Ref: Daniel K. Holtzclaw, DOC# 731154, Docket 2/2022

Eric R. Holtzclaw
[redacted]
Enid, OK [redacted]

Jan. 31, 2022

Oklahoma Pardon and Parole Board
Attn: Board Communications
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Ms. Barnes has now testified repeatedly under oath,
"He didn't touch me. He didn't touch me. He did not touch me. He didn't touch me."
(Tabitha Barnes' deposition transcript from Oct. 30, 2018, pp. 77, 100)

Dear Oklahoma Pardon and Parole Board Members,

I am speaking on behalf of my son Daniel Holtzclaw, a former Oklahoma City police officer who was wrongfully convicted in 2015 of alleged sexual assaults and is currently serving 263 years for crimes he did not commit. One of the alleged crimes is Count 5, Procuring Lewd Exhibition, for which Daniel is now up for parole. Daniel is innocent of all the charges brought against him, including Count 5, which alleges that Daniel told Ms. Tabitha Barnes to expose her genital area. I urge you to grant Daniel parole on Count 5 because Daniel was an upstanding police officer who was railroaded by the Oklahoma City Police Department (OCPD) due to a presumption of guilt, flawed forensic science, and biased detective work that involved procuring wrongful allegations against him from multiple women, with Ms. Barnes among them.

A brief overview of Daniel's case helps explain how and why he was railroaded, leading to Ms. Barnes' accusation and the wrongful conviction on Count 5. Daniel's case occurred around the time of the Ferguson, Missouri, riots and other similar incidents that sparked strong racial tension and anti-police feelings throughout the country. An initial oral sodomy allegation by Ms. Jannie Ligons against Daniel was filled with contradictions and lacked forensic evidence to support the claims. But a presumption of guilt and flawed forensic science caused detectives to develop tunnel vision, focusing on only one suspect, Daniel. The anti-police political climate, biased media coverage of Daniel's case, and ignorance of non-intimate "touch DNA" indirect transfer encouraged a rush to judgment during the investigation. When a small quantity of female and male DNA was found on the fly of Daniel's pants, detectives erred by believing the female DNA meant Daniel was guilty of sexual assault, even though there was no visible evidence of body fluid and the DNA evidence is explained by non-intimate DNA transfer via Daniel's hands after pat-searching civilians and using the restroom.

Convinced Daniel was guilty, OCPD detectives ignored evidence of his innocence and crafted a case to match their false narrative by procuring additional wrongful allegations as they searched for the source of the female DNA, an unknown female they believed was a victim. Detectives solicited additional wrongful allegations from at-risk Black women with vulnerabilities such as drug addictions, mental health challenges, and criminal justice difficulties that made the women susceptible to detectives' encouragement and pressure to accuse Daniel.

Daniel was then deprived of a fair trial because of mob protests, forensic science errors by OCPD analyst Ms. Elaine Taylor, prosecutorial misconduct, and ineffective trial counsel. The forensic science errors, unchallenged by Daniel's trial attorney, culminated in Daniel's wrongful conviction in December 2015 on 18 out of 36 counts after the prosecutor flagrantly misrepresented the minute quantity of female DNA on the fly of Daniel's uniform pants as deriving from vaginal fluid although no body fluids were detected. The ultimate outcome: Daniel was wrongfully convicted of sexually assaulting eight out of thirteen African-American complainants and sentenced by former Judge Henderson to 263 years in prison.

Ms. Tabitha Barnes was one of the women from whom OCPD detectives solicited a wrongful allegation. In addition to Count 5, alleging that Daniel told Ms. Barnes to expose her genital area, her wrongful accusation against Daniel also led to four other counts: Count 1 (sexual battery for allegedly touching Ms. Barnes' bare breasts), Count 4 (procuring lewd exhibition for allegedly telling her to expose her breasts), Count 3 (burglary in the first degree), and Count 6 (stalking). Daniel was acquitted of both the burglary and stalking charges.

I ask that you please grant Daniel parole on Count 5 for the following reasons:

(1) Most importantly, Ms. Barnes now denies that Daniel ever touched her breasts. After Daniel's conviction, Ms. Barnes testified repeatedly in a deposition under oath, ***"He didn't touch me. He didn't touch me. He did not touch me. He didn't touch me."*** Please see the attached transcript excerpt from Ms. Barnes' deposition on Oct. 30, 2018 (pp. 77, 100). Ms. Barnes also testified that she was 100% truthful about everything she claimed in her deposition. (*Id.* at pp. 137-38). Her new testimony completely contradicts her trial testimony that Daniel touched her breasts, which led to his wrongful conviction for Count 1 (sexual battery) and an 8-year prison sentence for that false allegation alone.

Please note that Count 1 is the count for which your Board denied parole in 2018 when Daniel and I both wrote to you, telling you that Daniel is innocent. Ms. Barnes' recantation shows that Daniel is telling you the truth: he is innocent. Daniel is innocent not just of Count 1, but also of all the other allegations, including Ms. Barnes' claims that led to Count 5.

(2) Ms. Barnes' trial testimony does not support Daniel's conviction for Count 5, procuring lewd exhibition. Counts 4 and 5 derived from the prosecution's claim that Daniel directed, procured, or counseled Ms. Barnes to expose her bare breasts and genital area, respectively. Yet

Ms. Barnes testified at trial that Daniel asked if she had drugs under her shirt or down her pants, after which she lifted her shirt and bra, exposing her bare breasts, and pulled out the waistband of her pants simply because she thought that was what the officer wanted, *even though he did not ask her to expose herself.* (Trial Transcript pp. 1796-98). Daniel denies seeing Ms. Barnes expose her breasts or genital region to him. But, if Ms. Barnes exposed her breasts or genital area, which Daniel neither requested nor saw, that is not grounds for his conviction.

(3) Concerning Count 5, the prosecution subjected Ms. Barnes to leading questions and pressure that encouraged wrongful allegations against Daniel.

First, Ms. Barnes' allegations and testimony at trial were obtained by the Oklahoma City Police Department's use of unethical methods that are known to encourage wrongful allegations against innocent people. Ms. Barnes only made her allegation after being approached by Det. Rocky Gregory, who states in his written report from 8/15/14 that he advised Ms. Barnes that "he had a tip that maybe she had been the victim of an unreported sexual assault." In fact, no such tip existed. Oklahoma City Police Department sex crimes detective Det Gregory simply knew from Daniel's police records that he had interacted with Ms. Barnes on three occasions, including when responding to an alleged burglary at her home. A detective should not encourage allegations by lying to a potential witness.

Second, Ms. Barnes was pressured to testify at the trial. The trial transcript shows that the prosecutor admitted, out of the jury's hearing, that law enforcement officers detained Ms. Barnes when she wanted to leave the courthouse and was refusing to testify. (Trial Transcript, pp. 1857-58). Prosecutor Gieger told former Judge Henderson that Ms. Barnes "refused to testify and tried to leave" the courthouse "at one point over the lunch hour," but "Oklahoma City Police detained her [...] for disorderly conduct and public intoxication because she was not being coherent and she was making somewhat of a scene [...] in the hallway." The prosecution's unethical action of detaining Ms. Barnes creates grave concern that her testimony at trial was a result of coercion. Detaining Ms. Barnes when she didn't want to testify should have shown that the prosecution could not prove its claims beyond a reasonable doubt, but the jury was not made aware of any of this.

Third, the prosecution encouraged Ms. Barnes to make allegations even though she suffered from drug addictions and testified during the trial while under the influence of PCP. Ms. Barnes' credibility issues were apparent during the trial when, outside of the jury's hearing, Ms. Barnes made false statements to the judge, at first denying that she had recently used PCP. (Trial Transcript, pp. 1810, 1812, 1814-15, 1962-69). Det. Gregory told former Judge Henderson, also outside of the jury's hearing, "I've spent a lot of time with her and she's – you're right [...] she's got kind of a fried brain." (Trial Transcript, p. 1868). This is especially alarming because Det. Gregory is the detective who first solicited an allegation from Ms. Barnes by falsely telling her he had received a tip that she might be a victim of sexual assault by an officer.

(4) Ms. Barnes' allegations, including her claim leading to Count 5, were obtained during a massive, biased, unethical investigation by the Oklahoma City Police Department that led to multiple wrongful allegations targeting Daniel. Parole for Count 5 should not be denied based on the 17 other convictions because they were also wrongful.

As was summarized earlier, Daniel was convicted of wrongful allegations for many reasons:

First, detectives succumbed to tunnel vision early on in the investigation, believing Daniel to be guilty immediately after an oral sodomy allegation, lacking forensic evidence, was made against him by Ms. Ligons, who described her assailant as a blond, short male. The lead detective, Kim Davis, has stated that she believed Daniel was guilty even before interviewing him.

Second, OCPD investigators incorrectly believed Daniel was guilty because an unknown female's complete DNA profile was found in a mixture of DNA from at least 3 people, including at least one unknown male, on the fly of Daniel's uniform pants with no evidence of any body fluid. OCPD's former Lt. Muzny, who headed the investigation, even testified in a deposition that it is "not possible" that the female DNA, ultimately matched to a teenager, Ms. Gardner, could have transferred through non-intimate contact. Ignorant of science, Lt. Muzny testified, "Nobody is ever going to convince me that Adaira Gardner's DNA was on the inside of his pants from just casual contact," not even a DNA expert. (Lt. Muzny's deposition, pp. 225-227). Lt. Muzny was also completely unaware that unidentified male DNA, which obviously did not transfer in that male's vaginal fluids, was also on the fly of Daniel's pants.

OCPD should have known about the following scientific research, which could have saved Daniel from being wrongfully convicted. Even before Daniel's trial began on Nov. 2, 2015, a study had revealed that a woman's DNA can transfer indirectly from her face and hands to a man's hands, and then, after the man unzipped his pants, from his hands to his underwear and even his penis during simulated urination. See Sarah Jones and Kirsty Scott (2010) The transfer of DNA through non-intimate social contact, in Conference Report by J. Hulme, SCIENCE AND JUSTICE, 50: 100-109, published five years before Daniel's trial. Daniel was taught by OCPD to do back-hand pat searches, which involved using his bare hand to hold civilians' hands behind their backs while he patted around their waists with the back of his free hand.

The prosecution's faulty belief that the DNA evidence equated with Daniel's guilt led to a major investigation flaw. After Ms. Ligons' allegation, ***photo lineups were halted at the District Attorney's direction*** because, as was testified by Det. Homan during Daniel's pre-determination hearing on Dec. 11, 2014, "Well, we we had female DNA." (Pre-D Hearing 12-11-2014, Part 5, pp. 37-38). Many wrongful convictions are caused by misidentification of an innocent person because detectives showed faulty photo lineups to witnesses. In Daniel's case, the prosecution was so biased by its belief in Daniel's guilt that it did away with photo lineups entirely after the one woman who was shown a photo lineup, Ms. Morris, first picked another officer, not Daniel.

Third, OCPD police detectives, not Daniel, targeted at-risk African-American women. When the tiny quantity of unknown female DNA found on the fly of Daniel's pants triggered OCPD to mount a massive and biased hunt to find her (Trial Transcript, pp. 2269, 2804), Lt. Muzny created an "victim profile" by assuming that Mr. Holtzclaw had targeted Black females with criminal histories and arrest warrants. Looking back through six months of police records prior to Ms. Ligons' allegation on June 18, 2014, Lt. Muzny identified hundreds of women whose criminal histories had been checked by Mr. Holtzclaw, noting those whom Mr. Holtzclaw had also run for warrants. ***Then Lt. Muzny created a list containing "specifically names of black females [...] who had a drug history, prostitution history or significant criminal history."*** (Trial Transcript, pp. 2284, 2385-87). Detectives used leading interview methods when soliciting allegations from the chosen women, telling them untruthfully that police had "received a tip" that the women were "possibly sexually assaulted by an Oklahoma City police officer" and encouraging interviewees to help catch the "really bad guy" because police had "a long list of victims." (Trial Transcript, pp. 1975, 2218, 2250, 2273, 2322-23, 2999, 3517-18).

Fourth, detectives and the prosecutors ignored evidence of Daniel's innocence. He was convicted of the allegations even though women gave inconsistent testimony that did not match the evidence, such as Daniel's physical appearance, his patrol car's appearance, and his patrol car's whereabouts.

Related to Count 5, Ms. Barnes initially claimed that her assailant's skin was an "Indian tan color" and his hair was a light brown, while Daniel's skin is pale and his hair is black. Ms. Barnes told the detectives that she had lifted up her shirt and bra and the officer had touched her bare breasts, but at trial she testified that she had not been wearing a bra. She also told detectives that the officer with whom she interacted on one of three occasions "was in the older car" style. Yet Daniel only drove the newer, black OCPD patrol car during the time of the allegations.

Ms. Ligons' suspect description also did not match Daniel. (She admitted to the detective that she had smoked marijuana and had taken PM pain medication before driving on June 18, 2014.) She said the officer was a white male, with blond parted hair, 35-45 years old, between 5'7" and 5'9, with unsmooth skin. Daniel is Japanese-American with black hair without a part. He was 27 years old at the time and is 6' 1" (but even taller with his police boots on) with smooth skin. Another concern that detectives should have had about Ms. Ligons' allegation is that her driver's license had been suspended for more than 30 years (Trial Transcript, pp. 543, 571), but at trial she denied knowing, at the time of the traffic stop, that her driver's license had been suspended (Trial Transcript, p. 543). Yet Ms. Ligons' fiancé of 20 years, whose car she was driving, testified that he was aware her license had been suspended and normally she didn't drive and he drove her, but for that particular night (June 17-18, 2014) he let her drive because he was tired (Trial Transcript, p. 606).

As a third example of inconsistent testimony, Ms. Sherry Ellis said her assailant was a black police officer with skin tone darker than her own, and several inches shorter than her own height of 5'11", which would mean around 5' 9" tall. This does not match Daniel at all. But when Ms. Ellis told OCPD Det. Davis that her assailant was a Black man, the detective responded by saying she knew who the assailant was, meaning Daniel. Oklahoma City Police should not condone a detective steering a witness toward a belief that a particular suspect is guilty.

Fifth, the OCPD DNA Lab's forensic analyst Ms. Elaine Taylor and the prosecutor Mr. Gayland Geiger misled the jury about the DNA evidence found on the fly of Daniel's pants, causing jurors to believe it derived from vaginal fluid.

Ms. Taylor made false and unscientific claims about the presence of male DNA and the likelihood that body fluid was present. The presence of unknown male DNA on the fly of Daniel's pants is important because it proves that an individual's DNA was able to transfer there without any involvement of that person's vaginal fluids, because males don't make vaginal fluids. But Ms. Taylor claimed at trial that Daniel's DNA was not found on the fly of his pants, even though the DNA profiles were inconclusive. She also claimed two of the DNA samples contained no male DNA, even though her own test results showed the presence of male DNA.

During the trial, the prosecutor then used his analyst's false claim – that Daniel's DNA was not inside the fly of his pants – to argue in favor of the presence of vaginal fluid. The prosecutor argued that if Daniel had simply touched the fly of his pants, innocently transferring the teenager's DNA on his fingers after searching her possessions, then you should expect to find Daniel's DNA from his fingers, which made the alleged lack of Daniel's DNA appear to support the prosecution's claim that the female DNA transferred in vaginal fluid. (Tr. 4087). But, in fact, the entire premise of that argument is flawed, one reason being that an analyst cannot exclude Daniel from being a possible contributor to inconclusive DNA profiles.

The prosecution's misrepresentations of the DNA evidence culminated in Prosecutor Gieger's closing argument, when he misled the jury by claiming it was a "fact that DNA from the walls of [an accuser Ms. Gardner's] vagina was transferred in vaginal fluids onto the outside and the inside -- not of his pockets, not of his cuff, not where he sits, but of the exact location she says his penis came in contact." (Trial Transcript, p. 4307). Mr. Geiger made this false claim even though no evidence of vaginal fluid was detected, no stains or deposits were observed on the fly of the uniform pants, and no tests for body fluids were completed by the forensic analyst.

These forensic science errors are described in Dr. Gill *et al.*'s "REPORT ON SCIENTIFIC ISSUES IN OKLAHOMA V. DANIEL K. HOLTZCLAW BY AN INTERNATIONAL PANEL OF FORENSIC EXPERTS," published in July 2017. The six forensic experts concluded, "We believe that Mr. Holtzclaw was deprived of his due process right to a fair trial because the State

misused DNA evidence -- a powerful form of forensic evidence -- and trial defense counsel did not correct crucial forensic science misrepresentations and omissions, such that the DNA evidence at the heart of the trial and lacking probative value was extremely prejudicial, corrupting the investigation of Mr. Holtzclaw and impacting the verdict. We believe that Mr. Holtzclaw's conviction should be overturned and he should be given a new trial." (*Id.* at 45).

OCPD analyst Ms. Taylor's errors in Daniel's trial were the subject of secret hearings presided over by former Judge Henderson in June 2017 during Daniel's direct appeal. We now know that after Daniel filed his appeal, his legal claim about Ms. Taylor's errors led OCPD DNA manager Mr. Ruddock to write a written review about her testimony in Daniel's trial. That written review was the focus of the secret hearings. ***Former Judge Henderson not only decided to exclude Daniel's attorneys entirely from that hearing, but also ruled incorrectly that Mr. Ruddock's written review contained no evidence impeaching Ms. Taylor.*** Henderson's pro-prosecution rulings overlap with the time when he now admits he was sexually involved with an assistant district attorney who alleges the judge was sexually assaulting her from 2016 through 2018. To this day, ***the City of Oklahoma City is refusing to bring the truth of OCPD's forensic science errors to light*** by publicly releasing Mr. Ruddock's written review of analyst Ms. Taylor's testimony that deprived Daniel of a fair trial.

Sixth, Daniel was convicted in the court of public opinion before and during the trial. During the trial, more than 100 protestors were chanting that Daniel was guilty, which interfered in the trial proceedings. Protesters screamed, "Give him life," and, "Racist jury, racist cop," which was heard by the jurors. One juror even admitted "there was concern" among jurors that things could get out of hand if the verdict didn't go the way the protesters wanted. (KOKO 5 News (2015, Dec. 18). FULL INTERVIEW: Juror in Holtzclaw sexual assault case speaks about trial).

Yet the trial judge, former Judge Henderson, simply admonished the jury to ignore the outside influences. (Trial Transcript, pp. 2317-21). He also denied Daniel's request that jurors be sequestered to insulate them from the escalating hostile environment and "all the protesting and yelling and screaming." Oklahoma attorneys Randall T. Coyne and J. Christian Adams submitted an *amicus* brief in support of Daniel in March 2017 to the Oklahoma Court of Criminal Appeals, which refused to hear their concerns about the impact of protests during the trial. The *amicus* brief concluded that ***former Judge Henderson "wrongly subordinated Holtzclaw's rights to a fair trial and due process to protesters' First Amendment rights."*** (*Id.* at 14). The *amicus* brief informs us that "efforts by spectators at a trial to intimidate judge, jury, or witnesses violate the most elementary principles of a fair trial. [...] Every American, of every color, is equally entitled to due process, and an unpressured jury hearing the evidence and deliberating in an atmosphere free from the howling mob." (*Id.* at 11).

(5) Daniel truly is innocent. Parole boards understandably are encouraged to consider whether an inmate has been rehabilitated and has participated in classes designed for guilty inmates, but

this well-intentioned criterion simply does not work when you are presented with cases, such as Daniel's, where innocent people are wrongfully imprisoned. Please understand that during his confinement, Daniel has not participated in classes or courses for rehabilitation designed for guilty inmates because he is innocent and had no sexual contact, sexual interactions, or inappropriate behavior with any of the women who accused him.

Daniel denies ever having sexual contact with any woman or ever asking any woman, including Ms. Barnes, to expose her breasts or genital region in the course of his work as a police officer. Daniel testified under oath in his deposition on October 21, 2019, that he never asked Ms. Barnes to lift up her shirt to expose her breasts, he did not ask her to pull out her waistband, and he never shined a flashlight onto her genitals. "Absolutely not, I've never ever done anything like that through my course as a police officer," Daniel testified. "I never did anything sexual in nature with any man or female during my course as a police officer." Daniel also testified that when he took an oath of office the day that he graduated from the police academy, he was 100 percent truthful in taking that oath and, "I upheld that oath of office by protecting and serving my community."

Please also consider that Daniel was correctly and entirely acquitted of the allegations of 5 of the 13 women whose allegations went to trial. He was also acquitted on many of the counts by the 8 women whose allegations led to the 18 convictions. He was acquitted of allegations because the women gave contradictory, inconsistent testimony – which is also true of all the allegations for which Daniel was wrongfully found guilty.

For example, Daniel was acquitted of several allegations because his accusers contradicted their own claims that they had been sexually assaulted. Ms. Raines, when questioned initially by Det. Gregory, denied seven times that any police officer was inappropriate with her before changing her story and implicating a Black police officer. Ms. Raines told Det. Gregory, "There's only one officer that I know a few years back. He was a Black cop. He used to come around here. And he exposed his self to me." (OCPD Police Interview). Yet when Det. Gregory wrote his police report, he failed to mention that Ms. Raines denied seven times that an officer had been inappropriate, other than a Black officer. After Det. Gregory asked Ms. Raines more leading questions, she then changed her story again, implicating Daniel by claiming he had her expose herself. She claimed the officer motioned for her to pull her shirt and bra up to check for hidden drugs but did not tell her to do so, and she simply felt like she had to lift her shirt and bra to expose her breasts. Her allegation did not consist of a crime. Daniel was acquitted.

In conclusion, I hope that you will grant Daniel parole on Count 5 because he did not commit any of the crimes alleged against him. Daniel writes to you in his parole interview questionnaire on Dec. 6, 2021, "In my case I was truly wrongfully convicted. I was a great officer who worked my butt off and did everything in my power to make sure my fellow brothers and sisters went home" to their families at night. Far from being a threat to his community, Daniel routinely put

his life in harm's way in the course of protecting his community as a police officer. He literally risked his life to fight crime in the Oklahoma City neighborhood he patrolled. In repayment, the Oklahoma City Police Department mounted a biased, deeply flawed investigation that railroaded and cast him aside.

By granting Daniel parole, you will be taking a step that supports integrity and inspires trust again in the criminal justice system. The errors that led to Daniel's wrongful conviction need to be recognized and corrected to prevent others in Oklahoma from suffering from wrongful convictions. Numerous scientists and criminologists who have studied Daniel's case are concerned about the unscientific and biased investigation mounted by the Oklahoma City Police Department. Daniel also has widespread community support that he deeply appreciates from people around the world who realize he is innocent, leading to more than 64,700 signatures on the Change.org petition, "Free Daniel Holtzclaw, an Innocent Man Wrongfully Convicted."

Last but not least, Daniel has the everlasting love and support from his family and friends. As a spokesperson for Daniel, our family, and his many supporters, thank you for considering these matters as you decide whether to grant Daniel parole on Count 5. We believe that justice will prevail because the truth sets the innocent free and Daniel is innocent. We hope you will help justice prevail by granting Daniel parole. I am awaiting the day when Daniel can come home to his family, grill on the patio, watch the game on TV, and relax together again outside prison walls at last, putting this horrible nightmare behind us.

Sincerely,

Eric R. Holtzclaw

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

TABATHA BARNES, TERRI MORRIS, SYRITA BOWEN, CARLA JOHNSON, KALA LYLES, JANNIE LIGONS, SHANDAYREON HILL,	)	
Plaintiffs,	)	
VS.	)	Case No. CIV-16-184-HE
THE CITY OF OKLAHOMA, a municipal corporation, DANIEL HOLTZCLAW, BILL CITTY, BRIAN BENNETT, ROCKY GREGORY, JOHN AND JANE DOES, all in their individual capacity,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF TABITHA JEAN BARNES

TAKEN ON BEHALF OF THE DEFENDANT

IN OKLAHOMA CITY, OKLAHOMA

ON OCTOBER 30, 2018

REPORTED BY: SUSAN J. FENIMORE, CSR, RPR

stress or worry or emotional issues?

A No, I had a good life.

COURT REPORTER: I didn't hear you what you said.

THE WITNESS: I've had a good life other than that.

Q (By Ms. Gooch) In this lawsuit the allegations regarding what Holtzclaw did to you, all the dates claimed to be in 2014. But today you've said repeatedly it was 2016.

A I say --

Q But I recognize you said that you're not sure on the dates.

A I've tried to block it out, forget -- forget dates. Even when it come on the news or wherever I see it, I don't watch it. I don't even read, I just don't even -- I try to block it out, dates, times. So, therefore, I can't really just give you the year, either. I just gave you what was on my head.

Q Okay.

A I blocked it out.

Q How many times did Holtzclaw touch you inappropriately?

A He didn't touch me.

last line says, "Holtzclaw then asked Plaintiff Barnes if there was anything under her breasts and fondled Plaintiff Barnes' naked breasts."

Do you see that?

A You just read it, yes, I see it, sir.

Q Isn't that different than what you testified today?

A What do you mean, is that different?

Q Didn't you say Holtzclaw didn't touch you?

A He didn't touch me.

Q So this is a mistake?

A He did not touch me.

Q And if you go back to Defendant's Exhibit Number 11, which is the Information, Count 1.

A Uh-huh, go ahead.

Q Five lines from the bottom of Count 1, "Directing T.B. to expose her breasts and then touching her bare breasts with his hand without her consent," that's also a mistake?

A He didn't touch me.

Q Okay.

A And when I testified in court, I said he didn't touch me.

Q And you understand that Mr. Holtzclaw was convicted of sexual battery on that count as a result

MS. ZELLNER: Objection.

MS. GOOCH: That's --

THE WITNESS: I'm really not understanding what you're asking me. Okay. Ask me -- you saying I'm saying he did not touch me? I remember showing my body three times.

Q (By Ms. Gooch) I'm telling you that in your lawsuit filed in federal court you allege that he touched your naked breasts. But that's incorrect. Are you going to now have your lawyer withdraw that allegation?

A No.

Q You're not?

MR. GILBERT: I object to the form.

MS. GOOCH: Okay.

MS. ZELLNER: Object.

MS. GOOCH: All right. That's all I have.

MR. SMITH: No -- no questions.

MS. ZELLNER: Just one further question.

FURTHER EXAMINATION

BY MS. ZELLNER:

Q Ms. Barnes, you would agree, would you not, that you have to be 100 percent truthful about what you've told us today for you to prevail in your lawsuit?

A Yes.

Q Okay. And you've been 100 percent truthful with us today about everything that you've claimed?

A Yeah, that -- yeah, that --

Q You haven't lied to us, right?

A No, No, No. Everything that I remember is what I remember. That's what I'm telling you.

MS. ZELLNER: Okay. All right. I don't have any further questions.

MS. GOOCH: The deposition is concluded.

MS. ZELLNER: Off the record.

MS. GOOCH: You have a right to review the transcript and approve the court reporter's typed it up correctly or you can waive that right, you just need to tell her.

MR. GILBERT: We want to read and sign.

(Deposition concluded at 1:12 p.m.)

(Signature required; witness excused.)