

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

JUL 16 2025

THE STATE OF OKLAHOMA,)

Plaintiff,)

v.)

RICHARD EUGENE GLOSSIP,)

Defendant.)

RICK WARREN
COURT CLERK

23 _____

Case No. CF-1997-244

**STATE'S NOTICE OF REJECTION OF DEFENDANT'S PROPOSED PLEA
BARGAIN**

On June 28, 2025, counsel for the defendant communicated to the State an intent to submit to the Court a proposed plea bargain discussed by the parties more than two years ago. The parties, however, never reached a final plea agreement. Negotiations more recently have proven fruitless. In light of defense counsel's recent revelation of his plan to submit communications regarding the defendant's proposed and unconsummated plea bargain, the State hereby gives formal notice of its rejection of the defendant's proposed agreement.¹

FACTUAL BACKGROUND

Following his second jury trial, conviction, and sentence in 2004, the defendant pursued numerous avenues of appeal, including state post-conviction relief. On April 6, 2023, the Oklahoma Attorney General, Gentner Drummond, filed a pleading in the

¹ The undersigned suggested to three different members of the defendant's legal team that pleadings on this topic should be filed under seal since they would reveal to a potential jury pool negotiations deemed inadmissible per 12 O.S.2001, § 2410. Mr. Knight rejected any agreement for the parties' pleadings revealing plea negotiations to be filed under seal.

defendant's most recent post-conviction proceedings before the Oklahoma Court of Criminal Appeals (OCCA) conceding error occurred during the second jury trial and, therefore, a new trial was warranted. Around that same time, the defendant's counsel, Don Knight, engaged Attorney General Drummond in email communications concerning a potential disposition of the prosecution apparently anticipating that the OCCA would grant the jointly-requested relief.

On April 20, 2023, the OCCA denied relief. *Glossip v. State*, 2023 OK CR 5, 529 P.3d 218. The defendant's conviction and sentence remained intact, and the proposed agreement was never finalized nor executed.

The defendant sought *certiorari* with the United States Supreme Court which was granted. On February 25, 2025, the Supreme Court of the United States issued its opinion in *Glossip v. Oklahoma*, 604 U.S. --, 145 S. Ct. 612 (2025), determining the defendant was entitled to a new trial in this matter.²

Since then, the parties and this Court have operated with the understanding that the case would be re-tried to a jury. More specifically:

1. On April 24, 2025, counsel for both the State and the defendant met with this Court in chambers to discuss the posture of the case and to place it back on the pretrial docket. During that meeting, no party communicated or acted in a manner consistent with a belief that a plea agreement had been reached at any time in this litigation. All parties acted in a manner

² Accordingly, the OCCA reversed the defendant's conviction and sentence and remanded the matter to this Court for a new trial. *Glossip v. State*, Nos. PCD-2023-267, D-2005-310 (Okl. Cr. April 18, 2025) (not for publication).

consistent with an intent to move the case toward trial. The Court and the attorneys discussed potential trial scheduling issues and whether the Court needed to allow time for a capital or non-capital trial—a final determination of which had not yet been made by the State. Upon inquiry from the Court, the parties acknowledged a dialogue to potentially resolve the matter by plea negotiations remained open, but there was no representation or assertion that any type of plea agreement had been reached. Defense counsel also did not request a plea and sentencing hearing. Instead, counsel stated the filing of unspecified defense motions would soon be forthcoming. By agreement, the case was set for status conference on May 9, 2025, which was later reset by agreement to June 9, 2025. *See* Exhs. 1 & 2, Court Minute Orders.

2. On May 8, 2025, the full prosecution and defense teams met at the Office of the Attorney General to discuss each party's respective position in the case. The defense did not claim, or even suggest, that a plea agreement had been reached in 2023 to which the State was bound. In fact, the defense's request on that date was not that a plea agreement be honored but that the case be dismissed outright. Mr. Knight was a key participant in the meeting. Yet at no point did he mention or indicate any belief that he had already reached a plea agreement with Attorney General Drummond. On the contrary, both sides agreed that discussions regarding a possible settlement would remain open. Consistent with that position, Mr. Knight and co-

counsel Judy Clarke sent a letter to First Assistant Attorney General Amie Ely on June 8, 2025, “regarding potential settlement of this case.” See Exh. 3, 6-8-25 Letter. The letter memorialized the defendant’s recent (rejected) offer to enter an *Alford* plea to an amended charge of accessory to murder and indicated he “would be open to entering a guilty plea to accessory.” The letter concluded with an offer to continue negotiations. Any reference to a previously reached agreement was conspicuously absent. *Id.*

3. On June 9, 2025, the defense took further action evincing the absence of a plea agreement by addressing two new defense motions relevant to re-litigating the case. First, the defense filed a motion requesting the Court set a bond for the defendant pending re-trial. During the scheduled status conference held that day, the parties agreed to set the case for a bond hearing on June 17, 2025. Second, defense counsel informed the State and this Court of the possibility the defendant would seek to remand the matter for a new preliminary hearing. Again, the defense made no mention that the parties had long ago reached a supposed plea agreement. Nor did defense counsel indicate the existence of an alleged plea agreement at the June 17 bond hearing.
4. At all times since the new trial was ordered, the State has communicated and acted consistently with its intent to re-try this case while leaving the possibility of a plea agreement open. However, all communications in that regard have not resulted in an agreement, and the defense did not assert

that a plea agreement had been previously reached. Despite the ongoing discussions and litigation described above, on Saturday June 28, 2025—four months after the Supreme Court ruled the defendant’s murder conviction must be vacated—Mr. Knight contacted Attorney General Drummond and Solicitor General Garry Gaskins suggesting—for the first time—that he had reached a binding settlement agreement with the Attorney General in this case more than two years ago. Mr. Knight indicated he would be submitting a “critical pleading,” presumably to enforce the purported agreement, “no later than July 7th [2025]” if the Attorney General did not respond to him by the close of business on Tuesday, July 1, 2025. Mr. Knight even labeled the email communications between himself and the Attorney General as “Exhibit 1 (Agreement)” presumably indicating it to be the first exhibit to his “critical pleading”. Mr. Knight provided an email dated April 1, 2023, wherein he set out general parameters for a plea agreement and stated that a more complete and formal agreement would be drafted for the State’s consideration. *See* State’s Exh. 4. The email reflects Attorney General Drummond agreed the “basic terms” of what had been discussed were correctly identified, but that as Mr. Knight made clear the defendant’s attorneys were still “preparing” their “more detailed” proposed agreement which would be subject to further revision and ultimately approval by the Attorney General.

5. Subsequent email communications between Mr. Knight and Attorney General Drummond confirmed that the proposed agreement was still a work in progress. On April 3, 2023, Mr. Knight emailed a “draft” of the proposed agreement and noted that, “Of course, this is a draft and I expect you may have some changes.” *See* State’s Exh. 5 (*emphasis in original*). In the next paragraph Mr. Knight indicated that he would consider the anticipated “written agreement” to be binding on both parties once reduced to a “signed agreement” whether filed with the court clerk or not. This proposed agreement was never executed. Instead, the Attorney General responded to Mr. Knight that revisions were to be anticipated. *See* State’s Exh. 5. Mr. Knight responded that he looked forward to receiving the “revised version as soon as possible”. *Id.* Importantly, Mr. Knight indicated on April 5, 2025, that he had not even discussed the proposed agreement with the defendant, Mr. Glossip, who of course would be one of the two essential parties to the agreement. *See* State’s Exh. 6.
6. It appears that the parties’ attention soon turned to other matters including clemency and the proposed agreement took a backseat to more pressing matters. *See* State’s Exh. 7. Soon the OCCA’s denial of post-conviction relief on April 20, 2023, made the defendant’s proposed agreement for resolution of criminal charges at the district court level a moot point. The defendant’s proposed agreement was never finalized nor was it ever executed by the parties.

7. Because no final settlement agreement has been reached in this case, the State cannot be compelled to agree to the terms proposed by the defendant.

ARGUMENT AND AUTHORITY

To begin with the obvious, “[t]he State is never under any legal obligation to plea bargain with any defendant; for there is no constitutional right to plea bargain.” *Gray v. State*, 1982 OK CR 137, ¶ 8, 650 P.2d 880, 882 (citing *Weatherford v. Bursey*, 429 U.S. 545, 560-61 (1977)); *see also Ross v. State*, 1986 OK CR 49, ¶ 16, 717 P.2d 117, 122 (“There is no absolute right to have a guilty plea accepted, nor even a constitutional right to plea bargaining.”); *State ex rel. Stout v. Craytor*, 1988 OK CR 79, ¶ 14, 753 P.2d 1365, 1368 (finding that because the defendant had no right to acceptance of a guilty plea or to plea bargain, “and insofar as the matter of plea bargaining is a discretionary matter with the prosecutor. . . the Honorable Respondent abused his discretion in directing the district attorney to file an amended information and directing him to accept the plea bargain.”).

Even when the prosecution and defense do reach a plea bargain, the “plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest.” *Mabry v. Johnson*, 467 U.S. 504, 507 (1984). As such, a plea bargain is not binding on either party unless and until the court accepts a defendant’s guilty plea or the defendant can demonstrate he relied to his detriment on a plea agreement that was accepted but later withdrawn. *See Ross*, 1986 OK CR 49, ¶ 16, 717 P.2d at 122 (rejecting

challenge to denial of defendant's motion to enforce a plea agreement that had been withdrawn by the State after acceptance by the defendant, particularly where no prejudice shown); *United States v. Novosel*, 481 F.3d 1288, 1294 (10th Cir. 2007) (government not bound by terms of signed plea agreement where defendant had not yet entered guilty plea and failed to demonstrate detrimental reliance on the agreement).³

Here, contrary to defense counsel's abrupt, new theory, the parties have never reached a plea agreement in this matter. Defense counsel premises the existence of a supposedly binding agreement on an email exchange between himself and Attorney General Drummond on April 1, 2023. For context, these emails were sent five days after the defendant filed his fifth application for post-conviction relief with the OCCA—nearly two years before relief would ultimately be granted. Since the defendant at that time was still under a final judgment and sentence, there was

³ See also *Shields v. State*, 374 A.2d 816, 820 (Del. 1977) ("We hold that the State may withdraw from a plea bargain agreement at any time prior to, but not after, the actual entry of the guilty plea by the defendant or other action by him constituting detrimental reliance upon the agreement."); *State v. Edwards*, 279 N.W.2d 9, 11 (Iowa 1979) ("The State may withdraw from a plea bargain at any time prior to, but not after, actual entry of the guilty plea by defendant or other action by defendant constituting detrimental reliance upon the arrangement."); *State v. Collins*, 265 S.E.2d 172, 176 (N.C. 1980) ("The State may withdraw from a plea bargain arrangement at any time prior to, but not after, the actual entry of the guilty plea by defendant or any other change of position by him constituting detrimental reliance upon the arrangement."); *State v. Wheeler*, 631 P.2d 376, 380 (Wash. 1981) (en banc) ("[A]bsent a guilty plea or some other detrimental reliance by the defendant, the prosecutor may revoke any plea proposal."); *State v. Reasbeck*, 359 So.2d 564, 565 (Fla. Dist. Ct. App. 1978) (holding that prosecutor's withdrawal from plea agreement was proper where it was made before the plea was tendered in court and "defendant had done nothing to his legal detriment in reliance upon a mere offer of the State"); *State ex rel. Gray v. McClure*, 242 S.E.2d 704, 707 (W. Va. 1978) ("[A] prosecuting attorney . . . is bound to the terms of a plea agreement once the defendant enters a plea of guilty or otherwise acts to his substantial detriment in reliance thereon. . . . If the defendant has not yet acted to his detriment, the State is not bound to the terms of an inchoate plea agreement."); *United States v. Baker*, 676 F.Supp.3d 1127, 1131 (D. Utah 2023) ("In short, even though the parties reached a plea agreement, . . . the agreement was unenforceable until Mr. Baker entered a guilty plea, something which he has not done, unless Mr. Baker shows detrimental reliance which 'might bind the government.'" (quoting *United States v. Novosel*, 481 F.3d 1288, 1294 (10th Cir. 2007))); *United States v. Kuchinski*, 469 F.3d 853, 857 (9th Cir. 2006) ("Kuchinski insists that once the government entered into a plea agreement, it was absolutely bound to the agreement's terms, even before the district court accepted the agreement. He is wrong. . . . We recognize that where detrimental reliance is shown, the government may be bound even before the district court accepts the agreement, but no detrimental reliance appears here.").

nothing to bargain for. Any prospect of plea bargaining in the event of a vacatur was purely speculative.

Not only were plea discussions at most anticipatory, a plain reading of the email conversation itself reveals that the parties never reached a final plea agreement. Indeed, the purpose of the email was to confirm “the basic terms” of a proposed agreement before defense counsel prepared a final document for the Attorney General’s “review.” Tellingly, defense counsel has not provided this Court with a final plea agreement executed by the State and the defendant. Instead, counsel provides nothing more than attorney correspondence discussing the future drafting of such a document.⁴ The reason for the omission is simple—the parties never reached a final plea agreement.

Additionally, an agreement between the State and the defendant is factually impossible because the defendant was kept in the dark about the proposed agreement at the same moment the defendant’s attorneys now claim it was consummated. Mr. Knight’s own words prove he failed to consult with his client regarding the proposed plea agreement, failed to obtain his client’s agreement or consent to the proposed plea

⁴ Notably, some of the terms set forth in the proposed plea agreement lacked procedural accuracy or enforceability. For instance, the second proposed term provided the State would “file new charges” against the defendant, reflecting counsel’s apparent misunderstanding of the effect of a vacatur of a conviction. Additionally, the fifth proposed term provided the State would agree “to give Mr. Glossip full good time credits as if he was an enhanced level 4 inmate for each day he served in custody.” Since Oklahoma long ago abandoned a “good time credit” system in favor of the current “earned credit system,” counsel presumably meant to reference the defendant’s earned credits. *See Ekstrand v. State*, 1990 OK CR 21, ¶ 3, 791 P.2d 92, 96 (Lumpkin, J. concurring in part/dissenting in part); 57 O.S. § 138. Even so, such a term would not be legally enforceable because a sentencing court has no authority to dictate the manner in which the Department of Corrections administers a sentence, assigns security levels, or awards such credits. *See Fields v. Driesel*, 1997 OK CR 33, 941 P.2d 1000; *Warnick v. Booher*, 2006 OK CR 41, ¶ 13, 144 P.3d 897, 901. *State ex rel. Henry v. Mahler*, 1990 OK 3, ¶ 13, 786 P.2d 82, 85; *Mitchell v. Meachum*, 1988 OK 131, ¶ 7, 770 P.2d 887, 890; 57 O.S. §§ 138; 530.1.

agreement, and inexplicably failed to even involve his client in the plea negotiation process. *See* State's Exh. 6.

It also bears noting that while Attorney General Drummond agreed to review the defense's proposed plea agreement document, he could not have lawfully given his unilateral approval of such an agreement without first consulting the victim's family. Article II, Section 38 of the Oklahoma Constitution guarantees crime victims, including family members of homicide victims, the right to be involved at all stages of a criminal prosecution. Further, the Oklahoma Victim's Rights Act specifically mandates that victims "be informed of any plea bargain negotiations and, upon request, to confer with the attorney for the state[.]" 21 O.S.Supp.2019, § 142A-2(A)(10). For this reason, also, the Attorney General's April 1, 2023 email cannot reasonably be construed as formal assent to any proposed plea agreement.

"Although the analogy may not hold in all respects, plea bargains are essentially contracts." *Puckett v. United States*, 556 U.S. 129, 137 (2009). Keeping with this analogy, the defendant cannot show his offer of a plea bargain was accepted by the State. *Nat'l Outdoor Advertising Co. v. Kalkhurst*, 1966 OK 85, ¶ 13, 418 P.2d 661 ("It is an elementary rule of law in this jurisdiction that in order to constitute a contract there must be an offer on the part of one and an acceptance on the part of the other."). Even if the defendant could make such a showing—which he cannot—any agreement between the parties is unenforceable here since the defendant has neither entered a guilty plea to any crime before this Court, nor has he relied to his detriment on the existence of an alleged agreement. *See, e.g., United States v. Jensen*,

996 F.Supp.2d 1151 (D. Utah 2014) (enforcing government's withdrawn agreement to dismiss a count where defendant stopped preparing for trial on that count and the government was able to produce additional evidence at the last minute due to the induced postponement of trial); *United States v. Garcia*, 519 F.2d 1343, 1345 (9th Cir. 1975) (defendant waived right to speedy trial in detrimental reliance on deferred prosecution agreement that the government later repudiated).

To the contrary, defense counsel have conducted themselves at all times throughout these proceedings consistent with the non-existence of any plea agreement. If the defense genuinely believed the parties had reached a final, binding plea agreement in this case two years ago, then it defies logic that it would continue to engage in ongoing plea negotiations (offering different terms than were discussed in 2023, at that), seek bond pending an anticipated re-trial, contemplate moving for a remanded preliminary hearing, move for admission of additional out-of-state counsel, and appear before this Court on numerous occasions without once mentioning the existence of an alleged plea agreement. The more reasonable explanation is also the most obvious: counsel conducted themselves as though there was no plea agreement because there is no plea agreement.

The defendant cannot show that he reasonably believed a plea agreement exists in this case or that he detrimentally relied to any degree on the mistaken belief that it did. Rather, all communications and conduct by counsel for both parties manifest the understanding that no agreement has been reached to date. Needless to say, the defendant is not entitled to enforcement of a non-existent plea agreement.

Though not procedurally necessary, due to Mr. Knight's announcement that he intends to submit a "critical pleading" presumably seeking enforcement of an unfinalized plea bargain long ago abandoned by the parties, the State hereby gives formal notice that the proposed agreement is rejected.

Respectfully Submitted,

GENTNER F. DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

JIMMY R. HARMON, OBA 17834
SENIOR DEPUTY ATTORNEY GENERAL

313 N.E. 21st Street
Oklahoma City, Oklahoma 73105
(405) 521-3921
Jimmy.Harmon@oag.ok.gov

Certificate of Service

On this 16th day of July, 2025, a true and correct copy of the foregoing *State's Notice of Rejection of Defendant's Proposed Plea Bargain* was mailed and/or emailed to:

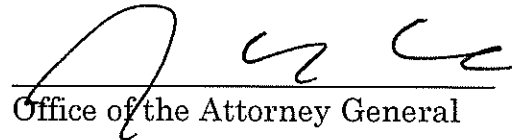
Don Knight
7852 S. Elati St., Ste. 205
Littleton, CO 80120
don@dknightlaw.com

Andrea Miller
800 N. Harvey
Oklahoma City, OK 73102
admiller@okcu.edu

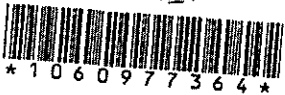
Corbin Brewster
2617 E. 21st St.
Tulsa, OK 74114
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San Diego, CA 92103
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320 W. Jefferson St.
Tallahassee, FL 32301
meolive@aol.com



Office of the Attorney General



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA
FILED IN DISTRICT COURT
OKLAHOMA COUNTY

THE STATE OF OKLAHOMA,
PLAINTIFF,
VS.

CASE NO. CF 1997-244

APR 24 2025

Richard Gossip
DEFENDANT.

RICK WARREN JUDGE: Coyle
COURT CLERK

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COURT MINUTE ORDER

AG
ASST. D.A. J. Hinepuger
R. Stephenson

DEF. ATTY: A. Miller

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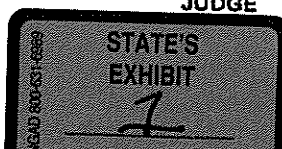
By agreement of the parties
Status Conference → 5/9/25 @ 9am

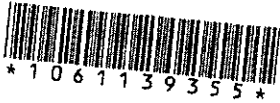
Δ Gossip waives his appearance for
today's status conference

[Signature]
ASST. DISTRICT ATTORNEY

[Signature]
DEFENSE ATTORNEY

24th DAY OF April 25
JUDGE [Signature]





IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA
FILED IN DISTRICT COURT
OKLAHOMA COUNTY

THE STATE OF OKLAHOMA,
PLAINTIFF,

VS.

CASE NO. CF 1997 - 244

JUN 09 2025

Richard Eugene Gossip
DEFENDANT.

RICK WARREN DGE: Coyce
COURT CLERK

17

COURT MINUTE ORDER

ASST. D.A.: AG Hanson, Stephenson,
Himpel

DEF. ATTY: Miller & Brennan

PAGE 1 OF 1

Case comes on for Status Conference

Bond Motion hearing set 6/17/25 @ 1:30 p.

ASSISTANT DISTRICT ATTORNEY

DEFENSE ATTORNEY

DAY OF

20

JUDGE

STATE'S
EXHIBIT

2



Clarke Johnston Thorp & Rice *A Partnership of Professional Corporations*

Attorneys at Law – 302 Washington Street, Suite 626, San Diego, California 92103

June 7, 2025

Amie Ely
First Assistant Attorney General
Office of Attorney General
313 NE 21st St.
Oklahoma City, OK 73105
via email (Amie.Ely@oag.ok.gov)

Re: State v. Richard Glossip, CF-1997-244

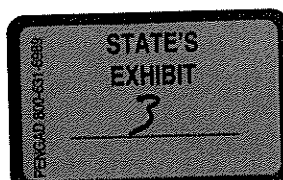
Dear Ms. Ely:

We write with regard to our conversation with you and Mr. Harmon regarding potential settlement of this case. To the extent your office offered a resolution requiring a life with parole sentence with no understanding of how much time Mr. Glossip must continue to serve in custody, it is rejected. As discussed, and as is clear from the court record, Mr. Glossip rejected an identical offer in November 2003 [RT November 3 and 4, 2003, pp. 4-6].

We reiterate our offer to settle this case by way of a plea to accessory after the fact, and imposition of the maximum 45-year sentence, and with credit that would result in Mr. Glossip's release (in reality with time credit, he will have served almost 9 years beyond the release date had the case resolved as an accessory in 1997 and he had received the maximum sentence). To the extent you object to the *Alford* portion of the offer, Mr. Glossip would be open to entering a guilty plea to accessory.

We came away from our conversation understanding that the state feels quite sure of a conviction for first degree murder, and therefore Mr. Glossip should seize the opportunity to accept a plea that *might* result in his release one day. At the same time, you acknowledged that you had not found any new evidence to support a conviction. Many legal and ethical hurdles stand in the way of a third conviction – and after the revelations that surfaced in the Reed Smith and Duncan investigations – many statements made by your own office in briefs and at the Supreme Court provide ample material to question your attempt to do so.¹ In addition, courts

¹ From State's Brief in Support of Glossip's Cert Petition: It is "simply not accurate" to say there was "overwhelming evidence of guilt;" [t]he physical evidence "all goes to Sneed;" [I]t is "correct" that the State's case "hinged on the testimony of one witness, Justin Sneed;" Sneed's "credibility was absolutely essential to Glossip's conviction."



that have reviewed this case after each trial agreed that the evidence of Glossip's guilt "was not overwhelming."² No reasonable person would suggest that the state's case has gotten stronger after the passage of 28 years.

We believe that because of the history of police and prosecutorial misconduct, destruction of evidence, loss and manipulation of witnesses, Mr. Glossip can never get a fair trial – and we will litigate to that end *if necessary*. You may believe that there is a path to conviction based on Mr. Glossip's statements. Whether that is accurate or not, pretrial litigation in this case will necessarily require a deep dive into whether police and prosecutors who have touched this case – at trial and during post-conviction proceedings – acted negligently,

From State's Merits Brief to Supreme Court: "[t]he only direct evidence connecting Glossip to the murder was Sneed's trial testimony"; "No forensic evidence linked Glossip to the murder"; "[N]o compelling evidence of any kind corroborated Sneed's testimony that" Glossip "was the mastermind"; "Without Sneed's statements to the police, there would have been no murder charge"; "[w]ithout Sneed's testimony "there would be no murder conviction or capital sentence"; "[t]he State's murder case would have been exceedingly difficult (if not impossible) to prove without its star witness" – Justin Sneed; "[b]efore Sneed pointed the finger at Glossip, the evidence substantiated Glossip's involvement only after the murder"; "[n]o evidence outside of Sneed's say-so tying Glossip to the murder's commission."

From the State's Supreme Court oral argument: "[T]he State has one indispensable witness. That witness is Sneed;" "Until the police talked to him, Glossip was only charged as an accessory after the fact;" "[t]his is the absolute critical witness;" "[w]ithout his testimony, there's no way to get the conviction of murder."

² See Order granting COA (No. CIV-08-0326-HE, 11/3/2010, DCWDOK). See also the State District Court FFCL on remand from the OCCA following evidentiary hearing March 9, 2001 (Case No. 098-948, CF-1997-244):

"Sneed was the State's star witness in the case against Richard Glossip. No forensic evidence linked Glossip to the murder. 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.

The entire theory of the State's case in chief was that Sneed was a pathetic creature who killed Van Treese only because Glossip suggested, coached, and encouraged him to do so. Sneed testified that without Glossip he would not have murdered Van Treese. (Tr. VI 101). If the State were successful in painting Sneed as being so malleable, it is logical to inquire, 'how malleable is he?' The plain-as-the-nose-on-your-face defense strategy would be to create question in the jury's mind: Could Sneed have been influenced by the standard interrogation techniques used by Detectives Bemo and Cook? The opportunity to raise this before the jury was squandered."

recklessly or with intention to improperly shape and reshape the testimony of multiple witnesses.³

The Attorney General's public and private statements, from 2023 to date, support our offered resolution, and we ask that you take this offer directly to him for consideration and approval. We are prepared to engage in good faith discussions and believe that a resolution is possible if both sides recognize the current state of the record. Please let us know if you believe further conversation at this point would be fruitful.

Sincerely,

/s/ Judy Clarke, Don Knight

Judy Clarke
Donald R. Knight

³ We are aware that Mr. Harmon was the Chief Assistant to D.A. Prater at the time that office declined to produce Boxes 1-8, a later production of which revealed a *Napue* violation and other misconduct. DA Prater was responsible for the arrest of one of Mr. Glossip's potential witnesses in 2015 and has long objected to any relief for Mr. Glossip.

Don Knight

From: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Sent: Saturday, April 1, 2023 10:08 PM
To: Don Knight
Cc: Trebor Worthen
Subject: Re: Glossip

Follow Up Flag: Follow up
Flag Status: Flagged

We are in agreement.

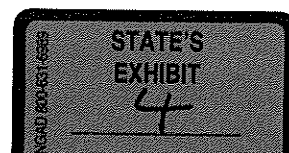
Gentner Drummond
Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
(405) 522-2975

From: Don Knight
Sent: Saturday, April 1, 2023 6:35:48 PM
To: Gentner Drummond
Cc: Trebor Worthen
Subject: [EXTERNAL] Glossip

Gentner,

Pursuant to our conversation from Thursday and earlier today, my team is preparing a document for your review that will memorialize the full terms of the agreement we have reached to resolve Mr. Glossip's case. While the document we are preparing will be more detailed than this recitation, from my understanding, these are the basic terms of our agreement:

- 1.Once the conviction is vacated and the matter returned to the OCDC, the OAG will continue to prosecute the case on behalf of the State.
- 2.Since the conviction will be vacated, the State will file new charges against Mr. Glossip of a single count of being an Accessory After the Fact, the maximum sentence for which in 1997 was 45 years.
- 3.Mr. Glossip will plead guilty to this charge.
- 4.The parties agree that Mr. Glossip will receive a sentence of 45 years in the Oklahoma Department of Corrections.
- 5.The State agrees to give Mr. Glossip credit for all time he has served from January 10, 1997, through and including the date of the entry of his guilty plea and sentencing. In addition, the state agrees to give Mr. Glossip full good time credits as if he was an enhanced level 4 inmate for each day he has served in custody. The parties stipulate and agree that, with this credit being applied, Mr. Glossip is eligible for immediate release as his sentence was completed in 2016.



6. Mr. Glossip, upon entry of the plea and sentence, which will be completed in a single proceeding, will be immediately released, and will not be placed on probation, parole, or post-imprisonment supervision. He will not be required to pay any fines, costs, or fees associated with his case. He will not be required to pay any restitution as a result of this plea. The State of Oklahoma will have no further right to claim any time, or anything of value, from Mr. Glossip resulting from the events that began on January 7, 1997, and continue through the date of his plea and sentencing.

7. Mr. Glossip will agree to fully and forever release and discharge the State of Oklahoma, the OCDA, the Oklahoma County Police Department, the Oklahoma County Jail, and the Oklahoma Department of Corrections, and all individuals who have served as attorneys, investigators, agents, servants, or employees of any of these agencies, their heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of Mr. Glossip's arrest and incarceration.

8. It is understood that the State of Oklahoma, nor any agency thereof, admits any liability in this matter.

If I have misstated anything, or left anything out of this agreement, please let me know so I can be sure to include it. In addition, you stated today that when I contact Kyle Counts and Tom Bates at the PPB on Monday and request that the April 12 clemency date be continued to a new date closer to the May 18 execution date, I may represent that your office joins in that request. I will advise the PPB that we are making this request due to ongoing talks, and in order to give the OCCA time to consider the motion for stay that is currently pending in the court.

Thank you for your attention and cooperation. I appreciate your efforts.

Best,

Don Knight, Esq.

Donald R. Knight, PC Law Firm

7852 S. Elati Street, Suite 205

Littleton, CO 80120

303.797.1645 | don@dknightlaw.com

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From: Don Knight
To: Gentner Drummond; Trebor Worthen
Subject: [EXTERNAL] Glossip agreement
Date: Monday, April 3, 2023 1:19:17 PM
Attachments: Glossip AGREEMENT FOR PLEA.docx
Service of Sentences and Credit Applicable to Offenders in Custody of ODOC 11.8.2021.pdf

Gentner,

Attached please find the draft of the agreement you asked my team to complete. Please note that, especially with respect to anything to do with the report from the Independent Counsel, I do not have access to the report so I cannot be certain of the language in the report. Otherwise, the draft contains all the elements of the email I sent to you on Saturday and to which you expressed your consent. Of course, this is a draft and I expect you may have some changes. I plan to see Mr. Glossip tomorrow afternoon and am sure you would like his signature before you release the report and hold your press conference. I have no doubt but that he will sign it without changes. Please let me know if you have any changes in the agreement as soon as possible so I can get them done and back to you for your final review.

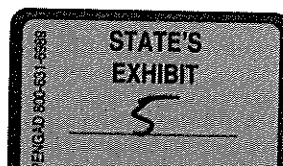
Also, I do not know if there is a plan to file this document anywhere or if it is simply a signed agreement that either party can use if a need arises. Filing it is not something we have discussed. In creating this written agreement, I considered the terms to be binding on both parties, so that we can move forward, and both be certain the case ends as described in the document. I do not think it needs to be filed in any court unless something falls through. If you feel differently, please let me know. I am certainly open to filing it if that is what you desire.


Thank you for your commitment and cooperation in this complicated matter. I look forward to hearing from you soon with any revisions or changes you may have.

Best,

Don Knight, Esq.
Law Office of Donald R. Knight, PC
7852 S. Elati Street, Suite 205
Littleton, CO 80120
O: 303.797.1645 | don@dknightlaw.com

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AGREEMENT FOR PLEA, SENTENCING, AND WAIVER OF CIVIL REMEDIES

THE PARTIES: This is an agreement made between the State of Oklahoma, by and through its elected representative, Attorney General Gentner Drummond, and Richard Glossip. Mr. Glossip is represented by attorneys Don Knight*, Amy Knight*, John Mills*, Joe Perkovich*¹, and Warren Gotcher.

BACKGROUND

Mr. Glossip was retried, convicted, and sentenced to death in Oklahoma County District Court (OCDC) in 2004 for the 1997 murder of Barry Van Treese, Case No. CF-97-244. The Oklahoma Court of Criminal Appeals (OCCA) has entered orders scheduling Mr. Glossip's execution on several occasions, beginning in 2014, and Mr. Glossip has received several gubernatorial reprieves. Pursuant to the OCCA's January 24, 2023 order, Mr. Glossip's execution is now set for May 18, 2023.

Mr. Glossip maintains his innocence of this crime. He was denied relief on appeal and in state and federal habeas proceedings. In July and September 2022, Mr. Glossip filed further successive applications for post-conviction relief, citing what he maintained was new evidence of innocence and new information long withheld by prosecutors only recently disclosed by the State. The OCCA denied these claims in November 2022. A petition for writ of certiorari related to the September application is currently pending in the United States Supreme Court.

In January 2023, AG Drummond released additional documents to the defense that had also been withheld. A claim regarding some of those documents, and other claims including a claim of cumulative error, are now pending before the OCCA in a successive application for post-conviction relief.

Also in January 2023, AG Drummond appointed an Independent Counsel, Rex Duncan, to conduct a review of this conviction. Mr. Duncan has concluded that Mr. Glossip's conviction of First-Degree Murder can no longer be legally supported, and he recommends the conviction be vacated by the OCCA, and the matter remanded to the Oklahoma County District Court (OCDC) for a new trial.

On or about April 5, 2023, AG Drummond will cause to be filed in the OCCA a Confession of Error, whereby his office, on behalf of the State, admits that due to a

¹ * Admitted Pro Hac Vice

cumulation of errors, Mr. Glossip's conviction for First Degree Murder cannot be legally supported. This pleading will ask the OCCA to vacate the conviction and death sentence and return the case to the OCDC for further proceedings.

If the State proceeds with the existing charge or new charges, Mr. Glossip understands that he has the right to plead not guilty, to have counsel appointed to represent him if he cannot afford counsel, to request bail, to a jury trial on all charges, and to appeal any conviction that may result. Mr. Glossip also understands that if he is charged again with a felony, and he cannot afford to post bond, he will remain incarcerated in the Oklahoma County Jail through the completion of his trial.

As of the date of the signing of this document, Mr. Glossip is sixty years old and, since January 10, 1997, has been continually incarcerated, either in the Oklahoma County Jail awaiting trial or retrial or on the Oklahoma State Penitentiary's death row in McAlester. The State believes it is in the best interest of the State of Oklahoma, and the family of the victim, to pursue a fair and just conclusion of these proceedings, and Mr. Glossip agrees.

AGREEMENT OF THE PARTIES

WHEREAS, with the background and understandings stated above, the parties, stipulate and agree as follows:

1. The OAG will continue to prosecute this case on behalf of the State, in exercise of its authority to prosecute this criminal matter and to act in the best interest of the State, upon any remand to the OCDC and any further filings by Mr. Glossip in the OCDC.
2. The State will move to dismiss the charge of Murder in the First Degree for the murder of Barry Van Treese in Oklahoma County case CF-97-244 and file a new charge against Mr. Glossip of a single count of being an Accessory After the Fact to the crime of Murder in the First Degree (Okla. Stat. tit. 21, § 173), the maximum sentence for which in 1997 was 45 years (Okla. Stat. tit. 21, § 175(5)).
3. Mr. Glossip will plead guilty to this charge of Accessory After the Fact.
4. The State will request a sentence of 45 years in the Oklahoma Department of Corrections and Mr. Glossip will not oppose this request.

5. The State agrees to give Mr. Glossip credit in calculating the duration of the sentence he must serve for all time he has served from January 10, 1997, through and including the date of the entry of his guilty plea and sentencing. In addition, the State agrees to give Mr. Glossip full earned credits as if he were an enhanced level 4 inmate² for each day he has served in custody. The parties stipulate and agree that with this credit being applied, Mr. Glossip is eligible for immediate release as his sentence was completed in 2016.
6. Entry of the plea and sentence will be completed in a single proceeding, after which Mr. Glossip will be immediately released as his sentence will be considered completely served. He will not be placed on probation, parole, or post-imprisonment supervision. He will not be required to complete any community service or pay any fines, costs, or fees associated with his case. He will not be required to pay any restitution as a result of this plea. The State of Oklahoma will have no further right to claim any time or anything of value from Mr. Glossip resulting from the events that began on January 7, 1997, and continue through the date of his plea and sentencing.
7. Mr. Glossip agrees to fully and forever release and discharge the State of Oklahoma, the Oklahoma County District Attorney, the Oklahoma County Police Department, the Oklahoma County Jail, and the Oklahoma Department of Corrections, and all individuals who have served as attorneys, investigators, agents, servants, or employees of any of these agencies, their heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of Mr. Glossip's arrest and incarceration for the murder of Barry Van Treese.
8. Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, Mr. Glossip agrees as a further consideration of this agreement that his release of the above parties applies to

² Section II (B) and (D)(1) attached document "The Service of Sentence and Credit Applicable to Offenders in Custody of ODOC."

any and all injuries, damages and losses resulting from his arrest and incarceration as described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

9. It is understood that neither the State of Oklahoma, nor any agency thereof, admits any liability in this matter.
10. Mr. Glossip represents that no additional claims are contemplated against any other party potentially liable for the losses, damages, and injuries he might have suffered.
11. Mr. Glossip's representatives have read this document with him and affirm that he understands its content.

The parties hereto have carefully read the foregoing, discussed its legal effect with their respective counsel, understand the contents thereof, and sign the same of their own free will and accord.

GENTNER DRUMMOND
Oklahoma Attorney General

RICHARD E. GLOSSIP

DONALD R. KNIGHT
Attorney for Richard Glossip

Date

Date

Date

From: Don Knight
To: Gentner Drummond; Trebor Worthen
Subject: [EXTERNAL] Glossip
Date: Wednesday, April 5, 2023 11:29:33 AM

Gentner and Trebor,

Thank you for sending my team IC Duncan's report. I met with Mr. Glossip yesterday and, while I did not show or leave the report with him, I did inform him that the report stated: "...the State must vacate Glossip's conviction due to its decades-long failure to disclose what I believe is *Brady* material, correct what I believe was false trial testimony of its star witness, and what I believe was a violation of the Court ordered Rule of Sequestration of witnesses. . . this case is also permeated by failures to secure, safeguard and maintain evidence in a capital murder case."

I also told him that it is my understanding that your office is in the process of preparing a confession of error to be filed today or tomorrow wherein you will ask the OCCA to vacate the conviction and return the matter to the District Court for further proceedings. I did not discuss with Mr. Glossip what we have agreed would happen if/when we get back to the District Court but, from my conversation with him, I can assure you that he will agree to resolve this case precisely as contemplated in the full agreement we have made.

I also understand from talking with Trebor yesterday that you might not be ready to release the report to the press until tomorrow, and that you likely won't be prepared to file your confession of error in the court until then either. And, as I understand it, when you announce these matters, it will likely be through a press release and not in a press conference. I understand these matters may be in flux and could change.

I told Trebor that I am happy to sit with local press and discuss the IC report with special emphasis on the quotes below. I believe such press can help drive the message of the strength of this report and its findings to galvanize further support for the position you take in your filing. Please let me know your thoughts as I will say nothing in the press (other than a written release in support of the report and your filing) unless you also believe it is helpful to do so. We share in the desire to have the OCCA expeditiously grant your request and wish to do whatever is best to make that happen. I am in town through 5pm on Thursday and can extend if necessary.

Finally, we continue to stand by to assist Mr. Gaskins in the preparation of your



confession of error. We are prepared to file whatever we need in support of your filing, either with the OCCA or in other courts if the OCCA does not grant your motion, but we also may be able to make some suggestions to the confession to help avoid a denial by the OCCA. Please let us know what you need.

Thank you so much for your efforts. They are greatly appreciated.

"The State's murder case against Glossip was not particularly strong and would have been, in my view, weaker if full discovery had been provided." (p. 3)

"I believe Glossip was deprived of a fair trial in which the State can have confidence in the process *and* result." (p. 3)

"The cumulative effect of errors, omissions, lost evidence, and possible misconduct cannot be underestimated." (p. 4)

"The initial investigation was brief and immediately focused on Glossip and Sneed, to the exclusion of all others." (p. 4)

"[F]ailure by the State to preserve evidence cannot be dismissed as inconsequential or without harm to the defense." (pp. 7-8)

"A plausible purpose of the Smothermon memo to Walker was to communicate the ME's previously unheard testimony and coach Sneed's testimony to match the ME's opinion...My Investigation found no other explanation for the memo or change in Sneed's testimony." (p. 9-10)

"Sneed testified falsely why he was on lithium and denied being seen by a psychiatrist, and the jury never heard the truth." (p. 12)

"The State presented Sneed, its star witness, in a light more favorably than he was entitled, and his false testimony went unchallenged. The State's case primarily relied on Sneed's credibility, is perception of reality and memory recall." (p. 12)

"Death penalty cases must receive the greatest scrutiny of discovery compliance, erring on the side of transparency and disclosure. In my view, such was not the case herein, and too much—everything—is at stake." (p. 14)

"In my view, the State must vacate Glossip's conviction due to its decades-long failure to disclose what I believe is *Brady* material, correct what I believe was false trial testimony of its star witness, and what I believe was a violation of the Court ordered Rule of Sequestration of witnesses. . . this case is also permeated by failures to secure, safeguard and maintain evidence in a capital murder case." (p. 15)

"Trying any case a third time is unfortunate and rare, but I believe it is appropriate in this case." (p. 15)

"If this murder was deserving of the death penalty, I believe the wrong co-defendant is on death row." (p. 16)

"With 34 years of courtroom experience in criminal law cases, I am an advocate for the death penalty in the 'worst of the worst' cases. However, I believe the numerous trial and appellate defects throughout the history of this case can be remedied only by remand for a new trial. . . . further advocacy in support of the case's current posture does not serve the interests of justice; instead, it rewards the defects and errors in the process. In my view, a new trial is necessary to restore integrity to the process herein." (p. 19)

"Your decision to seek a stay of execution and more thoroughly examine this case may be the bravest leadership decision I've ever witnessed, and it was absolutely the correct legal decision." (p. 19)

Don Knight, Esq.

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From: Don Knight
To: Gentner Drummond; Garry Gaskins; Trebor Worthen
Cc: Amy Knight; Meri Wright; j.perkovich@phillipsblack.org; John Mills; Warren Gotcher
Subject: [EXTERNAL] Gossip
Date: Thursday, April 13, 2023 6:23:46 PM
Attachments: April 14 Joint Motion for Stay of Execution draft.docx

AG Drummond,

As of this hour, we have had no word from the court on the stay of execution. My team decided that a new motion for a stay, incorporating the events of the past week, might help the court. Therefore we drafted the attached joint emergency motion for a stay in hopes of getting the stay granted before all involved (including the Van Treese family) need to prepare for the clemency hearing. These are just our thoughts, and we will defer to you if you do not think this should be filed at this time.

We can incorporate any changes or, as it is in Word, you may of course modify it in any way you think is appropriate.

Thank you so much for reviewing this. Please let me know what else you might need or call me at any time.

Best,

Don Knight, Esq.
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7852 S. Elati Street, Suite 205
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