

COURT TRANSCRIPT and EVIDENCE SUMMARY

There are several hearings and trials that involve this case. They are referenced as follows: Preliminary Hearing (PH); Daubert Hearing (DH); 1st trial (T1); 2nd trial (T2); 3rd trial (T3); Post-Conviction Relief Brief. Only a brief summary of the transcripts and evidence is provided as well as the trial and page numbers in which the summarized information can be found. Copies of the original transcripts by law cannot be provided nor distributed due to the nature of the case and for the protection of the minor child.

1. “Valerie Dyer testified that Charles had no access to her computer (T1.90)” T1.90 is Valerie Dyer’s testimony at the first trial on page 90.
2. “Amanda Monsalve testified that Charles didn’t see (child) after January 03 (PH.75)(T3.5, 32-33)” PH.75 is Amanda Monsalve’s testimony at the preliminary hearing on page 75. This testimony is also found at (T3.5,32-33) which is Amanda’s testimony at the 3rd trial on pages 5 and 32 through 33.
3. Search warrants were issued for Charles’ home see evidence folder
4. Valerie was recorded saying she won’t say anything in court that could cause her to lose custody of (child) (See Redacted Conversation Charles and Valerie, pages 2, 4-5).
5. Through testimony, Valerie admits that she and Charles argued over custody (PH.110)(T1. 32, 37-39, 72-73, 83-87)(T3.54, 59, 145).
6. Amanda Monsalve (Charles’ girlfriend) testified to custody issues between Charles and Valerie (PH.79, 84-85)(T1.11)(T3.14, 19-24).
7. Charles Dyer testified to a heated divorce and custody issues (T1.25, 30-31, 34-35, 40-41, 88-89, 94)(T3.128-130, 134-136).

8. Amy Dark (Charles' sister) testified to her knowledge of the custody issues (T3.7-8).
9. The month prior to the sexual abuse allegations, Valerie's computer was used to access www.myoutofcontrolteen.com as computer expert Marvin Dutton testified (T1.16). This website is marked Evidence item #23-C in the post conviction relief brief and explains how to win a custody battle.
10. Valerie Dyer was recorded voicing her concerns that she would lose custody of (child) to Charles, as well as her willingness to lie if necessary to keep this from happening (Charles and Valerie Conversation Transcript pages 2, 4-5).
11. Valerie acknowledges that she denied visitation to Charles and that he had called police over it (Post conviction relief brief Evidence item #1 Transcript pages 1-2). Charles testified that he recorded this conversation after an altercation concerning Valerie allowing (child) to be around a convicted child molester and after he threatened to report it, Valerie denied visitation and lied to police, telling them there was no visitation agreement (T3.28-31).
12. Valerie admitted that in June, 2009, she threatened to "say or do anything" to prevent Charles from gaining custody of (child) (PH.110)(T1.38-39). Charles testified that he was arrested by military authorities on false charges after this threat (T1.25-28).
13. Valerie admitted that in July, 2009, she told Charles that she would "do anything, including perjury" to keep Charles from getting his daughter, (child) (T1.72).
14. In a recorded conversation, Charles accuses Valerie of threatening to commit perjury, to which she doesn't deny. Valerie further states that she won't say anything in court that may jeopardize her retaining custody of (child) (Evidence item #1 Transcript pages 2, 4-5, Post-Conviction Relief Brief).

15. Valerie admitted at a Daubert hearing that she told Charles that she would “do or say anything” to keep Charles from gaining custody, before the sexual abuse allegations were made (DH.14).

16. At the trial that resulted in a guilty verdict, Valerie denied ever making any of these threats (T3.108-111, 150-154).

17. Charles testified that he was stationed in California while Valerie and (child) lived in Oklahoma (T3.18). Valerie corroborated this (T3.44).

18. Valerie testified that she and Charles communicated by phone and webcam (T1.27-28)(T2.62).

19. Valerie admitted to threatening Charles that she would “say or do anything” to prevent him from going custody of (child) during this time (PH.110)(T1.31-32, 38-39).

Charles corroborates this (T3.128-130).

20. After this argument, Valerie instructed her brother to call Charles’ command and file false charges stating Charles threatened to kill Valerie and (child), over the phone.

Charles testified to this (T1.24-28)(T3.130), is corroborated in part by Amanda Monsalve (T1.19) and Amy Dark (T1.7-8). Further, in a recorded conversation, Valerie admits these charges were false by stating, “I never said that you had threatened to kill me or my daughter” (Evidence item #13 Transcript Post-Conviction Relief Brief, pages 15-16).

21. Over the course of two years, Valerie was never able to give a precise date that (child) disclosed sexual abuse to Valerie. However, Valerie testified that (child) was in Valerie’s custody before school began, after the Christmas break, January, 2010.

School records show that school started January 04, 2010 (Evidence item #14-B, Post-Conviction Relief Brief). Valerie agrees that if this is accurate, Valerie picked (child) up

on January 03, 2010. Valerie testified multiple times that she learned of the sexual abuse this night and reported the abuse “the next day” [January 04, 2010] (PH.114)(D.H.15, 20)(T1.51-52, 80-81)(T3.125). The fact that (child) left Charles’ custody on January 03, 2010 and this was the last time Charles saw (child) was corroborated by Charles Dyer (T1.49-51)(T3.138), Amanda Monsalve (PH.74)(T1.15-17)(T3.32-33), and Jan Dyer (T1.15)(T3.177).

22. The previously mentioned testimony by Valerie that she learned of the sexual abuse on January 03, 2010 and reported it to the police on January 04, 2010 isn’t even a possibility. Though Valerie testified to this and further that (child) didn’t attend school this week (T1.80), it’s simply untrue. School attendance records prove that (child) attended school from January 04-07, 2010 and was only absent January 08, 2010 (Evidence item #14-A, Post-Conviction Relief Brief). Further, testimony of deputy Seeley (T1.11-13), deputy Seeley’s affidavit (Evidence item #17, Post-Conviction Relief Brief), and Valerie’s own police report (Evidence item #18, Post-Conviction Relief Brief) proves that no report to police was made until January 08, 2010. Valerie has been asked to explain this discrepancy but has never been able to (T2.80-81)(T3.125-126).

Thus raising questions that Valerie Dyer either **1.** Learned of the abuse on the day (child) left Charles Dyer’s home and then sent (child) to school and made no report to police for five (5) days, making Valerie’s testimony of reporting “the next day” and child missing school as untrue or **2.** Valerie learned of abuse on January 07, 2010 and her testimony of (child) crying, complaining that her vagina hurt, and making disclosure after leaving Charles’ home was untrue. No matter the scenario, it is undisputable that Valerie lied under oath concerning the disclosure of (child) and

reporting abuse to police. This evidence was not presented to the jury other than being mentioned in part, briefly.

23. At the trial that resulted in the guilty verdict, the State claimed that Valerie had no anger toward Charles or Amanda Monsalve during the month of December, 2009, before the allegations and therefore had no motive to fabricate charges. Valerie testified that she had no ill feelings toward Charles and Amanda in December, 2009 (T3.129). Valerie testified that she no longer wanted to be in a relationship with Charles around the time of the sexual abuse allegations (T3.139). Evidence proves these statements to be false. In a recorded conversation, Valerie states that she was devastated over learning that Charles and Amanda were in a relationship together, that Valerie still loved Charles, and still wanted to “be with [Charles]” December, 2009 (Evidence item #13 Transcript page 14, Post-Conviction Relief Brief). Valerie’s anger toward Charles can be seen by a Myspace posting from December 14, 2009 in which Valerie states “Let’s all pray [Charles’} penis falls off...shall we?” and “let’s hope his penis falls off...”(Evidence item #3 Post-Conviction Relief Brief). Further, in a recorded conversation, Valerie states that she hates Charles and makes several derogatory comments about Amanda’s weight, ethnicity, and states that Amanda was lucky Valerie didn’t “bust her face in” (Evidence item #13 Transcript pages 8, 33-36, Post-Conviction Relief Brief).

24. Valerie testified that during the October, 2008 – May, 2009 timeframe, Charles abandoned Valerie and (child) in Oklahoma with only \$126.00 (T2.54-55)(T3.47), that Valerie had to save up money to buy a car and rent a house (T2.60), and Charles never sent money to help her (T3.50). However, this is untrue as Valerie admitted that Charles paid Valerie’s rent (T3.116) and Valerie had housing before she even had a job (T3.49-

50). Further, Valerie testified that Charles paid for (child)'s daycare (T3.61). Beyond Valerie's testimony, check stubs prove an additional \$1,200, not counting rent and daycare, was paid to Valerie by Charles during this time (Evidence item #21-B, Post-Conviction Relief Brief). Additionally, during a recorded conversation, Valerie admits to John Dyer that Charles paid for her car (Evidence item #1 Transcript page 5, Post-Conviction Relief Brief).

25. Valerie testified that she openly admitted that she committed adultery to Charles and never lied to him about it (T3.55, 119). This is contradictory of previous testimony by Valerie that she did, in fact, deny committing adultery when Charles confronted Valerie about it (T1.69).

26. Valerie testified at trial that she only used drugs one time (T3.111). In previous testimony, Valerie testified that she used drugs multiple times and listed four (4) separate places that she left (child) while using drugs (T1.33)(T3.56-67). Beyond this, Valerie admits she "used to do drugs (Evidence item #13 Transcript page 18, Post-Conviction Relief Brief) and never says her drug use was a single act in recorded conversations.

27. In the trial resulting in the conviction, Valerie testified that Charles never allowed her family to come to the hospital to see (child) when she was born because Charles was "controlling and mean" (T3.28-30). The defense proved Valerie was lying by presenting multiple pictures of Valerie's friends and family in the delivery room holding (child). Valerie then claimed that she had meant that Charles wouldn't allow her family in the hospital during (child)'s birth but did "the next day" (T3.134-137). However, this is not what Valerie meant as her previous testimony was specifically that Charles never allowed Valerie's family to visit Valerie or (child) "while [Valerie was] in the hospital after birth"

(T2.35) and she gave this false testimony with tears in her eyes and dabbing her nose with a tissue given to her by the prosecutor (T2.33).

28. These and over thirty (30) other acts of perjury by Valerie Dyer are explained in detail in (Evidence item #25, Post-Conviction Relief Brief). None of this was brought to the jury's attention.

29. Charles Dyer testified to Valerie's tendency to lie (T1.26-29, 34-35, 52-53)(T3.121-122), as did Amanda Monsalve (T3.6-7). Valerie partially corroborates this (T3.97-98) and doesn't deny it when Charles states "You've done nothing since we've been together but lie..." during a recorded conversation (Evidence item #1 Transcript page 6, Post-Conviction Relief Brief).

30. Charles testified that Valerie had problems with abusing prescription drugs and would cut herself with razors (T3.109-110). Valerie confirms this (T1.92, 95-96)(T3.100, 140). Amanda testified that Valerie offered Amanda prescription medication while they were drinking alcohol (T3.7-11). Valerie also wrote to Charles in 2007 and admitted that she obtained prescription medication illegally from a family member (Evidence item #28-C, Post-Conviction Relief Brief). Valerie admitted to taking Zoloft, Lorazepam, and Xanax (PH.115)(T1.92). Charles testified that Valerie abused Xanax and Valium and it caused problems while he was in Iraq (T3.109-112, 115-120, 127). Charles testified that these problems resulted in Charles not being allowed to deploy a second time to Iraq (T1.21-22). Valerie corroborates that Charles didn't deploy because of her medical issues (T2.56-57).

31. The prescription medication that Valerie was taking legally was for her depression and suicidal thoughts. Valerie wrote in a letter that her mother made fun of her for taking

them and called them “crazy pills” (Evidence item #28-A, Post-Conviction Relief Brief). Amanda testified that she contacted a military support group to contact Valerie because Amanda was concerned from Valerie’s depression (T3.8-9).

32. This is clear evidence that Valerie has issues with being truthful which is undeniable in combination with Valerie’s acts of perjury in (Evidence item #25, Post-Conviction Relief Brief). This evidence also suggests that Valerie had issues with depression, cutting herself, and abusing prescription medication.

33. Valerie admits that her uncle, James Hekia, is a registered sex offender (PH. 117). Valerie admits that James lived with Valerie’s mother, Teresa Wylie (T3.141). Valerie admits to leaving (child) at Teresa’s residence while Valerie was elsewhere using drugs (T1.33). (child) admits that she went to Teresa’s home after school every day (T3.104).

34. Evidence proves that James Hekia was charged with exposing himself to four (4) year old W.H. (Evidence item #12-A, Post-Conviction Relief Brief), James admitted to exposing himself to his cousin T.B. (Evidence item #12-B, Post-Conviction Relief Brief), James attempted to commit lewd acts on a sixteen (16) year old (Evidence item #12-C, Post-Conviction Relief Brief), Teresa lied to police about James living with her during January, 2010 but James did, in fact, live there at this time (Evidence item #12-D, Post-Conviction Relief Brief), and James was arrested for living in Teresa’s home illegally (Evidence item #12-E, Post-Conviction Relief Brief).

35. Charles Dyer testified that the last day he saw (child) was January 03, 2010 (T1-49-51)(T3.138). This is corroborated by Amanda Monsalve (PH.74)(T1.15-17)(T3.32-33) and Jan Dyer (T1.15). Valerie corroborates that Charles didn’t have (child) after school started (T1.80-81). School records prove that school began January 04, 2010 and that

(child) attended school from January 04-07, 2010 (Evidence items #14-A and 14-B, Post-Conviction Relief Brief). Evidence proves that the report of sexual abuse was January 08, 2010 (Evidence items #17 and 18, Post-Conviction Relief Brief) corroborated by Deputy Seeley (T1.11-13) and Valerie herself (DH.15). Valerie testified time and time again that (child) complained of her vagina hurting and was crying from the moment she picked (child) up, the previous day [Thursday, January 07, 2010] to the report on January 08, 2010 (PH.114)(DH.15)(T1.51-52)(T3.125). This is corroborated by Amanda who testified that Valerie had told her (child) made disclosure “Thursday” (T3.77) and by Dr. Waters who reported that Valerie stated she had learned of the sexual abuse “Thursday” (Evidence item #5, Post-Conviction Relief Brief).

36. This evidence proves that (child) attended school Thursday, January 07, 2010, (child) went to James’ residence after school, and if (child) complained of her vagina hurting, it was four (4) days after seeing her father and immediately coming from a sex offender’s home. Further, (child) claimed that Teresa showed (child) her vagina in her home while sitting at the computer with legs up and no underwear on. This disclosure was made to Jan Dyer who in turn notified Charles. When Charles told Valerie, (child) denied every telling this to anyone, however, (child) did finally admit this to Valerie. Valerie acknowledges this in a recorded conversation (Evidence item #13 Transcript page 29-30 Post-Conviction Relief Brief). None of this evidence was presented to the jury.

THE (child)’S TESTIMONY AGAINST CHARLES DYER IS INCONSISTENT WITH THE FACTS, IS CONTRADICTORY OF ITSELF, CONTRADICTED BY OTHERS, IS UNCLEAR, UNCERTAIN, AND IMPROBABLE; ACCORDING TO OKLAHOMA STATE LAW, (child)’S TESTIMONY MUST BE CORROBORATED BY EVIDENCE LINKING THE ACCUSED TO A CRIME. AS NO CORROBORATING EVIDENCE EXISTS, HIS IMPRISONMENT IS A VIOLATION OF OKLAHOMA STATE LAW, AND DUE PROCESS

GUARANTEED UNDER THE U.S. CONSTITUTION. BEING SUCH, MR. DYER SHOULD BE RELEASED IMMEDIATELY.

According to Oklahoma state law, a rape victim's testimony must be corroborated by evidence linking the accused to the rape in the following instances: **1.** The victim's testimony is contradictory, unclear or uncertain, improbable, impeached, or inconsistent. **2.** There are indications that the prosecution is maliciously conspired. **3.** The accused denies the allegations against him and his testimony is corroborated.

37. The taped interview (Evidence item #7 Post-Conviction Relief Brief) of (child) and her in-court testimony is clearly contradictory, unclear and uncertain, improbable, and inconsistent.

Contradictory: **1.** During the interview (Evidence item #7, Post-Conviction Relief Brief) (child) states six (6) times that she was last raped on January 02, 2010, four (4) times that she wasn't raped on January 02, 2010, and one (1) time that she doesn't remember. **2.** (child) states in the interview that she was last raped on Charles' bed and then later says the last time was on a couch. **3.** (child) states that Charles does different sexual acts to her at different times, then later says "He does the same thing every day somebody leaves". **4.** (child) states that she performed oral sex on Charles January 02, 2010, then later says she didn't do anything to Charles' body on January 02, 2010. **5.** During the 1st trial, (child) testified that she didn't remember anything unusual about Christmas break [December, 2009-January, 2010] while at Charles' home (T1.12).

Inconsistent: **1.** During the forensic interview, (child) states that Charles' pillows are white. Testimony by Deputy Lemons (T1.7-9), Deputy Seeley (T1.8-10) and the search warrants (Evidence item #6, Post-Conviction Relief Brief) prove Charles owned only

green and brown pillows. **2.** (child) states Charles raped her while Valerie was at work in California. Valerie testified that she never held a job in California (T2.52). **3.** (child) stated in the interview that she was raped on Charles' bed and couch. Though Dr. Waters testified that a child of this age would bleed from intercourse (T1.27-29), no blood or secretions belonging to (child) were found in the home and no semen, blood, or secretions were found on (child)'s unwashed panties worn on the day of the alleged rape (Evidence item #8, Post-Conviction Relief Brief).

Improbable: **1.** It's improbable that no DNA evidence would be found after the intercourse described by (child). **2.** (child) states during the interview that she disclosed the sexual abuse to her mother on "Sunday" [January 03, 2010] while bathing. However, this isn't likely as Amanda testified to (child) bathing just hours before leaving Charles' home (T1.17-18)(T3.38). **3.** (child) stated that she was raped multiple times at Charles and Amanda's home. However, Charles (T3.135-138) and Amanda (T1.10-12)(T3.30-39, 62) both testified that Charles was only left alone with (child) once and was never alone with (child) on January 02, 2010.

Unclear or uncertain: **1.** During the forensic interview, (child) is asked about what specific sexual acts occurred on January 02, 2010. At one point, (child) states, "I don't remember the whole story". **2.** Jessica Taylor (forensic interviewer) testified that she, herself, was confused as to what sexual abuse had occurred (T1.50). **3.** (child) testified that she was unsure if what she said in the interview was correct (T3.101-102). **4.** Jessica Taylor testified that (child) was confused during the interview (T1.47). **5.** (child) is unable to describe anything about Charles' and Amanda's bedroom. **6.** (child) is unsure how she remembers the date of

January 02, 2010. **7.** During the interview, (child) states “I don’t know”, “I don’t remember”, or “I have no idea” eighteen (18) times.

Maliciously inspired prosecution: **1.** A custody battle and divorce at the time the allegation was made. **2.** Valerie threatened to do anything, including lie in court, to stop Charles from gaining custody of (child). **3.** Suggests that Valerie has no problem using government agencies to wrongfully arrest Charles. **4.** Valerie lied about the sexual abuse disclosure and events surrounding it. **5.** Reveals forty-five (45) acts of perjury by Valerie. **6.** Presents evidence suggesting (child) was coached what to say. **7.** Proves Valerie’s computer was used to research websites containing information about winning custody battles and reporting sexual abuse, over a week prior to the alleged disclosure by (child). **8.** Proves Valerie’s computer was used to view pornographic videos for an eight (8) hour period, the evening prior to (child)’s forensic interview where (child) is asked to describe sexual acts.

Corroboration of the accused: Charles testified and denied the allegations of raping (child) and his testimony is corroborated by the testimony of Amanda Monsalve and Jan Dyer. He is also corroborated by the DNA report (Evidence item #8, Post-Conviction Relief Brief) and forensic computer reports (Evidence items (15-A and 15-B, Post-Conviction Relief Brief).

38. All 3 instances in which a rape victim’s testimony must be corroborated by evidence applies to this case. The only evidence presented is a medical examination b Dr. Waters. He testified that although the examination is suspicious, he can’t say for certain that sexual abuse even occurred (T1.21-22)(T3.144). This evidence doesn’t show that sexual abuse occurred at all, let alone that Mr. Dyer was the perpetrator if it had. According to

Oklahoma's definition OUJI-CR 97, in order to be corroboration, the evidence must "tend to connect the defendant with the commission of the crime charged".

There is absolutely no other evidence against Mr. Dyer. In fact, the only evidence against him is the testimony of (child) alone. Holding Charles Dyer in prison is a violation of Oklahoma state laws and the due process guarantees of the Oklahoma Constitution and the fifth and fourteenth amendments of the U.S. Constitution. His incarceration is a miscarriage of justice and he should be released immediately.

39. (child) was given a forensic interview where she was asked to describe sexual acts (Evidence item #7, Post-Conviction Relief Brief). This interview was given January 12, 2010. The evening prior to this interview, Valerie Dyer viewed numerous pornographic pictures/video which could be suggestive that Valerie Dyer did this to instruct (child) in what to say during the interview. It could also be suggested that once Valerie was satisfied that (child) was sufficiently coached, she sent an online message to Charles Dyer and Amanda Monsalve, laughing at them and wishing Charles "good luck" because he was "going to need it". Undisputable proof of this is as follows:

1. On December 25, 2009 Valerie's computer is used to access www.topics.law.cornell.edu and searched the phrase "legal rights over a child" which led to U.S. code: Title 18, 3509. This title explains what questions a child will likely be asked while testifying as well as information concerning video taped dispositions of a child (Evidence item #15-B Section B-VI, Post-Conviction Relief Brief).
2. Valerie testified that she knew what was expected of (child) during the forensic interview and states that Valerie "prepared" (child) for the interview (DH.37).

3. On January 11, 2010, the day prior to (child)'s forensic interview, Valerie's computer was used to access www.redtube.com, a website to view pornographic videos, multiple times over an 8 hour period. This is reflected by the OSBI report (Evidence item #15-A, Post-Conviction Relief Brief) at page 2 and 3. Report reads 01-11-11. This is a typo that should read 01-11-10. The State acknowledges this. Further, page 2 reflects the last date of computer use as January 13, 2010 and page 8 confirms that all pornography was viewed between 12-25-09 and 01-11-10.

4. Valerie is directly linked to the viewing of this pornography as follows: The OSBI report (Evidence item #15-A, Post-Conviction Relief Brief) reflects a search for "Amanda Monsalve" on page 8. This search was done on www.myspace.com on January 11, 2010 at 2023 (8:23 p.m.). Amanda Monsalve testified that Valerie sent a Myspace message to Amanda on January 11, 2010 (T1.18)(T3.45-47). Valerie corroborates this (PH.114). The message is (Evidence item #2, Post-Conviction Relief Brief) and shows Valerie laughing at Charles and Amanda. Pornography was viewed at 2033 (8:33 p.m.) just minutes after this Myspace search, as the OSBI report proves.

5. 438 temporary internet images were downloaded January 11, 2010 due to accessing www.redtube.com. These images reflect similar content as contained in the online videos that were viewed. A sample of 51 of these images can be seen as (Evidence item #16-B, Post-Conviction Relief Brief) from the OSBI computer report.

6. (child)'s description of sexual acts are identical to these images (Evidence item #16-B, Post-Conviction Relief Brief). During the interview (Evidence item #7, Post-Conviction Relief Brief) (child) states **(a)** semen is yellow. Images of semen were found on Valerie's computer. **(b)** she was raped on a couch and bed. Images of sexual acts on

couches and beds were found on Valerie's computer. (c) Charles performed oral sex on her. Images of males performing oral sex on women were found on Valerie's computer. (d) Charles' pillows were white (pg 18). Search warrants (Evidence item #6, Post-Conviction Relief Brief), testimony of Deputy Lemons (T1.7-9), and Deputy Seeley (T1.8-10) prove Charles had only green and brown pillows, however, images of sexual acts on the beds with white pillows were found on Valerie's computer. (e) she performed oral sex on Charles and describes swirling her tongue around his penis (pg-22). Images of females swirling their tongues around penises were found on Valerie's computer. All of these images were downloaded within 24 hours prior to (child)'s forensic interview where she described these acts.

40. In the forensic interview of (child) on January 12, 2010, (child) tells the interviewer that she was last sexually abused on January 2nd, specifically. The interviewer becomes suspicious and asks why (child) says this date. (child) replies, "I don't know". The interviewer asks, "How do you remember that day?" to which (child) answers, "I told my mom I don't remember it and now I know" (Evidence item #7 Transcript page 12, Post-Conviction Relief Brief).

41. The forensic interviewer asks what Charles Dyer does to (child)'s vagina and (child) answers, "I don't remember the whole story" (Evidence item #7 Transcript page 13, Post-Conviction Relief Brief).

42. During the first trial Charles testified that (child)'s claims of sexual abuse at Jan Dyer's home during 2009 were impossible because he lived in a tent and only slept under the same roof as (child) once (T1.31-33). This was corroborated by Jan (T1.9-13). This was a major blow to the State's case. So, a year later, upon a direct question by the

prosecutor, (child) says she was raped in a tent. However, she's unable to describe anything about the tent (T3.99-100). On cross examination, the defense asks (child) when she had first mentioned anything about a tent to anyone. (child) stated that she never told anyone until the day prior, while in the prosecutor's office (T3.102). This was one day before the third trial, 2 years 9 months after this alleged rape, while coincidentally being prepared for trial, in the prosecutor's office. If this weren't enough to be suspicious, Valerie also mentions the tent, for the first time ever, on this same day. Valerie testified that in December, 2009, Valerie's relationship was good with Charles and Amanda Monsalve and that Charles took (child) on motorcycle rides, took her hiking, and camped in the back yard (T3.72). This was a clear attempt at trying to insert some type of testimony to corroborate the prosecution's newly acquired testimony of (child) because no one would do any of these activities with a child when temperatures rarely rose above the 40's and were well below freezing nearly every night, as proven by (Evidence item #22, Post-Conviction Relief Brief).

43. (child) answers "January 2nd" to questions that had nothing to do with dates, as if it were a learned response (Evidence item #7 Transcript page 20, Post-Conviction Relief Brief).

44. Valerie testified that (child) was grabbing her vagina and crying when Valerie asked what was wrong and (child) stated that Charles touched her (PH.101)(T1.46-49)(T3.73-81). (child) however, testified that Valerie never once asked if something was wrong (T3.112). (child) states that she did nothing to provoke questions from Valerie and that Valerie was the one that first suggested that Charles had touched (child) (Evidence item #7 Transcript page 33-34, Post-Conviction Relief Brief).

45. Valerie testified that she never brings up the subject of sexual abuse with (child) (T3.83). However, Valerie is recorded saying that she asked (child) about the abuse and “interviewed” (child) numerous times as well as the fact that (child) goes into “explicit” detail with Valerie concerning sex acts (Evidence item #13 Transcript pages 17, 29, Post-Conviction Relief Brief). Valerie likely testified multiple times that she never spoke with (child) concerning the abuse because, as she stated, State Prosecutor had advised Valerie not to (PH.106). None of this evidence was resented to the jury.

46. Computer expert Marvin Dutton testified that from December 25, 2009-January 01, 2010, Valerie’s computer was used to do approximately twenty (20) internet searches, accessing websites containing information regarding what is required to convict someone of crimes against children, sexual abuse and misconduct toward a child, child abuse, adoption, and custody. Websites searched included CornellLaw.com, childwelfare.gov, LawInfo.com, and myoutofcontrolteen.com (T1.13-16, 23-24).

Examples of information on these websites are as follows: childwelfare.gov; penalties for false reporting of child abuse (Evidence item #23-A, Post-Conviction Relief Brief), grounds for involuntary termination of parental rights (Evidence item #23-B, Post-Conviction Relief Brief), myoutofcontrolteen.com; how to win a custody battle (Evidence item #23-C, Post-Conviction Relief Brief).

47. After the first trial in which this evidence was presented by the defense, the State used the OSBI to do an independent examination of Valerie’s computer to refute Mr. Dutton’s findings. The OSBI confirmed Mr. Dutton’s findings and further found that these websites and pornographic websites were viewed during the same timeframe of December 25, 2009-January 12, 2010, beginning eight (8) days before Valerie claims

(child) made disclosure [January 03, 2010] (Evidence item #15-A, Post-Conviction Relief Brief).

48. Valerie testified that Charles had no access to her computer for over a year prior to this time (T1.90). None of this evidence was presented to the jury.

49. Jessica Taylor (forensic interviewer) testified that (child)'s forensic interview (Evidence item #7, Post-Conviction Relief Brief) was conducted January 12, 2010 (T1.41-42).

50. The OSBI forensic report shows nine (9) instances of access to "www.redtube.com" which is a pornographic website in which videos depicting adults in sexual acts can be viewed. The only day that this website is accessed more than once is January 11, 2010 and is done so repeatedly over an eight (8) hour span of time from 12:25 p.m. to 8:36 p.m. Note: The report reflects the year as 2011. This is a typo that should read "01/11/10". The OSBI and the State of Oklahoma recognize this error. This is further corroborated by page 2 of the report which states that the computer was last used January 13, 2010 (Evidence item #15-A, Post-Conviction Relief Brief). 51 photographs similar to what can be viewed on this website can be seen in (Evidence item #16-B, Post-Conviction Relief Brief).

51. The OSBI report also reflects an internet search for "Amanda Monsalve" at 8:23 p.m. on this same evening. Note: The year should read "2010" as mentioned above.

Coincidentally, this search on www.myspace.com for "Amanda Monsalve" was done within minutes of pornography being viewed. Also, Valerie sent Amanda a message on myspace this very evening, laughing at Amanda and wishing Charles "good luck" because "he will need it". The subject line was "Hahahaha" and is marked (Evidence

item #2, Post-Conviction Relief Brief). Valerie admitted sending this message (PH.114). This places Valerie at the computer within minutes of pornography being viewed.

52. All of this evidence is consistent with Valerie potentially coaching (child) on January 11, for the interview the next day, with the aid of pornographic material. Valerie admits that she knew what was expected of (child) at the interview and Valerie “prepared” (child) for it (DH.15). Once Valerie was confident that (child) could remember dates and describe sex acts, Valerie sent the Myspace message to Amanda, laughing at she and Charles (Evidence item #2, Post-Conviction Relief Brief). This act alone suggests that Valerie wasn’t angry that her daughter had just been raped but rather spiteful for Amanda “taking [Charles]” and maliciously laughing that Valerie had won the very custody battle she had begun researching how to win just two weeks prior (Evidence item #23-C, Post-Conviction Relief Brief). None of this was presented to the jury except that Valerie had sent a Myspace message to Amanda.

53. Valerie claims that she learned of (child)’s sexual abuse on January 03, 2010 (T1.80-81). This date is confirmed by Charles Dyer (T1.49-51)(T3.138), Amanda Monsalve (PH.74)(T1.15-17)(T3.32-33), and Jan Dyer (T1.15) that this was the last day Charles saw (child)

54. The sexual abuse allegedly occurred just 24 hours prior on January 02, 2010 (Evidence item #7 Transcript pages 12, 20, 27, Post-Conviction Relief Brief).

55. Valerie testified that she reported the incident “the next day” [January 04, 2010] (PH.114)(T1.50-52, 80-81)(DH. 20)(T3.125). Yet no police report was made until five (5) days later on January 08 according to Deputy Seeley (T1.11-13), his affidavit

(Evidence item #17, Post-Conviction Relief Brief), and Valerie's police report (Evidence item #18 Post-Conviction Relief Brief).

56. Dr. Waters testified that DNA could be gathered from a rape victim up to 3 days after the rape, and damage to the vagina could be seen up to 7 days after the rape (T1.8-10)(T3.124). This gave Valerie 48 hours to seek medical attention for (child) to gather DNA evidence and 6 days to gather evidence a rape had even occurred. However, Valerie sought no medical treatment for (child) even though Valerie claims (child)'s vagina was red, swollen, and open (T3.75). By the time police were contacted January 08, 2010, there was still 24 hours to obtain evidence of recent sexual abuse (according to Dr. Waters T1.7), yet no medical exam was done until January 13, 2010, which was ten (10) days after alleged disclosure.

57. (child) claimed that Charles Dyer's pillows were white (Evidence item #7 pg 18, Post-Conviction Relief Brief). The search warrant executed on Charles' home specifically mentions that police sought to collect "Photographs of the interior area of the residence to be used to verify the disclosure of the victim ((child))" (Evidence item #6, Post-Conviction Relief Brief). Yet, the State claims that no photographs were taken of Charles' bedroom. Any taken would corroborate testimony of Deputy Seeley (T1.9), Lemons (T1.8) and the search warrant (Evidence item #6, Post-Conviction Relief Brief) that Charles had no white pillows.

58. Amanda Monsalve was present with Charles all day on the date (child) claims she was raped January 02, 2010. However, law enforcement never attempted to question Amanda, though she sat in the sheriff's office for eight (8) hours after Charles' arrest.

59. Jan and John Dyer were in their home during the times (child) allegedly was raped there during July, 2009, yet law enforcement never once even attempted to question either of them.

60. Valerie claims that (child) was absent from school the week of (child)'s disclosure January 04-8, 2010 (T1.80). School records prove (child) was only absent January 08 (Evidence item #14-A, Post-Conviction Relief Brief).

61. Valerie admits she could have taken pictures of the damage to (child)'s vagina but didn't. Also Valerie "didn't want to" record (child)'s disclosure (T1.88).

62. All of this evidence is unusual, unreasonable, or neglectful and indicative of foul play by Valerie and/or the State of Oklahoma.

63. The OSBI forensic examination (Evidence item #8 Post-Conviction Relief Brief) proves the following:

1. 2DE shows that all residents of the home had left skin cells (epithelial DNA) on Charles' and Amanda's bed. (child)'s skin cells were not present, though this is where the rape allegedly occurred. Deputy Lemons testified that the bed linens had not been recently washed (T1.7).

1. 2DS, 2GE, 2GS, and 3BS are all sperm or bodily secretions from Charles Dyer or Amanda Monsalve.

3. Dr. Waters testified that there would be bleeding after intercourse with a child of (child)'s age (T1.27-28). However, no blood or secretions belonging to (child) were found anywhere in the home.

4. No blood or secretions were found on the panties (child) had worn before,

during, and after alleged rape. Amanda testified that these panties were unwashed since alleged rape date (T1.16)(T3. 37-38). Deputy Lemons confirmed that (child)'s panties and pajamas were taken from the dirty clothes hamper (T1.8) and Valerie Dyer corroborates that (child) left clothes at Charles' home (PH.107).

64. Valerie Dyer was allowed to testify that Charles Dyer was angry about Valerie bringing a child into the world (T3.26), called (child) "cancer" in Valerie's stomach and punched her during pregnancy while being disgusted at Valerie's pregnancy (T3.25). Valerie testified that Charles faked being happy about the pregnancy while around others (T3.27, 31, 35), only rubbed Valerie's belly once during pregnancy (T3.28), and refused to allow her family to come to the hospital after (child)'s birth (T3.28-29). Valerie testified that Charles forced her to move to Tennessee because he was controlling, mean, and didn't want Valerie's family around (child) (T3.29-30). Valerie testified that Charles refused to help raise (child), cussed at Valerie over (child), and wouldn't hug or hold her (T3.31). Valerie testified that Charles was angry at Valerie for giving (child) attention and he neglected (child) (T3.32, 38). She testified that Charles told Valerie that (child) was in his way (T3.39, 51-53), had no interest in (child) (T3.40), controlled Valerie and didn't want Valerie around her family (T3.44-45), and even grounded Valerie from the phone for calling her family (T3.45). Valerie testified that Charles abandoned she and (child) in Oklahoma with \$126.00 (T3.47), never called to speak to (child) unless Valerie pushed the issue (T3.48-52), was angry that Valerie moved out of his parents' home, and he never sent money to help Valerie or (child) (T3.50).

65. No evidence was offered to support even one single claim Valerie made. On the contrary, (Evidence #25, Post-Conviction Relief Brief) proves that 7 of these 21

statements were completely false. Not even one of these statements had any bearing on the facts surrounding the case but they were allowed by the trial Judge.

66. The only evidence against Mr. Dyer is the testimony of (child) which, as shown in proof #8 and 9, is unworthy of belief. The only other evidence even presented is the medical exam in which the doctor admits does not prove sexual abuse even occurred. The court and the prosecutor allowed this prejudicial testimony because the evidence wasn't enough to prosecute Mr. Dyer at the 1st trial. This is a serious miscarriage of justice.

67. The following is an appellate proposition proving prosecutorial misconduct.

IV. Prosecutorial misconduct

i: Improper attempts to impeach defendant

1) The State attempted to improperly impeach Petitioner by making it appear Petitioner was giving conflicting statements about Valerie going to her boyfriend's house the weekend after Petitioner's arrest and whether or not an argument on December 20, 2009 had caused Valerie's boyfriend to end their relationship (T3.

150-151). Petitioner had no knowledge of whether or not Valerie was lying about going to Oklahoma City or if she were still in a relationship with her boyfriend even. Petitioner testified previously that Valerie had used this as a reason he couldn't see his daughter (T1.52). The prosecutor was very argumentative and insinuated that Petitioner was lying about Valerie's relationship ending because of the December 20 argument even though Valerie had, just days prior, testified that her relationship did, in fact, end shortly after this argument (T3.131). There was no reason in these insinuations and the State knew Petitioner's testimony was corroborated by their own witness.

2) The prosecutor became extremely argumentative and insinuated that Petitioner was lying about Valerie asking for child support after the disclosure was made. The prosecutor even starts to hand the transcripts to Petitioner but the court stops her (T3.152-153). The State then insinuates, during closing arguments, that Petitioner is lying about this and only now, bringing it up (T3.184). However, one year earlier, Petitioner does in fact, mention that he spoke to Valerie on January 6, 8, and 11, 2010 and that Valerie asked for child support on January 09, 2010. Petitioner was asked nothing about Valerie asking for money on January 06 (T1.51-52). The State insinuating that Petitioner was lying about speaking to Valerie about “daily activities” after the allegations, in light of Valerie’s own testimony corroborating this (T3.85), and trying to impeach over testimony that the prosecutor knew or should have known was actually accurate, were acts for impeachment in bad faith.

3) The state attempted to insinuate that Petitioner was lying about Valerie wanting a divorce while they lived in TN. in 2003-2004 because he had never mentioned it before (T3.148-149). Actually, Petitioner did testify previously that his marriage was great until “mid-2003” but no further inquiry was made by either the defense or the State into this arena to afford Petitioner the opportunity to elaborate (T1.12).

4) The Prosecution is absolutely incapable of impeaching Petitioner for a single statement concerning the facts surrounding this case. With the inability to do so, the State has attempted to insinuate that Petitioner has lied about that which there was no opportunity to testify about previously or testimony they well knew was true but thought could be used to create an appearance of untruthfulness. The jury saw these exchanges and no doubt gave the State’s argument great weight and are predisposed to believe that the prosecutors are telling the truth that Petitioner is being untruthful about Valerie’s relationship ending because of

Petitioner, Valerie not wanting to be married to Petitioner in 2003, and about Valerie asking for child support after reporting the sexual abuse. These insinuations, when added to Jury instruction #13, which states “Evidence has been presented that on same prior occasion the defendant and/or other witnesses made a statement inconsistent with their testimony in this case”, no doubt called Petitioner’s credibility into question. These arguments by the prosecutors were aimed to do exactly that, and were not done to bring truth to the trial but muddy the truth in bad faith.

5) This conduct is a violation of ABA Standard 3-5.7 (B) which states “A prosecutor should not use the power of cross-examination to discredit or undermine a witness if the prosecutor knows the witness is testifying truthfully” as well as ABA Standard 3-5.7 (d) which states “A prosecutor should not ask a question which implies the existence of a factual predicate for which good faith belief is lacking”. Impeaching questions should not be propounded to a witness unless they are based upon facts that the prosecutor intends to present in refutation of an adverse answer. Such questioning should be done in good faith and not for the purpose of prejudicing and arousing suspicions of the jury against the defendant [41]. The prosecutors acted in bad faith and aroused suspicion against the defendant over facts they knew to be contrary to their statements, which deprives Petitioner of a fair trial to be tried on facts and truth. In a case such as this, in which the State’s proof is conflicting and proof of guilt is not overwhelming, every small action can tip the scales from not guilty to guilty.

ii. Prosecutor made comments in violation of ABA standard 3-5-8.

A. (a) In closing argument to the jury, the prosecutor may argue all reasonable inferences from evidence in the record. The prosecutor should not intentionally misstate the evidence or mislead the jury as to inferences it may draw.

1) To discredit the defense theory, the state did its best to convince the jury that there were no issues with custody or the divorce. During closing arguments, the prosecutor states "...in July of 2009 Defendant shows up with paperwork, divorce, visitation, custody, child support; it's worked out. There were no issues. Valerie signed it." And then further states, "There's no evidence of any issue with visitation, no issues with custody, no issues really going on at that point in time, July to some time in August." (T3.183). This, however, is not what the testimony showed. Valerie Dyer, during direct examination, testified that she wasn't OK with the divorce and custody agreement, she didn't agree with it, and only signed it because petitioner threatened to "...take [(child)] from me if I didn't and so I signed it so [(child)] could live with me..." also saying Petitioner "would bring up the adultery and the drug use and --and I—I didn't want to lose my baby so I just signed the paper." (T3.59-60). The prosecutors also had the knowledge that Valerie had previously testified to arguments at this time, stating that she told petitioner that she would "do anything, including perjury" to keep petitioner from gaining custody of [(child)] (T1.72) as well as Valerie withholding visitation from petitioner over trivial matters (T1.37-38). This is compounded by petitioner's testimony that his fear that Valerie would follow through on this threat, as she had in the past (T3.130), was so strong that petitioner even recorded Valerie at this time to catch her lying in case she made false allegations again (T1.28). In this recorded conversation, which the prosecutor has heard, Valerie expresses her fear of losing custody and her willingness to lie in court to retain that custody (Evidence item # 1). By Valerie's own admission, she gave petitioner problems over seeing [(child)] (T3.145). These statements of the prosecutor are willful misstatements of the facts in an attempt to mislead the jury into believe Valerie had no motive to fabricate the allegations. The prosecutor even makes inferences that petitioner

is lying about his testimony and reiterates “Any evidence whatsoever from Valerie or any other witness that took the stand, including the defendant, that there’s real issue going on with the divorce or custody at that point in time? No.” (T3.184). The jury cannot simply rewind their memories, and when a prosecutor uses corrupt tactics such as this, there’s a real likelihood that the seed is planted, that is based on the jury’s expectation of the State’s truthfulness, that can tip the scales from not guilty to guilty. There’s a reason this conduct is not allowed and it’s the same reason the prosecutor said it; because it clouds the truth of the facts.

2) The prosecutor argues that Valerie is neither an adulterer nor a liar. During closing arguments, he contends: “Woman scorned? Where’s the evidence? Drunken, drug abusing, affair-having liar? Where is the evidence? The only evidence that you have of -- really any of that is the Defendant telling you that.” (T3.185). Stating later “...affair-having liar? No evidence.” (T3.190). As previously argued in Proposition II-C, Valerie gave several contradictory statements, and statements inconsistent with the facts of this case. Valerie also committed outright, blatant perjury over forty (40) times as shown in (Evidence item #25, Post-Conviction Relief Brief). Valerie even lied about her statements that she would lie (T3.109-111, 150, 153-154). Concerning adultery, Valerie admitted she committed adultery (T1. 68-69, 72) (T2. 65) (T3. 55, 111, 119). In a recorded conversation, Valerie not only admits to having an affair, but doesn’t deny that she lies all the time (Evidence item # 1, Post-Conviction Relief Brief) The evidence and the prosecutor’s knowledge of it, is that Valerie is, beyond any doubt whatsoever, an “affair-having liar.” The defenses’ theory is that Valerie is extremely untruthful and the evidence completely supports this. Once again, the State corrupted its truth and fact finding purpose and muddied the truth with willful and

blatant lies in an attempt to bolster the credibility of a key witness where the truth would leave that credibility seriously lacking. The truthfulness of Valerie Dyer is the hinge on which the jury decides whether she would coach (child) and lie about it in court. By the prosecution making these statements, once again, the jury is swayed to giving great considerations to the State's contentions and leans this hinge ever closer to the State's side.

3) The state argued that [(child)] never made accusations of anyone else abusing her, despite the fact she was given an opportunity to do so. At closing arguments, the State contended "...you heard Jessica say, "Has anyone else ever touched you like this? Anyone ever touch you in a way that's not okay?" "She did, she asked that." (T3. 216) This statement, though accurate on its face, is reliant on perjured testimony. Jessica Taylor testified to this (T3.55, 78-79) as claimed. However, (child) was never asked this in the video. The only question remotely similar was when Taylor asked "Has your dad done this to anyone else?"

(Evidence item # 7, Post-Conviction Relief Brief). The first time (child) is ever asked, "Has anybody else ever touched your body in a way that is not okay?" is during her testimony two (2) years and four (4) months after the interview, during the third trial which is more than enough time to solidly instill false ideas in a child. This misstatement of the evidence led the jury to believe that (child) excluded anyone else as a possible perpetrator years prior when the truth is that it was only days prior.

4) The prosecutor argued that petitioner felt no responsibility for his wife and child. "Tell me one time he said, "I felt a responsibility to my family. I felt a responsibility to my daughter." "When did ye tell you that?" "He didn't. Not once." (T3.190) There's no way to describe this except as a blatant lie to mislead the jury from the facts of the case and gain a little more prejudice against the petitioner. Petitioner clearly stated that he had a

responsibility not only to his Marines, but to his family as well. Further testifying that these two responsibilities conflicted (T3.116).

5) The prosecutor's argument is likely to have significant persuasive force with the jury.

The possibility that the jury will give special weight to the prosecutor's arguments are very likely. Though the State should have the freedom to present arguments logically and with vigor, they should not feel at liberty to lie or misstate the evidence as the prosecutors in this case have. The Supreme Court in *Berger v U.S.* [15] said that "While he may strike hard blows, he is not at liberty to strike foul ones..." It was also stated that intentional misstatement of evidence is particularly reprehensible. It has been long established that a lawyer may not knowingly assert a fact which has not been proved [16]. Either the State's case is grounded in facts or it's not. In this case it's not; prompting the State to lie about visitation, custody, divorce issues, Valerie Dyer's credibility, opportunity of (child) to name other perpetrators, and the petitioner's dedication to his family. These are very important facts on which this case is decided. Specifically regarding the misstatement of Valerie's credibility and issues surrounding the divorce, the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it's upon such subtle factors as the possible interests of a witness in testifying falsely that a defendant's life or liberty may depend [17].

B. (b) The prosecutor should not express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.

1) During closing arguments, the State implied that Petitioner and Amanda

Monsalve were lying about when they started dating by stating "[Petitioner] returns to

California, very interestingly just starts dating Amanda at that point in time? Really? Does it matter? Only if you're trying to evaluate who's being truthful. Is that reasonable to believe

there wasn't something going on before then?" (T3.183-184). The State never introduced one iota of evidence to contradict Petitioner or Amanda, but makes this comment to lower the credibility of defense witness's truthfulness to the jury, by baseless insinuation.

2) Prosecutor states that the petitioner is untruthful in testifying that Valerie "is a drunken, pill popping liar? By saying this testimony "wasn't true. It didn't happen. It wasn't an issue" (T3.185-186).

3) Prosecutor said that in order to believe (child) and Valerie are liars, you must believe (child) wasn't abused. Further stating "(child)'s not lying" (T3.215). This is a clear violation of conduct and bolsters (child)'s credibility with the jurors.

4) The prosecutor argued that there "was no question, [(child)] was sexually abused" (T3.188). This is an improper personal belief of the evidence. Dr. Waters clearly stated that sexual abuse was not definitive. This matter is for the jury to determine and the jury from the first trial obviously had doubt.

5) Prosecutor stated that the evidence that (child) was sexually abused is "uncontroverted" (T3.190) same as paragraph 4), this is for the jury to determine.

6) The prosecutor stated, "[[(child)] was sexually abused. She didn't fall down." (T3.215). This is not what Dr. Waters testified to, no one asked [(child)] or either parent if [(child)] ever suffered an injury, and this matter is for the jury.

7) Prosecutor stated "...it doesn't change the fact that [petitioner] has sexually abused his daughter." (T3.212) This is another clear violation as a personal belief of guilt and states to the jury that it's a "fact" which the jury is relieved from determining for themselves.

8) Prosecutor stated, “Petitioner’s guilty of this, and I ask that you find him so.” (T3.219)

This is yet another complete disregard for well established rules of conduct, in favor of conviction at all cost.

9) These comments made by the prosecutors are a form of unsworn, unchecked testimony that exploits the influence of the District Attorney’s office and removes the prosecutor from his role as an impartial truth seeker, replacing himself as a one-sided advocate. The U.S. Supreme Court has long held that this very conduct is not allowed [18]. The ABA recognizes the importance of the prosecutor being a minister of justice and not simply that of an advocate [19]. The prosecutors in this case have clearly gone outside of this acceptable realm and have wholly presented themselves as one-sided advocates. Valerie made this clear by letting slip that the prosecutors presented themselves to her as, in her words, “my attorney” and said they were working for her. (T3.105-106) Beyond the subject of one-sidedness, deciding whether or not the elements of the crime are met is wholly up to the jury and shouldn’t be tainted by such comments. “Improper suggestions, insinuations, and especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger v. U.S.* [15]. Prosecutors should refrain from expressing personal opinions [20]. The State has no right in the area of argument to supply the lack of evidence or make greater the weight of evidence [21]. These comments are also a violation of State Statutes [22]. Volunteering opinions as to the veracity of a witness’ testimony, as shown in paragraphs 1, 2, and 3, is improper and unprofessional [24].

C. (c) The prosecutor should not make arguments calculated to appeal to the prejudices of the jury.

1) During closing arguments, the State made comments aimed not at the facts of the case, but rather to appeal to the jury's sympathy and nurture the already well-inflamed passions against the petitioner by stating how tragically heart broken (child) is and how she'll have to live with what the petitioner did to her the rest of her life (T3.190) and asked the jury to serve punishment with the consideration of how emotional (child) was (T3. 219) during the guilt/innocence phase.

2) The prosecutor argued that petitioner loved his Marine family but didn't love his wife and daughter. "Tell me one time, one time he said, 'I love my family.' Tell me one time he said, 'I love my daughter.' He didn't do it." (T3.190). This was quite simply another attempt to compile prejudice and had no purpose toward proving the facts of the case.

3) Remarks calculated to evoke bias or prejudice should never be made in a court by anyone especially the prosecutor. These comments bias the jury against petitioner in an environment that naturally biases a jury against a defendant because it concerns the horrendous crime of child rape. These comments, while petitioner will concede may be proper in a sentencing phase, have no place in the guilt/innocence phase. In a case of this nature, with such little evidence, every improper statement builds up to a tipping point toward a guilty verdict.

These very comments could very well have caused the added emotional charge to a juror's sympathy for (child) and anger toward the despicable character the petitioner was wrongfully painted as. A prosecutor should not encourage jurors to let improper sympathy or sentiment influence their decision [20]. Arguments for sympathy have been consistently condemned by the Oklahoma Appellate court [23].

iii. The prosecutor allowed witnesses to lie and let perjured testimony to go uncorrected on fifteen (15) separate accounts, even regurgitating some of it in closing arguments.

1) Valery Dyer testified that she picked up (child) from petitioner's home the night disclosure was made [January 03, 2010]. (T3.72) She further testified that she went to the police to report the abuse "the next day" [January 04, 2010]. (T3.84) Police reports (Evidence # 18, Post-Conviction Relief Brief), police affidavits (Evidence item # 17, Post-Conviction Relief Brief), and prior law enforcement testimony of Deputy Seeley (T1 Tr.11-13), of which the State is quite aware, prove that no police report was made until January 08, 2010, five (5) days after (child) left petitioner's home and alleged disclosure. This is a critical fact of the case, as explained in (Evidence item #25 section A-I, Post-Conviction Relief Brief), that prove Valerie is lying under oath about the facts of the disclosure, yet the State not once attempts to correct this testimony. The failure to correct this testimony is a knowing and willful act on the part of the prosecution because it uncovers a situation in which every scenario leads to the same conclusion that Valerie is lying about the alleged disclosure.

2) Valerie testified that she hasn't discussed the sexual abuse with (child) since disclosure (T3. 91-92). However, the State had knowledge that Valerie was recorded previously stating that (child) gave "explicit" detail about the abuse, Valerie questioned (child) and even "interviewed" (child) numerous times. As the State was responsible for recording it cannot claim to have had no knowledge of this recording (Evidence item #13 Transcript page 17 and 29, Post-Conviction Relief Brief). This testimony was uncorrected by the State because it would raise suspicion that Valerie gave (child) mock interviews and coached (child) The State, in fact, directed Valerie not to question (child) as Valerie admitted (PH.106).

3) One of the issues of argument between Valerie and petitioner was that Valerie wanted to be in a relationship with petitioner but he refused to abandon Amanda. Valerie was irate

over this. When defense counsel questioned Valerie about her desire to be with petitioner after he came back with Amanda [December, 2009], Valerie stated, "I didn't want to be with him, but I was still in love with him". (T3.139) However, in the recorded conversation referenced in paragraph 2 (Evidence item # 13), Valerie clearly states that she was "devastated" at learning about Amanda and says, "I still wanted to be with you!" This testimony went uncorrected by the State because it would show Valerie as lying and would uncover another motive for Valerie to make malicious allegations.

4) On direct, Valerie stated that she volunteered to tell petitioner that she had committed adultery. Q: "Do you recall how it was that [petitioner] brought up the issue of adultery, as you've described it?" A. "Well, he never knew that -- I mean, that I told him that I was with someone and then he said, 'Well, that's adultery'." Q: "So you volunteered that information to him?" A: "yeah." (T3 Tr. 55). During cross Valerie is asked, "At first did you deny the relationship, period?" to which she answered, "No." (T3.119). This is contrary to the truth, though. Valerie had previously testified that she did in fact, lie to petitioner about it and even states that she denied it "maybe an hour" (T1.69). This testimony effects the jury's perception of credibility and character of Valerie, and puts in question her claim that petitioner abandoned she and [(child)]. This is why the State allowed this perjury to go uncorrected.

5) Valerie testified that, "I only did the drugs that one time and I told [petitioner]." (T3.111). However, Valerie admitted to leaving (child) at multiple residences while doing drugs when asked by the State (T1.33). The State allowed this testimony to go uncorrected as it would have lowered Valerie's credibility and character to the jury.

6) The defense attempts to question Valerie about disclosure asking, "...you told her you were going to get something to make it quit burning, correct?" Valerie replied, "I never said that". Q. "When you were talking to the State just a bit ago?" A. "No, I said sit down in the bathtub and maybe it would stop hurting." (T3.124). The fact however, is that Valerie said, "...I'll -- I'll get you something for it not burning." (T3.75). This contradiction would bring to the jury's attention that Valerie is not recalling actual events that occurred but rather making the story up as she goes. To show the truth of this, petitioner offers that over two (2) years six (6) months, four (4) separate times to testify, and written police reports, this is the first time anything is mentioned of getting something to stop it from burning. The State knew this would create doubt in the jury's mind, concerning the disclosure, and choose not to correct it.

7) The defense attempted to question Valerie concerning her uncle molesting her in her teens, causing her to move in with petitioner's parents while petitioner was in the Marine Corps. Valerie testified that she didn't move into the Dyer home and had no problem with her relatives (T3.149). However, previously Valerie stated that she left her family to move in to the Dyer's home. Further, she even admits that it was because of problems she had at home (T1.62). Though petitioner will concede that Valerie didn't specify the specific problems at home, the fact Valerie lied about this subject in whole, would go directly to Valerie's credibility to the jury. Once again, the State failed to correct this because of its accumulative harm to the State's case.

8) Valerie testified upon moving back to Oklahoma in September 2008, petitioner "wouldn't call very much" and never got on the phone to speak to (child) but spoke to (child) only at Valerie's suggestion (T3.48). At a previous trial, however, when asked this exact line of

questioning by the same prosecutor, Valerie testified that during this time, petitioner called “all the time” and said nothing of his reluctance to speak to (child) When asked, “Did he talk and communicate with (child) at this time?” she answered, “Uh-huh -- yes.” (T2.62). Both of these statements cannot be true. This testimony had one purpose only, and that was to bias the jury against an uncaring father for mistreating a poor, pitiful wife and mother, and not wanting contact with his child. The prosecutor knew, or should have know, this testimony was false and correct it, however, he allowed this.

9) As explained in detail in (Evidence item #25 section A-iii, Post-Conviction Relief Brief), Valerie gave conflicting testimony concerning (child)’s demeanor, statements, and actions on the alleged disclosure date. In the trial resulting in conviction, it is clear that Valerie’s perjured testimony was calculated to prejudice Petitioner, gain sympathy for a crying mother (T3.74), and patch the previous hole in the State’s case created by Valerie’s previous testimony, that nothing was wrong with (child) upon leaving Petitioner’s home (T1.46).

There is no way the State can argue that it was unaware of this perjury as the State possessed all evidence mentioned in (section A-iii). The prosecution was undoubtedly concerned that bringing these contradictory statements to the jury’s attention would horribly weaken the state’s case by causing concerns that the disclosure was contrived, show Valerie’s willingness to lie to convict petitioner, and show Valerie can cry while giving false testimony.

10) Valerie testified that in 2003, while living in Tennessee, her marriage and petitioner’s treatment of her was bad because, “(child) was in the way, he said, to do what he wanted to do”. (T3. 37). However, Valerie previously testified that the first time she had ever heard petitioner say comment like this was in early 2009 (T1.29). This went uncorrected and

would have placed doubt in the jury's mind that this comment was ever made and undermine Valerie's credibility, had it been corrected.

11) Valerie testified that she never attempted to have petitioner arrested after the sexual abuse allegations. (T3.147-148) This is untrue. Valerie reported to the police that petitioner was stalking her (Evidence item # 24-A, Post-Conviction Relief Brief) and even that he had vandalized her car twice (Evidence item # 24-C, Post-Conviction Relief Brief), while petitioner was on bail after the allegation. During a recorded conversation June 30, 2011, Valerie admitted to telling police that petitioner slashed her tires and further stated that she had run over something but failed to tell police petitioner wasn't the cause (evidence item # 13 Transcript page 28, Post-Conviction Relief Brief). Valerie also acknowledged that she filed a stalking complaint even though she never saw Petitioner and didn't believe he was stalking her (Transcript pages 2 and 11, Post-Conviction Relief Brief). As the State recorded this call, it's aware of this conversation. The truth of this matter would prove Valerie has no problem with using the legal system to attack petitioner and the state allowed this testimony to go uncorrected.

12) Valerie testified that Petitioner did not want to go to Iraq a second time in 2008 and made Valerie tell his command that she was having problems with seizures. When asked if the reason was actually because of problems Valerie was having, she replied "No, Sir" (T3.101). However, Valerie previously stated to the prosecutor that Petitioner was unable to deploy a second time to Iraq because Valerie was sick, having seizures and was afraid to be alone with (child), and asked Petitioner to try to stay home and help take care of she and (child) (T2.56-57). As this testimony was given to the same prosecutor that was at the third trial, the State knew this testimony was false. It was

calculated to paint Petitioner's character as a coward that would use his wife to lie to the military for his selfish desires. The State had nothing to gain by eliciting the truth and knowingly allowed this testimony to go uncorrected.

13) The prosecution asked Jessica Taylor if (child) was able to describe petitioner's "wiener" to which Taylor replied, "Yes, she was." (T3. 46). This is a lie as (child) never gave details concerning descriptors of petitioner's penis. The jury was led to believe that (child) gave specifics regarding traits of petitioner's penis which, no doubt, would be strong and persuasive evidence of guilt. Not only was this uncorrected, it was solicited by the State.

14) Taylor stated, "[child] talked about her dad would take spit from his mouth and he would rub it onto his wiener before putting it inside of her bo-bo". And then reiterated that [(child)] said her father did this to her (T3.48). This dialogue was never once stated in the interview or in court testimony. But this testimony helped the prosecutor and gave the jury another statement to ponder concerning (child)'s ability to describe accurate sexual acts, so the State solicited it and let it go uncorrected.

15) Taylor states that she asked (child) if someone else had abused her and (child) answered, "No". She states that this is part of the "alternative hypothesis" procedure and (child) was given the opportunity to answer this question (T3.55, 78-79). This is completely false. (child) was asked only, "Do you know if your dad has ever done this to anyone else?". Never is (child) asked if someone else abused her until two (2) years, three (3) months later. Not only is this an absence of part of the interviewing procedure, the testimony goes uncorrected, and then the prosecutor argues this false testimony in closing arguments (T3.215).

16) This isn't just one or two simple instances of overlooking a minor detail. This perjured testimony involved **Paragraph 1:** The inconsistencies surrounding Valerie's perjury concerning disclosure date and reporting of abuse to police. **Paragraph 2:** Valerie's untruthfulness about giving (child) mock interviews and discussing abuse details.

Paragraph 3: Valerie's motives to fabricate charges. **Paragraphs 4, 5, & 7:** Valerie's credibility and character. **Paragraphs 6 & 9:** Valerie's perjury concerning (child)'s demeanor and mood, leaving petitioner's house and events transpiring at this time and upon returning home. **Paragraphs 8, 10 & 12:** Valerie's lies to gain sympathy for the State and prejudice against petitioner. **Paragraph 11:** Valerie's use of law enforcement to wrongfully harass petitioner. **Paragraphs 13, 14, and 15:** Perjury by the forensic interviewer to sway the jury into believing statements that were never made.

17) A State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction. This is implicit in any concept of ordered liberty [25]. The prosecutor has a duty to correct false evidence when it's offered [17]. As mentioned in A-5, the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interests of the witness in testifying falsely that a defendant's life or liberty may depend [17]. It's the prosecutor's duty to place foremost in his hierarchy of interests the determination of truth [26] which petitioner contends that the prosecutor in this case failed to do. In *Mooney v. Holahan* [27] the court said that "when a conviction is obtained by the presentation of testimony known to prosecuting authorities to have been perjured, due process is violated. The clause cannot be deemed to be satisfied by mere notice of hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty

through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance ... is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.” In U.S. v Agurs [28] the court stated, “...if the prosecutor knew or should have known that testimony given to the trial was perjured, the conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.” Petitioner asserts his right to due process under the Fourteenth (14) amendment of the U.S. Constitution and contends that the prosecutor’s conduct is a perversion of the adversarial system and destroys the trial’s ability to produce just results. Petitioner asks the court to overturn his conviction on the aforementioned authorities unless the State can prove the misconduct to be harmless beyond a reasonable doubt [29].

DESPITE FORTY-FIVE (45) ACTS OF PERJURY, DISTRICT ATTORNEY JASON HICKS REFUSES TO PROSECUTE VALERIE DYER AS THE LAW DEMANDS, PROVING CORRUPTION IN THE OKLAHOMA JUDICIAL SYSTEM.

Oklahoma State statute title 21 Chapter 17 Section 491 defines perjury as “whoever, in a trial, ...makes... a statement under oath ... that a statement is true, when in fact the witness ... does not believe that the statement is true or knows that it is not true or intends thereby to avoid or obstruct the ascertainment of the truth, is guilty of perjury?.

Section 496 states “Whoever, in one or more trials, ... makes or subscribes two or more statements under oath, ... when in fact two or more of the statements contradict each other, is guilty of perjury.”

Section 498 (c) states “In a prosecution for perjury by contradictory statements, as defined in 496 of Title 21, it is unnecessary to prove which, if any, of the statements is not true.

Section 500 (1) states “When committed on the trial of an indictment for felony, [Perjury is a felony subject to] imprisonment not less than two (2) years nor more than twenty (20) years”.

Evidence item #25 Post-Conviction Relief Brief proves that Valerie Dyer committed forty-five (45) acts of perjury throughout her testimony.

Jason Hicks, however, has refused to charge Valerie because her lies helped convict Charles Dyer. This is proof of the corruption within the Oklahoma “justice” system and compromises the confidence of the people in the courts. Jason Hicks himself should be punished by imprisonment or, at minimum, removed from office for this reprehensible behavior.