RICHARD EUGENE GLOSSIP

INNOCENT

WRONGLY CONVICTED

STATE DESTROYED EVIDENCE

NO CRIMINAL RECORD

MODEL PRISONER

61 LEGISLATORS URGE NEW HEARING

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INTRODUCTION

The State of Oklahoma intends to make its fourth attempt to execute innocent man Richard Glossip on September 22, 2022—even while the real killer, Justin Sneed, is serving a life sentence for the same crime. Mr. Glossip had no prior criminal record and has been a model prisoner for over 25 years while he has maintained his innocence. His conviction is the product of an inexcusably negligent police investigation, coercive and unreliable interrogation techniques, intentional destruction by the State of key physical evidence prior to the trial, prosecutors' presentation of unvetted, unreliable evidence, and incompetent state-provided defense attorneys, among other breakdowns of the justice system. Many of these breakdowns could be prevented by the implementation of the bipartisan Oklahoma Death Penalty Review Commission's recommendations issued in 2017.[1] Almost none of these recommendations has been adopted, as former Governor Brad Henry and Andy Lester, who co-chaired the commission, have recently lamented.[2]

An exhaustive independent investigation conducted by a prestigious law firm at the request of members of the Oklahoma Legislature found serious problems with Mr. Glossip's trial and conviction and concluded that no reasonable juror with all the evidence now known would have convicted Mr. Glossip.[3] In light of that report, 61 Oklahoma legislators—republicans and democrats—called on the State to agree to a new hearing;[4] the Attorney General refused.

The State has said Mr. Glossip should be executed without regard to recent developments

[1] The Death Penalty Review Commission was a group of eleven Oklahomans of diverse backgrounds who spent over a year studying the death penalty in this state and, in 2017, issued a nearly 300-page report with a series of both general and specific recommendations, including a unanimous recommendation that the death penalty not be resumed until significant reforms occurred.

[2] https://www.oklahoman.com/story/opinion/2022/07/24/opinion-oklahoma-executions-should-stop-until-system-is-reformed/65376052007/.

[3] The entire 300-page report is readily available online and will be made available to Board members on request. Reed Smith also prepared a 15-page summary, which is included in the Appendix beginning at APPX1. Reed Smith also issued a supplement issued August 9, 2022 (APPX16). Reed Smith has posted the report on its website: https://www.reedsmith.com/-/media/files/news/2022/glossipindependentinvestigation_finalreport.pdf.

[4] APPX26.

because two juries found him guilty and sentenced him to death. That is willful blindness. The first "trial" in 1998 was unanimously thrown out by the Oklahoma Court of Criminal Appeals (OCCA) because Mr. Glossip's lawyer was so incompetent that it was as though he had no counsel at all. The decision of a jury after a proceeding like that is meaningless, and to rely on that as any support for maintaining this wrongful conviction is disingenuous. The second jury, as detailed throughout this packet, was never given most of the information crucial to understanding what happened in this case, nor was any reviewing court. What courts and juries have thought of the limited and distorted evidence presented to them in no way establishes what actually happened, and truth matters.

We now know what really happened—both how the crime was actually committed and how an innocent man got sent to death row—but procedural rules on court proceedings have continued to stand in the way of the truth. This Board's recommendation of executive clemency may be Mr. Glossip's last chance to avoid being killed, and Oklahoma's last chance to avoid putting a demonstrably innocent man to death, which would not only end Mr. Glossip's life, but undermine the integrity of Oklahoma's entire criminal justice system.

OVERVIEW OF THE FACTS

On January 7, 1997 between 10:00 and 11:00 p.m., after an hours-long search for Barry Van Treese, his body was discovered beaten to death and stabbed in a guest room of the Best Budget Inn, a motel he owned Oklahoma City. The motel, next door to a strip joint called the Vegas Club, was a notorious location for illicit drug dealing, and it was also a destination for the sex trade spilling over from the club next door.

As police reports and trial testimony show,[5] Van Treese visited the Oklahoma City motel in the early evening on January 6, 1997, to pay employees and collect cash the motel had brought in since

[5] Due to the page limitations imposed on this submission, the police reports and transcripts are not included in the appendix. The source of information is, however, noted throughout the text. We would be happy to provide any underlying documentation the Board wishes to see.

his last visit. He then drove to a similar motel he owned in Tulsa for the same purpose. Van Treese left the Tulsa motel around 12:15 am on January 7 and instructed staff there that if his wife Donna called, they were to tell her he would not be home for five and a half hours because he planned to stop back in Oklahoma City.[6] He did not say why he needed to return there that night instead of sleeping at the Tulsa motel or driving home to Lawton. Turnpike records confirm he exited back in Oklahoma City at 1:36 am.

Residents of the Best Budget Inn in Oklahoma City recall that the window in Room 102 broke at around 4:15 am.[7] The guest in the next unit, Room 103, heard what he described as "some couple into a domestic," coming from 102 in the early morning hours, as well as a metallic sound and glass breaking.[8] Van Treese's bludgeoned body, which also had knife wounds on both the front and back, was later discovered inside Room 102 with his pants off and his underwear pulled down.[9] There has never been any dispute that Justin Sneed, an unpaid handyman and methamphetamine addict staying at the motel, committed that murder; he pleaded guilty to it and was sentenced to life in prison in 1998.[10]

Evidence discovered recently strongly suggests that Sneed had a female accomplice. Sneed had a girlfriend who danced at the Vegas club next to the motel, who went by the stage name "Fancy."[11] Many of the dancers—including Fancy—formed relationships with men they called their "sugar daddies" who would give them gifts and money.[12] Van Treese, who resided with his family in Lawton, periodically visited his Oklahoma City motel and, it has emerged, the Vegas Club. At least two witnesses have credibly reported that Van Treese was, in fact, Fancy's "sugar daddy," and that

[6] Bob Bemo police report, January 7, 1997 interview with William Howard Bender.
[7] Bob Bemo police reports, January 7, 1997 interviews with John Beavers and Kayla Purlsey.
[8] Bob Bemo police report, January 7, 1997 interview with John Prittie
[9] John Fiely police report, technical investigation at Room 102.
[10] Tr. 6/18/98. Transcripts from the first trial and any pretrial hearings are designated with "Tr." followed by the date. Transcripts from the 2004 trial are designated with "RT," as the official reporter's transcript of the trial in the record.
[11] APPX32 ¶ 26(Garcia).
[12] APPX33 ¶ 34 (Garcia).

Fancy was known to call Van Treese "my big Barry" and he would let her stay at the motel without paying.[13] It appears Fancy had arranged to meet up with Van Treese in Room 102 in Oklahoma City after he finished his business in Tulsa, where unbeknownst to Van Treese, Fancy and Sneed planned to rob him of the large amount of cash they believed he would be carrying. Aside from needing to feed his drug addiction, Sneed had a second reason for wanting to rob Van Treese: he was angry with him for not paying Sneed for his work at the motel. When Sneed tried to take his keys and money, Van Treese fought back, and while intending only to knock him out, Sneed beat him to death with a baseball bat.

Police never learned this story or searched for Fancy. In the early morning hours on January 8 following discovery of the body, Oklahoma City Police Department (OCPD) detectives interviewed Mr. Glossip, the motel's 33-year-old manager with just a seventh-grade education, who had stayed at and around the motel throughout the search for Van Treese. Police made a cursory attempt to locate Sneed, who had fled the motel before the body was discovered, but failed to locate him. The next day, detectives interviewed Glossip a second time and arrested him, not because they thought he killed Van Treese, but because they were convinced he had something to do with the murder.

On January 14, with Glossip still in OCPD custody, a roofing contractor in Oklahoma City, who was then employing Sneed, turned him in to police. Detective Bob Bemo, when he interviewed Sneed, spoke Glossip's name six times before Sneed mentioned any involvement by Glossip at all, coaxing Sneed to share the blame for the murder with Glossip.[14] Sneed took that lifeline, and eventually claimed that while he did indeed kill Van Treese, he did so only because Glossip had enlisted him to do so. The only witness to any such purported agreement was Sneed himself.

[13] *Id.*; APPX38.
[14] A video excerpt from this interview is included as VIDEO 1 on the drive included with this packet.

While Sneed was jailed for this crime and awaited his plea deal, he confided in no fewer than four other inmates—witnesses who were never interviewed by police and only recently located by Mr. Glossip's current counsel—all of whom report that Sneed's description of his crime had nothing to do with Richard Glossip.[15] Sneed told one of them that his girlfriend (he couldn't remember her name but knew that Van Treese was her sugar daddy) had learned Van Treese would be carrying between $20-30,000 in cash on the day he was killed, and the two of them had planned together to rob him, and Sneed ended up killing him.[16] Another also recalled hearing from Sneed that it was a botched robbery and a woman was involved;[17] he later appeared in a documentary confirming that it had been "a girl's job" to lure Van Treese into the room.

Mr. Glossip was tried—without the benefit of this information—in 1998. According to the prosecution, Glossip convinced Sneed to kill Van Treese, either in exchange for a portion of the money they could steal from him or by somehow overpowering Sneed's will. As manager, Mr. Glossip regularly had control of large amounts of the motel's cash, so stealing money provided no motive for him to participate in any attack. Instead, prosecutors alleged Glossip's motive was to avoid being fired by Van Treese either over purportedly embezzling motel proceeds throughout 1996, or, alternatively, the motel building's poor condition. Mr. Glossip's attorney was so grossly ineffective that when he was convicted, the OCCA unanimously threw out the conviction. The first attorney's errors were obvious on the face of the record, and the appeal lawyers did nothing to investigate the case outside of critiquing the conduct of the trial.

Shockingly, in October 1999, while that appeal was pending, the Oklahoma County District Attorney's Office instructed the OCPD to destroy ten items of evidence, including physical evidence from Room 102 and the motel's business records retrieved from the trunk of Mr. Van

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[15] APPX40-45 (Tapley); APPX37-39 (Melton); APPX46-47 (Cooper); APPX48-50 (Ramsey).
[16] APPX37-39 (Melton).
[17] APPX48-50 (Ramsey).

Treese's car, which would have been crucial for determining whether the State's theory that Glossip had embezzled proceeds had any basis in fact.[18] Many people involved in the trial have since confirmed that this should never have been done in a homicide case, let alone a death penalty case.[19] After this deliberate destruction of evidence came to light in January 2003, rather than recognizing the resulting impossibility of a reliable retrial, the State once again tried, convicted, and sentenced Glossip to death in 2004.

In 2020, after reviewing case records, a Republican-led bipartisan committee of Oklahoma legislators called on the Attorney General and Governor Stitt to re-investigate the matter. When they did not respond to those requests, the legislators engaged a large law firm, Reed Smith, LLP, to conduct a comprehensive independent investigation of the case on a pro bono basis, beginning early in 2022. On June 7, 2022, Reed Smith submitted a report to the legislators, who made it public on June 15, 2022. The report, which was based on a review of more than 12,000 documents, 36 witness interviews, 7 juror interviews, two expert consultations, and a lengthy interview with Mr. Glossip himself, among other steps, concluded that "the 2004 trial cannot be relied on to support a murder-for-hire conviction. Nor can it provide a basis for the government to take the life of Richard E. Glossip." Reed Smith concluded "that no reasonable juror hearing the complete record would have convicted Richard Glossip of first-degree murder." The report concluded that the State presented a complicated and implausible murder-for-hire theory, but there was an obvious explanation for the events that the jury was never offered: Justin Sneed, a 19-year-old methamphetamine addict, had planned to rob Van Treese but ended up killing him in the process, and had implicated Glossip as suggested by police to lessen the consequences.

[18] APPX51-56.
[19] Audio clips of trial prosecutor Gary Ackley, OCPD detective John Fiely, and retired OCPD detective Janet Hogue (who personally collected the items for destruction from the District Attorney's Office) discussing this can be found as VIDEO 2 on the attached drive.

On August 9, 2020, Reed Smith issued a supplemental report, revealing that they had obtained correspondence from 2007 in which Justin Sneed said he considered his testimony a "mistake" he wanted to "clean up."[20] The public defender talked him out of it, explaining that if he had done that, he would likely be facing the death penalty[21]—a shocking revelation in a case where that testimony was the only evidence Van Treese's killing had been a murder for hire.

THE BEST BUDGET INN

The Best Budget Inn (BBI) was located just off the interstate in Oklahoma City, nestled between a strip club called the Vegas Club, a Sinclair gas station, a credit union, and a McDonald's. Lawton resident Barry Van Treese owned this BBI and another in Tulsa. Van Treese did not visit his motels daily. Rather, he employed a live-in manager who was responsible for day-to-day operations.[22] The manager at the Oklahoma City motel, Mr. Glossip, was instructed to hold all the motel's cash proceeds, as Van Treese did not use a bank account for the BBI. Rather, receipts were recorded daily on a pre-printed "daily report."[23] The manager was to bundle each day's daily report with the cash, checks, and credit receipts from that day and keep them safe until Van Treese came to review and collect them.[24] The manager would also regularly report the day's numbers by phone to Van Treese's wife, Donna, who kept the books.[25] Van Trees paid the managers a weekly salary, and each month the managers could also receive a bonus based on the motel's performance, which were calculated by giving a fixed percentage of any amount brought in over a minimum threshold.[26]

These BBIs in Tulsa and Oklahoma City were well known sites of a lively drug trade, and dancers from the Vegas Club routinely used rooms in the Oklahoma City motel to engage in sex

[20] APPX17.
[21] APPX 18.
[22] RT Vol. 4 at 32.
[23] RT Vol. 4 at 129-30.
[24] *Id.*
[25] RT Vol. 5 at 49.
[26] RT Vol. 4 at 51.

work.[27] The Reed Smith investigation learned, through records from foreclosure proceedings and an interview with Van Treese's accountant, that Van Treese had "significant state and federal tax liabilities," leading to his bank account being levied by the IRS and as a result he kept significant sums of cash in his vehicle, rather than in the levied account. The investigation also learned that Van Treese faced significant mortgage debt on multiple properties. Perhaps unsurprisingly given this financial situation, Van Treese was unwilling to spend money on necessary repairs at his motels.[28] This explains why Van Treese's motels were widely known for being dirty and in disrepair, and cauldrons of illicit activity.[29]

RICHARD GLOSSIP

In 1995, Van Treese hired 32-year-old Richard Glossip to manage the Oklahoma City BBI with his girlfriend, D-Anna Wood.[30] Mr. Glossip had no criminal record (he'd had nothing worse than traffic tickets and two disorderly conduct fines he'd paid at age 18), and was known as a mild-mannered, diligent manager who periodically made largely futile efforts to rid the motel of its criminal element. [31]

Although Mr. Glossip reliably completed the simple, repetitive tasks of managing the motel, he had never finished 8th grade, and his IQ is in the borderline deficient range of cognitive functioning. In fact, 2011 IQ testing, which yielded an unadjusted score of 78, likely reflects, after accounting for the age of the test and its standard error of measurement, a true IQ between 69 and 79, which is in the intellectually disabled range.[32] But Mr. Glossip's impairments are not limited to his IQ. Testing conducted in 2011 revealed that his problem-solving ability was severely impaired, and

[27] APPX57-58, ¶¶ 1-3, 8-9 (Mize); APPX60-61 ¶¶ 5, 10 (Eckhart); APPX63-64, ¶¶ 3-4, 6 (Barrett); APPX70, 75 ¶¶10, 26 (Spann); APPX29-31, ¶¶ 2, 16, 25 (Garcia).
[28] APPX13-14.
[29] RT Vol. 12 at 23; RT Vol. 5 at 73.
[30] RT Vol. 4 at 182-83; RT Vol. 5 at 60.
[31] APPX60-61 ¶ 7 (Eckhart); APPX57 ¶ 5 (Mize); APPX66 ¶ 10 (Barrett); APPX29-30 ¶¶ 7-11 (Garcia).
[32] APPX80 ¶ 11 (Ouaou).

further evaluation by Dr. George Woods after Mr. Glossip was nearly executed for the third time in 2015 confirmed "low processing speed, poor working memory, impaired visual memory, and cognitive impairment."[33] Mr. Glossip struggled in particular to "integrat[e] multiple elements to produce a coherent, functional whole," failing, for instance, the simple task of drawing a clock face, and demonstrated a marked absence of mental flexibility and abstract thinking, responding when asked why people in glass houses should not throw stones, "Because it will break the glass."[34]

Dr. Woods explained that many of the deficits he observed stemmed from right parietal lobe impairment, which is "common in people who have suffered trauma," and causes Mr. Glossip, in complex or stressful situations, to be incapacitated and "unable to understand the circumstances."[35] Dr. Woods also observed "difficulty in executive functioning, which is critical for planning and problem-solving, as well as challenges picking up social cues and understanding context." *Id.* Consistent with these observed deficits, Dr. Woods determined that Mr. Glossip suffered significant trauma growing up in a chaotic home as the seventh of sixteen children, where he experienced violence and neglect.[36] On top of his measurable cognitive impairments, this history led to a "longstanding tendency to avoid confrontation."[37]

Mr. Glossip has been able to successfully hide these impairments throughout his life. Dr. Woods explains this is typical:

> Common strategies include simply pretending to understand when they do not, speaking with false confidence, and relying heavily on others, both directly and indirectly. This phenomenon is known as the "cloak of competence." It commonly masks impairments with reasonable effectiveness in day-to-day interactions, leaving laypeople and those having only casual interactions unaware of the individual's underlying deficits.[38]

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[33] APPX88 ¶ 32 (Woods).
[34] *Id.* ¶¶ 33-34.
[35] *Id.* ¶ 35.
[36] APPX85-86 ¶¶ 15-20 (Woods).
[37] APPX89 ¶ 38 (Woods).
[38] *Id.* ¶ 37.

A review of Mr. Glossip's social history reveals heavy use of these strategies. He has been in two formal and one common-law marriage, each with a woman who made decisions for him, and has worked in jobs that, while nominally managerial, required primarily the performance of rote tasks with the steps clearly spelled out.[39] He has also drawn on "his relative strengths in the verbal realm to convey a false sense of capability and, at times, confidence."[40] Still, he has exhibited problems with recognizing the import of his situation, not fully understanding, for instance, that his first wife, whom he married while still a minor and who was seven years his senior, had exploited him, or that it is unusual, and even suspicious and dangerous, to run a motel by keeping large amounts of cash on the premises.[41] Indeed, it seems Van Treese may not have actually wanted his motel rid of its criminal element, as the criminals brought significant business and did not demand cleanliness or quality—but Mr. Glossip would not have understood that, and earnestly tried to manage the motel as a legitimate business.

In sum, Dr. Woods concluded:

> The combination of Mr. Glossip's trauma history; a lack of emotional awareness or skills; and his cognitive impairments, which leave him unable to think clearly, assess his situation, and make any kind of reasonable plan, have rendered Mr. Glossip unable to respond appropriately or reasonably to unfamiliar situations that are stressful and urgent. In such situations, he is vulnerable to the wills of others. If provided direction, he would be uncommonly prone to follow it without appreciation of the consequences it may produce for him.[42]

Even with these difficulties, Mr. Glossip generally met the motel's financial targets and thus received bonuses from the Van Treeses on a regular basis.[43]

JUSTIN SNEED

In the summer of 1996, several rooms at the motel were rented by a crew of roofers from Texas

[39] APPX86-87, ¶¶ 21, 25-29 (Woods).
[40] APPX89, ¶ 37 (Woods).
[41] APPX86-87, ¶¶ 24,29 (Woods).
[42] APPX89-90, ¶ 39 (Woods).
[43] RT Vol. 4 at 119.

who had come to town to do seasonal repair work.[44] That crew included two stepbrothers, Wes and Justin Taylor.[45] Both had warrants out for their arrest in Texas, and Justin, it turned out, was not a Taylor at all; his legal surname was Sneed.[46] After a few weeks working on the roofing crew and living at the motel, the brothers arranged instead to stay for free at the motel as handy men, helping with laundry and doing work that was significantly easier than construction labor and left them free to hang around the motel, with its drug trade and connection to the Vegas club.[47] Shortly after this change, Wes's father came looking for him and took him home to Texas to face his pending charges; Justin Sneed stayed on.[48]

Sneed, it was well known around the motel, was a heavy drug user. In particular, he used methamphetamine, smoking, snorting, and even injecting it. Jamie Spann, a friend and co-worker who had known him for years remembered:

> Sneed would shoot meth, eat meth or snort meth. He was always high. . . . I have seen Justin Sneed shoot meth with a needle. I saw him mix it using the bottom of a beer or soda can. . . . Sometimes if he was in a hurry he would just wrap the meth in toilet paper and just eat the toilet paper and wash it down with Dr. Pepper. . . . Justin Sneed was so strung out on meth that he would do anything to get more drugs.[49]

Albert Mize, a regular at the motel, said of Sneed, "He was a full blown addict, and used methamphetamine intravenously on a daily basis."[50] Mize personally sold drugs to Sneed.[51] A third witness, Richard Barrett, explained, "[b]ased on [his] own experience, [he] believe[s] Justin Sneed was addicted to methamphetamine in a bad way.[52] Tricia Eckhart, a former maid at the motel, agreed.[53] And Stephanie Garcia, a dancer from the Vegas Club who knew Sneed well, explained he

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[44] RT Vol. 12 at 44; APPX70 ¶ 9 (Spann).
[45] RT Vol. 12 at 41-42.
[46] RT Vol. 12 at 42.
[47] RT Vol. 12 at 46-47.
[48] RT Vol. 12 at 42, 46.
[49] APPX72-73 (Spann).
[50] APPX57 ¶ 6 (Mize).
[51] APPX58, ¶¶ 8, 12 (Mize).
[52] APPX64, ¶¶ 6-7 (Barrett).
[53] APPX61 ¶ 10 (Eckhart).

"changed very quickly when he started using drugs heavily. He became very scary . . . I personally witnessed him inject himself with meth and heroin."[54] Garcia "personally used drugs with Sneed more than 20 times," which he bought "from a dealer at the Best Budget Inn who sold what we called 'bathtub' or 'peanut butter' or 'dirty' meth," and when "Sneed used drugs, he also became violent and paranoid." He was a "'back-to-back' drug user" who "was always looking for drugs or money for drugs."[55]

Unsurprisingly, Sneed was also known to steal to support his habit. Spann, who had known him since high school, recalled that even then, "[h]e'd steal anything that wasn't bolted down."[56] Because he was an addict, "[i]f he stole money, he would never split it with anyone."[57] Barrett explained Sneed "broke into cars at the motel parking lot and stole items from the cars," and brought items to trade for drugs, including "food stamps . . . radar detectors, car stereos, a Samsonite silver hard-covered briefcase and, on one occasion, a nickel-plated .38 caliber handgun," which he said he had taken "from occupied rooms at the motel and cars in the parking lots of the motel and other businesses near the motel."[58] Garcia, the dancer, "had personal knowledge of Sneed's plans to steal money. On one occasion, [she] personally witnessed him pick up a brick and announce that he was going to get 'the money and the drugs.' Later that evening, he came back with drugs and had blood on his shirt, and he looked messed-up."[59] Sometimes, he even used "girls who worked at the club to lure men into the rooms so he could set the men up and rob them."[60] Garcia also remembered that "in the months and weeks before the homicide," Sneed "would often hide from Rich because he was getting high and he did not want Rich to know that."[61] On one occasion,

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[54] APPX30 ¶ 15 (Garcia).
[55] APPX31 ¶¶ 18, 20 (Garcia).
[56] APPX69 ¶ 6 (Spann).
[57] APPX73 ¶ 20 (Spann).
[58] APPX64 ¶¶ 5, 7 (Barrett).
[59] APPX31 ¶ 23 (Garcia).
[60] *Id.* ¶ 25.
[61] APPX33 ¶ 41 (Garcia).

Sneed asked Glossip to help him stage a robbery at the motel, where Sneed would take the money and Glossip would report it was stolen by a stranger who did not fit Sneed's description. Glossip refused.[62]

A 1997 psychological evaluation of Justin Sneed revealed additional information about his background, including that he "admits to using a variety of drugs including marijuana, crank, cocaine, and acid," that he self-reported "he used to get angry quite often . . . yell at teachers and reject everyone and get into fights."[63] He reported being "kicked out of school in the 8th grade for fighting other students and teachers," used to "reject authority," and "often got into trouble." *Id.* School records obtained by Reed Smith confirm this.[64] He had previously been in legal trouble for burglary and for making a bomb threat. The evaluator found he would pose a significant threat if released not only because of the present charges but "because he has a violent history" and "a history of polysubstance abuse."[65]

THE MURDER

On the evening of Monday, January 6, 1997, Van Treese stopped by the motel, as he often did, to pick up the proceeds that had accumulated since his last visit, which was over a week earlier (on his way to a Christmas vacation), and to issue paychecks to Glossip and the daytime desk clerk, Billye Hooper.[66] He left the motel shortly before eight o'clock that night, bound for his Tulsa property.[67] He was expected back the next day for work on refurbishing some of the motel rooms,[68] but the next morning, he was not there, and that afternoon, his car was found unlocked and parked with a front wheel on the curb in the credit union parking lot next door.[69]

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[62] RT Vol. 9 at 22, 233.
[63] APPX92 (King report).
[64] APPX19-22.
[65] APPX91-83 (King report).
[66] RT Vol. 5 at 74-78; RT Vol. 7 at 53-54.
[67] RT Vol. 5 at 77.
[68] *Id.* at 78; RT Vol. 4 at 71, 191; RT Vol. 11 at 234
[69] RT Vol. 8 at 168.

A search was conducted, primarily by motel employees and Clifford Everhart, an associate of Van Treese's who occasionally worked informally as security at the motel,[70] lasting from mid-afternoon until late evening. A window had been broken in one of the rooms, Room 102, during the night, which several people around the motel had observed; this was not an unusual occurrence at the BBI. The blinds were closed and the window had been temporarily repaired with plexiglass from the outside that morning by Sneed, with assistance from Glossip, but police never looked inside that room (or apparently any other room) until Everhart and OCPD patrol officer Tim Brown entered it between ten and eleven p.m.. Inside, they found Van Treese, savagely beaten to death.[71] Justin Sneed had fled the scene upon arrival of police in the mid-afternoon. Mr. Glossip voluntarily spoke to police that night and was arrested two days later; Sneed was arrested five days after that.

THE SLOPPY POLICE INVESTIGATION

A. Minimal Interviews and Crime Scene Investigation

The police investigation of the murder—as documented in their reports—lasted just ten days, and, despite a range of unanswered questions, quickly ceased upon the arrest of Justin Sneed. Police collected evidence from Room 102, but then left it unsecured before returning for additional processing the next day. They failed to search the entire motel property or surrounding area, and during the entire investigation interviewed just 14 people,[72] some of whom they asked almost nothing. Crucially, with the exception of problematic witness William Bender (discussed *infra*), none of these interviews yielded any information about possible embezzlement from the motel, any concerns the Van Treeses may have had about its condition, any indication that Mr. Glossip's job might be in peril, anything about the relationship between, or any agreement between, Sneed and

[70] Everhart's status and role were never clear. He represented to various parties that he was a part owner of the motel, but that appeared to be untrue. The Reed Smith investigation uncovered an extensive history of problematic and dishonest behavior, including resigning in disgrace as the chief of police in Binger, Oklahoma. APPX14.
[71] RT Vol. 9 at 221-25.
[72] If any other interviews were conducted, either they were not documented, or the reports were never provided to the defense.

Glossip, or any information about Sneed being meek or vulnerable.

Aside from these limited interviews, police analyzed latent prints collected from Room 102. Several matched Sneed; one was unidentified, although Sneed, Glossip, and the victim were all excluded.[73] They also did limited processing of Van Treese's car, from which they extracted certain items the investigator thought would be useful, and where they located $23,100 in cash (some of which was stained with blue dye), then swiftly returned both the car and the money, without inventorying either, to the Van Treese family.[74] The only other investigative step documented is the collection of a surveillance video from the neighboring Sinclair station that was never watched and has since been lost by police or prosecutors.[75]

Though a handful of reports from the latent print analyst continued to trickle in through January and February, police effectively stopped investigating after arresting and interrogating Sneed, even though Mr. Glossip had continued to steadfastly deny participation in the murder, and even though Sneed's statement was the only evidence they had connecting Mr. Glossip to the killing itself.

B. **Police Interviews of Glossip**[76]

Much of the suspicion that developed around Richard Glossip arose from his own statements to police, which he made without counsel under the naïve belief that if he was innocent, he was not in any danger. Police appeared to develop suspicion of Mr. Glossip initially based on perceived inconsistency in statements given during the search for Van Treese about when Mr. Glossip had last seen him—around 8 pm the night before, as he was leaving for Tulsa, or around 7 the next morning

[73] RT Vol. 10 at 212.
[74] APPX23-24.
[75] O'Leary police report, January 7, 1997; Tr. 5/29/98 at 12.
[76] Again because of page limitations, the transcripts of these lengthy interviews are not included, but both the transcripts and the videos are available on request.

(when in fact Van Treese was already dead), when Mr. Glossip initially reported he had seen Van Treese walking across the parking lot, and later said he saw a person he *thought* was Van Treese, but was not sure.[77] That suspicion was magnified when Mr. Glossip told Officer Brown, upon discovery of the body, that he believed Sneed was the killer, as Sneed had come to his door in the early morning hours with a black eye, talking about a broken window in Room 102.[78]

Although Mr. Glossip quickly realized that he should have gone straight to authorities when he developed a suspicion of what had happened to Van Treese, and repeatedly expressed that understanding, detectives, using unethical and discredited interrogation techniques, led him to falsely confess to having known about and helped to conceal Van Treese's murder—the crime not of murder, but of accessory after the fact, for which they arrested him, and with which he was swiftly charged. Mr. Glossip's limited intelligence, inability to problem-solve, and difficulties with processing salient information undoubtedly left him highly vulnerable to this sort of manipulation.

Detectives Bemo and Cook first interviewed Mr. Glossip in the early morning hours of Wednesday, January 8, 1997, at the police station after they had finished their work at the motel crime scene. The interview lasted nearly two hours. Mr. Glossip denied involvement with the murder, but did say that he had strongly suspected Justin Sneed had something to do with it, and realized he should have told authorities that much sooner. He described being awakened by Sneed in the early morning hours, being told two drunks had broken a window in Room 102, and instructing Sneed to clean up the glass, and in the morning to repair the window. He also related that Sneed had a black eye at the time, which Sneed claimed had occurred when he slipped in the shower, and that Sneed had previously approached him about staging a robbery of the motel.

The detectives then conducted a brief interview with D-Anna Wood, who explained that she

[77] RT Vol. 9 at 209, 215-216 (testimony of Officer Tim Brown).
[78] *Id.* at 233.

had forbidden Rich to come forward with the information he had about Sneed: "[S]ee Rich suspected that Justin had something to do with it. But I said no, don't jump the gun, because we shouldn't be saying stuff if we don't really know." She spontaneously repeated this later in the interview. Police then asked Mr. Glossip to come back the next day for a polygraph, and he agreed.

During the day on Wednesday, Mr. Glossip sold some of his belongings, both because, given what had happened, he and Wood did not want to stay on at the motel, and because an acquaintance had advised him to talk to a lawyer, and needed money to pay for one. The next morning, Thursday, he did call a lawyer, David McKenzie, who told Mr. Glossip to come to his office. Mr. Glossip brought the money he had, but when he got there, the lawyer did not take his money, because it would not be enough to pay for representation. Mr. Glossip did not formally hire McKenzie, but McKenzie did call the detectives to tell them Mr. Glossip would not take a polygraph examination, and gave Mr. Glossip a card to show police if they tried to talk to him, saying under no circumstances were they to speak to or interrogate him without counsel present.[79]

As they were leaving McKenzie's office, Mr. Glossip and Ms. Wood were accosted by OCPD officers who brought them to the station, despite McKenzie having just told detectives that Mr. Glossip would not be taking the polygraph.[80] Mr. Glossip initially did as McKenzie had instructed and told the detectives he would not take the polygraph. Upon this refusal, the detectives told Mr. Glossip they were going to place him under arrest. As they walked him to a holding cell, Detective Bemo told Mr. Glossip he could go home if he passed the polygraph. Hearing that, against the advice he had just sought out from the lawyer, Mr. Glossip agreed to the test. They told him if he was in fact innocent, he should not need an attorney. [81] Detectives apparently summoned a

[79] Tr. 6/8/98 at 19.
[80] Tr. 6/8/98 at 17.This encounter was the subject of an unsuccessful motion to suppress Glossip's second statement to police. O.R. (record on appeal) 726-737.
[81] Tr. 6/8/98 at 23-24.

polygrapher, although no report or record of an examination administered to Mr. Glossip exists; the only evidence of any exam is Detective Bemo's testimony that he'd been told Glossip "flunked" the alleged polygraph, with no detail of what had been asked, or what the responses or actual results had been.[82] Despite numerous requests from attorneys for Mr. Glossip throughout the case, no polygraph materials have ever been produced (although the State relied on this purported polygraph in opposing clemency in 2014). Following this alleged polygraph, the detectives interrogated Mr. Glossip a second time, this time for about 40 minutes.

After Detective Bemo assured him that "this is your chance to help yourself. I know that—it's bad. It's not as bad as it was," and "now you can help yourself even more. You've got to fill in the gaps," and "if you're willing to help yourself, then we'll do everything we can to help you. But you've got to do—you've got to tell us about this thing, and you've got to tell us everything," Mr. Glossip repeated the same account he had given in his prior interview, with one important addition: when Sneed had come to his door in the middle of the night, in addition to telling Mr. Glossip about the window, he said "I killed Barry." Mr. Glossip explained that Sneed was mumbling and he couldn't really understand him, but he did not believe Sneed had actually done it, largely because he hadn't seen Van Treese return that night and looked out the window and did not see Van Treese's car parked where it was always parked when Van Treese was on the property. He also added that when Sneed fixed the window on Tuesday morning, Mr. Glossip had helped to hold the plexiglass, believing, as Sneed had told him, that the window had been broken by two drunks hanging around the motel.

Consistent with what D-Anna had told police the day before, Mr. Glossip emphasized that he had discussed it with her and he wanted to tell someone his suspicions about Sneed, but she told him not to say anything, because they did not know for sure. Mr. Glossip agreed he should have

[82] O.R. 806; Tr. 4/23/97 at 92.

done something sooner, but he was scared, and it had not occurred to him that Sneed would take off. He then told Detective Bemo what he clearly wanted to hear: "I didn't have nothing to do with Barry's death. Justin did it. I mean, I guess I did. I covered it up." Bemo indicated his approval and sought to placate Mr. Glossip, telling him, "Well, I believe that you don't have—you didn't have anything to do with the actual murder," and "at least you're not looking at a first-degree murder charge."

Mr. Glossip was then arrested, and he was charged—consistent with what Bemo had elicited from him—with accessory after the fact to first degree murder. Upon his arrest, police confiscated the $1,757 in cash he had on him that he had planned to use to pay the attorney.

C. **Police Interview of Sneed**

Several days later, when he was finally arrested, Sneed confessed to killing Van Treese with a baseball bat. Detectives told Sneed that everyone they talked to was "putting the whole thing on" him and would leave him "holding the bag." They told him he should not "take the whole thing." The only other person whose potential involvement Sneed had mentioned was his stepbrother, Wes Taylor. The following exchange then occurred:

> Det. Bemo: You know Rich is under arrest, don't you?
> Sneed: No. I didn't know that.
> Det. Bemo: Yeah. He's under arrest, too.
> Sneed: Okay.
> Det. Bemo: So he's the one – he's putting it on you the worst. Now, I think that there's more to this than just you being by yourself and I would like for you to tell me what – how this got started and what happened. . .

Only after Bemo had said Rich's name six times and emphasized that Rich Glossip was snitching on him did Sneed say Rich Glossip had asked him to rob Van Treese. He later changed his story to say that Mr. Glossip had asked him to kill Van Treese. Reed Smith's investigators consulted with Dr. Richard Leo, a preeminent expert on false confessions and interrogations, and also talked with trial prosecutor Gary Ackley, ultimately concluding that the "contamination by the police thus

raises serious doubts about the reliability of Sneed's statements that Glossip was involved in the murder."[83]

On the heels of this interview, the State charged Sneed with first-degree murder.[84] Mr. Glossip, as noted above, was charged only with accessory after the fact.[85] But approximately a week later, with no documented investigation in between, the State withdrew the accessory charge and amended the first-degree murder case to include Mr. Glossip as a co-defendant.[86]

After a preliminary hearing, the State filed a Bill of Particulars noticing its intent to seek the death penalty against Glossip, signed by Oklahoma County District Attorney Robert Macy, alleging two aggravating factors (neither of which would ultimately be the basis for the death sentence): that the murder was especially heinous, atrocious, or cruel, and the existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.[87] Sneed was offered a plea deal where he would avoid exposure to the death penalty in exchange for testimony against Glossip.[88] Sneed's testimony was the only direct evidence the State ever presented of Glossip's involvement in the murder.

D. Key Omissions

The areas police did *not* investigate are striking—a fact recognized extensively in the Reed Smith investigation. The omissions led both to the police entirely missing the true explanation and to proceeding with a mistaken theory inconsistent with the facts that would have been learned had the case been properly investigated.

[83] Complete Reed Smith report, p. 59.
[84] O.R. 1.
[85] O.R. 803.
[86] O.R. 9; *see also* O.R. 606 (findings of fact and conclusions of law on first appeal recognizing "Glossip's own statements implicated him as an accessory after the fact, but Glossip could not have been charged with Murder in the First Degree without Sneed's testimony.").
[87] O.R. 28-29.
[88] O.R. 86.

1. Witnesses from the motel, gas station, and strip club

The motel had 54 guest rooms, approximately 50 of them operational. On the night of January 6, 1997, motel records reflect 21 of those rooms occupied, many containing two beds; the following night, 19 were listed as rented.[89] Police interviewed only three guests. Several rooms near 102 were occupied, but there is no record of any attempt to interview those guests, despite the fact that John Prittie, in room 103, reported hearing the homicide as it took place. Of the motel witnesses police did interview, two reported hearing an argument in Room 102: Prittie and long-tern guest John Beavers both thought it sounded like a couple.[90] Yet police made no documented attempts to discover who the woman was or figure out what her role might have been. When they interviewed Jacqueline Williams, the maid who lived on-site in Room 250 with her boyfriend and three school-age children, it appears they asked her only about the events of Tuesday afternoon, and did not ask if she had seen or heard anything around the time of the murder during the night. There is no record of any attempt to speak to the children or boyfriend.[91] In the 2004 trial, Williams testified about hearing noises that night with her children,[92] something no one asked any of the five people living in that room about in 1997 when they were purportedly trying to solve the murder.

There is no report of an interview of Cliff Everhart, the associate of Van Treese who claimed to be a part owner of the motel and who participated extensively in the search, nor of Donna Van Treese, the victim's wife and motels' bookkeeper—two indisputably key witnesses. Nor do police reports reflect any interview of Leslie Williams, a girlfriend of Cliff Everhart who was present during much of the search for Van Treese and the discovery of the body.[93]

Sneed, in his interview with detectives and before the police introduced Glossip's name, told

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[89] APPX95-97.
[90] Bob Bemo police report, January 7, 1997 interview with John Prittie; RT Vol. 6 at 26.
[91]Bill Weaver police report, January 7, 1997 interview with Jacquelyn Kay Williams.
[92] RT Vol. 6 at 120-21.
[93] RT Vol. 9 at 59.

them the killing had been intended as a robbery, and his brother, Wes Taylor, was involved in setting it up. When asked during Sneed's preliminary hearing whether police had made any attempt to investigate or interview Wes Taylor, Det. Cook replied "No. He was in Texas. . . at the time of the investigation, it didn't seem that—like it had a lot of priority."[94]

Additional witnesses approached the police with information, and it appears detectives simply ignored them. Kirby Evans, who had no relation to the motel or any of the parties, phoned on the second day after the murder and stated his co-worker, Kim Hooper, told him she had a boyfriend who was at the motel on the night of the murder and seemed to have some knowledge about the murder; Evans provided contact information to the police for the boyfriend.[95] There is no indication police made any attempt to contact him.

2. Physical evidence and records

There is no record of any search for the murder weapon and one was never found. The bloody clothes worn during the murder were stashed in the motel's laundry room, but police did not look for or locate them until after apprehending Sneed a week later, when he showed them where to look. There is no record of any attempt to discern the source of the shower curtain taped over the window in Room 102 (102's shower curtain was intact in the bathroom).

Nor did police collect the motel's records—registration cards in the office, payment records, guest registers, employment records, or anything else, despite having been told by William Bender (the spouse of the Tulsa motel's manager, who would ultimately become an important though problematic witness for the State) that Van Treese was upset specifically because of the terrible state of those records at the Oklahoma City motel. Police never questioned the desk clerk, Billye Hooper, about the records. The file contains a very small number of records apparently produced for

[94] Tr. 10/1/97 p. 42.
[95] Vance Allen police report, January 9, 1997 phone call from Kirby Evans.

the first mid-trial in 1998[96]—financial summary spreadsheets created by Donna Van Treese and room rental records for the days surrounding the murder—but nothing more, a startling oversight, given that the State's theory at trial would become that an important motive for the murder was concealing embezzlement and mismanagement of the motel.

Police collected a security video from the gas station next door within hours after the body was found. There is no police report of any viewing of the video or identification of what it did or did not show. The first prosecutor stated on the record she had "not looked at that tape," but assumed it had no evidentiary value (meaning it would not help the *State* to prove *its* case).[97] The prosecutor for the second trial denied it had even been booked into evidence.[98] Critically, Pursley, the clerk, has said Sneed came into the Sinclair gas station in the early morning hours, perhaps immediately before the killing. This video likely showed what time he entered, who he was with, and what they were wearing (which could have been compared to the bloody clothes). It could also identify others who may have been involved or been witnesses and able to corroborate or dispute existing witness accounts. If it showed the exterior of the station at all, and pointed in the right direction, it could even conceivably show who entered and exited room 102 and moved the car during this homicide.

Van Treese's car was discovered with $23,100 cash in the trunk, some of which, officers noted, was stained with blue dye as though it had been part of a bank robbery.[99] There is no record of any follow-up on this suspicious fact. Indeed, the record reflects police swiftly returned this marked cash to the family, along with the car and its entire contents, except for the handful of items police decided to retain.[100] Nor do records reflect any attempt by officers to interview others who

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[96] Tr. 6/3/98 at 36-37.
[97] Tr. 5/29/98 at 12.
[98] APPX98.
[99] Joseph McMahon police report on technical investigations, January 7, 1997.
[100] Tr. 6/5/98 at 84-85; APPX23-24.

may have known how Van Treese came by that cash, or to learn what activities he was involved in that could have yielded suspicious cash. In the second trial, Donna Van Treese would ultimately testify that Van Treese had collected that cash because there was a balloon payment on the mortgage for the motel property.[101] The investigation by Reed Smith—investigation that police could and should have done—obtained the Van Treeses' mortgage documents and was "unable to locate any note that carried a balloon payment."[102]

Harold Wells,[103] the Tulsa narcotics officer who had arranged a phone interview with Tulsa employee William Bender, reportedly told Det. Bemo he "knew Barry Van Treese very well," and at his Tulsa establishment, Van Treese "would always provide a room for the police to work their deals."[104] There is no record of any further investigation into this arrangement, which certainly could have been relevant to who may have wanted to kill Van Treese. The witness Wells directed to Bemo, William Bender, gave a statement that was inconsistent in important ways with information other witnesses provided, and was so internally inconsistent and unclear that the detective noted the problems in his report.[105] Police never tried to resolve these inconsistencies or get more detailed information about Van Treese's plans and movements the night he was killed and the source of the money in his car. It appears police never asked any further questions of Bender, or even made the short drive to Tulsa to speak to him in person or interview his wife, Marty Baker, the official manager of that motel. Baker had very likely spoken to Van Treese on the night of January 6, and was one of the last people to see him alive. Bender also seemed to have independent knowledge of the crime, such as the fact that Van Treese was found in room 102 with his pants down or off, but

[101] RT Vol. 5 at 16.
[102] Complete Reed Smith report, . 148.
[103] In 2011, Wells was convicted on federal charges for his role in planting drugs on suspects and stealing cash in connection with drug arrests. *Curtis Killman, Judge: Former Tulsa Police Officer to Stay in Prison,* Tulsa World (Dec. 13, 2017), https://tinyurl.com/yc7es9xj.
[104] Bob Bemo police report, January 7, 1997 interview of William Howard Bender.
[105] *Id.*

there is no record of police attempting to discover how he had learned these facts and what else he may have known.

These omissions regarding the Tulsa employees are especially striking because the evidence police did have of the timeline of the evening had gaping holes. Van Treese arrived at the Oklahoma City motel around 6:00 p.m. and left at 7:50 p.m. Bender told police he arrived at the Tulsa BBI at 11:30 p.m. and left around 12:15 a.m., but had left instructions to tell his wife Donna, if she called, that he hadn't left until 12:40 a.m., and would be home in five and a half hours, apparently because he was going to stop back in Oklahoma City (although the drive from Tulsa to Norman by way of Oklahoma City is only about two and a half hours, suggesting Van Treese intended to spend about three hours in Oklahoma City in the middle of the night). Police obtained records from Van Treese's Pike Pass, which logged when and where he entered and exited the highway. They reflect that at 5:12 p.m., he passed through Chickasaw, and at 5:31, through Newcastle, which is about 20 minutes from the Oklahoma City motel—consistent with the reports of when he was there. He then got on the turnpike in Oklahoma City, exiting in Tulsa at 9:44 p.m.—again consistent with having left Oklahoma City shortly before 8:00 p.m. But the first report of Van Treese arriving at the Tulsa motel was at 11:30 p.m.—an hour and 45 minutes after he got off the interstate in Tulsa. The files contain no record of any attempt to find out where Van Treese was for these crucial hours that were among the last of his life, or whether it was during this window that he acquired the large amount of cash later found in his trunk. He got back on the Turnpike in Tulsa and got off in Oklahoma City at 1:36 a.m., indicating he likely left Tulsa shortly before midnight. His reasons for wanting his wife to be told he left significantly after he did were never explored, but given what has emerged about his behavior in relation to the Vegas Club and, specifically, his role as a "sugar daddy" to Fancy, a planned tryst back in Oklahoma City is a reasonable explanation. Based on the recollections of Kayla Pursley and John Beavers, the window in Room 102 was

broken sometime around 4:15 a.m. (the lost Sinclair surveillance tape likely could have pinpointed this time more precisely). This means Van Treese was in Oklahoma City for perhaps two and a half hours before he was killed. Police reports reflect no attempt to complete this crucial chronology. Reed Smith detailed this timeline in Appendix 3 to its report.

The Reed Smith investigation agreed there were critical gaps in the police investigation. The investigators were especially concerned about the loss of the Sinclair tape, which defense lawyers had requested to view, as well as the premature release of Van Treese's car and the suspicious cash to the family.[106]

In summary, there were many, many avenues that needed to be investigated to make a reliable determination about how the murder of Barry Van Treese came about. Instead, police accepted the first explanation that was presented to them (by Justin Sneed)—regardless of its source, coherence, or consistency with other evidence—and looked no further. When prosecutors arrived at a theory with which to try the case, based on alleged embezzlement, there is no record police or county investigators undertook any formal investigation to support that theory.

INTENTIONAL DESTRUCTION OF EVIDENCE

Glossip was tried, convicted, and sentenced to death in 1998, on the theory that he (1) had been caught mismanaging the motel and didn't want to be fired, but rather wanted to take over and run the motel himself; and (2) had a long-running plan to convince Sneed to rob Van Treese for him.[107] This Court unanimously reversed that conviction based on the utter incompetence of Mr. Glossip's first attorney, particularly his failure to use the video of the police interrogation showing detectives leading Sneed to implicate Glossip and his failure to pursue a jury instruction on accessory after the fact. *See Glossip v. State*, 2001 OK CR 21, 29 P.3d 597 (2001), ¶¶ 17, 19, 22.

[106] APPX10.
[107] Tr. 6/3/98 at 8-9 (first trial opening statement).

A. Deliberate Destruction

On November 10, 1999, during the pendency of the appeal of the first trial and at the instruction of the Oklahoma County District Attorney's Office, the OCPD intentionally destroyed 10 items of physical evidence, including several items from inside the Room 102 crime scene (duct tape, wallet, knives, keys, the shower curtain that had been taped over the window); various documents including financial records ("white box with papers," deposit book, two receipt books); and, lastly, an "envelope with note."[108] Although the current District Attorney has publicly denied it, it is clear from the available documentation and Reed Smith's investigation, including an interview with the OCPD detective ultimately responsible for carrying out the District Attorney's Office's instruction, that the District Attorney's Office requested this destruction.[109] The Reed Smith investigation learned that in the 1990s, the District Attorney's Office maintained a strict agreement with the police department dictating that evidence in a death penalty case must *never* be destroyed (much less while proceedings were ongoing, as they were here).[110] Yet there is no evidence anyone from the District Attorney's Office ever expressed surprise or concern about this occurrence—which is consistent with their involvement in the destruction.[111]

The process began when on October 27, 1999, with Mr. Glossip's ultimately successful appeal pending, the District Attorney's Office released the box in question to the custody of Inspector "J. McNutt" (née Hogue), under its original OCPD case number, 97-2261.[112] The next day, on October 28, 1999, a handwritten "OCPD Evidence/Property Booking Form," apparently by Inspector McNutt, notes "DA Returns," at the top and assigns a new OCPD case number, 99-95391, to the evidence in question.[113] Inspector McNutt composed the narrative for the body of the report,

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[108] APPX52-53.
[109] APPX51; *see also* VIDEO 2 (recorded comments of Janet Hogue).
[110] Complete Reed Smith report, p. 45; VIDEO 2 (recorded comments of Janet Hogue)
[111] Tr. 1/16/03 at 23-26.
[112] APPX56.
[113] APPX54-55.

giving it the subject line: "Property Transfer from Okla. County DA's Office[;] Appeals Exhausted: Property for Destroy."[114] The OCPD "Property Disposition or Release," card, also apparently bearing Inspector McNutt's signature, confirms destruction of the box in question on November 10, 1999, checking the box "Dispose as Authorized by City Ordinance."[115]

The Reed Smith investigation concluded that the destruction was intentional, not only because of the paperwork, but because a detective the firm interviewed confirmed that ordinarily no evidence would *ever* have been destroyed in a capital murder case and thus it would require the extraordinary step of the District Attorney's Office affirmatively ordering the destruction.[116] The investigation also confirmed through new interviews that a form listing the destroyed evidence was not a police form, but one used by the District Attorney's Office.[117] The Reed Smith investigation additionally established that the police department's record of the destruction deviated from protocol, as the destruction request obtained its own case number (99-95391) rather than a file entry associating the destruction with the existing Glossip case number (97-2261). Thus, whoever individually or collectively orchestrated this destruction initiated in the District Attorney's Office took steps apparently within the OCPD to isolate this action from standard operating procedures and thereby to keep the records out of the primary case file. Now-retired Inspector Janet McNutt (Hogue) was, at the time, Det. Bemo's partner, but had no other connection to the case or obvious reason to be assigned this task.[118]

Although Mr. Glossip's state-provided defense attorneys discovered the documentation of this destruction in preparation for the second trial, after a brief discussion of the matter in a pretrial hearing, they took no further steps to address it.[119] When the trial judge opined more than a year

[114] APPX51.
[115] APPX52-53.
[116] APPX7-8; VIDEO 2.
[117] APPX56; Complete Reed Smith report at 44 n.205.
[118] APPX7/
[119] Tr. 1/16/03 at 23-26.

before Mr. Glossip's retrial, "The only thing I know to do is to go with what we have and see what happens,"[120] defense counsel made no record of the gravity of the issue and the need to inquire more deeply as to what transpired. Defense counsel did not, at that time or subsequently, identify the destroyed evidence's relevance—particularly the fact that among the destroyed records was the only apparent source of evidence permitting adversarial testing of the State's premise that Glossip had embezzled proceeds from the motel.[121] The defense failed even to suggest that the District Attorney's destruction of this evidence warranted dismissal of the indictment or death notice, which they absolutely should have done, and appellate counsel conforms it was a mistake (and not a strategy) for her not to litigate this plain error violative of substantial rights.[122] None of his lawyers raised it, although the documentation was right there in the file. That is a serious breakdown.

Finally, several other items were definitely collected, and were not part of a documented destruction event, but are absent from the accounting of evidence in this case the police have today. In particular, in addition to the missing Sinclair video, the cash and crown royal bag containing drug paraphernalia taken from the apartment where Justin Sneed was staying—which would have been inconsistent with the State's portrayal of Sneed—have disappeared from police custody without explanation.

Oklahoma law requires criminal justice agencies to maintain any biological evidence from a violent felony offense so long as the defendant remains incarcerated. 22 Okl. St. Ann. § 1372(A). The shower curtain, at least, had blood on it and likely met the definition of biological evidence. The bipartisan Death Penalty Review Commission recommended that this protection be expanded, both in scope and time. Similarly, the Commission recommended that "District attorneys' offices

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[120] *Id.* at 26

[121] In Mr. Glossip's retrial, Ms. Donna Van Treese testified that a flood at her home destroyed all business records for the Oklahoma City Best Budget Inn that remained her possession. RT Vol. 4 at 115:20-116:9. Apart from profound concerns about her retention of those materials without the prosecution at least securing copies, this occurrence eliminated any prospect of overcoming the affirmative destruction of critical business records for Mr. Glossip's defense.

[122] APPX25.

should be required to retain all files, including protected work product, pertaining to a capital defendant's case until 60 days after the inmate is no longer on death row. . ." It is hard to believe the State would deliberately destroy evidence from the crime scene of a capital murder before the defendant had even filed his appeal brief, and similarly baffling that they could be careless with other items of potentially important evidence. If the State wants to assume the awesome responsibility of ending someone's life, they should at the very least keep track of the evidence that makes them so sure they have things right.

B. Refusal of Access

The Death Penalty Commission report makes an unambiguous recommendation that "[a]ll Oklahoma district attorneys' offices and the Office of the Attorney General should be required to allow open-file discovery at all stages of a capital case, including during the direct appeal, state post-conviction review, federal habeas corpus review, and any clemency proceedings." This is a common-sense recommendation that would clearly be in the interests of justice; if the State is truly justified in executing someone, it should have nothing to hide, and the entire system stands to benefit from transparency.

In this case, the District Attorney's office has provided Mr. Glossip's team with *no access whatsoever* to anything in their possession, even as new evidence has emerged casting serious doubt on the conviction. Not only have they failed to provide the recommended open access; they have flatly ignored repeated requests for specific items, accompanied by documentation of their likely existence and an explanation of the reasons for their relevance. Mr. Glossip's attorneys have written four detailed letters, beginning in 2016, requesting various items including the Sinclair video discussed above, documentation of the alleged polygraph examination the State relied on in opposing clemency for Mr. Glossip in 2014, notes and reports from police investigation that was or clearly should have been done, and notes from interviews with trial witnesses conducted by

investigators and/or prosecutors.[123] The District Attorney has ignored these requests. He has also refused access to interested legislators and, critically, to Reed Smith in its independent investigation.

The notion that the District Attorney's file may contain information exculpatory to Mr. Glossip, such as notes from interviews with witnesses (called or not called) who said things inconsistent with the State's case, is not mere speculation. There are at least two documented instances of this occurring in the very same office, both before and after Mr. Glossip's trials. In 2013, an Oklahoma County prosecutor was disciplined by the Oklahoma Supreme Court for failing to provide the defense with notes from a pretrial interview with a witness who contradicted the State's theory, in connection with capital trials held in 1995 and 1997. *State of Oklahoma v. Robert Bradley Miller,* 2013 OK 49, at 17. And in 2015, the Court found two other prosecutors from the same office had done something similar in a 2012 murder trial when they located an important witness shortly before trial and he told them something inconsistent with the State's theory; they eventually got him to agree instead with a prior statement he had given, but they were, the Court said, obligated to inform the defense about his inconsistent statements and turn over the notes they had taken. *State ex rel. Oklahoma Bar Association v. Miller & Kimbrough,* 2015 OK 69, at ¶¶ 11-11. In both cases, the prosecutors had these notes in their files and never gave them to the defense.

As the Commission recognized, it is unfair and not in the interests of justice for the State to proceed with executions while monopolizing the information. But their reticence is also troubling in and of itself. If this is a solid conviction clearly supported by the evidence, obtained fairly and legally, what could possibly be in their files that they do not want Mr. Glossip's attorneys to see? At the very least, this Board should demand to see those files itself before agreeing to allow the

[123] An example of one of these letters is included in the Appendix at APPX99-102. The rest of the letters are not included due to page limits, but are available on request.

execution to proceed.

TRIAL AND CONVICTION

The second trial began in May, 2004. The State added an additional aggravating factor mere months before the trial began (murder for remuneration, the only one the jury would ultimately find),[124] and called twelve witnesses it had not called at the first trial. Its case against Glossip, with the exception of Sneed's testimony, was entirely circumstantial. Prosecutors called six technical investigators and forensic analysts,[125] plus a stipulation from one more,[126] none of whom could connect items from the scene to anyone except Justin Sneed (although they did have an unidentified fingerprint from the broken glass in Room 102's window for which Sneed, Glossip, and Van Treese were all ruled out). Other than Sneed's testimony, the case against Glossip instead consisted of (1) an attempt to establish a motive, (2) a portrayal of Sneed as helpless and entirely dependent on Glossip (and thus easily manipulated by him into killing Van Treese), and (3) evidence concerning actions taken *after* the murder that did not reflect any involvement in the killing itself.

The prosecutors' pitch—although there is no documented police investigation of this theory—was that Glossip wanted Van Treese dead because he had been caught mismanaging the motel, and was about to be fired (the prosecution never explained how killing the owner would permit Glossip to stay employed at the dead man's motel). Van Treese's wife, Donna, whom police never formally interviewed, testified, despite the fact that she kept running track of the motel's earnings and paid Mr. Glossip regular bonuses on that basis, that she and her husband had just discovered the motel was short $6,000 over the prior year, and they blamed Glossip, believing he had been embezzling.[127] Her evidence was a one-page spreadsheet she had created herself showing the motel

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[124] O.R. 1044.
[125] Darren Guthrie, Charlene Cable, John Fiely, Joseph McMahon, Mike Jones, and Cindy Hutchcroft.
[126] Melissa Keith.
[127] RT Vol. 4 at 56.

had taken in less money than projected;[128] no underlying records were provided, and she testified any relevant records were destroyed in a flood in her home at some point before the second trial.[129] The prosecution had apparently not obtained copies of these records at any point in the case, despite their indispensability to their theory of Glossip's motive (other than those that were among the evidence deliberately destroyed in 1999). There is no record she reported any of this to police when Mr. Van Treese went missing, or when his murder was discovered. Expert accountants have reviewed the spreadsheet she did provide and concluded it shows no embezzlement at all; rather, it shows a difference between projected and actual revenue.[130] Actual documentation of fraud or embezzlement would be significantly more involved, including tax returns and, critically, detailed review of the business records over a significant span of time. The Reed Smith investigation concluded there was no evidence of embezzlement, and that prosecutors should not have presented that evidence without taking steps to verify it, such as obtaining the original underlying records or consulting with a forensic accountant.[131]

The other pillar of the State's case was that Sneed was young, meek, alone, needy, entirely dependent on Glossip, and thus easily controlled by him and made to commit a brutal murder on his behalf.[132] The jury was *not* provided with the information detailed above about Sneed's drug addiction, theft, or violent incidents, nor his criminal history or recent psychological evaluation, nor about Mr. Glossip's own limitations.

Witnesses who were never interviewed at the time were willing and able to give credible evidence contradicting the State's unreliable characterization of Sneed as meek and non-violent. A

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[128] APPX103.
[129] RT Vol. 4 at 115.
[130] APPX105-107 (Kerr).
[131] APPX13.
[132] RT Vol. 3 at 208-09, 216 (State's opening statement); RT Vol. 15 at 68; 73 (closing argument describing Sneed as a "Rottweiler puppy, let's say 11 months old, and Richard Glossip was the dog trainer."), 94, 157 ("Ole bumbling Justin Sneed), 181 ("It's not enough that we got the bat boy. It's time to convict the coach."). Prosecutors repeatedly referred to Glossip as the "mastermind." RT Vol. 15 at 74, 157.

co-worker described him as “kinda wild, would go out a lot at night.”[133] Another co-worker who had known him since high school called him “manipulative” and said he “liked to fight” and was a “‘bully-type’ guy.”[134] He recalled at the motel “Justin Sneed acted like he was the king . . . He’s the type of guy who wanted to run the show.”[135] He even remembered “one time that [Sneed] was going to fight another roofer but the other roofer was afraid of him.”[136] A motel regular said Sneed “was a hot head, and was always acting like a tough guy or a big shot.”[137] He “was shocked to hear that anyone had tried to portray [Sneed] as someone who is slow, or could be manipulated by anyone, let alone Richard Glossip.”[138] And a dancer from the Vegas Club who knew him described him as “very scary,” “loud,” and “violent and paranoid.” “cruel and violent,” and “crazy.”[139] Sneed once told her “he had places to hide a body where it would never get found,” and he “was not the kind of guy that would take orders from anyone.”[140] She had seen him shove a girl into the bathroom, calling her a “fucking bitch,” and had seen him choke a different girl until she passed out.[141] For his part, Glossip, far from being a “mastermind,” has an IQ in the 70s.[142]

The remainder of the evidence concerned the possibility that Glossip had taken steps to conceal the murder after it occurred, consistent with the police’s original conclusion that Glossip had committed, at most, the crime of accessory after the fact.[143] One allegation was that Glossip had pretended to search the motel rooms, thus preventing anyone from actually looking in Room 102, although there was disagreement and inconsistency among witnesses about whether Glossip had

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[133] APPX108 (O’Neill).
[134] APPX69-70, ¶¶ 4-5, 7 (Spann).
[135] APPX71 ¶ 12 (Spann).
[136] APPX77 ¶ 30 (Spann).
[137] APPX 57 ¶ 7 (Mize).
[138] *Id.*
[139] APPX30-31, ¶¶ 15, 18, 21 (Garcia).
[140] APPX31-32, ¶¶ 24, 31 (Garcia).
[141] APPX32-33, ¶¶ 32-33 (Garcia).
[142] APPX80 (Ouaou).
[143] *See* O.R. 593, 606 (findings of fact and conclusions of law on first appeal recognizing “Glossip could not have been charged with Murder in the First Degree without Sneed’s testimony.”)

been part of the purported search, or whether that had been solely Sneed before Glossip returned from Wal-Mart.[144] In any event, as Reed Smith pointed out, police should never have relied on reports of a search purportedly conducted by civilians who may have been suspects. The State similarly alleged that Mr. Glossip asked the housekeeper, Jackie Williams, not to clean downstairs rooms on the morning of January 7. Williams told police the day after the body was found that Sneed had asked her not to clean upstairs;[145] after speaking with prosecutor Gary Ackley seven years later, before the second trial, she changed her account to say it had been Glossip, not Sneed, who made the request.[146] Sneed also testified he was the one that had told her to clean only upstairs.[147]

The State also presented evidence that Glossip said he had seen Van Treese at the motel early Tuesday morning (when he was already dead), then said he saw Van Treese after the window had been broken, and then changed to say the last time he definitely saw Van Treese was 8:00 p.m. the night before.[148] Glossip later said he had seen someone in the parking lot that morning he *thought* was Van Treese, but he was not sure, and denied ever saying that he had definitely seen Van Treese then.[149] Notably, Glossip usually wore glasses, but his glasses were broken that day, and one of the places he had gone during the day on Tuesday, after the purported sighting and before Mr. Van Treese's car was found and he was declared missing, was to an optician to get a replacement.[150]

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[144] Billye Hooper testified both that "When Cliff [Everhart] got there, he instructed Justin to go check all the rooms that were not rented at the time," and that she had seen Sneed and Glossip together when "they left together to go out to check the rooms and things." RT Vol. 8 at 76. She had testified in the first trial that she called Sneed and relayed to him a request from Everhart and Glossip that Sneed check all the rooms. Tr. 6/4/98 at 37. Everhart testified he sent Sneed and Glossip together, RT Vol. 11 at 185, though Sneed alone reported that task was complete. *Id.* at 240. Sneed, for his part, testified Everhart asked him to do the checking before Glossip ever returned from Wal-Mart, and that he had more or less finished when Glossip arrived back from Wal-Mart. RT Vol. 12 at 157. A police report completed while the investigation was still a missing persons case suggests Everhart and Sneed were involved in the search of the rooms, but not Glossip. Julie Wheat police report on missing person, 1/7/1997.
[145] Bill Weaver police report of 1/8/1997 interview with Jacquelyn Kay Williams.
[146] RT Vol. 8 at 122; APPX115.
[147] RT Vol. 12 at 139.
[148] RT Vol. 9 at 194; 206; 209.
[149] *Id.* at 215-17, 219.
[150] RT Vol. 5 at 88.

Finally, the State relied heavily on the fact that Mr. Glossip had $1,757 in his possession when he was arrested, which it claimed must be the proceeds from the robbery, in which, the State alleged, approximately $4,000 was taken from Van Treese's car and divided between Sneed and Glossip.[151] Money taken from Sneed upon his arrest had blood on it, but there was no blood on any of the money taken from Glossip. The amount of money Van Treese had collected from the Oklahoma City motel on Monday evening, which Sneed later took from under the front seat of his car, is thus crucial. The Reed Smith investigation concluded Van Treese must have collected less than $3,000, meaning Sneed and Glossip could not have taken about $2,000 each as Sneed had described. Based on surviving motel records for the days immediately prior to the murder, the maximum amount of those proceeds was $2,848.45, which almost certainly over-estimates the amount actually picked up.[152] This much lower amount was consistent with motel employees' original reports to police, which all put the ballpark amount collected hovering at or below $3,000. Higher estimates emerged only later, after money had been taken from Sneed and Glossip that the State alleged was the robbery proceeds. The combined amounts seized from Sneed ($1,680) and Glossip ($1,757) significantly exceeds the amount Van Treese could have picked up. But Sneed certainly could have taken $2,800 and spent a significant portion of it in the intervening week, especially given that police found drug paraphernalia among his possessions.[153]

Conversely, there was significant evidence of Mr. Glossip collecting cash on Wednesday, January 8, for the purpose of paying the lawyer he was planning to hire the next day. The evidence showed he had sold a number of items, including an entertainment center and large television, an aquarium, and a futon, and that he had owned two vending machines on motel property, which he

[151] RT Vol. 15 at 94, 169-170.
[152] APPX12.
[153] RT Vol. 12 at 66. This evidence is among the items that have mysteriously vanished from police custody.

sold back to the motel for cash.[154] He still had some money left from the paycheck he had received on the evening of January 6, even after shopping on the 7th, and he had also told D-Anna Wood that he had saved money in a cookie jar in his apartment, although she did not know how much.[155] Kenneth Van Treese, Barry's brother, even testified that he paid Mr. Glossip in cash for the days he had already worked and for which he had yet to be paid.[156] While it is not possible now to precisely account for every dollar collected 25 years ago, it is clear Mr. Glossip had a significant amount of cash unrelated to the robbery of Van Treese, and there has never been any evidence that any portion of the $1,757 he had taken to retain a lawyer included money relating to the robbery.

The balance of the State's case consisted of video recordings of Glossip's two police interviews and the testimony Sneed had promised to give in his plea agreement. Apparently unaware of Mr. Glossip's impaired intellectual and cognitive functioning, the State characterized him as the "mastermind" of the murder.[157] Sneed testified, in short, that Glossip had asked him to kill Van Treese on several occasions, offering him escalating sums of money, before finally convincing him to do it on January 6. He testified Glossip had told him when Van Treese saw the condition of the rooms, they would both be fired, and then described the attack itself, in which he went alone into Room 102 and beat Van Treese with a baseball bat and attempted to stab him with a pocketknife. He claimed Glossip directed him to move the car and take the money from under the front seat; he and Glossip split the approximately $4,000 he took. Mr. Glossip then accompanied him back to Room 102 to make sure Van Treese was dead and to conceal the crime scene.[158] Sneed's testimony contained a number of significant discrepancies from statements he had made previously, to the police and in his testimony in the first trial (and would make subsequently); the Reed Smith report

[154] RT Vol. 11 at 127, 129.
[155] Bill Cook police report, January 16, 1997 interview with D-Anna Wood.
[156] RT Vol. 11 at 130.
[157] RT Vol. 15 at 74, 157.
[158] *See generally* RT Vol. 12 at 37-192.

catalogs them exhaustively, both in its text and in its Appendix 5. Examples include the amount of money he was offered to commit the murder, and why Mr. Glossip purportedly wanted Van Treese dead. Incredibly, particularly in light of the holding in the prior appeal, defense counsel did not play the video of the detectives leading Sneed to implicate Glossip for the jury. Several jurors reported to Reed Smith investigators that they wanted to have seen that video.[159]

When their turn came, Mr. Glossip's woefully unprepared lawyers did not call a single witness in his defense.

Crucially in a case so heavily dependent on such testimony, the jury was instructed that "No person may be convicted on the testimony of an accomplice unless the testimony of such a witness is corroborated by other evidence," and that "In determining the question as to whether or not the testimony of an accomplice has been corroborated, you ***may*** eliminate that testimony entirely and then examine all of the remaining testimony, evidence, facts, and circumstances...,"[160] a pattern instruction the OCCA held mere months later did not adequately convey Oklahoma law's requirement that accomplice testimony "***must*** be corroborated with evidence, that standing alone, tends to link the defendant with the commission of the ***crime charged***," *Pink v. State,* 2004 OK CR 37 ¶ 15, 104 P.3d 584, 590 (emphasis added). In this case, that meant there needed to be independent evidence apart from Sneed's testimony linking Glossip to the murder itself—not a cover-up or accessory after the fact—but this was never explained to the jury. On this faulty instruction, Mr. Glossip was again convicted and sentenced to death.

The case was again appealed and the OCCA, in a 3-2 decision, affirmed. *Glossip v. State*, 2007 OK CR 34, 168 P.3d 185. In his first state post-conviction application, Mr. Glossip's counsel alleged only issues apparent on the face of the record, with no independent investigation of

[159] APPX6.
[160] O.R. 1271.

the crime. The application was denied by unpublished order entered December 6, 2007, and Mr. Glossip proceeded to federal court. Although the federal habeas court denied Mr. Glossip's petition, in granting a certificate of appealability, it observed, "Unlike many cases in which the death penalty has been imposed, the evidence of petitioner's guilt was not overwhelming." *Glossip v. Sirmons,* No. CIV-08-0326-HE (W.D. Okla.), Doc. 66 (Sept. 29, 2010) at *1-2.[161]

EXECUTION ATTEMPTS

Oklahoma's execution protocol contains a detailed sequence of events leading up to an execution colloquially known as "death watch." When the date is set, the inmate is given a series of forms to fill out. The decisions he's asked to make include what he would like to be done with his body (though he is informed he is not allowed to donate his organs), what medical information he wants released, who he wants to have visit him the day before he is killed, who he would like to invite to witness his execution, and what he wants for his last meal. The prison then sends in both a doctor and a mental health professional to evaluate him and make sure nothing about his health is going to interfere with the execution process. At this point, he is strip searched, x-rayed, and screened for concealed objects on a BOSS Chair, then moved to another cell—a death watch cell, where he will be kept for 35 days. For Mr. Glossip, this fourth time the process is undertaken, this will occur on Friday, August 19 (a week after the submission of this packet, and four days before the scheduled hearing).

In a death watch cell, the inmate is under 24-hour continuous observation, with the lights on around the clock. Guards take away all the prisoner's property except for a small amount of legal and religious materials, pen and paper, and a single book or magazine. They can use basic hygiene items, but as soon as they're finished, they're taken away again. The death watch cells at OSP are

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[161] *Cf. Jones v. State,* 2006 OK CR 5, 128 P.3d 521, 541 (noting suppressed impeachment evidence not material because even without the relevant witness's testimony, "the evidence presented against Jones was overwhelming.").

located near the execution chamber, and inmates start at the farthest-away cell, and are moved to cells closer and closer to the execution chamber as the date draws nearer.

The day before the execution, at 9 pm, visitation and telephone privileges end. That means the inmate has to say his last goodbyes (which he must do through glass because it is non-contact visitation), the night before. He is also given his last meal. In his final 12 hours, the inmate is taken for a full-body x-ray. While he is gone, officers take all his remaining possessions. Then, they strip-search him and BOSS-scan him again, give him his last set of clothing, and place him back in a cell. In his last 4 hours, he is attended by members of the "Restraint Team." Once the Governor and Attorney General confirm the execution is proceeding, they take him from the holding cell to the execution chamber and secure him to the table, where staff members will find a vein, start an IV, and ultimately, administer a specific cocktail of lethal drugs. If a stay is entered before they proceed with the drugs, and it is not for longer than 35 days, they just take him back to his death watch cell, and start the countdown over again.

Mr. Glossip's first execution date was set for November 20, 2014. Death watch began on October 16, and Mr. Glossip was given the required notifications and forms, examined, searched, and moved to a death watch cell. He stayed there for just over a week—and went through a clemency hearing, where clemency was denied by a board that included a former close colleague of his trial prosecutor,[162]—before the execution was canceled at the State's request because the State was unready.

Mr. Glossip's execution was rescheduled for January 29, 2015. This time, the death watch process was triggered on Christmas Day, 2014, while his lawsuit challenging the lethal injection protocol was pending in the 10th Circuit Court of Appeals. His fellow prisoner, Charles Warner—in the cell just ahead of his—was executed on January 15th, even though the lawsuit was still pending

[162] Complete Reed Smith report at 44.

review by the U.S. Supreme Court, and Mr. Glossip was moved closer to the chamber. January 28th—the last day—arrived, and Mr. Glossip said his goodbyes and ate his last meal, even though the Supreme Court had not yet ruled on the petition in his lethal injection case. That night, the Supreme Court granted the petition, and the state was forced to call off the execution (which was preventable, if the State had not insisted on pressing forward with executions while the case was still under review), in what had been Mr. Glossip's final 24 hours.

The Supreme Court ultimately denied relief, and the same day, the Attorney General sought a new execution date, which was scheduled for September 16, 2015. This time, the death watch process started over again on August 12, and Mr. Glossip was again presented with the litany of dreadful choices to make and moved to the death watch cells to resume a deeper state of dread in waiting for his end.

The day before his execution, a small team of pro bono attorneys who had only just become aware of his case scrambled to present the OCCA with evidence that Mr. Glossip was innocent, but given their very recent introduction to the case, they had not yet had an opportunity to thoroughly investigate the facts. Again, Mr. Glossip said his goodbyes and had his last meal. The Restraint Team took over, and he entered his final four hours. Then, the Court agreed to stay the execution while it considered the submission, but just for two weeks—and Mr. Glossip was returned to his 24-hour death watch cell.

Eventually, the court declined to hear any new evidence of Mr. Glossip's innocence (again 3-2), and he once again moved closer to the chamber, into his last 24 hours where he said his goodbyes and had his last meal, and was readied for execution. They were prepared to move him from the holding cell to the chamber and strap him down when prison officials discovered the drug the execution team had loaded in the syringes intended for Mr. Glossip was not the drug called for in the protocol—they had potassium acetate in place of potassium chloride, and they had gotten to

the very cusp of his execution before realizing it, and simultaneously realizing the earlier execution of Mr. Warner had used these wrong chemicals.[163] Mr. Glossip was kept in limbo in his isolated holding cell for hours while attorneys debated whether they should kill him anyway, or stop the execution so they could follow the protocol. The scheduled time for his execution had come and gone before they decided to abide by their protocol. The Governor called off the execution.

POST-2015 INVESTIGATION AND TRUE FACTS OF THE CRIME

Since his aborted execution in 2015, Mr. Glossip's new pro bono attorneys have conducted a wide-ranging investigation, and learned that as Sneed himself described to multiple witnesses, the killing was not a murder for hire, but a botched robbery for drug money, committed by Sneed and his girlfriend.

While in jail prior to providing testimony in exchange for escaping the possibility of the death penalty, Sneed explained to multiple people how the murder came about. The most complete account comes from Paul Melton, who spent several months housed near Justin Sneed in the Oklahoma County Jail in 1997, and who was never approached or interviewed by anyone from the police, prosecution, or the defense until Mr. Glossip's lawyers tracked him down in 2016. In a sworn affidavit never seen by a jury or any court upholding the conviction, Melton sets out what Justin Sneed told him about the crime while they were incarcerated together:[164]

- Sneed had a girlfriend, and Van Treese was her "sugar daddy," giving her regular payments of $500-$1,000.
- Sneed beat to death Barry Van Treese, the owner of the motel, who lived out of town but stayed at the motel when visiting Oklahoma City. Either Sneed or his girlfriend worked at the motel.
- Sneed and the girlfriend learned that on the day Van Treese was killed, he would be carrying $20,000-$30,000 in cash, and they made a plan to rob him: the girlfriend would get Van Treese to meet her in one of the motel rooms, and Sneed would either be there waiting or go into the room after Van Treese arrived.

[163] These events are described in Interim Report Number 14 of the multi-county grand jury that investigated this matter.
[164] Mr. Melton's affidavit appears in the appendix at APPX37-39.

- The robbery scheme fell apart when Van Treese fought back and upset the plan, leading to Sneed killing him when he had only intended to rob him.

- The girlfriend was in the room during the murder.

- They did not get all the money they thought was there; Sneed was upset they killed a man for only a few thousand dollars, when they had expected $20,000-$30,000.

- Sneed had two concerns: not getting the death penalty, and his girlfriend not being caught.

- Sneed never mentioned Richard Glossip; the only other person whose involvement he ever mentioned was the girlfriend.

This account is highly credible for many reasons. As detailed *infra,* multiple details were separately confirmed by other witnesses—witnesses who had nothing to do with and had never met Melton. It was consistent with existing evidence. And stunningly, three other inmates who had overlapped with Sneed in the County Jail independently reported similar conversations with Sneed.

Joseph Tapley was Sneed's cellmate for several months in 1997. Tapley, who had never been interviewed by either side, contacted Mr. Glossip's attorney when he learned Mr. Glossip was set to be executed for Sneed's crime, and swore in an affidavit that Sneed had given him detailed accounts of his murder of Van Treese, including that he did it for money he believed was in the car, and that he had beaten Van Treese to death with a baseball bat, also breaking the window of the motel room, and that he had moved Van Treese's car to the bank parking lot.[165] Like Melton, Tapley reported that Sneed was very concerned about getting the death penalty, and that at no point in his discussions of the crime did he say anything about Richard Glossip.

Roger Lee Ramsey, who was in the unit at the jail when Sneed was brought in, independently reported hearing from Sneed that Sneed had beaten Van Treese with a baseball bat and stabbed him.[166] Ramsey explained that Sneed used the word "we" when describing what happened in the

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[165] APPX40-45 (Tapley).
[166] APPX48-50 (Ramsey).

motel room, at one point indicating a woman was involved, and had explained the plan had been to rob Van Treese by luring him into the motel room and taking his money. Ramsey only ever heard Sneed mention anyone named Richard as a person he was mad at and wanted to "get even" with for some reason, that he was consequently blaming for his own crime. In a television interview, Ramsey subsequently confirmed that the "girl's job" was to lure Van Treese into the room.

A fourth inmate who spent time in the Oklahoma County jail in 1997 with Sneed, Terry Allen Cooper, states Sneed told him he was afraid of the death penalty and attempted to enlist his help in trying to "lay it all off on Rich."[167] Cooper states Sneed knew that Cooper had spent time at the Best Budget Inn and asked him to falsely tell police Cooper had overheard Sneed and Glossip before the murder talking about wanting to kill the owner and split the money. Cooper refused.

These four independent witnesses corroborate one another, although they do not know one another and provided their details entirely independently. Consistent with their accounts, Dr. Edith King, who was appointed to do a competency evaluation of Sneed, reported that on July 1, 1997, Sneed told her "the alleged crime was in connection with a burglary," and made no mention of being hired or otherwise influenced by anyone else to commit the crime, nor did he make any mention of Richard Glossip, in a setting where, had it been true, he would be expected to do so.[168] A fifth witness, Fred McFadden, who had been in contact with the District Attorney's office in the spring of 1997, reported hearing Sneed brag about his crime while in Oklahoma County jail, which landed him on the State's witness list to establish, should Justin Sneed have gone to trial, that he was a continuing threat to society. An investigator from the Oklahoma County Public Defender reports that he interviewed McFadden in October of 1997, and he described Sneed as being proud of his crime, taking most of the blame, and had "beat the victim harder because he was enraged about

[167] APPX46-47 (Cooper).
[168] APPX91-94 (King report).

getting punched in the eye, receiving a black eye. He stated he looked for money and thereafter planned on running away with his old roofing crew"—all statements far more consistent with the version reported by Melton than with what the State presented at trial.[169]

Two other witnesses who spent time incarcerated with Sneed in the Department of Corrections' Joseph Harp facility also heard Sneed talk about his case: Michael Scott, who was celled across the hall from Sneed, and Frederick Gray, who worked in the prison law library. Scott reports in a sworn affidavit that he heard Sneed on multiple occasions openly bragging about the deal he had made to save his own life, that he had set Glossip up, and that Glossip had not done anything.[170] Scott came forward of his own accord when he learned Mr. Glossip was about to be executed. Gray similarly reported that in a law library meeting where inmates discussed their cases, Sneed bragged about his crime, which he described as a plot to rob his boss, and explained he had set up his "fall partner," who was not involved in the crime, to get revenge for his failure to help Sneed cover up the killing.[171] Gray heard Sneed explain he had falsely told police his "fall partner" had hired him to kill their boss.

Sneed's account of his crime to his jail mates is highly consistent with the evidence. Van Treese's car was found with $23,100 in the trunk—the correct amount from Melton's account that Sneed had apparently anticipated.[172] The man in the room next door, John Prittie, heard an argument in Room 102 between a man and a woman, as well as a metallic sound and glass breaking.[173] John Beavers, a longtime motel resident, also heard a crash and voices that "sounded like a couple."[174] The victim was attacked with two different weapons and had knife wounds on

[169] APPX18-19.
[170] APPX120-121 (Scott).
[171] APPX116-119 (Gray).
[172] RT Vol. 4 at 109.
[173] RT Vol. 4 at 158.
[174] RT Vol. 6 at 26.

both the front and back of his body,[175] suggesting two attackers, and Sneed was unable to account for all the injuries to Van Treese with his own actions.[176] Two sets of bloody clothes were found in the motel's laundry room.[177] And Van Treese left his Tulsa motel around midnight, planning to spend several late-night hours in Oklahoma City before driving home. All of this evidence is consistent with the account of the killing as an intended robbery by Sneed and a woman inside the motel room.

New witnesses discovered by Mr. Glossip's pro bono counsel have independently provided details widely consistent with the account Sneed gave to Melton. Two witnesses who spent time at the Best Budget Inn confirm Sneed had a girlfriend: Albert Mize, a drug dealer in the area, reports Sneed had a young-looking girlfriend with brown hair and sores on her face.[178] Stephanie Garcia, who worked as a dancer at the Vegas Club, independently reports that Sneed's girlfriend, a small, dark-haired young woman she knew from the club as "Fancy," had scars on her face.[179] Garcia also reported Fancy had a relationship with Van Treese, who gave her regular payments of $500-$1,000—the same amount separately recalled by Melton. Garcia reported Fancy came around a few days after the murder acting very afraid, saying she needed to "get rid of a box" for Sneed, and told Garcia, "I am not going down for this murder." Garcia also stated under oath that a man she knew as a customer at the club, John Miller, told her that on the night of the murder, Fancy called him demanding to be picked up from the Best Budget Inn right away and taken to another motel; when Miller picked her up, she had blood on her shirt and shoes.

This is exactly the sort of crime committed by methamphetamine addicts, and a host of witnesses have reported that Sneed had a raging methamphetamine addiction: Garcia, the dancer;

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[175] RT Vol. 11 at 82.
[176] RT Vol. 12 at 227.
[177] RT Vol. 9 at 166.
[178] APPX57-59 (Mize).
[179] APPX29-36 (Garcia).

Mize, the dealer; Barrett, another dealer; Spann, who had known Sneed since high school; and Eckhart, a maid at the motel, all of whose affidavits are included in the appendix. These witnesses also described the effects of meth, noting Sneed "would do anything to get more drugs" and meth "makes you crazy and violent" (Spann), that this crime "sounds like something an addict like Justin Sneed would do, an attempted robbery while strung out on methamphetamine" (Mize); meth addicts "stay awake for days or weeks and will do anything to get more of the drug, even kill" (Barrett); drug addicts "chase two things; drugs and the money to pay for drugs," and [w]hen Sneed was high, he was crazy. . . When he was coming off being high and needing more drugs, he was even crazier" (Garcia). Several of Sneed's jail-mates also reported he displayed signs of heavy meth use following his arrest in 1997.[180] Dr. Pablo Stewart, a renowned psychiatrist who specializes in substance abuse, confirms the meth available in the late 1990s was "much more potent than it is today," and that meth users, particularly intravenous users, often develop "psychotic symptoms" and "are prone to frenzied actions that can lead to 'overkill' behaviors. . . to take actions far in excess of what may be needed in any given circumstance"—such as "us[ing] a baseball bat and beat[ing] a victim to death in a frenzy, even if the intent is just to knock that person out with one blow."[181] This crime exactly fits the profile of a robbery by a methamphetamine addict: it involved a large amount of cash, it was committed with a baseball bat and a broken knife, unlikely choices of weapon for a killing carefully planned in advance: the victim was struck at least 9 times with a bat, and the car was parked askew in the nearby parking lot.

Not only was Sneed well known to be a meth addict; as detailed above, witnesses also consistently identified him as an inveterate thief. Garcia also described a specific ploy Sneed sometimes used: he would use girls from the club to lure men into motel rooms so he could rob

[180] APPX40-47 (Tapley, Cooper).
[181] APPX122-124 (Stewart).

them—exactly the plan Melton, who does not know Garcia, reported hearing about from Sneed in the Oklahoma County Jail in 1997.

Beyond his addiction and M.O., two witnesses independently reported overhearing Sneed talk about attacking Van Treese in the weeks before the murder: Eckhart, the maid, who heard Sneed telling someone on the phone "that the motel owner 'was going to get what he deserved,'"[182] and Margaret Humphrey, an employee at Van Treese's Tulsa motel, who reported hearing "[t]he maintenance man from Oklahoma City," a "young, skinny man who was on drugs and very aggressive," say "that Barry 'was going to get what was coming to him,'" that he was "going to rob and kill Barry when Barry came to the Oklahoma City Best Budget Inn on payday," and that he "would get what is owed to him."[183] Van Treese was, in fact, murdered after traveling to the BBI on payday. Again, these witnesses do not know one another. Consistent with these reports, Eckhart and D-Anna Wood had both reported Sneed expressing frustration that Van Treese did not pay him for his work.[184] Even Detective Bemo seems to believe that rather than going to the room to deliberately kill Van Treese, Sneed had meant to rob him and gotten "carried away," and said as much on camera.[185]

INDEPENDENT INVESTIGATION COMMISSIONED BY LEGISLATORS

On June 15, 2022, the legislators released Reed Smith's report on the independent investigation they had requested. The report, based on nearly four months of work by over 30 attorneys collectively devoting over 3,000 hours and running 343 pages including its appendices, addressed the question, "Was the verdict from Glossip's second trial reliable in light of all facts and evidence now known?"[186] It found "cast grave doubt as to Glossip's conviction and death

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[182] APPX60-62 (Eckhart)
[183] APPX125-127.
[184] J. Gainey interview of D. Wood, 1/30/1997, p. 25; APPX61 (Eckhart).
[185] VIDEO 3.
[186] APPX1.

sentence."[187] The concerns include:

- "The 1999 destruction of several pieces of key physical evidence as well as potentially exculpatory financial documents, *before* Glossip's retrial, by the Oklahoma City Police Department at the direction of the Oklahoma County District Attorney's Office."

- "Intentional contamination by the lead homicide detectives of Sneed's interrogation, that appears to have signaled to Sneed to implicate Glossip as involved and the mastermind of the murder, rather than to gather information from Sneed of what happened regardless of whether or not it fit a particular hypothesis."

- "A deficient and curtailed police investigation driven by the lead detectives' prematurely formed hypothesis that detracted from finding or looking for evidence of what in fact transpired."

- "[D]iscovery and collection of facts—some altogether newly found—that directly undermine the State's theory of the case and the reliability of the murder conviction"

- "Critical gaps in juror instructions that, based on jury interviews, appear to have caused the jury to misunderstand Oklahoma's statutory mandate requiring a specific analysis be undertaken to determine whether there is sufficient corroboration of accomplice testimony."

- "The Prosecution's failure to vet the evidence collected by the police and its further distortion of nearly every witness's testimony to fit its case theory and secure a guilty verdict."

The report itself runs 259 pages, and also includes appendices detailing, among other things, all known evidence of Van Treese's movements on the night of the murder, each item of evidence purportedly corroborating Sneed's statements and the investigation's findings on each point, a careful tracking of each account given by Justin Sneed, identifying what he said about each item on four separate occasions and where they are materially inconsistent, and a list of witnesses to whom Sneed spoke about the murder and what he said to each.

Since the issuance of their formal report in June, Reed Smith has obtained a letter written by Justin Sneed in 2007 in which he tells attorney Gina Walker "There are a lot of things right now that are eating at me. Some things I need to clean up. . . I think you know w[h]ere I'm going it was a mistake reliving this."[188] Although Sneed has never publicly recanted his testimony, this letter (and

[187] APPX4.
[188] APPX17-18.

the response from Walker) makes it apparent that he has strongly considered doing so in the past, but feared he would lose his protection from the death penalty if he did so.

This independent investigation is unprecedented in Oklahoma. It is thorough, detailed, and highly credible, and provides a pressing reason to recommend clemency for Mr. Glossip.

CONCLUSION

Richard Glossip is an innocent man who has been the victim of a massive breakdown in the justice system that would have been disturbing had it occurred even in a minor case. In a death penalty case, it is truly shocking, and the red flags in this case are so significant that they have raised alarm among a large group of pro-death-penalty Oklahoma politicians. Police are supposed to investigate cases objectively and thoroughly rather than jumping to conclusions and resting on their first theory. The State is supposed to provide competent lawyers to zealously represent indigent defendants' interests, which includes investigating the case and testing the prosecution's evidence. Prosecutors are supposed to ensure that the evidence they present is reliable, to safeguard the evidence in the case rather than destroying it, and to proceed with a prosecution only when it is consistent with justice. None of these things happened in this case. And even when serious flaws have come to light, the District Attorney has steadfastly refused to share any information he has about what really occurred and the Attorney General has resisted convening an evidentiary hearing.

Although Mr. Glossip has suffered an unimaginable fate—he has now spent almost as much of his life on death row as he lived as a free man, and has been forced to prepare for imminent death three times already—Mr. Glossip, who had never been in trouble before, has remained a model prisoner with a clean record. This Board should recommend that he be allowed to live.