No. 26-6046

ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

RAYMOND GLENN JOHNSON,

Petitioner

vs.

WILLIAM "CHRIS" RANKINS, WARDEN,

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Raymond G. Johnson
Pro se Litigant

OSR•A-3-11
POB 514
Granite, OK 73547

September 15, 2026

QUESTIONS PRESENTED

1. WHETHER A FEDERAL APPELLATE COURT COMPLY WITH FEDERAL RULE OF EVIDENCE 201(c) (2)—WHEN SUPPLIED WITH THE NECESSARY INFORMATION—IT DENIES A PROPERLY FILED REQUEST FOR IT TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACT OF A PETITIONER'S EVIDENCE OF LAW ENFORCEMENT PLANTING EVIDENCE AT CRIME SCENE.

2. WHETHER A FEDERAL COURT DISMISSES A HABEAS PETITION CONTRARY TO *HOUSE* AND *MCQUIGGIN* WHEN IT FAILS TO ASSESS HOW A REASONABLE JURY WOULD REACT TO AN OVERALL, NEWLY SUPPLEMENTED RECORD—WHEN PETITIONER SEEKS TO SUPPLEMENT WITH EVIDENCE NOT HEARD AT TRIAL.

LIST OF PARTIES AND RELATED CASES

1. William "Chris" Rankins is Warden of the Oklahoma State Reformatory (OSR) in Granite, Oklahoma, where Petitioner is confined. Thus Mr. Rankins is named as Respondent in the foregoing action.

2. The cases related included the following:

   - *Johnson v. Rankins,* No. 26-7002, Docket Text: "Order filed by Judges Moritz, Baldock and Eid denying renewed [sic] motion to take judicial notice filed by Appellant Raymond Johnson. Served on 7/14/2026."[1]

   - *Johnson v. Rankins,* No. 26-7002, U.S. Court of Appeals for the Tenth Circuit. Order denying panel rehearing and rehearing en banc, "Entered for the Court" July 6, 2026.

   - *Johnson v. Rankins,* No. 26-7002, U.S. Court of Appeals for the Tenth Circuit. Order Denying Certificate of Appealability and Motion to the Judicial Notice, filed June 2, 2026.

   - *Johnson v. Rankins,* No. 6:25-CV-004-RAW-DES, U.S. District Court for the Eastern District of Oklahoma. Opinion and Order dated December 16, 2025.

   - *Johnson v. Oklahoma,* No. F-2020-180 (Okl. Cr. September 14, 2021) (not for publication): Order Denying Petition for Rehearing. Order filed September 14, 2021.

   - *Johnson v. Oklahoma,* No. F-2020-180 (Okl. Cr. August 12, 2021) (not for publication): Order Affirming Judgment and Sentence. Order filed August 12, 2021.

[1] To date, Petitioner has not received a copy of said Order.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Raymond Johnson, *pro se*, seeks remand to the United States District Court for the Eastern District of Oklahoma for that court's assessment of how a jury would react to an overall, newly supplemented record—supplemented with Petitioner's evidence of actual evidence not heard at trial which overcomes habeas statute of limitation. *House v. Bell,* 547 U.S. 518, 539-40, 126 S. Ct. 2064, 2066, 165 L. Ed. 2d 1 (2006); *McQuiggin v. Perkins,* 569 U.S. 383, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013). For the reasons advanced in this pleading, Petitioner prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

References to Opinions are cited as Pet. App. ___. The United States Court of Appeals for the Tenth Circuit denial of COA, dismissal of appeal (Pet. App. A.), and order denying rehearing and rehearing *en banc* are not reported but available at 2026 WL 1557157 and reprinted at Pet. App. C. The opinion of the United States District Court for the Eastern District of Oklahoma is not reported but is available at 2025 WL 3644239 and reprinted at Pet. App. B.

JURISDICTION

The Tenth Circuit denied rehearing and rehearing *en banc* on July 6, 2026. Petition for rehearing en banc qualified for treatment as petition for rehearing and tolled 90 day period in which to file petition for certiorari. *Missouri v. Jenkins,* 495 U.S. 33, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990). The Tenth Circuit denied Certificate of Appealability, dismissed the appeal, and denied request to take judicial notice, on

June 2, 2026. The jurisdiction of this Court is invoked under U.S. Sup.Ct. Rule 13, and 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

- Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in relevant part:

*** nor shall any State deprive any person of life, liberty, or property, without due process of law; ***

- Section 2254 of Title 28 of the United States Code provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim - -
>
> * * * *
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.
>
> (e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

- Rule 201 (c) (2). [Judicial Notice of Adjudicative Facts], Federal Rules of Evidence, 28 U.S.C.A. provides in relevant part:

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

* * * *

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

* * * *

(2) **must take judicial notice if a party requests it and the court is supplied with the necessary information.** (Emphasis added)

(d) Timing. The court may take judicial notice at any stage of the proceeding.

STATEMENT OF THE CASE

A. Legal Background

1. Schlup standard.

a.

This Court, in *House*, explained that the *Schlup*[1] standard requires (1) **new reliable evidence not presented at trial** which the habeas court must assess for its likely impact of all the evidence on reasonable jurors (2) a petitioner to demonstrate that more likely than not, in light of the new evidence, no reasonable juror would find him guilt beyond a reasonable doubt, and (3) the federal court to assess how reasonable jurors would react to the overall, newly supplemented record. *House v. Bell,* 547 U.S. 518-19, 126 S. Ct. 2064, 2066, 165 L. Ed. 2d 1 (2006).

Further the Court explained, that because the *Schlup* standard does not address a district court's independent judgment as to whether reasonable doubt

[1] *Schlup v. Delo,* 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995)

exists, a ruling in favor of a petitioner does not require the showing of clear error as to the District Court's specific findings. And that by these principles, as described hereinabove, that a petitioner's evidence should be evaluated. *Id.*

b.

This Court, in *McQuiggin v. Perkins*, held that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup v. Delo,* 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808, and *House v. Bell,* 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1, **or expiration of AEDPA statute of limitations**, as in *Perkins. McQuiggin v. Perkins,* 569 U.S. 383, 384, 133 S. Ct. 1924, 1926, 185 L. Ed. 2d 1019 (2013).

The Court added, sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statute of limitations. *Id.*

2. Federal Rule of Evidence 201.

The Tenth Circuit of Appeals most recently held that Federal Rule of Evidence 201 (c) (2) requires the court to take judicial notice when a party requests it and supplies the court with the necessary information. *United States v. Murry,* 31 F. 4th 1274, 1296 (10th Cir. 2022). And in *U.S. v. Boyd,* 289 F. 3d 1254, 1258 (10th Cir. 2002) the court held that Federal Rule of Evidence 201 provides an exception to the ordinary requirement that record evidence support any judicial finding of fact.

B. Facts And Procedural History

Petitioner Raymond "Tex" Johnson of Dallas, Texas, accompanied his girlfriend to Durant, Oklahoma for the Thanksgiving Holiday which fell on a Thursday on the 24th day of November 2016. They traveled by Greyhound Bus. By Wednesday November 30, 2016, the two had left for Texas.

Detective Laxton's evidence

Petitioner was detained, on another matter, in the Dallas County Jail in Dallas, Texas when Detective Laxton through Texas officials arranged to obtain buccal swabs from him. On April 19, 2017, while Petitioner was in custody of Dallas County, Detective Laxton of the Durant Police Department, questioned Petitioner regarding the robbery of an EZ Mart store in Durant, Oklahoma. At which point Detective Laxton explained that (1) an EZ Mart store had been robbed around the time that Johnson had visited, and (2) that Raymond Johnson's DNA was found at the scene.

Additionally, while Petitioner was incarcerated in Dallas, Texas, Detective Laxton visited Petitioner's place of residence where the detective retrieved cigarette butts. DNA of Raymond Johnson was subsequently taken from a soda bottle and cigarette butts found near the scene of the Robbery. The state courts declined to order DNA testing of the cigarette butts retrieved from the residence of Raymond Johnson.

Detective Laxton himself admitted at trial that he improperly discarded three cigarette butts that he collected, failing to photograph and log them into evidence. Tr. Vol. 1 pp. 201, 224-229; Tr. Vol. 2 pp. 284-285. Further Detective Laxton admitted that the surveillance video did not definitively show the assailant smoking or

dropping anything. Tr. Vol. 1 pp. 230-231. What's more? Detective Laxton admitted that he'd cancelled the fingerprint analysis he'd previously ordered. Tr. Vol. 1 pp. 202, 205, 235; Tr. Vol. 2 p. 275.

Jury not presented with all of the video evidence

The jury viewed video but only to the extent of a 30-minute segment the State had played already. Tr. Vol. 1 p. 187. At trial the State played only between the time frames of 8:57 and 9:27. Tr. Vol. 1 p. 187. However it is the scene depicted from the screen shot of the video at 10:09:20 which reveals Detective Laxton's misconduct in having planted the bottle.

1. In February 2020, for a crime that occurred in December 2016, Petitioner Raymond Johnson was tried and convicted in the District Court for Bryan County, State of Oklahoma, on a single count of Robbery with a weapon in violation of 21 O.S. § 801 and sentenced to a term of 40 years of imprisonment within the custody of the Oklahoma Department of Corrections.

2. On October 5, 2020, Petitioner, through appointed counsel, timely lodged his appeal of the judgment and sentence to the Oklahoma Court of Criminal Appeals (OCCA). Counsel presented two claims: "Detective Laxton violated Appellant's right to Due Process by Planting DNA evidence at the crime scene", and Trial counsel was ineffective for failing to discover that Detective Laxton planted DNA evidence". Additionally, in accordance with Rule 3.11 (B) (3) (b), *Rules of the Oklahoma Court of Criminal Appeals*, title 22, Ch. 18, App. (2020), Petitioner requested and evidentiary hearing and to supplement the appeal record with: (1) Affidavit of Bob Stovall a

specialist in digital technology and owner of Vision Digital, LLC; (2) Nine screenshots described in Mr. Stovall's affidavit showing the bottle containing Petitioner's biological DNA was not present before Toyota 4 Runner arrived;[2] and (3) Bob Stovall's curriculum vitae resume.

3. On August 12, 2021, the OCCA denied Petitioner's request "to supplement record or for evidentiary hearing". In a separate order, the OCCA affirmed the judgment and sentence (Pet. App. D.). Nonetheless the EZ Mart surveillance camera, i.e., Bob Stovall's screen shots, show that Detective Brandon Laxton planted the plastic soda bottle in the parking lot forty-five minutes after the robbery. That portion of the video was not played for the jury at trial, but the disc was admitted as an exhibit at trial and was part of the appeal record. The prosecution had played only sections of the video at trial, and provided only certain screenshots.

4. At trial, two conflicting testimonies existed where Jason Conner, an EZ Mart employee, testified that the masked assailant bought a Mountain Dew, whereas Detective Laxton testified that the assailant bought a Mountain Dew White Out. Bob Stovall's screenshots show two separate bottles, not far from each other, in the parking lot: A green bottle in appearance (Original Mountain Dew), as well as a white bottle in appearance (Mountain Dew White Out). The bottle in question is Detective Laxton's Mountain Dew White Out bottle which bears Petitioner's DNA.

The video footage not shown at trial, i.e., Petitioner's screenshots, reveal that Detective Laxton, after having arrived in the white Toyota 4 Runner, had placed the

[2] Detective Laxton arrived to the crime scene in the Toyota 4 Runner captured in the screenshots.

object described as the plastic bottle at the scene of the crime, placed about one foot away from the **southwest distal end** of the white painted parking space strip. The detailed screenshots include a documented timeline of the video footage, i.e., screen shots.

The State's black and white screen shots of the scene capture a dark image of an object located approximately four or five feet away from the **northwest distal end** of the white painted parking space strip as well as a dark image of sorts at the **southwest distal end**. Those images are confusing; misleading at worst. Thus, the Respondent's black and white screen shots are misleading. Whereas Petitioner's in-color screen shots capture both the dark image described above as well as the actual object described as Detective Laxton's plastic bottle located at the **southwest distal end** which is only about a foot away from the white painted parking space strip.

Ultimately the screen shots reflect before and after images of Detective Lawton's arrival and that the object at the **southwest distal end** actually appeared almost immediately after Detective Laxton's arrival, after the detective existed the Toyota 4 Runner, and is seen retrieving the item from the backseat of the vehicle.

5. On September 1, 2021, Petitioner, through Counsel, filed a Petition for Rehearing in the OCCA. Counsel argued in pertinent part, that the OCCA had "overlooked the first subclaim of Appellant's ineffective-assistance proposition, **that trial counsel should have discovered the footage at 10:09:20 of State Exhibit 1 and presented it** to the jury". (Emphasis added).

6. On September 14, 2021 however the OCCA denied Petitioner's request for rehearing.

7. On January 6, 2025, Petitioner filed his petition for writ of habeas corpus in the United States District Court for the Eastern District of Oklahoma in which he relied on the Supreme Court's ruling in *McQuiggin v. Perkins,* 569 U.S. 383, 386 regarding plea of actual innocence overcoming habeas statute of limitations, and followed by the Tenth Circuit Court of Appeals in *Fontenot v. Crow,* 4 F. 4th 982, 1029 (10th Cir. 2021). See note below regarding scrivener's error.[3]

Furthermore, because the OCCA had not conducted an evidentiary hearing on Petitioner's facts, i.e., screenshots in support of his plea of actual innocence, neither had it ordered the state district court to conduct an evidentiary hearing, 28 U.S.C.A. § 2254 (d) (2) applies.

8. On December 16, 2025, the District Court dismissed the petition for 28 USCA § 2254 habeas relief as time-barred. Consequently the District Court failed to assess how reasonable jurors would react to an overall, newly supplemented record, applying the reasonable-doubt standard, as explained by the Supreme Court in *House v. Bell,* 547 U.S. 518, 539-40 (2006).

9. Petitioner timely appealed to the Tenth Circuit Court of Appeals. Additionally in support of his combined opening brief and application for certificate of appealability, with the necessary information provided, Petitioner requested the circuit court to take judicial notice of adjudicative fact.

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[3] The Tenth Circuit Court of Appeals Order dismissing Petitioner's appeal erroneously states "January 6, **2026**" as the date Petitioner filed his habeas petition in the district court. Order p. 2.

10. On June 2, 2026, the Tenth Circuit Court of Appeals dismissed Petitioner's appeal. Furthermore the circuit court denied Petitioner's request for it to take judicial notice of adjudicative fact of the necessary information provided, i.e., Petitioner's screenshots of Detective Laxton planting evidence, made available to the Tenth Circuit Court of Appeals.

11. Petitioner timely requested rehearing; moreover, with the request for rehearing, Petitioner for a second time requested the court to take judicial notice of adjudicative fact which with that request included the affidavit from Bob Stovall along with screenshots which suggest Detective Laxton planted the bottle in the parking lot after his arrival to the scene in the Toyota 4 Runner.

12. On July 14, 2026, the "Notice of Docket Activity" reflected that the Tenth Circuit Court of Appeals construed Petitioner's as a "renewed motion to take judicial notice" (Pet. App. C.). However Petitioner's second request was patently supplemented with (1) additional screenshots, and (2) the affidavit of Bob Stovall—the specialist in digital technology—who discovered the evidence, i.e., screenshots of the detective planting the evidence.

Reasons for Granting the Petition

In *House v. Bell,* 547 U.S. 518, 538, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006), the Court explained, "[b]ecause a *Schlup* claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record", and, "[i]f new evidence so requires, this may include consideration of the credibility of the witnesses presented

at trial." *House* at 538-39. In other words, the habeas court may have to make some credibility assessments concerning a witness or witnesses at trial.

Moreover, the Court in *McQuiggin v. Perkins,* 569 U.S. 383, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013) held that plea of actual innocence can overcome habeas statute of limitations. And that the gateway should open when a petition presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error. *Perkins* at 401.

But, in order to determine whether the gateway should open, the district court must assess how reasonable jurors would react to an overall newly supplements record which should include Petitioner's evidence—who happens to be a *pro se* litigant. In other words, Petitioner should be allowed to amend his pleading by offering his proof of actual innocence. *House* at 538-39. Moreover, Petitioner the Court should appoint counsel.

Petitioner's first reason.

> THE FEDERAL DISTRICT COURT DISMISSED HABEAS PETITION CONTRARY TO HOUSE AND MCQUIGGIN WHEN IT FAILED TO ASSESS HOW A REASONABLE JURY WOULD REACT TO AN OVERALL, NEWLY SUPPLEMENTED RECORD—PETITIONER SOUGHT TO SUPPLEMENT WITH EVIDENCE NOT HEARD AT TRIAL.

For all intents and purposes, Petitioner invoked the federal habeas court's jurisdiction under 28 § 2254 (d) (2) (". . . State court proceedings . . . resulted in a decision that was based on an unreasonable determination of the facts in light of the

evidence presented in the State court proceeding"). Petitioner had requested on direct appeal for the OCCA to order an evidentiary hearing, but the request was denied.

The federal district court however dismissed Petitioner's habeas petition contrary to 28 § 2254 (d) (2), *House*, and *Perkins* in that (1) in light of Petitioner's in-color video screenshots, it failed to assess how reasonable jurors would react to an overall, newly supplemented record. House at *538; and (2) it precluded Petitioner's otherwise late filed petition essentially alleging actual innocence as time barred. *See Perkins* at *392 ("[A] credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . on the merits notwithstanding the existence of a procedural bar to relief").

The federal habeas court foreclosed any opportunity for it to assess how a reasonable jury would react to an overall, newly supplemented record—applying the reasonable doubt standard—though Petitioner asserted that evidence existed to show bottled was planted after the detective arrived, the court relied solely upon supposed state court factual findings where the OCCA stated in pertinent part, "The assessment of the video on appeal in, again, patently false. The video is clear there is no evidence of planting. The bottle is there before [*sic*] the detective arrives." *Johnson v. Rankins,* Case No. 25-CV-004-RAW-DES, 2025 WL 3644239, at *4 (E.D. Okla. Dec. 16, 2025). Pet. App. B.

But when a state court denies a request for an evidentiary hearing and then make factual determinations, the failure to hold a hearing can render the court's subsequent factual findings unreasonable. *Smith v. Aldridge,* 904 F. 3d 874, 882 (10th

Cir. 2018). In Petitioner's case the OCCA needed to hold a hearing in order to make such a factual determination. Because the court did not, it made its own fact finding process inadequate. *Smith,* 904 F. 3d at 882.

The federal district court for the Eastern District of Oklahoma dismissed the habeas petition contrary to *House* and *Perkins* when it failed to assess how a reasonable jury would react to an overall, newly supplemented record. In so doing the district court dismissed the petition contrary to the circuit court's decision in *Fontenot v. Crow,* 4 F. 4th 982, 1032 (10th Cir. 2021) (The *Schlup* inquiry "requires a holistic judgment about all the evidence, and its likely effect on reasonable jurors applying the reasonable-doubt standard."). But, the circuit court failed to correct the district court's decision.

The panel, in its analysis, citing 28 U.S.C.A. § 2254 (e) (1), explained, "[w]hen a state court has made a factual determination bearing on the resolution of an actual innocence issue, the petitioner bears the burden of rebutting this presumption by clear and convincing evidence." Pet. App. A. pp. 4, 5. Nonetheless, in light of Petitioner's *Schlup* claim the district court was required to address whether Petitioner should be granted on evidentiary hearing to present his evidence. *Teleguz v. Pearson,* 689 F. 3d 322, 330-31 (4th Cir. 2012).

Petitioner therefore asks this Court to reverse the circuit court's judgment on this issue and grant the writ.

Petitioner's second reason.

FEDERAL APPELLATE COURT DID NOT COMPLY WITH FEDERAL RULE OF EVIDENCE 201 WHEN IT DECIDED NOT TO TAKE

JUDICIAL NOTICE OF ADJUDICATIVE FACT THOUGH PETITIONER SUPPLIED THAT COURT WITH THE NECESSARY INFORMATION, I.E., EVIDENCE OF LAW ENFORCEMENT PLANTING EVIDENCE AT CRIME SCENE.

Federal Appellate Court did not comply with federal rule of evidence 201 *et seq.* when it declined to take judicial notice of adjudicative fact or remand to district court for taking of evidence where Petitioner supplied the appellate court with the necessary information. Pet. App. A; Pet. App. C.

Federal Rules of Evidence. Rule 201 [Judicial Notice of Adjudicative Facts] provides in relevant part, "[T]he court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" FRE 201 (b) (2); moreover, the court **must** take judicial notice if a party requests it and the court is supplied with the necessary information. FRE 201 (c) (2). And the court may take judicial notice at any stage of the proceeding. In other words, judicial notice may be taken at any stage of the proceedings, whether in the trial court or on appeal. *See Elan v. Department of Treasury,* 567 U.S. 1, 19, 132 S. Ct. 2126, 2138 (2012) (Even without fact finding capabilities, the Federal Circuit may take judicial notice of facts relevant to the constitutional question. In Petitioner's case, the Due Process Petitioner was denied in the state court on direct appeal.

In addition to affording litigants the opportunity to hear and be heard and the exchanging of briefs, and any requirement of formal findings at any level, courts however have left open the possibility of introducing evidence through regular channels where appropriate. Compare *Borden's Farm Products Co. v. Baldwin,* 293

U.S. 194, 55 S. Ct. 187, 79 L. Ed. 281 (1934), where the cause was remanded for the taking of evidence. Where adequate information is available for taking of judicial notice, an appellate court should use such information. *U.S. v. Gonzalez,* C.A. 2 (N.Y.) 1970, 442 F. 2d 698, certiorari denied 92 S. Ct. 146, 404 U.S. 845, 30 L. Ed. 2d 81.

On appeal to the Tenth Circuit, Petitioner submitted adequate information, i.e., in-color screen shots from surveillance video indicating detective who arrived to the scene planted evidence—attached to his notice of appeal from district court's judgment. No motion to take judicial notice was submitted at that stage of the proceeding. *But see, Bar Rubber Products Co. v. Sun Rubber Co.,* C.A. 2 (N.Y.) 1970, 425 F. 2d 1114, 165 U.S.P.Q. 429, certiorari denied 91 S. Ct. 118, 400 U.S. 878, 27 L. Ed. 2d 115, 167 U.S.P.Q. 385 where court recognized that although motion to take judicial notice of documents, which allegedly would have succinctly demolished theory presented by opposing party, could have been submitted when notice of appeal from judgment, court of appeals was compelled to grant motion in view of gravity of issue to which documents related and in furtherance of interests of justice.

For these reasons, supported by relevant authority, certiorari should be granted and the case remanded to the district court.

Petitioner's third reason.

> THE TENTH CIRCUIT COURT OF APPEALS DECISION IS IN CONFLICT WITH THE DECISION OF NINTH CIRCUIT REGARDING A STATE COURT'S OBJECTIVELY UNREASONABLY FACT-FINDING PROCESS WHICH RENDERS ITS FACTUAL DETERMINATION UNREASONABLE.

The panel for the Tenth Circuit, in addition to having decided the case in conflict with the Ninth Circuit, it decided the case in conflict with a previous decision of a panel for the Tenth Circuit on the important matter regarding a state court's **process based** unreasonable factual determination.

The Ninth Circuit, on more than one occasion, has explained, "where a state court makes factual findings without an evidentiary hearing or other opportunity for the petitioner to present evidence, 'the fact-finding process itself is deficient', and not entitled to deference." *Hurles v. Ryan,* 752 F. 3d 768, 790-91 (9th Cir. 2014). *See also Perez v. Rosario,* 459 F. 3d 943, 950 (9th Cir. 2006) ("In many circumstances, a state court's determination of the facts without an evidentiary hearing creates a presumption of unreasonableness.")

Petitioner's Application for Evidentiary Hearing was timely filed in the Oklahoma Court of Criminal Appeals, wherein Petitioner's appointed counsel discovered and attached evidence indicating police misconduct where the investigating officer Detective Laxton planted evidence. The Tenth Circuit itself has explained, "[w]hen a state court denies a request for an evidentiary hearing and then makes factual determinations, the failure to hold a hearing can, in limited circumstances, render the court's subsequent factual findings unreasonable." *Smith v. Aldridge,* 904 F. 3d 874, 882 (10th Cir. 2018). That court also explained, "[w]hen a state court bases its decisions on an objectively unreasonable factual determination, AEDPA's limitation on relief is lifted." *Id.*

Whereas in Petitioner's case, on the issue regarding the police misconduct described above, the federal courts deferred despite the fact the OCCA made "factual findings" without an evidentiary. The Panel explained in relevant part, "[t]he OCCA focused on the video itself [*sic*], rather than the screenshots . . ." Pet. App. A. p. 2. But, clearly from the OCCA's written opinion, it considered the evidence to the extent that it viewed *only* the video presented at trial—not the parts of the video, i.e. screenshots, counsel for Petitioner discovered and presented on direct appeal which is otherwise new evidence in direct contradiction with the evidence the OCCA viewed. Pet. App. D. p. 3.[4]

Further the panel held that, "Johnson failed to submit his purportedly new evidence to the district court; the evidence was not, in fact, new [*sic*], and Johnson failed to rebut by clear and convincing evidence that OCCA's factual finding that law enforcement had not planted evidence." Pet. App. A. p. 3. But again, the OCCA's opinion is not entitled to deference where it made factual findings without an evidentiary hearing or other opportunity for the petitioner to present evidence. *Hurles v. Ryan,* 752 F. 3d 768, 790-91 (9th Cir. 2014). And as reasoned in *Hurles,* the fact-finding process itself in this case was therefore deficient. *Id.*

The federal habeas statute, 28 U.S.C.A. § (e) (1), does not apply as of yet, because no evidentiary hearing was held in the federal district court. The Tenth Circuit Court acknowledged as much in *Vreeland v. Zupan,* 906 F. 3d 86 (10th Cir.

[4] The OCCA noted that, "[t]he detective also retrieved a cigarette near where [Petitioner] was standing outside that also contained [Petitioner's] DNA" (Pet. App. D. p. 3). The OCCA's opinion does not reflect that it viewed video footage or screenshots to corroborate or to contradict that account.

2018). The circuit court noted, "[i]t's not entirely clear whether § 2254 (e) (1)'s presumption applies to our § 2254 (d) (2) analysis. *Vreeland v. Zupan,* 906 F. 3d 866, 880, n.3 (10th Cir. 2018). As for as § 2254 (d) (2) analysis, the Tenth Circuit held, "we must defer to the State court's factual determinations so long as reasonable minds reviewing the record might disagree about the finding in question. *Vreeland* at 880. But, as shown above, the record reflects that OCCA did not consider Petitioner's evidence, and denied his request for evidentiary hearing; furthermore, the OCCA denied Petitioner's request for rehearing. Pet. App. E.

For these reasons certiorari should be granted and the case ultimately remanded to the district court.

ADDENDUM

The Court would be advised to know that, though Petitioner can read, his comprehension however, especially of the law, is lacking to say the least. For that reason, Petitioner sought help from a fellow inmate who drafted his initial habeas petition. For reasons unknown, Petitioner's evidence was not attached to the Petition. The fellow who'd drafted the initial petition was subsequently transferred to another facility prior to any responsive pleadings.

After Petitioner received Respondent's Motion to Dismiss, he sought help from another inmate who'd been certified by the General Counsel for the Oklahoma Department of Corrections for work as an inmate research assistant. That inmate, with little time to prepare, drafted Petitioner's response. But it wasn't until after the Response was filed that that inmate was made aware of Petitioner's evidence, i.e.,

screenshots of the surveillance video not shown at trial, and the Affidavit of Bob Stovall the video the specialist in digital technology—who'd discovered said evidence. Moreover the screenshots in Petitioner's possession are in color; whereas, the Respondent might have included black and white screenshots which are misleading. The inmate research assistant had Petitioner's screenshots enlarged for the court to clearly see that Detective Laxton's evidence was not in the parking lot before the detective's arrival.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted this 16 day of September 2026,

By, _____
RAYMOND G. JOHNSON
OSR•A-3-11
POB 514
Granite, OK 73547

VERIFICATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF GREER)

VERIFICATION / DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746 the Petitioner, a prisoner in state custody, states under penalty of perjury and under the laws of the United States that the foregoing is true and correct; that Petitioner has read the foregoing and affixed his signature hereto at the Oklahoma State Reformatory (OSR) Law Library on this 16 day of September, 2026, and hand delivered a true and correct copy of the foregoing to the OSR Law Library Supervisor for mail to the Clerk of the Court and the party below under the Mailbox Rule Pursuant to Fed. R. App. P. 4 (c) postage prepaid.

_____
Raymond Glenn Johnson, ODOC # 855050

CERTIFICATE OF SERVICE

I, Raymond Glenn Johnson, the undersigned hereby certify that on this 16 day of September, 2026, with "Proof of Service" attached, hand delivered a true and correct copy of the foregoing to the OSR Law Library Supervisor for mail to the Clerk of the Court and the parties below:

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