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Motion to Permit Appellant to Personally Review Sealed Documents Under Supervision (filed August 13, 2026)

Twelve-page motion filed in the Oklahoma Court of Criminal Appeals, No. F-2016-62, asking that Mr. Holtzclaw be allowed to read, under supervision, the sealed transcripts of the two-day closed hearings held in June 2017 concerning the testimony of the State's DNA analyst. The motion does not ask the Court to unseal anything. As of this kit's date, the Court has not ruled.

Source: Public filing, Oklahoma Court of Criminal Appeals.



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,

Appellant,

Vs.

THE STATE OF OKLAHOMA,

Appellee.

Appellate Case No.

F-2016-62

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 13 2026

SELDEN JONES
CLERK

**MOTION TO PERMIT APPELLANT TO PERSONALLY
REVIEW SEALED DOCUMENTS UNDER SUPERVISION**

Counsel for Appellant Daniel K. Holtzclaw respectfully requests that this Court permit Mr. Holtzclaw to personally review, under supervision and on the conditions set out below, sealed documents this Court has previously authorized counsel, Appellant's retained experts, and his accompanying co-counsel, to review. Specifically, counsel requests that Mr. Holtzclaw be permitted to review the sealed 2017 transcripts of the two-day secret hearings from which this Court acknowledged Mr. Holtzclaw and his appellate counsel were improperly excluded. Appellant does not ask this Court to unseal any documents at this time.

PROCEDURAL POSTURE

Mr. Holtzclaw was convicted of various offenses in Oklahoma County District Court, Case No. CF-2014-5869. On August 1, 2019, his convictions and sentences were affirmed on direct appeal. *Holtzclaw v. State*, 2019 OK CR 17, 448 P.3d 1134. He is presently pursuing post-conviction relief under 22 O.S. § 1080 *et seq.* in the District Court of Oklahoma County.

On May 4, 2017, the State filed under seal a motion to remand for an evidentiary hearing concerning issues attendant to the testimony of an expert witness, together with accompanying exhibits. This Court granted the motion on May 30, 2017, and entered an interim protective order. The evidentiary hearing was held before the District Court on June 26 and 27, 2017. Neither

Neither Appellant nor his counsel was present. The district court interpreted this Court's remand order for an in camera hearing such that notice and presence of the defendant and his counsel were denied. This Court acknowledged that defense counsel "should have had the opportunity to participate fully" in that hearing. [Order Granting Motion to Unseal Documents and Setting Briefing Schedule, June 8, 2018, p. 3]

On June 8, 2018, this Court ordered the transcripts and exhibits to remain under seal, approving the District Court's determination that certain material filed in this case consists of personnel records protected by 51 O.S.Supp.2014, § 24A.7(A)(1), which this Court determined are subject to disclosure only at the discretion of the City of Oklahoma City.

Beginning in March 2025, when current counsel first made his appearance, this Court has entered a series of orders denying unsealing but granting supervised review of some or all of these materials by defense experts and/or co-counsel. By orders of April 7, 2025, May 20, 2025, and May 29, 2025, the Court granted current counsel of record review under the supervision of the Marshal of this Court. By order of August 13, 2025, the Court granted review by this counsel accompanied by a DNA expert, Michael J. Spence, Ph.D. By order of November 14, 2025, the Court granted this counsel review of additional sealed items. By order of March 25, 2026, the Court granted review by this counsel and Appellant's retained forensic scientist Dr. Brent E. Turvey. By order of June 10, 2026, the Court granted review by counsel accompanied by Oscar Michelen, Esq.

Four individuals have now examined some or all of these materials at request of current counsel under the supervision of the Marshal of this Court. Mr. Holtzclaw has never reviewed any of them. While counsel and its experts have had this opportunity, Mr. Holtzclaw and Mr. Holtzclaw's counsel cannot properly strategize and advocate next steps without Mr. Holtzclaw

having access to the sealed materials and having the ability to confer regarding the sealed material with counsel and his experts.

ARGUMENT AND AUTHORITY

This Court has determined, repeatedly, that the materials identified above remain sealed under 51 O.S.Supp.2014, § 24A.7(A)(1). Appellant does not ask the Court to disturb those determinations, and nothing in this motion depends on this decision being reconsidered. The confidentiality interest the seal protects has already been reconciled with supervised inspection. What remains is a question about the terms of an access regime this Court has established, not about whether the material itself may be inspected.

For the same reason, the observation appearing in this Court's orders of April 7, 2025, May 20, 2025, and August 13, 2025 — that Appellant has not asserted the materials were released by the City of Oklahoma City or that he has requested their release — does not bear on the relief sought here. The City's discretion under § 24A.7(A) governs public disclosure. It does not govern the terms on which this Court permits supervised judicial review of materials in its own custody, which the Court has authorized on a total of five occasions without reference to the City's position. The Court has authorized five such reviews in whole or in part without any prior release by the City, and none is required for a sixth.

What the Court now has to reconcile is how to balance the alleged privacy interests of the City of Oklahoma City in keeping these records confidential with the Constitutional rights of Mr. Holtzclaw to (a) meaningfully participate in his own defense and (b) have his lawyers be able to zealously advocate on his behalf which cannot be done and should not be done without his meaningful participation. Having already decided that the defendant and his counsel should have

been allowed to participate at the hearing, this Court should not limit access to the transcript of that hearing and its exhibits to counsel alone. Mr. Holtzclaw needs equivalent access.

I. Appellant possesses experience and knowledge that counsel and the retained experts do not which may assist in his defense.

The hearings of June 26-27, 2017, concerned the collection, handling, custody, and analysis of forensic evidence taken from Appellant, his clothing, and his patrol vehicle in 2014, and the internal review of the analyst's work and testimony in this case regarding that evidence. Additionally, government witnesses testified about events and observations regarding Mr. Holtzclaw's trial. Counsel and the retained experts can evaluate the laboratory record and legal and procedural issues regarding the conduct of the secret proceedings. They cannot evaluate the events that preceded it. They have no firsthand knowledge of the events of June 17-18, 2014, which preceded the complainants' allegations. Nor do they have firsthand knowledge of the trial.

Where the sealed testimony describes events that occurred at trial, such as discussions that allegedly occurred between defense DNA expert Brandt Cassidy and defense counsel Scott Adams (Brief of Appellee at 43, *Holtzclaw v. State*, No. F-2016-62 (Okla. Crim. App. filed Oct. 1, 2018), its accuracy is a question of fact on which Appellant is a percipient witness and no person who has reviewed the record is. Moreover, the appellant has direct and heightened knowledge of Oklahoma City police procedures, policies, and culture which are relevant as evidence handling; DNA transfer; and police protocol were all subjects of the ex parte hearing testimony and exhibits.

II. Counsel's access is not Appellant's access.

Neither the Supreme Court nor Oklahoma treat participation by counsel as a substitute for the participation of the defendant, the person whose Constitutional rights and liberty interests are most at stake.

The Supreme Court of the United States has held that the Constitution prohibits government practices and policies that violate precepts of fundamental fairness and due process even if they do not violate specific guarantees located in the Bill of Rights. *See, e.g. In re Winship*, 397 U.S. 358 (1970)(despite the absence of a specific constitutional provision requiring proof beyond a reasonable doubt in criminal cases, such proof is required by due process); *Hicks v. Oklahoma*, 447 U.S. 343 (1980)(where sentencing enhancement scheme for habitual offenders was found unconstitutional, defendant's sentence cannot be sustained, even if sentence falls within range of unenhanced sentences).

Whether rooted directly in the 5th and 14th amendments' right to due process and a fair trial, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. That includes a right to view evidence and material possessed by the government. *See, United States v. Diaz*, 2013 U.S. DIST. LEXIS 12465 (No. Dist. Oklahoma 2013). In *Diaz*, the Northern District of Oklahoma held that the government could not exclude a defendant from viewing certain evidence it had made available to the defendant's lawyer. *Id.* at *6.

In *Diaz*, a protective order was entered into which authorized the disclosure to defense counsel of investigative materials including recordings of court authorized wire communications, transcripts of intercepted wire communications and related documents. The documents and items provided consisted of 618 pages of documents and four audio CDs which contain audio and data. *Id.* at 2. The protective order, however, prevented defense counsel from disseminating the materials and required defendant's counsel to maintain complete custody and control over the documents which prevented counsel from leaving any materials at the jail with the defendant to enable him to review and study them without counsel being physically present during the review.

Id. The government stated this protection was necessary as some of the witnesses had been threatened with violence; had been harmed; and had been intimidated to not testify. *Id.* at 4.

The defense argued that the protective order was overbroad and that the defendant needed to have his own access to the material in order to meaningfully prepare in his defense. The District Court, citing *U.S. v. Garcia*, 406 F.Supp.2d 304 (SDNY 2005), ruled that the issues presented in the case should be decided based on the content of particular documents, not based on generalities or abstract principles. *Id.* at 5. Since the parties had not raised specific objections or demands as to particular documents, the Court ordered that parties to meet and confer and return to court if there was disagreement as to specific items. *Id.* at 6.

In *U.S. v. Garcia*, the government sought a protective order which, *inter alia*, prevented the defendant from taking into prison with him discovery material provided by the government to his defense team. In ruling that this provision was overbroad, the District Court held: Defendants have a right to participate in their defense. Moreover, defense counsel needs to be able to consult with their clients about the nature of the prosecution's expected proof. Often, the defendants alone possess information that may be critical in refuting the Government's evidence, or in discrediting expected prosecution witnesses. Defense counsel must thus be free to communicate freely with their clients, and to discuss with them the anticipated testimony against them. *Id.* at 305. The court held that the order was overbroad in some respects and held that defense counsel could leave certain material (especially that which only referred to law enforcement officers) with the defendant. *Id.* at 307.

Here, there is no threat to any witnesses and no lay witnesses involved whatsoever. The only reason the material is protected is because the Court found them to be "personnel records." But this Court has already determined that the defense should have access to the materials, so it

should also permit the defendant to view it and to confer with counsel while in possession of the documents so that he may meaningfully participate in his defense. The sealed materials are records of Ms. Taylor's professional work, compiled after she retired, which examine how she performed her job as a government forensic analyst. Other sealed materials include motion practice and arguments of the State and counsel surrounding access to the material. None concerns her medical history, her compensation, her retirement benefits, or any personal identifying information. Mr. Holtzclaw would argue that the State has a low privacy interest in keeping these types of records from Mr. Holtzclaw.

As suggested in *Diaz* and *Garcia*, the parties should be able to meet and confer to come up with a system that gives that access. The parties can certainly enter into a protective order prohibiting Mr. Holtzclaw from sharing the material with anyone other than members of the defense team.

This Court noted the distinction between allowing defense counsel to have access to material and the defendant having a right to be present in *Van White v. State*, 1999 OK CR 10, ¶¶ 30–31, 990 P.2d 259, 264–65, where the trial court, both counsel, and the county sheriff agreed to proceed in the defendant's absence. The Court held the arrangement erroneous notwithstanding counsel's consent, declining to presume waiver absent a record of consultation with the defendant himself. *See also Clark v. State*, 1986 OK CR 65, ¶ 9, 718 P.2d 375, 377.

Appellant does not ask this Court to revisit the June 2017 proceeding at this time. He observes only that the interest Oklahoma law protects — the affected person's own opportunity to be heard on matters concerning him — is not served by counsel's access alone.

The same distinction governs the statutory consequences here. Section 1086 of Title 22 forecloses claims not raised in an original or amended application. That preclusion operates against

the applicant personally. The State may not simultaneously charge Appellant with the consequences of claims unraised and deny him access to the record in which those claims reside.

III. There will be no later opportunity.

Under 28 U.S.C. § 2254(e)(2), a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state-court record where the failure to develop that record is attributed to the prisoner, and the ineffectiveness of state post-conviction counsel is so attributed. *Shinn v. Ramirez*, 596 U.S. 366, 382–83 (2022). Whatever Appellant does not contribute to the state record now, he cannot contribute later. Having been excluded improperly once before from participating and being heard during the 2017 secret *ex parte* hearing, this proceeding is the only forum in which his knowledge of these events can enter the record at all.

IV. Appellant cannot be produced, and the requested terms are more restrictive than those already in force.

Appellant is confined outside Oklahoma pursuant to the Interstate Corrections Compact. He remains subject to the jurisdiction of the courts of this State, and the receiving jurisdiction holds him as agent for Oklahoma. His production in Oklahoma City for the purpose of reviewing documents would require interstate transport at substantial public expense and to no purpose that a supervised session at his place of confinement would not equally serve. Also, due to the volume of issues and expert evidence involved, it is unlikely that counsel and the defendant could complete their need to confer and strategize in a single visit.

The issue in this case - whether it is sufficient due process for the defense attorneys and experts to view the subject “personnel” material or whether depriving an incarcerated defendant his own copy violates due process and his right to participate meaningfully in his defense appears to be a case of first impression in this District. The closest analogous situation would be a defendant’s right to view other forms of protected materials.

Congress has addressed the analogous problem in the most restrictive evidentiary category the criminal law recognizes - child sexual material. Under 18 U.S.C. § 3509(m)(2)(B), which deals with child pornography, material whose reproduction is itself criminal, is deemed reasonably available where the government affords ample opportunity for inspection at a government facility “by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.” The defendant is named first, coequal with counsel and experts. Courts applying the provision ask only whether the conditions of access afford ample opportunity in fact. *See United States v. Knellinger*, 471 F. Supp. 2d 640, 650 (E.D. Va. 2007)(ordering government to produce to the defendant himself a mirror image copy of defendant's hard drive, finding that due to defendant’s arguments, a copy to counsel and his expert was not enough of an “ample opportunity” and noting that "whether there is ample opportunity for inspection, viewing, and examination is a factual issue that must be resolved on the record in each case") .

While we are not dealing with child sexual material in this case, we are dealing with records that are otherwise protected from photocopying and duplication, and which pertain directly to issues in Mr. Holtzclaw’s case. Even counsel is only allowed to view the records related to the secret proceeding; they cannot take screenshots or copy the documents. Mr. Holtzclaw, however, should be given a copy so that he can have an “ample opportunity” to participate in his defense.

If supervised inspection by the defendant himself is compatible with due process that interest, it is compatible with the discretionary confidentiality interest in the personnel records of a public law enforcement employee who retired in February 2017 — records that were furnished to “multiple outside entities” including the American Society of Crime Laboratory Directors as a matter of accreditation routine; to the Oklahoma County District Attorney on an assessment that they might contain *Brady* or *Giglio* material; and to counsel for the City in pending civil litigation.

Applicant's Motion for Clarification (corrected title), Holtzclaw v. OK (F-2016-62) June 11, 2018.

The district attorney and municipal counselor both participated in the secret hearings from which Appellant and his counsel were, as this Court acknowledged, improperly excluded and to which they should have been given notice and access.

Oklahoma law asks the same proportionality question. Access may be restricted only where “there is no less restrictive means, such as redaction, available.” *Sloan*, 1998 OK CR 56, ¶ 21(2). This Court’s own rule directs that materials not be sealed “when a reasonable redaction will adequately resolve the issue.” Rule 2.7(E), *Rules of the Court of Criminal Appeals*, Title 22, Ch. 18, App. (2026).

Appellant proposes the following arrangement, which requires no order directed to any official outside this State and leaves custody of the sealed material in the hands of an officer of this Court or of counsel of record at all times:

1. The Marshal of this Court to prepare a single working copy, sequentially paginated and marked on each page as sealed confidential material subject to this Court’s protective orders;
2. That copy released to counsel of record on signed receipt, counsel to retain sole personal custody of it at all times and to permit no person other than he or his accompanying co-counsel to take possession of it;
3. Review to occur during a private legal visits at Appellant’s place of confinement, with counsel or co-counsel present throughout and the material remaining in counsel or co-counsel’s physical control, or in the alternative, during contemporaneous private video conferences between Appellant and counsel or co-counsel or the relevant expert;
4. No copies, photographs, reproductions, recordings, transmissions, or electronic media of any kind;

5. Appellant to execute, before any review, a written acknowledgment that he is bound by the same prohibition on public disclosure or distribution that this Court imposed on counsel and the retained expert by its order of August 13, 2025;
6. The working copy returned to the Marshal as agreed upon by parties, counsel to file a certificate identifying the dates and duration of each review session and certifying that no copy or portion of the material remains in any person's possession.

V. Custody of the materials.

The following is stated for the Court's convenience in directing where review shall occur. According to docket entries, the bound record, transcripts, exhibits, and six sealed envelopes — including the original and two copies of the transcript of the June 26–27, 2017 hearing — were withdrawn from this Court and delivered to the District Court of Oklahoma County on October 25, 2019, as reflected in the receipt filed that date and docketed in this Court on February 26, 2025, around the time counsel first inquired about reviewing the sealed materials. Pursuant to this Court's order of March 25, 2026, the transcript was delivered to this Court on April 21, 2026, as reflected in the receipt filed in the district court that date. It was returned to the Court Clerk of Oklahoma County on July 20, 2026, as reflected in the receipt filed that date.

Appellant accordingly requests that the Court enter such transmittal directions as it deems appropriate in order to grant Appellant the same permission to review the sealed hearing transcripts as granted previously to counsel and his retained experts.

VI. Preservation.

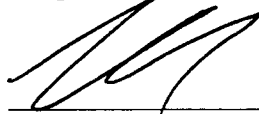
Appellant asserts, and preserves for further review, that denial of personal access on the terms proposed would deprive him of due process of law under the Fourteenth Amendment to the United States Constitution and Article II, §§ 7 and 20 of the Oklahoma Constitution, and would

render Oklahoma's post-conviction procedures fundamentally inadequate to vindicate the rights conferred by 22 O.S. §§ 1080–1089 within the meaning of *Osborne*, 557 U.S. at 69.

CONCLUSION

WHEREFORE, Appellant respectfully requests that this Court enter an order permitting Daniel K. Holtzclaw personally to review the sealed documents previously made available to counsel and to Appellant's retained experts, on the conditions set out in Part V above or on such other conditions as this Court deems appropriate; and grant such further relief as the Court deems just.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the date of filing of the above and foregoing instrument, a true and correct copy of the same was delivered to the Office of the Attorney General of the State of Oklahoma.



Benjamin Munda, OBA No. 31661