

IN THE DISTRICT COURT OF PONTOTOC COUNTY
STATE OF OKLAHOMA

FILED

DEC 18 2020

KAREN DUNNIGAN, Court Clerk
Pontotoc County, Oklahoma
By *[Signature]*
Deputy

THOMAS JESSE WARD,)
Petitioner,)
vs.) Pontotoc County Case No. CRF-1984-183
THE STATE OF OKLAHOMA,) Pottawatomie County Case No. CRF-1988-208
Respondent.) (Retrial)

POST CONVICTION FINDINGS AND CONCLUSIONS

ORIGINAL CHARGE: Count 1 – Robbery w/ Dangerous Weapon

(CRF-1984-183) Count 2 – Kidnapping

Count 3 – Murder, First Degree, 21 O.S. § 701.7

JUDGMENT & SENTENCE: Found guilty by jury and sentenced to death for Murder.

RETRIAL J&S: Found guilty by jury and sentenced on July 10, 1989, as follows:

Count 1 – Robbery w/ Dangerous Weapon: 10 years

Count 2 – Kidnapping: 10 years

Count 3 – Murder, First Degree: Life Imprisonment

DIRECT APPEAL: No. F-1990-17, affirmed in a unanimous, unpublished summary opinion on January 7, 1994.

PETITION FOR REHEARING: Denied on March 25, 1994.

APPLICATION FOR PCR FILED: November 1, 2017

AMENDED APPICATION FOR PCR FILED: March 2, 2020

RESPONSE FILED BY STATE: June 1, 2020

PETITIONER'S REPLY FILED: June 5, 2020

IS THERE A GENUINE ISSUE OF MATERIAL FACT? No.

IS AN EVIDENTIARY HEARING NECESSARY? No.

MATERIALS CONSIDERED BY THE REVIEWING COURT:

Filed in Pontotoc County Case No. CRF-1984-183:

- a. Exhibits marked as appendices volumes 1-6, attached to Petitioner's original Application for Post-Conviction Relief filed November 1, 2017, (designated as PBr Exh A ____)(See Court's Exhibit 1);
- b. Petitioner's Amended Application for Post-Conviction Relief with supporting brief and exhibits filed March 2, 2020, (Brief and Exhibits designated as PBr at p. ____ and PBr Exh B ____)(See Court's Exhibit 2);
- c. Respondent's Response to the Amended Application with supporting brief and exhibits filed June 1, 2020, (Brief and exhibits designated as RBr at p. _____ and RBr Exh ____, p.____);
- d. Petitioner's Reply to Respondent's Response with supporting brief and exhibits filed June 5, 2020;

Originally filed in Pottawatomie County Case No. CRF-1988-208:

- e. Trial transcripts from June 1, 1989 through June 14, 1989, (designated as TR I-XIII, date, p. _____);
- f. 1989 trial exhibits, (designated as State's Exh _____ or Defendant's Exh _____);
- g. Transcript of pre-trial hearing held December 29, 1988, Defendant's Motion to Produce and Disclose; and
- h. Transcript of pre-trial hearing held on May 30, 1989, Defendant's Motion to Suppress Testimony and Motion to Suppress the Video-taped Statement of Tommy Ward.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY:

1. Petitioner Tommy Ward (“Ward”) and Karl Fontenot (“Fontenot”) were jointly tried in Pontotoc County Case No. CRF-1984-183. A jury convicted them on September 24, 1985, and they were sentenced to death on the First-Degree Murder charge. At that time, the victim Donna Haraway’s (“Haraway”) body had not been found.
2. The Oklahoma Court of Criminal Appeals (“OCCA”) reversed Ward’s conviction in *Ward v. State*, 1988 OK CR 104, ¶¶ 2-3, 755 P.2d 123, 124, due to the United States Supreme Court’s decision in *Cruz v. New York*, 481 U.S. 186, 193-94 (1987), reversing its prior position on joint trials for defendants with interlocking confessions. Fontenot’s conviction was also reversed for the same reason. Ward’s case was remanded for a new trial.
3. Change of venue to Pottawatomie County was granted, and Ward was retried in Case No. CRF-1988-208 on the same charges. He was convicted again on June 16, 1989, but sentenced to life imprisonment, rather than death, on the Murder charge.
4. Ward appealed his Judgment and Sentence in Case No. F-1990-17, setting forth ten (10) propositions of error in support of his appeal. (RBr Exh 1). The OCCA affirmed in a unanimous, unpublished summary opinion on January 7, 1994. (RBr Exh 3). Ward’s case was transferred back to Pontotoc County where the first joint trial was held.
5. On November 1, 2017, Ward filed his Application of Post-Conviction Relief and Motion for Summary Disposition. Ward sought and received a period of limited post-conviction discovery from this Court on November 16, 2018, and took leave to conduct the depositions of OSBI Agent Gary Rogers (“Agent Rogers”), lead investigator in the Ward and Fontenot cases, Ada Police Department Detective Mike Baskins (“Detective Baskins”), and

Haraway's sister, Janet Weldon. After a hearing was held on October 25, 2019, in Pontotoc County, Oklahoma, this Court granted Ward's Motion to Enforce Subpoenas against the OSBI and the Ada Police Department, and to submit an interrogatory by mail to Steve Haraway (Haraway's surviving husband). Following conclusion of discovery, Ward filed an Amended Application on March 2, 2020, along with a supporting brief and a Motion for Summary Disposition. The State filed Responses thereto, to which Ward replied.

RELIEF SOUGHT UNDER THE OKLAHOMA POST-CONVICTION PROCEDURES

ACT:

6. Ward seeks relief under two sections of the Oklahoma Post-Conviction Procedure Act (PCPA), Okla. Stat. tit. 22 § 1080, *et seq.* First; Ward requests relief under § 1080(d) of the PCPA based on evidence of material facts not previously presented and heard that require vacature of his convictions and sentences in the interest of justice. Second; Ward requests relief under § 1080(a), based on the State's failure to disclose exculpatory and impeachment evidence, and its use of false testimony, in violation of Ward's due process rights under the state and federal constitutions.
7. The PCPA is not intended to provide a second or subsequent direct appeal. *Mayes v. State*, 1996 OK CR 28, ¶ 4, 921 P.2d 367, 370; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384, *cert. denied*, 514 U.S. 1005 (1995). Accordingly, issues raised on direct appeal are *res judicata*, and issues which could have been raised on direct appeal but were not, are waived. *Id.* Claims in a post-conviction application subject to either procedural bar will not be considered on the merits.
8. Having examined Ward's direct appeal and issues raised in Ward's Amended Post-Conviction Application, this Court finds one proposition raised in his direct appeal is not

procedurally barred by the doctrines of *res judicata* or waiver for reasons stated *infra*. Proposition VI claimed the trial court erred in not sustaining *in toto* Ward's request for discovery and disclosure heard before that court on December 29, 1988, specifically identifying nineteen (19) items he had requested be disclosed by the State. (RBr Exh 1, pp. 61-65).

9. In support of Proposition VI, Ward's appellate counsel argued the trial court abused its discretion in making a very limited disclosure statement, basically limiting the disclosure to only photographs, "sworn statements," and other matters which were statutorily directed for the State to produce to a defendant and those items required to be produced under *Stafford v. State*, 1979 OK CR 43, 595 P.2d 797. (RBr Exh 1, p. 64). Ward's counsel cited *Allen v. District Court*, 1990 OK CR 83, 803 P.2d 1164, as a "good guideline" to follow in what the State should produce for a defendant's inspection to ensure substantial justice and fair play, noting *Allen* was determined after the discovery hearing conducted on December 29, 1988.¹
10. Appellate counsel for the State responded by arguing "the defendant does not point to any specific item that he did not receive, nor does he allege how he was prejudiced by the failure to receive any particular item." (RBr Exh 2, p. 53). The State did acknowledge that a verdict could be set aside as the result of non-disclosure of evidence if the defendant was deprived of a fair trial, citing *US v. Rhodes*, 569 F.2d 384, 388 (5th Cir. 1978). *Id.* Further State's appellate counsel acknowledged a prosecution's failure to disclose requested impeachment evidence is held to be constitutional error if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have

¹ *Allen* has been superseded by the Oklahoma Criminal Discovery Code, title 22 O.S. § 2001 et seq. as stated in *Powell v. State*, 2000 OK CR 5, 995 P.2d 510, 524.

been different, *citing US v. Bagley*, 473 U.S. 667, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985).

Id. Finally, the State's appellate counsel cited the test set forth in *Lay v. State*, 1988 OK CR 60, 752 P.2d 823 to determine the effect of withholding exculpatory evidence. To find reversible error, the *Lay* Court ruled the appellant must meet the burden of showing (1) the prosecution has actually suppressed evidence after that evidence has been requested by the defense; (2) the evidence was favorable to appellant's defense; and (3) the evidence is material either to the guilt of appellant or his punishment. *Id.* at p. 54.

HANDLING OF CRIMINAL CASES BY THE PONTOTOC COUNTY D.A.'S OFFICE:

11. On December 29, 1988, a hearing on Ward's pre-trial discovery motion was conducted. Lead prosecutor, Bill Peterson ("Peterson") then district attorney, represented to the trial court he had produced all evidence he was "aware of" in response to Ward's discovery requests. (PBr Exh A0037). He told the court he had everything that was introduced as evidence in the first trial. *Id.* at A0038. He represented he had instructed investigative agencies and witnesses to turn over all evidence to his office. Peterson made it clear, however, if an investigative agency or witness withheld evidence he did not want to be held in contempt for failure to turn over something he knew nothing about. *Id.* at A0039. Later, Peterson stated to the court, "Yes sir, I have asked for all the evidence from day one in this case." *Id.* at A0040. Following the discovery hearing, on January 17, 1989, Peterson wrote a letter to defense counsel, Truman Simpson, listing thirteen (13) items enclosed which appears to be the State's discovery response to Ward. (PBr Exh B000298).
12. At a suppression hearing held on May 30, 1989, Ward sought to suppress any identification testimony given by James Moyer, Lennie Timmons, David Timmons and Gene Whelchel.²

² Brothers Lennie and David Timmons and their uncle, Gene Whelchel, arrived at McAnally's at approximately 8:30 p.m. and found the store unattended. (PBr Exhs A0222-25 (Lenny Timmons testimony), A0238-240 (David Timmons

Ward argued that Lennie Timmons and David Timmons were hypnotized by the OSBI prior to making any identification of Ward through sworn testimony or lineups, and therefore, an in-court identification should be suppressed. Peterson produced two (2) OSBI reports covering interviews with the Timmonses to prove the men had given investigators descriptions of Ward prior to being hypnotized. (PBr Exh A0085). Ward's attorney stated to the court the reports had not been provided even though requested. He stated further "That's the first we've heard of them and it's darn funny they're coming up with them today." *Id.* Assistant District Attorney Chris Ross ("Ross") claimed Ward was not entitled to the reports because they constituted "work product." *Id.* Ross stated "We [district attorney's office] have never been ordered to turn over to him [Ward's counsel] everything we have." *Id.* He defined work product as "any report prepared for the State by a police officer that does not contain the defendant's statement...".³ *Id.* at A0086.

13. Now retired, Peterson was deposed on June 14, 2017, in Fontenot's federal habeas case concerning the Haraway case. (*See excerpts*, PBr Exh A1805-40). He testified how a criminal case was handled by the Pontotoc County District Attorney's office during his tenure as District Attorney. Law enforcement would investigate and bring evidence in the form of a prosecutorial summary to the district attorney to discuss.⁴ After reviewing the evidence and researching the law, the district attorney's office would make a charging decision. *Id.* at A1809. The prosecutorial summary was all the written investigative reports

testimony), A0248-250 (Gene Whelchel testimony)). When Lennie was entering the store, a couple was observed exiting at the same time and getting into a pickup truck. (PBr Exhs A0225, A0231 (Lenny Timmons testimony), A0243, A0245 (David Timmons testimony)). Whelchel later identified the departing woman as Haraway. (PBr Exh A0251).

³ The State conceded the Timmonses and Whelchel would not make in-court identifications of Ward. (PBr Exh A0084). However, they did testify the composite drawing, introduced as State's Exhibit 51, resembled the man they saw at McAnally's. (PBr Exhs A0227-28 (Lenny Timmons testimony), A0240-41 (David Timmons testimony), A0250-51 (Gene Whelchel testimony)).

⁴ Peterson and Ross suggested they knew nothing in the Haraway investigation other than what was in the prosecutorial summary prepared by law enforcement. (PBr Exhs A1808-14, pp 11-15; A1817-19, pp 18-20; A1843-44, pp 9-10.)

and the sole method of receiving such information by the district attorney's office. *Id.* at A1810-11. Peterson believed any evidence generated during an investigation was given to him. *Id.* at A1812. The district attorney's office had an "open file" policy, meaning the defense had access to anything in the district attorney's files except "work product." *Id.* at A1813. Peterson deemed the prosecutorial report to be "work product" and not available to defense counsel. *Id.* at A1814. Peterson also testified he could not remember if his office had a policy requiring law enforcement to disclose exculpatory material, assuming but not confirming, law enforcement was aware of their obligation to turn over exculpatory evidence. *Id.* at A1817-19. In fact, Peterson testified it was not law enforcement's job to determine what was exculpatory and he expected to receive all the evidence. *Id.* at A1819.

14. In Agent Rogers' 2019 deposition, he testified how he, as an investigative officer, perceived the prosecutorial summary. The report contained interviews of witnesses, an inventory of evidence collected and a general overview of the case. (PBr Exh B000183, p. 204). Rogers stated the investigators rarely ever included all interviews, because it would "muddy the waters, ... including stuff that ... may or may not have had a lot to do with the particular case, and it would just add another element that the State would have to defend," *Id.* at 205. When asked his opinion on whether the prosecutorial report would be more or less useful if it included all the extraneous information he responded, "Well, I could see it could be useful for the defense ... they could really go out in left field, as far as picking at pieces ... and bringing into question stuff that really didn't have anything to do with the particular case. By sticking with the interviews and the facts that pertain to the case, it would make it more simplistic and make it easier for the ... prosecutor ... to put on the case." *Id.* Continuing with the line of questioning whether defendants might be able to

use leads the investigator deemed “dead ends” Agent Rogers testified, “Well, it would be able … for them [the defense] to go down various trails that had absolutely nothing to do with the case, but to be able to distract a jury or distract the judge, … .” taking the focus off the defendant. (PBr Exh B000189, p. 231; B000190, p. 232). Agent Rogers admitted an example of a “dead-end” lead would be revealing a suspect that law enforcement had eliminated during their investigation. *Id.* at B000190, p. 232.

15. Following Ward’s 1989 re-trial, in December 1992, the OCCA ordered the OSBI to produce to Ward’s former co-defendant Fontenot documents pertaining to its investigation in the Haraway case. (PBr Exhs A1565-66.) In response, 860 pages were produced to Fontenot’s counsel, including the prosecutorial summary. (*See generally*, PBr Exh. A0633-1519). In 2003, Ward’s *pro bono* attorney, Mark Barrett, received through OIDS, a partially legible version of the OSBI files. (*See, Mark H. Barrett’s Declaration*, PBr Exh B000283, ¶6). In 2008, the State finally produced mostly legible pages to Ward’s counsel. *Id.* at B000287, ¶22. Ward’s counsel received the Medical Examiner’s complete file of approximately forty-three (43) pages from Fontenot’s attorney, sometime between 2010 and 2013. *Id.* at B000283, ¶8. (*See complete ME Report*, PBr Exhs A1522-1564). Only three (3) pages of the medical examiner’s report were introduced as evidence at the time of trial.⁵ (*See also*, TR II, 6-1-89, p. 115, State Exh 47). In 2019, in response to subpoenas allowed by this Court, the Ada Police Department produced approximately 300 pages of documents containing police interviews with witnesses, alternative suspects and other leads.⁶

⁵ *See also*, Peterson’s letter dated January 17, 1989, to defense counsel, enclosing item #7 described as “Report of Investigation by Medical Examiner (three sheets)”. (PBr Exh B000298).

⁶ Fontenot sought this same information in 2017 with a federal court subpoena to the Ada Police Department and was told the APD had no records pertaining to the Haraway investigation. (PBr Exh B000662-669). Attorneys, acting as

16. As noted in paragraph 9 above, Ward's appellate counsel referred to *Allen* to support his proposition that there was error in withholding documents requested during discovery. He acknowledged *Allen* had not been decided at the time of Ward's discovery hearing on December 29, 1988. In the State's response to Ward's Amended Application, it argues that "No reasonable officer or prosecutor working in the mid-1980s would have imagined that there was a duty to preserve and produce every scrap of paper generated in a case, particularly a case with such an extensive and thorough investigation as this one." (RBr at p. 97). The State cites *Knighton v. State*, 1996 OK CR 2, 912 P.2d 878, as the law pertaining to discovery in 1988. (RBr at p. 92). The OCCA in *Knighton*, held that "[U]nsworn statement by witnesses to police and officer work product notes were not discoverable at all," noting that *Allen* had yet to be decided and that 22 O.S.Supp. 1994, § 2002 was yet to be passed by the Oklahoma Legislature. *Id.* at 912 P.2d 878, 890-91. But the OCCA also held that discovery by the accused of police reports must comply with *Brady v. Maryland*, 373 U.S. 83 (1963). *Id.* at 891. Under *Brady*, police reports were discoverable if: (1) the defense did not have independent knowledge and access to the reports; and (2) the reports contained evidence which was both favorable to the defendant and material to either guilt or punishment. *Id.*

17. Ward has never requested discovery of all the documents pertaining to his case in the State's possession. Rather, his attorneys have been very specific in their description of the documents sought, including *Brady* material. The OCCA in Fontenot's appeal, Case No. F-88-571 ordered a very specific list of documents and things to be produced by the OSBI.

counsel for the State in both Ward's state post-conviction proceedings and Fontenot's federal habeas case did not notify Fontenot's counsel or the federal court of the 300 pages produced by the APD in January 2019. Instead, Fontenot's counsel learned of the 2019 undisclosed documents from Ward's attorney. *See, Fontenot v. Albaugh*, 402 F.Supp. 3rd 1110, 1153 (E.D. Okla. 2019).

In response, the OSBI produced approximately 860 documents. On October 18, 2018, this Court granted Ward leave to conduct very limited discovery and specifically identified the discovery allowed. (*See* Court Minute filed October 23, 2018). Ward then filed a Motion to Enforce Court-Ordered Subpoenas to the OSBI and APD and a request to conduct additional limited discovery. Ward's Motion to Enforce Subpoenas was granted, in part, but limited to the interview reports and handwritten notes relied on by OSBI employee Lydia Williams to update the missing person report; and interviews of Janet Weldon, Steve Haraway, Pat Virgin, Richard Holkum, Karey McClure and Billy Charley. Also granted was Ward's request to subpoena new material pertaining to the Ward photo array lineup reports and pictures viewed by James Moyer and James Boardman. (*See* Court Minute filed November 1, 2019). In response, the APD produced 300 pages of documents, many of which were not responsive to the limited discovery ordered. Ward's attorneys saw for the first time, statements and reports responsive to Ward's 1988 pre-trial discovery requests that should have been produced by the State as required by the federal and state constitutions and caselaw at that time.

18. Respondent argues that the defense of laches precludes this Court from considering the Petitioner's Amended Application based on the premise that Petitioner's undue delay penalizes the State. *See Paxton v. State*, 1995 OK CR 46, 903 P.2d 325. The applicability of the doctrine of laches necessarily turns on the facts of each particular case. *Id.* at 327. Laches is an equitable defense. Petitioner filed his initial Application in 2017. His Application was amended in 2019, after the Ada Police Department produced documents containing material exculpatory and/or impeachment evidence. The Respondent argues a few witnesses that testified at trial are now deceased, and thus this affects the State's ability

to re-try this case. It is more likely that the State's inexcusable delay in producing documents requested for more than thirty (30) years will greatly prejudice the Petitioner. Several newly discovered witnesses and/or suspects identified *infra* may be difficult for the Petitioner to locate and further investigate the case. This Court finds the laches defense does not apply and will now examine the merits of the Petitioner's Amended Application.

CREDIBILITY OF KEY EYEWITNESS JAMES "JIM" MOYER:

19. On direct appeal, the State argued Jim Moyer's ("Moyer") testimony corroborated Ward's confession. (RBr Exh 2, p. 22). On June 2, 1989, Moyer testified at the re-trial he saw Ward at McAnally's convenient store at approximately 7:30 p.m. on April 28, 1984, the evening of Haraway's disappearance. (PBr Exh A0206-08). Moyer was the only "eyewitness" that placed Ward at McAnally's.⁷ Unbeknownst to Ward, Moyer had requested he be paid a reward for his testimony prior to giving it. (PBr Exhs A0852-0855). On April 4, 1989, prior to his testimony at the re-trial, Moyer wrote a letter to OSBI Director Ted Limke requesting a portion of a \$5,000 reward offered in the case. Moyer indicated that he assumed someone would contact him about the reward after he testified at the joint trial in 1985. *Id.* at A0852. To demonstrate that he was deserving of the reward, Moyer predicted at the re-trial he would again identify Ward and place him at the scene. *Id.* He reiterated he had identified Ward and Fontenot in line-ups and placed both at the scene resulting in their convictions in the joint trial. *Id.* He referred to a copy of a letter he received from Peterson after the joint trial, wherein Peterson told him "without my [Moyer's] testimony a guilty verdict would not have been possible." *Id.* at A0853. He also

⁷ Karen Wise and Jack Paschall identified Ward in live lineups, as being in J.P.'s convenient store located 3/10th of a mile from McAnally's from 7:00-8:30 pm on the night of the abduction. (PBr Exhs A0171-72 (Wise testimony), A0191-94 (Paschall testimony)).

enclosed a newspaper clipping dated May 1, 1984, advising the public of the reward. *Id.* at A0854. Director Limke responded Moyer was not eligible for the reward because it was offered only for the purpose of locating Haraway. The reward had also expired by the time Moyer wrote Limke. *Id.* at A0855.

20. Moyer had the May 1, 1984, newspaper article which notified the public a \$5,000 reward was being offered. Moyer had knowledge of the reward prior to looking at a photo array on November 6, 1984; prior to identifying Ward in a live lineup on November 19, 1984, and prior to testifying at the joint trial in September 1985. In 1984, Moyer was a college student working at a gas station. The State argues Moyer seeking the reward is irrelevant because he testified in the 1898 re-trial knowing he would not receive any money. The State overlooks the mindset of Moyer when he first testified in the joint trial proceedings beginning in 1985. He was of the opinion he would receive a portion of the reward for his testimony. Moyer's letter to OSBI Director Limke requesting a reward, if known to Ward at the re-trial, could have been used to impeach Moyer's credibility by showing he had a bias or interest in giving favorable testimony for the State. Since Moyer was the only eyewitness, his testimony was material, as acknowledged by Peterson in his letter to Moyer stating a guilty verdict would not have been possible without Moyer's testimony.

21. Moyer's testimony was inconsistent and changed over time. In 2019, the APD produced two police reports memorializing Moyer's interviews with them on April 30, 1984, and November 6, 1984. (PBr Exhs B000525 & B000517). In both interviews, Moyer described one suspect [later identified as Ward] as a blond-haired man, average height and weight, but gave no clothing description. At the re-trial in 1989, he testified Ward was wearing a "T-shirt, light in color, possibly light blue, blue jeans and tennis shoes or track shoes. The

shoes were low-tops with laces. (PBr Exh A0209 and TR III, 6-2-89, pp.123-24). In the April 1984 interview, Moyer reported he was already in McAnally's when the two men entered the store which is consistent with his re-trial testimony. (PBr Exhs B000525 and A0207). In November 1984, he told police the first man was already in the back of the store when he entered McAnally's. A second male then came in and walked past him. (PBr Exh B000517). The inconsistencies revealed in the newly discovered police reports could have been used to further impeach Moyer's credibility.

22. On direct appeal, Ward claimed the State had failed to produce all information regarding the identification of Ward, including lineup identification. (See, RBr Ex 1, p. 62(J)). Moyer testified *in camera* during the re-trial, he was shown some photographs in the fall of 1984 but was not able to identify the man he saw in McAnally's on April 28, 1984.⁸ (PBr Exh B000501). However, the undisclosed November 6, 1984, police report indicates Moyer chose a specific photograph #1 out of the "Ward" folder as most resembling the man he saw in McAnally's. (PBr Exh B000517). The police report does not give the identity of the man chosen. Eight days later, on November 14, 1984, Moyer identified Ward in a live lineup (PBr Exhs A0214-215). Ward learned for the first time in 2019, a police interview was conducted with James Boardman. (PBr Exh B000515). Boardman called within days of Haraway's disappearance and told police he was in McAnally's at approximately 5:00 p.m. on April 28, 1984, and saw two men "acting funny." He described both men as 6' tall, one brown headed and the other blond [Moyer had told police the blond was average height]. Boardman also gave clothing descriptions. He was shown a photo

⁸ At the joint trial preliminary hearing, Moyer testified he had been shown approximately twelve (12) photographs of blond-haired men and chose one that looked the closest to the man he saw at McAnally's. He was not told the identity of the man in the photograph. (PBr Exhs B000399-400, 402).

array and also selected the #1 photo out of the "Ward" folder. *Id.* Again, police did not identify the man in the selected photograph. Boardman was not asked by law enforcement to attend a live lineup even though he and Moyer had selected the same photograph. Instead, law enforcement had Karen Wise and Jack Paschall⁹ attend live lineups to identify the two (2) men they saw leaving J.P.'s convenient store [not McAnally's] at approximately 8:30 p.m. (PBr Exhs A0171-172; A0193). The State has never produced the photo array folders shown to Moyer and Boardman, or the photograph selected by both men, even though Ward requested it prior to the 1989 re-trial and again during limited discovery allowed in these post-conviction proceedings. The newly discovered evidence in the Moyer and Boardman police interviews concerning the photo arrays and the identification of Boardman as a potential witness could have been used to impeach Moyer's eyewitness testimony and is material evidence in this case.

OTHER McANALLY'S CUSTOMERS ON APRIL 28, 1984:

23. On direct appeal, Ward claimed he had been denied information regarding identification of all individuals in and around McAnally's on April 28, 1984, whether or not they were a suspect or a witness in the case. (See, RBr Ex 1, p. 62(K)). Only two McAnally's customers, other than Moyer, testified at the re-trial that they were in the store and saw Haraway on the day of her disappearance. The defense called Edna Elaine Harris, who testified she was in McAnally's on April 28th around 7:10 p.m to 7:20 p.m [before Moyer arrived at 7:30 p.m.] She saw a blond-headed man standing next to a van in the parking lot that she thought was acting suspicious. She testified she notified Detective Smith about

⁹ Paschall testified he viewed approximately forty to fifty (40-50) photographs in early May and again in late June of 1984 of different men, selecting photographs that resembled the men he saw at J.P.'s on April 28th. He was not given the identification of the men in the photographs he selected. (PBr A0191-94). None of the photographs shown to Paschall have been produced by the State.

her observations but was not interviewed until 1988, just prior to Fontenot's re-trial, by Agent Rogers and another man. She was told Detective Smith seemed to think they had the people that abducted Haraway. (TR XI 6-14-89, pp. 18-24). The State called Richard Holkum, an off-duty policeman, who testified he was in the store for ten minutes sometime between 7:35 and 7:55 p.m. [presumably after Moyer had left] and only saw Haraway and a female customer. (TR IV 6-5-89, p. 139). In the OSBI files and 2019 APD documents, there are undisclosed police interview reports taken from other McAnally's customers, in addition to Boardman discussed *supra*, who were in the store on April 28, 1984. Dawn Turner, interviewed May 7, 1984, was in the store between 5:30 and 6:00 p.m. She saw a large heavy-set man that was causing "uneasiness" in Haraway because he had been standing at the magazine rack for 45 minutes. (PBr Exh A0698). Also produced are handwritten police notes from interviews with John McKinnis and Guy Keys conducted on April 29, 1984.¹⁰ The officer noted McKinnis was in the store at 8:05 p.m. and saw a large man with a full beard standing at the counter. The report states McKinnis did not see any other vehicles parked outside. (PBr Exh B000531). McKinnis has now stated in a declaration that the man was standing behind the counter and appeared unhappy. He described the atmosphere as tense. (PBr Exh A1597, ¶4). McKinnis also saw a 1970s model pickup prepped to paint parked outside, disagreeing with the police report saying he did not see any vehicles parked outside. *Id.* at ¶6. The officer notes on the same report, Guy Keys was in the store at 8:25 pm [just five minutes prior to Timmons and Whelchel's

¹⁰ These interviews were conducted the day after Haraway's disappearance and before the May 1, 1984, newspaper article was published. The article stated \$167 cash was taken; police were interested in a light gray primed late 60s, early 70s Chevrolet pickup, jacked up in the rear with a narrow bed; the possible suspects were two (2) men, one 5'6" blonde with ear length hair, faded jeans, the other 6' brown shoulder length hair with blue shirt and jeans. The article also mentions the Seminole County convenient store abduction.

arrival at 8:30 p.m.]. Keys told police Haraway was behind the counter. No one else was in the store. (PBr Exh B000531). There is no mention as to whether Keys was asked about other vehicles in the parking lot. McKinnis and Keys reported they were in the store between the time Moyer left around 7:40 p.m., and the time Timmonses and Whelchel arrived at 8:30 p.m. This newly discovered evidence is material in establishing when Haraway was abducted, other potential suspects that were seen in the store prior to her disappearance and vehicles that may have been in the parking lot.

OTHER SUSPECTS AND LEADS:

24. On direct appeal, Ward raised the State's failure to identify other suspects. (RBr Exh 1, p. 63(Q)). During the December 29, 1988 discovery hearing, Peterson told the court he knew of no other suspects other than Tommy Ward and Karl Fontenot. (PBr Exh A0046). He admitted known suspects would be exculpatory evidence. *Id.*
25. The previously undisclosed OSBI files show Peterson's statement to be untrue. Floyd DeGraw was extensively investigated. OSBI reports show DeGraw resembled one of the two suspects in the Haraway case (PBr Exh A0645); had traveled through Oklahoma between April 27th and April 30, 1984; was arrested on May 3, 1984, for the raping of a woman in Randall County, Texas (PBr Exh A1349-50); and was in possession of a purse, wallet, prescription bottle and military bag with ties to Oklahoma.
26. DeGraw was a drifter with a habit of picking up hitchhikers. Traveling from Detroit, Michigan, he picked up hitchhiker, Jeff Johnson in Ohio. He and Johnson arrived at Gordy Elliott's house in Memphis, Tennessee around 4:00 p.m. on Friday, April 27, 1984, and left that same day around 11:00 p.m. (PBr Exhs A0653-54). The two men decided to travel to California. DeGraw admitted traveling through Oklahoma via Interstate 40 but claimed

they never left the interstate. *Id.* at A0647. DeGraw told OSBI Agent Davis they stopped for gas in Muskogee, Oklahoma. *Id.* at A0649. When informed Muskogee was 20 miles off I-40, he said he guessed they must have left the interstate to get gas in Muskogee. *Id.* They arrived in California on April 30, 1984 which was verified with a traffic citation issued on that date. *Id.* at A0659. During the trip, DeGraw said he picked up four (4) individuals other than Johnson, including a male and female couple, and two (2) males, "Tim" and "Brian." *Id.* at A0647-48.

27. When DeGraw was arrested in Shamrock, Texas, on May 3, 1984, he was found in possession of a wallet belonging to Tami Willett, an Ada resident. The City of Ada is where the abduction took place. Ms. Willett told police she left her wallet in a friend's car on February 3, 1984, after driving around Ada. She was not able to find it later. (PBr Exh A0656). The purse was stolen from Rebecca Scott in Oklahoma City, Oklahoma in late January, early February 1984. *Id.* at A0664-66. The prescription bottle found was for a prescription written for Jerald Paulson¹¹ on January 20, 1984. *Id.* at A0685-87. Paulson's family told investigators he was an alcoholic and hitchhiked around the country. His last known whereabouts was in December 1983 at the VA Hospital in Oklahoma City. *Id.* It was determined the military bag found belonged to Brian E. Barber described as a drifter who was last seen by his sister in early May 1984, in Lawton, Oklahoma. *Id.* The four (4) items found in DeGraw's car indicate either he or someone traveling with him had ties to Oklahoma.

28. DeGraw was administered a polygraph test on May 10, 1984, by an Amarillo police detective. The detective found DeGraw to be deceptive when asked about whether he was

¹¹ The NCIC clerk reported according to OSBI files that Paulson had a lengthy arrest record with various minor felony arrests throughout the country over the last twenty years. (PBr Exh A0686).

involved in the Ada kidnapping, and if he had seen the woman in a picture identified as Haraway. (PBr Exh A0656). The Amarillo detective graded the test as inconclusive and suggested the OSBI polygraph examiner review the test and results. A copy of the polygraph charts, questions asked and other pertinent information was given to OSBI Agent Davis to transfer to Deputy Inspector Lewade Langley for evaluation.¹² *Id.* That same day, DeGraw was interviewed by Agent Davis. DeGraw was caught in a lie about how he got the \$1,100 found on him. *Id.* When shown a picture of Haraway, Agent Davis wrote DeGraw “held his head in his hands, appearing about to breakdown. He composed himself, lifted his head with ‘very red’ eyes and said he did not know anything about Haraway.” He became irritable, paced the floor and did not want to answer any more questions. He insisted on being returned to his cell. *Id.* at A0659.

29. In the June 2017 Fontenot deposition, Peterson denied having any recollection of DeGraw. (PBr Exh A1830-31). Ross claimed he did not know anything about DeGraw at the time of Fontenot’s re-trial and therefore could not have disclosed the information to defense counsel. (PBr Exh A1847). The prosecutors’ statements are in line with details of how the district attorney’s office and investigative officers worked together in the mid-1980s. The district attorney’s office tried the Ward case using the OSBI’s prosecutorial summary. OSBI Agent Rogers testified he did not want to identify other potential suspects deemed “dead-ends” to keep the defense lawyer from distracting the jury or judge with information that had absolutely nothing to do with the case. *See ¶14 supra.* The OSBI’s investigation of Floyd DeGraw was not included in the prosecutorial summary. (PBr Exhs A0862-63).
30. Karen Wise (“Wise”) was working as a store clerk at J.P.’s convenient store on the night

¹² No report has been produced indicating whether the OSBI reviewed the Texas examiner’s findings and made conclusions from the same.

of Haraway's abduction. She testified she was concerned about two (2) men in J.P.'s she thought were acting suspicious. They were playing pool in the back portion of the store from approximately 7:00 to 8:30 p.m. (PBr Exhs A00159-60, 162-66, 176-182). Jack Paschall, a customer, arrived at J.P.'s between 8:00-8:30 p.m. *Id.* at A0165-66. Within a couple of days, she was asked by law enforcement to assist in the creation of composite drawings of the two (2) men. (PBr Exh A0168). At the time, she did not know the men. Later she identified Ward in a live lineup as being one of the two men she saw in J.P.'s on April 28th. (PBr Exh A0172). Ward's investigators have learned that prior to the joint trial, Wise met with Peterson to discuss her testimony. (See PBr Exhs A1567-69, Karen Wise Affidavit). She told Peterson it was not the men in the composite drawings but two (2) other men in the pool room she was afraid of because of their behavior in the store. *Id.* at A1567, ¶7. She knew and identified the other two men as Bubba Daggs and Jim Bob Howard. Peterson responded they already had the "ones who did it." Peterson also told Wise that Howard could not have committed the murder because he "didn't have the I.Q. of a grub worm." *Id.* Peterson told Wise not to mention Howard or Daggs being in the store at the same time as the other two men she had identified as Ward and Fontenot because it was not relevant. *Id.* at A1568, ¶8. On cross-examination, Wise did testify there were four (4) men in J.P.'s pool room but was not asked if she could identify the other two (2) men. (PBr Exh A0179). Jack Paschall testified there were only two (2) men in the pool room that evening. (PBr Exhs A0197-98). Undisclosed documents reveal, on November 16, 1984, Detective Smith interviewed Jim Bob Howard. (PBr Exh A1520-21). Howard did not remember where he was on the night of the abduction. He admitted he had been to J.P.'s to make purchases but was not aware J.P.'s had a pool table. Howard said he would

be willing to take a polygraph test but there is no evidence law enforcement followed up on his offer. *Id.* at A1520. There is no evidence that Bubba Daggs was interviewed. Wise's identification of Howard and Daggs by name, is extremely material to this case. Her identification of Ward in J.P.'s was key evidence used by the State to convince the jury Ward was the same person seen by the Timmonses and Whelchel leaving McAnally's at 8:30 p.m. In Ward's October 18, 1984 confession, he did not mention stopping at J.P.'s. At the re-trial, Ward denied he was at J.P.'s on April 28, 1984.¹³ Wise's identification of Howard and his denial of being in J.P.'s on that night are in direct conflict with each other. Ward should have been given the opportunity to investigate Howard and Daggs's whereabouts on April 28, 1984. The identification of Howard and Daggs by Wise as being in J.P.'s with the other two (2) men is material either to exculpate or implicate Ward.

31. Undisclosed documents reveal OSBI and APD investigators learned Haraway had been receiving obscene and harassing calls while at work. Steve Haraway told the Agent Rogers his wife had received two to three obscene phone calls at the store, the last one being two to three weeks before her disappearance. (PBr Exh A0697). On July 25, 1985, just prior to the joint trial, James Watts, Haraway's co-worker gave a written statement informing the investigator that Haraway had been receiving obscene phone calls at the store which upset her a "great deal." Haraway was not able to identify the voice of the caller but told Watts the calls had stopped about one month prior to her disappearance. (PBr Exh A1605). Haraway told her sister, Janet Weldon, she hated working at McAnally's because there was no alarm system and a lot of "weirdos" stop at the store. (PBr Exh A0980). She also told

¹³ Ward did place himself at J.P.'s with Marty Ashley in his January 9, 1985, statement but no facts of that statement could be corroborated. Wise testified she knew Ashley and he was not in J.P.'s on April 28, 1984. (TR VII, 6-7-89, p. 57).

Weldon she was going to look for another job because she felt uneasy working alone at night and “calls had started again” but gave no details about the calls. *Id.* Haraway had also received calls at work from a man that told her he was going to come out to McAnally’s some night when she was working and wait outside. *Id.* Steve Haraway and store manager, Monroe Atkinson both told authorities about a Vietnam veteran that came in the store when traveling from Sulphur to Muskogee, Oklahoma that carried on strange conversations with Haraway but was never aggressive. (PBr Exh A0888). There is no evidence that authorities ever investigated who was making the harassing or obscene phone calls to the store or whether they interviewed the Vietnam veteran. Steve Haraway, Watts, Weldon and Atkinson made no mention at trial of Haraway’s fear of working at McAnally’s. Ward was never made aware of the problems Haraway was having at the store, and therefore, missed the opportunity to investigate or question the witnesses about the harassing and obscene calls she was receiving. When asked in his 2017 deposition, Peterson agreed that statements about the obscene phone calls were the type of information that should have been disclosed to Ward’s counsel. (PBr Exh A1826).

32. There were several other individuals identified as possible suspects and/or leads in the OSBI documents that were not revealed to Ward.¹⁴ [See PBr at p. 33 for list]. One of the leads came from Tulsa County law enforcement. OSBI Deputy Inspector R. Chrisco made agents aware of Dennis and Orvel Reeves, two men arrested for the abduction of a female convenient store clerk in Tulsa, Oklahoma on August 9, 1984. The men resembled the description of the men in the Haraway case. The Tulsa arresting officer, an eyewitness to

¹⁴ Ward argues Billy Charley was a prime suspect. However, Ward had been made aware prior to the re-trial, that Charley had been identified as resembling the composite drawing and was interviewed. (PBr Exhs A0010-11). Law enforcement testified they interviewed Charley, but no police interview reports or notes have been produced which is suspicious.

the crime, saw Dennis Reeves “walk out of the store arm and arm with the female clerk.¹⁵ (PBr Exh A0761). Several witnesses testified at trial they saw a pickup primed for paint at J.P.’s and McAnally’s on the day Haraway disappeared but were inconsistent in color and paint description.¹⁶ Undisclosed APD police notes indicate there were several other leads of individuals driving pickups primed for paint in April and May of 1984. (See PBr Exhs B000521-23, B000526-530). Conflicting evidence was given as to whether Ward had access to a gray primed pickup. The truck was never found. The State’s failure to disclose suspects and/or leads they considered “dead ends” prejudiced Ward by not giving him the opportunity to investigate for himself whether the information was relevant to his case.

EVIDENCE REGARDING HARAWAY’S BLOUSE DESCRIPTION:

33. On direct appeal, Ward raised the State’s failure to produce all the evidence concerning Haraway’s clothing and other items of apparel found at the scene with her remains. (RBr Exh 1, p. 63(E)). Ward agreed to submit to a polygraph test and on October 18, 1984, he went to the OSBI office headquarters in Oklahoma City. OSBI Agent Featherstone testified Ward told Featherstone about a dream he had about what might have happened to Haraway. Ward then recanted and said he only wished it was a dream. He then spent several hours being interviewed by OSBI and APD investigators. The last thirty (30) minutes of the interview was video-taped. In the taped portion, Ward incriminates himself as being involved in the abduction and murder of Haraway. Ward was arrested that same

¹⁵ David Timmons testified a female believed to be Haraway left McAnally’s with a male walking beside her with his arm around her waist. (PBr Exh A0242).

¹⁶ At Fontenot’s re-trial, Moyer was asked if he noticed any blotches of paint or primer on the pickup. He testified the pickup was a solid color, but not “regularly painted.” He also testified he saw no specific places the pickup was being repaired. (PBr Exh B000476-77). At Ward’s re-trial, Moyer gave no description concerning the pickup paint. (PBr Exhs B000506-07). Wise testified most of the pickup was covered with reddish-brown primer. (PBr Exh A0691). Paschall testified the pickup was rough looking with grayish-blue primer. (PBr Exh A0188).

day. (See PBr Exh A0499-503). The October 18th video-taped recording was played to the jury at the re-trial.

34. Haraway's body was not found until after the joint trial. When Haraway's body was found, none of Ward's statements about where they took Haraway or what happened to her before and after her death fit the statements he made. (See Agent Rogers' testimony, PBr Exhs A0549-50). APD Detective Smith could not list "anything to be true" from the October 18, 1984, "confession" and also admitted the police never found a weapon or the gray-primered pickup truck in the case. (PBr Exh A0470-73). The only detail from Ward's October 18th confession that was not disproved when Haraway's body was discovered was his description of the blouse Haraway was supposedly wearing when she disappeared. The described blouse was not found with her remains but family members testified Haraway did own such a blouse. During the October 18th confession, when asked to describe Haraway's blouse, Ward said it was "white with little blue roses on it, I think blue roses. Agent Rogers followed up with "Button-up or slip-on?" Ward replies "button-up." Rogers then asked if there were buttons on the collar or just a regular collar. Ward said "it had little fringe deals around her collar and around the end of her arm, end of the sleeves." Rogers clarified saying "by little fringe, do you mean a lace kind of deal?" to which Ward agreed. (PBr Exh A0534-35). Ward testified at the re-trial, that prior to beginning the video-taped confession he was given a choice of two blouses by the officers and chose the one he described in the video. (PBr Exh A0559-60). Law enforcement testified the blouse description given by Ward was the first time they had heard such a description. As already mentioned, Richard Holkum, an off-duty policeman testified he was at McAnally's the evening of April 28, 1984. He described Haraway had on a blouse that was a pastel color,

a light lavender or blue with a small print or design on it. (PBr Exh A0291). Holkum testified further he told Detectives Baskins and Smith what Haraway was wearing the next day at the police station. *Id.* at A0292. Janet Weldon testified she did not verify to law enforcement that Haraway owned such a blouse until after Ward's October 18th confession but thought of the blouse the day after Haraway disappeared and was not able to find it. *Id.* at A0295-96, A0307.

35. At the re-trial, the State introduced a missing person's report dated April 29, 1984, marked as State's Exhibit 72. Haraway's blouse description was reported as "size 7, plaid color unknown." When Ward's counsel received the entire medical examiner's report between 2010 and 2013, the same missing person's report introduced at trial was included. (PBr Exh A1550.) The undisclosed report had the same details as the trial exhibit with additional, specific details about Haraway's appearance. The report, still dated April 29, 1984, added to the previous blouse description as "possibly lavender w/ blue flowers, lace around neck line." *Id.* Also produced were two (2) undated documents that summarize a police interview with Janet Weldon, Haraway's sister and describe the missing blouse. The first undated document labeled as "Background of Haraway" was written by Detective Baskins. (PBr Exh A0978-80, A0926). On the last page (A0926), Weldon describes the blouse as a "light lavender blouse that was very lightly tinted. It had blue flowers on it and had lace around the collar with elastic around the sleeves. The shirt was made of thin material and buttoned down the front." In the prosecutorial summary, a similar description of the blouse was given by Weldon but again the interview date was not given. The prosecutorial summary stated Weldon told Detective Baskins that the blouse she discovered missing from Haraway's belongings was "a light lavender colored blouse, with

small blue flowers on it" and "had lace around the collar and gathered with elastic on the sleeves and buttoned down the front." (PBr Exh A0878). Weldon's interview summary is the only undated summary out of 35 interviews contained in the prosecution summary prepared by OSBI for the State. (*Compare* PBr Exhs A0878 and A0926 with A0862-63 and A0877-960). Agent Rogers compiled the prosecutorial summary for the district attorney's office. He admitted Weldon's summary should have been dated and did not know why it was not. (PBr Exh B000121, pp. 90-92). Rogers assumed because Detective Baskins did not date the Haraway background report Rogers did not include a date in the prosecutorial summary. Detective Baskins stated that including the time and date in a report would be important and part of his policy. He could not give an example when he failed to date a report. (PBr Exhs B000009-10, pp. 33-34, B000030, p. 116). Baskins also stated the summaries pertaining to Weldon's interview were likely created from other police reports. (PBr Exh B000030, pp. 114-15). No such reports have been produced. The newly discovered updated "missing person's report" giving Ward's description of the blouse, along with the unusual circumstances of undated summaries and no police interview reports from which the summaries were taken, could have been used to impeach the officers' testimony as to when they became aware of the blouse description.

CONCLUSIONS OF LAW:

36. Under § 1080(d) of the PCPA, evidence of material facts not previously presented and heard may require a defendant's convictions and sentences to be vacated in the interest of justice. In *Salyers v. State*, 1988 OK CR 88, 755 P.2d 97, 101, the OCCA set forth the test as to whether a motion for new trial should be granted based upon newly discovered evidence. The newly discovered evidence must be (1) material; (2) could not have been

discovered before trial with due diligence; (3) is not cumulative; and (4) must create a reasonable probability that, had the newly discovered evidence been introduced at the original trial, it would have changed the outcome of the trial.¹⁷ In *United States v. Agurs*, 427 U.S. 97, 112, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), the United States Supreme Court stated the proper standard of materiality must reflect “our overriding concern with the justice of the finding of guilt.” The entire record must be considered. If there is no reasonable doubt about guilt with or without consideration of the additional evidence, there is no justification for a new trial. If, however, the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt. *Id.* at 427 U.S. at 113.

37. Under § 1080(a) of the PCPA, evidence that a conviction or sentence was obtained under a violation of the United States Constitution or the Constitution or laws of Oklahoma is a basis for post-conviction relief. In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the United States Supreme Court, dealing with exculpatory evidence,¹⁸ held that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. The *Brady* rule is not to displace the adversary system as the primary means to uncover the truth, but to ensure a miscarriage of justice does not occur. *See U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 3379-80, 87 L.Ed.2d 481 (1985). The prosecutor is not required to turn over his entire file to the defendant, but must disclose evidence favorable to the defendant, that if

¹⁷ See *Smith v. State*, 1992 OK CR 3, 826 P.2d 615, 617-18, *cert. denied*, 506 U.S. 952 (1992), for the application of newly discovered evidence in the context of a post-conviction appeal.

¹⁸ *Brady*, dealt with the suppression of a co-defendant’s confession.

suppressed would deprive the defendant of a fair trial. *Id.* at 3380. *Bagley* dealt with the suppression of evidence the defendant could have used to impeach a witness and applied *Brady* to determine if the defendant's right to due process had been violated.¹⁹ The prosecutor had failed to disclose government witnesses were offered a reward if information they supplied resulted in the goal sought by the government. *Id.* at 3384. The possibility of a reward gives witnesses a direct, personal stake in the defendant's conviction and is impeaching evidence. *Id.* *Bagley* further defined the standard of materiality set out in *Brady*. Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. *Id.* at 3383. A "reasonable probability" is a probability sufficient to undermine the confidence in the outcome. *Id.* It does not matter if the defendant made no request, general requests or specific requests in cases where the prosecution has failed to disclose evidence favorable to the defendant. *Id.* The *Bagley* court held a reviewing court may consider directly any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case. *Id.* The reviewing court must make such an assessment in "light of the totality of the circumstances," and with an awareness of the difficulty of reconstructing in a post-trial proceeding, the course the defendant and the trial would have taken had the defense not been misled by the prosecutor's incomplete response. *Id.* at 3384.

38. Under *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *see Brady*,

¹⁹ *Brady* applies to both exculpatory and impeachment evidence. *Bagley* at 3380.

373 U.S. at 87, the "good faith or bad faith of the prosecution" is irrelevant to whether due process is violated.

DECISION:

Donna Haraway's skeletal remains, along with remnants of clothing and accessories believed to be Haraway's, were not found until approximately twenty (20) months after she disappeared from McAnally's convenient store on April 28, 1984. This case rested on circumstantial evidence in the form of conflicting witnesses' testimony and Ward's inculpatory statements he gave to law enforcement.

With the exception of a blouse description given by Ward to investigators, none of his other statements about his involvement in Haraway's abduction were found to be true. Ward implicated Odell Titsworth as a third participant in the events of April 28, 1984. It was proved Titsworth was not involved because he had a broken arm at the time. (PBr Exhs A0006-07). Haraway's body was found in Hughes County, rather than Pontotoc County, Oklahoma with a bullet hole in her skull. Ward "confessed" Haraway was stabbed. Acquaintances of Ward testified he carried a knife,²⁰ but the medical examiner testified there was no evidence Haraway had been stabbed with a knife. No murder weapon was ever found.

The jury heard conflicting evidence as to whether Ward owned or had access to a late 60s, early 70s Chevrolet pickup with primed paint. Descriptions of the truck varied, including paint color, size of tires and whether it had a tailgate. A pickup was never located matching any of the witnesses' descriptions. Several witnesses gave conflicting testimony about the length of Ward's hair before and after April 28, 1984. Ward testified he was as at a party at the time of the

²⁰ David Yockey testified Ward carried a regular locked blade knife. (TR IV, 6-5-89, p.92). Billy Hammons testified Ward carried several pocket knives, including a large Buck knife he had received as a gift. (PBr Exhs A0330-31).

abduction. The majority of the witnesses supported Ward's alibi, but one of the hosts of the party testified Ward did not attend.

Newly discovered evidence reveals Moyer, the only witness to identify Ward as being at McAnally's, sought a reward for testifying. At trial, Moyer gave a very detailed description of Ward's clothing and told jurors he was already in McAnally's when the two men entered. However, in two undisclosed police interview reports produced by the APD in 2019, Moyer gave no description of the men's clothing and was inconsistent in the order the men entered McAnally's.

Moyer testified at trial he was shown a photo array but was not able to identify Ward. A police interview report reveals Moyer selected a photograph from the array. James Boardman, a customer of McAnally's on April 28th, selected the same photograph as Moyer. Boardman told police he saw two suspicious men, approximately six foot (6') tall at 5:00 p.m. Law enforcement had Moyer participate in a live lineup but did not request the same of Boardman. Ward had no knowledge of Boardman's statements to police. Although requested by Ward through discovery, the photo array has never been produced and the photograph selected by Moyer and Boardman has never been identified.

The jury heard conflicting evidence that put Ward at both J.P.'s and McAnally's at the same time. Moyer testified Ward was in McAnally's at approximately 7:30 p.m. Wise and Paschall testified Ward was playing pool at J.P.'s from 7:00 to 8:30 p.m. Through post-trial discovery it is now known that several customers were in McAnally's the night of Haraway's disappearance before and after Moyer, and saw suspicious acting men. McKinnis saw a heavy-set, bearded man at 8:05 p.m. and a primed truck in the parking lot. Keys was in the store at 8:25 p.m. and saw Haraway alone, just five (5) minutes before the Timmomes and Whelchel

testified they arrived at 8:30 p.m. and found the store unattended.

Ward was not aware of leads and potential suspects interviewed by investigators until receiving the OSBI and APD documents post-trial. Information did not just come from the public, but several other law enforcement agencies contacted the OSBI and APD with leads. DeGraw was extensively investigated but produced documents do not reveal why investigators eliminated him as a possible suspect. Ward was not aware Wise identified Howard and Daggs as being in J.P.'s playing pool at the same time as Ward. An undisclosed police interview report with Howard verifies the police followed up on Wise's statement. Undisclosed interviews reveal Haraway was fearful of working at McAnally's alone at night with no security system. If fact, Haraway had received harassing and/or obscene phone calls and encountered strange acting customers that routinely came in the store while she was working.

At trial, it was established Haraway owned a blouse similar to the floral one described by Ward in his October 18th confession. However, the blouse was not found with Haraway's remains. Only a red and white fabric with a medium label was found at the scene. Ward testified law enforcement gave him a choice between two (2) blouses before video-taping his confession. Law enforcement denied Ward's statement, testifying Ward's confession was the first time they had heard the floral blouse description. Richard Holkum testified he told Detectives Baskin and Smith the day after Haraway disappeared that she was wearing the floral blouse on April 28, 1984. Steve Haraway testified he gave no description of what top Haraway might have worn, other than a sweatshirt.²¹ Janet Weldon, Haraway's sister, testified she confirmed to police that Haraway owned a floral blouse fitting Ward's description after his October 18, 1984 confession,

²¹ Steve Haraway's testimony at the re-trial conflicts with his recent answer to Ward's interrogatory served on him December 24, 2019 concerning when he told investigators about the floral blouse. The Court finds the testimony he gave in 1989 is more credible.

but admitted under cross-examination she thought of the blouse within days of Haraway's disappearance and could not find it.

Discovered after the trial in the medical examiner's files was an updated "missing person's report" that contained the floral blouse description. The original report, dated April 29, 1984, was introduced at trial as State's Exhibit 72, which only described her blouse as "plaid color unknown." The updated report remained dated April 29, 1984, with no dates indicating when addition information was added to the report. Also produced in the 2019 documents are two summaries of Janet Weldon's police interviews wherein she describes the floral blouse. Neither of the summaries are dated, when all other summaries are dated. The actual police interview report with Weldon was not produced, even though Agent Rogers admitted the summaries would have been taken from interview reports. The updated "missing person's report", Weldon's missing interview report(s) and her undated summaries call into question when officers learned of the floral blouse description.

The Pontotoc County District Attorney's office relied solely on investigators to provide it with the evidence needed to prosecute the case without questioning whether the investigators had turned over all exculpatory and/or impeachment evidence. The investigators seem to have taken on the roles of prosecutor, judge and jury, determining that the only "relevant" evidence was evidence which fit their theory of the case. It also seems highly probable the district attorney's office knew favorable evidence was being suppressed and turned a blind eye as in the case of Peterson's instruction to Wise not to mention Howard and Daggs' being at J.P.s the night Haraway disappeared. This process of suppressing favorable evidence to Ward is fundamentally unfair and has deprived him of his right to a fair trial. He has been denied due process as guaranteed by the federal and state constitutions.

The cumulative effect of the material evidence withheld by the State as identified herein creates a reasonable probability the outcome of the trial would have been different given the burden of proof required for a conviction. No person is to be deprived of liberty or life without due process of law, which included a right to be free from conviction except upon proof beyond a reasonable doubt of guilt. Ward has asked for exculpatory and/or impeachment evidence for over thirty (30) years, both prior to trial and post-trial. Finally, in 2019, the Ada Police Department turned over 300 pages of police documents after representing to Ward's attorneys for years the Department had no documents relating to the Haraway case. For the first time, Ward discovered there were problems with the credibility of the State's witnesses and the existence of witnesses that raised serious doubts as to the accuracy of witnesses identifying Ward as the guilty party. It would only take one juror out of twelve to find the State had failed to prove Ward's guilty beyond a reasonable doubt, keeping Ward from being convicted of murdering Haraway.

Ward was arrested after his video-taped "confession" on October 18, 1984, and has remained in custody for over thirty-five years. Due to the passage of time, the Court is of the opinion Ward will not be able to receive a fair trial.

Now, based upon the findings and reasons set forth above, this Court finds that the factual contentions made by the Petitioner, Thomas Jesse Ward, in his Amended Application for Post-Conviction Relief are sufficient as a matter of law to establish *prima facie* showing the Petitioner is entitled to post-conviction relief. IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Petitioner's Amended Application for Post-Conviction Relief is granted. Pursuant to Title 22, O.S. § 1085, this Court hereby vacates and sets aside the Judgments and Sentences entered against Ward on July 10, 1989, dismisses the charges originally filed against him in Pontotoc County Case No. CRF-1984-183 and re-tried in Pottawatomie County Case No.

CRF-1988-208; and discharges Ward from the custody of the Oklahoma Department of Corrections.

DATE: December 18, 2020.



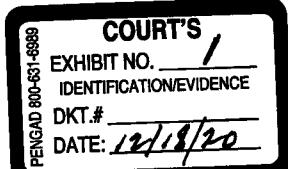
Diana Ford
District Judge

cc: certified copies to attorneys of record

**APPENDIX INDEX OF BRIEF IN SUPPORT OF THOMAS JESSE WARD'S
APPLICATION FOR POST-CONVICTION RELIEF (No. CRF-1984-183)**

Appendix Pages	Description	Hearing Tr. Cites (if applicable) ¹
Oklahoma v. Ward and Fontenot, No. 84-183, Preliminary Hearing Transcript Excerpts		
A0001 – A0005	Oklahoma v. Ward and Fontenot, No. 84-183, Preliminary Hearing Transcript Excerpts, Testimony of Janet Weldon (01/07/1985)	P.H. Vol. I at 131-34
A0006 – A0012	Oklahoma v. Ward and Fontenot, No. 84-183, Preliminary Hearing Transcript Excerpts, Testimony of Dennis Smith (01/15/1985)	P.H. Vol. IV at 708-10, 732-35
A0013 – A0015	Oklahoma v. Ward and Fontenot, No. 84-183, Preliminary Hearing Transcript Excerpts, Testimony of Odell Bruno Titsworth (01/15/1985)	P.H. Vol. IV at 790-92
A0016 – A0020	Oklahoma v. Ward and Fontenot, No. 84-183, Preliminary Hearing Transcript Excerpts, Testimony of Terri (McCarthy) Holland (01/16/1985)	P.H. Vol. IV at 889-93
Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts		
A0021 – A0026	Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts, Testimony of Janet Weldon (09/11/1985)	J.T. Vol. III at 859-63
A0027 – A0030	Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts, Testimony of Mike Baskin (09/16/1985)	J.T. Vol. VI at 1390-93
A0031 – A0034	Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts, Testimony of Terri (McCarthy) Holland (09/18/1985)	J.T. Vol. VIII at 1822-24
Oklahoma v. Ward, No. 88-208, Pre-Trial Hearing Transcript Excerpts		
A0035 – A0055	Oklahoma v. Ward, No. 88-208, Hearing Transcript Excerpts (12/29/1988)	Pre-W.T. (12/29/1988) at 16-21, 40-42, 50-52, 65-72
A0056 – A0082	Oklahoma v. Ward, No. 88-208, Hearing Transcript Excerpts (04/28/1989)	Pre-W.T. (4/28/1989) at 9-34

¹ The transcripts cited herein are defined as follows: *Oklahoma v. Ward and Fontenot*, No. 84-183, Preliminary Hearing Transcript ("P.H."); *Oklahoma v. Ward and Fontenot*, No. 84-183, Joint Trial Transcript ("J.T."); *Oklahoma v. Ward*, No. 88-208, Pre-Trial Hearing Transcript ("Pre-W.T."); *Oklahoma v. Ward*, No. 88-208, Trial Transcript ("W.T."); *Oklahoma v. Ward*, No. 88-208, Sentencing Hearing Transcript ("S.H.").



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Appendix Pages	Description	Hearing Tr. Cites (if applicable)¹
A0083 – A0110	Oklahoma v. Ward, No. 88-208, Hearing Transcript Excerpts (05/30/1989)	Pre-W.T. (5/30/1989) at 29-32, 62-73, 76-81, 84-88
Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts		
A0111 – A0120	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Allen Tatum (06/01/1989)	W.T. Vol. II at 20-28
A0121 – A0135	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of David Dixon (06/01/1989)	W.T. Vol. II at 51-65
A0136 – A0138	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Bruce Johnson (06/01/1989)	W.T. Vol. II at 74-76
A0139 – A0141	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Floyd Trivel (06/01/1989)	W.T. Vol. II at 81-83
A0142 – A0148	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Dr. Richard Thomas Glass (06/01/1989)	W.T. Vol. II at 90-93
A0149 – A0158	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Dr. Larry Balding (06/01/1989)	W.T. Vol. II at 99-101, 105-14
A0159 – A0186	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Karen Wise (06/01/1989)	W.T. Vol. II at 115-25, 142-49, 152-54, 163-65, 169-71
A0187 – A0204	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Jack Paschall (06/02/1989)	W.T. Vol. III at 28-30, 45-50, 55-58, 72-76
A0205 – A0220	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Jim Moyer (06/02/1989)	W.T. Vol. III at 84-91, 105-12
A0221 – A0236	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Lenny Timmons (06/02/1989)	W.T. Vol. III at 141-49, 151-53, 158-61
A0237 – A0246	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of David Timmons (06/02/1989)	W.T. Vol. III at 169-78

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A0247 – A0255	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Gene Whelchel (06/05/1989)	W.T. Vol. IV at 8-13, 26-28
A0256 – A0261	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Arthur Truman Scroggins (06/05/1989)	W.T. Vol. IV at 38-43
A0262 – A0265	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Mary Scroggins (06/05/1989)	W.T. Vol. IV at 48-51
A0266 – A0269	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Harvey Phillips (06/05/1989)	W.T. Vol. IV at 57-60
A0270 – A0272	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Monroe Atkeson (06/05/1989)	W.T. Vol. IV at 65-67
A0273 – A0275	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of O.E. McAnally (06/05/1989)	W.T. Vol. IV at 72-74
A0276 – A0280	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Steve Haraway (06/05/1989)	W.T. Vol. IV at 111-15
A0281 – A0289	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of James Watts (06/05/1989)	W.T. Vol. IV at 116-24
A0290 – A0293	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Richard Holkum (06/05/1989)	W.T. Vol. IV at 135-38
A0294 – A0309	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Janet Weldon (06/05/1989)	W.T. Vol. IV at 152-67
A0310 – A0315	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Pat Virgin (06/05/1989)	W.T. Vol. IV at 168-73
A0316 – A0319	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Paula Brown (06/06/1989)	W.T. Vol. V at 11-14
A0320 – A0325	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Agnus Lumpmouth (06/06/1989)	W.T. Vol. V at 15-20

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A0326 – A0331	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Billy Hammons (06/06/1989)	W.T. Vol. V at 21-26
A0332 – A0355	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Mike Baskin (06/06/1989)	W.T. Vol. V at 52-55, 57-76
A0356 – A0387	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Tape Recording of 10/12/1984 Statement by Thomas Jesse Ward (06/06/1989) (for full statement, see A1853 – A1920)	W.T. Vol. V at 101-13, 122-30, 135-38, 145-52
A0388 – A0413	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Mike Baskin (06/06- 07/1989) (cont.)	W.T. Vol. V at 153-56, 160-62, 169-72, 184-87 W.T. Vol. VI at 7-12, 14-18
A0414 – A0419	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Gordon Douglas Calhoun (06/07/1989)	W.T. Vol. VI at 73-78
A0420 – A0422	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Dennis Smith (06/07/1989)	W.T. Vol. VI at 130-32
A0423 – A0459	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Excerpts of Tape Recording of 01/09/1985 Statement by Thomas Jesse Ward (06/07/1989)	W.T. Vol. VI at 133-69
A0460 – A0488	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Dennis Smith (06/07- 08/1989) (cont.)	W.T. Vol. VI at 170- 74, 184-87 W.T. Vol. VII at 27-40, 43-48
A0489 – A0504	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Rusty Featherstone (06/09/1989)	W.T. Vol. VIII at 10- 24, 28
A0505 – A0541	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Tape Recording of 10/18/1984 Statement by Thomas Jesse Ward (06/09/1989)	W.T. Vol. VIII at 29- 65
A0541 – A0542	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Rusty Featherstone (06/09/1989) (cont.)	W.T. Vol. VIII at 65- 66

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Appendix Pages	Description	Hearing Tr. Cites (if applicable)¹
A0543 – A0551	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Gary Rogers (06/12/1989)	W.T. Vol. IX at 16-20, 31-34
A0552 – A0580	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Thomas Jesse Ward (06/12/1989)	W.T. Vol. IX at 132- 41, 143-51, 155-61, 167-69
A0581 – A0586	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Robert Cavins (06/13/1989)	W.T. Vol. X at 130-35
A0587 – A0589	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Janette Arlene Roberts (06/13/1989)	W.T. Vol. X at 171-73
A0590 – A0593	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Stacey Deprater-Brashier (06/13/1989)	W.T. Vol. X at 193-96
A0594 – A0623	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, State's Closing Statement (06/15/1989)	W.T. Vol. XII at 46-51, 119-27, 131-42, 166-68
A0624 – A0627	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Verdict (06/16/1989)	W.T. Vol XIII at 8-11
Oklahoma v. Ward, No. 88-208, Sentencing Hearing Transcript		
A1921 – A1925	Oklahoma v. Ward, No. 88-208, Sentencing Hearing Transcript Excerpts (07/10/1989)	S.H. (7/10/1989) at 20- 23
Exhibits to Application for Post-Conviction Relief		
A0628 – A0629	Photos of Trial Exhibits – Red Shirt and Red Earring	
A0630 – A0632	Ward v. Oklahoma, No. F-90-0017, Summary Opinion (01/07/1994)	
A0633 – A1519	The OSBI File	
A1520 – A1521	OSBI Reports of Interviews with Jim Bob Howard	
A1522 – A1564	Report of Investigation by Medical Examiner (01/22/1986)	
A1565 – A1566	Fontenot v. Oklahoma, No. F-88-571, Order (12/01/1992)	
A1567 – A1572	Karen Wise Affidavit (09/23/2009)	

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A1575 – A1577	OSBI Interviews with Randy Stane and Jim Bob Howard (02/02/2010)	
A1578 – A1579	Jim Bob Howard Declaration (11/11/2010)	
A1580 – A1583	David Yockey Declaration (11/22/2013)	
A1584 – A1585	Ted Frye Affidavit (10/05/2009)	
A1586 – A1587	Danny Barrett Affidavit (09/23/2009)	
A1588 – A1591	Sara Bonnell Declaration (11/24/2015)	
A1592 – A1593	Odell Titsworth Affidavit (01/23/2014)	
A1594 – A1596	Stacey Shelton Affidavit (11/11/2009)	
A1597 – A1599	John McKinnis Affidavit (07/16/2014)	
A1600 – A1601	Darlene Adams Affidavit (04/25/2013)	
A1602	Anthony W. Johnson Affidavit (04/25/2013)	
A1603 – A1606	James D. Watts Affidavit (07/20/2013)	
A1607 – A1608	Richard Holkun Affidavit (05/09/2013)	
A1609 – A1610	Karen & Larry Scroggins Declaration (12/09/2013)	
A1611 – A1664	Dr. Richard Leo Declaration (11/24/2013)	
A1665 – A1668	Richard Kerner Affidavit (10/27/2009)	
A1669 – A1671	Don Wyatt Affidavit (12/03/2013)	
A1672 – A1674	George Butner Affidavit (06/14/2013)	
A1675 – A1676	Thomas Ward Affidavit (10/13/2015)	
A1677 – A1714	Steve Capps Affidavit (10/30/2009)	
A1715 – A1753	Pontotoc County Records of Billy Charley Assault Charges (09/19/1994)	
A1754 – A1774	Ottawa County Records of Billy Charley Arrest (01/09/2006)	
A1775	Glen Dale Gore Interview (Dated Report)	
A1776	Glen Dale Gore Interview (Undated Report)	
A1777 – A1804	Fritz v. City of Ada, No. 194, Order on Motion for Summary Judgment (02/07/2012)	

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A1805 – A1840	Fontenot v. Rios, No. 16-cv-69, Excerpts of William N. Peterson Deposition Transcript (06/14/2017)	
A1841 – A1852	Fontenot v. Rios, No. 16-cv-69, Excerpts of Chris Ross Deposition Transcript (06/14/2017)	
Errata		
A1853 – A1920	Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Tape Recording of 10/12/1984 Statement by Thomas Jesse Ward (full statement)	W.T. Vol. V at 87-153
A1921 – A1925	Oklahoma v. Ward, No. 88-208, Sentencing Hearing Excerpts, (07/10/1989)	S.H. (07/10/1989) at 20-23

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Tab #	Appendix Pages	Dep. Exhibit # If Applicable	Description	Hearing Tr. Cites (if applicable)¹
New Discovery – Deposition Transcripts				
1	B000001 – B000077		Deposition Transcript of Mike Baskin, Volume I (03/28/2019)	
2	B000078 – B000097		Deposition Transcript of Mike Baskin, Volume II (06/04/2019)	
3	B000098 – B000178		Deposition Transcript of Gary Rogers, Volume I (03/29/2019)	
4	B000179 – B000207		Deposition Transcript of Gary Rogers, Volume II (06/04/2019)	
5	B000208 – B000262		Deposition Transcript of Janet Weldon (06/05/2019)	
Declarations & Affidavits				
6	B000263 – B000280		Declaration of Richard Carson and Exhibits (06/14/2018)	
7	B000281 – B000329		Declaration of Mark H. Barrett and Exhibits (06/15/2018)	
8	B000330 – B000331		Declaration of Richard Holkum (04/17/2019)	
9	B000332 – B000333		Declaration of Richard Carson (05/01/2019)	
10	B000334 – B000387		Affidavit of Jennifer Nepstad and Exhibits (05/31/2019)	
11	B000388 – B000389		Declaration of William Starns (05/06/2019)	

¹ The transcripts cited herein are defined as follows: *Oklahoma v. Ward and Fontenot*, No. 84-183, Preliminary Hearing Transcript ("P.H."); *Oklahoma v. Ward and Fontenot*, No. 84-183, Joint Trial Transcript ("J.T."); *Oklahoma v. Fontenot*, No. 88-43, Trial Transcript ("F.T."); *Oklahoma v. Ward*, No. 88-208, Pre-Trial Hearing Transcript ("Pre-W.T."); *Oklahoma v. Ward*, No. 88-208, Trial Transcript ("W.T.").

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Transcripts from Previous Trials				
12	B000390 – B000402		Oklahoma v. Ward and Fontenot, No. 84-183, Preliminary Hearing Transcript Excerpts, Testimony of Jim Moyer (01/08/1985)	P.H. Vol II at 211-12, 219, 231-34, 243-44
13	B000403 – B000427		Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts, Testimony of Steve Haraway (09/11/1985)	J.T. Vol. III at 807-08, 825-30
14	B000428 – B000448		Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts, Testimony of Jim Moyer (09/12/1985)	J.T. Vol. IV at 1036-39
15	B000449 – B000470		Oklahoma v. Ward and Fontenot, No. 84-183, Trial Transcript Excerpts, Testimony of Dennis Smith (09/17/1985)	J.T. Vol. VII at 1629-33
16	B000471 – B000477		Oklahoma v. Fontenot, No. 88-43, Trial Transcript Excerpts, Testimony of Jim Moyer (06/09/1988)	F.T. Vol. III at 27-28
17	B000478 – B000496		Oklahoma v. Ward, No. 88-208, Hearing Transcript Excerpts (05/30/1989)	Pre-W.T. (5/30/1989) at 6-11, 27-28, 40-41, 53-56, 60-62
18	B000497 – B000507		Oklahoma v. Ward, No. 88-208, Trial Transcript Excerpts, Testimony of Jim Moyer (06/02/1989)	W.T. Vol. III at 83, 96, 102-05, 118-19.
Fritz and Williamson v. City of Ada, No. Civ-00-194-B, Deposition Transcripts				
19	B000508 – B000509		Fritz and Williamson v. City of Ada, No. Civ-00-194-B, Deposition Transcript Excerpts, Testimony of James Fox (03/02/2001)	
20	B000510 – B000512		Fritz and Williamson v. City of Ada, No. Civ-00-194-B, Deposition Transcript Excerpts, Testimony of Richard Carson (04/10/2001)	

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21	B000513 – B000514		Fritz and Williamson v. City of Ada, No. Civ-00-194-B, Deposition Transcript Excerpts, Testimony of Carl Allen (10/03/2001)	

New Discovery – Produced Documents

22	B000515	Ex. 16	Report of Interview with James Boardman (ADA_000009)	
23	B000516		Report of Interview with Jimmy Simpson (ADA_000010)	
24	B000517		Report of Interview with Jim Moyer (ADA_000015)	
25	B000518		Lead Sheet Regarding Dr. Starns Providing Information About Jim Moyer (ADA_000017)	
26	B000519		Report of Interview with Yvonne Reed (ADA_000029)	
27	B000520		Report of Interview with Duney Alford (ADA_000031)	
28	B000521		Report of Interview with Bryan Cox (ADA_000032)	
29	B000522		Report of Interview with Bryan Cox (ADA_000033)	
30	B000523		Lead Sheet Regarding Information on Dan Phillip Clover (ADA_000042)	
31	B000524		Lead Sheet Regarding Check Shaw and Joe Schutte (ADA_000043)	
32	B000525		Report of Interview with Jim Moyer (ADA_000046)	
33	B000526		Lead Sheet Regarding Call from Loyd Cannon Providing Information on Arley and Billy Rowell and Ronnie and Everett Duncan (ADA_000052)	

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34	B000527		Lead Sheet Regarding Clinton Lackey Jr. (ADA_000054)	
35	B000528		Lead Sheet Regarding Call from Wayne Case Providing Information on Billy Charley (ADA_000061)	
36	B000529		Lead Sheet Regarding Call from Jack Hill Providing Information on William and Rommie Washburn (ADA_000062)	
37	B000530		Handwritten Notes Regarding Ladon Wainscott and Marty Stevenson (ADA_000094)	
38	B000531		Handwritten Notes Regarding Call from John McKinnis Providing Information About the Man He Saw at McAnally's (ADA_000095)	
39	B000532 – B000535	Ex. 5	Handwritten Notes from 4-30-1984 Regarding Information Obtained from Callers (ADA_0000122–25)	
40	B000536		Handwritten Notes on Three Separate Callers, All of Whom Identified Charley as Resembling Composite (ADA_000133)	
41	B000537		Handwritten Notes with "Charley" Written Three Times (ADA_000277)	
Responses to Petitioner's Interrogatories				
42	B000538 – B000544		Steve Haraway's Response to Petitioner's Interrogatories	

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43	B000545 – B000547		Ada Police Department's Responses to Petitioner's Interrogatories	
44	B000548 – B000624		Custodian of Records for the Oklahoma State Bureau of Investigation Responses to Petitioner's Interrogatories	

Other Materials

45	B000625		Gerald Adams, <i>Gunmen Rape City Store Clerk</i> , The Shawnee News-Star, Nov. 22, 1983	
46	B000626 – B000627		Memo of Interview with Karey McClure (04/10/2019)	
47	B000628 – B000639		Docket Report for Fontenot v. Allbaugh, No. 6:16-cv-00069-JHP-KEW (E.D. Okla. 2016)	
48	B000640 – B000653	Ex. 27	Oklahoma v. Guinn and East, Hearing Transcript Excerpts (03/16/1983)	
49	B000654 – B000661		<i>For Missing Woman's Mother, Not Knowing Is the "Hardest Park [sic]" Convenience Store Clerk's Disappearance All But Forgotten</i> , The Oklahoman, Apr. 15, 1985	
50	B000662 – B000669		Fontenot v. Allbaugh, No. 6:16-cv-00069-JHP-KEW (E.D. Okla. 2016), Fontenot Response to Respondent's Motion to Quash Subpoena	