

In the Supreme Court of the United States

No. 22-7466

RICHARD E. GLOSSIP,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

ON WRIT OF CERTIORARI TO THE OKLAHOMA
COURT OF CRIMINAL APPEALS

**AMENDED MOTION OF THE VAN TREESE FAMILY FOR
LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS
CURIAE AND FOR DIVIDED ARGUMENT**

Pursuant to Rules 28.3, 28.4, and 28.7 of this Court, amicus curiae victim family members Derek Van Treese, Donna Van Treese, and Alana Mileto (“the Van Treese family”) respectfully amend their previously filed motion for leave to participate in the oral argument. The family now requests five minutes of the thirty minutes of argument time that the Court has provided to the Court-appointed amicus defending the judgment below. The family will present a pivotal argument in support of the judgment below not presented by the Court-appointed amicus. While the Court can affirm the judgment below based on Court-appointed amicus’ arguments (both on lack of jurisdiction and the merits), the Court will benefit from receiving an additional outcome-determinative argument from the Van Treese family.

BACKGROUND

Amicus Van Treese family is aware that amicus participation in oral argument “will be granted only in the most extraordinary circumstances.” Extraordinary circumstances exist here—as the Court has previously recognized in appointing an amicus curiae to defend the judgment below.

In this case, nearly two decades ago Glossip was sentenced to death for murdering Barry Van Treese. After the Oklahoma Court of Criminal Appeals rejected Glossip’s fifth successive petition challenging his death sentence, he filed a certiorari petition seeking review of that decision. And then Oklahoma filed a brief acquiescing in certiorari and supporting vacating Glossip’s capital conviction.

The Van Treese family, represented by undersigned pro bono counsel, filed the only brief in opposition to Glossip’s certiorari petition. The family explained that it had been supporting a final conclusion in this case through twenty-five years of litigation. The family argued that the Court lacked jurisdiction to review Glossip’s petition. The family also argued that, on the merits, the Court should reject Glossip’s claim.

On January 22, 2024, the Court granted certiorari to review Glossip’s petition. The Court’s order also directed the parties (Glossip and Oklahoma) to brief the jurisdictional question raised by the Van Treese family. *See* Order, *Glossip v. Oklahoma* (Jan. 22, 2024).

The day after the Court granted certiorari, on January 23, 2024, the Van Treese family filed a motion for leave to participate in oral argument, requesting an allocation of time between Glossip, Oklahoma, and the family of 20/20/20 minutes. Oklahoma did not oppose the motion. Glossip opposed the motion.

Three days later, on January 26, 2024, in a short docket entry in the

case, the Court appointed Chris Michel, Esquire, of Washington, D.C., to brief and argue that case as amicus curiae in defense of the judgment below.

Thereafter, on April 23, 2024, Glossip and Oklahoma both filed their merits briefs, seeking to overturn the judgment below.

On July 8, 2024, the Court-appointed amicus filed his merits brief defending the judgment below.

On July 15, 2024, the Van Treese family filed its amicus brief defending the judgment below. The family presented an important argument not presented in other briefing, specifically regarding the meaning of the prosecutors' notes that are central to this case. The family explained how the parties (e.g., Glossip and Oklahoma) had both failed to provide to the Court the full context and meaning of the prosecutors' notes.

On Thursday, July 18, 2024, Oklahoma and Glossip jointly filed a motion for divided argument, requesting 15 minutes for petitioner Glossip, 15 minutes for Oklahoma, and 30 minutes for the Court-appointed amicus curiae. In filing their motion, the parties (e.g., Glossip and Oklahoma) did not contact counsel for the Van Treese family.

Two business days later, on Monday, July 22, 2024, the Clerk's Office emailed undersigned counsel regarding the family's still-pending motion to participate in the oral argument. Undersigned counsel then promptly contacted the parties and quickly filed this amended motion.

REASONS THE MOTION SHOULD BE GRANTED

The Van Treese family now seeks instead of twenty minutes of oral argument time (as sought in its earlier motion) five minutes to be taken from the thirty minutes of time allotted to the Court-appointed amicus. Thus, the family's motion seeks a division of time of 15/15/25/5 minutes between Glossip, Oklahoma, the Court-appointed amicus, and the amicus Van Treese family,

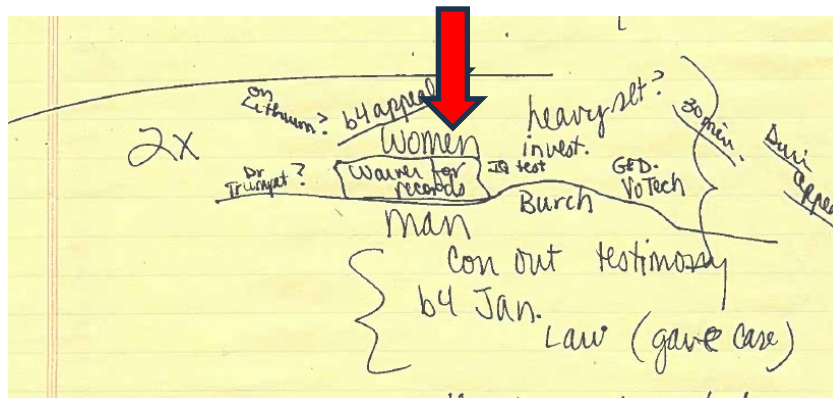
respectively. If allowed to participate in oral argument, the Van Treese family will present to the Court outcome-determinative information that will not be presented by the other counsel.

Apart from the jurisdictional question, the sole question presented in this case is whether State prosecutors violated *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), by withholding information from the defense. The parties (i.e., Glossip and Oklahoma) base their argument on an interpretation of a few references in one of the prosecutor's notes, drawing the inference that those notes prove the prosecutors withheld important evidence.

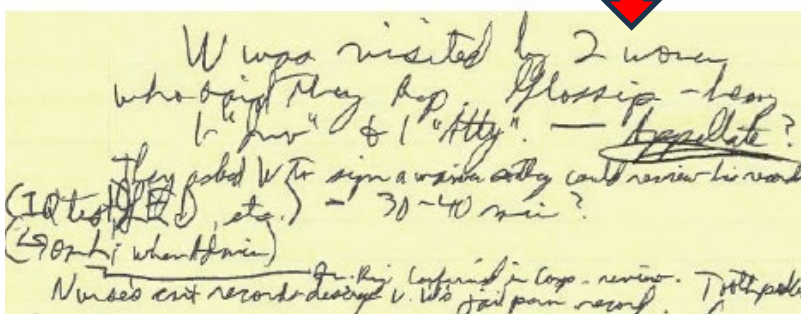
The family's amicus brief explains at length that the prosecutors never withheld information from the defense. If granted oral argument time, the family will present this pivotal argument to the Court, which is based on a fuller and fairer reading of the notes—including a reading of the second prosecutor's notes taken simultaneously with the first prosecutor's notes.

Specifically, the Van Treese family will argue to the Court (as it did in its amicus brief) that the notes from both prosecutors Connie Smothermon and Gary Ackley merely recorded information about what the prosecution's witness (Justin Sneed) was saying about being interviewed by two women *from the defense team*. The fact that the notes reflect a *defense interview* by two women is flagged with the red arrows below.

From Smothermon's notes:



And from Ackley's notes:



See Amicus Brief of the Van Treese Family at 8-16 (discussing Smothermon's and Ackley's notes). In light of this proper understanding of the prosecutors' notes (and related evidence), no evidence was ever withheld from Glossip's defense—and the factual argument by Glossip and Oklahoma for reversing the decision below collapses completely.

Because this argument on the merits is outcome-determinative, the Van Treese family will provide "assistance to the Court not otherwise available." Rule 28.7. Thus, this case presents one of those rare situations where an amicus has "identified] a gap that, for whatever reason, would otherwise be left unaddressed at oral argument." STEPHEN M. SHAPIRO, SUPREME COURT PRACTICE (11th ed. 2019) at 14-22 n.36 (internal quotation omitted).

While the Van Treese family and the Court-appointed amicus both share the same interest that the judgment below should be affirmed,¹ they reach this conclusion by different paths. The family’s decisive argument is not presented by the Court-appointed amicus, who has taken a narrower view of the materials that are available for this Court’s review. The family’s brief provides the Court with decisive information that the Oklahoma Attorney General should have provided to the courts below and to this Court. Because this information will not be presented by the other advocates at oral argument, the Court should allow the Van Treese family to present the information. *See, e.g., Dalmazzi v. United States*, 138 S. Ct. 576 (2018) (allowing private amicus curiae law professor to present oral argument on an issue that would not otherwise be presented); *see also Pac. Bell. Tel. Co. v. Linkline Commc’ns, Inc.*, 555 U.S. 438, 447 (2009) (noting that motion of private amicus to participate in oral argument was granted).

This Court’s close scrutiny of the factual record surrounding Glossip’s conviction is particularly important given that the parties—Glossip and Oklahoma—are attempting to agree that an error was committed below in obtaining Glossip’s conviction. This Court has long held that “the proper administration of the criminal law cannot be left merely to the stipulation of parties.” *Young v. United States*, 315 U. S. 257, 259 (1942). And “it is the uniform practice of this Court to conduct its own examination of the record in all cases where the Federal Government or a State confesses that a conviction has been erroneously obtained.” *Sibron v. New York*, 392 U. S. 40, 58 (1968). In sum, “private agreements between litigants ... cannot relieve this Court of performance of its judicial function.” *Garcia v. United States*, 469 U. S. 70, 79

¹ Both the Court-appointed amicus and the Van Treese family also agree that the Court should simply dismiss the case for lack of jurisdiction.

(1984). The Van Treese family has a direct interest in this case and will assist the Court in performing its judicial function by ensuring a full understanding of the facts.

POSITIONS OF THE PARTIES

The Court-appointed amicus curiae previously agreed to the parties splitting their own time and takes no position on this motion, deferring to the Court's discretion.

Petitioner Glossip opposes the motion.

Oklahoma takes no position on the motion.

CONCLUSION

For all these reasons, the Van Treese family requests that it be allowed to participate in the oral argument to defend the judgment below and be granted five minutes of argument time taken from the thirty minutes allocated to the Court-appointed amicus.



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