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## Will Oklahoma Put an Innocent Man to Death?

Lauren Carasik

*Western New England University School of Law, Carasik@law.wne.edu*

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# Will Oklahoma put an innocent man to death?

*Glossip case highlights capital punishment's fatal flaws*

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by [Lauren Carasik](#) @LCarasik

On Sept. 30, after the U.S. Supreme Court declined to intervene, Oklahoma Gov. Mary Fallin stayed Richard Glossip's execution right before it was scheduled to take place. She did so not because of [mounting evidence](#) of the innocence Glossip has long maintained but because of questions about the lethal injection protocol. This is the second time Glossip has been served his last meal, after a previous eleventh hour reprieve on Sept. 16. His new execution date is Nov. 6.

In denying his request for a reprieve on Sept. 28, the Oklahoma Court of Criminal Appeals was deeply divided. Three judges held that new evidence merely expanded on previous theories and did not warrant overriding the principle of final judgment. The panel's remaining two judges supported a stay of execution and a hearing on Glossip's innocence, with one arguing the state would not be harmed by a delay and that it had "no interest in executing an actually innocent man" and the other lamenting that his "trial was deeply flawed." As his defense attorney Don Knight said, "We should all be deeply concerned about an execution under such circumstances."

Despite suggestions that execution is reserved for the worst of the worst, for whom guilt is all but certain, the death penalty is fatally flawed. It is applied arbitrarily and discriminates against minorities and the marginalized, especially when the victim is white, and disadvantages the poor, who must rely on an overwhelmed and underfunded capital-defense system that often fails to vigorously defend their rights. The death penalty [fails to deter crime](#) and is far more costly than life imprisonment. It is unreliable and prone to human fallibility.

And given the system's documented failings, innocent people have surely been executed. It's time to end the practice, before the machinery of death inflicts another terrible and irreversible harm.

Glossip's conviction rested almost entirely on the testimony of Justin Sneed, a 19-year-old drug addict who worked at a hotel owned by Barry Van Treese, in exchange for room and board. Sneed confessed to murdering Van Treese but avoided the death penalty by implicating Glossip, a manager at the hotel, as the crime's mastermind. Glossip was first convicted and sentenced to death in 1998, but the verdict was overturned on appeal in 2001 because he received ineffective assistance of counsel, including his attorney's failure to show the jury the tape of Sneed's interrogation, which would have provided ample fodder to impeach his credibility — an obvious blunder. Glossip was found guilty at a second trial in 2004 and sentenced to death again after his lawyers inexplicably failed to present the evidence whose egregious omission justified overturning his previous conviction.

The case is [replete with holes](#) that should give even the death penalty's most ardent supporters pause. There is no physical evidence linking Glossip to the crime scene, he was implicated by one witness whose self-interest was evident, and the prosecution's theory was less than convincing. Sneed's credibility is further eroded by his [wildly inconsistent stories](#): The amount he claimed Glossip paid him to commit murder increased with each telling, and other [critical details](#) changed repeatedly.

In addition, flawed [forensic testimony](#) may have contributed to Glossip's conviction, including testimony that Van Treese bled out for hours before dying; it now appears that he likely died quickly. Some jurors who doubted Sneed's trustworthiness relied on the questionable conclusion that Van Treese could have been saved if Glossip had alerted authorities that Sneed confessed to the killing earlier. And last year Sneed's daughter sent the Oklahoma Pardon and Parole Board [a letter](#) saying that her father spoke of recanting his testimony implicating Glossip but feared he would face the death penalty.

## Studies estimate that 4 percent of those sentenced to death are innocent.

The defense team presented new evidence of Glossip's innocence that the jury never heard, including from witnesses who have little to gain by coming forward now. Richard Barrett, a former drug dealer who witnessed Sneed injecting methamphetamine at the hotel said that he "was known for stealing items from motel rooms and guests' cars." The statement contradicts the prosecution theory that Sneed was Glossip's hapless victim who was led astray. Michael Scott, who was Sneed's jailhouse neighbor, overheard him brag about setting Glossip up. And Sneed's former cellmate Justin Tapley came forward with evidence of Glossip's innocence on the eve of his September 16 execution date.

Prosecutor David Prater dismissed the new evidence, calling the last-ditch efforts to halt the execution a "bullshit PR campaign." After coming forward, two witnesses were charged with parole violations, raising the specter of intimidation intended to deter others from coming forward with exculpatory information. His disparagement of the credibility and reliability of these witnesses because of their criminal pasts while upholding Sneed's trustworthiness would be laughably incongruous if the stakes weren't life and death.

The testimony of jailhouse snitches is inherently unreliable because of their incentive to implicate someone else in order to lessen their own punishments. In fact, prosecution that relies on incentivized testimony is a leading cause of wrongful convictions in capital cases. Nationwide, 155 people have been exonerated from death row. The Innocence Project found that in death row exonerations based on DNA evidence, 15 percent of defendants were initially convicted on the basis of snitch testimony. Four of the 10 people exonerated from Oklahoma's death row were convicted at least in part because of false snitch testimony.

Studies estimate that 4 percent of those sentenced to death are innocent. Four years ago, the execution of Troy Davis amid evidence of innocence drew howls of protest, and Cameron Todd Willingham was executed in 2004 despite his

likely innocence. But their deaths at the hands of the state cause no angst for Supreme Court Justice Antonin Scalia, [who said in 2009](#) that the high court “never held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is ‘actually innocent.’”

In June a bitterly divided Supreme Court upheld [Oklahoma’s lethal injection protocol](#), in a case brought by Glossip and others. The court found the plaintiffs failed to establish that the protocol “entails a substantial risk of severe pain,” though [botched executions](#) are hardly rare; last year alone saw the prolonged and gruesome dispatches of [Dennis McGuire](#), [Clayton Lockett](#) and [Joseph Wood](#). Justice Stephen Breyer used his withering dissent in that case to deliver a broadside against the death penalty itself. He listed factors impugning the practice, including its “lack of reliability, the arbitrary application of a serious and irreversible punishment [and the] individual suffering caused by long delays.” As Breyer argued, “studies indicate that the factors that most clearly ought to affect application of the death penalty — namely, comparative egregiousness of the crime — often do not. Other studies show that circumstances that ought not to affect application of the death penalty, such as race, gender or geography, often do.”

Even those unconvinced by the expanding evidence of Glossip’s innocence should cringe at the uncertainty of his guilt. “Rather than try to patch up the death penalty’s legal wounds one at a time,” Breyer opined, “I would ask for full briefing on a more basic question: whether the death penalty violates the Constitution.” And if the court takes an honest look, it should conclude that the death penalty is an inhumane and unjust practice whose demise is long overdue.

*Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.*

*The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.*