

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

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JAN 20 2016

TIM RHODES  
COURT CLERK

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STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
v. )  
)  
DANIEL K. HOLTZCLAW, )  
)  
Defendant. )

Case No. CF-2014-5869

**MOTION FOR NEW TRIAL OR,  
ALTERNATIVELY, FOR EVIDENTIARY HEARING**

COMES NOW the Defendant, Daniel Ken Holtzclaw, by and through his attorney R. Scott Adams, and in accordance with 22 O.S. §§ 952 and 953 respectfully moves this Court for a new trial in this matter or, alternatively, an evidentiary hearing to determine whether discovery was withheld from the defense containing potentially exculpatory or impeachment evidence and in violation of direct government representations to the contrary.

**ARGUMENT**

DANIEL HOLTZCLAW WAS DENIED A FAIR TRIAL BECAUSE THE GOVERNMENT MADE DELIBERATE DISCOVERY VIOLATIONS AND MISREPRESENTATIONS, UNDERMINING CONFIDENCE IN THE VERDICT

Title 22, section 952 of the Oklahoma Statutes states in relevant part:

A court in which a trial has been had upon an issue of fact has power to grant a new trial when a verdict has been rendered against a defendant by which his substantial rights have been prejudiced, upon his application in the following cases only:

. . . . Seventh. When new evidence is discovered, material to the defendant, and which he could not with reasonable diligence have discovered before the trial . . . , and that the facts in relation thereto were unknown to the defendant or his attorney until after the trial jury in the case was sworn and were not of record.

22 O.S. § 952. Section 952 provides further,

When a motion for a new trial is made on the ground of newly discovered evidence, the defendant must produce at the hearing in support thereof affidavits or witnesses, or he may take testimony in support thereof as provided in Section 5781,<sup>1</sup> and if the time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as under all the circumstances of the case may seem reasonable . . . .

*Id.*

The newly discovered evidence in this case, discussed further below, reveals that the government may have failed to disclose material evidence. Under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” For a *Brady* violation to have occurred, the “evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching...and prejudice must have ensued.” *Stickler v. Greene*, 527 U.S. 263, 280 (1999). In addition, the evidence must be material to guilt. *See Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1987). “Evidence is material ‘only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” *Id.* “A reasonable probability of a different result is...shown when the government’s evidentiary suppression ‘undermines confidence in the outcome of the trial.’” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985)).

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<sup>1</sup> Section 5781, referenced in this statute, is now Title 22, section 494 (apparently section 952 was not updated to reflect this change).

The newly discovered evidence here is a Facebook post, posted by ██████████ Detective for the Oklahoma City Police Department, after the jury verdict in this case, stating that he was “a detective who assisted in parts of this investigation” [referring to Mr. Holtzclaw’s case] and making statements revealing that there is evidence that was withheld from the defense by the government. Specifically, ██████████ stated that

- (1) “several [women] who came forward were found to be liars who were looking for their piece of pie”; and
- (2) “DNA evidence from several of the victims was found in his car AND HIS PANTS.”

See Exhibit 1, attached.

If ██████████ statements are true, this potentially exculpatory evidence was withheld from the defense, despite the government’s repeated promises on the record that the defense had been given every piece of evidence in this case. First, the defense had been told specifically and on the record that all individuals, male and female, who made allegations against Mr. Holtzclaw had been disclosed to the defense. Second, the State’s witnesses testified under oath that there was only one individual’s DNA found anywhere during forensic examination of any material – car, pants, or otherwise, and that belonged to victim ██████████ ██████████ – found on Mr. Holtzclaw’s pants.<sup>2</sup> Third, ██████████ name does not appear in any discovery materials provided to the defense.

Corroborating Detective ██████████ statements that there is other evidence out there that had not been provided, is the statement of one juror who gave an interview to KOCO-TV

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<sup>2</sup> And the record will show that the government’s DNA expert testified that ██████████ DNA could have arrived there simply by any contact that Mr. Holtzclaw may have had with ██████████, including a search of her purse.

who said, “[A]fter the fact, when we got to speak to the judge and speak to the detectives, and you know, and speak to other people, you know they told us other stuff that wasn’t actually in evidence that confirmed what was going on . . .” See Exhibit 2, attached DVD of juror interview, at 00:10:12. It is unknown which detectives spoke to the jurors and what they said, but the juror’s statement corroborates [REDACTED]’s representation that there is evidence out there that was not given to the defense.

If there is additional DNA evidence despite the government’s representations to the contrary, and if there are additional people who came forward and falsely claimed that they were victims – yet for whatever reason their stories were withheld from the defense despite representations under oath that their stories did not exist – then deliberate misrepresentations were made not only to defense counsel but to the Court, calling into question the credibility of the government’s entire case. Such reckless discovery violations and misrepresentations to the court undermine confidence in the fairness of Mr. Holtzclaw’s trial.

The identities of every person who came forward to accuse Mr. Holtzclaw of rape was critical to the defense’s need to determine whether and how the alleged victims knew each other and whether there was evidence that collusion was occurring among the victims. In addition, part of the defense theory was that the police led the victims into a version of events that fit a pre-determined *modus operandi*. How these false accusers were handled, and if the police tried to lead them to a different story than the one offered, is material to the defense.

The defense theory was that interviewing officers led accusers into stories that matched AVL and radio traffic from Holtzclaw’s vehicle. Did an accuser become a “victim” because they were able to be led by police into a story that fit neatly into the government’s theory? The defense was given no opportunity to interview these people and no opportunity to cross-

examine officers regarding these stories. Furthermore, these unknown accusers' statements could contain exculpatory evidence. We simply cannot know without being told their identities and being given their statements. If there were more accusers who came forward who were determined to be unbelievable because their stories did not match the AVL and radio traffic, and if those determined to be true victims were so labeled only after being led into stories that matched AVL and radio traffic, this bolsters the defense's theory that the "approved" victims were also making up their stories – they were just more easily led by investigators.

The significance of the presence of multiple victims' DNA in Mr. Holtzclaw's vehicle and pants is that it undermines the reliability and credibility of the DNA testimony elicited at trial. DNA evidence was critical to the jury's decision, according to the juror interviewed. *See* Ex. 1 at 00:08:03. What DNA was discovered and where, how it was handled, and how this evidence could have impacted the DNA evidence that was presented, is critical to effective cross-examination of the government's DNA expert. That this evidence was withheld (if [REDACTED] statements are correct) undermines confidence in the verdict. The undisclosed evidence raises a reasonable probability that Mr. Holtzclaw was not given a fair trial, and relief is warranted as a result.

### CONCLUSION

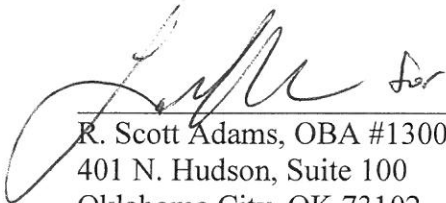
Counsel specifically reserves the right to raise other issues on appeal of this matter and, in reliance on *Runnels v. State*, 1995 OK CR 27, 896 P.2d 565, 565, has chosen to file the issues contained in this motion at this time without waiving the right to raise additional issues on appeal.

The statements made by [REDACTED] and the juror indicate that evidence was in fact withheld that undermines confidence in the fairness of this trial. Accordingly, a new trial

should be ordered. At a minimum, Mr. Holtzclaw respectfully **requests a hearing** to determine the truthfulness of [REDACTED] statements, what additional evidence exists that was not disclosed to the defense counsel, and whether any evidence withheld was material exculpatory or impeachment evidence.

Respectfully submitted,

ADAMS & ASSOCIATES, P.C.



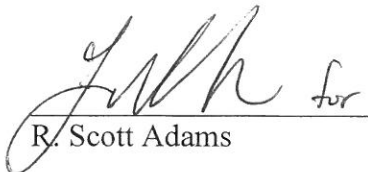
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ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that on the 20th day of January, 2016, a true and correct copy of the above was hand delivered to:

Oklahoma County District Attorney's Office  
320 Robert S. Kerr, Suite 505  
Oklahoma City, Oklahoma 73102



R. Scott Adams

