IN THE COURT OF CRIMINAL APPEALS
THE STATE OF OKLAHOMA

RICHARD GLOSSIP,	)	Oklahoma County
	)	Case No.
Petitioner,	)	
	)	Court of Criminal Appeals
vs.	)	Direct Appeal Case No.
	)	D-2005-310.
STATE OF OKLAHOMA,	)	
	)	Post Conviction Case No.2004-978
Respondent.	)	
	)	
	)	
	)	POST-CONVICTION
		CASE NO.

SUCCESSIVE APPLICATION FOR POST-CONVICTION REVIEW

DEATH PENALTY
EXECUTION SCHEDULED FOR 3:00 P.M. SEPTEMBER 16, 2015

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COURT OF CRIMINAL APPEALS FORM 13.11A

SUCCESSIVE APPLICATION FOR POST–CONVICTION RELIEF
- DEATH PENALTY -

PART A: PROCEDURAL HISTORY

Petitioner, Richard E. Glossip, through undersigned counsel, submits this Successive Application for Post-Conviction relief under Section 1089 of Title 22. This is the second time an application for post-conviction relief has been filed in Mr. Glossip's case. Pursuant Rule 9.7A (3)(d), a copy of the Original Application for Post-Conviction Relief is attached hereto as Attachment 1, *Appendix of Attachments to Application For Post-Conviction Relief.* The appendix of exhibits to the Original Application have not been attached, but are available should the Court find them necessary for its review of this subsequent application.

The sentence from which relief is sought: Death.

1. Court in which sentence was rendered:

(a) Oklahoma County District Court.

(b) Case Number: CF-1997- *.

2. Date of sentence: August 27, 2004

3. Terms of sentence: Death.

4. Name of Presiding Judge: Hon. Twyla Mason Gray.

5. Is Petitioner currently in custody? Yes.

Where? H-Unit, Oklahoma State Penitentiary, McAlester, Oklahoma.

Does Petitioner have criminal matters pending in other courts? No.

Does Petitioner have sentences (capital or non-capital) to be served in other states or jurisdictions? No.

I. CAPITAL OFFENSE INFORMATION

6. Petitioner was convicted of the following crime, for which a sentence of death was imposed:

(a) First Degree Murder, in violation of Okla. Stat. tit. 21, § 701.7(A).

Aggravating factors alleged:

(a) The State alleged:

1. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;
2. The murder was especially heinous, atrocious, or cruel;
3. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

(b) The jury determined:

The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

The heinous and cruel aggravating factor was dismissed before the second trial and the continuing threat aggravator was rejected by the jury.

Mitigating factors listed in jury instructions:

1. The defendant did not have any significant history of prior criminal activity;

2. The defendant is 41 years of age;

3. The defendant's emotional and family history;

4. The defendant, since his arrest on January 9, 1997, has been incarcerated and has not posed a threat to other inmates or detention staff;

5. The defendant is amenable to a prison setting and will pose little risk in such structured setting;

6. The defendant has family who love him and value his life;

7. Has limited education and did not graduate from high school. He has average intelligence or above. He has received his G.E.D.;

8. After leaving school, the defendant had continuous, gainful employment from age 16 to his arrest on January 9, 1997;

9. The defendant could contribute to prison society and be an assistance to others;

10. Prior to his arrest, the defendant, had no history of aggression;

11. The defendant was not present when Barry Van Treese was killed; and

12. The defendant has no significant drug or alcohol abuse history.

Was Victim Impact Evidence introduced at trial? Yes (X) No ( ).

7. Check whether the finding of guilty was made:

After plea of guilty ( ) After plea of not guilty (X).

8. If found guilty after plea of not guilty, check whether the finding was made by:

A jury (X) at the original trial;

A judge without a jury at the re-sentencing trial (X).

9. Was the sentence determined by (X) a jury, or ( ) the trial judge?

II. NON-CAPITAL OFFENSE INFORMATION

10. Petitioner was convicted of the following offense(s) for which a sentence of less than death was imposed (include a description of the sentence imposed for each offense).

Petitioner was not convicted of any offense other than the single capital offense.

11. Check whether the finding of guilty was made:

After plea of guilty ( ) After a plea of not guilty ( )
Not applicable (X).

12. If found guilty after plea of not guilty, check whether the finding was made by:

A jury ( ) A judge without a jury ( ) Not applicable (X).

III. CASE INFORMATION

13. Name and address of lawyer in trial court:

Attorneys for Original Trial

Silas Liman
1800 E. Memorial Rd.#106
Oklahoma City, OK 73131
(405) 323-2262

Names and addresses of all co-counsel in the trial court:

Wayne Woodyard
Oklahoma Indigent Defense System
610 South Hiawatha
Sapulpa, OK 74066
(405) 801-2727

14. Was lead counsel appointed by the court? Yes.

15. Was the conviction appealed? Yes (X) No( ).

To what court or courts? Oklahoma Court of Criminal Appeals.

Date Brief In Chief filed: December 15, 2005

Date Response filed: April 14, 2006

Date Reply Brief filed: May 4, 2006

Date of Oral Argument: October 31, 2006

Date of Petition for Rehearing (if appeal has been decided): May 3, 2007

Has this case been remanded to the District Court for an evidentiary hearing on direct appeal? Yes ( ) No (X).

If so, what were the grounds for remand? Not applicable.

Is this petition filed subsequent to supplemental briefing after remand?

Yes ( ) No (X).

16. Name and address of lawyers for appeal?

Janet Chesley
Kathleen Smith
Capital Direct Appeals
Oklahoma Indigent Defense System
P.O. Box 926
Norman, OK 73070
(405) 801-2666

17. Was an opinion written by the appellate court? Yes, for D-2005-310.
Yes, for D-1998-948[1]

If "yes," give citations if published:

Glossip v. State, 2007 OK CR 12, 157 P.3d 143 (2007)
Glossip v. State, 2001 OK CR 21, 29 P.3d 597 (2001)

18. Was further review sought? Yes (X) No( ). After this Court affirmed Mr. Glossip's death sentence in D-2005-310, certiorari was sought in the Supreme Court, which was denied on January 22, 2008 in Glossip v. Oklahoma, 552 U.S. 167 (2008).

An Original Application for Post-Conviction Relief was filed in this Court, Case No. PCD-2004-978, on October 6, 2006. The court denied Mr. Glossip's original application in an unpublished opinion on December 6, 2007. The following grounds for relief were raised in the original application:

PROPOSITION I

PROSECUTORIAL MISCONDUCT DEPRIVED MR. GLOSSIP OF A FAIR

[1] This Court reversed Mr. Glossip's conviction and death sentence in his first appeal.

TRIAL- AND RELIABLE SENTENCING PROCEEDING.

PROPOSITION II

TRIAL AND APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE OKLAHOMA CONSTITUTION.

PROPOSITION III

TRIAL AND APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO ARGUE THAT JUDICIAL BIAS SO INFECTED THE PROCEEDINGS THAT MR. GLOSSIP WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTIONS 6, 7, 9, AND 20 OF THE OKLAHOMA CONSTITUTION.

PROPOSITION IV

MR. GLOSSIP WAS DENIED A FAIR TRIAL WHEN THE TRIAL COURT FAILEDTO KEEP THE JURY SEQUESTERED DURING DELIBERATIONS.

PROPOSITION V

THE CUMULATIVE IMPACT OF ERRORS IDENTIFIED ON DIRECT APPEAL AND POST-CONVICTION PROCEEDINGS RENDERED THE PROCEEDING RESULTING IN THE DEATH SENTENCE ARBITRARY, CAPRICIOUS, AND UNRELIABLE. THE DEATH SENTENCE IN THIS CASE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND A DENIAL OF DUE PROCESS OF LAW.

On November 3, 2008, Mr. Glossip filed a Petition for Writ of Habeas Corpus in the United States District Court for the Western District of Oklahoma. Glossip v. Trammell, Case No. 08-CV-00326-HE. The federal district court denied the petition on September 28, 2010. The following grounds for relief were raised in Mr. Malone's habeas petition:

GROUND ONE

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUSTAIN A CONVICTION AND SENTENCE OF DEATH UNDER THE REQUIREMENTS OF THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

GROUND TWO

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADMITTING IRRELEVANT AND HIGHLY PREJUDICIAL EVIDENCE INTO THE RECORD IN VIOLATION OF MR. GLOSSIP'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND THREE

THE TRIAL COURT ERRED IN PERMITTING THE STATE TO DISPLAY SELECTIVE PORTIONS OF CERTAIN WITNESSES' TESTIMONY THROUGHOUT THE TRIAL BECAUSE IT OVEREMPHASIZED THAT TESTIMONY, CONSTITUTED A CONTINUOUS CLOSING ARGUMENT, AND VIOLATED THE RULE OF SEQUESTRATION OF WITNESSES.

GROUND FOUR

MR. GLOSSIP WAS DEPRIVED OF A FAIR TRIAL AND A FAIR SENTENCING HEARING BY THE IMPROPER TACTICS, REMARKS, AND ARGUMENTS OF THE PROSECUTORS DURING BOTH STAGES OF TRIAL.

GROUND FIVE

MR. GLOSSIP WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HIS RIGHTS UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND SIX

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE AGGRAVATING CIRCUMSTANCE OF MURDER FOR REMUNERATION.

GROUND SEVEN

ERRORS IN JURY INSTRUCTIONS GIVEN IN THE SECOND STAGE OF TRIAL DENIED MR. GLOSSIP'S RIGHTS UNDER THE EIGHTH AND

FOURTEENTH AMENDMENTS TO DUE PROCESS AND A RELIABLE SENTENCING PROCEEDING.

GROUND EIGHT

THE TRIAL COURT ERRED IN ALLOWING IMPROPER VICTIM IMPACT TESTIMONY DURING THE SENTENCING STAGE, VIOLATING MR. GLOSSIP'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND NINE

THE TRIAL COURT'S VOIR DIRE PROCESS VIOLATED MR. GLOSSIP'S RIGHTS PROTECTED BY THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OKLAHOMA CONSTITUTION.

GROUND TEN

THE ADMISSION OF A PRE-MORTEM PHOTOGRAPH OF THE VICTIM INJECTED PASSION, PREJUDICE, AND OTHER ARBITRARY FACTORS INTO THE SECOND STAGE PROCEEDINGS.

GROUND ELEVEN

TRIAL AND APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE OKLAHOMA CONSTITUTION.

GROUND TWELVE

TRIAL AND APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO ARGUE THAT JUDICIAL BIAS SO INFECTED THE PROCEEDINGS THAT MR. GLOSSIP WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND THIRTEEN

THE ACCUMULATION OF ERRORS SO INFECTED THE TRIAL AND SENTENCING PROCEEDINGS WITH UNFAIRNESS THAT MR. GLOSSIP WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE

PROCESS AND A RELIABLE SENTENCING PROCEEDING IN VIOLATION OF THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.

The Tenth Circuit affirmed the denial of habeas relief in Case No. 10-6244 on July 25, 2013. See Glossip v. Trammell, 530 Fed.Appx. 708 (2013). A petition for rehearing was filed on September 9, 2013 and was denied on September 23, 2013.

A petition for writ of certiorari was filed in the Supreme Court and was denied on May 5, 2014. See Glossip v. Trammell, 134 S.Ct. 2142, 188 L.Ed.2d 1131 (2014).

PART B: GROUNDS FOR RELIEF

19. Has a motion for discovery been filed with this application? Yes (X) No ().

20. Has a Motion for Evidentiary Hearing been filed with this application? Yes (X) No ( ).

21. Have other motions been filed with this application or prior to the filing of this application? Yes (X) No ( ).

If yes, specify what motions have been filed:

An Entry of Appearance and Petitioner's Motion to Seal Portion of Application for Post-conviction Relief and Related Attachment were filed by undersigned counsel contemporaneously with the filing of this Application.

22. List propositions raised (list all sub-propositions).

PROPOSITION ONE- IT WOULD VIOLATE THE EIGHTH AMENDMENT FOR THE STATE TO EXECUTE MR. GLOSSIP ON THE WORD OF JUSTIN SNEED INTRODUCTION

PROPOSITION TWO-COUNSEL WERE INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT

PROPOSITION THREE-THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE MURDER CONVICTION BECAUSE NO RATIONAL TRIER OF FACT COULD HAVE FOUND BEYOND A REASONABLE DOUBT THAT MR. GLOSSIP AIDED AND ABETTED SNEED

PROPOSITION FOUR- COUNSELS' PERFORMANCE VIOLATED MR. GLOSSIP'S RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE MEDICAL EXAMINER TESTIFIED IN A WAY THAT MISLED THE JURY AND UNDERMINES THE RELIABILTY OF THE VERDICT AND DEATH SENTENCE**.**

PART C: FACTS

STATEMENT OF THE FACTS OF THE CASE, INCLUDING REFERENCE TO SUPPORTING DOCUMENTATION, RECORD, AND APPENDICES

1. CITATIONS TO THE RECORD

Consistent with Rule 9.7(D)(1)(a), the record and transcripts in this case will be cited using the following abbreviations:

"O.R. ___":	the consecutively paginated nine (9) volume original record in Oklahoma County District Court Case No. CF-1997-244;
"Tr. ___":	the transcripts of the trial and sentencing proceedings held from May**9, 2004 through June *, 2004 followed by the volume and page number;
"Tr. month/day/year ___":	other hearing transcripts followed by that hearing's date and page number.

Any additional record in this post-conviction proceeding, not otherwise referenced above, consists of the "record on appeal" as defined by Rule 1.13(f), and is considered to be incorporated herein by operation of that Rule. References to the *Appendix of Attachments* in support of this Application for post-conviction relief will indicate their attachment number, e.g., "Att. 1."

STATEMENT OF THE CASE

Richard E. Glossip, was charged originally charged with accessory after the fact to first degree murder in Oklahoma County, Case No. CF-1997-244; the state, however, subsequently amended the information to charge a single count of first degree murder. Mr. Glossip was initially tried and sentenced to death by a jury before Judge Richard W. Freeman. The jury found the aggravating factors then charged: (1) the murder was heinous, atrocious and cruel; and (2) the defendant would pose a continuing threat to society. This conviction and death sentence was reversed by this Court because Mr. Glossip received ineffective assistance of counsel. See Glossip v. State, 2001 OK CR 21, 29 P.3d 597 (2001).

On remand, the heinous and cruel aggravating factor was dismissed before retrial and the court permitted the prosecution, over objection, to file an amended bill of particulars adding a new aggravating factor: murder for remuneration or murder for hire. After a jury trial, the jury convicted Mr. Glossip of the charged offense and sentenced him to death. At this trial, the jury rejected the continuing threat factor but found the murder for hire aggravating factor. The case was appealed under Case No. D-2005-310. This Court, in a 3:2 decision, affirmed the conviction and sentence of death. Glossip v. State, 2007 OK CR 34, 168 P.3d 185.

Mr. Glossip pursued his original state post-conviction action during the pendency of his direct appeal proceedings under Case No. PCD-2004-978. The post-conviction application was denied by unpublished order entered December 6, 2007.

PART D: PROPOSITIONS – ARGUMENTS AND AUTHORITIES

As a preliminary matter, this pleading's posture as a successive application does not constrain the Court's ability to grant relief. This Court maintains the power to grant post-conviction relief any time "an error complained of has resulted in a miscarriage of justice, or constitutes a substantial violation of a constitutional or statutory right." Valdez v. State, 2002 OK CR 20, 46 P.3d 703, 710-11. See also Okla. Stat. tit. 20, § 3001.1. The rule announced in Valdez is not an anomaly. This Court has consistently followed similar rationale when addressing successive post-conviction applications. Malicoat v. State, 2006 OK CR 25, 137 P.3d 1234; Torres v State, 2005 OK CR 17, 120 P.3d 1184; Slaughter v. State, 2005 OK CR 6, 108 P.3d 1052; McCarty v. State, 2005 OK CR 10, 114 P.3d 1089; Brown v. State, Case No. PCD- 2002-781 (unpublished) (attached hereto as Att. 3).

This Application raises instances of prior post-conviction counsel's constitutional and statutory ineffectiveness. This Court has held that the statutory right to post-conviction counsel in capital cases carries with it a requirement that post-conviction counsel perform effectively. Hale v. State, 1997 OK CR 16, 934 P.2d 1100. See also Okla. Stat. tit. 22, § 1356. Hale recognized the unfairness in providing a lawyer, but not requiring that lawyer to be effective. This Court held that a claim of ineffective assistance of post-conviction counsel was cognizable on a second post-conviction application since this was the "first available opportunity" for the petitioner to raise such a claim. Hale at 1102-03 (applying Strickland analysis to claim of post-conviction ineffectiveness). Similarly, this Court should not bar Mr. Malone's request to review the claims contained herein because he was denied the effective

assistance of post-conviction counsel.

PROPOSITION ONE
IT WOULD VIOLATE THE EIGHTH AMENDMENT FOR THE STATE TO EXECUTE MR. GLOSSIP ON THE WORD OF JUSTIN SNEED
INTRODUCTION

This Court recognized on the first direct appeal in this case that "the State's entire case" turned upon the testimony of Justin Sneed. *Glossip v. State*, 29 P.3d 597, 560 (Ok. Cr. 2001). This Court also recognized that "[t]he evidence tending to corroborate Sneed's testimony was extremely weak." *Id*. at 599. Newly discovered evidence reveals that Sneed's testimony was much weaker than even this Court has acknowledged. To allow the scheduled execution to go forward under these circumstances would result in a miscarriage of justice and a substantial violation of a constitutional right. *Valdez v. State*, 2002 OK CR 20, 46 P.3d 703, 710-11 (2002). Mr. Glossip's execution on this record, and on the word of Justin Sneed alone, would violate the Eighth Amendment's ban on cruel and unusual punishment.

We know Mr. Glossip did not kill anyone. The only evidence that he was even involved in a killing comes from Justin Sneed's lips. The evidence has never been compelling. See Proposition 3, *infra.* Recently discovered evidence creates more reasonable doubt about Sneed, which means that Mr. Glossip is not guilty. "We may assume...that in a capital case a truly persuasive showing of 'actual innocence' after trial would render the execution of a defendant unconstitutional." *Herrera v. Collins*, 506 U.S. 390, 417 (1993).

This Proposition presents two claims: (1) given the evidence known to this Court, it would violate the Eighth and Fourteenth Amendments to execute Mr. Glossip inasmuch as the evidence is insufficient to find him guilty; and (2) a death sentence predicated **solely** on the testimony of a

murderer who changed his stories to save himself violates the Eight and Fourteenth Amendments. *Hall v. Florida*, 134 S.Ct 1986, 1993 (2014)(capital proceedings must avoid the "risk" of wrongful execution). With what we know, Mr. Glossip would be acquitted at trial today.

The new evidence includes:

Expert opinions that the circumstances of this case pose a substantial risk of the execution of an innocent person. For example, Justin Sneed – the key witness against Mr. Glossip – was interrogated in a way that has been scientifically shown to produce false and unreliable information and, when exposed, exonerations.

Justin Sneed has bragged that, in order to escape the death penalty, he lied about Mr. Glossip's involvement in the case and that Mr. Glossip was not involved. He also has stated he wishes to recant but fears getting the death penalty himself.

Justin Sneed, contrary to the meek youngster he was portrayed to be at trial, was a severe, thieving, methamphetamine addict. He stole guns and other personal belongings out of cars in the parking lot of the motel where the crime occurred – and out of occupied motel rooms – and traded what he stole for methamphetamine. He was desperate for the drug. This was the modus operandi in this murder case – taking from rooms and cars at the motel to obtain drugs – but something went tragically wrong. Sneed, by himself, killed Mr. Van Treese.

RELYING UPON SNEED ALONE RISKS A WRONGFUL EXECUTION

In the early morning hours of January 7, 1997, Justin Sneed, by himself, beat Barry Van Treese to death with a baseball bat in Room 102 of the Best Budget Inn, a motel in Oklahoma City owned by Mr. Van Treese. Upon arrest, he first denied any involvement in or knowledge of the murder. Over the course of a long interrogation by detectives, Sneed was pressured to implicate Mr.

Glossip, the manager of the motel, and was fed details which, if he adopted them, would help him. Sneed finally adopted the detectives' story and agreed; in exchange for a life sentence for the murder he alone committed, to testify that Mr. Glossip was the mastermind of the plot to murder Mr. Van Treese to steal money from his car.

As the prosecutors conceded in argument at trial: "the physical evidence doesn't directly implicate Mr. Glossip." At a motion hearing held three days before the first trial, the prosecutor stated "*[t]his case rests basically on the testimony of Justin Sneed*. The physical evidence basically all goes to Justin Sneed."

1. The use of interrogation techniques proven to elicit false statements

Richard A. Leo, Ph.D., J.D., is the national, leading expert on police-induced false confessions and erroneous convictions. His just released report is attached to this request. Dr. Leo evaluated the circumstances of Mr. Sneed's interrogations and concluded, based upon decades of social science research, that law enforcement in this case used the "personal and situational factors associated with, and believed to cause, false confessions." *See* Dr. Richard Leo report, App. B.[2] For example:

> "The suggestion that Richard Glossip was involved in the homicide of Barry Van Treese first came from investigators, not Justin Sneed. The investigators feed Justin Sneed their theory that Richard Glossip was the mastermind of this homicide, and they repeatedly tell him that Richard Glossip was putting the crime on him;"
>
> Interrogators "repeatedly tell him that he will be the scapegoat for the crime if he does not confess, implying that he will receive the harshest punishment if he does not confess to it; they repeatedly suggest that Richard Glossip is the one who put him up to it; and they tell him that he can get this straightened out;"
>
> Interrogators "presumed the guilt of Richard Glossip from almost the start and sought to pressure and persuade Justin Sneed to implicate Richard Glossip"

[2] Apparently the detectives involved have used such techniques before. *See* Lombardi affidavit, App. C.

> "The investigators repeatedly lied to Justin Sneed by telling him that multiple people or witnesses had implicated him in the murder"

Dr. Leo's report explains the science behind why techniques such as these create "the suspect's perception that he is trapped, there is no way out, and that his conviction will be inevitable, thus leading to the perception that he has little choice but to agree to or negotiate the best available outcome or mitigation of punishment given the subjective reality of his situation." **Such tactics "are substantially likely to increase the risk of eliciting false statements, admissions, and or confessions**."[3]

Finally, Dr. Leo notes Sneed's "multiple, inconsistent, and contradictory accounts of the crime" which is consistent with a guilty person "falsely implicating an innocent third part as an accomplice."

2. Sneed set Mr. Glossip up and Mr. Glossip did not do anything

Sneed brags that he set Mr. Glossip up.

> AFFIDAVIT OF MICHAEL G. SCOTT
>
> 4. For about a year, starting in 2006, I was incarcerated at the Joseph Harp Correctional Facility.
>
> 5. While at Joseph Harp, my cell was across from Justin Sneed's cell....
>
> 7. While I was housed near Mr. Sneed, and on more than one occasion, I heard Justin Sneed talk about the murder case that he was in prison for, and about Richard Glossip. I clearly heard Justin Sneed say that, in his statements and testimony, he set Richard Glossip up, and that Richard Glossip didn't do anything.

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[3] App. D. is a document entitled "When Eight Is Enough: How many 'true' stories does it take to execute an innocent man?" --The transcribed statements of Justin Sneed.

In addition to Dr. Leo, other noted experts on wrongful convictions– Barry Scheck and Sam Gross–reviewed this case and labeled it a "classic example." They, with Sen. Tom Coburn, Barry Switzer, and former U.S. Attorney John W. Raley have urged the Governor "to stay the execution of Richard Glossip so that deep concerns about his guilt can be addressed." App. E.

8. Among all the inmates, it was common knowledge that Justin Sneed lied and sold Richard Glossip up the river.

9. As a specific example, within the first month or two of my arrival at Joseph Harp, I learned that Justin Sneed had snitched on a guy who didn't do anything. I specifically remember Justin on the top run with a group of other inmates, fixing some food, and laughing with them about setting Richard Glossip up for a crime Richard didn't do. It was almost like Justin was bragging about what he had done to this other guy–to Richard Glossip. Justin was happy and proud of himself for selling Richard Glossip out.

10. I know Justin made stuff up to try to save his own life, and to get a better deal: a life sentence on a soft yard. I heard Justin talking about the deal he made, and what he did to Richard.

11. When I heard Sneed say these things, I did not tell anyone. Honestly, there seemed to be many other things that I saw or heard that were much worse. However, when I saw the Dr. Phil show about Justin Sneed and about Mr. Glossip being executed, I knew I had to say something, because I realized just how important this information was. So I called Don Knight's office, since I saw him on Dr. Phil.

App. F.[4]

3. Sneed habitually broke into cars and motel rooms–stealing guns--to support his addiction to methamphetamine; this crime is his modus operandi

a. Sneed's drug dealer

The state portrayed Sneed as a hapless dupe who had taken methamphetamine, but "he didn't use it that often." The state asked: "Why would he need that much money?" And the state suggested that Sneed's only possible motive for admittedly killing Mr. Treese was to do Mr. Glossip's bidding.

According to one of Sneed's drug dealers at the time, Sneed habitually broke into peoples' cars

[4] Years after this time frame, Mr. Sneed apparently had second thoughts and wished to recant publicly but is afraid. According to Sneed's daughter, Justine, her father "had lied about Richard's involvement because he didn't want to get the death penalty" but he was "afraid to recant his testimony" because "he feared losing his plea deal and being put on death row himself." App. H. Sneed's mother also reports that when he was arrested he wrote to her and said there were other people involved, "really powerful and important people," like "police officers." App. I.

and motel rooms to take property to support his severe drug addiction.

AFFIDAVIT OF RICHARD ALLAN BARRETT

1. I met Bobby Glossip [Richard's brother] who I knew as "Critter" in late 1995 or early 1996 at the Plaza Motel in Oklahoma City.

2. At that time, I began dealing methamphetamine with Bobby Glossip and continued to do so until the end of 1996. During this period of time, we dealt drugs out of many different motels in the Oklahoma City area.

3. In or around September of 1996, I first started meeting Bobby Glossip at the Best Budget Inn on Council Road and 1-40. I met regularly with Bobby Glossip at the Best Budget Inn for the purposes of selling methamphetamine until the end of 1996.

4. I always met with Bobby Glossip in Room 102. Room 102 had a waterbed. I met with Bobby Glossip in Room 102 at the Best Budget Inn at least 3 times a week.

5. One of the first few times I was at the Best Budget Inn there was a young man in Room l02 getting high with Bobby Glossip. He was using methamphetamine with a needle. Bobbie Glossip always made people shoot up with a needle before he would sell to them; to be sure they were not the police. When he left, I asked Bobby Glossip who the guy was. **Bobby Glossip told me the kid was the motel maintenance man. Bobby Glossip told me to always keep my car locked when I was at the motel. Later I learned this was because the maintenance man (Justin Sneed) broke into cars at the motel parking lot and stole items from the cars.**

6. During this approximately four month period of time I would go to the Best Budget Inn to sell methamphetamine approximately 3 to 4 times a week. Each time I went to the Best Budget Inn, the guy I knew as the maintenance man would come to Room 102 within 30 minutes of me arriving to buy drugs from Bobby Glossip, who was buying drugs from me.

7. **Each time the maintenance man would come to Room l02, he would use cash (mostly coins) or items to trade for methamphetamine. I specifically recall Justin Sneed bringing the following items to trade for drugs: food stamps (trade $150.00 in stamps for $100.00 of drugs), radar detectors, car stereos, a Samsonite silver hard-covered briefcase and, on one occasion, a**

nickel-plated .38 caliber handgun.[5] I was present when Justin Sneed told Bobby Glossip that he had taken these items from occupied rooms at the motel and cars in the parking lots of the motel and other businesses near the motel. I remember that Bobby Glossip traded "a 16" (16th of an ounce) with Justin Sneed for the handgun. This would have been enough of the drug for Sneed to shoot up 6 or 7 times (and would typically last for a day and a half or so). People who use meth with a needle chase the "rush" instead of just the high and so they typically use more of the drug than those who snort it, as I used to do. However, either way, the effects of the drug would last for days. On more than one occasion I observed Justin Sneed shoot up with a needle. Based on my own experience, I believe **Justin Sneed was addicted to methamphetamine in a bad way. Methamphetamine is a very addictive drug.** I often saw Justin Sneed "tweaking." This means a twitching of his mouth and a chewing of his lips. This is a sure sign that someone is high on methamphetamine.

8. In my experience, 90 % of the people I knew who were addicted to meth were thieves; stealing to support their habit. People with this addiction stay awake for days or weeks and will do anything to get more of the drug, even kill. People get very paranoid and mean when they are high on methamphetamine, and will shoot someone, or beat someone, even to death, to keep them from telling others of illegal things the user may be doing, or just from having paranoid thoughts that someone might turn them in.

9. I saw nothing to make me think that Justin Sneed was controlled by Richard Glossip. I never saw anything to make me think that Richard Glossip knew anything about Justin Sneed stealing from motel rooms or cars in the motel parking lots or the businesses nearby. I did not see anything to make me think that Richard Glossip was addicted to drugs.

10. I met Richard Glossip when he would come to Room 102 to see Bobby Glossip. Richard Glossip came to the room but never would stay very long. He mostly came to tell us to quiet down. I did not see Richard Glossip socialize with Bobby Glossip. In fact, Bobby Glossip was mean to Richard Glossip and told him to stay out of his business. As far as I know, Richard Glossip was a good hearted guy who was not involved in Bobby Glossip's drug business. I never saw Richard in the room when people were shooting meth and I never saw Richard come to the room when Justin Sneed was there.

[5] Bobby Glossip, Richard's brother, was arrested in 1996 for being a felon in possession of a firearm, file # CF-96-7587, Oklahoma v. Robert Glossip. The firearm was a nickel plated .38 caliber handgun, corroborating Mr. Barrett's information.

> 11. When I was in the Oklahoma County Jail, I got a letter from a lawyer named Wayne saying he wanted to talk to me about Richard Glossip's case. I didn't know what the case was about, but I heard through rumors at the jail that it was a murder at the Best Budget Inn in Room 102, and they had my fingerprints. This freaked me out, and I started trying to get transferred to federal custody. I entered a plea in my federal case to get transferred so as to get away from this situation. After this, no one contacted me again and it was my intention not to talk to anyone about this situation. When I was first called by my cousin on September 8, 2015 to tell me someone wanted to talk to me about the case, I hung up on her, as I did not want to talk to anyone about this case. I only agreed to talk to Richard Glossip's lawyer because my mother called me back and asked me to.
>
> 12. I was not at the Best Budget Inn on January 7, 1997.
>
> 13. I provided this affidavit freely. No one threatened me, coerced me, or offered anything to me in exchange for this affidavit. I swear and affirm that the foregoing statement is true and correct. I am aware that by providing this affidavit, I may have to testify.

Thus, Sneed–a tweaking drug addict who routinely broke into cars (like Mr. Van Treese's) and into occupied motel rooms (like Mr. Van Treese's) to steal people's property to sustain his drug habit–eventually provided the only evidence against Mr. Glossip.

b. Meth addicts like Sneed are prone to crimes like this; and he was medically treated like an addict, or a psychotic person, once he was arrested

Dr. Pablo Stewart is an expert in psychiatric patients with substance abuse histories. He has reviewed Justin Sneed's medical and substance abuse history at the time of his crime and incarceration. In his opinion, the crime committed by Sneed was consistent with a meth addict acting alone. He also believes jail medical staff treated Sneed for his meth addiction, but he would need additional records to verify this. Dr. Stewart's report is attached.

1. Sneed's actions are consistent with a meth addict acting erratically and violently

According to Dr. Stewart:

Methamphetamine has changed significantly over the past 15-20 years due to the efforts of the federal government to restrict the availability of the precursor chemicals required to manufacture the drug. In the late 1990's, the time frame involved in this affidavit, the drug was much more potent than it is today.

Methamphetamine, especially when used intravenously over an extended period of time of weeks or months, will result in psychotic symptoms in the user. These effects are consistent with the symptoms suffered by someone in a psychotic state, and are much more likely to occur in someone who uses the drug intravenously, as opposed to taking the drug by other means, such as snorting it. These symptoms include, but are not limited to: auditory and visual hallucinations, paranoid delusions (fear, that is not based in any fact, that some other person is going to cause the user extreme harm that could include being killed), delusional thinking, and "ideas of reference" (an unfounded feeling that unrelated actions or movements have direct implications to the user. For example, a person addicted to methamphetamine might interpret a turn signal on a car as a sign that they are being watched by government agents).

Methamphetamine intoxication lasts for approximately 8-12 hours after injection. This period of intoxication is when the "high" is most prevalent and the drug can be detected in the user's system. However, once the drug actually leaves the user's system, the psychotic symptoms described above remain for weeks or even months after use, even when the user is no longer intoxicated.

During periods of intoxication, the user suffers from extreme agitation, rapid cycling of thoughts, and significantly impaired executive functioning. Use of the drug further erodes the user's ability to accurately assess the situation he is in. Long-term users lose a great deal of weight as they lose the desire to eat or sleep for days or even weeks. Noticeable personality changes become greater with use of the drug lasting more than just a few weeks.

Intravenous drug users of methamphetamine are prone to frenzied actions that can lead to "overkill" behaviors. In other words, the psychotic symptoms and paranoia lead intravenous users of methamphetamine to take actions far in excess of what may be needed under any given circumstance. For instance, and apropos to the allegations made in the homicide of Barry Van Treese, **a person under the influence of methamphetamine, or suffering from the psychotic symptoms caused by long term use, will use a baseball bat and beat a victim to death in a frenzy, even if the intent is just to knock that person out with one blow**.

I have reviewed the Affidavit of Richard Barrett. ... [T]o a reasonable degree of medical certainly, an individual who purchases Methamphetamine 3-4

> times per week for intravenous drug use is addicted to the drug. The psychotic effects of the drug on this individual will lasts for weeks or months after the user stops taking the drug.
>
> Methamphetamine addiction is extremely difficult to break. Those addicted to methamphetamine will place the need for the drug over all other concerns, including family, food, safety, and obedience to the law.

App. J.

2. Sneed was treated with lithium in jail which was prescribed for psychosis at the time

Dr. Stewart was advised that Sneed was prescribed lithium upon his arrest. The full medical records about this are under seal. However, Dr. Stewart observes:

> Lithium was administered in the late 1990's to treat various mood disorders, including symptoms of psychosis. Given Mr. Sneed's history of long term intravenous drug use, it is possible that the lithium that was prescribed to him was given for the purpose of treating the psychotic symptoms associated with the long-term methamphetamine use as described in the Affidavit of Richard Barrett. However, in order to reach a conclusion on this issue, I would need to review treating physician at the jail at the time.

CONCLUSION

The Supreme Court has recognized that false confessions are an intolerable risk in capital cases. *See Atkins v. Virginia*, 536 U.S. 304, 320 n. 25 (2002) (concern over "false confessions" and "we cannot ignore the fact that a disturbing number of inmates on death row have been exonerated"). As Dr. Leo explains, "[t]he same interrogation pressures, techniques, and factors that may lead an innocent person to falsely confess to a crime he did not commit may also lead a guilty person to falsely implicate an innocent third party as an accomplice." App. A, p. 4. To allow a death sentence on the word of Justine Sneed alone mocks the Eighth Amendment's promise of "reliability and fairness" in capital proceedings, *Atkins*, 536 U.S. 306, and unconstitutionally dilutes the "strength of the procedural protections that our capital jurisprudence

steadfastly guards." *Id*. at 317.

PROPOSITION TWO
COUNSEL WERE INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT

The allegations from Proposition One are incorporated into this Proposition. Trial counsel performed prejudicially unreasonably by failing to attack Sneed's credibility by showing (a) the manner in which he was interrogated presented a substantial risk of a false confessions and (b) that Sneed's modus operandi was to break into cars and motel rooms (as he did here) to support his raging drug addiction. Given the lack of any other evidence, these unreasonable omissions undermine confidence in the result. *Strickland v. Washington*, 466 U.S. 668 (1984)

PROPOSITION THREE
THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE MURDER CONVICTION BECAUSE NO RATIONAL TRIER OF FACT COULD HAVE FOUND BEYOND A REASONABLE DOUBT THAT MR. GLOSSIP AIDED AND ABETTED SNEED

The insufficiency of the evidence of guilt was raised on direct appeal from the first trial. This Court declined to address the issue because the Court ordered a new trial. However, a new trial was prohibited by double jeopardy if the evidence was insufficient at the first trial. This Court should now address that evidence and hold that the retrial violated the double jeopardy principles of the Fifth and Fourteenth Amendments.

Among the bedrock principles of criminal law is the rule that the State must prove each element of an offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 314-318, 99 S.Ct. 2781, 61L.Ed.2d 560 (1979); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970); U.S. Const. amend. XIV; Okla. Const. Art. II, §§ 7, 9. Where, as here, the

State presents both direct and circumstantial evidence to support its burden of proof, this Court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the charged crimes beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Spuehler v. State*, 709 P.2d 202, 203-204 (Okl. Cr. 1985). Application of these principles to the instant case mandates reversal of Mr. Glossip's conviction for Murder in the First Degree, as no reasonable trier of fact could have found that he was a principal to the murder of Barry Van Treese.

The substance of the State's evidence against Appellant can be summed as follows: on January 7, 1997, Mr. Glossip made purportedly conflicting remarks about when he had last seen Van Treese to various individuals, including the police. In a videotaped interview with detectives Bemo and Cook on January 8, 1997, Mr. Glossip denied knowing anything about Sneed's involvement in the killing of Van Treese, and he was subsequently released. (State Exh. 1) Mr. Glossip, who was asked by the detectives to return the next day to take a polygraph examination, consulted attorney David Mackenzie on the morning of January 9, 1997. (Tr. VI 17) During that meeting, Mr. Mackenzie called Detective Cook and instructed him not to speak with Mr. Glossip in his absence, and informed Cook that Mr. Glossip would not be taking a polygraph test. (Tr. VI 15)

Immediately upon exiting Mr. Mackenzie's office, Mr. Glossip was arrested and taken to the police station, where detectives Bemo and Cook began to lead Mr. Glossip to jail, informing him that he was being charged with murder. (Tr. VI 23) Mr. Glossip then stated that against the advice of his attorney he would take the polygraph. The test was administered. (Tr. VI 23) Afterwards, a second videotaped interview took place, during which Mr. Glossip was told that the polygraph revealed he was being "deceptive." (Tr. VI 20-21) Mr. Glossip then admitted that Sneed told him that he had killed Mr. Van Treese in the early morning hours of January 7, 1997, but that he had not believed him. (State Exh. 2) Mr. Glossip was told by Detective Bemo that he was not believable, and was then taken to jail where the money in his possession which was alleged to be

robbery proceeds was seized. (Tr. VI 43) Mr. Glossip was then held for several days while Sneed remained a fugitive. (Tr. VI 43; V 111)

In a videotaped interview conducted by detectives Bemo and Cook subsequent to his arrest, Sneed was told that the police knew the murder had not been his idea but rather Mr. Glossip's. After first denying any involvement or knowledge about the murder, when he was told that Mr. Glossip was trying to "hang it on him" and make him a scapegoat, Sneed changed his story and stated that Mr. Glossip had solicited him to kill Mr. Van Treese with a baseball bat for the cash Van Treese had in his car. Taken in the light most favorable to the State, the evidence adduced - other than the statements made by the actual killer- at best merely indicates that Mr. Glossip knew or should have known that Sneed had perpetrated a brutal murder upon Mr. Van Treese. The allegedly inconsistent statements Mr. Glossip made to various witnesses regarding when he had last seen Mr. Van Treese may be deemed indicative of Mr. Glossip's confusion, mistake, or even conscious and deliberate misrepresentations. However, even if Mr. Glossip purposely lied about when he had last seen Mr. Van Treese, those statements simply do not independently corroborate Sneed's claim that Mr. Glossip was "the mastermind" behind the crime. The statements at best indicate after the fact suspicion or knowledge of the crime, not premeditated involvement as a principal to murder.

Likewise, the money found on Mr. Glossip did not independently corroborate his purported involvement in a murder plot, but rather reflected his pay from the motel, proceeds from selling his personal items and vending machines, money collected from the vending machines, and his savings.[6] Mr. Glossip's alleged financial motivation for the murder – half of the motel's approximately $3,600.00 in receipts – was inconsistent with the fact that as the manager of the motel he routinely had access to sums many times greater that he could have simply walked away with.[7] In addition, Mr. Glossip had all of the $3600.00 in receipts in his possession before Mr. Van

[6] Appellant delineated the source of all of the cash found on his person at the time of arrest during direct examination. (Tr. VII 101)

[7] Desk clerk Blllye Hooper testified that at times Mr. Glossip, as manager of the motel, would have custody of $15,000 - 20,000. (Tr. IV 23-24)

Treese ever arrived at the motel, and could have taken the entire sum without having to plan a robbery and splitting the proceeds with an accomplice.

The State had also alleged that Mr. Glossip had been motivated to murder Mr. Van Treese because he had been caught embezzling and was on the verge of being fired from his position as motel manager. The prosecution failed, however, to provide the promised evidence to support its claim that Mr. Glossip was going to be fired for embezzlement or inept management practices. While Donna Van Treese testified that Mr. Van Treese was concerned about an apparent shortage appearing in a year-to-date report, she testified only that he wanted an explanation from Mr. Glossip regarding the apparent discrepancy, not that he was going to terminate him. (Tr. III 37) In addition, the testimony of Billye Hooper indicates that when Mr. Van Treese was at the motel checking receipts on January 7, he brought up the topic of beginning to remodel the motel the next day with Mr. Glossip's assistance. (Tr. IV 25-26) Mr. Glossip in fact purchased paint for the planned renovations on January 8, 1997. When questioned and released by the police after the discovery of Mr. Van Trees e's body, Mr. Glossip did not attempt to flee as Sneed did, but rather he attempted to sell his possessions to raise money for a lawyer and to fund moving to another motel until the matter was straightened out. (Tr. VII 101) These facts, viewed in the absence of Sneed's tainted averments, create a scenario within which no rational trier of fact would believe Mr. Glossip was guilty of malice murder.

Aside from the foregoing facts, subject to non-sinister explanation, the State's case against Mr. Glossip was predicated exclusively upon the testimony of the actual, confessed murderer of Barry Van Treese, Justin Sneed.[8] It was Sneed alone that gave testimony connecting Mr. Glossip in any fashion to the actual act of taking Mr. Van Treese's life. Absolutely no physical evidence tied Mr. Glossip to the murder or the crime scene. No witness – save Sneed – implicated Appellant's involvement in acts connected directly to the homicide, or to conduct demonstrative of any lethal intent on the part of Mr. Glossip.

[8] The prosecutor conceded this at the motion hearing held three days before trial, stating "*[t]his case rests basically on the testimony of Justin Sneed*. The physical evidence basically all goes to Justin Sneed." (M. Tr. 27) (emphasis added)

In addition, Sneed gave inconsistent accounts of the events surrounding the death of Mr. Van Treese. Most remarkable are the glaring inconsistencies between his statements to the police and his in-court testimony, discrepancies which were not exploited whatsoever by Appellant's trial counsel to impeach Sneed's credibility. It is clear that the prosecution's case rose and fell on Sneed's self-serving statements. It is equally clear that Sneed's testimony, which was the product of a plea agreement which would spare his very life, was not properly corroborated.

A conviction in a case such as this, built solely on the uncorroborated statements of an accomplice, simply cannot stand. By statute, accomplice testimony must be supported by other competent evidence which tends to lend credibility to what is otherwise inherently suspect:

> A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with *the commission of the offense,* and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Okla. Stat. tit. 22, § 742 (Supp.1999) (emphasis added); *see also McCarty v. State*, 977 P.2d 1131-32 (Okl.Cr. 1998). To be legally sufficient, this Court has held that "the corroborative evidence must *of itself*, and without the aid of the testimony of the accomplice, tend in some degree to connect the defendant with the commission of the offense." *Rider v. State*, 494P.2d 347, 350 Okl.Cr.1972) (emphasis added).[9] In addition, "independent evidence merely consistent with the main story is not sufficient to corroborate if it requires any part of the accomplice's testimony to make it tend to connect the defendant with the crime." *Id*. Moreover, "[the corroborating evidence may be sufficient, although by itself slight, but it is not sufficient if it *merely tends to raise a suspicion of guilt*." *Id*. (citing *Kirk v. State*, 10 Okl.Cr. 281, 135 P. 1156 (1913)) (emphasis added).

[9] This standard was incorrectly set forth by the prosecutor in closing argument when she stated that the evidence "doesn't have to connect the defendant to the murder, it only has to connect him to the crime." (Tr. VIII 18) The prosecutor omitted the critical language that the evidence has to connect a defendant to the commission of the crime, not just the crime and its attendant circumstances. Mr. Glossip was "connected to the crime" simply by virtue of his relationship with the victim, the real killer, [Sneed] and his status as manager of the Best Budget.

It is not enough that an accomplice makes statements that can be verified by other evidence; the corroborative evidence must go to a defendant's commission of the crime itself. As this Court has stated:

> Corroborating evidence must tend to connect the defendant with the commission of the offense absent the accomplice's testimony. *Jones v. State*, 555 P.2d 1061 (Okl.Cr.1976). Even slight evidence may be sufficient, but it must do more than raise a suspicion of guilt. *Kirk v. State*, 10 Okl.Cr. 281, 135 P. 1156 (1913). It is also insufficient if it does no more than connect the defendant with the perpetrators but not the crime. *Frye v. State*, 606 P.2d 599 (Okl.Cr.1980).
>
> *L. E. Y. v. State*, 639 P.2d 1253, 1255 (Okl.Cr. 1982).

The evidence in this case does in fact connect Mr. Glossip to the perpetrator of the crime. It may be characterized as raising suspicions, and might even arguably show that Mr. Glossip had, or should have reasonably had knowledge of the crime after the/act. However, absolutely nothing, other than the self-serving statements of Justin Sneed directly connect Appellant to the crime of murder as an aider and abettor. As the foregoing argument and authority make clear, that is simply not enough to warrant affirmance of Mr. Glossip's conviction and attendant sentence of death.[10] In *Bowie v. State*, the Court articulated what type of evidence would be deemed sufficient to corroborate accomplice testimony in a "murder for hire" scenario such as that in the instant case:

> We find that there was sufficient evidence corroborating the testimony of both Ervin and Britt to convict appellant; several people, other than Ervin and Britt, testified that appellant offered five thousand dollars for the death of Traylor. Gary Fisher testified that just ten days before the murder appellant said he found

[10] *See also Hamilton v. State*, 10 P.2d 734, 735-36, (Okl.Cr. 1932) (defendant convicted of forgery via testimony of two accomplices; corroboration consisted of defendant's access to place where checks were stolen, his acquaintance with the accomplices, and act of transporting one accomplice after he negotiated the forged Instrument; Court stated that" [t] his testimony creates a strong suspicion, because it shows opportunity for defendant to have aided or abetted or to have profited from the proceeds of the crime. [However,] [t]he circumstances proven are too remote. This testimony ls Insufficient corroboration under the requirement of the statute and many decisions of this court") (numerous citations omitted).

> someone to kill Traylor, and after Traylor was dead, appellant talked about how good it felt to order someone killed. Therefore, reversal is not warranted and this assignment of error must fail.

Bowie v. State, 816 P.2d 1143, 1145-46 (Okl.Cr. 1991). Such corroborative evidence is sorely lacking in the present case. No one other than Sneed – the man who actually swung the baseball that killed Barry Van Treese – provided testimony that Mr. Glossip engineered a plot to kill his employer. Mr. Glossip had a comfortable lifestyle and steady job at the Best Budget motel. In contrast, Sneed, an itinerant laborer who admitted to using methamphetamine in the days before Mr. Van Treese was killed, had no means of income and would have been homeless but for the maintenance man position given to him by Appellant. When arrested after being in hiding for several days, Sneed initially pleaded ignorance but soon told the interviewing detectives what they clearly telegraphed they wanted to hear: that the murder of Barry Van Treese had been Mr. Glossip's idea. Sneed's testimony at trial was profoundly different from the statement he gave to the police, and the jury was never shown that statement in assessing his credibility.[11] Mr. Glossip's conviction and death sentence, based on Sneed's uncorroborated testimony, is repugnant to fundamental notions of fairness and due process.

The total lack of requisite corroboration is further evidenced by one of the jury's notes submitted during first stage deliberations. The note stated:

> Would the knowledge of Mr. Van Treese's beating and Mr. Glossip's inaction in regards to not calling authorities or providing aid to Mr. Van Treese constitute becoming a principal to First Degree Murder as defined by Instruction Number 9? (0.R. 374)[12]
>
> Clearly, had the jury found Mr. Sneed's testimony to be corroborated – that Mr. Glossip had approached him numerous times and eventually convinced him to kill the victim – they would have found Mr. Glossip to be a principal to the crime

[11] This was a circumstance capitalized upon the prosecutor, who in the absence of the inconsistencies in the videotaped statement was able to argue what was in fact an undeniable falsehood. *See* Proposition II and Notice of Extra-Record Evidence Supporting Prosecutorial Misconduct and Violations of the Due Process Clauses of the Oklahoma and Federal Constitutions.

[12] The answer given by the trial court was "[Y]ou have all the law before you necessary to answer the question you have asked." (0.R. 372; Tr. VIII 71) *See* Proposition III.

> before Sneed woke up Mr. Glossip and told him he had killed Barry Van Treese. Aside from the obvious indication that the jury may have in fact improperly convicted Mr. Glossip of malice murder for the act of falling to render aid or assistance to Mr. Van Treese, the note indicates that jurors had a reasonable doubt as to Sneed's version of the facts. Had the jurors in fact found Mr. Sneed's testimony corroborated as to its most critical assertion- that Mr. Glossip told him to kill Mr. Van Treese – then there would have been no question regarding culpability for Mr. Glossip's inaction once Sneed told him that he had committed a homicide.

No rational trier of fact could have found beyond a reasonable doubt that Mr. Glossip was part of a plot to kill Barry Van Treese. One explanation for the guilty verdict is that the jury relied on the uncorroborated testimony of Sneed, and due to incompetence of trial counsel, was not educated as to the utter lack of evidence supporting Sneed's version of the events or provided with any cogent theory of defense. Another explanation is that the jury guessed incorrectly when the question they put to the judge went unanswered, and they concluded that Appellant could in fact be found guilty of murder for failing to render aid to Mr. Van Treese. The record makes clear that the jury may have based a malice murder conviction on Mr. Glossip's failure to act in the wake of Sneed's statement that he had killed Mr. Van Treese.

For these reasons, and in the absence of competent evidence to buttress the undoubtedly dubious testimony of the man who actually killed Barry Van Treese, the Court must set aside Appellant's conviction and sentence.

PROPOSITION FOUR

COUNSELS' PERFORMANCE VIOLATED MR. GLOSSIP'S RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE MEDICAL EXAMINER TESTIFIED IN A WAY THAT MISLED THE JURY AND UNDERMINES THE RELIABILTY OF THE VERDICT AND DEATH SENTENCE.

Counsel's performance was deficient when they failed to adequately investigate, prepare for and address the medical examiner's testimony concerning her autopsy report, the time of death and the cause of death.

At trial, the medical examiner, Dr. Choi, testified that the victim could have lived for hours

after he was beaten, and she affirmatively testified that the victim did not die within thirty minutes of being beaten. This testimony was false. See Attachment K (Wigren Report Dated September 8 and 9, 2015).

In fact, qualified medical examiners are uniform in their opinion that there is no medical evidence to support this testimony of Dr. Choi. See, e.g., id.; Attachment M (Dr. Plunkett letter). "Based on the totality of autopsy findings and witness statements, it is clear that the decedent died quickly, within a period of no more than 30 minutes, following the infliction of injury." Wigren Rpt. At 10.

Dr. Choi's testimony was also internally inconsistent on the critical issue of whether the victim could have been saved by timely medical intervention, a fact defense counsel failed to recognize or address due to their failure to prepare. She agreed with the prosecutor that the victim would "have survived if he would have received prompt medical attention." But she also testified that it was "unlikely" the victim would "have lived through the head injury had he not bled to death." This inconsistency allowed the false understanding by jurors that the victim could have been saved after Sneed beat him, and could have been saved by Glossip had he responded more quickly to Sneed's comment that he had killed the victim.

Counsel's preparation was so lacking that they failed to uncover the fact that the Autopsy Protocols referenced in the autopsy report were non-existent. See Attachment L (Schile Affidavit dated September 14, 2015).

Undersigned counsel discovered last week that Dr. Choi's misleading testimony, which permitted the prosecution to argue that the victim survived long enough for Mr. Glossip to have acted to save him, was "key" for at least some jurors. If Choi's testimony was relied on by any juror, and it was most definitely relied on by the prosecution in its argument to the jurors, "a man will be executed based in whole or in part on expert testimony for which there is no scientific

basis. The profession of forensic pathology, the criminal justice system, and human beings suffer when the Courts allow and jurors hear scientifically false testimony. (See: National Research Council. Strengthening Forensic Science in the United States: A Path Forward < http://www.nap.edu/catalog/12589/strengthening-forensic-science-inthe-united-states-a-path-forward >.) See Plunkett Letter.

Counsel's failure to challenge Dr. Choi's testimony at any stage of the proceedings was prejudicial at both stages of the trial.

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PRAYER FOR RELIEF

Wherefore Mr. Glossip respectfully requests that this Court enter an order staying his scheduled execution, ordering an evidentiary hearing, and granting relief.

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of September, 2015, a true and correct copy of the foregoing Successive Application for Post-Conviction Relief, along with a separately bound Appendix of Attachments were delivered to the Clerk of this Court, with one of the copies being for service on the Attorney Counsel for Respondent.

_____
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