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U.S. COURT OF APPEALS
10th CIRCUIT
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CASE NO. 07-5172

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April Rose Wilkens,
Petitioner-Appellant,
versus
Millicent Newton-Embry, Warden,
Respondent-Appellee.

APPEAL FROM THE JUDGMENT
IN FAVOR OF THE RESPONDENT AND AGAINST THE PETITIONER
ENTERED BY U.S. DISTRICT JUDGE TERENCE KERN
IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA
IN A HABEAS CORPUS ACTION BROUGHT PURSUANT TO 28 U.S.C. § 2254
AT DISTRICT COURT CASE NUMBER 02-CV-244-TCK-SAJ

APPELLANT'S BRIEF

April Wilkens, pro se
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April 2008

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STATEMENT OF RELATED CASES

There are no prior or related appeals

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

APRIL ROSE WILKENS,)	
)	
Petitioner-Appellant,)	
vs.)	Case No. 07-5172
)	
MILLICENT NEWTON-EMBRY, Warden,)	
)	
Respondent-Appellee.)	

APPELLANT'S BRIEF

STATEMENT OF JURISDICTION

I, April Wilkens, am the Petitioner-Appellant in this case, and I am a state inmate incarcerated at the Mabel Bassett Correctional Center under the control of Respondent-Appellee Warden Millicent Newton-Embry. See Appellant's Exhibits at 160 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 1]. I brought this habeas corpus action pursuant to 28 U.S.C. § 2254 on 2 April 2002 in the U.S. District Court for the Northern District of Oklahoma alleging that I am incarcerated in violation of the United States Constitution. Id. On 5 November 2007, U.S. District Judge Terence Kern denied my petition for a writ of habeas corpus. See Appellant's Exhibits at 160, 191 [Aplt. Exhibits 20 and 21, NDOK Opinion and Judgment, NDOK Dkt. ##65 and 66]. Pursuant to 28 U.S.C. § 1746, I timely submitted my notice of appeal to prison officials for mailing on 20 November 2007, and it was filed on 26 November 2007. See Appellant's Exhibits at 192 [Aplt. Exhibit 22, Notice of Appeal, NDOK Dkt. #67]. The U.S. Court of Appeals for the Tenth Circuit has jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253.

STATEMENT OF THE ISSUES

- I. APPELLANT'S COUNSEL WAS INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION
 - A. Appellant's counsel failed to adequately investigate Appellant's defense and present exculpatory evidence

1. Appellant's counsel was ineffective for failing to contact Appellant's former attorneys, U.S. District Judge Claire Eagan and Mike Cooke, and failing to discover and present an audiotape in their possession of Terry Carlton admitting that he beat and raped Appellant
 2. Appellant's counsel was ineffective for failing to present a warrant for Terry Carlton's arrest that was issued when he failed to appear in court after he was arrested outside of Appellant's home with a loaded, chambered 9mm pistol and a stun gun
 3. Appellant's counsel was ineffective for failing to present Appellant's 28 April 1998 urinalysis, which was reportedly negative for all drugs
 4. Appellant's counsel was ineffective for failing to present a transcript of Tulsa Police Officer Laura Fadem's inconsistent *in camera* testimony
 5. Appellant's counsel was ineffective for failing to present adequate testimony from a qualified Battered Woman Syndrome specialist
- B. Appellant's trial counsel was ineffective for failing to request a manslaughter jury instruction

STATEMENT OF THE CASE

I, April Wilkens, am the Petitioner-Appellant in this case, and I am a prisoner of the state of Oklahoma. See Appellant's Exhibits at 160 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 1]. I brought this habeas corpus action pursuant to 28 U.S.C. § 2254 alleging that I am incarcerated in violation of the United States Constitution. Id.

My case is a Battered Woman Syndrome (“BWS”) case under Oklahoma law. See Appellant's Exhibits at 169-173 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 10-14]. On 28 April 1998, I shot and killed my ex-fiancé, Terry Carlton. See Appellant's Exhibits at 162 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 3]. On 29 April 1998, I was charged with first-degree murder in the District Court of Tulsa County in the State of Oklahoma in case number CF-98-2173. Id. On 24 April 1999, I was convicted of first-degree murder following a three-week jury trial at which I was represented by attorney Chris Lyons. Id.; and Tr.Trans.Vol.

I at 2. On 7 July 1999, I was sentenced to life in prison in the custody of the Oklahoma Department of Corrections. See Appellant's Exhibits at 162 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 3]. On 9 June 2000, a direct appeal was filed on my behalf by attorney Bill Zuhdi, on contract with the Oklahoma Indigent Defense System, in the Oklahoma Court of Criminal Appeals ("OCCA") in case number F-1999-927. Id. On 3 April 2001, the Oklahoma Court of Criminal Appeals denied my direct appeal in an unpublished summary opinion. See Appellant's Exhibits at 18 [Aplt. Exhibit 9, OCCA Summary Opinion, NDOK Dkt. #48 Exhibit C]. See also Appellant's Exhibits at 163 [Appellant's Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 4]. On 2 April 2002, a petition for a writ of habeas corpus was filed on my behalf by attorney David Blades in the U.S. District Court for the Northern District of Oklahoma in case number 02-CV-244-TCK-SAJ. See Appellant's Exhibits at 163 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 4]. On 27 February 2003, my habeas case was stayed pending exhaustion of available state court remedies for my unexhausted claims. Id. On 5 March 2003, appearing *pro se*, I filed an application for post-conviction relief presenting my unexhausted claims in the District Court of Tulsa County in case number CF-98-2173. See Appellant's Exhibits at 23 [Appellant's Exhibit 11, Application for Post-conviction Relief filed in District Court of Tulsa County, NDOK Dkt. #39 Attachments]. See also Appellant's Exhibits at 163 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 4]. On 22 August 2003, the District Court of Tulsa County denied my application for post-conviction relief. See Appellant's Exhibits at 65 [Aplt. Exhibit 13, District Court of Tulsa County Order Denying Application for Post-conviction Relief, NDOK Dkt. #39 Attachments]. See also Appellant's Exhibits at 164 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 5]. On 9 September 2003, appearing *pro se*, I filed a post-conviction appeal in the Oklahoma Court of Criminal Appeals in case number PC-2003-1002. See Appellant's Exhibits at 73 [Aplt. Exhibit 14, Post-conviction Appeal filed in the

Oklahoma Court of Criminal Appeals]. See also Appellant's Exhibits at 164 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 5]. On 2 August 2004, the Oklahoma Court of Criminal Appeals denied my post-conviction appeal. See Appellant's Exhibits at 147 [Aplt. Exhibit 17, OCCA Order Denying Post-Conviction Appeal, NDOK Dkt. #47 Exhibit E]. See also Appellant's Exhibits at 164 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 5]. On 18 August 2004, appearing *pro se*, I filed my notice of exhaustion of state court remedies and amended habeas corpus petition in the U.S. District Court for the Northern District of Oklahoma in case number 02-CV-244-TCK-SAJ. See Appellant's Exhibits at 164 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 5]. On 12 October 2004, the U.S. District Court lifted the stay in my habeas case. See NDOK Dkt. #38. On 5 November 2007, U.S. District Judge Terence Kern denied my habeas petition. See Appellant's Exhibits at 160, 192 [Aplt. Exhibits 20 and 21, NDOK Opinion and Judgment, NDOK Dkt. ##65 and 66]. On 20 November 2007, in compliance with 28 U.S.C. § 1746, I timely submitted my notice of appeal to prison officials for mailing to the U.S. District Court, and it was filed on 26 November 2007. See Appellant's Exhibits at 192 [Aplt. Exhibit 22, Notice of Appeal, NDOK Dkt. #67]. I am now appealing to the U.S. Court of Appeals for the Tenth Circuit.

STATEMENT OF THE FACTS

My case is a Battered Woman Syndrome (“BWS”) case under Oklahoma law. Tr.Trans.Vol. I at 5-6. **On 28 April 1998, I shot and killed my ex-fiancé, Terry Carlton. See Appellant's Exhibits at 162 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 3].** The following day, on 29 April 1998, I was charged with first-degree murder in the District Court of Tulsa County in the State of Oklahoma in case number CF-98-2173. Tr.Trans.Vol. IX at 1821-22. After spending nearly a year in the county jail, I was put on trial on 5 April 1999. Tr.Trans.Vol. X at

1936; and Tr.Trans.Vol. I at 2. My trial lasted three weeks. Tr.Trans.Vol. XV at 3072.

Terry Carlton had two serious—and violent—relationships with women before me. Tr.Trans.Vol. 1 at 5-10. Terry's ex-wife, Sherry Blanton, and Terry's ex-girlfriend, Melinda Wallace, had both been assaulted by Terry Carlton, and both Sherry and Melinda had filed protective orders against Terry. *Id.* at 10. The state filed a motion *in limine* to limit evidence of Terry Carlton's history of abusing and assaulting women before me, and the trial court sustained that motion in part, thereby limiting evidence of specific incidents of Terry Carlton's abuse and violence towards the women in his past relationships. *Id.* at 5. **However, Terry's ex-wife, Sherry Blanton, was permitted to testify about the protective order she filed against Terry in November 1985. Tr.Trans.Vol. XIV at 2788-90. See also Appellant's Exhibits at 185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26, citing Tr.Trans.Vol. XIV at 2789-90].**

I testified about my history as well as the history of my relationship with Terry Carlton and the numerous incidents when he hit, choked, raped and otherwise abused me. See Appellant's Exhibits at 185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26]. Several witnesses corroborated my testimony. See Appellant's Exhibits at 183-185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 24-26].

Briefly, here are a few lines about what my life was like before I met Terry Carlton. I was born on 25 April 1970. Tr.Trans.Vol. X at 1927. I grew up in Kellyville, Oklahoma, and graduated from Kellyville High School in 1986. *Id.* at 1927-29. (Kellyville is a very small town near Tulsa.) After high school, I attended Oklahoma State University. *Id.* at 1930. In August 1990, I married my college sweetheart, Eric Wilkens, and our son, Hunter, was born in January 1991. *Id.* at 1935. In the spring of that same year, I graduated from Oklahoma State University with a bachelor of science degree. *Id.* at 1930. **Then I moved to Chicago, Illinois, and**

completed Northwestern University Medical School's Prosthetics Program, an accelerated post-baccalaureate program, in December 1991. Id. at 1932. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2]. Eventually, my husband and I grew apart and divorced. Tr.Trans.Vol. X at 1937. Our relationship was never hostile or violent, and the divorce was amicable. Id. I was granted custody of our son. Id. at 1937-38.

When I met Terry Carlton, I was a 25-year-old single mom raising my son in Tulsa. Id. at 1934, 1938-39. I owned my own business where I was working as a board-certified prosthetist fitting amputees with artificial arms and legs. Id. at 1931-32, 1939, 1941. I met Terry Carlton in the fall of 1995 while I was looking for a car at the Acura of Tulsa auto dealership, where Terry presented himself as the owner of the dealership. Id. at 1941. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26]. I remember thinking Terry was attractive and charming with a beautiful smile. Tr.Trans.Vol. X at 1944. Terry had my telephone number, and he began to call me. Id. at 1943-44. Eventually, Terry and I began dating. Id. at 1945. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2]. Terry had no children, and he and I usually only saw each other when I did not have my son with me—i.e., about every other weekend and sometimes during the week. Tr.Trans.Vol. X at 1952. Typically, I kept Terry and my son apart. Id.

Terry was 12 years my senior. See Tr.Trans.Vol. VI at 1231; and Tr.Trans.Vol. X at 1927. He courted me like no man ever had before, and I felt special when I was with him. Tr.Trans.Vol. X at 1947. During our courtship, Terry seemed like a complete gentleman—charming, funny, very likable and lovable. Id. at 1948. Terry and I had a whirlwind romance and on Christmas Eve 1995, Terry asked me to marry him. Id. I said yes, and we planned to get married in April 1996. Id. at 1949. See also Appellant's Exhibits at 161

[Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].

Early on, Terry's friend, Robert Martin, told me about Terry's previous relationship with his ex-girlfriend, Melinda Wallace. Tr.Trans.Vol. XI at 2098. Melinda and Terry lived together just before Terry and I started dating. Id. Robert told me that he was glad Melinda was out of the picture because she was a "crazy bitch from hell" who physically abused Terry. Id. at 2099. Robert told me about incidents of violence between Terry and Melinda, but claimed that Melinda would attack Terry and Terry would defend himself. Id. That's what Robert said Terry told him, anyway. Id. Robert Martin testified at my trial about one occasion when he was at Terry's home and saw a damaged door, and Terry said that Melinda had kicked the door in. Tr.Trans.Vol. IX 1738-39. I testified that I assumed Robert was telling the truth about Melinda because at that time, Terry had never abused me. Tr.Trans.Vol. XI at 2099.

Then, after Terry and I were engaged, things began to change. Tr.Trans.Vol. X at 1948. There was serious incompatibility, and I decided not to marry Terry. Id. I began to see another side of Terry, such as unpredictable fits of anger. Id. at 1950-51. Terry became very critical of me. Id. at 1951. I thought Terry seemed like "Dr. Jekyll and Mr. Hyde." Id. at 1952. One minute everything was fine and the next it was not. Id. at 1952-53. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].

The first time Terry physically abused me was at his house on 25 April 1996, my 26th birthday. Id. at 1954. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2]. Terry came at me and grabbed my throat. Tr.Trans.Vol. X at 1954. Terry was six feet tall and weighed about 180 pounds, whereas I am about five-and-a-half feet tall and I weighed around 105 pounds. Id. at 1982-83. See also Tr.Trans.Vol. XV at 3034. So Terry could easily overpower me with his bare hands. Id.

After the incident in April 1996, Terry was very apologetic and we continued to see each other. Tr.Trans.Vol. X at 1957. **Then, in the summer of 1996, Terry and I were on a trip to Amsterdam when he became angry because I wasn't getting out of bed fast enough. Id. at 1958-59. Terry attacked me in our hotel room. Id. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].** Terry hit me with his ball cap and pushed me back onto the bed. Tr.Trans.Vol. X at 1960. It was very demeaning because I just sat there and took it. Id. I felt very weak. Id. Terry shoved me hard and then held me down, ripped off my underpants, and had very rough sex with me. Id. It was obvious I did not want to have sex. Id. I felt like I had been raped, but I couldn't say that I was. Id. at 1961. After a few hours, Terry apologized. Id. at 1962. **My relationship with Terry was off and on from that point. Id. at 1963. And Terry assaulted me again numerous times. See Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].**

In November 1996, while on a trip to Rome, Italy, Terry became enraged at me because I woke him up while I was trying to call my son from our hotel room. Tr.Trans.Vol. X at 1964, 1966-68. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2]. Terry said, "All right, Bitch, this is Italy, and they don't look at wife beating like they do in America, and I can do whatever I want to over here." Tr.Trans.Vol. X at 1968. Then he pounced on me, placed his elbows in my eye socket, hit me, and twisted my arms. Id. He stopped assaulting me when he heard pounding on the door. Id. at 1969. Steve Hatchett, who knew Terry from the car business and was on the trip to Rome, testified at my trial that he and his wife heard a man yelling angrily at a female in the hotel room next to theirs. Tr.Trans.Vol. IX at 1878-79. Mr. Hatchett testified that he heard the female screaming and bawling, and sounds of somebody being hit. Id. at 1880. Mr. Hatchett said that he got out of bed, went to the room where he heard the violence, and started pounding on the door. Id. at

1880. The door opened and Mr. Hatchett saw Terry. Id. at 1881. Terry slammed Mr. Hatchett's arm in the door. Id. at 1884-85. Mr. Hatchett described Terry as very, very angry and emotional. Id. at 1885. The state called Shirley Carlton, Terry Carlton's mother-in-law, to testify in rebuttal at my trial that she was present on the trip to Rome and she saw me right after the incident in question. Tr.Trans.Vol. XV at 2975-2977. Specifically, Ms. Carlton testified that she saw me in the bathroom of her hotel room, that I was completely naked, and that I had no marks on me. Id. at 2977. I testified that I never disrobed for Shirley Carlton and she did not see me naked while we were in Rome. Tr.Trans.Vol. XIII at 2409. I also testified that after the assault, while still in Rome, I was treated by a physician and I reported the attack to the police. Tr.Trans.Vol. X at 1972-76.

Upon returning to the United States from Rome, I was treated by Dr. Joseph Schlecht for one of the the injuries—the one to my hip—that I sustained in the Rome incident: Dr. Schlecht testified that he saw me on or about 15 November 1996 for the “large” injury to my hip, and my “wounds were compatible with the report of domestic violence” I gave him at the time. Tr.Trans.Vol. XIII at 2384-85. **I also sought a protective order and court assistance. Id. at 1980, 1993. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].** In her affidavit on record in this action, U.S. District Judge Claire Eagan, who represented me in that November 1996 protective order application prior to assuming her responsibilities on the federal bench in Tulsa, described my condition when she met with me on 15 November 1996. See Appellant's Exhibits at 1 [Aplt. Exhibit 1, Affidavit of Claire Eagan, NDOK Dkt. #2 Exhibit 1 at 1]. Judge Eagan observed that I had two blackened eyes, numerous bruises on my arms, face and throat, as well as a red and swollen jaw. Id. Further, Judge Eagan relates that I indicated I also had contusions on my shoulder, back, **hip**, and pelvic area. Id. Judge Eagan explains that I told her I sustained the injuries when Terry slammed me on the floor,

up against a wall, and in a door jam. Id. Judge Eagan further relates I told her that Terry had been violent towards me in the past, that his violence was aggravated by his use of alcohol and/or drugs, and that the violence escalated whenever I tried to leave Terry. Id. Judge Eagan also describes an audiotape recording that I gave her wherein Terry admitted he attacked me in Rome and told me beforehand that “this is Europe and I can do what I want to here.” Id. Further, as Judge Eagan relates, Terry also admitted on the audiotape that the beating in Rome was “drastic”; that he choked me, but only after I resisted his attempts to throw me out of our hotel room while I was naked; that his use of alcohol possibly aggravated his violence towards me; that he had assaulted and raped me before; and that his “anger builds and builds” and he had “no other way to address an issue” with me than through violence. Id. at 1-2. Judge Eagan explains I told her that Terry contacted me on the eve of the hearing for the permanent protective order—in violation of the temporary protective order already in place—and **I was fearful and too intimidated to appear for a permanent protective order.** Id. at 2. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2]. Judge Eagan did not testify at my trial because my attorney never contacted her. See Appellant's Exhibits at 2 [Aplt. Exhibit 1, Affidavit of Claire Eagan, NDOK Dkt. #2 Exhibit 1 at 2]. For the same reason, the audiotape was not discovered and presented into evidence at my trial. Id. at 2. See also Issue I.A.1., *infra*.

The November 1996 audiotape that my attorney failed to discover and present was a recording of conversations between Terry and me. Here are pertinent excerpts from that tape:

APRIL: I don't understand what drives you to the point where, like you said, that you want to strangle the living shit out of me, I mean.

TERRY: Well, if you're interested, I'll tell you...you do things that you know will piss me off and you do them on purpose. You know, to me that's provoking somebody....

APRIL: **You hit me....**

TERRY: I was just trying to leave. Leave. So, you know, then I'm in bed. So what do you do? Instead of trying to make the situation better by just going to bed, you know, you deliberately aggravate the situation 'cause **you do something that you know is going to really piss me off and that is wake me up calling [your son] Hunter** and talking to [your son] Hunter knowing that you're going to keep me up when all I want to do is go to bed....

APRIL: **Okay, do you not see how maybe it's a little drastic to pounce on someone and choke them and throw them out on their ass naked...?**

TERRY: **Yes. You're right. It is drastic and I admitted it....But did you do anything to help the situation? No....You want to know how you could've helped the situation? I thought I told you. You could have dropped it. You could've gone to bed just like I was trying to do. But no. You wanted to keep me up awake by making calls that you didn't need to make just to fucking punish me, keep me awake, to keep me up that night. You wanted, you wanted to call [your son] Hunter....**

APRIL: I suppose that everybody does things that are aggravating to the other person. **I just don't understand the need for physical violence.**

TERRY: I see. So it's okay for you to do, to pull out the stops and do everything that you can do to **piss me off**, but, you know, as soon as I, you know, react in the same way and pull out the stops and do **the things I can do to hurt you**, what's the difference, April? You know, what's the difference? **You're fucking with me. I'm fucking with you. You understand?** You know, that's the big fucking lie that it's, you know, it's okay to do whatever the fuck you want to, but it's not okay for me to **do whatever I feel like doing....then whenever I just, you know, I lose my temper and I'm going to throw you outside the room naked.**

APRIL: **And choke me.**

TERRY: **That's when you started resisting. But, you know, is one any better than the other? I mean, do you dummy?** To me it seems like you think it's okay to do those things. I mean, that's what you're telling me: "Oh well, I suppose we all fuck with each other every once in awhile, but you, you broke the rule. You went over, you stepped over the line. You got physical." I'm saying neither one of them is right....I'm not satisfied with this because **what you're going to do is go to a victim's group, okay, and you're all going to sit there and tell each other it's not you're fault that this happened to you and pat each other on the back and feel sorry for each other and, you know, it's going to be what a bastard I am, okay, and you're not going to be working on your own problems, okay? You're not going to work on why you feel it is necessary to do those petty little things that make me angry. And you would still do them, you know, if I didn't do the violence thing, if the violence thing was not even a**

factor....

APRIL: The problem is when you do it, you don't apologize, you know (laughs). I mean, I don't remember hearing: "April, I raped you. I know that must've really upset you and I'm sorry" or "April, I know that, you know, that I slammed you against the ground, and I know that must've been really traumatic for you and I'm sorry."

TERRY: I have said those things. I have said those things. You just want to hear them over and over again, you know, and I'm, you know, I'll apologize once, but I'm not going to sit there and just have to apologize every fucking day of my life. You either accept the apology or you don't. It sounds to me like you don't. April, I'm not interested in fighting with you....

APRIL: Yeah, I understand, I don't want to fight with you either. I guess that's why I was trying to explain that it's best for us to stay apart....

TERRY: April, until you change there's no reason for me to change. I mean, you know, I don't think that I'm somehow, you know, I just get the feeling that somehow all this is on me and I'm just this horrible fucking mutant....

APRIL: I don't know. Do you think that alcohol and the drugs or anything like that have anything to do with it?

TERRY: (Sighs) Uh, well, I'm sure. I mean, yeah, it has something to do with it. I have never taken any drugs so I don't know, but the alcohol, the alcohol is a dis-inhibitor so it makes you do things that you normally wouldn't do or allows you to do things that you don't normally do. But mainly the thing is I don't allow myself—it's a complicated thing—but I think mainly it's I like build up. These things build up inside me. You know, my anger just builds and builds and I don't have any way since we're so bad at communicating, I don't feel like I can communicate those things....Then it just builds and builds till it explodes because I can't, there's no way to address an issue with you. I mean, I'm sorry, I'm not trying to, I mean, you don't know what that's like.

APRIL: I don't know, I guess. I guess what I kind of thought was that you were doing the drugs again 'cause it kind of scared me and, well, it more than kind of scared me, it frightened the hell out of me...when you said, "Hey, this is Europe and I can do what I want to you here!" I just thought that was kind of scary—like it was premeditated or something.

TERRY: No. It wasn't premeditated. It was just meant to scare you....

Appellant's Exhibits at 5-7 [Aplt. Exhibit 3, Abridged Audiotape Transcript, Abridged NDOK Dkt. #2 Exhibit 4 at 1-3]; and Audiotape Recording [NDOK Dkt. #53 Exhibit 1].

Sometime before the end of 1996, Terry Carlton called me and said he was severely depressed and suicidal. Tr.Trans.Vol. X at 1978-79. He asked me to please get him to a doctor. Id. at 1979. Terry persisted, and I finally arranged for him to see my doctor, Dr. Mark Teter. Id. at 1978-79. I met Terry at Dr. Teter's office, and Dr. Teter treated Terry. Id. Then Terry became very ill, and I took care of him. Id. at 1981-82. Terry began to see a psychiatrist, Dr. Theresa Farrow. Tr.Trans.Vol. XV at 2995. Dr. Farrow testified at my trial that Terry was her patient. Id.

I testified that at this point in time, my relationship with Terry Carlton was on again, but never to the same degree. Tr.Trans.Vol. X at 1983. **Then Terry attacked me again on Valentine's Day of 1997, causing me to call 911 and seek police assistance. Tr.Trans.Vol. X at 1983, 1990-91. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].** Terry and I separated after the Valentine's Day 1997 incident, but we got back together in mid-to-late March 1997. Tr.Trans.Vol. XI at 1996. I still had feelings for Terry. Id. at 1998.

Terry's psychiatrist, Dr. Theresa Farrow, testified that she started seeing me on 24 March 1997. Tr.Trans.Vol. XV at 2995, 2993, 2996-97. I saw Dr. Farrow for depression and anxiety resulting from the problems in my relationship with Terry. Id. at 2876. Dr. Farrow testified that I told her about Terry's violence and she believed Terry had physically abused me; however, she said she did not believe I was suffering from Battered Woman Syndrome. Id. at 2995-97. Dr. Farrow treated me with the antidepressant Prozac. Id. at 2876.

At my trial, the state tried to portray me as having abused drugs since I was a teenager. Tr.Trans.Vol. XII at 2200. See also Appellant's Exhibits at 97 [Aplt. Exhibit 15, Response to Post-Conviction Appeal at 15]. I did use marijuana a few times when I was a teenager. Tr.Trans.Vol. XII at 2200. See also Appellant's Exhibits at 113, [Aplt. Exhibit 16, Reply to

State's Response to Post-Conviction Appeal at 14]. Also, I was briefly hospitalized back then, although I was not hospitalized for drug abuse. Tr.Trans.Vol. XII at 2200. (It is not clear from the trial transcript, but the hospital diagnosed me with anorexia when I was a teenager.) I tested negative for all drugs at that time. Id. Dr. John Call, a forensic psychologist who investigated my case, testified that the hospital evaluated me when I was a teenager and found no evidence of drug abuse. Tr.Trans.Vol. XV at 2967. Further, Dr. Call testified he found no evidence that I had abused drugs before I met Terry Carlton. Id. Not long after we met, Terry told me that he had a reputation for abusing drugs. Tr.Trans.Vol. XI at 2005. He said he wanted me to hear it from him first. Id. He assured me that he had been through drug rehab, was fully recovered, and was not using drugs. Id. at 2005, 1999. However, I did see Terry drinking wine and cocktails. Id. at 2005-06. **Then, in the spring of 1997, I discovered Terry was using illegal drugs. Terry brought cocaine with him on a trip we took to Greece for my birthday in April 1997. Id. at 1997-99. I had never tried cocaine before, and I tried it twice with Terry in Greece. Id. at 1999. I didn't like it because it numbed my throat, but Terry continued to use it. Id. Terry became agitated when he ran out of cocaine. Id. He attacked me in our hotel room and threatened to sodomize me. Id. at 2000. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].** Terry also threatened to blackmail me with photographs he had taken of us having sex together. Tr.Trans.Vol. XI at 2000, 2004.

Terry and I had another confrontation right after we returned to Tulsa from Greece. Id. at 2001. **Tulsa Police Officer Paul Fields testified at my trial that he observed multiple bruises on me when he responded to a domestic abuse call from me on 5 May 1997. Tr.Trans.Vol. XIII at 2568, 2571. See also Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr. Trans.Vol. XIII at 2569].** Officer Fields

also reported I told him that Terry was blackmailing me with pictures at that time. Tr.Trans.Vol. XIII at 2574. **Dr. Charles Teter testified at my trial that he examined me on approximately 6 May 1997, and he also found several areas of fresh bruising consistent with my indication that Terry Carlton had caused my injuries. See Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol. XIV at 2632-33]. On 5 May 1997, I filed for a second protective order, but I did not follow through with that protective order because I was very frightened of Terry. Tr.Trans.Vol. XI at 2002-03. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].** Terry told me that I would be dead if I followed through with the protective order. Tr.Trans.Vol. XI at 2004. And Terry was blackmailing me with photographs that he had taken of us having sex with each other. Id.

Terry's friend, Robert Martin, testified at my trial that in May of 1997, Terry called him and said that he had been in a confrontation with me and needed to get away. Tr.Trans.Vol. IX at 1754. Terry arrived at Robert's house in Dallas, and I arrived there later at about 3 a.m. Id. Robert testified that I went from bedroom to bedroom looking for Terry. Id. at 1755. I seemed "very, very agitated." Id. I did not find Terry. Id. Robert tried to calm me down, and I went to sleep. Id. Later that morning, Terry saw me in the house and he was upset. Id. Terry and I went outside and talked, then Terry got in his car and left. Id. I got in my car and left after Terry. Id. The next evening, I returned to Robert's house. Id. Robert testified that I was screaming and cussing at Terry and telling Terry, "You're not gonna do this to me." Id. at 1756. Robert said that Terry told him to get me out of there. Id. Robert testified he told me that he would call the police if I didn't leave, and I left. Id. Robert said there was no physical altercation between Terry and me on that occasion or the day before. Id. at 1757. (It is not clear from the trial transcript, but this is how Terry was blackmailing me at that point in time: Terry

told me that he was going to give copies of the photos of us having sex together to all of my son's grandparents, tell them that I had used drugs, and do everything in his power to make sure that I lost custody of my son.) I testified that I was very frightened of Terry using the explicit photos against me. Tr.Trans.Vol. XI at 2003-04.

Also in May 1997, I went to Terry's house after he had promised to give me the explicit photographs and stop blackmailing me. Id. at 2006. I arrived at Terry's house unannounced and went downstairs to the basement, where I saw bloody syringes everywhere along with cocaine. Id. I was shocked. Id. at 2005, 2006. Up until that time, Terry had told me that he had never used drugs intravenously before. Id. at 2006. I tried to escape, but I guess Terry heard me. Id. at 2008. I ran upstairs and out the front door. Id. I made it to my car, which was parked in Terry's driveway. Id. Terry had been upstairs, and he was running after me. Id. I was able to get into my car, lock the doors, and begin backing out of Terry's driveway. Id. at 2009. Terry caught up with me and busted my car window out because I wouldn't stop. Id. The glass window broke in on me and cut up my arm. Id. Half of Terry's body was in my car. Id. He grabbed my car keys. Id. at 2010. Then Terry noticed his neighbor, Dr. Brent Laughlin, watching from the driveway across the street. Id. At that point, Terry took my car keys and ran back inside of his house. Id. **Dr. Brent Laughlin testified about this incident at my trial. According to Dr. Laughlin, sometime in early May of 1997, at about 6:30 or 7:30 a.m., he was in his driveway when he heard a crash and looked up from across the street. Tr.Trans.Vol. XIV at 2621-23. Dr. Laughlin testified that he saw a car trying to back out of Terry's driveway, and Terry was leaning into the car through the driver's window area. Id. Dr. Laughlin testified that he came across the street to help and when Terry saw him, Terry went into his house. Id. at 2624. Dr. Laughlin heard Terry calling to me from his house. Id. Terry was asking me to come inside and talk. Id. Dr. Laughlin testified that he**

saw me in the driver's seat of the car with some cuts and I appeared to be bleeding. Id. at 2624-26. Dr. Laughlin saw broken glass on the driveway and inside of the car, and it was obvious that the driver's side window had been broken and shattered into small pieces. Id. and 2625. See also Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol. XIV at 2625-26]. Dr. Laughlin said I appeared upset and I made it clear to him that I wanted to get away from there. Tr.Trans.Vol. XIV at 2626. Dr. Laughlin approached Terry's house and tried to get Terry to settle down. Id. Eventually, Terry tossed my car keys out of his front door, and Dr. Laughlin gave them to me. Id. I left minutes later. Id. at 2627. Terry's friend, Robert Martin, testified at my trial that I called him after I found the syringes in Terry's house and tried to get him to help Terry because I was concerned about Terry's intravenous drug use. Tr.Trans.Vol. IX at 1748-50. Robert said that he drove to Terry's house and told Terry what I had said. Id. at 1749. Robert testified that Terry showed him his arms, and there were no marks on Terry's arms. Id. Robert said that Terry denied using intravenous drugs and claimed I was "just being crazy." Id. Robert testified he did not believe that Terry was using intravenous drugs. Id. at 1750.

I testified that the next time I had much contact with Terry was in July of 1997. Tr.Trans.Vol. XI at 2011. Terry told me that he wasn't using intravenous drugs anymore and promised not to use them again. Id. at 2013. We started to see each other again and were getting along well. Id. He was helping me with some problems with my business, and I started spending more time at his house. Id. at 2012-13. Terry was treating me like a princess again. Id. at 2013. Then in August 1997, I discovered that Terry was still using intravenous drugs. Id. at 2014. Terry told me that he was only doing it on weekends. Id. And that's when I tried it with him for the first time. Id. That was my first time ever using intravenous drugs. Id. See also Tr.Trans.Vol. XV at 2967. Although Terry wanted me to try it with him, he didn't force me. Tr.Trans.Vol. XI at

2014. Among other things, I didn't understand it, and I was curious. Id. So I tried it with Terry. Id. I continued to use after that. Id. at 2015. I do not blame Terry for my intravenous drug use. Tr.Trans.Vol. XII at 2211.

My friend Carrie Gaston testified that she witnessed Terry's attempts to control me around this same period of time. Tr.Trans.Vol VII at 1320. Carrie and I have been friends since we were both 13 years old, and from June through September 1997, Carrie worked as the office manager of my business, Snyder Prosthetic & Orthotic Center, in Tulsa. Id. at 1303, 1305, 1314. Carrie testified that when she worked for me, she witnessed Terry try to prevent me from coming to work, prevent me from seeing her, and even prevent me from talking to her on the telephone. Id. at 1319-25.

I testified that later in August 1997, after things seemed to be going okay between us, Terry became violent towards me out of the blue. Tr.Trans.Vol. XI at 2016. He claimed he couldn't find the neck of one of his guitars, and he accused me of destroying it. Id. He held me at gunpoint all weekend. Id. Terry raped me and said if I came up with the guitar neck, I would just get a beating, but if he couldn't find it, he was going to kill me. Id. Terry said that he was going to keep me with him until I either admitted I had the guitar neck or that I had destroyed it. Id. at 2017. Finally, Terry made me write a \$7,000 check to him because that's what he said the guitar neck was worth. Id. at 2017. Then Terry called the police and told them that I was a crazy ex-girlfriend who had just broken into his house. Id. at 2018. When the police arrived, I told the police what had really happened, but an officer said that I wasn't making any sense and told me that I should go home. Id. I told the officer that I could not be alone, and he told me that he couldn't babysit me. Id. I ended up going home and staying there. Id. Later, Terry's house cleaner found the guitar neck in his house. Id. at 2017.

After Terry raped me in August of 1997, I gave up my business. Id. at 2039-40. Earlier in

1997, my parents had filed a lawsuit against the business, and while one prayer for relief seeking \$300,000 was denied in that case, fighting the lawsuit was difficult emotionally and financially. Tr.Trans.Vol. XII at 2302-03; and Tr.Trans.Vol. XV at 2865. The business was in reorganization bankruptcy when I gave it up. Id. See also Appellant's Exhibits at 3 [Aplt. Exhibit 2, Affidavit of Michael Cooke, NDOK Dkt. #2 Exhibit 3 at 1]. I had been trying to hang on to the business, but after the August rape, I just didn't want to fight with my parents for the business anymore. Tr.Trans.Vol. XI at 2041. I stopped working and began living off what savings I had left. Id. at 2040. I was too ashamed to tell my mom and dad about how bad things really were with Terry. Id. at 2094.

In late August 1997, I also stopped seeing Terry's psychiatrist, Dr. Theresa Farrow, who had been treating me since March 1997 for depression, anxiety, and relationship problems. Tr.Trans.Vol. XV at 2995, 2993, 2996-97, 2876. Dr. Farrow testified at my trial that Terry contacted her after I stopped seeing her and tried to get her to see me again, but I didn't show up. Id. at 2998. I testified that I changed all of my phone numbers and managed to avoid talking to Terry for the next few months. Tr.Trans.Vol. XI at 2018-19, 2022. However, during this time period, I did have a prowler in and around my home, though I could only see shadows and couldn't see who it was. Id. at 2022. (It is not clear from the trial transcript, but I suspected the prowler was Terry.)

Then in December 1997, I talked to Terry again. Id. at 2023, 2025. He had been trying to talk to me, and I finally spoke with him because my friend Carrie Gaston needed a loan and I could not afford to help her. Id. at 2022. Terry agreed to give me the money for Carrie, and he told me to come to his house and pick it up. Id. at 2023. Carrie and I along with her husband went to Terry's house to get the check. Id. at 2023, 2025. After we arrived, Terry wanted me to go to Walmart and purchase some things for him using his credit card. Id. at 2025-26. I had

done this for Terry in the past, so it was nothing unusual. Id. at 2026. By this time, Terry had repossessed my car and I could not afford another car, so I drove Terry's car to Walmart. Id. at 2026, 2040. When I tried to use Terry's credit card at Walmart, the store called Terry to confirm that I was using his credit card with his permission. Id. at 2026. Terry said no. Id. Terry had police officers bring him to Walmart, then Terry drove me back to his house. Id. at 2027. I was very confused. Id. After we arrived at Terry's house, he became violent. Id. He said he was angry because I had been gone too long. Id. at 2028. I ran upstairs to get away from Terry, and I locked myself inside of a bedroom. Id. at 2027. Eventually, Terry beat and kicked in the bedroom door and attacked me. Id. at 2028, 2030-32. Terry raped me and shoved Valium down my throat. Id. at 2028. **Tulsa Police Officer Kimberly Presley testified at my trial that she responded to the 911 call for help at Terry Carlton's residence on 6 December 1997. Tr.Trans.Vol. XIII at 2543. Officer Presley said I told her that Terry had raped me. Id. at 2545. Officer Presley testified that when she asked Terry if I was hurt, he replied, "I don't know. She's one big bruise." See also Appellant's Exhibits at 183-84 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 24-25, citing Tr.Trans.Vol. XIII at 2550].** Officer Presley said that Terry was acting "flippantly," "like it meant nothing, was no big deal." Tr.Trans.Vol. XIII at 2550. Further, Officer Presley testified Terry admitted to her that he had drugged me with Valium. Id. at 2549-50. Officer Presley said it appeared that Terry had kicked in the bedroom door using "an extreme amount of force to...break [the] door frame." Id. at 2548-49. Officer Presley handcuffed Terry, but she was ordered by a supervising officer, Sergeant Rick Helberg, to release Terry and just file a report. Id. at 2564. Officer Presley said that Sergeant Helberg was not present at the scene when he ordered Terry's release. Id. at 2565. I testified that a police officer took me directly to a hospital for a rape examination. Tr.Trans.Vol. XI at 2033, 2297. **Sexual Assault Nurse Examiner Karen Morgan examined me and**

testified at my trial that my injuries included vaginal redness, bruising, tearing, and lacerations consistent with my statement that Terry had raped me. Tr.Trans.Vol. XIII at 2483, 2486, 2506. See also Appellant's Exhibits at 183 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 24, citing Tr.Trans.Vol. XIII at 2486]. I testified that photographs were taken and a report was completed of the rape exam. Tr.Trans.Vol. XI at 2034-35, 2038. I was very weak, very faint, almost sick. Tr.Trans.Vol. XIII at 2415-16. Terry was never detained or arrested. Id. at 2417, 2564. However, Terry was very concerned about rape charges being filed against him. Tr.Trans.Vol. XI at 2039, 2041. Terry came to my house and insisted that I not cooperate with the police investigation into the rape. Id. at 2039. See also Tr.Trans.Vol. XIII at 2417. I didn't want Terry around me, but he kept me with him and even drew up a form that he wanted me to sign saying he didn't rape me. Tr.Trans.Vol. XI at 2039.

Terry's friend, Robert Martin, testified Terry told him that I had accused him of raping me, but Terry claimed that after I was examined, the police found out I had not been raped. Tr.Trans.Vol. IX at 1741. Robert testified that Terry said my "case was very weak" **because I had come to his house.** Id. at 1742-43. According to Robert, Terry also claimed I had a "little bag of sex toys," and Terry said that didn't "look very good" for me. Id. Robert said Terry told him that I locked myself in an upstairs bedroom and began breaking things, and Terry said he forced the door open so I couldn't continue to damage things. Id. at 1739. Further, Robert testified Terry told him that I would become aggressive towards him, and Terry said he would defend himself and try to eliminate me from his presence. Id. at 1743. Robert said Terry claimed that I would then call the police and say that Terry had attacked me. Id. All of this is strikingly similar to Robert's testimony concerning what Terry had to say about his previous girlfriend, Melinda Wallace. Id. at 1739. It is also similar to what Robert told me about Melinda Wallace early on in my relationship with Terry. Tr.Trans.Vol. XI at 2098-99. I believed Robert

back then—before Terry became abusive and violent towards me. Id. at 2098-99.

Once I convinced Terry that I would not cooperate with the police's investigation into the December 1997 rape, I had about a week or two of relief in December 1997, and then things went from bad to unbearable. Id. at 2059, 2044-45. **At this point in my life, I had had enough, and I made that clear to Terry. Id. at 2041. I did everything I knew of to stay free of Terry. Id. This is when the violence started to spin wildly out of control. Id. Terry stalked me relentlessly. Id. at 2041, 2058. I called the police seeking help many times. Id. at 2041. See also Appellant's Exhibits at 161-62 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2-3]** I still had custody of my son, but he was staying with his father, my ex-husband. Tr.Trans.Vol. XI at 2040. I insisted that my son stay with his dad because my home was not safe and I could no longer keep my son safe. Tr.Trans.Vol. XIII at 2397-98.

I testified that I believed Terry was trying to frame me for drugs or kill me at this point in time. Tr.Trans.Vol. XIII at 2461. Attorney Mike Cooke's affidavit on file in this action relates a December 1997 when I called him and pleaded with him to come to my home. See Appellant's Exhibits at 3 [Aplt. Exhibit 2, Affidavit of Michael Cooke, NDOK Dkt. #2 Exhibit 3 at 1]. Mr. Cooke relates that I was panicked and frantic on the telephone. Id. After Mr. Cooke arrived, I told him that Terry or some of Terry's friends had broken into my garage and I was afraid they had left their drug making equipment there. Id. Mr. Cooke relates that I was very upset. See Appellant's Exhibits at 3 [Aplt. Exhibit 2, Affidavit of Michael Cooke, NDOK Dkt. #2 Exhibit 3 at 1]. Mr. Cooke and I could not get into my garage. Id. When Mr. Cooke told me that he was going to call the police, I told him that the police would do nothing. Id. Mr. Cooke called the police and told the responding officer that he was an attorney. Id. Mr. Cooke explained to the officer what he knew about the violent nature and history of my relationship with Terry Carlton. Id. He explained I was afraid that Terry Carlton or one of his friends had taken over my garage.

Id. The officer indicated that he had been to my residence “several times before.” Id. He asked Mr. Cooke why I had called a lawyer. Id. Mr. Cooke observed the police officer to be fairly dismissive of my concerns. Id. Mr. Cooke did not see the police take any action. See Appellant’s Exhibits at 3-4 [Aplt. Exhibit 2, Affidavit of Michael Cooke, NDOK Dkt. #2 Exhibit 3 at 1-2]. Mr. Cooke did not testify at my trial because my counsel never contacted him. See Appellant’s Exhibits at 4 [Aplt. Exhibit 2, Affidavit of Michael Cooke, NDOK Dkt. #2 Exhibit 3 at 2]. See also Issue I.A.1., *infra*.

In January of 1998, Terry tried to break into my home many times, particularly through the back gate located directly in front of my garage. Tr.Trans.Vol. XI at 2059-60. **One of my neighbors, Carl Hughes, testified at my trial about an incident he witnessed around January 1998, when Terry was trying to force his way into my property through my back gate at about 4:30 or 5:00 o'clock in the morning. Tr.Trans.Vol. XIV at 2729-31. See also Appellant’s Exhibits at 184-85 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25-26, citing Tr.Trans.Vol. XIV at 2730].** Mr. Hughes said that when he confronted Terry, Terry warned him to mind his own business and said, “Do you have any idea who I am?” Tr.Trans.Vol. XIV at 2731. Mr. Hughes also testified that around this same time period, the distinct, loud sound of Terry’s car regularly woke him up between two and five o'clock in the morning. Id. at 2729.

Another one of my neighbors, Glenda McCarley, testified that she witnessed Terry Carlton stalking me and breaking into my home in the early months of 1998. Tr.Trans.Vol. XIV at 2740-48. Ms. McCarley said that the sound of Terry’s car woke her up in the “wee hours of the morning” about “five out of seven days” a week. Id. at 2741. Ms. McCarley testified she saw Terry park his car around different corners from my home and sometimes in front of *her* house. Id. at 2746. I testified that on several occasions when Terry broke into my home, he beat in the

back doors leading directly into my bedroom. Tr.Trans.Vol. XI at 2046, 2045. Ms. McCarley testified about one incident she witnessed in February or March of 1998, when Terry was trying to break into my home using what appeared to be a piece of pipe to beat on the back doors and windows. Tr.Trans.Vol. XIV at 2745. Ms. McCarley testified that on that occasion, *she* called the police. Id. at 2746. Ms. McCarley said that Terry left just before the police arrived and, as usual, the police did nothing. Id. Ms. McCarley testified that it “got to be a very common occurrence” for the police to be at my residence, and that the police usually did nothing. Id. Ms. McCarley further testified that Terry left my home so many times just before police arrived that it was “almost a joke” among my neighbors about how Terry had the police officers' timing down. Id. at 2747-48, 2740. **Ms. McCarley also testified about an incident of abuse she witnessed late one night when she heard me screaming and saw me running from my home. Id. at 2743-44, 2761.** Ms. McCarley testified that she saw Terry Carlton exit my home, run me down, grab me by my hair, and drag me back behind my privacy fence toward the back of my home. Id. See also Appellant's Exhibits at 185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26, citing Tr.Trans.Vol. XIV at 2744]. Ms. McCarley further testified that she never saw me do anything aggressive toward Terry Carlton. Tr.Trans.Vol. XIV at 2762.

Another one of my neighbors, Maxine Calliccoat, testified at my trial that I came to her house and said I needed to use her phone because Terry had yanked mine out of the wall or disconnected it somehow. Tr.Trans.Vol. XIV at 2689, 2691-92. **Ms. Calliccoat, testified at my trial that she could hear arguing and yelling when Terry Carlton was at my home, and I used her phone more than once to call the police because Terry Carlton was threatening me. See Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol. XIV at 2686-88].** Ms. Calliccoat also said that the distinct, loud sound of Terry's car and of Terry and I arguing would wake her up “four and five and sometimes six

times a week,” always at 2:30 or 3:00 o'clock in the morning. Tr.Trans.Vol. XIV at 2687. Ms. Callicoa testified that Terry and the police were at my home “day after day after day.” Id. at 2689. Ms. Callicoa also testified that Terry actually followed me to her house once and knocked on her door wanting to see me, but she wouldn't let him in. Id. at 2689-90. To Ms. Callicoa, Terry appeared “fairly calm, but he was angry.” Id. at 2691. In contrast, Ms. Callicoa described me as “**very nervous** and very upset, very hyper,” and she said I seemed to be afraid for my life because Terry was threatening me. Id. at 2689-90.

I testified that on one occasion, Terry cut all of my phone lines before breaking into my home and attacking me. Tr.Trans.Vol. XI at 2074. **My neighbor Glenda McCarley testified about an incident when I came to her house after Terry had broken into my home and I needed to call the police because I was afraid of Terry. See also Appellant's Exhibits at 185 [Apt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26, citing Tr.Trans.Vol. XIV at 2739].** Ms. McCarley said that I seemed “very upset,” “very rattled,” and “**nervous.**” Tr.Trans.Vol. XIV at 2752. On that occasion, Ms. McCarley testified that she witnessed a police officer, **Aaron Tallman**, refuse to help me after he responded to the 911 call for help. Id. at 2739, 2748-49. Specifically, Ms. McCarley testified that **Officer Tallman** appeared “put-out, impatient, in a hurry” when he saw me, said something derogatory, and then immediately got back in his car and left. Id. at 2749. Ms. McCarley said she was “infuriated” by **Officer Tallman's** refusal to help me, and she asked another officer for **Officer Tallman's** name and badge number. Id. at 2749-50. Ms. McCarley recognized **Officer Tallman** because she had seen him at my residence “several times” before. Id. at 2758. (For his part, Officer **Aaron Tallman** pretty much denies everything and claims he has only been to my house twice. Tr.Trans.Vol. XIII at 2582-84, 2585, 2598).

Around this same time, Terry Carlton also attacked me in court by filing lawsuits against me.

Tr.Trans.Vol. XV at 2949, 2865-66. One lawsuit was for the engagement ring he had given me, which he had already taken from my house. Tr.Trans.Vol. XIII at 2401-02.

Also around this time, in February 1998, my ex-husband, Eric Wilkens, filed for custody of our son, Hunter. Tr.Trans.Vol. XIII at 2399-2400. Hunter had been staying with Eric since Terry raped me in December 1997. Id. at 2397-98. Hunter was staying with Eric at my insistence because my home was not safe and I could not keep Hunter safe. Id. When Eric filed for custody of Hunter in February 1998, Eric attested that he believed my home was not safe for Hunter, and that Terry Carlton was a danger to both me and Hunter. Id. at 2400. I did not contest because I agreed that was true, and I believed Eric should have custody of Hunter at that time. Id. Eric was also concerned that I wasn't working, had no car, had no money for food, and that my utilities had been cut off. Id. at 2458. It is true that I wasn't working and had no car. Tr.Trans.Vol. XI at 2040. It is also true that there were some occasions when my utilities were cut off for nonpayment. Tr.Trans.Vol. XII at 2307. Also, I was using methamphetamine intravenously once or twice a day. Tr.Trans.Vol. XV at 2873. My relationships with my family and friends had disintegrated. Id. at 2821. I had become more and more and more isolated. Id. at 2820. My whole life was disintegrating. Id. I was very ashamed. Tr.Trans.Vol. XI at 2094.

By this time, I had developed feelings for another man, Luke Draffin, whom I had previously regarded as more of a friend. Tr.Trans.Vol. XI at 2041-42. I also got drugs from Luke. Tr.Trans.Vol. XII at 2224. When Terry found out about my relationship with Luke, he became openly obsessive and jealous. Tr.Trans.Vol. XI at 2042. It was crazy. Id. Luke offered to help protect me from Terry, and I came to rely on Luke for help sometimes. Id. at 2041-42. Luke was very kind to me. Id. I felt safe when Luke was around. Id. Luke was the only person whom Terry was afraid of. Tr.Trans.Vol. XV at 2951. Terry told me that he gave Luke a Harley Davidson motorcycle to stay away from me and not help me. Tr.Trans.Vol. XI at 2043. I

heard Luke was driving the motorcycle, but I never saw him with it. Id. (It's not exactly clear from the record, but although Terry told me that he had given Luke the motorcycle in exchange for Luke's promise not to help me, I did not believe Terry back then.) Luke Draffin testified at my trial that he met me sometime around September 1997, and saw me about once a week. Tr.Trans.Vol. VII at 1511, 1513-14. Luke said that he was friends with both Terry and me. Id. at 1510. Luke also testified that he sometimes provided drugs to Terry and me. Id. at 1505. Luke said he could tell that I had developed feelings for him. Id. at 1514. Luke testified that sometime around the first of the year in January or February 1998, Terry offered him "about \$5000" to stay away from me and not help me. Tr.Trans.Vol. VII at 1512-14. Luke testified he told Terry that if Terry felt that strongly for me, Terry wouldn't have any problems from him because "there wasn't anything there." Id. at 1511.

I testified that in mid-February 1998, Terry entered my home uninvited. Tr.Trans.Vol. XI at 2060-62. Luke Draffin was at my home at the time, and I now believe Luke let Terry in and then stepped outside. Id. Terry was armed with a gun, a stun gun, a billy club, and tear gas. Id. Terry attempted to rape me in my bedroom. Id. **This is the incident when I retrieved a pistol, pointed it at Terry's head, and tried to shoot Terry to protect myself, but the gun did not fire. Tr.Trans.Vol. XII at 2230-31. See also Tr.Trans.Vol. XIII at 2477-78.**

On 21 February 1998, Terry attempted to break into my home again. Tr.Trans.Vol. XI at 2063. I called 911, and police officers arrived and found Terry outside of my home with a loaded, chambered Glock 9mm pistol and a stun gun. Id. at 2063, 2067. Terry was arrested. Id. at 2069. **Officer Troy Dewitt testified at my trial that I placed a 911 call from my home at around three o'clock in the morning on 21 February 1998. Tr.Trans.Vol. XIV at 2708-2710. Upon arrival, Officer Dewitt found Terry Carlton outside of my home with a loaded gun and a stun gun in his possession. Id. at 2712. Officer Dewitt said that Terry was trying**

to elude the police, and officers had to stop Terry at gunpoint. Id. at 2711-12. Officer Dewitt arrested Terry. Id. at 2712-13. See also Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol. XIV at 2712-13]. Officer Dewitt testified that he had been to my home in response to 911 calls numerous times before, but this was the first time he caught Terry there. Tr.Trans.Vol. XIV at 2714-15. Officer Dewitt said he remembered me wearing a "panic button"—one that signaled my home alarm system—around my neck for protection. Id. at 2720. **Officer Dewitt testified that due to the circumstances and what he had found, he called a judge and obtained an emergency protective order for me on the spot. Id. at 2716. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].** I testified that Terry violated the emergency protective order by calling me repeatedly from jail. Tr.Trans.Vol. XI at 2090-91. I called the police to report the violation, and **Officer Aaron Tallman** arrived at my home. Id. at 2091, 2089. I showed **Officer Tallman** my copy of the emergency protective order along with my caller I.D. showing calls from the jail, but **Officer Tallman** refused to enforce the protective order. Id. at 2091. **Officer Tallman** told me that I was beginning to annoy him. Id. at 2078-79. Terry bonded out of jail and was right back at my house again. Tr.Trans.Vol. XIII at 2413-14. **That's why I did not work to make the last emergency protective order permanent. Id. See also Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2].**

On 25 February 1998, Terry Carlton was charged with transporting a loaded firearm in connection with his arrest outside of my home on 21 February 1998. See Appellant's Exhibits at 185-186 [Aplt. Exhibit 20, NDOK Opinion , NDOK Dkt. #65 at 26-27].

My friend Carrie Gaston testified that she dropped in on me at my home sometime around February 1998. Tr.Trans.Vol. VII at 1329-30. Carrie testified that while I am a neat and

organized person who always keeps my home clean, on this occasion, my home “was in disarray....Dishes undone, the place was a mess....nothing was where it should have been—like everything had been gone through, basically.” Id. Carrie testified that I was “emotionally very, very distraught,” “frightened,” and not myself. Id. at 1331. Carrie testified that I was “afraid to come to the door” and afraid to “answer the phone.” Id. at 1332. She said that she knew that I was afraid of Terry Carlton. Id. Carrie testified I told her that Terry had been physically abusive to me on “numerous occasions.” Id. at 1327. Further, Carrie testified that she knew I had filed a restraining order against Terry and I was trying to stay away from him. Id. at 1334.

In March of 1998, there were so many incidents when Terry Carlton broke into my home that it seemed “constant.” Tr.Trans.Vol. XI at 2069. On one occasion, Terry also kicked in my interior bedroom door, leaving his boot prints on the door and damaging the door frame. Id. at 2047-48, 2055. Around this time, Shannon Broyles, whom I have been friends with since high school, stopped by my home unannounced and this is what she testified she saw: “[April's] house had been tore up, it was destroyed. I mean, everything. I saw things smashed, glass broke. I saw her bedroom door, it had been forced in somehow, like it had been knocked in or kicked in. From the back door to the front door to the bathroom, the laundry room, to her bedroom...the whole house was like that.” Tr.Trans.Vol. XIV at 2663, 2672-74, 2667. Shannon testified that even *she* was afraid to be around Terry Carlton. Id. at 2679.

On one occasion around this time, I was running from my home while Terry was breaking in again, and I entered a QuikTrip convenience store located a couple of blocks away. (The QuipTrip was located at 36th & Peoria in Tulsa. Tr.Trans.Vol. XIV at 2644. My home is one block from 35th & Peoria. Tr.Trans.Vol. XI at 2075.) **James Ashlock, the QuikTrip sales clerk on duty at the time, testified at my trial that I came into the store in March or April of 1998, sometime between three and five o'clock in the morning, and I seemed upset—like**

I was looking for someone to come and harm me. Tr.Trans.Vol. XIV at 2644-45, 2649. Mr. Ashlock said that shortly thereafter, Terry Carlton arrived, and Terry and I argued because I did not want to leave with Terry. Id. Mr. Ashlock testified that Terry tried to physically lead me from the store and when I resisted, Terry grabbed my purse and jerked it away from me. Id. at 2653. Mr. Ashlock was concerned enough to call 911 and lock Terry Carlton out of the store. Id. at 2653-55. See also Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol. XIV at 2647-57]. Mr. Ashlock testified that Terry "responded by cussing" at him and acted "like it was no big deal if the police were on their way—like...he didn't care one way or another." Tr.Trans.Vol. XIV at 2656. Mr. Ashlock testified that Terry's reaction scared *him* a little bit. Id. Mr. Ashlock testified that Terry left before officers arrived. Id. Mr. Ashlock said I waited five to ten minutes after Terry left, and then I also left before officers arrived. Id. at 2656-57. Mr. Ashlock testified that I "was upset," "crying and shaking." Id. at 2657.

On 25 March 1998, a bench warrant was issued for Terry Carlton's arrest in the District Court of Tulsa County in case number CM-1998-575 for Terry's failure to appear in court on the gun charge that was filed against him after he was arrested outside of my home with a loaded gun and a stun gun on 21 February 1998. See Appellant's Exhibits at 185-86 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26-27]. (The warrant was still in effect when I killed Terry Carlton. See Appellant's Exhibits at 11 [Aplt. Exhibit 5, District Court of Tulsa County Case Report, NDOK Dkt. #12 Exhibit 3 at 2.]

On two separate occasions after Terry Carlton had broken into my home in April 1998—just a few weeks before I killed Terry—different Tulsa police officers, including **Officer Aaron Tallman**, failed to enforce the outstanding bench warrant for Terry's arrest when they encountered us and I was pleading for help. The first time this happened was on 2 April 1998,

after I escaped from my home as Terry was about to break in again. Tr.Trans.Vol. XI at 2075-76; and Tr.Trans.Vol. XIII at 2392-93. **Officer Aaron Tallman** arrived on the scene to which I had fled one block away. Id. (As outlined hereinabove, **Officer Aaron Tallman** had previously responded to numerous emergency calls at my home, and he had a sordid history of refusing to protect me from Terry Carlton. Tr.Trans.Vol. XI 2076-78, 2091, 2089; and Tr.Trans.Vol. XIV at 2748-49, 2758.) On 2 April 1998, when **Officer Tallman** arrived on the scene to which I had fled from Terry Carlton, I was pleading to God for protection from Terry. Tr.TansVol. XIII at 2393-94. I was calling out to God because I felt like I had no one else. Id. at 2394. I knew from my past experiences with **Officer Tallman** that he was not going to help me. Id. See also Tr.Trans.Vol. XI at 2077-78. I kept on pleading to God for protection from Terry because I wanted Terry to stop violating my home, and I didn't want to have to keep running from my own home. Tr.Trans.Vol. XIII at 2394, 2392. My home was supposed to be my safe haven, but it had become anything but. Id. **Officer Tallman** saw Terry's car, a distinctive black Acura NSX, parked in front of my home. Tr.Trans.Vol. XI at 2079. **Officer Tallman** refused to arrest Terry even though Terry had a bench warrant for his arrest. Id. **Officer Tallman** testified at my trial that I was "talking to God, talking to Jesus" and acting like I was getting answers. Tr.Trans.Vol. XIII at 2580. He called it "gibberish." Id. at 2589. I testified that I didn't feel like I was getting any answer from God. Id. at 2457. **Officer Tallman** described me as "nervous," and said he attributed my behavior to drug abuse. Id. at 2595. **Officer Tallman** claimed that the contents of my purse were just "strewn about the place" and he could see two syringes coming from my purse. Id. at 2589-90. **Officer Tallman** testified that the unused syringes tested positive for methamphetamine. Id. at 2591. **Officer Tallman** summoned Sean Blankenship, an employee of Parkside Hospital, a local mental hospital, to the scene. Id. at 2592. Sean Blankenship is not a psychologist or a psychiatrist. Tr.Trans.Vol. XV at 2982. Mr. Blankenship testified at my trial

that I said I was talking to God. Id. at 2986. Mr. Blankenship further claimed I said the Son of God was breaking into my home and beating me up. Id. I flatly denied ever saying that the Son of God was breaking into my home and beating me up. Tr.Trans.Vol. XIII at 2457. Mr. Blankenship issued an order for me to be transported to Parkside Hospital. Tr.Trans.Vol. XV at 2986. Then, **Officer Aaron Tallman** transported me to Parkside Hospital. Tr.Trans.Vol. XIII at 2593. **Officer Tallman** testified that he intended to file an out-of-custody warrant for my arrest for drug possession later “because the jail thing will always be there.” Id. at 2603. (One month after I was convicted of first-degree murder in the instant case, the district attorney who prosecuted me at my murder trial charged me with drug possession in the District Court of Tulsa County at case number CF-99-2575 in connection with the 2 April 1998 incident involving **Officer Aaron Tallman**. I plead no contest and received a two-year sentence to serve concurrently with the life-sentence I am serving for the murder conviction. See Appellant's Exhibits at 16 [Aplt. Exhibit 7, *Tulsa World* article reporting on my sentencing in the drug possession case]. See also Appellant's Exhibits at 153 [Exhibit 18, *Tulsa World* article evidencing the Tulsa district attorney's friendship with Terry Carlton's father, Don Carlton].) **Officer Aaron Tallman** never did arrest Terry even though Terry had an outstanding bench warrant for his arrest at that time. Tr.Trans.Vol. XIII at 2602. At my trial, Officer Tallman denied ever even seeing Terry's car parked in front of my house on 2 April 1998. Id. at 2601-02. **My counsel did not introduce the outstanding warrant for Terry's arrest into evidence or even mention it at my trial. See Issue I.A.2., infra. See also Appellant's Exhibits at 185-186 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26-27].**

After **Officer Aaron Tallman** took me to Parkside Hospital on 2 April 1998, I was briefly examined by mental health professionals. Tr.Trans.Vol. XII at 2194. By this point in time, I was using methamphetamine intravenously once or twice a day, and I admitted it. Tr.Trans.Vol.

XV at 2873. I admitted having a drug abuse problem, and I was diagnosed with a substance abuse disorder. Id. at 2813, 2818. My urinalysis was positive for methamphetamine. Tr.Trans.Vol. XII at 2202-03. I don't recall specifically how I put this, but I also expressed that I felt like domestic violence was the problem in my life that troubled me the most. Tr.Trans.Vol. XIII at 2390-92. I said that I had lost my safety and independence. Id. at 2391. I expressed that I was afraid Terry Carlton was going to kill me. Tr.Trans.Vol. XV at 2830-32. However, the staff at Parkside Hospital diagnosed me with Bipolar Disorder and treated me as though my fear of Terry Carlton was a paranoid delusion. Tr.Trans.Vol. XII at 2190-91, 2195, 2205, 2213, 2225-26; and Tr.Trans.Vol. XV at 2813. And Parkside Hospital administered high-powered psychotropic drugs used to treat Bipolar Disorder—including Lithium and Valproic Acid—to me. Tr.Trans.Vol. XII at 2190-91, 2205. On 8 April 1998, after six days of confinement at Parkside Hospital, I escaped. Tr.Trans.Vol. XI at 2079-80. I escaped by taking the supervising nurse's keys while she was shucking her duties and playing the card game *Uno*. Tr.Trans.Vol. XII at 2199-2200. I returned to my home. Tr.Trans.Vol. XI at 2080. Later the same day, Terry sneaked into my home and used a gun to force me to go to his house. Id. at 2080-81. Terry told me that he was upset with me because when he tried to visit me at Parkside Hospital, I refused to see him. Id. at 2081. Terry also told me that he was the one who arranged for me to be taken to Parkside Hospital in the first place. Id. at 2103. Specifically, Terry said that he thought a stay in a mental hospital would teach me that he was the only person who cared about me. Id. I believed Terry when he told me that he was responsible for having me locked-up in Parkside Hospital. Tr.Trans.Vol. XV at 2869. After he abducted me at gunpoint from my home on 8 April 1998, Terry held me at his house until 11 April 1998, when I escaped after he attempted to rape me there and threatened to slice my throat and kill himself. Tr.Trans.Vol. XI at 2082-84. (This is not a part of the record, but Terry's threats were made all the more real to me by the fact

that Terry's only nephew had recently killed his own ex-girlfriend and then shot himself. Terry claimed that "the bitch got what she deserved," and he said I was next. I believed Terry when he said that.) I managed to grab three pistols from Terry's home as I escaped. Id. at 2084, 2094-95. I ran to Terry's neighbor's house and called a domestic violence hot line. Id. at 2084-85. I called a domestic violence hot line because I would not call the police anymore. Id. See also Tr.Trans.Vol. XIII at 2397. Police officers, including Officer James Bennett, arrived shortly thereafter. Tr.Trans.Vol. XI at 2085. I gave the police officers all three of the pistols that I had taken from Terry's house when I escaped. Id. at 2085-86. I told the police officers about Terry's history of raping and otherwise assaulting me. Tr.Trans.Vol. XII at 2230-31; and Tr.Trans.Vol. XIII at 2477-78. At my trial, Officer James Bennett testified that on the afternoon of 11 April 1998, he was dispatched to Terry Carlton's house in response to a call about a man with a gun. Tr.Trans.Vol. IX at 1762. Officer Bennett identified me as the caller. Id. Officer Bennett testified that after he arrived at the scene, Terry Carlton came out of his house holding a guitar in his hand. Id. at 1764. According to Officer Bennett, Terry seemed "fairly relaxed." Id. Officer Bennett testified that he then went behind a house across the street and talked to me. Id. at 1765. Officer Bennett testified that I was "confused and disheveled" and "**very nervous,**" and he associated my demeanor with intravenous drug use. Id. at 1765. Officer Bennett said I told him that I "placed a loaded gun to Terry Carlton's head and pulled the trigger," but "the gun didn't go off." Id. at 1766. I testified that I never stuck a gun to Terry's head and I did not say that to Officer Bennett; however, as I explained, I did tell Officer Bennett about a **previous** incident when Terry tried to rape me in my home, I *pointed a gun at his head* and tried to shoot him to protect myself, and the gun did not fire. Tr.Trans.Vol. XII at 2230-31; and Tr.Trans.Vol. XIII at 2477-78. Officer Bennett also testified that I said Terry told me that he was God and the devil, and I believed it. Tr.Trans.Vol. IX at 1766. I testified that I never said I believed Terry

was God and Satan. Tr.Trans.Vol. XII at 2231. And on recross examination, Officer Bennett admitted he had previously reported that Terry said that to him, not me. Tr.Trans.Vol. IX at 1781. Specifically, Officer Bennett's police report reads: "Carlton stated that he was God and Satan, and that April said she believed him." Id. Nevertheless, in spite of his report to the contrary, Officer Bennett insisted that it was me who said that to him, not Terry Carlton. Id. at 1782. Officer Bennett also testified that he asked if I had any guns with me, and I said yes. Tr.Trans.Vol. IX at 1766. Officer Bennett said that I gave him permission to look for the guns in my bag, and he found two guns there along with drug paraphernalia. Id. at 1776-77. Officer Bennett testified that he issued an emergency order of detention for me to be transported back to Parkside Hospital. Id. at 1767-68. According to Officer Bennett, "[I]t seemed like Mr. Carlton wasn't the threat, that Ms. Wilkens was." Id. at 1769. On cross-examination, Officer Bennett claimed he could not recall whether or not I had told him that Terry Carlton had attacked me. Id. at 1772. Officer Bennett also claimed he could not recall if I had told him that the pistols in my bag belonged to Terry Carlton. Id. Officer Bennett did acknowledge, however, that I was not exhibiting any particularly aggressive behavior that day. Id. Further, Officer Bennett admitted on cross-examination that he actually went inside of Terry Carlton's home with Terry that morning and saw a shotgun, unsheathed from its scabbard, in the hallway. Id. at 1773. This means that Officer Bennett was in direct contact with Terry inside of Terry's own home, yet he did not enforce the warrant for Terry's arrest. Id. **(My counsel did not introduce the outstanding warrant for Terry's arrest into evidence or even mention it at my trial. See Issue I.A.2., *infra*. See also Appellant's Exhibits at 185-186 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26-27].)** However, Terry was also transported to Parkside Hospital for an evaluation. Tr.Trans.Vol. XI at 2086. Then Terry was simply released a few hours later while I was once again confined at Parkside Hospital. Id. And still free despite

having a warrant for his arrest, Terry continued to stalk and harass me even while I was hospitalized.

While I was hospitalized at Parkside Hospital in April 1998, Terry Carlton twice contacted my friend Shannon Broyles and asked her to help him win me back by planning a surprise birthday party for me. Tr.Trans.Vol. XIV at 2669, 2677. Shannon testified that Terry asked her to meet him for lunch to plan the party, but she did not meet Terry because she was afraid. Id. at 2679. Shannon said she was afraid to meet Terry because she knew about Terry's violent history and she did not believe he was stable. Id.

Meanwhile, back at Parkside Hospital, things were not going well with me. Parkside Hospital's staff members were still treating me like my fear of Terry Carlton was a paranoid delusion. Tr.Trans.Vol. XII at 2190-91, 2195, 2205, 2213, 2225-26. Parkside Hospital's psychiatric records describe me as "manipulative," "paranoid," "psychotic," and "homicidal." Id. at 2209, 2213, 2225, 2226. I was upset about being confined at Parkside Hospital, and I was not compliant with their treatment program. Id. at 2195-96. The staff reported that I was "argumentative," "disruptive," and confrontational." Id. at 2201, 2202. Also, given the manner in which I had escaped from Parkside Hospital a few days earlier on 8 April 1998, I felt like the supervising nurse—the same nurse whom the hospital held responsible for my escape—was not at all fond of me this time around. Id. 2199-2200. On one occasion when I refused to let go of the phone while I was trying to call another hospital, she reported that I was combative and had me placed in restraints and seclusion. Id. at 2196-2200. She reported that during that incident, I began yelling, screaming, hitting, and kicking at the staff. Id.

On 23 April 1998, after about two more weeks of confinement at Parkside Hospital, I was transferred from Parkside Hospital to Eastern State Hospital, the now-defunct state mental health hospital in Vinita, Oklahoma. Tr.Trans.Vol. XI at 2086. After I arrived at Eastern State

Hospital, I called Terry Carlton and pleaded with him to please let me go. Id. at 2103. I called Terry because he had told me previously that he had arranged for me to be taken to Parkside Hospital because he thought a stay in a mental hospital would teach me that he was the only person who cared about me. Id. And I believed Terry when he told me that he was responsible for having me locked-up in Parkside Hospital. Tr.Trans.Vol. XV at 2869. I believed that if Terry would just lead his own life and let me live mine, things would be okay. Tr.Trans.Vol. XIII at 2475-76. But apparently Terry intended to keep me locked-up in a mental hospital for a long time: Terry's psychiatrist, Dr. Theresa Farrow, who had also previously treated me for depression and anxiety in 1997, testified at my trial that Terry contacted her after I was transferred to Eastern State Hospital in Vinita, Oklahoma, and Terry wanted her to have me committed to a different psychiatric ward at a hospital back in Tulsa. Tr.Trans.Vol. XV at 2998, 2995. Dr. Farrow testified that she and Terry did not expect Eastern State Hospital to release me. Id. at 2998.

I testified that on 26 April 1998, while I was still a patient at Eastern State Hospital, Terry visited me there. Tr.Trans.Vol. XI at 2103. I didn't want to see Terry, but I also didn't want to aggravate him in any way. Id. at 2102. Terry was driving a brand new Acura NSX, and he told me that the car was my birthday present and it was waiting for me when I got home. Id. at 2103-04. At the time, I was outside with hospital employees and a group of other patients. Id. at 2104-05. I told Terry what I had been telling him—that he and I were never going to be intimate or in a relationship again. Tr.Trans.Vol. XIII at 2428. Then I told Terry that I was in love with someone else, Luke Draffin. Tr.Trans.Vol. XI at 2105. I was just trying to get Terry to leave me alone. Id. Terry had told me that if I would just tell him that I loved somebody else, he would leave me alone. Tr.Trans.Vol. XIII at 2428. Instead, Terry became irate and angry at me. Id. at 2428-29. **Neva Lathrop, a nurse's aide at Eastern State Hospital,**

testified at my trial that Terry was yelling, jumping up and down, and flopping his arms when he visited me. See Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26-27, citing Tr.Trans.Vol. XIV at 2614]. Ms. Lathrop said Terry was acting so strangely that even the mental patients were really looking at him. Tr.Trans.Vol. XIV at 2617. **Betty Cantrell, a nurse at Eastern State Hospital, testified at my trial that Terry was hostile and cursing at me when he visited me. See Appellant's Exhibits at 183 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 24, citing Tr.Trans.Vol. XIII at 2529].** Nurse Cantrell testified that as Terry walked off, I told her that he carries a gun. Tr.Trans.Vol. XIII at 2530. Nurse Cantrell further testified that Terry went to his car, but instead of leaving, he started to approach me again, and at that point, she intervened and insisted that Terry leave. Id. at 2531. Nurse Cantrell said that Terry then went back to his car, slammed the door, and “flew out of the parking lot” while throwing gravel and spinning around. Id. Nurse Cantrell described my usual demeanor as “friendly” and “pleasant,” saying “we didn't have any problems with her.” Id. at 2526. However, Nurse Cantrell testified that I became “nervous” and “tense” when Terry visited me at Eastern State Hospital. Id. at 2528. **Riza Johnson, a mental health aide at Eastern State Hospital, testified that Terry was agitated and “hollering at April from the car” when he visited me at the hospital. See Appellant's Exhibits at 183 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 24, citing Tr.Trans.Vol. XIII at 2517].** Ms. Johnson testified that Terry was upset with me and he was “squealing his tires” as he left the parking lot. Tr.Trans.Vol. XIII at 2516. Ms. Johnson also testified that Terry appeared “edgy,” and he made her “very uncomfortable.” Id. at 2517. In contrast, Ms. Johnson testified that I was “cheerful,” “pleasant to be around,” and “never gave [Eastern State Hospital] any trouble at all.” Id. at 2512. However, Ms. Johnson did say that when Terry visited me at Eastern State Hospital, I acted “nervous” and “uneasy.” Id. at 2515.

Terry's friend, Robert Martin, testified at my trial that Terry called him on 27 April 1998, the day after Terry visited me at Eastern State Hospital, and Terry told him that I was in love with someone else. Tr.Trans.Vol. IX at 1734-35.

Parkside Hospital's diagnosis of Bipolar Disorder had followed me to Eastern State Hospital. Tr.Trans.Vol. XV at 2833. However, Eastern State Hospital records also report that I was exhibiting the signs of Battered Woman Syndrome. Id. Further, Eastern State Hospital records show that I had a substance abuse disorder. Id. I testified that on 27 April 1998, the day after Terry's outbursts at Eastern State Hospital, I was released from Eastern State Hospital into the "12 & 12" drug rehabilitation program in Tulsa. Tr.Trans.Vol. XI at 2101. Shortly after arriving at the "12 & 12" drug rehab, I went AWOL from the program because Terry had been at Eastern State Hospital threatening me the day before. Id. at 2102. I returned to my home to find that it had been ransacked and pillaged yet again. Id. at 2106-2111, 2113. I was sure Terry had done it. Id. at 2110. He left sticky notes and wrote on some of my mirrors. Id. at 2110, 2113. I didn't stay in my home long. Id. at 2111. First, I went out walking around my neighborhood. Id. at 2114. I was trying to clear my head and think about things. Id. at 2115. I felt very threatened, and I was trying to figure out a way to peacefully resolve things. Tr.Trans.Vol. XIII at 2440. I ate at a local café and paged Luke Draffin. Tr.Trans.Vol. XI at 2114. I was seeking Luke's protection and emotional support. Tr.Trans.Vol. XV at 2950-51. Luke Draffin testified at my trial that I paged him from a café that afternoon, and he returned my page. Tr.Trans.Vol. VII at 1504-07. Luke testified that I needed help, I had nowhere to go, and I needed a ride. Id. at 1506-07. I testified that I walked back to my house after I left the café, and I went in-line skating sometime around dark. Tr.Trans.Vol. XI at 2116. I skated over to my neighbor's house and asked to use the phone. Id. at 2117. My neighbor Glenda McCarley testified at my trial that I arrived at her house that night, still wearing in-line skates, and used her telephone. Tr.Trans.Vol.

XIV at 2750, 2752. She testified that I seemed afraid Terry would come after me, and I told her that I was wearing in-line skates because I could skate faster than I could run. Id. at 2751-52. Ms. McCarley also testified that I told her I had just left the “12 & 12” drug rehab program and I said, “I’ve just got a certain length of time before [Terry will] find out that I’m not there.” Id. at 2753. Ms. McCarley testified I told her, “I can’t stay at my house....I have to leave there, I can’t stay over there anymore.” Id. at 2752. Ms. McCarley said that I used her phone, and it sounded like I thought I had some place to go that Terry wouldn’t know about. Id. at 2751. I testified that I called my friend Shannon Broyles to see if she could come get me, but she had just put her baby down to sleep for the night. Tr.Trans.Vol. XI at 2118. Then I asked Shannon about getting a large dog for protection, but that didn’t work out. Id. **Shannon Broyles testified at my trial that I called her late that night because I was afraid of Terry and I wanted to borrow her dog for protection from him. Tr.Trans.Vol. XIV at 2670-71. See also Appellant’s Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol XIV at 2670].** Shannon testified that I seemed “worried and afraid.” Tr.Trans.Vol. XIV at 2671. She said she got the impression that I was scared but trying to downplay it. Id. I testified that after things didn’t pan out with Shannon, I went to see Luke Draffin at the Tulsa hotel where he was staying. Tr.Trans.Vol. XI at 2120. I was still seeking Luke’s protection and support. Tr.Trans.Vol. XV at 2950-51. Luke would not see me. Tr.Trans.Vol. XI at 2120-21. I was upset, and I threw my backpack on Luke’s car and hung the keys to his hotel room on his visor. Id. at 2121. Luke Draffin testified at my trial that he didn’t want to help me when I arrived at his hotel because he had “made a deal with Terry.” Tr.Trans.Vol. VII at 1514.

I testified that I left the hotel and was able to flag down Officer Jane Masek to get a ride home. Tr.Trans.Vol. XI at 2121. Officer Masek testified at my trial about her encounter with me after I left the hotel. Officer Masek testified that at approximately 1:28 a.m. on 28 April

1998, she had been dispatched to a hotel for an anonymous complaint regarding a lady beating on a car at a hotel. Tr.Trans.Vol. VII at 1279. When she arrived, the parking lot was quiet and there was no disturbance—no yelling or screaming. Id. at 1280. As she was leaving the hotel parking lot, she saw me Rollerblading. Id. at 1281-82. Officer Masek testified that I flagged her down and she stopped. Id. at 1282. Officer Masek said I told her my name, and she checked to see if I had any warrants or if I was wanted for any other reason. Id. at 1284. Officer Masek reported that I had no warrants for my arrest. Id. at 1293. Officer Masek said I told her that I had just gotten out of Eastern State Hospital in Vinita, and that I had been at the “12 and 12” drug rehab program, but somebody was picking on me so I left. Id. at 1288. Officer Masek testified there was no report that I had gone AWOL from Eastern State Hospital or the “12 & 12” drug rehab program. Id. at 1292. Officer Masek said I appeared “rather upset” and “mad.” Id. at 1293, 1286. However, Officer Masek testified that I didn't look like I “was high or anything.” Id. at 1289. Officer Masek gave me a ride home and we talked. Id. at 1286. She said I told her that I was mad at the guy at the hotel because he had told me to come over and then wouldn't let me in. Id. at 1286. Officer Masek said she told me that I should drop him and find somebody else who treats me better. Id. Officer Masek said of the ride back to my house, “I don't recall anything out of the ordinary.” Id. at 1296. After we arrived at my residence, Officer Masek watched me go inside my home and then she left. Id. at 1287.

I testified that I didn't stay at my home long after Officer Masek dropped me off. Tr.Trans.Vol. XI at 2122. At about two or three o'clock in the morning that day, 28 April 1998, I walked to Terry's house. Tr.Trans.Vol. XI at 2123. I wanted to make peace with Terry. Id. at 2123. I wanted a peaceful resolution to the conflict that had been going on for months and months. Id. Terry had ransacked my home, and I was afraid he was going to assault and kill me. Tr.Trans.Vol. XV at 2833. I went to Terry's house to talk to him because I believed he was

going to come after me anyway, and I wanted to make peace with him in an attempt to head off the attack. Id. at 2834.

When I arrived at Terry's house, I knocked on the front door. Tr.Trans.Vol. XI at 2129. Terry answered and invited me in. Id. He had a gun with him, apparently because it was late. Id. Terry was glad I was there. Id. at 2130. He wanted to go upstairs to the bedroom, but I did not want to, and we went directly downstairs instead. Id. While in the basement, I saw my electric guitar and other things that Terry had stolen from my home while I was hospitalized. Id. at 2112. Terry admitted that he had taken them. Id. at 2111. Terry wanted me to use drugs with him. Id. at 2131-32. I did not want to use drugs with Terry. Id. I told Terry that I had come over for a peaceful resolution of our problems so that he could get on with his life and I could feel safe. Id. Then Terry became short-tempered and insisted that I use drugs with him. Id. I made up my own solution using water and a tiny bit of methamphetamine. Tr.Trans.Vol. XII at 2332-33. I persuaded Terry to let me mix it weak by telling him that I wanted to be careful because it was my first time to use that particular kind (or batch) of methamphetamine. Tr.Trans.Vol. XI at 2132-33. I injected the drugs, but I did not do a full injection because I did not want to do drugs with Terry at all. Tr.Trans.Vol. XII at 2335. Terry injected himself with a mixture of methamphetamine and heroin. Id.

There are different kinds (and batches) of methamphetamine with different effects. Tr.Trans.Vol. XII at 2202-03. I described the methamphetamine that I used with Terry that morning like this: "The meth I...injected, um...it's the first time I've done any....I'm not sure it was meth, 'cause I felt nothing." Id. at 2291. The state used that statement to accuse me of claiming that was the first time I had *ever* used methamphetamine. Id. See also Appellant's Exhibits at 97 [Aplt. Exhibit 15, Response to Post-conviction Appeal at 15]. That is not what I said: I said that was the first time I had used "*the* meth"—meaning that particular kind (or batch)

of methamphetamine—I used that morning. Tr.Trans.Vol. XII at 2291; and Tr.Trans.Vol. XI at 2132-33.

After using drugs with Terry that morning, I went upstairs to use the restroom. Tr.Trans.Vol. XI at 2133. When I opened the door to exit the restroom, Terry was standing there in front of me blocking the stairs. Id. at 2134. He had the gun in his hand. Id. He pointed it at me and said I was never going to come around so he was going to rape me. Id. at 2135. His words to me were something like, “I’m going to take the fuck you owe me.” Id. I was scared and shocked. Id. at 2136-37. At gunpoint, Terry took me into his bedroom. Id. Then Terry grabbed me and shoved me toward his bed. Id. Terry had asked me to promise that if he agreed to go to drug rehab, I would commit to him after he got out. Id. at 2138. He became violent when I told him that I could not make a commitment to him. Id. at 2139. At some point, Terry put the gun in the nightstand drawer so that he could grab it quickly. Id. at 2140. He told me he was going to rape me and kill me. Id. Terry ripped off my shoes and threw them across the room. Id. He yanked down my pants, ripping them in the process. Id. at 2141. I begged Terry not to rape me, but he told me that my pleas didn’t matter and I was “gonna be a dead bitch.” Id. at 2141-42. I asked Terry to please kill me before he raped me. Id. at 2142. Terry forced himself into me, and he already had his fingers inside of me Id. Terry raped me with extreme force, tearing me as he entered. Tr.Trans.Vol. XII at 2343. It was painful. Tr.Trans.Vol. XI at 2142. I begged Terry to please kill me because I didn’t want him to rape me anymore, and he told me, “You’re a dead bitch.” Id. Terry hit me in the head with his fists and reached around my neck to break it. Id. My neck cracked. Id. Terry continued to rape me. Id. at 2143. It seemed like the rape went on forever. Id. I eventually talked Terry into stopping the rape by saying things to him like, “How can you enjoy this?” “How can you be with someone...you know doesn’t want to be with you?” Id. at 2143-44. Terry did not ejaculate inside of me. Id. After Terry stopped raping me, he

started to masturbate. Id. I was just lying there numb. Id. I don't know whether or not he ejaculated with his hand. Id. Then Terry made me douche while he watched because he didn't want any evidence left. Id. at 2177-78. See also Tr.Trans.Vol. XII at 2350. Terry discarded the used douche in the wastebasket in the upstairs hall bathroom. Tr.Trans.Vol. XI at 2178. I was scared by the fact that Terry actually had a douche at his house. Id. I was afraid, confused, and nervous. Id. at 2179. I felt like my whole life had come to revolve around appeasing Terry and trying to keep him from hurting me. Id. I wanted Terry to get help, and I wanted to get out. Id. I suggested that Terry get some rest which would give me some lead-time to get away, but Terry decided to go back downstairs with me. Id. at 2145-46.

Once Terry and I were back in the basement, Terry mixed heroin and methamphetamine, and he insisted I inject drugs with him again. Id. at 2147. Terry had difficulty finding a vein to inject himself with the drugs because he had injected a large quantity of drugs recently and because there were no clean syringes. Id. at 2148-49. While Terry was distracted trying to find a vein, I was able to empty the syringe he gave me onto the floor and pretend I had injected the drugs. Id. at 2149. I asked Terry if I could use the telephone, and he told me it was upstairs on the nightstand. Id. at 2150. (Dr. John Call testified that I explained to him how I "used a ruse" to get Terry to let me use the phone: I told Terry that I wanted to call about getting us some better drugs. Tr.Trans.Vol. XV at 2951.) I testified that Terry let me go upstairs alone to get the phone. Tr.Trans.Vol. XI at 2150. While upstairs, I saw the gun in the nightstand while I was looking for the phone. Id. at 2150-51. I also saw Terry's police channel scanner on the nightstand. Id. at 2151. Along with the gun and scanner, I hurriedly gathered together Terry's keys, cash, and credit cards. Id. I put most everything in the pockets located along the back of my vest. Id. at 2152. (I was wearing a bicycling outfit. Id. at 2123-24). I took Terry's gun because I wanted to make sure Terry could not use it on me and because I wanted to protect

myself from him. Tr.Trans.Vol. XI at 2152. I did not have time to get everything because I heard Terry moving downstairs. Id. at 2151.

When I went back downstairs, I had an opportunity to run out the front door of the house, but Terry could outrun me and from where he was at, I didn't think I would get very far. Id. at 2155. **(Remember the testimony from Terry's neighbor, Dr. Brent Laughlin, and also from my neighbor, Glenda McCarley, about the different incidents they witnessed when I did try to run from Terry and he ran me down, catching up with me right as I got into my car and then smashing out the window or grabbing me by my hair and dragging me back into the house. See Appellant's Exhibits at 184-185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25-26, citing Tr.Trans.Vol. XIV at 2625-26 and 2744].)** Plus, I was conflicted: I was still concerned that even if I escaped, Terry would just come to wherever I was at. Tr.Trans.Vol. XI at 2155. Even if he didn't catch me, he would still find me. Id.

I went back down to the basement, and Terry went upstairs. Id. at 2155-56. He was supposed to lie down and get some rest. Id. at 2156. I could hear him moving around, and I waited for him to settle down so I would know that he had actually gone to bed. Id. I kept thinking Terry would lie down and I would have an opportunity to sneak out. Id. at 2155. But Terry never did lie down. Id. at 2156. He came back down to the basement. Id. Terry was frantic and he handcuffed me while I was sitting in a chair. Id. He grabbed both of my arms and he put the right handcuff on first. Id. at 2157. Then he forced my arms together and put the left handcuff on. Id. (It's not clear from the trial transcript, but Terry handcuffed me with my hands in front.) Terry asked, "Bitch, where's the gun?" Id. Then he searched my pants. Id. I had placed the gun in the back pocket of my vest located over the small of my back. Id. at 2158, 2163. I was scared Terry would find the gun. Id. at 2158. I knew it was loaded because I checked it after I found it and discovered it was loaded and ready to fire with one bullet in the chamber. Id.

at 2158-59. Not finding the gun in my pants, Terry quit searching for the gun and told me that he was going to kill me. Id. at 2160. Terry said he was going to anally sodomize me first. Id. His words to me were: "I'm going to rape you up the ass." Id. Terry yanked me toward the couch. Id. He looked deranged, frightening, and fearless. Id. I remember thinking that when Terry sodomized me, he would find the gun. Id. at 2162. On the way to the couch, Terry let go of me. Id. Still handcuffed, I was able to reach around and quickly pull the gun from the back pocket of my vest. Id. at 2162-63. Terry saw the gun, and he became enraged and charged toward me. Id. at 2165. I felt I had no other option with no more distance between us than to shoot. Id. at 2166. I remember pointing the gun at Terry's head. Id. His head was "right there." Id. I shot the gun and just kept shooting. Id. I thought that if Terry got the gun away from me, he would torture me and then kill me. Id. at 2167. I didn't make any conscious decision to keep shooting, I just kept shooting because I was afraid. Tr.Trans.Vol. XII at 2378. See also Tr.Trans.Vol. XV at 2837. It seemed to happen quickly and I don't recall ever pausing. Tr.Trans.Vol. XIII at 2445. I heard Terry say something after I started shooting, but it didn't register with me what he had said until after I had emptied the gun and stopped shooting: I believe he had said that he was paralyzed and to call an ambulance. Tr.Trans.Vol. X at 2168-69; and Tr.Trans.Vol. XII at 2378. I was in a daze. Tr.Trans.Vol. XI at 2169. At some point, I removed the handcuffs using a hand sanitizer. Tr.Trans.Vol. XI at 2170. I was in shock. Id. at 2171. I covered Terry's body with a blanket and sat near him. Id. at 2172. I told myself that I had done the merciful thing by killing Terry. Tr.Trans.Vol. XII at 2370-71. That was just a thought that went through my head after I had killed Terry: I did not mean that it was a mercy killing. Id. It is not clear from the record, but this is what I meant: when Terry raped me earlier that morning, I begged him to kill me first because I felt like that would have been merciful. Tr.Trans.Vol. XI at 2142. But Terry didn't show me any mercy: he beat me and he raped me. Id.

Just like he had done before. Tr.Trans.Vol. X at 1961; and Tr.Trans.Vol. XI 2016, 2028. Terry seemed to like seeing me suffer, and even though I genuinely believed I had no other option, the grief I felt because I had killed Terry was devastating to me. See Appellant's Exhibits at 13-15 [Aplt. Exhibit 6, Pre-sentence Investigation Report Assessment of April Wilkens by Domestic Violence Intervention Services Counselor Lynda Driskell at 1-3]. So, after I killed Terry, I kept telling myself that at least I had done the merciful thing. Tr.Trans.Vol. XII at 2371. I was trying to come to terms with what I had done. Id.

At some point, I paged Luke Draffin because I was afraid to be alone with the police and I wanted someone with me when the police came, but Luke did not return the page. Tr.Trans.Vol. XI at 2174-76. See also Tr.Trans.Vol. XV at 2951. Luke Draffin testified at my trial that he received a page at about 8:30 a.m. that morning from Terry Carlton's home number, which he recognized, but he did not return the page because he was asleep at the time. Tr.Trans.Vol. VII at 1503-04.

I testified that eventually Terry's phone rang and I answered it. Tr.Trans.Vol. XI at 2175. My friend Carrie Gaston was on the line. Id. I told Carrie what had happened and said that I was afraid to be alone with the police, that I wanted someone with me when the police came, and that I wanted to see my son first before anything. Id. I asked her what I should do because I was confused. Id. at 2175-76. Carrie Gaston testified at my trial that between 9:00 a.m. and 10:00 a.m. that morning, she called Terry's residence to check on my whereabouts. Trans.Vol. VII at 1307. Carrie testified that to her surprise, I answered the telephone. Id. at 1308-09, 1335. Carrie said I told her that Terry was dead and I had shot him. Id. at 1309-10, 1335. She also testified I told her that Terry had beaten, raped, and handcuffed me that morning. Id. at 1336. Carrie said I told her that I was going to call the police, and I asked her not to call the police at that time. Id. at 1312. She testified I told her that I wanted to hug my son first. Id. at

1312, 1340. According to Carrie, I gave no indication that I was trying to hide or conceal anything. Id. at 1340. After our conversation, Carrie called 911 and told the operator that she believed there may have been a shooting. Id. at 1311-12.

Tulsa Police officers testified at my trial about responding to the 911 call that morning. At approximately 9:25 a.m., the dispatcher assigned Officer H.G. Lawson a call in reference to a shooting at Terry Carlton's house at 2272 East 38th Street in Tulsa. Tr.Trans.Vol. VII at 1344-45, 1359. Officer Joe Gann heard the dispatch and also arrived at the location. Id. at 1345, 1367, 1377-78, 1392-93. The officers knocked on the front door and observed me on the stairwell through the window of the door. Id. at 1348-49, 1361, 1367, 1380, 1397, 1400, 1415. I came and opened the door. Id. at 1349, 1362, 1381, 1400, 1415. I looked ragged. Id. at 1367. Officer Gann told me that they were there in response to a shooting and at that point, Officer Lawson asked me, "Did you shoot him?" Id. at 1349, 1360, 1402. I said yes. Id. I told the officers that Terry and the gun were downstairs in the basement. Tr.Trans.Vol. VII at 1351, 1416, 1457. I did not attempt to hide or conceal anything. Id. at 1360, 1407. Officer Lawson told Officer Fadem to take custody of me. Id. at 1351. Then Officer Lawson, Officer Gann, and Officer Forester went downstairs where they observed a blue blanket covering Terry. Id. at 1353, 1383-84. A gun was on the table. Id. Drug paraphernalia including a spoon and syringes were also on the table. Id. at 1353-55, 1385. Narcotics were also visible in the basement. Tr.Trans.Vol. X at 1900. See also Tr.Trans.Vol. XV at 3025-26. Officer Lawson checked Terry and discovered he was deceased. Tr.Trans.Vol. VII at 1355-56, 1383-84, 1406. Officer Gann saw a chair with handcuffs on it. Id. at 1406. When the officers came back upstairs, Officer Fadem, on the suggestion of Officer Forester, read my Miranda rights to me. Id. at 1418-19. I was very cooperative. Id. at 1419-20. Officer Fadem testified that when she handcuffed me that morning, she noted that I am "very, very small-boned." Id. at 1495.

Officer Fadem gave inconsistent testimony about what happened that morning, although my jury was not present to hear it. See Issue I.A.4., *infra*. This is important because in my jury's presence, Officer Fadem gave some very harmful testimony that contradicted my testimony at trial. Id. Prior to Officer Fadem's testimony in front of my jury, a *Jackson v. Denno* hearing was held at my trial outside of the presence of my jury. Tr.Trans.Vol. VI at 1096. Officer Fadem testified during cross-examination at that *in camera* hearing that after officers arrived at Terry's house that morning, another officer asked me, "Did you shoot him?" Id. at 1127. To that, my attorney challenged Officer Fadem by asking:

Did you find that to be a little bit strange on walking into this person's house and a lady has just opened the door and you don't have any of the facts...and Officer Gann says, "Did you shoot him?"

Id. Then, during her subsequent testimony in the presence of my jury at my trial, Officer Fadem changed her story and said that she heard one of the other officers ask me a question right after they arrived at Terry's house that morning, but she did not recall what it was. Tr.Trans.Vol. VII at 1457. Officer Fadem testified that she only heard me say, "I shot him." Id. To that, my attorney countered, "Okay, so you don't recall having heard anything the officers in front of you say [sic]....You can hear what [April] says clearly, but you can't hear the other two officers." Id. Also, Officer Fadem testified on direct-examination at the *in camera* hearing that she heard me say, "I shot him." Tr.Tans.Vol. VI at 1103. However, on cross-examination during the *in camera* hearing, Officer Fadem testified that she did **not** hear me say, "I shot him." Id. at 1129. At that point, my attorney had this to say:

I thought that's what you earlier testified about, Officer Fadem. If I'm wrong, I'll stand corrected. But I thought you previously testified on direct examination...that [April] said, when you walked in there, "I shot him...."

Id. at 1129. Officer Fadem tried to clean things up by saying I said, "I shot him" after the officers stepped in Terry's house. Id. However, Officer Fadem had just testified that the officers

had already stepped in Terry's house when she claimed she did **not** hear me say I shot Terry. Id. at 1128. Later, in my jury's presence, Officer Fadem went back to her original story and testified that she heard me say, "I shot him." Tr.Trans.Vol. VII at 1457.

Officer Fadem also testified about the conversations she had with me while we were still at Terry's house on the morning of the shooting, and some of that testimony was inconsistent and contradicted my testimony as well. Officer Fadem testified I told her that I went over to Terry's house that morning because I wanted to make peace with him. Id. at 1473. She said I told her that Terry had broken into my home numerous times and I was fearful of him. Id. at 1473-74. According to Officer Fadem, I said that I had to help myself because I wanted to be comfortable. Id. at 1474-75. Officer Fadem testified that I said I arrived at Terry's house at about 4:00 a.m. that morning and knocked on the door. Id. at 1423. Terry answered and was holding a small handgun, apparently because of the hour. Id. Terry wanted to go upstairs to the bedroom after I arrived that morning, but I did not want to get intimate with Terry so we went downstairs to the basement. Id. Officer Fadem testified I told her Terry and I injected drugs while we were in the basement, but I mixed mine weak because I "didn't want to be in an altered state." Id. Officer Fadem said I told her that I did not want to get high. Tr.Trans.Vol. VI at 1111. Officer Fadem also testified I told her that I "wanted to be drug-free." Tr.Trans.Vol. VII at 1444. According to Officer Fadem, after using drugs with Terry, I finally agreed to go upstairs with Terry although I didn't want to, and that's when he told me, "Now you're really going to see a beating." Id. at 1424, 1487. Officer Fadem testified I told her that Terry hit me and cracked my neck Id. Officer Fadem recalled observing some type of possible red mark on the side of my face. Id. at 1436. Officer Fadem testified I told her that Terry then pulled down my pants and had sex with me on the bed. Id. at 1424, 1487. To Officer Fadem, it sounded like Terry forced me to have sex with him. Id. However, Officer Fadem claimed she did not recall me "using the word

rape.” Tr.Trans.Vol. VI at 1132-33. Officer Fadem testified I told her that Terry made me douche afterwards because he didn’t want any evidence left. Tr.Trans.Vol. VII at 1424-25. At that point, according to Officer Fadem, Terry and I went back downstairs to the basement where he injected heroin and I squirted a syringe of methamphetamine onto the floor. Id. at 1425. Then, according to Officer Fadem, I went back upstairs to use the bathroom, went to the nightstand next to Terry's bed, and took the gun Terry had left there. Id. I checked to make sure the gun was loaded and then I put it into the back pocket of my vest. Id. at 1426. Officer Fadem testified I told her that when I went back down to the basement, Terry handcuffed me and started pulling me over to a couch. Id. Officer Fadem testified I told her that I thought Terry “was going to rape me again, at that point.” Id. at 1436. Officer Fadem testified I told her that Terry was coming at me with a mean look when I shot him while I was still handcuffed. Id. at 1427. Officer Fadem testified that I said I thought the first shot hit Terry in the neck because I saw blood coming from that area. Id. at 1427-28. Officer Fadem said I told her that Terry said he was paralyzed after the first shot, but I was in shock and kept shooting until the gun was empty. Id. at 1428-29, 1490. According to Officer Fadem, I said that Terry wasn't dying fast enough, so I kept shooting because it was the merciful thing to do. Id. at 1428, 1429. However, on cross-examination, Officer Fadem admitted that her official report does not indicate that's what I said. Id. at 1490-92. According to Officer Fadem's official police report, I said this about the shooting: “I couldn't move, I was in a state of shock. When I kept shooting, I felt like it was the merciful thing to do. I kept saying he wouldn't die.” Id. at 1492. When challenged about the discrepancy between her official report and her testimony at my trial, Officer Fadem maintained I told her that I kept shooting Terry because he wasn't dying fast enough. Id.

During the previous *Jackson v. Denno* hearing held outside my jury's presence, Officer Fadem testified on direct-examination that I never asked for medical care or a rape examination

while we were still at Terry's house on the morning of the shooting. Tr.Trans.Vol. VI at 1108. However, on cross-examination during that same *in camera* hearing, Officer Fadem testified that she didn't recall whether or not I had asked—while she and I were still at Terry's house that morning—to go to the hospital for a rape exam. Id. at 1133. Officer Fadem testified that I could have asked her for a rape examination while we were still at Terry's house, she just didn't recall. Id. at 1134. Later, in my jury's presence, Officer Fadem changed her story back again and testified that while she and I were still at Terry's house, I never indicated that I was injured and needed assistance in any way. Tr.Trans.Vol. VII at 1436. Nevertheless, Officer Fadem testified in front of my jury at my trial that it is police policy that “whenever anybody says they have been raped, we take them to a certain area in Hillcrest Hospital where they do rape exams.” Id. **Yet I was not taken directly to Hillcrest Hospital for a rape examination after I told Officer Fadem that Terry raped me on the morning that I killed him. Id. at 1435. Instead, Officer Fadem took me directly to the police detective division where I was interrogated on videotape. Id. See also Exhibit 15, NDOK Opinion [Dkt. #65] at 18. See also Issue I.C., *infra.***

The videotaped statement began at 11:30 a.m. and concluded at 12:15 p.m. See Videotaped Statement, State's Exhibit 69. As set forth fully in this Statement of Facts hereinabove, when that videotape was made, I had lived through two years of abuse and violence at Terry Carlton's hands. See this section, Statement of Facts, *supra*. I had just been beaten and raped. Id. I had just been fighting for my life. Id. I had just killed Terry, a devastating thing in its own right. Id. I had been awake for over 30 hours, and I was thoroughly exhausted and overwhelmed. Id. I was surrounded by a slew of antagonistic police officers. Id. Naturally, all of that was unnerving to me: straightaway, I told the police that I was “shook up” and “scared.” See Videotaped Statement, State's Exhibit 69. And while my videotaped statement is consistent with

my testimony at trial, the manner in which I spoke on the videotape was erratic and my behavior was downright bizarre. Id. Being painfully scared and insecure, I burst out in fits of anxious laughter. Id. At times I was rambling and incoherent. Id. I was a complete basket case, and that's exactly how I came across. Id. The big question of course was why I had shot Terry so many times, and I kept explaining that with the peculiar statement, "I'm a good shot." Id. I also said that I felt like I had done the merciful thing and the safe thing. Id.

I testified that when law enforcement questioned me and took my statement at the police detective division that morning, I was never informed that I was going to be videotaped and I did not know I was being videotaped. See Tr.Trans.Vol. XI at 2179. I was only told that my statement was going to be audiotaped. Id. Detective Ken Makinson, who questioned me on the videotape, testified at my trial that he did not recall telling me that I was being videotaped, although he said he assumed he told me. See Tr.Trans.Vol. VI at 1171-72. Detective Makinson acknowledged that an audiotape recorder was on the table in front of me when the videotaped statement was made. See Tr.Trans.Vol. IX at 1826-27. Officer Laura Fadem testified that after my taped statement concluded at the police detective division, she transported me to Hillcrest Hospital for a rape examination and medical care. Tr.Trans.Vol. VII at 1435.

Sexual Assault Nurse Examiners are specially trained to treat rape victims with great care and compassion so as not to "victimize the victim by the system." Tr.Trans.Vol. XIII at 2482-83. Sexual Assault Nurse Examiner Coordinator Kathy Bell testified that my 28 April 1998 rape examination began at 1:05 p.m. and lasted "between probably two and three hours." See Tr.Trans.Vol. VIII at 1679, 1695. Nurse Bell testified that she treated me that day and documented my injuries, including "an area of tear in two different places" vaginally; bruises on my hands, wrists, arms, and head; and redness on my hands and neck. Id. at 1692-93, 1703-22. Further, Nurse Bell testified that there was actual physical evidence to support my statement that

Terry Carlton had punched me in the left side of my face with his fist. Id. at 1703-04. Nurse Bell also collected my clothing, including a black shirt, vest, and pants. Id. at 1670-71. Nurse Bell testified my pants were torn on the right inner knee. Id. at 1686. She also said that there was a small tear about the size of the head of a pencil in the crotch area of my pants. Id. at 1686-87. Nurse Bell explained that Sexual Assault Nurse Examiners cannot and do not give an opinion in any case about whether or not a rape has actually occurred. Id. at 1684-85, 1721, 1723. See also Tr.Trans.Vol. XIII at 2507-08. Nurse Bell said her job is only to document the patient's history, collect evidence, and treat medically. Tr.Trans.Vol. VIII at 1684-85, 1721, 1723. The rape examination evidence was introduced as "the rape kit," State's Exhibit No. 10. Id. at 1696.

Different Tulsa police detectives testified at my trial about additional pertinent things they discovered during a search of Terry Carlton's home on the morning of the shooting. Detective Doug Nordyke identified the handgun on the table in Terry's basement as a Beretta .22-caliber. Tr.Trans.Vol. VIII at 1621. No bullet was in the handgun's chamber, and the handgun's magazine was empty as well. Id. at 1635. Detective Roy Heim noted that the handcuffs found in the basement had a residue on them that appeared to be "a dried cream...only clear." Tr.Trans.Vol. X at 1909. A hand soap container was found nearby. Id. A Radioshack Hyperscan Scanner capable of monitoring police dispatch channels was also found in the basement. Id. at 1911-12. Detective Heim also saw a pair of tennis shoes in the upstairs master bedroom "laid over on the side...apart." Id. at 1903-04. Detective Margaret Lovell testified that the tennis shoes in the master bedroom appeared to be women's tennis shoes. Tr.Trans.Vol. VIII at 1558. Pillows, clothes, and other things were also scattered over the floor in the master bedroom. Id. at 1573-74. Detective Heim did not look in any of the trash receptacles in the upstairs bathrooms. Tr.Trans.Vol. X at 1913. Detective Loveall also did not look in any

wastebaskets in the upstairs bathrooms. Tr.Trans.Vol. VIII at 1554-55. (None of the other detectives gave any testimony about the wastebaskets in the upstairs bathrooms. This is important because Terry disposed the douche that he made me use that morning in the upstairs hall bathroom wastebasket. Tr.Trans.Vol. XII at 2350.) Detective Loveall also testified that she found several hand grenades in Terry's basement. Tr.Trans.Vol. VIII at 1541. Further, Detective Loveall said that she found assault rifles and "15 to 20" shotguns upstairs in one of Terry's closets. Id. at 1551-52. Detective Ken Makinson testified that various powdered substances were in Terry's basement. Tr.Trans.Vol. IX at 1818.

Medical Examiner Dr. Ronald Distefano testified at my trial about the autopsy he performed on Terry Carlton. Dr. Distefano testified that Terry Carlton was six feet tall and weighed 188 pounds. Tr.Trans.Vol. VI at 1219. (As I mentioned earlier, I testified that I am about five-and-a-half feet tall and weighed around 105 pounds. Tr.Trans.Vol. X at 1982-83.) Dr. Distefano testified that Terry was 40 years old at the time of his death. Tr.Trans.Vol. VI at 1231. (I was 28 years old when I killed Terry. See Tr.Trans.Vol. X at 1927.) Dr. Distefano said that Terry had chronic injection sites in various stages of healing along his left arm and both legs Tr.Trans.Vol. VI at 1236, 1253-54. Dr. Distefano confirmed that Terry's "track marks" were probably due to long-term intravenous use of illicit drugs. Id. at 1237, 1253. Dr. Distefano testified that Terry's toxicology report indicated the presence of methamphetamine and heroin in his system at the time of his death. Id. at 1246, 1255. Dr. Distefano testified that Terry had been shot in the hand, neck, and head. Id. at 1228. Dr. Distefano could not determine in which order the bullets struck Terry. Id. at 1228, 1262. Dr. Distefano testified that at least one of the shots was fired within a foot-and-a-half to two feet away from Terry's face. Id. at 1247. Dr. Distefano testified that the gunshot wound to Terry's hand could have been inflicted when Terry was lunging with his hands out. Id. at 1266. That bullet entered the palm of Terry's hand. Id. at

1238. Additionally, Dr. Distefano believes another bullet may have passed through Terry's hand before entering Terry's neck or head. Id. at 1273, 1240. That finding is also consistent with my statement that Terry was coming at me when I shot him. Id. With respect to the gunshot wound in Terry's neck, the path of that bullet indicates a face-to-face confrontation and means that I was almost directly in front of Terry when I fired that shot. Id. at 1271. The trajectory of that bullet is consistent with my testimony that Terry was coming at me when I shot him. Id. at 1244-45, 1268-71. Dr. Distefano said it is possible that Terry was paralyzed by that gunshot wound. Id. at 1243-44, 1267. Other than the gunshot wounds in Terry's hand and neck, the trajectory of the rest of the bullets indicated that they were all fired from the same general area and struck Terry in the left side of his face and head. Id. at 1262, 1226.

The last defense witness my attorney presented at my trial was a psychologist, Dr. John Call, who testified that he is a Battered Woman Syndrome (“BWS”) expert. Tr.Trans.Vol. XV at 2806-08. When asked to relate his experience working directly with battered women, Dr. Call testified only that he had been “involved in the treatment of battered women and in the analysis of battered women who kill the alleged abuser.” Id. at 2806-07. Dr. Call did not indicate the degree of his involvement working directly with battered women. Id. Dr. Call said that he was involved in four Battered Woman Syndrome cases including mine, and in the the other three cases, he was working for the prosecution. Id. Dr. Call provided the jury with an explanation of Battered Woman Syndrome. Id. at 2815-17. He further testified that I exhibited the following Battered Woman Syndrome symptoms: (1) actual physical evidence of being battered; (2) evidence of physical trauma over a period of time; (3) fear and apprehension regarding the battering; (4) increasing isolation from friends, family, and work with resulting loss of support from those outside sources; (5) difficulty in following through with protective orders; (6) traumatic bonding;

(7) classic Battered Woman Syndrome pattern of complaining to friends and others but not leaving the batterer. Id. at 2819-26. However, during his direct-examination testimony at my trial, Dr. Call told my jury in no uncertain terms that he believed my fear was unreasonable and that it was unreasonable for me to use deadly force to protect myself from Terry Carlton. Specifically, Dr. Call testified:

I believe that [April Wilkens] was telling what she thought...what her perceptions were. And she...admits that she shot him. Says she feels no shame, no guilt. That she had to do it. She was needing to be safe. **I believe that's what she thought. I don't believe it's reasonable.** I don't believe that her...thinking was rational.

Tr.Trans.Vol. XV at 2836 (emphasis added). **Over and over again during his testimony at my trial, Dr. Call drummed it into my jurors heads that in his expert opinion, my thinking and actions were “stupid,” “unreasonable,” “irrational,” “illogical,” and so forth.** Id. at 2824-25, 2850-51, 2834-36. For instance, when Dr. Call explained “traumatic bonding” in battered women, he described it as “**stupid behavior,**” saying:

One of the questions in these...scenarios, both for mental health professionals as well as anybody else involved, is why doesn't the....woman just leave?...

[A]nd this is something that is seen, frankly, quite frequently in battered women's syndrome, women do not just leave because of this **traumatic bonding**....[T]here is this problem with doing the rational, reasonable thing right away, which is leaving....

I saw [in April Wilkens] the classic pattern of a battered woman who would...complain to friends, to her office manager, I'm not going to see him again, it's horrible, he's beating me up, going to doctors, and then get back together again....of, frankly, **stupid behavior.**

Tr.Trans.Vol. XV at 2824 (emphasis added). Dr. Call went on to give an example of what he deemed was my traumatic bonding behavior, and then he declared, “**I, John Call, Mr. Rational Person, obviously thinks that that's not reasonable.**” Id. at 2825 (emphasis added). Then Dr. Call reiterated, “In my opinion, it is **not reasonable.**” Id. at 2826 (emphasis added). **Dr. Call concluded his direct-examination testimony by opining:**

The defendant's descriptions of the events of the early morning of April 28, 1998, are consistent with other similar reports about the couple's battering relationship, and it's my opinion that the balance of the data supports the conclusion that the Defendant was psychotic at the time of the shooting, believed she was in danger, and believed that her use of force was justified.

Id. at 2852. See also Appellant's Exhibits at 172-173 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 13-14, citing Tr.Trans.Vol. XV at 2852]. Dr. Call based his opinion that I was "psychotic" on his opinion that I was suffering from Bipolar Disorder. Tr.Trans.Vol. Vol. XV at 2851. To formulate his opinion that I was suffering from Bipolar Disorder, Dr. Call relied on mental health records from Parkside Hospital, Eastern State Hospital, and Dr. Theresa Farrow, the psychiatrist who had treated both Terry and me. Id. at 2813. On cross-examination, with respect to my failure to pursue permanent protective orders against Terry Carlton, Dr. Call agreed with the district attorney's assertion that the cliché "you can lead a horse to water, but you can't make him drink" applied to me. Id. at 2863. Dr. Call also opined that I have a tendency to be manipulative, self-indulgent, hedonistic, narcissistic, hostile, resentful, irritable, and somewhat aloof, cold, nongiving, and uncompromising in an attempt to advance myself at the expense of others. Id. at 2870-71. Further, Dr. Call opined that I tend have a grandiose belief in my own capabilities, rationalize difficulties, deny responsibility for my actions, and have difficulties of an addictive nature. Id. at 2870-72. Dr. Call opined that I see the world as a threatening place and feel others do not understand me or give me enough sympathy. Id. at 2871. Further, Dr. Call agreed that I was "homicidal." Id. at 2927. Then, on redirect-examination, Dr. Call opined that although Terry Carlton was the "first aggressor" on the morning of the shooting, I ended up being the aggressor. Id. at 2960. On recross-examination, **Dr. Call concluded all of his testimony at my trial by opining that on the morning of the shooting, "the first aggressor was Terry Carlton"; but in the end, "[April Wilkens]**

aggressed.” Id. at 2973. Dr. Call testified that he based his opinions of me on: (1) **three** interview and testing sessions with me, (2) hospital records and police reports, (3) interviews with some people involved, and (4) reports of interviews with numerous other individuals. Id. at 2809. (My attorney did not inform me of Dr. Call's opinions of me—and of battered women, in general—and I was blindsided by Dr. Call's opinions at my trial. Tr.Trans.Vol. XII at 2189-90.)

In rebuttal, the state called Terry's psychiatrist, Dr. Theresa Farrow, who had previously treated both Terry and me, to opine I was not suffering from Battered Woman Syndrome. Tr.Trans.Vol. XV at 2995-97. Dr. Farrow based her opinion on 20 one-hour appointments with me from March through August 1997. Id. at 2993-94. Further, Dr. Farrow testified that she had evaluated approximately “200 to 300” people with Battered Woman Syndrome. Id. at 2994. On cross-examination, Dr. Farrow testified that Terry was a heavy intravenous drug user, and she said Terry was “able of being rageful [sic] at times.” Id. at 2995-97. Dr. Farrow said she believed I was a victim of domestic abuse and that Terry had physically abused me, but in her opinion, I was not suffering from Battered Woman Syndrome. Id. Instead, as Dr. John Call testified, Dr. Farrow opined that I was suffering from Bipolar Disorder and Borderline Personality Disorder.

All of the witnesses who testified at my trial about Terry Carlton abusing me were impeached one way or another by the prosecution. For just a few examples of this, see Tr.Trans.Vol. XII at 2230-32; and Tr.Trans.Vol. XIII at 2387-2389, 2562; and Tr.Trans.Vol. XIV at 2637-38, 2678, 2698, 2755-59, 2761-62; and Tr.Trans.Vol. XV at 3015-16, 3055-56, 3060. Throughout my trial, the prosecution essentially accused me of lying at my trial or to others about Terry Carlton having ever *really* beaten and raped me. Id. None of the witnesses who testified at my trial claimed to have seen me ever attack Terry Carlton. Tr.Trans.Vol. XV at 3037-38. Further, Dr. Brent Laughlin, who lived across the street from Terry Carlton the entire time that I knew Terry,

testified that he never saw me break into Terry's house or even enter using a key for that matter. Tr.Trans.Vol. XIV at 2629, 2620-21. Yet the prosecution claimed "it takes two to tango" and characterized Terry's violence as mutual combat, saying we attacked each other, and the rapes as consensual rough sex. Tr.Trans.Vol. XIV at 2759. See also Tr.Trans.Vol. XII at 2230-32; and Tr.Trans.Vol. XIV at 2755, 2761-62; and Tr.Trans.Vol. XV at 3015-16, 3055-56, 3060. Prosecutors dismissed reports that I was **nervous**, upset, and behaving strangely after contacts with Terry by asserting that my behavior was due to my drug abuse and mental health problems rather than anything Terry had done. See Trans.Vol. XII at 2230-32; and Tr.Trans.Vol. XIII at 2562; and Tr.Trans.Vol. XIV at 2678, 2698, 2756-58; and Tr.Trans.Vol. XV at 3058, 3060. The district attorney even accused me of ransacking my own home before I went to Terry's house on the morning that I killed Terry. Tr.Trans.Vol. XII at 2377; and Tr.Trans.Vol. XIII at 2418. And the district attorney asserted that I caught Terry off-guard while he was strumming a guitar and shot him without provocation as he begged for his life. Tr.Trans.Vol. XII at 2365-2369.

During her closing arguments at my trial, the assistant district attorney alleged that I went to Terry Carlton's house on the morning of the shooting because I was desperate for methamphetamine. Tr.Trans.Vol. XV at 3013. Then **the assistant district attorney declared, "[April Wilkens] had sexual intercourse with Terry Carlton that night. It wasn't rape. It was consensual....Terry Carlton did not...rape her that night."** Tr.Trans.Vol. XV at 3016. **Further, the assistant district attorney reminded my jury of Dr. John Call's opinions, saying, "The Defendant's own expert testified from this witness stand that the Defendant's actions were stupid and not reasonable."** Id. at 3020 (emphasis added).

And then the district attorney summed up the state's case against me during his closing arguments with this assertion:

[H]ad the defendant allowed the State of Oklahoma and our legal system to

come to her aid, [Terry Carlton] might have been punished, and he might still be alive.....

If April Wilkens had really been serious about her fear of Terry Carlton, she would have allowed the system to come to her aid. Now, I know you're going to think about cases you've heard, and that's part of your common sense. Take it back with you. That's the appropriate thing to do. **The State of Oklahoma believes that these were just tactics, manipulative tactics to screw with her boyfriend. She also likes to cry rape.** When in trouble, cry rape. Everybody listens.

Tr.Trans.Vol. XV at 3055-56 (emphasis added). Then district attorney summed up his characterization of my relationship with Terry like this:

He abused her, **she abused him**, I file a protective order, **I cry rape**, now I'm back, let's get high, I hate you, I love you....Man, what a dysfunctional life.

Id. at 3060. (emphasis added). Twice during his closing arguments at my trial, the district attorney described me as being "all cranked up" on drugs when I killed Terry Carlton. Id. at 3058, 3063. **(My urinalysis from the morning of the shooting was reportedly negative for all drugs. The negative urinalysis is consistent with my statement to police that although Terry insisted I use drugs with him that morning, I managed to use only a very small amount because I didn't want to be in an altered state. See Tr.Trans.Vol. VII at 1423, 1425. However, my attorney failed to introduce the urinalysis results into evidence at my trial. See Issue I.A.4, *infra*. See also Appellant's Exhibits at 186-87 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 27-28].)** Further, the district attorney discredited Dr. John Call's Battered Woman Syndrome defense testimony by saying:

Dr. Call....How many cases of battered woman syndrome have you done? Four. Four? I just about dropped my pen. Four? Wow. You're going to formulate all these opinions based on four prior cases.

Tr.Trans.Vol. XV at 3064.

My attorney did not request a manslaughter instruction and my jury was not given the option of returning one. See Appellant's Exhibits at 167-69 [Aplt. Exhibit 20, NDOK

Opinion, NDOK Dkt. #65 at 8-10]. At the close of the three-week trial, I was convicted of first-degree murder on 24 April 1999. See Appellant's Exhibits at 162 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 3].

During the state's pre-sentence investigation conducted prior to my sentencing, Domestic Violence Intervention Services ("DVIS") counselor Lynda Driskell, who was my DVIS counselor, submitted a written assessment statement on my behalf. See Appellant's Exhibits at 13-15 [Aplt. Exhibit 6, Pre-sentence Investigation Report Assessment of April Wilkens by Domestic Violence Intervention Services Counselor Lynda Driskell at 1-3]. Ms. Driskell wrote:

As April Rose Wilkens' counselor, I...hope that my assessment of April will assist in your effort to understand April's situation and the abuse related events that led to **what I believe was April's act of self-defense on April 28, 1998....**

I first became familiar with April's case last July when an attorney from the National Clearing House for the Defense of Battered Women in Philadelphia contacted Domestic Violence Intervention Services [{"DVIS"}] Executive Director, Felicia Collins. Felicia was asked to assist April Wilkens by arranging for the provision of advocacy and counseling services while April awaited trial. At that time, April was incarcerated at ADC [the Adult Detention Center] where she has remained since her arrest in April 1998. Felicia contacted me at my office where I am employed full time as a licensed professional counselor for DVIS....In addition to my work at DVIS I have developed and implemented two graduate courses in Domestic Violence and Sexual Abuse for the University of Oklahoma where I have been employed as an adjunct assistant professor since June, '97. Felicia believed that my knowledge and experience in the field of domestic violence treatment and assessment would naturally prepare me for my role as April's counselor. Before meeting with April, I spoke with her mother, Louise Fitchue, and her public defender, Damon Cantrell, but nothing could have prepared me for the last thirteen months, the dozens of sessions with April which culminated in 35 to 40 hours of face to face contact at ADC [the Adult Detention Center], the three weeks of trial and April's conviction.

My first impression of April was that she told a true and horrific story that paralleled the hundreds of similar stories of domestic violence told to me by female victims and survivors with one exception, that April found her life to be threatened to the extent that she believed if she did not defend herself she would be raped and murdered by Terry Carlton. **I validate [April Wilkens's] belief that she acted out of a pervasive fear that Terry would, in deed, follow through with this [sic] threats to kill her. During my sessions with April she related symptoms of post-traumatic stress disorder including sleep disturbances, depression compounded by hopelessness, hyper vigilance, elevated levels of anxiety and horrendous grief as a result of taking the life of**

a man whom she loved. These symptoms are characteristic of the long term impact of violence on victims of abuse....

April described a whirlwind courtship and seduction by Terry soon after she met him. The relationship gradually changed and April related numerous accounts of emotional abuse, isolation and threats to harm which escalated to physical battering, sexual coercion, sexual assault and drug use. April realized that she might not survive Terry's brutal attacks and her repeated attempts to distance herself from Terry were met by his refusal to let her go. His refusal to accept manifested in his stalking behaviors, harassment, and destruction of her property. April reported Terry's obsession with firearms and his threats to kill her which he used to control, intimidate and instill fear in his victim and it worked. The history of abusive incidents was documented repeatedly by Tulsa Police Officers who responded to numerous 911 calls made by April and medical reports by two SANE [Sexual Assault Nurse Examiner] nurses who examined her after two reported rapes, and by friends and neighbors who witnessed Terry' abuse of April. April described feeling trapped with no hope of escape. She became convinced that she had nowhere to hide where he could not find her. It also became very clear to April that the safety, support and external validation she desperately needed in order to survive was not available to her unless she agreed to follow through with protective orders and to cooperate with prosecutors even though she was being threatened with abuse and murder by Terry Carlton if she turned against him. Thus, April was blamed for failing to utilize all options available to her, options she believed were unsafe and unreasonable.

On April 28, 1999 [sic], she decided to act in what she believed to be her and Terry's best interest by pleading with him to get help. So many women have put their fear aside and placed themselves in danger by returning to the abusers with the mistaken belief that they have the power to help them. April, too, was mistaken but she believed that she had no other choice but to appeal to the reasonable, rational side of Terry she had known in the earlier stages of their relationship. But as we know, April was brutally assaulted physically and sexually on the morning of the shooting and has photographs and medical reports to support the claim that she was beaten, raped, and handcuffed. So, I strongly believe that April's efforts to "calm him down" have been grossly misinterpreted by those who want us to believe that April premeditated a murder.

I have come to know April Wilkens as a sensitive, intelligent, compassionate young woman who loves her son Hunter and who shares a close relationship with her parents and extended family members. I am also saddened that Terry's family in suffering from grief and loss and that April lives with this tragedy and all of the misery that accompanies remorse and sorrow every single day. As a therapist, I maintain professional boundaries with my clients and keep an emotional distance in order to provide a safe environment for them to disclose their thoughts and feelings, and I must also admit that this case and April's conviction has made a lasting impact on me as a professional counselor and as a human being. I am glad to have known April Wilkens and her family and I am inspired by the impression that her courage has made on victims of domestic violence and spousal rape who know of her case and its outcome....

Appellant's Exhibits at 13-15 [Aplt. Exhibit 6, Pre-sentence Investigation Report Assessment of April Wilkens by Domestic Violence Intervention Services Counselor Lynda Driskell at 1-3]. Ms. Driskell wrote that she counseled me through "dozens of sessions...which culminated in 35 to 40 hours of face to face contact" with me. Id. (In contrast, Dr. John Call testified that he only interviewed me three times. Tr.Trans.Vol. XV at 2809.) Ms. Driskell does not opine that I was suffering from any other mental illnesses or disorders besides Post Traumatic Stress Disorder. See Appellant's Exhibits at 13-15 [Aplt. Exhibit 6, Pre-sentence Investigation Report Assessment of April Wilkens by Domestic Violence Intervention Services Counselor Lynda Driskell at 1-3]. Clinically, Battered Woman Syndrome is a sub-category of Post Traumatic Stress Disorder. Tr.Trans.Vol XV at 2815-2816. My attorney did not call Ms. Driskell to testify on my behalf at my trial, and therefore Ms. Driskell did not testify at my trial.

On 7 July 1999, I was sentenced to life in prison. **See Appellant's Exhibits at 162 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 3].** Subsequently, the Oklahoma Court of Criminal Appeals ("OCCA") denied my direct appeal in April 2001, the District Court of Tulsa County denied my application for post-conviction relief in August 2003, and the Oklahoma Court of Criminal Appeals denied my post-conviction appeal in August 2004. **See Appellant's Exhibits at 163-64 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 4-5].**

Terry Carlton's father, Don Carlton, is a well-known financial campaign supporter, fundraiser, and personal friend of Tulsa District Attorney Tim Harris. See Appellant's Exhibits at 153-55 [Aplt. Exhibit 18, *Tulsa World* newspaper article evidencing Don Carlton and Tulsa District Attorney Tim Harris's relationship, NDOK Dkt. #57 Exhibit A at 1-3]. Tulsa District Attorney Tim Harris personally prosecuted me at my murder trial in April 1999 and argued against my application for post-conviction relief in March 2003. Id. See also Tr.Trans.Vol. I at 2; and Appellant's Exhibits at 56, 63 [Aplt. Exhibit 12, Response to Application for Post-

conviction Relief filed in District Court of Tulsa County, NDOK Dkt. #39 Attachments at 1, 8]. I did not discover evidence of District Attorney Harris's personal and financial relationships with Terry Carlton's father until 2006. See Appellant's Exhibits at 153-55 [Aplt. Exhibit 18, *Tulsa World* newspaper article evidencing Don Carlton and Tulsa District Attorney Tim Harris's relationship, NDOK Dkt. #57 Exhibit A at 1-3]. There is some question as to whether or not District Attorney Harris and Don Carlton were already friends by the time District Attorney Harris prosecuted me at my April 1999 trial, but there is no doubt whatsoever that they were friends when District Attorney Harris argued against my application for post-conviction relief in 2003. Id. It is my contention that District Attorney Harris should have divulged his relationship with Terry Carlton's father, Don Carlton, and at the very least recused from handling my post-conviction application in 2003. See NDOK Dkt. #57 at 1-2. When the District Court of Tulsa County denied my application for post-conviction relief in 2003, that court adopted District Attorney Harris's argument against me almost verbatim. See Appellant's Exhibits at 147 [Aplt. Exhibit 13, District Court of Tulsa County Order Denying Amended Application for Post-conviction Relief, NDOK Dkt. #39 Attachments]. And here's something else: while my application for post-conviction relief was pending in the District Court of Tulsa County, District Attorney Tim Harris was caught up in a very public scandal in which another moneyed and influential Tulsan, Larry Wheeler, accused him of asking for money to pay for prosecuting a suspect in his father's murder. At that time, the *Tulsa World* newspaper quoted Larry Wheeler saying, "You can't give somebody money to prosecute. Everybody should be afforded equal protection under the law....[The Tulsa District Attorney's office] wanted money. We didn't pay, and the result is obvious." Appellant's Exhibits at 156, 159 [Aplt. Exhibit 19, NDOK Dkt. #57 Exhibit B at 1, 4]. (The suspect whom District Attorney Harris refused to prosecute, notorious former FBI Agent Paul Rico, was later indicted by a Tulsa grand jury for the murder of Larry

Wheeler's father, Roger Wheeler. Paul Rico died while awaiting trial in Tulsa on the murder charge. See NDOK Dkt. #57 at 3.) Given all of the above, I believe that the federal courts should disregard the District Court of Tulsa County's decisions in my case. See NDOK Dkt. #57.

Additionally, Terry Carlton's father, Don Carlton, is a long-time personal friend of Oklahoma Court of Criminal Appeals Judge Charles Johnson. See NDOK Dkt. #39 at 38; and NDOK Dkt. #57 at 2; and NDOK Dkt. #60 at 2. I first met Judge Charles Johnson in May 1996, when he officiated at Don Carlton's wedding to his third wife, Shirley. See Appellant's Exhibits at 22 [Aplt. Exhibit 10, Marriage Certificate of Don and Shirley Carlton showing Oklahoma Court of Criminal Appeals Judge Charles Johnson officiating]. Terry Carlton was the best man at that wedding. At the time that Judge Johnson presided over Don and Shirley Carlton's nuptials back in 1996, Judge Johnson was an active judge on the Oklahoma Court of Criminal Appeals. Id. (Shirley Carlton testified against me at my trial. See Tr.Trans.Vol. XV at 2975-77.) In 2001, Judge Johnson recused from my direct appeal in the Oklahoma Court of Criminal Appeals. See Appellant's Exhibits at 21 [Aplt. Exhibit 9, Oklahoma Court of Criminal Appeals' Summary Opinion in *Wilkins v. State*, NDOK Dkt. #47 Exhibit A at 4]. However, in 2004, Judge Johnson failed to recuse from my post-conviction appeal in the Oklahoma Court of Criminal Appeals. Instead of recusing, Judge Johnson voted to deny my post-conviction appeal. See Appellant's Exhibits at 152 [Aplt. Exhibit 17, Oklahoma Court of Criminal Appeals' Order Affirming Denial of Post-conviction Relief, Exhibit 17, NDOK Dkt. #47 Exhibit E at 6]. I maintain that Judge Johnson should have recused from my post-conviction appeal and that his vote to deny it should be disregarded. See NDOK Dkt. #39 at 38; and NDOK Dkt. #57 at 2; and NDOK Dkt. #60 at 2. In the amended brief that I filed in support of my habeas petition in the U.S. District Court, I mentioned Judge Johnson's friendship with Terry Carlton's father, Don Carlton, and I questioned

Judge Johnson's participation in my post-conviction appeal. See Amended Brief in Support of Petition for Writ of Habeas Corpus, NDOK Dkt. #39 at 38. In the state's response to my amended habeas petition, the state did not dispute the fact that Judge Johnson and Don Carlton are close friends, nor did the state object to my argument that Judge Johnson should not have participated in my post-conviction appeal. See Response to Petition for Writ of Habeas Corpus, NDOK Dkt. #45.

What's more, former Oklahoma Court of Criminal Appeals Judge Stephen Lile also voted to deny my post-conviction appeal in August 2004. See Appellant's Exhibits at 152 [Aplt. Exhibit 17, Oklahoma Court of Criminal Appeals' Order Affirming Denial of Post-conviction Relief, Exhibit 17, NDOK Dkt. #47 Exhibit E at 6]. Seven months later, Judge Lile resigned amid an ongoing investigation into allegations that he misappropriated court funds and used his influence to intervene in his assistant's son's criminal case. See Appellant's Exhibits at 193 [Aplt. Exhibit 23, Newspaper article reporting on Judge Lile's resignation, NDOK Dkt. #60 Exhibits]. The Oklahoma Attorney General's investigation of Judge Lile ended when he resigned from the Oklahoma Court of Criminal Appeals on 1 March 2005. Id. When Judge Lile resigned, the governor of Oklahoma, Brad Henry, had this to say:

Given the serious and troubling nature of the circumstances surrounding his office, Judge Lile without question made the right decision in stepping down from the bench. Our judiciary must be held to the highest of ethical standards. I do not believe the conduct detailed in the state audit report and other accounts was consistent with that standard.

Appellant's Exhibits at 193 [Aplt. Exhibit 23, Newspaper article reporting on Judge Lile's resignation, NDOK Dkt. #60 Exhibits]. I maintain that Judge Lile should not have participated in my post-conviction appeal and that his vote to deny it should be disregarded as well. See NDOK Dkt. #60.

There are only five judges on the Oklahoma Court of Criminal Appeals, and pursuant to Okla.

Stat. Ann. Tit. 20 § 31, it takes three judges to make a quorum. Judge Charles Chapel did not participate in my post-conviction appeal. See Appellant's Exhibits at 152 [Aplt. Exhibit 17, Oklahoma Court of Criminal Appeals' Order Affirming Denial of Post-conviction Relief, Exhibit 17, NDOK Dkt. #47 Exhibit E at 6]. I maintain that Judges Charles Johnson and Stephen Lile should not have participated in it, either. See NDOK Dkt. #60. The remaining two Oklahoma Court of Criminal Appeals judges who participated in my post-conviction appeal do not represent a quorum. Id. at 2. Therefore, I believe that the Oklahoma Court of Criminal Appeals' decision in my post-conviction appeal should not carry any weight whatsoever in the federal courts' review of my case. Id.

I presented all of the foregoing facts and arguments asking for plenary review of my habeas petition to the U.S. District Court in two different motions to supplement. See Petitioner's Motion to Supplement, NDOK Dkt. #57; and Petitioner's Motion to Supplement Regarding Ruling by OCCA, NDOK Dkt. #60. The state did not file any objections to those particular motions to supplement. See NDOK Appearance Docket at 6. The U.S. District Court allowed me to file both of those supplements. See NDOK Order Granting Petitioner's Motion to Supplement, NDOK Dkt. #58; and Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2, referring to NDOK Dkt. #60]. However, the U.S. District Court only considered one of those supplements, the one regarding the Oklahoma Court of Criminal Appeals, in deciding the outcome of my habeas petition. See Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2, referring to NDOK Dkt. #60]. The U.S. District Court did not review my habeas petition *de novo*. See Appellant's Exhibits at 166-67 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 7-8]. **On 5 November 2007, the U.S. District Court denied my petition for a writ of habeas corpus. See Appellant's Exhibits at 190 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 31].**

I am now appealing to the U.S. Court of Appeals for the Tenth Circuit, and I am asking this Court to review my appeal *de novo*. See Argument and Authorities Standard of Review, *infra*.

SUMMARY OF THE ARGUMENT

My case is a Battered Woman Syndrome (“BWS”) case. On 28 April 1998, I shot and killed my ex-fiancé, Terry Carlton. Terry had already raped me once that morning. He also told me that he was going to kill me. Terry had handcuffed me and was trying to anally sodomize me when I shot him eight times with his own gun. **Although the U.S. District Court denied my habeas petition, that court recognized that “there was substantial evidence at [my] trial that Terry Carlton had physically abused and terrorized [me] on more than one occasion.”** Appellant's Exhibits at 183 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 24]. **Further, the U.S. District Court opined that my “jury was presented with ample evidence of battering by Mr. Carlton and police testimony regarding domestic abuse calls....”** See Appellant's Exhibits at 185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26]. Yet my jury rejected my Battered Woman Syndrome defense, convicted me of first-degree murder, and sentenced me to life in prison. See Appellant's Exhibits at 173, 162 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 14, 3]. I have been incarcerated for nearly ten years for killing the man who repeatedly beat me and raped me. Prison is a very abusive and violent place. If my conviction stands, I have at least several more years if not a lifetime of this to go. Given the substantial evidence on record in my case that Terry Carlton repeatedly abused and terrorized me, I hope this Court finds that my trial was not just or fair. So what went wrong?

First, my attorney failed to adequately investigate my defense and present exculpatory evidence including an audiotape recording of Terry Carlton admitting that he beat me and raped me. This is important evidence because the prosecution essentially accused me of lying about

Terry Carlton having ever *really* beaten and raped me. Prosecutors characterized Terry's violence as mutual combat, saying we attacked each other, and the rapes as consensual rough sex. The audiotape was saved by U.S. District Judge Claire Eagan, who represented me in a protective order application against Terry Carlton prior to assuming her responsibilities on the federal bench. My attorney also failed to present a warrant for Terry Carlton's arrest and the fact that different police officers on separate occasions failed to enforce the warrant when they encountered us and I was pleading for protection from Terry just weeks before I killed him. The warrant was issued when Terry failed to appear in court after he was arrested outside of my home at about three o'clock in the morning with a loaded, chambered pistol and a stun gun. And my attorney failed to present the results of my urinalysis taken after the shooting. The results were reportedly negative for all drugs. That is important evidence because the state insinuated that I killed Terry because of drug abuse, not domestic abuse.

Additionally, my attorney failed to present testimony from a qualified Battered Woman Syndrome specialist adequately explaining why my belief that I had to use deadly force to protect myself from Terry Carlton could be considered reasonable based on my circumstances and as viewed from my perspective. In Oklahoma, the Battered Woman Syndrome defense is self-defense. The key to the Battered Woman Syndrome defense of self-defense is the reasonableness of the defendant's fear at the time of the killing. Expert Battered Woman Syndrome testimony explaining the reasonableness of the defendant's fear is necessary to prove her Battered Woman Syndrome defense of self-defense. Therefore, it is not enough for counsel to put on a Battered Woman Syndrome expert to opine that the defendant's fear was genuine: counsel must put on a Battered Woman Syndrome expert to opine—and explain why—the defendant's fear and actions could be considered reasonable. That did not happen at my trial. Instead, my attorney presented a psychologist, Dr. John Call, who testified about Battered

Woman Syndrome and opined that my fear was genuine, but ultimately made a case for manslaughter when he told my jury in no uncertain terms that he believed my thinking was unreasonable and that it was unreasonable for me to use deadly force to protect myself from Terry Carlton. Over and over again during his testimony at my trial, Dr. Call drummed it into my jurors heads that in his expert opinion, my thinking and actions were “stupid,” “unreasonable,” “irrational,” “illogical,” and so forth. Essentially, Dr. Call testified that in his opinion, I shot Terry Carlton because I was “psychotic.” Finally, Dr. Call wrapped up his testimony by opining that on the morning of the shooting, “the first aggressor was Terry Carlton”; but in the end, “[April Wilkens] aggressed.” And with all of that, my Battered Woman Syndrome defense of self-defense was utterly sabotaged.

Finally, after putting on a psychologist who made a case solely for manslaughter, my attorney failed to request a manslaughter jury instruction and my jury was not given the option of returning one. I maintain that was objectively unreasonable because the evidence warranted a manslaughter instruction pursuant to Oklahoma law.

For the foregoing reasons among others, I am asking this Court to overturn my first-degree murder conviction and life-sentence.

ARGUMENT AND AUTHORITIES

Standard of Review

Because my habeas petition was filed after 24 April 1996, the provisions of the Antiterrorism and Effective Death Penalty Act (“AEDPA”) would ordinarily govern my appeal. See *Battenfield v. Gibson*, 236 F.3d 1215, 1220 (10th Cir. 2001). Under AEDPA, this Court would typically review my appeal under the objectively unreasonable standard to determine if the lower courts' decisions were factually and legally objectively unreasonable. See Appellant's Exhibits at

166 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 7, quoting 28 U.S.C. § 2254 (d)]. Furthermore, the lower courts' decisions would ordinarily be presumed to be correct. See Appellant's Exhibits at 167 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 8, quoting 28 U.S.C. § 2254 (d) (1)]. However, I argue that this Courts' review of my appeal should be *de novo* for a number of extraordinary reasons. See NDOK Dkt. ##57, 60.

I am appealing my first-degree murder conviction in the death of Terry Carlton. Terry Carlton's father, Don Carlton, is a well-known financial campaign supporter, fund-raiser, and personal friend of Tulsa District Attorney Tim Harris. See Appellant's Exhibits at 153-55 [Aplt. Exhibit 18, *Tulsa World* newspaper article evidencing Don Carlton and Tulsa District Attorney Tim Harris's relationship, NDOK Dkt. #57 Exhibit A at 1-3]. Tulsa District Attorney Tim Harris personally prosecuted me at my murder trial in April 1999 and argued against my application for post-conviction relief in March 2003. Id. See also Tr.Trans.Vol. I at 2; and Appellant's Exhibits at 56, 63 [Aplt. Exhibit 12, Response to Application for Post-conviction Relief filed in District Court of Tulsa County, NDOK Dkt. #39 Attachments at 1, 8]. I did not discover evidence of District Attorney Harris's personal and financial relationships with Terry Carlton's father until 2006. See Appellant's Exhibits at 153-55 [Aplt. Exhibit 18, *Tulsa World* newspaper article evidencing Don Carlton and Tulsa District Attorney Tim Harris's relationship, NDOK Dkt. #57 Exhibit A at 1-3]. There is some question as to whether or not District Attorney Harris and Don Carlton were already friends by the time District Attorney Harris prosecuted me at my April 1999 trial, but there is no doubt whatsoever that they were friends when District Attorney Harris argued against my application for post-conviction relief in 2003. Id. It is my contention that District Attorney Harris should have divulged his relationship with Terry Carlton's father, Don Carlton, and at the very least recused from handling my post-conviction application in 2003. See NDOK Dkt. #57 at 1-2. When the District Court of Tulsa County denied my application for

post-conviction relief in 2003, that court adopted District Attorney Harris's argument against me almost verbatim. See Appellant's Exhibits at 147 [Aplt. Exhibit 13, District Court of Tulsa County Order Denying Amended Application for Post-conviction Relief, NDOK Dkt. #39 Attachments]. And here's something else: while my application for post-conviction relief was pending in the District Court of Tulsa County, District Attorney Tim Harris was caught up in a very public scandal in which another moneyed and influential Tulsan, Larry Wheeler, accused him of asking for money to pay for prosecuting a suspect in his father's murder. At that time, the *Tulsa World* newspaper quoted Larry Wheeler saying, "You can't give somebody money to prosecute. Everybody should be afforded equal protection under the law....[The Tulsa District Attorney's office] wanted money. We didn't pay, and the result is obvious." Appellant's Exhibits at 156, 159 [Aplt. Exhibit 19, NDOK Dkt. #57 Exhibit B at 1, 4]. (The suspect whom District Attorney Harris refused to prosecute, notorious former FBI Agent Paul Rico, was later indicted by a Tulsa grand jury for the murder of Larry Wheeler's father, Roger Wheeler. Paul Rico died while awaiting trial in Tulsa on the murder charge. See NDOK Dkt. #57 at 3.) Given all of the above, I believe that the federal courts should disregard the District Court of Tulsa County's decisions in my case. See NDOK Dkt. #57.

Additionally, Terry Carlton's father, Don Carlton, is a long-time personal friend of Oklahoma Court of Criminal Appeals Judge Charles Johnson. See NDOK Dkt. #39 at 38; and NDOK Dkt. #57 at 2; and NDOK Dkt. #60 at 2. I first met Judge Charles Johnson in May 1996, when he officiated at Don Carlton's wedding to his third wife, Shirley. See Appellant's Exhibits at 22 [Aplt. Exhibit 10, Marriage Certificate of Don and Shirley Carlton showing Oklahoma Court of Criminal Appeals Judge Charles Johnson officiating]. Terry Carlton was the best man at that wedding. At the time that Judge Johnson presided over Don and Shirley Carlton's nuptials back in 1996, Judge Johnson was an active judge on the Oklahoma Court of Criminal Appeals. Id.

(Shirley Carlton testified against me at my trial. See Tr.Trans.Vol. XV at 2975-77.) In 2001, Judge Johnson recused from my direct appeal in the Oklahoma Court of Criminal Appeals. See Appellant's Exhibits at 21 [Aplt. Exhibit 9, Oklahoma Court of Criminal Appeals' Summary Opinion in *Wilkins v. State*, NDOK Dkt. #47 Exhibit A at 4]. However, in 2004, Judge Johnson failed to recuse from my post-conviction appeal in the Oklahoma Court of Criminal Appeals. Instead of recusing, Judge Johnson voted to deny my post-conviction appeal. See Appellant's Exhibits at 152 [Aplt. Exhibit 17, Oklahoma Court of Criminal Appeals' Order Affirming Denial of Post-conviction Relief, Exhibit 17, NDOK Dkt. #47 Exhibit E at 6]. I maintain that Judge Johnson should have recused from my post-conviction appeal and that his vote to deny it should be disregarded. In the amended brief that I filed in support of my habeas petition in the U.S. District Court, I mentioned Judge Johnson's friendship with Terry Carlton's father, Don Carlton, and I questioned Judge Johnson's participation in my post-conviction appeal. See Amended Brief in Support of Petition for Writ of Habeas Corpus, NDOK Dkt. #39 at 38. In the state's response to my amended habeas petition, the state did not dispute the fact that Judge Johnson and Don Carlton are close friends, nor did the state object to my argument that Judge Johnson should not have participated in my post-conviction appeal. See Response to Petition for Writ of Habeas Corpus, NDOK Dkt. #45.

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Appearance Docket at 6. The U.S. District Court allowed me to file both of those supplements. See NDOK Order Granting Petitioner's Motion to Supplement, NDOK Dkt. #58; and Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2, referring to NDOK Dkt. #60]. However, the U.S. District Court only considered one of those supplements, the one regarding the Oklahoma Court of Criminal Appeals, in deciding the outcome of my habeas petition. See Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 2, referring to NDOK Dkt. #60]. The U.S. District Court did not review my habeas petition *de novo*. See Appellant's Exhibits at 166-67 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 7-8].

The Fourteenth Amendment to the United States Constitution establishes a criminal defendant's right to due process before a fair and impartial tribunal. All of the foregoing supports my assertion that I did not receive due process and fair consideration in the lower courts. At minimum, the foregoing establishes an unacceptable appearance of bias in favor of the state in my case. Therefore, I hope this Court will disregard the lower courts' decisions in my case, including the Oklahoma Court of Criminal Appeals' decision to procedurally bar Issues I.A.1-4 and the U.S. District Court's decision to adopt that procedural bar. I hope this Court will review this appeal *de novo*.

I.

APPELLANT'S COUNSEL WAS INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Of all the rights that a person who is accused of a crime has, the right to be effectively represented by counsel is by far the most pervasive because it affects a defendant's ability to assert any other rights she may have. See *Fisher v. Gibson*, 282 F.3d 1283 (10th Cir. 2002). I argue that I did not receive effective assistance of counsel at my trial because my trial counsel