

*Independent Investigation of
State v. Richard E. Glossip*

**Third
Supplemental
Report
Reed Smith LLP**

September 18, 2022

Index of Exhibits to Reed Smith’s Third Supplemental Report

Exhibit Number	Description
1.	Letter from Assistant District Attorney Connie Smothermon to Gina Walker During Retrial
2.	August 15, 2022 Reed Smith Interview Transcript of Justin Sneed – CONTAINS CONFIDENTIAL AND SENSITIVE INFORMATION
3.	August 26, 2022 Reed Smith Interview Transcript of Justin Sneed – CONTAINS CONFIDENTIAL AND SENSITIVE INFORMATION
4.	September 7, 2022 Interview Transcript of Justin Sneed – CONTAINS CONFIDENTIAL SENSITIVE INFORMATION
5. A.	October 24, 2014 Email from O’Ryan Justine Sneed
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15.	October 29, 2003 Notes of interview with Cliff Everhart
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17.	October 29, 2003 Joe Harp Interoffice Memorandum re: Sneed Transport
18.	October 30-31, 2003 Oklahoma County Jail Documents re: Sneed

Since the Reed Smith Independent Investigation report became public on June 7, 2022 (“Report”), our Supplemental Report became public on August 9, 2022 (“Supplemental Report”), and our Second Supplemental Report became public on August 20, 2022, we have continued to investigate.

Two significant developments have occurred since we issued the Second Supplemental Report:

(1) The Reed Smith¹ Investigation Team interviewed Justin Sneed,² the State’s primary witness against Richard Glossip, regarding Sneed’s discussions of “recanting” with multiple people that occurred over an 11-year period, other inconsistencies in his testimony, and newly obtained documents.

(2) The Investigation Team was granted access by Glossip’s defense counsel to a portion of the District Attorney’s Case File, which we understand was a subset of the seven (7) boxes of documents (“DA’s Case File”) that the Attorney General’s Office (“AGO”) obtained from the District Attorney,³ and a transcript of the AGO’s July 18, 2022 interview of Sneed.⁴ In the DA’s Case File, we discovered documentation of the State violating the Court’s Rule of Sequestration during Glossip’s retrial and providing Sneed, through his attorney, information as to what other witnesses testified to during the retrial and immediately before Sneed testified on May 26, 2004. It appears that at least one purpose for providing this information to Sneed was so he could conform his testimony to match the evidence which already had been adduced through one or more of these other witnesses.⁵

¹ Individuals from the firms Crowe & Dunlevy LLP and Jackson Walker LLP also continue to assist Reed Smith in various aspects of the ongoing investigation and are included in the term “Reed Smith Investigation Team.”

² The Reed Smith Investigation Team conducted over eight hours total of in-person interviews of Sneed on August 15, August 26, and September 7, 2022. We have provided transcripts of these interviews to both the AGO and Glossip’s defense. We have attached these transcripts as Exhibits 2-4 but due to the interviews containing some information that is of medical, personal, or a sensitive nature, we have withheld from the general public. Sneed also stated to Reed Smith that the AGO’s interview in July 2022 was very quick, probably 30-45 minutes. Sneed also stated that with regard to the AGO’s interview, “the only thing that seemed to get really adamant was I going to stand on the testimony that I had already given.” Exhibit 3: August 26, 2022 Reed Smith Interview of J. Sneed at p. 126:12-16; July 18, 2022 AGO Interview of J. Sneed. Sneed stated the AGO interviewers additionally showed him pictures of a few inmates and asked him questions about them. Exhibit 3: August 26, 2022 Reed Smith Interview of J. Sneed at pp. 17:25-18:1; 126:14-16.

³ With one exception, the AGO appears to have removed all but one witness interview notes (including Sneed’s and others that testified at trial) as well as anything the AGO deemed “work product.” It is our understanding that the AGO has declined to produce a log of what documents were removed. While we have asked them to reconsider this decision, the AGO has not responded to date.

⁴ Despite our request, the Attorney General would not allow Reed Smith access to either the DA’s Case File (seven boxes total) or the AGO’s interview transcript of Sneed. Pursuant to our ongoing investigation, we then requested that Glossip’s defense counsel grant us access to both. On September 6, 2022, Glossip’s defense counsel provided Reed Smith access to both.

⁵ See Section 4 for more details; see also Exhibit 1: Letter from C. Smothermon to G. Walker.

This newly obtained evidence establishes not only a pattern of Sneed discussing “recanting” to individuals he trusts at various times spanning a period of over a decade,⁶ but also conduct by the State before and during Glossip’s retrial that reveal its concerns over Sneed’s reliability and credibility. Specifically, the State’s attempts before and during the retrial to bolster Sneed’s reliability behind the scenes are informative clues. In order to have Sneed’s testimony align with the other evidence already presented in Glossip’s retrial, the lead prosecutor Connie Smothermon communicated with Sneed about other witness testimony through his attorney (Gina Walker, also a witness on the State’s witness list) during the retrial,⁷ thereby violating the Rule of Sequestration.⁸ Before the retrial, the State took the unusual step of adding Sneed’s attorney, Ms. Walker, as a witness for the State in case Sneed, depending on cross examination, needed rehabilitation or rebutting.⁹ The prosecution’s efforts to bolster and align Sneed’s testimony with other evidence at trial is very troubling and appears to violate Oklahoma law. This newly discovered evidence adds further supports to our Report’s findings that no reasonable jury hearing the complete record would have convicted Richard Glossip of first-degree murder and sentenced him to death. Sneed’s testimony was the critical evidence against Glossip, and evidence uncovered in the investigation continues to show the unreliability of Sneed’s testimony.

This Third Supplemental Report supplements our prior submissions and adds new information we have learned since August 20, 2022. We continue to investigate and may submit additional supplemental reports as necessary.

1. Sneed Admits to Discussing “Recanting” With His Daughter and Mother in 2014 Establishing a Pattern of Him Talking About Recanting Over an 11-Year Period

In his August 15,¹⁰ and September 7, 2022 interviews, Sneed admitted he discussed “recanting” in August/September 2014 with his mother and daughter in the context of that being his only option to “maybe” get out of prison.¹¹ Sneed also confirmed that parts of the letter

⁶ In our August-September 2022 interviews of Sneed, he stated that what he meant by “recant” was to break his plea deal, get a better deal, and that he did not want to testify. During the August 26, 2022 interview, Sneed clarified that “it was more about silencing my testimony in the way of me not having to be there” and “taking back the plea agreement.” Exhibit 3: August 26, 2022 Transcript of Reed Smith Interview of J. Sneed at p. 94:5-10. Additionally, when asked about his July 2007 letter, Sneed could not recall and had no explanation for his expressing that he wanted to “clean things up,” “some things are eating at me,” and wanting to contact the “indigent defense for his case or the DA’s.” See Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 130:5-17.

⁷ Given that the State added Gina Walker as a trial witness, it should have refrained from talking to her as well.

⁸ The sequestration of expert witnesses falls under Oklahoma’s Rules of Evidence, § 2615. OKLA. STAT. tit. 12, § 2615 (West 2017). This rule requires the court to exclude witnesses from the courtroom as to not hear the testimony of other witnesses upon a request by the court or by the court’s own order. In Glossip’s retrial, the rule was invoked by the defense after opening statements. Trial 2 Transcript, Vol. 4 at p. 25:23. The underlying reasons for imposing the rule of exclusion are to place restraints on witnesses who might be tailoring their testimony to coincide with the testimony of earlier witnesses and to assist the trier of fact in detecting whether a witness’ testimony is less than candid. *Geders v. United States*, 425 U.S. 80, 87 (1976).

⁹ November 3-4, 2003 Transcript of Proceedings, Pre-Trial Record, Vol. 1 at p. 8:11-22.

¹⁰ Exhibit 2: August 15, 2022 Reed Smith Interview of J. Sneed at p. 20:17-19.

¹¹ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 23:16-22; 24:14-25:1; 27:1-10; 27:13-17; 32:20-24; 34:22-35:3.

purportedly written by his daughter to the Oklahoma Pardon and Parole Board in October 2014¹² matched the brief conversation he had with her and his mother in August/September 2014.¹³

In that 2014 letter, Sneed's daughter stated: "For a couple of years now, my father has been talking to me about recanting his original testimony."¹⁴ Sneed further confirmed that the letter was sent to Mark Henricksen, Glossip's defense counsel at the time, from his daughter's email address. According to Sneed, "from prior knowledge I have known her to have that email before."¹⁵ Sneed also acknowledged that he could see how his daughter could interpret his using the word "recant" to mean changing his testimony¹⁶ but that she was "under some delusion that Mr. Glossip is innocent."¹⁷ Sneed also stated that his daughter has not denied to him writing the letter in its entirety and "hasn't all the way denied she was speaking to somebody."

Yet, in July 2022, when the AGO specifically asked Sneed about what he said to his daughter in 2014, Sneed denied discussing wanting to recant with her:¹⁸

Q. Okay, but you do recall using that word with her at least in that phone conversation?

A. In the context of if I had any legal way of ever getting out of here would have to be just changing the whole demeanor of the truth.

Q. So, the word recanting is there, and you do recall that phone call, right, where you just talk to her about it in the context of---

A. In the context of her wanting to know if I could ever get out.

Q. Okay and when you were talking to her, when you said I would have to recant my testimony to even maybe have the option of getting out, you meant take it back and withdraw it, right?

A. It would have been just withdrawing because I mean I didn't see myself just all of a sudden making up a whole other storyline and it wasn't --- it doesn't even seem like it was a real brief conversation.

¹² Exhibit 5: October 14, 2014 Email and Letter from O. Sneed.

¹³ *Id.*; Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 41:1-6; 44:14-23.

¹⁴ See Exhibit 5B for the complete letter.

¹⁵ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 32:1-3.

¹⁶ *Id.* at p. 36:14-20.

¹⁷ *Id.* at p. 45:1-2.

¹⁸ July 18, 2022 Interview by the Attorney General's Office of J. Sneed at p. 36:1-8. Reed Smith Investigators read Sneed's statement given to the AGO (listed above) and Sneed responded as follows:

Q. And so, I think what you meant to say was you did tell her you want to recant but it was in the context of talking about only way to get out, right?

A. Well yes because I never just wholeheartedly told her my family I want to recant. It was always well what do you think your options are, and then the options stem from well I told them this story. I've signed this contract. This is what's going on. The only option would be recanting and try to go along with some other storyline I'm not going to be able to keep up with anyway. See Exhibit 4: September 7, 2022 Reed Smith Transcript of J. Sneed Interview at p. 48:19-49:3.

1 MR. CRUSOE: Did you or did you not
2 tell your daughter that you wanted to recant your story?
3 JUSTIN SNEED: No, I did not. No. The
4 only thing that I told -- I have spoken to any of my family
5 on any of that was I told them that the only way I seen me
6 having any action in court would be to change the whole
7 storyline, but I can't because it's the truth and there's
8 nothing else to be there, but to stand on the truth.

Only a few weeks later, in August 2022, Sneed voluntarily offered that the only people he had used that word “recanting” with was his attorney, Gina Walker, and his family.¹⁹ In September 2022, when asked by Reed Smith again, Sneed reiterated that he did in fact discuss “recanting” with his family in August/September 2014.²⁰ When confronted about this apparent contradiction in statements, Sneed first could not recall if the AGO had discussed it with him and then when shown the AGO interview transcript, he responded as follows:

A. I just didn’t know if I really interjected that to cover something that I thought they were leading up to or if they actually asked a question which appears here that they actually asked me the question.

Q. Okay. And so, I think what you meant to say is that you did tell her you want to recant but it was in the context of talking about the only way to get out, right?

A. Well yes because I never just whole heartedly told her my family I want to recant. It was always well what do you think your options are, and then the options stem from well I told them this story. I’ve signed this contract. This is what’s going on. The only option would be recanting and trying to go along with some other story line I won’t be able to keep up with anyway.²¹

This, combined with his recently obtained letters to Gina Walker, establishes a pattern of behavior by Sneed with two consistent themes:

1) it indicates that Sneed is unreliable as a witness because he seems to articulate one story to one party and then a different story the next time he discusses the same topic; and

¹⁹ Exhibit 2: August 15, 2022 Reed Smith Transcript of J. Sneed Interview at p. 20:17-23. “The only person I probably ever used the word recanting to would’ve been to Gina or any of my family members. And when I talked to them, I tell them, well, if I went and told the media or the lawyers any other story that wasn't what I told in the first place then I would just start making stuff up at that point and I probably wouldn't even know how to keep up with the storyline.”

²⁰ Exhibit 4: September 7, 2022 Reed Smith Transcript of J. Sneed Interview at p. 48:14-49:3.

²¹ *Id.*

2) it demonstrates a history spanning an 11-year period (from 2003-2014) of Sneed discussing “recanting” with various individuals that he trusts. Sneed’s testimony was crucial to obtaining a conviction against Glossip for first-degree murder and the murder for remuneration aggravator that attached the death sentence to Glossip. When these admitted statements from Sneed made to his family in 2014 are combined with the recently obtained letters written by Sneed from 2003²² and 2007,²³ all discussing “recanting” or needing to “clean things up,” it is deeply troubling. The evidence viewed in the totality, further calls into question the reliability of his 2004 trial testimony.

2. Sneed Indicated Multiple Details of His Trial Testimony Were Wrong But Maintained He is Still Consistent on the “Significant Events”

When confronted with different versions of his statements to police, his testimony at Trial 1 and Trial 2, the AGO’s interview in July 2022, and the Reed Smith interviews in August/September 2022, Sneed attempted to clarify which version was in fact accurate. On specific points of testimony, he admitted that some of his trial testimony from Trial 1 and Trial 2 were inaccurate, that he misremembered, or was confused by the question. We provide three examples below:²⁴

- Example 1: Trial 2 testimony that Sneed agreed was a “mistaken memory”:

What Sneed Testified to Previously	What Sneed Stated in September 2022
Sneed left the motel on January 7, 1997 “about noon” ²⁵	<p>Q. [T]he police report which starts at 3:04 when she got on the scene. she’s She is saying she’s observing you checking the rooms which would be after 3 p.m.</p> <p>A. Okay.</p> <p>Q. And that’s in line with what you told police and you testified at trial 1. But by trial 2, you’re thinking it’s much earlier?</p> <p>A. Yeah, and that’s just me going off of timeline in my head and memory of things that are happening of when I thought somebody left.</p> <p>Q. This is a mistaken memory, right? Would you agree with me at least that you’re leaving at 11:30 or noon?</p>

²² August 20, 2022 Second Supplemental Report Exhibit A: May 15, 2003 Letter from J. Sneed.

²³ Discussed in the August 9, 2022 Supplemental Report.

²⁴ See Exhibit 4: September 7, 2022 Transcript of J. Sneed Interview for the full details.

²⁵ Trial 2 Testimony of J. Sneed, Vol. 13 at 73:14-74:5.

What Sneed Testified to Previously	What Sneed Stated in September 2022
	<p>A. Yes ma'am. If everything else projects that I've been seen by an officer, and phone calls are being made at designated times and Glossip is leaving at a designated time, then yeah, my whole frame of memory of exactly what time of day it is is thrown off a little bit.²⁶</p>

- Example 2: Trial 1 testimony that Sneed was "in confusion of something else":

What Sneed Testified to Previously	What Sneed Stated in September 2022
<p>Sneed saw Mr. Van Treese "earlier that previous day, around 4 or 5" "in the office."²⁷</p>	<p>Q. Do you recall seeing Mr. Van Treese earlier in that day before when he was on site? A. No, I do not. I believe I was already in my room laying down, already preparing to go to sleep, never even knew the guy was there or going to be there.</p> <p>Q. Okay. So, not even earlier in the day you don't remember anything? A. Not even earlier in the day. I don't remember even Glossip having any conversations with me or around me saying that he was going to be there sometime this evening or this morning or anything like that.</p> <p>Q. So, do you recall that in trial 1, you testified that you did see Mr. Van Treese around 4 or 5 on site and you were asked where did you see him, you said at the motel. What part of the motel? In the office. A. No, that almost seems like I would have been reflecting off of a different memory a few weeks before or month before this...²⁸ ***</p> <p>Q. So, this [trial 1 testimony] says, "On January 7, did you see Mr. Van Treese at the motel prior to you going to his Room 102? And you said, "Earlier that previous day around 4 or 5."</p>

²⁶ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 154:2-22.

²⁷ Trial 1 Testimony of J. Sneed, Vol. 6 at pp. 87:12-88:2.

²⁸ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 138:10-139:5.

What Sneed Testified to Previously	What Sneed Stated in September 2022
	A. Yeah, if I answered that I was in confusion of something else.... ²⁹

- Example 3: Statement to Attorney General’s Office inconsistent with trial testimony:

What Sneed Testified to Previously	What Sneed Stated to the AGO in July 2022
Q. Do you remember how much was there?	When I came back to my motel room with the money, Mr. Glossip was there. Then, all of a sudden, he wants to split the money, which was around like 7,500 or something like that. ³²
A. It seems like right around 4,000.	
Q. Okay. Did you split it evenly?	I think I remember getting a count on mine one time, and there was -- and I knew there was like three grand or a little over three grand, something like that. ³³
A. Yes, ma'am. ³⁰ ***	
Q. And you split it. And if I'm understanding, you got somewhere close to \$2,000; is that right?	
A. Yes, ma'am. ³¹	

When Reed Smith asked Sneed about these inflated amounts provided to the AGO, and that he testified at trial that he only got \$4000 out of Mr. Van Treese’s vehicle, and the police found him with only \$1680, Sneed explained that he was promised \$7500 and “keep in mind that’s what I thought was in the envelope at the time.”³⁴

These examples further demonstrate that Sneed’s statements regarding what occurred change every time he recites the events. It should be noted that his variation is not only on points that are immaterial. For instance, the amount of money taken from Mr. Van Treese was a critical

²⁹ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 142:20-143:1.

³⁰ Trial 2 Testimony of J. Sneed, Vol. 12 at p. 129:5-8.

³¹ Trial 2 Testimony of J. Sneed, Vol. 12 at p. 129:19-21.

³² July 18, 2022 AGO Interview Transcript of J. Sneed at p. 14:12-15.

³³ *Id.* at p. 16:10-13.

³⁴ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 135:1-5.

fact at trial and something that the Oklahoma Court of Criminal Appeals focused on in its 3-2 decision affirming Glossip's conviction.³⁵

Sneed's memory recall of events is either extremely poor (even in earlier times closer to the events in question as evidenced with the police in January 1997 or trial 1 in June 1998) or he is not being truthful. Given the extent of his varying stories, coupled with the fact that Detective Bemo first suggested Glossip as being involved six times before Sneed even implicated him, we concluded in our Report that Sneed's testimony was not reliable. The new evidence we have uncovered further supports this conclusion. For example, during his September 7, 2022 interview, Sneed admits that during earlier portions of his January 14, 1997 police interrogation, "I can say that I wasn't yet being all the way honest about anything in the middle and it seems like to me the interrogation might have just got started."³⁶ But even at later portions of the police interrogation, Sneed explained he was "missaying or it was being misinterpreted" or the police "already got me confused or this is where really just starting to say, okay, I tell you what's really going on."³⁷

Despite acknowledging these misstatements or inaccuracies, Sneed states he is not misremembering "significant events, maybe to timelines and reflections on some things like that but not the significant events of the actual murder and implications of the people that used me to murder."³⁸ Sneed clarified those "significant events" were "Mr. Glossip coming and coercing me and talking me into it and increasing amounts of money and being real adamant about it to the event of committing the murder me coming back out telling him and the whole motion of the day and the sun starting to come up. And then just I could lose bearings on exact time of day.... It can seem like one long hour to me."³⁹ It is disconcerting that the only details he appears to state consistently are that he killed Barry Van Treese, and that Glossip is to blame for it. As for the details of what actually transpired, however, Sneed's rendition appears to change from one reciting to the next. Our Report (Appendix 5) details many of Sneed's inconsistencies. These recent interviews further suggest that Sneed is unable to tell a consistent version of the events of the murder, other than stating that Glossip was involved.⁴⁰

³⁵ "The most compelling corroborative evidence, in a light most favorable to the State, is the discovery of the money in Glossip's possession." *Glossip v. State*, 157 P.3d 143, 152 (OK Crim. App. 2007). And yet, the only way that the \$1757 found on Glossip's person has significance is because of Sneed's testimony that he stole \$4000 total and they split it in half.

³⁶ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 145:13-17 (emphasis added).

³⁷ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 149:5-6 It was pointed out to Sneed that some of his statements in the police interrogation did not line up with his subsequent trial testimony. For example, he stated to police that "Rich told me that he would split what money we could get out of Barry" but then by trial 1, Sneed was testifying that Glossip told him only *after* the murder that Glossip was going to take half of the money and Sneed acquiesced. Compare January 14, 1997 Police Interrogation of J. Sneed at p. 25:1-4 to Trial 1 Testimony of J. Sneed, Vol. 6 at p. 96:5-8.

³⁸ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 155:2-7.

³⁹ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 155:11-22.

⁴⁰ The fact that Glossip's involvement was suggested several times to Sneed by the police during the initial interrogation is not inconsequential.

3. New Information to Timeline in Second Supplemental Report Shows Multiple ADA Meetings with Sneed and That ADA Had Knowledge Sneed Wanted to Break His Deal and Not Testify

New documentation and information obtained recently from Sneed demonstrate that the State was aware prior to Glossip's retrial of exculpatory and impeachment evidence and did not disclose such information to the defense. This evidence of Sneed wanting to break his deal and not testify directly related to Sneed's credibility and reliability of his testimony. The newly obtained evidence comes from four different sources: 1) the Oklahoma Department of Corrections, 2) the DA's Case File (obtained from Glossip's current defense team on September 6, 2022), 3) the Oklahoma County Jail Trust, and 4) the Oklahoma County Public Defender's Office. The Public Defender's Office searched and located only a portion of an electronic file for Sneed. They have been unable to locate the full case file. Using our Report details and findings, the Public Defender's Office reviewed the electronic file they still maintain and produced only a narrow set of documents with redactions pursuant to the Code of Professional Responsibilities and the Oklahoma crime fraud exception to the attorney-client privilege due to the pending threat of death.

Based on this newly obtained evidence, we have learned that ADAs Pope and Ackley met with Sneed on at least another occasion in October 2003, that Sneed had only wanted to take life with the possibility of parole (and not life without parole in early 1998), and that he sought a sentence reduction after signing his plea deal in May 1998. We have updated the timeline accordingly with new additions delineated in **red**.

- **September 10, 1997:** State offers Richard Glossip a plea deal of life without parole, and to testify against Sneed. Glossip declines this deal.
- **September 16, 1997:** State files its Summary of Witness Testimony and lists Sneed as being offered life without parole and that he will testify against Glossip.
- **January/February 1998:** Sneed writes to Gina Walker that he "will sign life possible to parole and that's it. I've left Chuck, John and my mom pretty much do all the answering for me and it's not what I want." Sneed also states that "I let my brother talk me into quitting roofing and staying at the Best Budget Inn. Then I go and let Richard talk me into this mess. So I started thinking why? Are you going to let everyone talk you into something?"
- **May 26, 1998:** Sneed signs the State's plea agreement of life without parole, and to testify against Glossip.

- **September 17, 1998:** Sneed files a motion for reconsideration/judicial review of his sentence.⁴¹ The court denies the motion.
- **December 1998:** Sneed writes to his attorney, Gina Walker, asking about a sentence reduction. Sneed mentions “Glossip just kept on and on me about it. I just freaked out.”
- **January 30, 2003:** Sneed writes to Gina Walker regarding his misconduct (class A battery) and that “I guess I better answer your question DNA Sample? Well every-one knows I’m guilty so, you think it will prove my innocence (smile) I’ll keep my fingers crossed.”⁴²
- **May 15, 2003:** Sneed writes to Gina Walker stating: “Curious on if your [sic] still thinking about coming here to try to visit me before his trial. And parts of me are curious that if I chose to do this again. **Do I have the choice of re-canting my testimony at anytime during my life, or anything like that.** For now I guess that’s pretty much it if there is anything you know, on his court date and **about re-canting.**”⁴³
- **May 21, 2003:** Gina Walker writes to Sneed: “As for your other questions, yes, I do plan to come visit you...The remainder of the things you mention in your letter I will talk to you about in person.”⁴⁴
- **August 2003:** Connie Pope replaces Fern Smith as lead ADA on the Glossip case.
- **August 7, 2003:** Gina Walker visits Sneed at Joe Harp Correctional Facility.⁴⁵
- **August 12, 2003:** Gina Walker writes to Sneed saying she spoke with ADA Connie Pope and that the trial has been postponed till November 2003.⁴⁶
- **September 23, 2003:** ADA Pope and Gina Walker communicate with Sneed. In an October 1, 2003 letter, Sneed writes “But, I’ve learned, as you & the DA’s said on the 23rd, there’s a lot in words & details that can tell people a lot.”⁴⁷
- **September 25, 2003:** ADA Pope meets with Kenneth Van Treese (brother of Barry Van Treese and fact witness in Glossip’s retrial).⁴⁸

⁴¹ Exhibit 7: September 1998 Request for Sentence Reduction.

⁴² Exhibit 13: January 30, 2003 Letter from Sneed to G. Walker.

⁴³ Second Supplemental Report Exhibit A: May 15, 2003 Letter from J. Sneed (emphasis added).

⁴⁴ Second Supplemental Report Exhibit B: May 21, 2003 Letter from J. Sneed (emphasis added).

⁴⁵ Exhibit 8: Department of Corrections Requests for Visitation submitted by Gina Walker.

⁴⁶ Exhibit 14: August 12, 2003 Letter from G. Walker to Sneed.

⁴⁷ Second Supplemental Report Exhibit B: October 1, 2003 Redacted Letter from J. Sneed.

⁴⁸ Exhibit 9: September 28, 2003 Email from K. Van Treese to ADA C. Smothermon at p. 1. Kenneth Van Treese did not testify in the first trial against Glossip.

- **September 28, 2003:** Kenneth Van Treese sends a follow-up email memorializing their September 25, 2003 discussion which included a point on Sneed attempting to renegotiate his plea deal.⁴⁹

FIFTH ISSUE:

THE FIRST TRIAL OF RICHARD GLOSSIP AND THE SUBSEQUENT CONVICTION WAS BASED TO A LARGE MEASURE ON THE TESTIMONY OF JUSTIN SNEED. I AM CONCERNED THAT SNEED MAY ATTEMPT TO RENEGOTIATE THE TERMS OF HIS PLEA AGREEMENT IN EXCHANGE FOR TESTIFYING TO THE SAME FACTS HE PROVIDED IN THE FIRST TRIAL. MS. POPE ASSURED ME THAT SNEED IS ON BOARD FOR THE NEW TRIAL AND THERE WILL BE NO MODIFICATION TO THE AGREEMENT FOR SNEED TO BE IN PRISON FOR THE REST OF HIS LIFE.

- **September 29, 2003:** State (ADA Pope) serves subpoena to Sneed's attorney, Gina Walker, to appear to testify.
- **October 1, 2003:** Sneed writes to Gina Walker referencing her and the D.A.'s recent communication on the 23rd.⁵⁰
- **October 20, 2003:** Gina Walker has a scheduled meeting with Sneed at Joe Harp Correctional Facility.⁵¹
- **October 20, 2003:** The State formally adds Gina Walker to the witness list. The State also files amended Bill of Particulars adding the murder for remuneration (the sole death penalty aggravator that Glossip was convicted of). The State also files a More Definite and Certain Statement adding some new information from Sneed regarding the murder for hire.
- **October 22, 2003:** ADAs Connie (Pope) Smothermon and Gary Ackley have a scheduled meeting at Joe Harp Correctional Facility with Sneed and his attorney, Walker.⁵²
- **October 29, 2003:** ADAs Smothermon and Ackley interview Cliff Everhart. ADA Smothermon's notes list several new statements made by Everhart.⁵³

⁴⁹ Exhibit 9: September 28, 2003 Email from K. Van Treese to ADA C. Smothermon at p. 2. None of this nor the underlying information appears to have been disclosed to Glossip's defense.

⁵⁰ Second Supplemental Report Exhibit B: October 1, 2003 Redacted Letter from J. Sneed.

⁵¹ Exhibit 8: Department of Corrections Requests for Visitation submitted by Gina Walker.

⁵² Exhibit 8: Department of Corrections Request for Visitation Submitted by Gina Walker. During ADA Smothermon's direct examination of Sneed, she confirmed with Sneed they met twice at Joe Harp Correctional Facility, one "last year" (which would have been in 2003) and one "five weeks ago" (which would have been in 2004). Trial 2 Testimony of J. Sneed, Vol. 12 at p. 60:1-12, 61:16-24.

⁵³ Exhibit 15: October 29, 2003 Notes of interview with Cliff Everhart. This document was recently obtained from the DA's Case File. Only the bottom two statements by Everhart appear to have been disclosed to the defense in an October 31, 2003 email (see Exhibit 16). We have not located any other disclosures by the State to the defense regarding Everhart's statements. Former ADA Gary Ackley does not recall why the two statements were disclosed

- **October 29, 2003:** According to a Joe Harp Interoffice Memorandum, an instruction came in that Sneed “will be going to court on Thursday, October 30, 2003” and would be “out overnite [sic].” “A deputy from Oklahoma County will pick him up around 7:00 a.m.”⁵⁴
- **October 30-31, 2003:** Sneed is transported to Oklahoma County Jail due to a “Writ – Ad Test.”⁵⁵ No writ is filed on the case docket for this date/transport. Sneed is placed in protective custody in the Oklahoma County Jail per the D.A.’s instruction.⁵⁶ It is unclear the purpose of this 24-hour transport but it is possible (and highly likely given the DA’s request for protective custody) that ADA Smothermon met with Sneed.
- **October 31, 2003:** ADA Ackley emails Glossip’s defense counsel only disclosing two statements made by Cliff Everhart during the interview.⁵⁷
- **November 3-4, 2003:** Hearing before Judge Gray where ADA Smothermon explains why Gina Walker was added to the witness list including possibly to rehabilitate and rebut Sneed’s testimony, the original plea agreement, and Sneed’s visit with Mr. Burch.
- **May 5, 2004:** Second meeting with Sneed – in attendance are ADAs Smothermon, Ackley, and Sneed’s attorney, Gina Walker.
- **May 24, 2004:** Sneed released from Joe Harp Correctional Facility to be transported to Oklahoma County jail for upcoming testimony at Glossip’s retrial.⁵⁸

This newly obtained evidence further supports that the State had knowledge that Sneed wanted to break his plea agreement for a better one and not testify prior to Glossip’s retrial and this was not disclosed to the defense.

in his email but not the other statements made by Everhart. He also noted this was not his witness and he was not aware that they were not disclosed to the defense. September 14, 2022 Reed Smith Interview of G. Ackley.

⁵⁴ Exhibit 17: Joe Harp Interoffice Memorandum dated October 29, 2003.

⁵⁵ Exhibit 18: October 30-31, 2003 Oklahoma County Jail documents.

⁵⁶ See Exhibit 18.

⁵⁷ Exhibit 16: October 31, 2003 Email from G. Ackley to W. Woodyard listing two points from Everhart’s interview. Ackley acknowledged that if Everhart testified to facts either inconsistent or omitted from his first testimony but contained in these witness interview notes, that information should have been disclosed to the defense pursuant to *Brady*. September 14, 2022 Reed Smith Interview of G. Ackley.

⁵⁸ Exhibit 6: May 24, 2004 Receipt/Release of Prisoner of J. Sneed.

4. Sneed Confirmed that ADA Smothermon Was Aware He Did Not Want to Testify and Wanted to Break His Plea Agreement

In his August 26, 2022 interview, Sneed confirmed that he met with representatives of the District Attorney's Office along with his attorney, Gina Walker, before Glossip's retrial where his plea agreement and his not wanting to testify were discussed.⁵⁹

Sneed recalled that "[e]ven on the second trial, where they rushed me in and pulled me into the courtroom, and then I'm in a little conference room, arguing the same point with them, talking about that I don't want to do it...Yeah, basically where it was to the point of just breaking me and me saying ok. I mean I guess maybe in the reality of life, I could have just kept waiting more and more time, but it seemed like we weren't leaving this scene until I agreed to do it, which comes along with pressure with Glossip, with the pressure of him wanting me to commit the act, so over time, it just seems like a lot of pressure, especially just being 19, 20, and 21, in that category, between the first trial and second trial."⁶⁰ During the August 26, 2022 interview, when asked specifically if right before trial 2, ADA (Pope) Smothermon was aware that he did not want to testify, Sneed's response was "to my knowledge."⁶¹

Former ADA Gary Ackley explained that he was not aware that Sneed wanted to recant, discussed recanting, did not want to testify, wanted to break his deal and/or attempt to renegotiate his plea deal.⁶² When shown the September 28, 2003 email from Ken Van Treese recently found in the DA Case File⁶³ that memorialized a meeting with ADA Smothermon where a discussion of concerns over Sneed attempting to renegotiate his plea deal was discussed, Mr. Ackley stated he was not present at that meeting and does not recall it. He also stated that he would have concerns if he had known that Sneed was waffling or wanting to recant or attempt to renegotiate a new deal before trial. Those concerns would be "(1) was he lying then or now, (2) discovery, and (3) any prosecutor would be concerned about any cooperating witness in any big case regarding the uncertainty of the waffling back and forth and the disingenuous bad faith nature of such actions."⁶⁴ He also reiterated that information would qualify as Brady material and should have been disclosed to the defense.⁶⁵

We have seen no evidence that ADA Smothermon ever informed the defense of Sneed's comments or wishes to break his deal and get a better one, or anything else discussed at this meeting with Ken Van Treese on September 25, 2003. We also confirmed with both of Glossip's

⁵⁹ Exhibit 3: August 26, 2022 Reed Smith Interview at p. 78:1-8, 80:25-81:24, 93:15-22.

⁶⁰ *Id.* at p. 10:10-23. Sneed further recalled that during this conference room meeting with Ms. Walker and ADA Smothermon, the discussion involved "a lot of anything that I had to do was either not wanting to do to the point of being drugged to the courtroom and saying, really, you're out of time and your plea agreement is right here, and just marched out to the stand." *Id.* at p. 81:14-17.

⁶¹ Exhibit 3: August 26, 2022 Reed Smith Interview of J. Sneed at p. 83:1-3. Sneed denied he told an ADA that he wanted to substantively change his testimony regarding Glossip's urging him to murder Mr. Van Treese. *Id.* at p. ___.

⁶² September 14, 2022 Reed Smith Interview of G. Ackley.

⁶³ Exhibit 9.

⁶⁴ *Id.*

⁶⁵ September 14, 2022 Reed Smith Interview of G. Ackley.

retrial defense counsel that they do not recall the State ever disclosing such information to them at any point.⁶⁶ It is our understanding that in 2022, the AGO removed from the DA Case File anything it unilaterally deemed as “work product” and that despite there being folders labeled “Connie Pope Interview Notes” and “Gary Ackley Interview Notes” those folders were filled with police reports and/or other publicly available documents. Notes from only one witness interview of Cliff Everhart from October 29, 2003 were contained in the seven boxes of the DA’s Case File. It is our understanding that the AGO has also declined to provide a privilege log or other listing of what documents were removed. We have asked the AGO to reconsider this decision but have not heard back as of the date of this report.

Glossip’s retrial defense counsel also confirmed that this information (Sneed wanting to recant, discussing recanting, leveraging his testimony, expressing a desire to break his deal and seek a better one) would have been critical for the cross examination of Sneed and the entire case.⁶⁷

The Oklahoma Discovery Code addresses §2002 addresses disclosures in criminal suits.⁶⁸ While Section 2002(E)(3) exempts legal work product from discovery, the work product exemption is not absolute. Irrespective of the exemption, “[d]ue process requires the State to disclose exculpatory and impeachment evidence favorable to an accused.”⁶⁹

When the “reliability of a given witness may well be determinative of guilt or innocence,” nondisclosure of evidence affecting credibility falls within this general rule. *Giglio v. United States*, 405 U.S. 150, 153-54 (1972) citing *Napue v. Illinois*, 360 U.S. 264, 269 (1959). The testimony and reliability of Sneed, the primary witness for the State against Glossip, was determinative to an innocence or guilt finding in Glossip’s case. The State should have disclosed this information to the defense before Glossip’s retrial.

5. ADA Pope’s Apparent Violation of the Rule of Sequestration Shows Continuing Concern Over Sneed’s Testimony

“[S]equestration is (next to cross-examination) one of the greatest engines that the skill of man has ever invented for the detection of liars in a court of justice.”⁷⁰ The sequestration of witnesses falls under Oklahoma’s Rules of Evidence, § 2615.⁷¹ This rule requires the court to exclude witnesses from the courtroom so as not to hear the testimony of other witnesses upon a request by the court or by the court’s own order. The defense invoked this rule in Glossip’s retrial.⁷²

⁶⁶ August 2022 Reed Smith Interviews of former Glossip attorneys Silas Lyman and Wayne Woodyard.

⁶⁷ *Id.*

⁶⁸ 22 O.S. 2011, §2002.

⁶⁹ *Musonda v. State*, 2019 OK CR 1, ¶ 7, 435 P.3d 694, 696.

⁷⁰ John Henry Wigmore, *Wigmore on Evidence: Evidence in Trials at Common Law* § 1838 (Arthur Best ed., 4th ed. 2021).

⁷¹ OKLA. STAT. tit. 12, § 2615 (West 2017). The rule was enacted and went into effect in 1978.

⁷² Trial 2 Transcript, Vol. 4, at p. 25:23.

The underlying reasons for imposing the rule of exclusion were to place restraints on witnesses who might be tailoring their testimony to coincide with the testimony of earlier witnesses and to assist the trier of fact in detecting whether a witness' testimony is less than candid.⁷³ In one case affirmed by the Oklahoma Court of Criminal Appeals, the trial court excluded a witness to testify where a violation of the Rule of Sequestration had occurred.⁷⁴

The Tenth Circuit has emphasized counsel's obligation to protect sequestration of witnesses explaining, that "[c]ounsel know, and are responsible to the court, not to cause any indirect violation of the Rule by themselves discussing what has occurred in the courtroom with the witnesses."⁷⁵

Further, Oklahoma courts have recognized the fundamental dual role a prosecutor has. "The prosecutor is both an administrator of justice and an advocate The duty of the prosecutor is to seek justice, not merely to convict.' Moreover, this Court has also stated: Surely, the prosecutor was aware that she was approaching a forbidden line and surely she was aware of the consequences of erroneously crossing it."⁷⁶

Glossip's defense invoked the Rule of Sequestration at the beginning of the retrial.⁷⁷ The newly obtained evidence located in the DA's Case File seems to suggest that ADA Smothermon improperly attempted to gain an advantage by at least contacting two witnesses on the State's witness list during the retrial (Gina Walker and Justin Sneed) after the Rule had been invoked.⁷⁸ ADA Smothermon's contact with Walker and Sneed appears to have nullified Judge Gray's imposition of the rule in Glossip's retrial.

Based on her letter found in the DA's Case, ADA Smothermon appears to have taken the extraordinary step of contacting Sneed's attorney during the trial and right before Sneed testified specifying "a few items that have been testified to that I needed to discuss with Justin."⁷⁹ ADA Pope then lists six detailed⁸⁰ points of testimony given and questions for Sneed:

⁷³ *Geders v. United States*, 425 U.S. 80, 87 (1976).

⁷⁴ *Dutton v. State*, 674 P.2d 1134 (OCCA 1984).

⁷⁵ *United States v. Buchanan*, 787 F.2d 477, 485 (10th Cir. 1986).

⁷⁶ *Brison v. State*, 1986 OK CR 183, ¶¶ 9-10, 730 P.2d 537, 539 (Okl.Cr. 1986).

⁷⁷ Trial 2 Transcript, Vol. 4 at 25:23.

⁷⁸ It is possible other witnesses may have been contacted as well but, as discussed above, documents were removed by the AGO with no privilege log/list provided.

⁷⁹ Exhibit 1: Letter from C. Smothermon to G. Walker.

⁸⁰ See Exhibit 1 for all six detailed points of testimony.

Gina,

Here are a few items that have been testified to that I needed to discuss with Justin –

1 - Officer Vernon Kriethe says in his report that after he arrested Justin and was transporting him downtown Justin voluntarily said –

It was my job to take him out and his to clean up
The evidence –he didn't do a very good job

a.m?
p.m.?

Does Justin remember making that statement?

2. -Kayla Pursley says she saw Justin leave in Glossip's car about 5:30 or 6:00 and she doesn't know how long he was gone or where he went. ?????

3 - Our biggest problem is still the knife. Justin tells the police that the knife fell out of his pocket and that he didn't stab the victim with it. There are no stab wounds, however the pocket knife blade is open and the knife is found under the victim's head. The victim and Justin both have "lacerations" which could be caused from fighting/ falling on furniture with edges or from a knife blade. It doesn't make much sense to me that Justin could have control of the bat and a knife, but I don't understand how/when the blade was opened and how/when they might have been cut. Also, the blade tip is broken off. Was the knife like that before or did that happen during?

ADA Smothermon ends the letter with a sense of urgency to get to Sneed before he testifies:⁸¹

Thanks - we should get to him this afternoon. Tina wasn't here on Monday so Justin may not get to the old jail until noon.

Connie

Kayla Pursely did not testify in any preliminary hearing, she did not testify in trial 1, nor did she give any statements to the police or to the prosecutor that were disclosed to the

⁸¹ We have been informed by Oklahoma practitioners that the "old jail" was where inmates were housed before testifying or appearing in Oklahoma County Court during this timeframe. In Glossip's retrial, Sneed testified on May 26-27, 2004 and he was released from Joe Harp Correctional Facility on May 24, 2004 at 3 p.m. Exhibit 6: Department of Corrections Receipt for Prisoner (May 24, 2004).

defense that she saw Sneed leaving in Glossip's car at 5:30/6 on January 7, 1997. However, Kayla Pursley had already testified in Glossip's retrial (on May 21, 2004) that she observed Sneed in a car at 5:30/6 in the morning on January 7, 1997.⁸² ADA Pope notes this testimony in her letter to Sneed's attorney:⁸³

2. -Kayla Pursley says she saw Justin leave in Glossip's car about 5:30 or 6:00 and she doesn't know how long he was gone or where he went. ?????

Notably, when Pursley testified in trial 2 for the first time to this fact (seeing Sneed in Glossip's car at 5:30/6 on January 7, 1997), the defense informed that Court that "she has now testified differently than the information that's contained in the reports. For example, whether or not she told Detective Bemo about even seeing Justin Sneed with Mr. Glossip's car at 5:30. Some of these statements that are up here on the board, she has never said until today."⁸⁴ ADA Smothermon then argued that the defense was "not trying to impeach her with something different. She said absolutely nothing different that's in any of these reports. Did she say some things that aren't contained, some additional things, yes. But that's not – reading these reports wouldn't refresh her recollection because they're not in these reports."⁸⁵ ADA Smothermon later stated: "I agree that there are things that she's testified to that aren't in the reports."⁸⁶

ADA Smothermon's statements reaffirm that Pursley had never testified to that fact before trial 2. The fact it is then contained in ADA Smothermon's letter to Gina Walker to discuss with Sneed demonstrates this letter was written during the retrial, i.e., after Pursley testified in the retrial.⁸⁷

⁸² Trial 2 Testimony of K. Pursley, Vol. 9 at p. 37:5-15 (May 21, 2004).

Q. Okay. When you saw Justin Sneed use Richard Glossip's car before this day, then it was for an errand for Richard Glossip; am I understanding that?

A. Yes. That's what I would have thought he would have been going somewhere for Rich.

Q. Now we're at about 5:30 or 6, is that right, in the morning?

A. Yes.

Q. On January 7th. And you see Justin Sneed get in this car?

A. Right.

⁸³ Exhibit 1: Letter from C. Smothermon to G. Walker.

⁸⁴ Trial 2 Testimony of K. Pursley, Vol. 9 at 74:3-10.

⁸⁵ Trial 2 Testimony of K. Pursley, Vol. 9 at 74:15-22. ADA Smothermon informed the Court the statements had been disclosed and the defense quickly corrected her to say in fact the statements had not been disclosed. *Id.* at 6-12.

MS. SMOTHERMON: Well, she's disclosed them to the State who's disclosed them to Defense a lot earlier, so this isn't the first time today they've heard these statements. I don't want the record to be unclear about that.

MR. LYMAN: Yes, it is the first time I've heard some of these statements. I want the record to be clear about that.

⁸⁶ Trial 2 Testimony of K. Pursley, Vol. 9 at 77:7-8.

⁸⁷ We reached out to former ADA Smothermon to give her an opportunity to discuss this specific letter and she has declined to respond. We also reached out to former ADA Gary Ackley – he stated that he did not recognize the letter nor was he aware of this letter written by ADA Smothermon to Gina Walker for discussion with Sneed. He

In point 3 of ADA Smothermon's letter, she mentions that Sneed had told police that he did not stab Mr. Van Treese and just dropped the knife.⁸⁸

3 - Our biggest problem is still the knife. Justin tells the police that the knife fell out of his pocket and that he didn't stab the victim with it. There are no stab wounds, however

Detective John Fiely had already testified (on May 24, 2004) that a knife was found under Mr. Van Treese's head.⁸⁹ ADA Smothermon's letter to Sneed's attorney mentions this testimony:⁹⁰

the pocket knife blade is open and the knife is found under the victim's head.

Detective Fiely had also testified in Glossip's retrial that the tip of the knife found was broken off.⁹¹

The Medical Examiner, Dr. Chai Choi, had testified in the retrial on May 25, 2004, that some of Mr. Van Treese's face wounds could be "by human hands or struck onto some furniture."⁹²

ADA Smothermon lists both points of Dr. Choi's testimony in her letter to Sneed's attorney:

stated that Sneed was not his assigned witness in the division of labor, and was ADA Smothermon's assigned witness at Glossip's retrial. Ackley stated he only recalls meeting with Sneed one time with ADA Smothermon (and he does not recall Gina Walker being present at the meeting) and he was strictly an observer. September 13 and 14, 2022 Reed Smith Interviews of G. Ackley.

⁸⁸ Exhibit 1: Letter from C. Smothermon to G. Walker; *see also* January 14, 1997 Police Interrogation of J. Sneed at p. 61:20-22.

⁸⁹ Trial 2 Testimony of J. Fiely, Vol. 10 at p. 87:1-4, 87:23-25 (May 24, 2004).

Q. This the knife that you just testified about?

A. That was the knife that was found underneath the victim's head when he was moved.

⁹⁰ Exhibit 1: Letter from C. Smothermon to G. Walker.

⁹¹ Trial 2 Testimony of J. Fiely, Vol. 10 at p. 128:5-8 (May 24, 2004).

Q. Now, one of the things observed on it is the tip of the knife. Is the tip intact? In other words, does it come to its point?

A. No, it is not. The tip is broken off of the knife.

⁹² Trial 2 Testimony of C. Choi, Vol. 11 at p. 34:11-16 (May 25, 2004).

Q. Yes, that's example. Now, were you referring specifically to the eyes, the bridge of the nose and the lip when you stated that opinion just now?

A. They could be struck by human hands or struck onto some furniture. No way I can tell.

the pocket knife blade is open and the knife is found under the victim's head. The victim and Justin both have "lacerations" which could be caused from fighting/ falling on furniture with edges or from a knife blade. It doesn't make much sense to me that Justin

Dr. Choi also testified in Glossip's retrial (on May 25, 2004) that Mr. Van Treese's chest wounds were "puncture wounds" which are "a stabbing type injury."⁹³ Dr. Choi also testified about the wounds possibly coming from furniture edges.⁹⁴ Notably, Dr. Choi did not testify in trial 1 about furniture. This further indicates this letter from ADA Smothermon to Gina Walker was written during the retrial, *i.e.*, after Dr. Choi testified in the retrial to these facts.

In her letter, ADA Smothermon even expressed doubt that Sneed could be controlling the bat and the knife, and that the blade tip was broken off.⁹⁵

furniture with edges or from a knife blade. It doesn't make much sense to me that Justin could have control of the bat and a knife, but I don't understand how/when the blade was opened and how/when they might have been cut. Also, the blade tip is broken off. Was the knife like that before or did that happen during?

The next day, May 26, 2004, Sneed testified at Glossip's retrial. For the first time, Sneed testified that he used the knife during the attack and stabbed Mr. Van Treese in the chest.⁹⁶ This reversal of his statement given to police does not appear to be a coincidence. Rather, it appears to be manufactured in response to ADA Pope's communication during trial to Sneed's attorney explicitly about what had been testified to by other witnesses about the knife.⁹⁷ The Defense immediately moved for a mistrial as this was new information not turned over before and the

⁹³ Trial 2 Testimony of C. Choi, Vol. 11 at p. 88:3-12 (May 25, 2004).

Q. Dr. Choi, regarding the patterned injuries on the victim's left chest, were those puncture wounds?

A. What I mean, puncture is not penetrating and not skin breaking, but skin surface scratched and underneath the hemorrhages.

Q. So the skin was not punctured?

A. No.

Q. And a puncture wound is a stabbing-type injury, is it not?

A. Yes, usually described that way.

⁹⁴ Trial 2 Testimony of C. Choi, Vol. 11 at pp. 34:15-16, 40:2-3, 40:12-13, 93:4-13.

⁹⁵ Exhibit 1: Letter from C. Smothermon to G. Walker.

⁹⁶ Trial 2 Testimony of J. Sneed, Vol. 12 at p. 102:3-5. Former ADA G. Ackley characterized this change in testimony as a "night and day" inconsistency and not minor. Mr. Ackley stated that "there's a technical waffle there because of the bizarre attack. The knife was Sneed's passkey to get into the motel rooms. The tip of the knife was broken off – he was stabbing a man with the knife that didn't have a point on it." Mr. Ackley further stated while "not excusing his [Sneed's] inconsistency," there were "all kinds of room in those vagaries." Mr. Ackley agreed, however, that if, Sneed had changed his testimony because of an intervening memo from ADA Smothermon to Gina Walker the day before Sneed testified, that would be a problem for reliability of Sneed's testimony. September 14, 2022 Reed Smith Interview of G. Ackley.

⁹⁷ Sneed confirmed that he recalls sitting with the District Attorney's Office and Gina Walker in a conference room

Court denied it.⁹⁸ Based on the record, the defense, however, was not aware of Ms. Smothermon's communication to Ms. Walker (who was a witness on the State's witness list) or her providing information to Sneed through his attorney that allowed Sneed to provide this new information so that his testimony could be consistent with Dr. Choi's new information.

The newly obtained information and updated timelines in Section 3 show that ADA Smothermon had already talked to Sneed prior to Glossip's retrial (*e.g.*, September 23, 2003, October 22, 2003, possibly October 30-31, 2003, May 5, 2004). Sneed's statement to police in January 1997 was that he did not use the knife during the attack and he did not stab Mr. Van Treese.⁹⁹ Only after testimony of these other witnesses (Detective Fiely, Dr. Choi), notice was sent to Gina Walker by ADA Smothermon, only then did the testimony of Sneed change to now include stabbing Mr. Van Treese. The only way that could have happened is Gina Walker talked to Sneed about it, receiving this communication from ADA Smothermon during the retrial.

It now appears, based on this newly discovered Smothermon communication to Gina Walker, that Sneed tailored his testimony on the use of the knife, reversing what he said to police in January 1997.¹⁰⁰ This mirroring of testimony by Sneed regarding the knife and him stabbing Mr. Van Treese to align with other evidence seems confirmed by what he stated to Reed Smith in his September 7, 2022 interview.¹⁰¹ Sneed also stated as much in his 2016 interview: "I was . . . adamant about not telling the police about whether um, I used a knife or not um, and then I came clean about it, because that was the only way that he could have got those marks."¹⁰²

That the intervening cause is the prosecutor herself is deeply troubling. ADA Smothermon's reaching out to two witnesses listed on the State's witness list, while the retrial was in process, detailing what other witnesses testified to, appears to be a purposeful circumvention and disregard of the Rule of Sequestration. Given that Sneed was such a primary witness to the State's case, his testimony and credibility were germane to the jury's evaluation and ultimate verdict. ADA Smothermon's actions (unknown at the time) appear to have so infected Glossip's

⁹⁸ Trial 2 Testimony of J. Sneed, Vol. 12 at p. 105:1-10. ADA Smothermon informed the Court and defense only after defense's motion for a mistrial, that "Yesterday after I heard the ME's questions, I called Ms. Walker. She had a conversation with Mr. Sneed and conveyed to me that – the same thing that I knew, that he had the knife open during the attack but that he did not stab him with it. The chest thing we're all hearing at the same time." Trial 2 Testimony of J. Sneed, Vol. 12 at p. 107:25-108:5. ADA Smothermon did not inform the defense or the Court about her letter to Ms. Walker or that she disclosed points of testimony from other witnesses in that letter. This extraordinary action by ADA Smothermon to violate the Rule of Sequestration seems to suggest that she was concerned about the reliability and credibility of Sneed's statements, particularly when compared to other witness testimony or objective evidence.

⁹⁹ January 14, 1997 Police Interrogation of J. Sneed at p. 61:20-62:2 ("I recall dropping it after I left the room because I knew I didn't have it on me no more.")

¹⁰⁰ Sneed does not recall adding any detail in Trial 2 that the prosecutor would not have already known about prior to getting on the stand. Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 141: 14-16.

¹⁰¹ Exhibit 4: September 7, 2022 Reed Smith Interview of J. Sneed at p. 101:21-22 ("No, it was a knife that was involved, which obviously, I think he had a wound on his chest.").

¹⁰² See Radical Media Interview with J. Sneed (June 23, 2016).

trial that it appears to be fundamentally unfair, particularly when the defense made a motion for a mistrial on this specific issue.¹⁰³

Had the defense known about this communication from ADA Pope to Sneed through Sneed's attorney (who also was a witness on the State's witness list), written during the retrial for the purpose of conveying witness testimony to Sneed, and explicitly asking about the knife the day before Sneed testified, the Court could have evaluated the defense's motion for a mistrial with a more complete and informed perspective. The defense could have also asked to exclude Sneed's testimony or at the very least questioned Sneed on it for the jury to consider. This goes directly to Sneed's credibility and reliability as a witness, particularly given the State's theory that Sneed is so malleable and meek,¹⁰⁴ and the defense appears to have been at a severe disadvantage not knowing this. This newly obtained evidence further supports our findings that the 2004 guilty verdict cannot be relied on, as it appears clear that improper prosecutorial conduct may well have been a factor in its ability to obtain this verdict against Glossip.

¹⁰³ "Relief will only be granted where the prosecutor committed misconduct that so infected the defendant's trial that it was rendered fundamentally unfair, such that the jury's verdicts should not be relied upon." *Bench v. State*, 431 P.2d 929, 963 (OK Crim. App. 2018).

¹⁰⁴ In fact, ADA Pope argued this exact theory to claim that she needed Gina Walker as a witness to testify that Lynn Burch, Glossip's defense counsel at the time, induced/encouraged Sneed not to testify by presenting him a case (*State v. Dyer*) to give to Ms. Walker. See November 4, 2003 Pre-Trial Record Hearing at 7:19-21, 11:21-22 (Court explaining that "part of the State's theory of this case is that Mr. Sneed was a pretty malleable guy who was influenced by Mr. Glossip to commit these crimes" and "reinforcing the State's position that Mr. Sneed is so malleable that whoever got to him last would influence him"). During the August 26, 2022 Reed Smith Interview, Sneed stated he did not feel threatened by Mr. Burch, or that any of Glossip's defense counsel mad him feel badly when they visited him. "I think they just really wanted to see 1) was I going to say yes/no am I going to testify, and 2) they asked me questions about details, did I still have the same details. I think it was more inquiring." Exhibit 3: August 26, 2022 Reed Smith Interview of J. Sneed at p. 110:23-111:1.