

ORIGINAL



IN THE COURT
OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

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COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

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JOHN D. HADDEN
CLERK

MICAH WAYNE TURNER,)
)
Appellant,)
)
v.)
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

Case No.: F-2021-1422

District Court of Rogers County
Case No.: CF-2020-201

**BRIEF-IN-CHIEF FOR AND ON BEHALF
OF APPELLANT MICAH WAYNE TURNER**

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TABLE OF CONTENTS

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

PROPOSITION I

 PROSECUTORIAL MISCONDUCT RESULTED IN A
 FUNDAMENTALLY UNFAIR TRIAL 10

 A. Standard of Review 10

 B. Merits 10

 1. *Brady* Violation 12

 2. Breanna Nissen 21

 3. Eavesdropping on Jurors 25

PROPOSITION II

 TURNER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL
 28

 A. Standard of Review 28

 B. Merits 28

 1. Breanna Nissen 31

 2. Shary Turner 32

 3. Bryce Turner 33

 4. Micah Turner 35

PROPOSITION III

THE CUMULATIVE EFFECT OF THE LEGAL ERRORS IN THIS
CASE COMBINED TO RENDER THE TRIAL FUNDAMENTALLY
UNFAIR 37

C. Standard of Review 37

D. Merits 37

CONCLUSION 39

CERTIFICATE OF SERVICE 40

TABLE OF AUTHORITIES

<i>Anderson v. State</i> , 2006 OK CR 6, 130 P.3d 273	10, 19
<i>Arizona v. Fulminante</i> , 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)	26
<i>Bechtel v. State</i> , 1987 OK CR 126, 738 P.2d 559	37
<i>Berger v. United States</i> , 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)	11, 25
<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)	11, 19
<i>Chandler v. State</i> , 1977 OK CR 324, 572 P.2d 285	37
<i>Coddington v. State</i> , 2011 OK CR 17, 254 P.3d 684	29
<i>Davison v. State</i> , 2020 OK CR 22, 478 P.3d 462	28
<i>Derosa v. State</i> , 2004 OK CR 19, 89 P.3d 1124	10, 37
<i>Donnelly v. DeChristoforo</i> , 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974)	10
<i>Fisher v. State</i> , 2009 OK CR 12, 206 P.3d 607	28
<i>Harris v. State</i> , 2019 OK CR 22, 450 P.3d 933	19

Lewis v. State,
1998 OK CR 24, 970 P.2d 1158 37

Littlejohn v. State,
2008 OK CR 12, 181 P.3d 736 28

Lovell v. State,
1969 OK CR 177, 455 P.2d 735 37

Strickland v. Washington,
466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) 25, 28

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THE STATE OF OKLAHOMA,)	
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<i>Appellee.</i>)	

BRIEF OF APPELLANT

Appellant, Micah Wayne Turner, by and through the undersigned counsel, presents the following argument and authorities in support of his direct appeal from Rogers County. Appellant will be referred to by name. The Respondent, State of Oklahoma, will be referred to as the State.

STATEMENT OF THE CASE

The State filed a felony Information in Rogers County on April 1, 2020, accusing Turner of a single count of Murder in the First Degree. O.R. 1. The Information was amended on April 7, 2020, with technical changes. O.R. 8.

Preliminary examination occurred before the Hon. Lara M. Russell on October 7, 2020. At the conclusion of the evidence, Judge Russell overruled Turner's demurrer and issued an order binding him over for trial. P.H. Tr. 91. The State filed a Second Amended Information on October 12, 2020, alleging a single count of Murder in the First Degree. O.R. 31.

Turner filed a motion to set bond on October 22, 2020. O.R. 35. The State opposed this motion and a hearing was held on November 10, 2020. The district court issued an order on December 8, 2020, denying bond. O.R. 56.

Turner filed a pre-trial motion to dismiss based upon lawful self-defense. O.R. 86. A hearing was held on August 16, 2021, at the conclusion of which the Hon. Stephen R. Pazzo denied the motion. Tr. 08/16/2021 at 218.

Jury trial commenced on September 28, 2021. Turner was found guilty and the jury recommended a sentence of Life. O.R. 275. Formal sentencing was had on December 2, 2021, at which Judge Pazzo followed the recommendation of the jury and sentenced Turner to life imprisonment. Sent. Tr. 6.

Turner filed Notice of Intent to Appeal and Designation of Record on December 2, 2021. O.R. 307.

STATEMENT OF THE FACTS

This case deals with the shooting death of William Wilkins on or about March 23, 2020. Wilkins died when Micah Turner shot him in the chest with a shotgun. The question was whether it was premeditated murder or self-defense/defense of another.

As the State outlined during opening statements, Wilkins started out as a rent-paying roommate of Shary Tuner (the mother of Micah Turner), but he soon became a freeloader not paying rent, a thief who stole property (rifles) and used her credit card, and a meth addict who used the items he stole to buy more meth while he refused to leave the house, eventually locking himself in the garage where he lived until he was shot. Tr. 529-38.

Things came to a head on March 23, 2020, when Shary Turner had his phone shut off because she was the one paying for it. This resulted in an argument that escalated, and Micah Turner eventually retrieved a shotgun. Micah Turner made statements to the police that Wilkins had stood up and was moving toward him when Turner shot him out of fear; but the State's theory was that Wilkins was basically sitting down when the shooting occurred. *Id.*

The defense picture was much different. Defense counsel outlined that Shary Turner was a single mother living in Owasso, Oklahoma, and supporting Bryce Turner (Micah's younger brother). Tr. 538-555. Micah was a student at OSU-Okmulgee studying cyber-security and was dating a young woman named Hannah. *Id.*

Shary received notice of a mortgage increase and needed help. Since Micah had moved out and was attending college, she decided to rent out the spare bedroom to a responsible tenant. What she got was William Wilkins, a 6-foot, two hundred and thirty pound meth addict who eventually started stealing their property to pay for his habit. *Id.*; Tr. 1236-40 (Wilkins pawned a gun he stole from the Turners). Micah Turner is 5'6" tall and weighs 135 lbs. Tr. 1201-05.

Wilkins stole guns from the house but police did not do anything about it. Tr. 634-41. Officer Cory Smith responded to a call from the Turner residence reporting that seven different guns had been stolen out of the room of Bryce Turner. Tr. 646-50. Micah was at the house and he described the guns that were stolen and also stated that he believed that William (Brad) Wilkins had stolen them. *Id.* This was echoed by Shary and Bryce. *Id.*

Importantly, Shary Turner also stated that Wilkins carried a handgun as early as March 13, 2020. *Id.* 661-65.

Shary Turner sent to police a video of Wilkins stealing the guns. Tr. 666-70; 676-80. Officer Smith saw this video and agreed that he had probable cause at that point to arrest Wilkins for either Burglary in the Second Degree, Larceny from a House, or Grand Larceny. *Id.*

Police had been dispatched to the house on March 14, 2020, for “verbal domestic” call, which is a heated argument. Tr. 671-75. Police were then dispatched again for the same thing on March 19, 2020. *Id.*

Shary also e-mailed police photographs of the notarized eviction notice she had served on Wilkins. *Id.* Officer Smith also advised Shary of her option to seek a protective order against Wilkins, but she had advised him that she had tried that but was denied by the Rogers County Court. Tr. 676-80.

Officer Smith testified that despite all the efforts made by Shary Turner to get Wilkins out of her home, he could still live there despite the fact that he was not welcome there, had stolen from her, and that she was afraid of him. Tr. 681-83.

Shary placed a call to police on March 23, 2020, at around 10:00 p.m. Tr. 700-02. Officer Travis Harris responded to the scene. Tr. 709-15. He entered the house and saw Micah and Bryce performing CPR on Wilkins. Tr. 716-26. He did not feel like he was in any danger from Micah or Bryce. Tr. 736-45. Bryce was putting compression on the wound which appeared to be above the heart. *Id.*

He also testified that it appeared that Wilkins was much larger than both Turner boys. Tr. 746-51. He was also unaware that police had been dispatched to the home three times in the last ten days, although he knew that Officer Smith had been at the home previously on a call. *Id.*

He was first on the scene, although other officers were en route by that time, including Officer Leila Rau. *Id.* Present in the house were the decedent Wilkins, Bryce Turner, Micah Turner, Shary Turner, and Breanna Nissen. *Id.*

At some point, Bryce Turner “just started talking” and told responding officers that Wilkins had threatened Shary, and that Micah seemed to be fed up with it and “took care of it.” Tr. 727-29. This was admitted over a hearsay objection as an excited utterance. *Id.*

The second officer to arrive on the scene was Officer Leila Rau. Tr. 771-775. Officer Rau saw Shary standing by Officer Harris, Wilkins was on the floor and Micah Turner was performing CPR. *Id.* This went on for a while until Officer Harris took over CPR and relieved Micah. *Id.* Officer Rau asked, “Who is the son?” and Shary responded, “My son shot this individual.” *Id.*

Officer Rau then placed Micah in handcuffs. *Id.* According to Officer Rau, this was a detention and not an arrest. *Id.* She placed Micah in the back of her patrol car where she administered the *Miranda* warnings. Tr. 776-85.

Police eventually secured a handwritten statement from Micah:

Brad has been in our house for months. He has stolen guns, knives, drills and \$10k from us. We could not evict him so he has been coming and going as he pleases. My mother and brother were both very scared for there [sic] lives. He has been doing meth and other drugs. He has been getting more and more violent. Tonight he yelled at my mother and threatened her, "You're playing a dangerous game, girl, and your [sic] not going to win." He has a history of violence and my mother has told me he is very dangerous. He stated slamming doors and I knew he would become physically violent with my mother as soon as he had a chance alone with her. This is not the first time he has been violent, and the fact that he stole our gun I knew he could pull one out at any moment. We have videos of him stealing one of our guns. We have called the police about him a few times, but unfortunately there was nothing they could do. Brad also has tried to extort \$1500 from my brother. I knew tonight was going to get violent, and I could not wait until he already had a gun to either my mother or brother's head, so knowing officers were on there way I shot him. I wanted to fire at his knee, but Brad started standing so I aimed for center of mass in fear of him trying to overpower me or shoot me first. My intent was to threaten him, but him standing up looked aggressive enough for me to fire the weapon. I do not believe in killing, and I desperately hope he makes it. I applied chest compressions and CPR myself to save him to the best of my abilities. I did not intend to fire that weapon tonight, I was hoping Brad would stand down, and I could defend my house without being violent, but he forced my hand.

State's Exhibit #22. When Officer Rau ran a records check on Micah Tuner, it turned up clean, no prior arrests or convictions and no prohibitions from owning or possessing a firearm, and he was 20-years-old. Tr. 821-25; Tr. 841-45.

She also confirmed that Micah had told her that Wilkins had been aggressive toward him that day, and had threatened Shary and Bryce; and also that Micah had

said that Wilkins was getting up aggressively toward him. *Id.*; Tr. 836-40. She also believed Micah's statement. Tr. 884-890.

Micah was interviewed again by Det. Jack Wells. Tr. 1127-35; Tr. 1151-55 (State's Exhibit #18 is the recording). Micah repeated essentially what he had written, including that Wilkins was a thief and had threatened his mother ("Your [sic] playing a dangerous game, girly, & your [sic] not going to win.") Tr. 1156-60.

Police processed the home as a crime scene and found evidence of drug paraphernalia in the form of glass pipes hidden under a cushion inside a Q-Tip box, some of which had burn residue (drugs are smoked in a glass pipe). Tr. 946-50. Photographs of these things were admitted. *Id.* Wilkins had been living in the garage and since his relationship with Shary Turner had turned sour, he was in limbo for a place to live. Tr. 1001-05.

The medical examiner confirmed that Wilkins was 6'0" tall and weighted 219 pounds. Tr. 1029-36. The body had evidence of a shotgun wound. Tr. 1041-45. There was also meth in the blood of Wilkins, so much so that the medical examiner testified that Wilkins was under the influence of meth at the time of death. Tr. 1046-50. The medical examiner also estimated the distance from Wilkins to the shotgun when it fired as 4-5 feet. Tr. 1053-54. The shotgun wound to the chest was the cause of death. *Id.*

OSBI Agent Danny Mouttet testified about extracting cell phone information from the phones of Shary and Bryce. Tr. 1093-1101 (State Exhibit #31 is Shary Turner's phone). Agent Mouttet was asked to download texts from 03/23/2020 through 03/24/2020. *Id.* 1101-05. The texts appear to be normal exchanges in light of the events.

The State rested. Tr. 1282.

The defense called Officer Kevin Burke. Tr. 1284-88. Officer Burke had been dispatched to the Turner home on the night of the incident, and by the time he had arrived the scene had been secured. *Id.*

The defense rested without calling any other witnesses. Tr. 1293.

During the State's closing argument, the primary contention was that Micah had grabbed a shotgun, took the safety off, and crossed the living room and shot an unarmed man sitting down. Tr. 1376-83.

PROPOSITION I

PROSECUTORIAL MISCONDUCT RESULTED IN A FUNDAMENTALLY UNFAIR TRIAL.

A. Standard of Review.

This Court determines *de novo* whether the facts meet the standards of a *Brady* violation. *See Anderson v. State*, 2006 OK CR 6, ¶ 28, 130 P.3d 273.

B. Merits.

A reminder of some first-principles is helpful here.

The function of the prosecutor under the Constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of people as expressed in the laws and give those accused of crime a fair trial. *Donnelly v. DeChristoforo*, 416 U.S. 637, 648-49, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974); *accord Derosa v. State*, 2004 OK CR 19, ¶53, 89 P.3d 1124.

The United States Supreme Court has stated eloquently the central principle that the prosecutor must play fairly in a criminal case and avoid shortcuts to securing convictions:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that

guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). The system itself is on trial when a prosecutor engages in such tactics and fundamental fairness dictates against allowing such gamesmanship in criminal trials. *See, e.g., Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (“society wins not only when the guilty are convicted but when criminal trials are fair; our system of justice suffers when any accused is treated unfairly.”).

Turner also asks this Court to keep in mind that the prejudice element of a *Brady* claim does not mean that the non-disclosed evidence would have resulted in an acquittal or that with disclosure the evidence would have been insufficient to convict; rather, disclosure of the evidence would have put the case in a different light. *Anderson v. State*, 2006 OK CR 6, ¶ 28, 130 P.3d 273.

With these principles in mind, Turner asserts that prosecutorial misconduct requires reversal and that there were two primary types of misconduct in this case: 1) non-disclosure of exculpatory evidence; and 2) witness intimidation and orchestration of witness expulsion from the courthouse.

1. BRADY VIOLATION.

Turner filed two pre-trial motions for discovery requesting exculpatory evidence under *Brady*, and specifically statements made by any witness. O.R. 14, 75.

Although there are seven volumes of trial transcripts in this case, the basic issue in a simplified setting is whether Micah Turner shot and killed William Wilkins in self-defense or was it malice aforethought murder. Although the principal actor and defendant is Micah Turner, the actions and perspectives of other witnesses bear on the question.

Shary Turner and her two adult sons, Micah and Bryce, lived a decent life in Owasso, Oklahoma, in Shary's home. Micah moved out to attend college, which left Shary in a pinch when the mortgage increased; so she secured a roommate. The roommate was William Wilkins (whom they called "Brad").

Wilkins lived in the Turner home for a while, and eventually he began a dating relationship with Shary. However, that soured but instead of leaving, he refused to leave the house and became essentially a freeloader who locked himself in the garage where he lived and refused to leave, refused to pay rent, stole guns from the Turners to support his meth habit (he had meth in his blood at autopsy and glass pipes in his garage-room), and was an overall aggressive and intimidating nuisance to this family in their own home.

And keep in mind that Wilkins was 6'0" tall and weighed 219 pounds, while Micah Turner is 5'6" tall and weighs 135 pounds. Tr. 1201-05; Tr. 1029-36.

The medical examiner testified that Wilkins was shot at a range of 4-5 feet. Tr. 1053-54.

The main points of contention at trial regarding self-defense were whether: 1) Wilkins really posed an actual danger toward Turner and his family; and 2) whether Wilkins was standing up and aggressively moving toward Turner as Turner alleged, or whether Wilkins was shot while sitting on the couch and posing no threat of harm as argued by the State. Tr. 529-38 (State opening statement alleging that Wilkins was basically sitting down when shot); Tr. 1376-83 (State closing argument alleging Turner grabbed a shotgun, took the safety off, and crossed the living room and shot an unarmed man sitting down).

This is important because the police officer witnesses made it sound as if Shary Turner really was not scared of Wilkins at all; and prosecutors argued that Wilkins was shot while sitting on the couch and no threat to Turner.

As to this second part, prosecutor Isaac Shields had failed to turn over critical information in possession of the State to the effect that Shary Turner had called the District Attorney's Office on or near the day of the shooting and told witness coordinator Jessica Arthur "that she was scared of the victim [Wilkins] and needed

help.” *See* Motion for New Trial attached Exhibit 1 (e-mail exchange between Assistant District Attorney Madison Shockley and District Attorney Matt Ballard).

A copy of this e-mail exchange was acquired by appellate counsel’s investigator, April Stamper, directly from Assistant District Attorney Madison Shockley who worked in the same office as Shields. *See id.* attached Exhibit 3.

The e-mail exchange showed that Jessica Arthur had actually expressed her concerns about Shary’s statement to her to another Assistant District Attorney named Kaylind Landes. Arthur had told Landes about it on or about September 24, 2021, and that she had initially tried to pass the call from Shary to Assistant District Attorney George Gibbs who was co-counsel on the case along with Isaac Shields. *Id.*; *see also id.* attached Exhibit 4 (affidavit of investigator April Stamper).

According to Landes, Jessica Arthur was watching the news, saw the media reports of the shooting, and realized that Shary Turner was the mother of Micah Turner (the shooter) and was the person who had called her and expressed fear about Wilkins right before the shooting happened. *See id.* attached Exhibit 4.

Arthur, who was understandably alarmed by this, realized that she had typed up a document to memorialize her conversation with Shary Turner. *Id.* However, she sat on this information for months before she realized that it would be important to the *defendant* in the case.

This is when Arthur then reached out to Kaylind Landes, who in turn notified Madison Shockley about the existence of this report containing exculpatory information. *Id.* Landes does not believe that the report by Arthur was ever logged properly or placed in the evidentiary file in the case. *Id.* ¶ 11.

When Landes notified Shockley about the “Arthur report” Shockley brought her concerns that the District Attorney’s Office was possibly neglecting its *Brady* duties to District Attorney Matt Ballard and First Assistant Brian Serber. *See id.* attached Exhibit 3 at ¶¶ 7-8. Ballard responded that he had discussed the matter with Shields who had informed him that the report had been turned over to the defense. *Id.*; *see also* attached Exhibit 1.

It had not been turned over to the defense.

Nor has the report written by Jessica Arthur ever been seen by anyone on the defense team to this day. Defense counsel Sabah Khalaf did not become aware of the existence of the “Arthur Report” until some time in June, 2022. *See Motion for New Trial* attached Exhibit 2 at ¶ 2.

Khalaf had in fact spoken to Shary on multiple occasions prior to trial about her efforts to evict Wilkins but she was unfamiliar with the court system and she never mentioned to Khalaf that she had ever spoken to anyone at the District Attorney’s Office, which he attributed most likely Shary calling the Court Clerk’s

Office and being transferred to the District Attorney's Office without realizing to whom she was speaking. *Id.* ¶¶ 3-7.

Khalaf now understands that Shary told the District Attorney's Office that she was terrified of Wilkins, that he had made personal threats to her safety, and in fact told her that he had killed someone before; and she also believed that the best friend of Wilkins was a drug dealer which frightened her because Wilkins was living in her house and using meth. *Id.* ¶ 8.

No one from the prosecutor's office disclosed this information to defense counsel prior to trial. *Id.* ¶ 9. Had it been disclosed, defense counsel would have called Shary as a witness at trial, and also explored recusing the District Attorney's Office because a witness was employed there (Jessica Arthur, the person who took the call from Shary). *Id.* ¶ 10.

A few things emerge from these facts.

First, the Court will notice that appellate counsel has not attached affidavits from either Kaylind Landes or Madison Shockley, although the e-mail exchange is attached. There are reasons for this that bear explanation.

As to Kaylind Landes, she was summoned to the office of Isaac Shields on or about September 30, 2021, and was informed, according to her, in a threatening manner by Shields that she was "meddling" and that defense counsel had been made

aware of the report by Jessica Arthur (which is no true). *See* Motion for New Trial attached Exhibit 4 at ¶ 9.

Further, Shields informed Landes that he was the highest paid employee in the District Attorney's Office and could "make or break any attorney" and that individuals were going to start losing their jobs over this situation. *Id.* ¶ 10.

On or about October 4, 2021, Landes turned in her *resignation* as a result of her experience with prosecutors at the Rogers County District Attorney's Office and the way they handled things in the Turner case. *Id.* ¶ 13. She also believes that attempts by administration in the Rogers County District Attorney's Office to persuade her from resigning were a ruse to control the narrative created by the cover-up of the exculpatory information in this case. *Id.* ¶ 16.

Counsel's investigator April Stamper spoke with Landes about the possibility of Landes executing an affidavit regarding the information that she had told to Stamper, and Landes *agreed* to do so. *Id.* ¶ 17.

However, within one hour of telling Stamper that she would sign an affidavit, Landes called Stamper back and stated that she would not because she was *physically afraid* of Isaac Shields and feared for herself and her family if she did so. *Id.*

As to Madison Shockley, she too resigned from the Rogers County District Attorney's Office because of how the Turner case had been handled by her superiors.

See Motion for New Trial attached Exhibit 3 at ¶ 10. She had also agreed to execute an affidavit regarding this matter, like Landes, within an hour of agreeing to do so, she called back and said she would not after discussing the matter with her new boss at the Tulsa County District Attorney's Office.

Thus, *two* prosecutors have resigned over how Isaac Shields handled the exculpatory information in this case, and both refuse to proffer affidavits, one because of actual fear for her safety from Isaac Shields and the other because of advice from her current boss.

Turner thus requests an evidentiary hearing to employ judicial authority in the district court to make a proper record to the extent that the State contests of the facts presented. Turner filed two pre-trial motions for discovery requesting exculpatory evidence under *Brady*, and specifically statements made by any witness. O.R. 14, 75.

Shary Turner was an endorsed State witness. O.R. 2.

Second, it must be noted that Isaac Shields and George Gibbs, Jr., have both been suspended by District Attorney Matthew Ballard for eavesdropping on a deliberating jury in a different case, and the matter has been referred for possible criminal prosecution to the Attorney General.¹ See Motion for New Trial attached

¹ At least as to Shields, counsel believes that this is not the first time he has tried to eavesdrop on deliberating jurors. Counsel believes that he has been caught doing this in a trial several years ago which has been confirmed by the defense

Exhibit 5. These actions by Shields indicate his inclination to hide *Brady* material, as does his intimidation tactics used against Landes and also outlined below regarding defense witness Breanna Nissen.

The actions of the prosecutor in this case constitute reversible error under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); accord *Harris v. State*, 2019 OK CR 22, 450 P.3d 933. The Supreme Court in *Brady* held that the Constitution requires as a matter of Due Process the State to disclose evidence favorable to the accused. *Brady*, 373 U.S. at 87.

This Court has held that to establish a *Brady* violation, a defendant need not show that the State intentionally withheld such information, but he must show that the evidence had exculpatory value, that it was material, and that there is a reasonable probability that its omission affected the outcome of the trial. *Harris*, ¶ 38.

And as noted, *supra*, the prejudice element of a *Brady* claim does not mean that the non-disclosed evidence would have resulted in an acquittal or that with disclosure the evidence would have been insufficient to convict; rather, disclosure of the evidence would have put the case in a different light. *Anderson v. State*, 2006 OK CR 6, ¶ 28, 130 P.3d 273.

In this case, there is no dispute that Turner shot and killed Wilkins. The point

lawyer who caught him and confronted him about it.

of contention was whether Turner was justified in doing so either from a reasonable belief that Wilkins posed a threat to him or his mother and brother. This was the contested point at trial. *See, e.g.*, Tr. 1306-12 (State closing argument refuting whether Shary and Bryce were in danger).

The fact that Shary Turner contacted the District Attorney's Office within hours of the shooting and expressed fear of Wilkins and asked for help is obviously a material fact that should have been disclosed, and more to the point would have placed the State's case in a different light under *Brady*.

This fact was apparent to at least three employees of the District Attorney's Office (Witness Coordinator Jessica Arthur, Assistant District Attorney Madison Shockley, and Assistant District Attorney Kaylind Landes), but apparently not to lead prosecutor Isaac Shields. The evidence would have corroborated the handwritten statement of Micah provided to the police that both his mother (Shary) and his brother were afraid of Wilkins, but the jury never heard from Shary or Bryce (this is an important point raised in Proposition III, *infra*).

Had this evidence been disclosed to defense counsel, there is a probability that it would have affected the result, or put another way under *Anderson*, it would have put the case in a different light, not only because of the content of her statement, but the timing of it so close to the shooting. Shary Turner was not called by the defense,

but would have been had this information been disclosed; and her testimony would have supported the defense theory of the case.

2. BREANNA NISSEN.

Breanna Nissen was another defense witness who was not called at trial.

She was physically present at the house when the shooting occurred and came out of a bedroom the split-second she heard the gunshot. *See* Motion for New Trial attached Exhibit 6. She would have testified that they were all afraid of Wilkins. *Id.*

On the night of the shooting, the aggressive behavior of Wilkins had intensified to the point that Bryce Turner told her to go to the bedroom and lock the door, which she did. *Id.* ¶ 3. She then heard a gunshot, which scared her, and she unlocked the door, opened it, and saw Wilkins *standing* close to Micah (a distance of 4-5 feet, similar to the testimony of the medical examiner). *Id.* ¶ 4.

Wilkins said something to the effect of, “Oh my God, you shot me. I’m shot,” and Wilkins was facing Micah when he said this, about five feet away before he fell over onto the floor. *Id.* This is important because the State’s theory of the case was that Wilkins was *sitting* on the couch in a non-threatening way and Micah simply walked up and shot him as he sat there. Breanna saw something inconsistent with that theory: Wilkins standing up on his feet facing Micah just a few feet away from each other.

Prior to trial, Breanna was listed as a State witness (and also a defense witness) and she was summoned to meet lead prosecutor Isaac Shields at his office. *Id.* ¶¶ 5-6. She told him the truth about what she saw. *Id.* ¶ 6. She recalled that Shields took a phone call from his son, hung up the phone, then said to her that she was about the same age as his son (Breanna was barely 18-years-old at the time), but that she was in a much worse position in life. *Id.* ¶ 7.

Further, Shields told her that there was no way that she was going to get on the witness stand and lie for Micah Turner. *Id.* ¶ 8. She felt threatened and intimidated by Shields because he was very aggressive and said that she was lying. *Id.* ¶ 9. She “cried silently” to herself and she felt afraid to testify as a defense witness. *Id.* ¶ 9.

Defense counsel full intended on calling Breanna as a defense witness, even though she had refused to speak to him until subpoenaed to court. *See* Motion for New Trial attached Exhibit 2 at ¶¶ 11-12.

According to defense counsel, Shields had discouraged him multiple times from calling Breanna as a witness, saying that she was a liar, unreliable, and that he had threatened to charge her if she testified. *Id.* ¶ 13.

When she showed for court during trial, defense counsel spoke to her about the case and realized that she was terrified of Shields and the District Attorney’s Office in general, telling defense counsel that she had met with Shields on at least two

occasions at the office of the District Attorney and that Shields had threatened to charge her if she testified. *Id.* ¶¶ 13-14.

Defense counsel recognized that Breanna was an important witness for the defense because she corroborated Micah's version of the events by indicating that Wilkins was standing and aggressively moving towards Micah when he was shot. *Id.* ¶ 15.

When Breanna was in the hallway waiting to be called as a witness, the bailiff pulled counsel into a separate courtroom and advised that a juror had allegedly seen Breanna in the hallway the day before and appeared to be taking pictures of the jurors. *Id.* ¶ 16.

This allegation surprised counsel because it seemed out of character and she was a teenaged girl unlikely to do something like that. *Id.* ¶ 17. He spoke to her later and confirmed that she had used her phone to check social media and to entertain herself but never took any photographs of the jurors. *Id.* ¶ 18.

Breanna also denied taking photographs of jurors. *See* attached Exhibit 6 at ¶ 11. In fact, she had no idea that she had even been accused of doing that when she was escorted out of the courthouse without being given any notice as to why or an opportunity to explain or deny. *Id.* ¶ 10.

So, as it happened, defense counsel recalled that Judge Pazzo held a hearing

on the matter,² and Shields insisted that he be given great latitude on cross-examination to cover use of her cell phone. *See* attached Exhibit 2 at ¶ 19. In counsel's view, this would taint the jury and it spooked him from calling any substantive witness from the Turner family or Breanna (who was dating Bryce at the time). *Id.* ¶ 20.

Defense counsel believes that, based upon information from Breanna, that she never filed or photographed any jurors, and that the allegation was planted by the prosecutors in this case in an effort to prevent her from testifying. *Id.* ¶ 29.

The result was that defense counsel decided not to call the key witness Breanna Nissen and other members of the Turner family at trial (Bryce, Shary and Micah) at trial. *Id.* ¶ 25.

Defense counsel's contention that the allegation that Breanna had taken photographs of jurors with her phone was a ruse by prosecutors to prevent her from testifying is persuasive. As defense counsel noticed, it is entirely too coincidental that Shields threatened and coerced Breanna to not testify as a defense witness, and it ends up that she is the only defense witness accused of taking pictures and escorted out of the courthouse. *Id.* ¶ 30.

² Although counsel's recollection was that a hearing had been held, there does not appear to be any stenographic record of the hearing or any ruling by the trial court.

This situation is important because it changed the defense strategy and likely the outcome of the case. *Id.* ¶ 31.

There appears to be no record of any hearing on this matter. No record of any juror asserting such a thing, or of Breanna being given notice of the allegations and an opportunity to respond, or any evidence at all that this was anything other than a fabrication of Isaac Shields.

To the extent that it was, it is obvious prosecutorial misconduct and manipulation of defense witnesses. *See Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed.2d 1314 (1935).

To the extent that it was a legitimate juror concern, trial counsel was ineffective for failing to make a proper record, failing to contest the assertion that Breanna had taken any photographs of jurors, and for then making the unreasonable decision to not call her as a defense witness because her testimony was critical. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

3. EAVESDROPPING ON JURORS.

As outlined, *supra*, District Attorney Matt Ballard has referred a disqualification request to the Attorney General stemming from an allegation that prosecutors Isaac Shields and George Gibbs, Jr., were caught eavesdropping on a deliberating jury in a recent case out of Rogers County. *See id.* attached Exhibit 5.

The allegations against Shields and Gibbs are actually criminal in nature in that the jury was deliberating in a courtroom, rather than a jury room, which was outfitted with recording devices and equipment accessible in the courthouse security office. *Id.*

This is important because the jury deliberations during the trial of Micah Turner, too, occurred in a courtroom in Rogers County because of the pandemic protocol, and the prosecutors were Isaac Shields and George Gibbs, Jr. *See* Motion for New Trial attached Exhibit 2 at ¶ 27. According to defense counsel, the courtroom where deliberations took place were also likely outfitted with microphones and cameras that could have been accessed by Shields and Gibbs during deliberations in this case as well. *Id.* ¶ 28.

The referral letter from District Attorney Matt Ballard to the Attorney General cites 21 O.S. § 588, which makes it a felony crime for anyone to eavesdrop on a deliberating jury.

Thus, the specter of two prosecutors monitoring the deliberations in the trial of Micah Turner is potentially a felony crime against the jury. This would be a structural error. *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (describing structural error as a defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself).

Turner asserts that he is entitled to an evidentiary hearing to determine whether Shields and/or Gibbs eavesdropped onto the deliberations in his case, and if so, to reverse his conviction and remand for a new trial based on this structural error.

PROPOSITION II

TURNER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

A. Standard of Review.

The legal question of whether defense counsel was constitutionally effective is decided by this Court *de novo*. *Fisher v. State*, 2009 OK CR 12, ¶ 25, 206 P.3d 607 (“this Court makes the ultimate decision regarding a claim of ineffective assistance of counsel”); *see also Littlejohn v. State*, 2008 OK CR 12, ¶ 28, 181 P.3d 736, 745. Findings of fact by the trial court, if any, are reviewed for an abuse of discretion. *Id.*

B. Merits.

A defendant in a criminal case is entitled to the effective assistance of counsel; and constitutionally deficient counsel violates the Sixth and Fourteenth Amendments to the United States Constitution as well as article II, §§ 7 and 20 of the Oklahoma Constitution. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Under the familiar constitutional test established in *Strickland*, an ineffective assistance claim has two components: a defendant must show that counsel’s performance was deficient, and that the deficiency prejudiced the defense. *See Davison v. State*, 2020 OK CR 22, ¶¶ 12-13, 478 P.3d 462.

The performance of trial counsel is measured by an objective standard of reasonableness under prevailing professional norms. *Id.* (citing *Coddington v. State*, 2011 OK CR 17, ¶ 78, 254 P.3d 684, 713-14). If counsel's performance falls under this standard, the appellant must show a reasonable probability that, absent trial counsel's deficient performance, the outcome of the trial would have been different. *Id.*

Here, the State had to disprove beyond a reasonable doubt that Turner acted in self-defense. O.R. 252 (Jury Instruction No. 33). This would appear to be a tall order in a case where a 6'0" tall 219 pound drug using (meth) commandeered a woman's home, refused to pay rent, refused to leave, locked himself in the garage, stole guns from the house and pawned them for drug money, antagonized everyone in the house and yelled at and intimidated the homeowner Shary Turner whose efforts to use the legal process to evict him fell on deaf ears.

The problem is that the jury did not hear from the most critical defense witnesses, and indeed defense counsel failed to call the four most critical witnesses for the defense, all endorsed by the defense (O.R. 172), each of whom could have refuted the principal contentions of the State: Breanna Nissen, Shary Turner, Bryce Turner, and Micah Turner. Each of these four witnesses were at the scene inside the home when the shooting occurred.

Defense counsel's reasons for not calling these witnesses and putting on a defense was that the situation surrounding the allegations made against Breanna Nissen of allegedly taking photographs of jurors would lead to cross-examination of that issue by the State and would somehow "taint" the jury against the Turners. *See* Motion for New Trial attached Exhibit 2 at ¶¶ 20, 24-25.

The legal inquiry for this Court is whether foregoing the most favorable evidence and testimony for the defense was a reasonable decision in light of the fact that Breanna Nissen denied that she ever took pictures of the jurors, no juror was ever produced to substantiate such an accusation, Breanna was never brought in to testify or give her side of the story and was rushed out of the courthouse without any explanation, and what exactly would the "taint" be in such a situation?

Sure, the prosecutor could cross-examine Breanna on whether she was taking photographs of jurors, but so what? She would have denied it and told them she was playing on her phone, which is not something exactly shocking for a teenaged girl to be doing while waiting to be called as a witness. *See* Motion for New Trial attached Exhibit 6 at ¶ 11-13.

And let us not forget that if Isaac Shields was going to cross-examine Breanna over the photograph allegation to which there was no substance and which was likely orchestrated by him in the first place, there could have been re-direct examination

explicating the fact that Breanna had met with Shields prior to trial at his office, where he called her a liar, tried to intimidate her into not testifying, made her cry silently to herself listening to him berate her, and threaten to charge her with a crime if she testified for Micah—but yet here she is testifying to the truth anyway despite his threats and intimidation tactics. This would have made her a more powerful witness.

Thus, the decision by trial counsel to forego a defense was not reasonable under the circumstances. Trial counsel should have called the following witnesses:

1. BREANNA NISSEN.

Her testimony was crucial for the defense because she was physically present at the house when the shooting occurred and came out of a bedroom the split-second she heard the gunshot. *See* Motion for New Trial attached Exhibit 6.

Prior to the shooting, she would have testified that they were all afraid of Wilkins. *Id.* On the night of the shooting, the aggressive behavior of Wilkins had intensified to the point that Bryce Turner (her then-boyfriend) told her to go to the bedroom and lock the door, which she did. *Id.* ¶ 3. She then heard a gunshot, which scared her, and she unlocked the door, opened it, and saw Wilkins standing close to Micah. *Id.* ¶ 4.

Wilkins said something to the effect of, “Oh my God, you shot me. I’m shot,” and Wilkins was facing Micah when he said this, about five feet away before he fell

over onto the floor. *Id.* This would have been important for the jury to hear because the State's theory of the case was that Wilkins was sitting on the couch in a non-threatening way and Micah simply walked up and shot him as he sat there.

Breanna saw something inconsistent with that theory, Wilkins standing up on his feet facing Micah just a few feet away from each other, which greatly corroborates Micah's assertion that Wilkins was aggressively coming at him when Micah shot.

2. SHARY TURNER.

Shary Turner was the subject of prosecutorial opening statements (Tr. 529-38), defense counsel opening statements (Tr. 538-55), and testimony from police officer witnesses about her efforts to evict Wilkins (Tr. 634-41; 646-50) over his theft of guns among other things (Tr. 666-70).

However, the jury never heard from Shary.

The State never called her, and neither did the defense. As with Breanna, defense counsel's reason was the "juror photos" situation. As with Breanna, was this a reasonable decision? How would that situation taint Shary's testimony? It obviously would not.

What would she have contributed? She would have corroborated Micah's statement of concern for her and Bryce that Wilkins would have a gun to their heads sooner or later. *See* State Exhibit #22.

Obviously, if the State prosecutors had performed their *Brady* duties, Shary would have been questioned about calling Jessica Arthur at or on the day of the shooting and her efforts to evict Wilkins and that she was terrified of him.

Beyond that, the jury would have learned of the threats made by Wilkins against her and her family, the fact that Wilkins had bragged to her about shooting his mother's boyfriend or husband in the past, that he had told her his best friend was a drug dealer which made her even more fearful, and her despair at being told by courthouse personnel that despite all of this the law provided no avenue for her to evict Wilkins. *See* Motion to Supplement attached Exhibit 8.

3. BRYCE TURNER.

Bryce Turner (Micah's younger brother), also resided in the house with Shary. He was an endorsed witness for the defense, but was not called because the alleged taint from the Breanna Nissen "juror photos" issue. Was this reasonable? No.

Bryce would have told the jury about Wilkins's personality, how he robbed them of their guns and sold them for drugs and the real possibility Wilkins could have had one in his possession on the, that Wilkins walked into the house that night angry and screaming at Shary and that he had physically placed his foot in the doorway so she was not able to close the door and get away from him. *See* Motion to Supplement attached Exhibit 7.

Micah in fact tried to intervene and talk to Wilkins which was met with, “Fuck off.” *Id.* During this tense situation with Wilkins screaming and arguing with their mother, something very important happened that the jury never heard: Wilkins left the house for about 35-45 minutes. *Id.* ¶ 8.

During the time that Wilkins was gone, Bryce stayed in the bedroom with Micah. This is important because both boys feared that Wilkins went outside to retrieve a gun that he had stolen from them and they also knew that he owned a pistol. *Id.* ¶ 9-10. It was right when Wilkins came back inside the house that he went into the kitchen, arguing ensued, Micah walked out of the room, and then Bryce heard the gunshot. *Id.* ¶ 11-15.

Like Breanna, Bryce also rushed out of the room and saw Wilkins standing and then fell, saying something like, “it got me, it got me.” *Id.* ¶ 15. Thus, he not only could have described for the jury the details of the night that amped up the fear (the arguing and screaming, Wilkins going outside for some unknown reason), but he also could have corroborated Breanna’s information that Wilkins was standing in front of Micah at the time he was shot, not sitting down as the State argued.

Finally, Bryce’s testimony would have been important because Officer Harris testified at trial that when he arrived at the scene, Bryce was in an excited state and just started talking. Tr. 727-29.

According to Officer Harris, Bryce told responding officers that Wilkins had threatened Shary, and that Micah seemed to be fed up with it and “took care of it.” *Id.* This was admitted over a hearsay objection as an excited utterance. *Id.*

This statement, and the implication that Micah “took care of it” in a premeditated way went unrebutted at trial. Bryce is the one who made the statement. Had he testified at trial, he would have explained to the jury that he was in shock at what he had seen and when he said that Micah took care of it, he just meant to convey to the officers that Micah had fired the shot, not that he had planned it. *See* Motion to Supplement attached Exhibit 7 at ¶ 20.

4. MICAH TURNER.

Finally, the jury never heard from the most important witness: Micah Turner.

At the time of the shooting, Micah was a 20-year-old college student at OSU-Okmulgee studying cyber-security and dating a young woman named Hannah. Tr. 538-555. He also had a clean record, no warrants or convictions, and no other prohibitions from owning a firearm. Tr. 821-25; 841-45.

Was there any reasonable basis to not call him to the stand and have him tell the jury that he acted in self-defense? No.

This is especially true since Micah had told police that Wilkins had been aggressive toward that day, had threatened Shary and Bryce, and that Wilkins was

getting or standing up aggressively toward Micah at the time of the shooting. Tr. 821-25; 836-40.

Micah made three statements to police, and the prosecution did what it always does in these situations, picks apart the inconsistencies, highlights discrete statements that support its case, and picks apart his actions that night to support guilt. Tr. 1295-1300; Tr. 1301-05 (contrasting three statements made by Micah).

The problem was that Micah did not take the stand and explain his statements, the events specifically that caused him to be fearful of Wilkins and to shoot him in the moment, and to convey to the jury in a personal way why he was justified in taking the actions that he did.

This was especially crucial in light of the corroborating witnesses that should have been called (Breanna, Bryce and Shary), each of whom were actually inside the home when the shooting occurred and each of whom had personal experience with the personality of William Wilkins.

Not calling Micah to the stand was a mistake, and it was a decision made based upon an unreasonable assessment of the effect that the "juror photos" incident with Breanna would have had on Micah.

For the foregoing reasons, counsel made an unreasonable decision to forego a defense presentation which prejudiced Micah.

PROPOSITION III

THE CUMULATIVE EFFECT OF THE LEGAL ERRORS IN THIS CASE COMBINED TO RENDER THE TRIAL FUNDAMENTALLY UNFAIR.

A. Standard of Review.

This Court decides de novo whether the cumulative effect of trial errors deprives the accused of a fair trial. *Lewis v. State*, 1998 OK CR 24, ¶ 63, 970 P.2d 1158.

B. Merits.

The jury trial was infused with more than one legal error, the aggregate effect of which is sufficient to warrant reversal and/or modification of sentence even if this Court is convinced that any one error does not warrant relief. *See Bechtel v. State*, 1987 OK CR 126, ¶ 12, 738 P.2d 559, 561 (“When a review of the entire record reveals numerous irregularities that tend to prejudice the rights of the defendant, and where a cumulation of said irregularities denies the defendant a fair trial, the case will be reversed, even though one of said errors standing alone would not be ample to justify reversal”); *see also Chandler v. State*, 1977 OK CR 324, ¶ 13, 572 P.2d 285; *Lovell v. State*, 1969 OK CR 177, ¶ 13, 455 P.2d 735; U.S. Const. amend. XIV; Okla. Const. art. II, § 7.

This Court has recognized that when there are “numerous irregularities during

the course of [a] trial that tend to prejudice the rights of the defendant, reversal will be required if the cumulative effect of all the errors was to deny the defendant a fair trial.” *DeRosa v. State*, 2004 OK CR 19, ¶100, 89 P.3d 1124.

In Turner’s case, the irregularities were of such a nature as to deprive him of a fair trial warranting reversal.

The lead prosecutor failed to disclose the exculpatory evidence of Shary Turner pleading with court personnel at or on the day of the shooting to help her evict Wilkins and that she was terrified of him, he tried to intimidate a teenage girl witness for the defense who told the truth about what she saw (Wilkins standing when he was shot, not sitting on the couch) and was threatened with criminal prosecution herself, and then there was the highly suspicious allegation of Breanna taking photos of the jurors which she denies ever doing, but was never given an opportunity to explain, which ended up in her being removed from the courthouse in a very coincidental lucky chain of events for the State.

On top of all that, Micah had witnesses to call in his defense who could have corroborated the major, critical facts that would have supported his self-defense claim (that Wilkins was not on the couch, but rather was standing up and coming toward him at 6'0" and 229 pounds to Micah’s 5'6" and 135 pounds, that Wilkins had stolen guns from the Turners and went outside for around 35-45 minutes before coming

back inside, and the fact that he was known by Micah to have possessed a pistol in addition to the guns that he had stole, not to mention that he not only was a meth user, but he had a best friend who was a drug dealer and that Wilkins had bragged about shooting someone in the past).

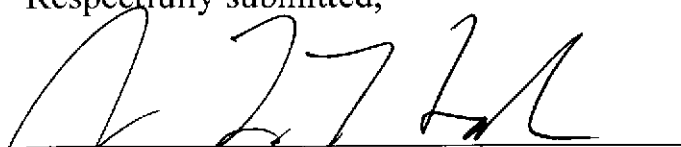
The combined effect of the prosecutor hiding exculpatory evidence and defense counsel failing to present some resulted in a fundamentally unfair trial in violation of Micah Turner's right to Due Process.

CONCLUSION

For the reasons stated above, Turner requests that this Court grant relief as requested under the law and evidence, reverse his conviction, and remand for a new trial.

DATED this 4th day August, 2022.

Respectfully submitted,

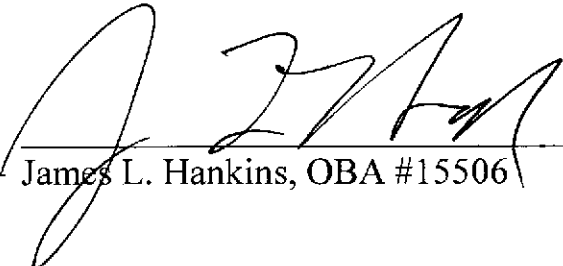


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CERTIFICATE OF SERVICE

I certify that on this 4th day of August, 2022, a true and correct copy of the foregoing was delivered to the Clerk of this Court for transmittal to the Attorney General of the State of Oklahoma.



James L. Hankins, OBA #15506