

ORIGINAL

No. 21-5890

IN THE

SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

**CHRISTOPHER TERRELL**

**PETITIONER**

**V.**

**STATE OF ARKANSAS**

**RESPONDENT**

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**ARKANSAS COURT OF APPEALS**

**PETITION FOR WRIT OF CERTIORARI**

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**CHRISTOPHER TERRELL, Pro-se**

**A.D.C # 87881**

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## **QUESTIONS PRESENTED**

1. Is a criminal conviction unconstitutional and in violation of Due Process when a jury does not remain impartial on the question of guilt for the crime charged?
2. Is it inherently prejudicial to a defendant for a jury not to follow the court's instructions and conscientiously apply the law as charged by the court?
3. When a jury considers a matter not admitted into evidence to convict the defendant, can a state court use a rule of evidence to save the conviction and deny the defendant his right to a fair, lawful and impartial trial?
4. Is it considered an outside influence on a jury's deliberations for a jury to use an uninstructed theory of law as the motivating factor in the jury's vote to convict?
5. Does the Sixth Amendment require that the no-impeachment rule give way to permit the consideration of jury misconduct evidence of a resulting denial of the jury trial guarantee which cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict?
6. Since the jury misconduct of Terrell's murder trial is unprecedented to the United States history of case law, can that misconduct remain beyond effective examination even though that examination would unquestionably adduce evidence sufficient to provide a substantive ground to set aside the verdict?
7. Is it inconsistent with justice and setting a dangerous precedent for a state to uphold a conviction where jurors have admitted that they were unable to find that the only defendant charged and on trial did in fact commit the essential element that would constitute the crime charged?

## **PARTIES TO THE PROCEEDING**

Petitioner CHRISTOPHER TERRELL is a prisoner at the Ouachita River Correctional Unit in Malvern, Arkansas. Respondent is the STATE OF ARKANSAS, who maintains custody of the Ouachita River Correctional Unit, represented by Attorney General Leslie Rutledge with the Arkansas Attorney General's Office.

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## **PETITION FOR A WRIT OF CERTIORARI**

CHRISTOPHER TERRELL respectfully petitions for a writ of certiorari to review the judgment of the Arkansas Court of Appeals in this case.

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### **OPINIONS BELOW**

The opinion of the Arkansas Court of Appeals (App.8) is reported at 2021 Ark. App. 179. The trial court's order denying Terrell's petition for postconviction relief (App. 18) is not reported.

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### **JURISDICTION**

The Arkansas Court of Appeals judgment mandate was affirmed on June 24, 2021. (App. 1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

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### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves the Sixth Amendment, as applied to the states through the Fourteenth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall be previously ascertained by law, and to be informed of the nature and cause of the accusation; to be obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

This case involves the Fourteenth Amendment's Due Process of law:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves Ark. Code Ann. § 5-10-102(a)(2) Murder-

First Degree:

- (a) A person commits murder in the first degree if:
  - (2) with purpose of causing the death of another person, the person causes the death of another person.

## **STATEMENT OF CASE**

This case arises from Christopher Terrell's claim that he received ineffective assistance of counsel. Trial counsel failed to preserve an issue on appeal that clearly shows that Terrell's right to a fair and impartial trial and his Due Process right to be found guilty only beyond a reasonable doubt of every element that constitutes the crime that he was charged with were violated. Therefore, rendering his conviction for purposeful First Degree Murder, unconstitutional under the Sixth Amendment to the United States Constitution. Also that even if the jury in Terrell's case did violate his due process right to a fair trial, the Appellant Court of Arkansas ruled that nevertheless the Arkansas Supreme Court has held that Ark. R. Evid. 606(b) is not unconstitutional. This holding would make Terrell's conviction unconstitutional under the Fourteenth Amendment to the United States Constitution.

Terrell and an associate, Betty Grant, were detained for questioning in the shooting death of James Hunt. Grant, during her initial interview, told the Arkansas State Police that she was responsible for the shooting death of James Hunt and that Terrell was not involved, so she was charged with Hunts death. Grant, days later, changed her story to Terrell was responsible for the shooting death of Hunt, which led to Terrell being charged also. They were not charged as accomplices. Terrell was charged pursuant to Ark. Code Ann. § 5-10-102 (a)(2), which states: "A person commits murder in the first degree if... [w]ith a purpose of causing the death of

another person, the person cause the death of another person." (Ark. CR-18-921, R. 8). One year later Grants charge was Nolle Processed and amended to Hindering Apprehension upon her agreeing to testify against Terrell. (Ark. CR-18-921, R.1213 A-B; R. 1216 A).

At Terrell's trial where he was on trial as the sole principal, the shooter, Medical Examiner Dr. Adam Craig testified that James Hunt's cause of death was a shotgun wound to the head and that the manner of death was homicide. (Ark. CR-18-921, R.1022). Betty Grant testified that Terrell was the one who killed hunt. (Ark. CR-18-921, R. 764). To impeach her testimony, trial counsel questioned her extensively and played several portions of Grant's initial interview with the Arkansas State Police in which she claimed that she shot Hunt, described several aspects of the crime scene in detail and stated unequivocally that Terrell had nothing to do with Hunts death. (Ark CR-18-921 R. 798-856; R. 861-865).

At the conclusion of the trial, the trial court Judge instructed the jury that he would now give them the instructions that apply to the case and that the faithful performance of their duties is essential to the administration of justice. That they were not to consider any rule of law with which they may be familiar unless it is included in the court's instructions. That it is their duty to apply the law to the facts of the case and render their verdict upon the evidence and the law as instructed. That the state must prove beyond a reasonable doubt each element of the offense charged. That Terrell has the right to be presumed innocent until his guilt is proven

beyond a reasonable doubt. Christopher Terrell is charged with the offense of Murder in the First degree. To sustain this charge the State must prove the following things beyond a reasonable doubt; That Christopher Terrell with the purpose of causing the death of James Hunt, Christopher Terrell caused the death of James Hunt. That a person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result (Ark. CR-18-921, R. 1133-1138). The jury returned a verdict of guilty and sentence Terrell to Twenty-Three (23) years in prison. (Ark. CR-18-921, R.1196).

Immediately following the trial, Juror John Robinson approached Terrell's trial counsel outside the courthouse and engaged them in a conversation. During this conversation, Juror Robinson made a comment about "not knowing which one of them who did it" referring to who shot Hunt, whether Terrell or Grant. This prompted Terrell's trial counsel to file a motion for a new trial on the basis that Terrell had not received a fair and impartial trial. Also that the jury had convicted him as an accomplice despite being instructed not to consider any rule of law that they may be familiar with, therefore constituting an outside influence, specifically an extraneous matter not entered into evidence because Terrell was not charged as an accomplice nor was the jury instructed that it could convict in this manner and that jurors can testify as to this type of misconduct. (Ark. CR-18-921, R.183-186). This also led to Investigator Curtis Tate with the Second Judicial Public Defenders Office being assigned to investigate this jury misconduct issue. Investigator Tate

interviewed five jurors, John Robinson, Nicole Elsey, Amanda Broglen, Holly Partain, and Louis Griffin. Nicole Elsey submitted an affidavit which reads:

"I, Nicole Esley, served as a juror in the trial of Christopher Terrell from April 10-12, 2018. I hereby state that the jury was unable to determine who specifically shot and killed James Hunt, but that Christopher Terrell was convicted because he was found to have been involved in the commission of the crime."

The affidavit is verified under oath that is it true and correct. (Ark. CR-18-921, R.1225). The other jurors conveyed to Investigator Tate that they did not believe that Terrell was guilty of what he was charged with, but since they were not given any other choice of crime, such as what is considered a lesser included, they went ahead and found him guilty anyways. (Ark. CR-20-491 Appellant's Addendum 3) All five jurors did appear at the new trial motion hearing to testify as to what they had done.

At the new trial motion hearing, Terrell's trial counsel stated that it was Terrell's position that the jury had considered a rule of law that was not instructed, specifically accomplice liability. Counsel made the point that there was no accomplice instruction given, even though the state had requested an instruction that said, pertaining to the charge of Murder in the First Degree, "Acting alone or with one or more persons." Terrell's counsel reminded the trial court that it had denied the state's request on this because Terrell was the only one charged, the principle actor in the crime and not under any form of accomplice liability. (Ark. CR-

18-921, R.1077-1079). Counsel stated that if we could get to a hearing on this, the facts would prove that the jury considered an extraneous rule of law in arriving at their verdict and that Terrell's substantive right had been prejudiced and he was unable to receive a fair and lawful trial. (Ark. CR-18-921, R.1233-1235). The trial court then allowed Juror Elsey's affidavit to be filed and then ruled upon the motion for a new trial and the affidavit. Trial court denied the motion, ruling that the affidavit did not prove the type of information that jurors can testify about. (Ark. CR-18-921, R.1240). Terrell's counsel then sought to proffer the five jurors testimony for appeal reasons but was denied by the trial court of doing so. (Ark. CR-18-921, R.1241). Terrell's trial counsel then filed an amended notice of appeal on the sentencing order adjudicating Terrell guilty of Murder in the First Degree entered on April 12, 2018 and on the Circuit Court's denial of his motion for a new trial on July 23, 2018. (Ark. CR-18-921, R. 1226).

On appeal the Arkansas Court of Appeals refused to reach the merits of the denial of Terrell's motion for new trial, because counsel had failed to timely file the amended notice of appeal in accordance with Arkansas Rule of Criminal Procedure 33.3(c) and Arkansas Rule of Appellate Procedure - Criminal 2(b)(2). *Terrell v. State*, 2019 Ark. App. 433, at 10-11. Terrell then filed a petition in the trial court for post conviction relief for ineffective assistance of counsel pursuant to Arkansas Rule of Criminal Procedure 37. (App. 28-39)

In the petition, Terrell states that under the United States Constitution and the Arkansas Constitution each guarantee the right to counsel. U.S. Const. Amend. VI; Ark. Const. Art. 10§2. This means the right to effective assistance of counsel. Under point two Terrell raised the issue of trial counsel not preserving his jury misconduct new trial motion based on extraneous prejudicial influence on jurors. Terrell explained how this error of trial counsel was prejudicial to his case. That the trial court had abused its discretion by denying the motion for new trial. That the jurors had violated the trial court's instructions by convicting on a matter not entered into evidence. Terrell cited other state case law where new trials had been granted due to jurors convicting on un-instructed legal theory of accomplice liability. (App. 35-37). There were no Arkansas State Case law examples on this issue, nor could Terrell find any case law anywhere in America, where a jury had convicted the single defendant of purposeful murder or any form form of murder, without being able to determine that the single defendant did in fact commit the murder.

The trial court denied the Rule 37 petition without a hearing and stated that it had reviewed the entire 1,243 page appeal record. The trial court stated that while the previous trial court lacked jurisdiction to deny the new trial motion, its legal conclusion was correct. Also that Ark. R. Evid. 606(b)'s exceptions don't apply and therefore any deficiency by Terrell's trial counsel in failing to timely appeal the deemed-denial of the new trial motion caused Terrell to suffer no prejudice. The trial court also ruled that the affidavit submitted wasn't extraneous information, it was

just a statement about an ability to reach a particular conclusion. (App. 18, 19, 25, 26.). In doing so the trial court ruled that under the test of *Strickland v. Washington*, Terrell's claim fails. Terrell then filed a notice of appeal to the Arkansas Court of Appeals from the trial court's order denying his petition for post conviction relief pursuant to Ark. R. Crim. P. Rule 37 entered on March 23, 2020. (Ark. CR-20-491, R. 41)

On appeal, Terrell sought to have his case decided by the Arkansas Supreme Court on the basis that it was a first impression to the state, however, the Arkansas Court of Appeals took up and ruled upon his appeal. In this appeal, on the denial of point two of his Rule 37 petition, Terrell sought to explain, best that he could, that the jury misconduct of his case was unprecedented. That the jury misconduct denied him his right to a fair and impartial trial, denied him his substantial rights afforded to him at trial by the United States Constitution Amendment 6 and 14, and also denied him his due process right to be found guilty only beyond a reasonable doubt of the crime he was actually charged with. Also that by the instructions given to the jury by the trial court, the jury had violated their sworn duty of applying the law as instructed and that this also violated his constitutional rights. Terrell also explained that the trial court had denied him his basic fundamental constitutional rights by first denying his motion for new trial and second by denying point two of his Rule 37 petition. Terrell explained the United States Supreme Courts opinion on the reasonable doubt standard. *In re Winship*, 397 U.S. 358 (1970), Terrell

explained that the enforcement of the reasonable doubt standard lies at the foundation of our criminal law. That the Due Process places on the state the burden of persuasion and that it was perfectly clear by the jury misconduct evidence presented that the state simply did not carry its burden, also a constitutional violation, being that the jury violated their oath on the question of guilt by not remaining impartial. Also that this was amplified by the fact that there was only one issue to be decided, did Christopher Terrell shoot and therefore cause the death of James Hunt? Terrell finished by stating that given all these facts, he did receive ineffective assistance of counsel for trial counsel not preserving this issue on direct appeal. (Ark. 20-491, Appellant's Brief Arg. 11-28). Just like the trial court, the Appellant Court side stepped the majority of Terrell's argument and affirmed the trial court's denial of the Rule 37 petition by applying a rigid application of Ark. R. Evid. 606(b). The Appellant Court also ruled that Terrell's argument that the jury had denied him his due process rights was not raised at the trial court. Nevertheless the Appellant Court ruled that the Supreme Court of Arkansas has held that Ark. R. Evid. 606 (b) is not unconstitutional and serves the important function of maintaining the privacy of jury deliberations and the finality of judgments. 2021 Ark. App. 179, at 7-10, (App. 14-17).

Terrell then filed a petition for review with the Arkansas Supreme Court in which he pointed out that his due process right to a fair and impartial trial was raised in the new trial motion, at the hearing on the motion and that the underlying

rational in Arkansas for issues being raised for the first time on appeal is that the trial court never had an opportunity to make a ruling. Also that the test for preservation could not hinge solely on whether the litigant used the correct magic words in citing to a violation that prejudiced his right to a fair trial. (App. 5-6) The Arkansas Supreme Court passed on this constitutional issue by denying review. (App. 2.).

The court of Appeals Mandate was affirmed in case number CR-20-491 on June 24, 2021. (App. 1).

#### **REASONS FOR GRANTING THE WRIT**

There is absolutely no doubt that it is a very unusual circumstance in a trial for purposeful First Degree Murder for jurors to convict a criminal defendant for shooting and killing the victim without being able to determine that the defendant did in fact shoot and kill the victim. (Ark. CR-18-921, R.183-186; 1225; Ark. 20-491 Appellant's Addendum 3). So unusual that this nation's history of case law reveals no prior examples. Key to the understanding of the matter of context in this, is that the defendant, Christopher Terrell, was the only citizen charged and on trial for this shooting. (Ark. CR-19-921, R.8; 1077-1079). Also, key to the understanding on this, is that in the State of Arkansas to sustain the charge of First Degree Murder, Ark. Code Ann. § 5-10-102 (a)(2), the state must prove two things beyond a reasonable

doubt. That not only did Terrell shoot but that he purposefully shot the victim, James Hunt, with the conscious object to cause Hunt's death. (Ark. CR-18-921, R. 1136-1138). So it becomes a double negative on the understanding of a fair, lawful and impartial trial under the jury trial guarantee for the jurors to vote guilty without being able to determine beyond a reasonable doubt that Terrell did in fact pull the trigger that fired the one shot that caused the death of James Hunt. (Ark. CR-18-921, R.1022-1023). It would also be a double negative because this action of the jurors violates not one but two of Terrell's constitutional rights guaranteed to him at trial. U.S.Const.Amend. VI by not remaining impartial and therefore denying Terrell a fair trial on the question of guilt for the crime charged. U.S.Const.Amend. XIV by not finding beyond a reasonable doubt the existence of every fact necessary, (essential element, Ark. CR-18-921, R.1136), to constitute the charge that Terrell was actually charged with, therefore denying him his due process of law. (See, e.g. *In re Winship*, 397 U.S. 358, at 361-364),(See also CR-20-491 Appellant's brief Arg. 11-28).

This bizarre unprecedeted misconduct of the jury becomes even more egregious to Terrell's rights, when the trial court in an order denying Terrell's post-conviction collateral proceeding Rule 37 petition, ruled that the evidence produced at the new trial motion hearing on this misconduct, wasn't extraneous information, it was a statement about an inability to reach a particular conclusion. (App. 26). Is not reasonable doubt and an inability to reach a particular conclusion on the crime

charged, just two parts of the same? So in effect the trial court admits that a juror has admitted that the jury during deliberations had reasonable doubt about guilt for the crime charged. Reasonable doubt to the point that the jury disseminated to one another Terrell's guilt under an outside un-instructed theory of liability to convict. (Ark. CR-18-921, R.183-186;1225; Ark. CR-20-491, Appellant's Addendum 3). The trial court also ruled that Terrell was not prejudiced by this because this was not an outside influence. (App. 26)

This inability to reach this particular conclusion the trial court conceded the jury misconduct evidence revealed, was only one of two particular conclusions the jury had to reach, beyond a reasonable doubt, in order for the state to prove and sustain its burden of persuasion. First, essential element, did Christopher Terrell shoot James Hunt? (Ark. CR-18-921, R..1136). Second, sustain this essential element by proving, beyond a reasonable doubt, that Terrell shot and therefore killed Hunt on purpose with the conscious object to cause Hunt's death. (Ark. CR-18-921, R.1137-1138).

The egregious denial to Terrell's basic, substantial, fundamental rights to a fair, lawful and impartial trial, guaranteed by the Constitution, rises to an even higher level when on appeal of the trial court's denial, Terrell gave a detailed, fact-intensive claim of how the jury violated his due process rights, the Appellant Court of Arkansas held: "Nevertheless, the Supreme Court (of Arkansas) held in *Miles*, *supra*, that Rule 606(b) is not unconstitutional and serves the important functions of

maintaining the privacy of jury deliberations and protecting the finality of judgments." (App. 16).

In citing to a totally distinguishable case from the facts and circumstances of Terrell's case, the Appellant Court also said that Ark. R. Evid. 606 (b) applies to Terrell's case "even on grounds such as mistake, misunderstanding of the law or facts, failure to follow instructions, lack of unanimity, or application of the wrong legal standard." (App.16). In stark contrast to this is in *Adams v. Texas*, 448 U.S. 38, at 44, this Court made a point about; "the State's legitimate interest in obtaining jurors who could follow their instructions and obey their oaths. For example, a juror would no doubt violate his oath if he were not impartial on the question of guilt." Also; "The State may insist, however, that jurors will consider and decide the facts impartially and conscientiously apply the law as charged by the court." Id., at 45. This Court stated elsewhere; "Jurors who cannot apply the law are not impartial." *Wainwright v. Witt*, 469 U.S. 412, at 423. How is it then that the State has this legitimate interest so much that they may even insist that the jury understands the law, follows the instructions, obey their oaths and apply the right legal standard or law as charged by the Court, but the criminally accused on trial in the State of Arkansas does not? This holding by the State of Arkansas in Terrell's case seems a little backwards, given the fact that the only place the word "Jury" is found in the Constitutional Provisions concerning a criminal trial is in speaking upon the guarantee of the rights of the criminally accused. U.S.Const. Amend. VI. So the

State of Arkansas has placed the concerns about the privacy of the jury's deliberations over, above, or in front of Terrell's right to a fair, lawful, and impartial trial.

If this is allowed to stand, will this then be what future criminally accused citizens on trial in the State of Arkansas need to come to expect at their trials? And if so, will this then permit other states, in the course of their legitimate interests in maintaining the privacy of jury deliberations and protecting the finality of judgments, to infringe upon their criminally accused's constitutional right to a fair, lawful and impartial trial to shield the egregious misconduct of their jury trials? Does this not reduce the Sixth Amendment jury trial guarantee to just a mere form of words? Is not the jury trial guarantee implemented with the concern that an American citizen not be convicted for a crime on which the jurors could not find that the American citizen did in fact commit the essential elements of the crime that the American citizen is on trial for? Or reduce the risk that a citizen guilty of one crime might be convicted of a more serious crime of which he is innocent?

Once it has been revealed that a guilty verdict was rendered without being able to determine or possessing the inability to find the essential elements which constitute the crime charged, would not allowing that verdict to stand be inconsistent with justice? This type of unprecedented, egregious jury misconduct can be obscured by all the fancy legalization anyone chooses to pour on it, but in the end, unfair, unlawful, and un-impartial is still unfair, unlawful, and un-impartial

is it not? Do you believe that society in their substantial public interest of the administration of the criminal law would call this unfair, unlawful, and un-impartial? Do you believe that American citizens would be okay with being adjudged guilty of shooting and killing someone when their jurors were unable to determine or reach the particular conclusion that they did in fact shoot and kill someone? Are not the words fair, lawful and impartial in their full meanings to be applied to criminal trials by jury? Does not prejudice arise when jurors admit to misconduct that proves that they did not follow the court's charge and that the failure to follow the law as charged by the court proves un-impartiality?

There is absolutely nothing in the entire record of Terrell's case that would give jurors the legal right to return a verdict of guilt without being able to determine beyond a reasonable doubt (reach particular conclusion) that Terrell shot and killed James Hunt. (Ark. CR-18-921, R.1133-1138). To convict Terrell for being involved in, but not for committing the essential element of the crime, is an extraneous intrusion to the whole context of the trial itself. The "ultimate inquiry" is whether the intrusion "affected the jury's deliberation and thereby its verdict." *United States v. Olano*, 507 U.S. 725, 113 S.Ct. 1770, at 1780. Given this, a new trial is warranted if there is a reasonable possibility that it could have affected the verdict. In Terrell's case it was the intrusion which was the motivating factor to convict. This was unfair, unlawful, and un-impartial because, "The modern Juror's verdict must be based upon evidence developed at the trial." *Irvin v. Dowd*, 366 U.S. 717, at 722. The

prosecution never presented in its case in chief or argument Terrell's guilt under the form of liability the jury used to convict on. Neither did the court's charge.

The modern jury is conceived of as an institution that determines the merits of a case solely on the basis of the evidence developed and argument presented to them in the course of the trial in accordance with established trial procedure. Mr. Justice Holmes expressed this concept over one hundred years ago in the following language: "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence." *Patterson v. Colorado*, 205 U.S. 454, 462, 27 S.Ct. 556,558,41 L.Ed. 879 (1907). When the jurors step outside this constitutional protected boundary in the determination of guilt, then they forfeit the right to be considered unabaised and qualified to serve. The law is reason apart from passion. Accordingly, courts in their inquiry should always be continually sensitive to any type of jeopardy to a criminal defendant's Sixth Amendment rights. Consistent with the jury trial guarantee, *Chapman v. California*, 386 U.S. 18,87 S.Ct. 824, 17 L.Ed. 2d 705 (1967) says the question it instructs the reviewing court to consider is not what affect the constitutional error might generally be expected to have upon a reasonable jury, but rather what effect it had upon the guilty verdict in the case at hand. What is the reason for a guilty verdict without the finding of the essential elements of the crime, exactly, passion. The courts of Arkansas failed Terrell in this aspect by placing the jury first and him second. (App.16). In doing so the Appellant

Court has set forth a dangerous precedent in Arkansas to promote irregularity and injustice. A criminal defendant is never to be deprived of his liberty without Due Process of law no matter the reason. It would be blinking at reality not to recognize the extreme prejudice inherent in this, to future criminally accused citizens in Arkansas.

The corroborating evidence of five jurors leaves no doubt that the State's case against Terrell was not overwhelming and that they considered extensively in their deliberations to convict him as only being involved, instead of the trigger puller as the state's case in chief implied him to be and the courts charge required him to be. (Ark. CR-18-921 R.1136-1138). This corroboration of five jurors cast serious doubt on the fairness and impartiality of the jury's deliberations. (Ark. CR-18-921 R. 183;1225; Ark. CR. 20-491 Appellant's Addendum 3). The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury..." What the fact finder must determine (reach a particular conclusion) to return a verdict of guilty is prescribed by the Due Process Clause. The prosecution bears all elements of the offense charged, see e.g. *Patterson v. New York*, 432 U.S. 790, 795, 72 S.Ct. 2319,2327, 53 L.Ed. 1302 (1952), and must persuade the fact finder "beyond a reasonable doubt" of all the facts necessary to establish each of those elements, see, e.g., *In re Winship*, 397 U. S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed. 2d 368 (1970); *Cool v. United States*, 409 U.S. 100,104, 93 S.Ct. 354,357,34 L.Ed.2d 335 (1972) (percuriam). This right

to be convicted beyond a reasonable doubt is a "historically grounded right of our system, developed to safeguard men from dubious and unjust convictions." *Brinegar v. United States*, 338 U.S. 160,174,69 S.Ct. 1302,93 L.Ed. 1879 (1949). That the government must prove beyond a reasonable doubt every element of an offense charged is "an ancient and honored aspect of our criminal justice system." *Victor v. Nebraska*, 511 U.S. 1,5,114 S.Ct. 1239,127 L.Ed. 2d 583 (1994). The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. *Winship*, 397 U.S., at 363. The standard provides concrete substance for the presumption of innocence - that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law,' *Winship*, 397 U.S., at 363 (quoting *Coffin v. United States*, *supra*, 156 U.S., at 453, 15 S.Ct. at 403.) Accordingly, a society that values the good name and freedom of every individual should not condemn a man when there is reasonable doubt about his guilt. *Winship*, 397 U.S., at 364. In fact, this Court has said that the reasonable-doubt requirement is a basic protection "without which a criminal trial cannot reliably serve its function." *Sullivan v. Louisiana*, 508 U.S. 275,281,113 S.Ct. 2078, 124 L.Ed. 2d 182 (1993).

Unprecedented. Terrell has not been able to locate in any of the jury misconduct cases he has found, concerning an array of issues, any example of where jurors have convicted a singularly charged and singularly on trial defendant

for shooting and killing a victim without being able to determine, reach the particular conclusion, that said defendant did in fact pull the trigger shooting and killing the victim. Very unusual circumstance indeed. There just simply are no prior examples that even come close to leading him on his quest for relief of his unfair, unlawful, un-impartial, wrongful conviction.

Terrell has respectfully cited to cases by this court that he believes in some way helps him establish the merits of his argument. But even this court has never decided this type of unusual issue concerning this type of egregious jury misconduct as the facts and circumstances of Terrell's case has revealed. In *Vicksburg & Meridian Railroad co. v. O'Brien*, 119 U.S. 99,103 ,7 S.Ct. 172,174,30 L.Ed. 299 (1886) this court speaking through Mr. Justice Harlan, said: "While this court will not disturb a judgment for an error that did not operate to the substantial injury of the party against whom it was committed, it is well settled that a reversal will be directed unless it appears beyond doubt that the error complained of did not and could not have prejudiced the rights of the party." America's system of law has continuously endeavored to prevent even the possibility of unfairness. See *In re Murchison*, 349 U.S. 133,75 S.Ct. 623,99 L.Ed. 942 (1955).

Terrell's Due Process rights were violated. It takes no fanciful flight to perceive this. At what cost to his, and future criminally accused citizens rights must be payed in order for the State of Arkansas to shield the privacy of the jury's deliberation? This court, of course, has jurisdiction over the final judgments of state

post-conviction courts, see 28 U.S.C. § 1257(a), and exercises that jurisdiction in appropriate circumstances. Issuance of the writ of certiorari is necessary to review this very unusual circumstance of unprecedented, egregious jury misconduct, being that it applies to a criminal defendants constitutional right to a fundamentally fair, lawful, and impartial trial in this nation. The alternative to granting review, after all, is forcing Terrell to endure yet more years in an Arkansas Prison in service of a conviction that is constitutionally flawed.

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## **CONCLUSION**

For the foregoing reasons, the Writ should be granted.

Dated this the 20 day of September, 2021.

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