

failed to: (a) adequately investigate my defense and present exculpatory evidence, and (b) request a manslaughter jury instruction.

I.A.

**APPELLANT'S COUNSEL FAILED TO ADEQUATELY INVESTIGATE
APPELLANT'S DEFENSE AND PRESENT EXCULPATORY EVIDENCE**

It is well established that trial counsel has a duty to properly investigate defenses and present exculpatory evidence on behalf of his client. See Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Issues I.A.1-5, *infra*, all regard important exculpatory evidence that my trial counsel failed to discover and/or present at trial and my appellate attorney failed to present on direct appeal. The Oklahoma Court of Criminal Appeals (“OCCA”) procedurally barred these issues—except for one—because I raised them for the first time in my state post-conviction proceedings and they could have been raised on direct appeal. See Appellant's Exhibits at 178-88 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 19-29]. The Oklahoma Court of Criminal Appeals did not procedurally bar Issue I.A.5., my Battered Woman Syndrome expert testimony issue, although I raised it for the first time in my state post-conviction proceedings and it could have been raised on direct appeal as well. See Appellant's Exhibits at 169-70 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 10-11]. First of all, I believe the Oklahoma Court of Criminal Appeals' selective application of its procedural bar to Issues I.A.1-4 and not to Issue I.A.5. should negate the procedural bar altogether in my case because that court applied the procedural bar inconsistently. Secondly, I have consistently argued in state and federal proceedings that my appellate attorney was ineffective for failing to raise these issues on direct appeal. See Appellant's Exhibits at 181-82 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 22-23]. When I wrote to my appellate attorney about the evidence my trial attorney failed to present at my trial, my appellate attorney sent me a letter telling me

that factual issues not presented at trial usually cannot be presented on direct appeal. See Appellant's Exhibits at 17 [Aplt. Exhibit 8, Letter from Attorney Bill Zuhdi, NDOK Dkt. #62 Exhibit A]. In Oklahoma, that is not true. Pursuant to Rule 3.11 (b), *Rules of Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (1995), evidence not presented at trial can be presented on direct appeal in Oklahoma.

As outlined in Issues I.A.1-5 hereinbelow, my trial attorney's failure to adequately investigate my defense and present exculpatory evidence rendered my trial unfair. Therefore, my appellate attorney's failure to raise these issues on direct appeal rendered my direct appeal unfair. Consequently, my appellate counsel's performance was objectively unreasonable and I have demonstrated cause and prejudice sufficient to overcome the Oklahoma Court of Criminal Appeals' procedural bar on Issues I.A.1-4. Hence, it was objectively unreasonable for the U.S. District Court to apply the bar to those issues and deny my habeas petition.

The above legal argument is quite a mouthful for me. I hope I got it somewhere close to right and that you know what I'm trying to say. As with the rest of my brief, I ask that you please construe my arguments liberally. I am an incarcerated *pro se* litigant not schooled in the law, and I am learning as I go. I am handling my case entirely by myself without any legal help from anyone. I have a good handle on the facts of my case, but at times I find the law to be complex and challenging to navigate. I am confident my claims have merit, and I would hate to lose this appeal because of any procedural errors that I have made.

I.A.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.

My trial counsel was ineffective for failing to contact my 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 me. Further, my appellate attorney was ineffective for failing to raise this claim on direct appeal.

My case is a Battered Woman Syndrome (“BWS”) case. My Battered Woman Syndrome defense of self-defense is premised on the fact that when I shot Terry Carlton, I had a reasonable belief that he was threatening me with death or serious bodily harm thereby justifying the killing. My counsel was aware of a long history of beatings and rapes visited upon me by Terry Carlton. Further, counsel was aware that I sought protective orders against Terry Carlton on three occasions and that the first time, I was represented by the Honorable Claire Eagan before she assumed her responsibilities on the federal bench in Tulsa. In her affidavit on record in this action, Judge Eagan relates that she was never contacted by my counsel. See Appellant's Exhibits at 2 [Aplt. Exhibit 1, Affidavit of Claire Eagan, NDOK Dkt. #2 Exhibit 1 at 2]. At the time, Judge Eagan was serving as a U.S. Magistrate on the federal bench in Tulsa, so there is no reasonable excuse for my attorney's failure to contact her. Had my counsel ever contacted Judge Eagan, he would have discovered that her former law partner, Mike Cooke, also had firsthand information concerning my relationship with Terry Carlton as well as an audiotape recording of discussions between Terry and me wherein Terry admits that he beat me and raped me. Id. at 2. See also Appellant's Exhibits at 3 [Aplt. Exhibit 2, Affidavit of Michael Cooke, NDOK Dkt. #2 Exhibit 3 at 1]; and Appellant's Exhibits at 5-7 [Aplt. Exhibit 3, Abridged Audiotape Transcript, Abridged NDOK Dkt. #2 Exhibit 4 at 1-3]; and Appellant's Exhibits at 182-185 [Aplt. Exhibit 20, NDOK Opinion , NDOK Dkt. #65 at 23-26]; and Audiotape Recording [NDOK Dkt. #53 Exhibit 1].

My counsel's failure to discover and present this evidence rendered my trial unfair. At my trial, I testified about 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]. One of the instances I testified about was a trip to Rome, Italy, with Terry Carlton and a group of other people including his family. My testimony was that Terry had attacked me in our hotel room in Rome because I woke him up when I was trying to call my son. See Tr.Trans.Vol. X at at 1964, 1969. This evidence was of such importance that 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. See 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. See Tr.Trans.Vol. XIII at 2409. The audiotape of conversations between Terry Carlton and me includes a discussion about our trip to Rome wherein Terry admits he attacked me in Rome because I woke him up when I was trying to call my son. Specifically, Terry admits he tried to throw me outside of the hotel room while I was naked and then choked me because I started resisting. See Appellant's Exhibits at 5-6 [Aplt. Exhibit 3, Abridged Audiotape Transcript, Abridged NDOK Dkt. #2 Exhibit 4 at 1-2]; and Audiotape Recording [NDOK Dkt. #53 Exhibit 1]. This evidence proves that I told the truth when I testified that Terry assaulted me—and when I explained why he assaulted me—in Rome.

Further, Judge Eagan would have testified about my battered condition when she met me after I returned home from Rome, about how I told her Terry became more violent when I tried to leave him, and about how I told her that he violated the temporary protective order that I had against him and I was afraid to appear for a permanent protective order. See Appellant's Exhibits

at 1 [Aplt. Exhibit 1, Affidavit of Claire Eagan, NDOK Dkt. #2 Exhibit 1 at 1]. Judge Eagan's testimony would have been all the more credible and powerful because she is a federal judge and was at the time of my trial.

The U.S. District Court opined that Judge Eagan's and Mike Cooke's affidavits, along with the audiotape, were merely cumulative evidence of abuse because several other witnesses corroborated my testimony that Terry abused and raped me. See Appellant's Exhibits at 183-185 [Aplt. Exhibit 20, NDOK Opinion , NDOK Dkt. #65 at 24-26]. I disagree with the U.S. District Court's line of reasoning. Notice that when outlining the history of my relationship with Terry Carlton, even the U.S. District Court wrote, “**According to Petitioner**....instances of physical abuse occurred...including attacks by Mr. Carlton on Petitioner while they were on vacations to Europe.” Appellant's Exhibits at 161 [Aplt. Exhibit 20, NDOK Opinion , NDOK Dkt. #65 at 2]. That leaves you wondering whether or not I really told the truth. On the audiotape, Terry specifically admits he attacked me while we were on vacation in Rome, and that proves I told the truth. See Appellant's Exhibits at 5-6 [Aplt. Exhibit 3, Abridged Audiotape Transcript, Abridged NDOK Dkt. #2 Exhibit 4 at 1-2]; and Audiotape Recording [NDOK Dkt. #53 Exhibit 1]. The state alleged I lied about Terry attacking me in Rome, and when you know that I really did tell the truth about that incident, you are more inclined to believe me about other matters as well. This goes to my overall credibility, which is critical to establishing my Battered Woman Syndrome defense of self-defense.

In rationalizing that the audiotape was cumulative evidence of abuse, the U.S. District Court wrote that “[a]lthough the audiotape reveals that both Petitioner and Mr. Carlton acknowledged a troubled relationship existed between them, there were many other witnesses who testified that the relationship was abusive and contentious.” Appellant's Exhibits at 185 [Aplt. Exhibit 20, NDOK Opinion , NDOK Dkt. #65 at 26]. I believe this line of reasoning is objectively

unreasonable. First of all, the tape reveals much, much more than that Terry and I had a “troubled relationship,” as the U.S. District Court put it. To make my point, I give you the following excerpts from the audiotape:

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 your 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]. I believe that the audiotape proves a whole lot more than that my relationship with Terry Carlton was "troubled."

Further, 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. 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. See 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 Tr.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.

During her closing arguments at my trial, 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.

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 the 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).

The audiotape is the only piece of evidence that proves definitively that Terry Carlton really did beat me and rape me. It proves that I didn't just “cry rape,” as the prosecution alleged. The tape also makes it clear that Terry was the sole perpetrator of violence between the two of us. The tape is the only piece of evidence in Terry's own voice: it is the only evidence of abuse and rape that cannot be disputed. Rather than just being cumulative evidence of abuse, the audiotape, in conjunction with Judge Eagan's and attorney Mike Cooke's testimonies, is critical evidence that definitively proves my allegations that Terry really did beat me and raped me: Terry and I were not engaged in mutual combat and consensual rough sex. This evidence goes to my overall credibility, which is critical to proving my Battered Woman Syndrome defense of self-defense.

I.A.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.

My trial 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 my home with a loaded, chambered 9mm pistol and a stun gun. Further, my appellate counsel was ineffective for failing to raise this claim on direct appeal.

On 21 February 1998, Terry Carlton attempted to break into my home. See 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. See 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. See Appellant's Exhibits at 184 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 25, citing Tr.Trans.Vol. XIV at 2712-13]. See also Appellant's Exhibits at 8-9 [Aplt. Exhibit 4, Tulsa Police Arrest Report, NDOK Dkt. #12 Exhibit 2 at 1-2]. 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. See Tr.Trans.Vol. XIV at 2714-2715. 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.

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. On 25 March 1998, a bench warrant was issued for Terry's arrest in Tulsa County District Court case number CM-1998-575 for his failure to appear in court on this gun charge. See Appellant's Exhibits at 185-186 [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 in *Carlton v. State*, NDOK Dkt. #12 Exhibit 3 at 2].

The U.S. District Court opined that the outstanding warrant for Terry Carlton's arrest was not evidence critical to my defense. See Appellant's Exhibits at 186 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 27]. I disagree for a number of reasons.

Importantly, the warrant for Terry Carlton's arrest is critical evidence that demonstrates even pending criminal charges and a warrant for Terry's arrest were not going to deter him. No mere court order or piece of paper was going to stop Terry Carlton from getting to me. And in fact, it didn't stop him.

Additionally, on two separate occasions just weeks before I killed Terry Carlton, different Tulsa police officers, including Officer Aaron Tallman and Officer James Bennett, failed to enforce the bench warrant for Terry's arrest when they encountered us and I was pleading for help. As for Officer Tallman, when he testified at my trial, he denied everything that could have gotten him in trouble, including seeing any evidence that Terry Carlton was even around. See Tr.Trans.Vol. XIII at 2601-02. But Officer Bennett admitted during his testimony that he was with Terry Carlton inside of Terry's home on 11 April 1998 after he responded to a call that I had made for help. See Tr.Trans.Vol. IX at 1773. The warrant for Terry's arrest was outstanding on that day. See Appellant's Exhibits at 11 [Aplt. Exhibit 5, District Court of Tulsa County Case Report in *Carlton v. State*, NDOK Dkt. #12 Exhibit 3 at 2]. Yet Officer Bennett did not enforce

the warrant and did not arrest Terry. Id.

This is what happened. On 2 April 1998, I escaped from my home as Terry Carlton was about to break in yet again. See 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 set forth fully in the Statement of Facts hereinabove, **Officer 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. See Tr.Trans.Vol. XI 2076-78, 2091, 2089; and Tr.Trans.Vol. XIV at 2748-49, 2758. For instance, one of my neighbors, Glenda McCarley, testified that she witnessed **Officer Tallman** arrogantly refuse to help me when he responded to a 911 call after Terry had broken into my home. See Tr.Trans.Vol. XIV at 2739, 2748-50, 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. See 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. See 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. See 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. See 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. See 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. (During my testimony, I flatly denied ever saying that the Son of God was breaking into my home and beating me up. See Tr.Trans.Vol. XIII at 2457.) Mr. Blankenship issued an order for me to be transported to Parkside Hospital. See Tr.Trans.Vol. XV at 2986. Then, **Officer Aaron Tallman** transported me to Parkside Hospital. See 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 [Exhibit 7]. See also Appellant's Exhibits at 153 [Exhibit 18, evidencing the 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. See Tr.Trans.Vol. XIII at 2602. At my trial, Officer Tallman denied seeing Terry's car in front of my house on 2 April 1998. Id. 2601-02

After **Officer Aaron Tallman** took me to Parkside Hospital on 2 April 1998, I was briefly examined by mental health professionals. See 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. See 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. See 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. See 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. See Tr.Trans.Vol. XII at 2190-91, 2205. (I maintain that I was suffering from Battered Woman Syndrome, a subcategory of Post Traumatic Stress Disorder, rather than Bipolar Disorder, and that my fear of Terry was reasonable, not a paranoid delusion. See Issue I.A.5., *infra*. And I have a Battered Woman Syndrome expert who backs me up on that. Id. See also Appellant's Exhibits at 13 [Aplt. Exhibit 6, Pre-sentence Investigation Report Assessment of April Wilkens by Domestic Violence Intervention Services Counselor Lynda Driskell].) On 8 April 1998, after six days of confinement at Parkside Hospital, I escaped. See 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*. See Tr.Trans.Vol. XII at 2199-2200. I returned to my home. See 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. See Tr.Trans.Vol. XI 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. See 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. See Tr.Trans.Vol. XI at 2082-84. (It is not 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. See Tr.Trans.Vol. XIII at 2397. Police officers, including Officer James Bennett, arrived shortly thereafter. See 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. See 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. See 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. See 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. See Tr.Trans.Vol. IX at 1766. I testified that I never said I believed Terry was God and Satan. See 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. See 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. See 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. However, Terry was also transported to Parkside Hospital for an evaluation. See Tr.Trans.Vol. XI at 2086. Then Terry was simply released from Parkside Hospital a few hours later while I was once again committed and locked-up. Id. And still free despite having a warrant for his arrest, Terry continued to stalk and harass me even while I was hospitalized. See Statement of Facts, *supra*.

When they saw me following encounters with Terry Carlton, Officer Tallman and Officer Bennett both described me as “nervous” and attributed my demeanor solely to drug abuse. See Tr.Trans.Vol. IX at 1765; and Tr.Trans.Vol. XII at 2595. It is true that I was using methamphetamine at the time: by April 1998, I was using methamphetamine intravenously about once or twice a day, and I admitted it. See Tr.Trans.Vol. XV at 2873. However, a number of other witnesses at my trial also described me as “nervous” following my encounters with Terry Carlton around the same time period, and all of those other witnesses attributed my nervous behavior to my fear of Terry Carlton, not my drug abuse. See Tr.Trans.Vol. XIII at 2515, 2528; and Tr.Trans.Vol. XIV at 2689-90, 2752, 2739.

Suspiciously, Officer Bennett, along with Officer Tallman's associate, Sean Blankenship, claimed they could not recall me telling them that I was afraid of Terry Carlton and why. See Tr.Trans.Vol. IX at 1772; and Tr.Trans.Vol. XV at 2987-88. They just couldn't recall me saying that Terry Carlton had threatened me or had attacked me. Id. However, several other witnesses, including Officer Troy Dewitt, testified that around the same time period, I made it clear to them that I was afraid of Terry Carlton and I explained why I was afraid of him. See Tr.Trans.Vol. VII at 1330-32; and Tr.Trans.Vol. XIV at 2678, 2687-90, 2714, 2739. See also Appellant's Exhibits at 8-9 [Apl. Exhibit 4, Tulsa Police Arrest Report, NDOK Dkt. #12 Exhibit

2 at 1-2].

Officer Tallman and Officer Bennett really have no excuse for their separate failures to enforce the bench warrant for Terry Carlton's arrest. Sure, Terry may have acted calm and cool when officers encountered us. And I was nervous and frazzled—I was scared and it didn't help matters that I was on drugs. Further, I may have had drugs and/or drug paraphernalia in my possession. Still, one person's demeanor and/or criminal conduct does not excuse or negate another person's criminal conduct. And while I may have had drugs and/or drug paraphernalia, Terry Carlton had an outstanding warrant for his failure to appear in court after he was arrested outside of my home at around 3 a.m. with a loaded gun and a stun gun. *Big difference.* Plus, when Terry was arrested outside of my home with a gun on 21 February 1998, he was trying to elude the police, and officers had to stop him at gunpoint. See Tr.Trans.Vol. XIV at 2711-12. See also Appellant's Exhibits at 8-9 [Aplt. Exhibit 4, Tulsa Police Arrest Report, NDOK Dkt. #12 Exhibit 2 at 1-2]. As with the 21 February 1998 incident at my home, I was the one who called for help on 11 April 1998 after I escaped from Terry's house. See Tr.Trans.Vol. XI at 2081-85. And Officer Bennett testified that he knew I was the one who made the call for help on 11 April 1998. See Tr.Trans.Vol. IX at 1762. What's more, I waited for officers to arrive. Id. at 1765; and Tr.Trans.Vol. XI at 2081-85. Yet according to Officer Bennett, it seemed like I was the threat, not Terry. See Tr.Trans.Vol. IX at 1769. Introducing the outstanding warrant for Terry's arrest into evidence at my trial sure would have helped me prove Officer Bennett wrong. The mere fact that Terry was able to circumvent being arrested—even while face-to-face with police officers—when he had a warrant for his arrest proves just how dangerous Terry was.

Police officers typically enjoy an inherent measure of credibility in the eyes of jurors that many other witnesses—especially a murder defendant like myself—do not. Officer James Bennett and Officer Aaron Tallman both gave harmful testimony at my trial, and the warrant for

Terry's arrest and their failure to enforce it is critical evidence that goes a long way to impeach their hurtful testimonies. Armed with the knowledge that Terry had a warrant for his arrest, any juror would have questioned exactly why the officers did not enforce it—and that would have led to a lot more questions about those officers' credibility.

Further, the warrant for Terry Carlton's arrest along with the police officers' failure to enforce it goes to my credibility in all matters. Not only did Officer Tallman's and Officer Bennett's testimonies contradict my testimony at trial, but during closing arguments at my trial, the district attorney told my jury that if I had allowed the police to protect me, Terry might have been punished and he might still be alive. See Tr.Trans.Vol. XV at 3055. The district attorney asserted that if I had really been serious about my fear of Terry Carlton, I would have allowed the system to come to my aid. Id. at 3055-56. However, I believe that I very well might be dead if I had relied on the police to protect me from Terry. Terry found it amusing whenever I sought protection from the police and they did not arrest him. He taunted me about it, saying things like, "500 bucks, baby, that's all it costs to bribe any police officer." Without knowing about this warrant for Terry's arrest and police officers' failure to enforce it when I asked for their protection, it is virtually impossible to understand the reasonableness of my state of mind when I killed Terry. I testified that I believed I could not rely on the police to protect me from Terry, and the warrant for Terry Carlton's arrest, along with police officers' failure to enforce it, supports my testimony. I am not saying that other police officers were not helpful to me at times—some officers, such as Officer Troy Dewitt, were very helpful—but the point is that I did not believe I could depend on the police to protect me from Terry. And I had good reason to be scared of Terry and to feel like I could not rely on the police to protect me from him.

I.A.3.

APPELLANT'S COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT APPELLANT'S 28 APRIL 1998 URINALYSIS, WHICH WAS REPORTEDLY NEGATIVE FOR ALL DRUGS.

My trial counsel was ineffective for failing to present my 28 April 1998 urinalysis, which was reportedly negative for all drugs, and my appellate counsel was ineffective for failing to raise this issue on direct appeal. As I explained in my pleadings filed in the U.S. District Court, the negative urinalysis matters because the state insinuated that I killed Terry Carlton because of drug abuse, not domestic abuse. See NDOK Dkt. #50 at 13-18; and NDOK Dkt. #13 at 3. The U.S. District Court opined that my 28 April 1998 urinalysis is irrelevant because it does not prove I did not kill Terry Carlton. See Appellant's Exhibits at 186-187 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 27-28]. The U.S. District Court also opined that the negative urinalysis would not have advanced my Battered Woman Syndrome defense in any way. See Appellant's Exhibits at 187 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 28]. I disagree with the U.S. District Court.

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. 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. 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.

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. While the negative

urinalysis does not prove I did not shoot Terry—since day one, I have openly admitted that I killed Terry—it certainly helps prove I did not kill Terry because I was “all cranked up” on drugs, as the prosecution insinuated.

I testified that I went to Terry's house that morning to make peace with him, and even though he insisted I use drugs with him, I managed to use only a very small amount because I did not want to be in an altered state. See Tr.Trans.Vol. XI at 2123-68. Tulsa Police Officer Laura Fadem testified that I told her virtually the same thing on the morning of the shooting. Tr.Trans.Vol. VI at 1111; and Tr.Trans.Vol. VII at 1423, 1473. My negative urinalysis should have been presented at my trial because it substantiates my testimony at trial and my statements to law enforcement on the morning of the shooting. This goes to my credibility in all matters, which is critical to proving my Battered Woman Syndrome defense of self-defense.

I.A.4.

APPELLANT'S COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT A TRANSCRIPT OF TULSA POLICE OFFICER LAURA FADEM'S INCONSISTENT *IN CAMERA* TESTIMONY.

My trial counsel was ineffective for failing to present a transcript of Tulsa Police Officer Laura Fadem's inconsistent *in camera* testimony, and my appellate counsel was ineffective for failing to raise this issue on direct appeal. Impeaching Officer Fadem's testimony is important because in my jury's presence, she gave some extremely harmful false testimony that contradicted my testimony.

Officer Fadem testified that I told her Terry had handcuffed me and was coming at me with a mean look when I shot him. See Tr.Trans.Vol. VII at 1426-27. 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. Officer Fadem testified 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. That's not what Officer Fadem's official police report says. Id. at 1492. 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. Believing Terry wouldn't die is not the same thing as shooting him because he's wasn't dying fast enough. However, 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.

My testimony about what happened when I shot Terry Carlton is substantially different from Officer Laura Fadem's testimony. I testified that Terry had handcuffed me and was enraged and charging toward me when I fired the gun and just kept shooting. See Tr.Trans.Vol. XI at 2156-57, 2165-66. 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. See 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. See 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. See Tr.Trans.Vol. X at 2168-69; and Tr.Trans.Vol. XII at 2378. I was in a daze. See Tr.Trans.Vol. XI at 2169. At some point, I removed the handcuffs using a hand sanitizer. Id. 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. See 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 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. See 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. See 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. See Tr.Trans.Vol. XII at 2371. I was trying to come to terms with what I had done. Id.

The U.S. District Court ruled that my counsel was not ineffective for failing to impeach Tulsa Police Officer Laura Fadem with a transcript of her contradictory *in camera* and trial testimonies, deciding that Officer Fadem's *in camera* and trial testimonies were substantially the same. See Appellant's Exhibits at 187-88 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 28-29]. I disagree. Officer Fadem's testimonies were not substantially the same.

A *Jackson v. Denno* hearing was held at my trial outside of the presence of my jury. See Tr.Trans.Vol. VI at 1096. Officer Laura Fadem testified during cross-examination at that *in camera* hearing that after officers arrived at Terry Carlton's house on the morning of the shooting, 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. at 1127. Then, during her 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. See 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. Additionally, 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. Later, on cross-examination in 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." See Tr.Trans.Vol. VII at 1457.

Another example of Officer Fadem's contradictory testimony occurred during the *in camera* hearing. First, Officer Fadem testified that I never asked for medical assistance or a rape examination while we were at Terry's house on the morning of the shooting. See Tr.Trans.Vol. VI at 1108. Then on cross-examination, she testified that she did not recall whether or not I had asked for a rape examination while we were still at Terry's house that morning. Id. at 1133. Officer Fadem changed her story and said that I could have asked for a rape exam at that time, she just did not recall if I had or not. 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.

Officer Fadem also testified during the *in camera* hearing that I indicated to her that Terry

had raped me on the morning of the shooting, but she did not recall me “using the word rape.” Id. at 1132-33. Then during her testimony in front of my jury at my trial, Officer Fadem said I told her that Terry was “going to rape me again” after he handcuffed me that morning. Tr.Trans.Vol. VII at 1436.

Officer Fadem's testimony at my trial was inconsistent. Because her inconsistent testimony was delivered during the *in camera* hearing held outside of my jury's presence, my jury was not aware of Officer Fadem's propensity to change her story. And because Officer Fadem gave extremely harmful testimony in front of my jury that contradicted my testimony, my attorney should have impeached Officer Fadem with her own contradictory words. This goes to my credibility in all matters, which is critical to proving my Battered Woman Syndrome defense of self-defense.

I.A.5.

APPELLANT'S COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT ADEQUATE TESTIMONY FROM A QUALIFIED BATTERED WOMAN SYNDROME SPECIALIST.

My trial counsel was ineffective for failing to present adequate testimony from a qualified Battered Woman Syndrome (“BWS”) specialist, and my appellate counsel was ineffective for failing to raise this issue on direct appeal.

When the Oklahoma Court of Criminal Appeals denied this issue on the merits in 2004, that court declared:

Contrary to the assertion of the United States Court of Appeals for the Tenth Circuit, this Court, in *Bechtel v. State*, 1992 OK CR 55, 840 P2d 1, did not announce the professional standard in Oklahoma for an attorney representing a battered woman. *See Paine v. Massie*, 339 F.3d 1194, 1202-03. This Court cannot and would not ignore our adversarial system of justice and dictate that trial counsel is required to present a criminal defense in a specified way. Nowhere in the *Bechtel* decision is effectiveness of counsel even discussed.

Appellant's Exhibits at 149 [Aplt. Exhibit 17, Oklahoma Court of Criminal Appeals' Summary Opinion, NDOK Dkt. #47 Exhibit E at 3]. See also Appellant's Exhibits at 170 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 11]. However, just two years later, in *Smith v. State*, 144 P.3d 159 (Okla. Cr. 2006), the Oklahoma Court of Criminal Appeals contradicted its opinion in my post-conviction appeal when it overturned another battered woman's first-degree murder conviction and declared:

Bechtel and *Paine* clearly indicate that when a battered woman presents a defense of self-defense at trial, defense counsel should present the testimony of an expert on BWS in order “to equip the jury to properly assess the **reasonableness** of [the defendant's] fear.” *Paine*, 339 F.3d at 1204.

Smith v. State, 144 P.3d 159, 166 (Okla. Cr. 2006) (emphasis added), quoting *Paine v. Massie*, 339 F.3d 1194, 1204 (10th Cir. 2003) and citing *Bechtel v. State*, 840 P.2d 1 (Okla. Cr. 1992). The Oklahoma Court of Criminal Appeals' opinion in *Smith* was written by Judge Gary Lumpkin. See *Smith v. State*, 144 P.3d 159 (Okla. Cr. 2006). Oklahoma Court of Criminal Appeals Judge Charles Johnson “specially concurred” with the *Smith* decision, writing separately that “expert [Battered Woman Syndrome] testimony is often essential to explaining the **reasonableness** of the defendant's conduct.” *Id.* at 169-170 (emphasis added). Additionally, I'm pretty sure that Judge Charles Johnson wrote the Oklahoma Court of Criminal Appeals' opinion to that effect in *Bechtel*. See *Bechtel v. State*, 840 P.2d at 1 (Okla. Cr. 1992). Yet Judge Gary Lumpkin and Judge Charles Johnson both previously voted to deny my post-conviction appeal in a decision that emphatically asserted the Tenth Circuit Court of Appeals misinterpreted *Bechtel* and got it wrong in *Paine*. See Appellant's Exhibits at 149, 152 [Aplt. Exhibit 17, Oklahoma Court of Criminal Appeals' Summary Opinion, NDOK Dkt. #47 Exhibit E at 3, 6].

The U.S. District Court opined that the psychologist whom my attorney presented, Dr. John Call, gave adequate testimony because he testified “concerning both the symptoms of [Battered

Woman Syndrome] and his assessment of how the experiences of Petitioner, as a battered woman, impacted her state of mind at the time of the killing.” Appellant's Exhibits at 173 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 14]. I disagree with the U.S. District Court's opinion that Dr. Call gave adequate Battered Woman Syndrome testimony at my trial.

Dr. Call clearly made a case solely for manslaughter during his defense testimony at my trial when he opined that my fear was genuine but my fear and actions were **not** reasonable. See Tr.Trans.Vol. XV at 2836. It was objectively unreasonable for my attorney to present Dr. Call's testimony because under Oklahoma law, the Battered Woman Syndrome (“BWS”) defense is self-defense. See *Bechtel v. State*, 840 P.2d 1 (Okl.Cr. 1992). In *Paine v. Massie*, 339 F.3d 1194 (10th Cir. 2003), the Tenth Circuit Court of Appeals noted that Ms. Paine's counsel labored extensively to establish that Ms. Paine's subjective fear was genuine, but counsel failed to provide Battered Woman Syndrome testimony attempting to establish the reasonableness of that fear in the context of Ms. Paine being a Battered Woman Syndrome sufferer. Id. at 1202. Accordingly, the Tenth Circuit ruled that “[g]iven the [Oklahoma Court of Criminal Appeals'] extensive focus on the 'key' reasonableness component of a self-defense claim in a BWS case, *Bechtel*, 840 P.2d at 10-11, counsel's failure to offer BWS testimony to provide context for the jury on the reasonableness of [the defendant's] fear amounts to objectively unreasonable performance.” Id. at 1202, citing *Bechtel v. State*, 840 P.2d 1, 10-11 (Okl.Cr. 1992). **On remand, the Tenth Circuit required Ms. Paine to produce a “qualified BWS expert willing to testify that Ms. Paine was suffering from BWS at the time of the killing and willing to explain the impact of BWS on her state of mind and, specifically, to opine Ms. Paine's belief that the use of deadly force was necessary to protect herself from imminent danger of death or great bodily harm could be considered reasonable based on her circumstances and viewed from her perspective.”** Id. at 1204 (emphasis added), citing *Bechtel v. State*, 840 P.2d 1, 6-8

(Okl.Cr. 1992).

Pursuant to *Paine* and *Bechtel*, my counsel should have presented testimony from a qualified Battered Woman Syndrome expert who specifically opined that my belief that the use of deadly force was necessary to protect myself from Terry Carlton could be considered reasonable based on my circumstances and viewed from my perspective. Further, a qualified Battered Woman Syndrome should have explained why that's true. Instead, **Dr. John Call told my jury in no uncertain terms that my fear and actions were not reasonable. 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).

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. 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. Finally, 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.

During her closing argument at my trial, the assistant district attorney seized on Dr. Call's opinions and reminded my jury that “[t]he Defendant's own expert testified from this witness stand that the Defendant's actions were **stupid and not reasonable.**” Id. at 3020 (emphasis added).

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. See Tr.Trans.Vol. XII at 2189-90.

In *Bechtel*, the Oklahoma Court of Criminal Appeals (“OCCA”) wrote:

Misconceptions regarding battered women abound, making it more likely than not that the average juror will draw from his or her own experience or common myths, which may lead to a wholly incorrect conclusion. Thus, we believe that expert testimony on [battered woman] syndrome is **necessary** to counter these misconceptions.

Bechtel v. State, 840 P.2d 1, 8 (Okla.Cr. 1992) (emphasis added). To support this conclusion, the

Oklahoma Court of Criminal Appeals quoted Dr. Lenore Walker, the definitive Battered Woman Syndrome expert who coined the term *Battered Woman Syndrome*, as follows:

Expert testimony on the battered woman syndrome would help dispel the ordinary lay person's perceptions that a woman in a battering relationship is free to leave at anytime. The expert would counter any 'common sense' conclusions by the jury that if the beatings were really that bad, the woman would have left her husband much earlier. Popular misconceptions about battered women would be put to rest, including the beliefs that the women are masochistic and enjoy the beatings and that they intentionally provoke their husbands into fits of rage. *The Battered Woman Syndrome* (1979).

Id. at 8 Footnote 8. See also *Paine v. Massie*, 339 F.3d 1194, 1205 at Footnote 1 (10th Cir.2003), quoting *Bechtel v. State*, 840 P.2d 1, 8 at Footnote 8 (Okl.Cr. 1992). Thus, the Oklahoma Court of Criminal Appeals concluded in *Bechtel* that:

Dr. Walker's [expert Battered Woman Syndrome] testimony as to how Appellant's particular experiences as a battered woman suffering from the Battered Woman Syndrome affected her perceptions of danger, its imminence, what actions were necessary to protect herself **and the reasonableness of those perceptions** are relevant and necessary too prove Appellant's defense of self-defense.

Id. at 10 (emphasis added). In *Bechtel*, the Oklahoma Court of Criminal Appeals relied heavily on the writings of Dr. Lenore Walker. In this action, I am also relying extensively on the writings of Dr. Walker. I believe Dr. Walker's writings on the Battered Woman Syndrome shed light on why my fear and my belief that I had to use deadly force to protect myself from Terry Carlton could be considered reasonable based on my circumstances and viewed from my perspective. I believe that Dr. Walker's writings provide a good example of what adequate expert Battered Woman Syndrome testimony should be. In light of the evidence presented at my trial, here are some things that Dr. Walker has written about battered women and Battered Woman Syndrome that I believe an expert should have explained to my jury:

Battered women come from all walks of life and the only fact that brings them together is their victimization by an intimate male partner. The one answer that continues to elude researchers, clinicians, and the general public alike is to the

question, "*Why doesn't she leave.*" [They're are] multiple answers, but most simply put: *Leaving does not stop the abuse and may even make it worse.*¹

The violence doesn't cease...but rather, escalates to higher levels, even becoming potentially lethal. The men are at greater risk for emotional breakdowns, homicidal, and suicidal reactions. Media stories about despondent husbands who shoot and kill the whole family have become more commonly linked with spouse abuse, as reporters become more sophisticated in their understanding of domestic violence.²

[M]ost homicide/suicides that are reported take place in domestic violence families. And, we are much more aware of the fact that from the point of separation until about two years afterward is the most dangerous time for a battered woman and her children.³

Obviously those [batterers] who engage in stalking behavior won't be deterred by court orders....It is a real no-win situation for some battered women. They will continue to be battered if they do not get help and they will be hurt worse if they do! This is critical for those who work with battered women to understand!⁴

[B]attered women...often meet with outright indifference or inaction when they turn to the law enforcement agency of first resort: the local police....⁵

[A]lmost all of the [battered] women who had called [the police] stated...that the police had provided absolutely no help at all. In fact they often made things worse; once they were gone, after...the batterer saw that nothing had been done to stop him, he often continued his abuse with renewed violence.⁶

The issue of the woman's response to violent attacks by the man who loves her has been clouded by the mythology that she behaves in a manner that is either extremely passive or mutually aggressive. Rather, these data suggest that battered women develop survival skills that keep them alive with minimal injuries....

[S]imple counting of aggressive acts distorts rather than aids the understanding of violence in the family by misleading others into accepting a mutual expression of violence notion. Rather, our data suggest evaluating the men's violent acts for power and control differently than the women's, who strike back in self-defense, to stay alive or minimize their possible injuries.⁷

1 Walker, Lenore, E.A., *The Battered Woman Syndrome*, 2nd Ed. (New York: Springer Publishing Company, 2000), xii.

2 Id. at 205.

3 Id. at 42.

4 Id. at 198 (citations omitted).

5 Walker, Lenore E., *Terrifying Love: Why Battered Women Kill and How Society Responds* (New York: HarperPerennial, 1990), 53.

6 Id. at 63.

7 Walker, Lenore, E.A., *The Battered Woman Syndrome*, 2nd Ed. (New York: Springer Publishing Company, 2000), 40-41.

Battered women who kill can perhaps be set apart from those who do not kill in terms of the perceived danger of their situations, and the severity and brutality of the violent physical, sexual, and psychological abuse they have endured. Sexual abuse plays a big part, as does alcohol and/or drug abuse on the part of the batterer....

In trying to differentiate those battered women who kill from those who do not, we can look for special characteristics common to this particular group....

[Battered women who killed] described their men as making more death threats. Their men were also more likely to use weapons to terrorize them. They tended to abuse alcohol more frequently and seemed to be growing continually more dangerous toward the women, toward their children, and towards others....

All mention the fact that batterers were extremely jealous of every other person in their lives, and especially children. Their men were all unusually suspicious and possessive, and often threatened to hurt or kill the woman's relatives or friends.

All of the battered women who killed were subjected to verbal abuse and criticism that often amounted to acute psychological torture.

While they often later remarked on the unusual sensitivity and sensuality of the batterer when he was on his "good" behavior, many also noted his unusual sexual behavior: tendencies toward actively violent perversity....

Nearly all of them noted that their men had difficulty controlling intake of alcohol. Every one of them had been threatened with guns, knives, or other weapons. And every one of them was aware that the batterer truly was capable of killing either her or himself....

Battered women who kill have almost invariably done so after having experienced...an uncontrollably savage acute incident, or after the recurrent onset of tension-building phase behavior, in order to prevent such an acute incident from happening again. Each woman seems to feel that she just cannot cope with the impending brutality or the psychological tension any longer; all say they simply wanted to stop him from hurting them like that again....The small number of women who kill their batterers do not necessarily want them dead at the time; rather, they are seeking only to put an end to their pain and terror....⁸

But living in constant terror exacts its price. One of the results would appear to be an emotional immunity of sorts, an imperviousness to the reality and consequences of violence, and also the reality of death....

[B]y the time she kills, the abused woman is often so damaged herself, physically and emotionally, that she may be in a dissociative state.

[For example, one battered woman] couldn't believe her abusive husband was dead, even though she'd fatally shot him twice....He hadn't wanted to die; therefore, he would not. To her, he was still alive: terrible, threatening, omniscient....He isn't dead! She repeated to herself, over and over again: he isn't dead!⁹

⁸ Walker, Lenore E., *Terrifying Love: Why Battered Women Kill and How Society Responds* (New York: HarperPerennial, 1990), 101-106.

⁹ *Id.* at 73-75.

Alcohol and drug abuse has been found to be used as a form of self-medication to block the intense emotions that are often experienced by abuse victims, particularly physical and sexual assault victims....

[T]he major risk factors were...adult victimization by domestic violence, and a partner who abuses substances....It is not uncommon for women to become addicted to drugs that are supplied by their batterers who then has greater power and control over the woman....¹⁰

Battered women's use of drugs was lower...for the first three [battering] incidents and...for the last one. One possible explanation for the apparent decrease toward the end is that they needed to be drug-free to perceive the alternatives involved in terminating the relationship.¹¹

[Battered women] all told of ways they learned to keep control of their own minds, recognizing that the batterer had the ability to control their bodies. They let the batterers think they were stupid or suggestible and appeared to conform to his wishes. Sometimes, despite these efforts at only making believe, his mind control techniques were successful. For some of the women who kill, however, their violence is a desperate attempt to keep him from gaining control of their minds, too. For example, several told us of how the men managed to convince doctors to prescribe major psychotropic drugs for the women and began supervising their taking them.¹²

It is interesting to note that many of these [battered] women were well-educated, held responsible jobs, and came from financially stable families....It was likely that the batterer had the power in social and financial areas, whether or not the woman had her own access to money.¹³

[M]iddle-class and upper-income women realize (truthfully, in many instances) that others in the community will not come to their aid because those others may have financial, political, and social ties to the batterer; should he suffer disgrace or exposure, they stand to lose as well. Thus, powerful members of the woman's community, rather than helping her, may collude in covering up the batterer's criminal behavior. This response supports the commonly held view of battered women...that their husbands are nearly omniscient and certainly much more powerful than anyone who might expose them....

[B]eyond the shadow of a doubt...the economically privileged battered woman can have just as much, if not more, trouble separating from the batterer as the battered woman who lives in poverty.¹⁴

Instead of explaining things like that to help my jury understand the reasonableness of my

10 Id. at 95-97.

11 Walker, Lenore, E.A., *The Battered Woman Syndrome*, 2nd Ed. (New York: Springer Publishing Company, 2000), 93.

12 Id. at 50-51

13 Id. at 36.

14 Walker, Lenore E., *Terrifying Love: Why Battered Women Kill and How Society Responds* (New York: HarperPerennial, 1990), 107.

fear and actions in the context of Battered Woman Syndrome, **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). Further, Dr. Call concluded:

[I]t'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 her use of force was justified.

Appellant's Exhibits at 173 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 14, citing Tr.Trans.Vol. XV at 2852]. Dr. Call made it sound like I shot Terry Carlton because I was psychotic. Psychotic or not; in spite of all my flaws, and I have many; despite all of my mistakes and bad choices, and Lord knows I've made some doozies; irrespective of all the hateful things the state has to say about my character, and you're sure to hear plenty; the danger Terry Carlton posed to me was real, not imaginary. And it was wrong for Dr. Call to make it sound like I killed Terry Carlton because there was something inherently wrong with me. Besides, that theory just doesn't add up. Dr. Call based his opinion that I was "psychotic" on his opinion that I was suffering from Bipolar Disorder. See Tr.Trans.Vol. Vol. XV at 2851. To formulate that opinion, Dr. Call relied on my mental health records from Parkside Hospital, Eastern State Hospital, and Dr. Theresa Farrow, a psychiatrist who had treated both Terry Carlton and me. Id. at 2813. Dr. Call's testimony makes it pretty clear that no mental health professional had ever diagnosed me with Bipolar Disorder or any personality disorder until at least 1997. Id. at 2809, 2811-13. By that time, Terry Carlton had already physically assaulted me a number of times. See Statement of Facts, *supra*. And Terry had raped me. Id. I believe that my history prior to that speaks for itself: by all accounts, my life was going exceptionally well before Terry Carlton became abusive and violent towards me. Id. I maintain that I was suffering from Battered

Woman Syndrome, not Bipolar Disorder, and that my fear of Terry was **reasonable** and not delusional. I maintain that I used deadly force to protect myself from Terry because it was reasonable, not because I was **psychotic**. As Dr. Walker explains:

[I]t would be quite easy to misdiagnose battered women as having a serious mental illness if cautions weren't taken to account for the influence of having to cope with battering. For example, it is **reasonable** for a battered woman to believe she has been betrayed and that someone is out to get her without it being indicative of paranoid ideation. And it is common for battered women to become cognitively confused without having **psychotic** ideation.¹⁵

[M]isguided "experts" play into the court's common misconceptions about pathology...so the truth is that there are dangers, as well as benefits, to using expert witnesses in some cases....

Too often, our courts serve to complete the work of the batterer by continuing to arbitrarily control and then convict the battered woman....Most battered women who kill do so in self-defense. By the time they kill, they are already the most silenced, the most violated women....

None of these women are ruthless killers. All are victims. Their victimization, though, does not end when they kill a brutal spouse or lover. Battered women who kill in self-defense may go from being prisoners of interpersonal abuse to being prisoners of the state. They are not free until a jury returns a verdict of not guilty....

And that is precisely why a battered woman, subject to the methodology of the law, deserves to be represented as well by an expert witness who is knowledgeable and practiced in the methodology of feminist psychology.¹⁶

Clinical psychology, the branch of psychology in which mental disorders are studied, explains only a very small part of the field of human behavior, although it is this part of psychology with which the general public is most familiar. This fact can be a problem when professionals with no expertise in the field of battered women, but with impressive professional psychological or psychiatric credentials, testify in a court of law, and it is one reason why only a qualified expert witness should testify in any trial involving a battered woman who kills.

The behavior of battered women who kill their abusers needs to be understood as *normal*, not abnormal. Defending oneself from reasonably perceived imminent danger of bodily harm or death ought to be considered a psychologically healthy response. Most battered women who kill do so in self-defense, not because they are mentally disordered. And the expert witness who can provide judges and juries with a genuine understanding of this fact can have a critical role in changing our criminal justice system's inadequate response to the entire problem.

15 Walker, Lenore, E.A., *The Battered Woman Syndrome*, 2nd Ed. (New York: Springer Publishing Company, 2000), 103 (emphasis added)

16 Walker, Lenore E., *Terrifying Love: Why Battered Women Kill and How Society Responds* (New York: HarperPerennial, 1990), 11-13

Psychoanalysts who believe that internal mental conditions alone, and not external circumstances, cause mental illness ought to take note of this contradiction. The symptoms of mental illness displayed by many battered women tend to quickly clear up once they are able to live without fear of further violence....

A lot of “crazy” ladies aren't so crazy, after all.

A battered woman often adopts behavior that earns her a diagnosis of insanity, of being “crazy.” In fact, many of her seemingly bizarre actions may have purpose and logic when **viewed within the context of the violence and terror in which she lives.**

In context, the “crazy” actions of battered women may be effective survival techniques. Diagnoses of mental illness, delivered by uninformed medical personnel and mental health professionals, are often wrong.¹⁷

It is essential that we learn to recognize Battered Woman Syndrome for what it is: a terrified human being's *normal* response to an abnormal and dangerous situation. Psychiatrists and other helping professionals tend to confuse the effects of domestic abuse with “masochism,” “borderline personality disorder,” or any number of other inapplicable diagnoses. Those involved in diagnostic procedures must remember that, in the case of battered women, lives depend upon proper, knowledgeable, and accurate evaluations and conclusions.

We must also break through our denial about the severity of the sadistic manipulation and psychological control—amounting in some cases to real brainwashing—that a batterer may exert over a battered woman....

When free, once and for all, of the battering circumstances, most of these women cease to manifest any so-called behavioral disturbances or personality disorders, a fact that proves, to this professional, at any rate, that their previously abnormal behavior was directly caused by their victimization. When they are no longer victimized, the bizarre behavior disappears....

Not enough is said...about the absolutely “crazy-making” behavior of the batterer....

Organized psychiatry, in general, has displayed an appalling ignorance about the psychology...of battered women in particular.¹⁸

The informed expert witness is the only person...qualified to point out that *the psychological reality of [battered] women justifies their actions.* Their state of mind meets the requirement of reasonable perception. Battered women who kill do so because it is the only remaining way they can see out of a physically life-threatening and emotionally and psychologically untenable circumstance.¹⁹

In my view, Dr. John Call's opinions are uninformed, chauvinistic, and inclined to favor the prosecution in Battered Woman Syndrome self-defense cases. When asked to relate his

17 Id. at 169-171 (emphasis added)

18 Id. at 180-189

19 Id. at 267

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.” Appellant's Exhibits at 172 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 13, citing Tr.Trans.Vol. XV at 2806-07]. Dr. Call did not testify about his degree of involvement working directly with battered women. Id. My attorney told me that my case was the first Battered Woman Syndrome case in which Dr. Call had worked as a consultant for the defense, and Dr. Call himself testified at my trial 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. And even Dr. Call's testimony supporting a manslaughter verdict at my trial was discredited when the district attorney pointed out Dr. Call's inexperience this way:

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.

The Oklahoma Court of Criminal Appeals decided that Dr. Call was a qualified Battered Woman Syndrome (“BWS”) expert. See Appellant's Exhibits at 170-171 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 11-12]. The U.S. District Court agreed. See Appellant's Exhibits at 171-172 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 12-13]. I disagree; however, I concede that by law, he may be considered qualified to present expert Battered Woman Syndrome testimony. When I first raised this issue back in 2003, I was new at crafting issues and not at all sure how to go about it. I erred by titling this issue based on what I believe was the underlying cause of Dr. Call's inadequate testimony—i.e., that he was not truly a Battered Woman Syndrome specialist. However, I did get to the heart of the matter in my arguments in both the state and federal courts. The most important thing, as I explained in the body of my argument, is that Dr. Call failed to opine that my belief that I had to use deadly force

to protect myself from Terry Carlton could be considered reasonable based on my circumstances and viewed from my perspective—and Dr. Call failed to explain why that's true. See Appellant's Exhibits at 171 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 12]; and Appellant's Exhibits at 49-52, [Aplt. Exhibit 11, Application for Post-Conviction Relief at 25-28]; and Appellant's Exhibits at 80 [Aplt. Exhibit 14, Post-Conviction Appeal at 8]; and Appellant's Exhibits at 101, 109-112, 117-125, 126-129, 133-139 [Aplt. Exhibit 16, Reply to State's Response to Post-Conviction Appeal at 2, 10-13, 18-25, 27-30, 34-40]; and NDOK Dkt. #14 at 3-7; and NDOK Dkt. #39 at 19-29; and NDOK Dkt. #50 at 18-25, 36.

Before I wrap this up, let me steal a little bit of the state's thunder by telling you now what Dr. John Call thinks about me personally. At my trial, Dr. Call 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. See Tr.Trans.Vol. XV at 2870-71. Further, Dr. Call opined that I tend to 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. And 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. I can't argue with any of that without making Dr. Call seem right about me. Besides, in truth, there are things about me that I am not proud of and want to change.

So who would have made a good expert witness in my case? Dr. Walker recommends the following:

A feminist psychologist or one very familiar with the current research on battered women, victimization, Post Traumatic Stress Disorder, and the concept of learned helplessness...can provide the most informative expert witness testimony when a battered woman is on trial. Shelter and task force workers with similar skills can also be good expert witnesses.²⁰

²⁰ Id. at 11.

There was—and still is—a qualified Battered Woman Syndrome specialist available to provide the necessary expert testimony explaining the reasonableness of my fear and actions. 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 an 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]. Specifically, 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 is 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....

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. See 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. See Tr.Trans.Vol XV at 2815-2816.) Ms. Driskell could have, would have, and should have testified on my behalf at my trial. However, my attorney did not call Ms. Driskell. Therefore, Ms. Driskell did not testify at my trial and my jury missed out on her valuable and necessary assessment of the reasonableness of my state of mind and the actions I took to protect myself from Terry Carlton.

I.B.

APPELLANT'S TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST A MANSLAUGHTER JURY INSTRUCTION

My trial counsel was ineffective for failing to request a manslaughter jury instruction. Oklahoma law establishes that counsel's failure to request a manslaughter instruction when the evidence warrants such an instruction falls below the professional standard for defense attorneys in the state. In cases such as mine, the professional standard as it relates to counsel's conduct in requesting a lesser-included offense instruction has been discussed in a great deal of litigation in Oklahoma. The duty of counsel surrounding lesser-included offense instructions was clearly delineated in *Ballard v. State*, 31 P3d 390 (Okl.Cr. 2001). In *Ballard*, the defendant was

convicted of murder in the first degree. In that case, the trial judge offered a lesser-included offense instruction and trial counsel refused the instruction. The Oklahoma Court of Criminal Appeals reversed the conviction, finding trial counsel to be ineffective and finding that in order to exclude a manslaughter instruction, the record must show a written waiver *by the defendant*. Id. at 391, citing *Shrum v. State*, 991 P.2d 1032 (Okl.Cr.1999).

Even though defense counsel has a duty to request a manslaughter instruction in a murder case, that duty is only triggered if there is sufficient evidence to support such an instruction. Pursuant to Okla. Stat. Ann. Tit. 21 § 711, homicide is manslaughter in the following cases:

1. When perpetrated without design to effect death by a person while engaged in the commission of a misdemeanor.
2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.
3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

Further, under Oklahoma law, “all lesser forms of homicide are necessarily included and instructions on lesser forms of homicide should be administered if they are supported by the evidence.” *Shrum v. State*, 991 P.2d 1032, 1036 (Okl.Cr. 1999) In my case, the Oklahoma Court of Criminal Appeals determined that my trial counsel was not ineffective for failing to request a jury instruction on first-degree manslaughter, deciding such an instruction was not warranted by the evidence. See Appellant's Exhibits at 19 [Aplt. Exhibit 9, Oklahoma Court of Criminal Appeals' Summary Opinion, NDOK Dkt. #48 Exhibit C at 2]. In ruling against me on a related manslaughter instruction issue in my direct appeal, the Oklahoma Court of Criminal Appeals acknowledged that it was failing to adhere to its own precedent. See Appellant's Exhibits at page 19 footnote 1 [Aplt. Exhibit 9, Oklahoma Court of Criminal Appeals' Summary Opinion, NDOK Dkt. #48 Exhibit C at page 2 footnote 1]. I believe that the Oklahoma Court of

Criminal Appeals' failure to adhere to precedent in my case is patently unfair.

In agreement with the Oklahoma Court of Criminal Appeals, The U.S. District Court opined that my attorney was not ineffective for failing to request a manslaughter instruction, deciding the evidence did not warrant a manslaughter instruction. See Appellant's Exhibits at 169 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 10] I disagree. I believe that decision is objectively unreasonable in light of the evidence presented at my trial. See Statement of Facts, *supra*. Conspicuously absent from the U.S. District Court's opinion is any mention of the events immediately preceding the shooting. I myself testified that on the morning of the shooting, Terry raped me, handcuffed me, and was threatening to anally sodomize and kill me. See Tr.Trans.Vol. XI at 2135-71. Terry was enraged and charging toward me when I shot him. Id. at 2165-66. 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. See 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. See 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. See Tr.Trans.Vol. X at 2168-69; and Tr.Trans.Vol. XII at 2378. I was in a daze. See Tr.Trans.Vol. XI at 2169. At some point, I removed the handcuffs using a hand sanitizer. See 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. See 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

killling Id. It is not clear from the record, but here 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. See 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. See 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. See Tr.Trans.Vol. XII at 2371. I was trying to come to terms with what I had done. Id.

The state's own evidence supported my testimony. See Statement of Facts, *supra*. For example, law enforcement eventually transported me to Hillcrest Hospital for a rape examination and medical care following the shooting. See Tr.Trans.Vol. VII at 1435. I was examined by Sexual Assault Nurse Examiner Coordinator Kathy Bell. Nurse Bell testified at my trial that she treated me that morning and documented my injuries, including "an area of tear in two different places" vaginally; bruises on my wrists, arms and head; and redness on my hands and neck. See Tr.Trans.Vol. VIII at 1692-93, 1706-15, 1722. 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. The rape examination evidence was introduced as "the rape kit," State's Exhibit No. 10. Id. at 1696. Oddly enough, the only mention of the rape exam in the U.S. District Court's opinion appears briefly on page 18. See Appellant's Exhibits at 177 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 18].

A heat of passion manslaughter instruction was warranted by the evidence at my trial because the elements of heat of passion are: 1) adequate provocation; 2) a passion or emotion such as

fear, terror, anger, rage, or resentment; 3) homicide occurred while the passion still existed and before a reasonable opportunity to cool; and 4) a causal connection between the provocation, passion and homicide. See Powell v. State, 995 P.2d 510, 534 (Okl.Crim. 2000); and Charm v. State, 924 P.2d 754, 760, *cert. denied*, 520 U.S. 1200, 117 S.Ct. 1560, 137 L.Ed.2d 707 (1997). The trial evidence revealed a two-year history of violence by Terry Carlton against me. See Statement of Facts, supra. On the day that I killed Terry, he had raped me, handcuffed me, and was threatening to anally sodomize me and kill me. See Tr.Trans.Vol. XI at 2135-71. Terry was enraged and charging toward me when I shot him eight times with his own gun. Id. Certainly, there was adequate provocation coupled with fear, and just because I shot Terry eight times does not mean that I did not act under a heat of passion or that such passion had cooled. In fact, I testified that I kept shooting Terry because I was afraid. See Tr.Trans.Vol. XII at 2378. See also Tr.Trans.Vol. XV at 2837.

Pursuant to Okla. Stat. Ann. Tit. 21 § 711, homicide is also manslaughter “when perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.” The U.S. District Court opined there was no evidence that when I killed Terry, I “was resisting an attempt by [Terry Carlton] to commit a crime or after such an attempt had failed.” Appellant's Exhibits at 169 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 10]. Aside from the fact that the state's own evidence introduced at my trial supported my testimony that Terry raped me, handcuffed me, and was trying to sodomize me when I shot him eight times, there is another reason I disagree with the U.S. District Court's opinion in this matter. In Bechtel v. State, the Oklahoma Court of Criminal Appeals noted that introducing evidence of past violent encounters with the deceased “is an established method of proof in self-defense cases, because the law recognizes the fact that future conduct may be reasonably inferred from past conduct.” Bechtel v. State, 840 P.2d 1, 13 (Okl.Cr. 1992) citing Roberson v. State, 218

P.2d 414 (Okla.Cr. 1950). Further, the Oklahoma Court of Criminal Appeals acknowledged in *Bechtel* that for a battered woman, “the threat of serious bodily harm or death is **always** imminent.” *Bechtel v. State*, 840 P.2d 1, 12 (Okla.Cr. 1992) (emphasis added). The U.S. District Court noted 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....” Appellant's Exhibits at 185 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 26]. Therefore, it is perfectly reasonable to conclude that when I killed Terry, I was resisting an attempt by Terry to commit a crime or after such an attempt had failed. The question as to whether or not the killing was necessary means the difference between self-defense and manslaughter, not first-degree murder. See Appellant's Exhibits at 167 [Aplt. Exhibit 20, NDOK Opinion, NDOK Dkt. #65 at 8].

Further, while the evidence in my case shows that I fired the gun until it was empty and shot Terry Carlton eight times, that does not preclude a manslaughter instruction in my case. Under Oklahoma law, multiple independently fatal wounds do not preclude a manslaughter instruction. See *Hogan v. Gibson*, 197 F.3d at 1311 (10th Cir. 1999), citing *Williams v. State*, 513 P.2d at 336-39 (Okla.Cr. 1973). Evidence of intent does not negate a manslaughter instruction under Oklahoma law. See *Hogan v. Gibson*, 197 F.3d at 1311 (10th Cir. 1999), citing *Le v. State*, 947 P.2d at 546 (Okla.Cr. 1997).

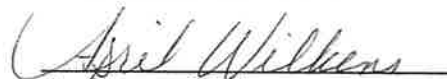
A manslaughter instruction would have allowed my jury to find that my fear of Terry Carlton was genuine while my fear and use of deadly force to protect myself from him was not reasonable. Armed with such an instruction, my jury could have convicted me of manslaughter and sentenced me to considerably less than the life-sentence I am now serving.

I have been incarcerated for nearly ten years for killing the man who repeatedly beat me and raped me. Prison is a very violent and abusive place. If my first-degree murder conviction and life-sentence stand, 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.

CONCLUSION

WHEREFORE, for all of the foregoing, I pray this Court reverses the district court's decision awarding judgment in favor of the Respondent and against me. I would be thankful for any relief you believe is appropriate in my case.

Respectfully submitted,


April Rose Wilkens
M.B.C.C. C1C-117
29501 Kickapoo Road
McLoud, OK 74851

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that the foregoing is true and correct.


April Rose Wilkens

CERTIFICATE OF SERVICE

I certify that on the 14th day of April, 2008, a true and correct copy of the foregoing was mailed, with prepaid first-class postage affixed, to:

William Holmes, Asst. Attorney General
Oklahoma Attorney General's Office
313 N.E. 21st Street
Oklahoma City, OK 73105


April Rose Wilkens

APPELLANT'S EXHIBITS

(Appellant's exhibits filed separately)

1. Affidavit of U.S. District Judge Claire Eagan,
28 March 2002 [NDOK Dkt. #2 Exhibit 1]
2. Affidavit of Attorney Mike Cooke,
1 April 2002 [NDOK Dkt. #2 Exhibit 3]
3. Abridged Audiotape Transcript of April Wilkens and Terry Carlton
[Abridged NDOK Dkt. #2 Exhibit 4]
4. Tulsa Police arrest report of Terry Carlton's 21 February 1998 arrest
for transporting a loaded firearm [NDOK Dkt. #12 Exhibit 2]
5. District Court of Tulsa County case report evidencing warrant
for Terry Carlton's arrest issued on 26 March 1998
and still outstanding on 28 April 1998 in *Carlton v. State*,
case no. CM-1998-575 [NDOK Dkt. #12 Exhibit 3]
6. Pre-sentence Investigation Report Assessment of April Wilkens
by licensed Domestic Violence Intervention Services counselor Lynda Driskell,
filed in *Wilkens v. State*, District Court of Tulsa County case no. CF 98-2173
7. Newspaper article by unidentified staff writer,
"Drug Conviction Adds 2 Years to Woman's Sentence,"
Tulsa World, 11 July 2000: A-10
8. Letter from appellate attorney Bill Zuhdi,
07 February 2000 [NDOK Dkt. #62 Exhibit A]
9. Oklahoma Court of Criminal Appeals' Summary Opinion
Affirming Judgment and Sentence in *Wilkens v. State*,
OCCA case no. F-99-927, 03 April 2001 [NDOK Dkt. #48 Exhibit C]
10. Marriage Certificate of Don and Shirley Carlton,
Oklahoma Court of Criminal Appeals Judge Charles Johnson officiating,
filed in Creek County, Oklahoma, 29 May 1996
11. Application for Post-Conviction Relief in *Wilkens v. State*,
District Court of Tulsa County case no. CF 98-2173, 05 March 2003
12. Tulsa District Attorney Tim Harris's Response
to Application for Post-Conviction Relief in *Wilkens v. State*,
District Court of Tulsa County case no. CF 98-2173, 27 March 2003

13. Order Denying Amended Application for Post-Conviction Relief in *Wilkins v. State*, District Court of Tulsa County case no. CF 98-2173, 22 August 2003
14. Post-Conviction Appeal in *Wilkins v. State*, OCCA case no. PC-2003-1002, 9 September 2003
15. Oklahoma Attorney General's Response to Post-Conviction Appeal in *Wilkins v. State*, OCCA case no. PC-2003-1002, 28 May 2004
16. April Wilkins's Reply to State's Response to Post-Conviction Appeal in *Wilkins v. State*, OCCA case no. PC-2003-1002, 17 June 2004
17. Oklahoma Court of Criminal Appeals' Order Affirming Denial of Post-Conviction Relief in *Wilkins v. State*, OCCA case no. PC-2003-1002, 2 August 2004 [NDOK Dkt. #47 Exhibit E]
18. Newspaper article by Ziva Branstetter, "DA's Race Among Most Moneyed," *Tulsa World*, 21 July 2006
19. Newspaper article by Ziva Branstetter, "DA, Law Officers in Feud," *Tulsa World*, 20 July 2003: A-1 [NDOK Dkt. #57 Exhibit B]
20. Opinion and Order by U.S. District Judge Terence Kern in *Wilkins v. Newton-Embry*, NDOK case number 02-CV-244-K (J), 05 November 2007 [NDOK Dkt. #65]
21. Judgment by U.S. District Judge Terence Kern in *Wilkins v. Newton-Embry*, NDOK case number 02-CV-244-K (J), 05 November 2007 [NDOK Dkt. #66]
22. Notice of Appeal in *Wilkins v. Newton-Embry*, NDOK case number 02-CV-244-K (J), 26 November 2007 [NDOK Dkt. #67]
23. Newspaper article by Barbara Hoberock, "Appellate Judge Quits Amid State Investigation," *Tulsa World*, 1 March 2005: A-1 [NDOK Dkt. #60 Exhibits]

13. Order Denying Amended Application for Post-Conviction Relief in *Wilkins v. State*, District Court of Tulsa County case no. CF 98-2173, 22 August 2003
14. Post-Conviction Appeal in *Wilkins v. State*, OCCA case no. PC-2003-1002, 9 September 2003
15. Oklahoma Attorney General's Response to Post-Conviction Appeal in *Wilkins v. State*, OCCA case no. PC-2003-1002, 28 May 2004
16. April Wilkins's Reply to State's Response to Post-Conviction Appeal in *Wilkins v. State*, OCCA case no. PC-2003-1002, 17 June 2004
17. Oklahoma Court of Criminal Appeals' Order Affirming Denial of Post-Conviction Relief in *Wilkins v. State*, OCCA case no. PC-2003-1002, 2 August 2004 [NDOK Dkt. #47 Exhibit E]
18. Newspaper article by Ziva Branstetter, "DA's Race Among Most Moneyed," *Tulsa World*, 21 July 2006
19. Newspaper article by Ziva Branstetter, "DA, Law Officers in Feud," *Tulsa World*, 20 July 2003: A-1 [NDOK Dkt. #57 Exhibit B]
20. Opinion and Order by U.S. District Judge Terence Kern in *Wilkins v. Newton-Embry*, NDOK case number 02-CV-244-K (J), 05 November 2007 [NDOK Dkt. #65]
21. Judgment by U.S. District Judge Terence Kern in *Wilkins v. Newton-Embry*, NDOK case number 02-CV-244-K (J), 05 November 2007 [NDOK Dkt. #66]
22. Notice of Appeal in *Wilkins v. Newton-Embry*, NDOK case number 02-CV-244-K (J), 26 November 2007 [NDOK Dkt. #67]
23. Newspaper article by Barbara Hoberock, "Appellate Judge Quits Amid State Investigation," *Tulsa World*, 1 March 2005: A-1 [NDOK Dkt. #60 Exhibits]