No. 22-5080

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Jacky Carldale Mayfield — PETITIONER
(Your Name)

vs.

State of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tulsa County District Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jacky Carldale Mayfield
(Your Name)

P.O Box 97 - OSP
(Address)

McAlester, Ok, 74502
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Proposition one: The search warrant issued on June 20, 2016 authorizing search data stored on Appellant's Phone was general in nature and therefore unlawful in Violation of the fourth Amendment and Article II, § 30 of the Oklahoma Constitution.

Proposition Two: The affidavits in support of both June 20, 2016 search warrants were insufficients To establish probable case in Violations of Article II § 30 of the oklahoma Constitution and the fourth Amendment To the united States Constitution.

Proposition Three: The district court repeatedly and improperly allowed state witnesses To refresh their recollection with documents that others prepared.

Proposition four: The District Courts failure To conduct an in camera hearing regarding the identity of a "confidential witness" constituted reversible error.

Proposition five: Appeldant was improperly shackled and not permitted to sit with his attorney during his non Jury Trial.

Proposition six: Lead Detective missed identification of defendant when witness's described someone with a differant look and style as defendant. Lead Detective Violated 8th Amendment right for a fair Trial by not fully doing his Job investigating and has admitted To his failure on record once he had his eyes set on defendent nothing else was investigated

Proposition seven: ineffective of counsel by failing To bring important facts up during Trial and misleading defendant into signing his rights on a waiver over To not have a Jury Trial of his peers.

LIST OF PARTIES

[/] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

Case No. F-2020-639

In The
Court of Criminal Appeals
Supreme Court of The United States

Jacky CarDale Mayfield
Appellant,

v.

Supreme Court of The United States

Appellant's Brief on Appeal from A Conviction
After A Trial By Jury in Tulsa County District Court
Case CF-2016-3502, The Honorable Cliff Smith, Presiding

June. 17, 2022

Jacky CarDale Mayfield #545378
Oklahoma State Prison
P.O Box 97
McAlester, Ok, 74502
Appellant

Table of contents

Propositions of Errors:

Table of Authorities

Case

Other Authorities

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was March 31 -22. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Case Background

On July 1, 2016, The Tulsa County District Attorney's office filed an information alleging in counts I and II That Jacky Cardale Mayfield had committed Two counts of first degree murder in violation of 21 O.S. Supp. 2012, § 701.7. Count III alleged That he had committed The offense of possession of a firearm after former conviction of a felony in violation of 21 O.S. Supp. 2014, § 1283. Count IV alleged possession of a stolen vehicle in violation of 47 O.S. 2011, § 4-103. (O.R. 36) A second page alleged a single prior felony conviction. (O.R. 41) On October 11, 2016, The Tulsa County District Attorney's office filed an amended information adding a fifth count alleging that co-defendant Rebecca Williams had committed The offense of accessory after The fact in violation of 21 O.S. 2011, § 173. (O.R. 64)

Appellant's preliminary hearing was held on November 22, 2016. The magistrate bound Jacky Mayfield over for Trial on every count except count IV, which was dismissed. Co-defendant Rebecca Williams was bound over on count V. The district court Then passed The arraignment date multiple Times while The State weighed The possibility of seeking The death penalty. In response To The State's Threat To file a bill of particulars, defense counsel filed a "Notice of Intent To Raise Mental Retardation as a Bar To The Death Penalty on August 24, 2017. (O.R. 131) Four days later, The State filed a bill of particulars and Mr. Mayfield was arraigned on November 28, 2017.[1] (O.R. 135)

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[1] Although The court held a number of hearings on The issue of Jacky Mayfield's cognitive ability and whether he could lawfully be executed, The State of Oklahoma ultimately withdrew The bill of particulars prior To Trial. Therefore, most of what happend in 2018 and 2019 is not particularly relevant To The issue raised on appeal and Therefore The hearing dates are not included in The case background.

co-defendant Rebecca williams entered a plea of guilty To The charge of accessory after The fact and on March 26, 2019 she received a plea-bargined sentence of Ten years in prison. The "intellectual disability" question was resolved against Jacky mayfield on July 2, 2019, and his case was set for Jury Trial with The bill of particulars intact. However, on January 24, 2020, The state withdrew The previously filed bill of particulars in exchange for a Jury Trial waiver from Jacky Mayfield. (O.R. 289) In anticipation of Appellant's nonjury Trial, The State filed a "Motion To Present (AT&T phone Records as) Business Record Evidence" on June 5, 2020. (O.R. 290) Defense counsel filed an-all-encompassing motion To suppress on June 23, 2020. (O.R. 305) The state filed a written response To The motion To suppress on June 30, 2020.

The district court Took The motion To suppress under advisement and Jacky mayfield's nonjury Trial began The week of August 3, 2020. After hearing The evidence, Judge Smith denied The motion To suppress and on August 6, 2020, and he convicted Appellant of Two counts of first degree murder and one count of possession of a firearm after former felony conviction. The district court sentenced Appellant To Two Terms of life with The possibility of parole on each count and Ten years for possession of a firearm after former conviction of a felony. The court ordered each sentence To run Concurrently.

This appeal was perfected by The filing of a petition in error on December 7, 2020, after This court granted Appellant The right To file an appeal out of Time in PC-2020-601.

Factual Summary

On June 13, 2016, Olivia Tilley went to Chamberlain Park with her cousin, Mary McClure to meet some boys. (Vol. II, Tr. 61) She did not remember the exact time that she reached the park, but "[i]t was dark outside." (Vol. II, Tr. 61) As the group conversed, Olivia saw a "caramel-colored" man who was bald, or had short hair (and was also "a little chubby") outside a black SUV parked nearby. The man appeared to be talking to someone inside the vehicle on the passenger side. (Vol. II, Tr. 65; 70) He was wearing a light-colored or tan shirt and shorts. (Vol. II, Tr. 65) When showed a photograph of Jacky Mayfield, she admitted that the person she saw was not Jacky Mayfield and did not have pigtails, nor was he six foot four 300-pound man.[2] (Vol. II, Tr. 74) In any event, when she heard gunshots from the direction of the black SUV, understandably, she ran away. No one at the scene was able to identify Jacky Mayfield as the shooter.

Mary McClure remember the meeting with the boys as taking place before 10 p.m. (Vol. II, Tr. 78) She also remembered that there was another person in the group: Mary's friend Adrien. (Vol. II, Tr. 78) Mary was there to meet a boy named Carlos, who showed up in a Mustang with a friend. (Vol. II, Tr. 79) Mary initially thought that Carlos might be in the SUV. She got close enough to see a man and a woman in the front seat, but when she realized she did not know the occupants, she walked away. (Vol. II, Tr. 80) Mary's memory was "kind of foggy," but when prompted by the prosecutor she described a "bigger wider" man of average height standing next to the SUV. He was "light skinned" or maybe mixed race. (Vol. II, Tr. 82) When showed a photograph of Jacky Mayfield, Mary testified he did not look like the man standing by the SUV. (Defendant's Exhibit #1)

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[2] At the time of his arrest, Jacky Mayfield's hair was long and was in pigtails. He weighed 300 pounds and stood six foot four inches tall.

Javier Vargas was with his cousin Carlos at Chamberlain Park when the girls arrived. Carlos was doing most of the talking to the girls, while Javier stays in the car on his phone. (Vol. II, Tr. 93) Javier Vargas claimed to see a man standing by the SUV get in on the passenger side. (Vol. II, Tr. 96) He agreed with defense counsel that the man was not six foot four. (Vol. II, Tr. 102) About ten minutes later he heard gunshots; Javier thought the gun was being fired in their direction. Carlos got in the car and they left. (Vol. II, Tr. 96)

David Harris was a basketball coach in 2016, and was on his way to lock up the gymnasium at Chamberlain sometimes after 10:30 p.m. when he saw a man walking away from the black SUV. (Vol. II, Tr. 106) Mr. Harris agreed with defense counsel that while it was dark and he had tinted windows, the man he saw was not six foot four, nor did he have long hair, or pigtails. (Vol. Tr. 117) He did remember a car sitting at a stop sign nearby. The car looked "reddish" with it's front end missing. (Vol. II, Tr. 109) Detective Terrance Campbell arrived at the crime scene later that morning, after the area had already been cordoned off with yellow tape. (Vol. II, Tr. 129) The shooting victims - Meshawna Jones and Marky Goff - were still in the front seat of the SUV; the child's seat in the back, behind the driver's seat, was empty. He recovered two 9-millimeter Luger cartridge casings from inside the vehicle. (Vol. II, Tr. 131) It appeared as though the shots had been fired from the back seat. later testing confirmed that at least two of the three casing were fired from the same weapon.[3] (Vol. IV, Tr. 569) No actual projectiles or fragments were recovered (Vol. II. Tr. 153) Ultimately, the police lifted 47 latent prints from the SUV, none of which matched Jacky Mayfield. (Vol. II, Tr. 164)

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[3] The cartridge casings were placed in NIBIN, and there was a match for TPD incident 20162818 3, property receipt BL0329. (Vol. IV, Tr. 570) Law enforcement failed to follow up on this "presumptive match." (Vol. IV, Tr. 572)

There may have been no cell phones in the SUV but detectives were able to learn the phone numbers associated with the deceasd's phones: (918) 900-7822 for Marky Goff and (918) 282-4858 for Meshawna Jones. (Vol. IV, Tr. 625) Phone records indicated the last calls they responded to were after 10:50 p.m. Detective Zenoni estimated the Time of the Shooting as 10:56 p.m. (Vol. IV, Tr. 629)

In June of 2016, Kenneth Murray Testified that he lived in Oklahoma City with his girlfriend, Shavon Johnson. (Vol. II, Tr. 177) He Testified that sometime in June he overheard a conversation between Jacky Mayfield and Shavon during which mr. mayfield admitted "that he killed two people in Tulsa..." (Vol. II, Tr. 183) Kenneth Murray indicated that Appellant Told Shavon he was going To New Orleans. Finally, Kenneth Murray identified the car that Jacky Mayfield arrived in as "messed up in the front." (Vol. II, Tr. 186) Shavon Johnson vehemently denied that This conversation Took place, and accused mr. Murray of lying. (Vol, IV, Tr. 58) Shavon Johnson admitted To having sex with Kenneth Murray on occasion, but Testified that They never lived together. He lived with his mother. (Vol, IV, Tr 586) In response to a specific question by defense counsel ms. Johnson Testified Jacky mayfield never Told her That he had murdered anyone. (Vol, IV, Tr. 58, 597)

Bernita Drake Testifield after mr. Murray. (Vol, II, Tr. 205) She Told The court That Jacky mayfield showed up at Bernita's work on June 14, 2016. in a "red four-door compact Type car" with a front end That had been wrecked. (Vol. II, Tr. 213) Jacky Mayfield Told her That "he was Tired, he was ready To go To sleep, he was hungry". (Vol. II, Tr. 211) Bernita helped him with some money, but Jacky Mayfield did not stay with her on June 13, 2016. (Vol. II, Tr. 210, 217)

Damesha Scott is Jacky mayfield's cousin. (Vol. II, Tr. 220) Jacky Mayfield Visited her at her apartment "around noonish" on June 17,

2016. Jacky asked if she had seen the news. Damesha hadn't, but according to her Testimony, Jacky mayfield admitted "I did it". (Vol. II. Tr. 206) She understood this to mean the Chamberlain park homicides. He added that he had sent someone to the SUV to wipe the SUV clean. (Vol. II, Tr. 232) Jacky was driving the red ford focus with the damaged front end. He wanted to borrow Damesha's black ford focus, and she let him use it.

Checking the phone numbers associated with the shooting victims, Detective Zenoni was able to obtain phone records that revealed the last phone number called by marky Goff. At the time, of the murder. The police were able to conduct a facebook search with nothing more than a phone number, and that information led them to a page containing images of a red ford focus "with the front right bumper kind of missing basically." (Vol. IV, Tr. 630) State's Exhibit #87) Detective Zenoni believed the car matched one depicted in video surveillance footage taken near the time of the shooting at chamberlain (Vol. IV, Tr. 635) This, according to Detective Zenoni, led law enforcement to Jacky. (Vol. IV, Tr. 635)

Mr. Mayfield was taken into custody without incident on June 17, 2016 at the comanche park apartments. Detective Zenoni interrogated him after his arrest. (Vol. IV, Tr. 639) mayfield told the detective he had been in oklahoma city all day on June 13, 2016. (Vol. IV, Tr. 644) He admitted to driving a red car, but this was just one of many cars that he was "in and out of." (Vol. IV, Tr. 644) He admitted to being a member of the Hoover crips. Detective Jason white seized a cell phone that mayfield admitted to sometimes using. (Vol. IV, Tr. 644

Detective white assisted in the search of the black ford focus driven by mayfield (which was reported as stolen when it was in fact not) and found a 9-millimeter handgun. (Vol. II, Tr. 295) However, subsequent testing revealed the gun

was not a match TO the shell casing found in the Ford Expedition. (Vol. III, Tr. 305; 567)

Sergeant Nathan Schilling is the go-to phone expert for the Tulsa police Department. on June 21, 2016 he was provided with a cell phone that he believed to be Jacky Mayfield's. (Vol. III, Tr. 351) He attempted a cellebrite extraction of the phone, but was unable to complete examination. (Vol. III, Tr. 352) He had to manually scroll through the phone to obtain what information he felt was useful. (State's Exhibit #86) Detective Schilling was also able to secure the call logs and histories for the phone by taking photographs. (Vol. III, Tr. 357) using this information from the cell phone carrier and the cell phone, he testified that the phone utilized four towers in north Tulsa over the course of the evening on June 16, 2016. Specifically, he placed the Tower that the phone was using at 10:50 p.m. as near chamberlain park. (Vol. III, Tr. 364) After 11:50 p.m., Detective Schilling followed the cell Tower records as the phone Traveled to oklahoma city. (Vol. III, Tr. 366) He placed the phone in oklahoma city on June 14th, 15th and 16th, 2016. (Vol. III, Tr. 367) Detective Schilling Testified that the last Time that the phone used a cell phone Tower in oklahoma city was at 4 p.m. on June 16th. (Vol. III, Tr. 368) "on the 16th [The phone] comes back To Tulsa." (Vol. III, Tr. 368)

Jacky mayfield's co-defendant - Rebecca williams - was called as a witness by the state. She entered a plea To the crime of accessory after the fack and received a Ten-year prison sentence on may 26, 2019. She Testified that after the Shooting on June 13, 2016, mayfield called her and asked if she would "do him a favor and pick up a phone that his friend had left with another friend of his." (Vol. II, Tr. 466) She went To chamberlain park and removed only one phone from the ford Expedition. According To Rebecca, mayfield dialed the phone so that she would be able To find it in the dark. (Vol. III, Tr. 468)

She located the phone on the passenger's lap and she took it and "threw it out". (Vol, III, Tr. 468, 475) She claimed that at the time, she did not realize that he was dead, and admitted that she was "highly intoxicated" at the time. (Vol. III, Tr. 471) "Give or take, she admitted to the court that she was "completely not credible". (Vol, III, Tr, 471)

Proposition One: The search warrant issued on June 20, 2016 authorizing search of data stored on Appellant's phone was general in nature and therefore unlawful in violation of the Fourth Amendment and Article II, §30 of the Oklahoma Constitution.

Standard of Review

When reviewing a trial court's ruling on a motion to suppress evidence based on an illegal search and seizure, this Court defers to the court's factual findings. Lee v. State, 1983 OK CR 41, ¶6, 661 P.2d 1345, 1349-50. The ultimate conclusion drawn from those facts is a legal question that the court reviews de novo. Seabolt v. State, 2006 OK CR 50, ¶5, 152 P.3d 235.

Argument and Authority

A modern smart phone has little in common with the telephones that preceded it. A smart phone is a general purpose computer capable of interacting with millions of other computers around the world. Smart phones utilize an "operating system" just like a computer. Indeed, the phone that was subject to search in this case a "windows" operating system - the same operating system used in the majority of computers in the united states. People continue to call these computing devices "phones" out of habit, as the use of smart phones has evolved, their use as a

Telephone is no longer even the primary function of the device. Smart phones could just as easily be called cameras, video recorders and players, reloadexes, calendars, libraries, diaries, albums, Televisions, maps, or newspapers. see Riley v. California, 573 U.S. 373, 134 S.Ct. 2473, 189 L.Ed. 2d 430 (2014).

Detective Michael Zenoni learned of Jacky mayfield's phone number based upon his discovery that the last phone call from Marky Goff's phone was to a phone that Appellant had been using. (Vol. IV, Tr. 629) The first search warrant issued on June 20, 2016 was for the seizure and examination of data from the phone. (O.R. 384) The second warrant was directed to At&t to gain "CSLI" information with respect to mr. mayfield's phone. (Vol. IV, Tr. 600; O.R. 373) In september of 2016, law enforcement second another warrant for the contents of the phone and the phone was sent to Salt Lake City.[4] (Vol. IV, Tr. 600)

This proposition of error addresses the warrant issued to extract data from the smart phone seized from mayfield. Detective Zenoni admitted that he was made aware that there was a possibility that the execution of the search warrant could destroy the phone. (Vol. IV, Tr. 601) He admitted that there were no limitations upon "aggressively examining [the] phone". (Vol. IV, Tr. 609) while there was no evidence admitted as as result of the september search warrant, the phone was completely destroyed as a result of that search.

The State sought to use text messages from the phone to establish that Rebecca williams was looking for mayfield and that mayfield "was in a meeting with bigger figs" and would call her later. According to Detective Zenoni, mayfield was "talking to Big homies, RLG, in the gang". (Vol. IV, Tr. 609) since marky Goff was a Hoover, this led Detective Zenoni to the conclusion that the exchange

[4] The State did not use any of the evidence obtained as a result of the september search warrant in its case. (Vol. IV, Tr. 610)

was related to a planned "hit". (Vol. IV, Tr. 670) Then, later, at 2:29 a.m. a Text from "107Pookie New was basically Texting To him That Jacky Texted a 'hint" To 107Pookie New That he was good. "Baby got The phones and cleaned up The house for me Just now." (Vol. IV, Tr. 672) "im good cuz baby got phone and clean up The house for me Just now Bxmpbxmp no need To change number now." (Vol. IV, Tr. 672) Appellant object To The text messages. (Vol. IV, Tr. 667) The Text messages are Screenshots from a camera That The Detective Took "I don't know if They've been deleted, if it's a complete conversation." (Vol. IV, Tr. 730) (Vol. IV, Tr. 760) (Vol. IV, Tr. 684) Detective Zenoni admitted To not doing any follow up's on The evidence or any other supects in The case once he had his eyes on Jacky Mayfield.

The Search warrant for The contents of The phone issued on June 20, 2016 was a general warrant prohibited by both The Oklahoma and united States constitutions. The warrant authorized The Seizer of everything That could be obtained from The phone;

Download data contained in The cellular phone with number 318-348-1546 To include call detail records, Text messages (including drafts). contacts, photographs and Videos. GPS information, device identification number, and all other data associated with The cellular phone. (O.R. 384) (Emphasis added.)

Detective Zenoni was The person who prepared and signed The affidavit in support of The Search warrant.

(O.R. 387) The detective admitted that the language in the search warrant placed no limits on data extraction from the phone. (Vol, IV, Tr. 608-09) Oklahoma constitution, and the united States constitution limit the Government's ability to rummage through phone data looking for evidence. The fourth Amendment provides that "no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized." See also Article II, § 30 of the Oklahoma constitution and 22 O.S. 2011, § 1223.

The particularity requirement ensures "that a search does not extend beyond it's authorized purpose, and that law enforcement officers do not engage in exploratory rummaging through personal belongings." Jones v. State, 1981 OK CR 93, 632 P.2d 1249. A valid warrant must strictly limit the scope of a search to particular places and particulars things to be seized and it must eliminate discretion on the part of officers executing its commands. Kinsey v. State, 1979 OK CR 122, 602 P.2d 240 is a case where this court found the following language converted what would have likely been acceptable language into a general warrant:

> Although the appellant also argues that the description of the items in the affidavit upon which the warrant was based were inadequate, we feel the central issue is whether the warrant amounted to a "general warrant" which is constitutionally impermissible. The language of the warrant listed the following property. "25 ca. pistol; C.B. radios; aerials and equipment;

livestock feed; chain hoist; Jewelry;
Two (2) wristwatches; .22 rifle with scope;
portable, battery operated T.V; and other stolen
property." (Emphasis added.)

It was the final authorization to search for "other stolen property" that this court found offensive. while perhaps a distinction without a difference, the language of the warrant in mr. Mayfield's case is... even broader than what was in the kinsey search warrant. In addition to the specific items listed, the warrant also authorized the seizure of "all other data associated with the cell phone." (O.R. 395) Imagine if the kinsey magistrate simply added "and all other property in the place to be searched" to the end of the description of items to be seized. At least the kinsey warrant limited the seizure to stolen property.

A search warrant for data on a motion smart phone therefore must fully comply with the requirements of the warrant clause. It is not enough for police to show there is probable cause to arrest the owner or user of the cell phone, or even to establish probable cause to believe that the phone contains evidance of a crime. To comply with the forth Amendment, the warrant must specify the particular items of evidance to be searched for and seized from the phone and be strictly limited to the time period an information or other data for which probable cause has been properly established. Vigilance in enforcing the particularity is thus essential to the protection of the vital privacy interests inherent in virtually every modern cell phone and to the achievement of the "meaningful constraints" contemplated in Riley, 530 U.S. at 399. As the united States Supreme court has

recently held, Judges are "obligated - as 'subtler and more far-reaching means of invading privacy have become available To The Goverment - To ensure That The 'progress of science' does not erode fourTh Amendment protections." carpenter v. united States, - U.S. - 138. Ct. 2206, 223, 201 L.Ed. 2d 507 (2018)(quoting olmstead v. united States, 277 U.S. 473-74, 48 S.Ct. 564, 72 L.Ed. 944 (1928)(Brandeis, J., dissenting). while The united States Supreme courts has not specifically weighed in on The issue presented, The carpenter case demonstrates The court's reliance on The quoted language from olmstead. In carpenter, The supreme court reJected The Gaverment's contention That There was no expectation of privacy in The deta generated from The use of smart phones and held by Third-party previders.

while There does not appear To be any published oklahoma authority addressing The particular Hy requirement's application To smart phones, other courts have addressed it. In 2015, The united States District Court for The souThern District of Illinois decided united States v. winn, 79 F. Supp. 3d 904 (S.D. Ill. 2015). In winn, The defendant was accused of using his cell phone To VideoTape underage girls in swimming suits while rubbing his genitals. Law enfercement seught, and obtained, a warrant To search The defendant's phone fer "any and all files" contained in The cell phone and its memory card That:

> ...constitute[d] evidence of The offense of [Public Indecency], including, but not limited To, The calendar, phonebook, contacts, Sms messages, MMS messages, emails, pictures, Videas, images, ringtones, audio files, all call logs, installed application data, GPS information, WIFI information, Internet history and usage, any system files, and any delated data. winn, 79F. Supp. 3d at 919.

The winn court acknowledged That law enforcement had

Probable cause to search for two categories of data: photos and videos recordings. However, with respect to these two categories, "the warrant was not as particular as could be reasonably expected given the nature of the crime and the information the police possessed." Winn, 79 F. Supp. 3d at 920. "most importantly, the warrant should have specified the relevant time frame." See Cassidy v. Goering, 567 F. 3d 628, 636 (10th Cir. 2009)("It is not enough that the warrant makes reference to a particular offense; the warrant must ensure that the search is confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause.").

In Burns v. United States, 235 A. 3d 758 (D.C. 2020). The District of Columbia court of Appeals came to conclusions remarkably similar to those in Winn. Burns involved a murder prosecution. Even if the affiant had established probable cause for some data contained in the defendant's two cell phones, the warrants lacked particularity:

> [The warrants described] the objects of the search in the most general terms imaginable. Rather than specifying the three narrow items of evidence for which the affidavits established probable cause, the warrants broadly authorized the seizure of "any evidence" on the phone and listed, by way of example, generic categories covering virtually all of the different types of data found on modern cell phones. The warrants imposed no meaningful limitations as to how far back in time police could go or what applications they could review and, instead, endorsed the broadest possible search without regard to the facts of the case or the limited showings of probable cause set forth in the affidavits. Burns, 235 A. 3d at 775.

Henderson, 289 Neb. 271, 854 N.W. 2d 616, 631-34 (2014); people V. Thompson, 178 A.D. 2d 457, 116 N.Y.S. 3d 2 (2019).

Finally, The good faith exception To The exclusionary rule fails To save This general warrant. A police officer's decision To obtain a warrant is Treated as prima facie evidence That The officer was acting in good faith. A defendant can rebut The prima facie evidence of good faith by showing That (1) The affiant misled The issuing Judge with a reckless or Knowing disregard for The Truth; (2) The issuing Judge abandoned his Judicial role; (3) The complaint supporting The search warrant was "bare bones" or "so lacking in indicia of probable cause" That belief in The existence of probable cause is unreasonable; or (4) The warrant was so facially deficient in failing To particularize The place To be searched or The things To be seized That The executing officers cannot reasonably presume it To be Valid. United States V. Glover, 755 F. 3d 811, 818-19 (7th Cir. 2014)(citing Leon, 468 U.S at 923. 104 S. Ct. 3405)

In Winn, The Illinois court found That "The Warrant was so facially and grossly overbroad in its description of The items To be seized That '[a] reasonably well-trained officer would have Known The Search was illegal despite The issuing Judge's authorization." Winn, 79 F. Supp. 3d at 924, citing To Leon, 468 U.S. at 923, n. 23, 104 S. Ct. 3405. See also United States V. Leary, 846 F. 2d 592. 609 (10th Cir. 1988) ("A reasonably well Trained officer should Know That a warrant must provide guidelines for determing what evidence may be seized.")

The warrant in The case authorized a fishing expedition, and law enforcement officers did Their best To carry out a fishing expedition. The search continued until The phone was destroyed. This case must be remanded for a new Trial, excluding The improperly seized evidence.

proposition Two: The affidavits in support of both June 20, 2016 search warrants were insufficient to establish probable case in Violation of Article II, § 30 of the Oklahoma constitution and the Fourth Amendment to the united states constitution.

Standard of Review

when reviewing a Trial court's ruling on a motion to suppress evidence based on an illegal search and seizure, this court defers to the court's factual findings. Lee v. States, 1983 OK CR 41 ¶6, 661 P.2d 1345, 1349-50. The ultimate conclusion drawn from those facts is a legal question that the court reviews de novo. seabolt v. State, 2006 OK CR 50, ¶5, 152 P.3d 235. Further, this court has adopted a "totality of the circumstances" approach to probable cause review. Langham v. State, 1990 OK CR 9, 787 P.2d 1279.

Argument and Authority

only the first two search warrants (dated June 20, 2016) are at issue in this proposition of error; the state did not use any evidence recovered from the september 12, 2016, search warrant at Jacky mayfield's nonJury Trial. The physical search of the cell phone itself was discussed in the preceding proposition of error. In addition to the search of the smart phone, the second warrant authorized detective to secure "third party" evidence from the smart phone assigned the number (318) 348-1546. (OR. 373) state's Exhibit #78 was a copy of a document signed by Dana Morgan Williams, an At&t "Legal compliance Analyst" and "custodian of Records for At&t." The records custodian provided records kept by At&t for phone number (318) 348-1546. State's Exhibit #79 was a map of cell phone Tower's and calls made from the (318) 348-1546 phone number that the state used to convince the court that Jacky mayfield was at least in the vicinity of the homicides near the Time of the Shooting. State's Exhibit #86

was a series of well over four hundred screen shots of text messages on the phone. State's Exhibit #87 was an image of a person purported to be Jacky Mayfield next to a vehicle associated with the homicides.

Appellant acknowledges that this court have distinguished the search of a smart phone for data from other records maintained by the cell phone carrier for the smart phone, State v. Marcum, 2014 OK CR 1, 319 P.3d 681 (finding no reasonable expectation of privacy in records kept by the carrier).[5] Appellant believes that the recently decided Carpenter v. United States, -U.S.-, 138 S.Ct. 2206, 201 L.Ed.2d 507 (2018) calls into question some of the language used in the Marcum holding. While not directly addressing text messages retrieved from a defendant's cell phone carrier, the case did specifically review the "Third Party doctrine" on which the Marcum court relied upon.[6]

The affidavits in support of the June 20, 2016 search warrants are substantially identical, differing only in the respective third paragraphs describing the target of the requested search. Appellant contends that neither established probable cause. For example, each of the affidavits the following description of a suspect:

> ...A witness at the park reported seeing a black male walk to the ford from the east and enter the passenger side of the SUV on the night of 06/13/2016. Moments later the witness reported hearing multiple gunshots. A second witness driving to the park observed a black male walking east in the parking lot from the SUV on the night of 06/13/2016. The black male was described as being Tall (601-602) with brown skin, a Box Type haircut, and a "funny face."

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[5] In fact, when this court decided Marcum in 2014, the Supreme Court had yet to recognize a right to privacy in the content of cell phones. The Supreme Court decided Riley v. California, 573 U.S. 373, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014) later the same year.

[6] The subpoenas in Carpenter and Marcum both relied upon the authority of the Stored Communications Act, 18 U.S. §§ 2701-2712,

This allegation omits reference to the description of a second witness that the black male was "tall and buff" and possibly bald; and misstates "funny face" as Detective Zenoni's report reflects that the witness actually described a "funny look" on the suspect's face. Most importantly, the cited paragraph means nothing in the probable cause evaluation because it fails to connect the observations with anything or anyone. There is no allegation in the affidavit that Jacky Mayfield fits either competing description.

The affidavit(s) attribute alleged admissions by mr. Mayfield to unidentified and unknown informants without including any context or other factors sufficient to allow the magistrate to independently access the reliability of the secret informants. According to the affidavit(s), the first of the secret informants stated:

A witness stated that on 06/17/2016 the Defendant arrived at his home in oklahoma city during the early morning hours. The witness stated that the Defendant confessed to killing Marky Goff and Meshawna Jones and provided details that only a person who was present during the crime would have been familiar with. but he was not able to give the Detective's such details that only a person that was at the crime would know. he only gave details to the detectives that was public knowledge already. The witness stated that the Defendant arrived in oklahoma city in a small red car with right side front end damage. The witness said the Defendant left oklahoma city on 06/17/2016 at approximately 0100-1000 hours in the small red car.

The second "secret witness" allegedly stated:

A second witness stated that the Defendant arrived at her home during the morning hours of 06/15/2016 accompanied by an unknown male and female. The witness stated that the defendant

Confessed To killing Marky Goff and Meshawna Jones and provided details That only a person who was present during The crime would be familiar with. but cell phone records have shown That The Defendant was in Oklahoma city all day on 06/15/2016. The witness stated That The Defendant and his companions eventually left her apartment. The witness let The Defendant borrow her black ford Escort and he departed her apartment. officers recovered The red 2014 ford focus bearing OK 665-LF11 at 2200 S. olympic Avenue. The Vehicle had front end damage from about The right headlights To The right side quarter panel and a sun roof.

A neutral and detached magistrate reading The above paragraphs would have no idea of The identity or reliability of either of The undisclosed witnesses. No indicia of reliability was offered. Nothing in The affidavit suggests That either is sufficiently reliable for a Judge To authorize a valid warrant. when a Tip comes from an unknown informant, The anonymous Tip must be "Sufficiently corroborated To furnish reasonable suspicion That respondent was engaged in criminal activity." Alabama V. White, 496 U.S. 325, 331, 110 S.Ct. 2412, 2412, 2416, 110 L.Ed.2d 301 (1990) see also Nilsen V. State, 2009 OK CR 6. 203 P.3d 189; Scott V. State, 1996 OK CR 57, ¶8, 927 P.2d 1066, 1068.

The conclusory statement in The affidavit That Jacky mayfield "provided details That only a person who was present during The crime would have been familiar with" is of no real use To a reviewing magistrate, for There are no underlying facts That would make it possible for The magistrate To evaluate The Truth of The statement. In other words, The affidavit provides allegations That cannot be evaluated from witness whose credibility cannot be determined. The affidavits might as well simply state That an unknown informant provided sufficient information in The affiant's opinion-To establish probable cause. see Davenport V.

State, 1973 OK CR 271, 510 P.2d 988 and cases cited therein.

To make matters worse, the affidavits fail to include factors then known to Detective Zenoni that tend to undermine any allegation that Mr. Mayfield's statements to the secret informant's reliability reported facts that only the killer would know. Such conclusory statements, without the underlying factual circumstances regarding veracity, is a "bare bones" affidavit that fails to establish probable cause. United States v. West, 520 F.3d 604, 610 (6th Cir. 2008). Nearly twenty-five years after the United States Supreme Court carved out the good faith exception to the exclusionary rule in United States v. Leon, 468 U.S. 897, 920-21, 104 S.Ct. 3405, 3419, 82 L.Ed.2d 677 (1984), this court decided State v. Sittingdown, 2010 OK CR 22, 240 P.3d 714 (approving the Leon rule). Although the Leon reference in Sittingdown was dicta, this court now accepts the good faith exception to the exclusionary rule as though it has always been the law in Oklahoma. In State v. Wallace, 2019 OK CR 10, 442 P.3d 175, this court held that the exclusionary rule does not bar the admission of evidence seized in reasonable, good faith reliance on a search warrant that is subsequently held to be defective.

Stripped of the irrelevant and misleading allegations, each affidavit is long on irrelevant generalities, long on prejudicial recitations of the details of a horrific crime, and short on specific allegations attributed to demonstrably reliable sources. Failure to make full disclosure of factors bearing on the credibility of the unidentified informants requires the court to re-assess the affidavit after striking the offending text. See Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); Matthew v. State, 2002 OK CR 16, ¶¶ 22-23, 45 P.3d 907; Jones v. State, 2006 OK CR 5, ¶ 27, 128 P.3d 521. After striking the offending text from the affidavits in this case, this court is left with a "bare bones" affidavit that "no reasonably well trained police officer could have believed [established] probable cause to search". State v. Haliburton, 2018 OK CR 28, ¶ 17, 429 P.3d 997, citing to Leon, 468 U.S. at 926

Proposition Three: The district court repeatedly and improperly allowed state witnesses to refresh their recollection with documents that others prepared.

Standard of Review

District court rulings on the admission or exclusion of evidence are reviewed for an abuse of discretion. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and Judgement, one that is clearly against the logic and effect of the facts presented. Neloms v. State, 2012 OK CR 7, ¶ 35, 274 P. 3d 161, 170.

Argument and Authority

several witnesses who Testified against Jacky mayfield were permitted to refresh the memory with the recollections and observations of others. paraphrasing defense counsel's words: the Testimony of witnesses were all refreshed with the lead detective's report as if it was a script from the first 48 that they could not deviate from. (closing/sentencing Tr. 44) In a case that depended heavily upon the Testimony of lay witnesses, the court's decision to permit the wholesale use of reports written by others to "remind" the witnesses what they were supposed to say constituted reversible error.

Olivia Tilley was the second witness to Testify for the state. when asked by the prosecutor if she remembered how many gunshots that she heard on the night of the homicides, her response was that she did not remember. (Vol. II, Tr. 66) when asked if she heard more than one shot, her response was the same: she did not remember. (Vol. II, Tr. 66) since the state did not have a report that Olivia Tilley prepared after the homicides, or even a recording of the conversation that she had with the police because the lead detective decided not to record olivia Tilley's statement and "just play it by ear." (Vol. IV, Tr. 682) The ADA produced what he referred to as a "summary of that conversation". (Vol. II, Tr. 67) The summary was prepared by the lead detective. Defense counsel objected, and the

ADA responded that he believed that he could "refresh her memory with anything"[7] In the end, the witness had to admit that even after reading the police officer summary of what he remembered that she told him, it did not refresh her memory. she could not say whether the person she saw by the SUV was tall or short. (Vol. II, Tr. 70) however Olivia did remember that the person she saw was a "light-skinned caramel colored" and that believed the person was bald without any hair. (Vol. II, Tr. 65) She did say that the person "sitting next to the SUV" was "a little chubbier." The record is not entirely clear as to whether this was a memory refreshed with the officer's statement or not.

The next witness to be called by the state was Javier Vargas. He was also at chamberlain park the night of the shooting. (Vol. II, Tr. 90) He described a "kind of stocky" person walking towards the SUV. (Vol. II, Tr. 94) He could not, however, recall whether this person actually got into the SUV. once again, the prosecutor asked if looking at the detective's summary of his statement would help refresh his memory. (Vol. II, Tr. 94) once again, defense counsel objected:

Judge, im going to object again. if we're just going to spoon-feed every witness mike Zenoni's report of what he says they said to get them to say what the state wants them to say, it's improper testimony for this witness he didnt say that he would remember. He never said he's even seen that report. I think it's an improper refreshing of memory. (Vol. II, Tr. 94)

The objection was overruled. After the prosecuter directed mr. Vargas's attention to the middle section of the report, the witness advised the court that the report did, in fact refresh his memory. (Vol. II, Tr. 95) After reading the police report, he was able to testify that the person entered the SUV on the passenger's side. (Vol, II, Tr. 96) Ten minutes later, he heard the gunshots.

[7] Given the ADA's position, it would have been perfectly fine for him to simply refresh the witness's recollection himself. For example, he could have simply asked the witness if "Knowing that other witnesses heard two gunshots, does that refresh your recollection as to the number of gunshots that you heard?

Kenneth Murray was a key witness for the State who claimed to overhear admissions made by Jacky Mayfield. His credibility was questionable from the start; he initially lied to the police and told them that his name was David Smith. (Vol. II, Tr. 184) Murray did not remember, so the prosecuter once again offered a law enforcement summary, over defense counsel's objection, the ADA was permitted to hand the witness "a summary of the conversation he had with detectives" that he had not prepared. (Vol. II, Tr. 189) Mr. Murray eventually testified that he heard Jacky Mayfield admit that he killed two people. (Vol. II, Tr. 191)

The State called Dameisha Scott primarily for the purpose of testifying that she heard incriminating statements made by Jacky Mayfield. Even when prompted by the leading question as to whether Jacky Mayfield ever made statements about "unfinished business," she could not "remember exactly!" (Vol, II, Tr. 228) Once again, the prosecutor asked if he could use a detective's report to refresh the witness's recollection. This time, the court permitted defense counsel to question the witness as to whether she had ever seen any police reports in this case, and the witness admitted that she had not. (Vol. II, Tr. 230) The court overruled defense counsel's objection and after Ms. Scott testified that the report did, in fact, refresh her memory, she remembered saying that "like basically [Jacky Mayfield] sent a female back out there to finish the - and wipe the fingerprints off and that if anybody else knew about the situation, it would be me that tell them because I was the only person that he told. (Vol, II, Tr. 232)

Although decided prior to the enactment of the Oklahoma Evidence Code, the Oklahoma Court of Criminal Appeals addressed the use of a witness or record to refresh a witness's memory in Rasbury v. State, 1956 OK CR 114, 303 P. 2d 465. This court summarized the history of the rule:

> Apparently the earlier English cases of genuine refreshment of recollection imposed no restriction upon the use of memoranda to refresh. These were not required to have been made near in time to the event, in the later-developed practice

of using records of past recollection These restrictions, with good reason, were imposed. Since, however, The old name of "refreshing recollection" was given To both practices, it was natural That The restrictions developed for one Kind of memoranda should be applied To The other.

The Rasbury court continued:

> which is The wiser practice, The rule of The older cases, championed by Wigmore and by a good many present-day courts, To The effect That any memorandum, without restriction or authorship, Timey, or correctness, may be used when The purpose is To revive memory, or The rule requiring That The memorandum To refresh must meet The same Tests as The record of part recollection? Even if The latter requirement is a historical or analytical blunder, it will be none The worse for That if it is a safeguard needed in The search for Truth.

Rasbury, 303 P. 2d at 470

In The end, The court of Criminal Appeals suggested That upon retrial, if The witness sought To Testify with The aid of The memorandum and objection is interposed, "a necessary showing should be made That The memorandum was prepared by The witness while The occurrences mentioned in it were recent and fresh in his recollection and That The facts stated in The memorandum are True." Rasbury 303 P.2d at 470. (Emphasis added) How can a witness legitimately refresh his or her recollection with a document That - until placed in The witness's hand during Testimony - The witness did not know existed?

12 O.S. 2011, § 2612 deals primarily with The right of an adverse party To review "a record or object" That a witness relies upon To refresh his or her recollection. In United States V. Abel, 469 U.S. 45, 105 S.Ct. 465, 83 L.Ed. 2d 450 (1984), The Supreme Court acknowledged That The common law rules of evidence in practice still exist under The Federal Rules of Evidence, albeit in altered from. In Beck V. State, 1991 OK CR 126, 824 P. 2d 385, This court found That The United States Supreme Court's rationable in Abel was applicable in Oklahoma because

oklahoma rules were adopted from the federal rules.

proposition four: The District court's failure to conduct an in camera hearing regarding the identity of a "confidential witness" constituted reversal error.

Standard of Review

It is believed that the standard of review is whether the district court abused it's discretion. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. Neloms v. State, 2012 OK CR 7, ¶35, 274 P.3d 161, 170.

Argument and Authority

Defense counsel noted in a memorandum filed on July 24, 2020 that he believed that the State was obligated under 12 O.S. 2011, § 2510(C) to provide the identity of a "confidential witness" referred to by Detective Walker (as reported by Detective Zenoni). (O.R. 370) Defense counsel represented to the district court that "it's someone that met with Mr. Walker, was actually in the car with Walker when Walker was trying to arrest Mayfield; he was there." (Vol. I, Tr. 12). At the very least, the secret witness observed the offense of possession of a firearm, for which Jacky Mayfield was charged and ultimately convicted. Judge Smith denied defense counsel's request for an in camera hearing. (Vol. I, Tr. 27-28)

12 O.S. Supp. 2020, § 2510 establishes the Government's privilege to refuse to disclose the identity of a person who has furnished information to law enforcement. most of the language of the statute addresses exceptions to the privilege, none of which Judge Smith believed to be applicable in this case. (Vol. I, Tr. 25) A significant lynchpin of the statutory exceptions involve relevancy; if the informant was a witness to the alleged criminal conduct, or if inforomation from the informant is relied upon to establish the legality of a search, the privilege does not apply.

Defense counsel's belief that the informant privilege did not

apply in mr. Mayfield's case is based in part upon a report penned by sargeant walker, who at the time was in charge of the Homicide unit in the Tulsa police Department. The sergeant's report "reflects that he talks to a confidential informant who is calling him and talking to him about the case!" (Vol. I, Tr. 6) counsel continues: "This particular confidential witness is a key player, both in search and seizure areas and on the merits when the trial begings." "The investigation in this matter was not centered on Jacky mayfield until this witness contacted sergeant Dave walker." (Vol. I, Tr. 9) There was no indication that this was an anonymous tipster, this was a person who over a period of time provided information which directly resulted in the focus of the police investigation turning towards Jacky mayfield. The informant's direct connection is further evidence by the fact that he was present in sergeant walker's vehicle when walker tried to arrest mr. mayfield. (Vol. I, Tr. 11)

prior to the enactment of the Evidence code, 12 O.S. Supp. 1977, § 418.9 called for an in camera hearing concering possible disclosure when "it appears that an informer may be able to give testimony relevant to an issue in a criminal case." In Taylor v. State, 1980 ok CR 121, 621 P.2d 1184, this court addressed whether the identiy of an informant who was involved in the sale of amphetamines to an undercover officer had to be disclosed upon demand. Although 12 O.S. Supp. 2020, § 2510 no longer refers to an in camera hearing, it also does not require that the disclosure of the informant's identity be public. As presently written, 12 O.S. Supp. 2020, § 2510(C)(3) provides:

> The court shall, on request of the government, direct that the disclosure be made in chambers. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceding under this subsection except a disclosure in chambers if the court determines that no counsel or party shall be permitted to be present. if disclosure of the identity of the informant

is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

The united States supreme court has articulated a standard for disclosure of confidential informants who play an active rather than passive role in criminal activity. There is no fixed Test, but the court should take into consideration 1.) The crime charged; 2.) The possible defense; 3.) The possible significance of the informer's Testimony; and 4.) other relevant factors. U.S. V. Aranda-Diaz, 2014 WL 59868 (N.M. 2014), citing To Roviaro V. united States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed. 2d 639 (1957). A reviewing court must weigh the public's interest in protecting informants against a defendant's right To prepare a defense.

The States interest in "protecting" The identity of a confidential witness or informant carries less weight when the testimony of the informant is believed To be beneficial To the person seeking the identity of the informant. when a defendant has at least made a prima facie showing that disclosure is warranted, the Tenth circuit has - for decades - upheld and countenanced the use of an in camera hearing as a mechanism for a court To better balance the competing interests associated with disclosure. united states V. Moralez, 917 F. 2d 18 (10th Cir. 1990); Gaines V. Hess, 662 F. 2d 1364 (10th Cir. 1981); Garcia V. united States, 373 F. 2d 806 (10th Cir. 1967). At a minimum, the united state supreme court has directed courts To conduct an in camera hearing To determine if the information is exculpatory. see pennsylvania V. Ritchie, 480 U.S. 39, 57-58, 107 S.Ct. 989, 94 S.Ct. 40 (1987). The in camera procedure has advantage of giving the Trial court considerable flexibility in determining if disclosure is warranted." Gaines, 662 F. 2d at 1369.

It is impossible to weigh the significance of the error without remanding this case to the trial court for an evidentiary hearing. Appellee may accuse Appellant of a certain amount of speculation in this proposition of error, but such speculation is necessitated by the district court's decision to deny an in camera hearing in the first place. This court should remedy that error with an order remanding this case for an in camera hearing.

Proposition Five: Appellant was improperly shackled and not permitted to sit with his attorney during his nonJury trial.

Standard of Review

The Oklahoma court of criminal Appeals has held that "restraint by means of surveillance, shackles and leg irons and other means of maintaining order and preventing acts of violence and escape are matter within the sound judicial discretion of the trial court." "[E]ach case must depend on its own facts, and this court will scrutinize with the greatest care every such case in search of abuse of discretion" see Sanchez v. State, 2009 OK CR 31, ¶ 34, 223 P.3d 980 and cases cited therein.

Argument and Authority

At the onset of the trial, defense counsel noted for the court that mr. Mayfield was sitting in the jury box in a waist chain with his ankles chained. (Vol. II, Tr. 39) He requested "[for Jacky mayfield's] comfort and dignity... that he be unshackled!" (Vol. II, Tr. 39) There was no hearing; Judge Smith simply deferred to the deputy in the courtroom for permission. The deputy responded that his superior - sergeant pounds - "said no!" (Vol. II, Tr. 39) Jacky Mayfield remained shackled in the jury box throughout the trial.

At one point during the trial, defense counsel was not permitted to enter the jury box and stand next to his client in an effort to establish Jacky mayfield's height. (Vol. IV, Tr. 712) mr. mayfield remained in the jury box during the trial while his attorneys sat at the defense table,

which is traditionally positioned as far away from the jury box as possible. The prosecutors were closer to Jacky Mayfield during the trial than his attorneys.

22 O.S. 2011, § 15 provides:

> No person can be compelled in a criminal action to be a witness against himself; nor can a person charged with a public offense be subjected to any more restraint than is necessary for his detention to answer the charge, and in no event shall he be tried before a jury while in chains or shackles. (Emphasis added).

The statute is intended to preserve the inherent right of a person charged with a crime to appear in court with the free use of his faculties, both mental and physical, and to preserve the presumption of innocence. McQueen v. State, 1966 OK CR 150, 421 P.2d.[8] The statute contains three provisions. The second provision - limiting a defendant's restraint to no more than necessary; is not limited to jury trials.

Sanchez v. State, 2009 OK CR 31, 223 P.3d 980 held that 22 O.S. 2011, § 15 established a defendant's right to a hearing before he could be "restrained by a shock sleeve, shackles, or any other form of physical restraint." Sanchez, ¶ 34. Before restraining a defendant in any way, the court must make a specific finding on the record that the defendant has engaged in disruptive or aggressive behavior in connection with the proceedings or endanger public safety during the trial." Sanchez, ¶ 34. The court must provide a

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[8] McQueen was overruled by Peters v. State, 1973 OK CR 443, 516 P.2d 1372 insofar as the case interpreted Oklahoma law as establishing an absolute right for a defendant to be present unshackled in front of a jury. Peters established that these rights could be implicitly waived by the defendant's conduct.

factual basis for its decision.

Sanchez involved a Jury Trial; mr. Mayfield's case was Tried before The court. There are at least Two reasons why Sanchez should not be limited To Jury trials. First, The restraint in Sanchez did not limit its prohibition To The use of visible restrains. For example, The language of Sanchez prohibited The use of a "shock sleeve" without a hearing To establish The necessity of The restraint. A "shock sleeve" can be easily concealed under a defendant's clothing and That made no difference in This court's rationale for The rule. Second, The language of The first Two provisions of 22 O.S. 2011, §15 contain no express Jury trial limitation. The first provision states That no person can be compelled To be a witness against himself in a criminal action. The second section provides: "a person charged with a public offense [may not] be subJected To any more restraint Than is necessary for his detention to answer The charge." Only The final provision applies exclusively To Jury trial.

The record in The case is clear: Judge Smith relied upon The sheriff when deciding how mr. Mayfield should be restrained. In Davis v. State, 1985 OK CR 140, 709 P.2d 207, The sheriff considered The defendant To be a security risk and shackled him prior To entering The courtroom. In a specially concurring opinion Judge Brett wrote:

> The sheriff does not control The courtroom. That is The responsibility of The Trial Judge. The trial Judge is bound To proceed in accordance with The terms of 22 O.S. 1981, §15 until some reason develops To proceed otherwise. FuTher, when restraint becomes necessary The record should be made complete clear why restraint is being applied.

Admittedly, The principle harm of shackling a defendant during a trial is evidentiary in nature; it ordinarily forbids The preJudicial spectacle of a defendant clapped in irons before a Jury. Sanchez, ¶35. It also "safeguards a defendant's dignitary and tactical interests in making his defense without The mental and physical burdens of shackles." Sanchez, ¶35. This impairment was exacerbated by The court placing The defendant and his

attorneys at opposite ends of the courtroom during Trial.

Honoring the presumption of innocence requires that this court maintain a presumption against pretrial detention. The supreme court of the united states has long recognized that the traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See Hudson v. Parker, 156 U.S. 277, 285, 15 S.Ct. 450, 39 L.Ed. 424 (1895) "in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception". Foucha v. Louisiana, 504 U.S. 71, 83, 112 S.Ct. 1780, 118 L.Ed. 2d 437 (1992) This is all but forgotten in Tulsa county, where the presumption is that a defendant remain in Jail pending Trial, unless he can afford to post bond. Even during mr. mayfield's Trial, the presumption of innocence continues, and although he was in custody neither the sheriff nor the court could impose a greater level of restraint than necessary. [illegible] until this court takes action. The presumption of innocence will remain an endangered principle in Tulsa county.

Proposition Six: Lead Detective missed identification of defendant when witness's described someone with a different look and style as the defendant. Lead Detective violated 8th Amendment right for a fair Trial by not fully doing his Job investigating and has admitted to his failure on record once he had his eyes set on defendant nothing else was investigated.

Standard of Review

District court ruling on the admission or exclusion of evidence, are reviewed for an abuse of discretion. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment. one that is clearly against the logic and effect of the facts presented. Neloms v. State, 2012 OK CR 7, ¶35, 274 P.3d 161, 170.

Argument and Authority

The lead Detective Micheal Zenoni failed to do his rightful duty as an officer of the law and fully investigate as he should have! The Detective did not record all of the interviews that took place (Vol. IV, Tr. 682). He stated that he, "Just play it by ear when im there." (Vol, IV, Tr. 684.) Detective Zenoni did not even record the interview that he claim to have had with Reggie Haynes. Knowing that the victim marky Goff was beefing with Reggie Haynes. Detective Zenoni did not even bother to investigate further into anything. "once we got working on Jacky, no!" (Vol. IV, Tr. 702-03) even when witnesss said that they saw a "regular sized not too tall, caramel skin, short harr, Box style haircut" unlike the Defendant Jacky mayfield the Detective still did not care to investigate any other suspects that Detective's had a list of once mr. mayfield was in his eye sight. it even took the Detective's four years after mr. mayfield was in custody about to go to Trial to even bother to interview a person that finger prints they have had for four years that was taken from the car that may have been connected to the crime and the only reason Detectives bother to interview that person after four years was because Detective Jason white told them that "im just doing this because same defense attorney might raise it at Trial." (Vol, IV, Tr. 721) Detective Zenoni just plain failed to investigate at all because he wanted Jacky mayfield to be his guy. he has admitted to his failure to correctly do his Job. (Vol, IV, Tr. 693) (Vol, IV, Tr. 682) (Vol, IV, Tr. 684) (Vol, IV, Tr. 688) (Vol, IV, Tr. 690) (Vol, IV, Tr. 696) (Vol, IV, Tr. 702-03) (Vol, IV, Tr. 708) (Vol, IV, Tr. 720-21).

(Vol. IV, Tr. 730)(Vol. IV, Tr. 738)(Vol. IV, Tr. 760) Detective Zeneni Testified. when Jacky Mayfield was arrested on June 17th, 2016, no alternative suspects were ever developed. He didnt even Try the lab reports had not come back Yet on the blood, fingerprints, and ballistics on June 17th, But when they did come back and they eliminated Jacky Mayfield as the fingerprint on that rear passenger door, as the (DNA) on that door handle, and as the ballistics shell casings that were found that I think everyone believes came from the murder weapon that killed marky Goff and meshawna Jones. all of that evidence eliminated Jacky mayfield.

Jacky mayfield's (DNA) was not in the car. It's not Just that his (DNA) wasn't in the car. They had (DNA) that excluded all the victims and it also excluded Jacky may. It may be the (DNA) of the shooter. They had finger-prints that excluded all of the victims and excluded Jacky mayfield. They left a lot of stones unturned in this case because at June 17th, 2016, when they cut the show of the first 48, which was produced and aired on national T.V. and Jacky mayfield began his four year tenure at David Limoss Jail waiting his day in court. They did not do anything To follow up on all these other leads that pointed To someone else. The description that Detective Zeneni had from witness's was between "caramel-colored wearing like a Tan or nude shirt and cargo shorts." (Vol. I, Tr. 65)(Vol. I, Tr. 74-75) "may have been bald." "six-one medium To buff build. medium brown complexion. a funny face look, ugly like a - not like the fresh Prince, but the ball thing - ugly bad cut." (Vol, IV, Tr. 625

They focused in on mr. mayfield with cameras over their shoulder with the glory and POlish of the first 48 and they never looked back. The labs came back. They excluded mr. mayfield, and they never looked back. and I understand why. I understand that a Homicide Detective DIVISION is eager To close a case and be done with it. It's a lot more work To go back To the lab and say. "can you run the prints on these other possible suspects that we've developed". and then wait on those lab results and interact with the lab and follow upon those leads. They didn't do any of that because it was a nice clean easy arrest

The most Power evidence in this case are the five eyewitnesses That described a regular-sized guy. and almost To a witness They identified someone much smaller than mr. mayfield. He is a large man. his hair-cut in the mug shot of his arrest on June 17th, 2016, isn't a new hairstyle it's an old ratty hairstyle he didn't change. There's no evidence that he changed it. and despite the complete inconsistency of every eyewitness

description and mr. mayfield's characteristics. That all got glossed over, too Each of those eyewitnesses described characteristics that are completely distinguishable from Jacky mayfield.

Proposition seven: Ineffective of counsel by failing To bring important facts up during Trial and misleading defendant into signing his rights on a waiver over To not have a Jury Trial of his Peers.

Standard of Review

Appellant alleging ineffective of counsel must overcome presumption that counsel rendered reasonable professional assistance by showing that Trial counsel Performance was unreasonably deficient and that he was prejudiced by The deficient Performance. (Davison v. State, 2020 ok 478 P.3d 462

Argument and Authority

Defense counsel was ineffective due To counsel corbin Brewster mis-leading Defendant Jacky mayfield into signing his rights on a waiver over To not have a Jury Trial of his Peers. Counsel knowing That the defendant mr. mayfield was mentally slow and would not fully understand The meaning of The use of ceunsel's educated words.

"The diagnosis of mental Retardation has been establish in Previous evaluations"

1. In February 2005, at age 16, mr. mayfield was given a Psychological evaluation by Dr. Susan Phillips, Ph.D. Although mr. mayfield was attending 11th grade, his actual skill level was reported by The docter, To be at 6th grade or below. According To records The doctor administered The Bender Gestalt Test and mr. mayfield's results indicated his visual motor age was similar To That of a person between 8 years and 6 months and 8 years and 11 months, or rather someone half his age. The doctor noted. Defense counsel corbin Brewster which he had knowledge of defendants state of mental disability convinced defendant mr. mayfield That it would be best To have a non-Jury Trial because The chances for a better Verdict due To The facts of evidence within The case. but a Jury will more Than likely find The defendant guilty only because The Death penalty was being asked for by The State. Even if The Jury did not put mr. mayfield on Death Row. They would still found mr. mayfield guilty no matter The evidence. mr. mayfield To counsel many

Times that he will rather take his chances with a Jury. Defense Counsel told mr. mayfield that he knew that mr. mayfield was tired of sitting in the county Jail and that if he were to have a Jury Trial it will be at least another year or more that defendant will have to stay in the county Jail because of the covid19 outbreak crisis but but a non-Jury Trial could take place at any time if mr. mayfield were to waive his rights to a Jury Trial. mr. mayfield believed that Counsel had his best interest.

During the course of the non-Jury Tral. counsel failed to raise arguments that were in favor of mr. mayfield that could have possibly change the Verdict. Defense Counsel failure to seek impeachment of witnesses Testimony. Dameisha scott said that mr. mayfield came to her home on wednesday June 15th, 2016 (Vol. II. Tr 246). when there was evidence that proves that mr. mayfield was in fact not in Tulsa county on 6-15-2016. nor did counsel argue entrapment when mr. mayfield was arrested. when Dameisha let defendant use her car. (Vol. II. Tr. 249). the officer had it reported as stolen so officers would have reason to stop and arrest and search mr. mayfield on false pretense. when in fact ms. scott let mr. mayfield use her car.

"Defense counsel's performance fell below an objective standard of reasonableness. and there is a reasonable probability that. but for counsel unprofessional errors the result of the proceeding would have been differant." (U.S.C.A. const. Amend. 6) see (smith v. Maheney. 2010. 611 F. 3d 978).

while Defense counsel failed to bring up many facts of the case for the record. Defense counsel made the statement while he was cross examining a witness. "man. Im glad there's not a Jury." (Vol. IV, Tr. 740). The statement is further proof that defense counsel knowingly misled Jacky mayfield into waiving his rights to a Jury Trial for if mr. mayfield had not waived his rights to have a Jury Trial the out come may have been differant.

4. The facts of this case make it clear that counsel's conduct at and before respondent's sentencing proceeding cannot be found unreasonable under the above standards. They also make it clear that. even assuming counsel's conduct was unreasonable. respondent suffered insufficient prejudice to warrant setting aside his death sentence. pp. 2070-2071. see. Washington v. Strickland, U.S.C. 693 F. 2d 1243 (5th Cir. 1982).

Defense counsel failure to argue that the search warrant for the Defendants arrest was not infact for the car. Defendant was not inside of any car when the officers moved in to arrest mr. mayfield mr. mayfield was already outside of the car at least four or five feet away from any car. Therefore the search of the car should have been void. counsel also made stipulations with the district attorney with out explaining what was being stipulated to defendant.

counsel failure to argue the fact that the witness David Harris was just now at Trial adding to the story that he told the Detectives four years later things that was never before mentioned.(Vol. II, Tr. 106)(Vol, II, Tr. 120). counsel failure to argue the facts when the State said mr. mayfield was making call's through out the whole day of June 13th 2016 when in fact the same text message that the state use against mr. mayfield. that was sent to Rebecca williams proves that the defendant didn't have the phone for some time, "Just checking phone. in meeting with bigger figs. call you later."

Defense Counsel also failed to point out that the text message to 107 Pookie new "Im good cuz baby got the phones and clean up the house just now bompbxmp no need to change number now."(Vol. IV, Tr. 673) was a respond to a text message coming from 107 Pookie new but that text message of 107 Pookie new was never even mention because it would further show that mr. mayfield was doing a favor by getting the phones because he was being asked to. counsel failure to impeach Kenneth murray.' for lying about who he was when he first called the police saying his name was David smith.' for lying about staying with shaven Johnson but giving Detectives a different address than that of Shaven Kenneth murray also first claimed the defendant was outside when he told them about the murder than changed his story saying the defendant told the story inside of mr. murray's living room. he should have been impeached but counsel failed to do so. Counsel failure to argue many facts of the case that should have been put on record but Defense counsel waits until closing arguments to then state these facts when they should have been pointed out and argued during the Trial

But his failure to do so has sealed mr. mayfields fate by the Judge when a Jury would have focus fully on all of the evidence and not just on one witness Testimony as the Judge have done and have stated as much during the end of closing arguments. mr. mayfield did not have the chance to a fair and just Trial and ask this court to reverse and amend this case for a new Trial by Jury

Conclusion

wherefore, Premises considered, it is respectfully requested that this court reverse Appellant's conviction's and remand for a new Trial.

Carldale Mayfield

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