



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

APRIL ROSE WILKENS,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

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Case No. CF-1998-2173

Judge David Guten

**DISTRICT COURT
FILED**

NOV 25 2025

**DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
DENYING PETITIONER'S REQUEST FOR SENTENCE MODIFICATION UNDER
THE OKLAHOMA SURVIVORS' ACT, DENYING PETITIONER'S MOTION TO
RECONSIDER AND/OR FOR NEW HEARING, AND DENYING PETITIONER'S
MOTION TO DISQUALIFY THE DISTRICT ATTORNEY AND THE TULSA COUNTY
DA'S OFFICE AND/OR FOR THE APPOINTMENT OF SPECIAL PROSECUTOR**

This matter initially came on for consideration on September 3 and 4, 2025 for an evidentiary hearing pursuant to the Petitioner's Motion for Sentence Modification under the Oklahoma Survivors' Act. The Petitioner requested to apply for resentencing on August 29, 2024. The Honorable District Judge Clifford Smith notified the Petitioner of her eligibility on November 5, 2024. The Petitioner filed her Application for Sentencing Relief on November 13, 2024. After receiving evidence and argument, this Court issued its ruling at the close of the evidentiary hearing on September 4, 2025, and denied Petitioner's Application for Resentencing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the outset, the Oklahoma Survivors' Act (OSA) requires that the Defendant present the following evidence:

B. The defendant *shall* provide to the court evidence including but not limited to:

1. Documentary evidence corroborating that the defendant was, at the time of the offense, a victim of domestic violence; *and*
2. At least one piece of documentary evidence that is a court record, presentence report, social services record, hospital record, sworn statement from a witness to

the domestic violence or abuse who is not the defendant, law enforcement record, domestic incident report, or protective order.

Other evidence may include, but not be limited to, local jail records or records of the Department of Corrections, documentation prepared at or near the time of the commission or prosecution of the offense tending to support the claims of the defendant, or verification of consultation with a licensed medical care provider or mental health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, rape crisis counselor, or other advocate acting on behalf of an agency that assists victims of domestic violence or abuse. Expert testimony from a psychiatrist, psychologist, or mental health professional showing that the defendant has been diagnosed with post-traumatic stress disorder as a result of the violence or abuse at issue may also be submitted to the court as evidence.

22 O.S. § 1090.3(B). Without said evidence, the Defendant's claim is statutorily deficient and must be dismissed.

Beyond the required documentary evidence outlined above, the Defendant is required to prove her claims by clear and convincing evidence. Under 22 O.S. § 1090.3(C), the Defendant not only has the burden of proof, but she also must prove several things *by clear and convincing evidence*:

If the court finds by clear and convincing evidence that at the time of the offense the defendant was a survivor of domestic violence or subjected to physical, sexual, or psychological abuse inflicted by a sexual partner, a family member or member of the household, the trafficker of the defendant, or any person who used the defendant for financial gain, and that the violence or abuse was related to and was a substantial contributing factor in causing the defendant to commit the offense or to the defendant's criminal behavior, the court shall depart from the applicable sentence to the ranges provided as follows.

The Defendant must show the following "elements" of an OSA claim by clear and convincing evidence:

1. The abuse occurred at the time of the offense;
2. The Defendant was a "survivor of domestic violence" or subjected to physical, sexual, or psychological abuse;
3. The abuse was inflicted by sexual partner, a family member or member of the household, the trafficker of the defendant, or any person who used the defendant for financial gain,

4. The abuse was related to *and* was a substantial contributing factor in causing the Defendant to commit the offense or to the Defendant's criminal behavior.

22 O.S. § 1090.3(C).

The Oklahoma Survivors' Act does not define clear and convincing evidence, but guidelines of what may or may not constitute clear and convincing evidence may be extrapolated in other areas of the law. Prior to the Uniform Post-Conviction Procedure Act, the Oklahoma Court of Criminal Appeals announced certain principles deduced by several writ of habeas corpus cases:

Public policy does not permit petitioner on habeas corpus to supply missing links by his testimony standing alone in record, but relief must be based upon something more substantive, and petitioner's testimony should be corroborated by clear and convincing proof.

Ex parte Owens, 88 Okla. Crim. 346, 351, 203 P.2d 447, 449 (1949). The Court determined that the petitioner's testimony was "not corroborated by other convincing evidence but [was] contradictory within itself" and also in direct conflict with other aspects of the case. *Id.* In *Russell v. Cherokee County District Court*, 1968 OK CR 45, 438 P.2d 293, 294, the Court stated:

It is fundamental that where a petition for writ of habeas corpus, or for post-conviction appeal is filed, the burden is upon the Petitioner to sustain the allegations of his petition, and that every presumption favors the regularity of the proceedings had in the trial court. Error must affirmatively appear and is never presumed.

"Granting any relief based upon bald allegations or suspicions would clearly go against the presumption of correctness we attach to trial proceedings . . ." *Hatch v. State*, 1996 OK CR 37, 924 P.2d 284, 296.

In juvenile deprived proceedings, clear and convincing evidence is defined as "that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established." *In re State In Int. of K.P.*, 2012 OK CIV APP 32, ¶ 6, 275 P.3d 161, 164. In a termination of parental rights trial where a jury

determines if the State presented clear and convincing evidence to support termination, the trial court instructs them as follows: “When I say that a party has the burden of proving any proposition by clear and convincing evidence, I mean that you must be persuaded, considering all the evidence in the case, that the proposition on which the party has this burden of proof is *highly probable* and *free from serious doubt*.” OUI Juvenile 2.5 (emphasis added).

New York has a similar statute¹ to the Oklahoma Survivors’ Act and ample case law has generated from its litigation. In fact, one could conclude that the OSA statute was modeled after New York’s Domestic Violence Survivors Justice Act (DVSJA), with Oklahoma’s statute being more expansive in many ways. In support of their sentence modification applications due to domestic violence, New York petitioners must sustain their burden by preponderance of the evidence. New York courts have cautioned against modifying a petitioner’s sentence on the petitioner’s self-serving hearsay, and, instead, required independent evidence to corroborate the application:

The legislature intended that DVSJA relief would be awarded on the basis of “objective” evidence after the applicant satisfied a high standard of proof (*see* Bill Jacket, 2019 A.B. 3974, Ch. 31 at 12 [“the applicant would ... have to satisfy a very high standard of proof to demonstrate *objective* eligibility for relief] [emphasis added]; New York Committee Report, 2019 NY A.B. 3974 [NS] [“an incarcerated survivor is ... required to include evidence corroborating the claim she was, at the time of the offense, a victim of domestic violence”]). Most published decisions that have awarded DVSJA relief so far have done so in light of independent, objective evidence corroborating the applicant’s allegations.

People v. B.N., 79 Misc. 3d 740, 752–53, 192 N.Y.S.3d 445, 455 (N.Y. Sup. Ct. 2023). New York’s statute allows for “reliable” hearsay, but New York courts have adhered to the following caveat: “Because of the danger of a defendant manufacturing evidence favorable to her own position, the longstanding rule in New York is that a defendant’s self-serving statements, when offered in her

¹ N.Y. Crim. Proc. Law § 440.47.

own favor, generally do not constitute reliable hearsay.” *People v. B.N.*, 79 Misc. 3d 740, 752, 192 N.Y.S.3d 445, 455 (N.Y. Sup. Ct. 2023).

I. PETITIONER IS A DOMESTIC ABUSE SURVIVOR AS DEFINED IN THE OKLAHOMA SURVIVORS’ ACT.

The Oklahoma Survivors’ Act defines domestic violence as “any act of physical harm or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor, or minor child who is currently or was previously an intimate partner or family or household member.” 22 O.S. § 1090.2(1). Under the Oklahoma Survivors’ Act, the Court determines that the Petitioner has established by clear and convincing evidence that she is a survivor of domestic violence perpetrated by decedent Terry Carlton. The Petitioner sustained physical injuries on numerous occasions perpetrated by the hands of Carlton. These injuries included photographed bruising and vaginal tears found on two different SANE exams. There was more than sufficient evidence presented in the jury trial testimony and documentary evidence admitted at the evidentiary hearing that abuse existed within the Petitioner and Carlton’s relationship. However, that is only *one part* of the analysis this Court must undertake under the Oklahoma Survivors’ Act.

II. PETITIONER IS NOT ENTITLED TO A SENTENCE MODIFICATION BECAUSE SHE FAILED TO PROVE THE ABUSE WAS A SUBSTANTIAL CONTRIBUTING FACTOR IN CAUSING THE PETITIONER TO COMMIT THE OFFENSE OR TO THE PETITIONER’S CRIMINAL BEHAVIOR.

The Petitioner is not entitled to a sentence modification under the Oklahoma Survivors’ Act because the Petitioner failed to establish by clear and convincing evidence that the domestic violence was a substantial contributing factor in causing the Petitioner to commit the offense or to the Petitioner’s criminal behavior. The Oklahoma Survivors’ Act requires a *nexus* between the domestic violence a defendant endured *and* the offense which the defendant is later convicted of:

Such violence or abuse was related to and was a substantial contributing factor in causing the defendant to commit the offense for which he or she is presently in custody or to the defendant's criminal behavior.

22 O.S. § 1090.4(2). The domestic violence must be a "substantial contributing factor" which caused the Petitioner to commit the offense. Alternatively, the Petitioner must show that the domestic violence was a "substantial contributing factor" to the Petitioner's criminal behavior.

The Oklahoma Legislature did not define "substantial contributing factor," and neither did the New York Legislature when it enacted DVSJA. Originally, the DVSJA only required a defendant to allege abuse was a contributing factor, but the New York Legislature later amended it to require it be "substantial." The New York Supreme Court engaged in extensive discussion in what this term means, including diving into lawmaker's discussions:

Thus, the entire legislative history contemplates causation. It speaks of victims committing crimes because: they were "reacting" to abuse, "protect [ing]" or "defending" themselves or their children, acting "as a result of" abuse, or being "coerced" into committing crimes. There is no way to read this language and rationally conclude that causation has been "eliminated" as the defendant urges.

If "substantial contributing factor" does not require any degree of causation as the defendant urges, then any offender who has ever endured domestic abuse is eligible for DVSJA relief, even if there is no articulable link between the abuse and the criminal conduct. This would cast such a broad net that most offenders in the state would be eligible, not just the "small fraction" contemplated by the legislature.

People v. B.N., 79 Misc. 3d 740, 767–68, 192 N.Y.S.3d 445 (N.Y. Sup. Ct. 2023). Notably, the New York Supreme Court articulated the reality that a subset of petitioners may be domestic violence victims, but still may not qualify for relief under DVSJA.

In *People v. Smith*, 69 Misc. 3d 1030, 132 N.Y.S. 3d 251 (2020), the New York court discussed the delicate factual inquiry a court must undergo when determining what constitutes a substantial contributing factor:

A court's evaluation with regard to whether the abuse a defendant suffered constitutes a significant contributing factor to her criminal behavior is not

transactional. It is cumulative, requiring the court to consider the cumulative effect of the abuse together with the events immediately surrounding the crime, paying particular attention to the circumstances under which defendant was living and adopting a “full picture” approach in its review.

In *People v. J.M.*, 84 Misc. 3d 201, 211 N.Y.S. 3d 762 (2024), the defendant pled guilty to a 14-count indictment which included her and a co-defendant burglarizing a home, choking its occupant, and setting the house and occupant on fire. The occupant died. At the sentencing hearing, J.M. offered her own testimony and the testimony of her mother, sister, and cousin to support her claim that her co-defendant, “G.,” was physically abusing her. *Id.* at 204. In addition, she offered the testimony of Dr. Evan Stark, who opined that the defendant was under the coercive control of G. *Id.* The prosecution objected to a reduction in the defendant’s sentence under several theories, including that the defendant “offered vague and inconsistent testimony regarding the dates, times, and degree of physical abuse.” *Id.* at 205. The court determined that coercive control was not at play in the defendant’s relationship with G., and the court further noted that the defendant’s drug abuse and behavioral issues were present notwithstanding her relationship with G.:

Dr. Stark concluded one of the factors in defendant committing the crime was her “chronic and often disabling drug addiction”, and she attributes that addiction to G. Dr. Kirschner claimed there is no clear nexus between defendant’s criminal conduct and the alleged abuse, noting that she has offered various conflicting accounts as to how G.’s abusive conduct caused her to engage in the instant offense. In viewing the history, character and condition of defendant it is evident that she demonstrated antisocial conduct both in the community and to a lesser degree while incarcerated, and it is clear that her participation in the crime was not due in any significant degree to any abuse she suffered by G. The credible evidence demonstrates that defendant’s behavioral issues and drug use were present long before she ever met G., and it was abundantly evident to this Court that the evidence presented by the defendant at the hearing was tailored to the instant application.

Id. at 209-210. The *J.M.* court further took issue with the lack of objection evidence to support the defendant’s contentions—contentions that were clear to the court were tailored for the hearing:

Defendant’s “proof” lacks independent, objective evidence corroborating defendant’s allegations of abuse. Corroboration is critically important in

considering re-sentencing under the DVSJA, especially when there is inconsistent testimony and contrary evidence. Many conclusory statements were made by the defendant and were “corroborated” by her family. The primary historians detailing the purported abuse are the defendant and her mother, both of whom have a significant interest in the outcome of this application, as well as a motive to exaggerate the degree of abuse.

Id. at 212.

In *People v. A.L.*, 85 Misc. 3d 616 (2024), the New York court denied the defendant resentencing, concluding that, although the defendant was a victim of domestic violence, the defendant failed to prove that the domestic violence was a substantial contributing factor to her murdering her child. First, the Court noted the lack of the defendant’s testimony:

The court does not fault Ms. L. for not testifying. It does not fault her attorneys for not presenting her testimony. Indeed, not presenting that testimony may have been the best strategic choice for the defense. The court believes, however, that it is nevertheless required to consider the lack of any testimony by the Defendant as a lack of evidence which was relevant to its determination. There is one person who was in the best position to outline the extent to which the intimate partner violence perpetrated by Carlos impacted Ms. L.’s decision to murder E. There was no evidence at the hearing presented by that person. Rather, the court was left to consider only the testimony of the Defendant’s expert, who served as a conduit for unrecorded, paraphrased, non-cross-examined statements made by Ms. L. and prior statements made by the Defendant during her parole hearings, some more than a decade ago.

Id. at 632. Then, the Court turned to whether the abuse she suffered was a substantial contributing factor to her committing the homicide, and the Court concluded that the homicide came about due to the following “range of factors”:

- The defendant being overwhelmed at taking care of six children;
- The absence of appropriate support by child protective agencies;
- The defendant’s significant trauma as a survivor of child sexual assault; and
- The defendant’s rape by a stranger.

Id. at 633. Then the Court noted two additional factors, which were the “most significant” to her

committing the homicide: (1) the defendant's difficult relationship with the deceased child and (2) the defendant's "significant and increasing alcohol and drug abuse at the time of the murder." *Id.* at 633. The Court opined: "Among *all of these causative factors*, it is also obvious that in committing the murder and not seeking medical treatment for E. for two days, [the defendant] made choices. Her acts were intentional." *Id.*

The burden of proving the elements of an Oklahoma Survivors' Act claim rests *solely* upon the Petitioner. The State of Oklahoma is under no obligation to put forth any evidence in rebuttal. The Petitioner was tried by a jury where 12 citizens of Tulsa County heard and considered over two weeks' worth of evidence. Based upon the testimony and argument the Petitioner has submitted to this Court, she and her counsel are requesting this Court to accept evidence of abuse while completely discarding all other factors surrounding the homicide. This Court declines to view the evidence with tunnel vision. The factfinder at trial (the jury) appropriately weighed evidence of substance abuse and mental health, and now, as the current factfinder, this Court must do the same. This Court must look at the "full picture" of what happened in this case.

Petitioner first called Senior US District Judge Claire Eagan who testified that in 1996, then as a practicing attorney, she was asked through another attorney in her firm to assist Ms. Wilkins in seeking a Protective Order against Mr. Carlton. She testified to altercations that Ms. Wilkins reported to her, as well as observations of physical injuries on Ms. Wilkins' face and arms. She testified that she obtained an Emergency Protective Order on behalf of Ms. Wilkins but that when it came time for the final Protective Order Hearing, Ms. Wilkins failed to appear and that when she was able to speak to Ms. Wilkins by phone, Ms. Wilkins reported she was too frightened to come to Court and did not want to confront Mr. Carlton. While Judge Eagan's testimony was relevant to the issue of whether Ms. Wilkins was a survivor of domestic violence and whether Mr.

Carlton was the abuser, those facts were never in dispute and her testimony offered little assistance to the Court on the ultimate question of whether the domestic violence was a substantial contributing factor to the crime that she had committed.

Petitioner also called James Spargur who was a former employee at Acura of Tulsa where Mr. Carlton worked. He testified that he met Ms. Wilkins when she came to purchase a vehicle and recalled instances where he saw Mr. Carlton be verbally abusive towards Ms. Wilkins. He also testified that Mr. Carlton had a reputation for abusing drugs inside and outside of the dealership and implied that on several occasions Mr. Carlton was inappropriate with female employees. However, Mr. Spargur's testimony, like that of Judge Eagan's, was only relevant to the issue of whether Ms. Wilkins was a survivor of domestic violence and whether Mr. Carlton was the abuser. But again, these facts were never in dispute and offered little assistance to the Court on the ultimate question of whether the domestic violence was a substantial contributing factor to the crime that she had committed.

The only person the Petitioner put forth in her case in chief to sustain her burden to prove that domestic violence was a substantial contributing factor that caused her to commit the homicide was Ms. Angela Beatty, who by her own admission, was an unlicensed and uncertified social worker. Although Beatty testified that she holds a certification as a domestic violence response professional with expertise in coercion and control, this Court notes there is no licensing or accreditation body that oversees her work or would exercise any authority over her work. Throughout her direct examination, she provided opinions to this Court that she *admitted* on cross examination *she did not have the expertise to provide*. In fact, she *retracted* her direct examination testimony at least twice, specifically as to the relevant issues the Court was required to examine. Beatty's bias was apparent on cross examination. Notably, Beatty testified to appearing on a

podcast that advocated for the Defendant's cause nearly two years prior to providing her expert opinion in this case. On the podcast, she admitted to chastising the original prosecutor and opining that the Defendant being committed to an inpatient facility for mental health treatment "sounds like trauma." She testified that she "internally" checks her biases, although she admitted that she disagreed with the jury's verdict in this case, the District Court's pronouncement of judgment and sentence, the Oklahoma Court of Criminal Appeal's mandate affirming judgment and sentence, and the Northern District of Oklahoma's denial of habeas relief. Beatty testified that trauma can oftentimes manifest in ways that look like a mental health episode and stated that Ms. Wilkins "had been misdiagnosed", but then *admitted* that she did not have the requisite qualifications to make that statement and *retracted* her testimony.

As to the ultimate issue in this case, Beatty provided her opinion "to a reasonable degree of professional certainty" that the domestic violence the Petitioner sustained was a substantial contributing factor to her committing the homicide. This Court is left guessing as to what profession Beatty is alleging. It cannot be social work because Beatty testified that she is not a licensed social worker. The only profession this Court can ascertain is her advocacy work with victims of domestic violence. But one cannot compare Beatty's "reasonable degree of professional certainty" to a "reasonable degree of medical certainty" or a "reasonable degree of scientific certainty" that has been routinely accepted by courts. In fact, there is no basis in law for a "reasonable degree of professional certainty" standard and the Court must conclude that this standard was manufactured solely for purposes of Petitioner's hearing and specifically to bolster the testimony of Ms. Beatty.

Ms. Beatty was asked about whether she considered the trial evidence related to Ms. Wilkins' mental health history and how that affected her opinion, to which she indicated she was

not a mental health expert and “was only asked to speak about the domestic violence”. When asked whether she considered the trial evidence related to Ms. Wilkins’ drug abuse history and how that affected her opinion, she stated that “you would need a substance abuse expert to speak to that” and stated she “was only asked to speak about the domestic violence”.

At times, the Court noted, Beatty was confrontational and condescending, even *refusing* to answer questions asked of her on cross examination. Beatty’s behavior, admissions, and outright bias to guaranteeing an outcome in this case was on full display throughout her testimony. This Court has no question that Beatty may be a very effective *advocate*, but the testimony proved that she was not an objective witness in this case, nor did she have the requisite qualifications to flaunt many of the opinions she provided.

This was the entirety of the Petitioner’s case in chief as the Petitioner herself chose not to testify. Had the State moved for a demurrer at the close of the Petitioner’s case, this Court would have likely granted it.

The State, however, presented testimony from Dr. Jarrod Steffan, a forensic psychologist, who testified that the domestic violence Petitioner experienced was not a substantial contributing factor to the homicide, but rather it was Petitioner’s severe mental health disturbances coupled with significant substance abuse. In addition to a thorough review of the entire record in this case, to include the evidence and testimony presented at trial, he also discussed how several stressors in her life were existent around the time of the homicide, including several lawsuits, a vehicle repossession, an ongoing custody dispute involving her minor son, discontinued utilities and the foreclosure of her home. Dr. Steffan included *all* factors in his conclusion. In that way, this case is analogous to *People v. A.L.*, 85 Misc. 3d 616 (2024). Beatty, in comparison, either deliberately ignored or severely discounted everything occurring in the Defendant’s life with the exception of

domestic violence. Again, when asked whether she considered how the claims of mental health disturbances and severe substance abuse may have contributed to the crime or to Petitioner's thoughts at the time of the crime, Beatty responded that "she was only asked to speak on the domestic violence". Ultimately, Petitioner failed to prove by clear and convincing evidence that the domestic violence that the Petitioner suffered was a substantial contributing factor to her committing the homicide.

PETITIONER'S MOTION TO RECONSIDER AND/OR MOTION FOR NEW HEARING

Petitioner filed her Motion to Reconsider and/or Motion for New Hearing on September 12, 2025, alleging (1) that the Court misinterpreted the Survivor's Act to require expert testimony on the "substantial related factor" prong; (2) that the Court improperly excluded opinion testimony from [Petitioner's] psychiatric expert on rebuttal; and (3) that the Court improperly gave "no weight" to the [Petitioner's] domestic violence expert. The Court has reviewed Petitioner's Motion, the State's Response, and the records in rendering its decision. This Court finds that the Motion fails to present any issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony; this matter can be decided on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, ¶ 10, 823 P.2d 370, 373-74.

On September 2, 2025 (the day prior to Petitioner's two-day OSA hearing) the parties appeared before the Court to address, amongst other things, Petitioner's request to call an additional expert witness, Dr. Reagan Gill, in rebuttal to the State's expert, Dr. Jarrod Steffan. For the first time, Petitioner disclosed Dr. Gill's participation in the case as a consultant, noting that she had been involved in the case for approximately five (5) months. Petitioner acknowledged that her domestic violence expert, Ms. Beatty, was not qualified to speak on the issue of mental health, that Beatty was "an MSW, not a mental health expert" and that Beatty "can talk about it to

a certain degree but she can't talk about it to the degree that a forensic D.O. can", and that based on the conclusions contained in Dr. Steffan's report as it related to the ultimate question of whether domestic violence was a substantial related factor to the homicide, Petitioner was now "in a position where she needed to call a rebuttal". Petitioner claimed, "there was no way we could have known we'd need to call an expert", that "we actually didn't even know who [the State's expert] was until July 8th" and that "[Dr. Gill] hasn't had time to actually write her expert report". Based on these assertions, and over the State's objection, the Court granted Petitioner's request to allow Dr. Gill to testify in rebuttal.

Contrary to her claim, it was Petitioner who requested Dr. Gill testify as an expert, specifically as a rebuttal witness, and specifically to address the conclusions reached by Dr. Steffan as to the "substantial related factor" prong. This was despite the Court's suggestion to continue the proceedings and allow Dr. Gill to prepare and circulate her expert report and be called as a direct witness in the Petitioner's case in chief. It was also Petitioner who offered the limitations on Dr. Gill's testimony on rebuttal claiming, "we would be fine to caveat it to [Dr. Steffan's] written report".

Petitioner cites to *Harris v. State*, 84 P3d 731, 2004 OK CR 1, and *Goforth v. State*, 1996 OK CR 30, 921 P2d 1291, as persuasive authority, however, *Harris* and *Goforth* are distinguishable from this case. In *Harris*, and as Petitioner notes, the Court stated that "Generally, the State need not give advance notice of rebuttal evidence, because it cannot know before trial what evidence will be relevant in rebuttal". *Goforth v. State*, 1996 OK CR 30 ¶3, 921 P2d 1291, 1292. *Harris* goes on to state, however, that "[The State's expert] only interviewed Appellant after the defense gave notice that it intended to present a defense based on Appellant's mental health. Defense counsel was present when [the State's expert] interviewed Appellant. Appellant had

access to his own mental-health experts to review [the State's expert's] notes and testimony. After [the State's expert] testified on direct examination, the trial court granted Appellant's request for additional time to prepare for cross-examination. Appellant was not unfairly surprised by [the State's expert's] testimony". *Id.*

From Petitioner's Motion and from review of the record, one thing is made clear: the Petitioner was aware in April 2025 (nearly five months prior to the OSA hearing) of the State's intent to hire a forensic psychologist and engaged Dr. Reagan Gill "to interview [Ms. Wilkens] and begin the process of creating an expert opinion in the event that rebuttal testimony was necessary" (Petitioner's Motion to Reconsider, at Page 6). This was not disclosed to the State. Petitioner became aware that Dr. Jarrod Steffan had been retained by the State on July 8, 2025. Dr. Gill's "expert opinion" was completed on July 15, 2025 (Petitioner's Motion to Reconsider, Exhibit 1). This also was not disclosed to the State. On July 24, 2025, the State filed a Motion to Permit the Psychological Evaluation of the Defendant. On July 25, 2025, the Court heard argument from both counsel on the matter and granted the State's Motion for Psychological Evaluation. Despite being aware of Dr. Steffan's involvement, Petitioner still elected not disclose Dr. Gill's participation, nor did she provide a copy of Dr. Gill's expert report. Petitioner's claim on September 2, 2025, that "there was no way we could have known we'd need to call an expert" and that "[Dr. Gill] hasn't had time to actually write her expert report" is not supported by the record and is in direct contrast to *Harris* and *Goforth*. The attachment of Dr. Gill's expert report to Petitioner's Motion to Reconsider now presents evidence which was not properly introduced at the hearing and not previously disclosed to the State as required under the Oklahoma Discovery Code, and its admission now would constitute unfair surprise. It is not new evidence, but rather evidence that was purposefully and strategically withheld.

The reasons for why Dr. Gill was never included in the Petitioner's case in chief, or why Petitioner declined the Court's suggestion to continue the proceedings and allow Dr. Gill time to prepare her report and to be called as a direct witness in her case in chief remain unclear, and the Court cannot opine on Petitioner's strategic trial decisions.

The claims raised by Petitioner's Motion to Reconsider and/or Motion for New Hearing are not supported by the record or by the evidence and are therefore denied.

**PETITIONER'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE
AND FOR THE APPOINTMENT OF SPECIAL PROSECUTOR**

Petitioner filed her Motion to Disqualify the District Attorney and the Tulsa County District Attorney's Office and for the Appointment of Special Prosecutor on November 3, 2025. The Court has reviewed Petitioner's Motion and the records in rendering its decision. This Court finds that the Motion fails to present any issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony; this matter can be decided on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, ¶ 10, 823 P.2d 370, 373-74.

The Court finds that having denied Petitioner's Motion to Reconsider and/or for New Hearing, the Motion to Disqualify the District Attorney's Office and for the Appointment of Special Prosecutor is now moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that based on the foregoing, Petitioner's request for sentence modification under the Oklahoma Survivors' Act and Petitioner's Motion to Reconsider and/or for New Hearing is hereby **DENIED WITH PREJUDICE**. Petitioner's Motion to Disqualify the District Attorney's Office and for the Appointment of Special Prosecutor is **DISMISSED AS MOOT**.

SO ORDERED this 25th day of November, 2025.



DAVID GUTEN
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

The Court certifies that on the date of filing, a true and correct copy of the above and foregoing was mailed to:

Colleen McCarty
Abby Gore
Oklahoma Appleseed Center for Law and Justice
822 E. 6th St.
Tulsa, OK 74120

&

Steve Kunzweiler
Meghan Hilborn
Tulsa County District Attorney's Office
500 South Denver, Suite 900
Tulsa, Oklahoma 74103

DON NEWBERRY, COURT CLERK

BY: _____

Deputy Court Clerk