

No. _____

In the
Supreme Court of the United States

BRIAN RUSSELL TURNER,
Petitioner,
v.

THE STATE OF MISSISSIPPI,
Respondent.

**On Petition for a Writ of Certiorari from
the Supreme Court of Mississippi**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of Mississippi Erred in Denying Petitioner's Claim that the Prosecution Withheld Exculpatory Evidence Pursuant to *Brady v. Maryland* and *Arizona v. Youngblood*.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this Court are as follows:

Brian Russell Turner.

The State of Mississippi.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Brian Turner has no parent corporations and no publicly held company that owns 10% or more of any entity.

LIST OF PROCEEDINGS

CIRCUIT COURT OF TISHOMINGO COUNTY,
MISSISSIPPI

Cause No. CR18-187

STATE OF MISSISSIPPI v. BRIAN RUSSELL
TURNER

Judgment dated 10/08/2019.

Unpublished opinion.

CIRCUIT COURT OF TISHOMINGO COUNTY,
MISSISSIPPI

Cause No. CR18-187

STATE OF MISSISSIPPI v. BRIAN RUSSELL
TURNER

Order dated 11/19/2019 denying Petitioner's Motion for
J.N.O.V. or, in the Alternative, Motion for New Trial.

Unpublished opinion.

SUPREME COURT OF MISSISSIPPI

Case No. 2019-KA-01724-SCT

BRIAN RUSSELL TURNER v. STATE OF
MISSISSIPPI

Order dated 06/17/2021 affirming the Circuit Court's
decision denying Petitioner's sentence and Motion for
J.N.O.V.

Turner v. State, No. 2019-KA-01724-SCT, 2021 Miss.
LEXIS 157 (June 17, 2021)

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully requests that a Writ of Certiorari be issued to review the decisions of the Circuit Court of Mississippi for Tishomingo County, and the Mississippi Supreme Court on appeal, finding that Mr. Turner's due process rights were not violated pursuant to *Brady v. Maryland* or *Arizona v. Youngblood*.

OPINIONS BELOW

The June 17, 2021 decision from the Mississippi Supreme Court can be found at *Turner v. State*, No. 2019-KA-01724-SCT, 2021 Miss. LEXIS 157 (June 17, 2021) and is reproduced in the Appendix ("Pet. App. 1a") at Pet. App. 1a.

BASIS FOR JURISDICTION IN THIS COURT

The Supreme Court of Mississippi affirmed the decision of the Mississippi Circuit Court of Tishomingo County on June 17, 2021. (Pet. App. 1a). This Court has jurisdiction pursuant to statutory provision 28 U.S.C. § 1254(1) to review on writ of certiorari the decision of a state Supreme Court. This matter brings questions of law that are unsettled.

In *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg*, 545 U.S. 308 (2005), this Court articulated a standard for federal question jurisdiction. The federal issue must be "actually disputed and substantial," and it must be one that the federal courts can entertain without disturbing the balance between federal and state judicial responsibility. *Id.* at 314. Here, that question is whether the Mississippi

Supreme Court erred in finding that Mr. Turner's due process rights were not violated pursuant to the standard found in *Brady v. Maryland*.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE

A. Bringing the Claims to Federal Court.

On September 23, 2019, the Mississippi Circuit Court of Tishomingo County found Petitioner not guilty of one count of aggravated assault upon a law-enforcement officer (Count I) and guilty of one count of failing to stop a motor vehicle pursuant to the signal of a law-enforcement officer (Count II), two counts of aggravated assault upon a law-enforcement officer (Counts III and IV) and one count of possession of a firearm by a felon (Count V). (Pet. App. 1a). Petitioner then motioned for J.N.O.V. or, in the alternative, a new trial. (Pet. App. 1a). That motion was subsequently denied. (Pet. App. 43a). Petitioner then filed an appeal with the Supreme Court of Mississippi on July 29, 2020. (Pet. App. 1). That petition was denied on June 17, 2021. (Pet. App. 1).

Petitioner now timely files this petition for a Writ of Certiorari with the United States Supreme Court.

B. Concise Statement of Facts Pertinent to the Questions Presented.

On May 3, 2018, professional logger Brian Turner left work after a thirteen-hour shift, intending to return to his home in Tishomingo County, Mississippi. However, on his way home, Mr. Turner was confronted with a safety checkpoint consisting of a police roadblock manned by several officers. This roadblock was not previously advertised in the news media or on any road signs, and Mississippi Highway Patrolman Derick Earnest later testified at trial that—to an average motorist—it would likely have been

indistinguishable from a traffic accident. (Pet. App. 45a).

Upon seeing the roadblock, Mr. Turner took a left turn into a nearby parking lot and began traveling south. (Pet. App. 3a). Although the officers gave inconsistent testimony regarding the turn at trial, a consensus seemed to emerge that Mr. Turner's actions were "unusual" but not illegal. (Pet. App. 80a). Tishomingo County Sheriff's Deputy Jason Moore decided to follow Mr. Turner and ultimately initiated a stop after realizing that Mr. Turner's tags were expired, and his vehicle lacked tag lights. (Pet. App. 3a). Although Deputy Moore did not detect the odor of drugs or alcohol, he told Mr. Turner to exit the vehicle. (Pet. App. 81a-82a).

At this point, the testimony provided by Deputy Moore and that provided by Mr. Turner begin to diverge. Moore claims that as he approached the vehicle, Mr. Turner became irate. (Pet. App. 3a). Deputy Moore claims that he drew his taser and told Mr. Turner to exit the vehicle, intending to arrest him for disorderly conduct. (Pet. App. 4a). Turner claims that Moore drew his firearm and pointed it at him. Both parties agree that this is when Mr. Turner re-entered his vehicle and left the scene with Moore in hot pursuit. (Pet. App. 4a).

Mr. Turner made a U-turn and began traveling the other direction. The two parties subsequently crashed into each other's vehicles. (Pet. App. 4a). At trial, Turner maintained that Moore rammed his driver's side vehicle in an attempt to end the chase. (Pet. App. 13a). However, Deputy Moore asserted that Turner

intentionally crashed into his vehicle, resulting in Mr. Turner's being charged with aggravated assault on an officer through the use of an automobile. (Pet. App. 13a). In any event, Turner was found not guilty of this charge at trial. (Pet. App. 1a).

A shootout then ensued between Mr. Turner on one side and Officers Moore and James Guthery on the other, the latter of whom arrived at the scene shortly after the collision. (Pet. App. 4a). Predictably, each side claims that the other initiated the shootout either way, Mr. Turner escaped. (Pet. App. 5a). Believing that his life was in danger, Turner returned home and obtained another firearm and a bulletproof vest. (Pet. App. 96a). Turner then called the Mississippi Bureau of Investigation ("MBI") before traveling to Tennessee. (Pet. App. 96a). Turner was arrested the next day without incident. (Pet. App. 4a-5a).

Claiming that it would substantiate his version of events, Mr. Turner repeatedly asked the MBI to obtain both the body camera footage from Deputy Moore and the dash cam footage from Trooper Earnest's highway patrol vehicle. (Pet. App. 95a-96a). Body cameras are required for all on-duty officers pursuant to the Belmont Police Department policy. (Pet. App. 65a).

Although the Tishomingo County Sheriff's Department and the Belmont Police Department confirmed that both Moore and Guthrey had been issued body cameras on the night in question, the MBI never obtained the body cameras—nor the dashcam footage—for independent review. (Pet. App. 29a-30a). Neither Moore nor Guthrey were ever interviewed by the MBI. (Pet. App. 66a-67a).

C. Procedural History

On October 9, 2018, Turner was indicted for one count of failure to stop, one count of aggravated assault of a law-enforcement officer through the use of an automobile, two counts of aggravated assault of a law-enforcement officer through the use of a deadly weapon, and one count of felon in possession of a firearm. (Pet. App. 2a). Trial took place in the Mississippi Circuit Court of Tishomingo County.

On January 22, 2019, Turner filed a Motion to Obtain Dash Camera and Body Camera Surveillance, seeking an order directing the State to produce

a copy of any and all audio, video, digital or electronic copy of any type of audio or video recording that was made by the Mississippi Highway Safety Patrol, the Belmont Police Department, and or the Tishomingo County Sheriff, or his deputies, to include, but not limited to, the dashboard camera footage from the aforementioned police patrol cars, or any other police patrol car, at the time in question, together with body camera footage from any officer involved herein, to include: Trooper Derek Earnest, Tishomingo Deputy Jason Moore, Belmont Officer James Guthery, and Belmont Officer Randy Cornilson.

(Pet. App. 6a). The Tishomingo County Sheriff's Department and the Belmont Police Department confirmed that Moore and Guthery had been issued body cameras on the night of the shootout. (Pet. App. 63a-82a). In response, the trial court ordered the State;

to provide all evidence, including dash cam video, that they have in their possession or through reasonable means of investigation can uncover. . . . I am ordering that the State make available any and all *Brady* material, and you'll have an opportunity to cross-examine any and all witnesses that you wish to call at the appropriate time.

(Pet. App. 6a). The footage was never provided.

On October 2, 2019, Mr. Turner filed his Motion for Judgment Not Withstanding the Verdict. (Pet. App. 2a-3a). The jury ultimately found Mr. Turner a) not guilty of aggravated assault of a law-enforcement officer through the use of an automobile, and b) guilty on all four other counts. (Pet. App. 3a-4a). The Circuit Court entered judgment against Mr. Turner on October 8, 2019 and denied his Motion for J.N.O.V. on October 14 of the same year. (Pet. App. 43a).

Mr. Turner filed an appeal with the Supreme Court of Mississippi on July 29, 2020, raising the following issues; (I) insufficient evidence to support his two convictions for aggravated assault of a law-enforcement officer through the use of a deadly weapon; (II) admission of improper lay-opinion evidence; (III) the constitutionality of the roadblock; (IV) admission of improper statements by the District Attorney regarding Turner's decision to not call a witness; (V) the failure of the circuit court to obtain body- and dash-camera footage from Officers Moore and Guthery; and (VI) the admission of a scaled drawing at trial that was not previously provided to the defense. *See* (Pet. App. 1a-42a).

On June 17, 2021, the majority of the Mississippi Supreme Court held that Mr. Turner’s claims lacked merit. (Pet. App. 1a-42a). The lone dissent—penned by Presiding Justice King—found that the trial court committed reversible error when it allowed the prosecution to present improper expert-opinion testimony. (Pet. App. 33a-42a).

This Petition for a Writ of Certiorari follows.

REASONS TO GRANT THIS PETITION

I. This Court Should Find that The Mississippi Supreme Court Erred When It Upheld the Judgment of the Circuit Court Despite the State Having Withheld Important Exculpatory Evidence from Mr. Turner Under *Brady v. Maryland*

This Court should grant Mr. Turner's Petition for a Writ of Certiorari on the grounds that Mr. Turner's due process rights were violated by State's refusal to produce exculpatory evidence. Since the Supreme Court's landmark decision in *Brady v. Maryland*, precedent dictates that the suppression—by the prosecution—of evidence favorable to the accused is sufficient in and of itself to constitute a denial of due process. *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (citing *United States ex rel. Almeida v. Baldi*, 195 F.2d 815, 820 (3d Cir. 1952)).

Violations of the Brady doctrine are violations of Petitioner's Fifth and Sixth Amendment rights to due process and a fair trial. *See U.S. Const. amend. VII, U.S. Const. amend. VI.* In the words of this Court; "the Fifth and Sixth Amendments provide, as part of the Constitution's 'fair trial' guarantee, that defendants have the right to receive exculpatory impeachment material from prosecutors." *United States v. Ruiz*, 536 U.S. 622, syllabus (2002) (citing *Brady*, 373 U.S. 83 at 87).

There are three key elements of a *Brady* violation: (1) evidence at issue must be favorable to the accused because it is exculpatory or impeaching; (2) evidence

must have been willfully or inadvertently suppressed by the State; and (3) prejudice ensued. *Skinner v. Switzer*, 562 U.S. 521, 536, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)).

A. The Evidence at Issue is Favorable to Mr. Turner Because it is Both Exculpatory and Impeaching

This Court should find that the Mississippi Supreme Court erred when it found that the State did not violate Mr. Turner's due process rights under *Brady v. Maryland*. As stated above, the evidence in question must be "exculpatory or impeaching." See *Skinner*, 562 U.S. at 536. The body camera footage withheld by the State is both exculpatory and impeaching.

i. The body camera footage and dash camera footage constitute exculpatory evidence.

This Court should find that the video evidence from Officers Moore and Guthery's body cameras, as well as from Officer Moore's dash cam, constitutes exculpatory evidence under *Brady*. This Court has held that the defendant shows a *Brady* violation by demonstrating that "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419, 434-435 (1995).

Various courts in a myriad of jurisdictions have held that video evidence is generally considered exculpatory so long as its value is not purely speculative. See, e.g.,

Hartfield v. City of Urbana, No. 21-2045, 2021 U.S. Dist. LEXIS 134915 (C.D. Ill. July 19, 2021), *United States v. Perry*, No. 2:18-cr-113, 2019 U.S. Dist. LEXIS 163219 (E.D. Va. Aug. 19, 2019), *State v. Rogers*, 2020 UT App 78, 467 P.3d 880 (Ct. App. 2020).

The exculpatory value of the footage from the body and dash cameras is hardly speculative. Mr. Turner's defense rested primarily a self-defense claim predicated on Officer Moore's status as the initial aggressor. Even prior his arrest¹, Mr. Turner has consistently claimed that he was not the initial aggressor in the confrontation between him and Officer Moore, and that the Mississippi Highway Patrol were "out to kill him." (Pet. App. 13a).

Turner's behavior immediately after the shootout strongly indicates that he feared for his life. Mr. Turner called the Mississippi Bureau of Investigation following the shootout to inform them of the night's events and beg them to investigate the circumstances of the shootout. (Pet. App. 96a-97a). Turner then fled out of state, where he allowed himself to be arrested without incident by Tennessee police. (Pet. App. 5a-6a). Additionally, the jury found Mr. Turner not guilty of Aggravated Assault on an Officer with a Vehicle after applying the self-defense instruction provided by the trial judge. (Pet. App. 1a).

Consequently, this Court should find that the video evidence from Moore and Guthery's body cameras and

¹ See Mr. Turner's Phone call to the MBI; (Pet. App. 96a).

the dash cam footage from Officer Moore's patrol vehicle constituted exculpatory evidence.

ii. The body camera footage and dash camera footage constitute impeaching evidence.

This Court has held that "when the reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within the general rule enunciated in *Brady*." See *State v. McGuire*, 2018-Ohio-1390 ¶ 22 (Ct. App.) (quoting *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), citing *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)).

Due to the State's failure to provide the video evidence at trial, Mr. Turner was deprived of a meaningful opportunity to cross examine Officers Moore and Guthery using potentially exculpatory evidence. Virtually all the important interactions constituting the factual basis of this case should have been recorded by either; the a) the body cameras worn by Officers Moore and Guthery, or; b) Officer Moore's dash camera. This video evidence would have been used to impeach the Officers' testimony in a way that no other evidence is capable of.

As a result, this Court should find that the video evidence was a particularly invaluable form of both exculpatory and impeachment evidence.

B. The Evidence at Issue was Willfully or Inadvertently Suppressed by the State

This Court should find that the video evidence contained in Officers Moore and Guthrey's body cameras and Officer Moore's dash camera was suppressed by the state. The standard this Court has historically used to determine the constitutionality of the suppression turns on the *materiality* of the evidence suppressed. *See Brady*, 373 U.S. 83 at 87. Put simply, when the evidence sought is *material* to the defendant's guilt or punishment, whether the State acted in good or bad faith is *immaterial*;

[the] suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Id.

Regardless of whether this Court finds that the video evidence was suppressed by the State in bad faith, it should still hold that Mr. Turner's due process rights were violated under *Brady v. Maryland* due to the objectively material nature of the evidence.

At trial, the Circuit Court gave the following instruction to the jury;

As to any count, if you find from the evidence that Brian Russell Turner acted in self-defense, then you must find him not guilty in such count.

If, however, you find from the evidence in this case beyond a reasonable doubt that the State has proven the necessary elements of aggravated assault and that the defendant did not act in necessary self-defense, you should find the defendant guilty as charged.

The intent or purpose for an act is a question to be determined by you, the jury, from consideration of the evidence presented in this case. In doing so, intent can be inferred from the defendant's actions, conduct, expressions, and from the circumstances surrounding the charged crime.

An aggressor is not entitled to assert the defense of self-defense. As to any count, if you find that Brian Russell Turner was the initial aggressor in the series of events, then Brian Russell Turner may not claim that he acted in self-defense.

See Turner, No. 2019-KA-01724-SCT at *11-13 (June 17, 2021) (Pet. App. 12a).

The trial court informed the jury in no uncertain terms that, if they found that Mr. Turner was not the initial aggressor, then he was to be found not guilty. The introduction of the video evidence would have laid this question to rest permanently. As a result, this Court should find that the State's suppression of the video footage constituted a denial of Mr. Turner's due process rights regardless of whether the Prosecution acted in bad faith.

C. Mr. Turner was Prejudiced by the Withholding of the Relevant Evidence

This Court should find that the Prosecution's withholding of the relevant video evidence constituted a denial of due process that prejudiced Mr. Turner at trial. "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence, he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *State v. Porter*, 145 Haw. 262, 7, 450 P.3d 1287 (Ct. App. 2019) (citing *Whitley*, 514 U.S. at 434-35, *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

When establishing the parameters of the *Brady* doctrine, the Supreme Court has held that "[the] failure to turn over exculpatory information violates due process 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Wearry v. Cain*, 136 S. Ct. 1002, 1008 (2016) (citing *Whitley*, 514 U.S. at 433-434, *Bagley*, 473 U.S. at 682).

The State's suppression of the video evidence severely prejudiced Mr. Turner. Mr. Turner's primary defense at trial was the fact that he was acting in self-defense. The case ultimately hinged on whether the jury found that Mr. Turner or Officer Moore was the primary aggressor. As noted above, a jury instruction was given to this effect. (Pet. App. 9a-11a).

However, the lack of video evidence presented to the jury forced them to decide between two alternative accounts of what transpired that night. On one

claim—Assault on an Officer With a Vehicle—the jury decided in favor of the Petitioner. On the other counts, they did not. (Pet. App. 1a). Had the relevant evidence been brought to trial, rather than suppressed by the State, there is a reasonable probability that the result of the proceeding would have been different. In its absence Mr. Turner cannot be said to have received a fair trial, and consequently this Court should grant the petition he has presented here today.

II. Alternatively, This Court Should Find that The Mississippi Supreme Court Erred When It Upheld the Judgment of the Circuit Court Despite the State Having Withheld Important Exculpatory Evidence from Mr. Turner Under *Arizona v. Youngblood*

Should this Court find that the video evidence was not material under the Brady standard, it should nevertheless grant this petition pursuant to the standard found in *Arizona v. Youngblood*. The suppression of evidence—regardless of whether it has been proven to be materially useful—is still considered a due process violation when the evidence was suppressed by the Prosecution in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988).

Pursuant to *Youngblood*, this Court should find that the Mississippi Supreme Court erred in affirming the decision of the Circuit Court. It is well-settled law that

[the] due process clause sometimes protects defendants from the Government's loss of

potentially exculpatory evidence. In order to demonstrate a due process violation from its loss, the defendant must establish that (1) the evidence was at least potentially exculpatory; (2) the exculpatory value was apparent before the evidence was lost or destroyed; (3) the evidence was lost or destroyed in bad faith; and (4) no comparable evidence could be obtained by reasonably available means.

Perry, No. 2:18-cr-113, 2019 U.S. Dist. LEXIS 163219 at *8 (citing *Youngblood*, 488 U.S. at 57-58; *United States v. Newsome*, 322 F.3d 328, 334 (4th Cir. 2003); *Holdren v. Legursky*, 16 F.3d 57, 60 (1994)).

A. The Video Evidence Is At Least Potentially Exculpatory

The video evidence contained on the body and dash cameras was at the very least potentially exculpatory. This point was previously addressed in Section I(a)(i) of this petition, so it will not be repeated at length here.

However, it is relevant to note that the evidence sought by Mr. Turner could potentially prove or disprove his claim that Officer Moore was the initial aggressor. Had Moore been the initial aggressor, Mr. Turner would not have been guilty of the aggravated assault offenses for which he is currently imprisoned. Moreover, Mr. Turner's account of the nights events is supported by circumstantial evidence, i.e., his behavior following the shootout. (Pet. App. 95a-98a).

The simple fact of the matter is that had the body and dash cam footage corroborated Mr. Turner's version of events—hardly an unreasonable

proposition—he would not be in prison today. As a result, this Court should find that the video evidence was, at the very least, potentially exculpatory.

B. The Exculpatory Value of the Evidence was Apparent Before the Evidence was Lost or Destroyed

Furthermore, the exculpatory value of the evidence was apparent before the evidence was lost or destroyed. When an alleged offense is predicated entirely on eyewitness testimony, it strains credulity to assume that the value of video evidence depicting said offense would *not* be immediately apparent. As addressed in Section I(a)(i)-(ii), the video evidence could be used for both exculpatory and impeachment purposes. As a result, this Court should hold that the exculpatory value of the evidence was apparent long before the evidence was lost or destroyed.

C. The Video Evidence was Lost or Destroyed in Bad Faith

This Court should find that the State's refusal to make the various body and dashboard cameras belonging to Officers Moore, Guthery, and Earnest available to the defense constituted an act of bad faith. The Mississippi Supreme Court held in *Hentz v. State*, 489 So.2d 1386 (Miss.1986), that in criminal cases “prosecuting attorneys should make available to attorneys for defendants *all such material in their files* and let the defense attorneys determine whether or not the material is useful in the defense of the case.” *Id.* at 1388 (emphasis added).

At trial, Officers Moore and Guthery both admitted that their respective departments required them to wear and use body cameras. (Pet. App. 63a, 83a). Furthermore, Officer Guthery even testified that he was in possession of a body camera during his interactions with Mr. Turner. (Pet. App. 64a). The Tishomingo County Sheriff's Department records state that Officer Moore was provided a body camera on the night in question. (Pet. App. 83a).

However, both officers' cameras allegedly failed to produce any valuable footage of Mr. Turner's alleged offense. Officer Guthery claims that his camera was located on the passenger's seat of his vehicle. (Pet. App. 64a). Officer Moore claims that his camera was never actually checked out and remained in the Chief's office, in violation of protocol. (Pet. App. 83a).

The same excuse was used by the State to prevent the Petitioner from examining the dashboard camera in the vehicle driven by Trooper Earnest. The Mississippi Highway Patrol, of which Trooper Earnest was an employee, required dashboard cameras (Pet. App. 51a). Nonetheless, Trooper Earnest claimed that he had no dash camera footage from that night. (Pet. App. 51a).

The State asks us to believe that, although all three officers had cameras on their person or in their vehicle, none of these cameras happened to be turned on at any point during the roadblock, traffic stop, or subsequent shootout. Regardless of the veracity of this claim, one important fact remains; none of these excuses should have prevented Officers Moore, Guthery, and Earnest

from providing their cameras to the defense for inspection.

In its affirmance of the trial court's decision, the Mississippi Supreme Court explicitly acknowledged that "the circuit court ordered the State 'to provide all evidence, including dash cam video, that they have in their possession or through reasonable means of investigation can uncover.'" (Pet. App. 29a).

In response to this order, both the Belmont Police Department and the Tishomingo County Sheriff's Department merely asserted that no relevant footage existed on those cameras. The Circuit Court held that the State's claim that footage was "not available" satisfied the State's burden of production under *Hentz* and denied Turner's appeal. (Pet. App. 29a-30a).

The Mississippi Supreme Court's holding clearly violates the spirit and intent of *Hentz*, as well as its clear language. The *Hentz* court clearly stated that it is the prosecution's duty to turn over all relevant materials and "let the defense attorneys determine whether or not the material is useful." *Hentz*, 489 So.2d at 1388. As a result, this Court should grant Turner's petition and provide him with a hearing to plead his claims.

D. No Comparable Evidence Could be Obtained by Reasonably Available Means

Due to its status as a minute-by-minute record of the night's events, the video evidence is invaluable to the case at hand. No comparable evidence exists, let alone could be obtained by reasonable means. The

initial stop, chase, and shootout were all conducted late at night. If other eyewitnesses saw any of the events in question, they were not discovered by either party and no foundation has been presented that would lead one to assume their existence.

In the absence of the video evidence contained on Officers Moore and Guthery's body cameras and Officer Moore's dash camera, the trial was forced to proceed on the basis of eyewitness testimony and forensic analysis. The accuracy and veracity of that evidence has been challenged repeatedly in lower courts and will not be addressed in this petition. See (Pet. App. 9a-29a). However, it should not be a point of controversy to assume that none of that evidence is comparable in scope and reliability to first-hand video evidence.

This Court should find that the failure of the State to provide the physical body cameras to the defense constituted a denial of Mr. Turner's due process rights. If the State's assertion that no footage was contained on the cameras is true, then this issue would have been resolved and this petition would likely not be before this Court today. Unfortunately, the State opted for an evasive strategy and the Mississippi Supreme Court found that that strategy was reasonable. As a result, this Court should grant Mr. Turner's petition.

III. This Court Should Grant Mr. Turner’s Petition to Clarify the Legal Implications of a Law Enforcement Officer’s Willful Decision Not to Utilize Their State-Issued Body Camera in Contravention of Relevant Department Procedures

This Court should grant Mr. Turner’s petition so that it may inject some much-needed clarity into the debate concerning the vital role of body cameras in 21st century policing. Mr. Turner would ask this Court to find that an on-duty officer’s willful decision not to utilize a body camera provided to him by his department establishes a rebuttable presumption that the officer acted in bad faith under *Brady* and *Youngblood*.

It is true that body-worn cameras are a relatively new innovation in the field of policing. Introduced in response to various concerns regarding police misconduct and accountability, body cameras are intended to serve as a valuable record of the interactions between law enforcement officials and citizens.

In the aftermath of a series of high-profile officer-involved shootings, police departments across the country have introduced policies requiring the use of body cameras by police officers. The Belmont Police Department—of which Officer Guthery was an employee—was one of the agencies that required officers to wear body cameras while on-duty. (Pet. App. 65a-66a). Body cameras were also utilized by the Tishomingo County Police Department. Unfortunately,

the application of these policies has not been as cut and dry as advocates had likely hoped.

As a result of their novelty, significant discrepancies exist in the case law relating to body cameras. The District Court of the District of Columbia recently found that when officers fail to activate their cameras in violation of department policy, they have “deprived the Court from reviewing the best evidence available.” *United States v. Gibson*, 366 F. Supp. 3d 14, 19 (D.D.C. 2018). The *Gibson* Court seemed to place substantial weight on the department policy relating to the use of body cameras. *See Id.* at n. 3.

On the other hand, other courts seem to have found that failure to utilize body cameras is not a significant error, even if in violation of department policy. *See United States v. Griffin*, 2018 U.S. Dist. LEXIS 175167, 2018 WL 4929397, at *4 (E.D.Wis. Oct. 11, 2018) (court declined to suppress evidence as “fruit of the poisonous tree” despite the officer’s “habit of not activating his body camera as soon as called for under the department’s policy”), *United States v. Tillard*, 2020 U.S. Dist. LEXIS 1539, 2020 WL 57198, at *6-7 (W.D.N.Y. Jan. 6, 2020) (court declined to find bad faith in part because both officers “had their cameras for thirty working days or less.”).

Nevertheless, a consistent theme in these decisions has been an understanding that the ubiquity of body cameras raises new and challenging implications under evidentiary law. Although ultimately declining to find bad faith, the Nevada District Court held that

'body cameras are new devices that officers ... are still getting acclimated to using' because they are 'not yet accustomed to having all of their discussions permanently memorialized' ... [as] BWCs² become more pervasive, and their use more ingrained in the culture and day-to-day routines of police officers, the Court cannot say that the absence of video evidence in violation of internal police procedures can never be suspicious or suggestive of misconduct.

United States v. Brown, No. 2:17-cr-00058-JCM-VCF-1, 2017 U.S. Dist. LEXIS 215420 at *51-52 (D. Nev. Aug. 14, 2017). *See also United States v. Taylor*, 312 F. Supp. 3d 170 (D.D.C. 2018), *United States v. Aguirre-Cuenca*, No. 3:19-cr-00141, 2020 U.S. Dist. LEXIS 197320 (W.D.N.C. July 17, 2020).

At trial, Officer Guthery was questioned by the defense regarding the applications and value of body cameras to the policing profession;

Q. In other words . . . if someone accused an officer of doing something wrong, it's possible that that body camera footage could substantiate what the officer says or what he did, right . . . isn't that correct?

A. That's correct.

Q. It could also . . . contradict what any witness might say, correct?

A. That's true.

² Body-Worn Cameras.

Q. It could prove that defendants were properly advised of their *Miranda* rights, couldn't it?

A. It could.

Q. It could highlight and prove police misconduct, couldn't it?

A. It sure could.

Q. It could also prove the actual innocence of a couldn't it, sir?

A. It could do that, too.

(Pet. App. 65a). In this exchange, Officer Guthery demonstrated a clear understanding of the important role body cameras are meant to play in the work of a police officer.

Officers Moore and Guthery were both required to wear body cameras during their interactions with civilians. (Pet. App. 65a-66a, 83a). In fact, the Belmont County Police Department has explicit guidelines requiring the use of body cameras, as Officer Guthery admitted to the defense at trial;

Q. The Belmont Police Department has a body camera policy, do they not?

A. They do.

Q. And you're familiar with that policy, aren't you, sir?

A. Somewhat.

Q. How long did you work as an officer at the Belmont Police Department?

A. Eight years.

Q. During that time did you familiarize yourself with the body-worn camera policy?

A. Once we got them, yes.

Q. And you were issued a body camera, were you not?

A. We're not issued any, not as our personal or anything like that. You just get one when you go in. They're just plugged up on the counter.

Q. Well, you're required to, aren't you?

A. Yeah. It says we -- you know, we need to have it, but no one has ever been written up for not having it.

...

Q. So it's basically -- you're saying it's just left to officer's discretion whether you want to wear the body camera or not?

A. Just about it. Just about it or it either is or it isn't. Pretty much it is. If I didn't want to get one, I didn't get one.

Q. Were you in charge of making that decision?

A. No, sir, I wasn't.

Q. Who's in charge of making those type decisions?

A. The chief.

(Pet. App. 65a-66a) (edited for clarity). However, Officer Guthery subsequently testified that he had chosen not to utilize his body camera at any point during the evening—an evening where he was on duty, armed, and tasked with maintaining the peace;

Q. Isn't it true, sir, that you do not have any body-worn camera video from the night in question?

A. No, sir, no video.

Q. You did not have your body-worn camera activated at the time of the events in question, did you?

A. No, sir, it was not on my person.

Q. You did not have—not only was it not on your person and was it not activated at the events in question, the body-worn camera was not on or activated at the roadblock, was it?

A. No, sir. We just don't wear them for checkpoints.

(Pet. App. 68a) (edited for clarity).

Additionally, Officer Moore testified at trial that—in flagrant violation of department policy—he failed to utilize a body camera on the night of the shooting as well;

Q. As we sit here today in 2019, you do not have video of this incident, do you?

A. No, sir.

Q. However, on May the 3rd, 2018, you testified that the Tishomingo County sheriff's office had utilized body cams, correct?

A. Yes, sir.

Q. In fact, they had issued you a body camera?

A. Yes, sir.

Q. And you've testified that your camera was in Officer Marlar's office?

A. Yes, sir.

...

Q. Isn't it true you have nothing from a logbook or any recording as to where your body cam was on the night in question?

A. No, sir.

(Pet. App. 82a-83a) (edited for clarity).

As a result of what can only be either; 1) the intentional suppression of the body camera evidence by the State, or 2) Officer Moore's willful decision to violate Department Policy, potentially exculpatory evidence, whose value was immediately apparent, was lost or destroyed even though no comparable evidence could be obtained by reasonably available means. *See Youngblood*, 488 U.S. at 57-58.

To prevent further such due process violations, this Court should embrace its status as the highest court in

the United States and provide guidance to the lower Courts on the evidentiary status of body camera footage. Mr. Turner is asking this Court to find that when—in violation of Department policy—an officer fails to utilize their government-issued body camera, a rebuttable presumption is established that the evidence contained on the camera was suppressed in bad faith under the *Brady* and *Youngblood* standards.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

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