

IN THE  
SUPREME COURT OF THE UNITED STATES

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No. 15- \_\_\_\_

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RICHARD GLOSSIP,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

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*PETITION FOR A WRIT OF CERTIORARI TO THE  
OKLAHOMA COURT OF CRIMINAL APPEALS*

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Mark Olive, Esq.\*  
320 W. Jefferson Street  
Tallahassee, FL 32301  
850-224-0004

Donald R. Knight, Esq.  
7852 S. Elati Street, Suite 201  
Littleton, CO 80120  
303-797-1645

Kathleen Lord, Esq.  
1544 Race Street  
Denver, CO 80206  
303-321-7902.

\* Counsel of Record

## QUESTIONS PRESENTED

“The State’s entire case” against Mr. Glossip turned upon the testimony of Justin Sneed. *Glossip v. State*, 29 P.3d 597, 560 (Ok. Cr. 2001). Newly discovered evidence completely undermines Sneed’s credibility. Mr. Glossip claimed below that his execution based solely on Sneed’s bargained for, and now provably unreliable, testimony would violate the Eighth and Fourteenth Amendments.<sup>1</sup>

The lower court narrowly denied a stay of execution and an evidentiary hearing. Two Judges dissented.<sup>2</sup> “The substantial risk of putting an innocent man to death clearly provides an

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<sup>1</sup> “[D]ecisions of this Court clearly support the proposition that ‘it would be an atrocious violation of our Constitution and the principles upon which it is based’ to execute an innocent person.” *In re Davis*, 130 S.Ct 1, 1-2 (2009)(Stevens, J., joined by Ginsburg, J, and Breyer, J., concurring)(citation omitted).

<sup>2</sup> See Johnson, J, dissenting: “Glossip’s materials convince me that he is entitled to an evidentiary hearing to investigate his claim of actual innocence.” See also Smith, Presiding Judge, joined by Johnson, J., dissenting: “Glossip claims to have newly discovered evidence that Sneed recanted his story of Glossip’s involvement, and shared this with other inmates and his daughter. The tenuous evidence in this case is questionable at best if Sneed has, in fact, recanted.” “While finality of judgment is important, the State has no interest in executing an actually innocent man.” And see Johnson, J., dissenting:

A bare majority of this Court affirmed this case on direct appeal. I dissented because Glossip’s trial was deeply flawed. *Glossip v. State*, 2007 OK CR 12, ¶¶ 1-4, 157 P.3d 143, 175 (Johnson, J., dissenting). Because I believe Glossip did not receive a fair trial, I cannot join in the denial of this successor post-conviction application that further calls into doubt the fairness of the proceeding and the reliability of the result. “The death penalty is the gravest sentence our society may impose.” *Hall v. Florida*, 572 U.S. \_\_\_, \_\_\_, 132 S.Ct 1986, 2001, 188 L.Ed. (2014). I would grant Glossip’s request for evidentiary hearing to investigate his claim of actual innocence because those who face “that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.” *Id.*

adequate justification for holding an evidentiary hearing.” *In re Davis*, 130 S.Ct 1

(2009)(Stevens, J., joined by Ginsburg, J, and Breyer, J., concurring).

This case presents the following questions:

does it violate the Eighth and Fourteenth Amendments to execute an innocent person?

does it violate the Eighth and Fourteenth Amendments for a State to execute a person when there is too much doubt about the integrity of the person’s conviction?

does it violate the Eighth and Fourteenth Amendments for a State not to provide a procedure for determining facts in the face of sworn affidavits and other evidence demonstrating the sole testimony upon which a conviction and sentence of death are based is unreliable?

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Mr. Glossip respectfully petitions this Court to review the decision of the Oklahoma Court of Criminal Appeals.

**OPINIONS BELOW**

The opinion of the Oklahoma Court of Criminal Appeals is attached. Appendix 1.

**JURISDICTION**

The lower court's opinion issued September 29, 2015. This Court has 28 U.S.C. section 1257(a) jurisdiction.

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves the Eighth and Fourteenth Amendments to the Constitution:

[N]or [shall] cruel and unusual punishments [be] inflicted. U.S. CONST. amend. VIII.

[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend. XIV.

## STATEMENT OF THE CASE

### A. New Evidence of Innocence

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." The lower 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). The 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 the lower court earlier acknowledged.

Recently discovered evidence demonstrates substantial doubt about Sneed's credibility.

The new evidence includes:

Sneed's cell mate after his arrest swears that Sneed told him all about the crime and in Sneed's renditions he acted alone and made no mention of Mr. Glossip or anyone else being involved.

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.

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

The opinions of experts 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.

Sneed is telling new lies every day.

### **1. Sneed's cell mate before trial: Sneed's story was he acted alone**

Mr. Joseph Tapley has come forward. He was Sneed's cell mate pre-trial. He swears as follows:

I was placed in the Oklahoma County Jail the summer of 1997 until October 1997.

During this time period, Justin Sneed was my cell mate. We were housed in cell 6-D-25 during this entire time. There were 50 cells with 2 people per cell. A handwritten diagram of the unit and our cell is attached to this affidavit.

We were locked down the majority of the time, only getting out 2 to 3 times a week for showers, to play cards, or to attend Bible classes.

I spent a lot of time talking to Justin Sneed about the Bible. We read the Bible every day. In fact, I have Justin Sneed's signature in my Bible dated September 28, 1997. Photographs of my Bible are attached to this affidavit.



During the time we spent together, Justin Sneed told me very detailed accounts of how he killed Barry Van Treese on two or three separate occasions. I don't remember the exact words he said, but I am sure he did it for the money because he told me the money was in the car.

Justin Sneed told me that it was hard to kill Mr. Van Treese. He told me he hit him repeatedly with a baseball bat. Justin Sneed made it clear to me that he wanted to kill Mr. Van Treese because he told me he how hard it was to kill him. I cannot say at what point that night that Justin Sneed decided to kill Mr. Van Treese. He then told me that there was a struggle, and it was really hard to get Mr. Van Treese to die. Justin Sneed told me he broke the window out of the motel room with a baseball bat.

Justin Sneed told me that he moved Mr. Van Treese's car to the bank parking lot. He told me the money was in the car.

Justin Sneed told me that he moved the car to the bank parking lot so that he could use the car later to come back and get the body to take the body away.

Justin Sneed told me that he threw something in the trash.

**I am sure that Justin Sneed acted alone. He never gave me any indication that someone else was involved. He never mentioned the name of Richard Glossip to me. If he had told me that someone else was involved, I would definitely had remembered that.**

Justin Sneed was very concerned about getting the death penalty. He was very scared of it. The only thing that mattered to him was signing for a life sentence.

I have been in prison. I know people who have killed other people. I know people who have shown remorse. Justin Sneed showed no remorse to me at all for the killing. He looked to me to be sorry he got caught, but he did not seem to care that he killed a man.

I have been around people who are addicted to methamphetamine. They have certain ways of acting that are called "tweaking." Justin Sneed had the twitches of a person who used methamphetamine. He was "tweaking" while he was in jail.

One time in jail, I used methamphetamine with Justin Sneed. We traded two

bags of coffee for enough methamphetamine for each of us to use one time. We snorted the methamphetamine.

Justin Sneed was definitely not mentally retarded. I thought of him as a regular person. We talked all of the time about many things. He never had any trouble understanding things or communicating with me. We spent a lot of time reading the Bible. We would preach the Word of the Lord to the other inmates on the rare occasions when we got out on the pod. Justin Sneed was able to understand the Bible as well as I did.

I own a business. I have children. I do not want my name in the press or involved in this case.

**From everything Justin Sneed told me, Justin Sneed killed this man alone. If he had been involved with anyone else, he would have told me. He told me everything about this crime, but never that anyone else was involved. I never heard the name Richard Glossip from Justin Sneed.**

I am coming forward now because I heard that Mr. Glossip was about to be killed. I found Mr. Knight by googling "attorney for Richard Glossip." I called Mr. Knight and left a message on his telephone at his office, just after the 6 o'clock news on Tuesday, September 15, 2015.

I had been thinking of calling with this information for a month or so before the execution, but I always thought that someone would stop it. When it looked like it would not stop, I felt like I had to do something. I did not actually talk to Mr. Knight until after the execution had been stopped.

If Mr. Glossip had been killed, and I had not done anything, I would have felt terrible for the rest of my life.

Prior to providing this affidavit, no one has ever called me or interviewed me about Justin Sneed or Richard Glossip. The only person I have ever talked with about this is my wife. I never heard anything about this case before I met Justin Sneed, and I did not hear anything about it again until recently when I heard about it on the news. I have never snitched on anyone or testified against anyone else.

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.

Attached to Supplemental Application below.

**2. 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 describes Sneed’s burglaries**

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 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 “Crittter” 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 102 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 102, 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.** 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.

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.

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.

**b. The conduct of meth addicts and Sneed's treatment with lithium**

Dr. Pablo Stewart is an expert in drug addiction. He swears Sneed's actions are consistent with a meth addict acting erratically and violently.

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 certainty, 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 last 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.

Dr. Stewart was advised that Sneed was prescribed lithium upon his arrest, which his medical records reveal. Dr. Stewart observed:

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.

### **3. Sneed says he set Mr. Glossip up**

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.

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.<sup>3</sup>

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<sup>3</sup> 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



#### 4. 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. 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.<sup>4</sup> 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" "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**

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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.

<sup>4</sup> Apparently the detectives involved have used such techniques before. *See* Lombardi affidavit, App. C.

**“are substantially likely to increase the risk of eliciting false statements, admissions, and or confessions.”<sup>5</sup>**

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.”

### **5. The lies continue—a just released interview**

Sneed was recently interviewed by a reporter, Cary Aspinwall of The Frontier. A transcript of the interview was presented to the lower court. He told new stories, and contradicted other earlier ones. For example:

1. What was Mr. Glossip’s motivation?

ASPINWALL: You didn’t know Richard to have been --

SNEED: Yeah, I didn’t know what his motivation was other than, yeah, he kept begging and pleading with me until the point he literally pushed me over an edge. Right. (Pg. 2)

This is a lie. Sneed has given many accounts of Mr. Glossip’s supposed “motivation” including: “He was going to rent rooms off the books and keep money back and everything and slide me some on the side...” (pg. 46, Police interview, story 4); and “Richard was saying with Van Treese out of the way he could con the widow into letting him run both motels, and I could manage one.” (pg. 104, Trial 1, story 5). (For further discrepancies, see 41 different responses

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<sup>5</sup> 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.

to “Why did you do it?” in Attachment T, the Detailed Elements from Sneed’s 8 Stories, below).

2. Gloves?

SNEED: I look back now and notice that, yeah, he went and put some gloves on, and he made sure that his little prints wasn’t there. So he was just guiding a misguided youth down the road anyway, so . . . (Pg. 6)

This is a lie. Sneed has never said in any previous statement that Mr. Glossip put on gloves. Previously he stated Mr. Glossip left no prints because he did not touch anything, or he did touch things but still left no prints (see Eight is Enough).

3. Where was Sneed’s payment coming from?

ASPINWALL: You thought you were going to get this money or going to split this money? Or he said, “I’m going to give you money”?

SNEED: Nah. He said he was going to pay me money. It didn’t have nothing to do the whole splitting the money didn’t come ‘til the end, to where I realized, okay, you know, that Mr. Van Treese was the one with the money, and that’s where he was getting the money. (Pg. 2)

This is a lie. Sneed has stated many times that it was Mr. Glossip’s plan to split money taken from Mr. Van Trease. For example: “Richard told me we could split the money we could get out of Barry” (pg. 25, Police interview, Story 3); and “I split it with him instead of taking it all like promised because the money was never really on my mind for it. I was just going along with what he (Richard) said (pg. 95, Trial 1, Story 5). (For further discrepancies, see 41 different responses to “Why did you do it?” from Sneed’s 8 Stories.

4. Did Mr. Glossip intend to set Sneed up?

ASPINWALL: You feel like his intention was always to set you up--

SNEED: Yeah.

ASPINWALL: -- to take the fall for this.

SNEED: Yeah. (Pgs. 4-5)

This is a lie. This is the first time that Sneed has ever said that Richard's "intention was to set...[him]...up...to take the fall for this."

5. Was Mr. Glossip going to save Sneed?

SNEED: . . .and going and telling me that he was going to - to save us both, which, in turn, isn't what he really did because he just went down there and told them I came and admitted it to him at 5 o'clock in the morning.

ASPINWALL: So he told you, "I'm going to save us both. Don't worry about this."

SNEED: Yeah. (Pg. 5)

This is a lie. Sneed has never said in any previous statement that Mr. Glossip said he was "going to save us both..."

6. Did Mr. Glossip leave at 9-ish?

SNEED: I knew that he had left around 9-ish in the morning. (Pg. 8)

This is a lie. Previously Sneed testified that "Glossip went back to take a nap, woke up around noon and went to Wal-Mart." (pg. 98, Trial 1, story 5).

7. Just a normal day?

SNEED: So I just went up there to see what he wanted; thought it was just going to be an average day or whatever, until, you know, of course, I seen the two squad cars and him. And they were trying to do a missing person's report. (Pg. 9)

This is a lie. Sneed had just murdered Barry Van Treese and his body was lying in room 102.

How could he think this "was just going to be an average day..."

Sneed, feeling the need to defend himself, cannot tell a straight story.

## **B. Procedural history**

Richard Glossip was charged originally 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 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. The lower Court, in a 3:2 decision, affirmed the conviction and sentence of death. *Glossip v. State*, 2007 OK CR 34, 168 P.3d 185.

On September 15, 2015, Petitioner filed a Successive Application for Post-Conviction Relief in the lower Court. The lower court entered a two week stay-of execution, and denied relief September 28, 2015.

## REASON FOR GRANTING THE WRIT

### **STATE COURTS SHOULD NOT BE ALLOWED SUMMARILY TO EXECUTE SOMEONE BY IGNORING SUBSTANTIAL NEW EVIDENCE OF INNOCENCE**

This 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 an execution on the word of Justine Sneed would undermine the Eighth Amendment’s promise of “reliability and fairness” in capital proceedings, *Atkins*, 536 U.S. 306, and unconstitutionally dilute the “strength of the procedural protections that our capital jurisprudence steadfastly guards.” *Id.* at 317.

This Court is sensitive to the risks of wrongful convictions and death sentences. *See Kansas v. Marsh*, 548 U.S. 163, \_\_\_ (2006) (“Today, a new body of fact must be accounted for in deciding what, in practical terms, the Eighth Amendment guarantees should tolerate, for the period starting in 1989 has seen repeated exonerations of convicts under death sentences, in numbers never imagined before the development of DNA tests”)(Stevens, J., joined by Ginsberg, J., Breyer, J., and Souter, J., dissenting). And the Court is aware that an evidentiary hearing is at times necessary to get at the truth, even years after a conviction. *In re Davis*, 130 S.Ct 1 (2009)(Stevens, J., joined by Ginsburg, J, and Breyer, J., concurring).

This case presents the issue squarely: will the Eighth and Fourteenth Amendments allow a citizen to be put to death based upon evidence we all know is highly suspect?<sup>6</sup> Two Judges in the lower court said “no.” Three judges said “yes,” without addressing the evidence.<sup>7</sup> At a new trial, Sneed would have to explain:

- a. breaking into cars and motel rooms to steal guns and other valuables to trade for meth, which is what he did in this case;
- b. that he was addicted to and desperate for meth, rather than just occasionally using it;
- b. admitting to his daughter and others to setting Mr. Glossip up;
- c. never mentioning to his cell mate that anyone else was involved in the crime; and
- d. his multiple, contradictory, and false statements about his crime.

If a jurist questions Sneed’s veracity, then this execution should not proceed. Two, at least, do have doubts.

## CONCLUSION

This petition should be granted and a stay of execution should be entered.

Mark Olive, Esq.\*  
320 W. Jefferson Street  
Tallahassee, FL 32301  
850-224-0004

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<sup>6</sup>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).

<sup>7</sup>The majority below “favor[ed] the legal principle of finality of judgment,” Lewis, J., at 3, while dissenters thought “[w]hile finality of judgment is important, the State has no interest in executing an actually innocent man.” The majority also favored procedural bars and waivers. This court should hold, if necessary, that procedural bars are unconstitutional if they result in the execution of an innocent person. *See In re Davis*, concurring opinions, *supra*.

Donald R. Knight, Esq.  
7852 S. Elati Street, Suite 201  
Littleton, CO 80120  
303-797-1645

Kathleen Lord. Esq.  
1544 Race Street  
Denver, CO 80206  
303-321-7902.

\* Counsel of Record

September 29, 2015

CERTIFICATE OF SERVICE

I CERTIFY the fore gong was served upon

Scott Pruitt  
Jennifer Miller  
Attorney General  
313 NE 21st Street  
Oklahoma City, Oklahoma 73105

jennifer.miller@oag.ok.gov

by e-mail on September 29th, 2015.

\_/s/\_Olive\_\_\_\_\_