

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re. STEVEN B. TURNER - Petitioner

APPENDIX OF EXHIBITS TO THE PETITION FOR A WRIT OF HABEAS CORPUS
(APPENDICES A-P)

Steven B. Turner No. 354446
Western Missouri Correctional Center
609 E. Pence Road (2-A-205)
Cameron, Missouri 64429

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-3162

Steven B. Turner

Petitioner

v.

Chris Brewer

Respondent

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-00487-GAF)

JUDGMENT

Before COLLTON, ERICKSON, and STRAS, Circuit Judges.

The motion for authorization to file a successive habeas application in the district court is denied. Mandate shall issue forthwith.

November 07, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

A
1

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3162

Steven B. Turner

Petitioner

v.

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Respondent

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-00487-GAF)

MANDATE

In accordance with the judgment of November 7, 2022, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

November 07, 2022

Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

THIS OPINION IS NOT FINAL UNTIL
ALL POST HANDDOWN MOTIONS HAVE
BEEN DISPOSED OF AND THE MANDATE
ISSUED AND RECEIVED

STATE OF MISSOURI,)
v.)
Respondent,) WD 59590
STEVEN B. TURNER,)
v.)
Appellant.)

**Appeal from the Circuit Court of Lafayette County, Missouri
The Honorable William J. Roberts, Judge**

Before: Ellis, P.J., and Smith and Howard, JJ.

Order

Per Curiam

Steven B. Turner appeals from his convictions of murder in the first degree and armed criminal action. Turner raises three points on appeal. First, he contends the trial court erred in failing to provide the jury with an instruction on justification as required by MAI-CR 3d 306.06. Second, he contends the trial court erred in denying his motion for judgment of acquittal on the charge of murder in the first degree at the close of all the evidence in that the State's evidence was insufficient to permit a reasonable juror to find guilt beyond a reasonable doubt as to the crime of murder in the first degree. Third, Turner claims the trial court erred in failing to provide the jury with appropriate instructions on "mental disease or defect negating culpable mental state" as required by MAI-CR 3d 308.03.

Affirmed. Rule 30.25(b).

APR 11 2002
AB
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IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,)
v.)
STEVEN B. TURNER,)
Respondent,) WD 59590
Appellant.)
ORDER FILED:
August 30, 2002

**Memorandum of Reasons for Order Affirming
Judgment Pursuant to Rule 30.25(b)**

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the conviction on this appeal.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER COURT. IN THE EVENT OF THE FILING OF A MOTION TO REHEAR OR TRANSFER TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED TO ANY SUCH MOTION.

Steven B. Turner appeals from his convictions of murder in the first degree and armed criminal action. Turner raises three points on appeal. First, he contends the trial court erred in

APR "8" 4

failing to provide the jury with an instruction on justification as required by MAI-CR 3d 306.06. Second, he contends the trial court erred in denying his motion for judgment of acquittal on the charge of murder in the first degree at the close of all the evidence in that the State's evidence was insufficient to permit a reasonable juror to find guilt beyond a reasonable doubt as to the crime of murder in the first degree. Third, Turner claims the trial court erred in failing to provide the jury with appropriate instructions on "mental disease or defect negating culpable mental state" as required by MAI-CR 3d 308.03.

We affirm.

Facts

Steven B. Turner was charged with murder in the first degree, § 565.020,¹ and armed criminal action, § 571.015, in the stabbing death of Deborah Boldridge.

On the evening of April 23, 1999, Margaret Lloyd and her boyfriend, Robert Lee, went to visit Deborah Boldridge, who lived in Higginsville, Missouri. They arrived at Boldridge's house at around 10:00 or 10:30 p.m. They sat around the house eating and watching television.

Subsequently, Turner, who was Boldridge's cousin, and a man named Wallace Jeffries arrived at Boldridge's house. While Turner was present, his mother telephoned from Odessa and spoke with Boldridge. She was looking for Turner and wanted him to return home with her station wagon, which Turner had apparently taken without her permission. Boldridge told Turner's mother that Turner was not there. However, after she got off the phone, she told Turner to move the car away from her house because she was afraid the police might be called. Turner left the house and drove off in the station wagon, but returned a few minutes later.

At around 11:30 p.m., Lloyd and Lee left Boldridge's house and walked to Crocker's Bar. When they left, Turner and Jeffries were still at Boldridge's house. Prior to leaving, neither Lloyd nor Lee observed Boldridge acting crazy or threatening Turner. They seemed to be getting along.

While still at Crocker's Bar, Lloyd called Boldridge to let her know that she was at the bar. When Lloyd arrived home, she called a second time, at 12:36 a.m. Boldridge told her that she was trying to get Turner out of her house. She used profanity, but she did not indicate that they were arguing, nor did Boldridge sound unusual or seem to be under the influence of crack cocaine.

Lloyd called again at 2:23 a.m., but Boldridge's answering machine picked up. She called again at 3:17 a.m., but the telephone just rang and rang.

Shortly after 7:00 a.m. later that morning, police and paramedics were summoned to Boldridge's home. When they arrived, they discovered that the residence was a mess. Tables and chairs had been overturned and papers were strewn all over the floor. Police found Boldridge's dead body in the corner of the living room. Sofa cushions were pulled off or tossed about. There were blood spatters on the couch, coffee table, television and TV stand, and a broken lamp near the victim's body. There also were pillows, pens, pencils, bottles, some clothes and a bloody steak knife lying on the floor. The victim's telephone was in the middle of the floor, unplugged from the wall. In a spare upstairs bedroom, there were two crack pipes and two lighters lying on a desk.

An autopsy revealed that Boldridge had suffered a variety of injuries to virtually every part of her body. She had a bruise in front of her right ear and two "cutting stab-type injuries" around her right eye, one of which was near the eyebrow and the other below the eye toward the nose. The wounds could have been inflicted by one or two blows.

¹ All statutory references are to RSMo 2000.

Boldridge also suffered at least thirteen separate cutting or stab wounds to her "trunk area," between the neck and the pubic area. Six of the wounds were in the upper chest area. Two others were in Boldridge's back, one of which extended into the abdominal cavity. Boldridge's other stab wounds included an inch-long stab wound to the right forearm, and two other stab wounds to her upper arm and shoulder. In addition, she suffered a five-inch stab wound that completely penetrated her right leg, and various scrapes and bruises to her left leg.

The wounds to Boldridge's front trunk were the most serious. The top wound in the larynx and ones in her chest caused the most serious injury, one penetrating the lung and the other puncturing the aorta, resulting in a loss of blood and causing her death.

Turner was arrested at his mother's home by Higginsville police. He admitted to the police that he had killed his cousin and told them that the murder weapon was a knife, which he dropped on the floor of the front room of Boldridge's home.

An emergency medical technician was dispatched to the police station. Turner told her that he had been hit on the ring finger of his left hand. His vital signs did not show any evidence of drug intoxication. However, a subsequent blood test revealed traces of benzoylecgonine, a metabolite of cocaine.

Turner told the police that he and Boldridge had been smoking crack and that he was high on crack when the stabbing occurred. Turner said that Boldridge had thrown something at him which broke his finger, and that she came at him with a knife. Turner said he took the knife away from Boldridge and then "kicked her into the corner," from where she never subsequently moved. Turner said that he picked up the knife, went over to where Boldridge was lying, and began stabbing

her. Turner said he knew that Boldridge kept her crack in her jeans pocket, but he became indignant and terminated the interview when he sensed that the police might be suggesting that he had murdered Boldridge for crack cocaine.

At trial, Turner testified that after he finished smoking crack with Boldridge, he said he was going to leave, and Boldridge got angry and said that all Turner wanted to do was smoke all the "dope" and leave. Turner testified that Boldridge threw an ashtray at him from close range, which broke his finger. Then Boldridge started coming at him with a knife. He turned and kicked her in the stomach, causing her to drop the knife and stumble back. The knife fell between the couch and the table. Turner then picked up the knife. Turner testified that he "must have killed her," but he maintained that he had no specific recollection of stabbing her. He said he had no memory of what happened until he heard his mother knocking on the door. As he was driving to his mother's house with his sister, he told her that he thought he killed Boldridge.

Following trial, Turner was convicted of murder in the first degree and armed criminal action. The trial court sentenced Turner, as a prior offender, to concurrent terms of life imprisonment without the possibility of probation or parole and ten years' imprisonment, respectively. This appeal follows.

Point I

Turner's first point on appeal is that the trial court erred in failing to provide the jury with an instruction on justification as required by MAI-CR 3d 306.06, in that there was evidence supporting such an instruction. Specifically, Turner argues that in his confessions and during his trial testimony, he provided evidence that the victim had stabbed him some years prior and on the

day in question she assaulted him with an object, breaking his finger, and moments thereafter came at him with a knife in a threatening manner, after which he kicked her, grabbed the knife, and while subjectively fearing for his life, stabbed her to death.

In reviewing a trial court's decision to not submit a self-defense instruction, we view the evidence in the light most favorable to the defendant. *State v. Francis*, 60 S.W.3d 662, 673 (Mo.App. W.D. 2001). "The court is required to instruct the jury on self-defense if there is substantial evidence putting self-defense in issue, regardless of whether the defendant has requested the instruction and irrespective of the source of the evidence." *State v. Griffin*, 859 S.W.2d 816, 820 (Mo.App. W.D. 1993). Failure to submit such an instruction where it is warranted constitutes reversible error. *State v. Weems*, 840 S.W.2d 222, 226 (Mo. banc 1992).

Section 563.031 provides, in relevant part, as follows:

1. A person may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent he reasonably believes such force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful force by such other person

2. A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless he reasonably believes that such deadly force is necessary to protect himself or another against death, serious physical injury, rape, sodomy or kidnapping or serious physical injury through robbery, burglary or arson.

"Four elements must be present to allow the use of deadly force in self-defense." *Weems*, 840 S.W.2d at 226. They are as follows:

(1) an absence of aggression or provocation on the part of the defender, (2) a real or apparently real necessity for the defender to kill in order to save himself from an immediate danger of serious bodily injury or death, (3) a reasonable cause for the defender's belief in such necessity, and (4) an attempt by the defender to do all within

his power consistent with his personal safety to avoid the danger and the need to take a life.

Id. (Citation omitted.)

"The burden is on the defendant to interject the issue of self-defense." *Francis*, 60 S.W.3d at 673. However, once the evidence raises self-defense, the State has the burden to prove beyond a reasonable doubt that the homicide was not justified. *Id.*

Turner's counsel requested a self-defense instruction patterned after MAI-CR 3d 306.06. The trial court refused the instruction on the basis that self-defense was not an issue in the case because Boldridge was disarmed when Turner stabbed her. The trial court also refused the instruction on the basis that "the instruction, as tendered, would not be in proper form for the way the evidence came out in this case."

"What constitutes self-defense . . . is not a question of fact for the jury, but a question of law." *State v. Jackson*, 522 S.W.2d 317, 319 (Mo.App. 1975). However, "where the evidence is conflicting or of such a character that different inferences might reasonably be drawn therefrom, it is generally a question of fact for the jury to determine whether the accused acted in self-defense in a particular case." *Id.*

We hold that the trial court properly determined as a matter of law that Turner was not entitled to an instruction on self-defense. *See State v. Thomas*, 625 S.W.2d 115, 123 (Mo. 1981) (finding that the trial court did not err in determining that the defendant as a matter of law was not entitled to a self-defense instruction). We agree with the trial court's determination because there was not substantial evidence before the trial court that Turner acted in self-defense. We find that there was no substantial evidence that Turner had a reasonable cause for his belief that it was

necessary for him to kill Boldridge in order to save himself from an immediate danger of serious bodily injury or death. Even if we accept as true Turner's statement that Boldridge threw an ashtray at him and broke his finger and then came at him with a knife, Turner admitted that he subsequently "kicked her into the corner," from which she never moved. Furthermore, Turner did not present any evidence that he attempted to do all within his power consistent with his personal safety to avoid the danger and the need to take Boldridge's life. In fact, Turner did not present any evidence that he did anything to avoid "the danger" in this case. In addition, the "evidence as to the location and multiplicity of the wounds upon the victim," including stab wounds to the back, is inconsistent with Turner's self-defense claim. *State v. Zeitvogel*, 655 S.W.2d 678, 693 (Mo.App. W.D. 1983); see also *State v. Jordan*, 646 S.W.2d 747, 750-51 (Mo. banc 1983) (finding that, along with other factors, the location and severity of the ten stab wounds "sp[oke] loudly" that the defendant did not reasonably believe it was necessary to use such deadly force in self-defense). Point I is denied.

Point II

Turner's second point on appeal is that the trial court erred when it failed to grant his motion for judgment of acquittal on the charge of murder in the first degree at the close of all the evidence because the State's evidence was insufficient to permit a reasonable juror to find guilt beyond a reasonable doubt as to the crime of murder in the first degree in that the totality of evidence established that he stabbed the victim in the heat of passion while he was high on crack cocaine, after the victim had broken his finger and attempted to stab him with a knife.

In deciding whether sufficient evidence supports the verdict, we determine whether substantial evidence exists from which a reasonable juror might have found the defendant guilty

beyond a reasonable doubt. *State v. Mann*, 23 S.W.3d 824, 829 (Mo.App. W.D. 2000). We accept as true all the evidence favorable to the State, including all favorable inferences drawn from the evidence, and disregard all evidence and inferences to the contrary. *Id.* Substantial evidence is evidence "from which the trier of fact could reasonably find the issue in harmony with the verdict." *Id.* (Citation omitted.)

Turner argues that there was insufficient evidence to support a finding that he deliberated before killing Boldridge. Rather, Turner contends, the evidence supports only a finding that he stabbed Boldridge in the heat of passion.

In *State v. Johns*, 34 S.W.3d 93, 110 (Mo. banc 2000), *cert. denied*, 532 U.S. 1012, 121 S.Ct. 1745, 149 L.Ed.2d 668 (2001), we stated as follows:

The crime of first degree murder consists of three elements: (1) knowingly (2) causing the death of another person (3) after deliberation upon the matter. Deliberation is defined as "cool reflection for any length of time no matter how brief." Direct proof of a required mental state is seldom available, and the mental state may be proved by indirect evidence and inferences reasonably drawn from the circumstances surrounding the slaying.

(Citations omitted.) "Deliberation does not require proof that the defendant contemplated his actions for a long period of time." *State v. Ervin*, 979 S.W.2d 149, 159 (Mo. banc 1998). Deliberation may be inferred where the "killer had ample opportunity to terminate the attack once it began" and where there is evidence of a prolonged struggle, multiple wounds, or repeated blows. *Id.* (Citations omitted.)

In the present case, the victim was stabbed 19 times, including twice in the back. In addition, there was evidence, including overturned furniture, a broken lamp, strewn papers, and other evidence of a state of disarray in the room, from which the jury could have inferred that a struggle occurred.

We hold that a reasonable jury could have concluded, based on the circumstances in this case, that Turner deliberated before killing Boldridge. Point II is denied.

Point III

Turner's third point on appeal is that the trial court erred in failing to provide the jury with appropriate instructions on "mental disease or defect negating culpable mental state" as required by MAI-CR 3d 308.03, in that there was evidence that established he had attempted suicide on a prior occasion, had been hospitalized in a psychiatric facility as an in-patient, suffered from prior blackouts, and experienced a blackout during the actual stabbing of the victim in this case.

The State contends that Turner's claim of error in regard to the court's refusal of his instruction is not preserved because the requested instruction was not set out in the argument portion of Turner's brief.

If a point relates to the giving, refusal or modification of an instruction, such instruction shall be set forth in full in the argument portion of the brief. *State v. Childers*, 853 S.W.2d 332, 338 (Mo.App. W.D. 1993). Not only does Turner fail to set forth the proffered instruction as required, the instruction is not contained anywhere in the record on appeal. Therefore, even assuming that a mental defect instruction was justified in this case, the absence of the proffered instruction in the record on appeal deprives this court of the ability to determine whether the particular instruction Turner proposed was proper.

"Allegations of error that are not properly briefed on appeal, with exceptions not applicable here, shall not be considered by the appellate court." *State v. Sheffield*, 821 S.W.2d 859, 863 (Mo.App. S.D. 1991). However, "[p]ursuant to Rule 30.20, this court has the discretion to consider

plain errors that affect substantial rights upon finding manifest injustice or miscarriage of justice resulted therefrom." *Childers*, 853 S.W.2d at 338. With the information we have, we perceive no plain error in the court's refusal of the instruction. Point III is denied.

The judgment of the trial court is affirmed.



NOTICE
THIS OPINION IS NOT FINAL UNTIL
ALL POST HANDDOWN MOTIONS HAVE
BEEN DISPOSED OF AND THE MANDATE
ISSUED AND RECEIVED.

In the Missouri Court of Appeals
WESTERN DISTRICT

Steven B. Turner,)
v.)
Appellant,) WD 64733
State of Missouri,) Opinion Filed: January 31, 2006
Respondent.)

In the Circuit Court of Lafayette County
The Honorable William J. Roberts, Judge

Before Robert G. Ulrich, P.J., Patricia A. Breckenridge, and James M. Smart, Jr., JJ.

Order

Per Curiam:

Steven Turner appeals the denial of his Rule 29.15 motion in which he sought to vacate his convictions for one count of first-degree murder and one count of armed criminal action.

Having carefully considered the contentions on appeal, we find no grounds for reversing the decision. Publication of a formal opinion would not serve jurisprudential purposes or add to understanding of existing law. The judgment is affirmed. Rule 84.16(b).

In the Missouri Court of Appeals
WESTERN DISTRICT

Steven B. Turner,)
v.)
Appellant,) WD 64733
State of Missouri,) Opinion Filed: January 31, 2006
Respondent.)

MEMORANDUM

This informal, unpublished memorandum explains the rationale for the order affirming judgment. It is not a formal opinion and should not be cited in unrelated cases. Attach a copy to any motion for rehearing or to transfer the case to the Supreme Court.

Steven Turner appeals the denial of his Rule 29.15 motion in which he sought to vacate his convictions for one count of first-degree murder and one count of armed criminal action. Turner's motion charged his trial attorney with ineffective assistance for failing to advise him to accept a plea bargain. We affirm.

Procedural and Factual Background

Steven Turner was indicted for first-degree murder § 565.020¹ and armed criminal action § 571.015 by a grand jury on May 6, 1999. The charges resulted from the stabbing murder of Turner's cousin Deborah Boldridge. The State offered Turner a plea bargain of a reduced charge of second degree murder and a twenty-five year sentence. Turner rejected the offer and proceeded to trial. Turner was found guilty on both charges and sentenced concurrently to life without the possibility of probation or parole for the first

¹ All statutory references are to the Revised Statutes of Missouri, 1994, unless otherwise indicated.

The first question that must be addressed prior to reaching the merits of the claim is whether Turner has the right to challenge the decision to go to trial instead of taking a guilty plea bargain. Two cases on point from the Southern District of this court, *Rowland v. State*, 129 S.W.3d 507 (Mo. App. 2004), and *Bryan v. State*, 134 S.W.3d 795 (Mo. App. 2004), indicate that Turner has no such right. Turner argues that these cases do not apply because they "are based on law that is not on point and ... ignores [sic] law that is binding and on point." We disagree.

In *Rowland*, as in this case, the underlying complaint was a difference between the offered sentence in the plea negotiations and the resulting sentence from trial. 129 S.W.3d at 510. Rowland declined an offer to plead guilty for a ten-year sentence because he thought he would have to serve eighty percent of it because of prior commitments. *Id.* Instead, one of the prior commitments did not count toward his mandatory minimum, and Rowland argued that his attorney was ineffective for not realizing this prior to rejecting the plea bargain. *Id.* Regardless, Rowland declined to plead guilty and he was sentenced to thirteen years in jail after trial. *Id.*

The court distinguished between convictions based upon pleas of guilty and convictions following trial. *Id.* "Unless and until a plea agreement is reached and embodied in the judgment of a court, nothing has occurred that is of constitutional significance. Failed negotiations do not implicate the constitution. It is an ensuing plea of guilty that implicates the constitution." *Id.* (internal citations omitted). Further, the court stated that refusing a plea based upon a misunderstanding is not a basis for challenging the conviction and sentence under rule 29.15. *Id.* at 510-11. "A defendant in a criminal case has no right to a plea agreement." *Id.* at 510.

morning of trial, he *did not know* whether or not he would accept the bargain. This testimony would fail to show any prejudice even if there were a cognizable claim.

For all of the above reasons, it is clear that Turner did not suffer the loss of a constitutional right. Turner fails to satisfy the requirements to maintain a claim of ineffective assistance under *Strickland*, 466 U.S. at 687 and *Deck v. State*, 68 S.W.3d 418, 425 (Mo. banc 2002). The motion court did not clearly err.

Conclusion

The judgment of the motion court is affirmed.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

STEVEN B. TURNER,)
vs.)
Petitioner,)
vs.) Case No. 06-0487-CV-W-GAF-P
MIKE KEMNA,)
Respondent.)

OPINION AND ORDER DENYING PETITION FOR HABEAS CORPUS

Petitioner, Steven B. Turner, filed this pro se habeas corpus petition pursuant to 28 U.S.C. § 2254 on June 15, 2006, seeking to challenge his 2001 convictions and sentences for first degree murder and armed criminal action, which were entered in the Circuit Court of Lafayette County, Missouri. Petitioner raises four grounds for relief: (1) trial court error in denying his motion for judgment of acquittal due to insufficient evidence for a rational jury to find him guilty beyond a reasonable doubt of first degree murder; (2) trial court error in declining to give the jury an instruction on diminished capacity; (3) trial court error in declining to give the jury an instruction on self-defense; and (4) ineffective assistance of trial counsel for advising petitioner not to plead guilty to second degree murder in exchange for a twenty-five year prison sentence.

Respondent does not state a position as to whether petitioner's grounds for relief are exhausted. However, respondent contends that all grounds are without merit, and that Ground 2 is also procedurally defaulted.

On direct appeal, the Missouri Court of Appeals summarized the facts as follows:

Steven B. Turner, was charged with murder in the first degree, § 565.020, n1 and armed criminal action § 571.015, in the stabbing death of Deborah Boldridge.

n1 All statutory references are to RSMo 2000.

DOCUMENT 10
EXHIBIT A

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determination because there was not substantial evidence before the trial court that Turner acted in self-defense. We find that there was no substantial evidence that Turner had a reasonable cause for his belief that it was necessary for him to kill Boldridge in order to save himself from an immediate danger of serious bodily injury or death. Even if we accept as true Turner's statement that Boldridge threw an ashtray at him and broke his finger and then came at him with a knife, Turner admitted that he subsequently "kicked her into the corner," from which she never moved. Furthermore, Turner did not present any evidence that he attempted to do all within his power consistent with his personal safety to avoid the danger and the need to take Boldridge's life. In fact, Turner did not present any evidence that he did *anything* to avoid "the danger" in this case. In addition, the "evidence as to the location and multiplicity of the wounds upon the victim," included stab wounds to the back, is inconsistent with Turner's self-defense claim. *State v. Zeitvogel*, 655 S.W.2d 678, 693 (Mo. App. W.D. 1983); *see also State v. Jordan*, 646 S.W.2d 747, 750-51 (Mo. banc 1983) (finding that, along with other factors, the location and severity of the ten stab wounds "sp[oke] loudly" that the defendant did not reasonably believe it was necessary to use such deadly force in self-defense). Point I is denied.

(Respondent's Exhibit "E," pp. 5-8)

The resolution of petitioner's third ground for relief by the state court did not result in "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or in "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" 28 U.S.C. § 2254(d)(1) and (2) (as amended April 24, 1996), as defined by the Supreme Court in Terry Williams v. John Taylor, supra.

Ground 3 is denied.

GROUND 4 - INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In Ground 3, petitioner alleges that his trial counsel was ineffective for advising him not to take a plea offer of twenty-five years imprisonment in exchange for his guilty plea to second degree murder.

In order to succeed on petitioner's claim of ineffective assistance of trial counsel, petitioner

must establish that: (1) his counsel's performance was unreasonable as viewed in the totality of the circumstances; and (2) his defense was prejudiced by counsel's actions in that there is a reasonable probability that, but for counsel's unprofessional acts, the results of the trial would have been different. Strickland v. Washington, 466 U.S. 668, 694-95 (1984); Schaeffer v. Black, 774 F.2d 865, 867 (8th Cir. 1985). Reasonably effective assistance of counsel may be defined as the skill and diligence that a reasonably competent attorney would exercise under similar circumstances. See, e.g., Strickland v. Washington, 466 U.S. at 687-90. Judicial scrutiny of counsel's performance must be highly deferential, id. at 689, and there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id.

On appeal from the denial of petitioner's Rule 29.15 motion, the Missouri Court of Appeals rejected this ground as follows:

Turner's only point on appeal is that the motion court clearly erred in denying his motion because his trial counsel was ineffective in failing to advise him to plead guilty to second-degree murder and take a twenty-five year sentence instead of going to trial. Turner says that had he received advice to take the guilty plea he *probably* would have chosen to plead guilty rather than go to trial.

The first question that must be addressed prior to reaching the merits of the claim is whether Turner has the right to challenge the decision to go to trial instead of taking a guilty plea bargain. Two cases on point from the Southern District of this court, *Rowland v. State*, 129 S.W.3d 507 (Mo. App. 2004), and *Bryan v. State*, 134 S.W.3d 795 (Mo. App. 2004), indicate that Turner has no such right. Turner argues that these cases do not apply because they "are based on law that is not on point and...ignores [sic] law that is binding and on point." We disagree.

In *Rowland*, as in this case, the underlying complaint was a difference between the offered sentence in the plea negotiations and the resulting sentence from a trial. 129 S.W.3d at 510. *Rowland* declined an offer to plead guilty for a ten-year sentence because he thought he would have to serve eighty percent of it because of prior commitments. *Id.* Instead, one of the prior commitments did not count toward his mandatory minimum, and *Rowland* argued that his

attorney was ineffective for not realizing this prior to rejecting the plea bargain. *Id.* Regardless, Rowland declined to plead guilty and he was sentenced to thirteen years in jail after trial. *Id.*

The court distinguished between convictions based upon pleas of guilty and convictions following trial. *Id.* "Unless and until a plea agreement is reached and embodied in the judgment of a court, nothing has occurred that is of constitutional significance. Failed negotiations do not implicate the constitution. It is an ensuing plea of guilty that implicates the constitution." *Id.* (internal citations omitted). Further, the court stated that refusing a plea based upon a misunderstanding is not a basis for challenging the conviction and sentence under rule 29.15. *Id.* at 510-11. "A defendant in a criminal case has no right to a plea agreement." *Id.* at 510.

In *Bryan*, the court recognized that a defendant does not have a constitutional right to a negotiated plea. *See Bryan*, 134 S.W.3d at 803. The court went on to state that the purpose of a Rule 29.15 motion is for the court to determine whether ineffective assistance prevented the defendant from receiving a fair trial. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 684 (1984)). The fairness of Bryan's trial was not challenged, and the court remarked that a defendant is entitled only to one fair trial. *Id.* at 803-04. Turner also does not challenge the fairness of his trial. Turner cannot assert a constitutional claim related to his failure to plead guilty when he had a fair trial. *See Rowland*, 129 S.W.3d at 510. *Rowland* and *Bryan* govern this case. Thus, Turner has no cognizable challenge to his decision to go to trial.

Further, the motion court here found that the greatest motivating factor for Turner in how to handle the plea decision was his interest in having a meaningful relationship with his son and seeing him graduate from high school. In order to accomplish this, Turner needed a sentence that would not exceed eight years of confinement. An offer that would achieve that goal was never made to Turner. The motion court believed that Turner's reason for going to trial was to try to convince the jury that he was guilty only of involuntary manslaughter so that he would have had a chance at a sentence that would terminate within eight years. Thus, the trial court believed that Turner rejected the plea offer for reasons that had nothing to do with counsel's advice.

In any event, Turner also further weakened the argument for his claim because he testified at the motion hearing that if he were again presented with the option of pleading guilty to second-degree murder and a twenty-five year sentence, the offer made the morning of trial,

he *did not know* whether or not he would accept the bargain. This testimony would fail to show any prejudice even if there were a cognizable claim.

For all the above reasons, it is clear that Turner did not suffer the loss of a constitutional right. Turner fails to satisfy the requirements to maintain a claim of ineffective assistance under *Strickland*, 466 U.S. at 687 and *Deck v. State*, 68 S.W.3d 418, 425 (Mo. banc 2002). The motion court did not clearly err.

(Respondent's Exhibit "J," pp. 2-5).

The resolution of petitioner's fourth ground for relief by the state court did not result in "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or in "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" 28 U.S.C. § 2254(d)(1) and (2) (as amended April 24, 1996), as defined by the Supreme Court in Terry Williams v. John Taylor, supra. Applying the Strickland standard of review to the facts as set forth in the record, the Court finds that trial counsel was not ineffective.

Ground 4 is denied.

ORDER

Accordingly, it is **ORDERED** that:

- (1) the above-captioned petition for a writ of habeas corpus is denied; and
- (2) this case is dismissed with prejudice.

/s/ Gary A Fenner
GARY A. FENNER
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri

Dated: 11/16/06

APPEAL,CLOSED,HABEAS,PPROSE,SMC

**U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:06-cv-00487-GAF**

Turner v. Kemna

Assigned to: District Judge Gary A. Fenner

Referred to: Prisoner Pro Se

Case in other court: 8th Circuit Court of appeals, 06-04144

8th Circuit Court of appeals, 06-04144

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 06/15/2006

Date Terminated: 11/16/2006

Jury Demand: None

Nature of Suit: 530 Habeas Corpus
(General)

Jurisdiction: Federal Question

Petitioner**Steven B Turner**represented by **Steven B Turner**

354446

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Respondent**Mike Kemna**represented by **Ronald S. Ribaudo**Ribaudo Law Firm
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Date Filed	#	Docket Text
06/15/2006	1	PETITION for Writ of Habeas Corpus under 28 USC 2254 (PROV filed pursuant to court en banc order of 10-21-97)Steven B Turner.(Weinzerl, Dana) (Entered: 06/16/2006)
06/15/2006	2	AFFIDAVIT in support of request to proceed ifp by Steven B Turner. (Weinzerl, Dana) (Entered: 06/16/2006)
06/16/2006		REFERRED TO PRISONER PRO SE (Weinzerl, Dana) (Entered: 06/16/2006)
06/27/2006	3	Inmate ACCOUNT STATEMENT. (Weinzerl, Dana) (Entered: 06/27/2006)
07/07/2006	4	ORDER TO SHOW CAUSE petitioner is denied leave to proceed in forma pauperis pursuant to 28 U.S.C. ? 1915;?(2) petitioner is directed to remit to the Clerk of the Court the required \$5.00 filing fee in this case within 30 days from the date of this Order or face dismissal without further notice Show Cause Response due by 8/7/2006. Signed by Judge Gary A. Fenner on 7/7/06. (Weinzerl, Dana) (Entered: 07/07/2006)
07/20/2006	5	NOTICE of appearance by Ronald S. Ribaudo on behalf of Mike Kemna (Ribaudo, Ronald) (Entered: 07/20/2006)
07/26/2006		RECEIPT number 242679 in the amount of \$5.00. (Weinzerl, Dana) (Entered: 07/26/2006)
07/31/2006	6	RESPONSE TO ORDER TO SHOW CAUSEbyMike Kemna. (Ribaudo, Ronald) (Entered: 07/31/2006)
07/31/2006	7	NOTICE of filing by Mike Kemna re 6 Response to Order to Show Cause (Ribaudo, Ronald) Modified on 10/2/2006 received respondent's exhibits (Weinzerl, Dana). Modified on 10/17/2006 received respondents exhibits in paper form in the clerk's office(Weinzerl, Dana). (Additional attachment(s) added on 3/13/2017: # 1 Exhibit A & B, # 2 Exhibit C thru J) (Crespo, Wil). Modified on 3/13/2017 (Crespo, Wil). The exhibits, which were originally referred to in the Notice of Exhibit Attachment, were scanned and attached to the filing on 3/13/17. There are no exhibits to this filing being kept in the Clerk's Office. (Entered: 07/31/2006)
08/08/2006	8	ORDER that petitioner file a reply to respondent's response (Doc. No. 6) within 30 days from the date of this Order, or this case will be dismissed without further notice. Signed by Judge Gary A. Fenner on August 8, 2006. (Travers, Phyllis) (Entered: 08/08/2006)
09/06/2006	9	RESPONSE filed by Steven B Turner. (Attachments: # 1 Exhibit)(Weinzerl, Dana) (Entered: 09/11/2006)
11/16/2006	10	OPINION And ORDER denying petition for writ of habeas corpus with prejudice Signed by Judge Gary A. Fenner on 11/16/06. (Weinzerl, Dana) (Entered: 11/16/2006)

11/16/2006	11	CLERK'S JUDGMENT (Weinzerl, Dana) (Entered: 11/16/2006)
12/13/2006	12	NOTICE OF APPEAL as to 10 Order, 11 Clerk's Judgment by Steven B Turner. (Weinzerl, Dana) (Entered: 12/14/2006)
12/13/2006	13	MOTION for certificate of appealability filed by Steven B Turner (Weinzerl, Dana) (Entered: 12/14/2006)
12/13/2006	14	MOTION for leave to proceed in forma pauperis on appeal filed by Steven B Turner (Weinzerl, Dana) (Entered: 12/14/2006)
12/18/2006	15	ORDER denying 13 motion for certificate of appealability, denying 14 motion for leave to proceed in forma pauperis Signed by Judge Gary A. Fenner on 12/18/06. (Weinzerl, Dana) (Entered: 12/18/2006)
12/18/2006		***Appeal Receipt of Notice of Appeal and supporting documents received by USCA on: Mon Dec 18 09:04:04 CST 2006 (Weinzerl, Dana) (Entered: 12/18/2006)
12/18/2006	16	TRANSMISSION of Notice of Appeal and ECF notification of appeal filed to US Court of Appeals re 12 Notice of Appeal, 13 MOTION for certificate of appealability 1 original file and 2 expandable folders(Weinzerl, Dana) (Entered: 12/18/2006)
12/20/2006		USCA Case Number from 8th Circuit Court of appeals is 06-4144 for 12 Notice of Appeal filed by Steven B Turner,, 13 MOTION for certificate of appealability filed by Steven B Turner, THIS IS A TEXT ENTRY ONLY - NO DOCUMENT IS ATTACHED. (Weinzerl, Dana) (Entered: 12/20/2006)
12/20/2007	17	USCA Judgment and/or Opinion as to 12 Notice of Appeal filed by Steven B Turner This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. Denying application for certificate of appealability. Request to proceed in forma pauperis is denied as moot. (Mayes, Melanie) (Entered: 12/21/2007)
02/29/2008	18	MANDATE of US COURT OF APPEALS as to 12 Notice of Appeal filed by Steven B Turner with mandate issued on February 29, 2008. (Mayes, Melanie) (Entered: 03/10/2008)
04/28/2008	19	Appeal Remark re 12 Notice of Appeal : US Supreme Court Notice of cert filed Cup. Court Number 07-10557 filed date 4/24/2008. (Mayes, Melanie) (Entered: 05/02/2008)
06/09/2008	20	Appeal Remark re 12 Notice of Appeal : Supreme Court order filed denying cert petition. (Mayes, Melanie) (Entered: 06/11/2008)
08/25/2017	21	PETITIONER'S RULE 60(b) MOTION filed by Steven B Turner. Suggestions in opposition/response due by 9/14/2017. (Richard, Tracey) (Entered: 08/31/2017)
09/11/2017	22	NOTICE of appearance by Stephen David Hawke on behalf of Mike Kemna (Attorney Stephen David Hawke added to party Mike Kemna(pty:res)) (Hawke, Stephen) (Entered: 09/11/2017)

11/02/2017	23	ORDER directing Respondent to file a reply to Petitioner's motion (Doc. 21) by 11/16/2017. Signed on 11/2/2017 by District Judge Gary A. Fenner. This is a TEXT ONLY ENTRY. No document is attached. (Casey, Susan) (Entered: 11/02/2017)
11/16/2017	24	MOTION for extension of time to file response/reply filed by Stephen David Hawke on behalf of Mike Kemna. Suggestions in opposition/response due by 11/30/2017 unless otherwise directed by the court. (Hawke, Stephen) (Entered: 11/16/2017)
11/17/2017	25	ORDER granting Respondent's motion for extension of time to file response (Doc. 24). Response now due by 12/7/2017. Signed on 11/17/2017 by District Judge Gary A. Fenner. This is a TEXT ONLY ENTRY. No document is attached.(Casey, Susan) (Entered: 11/17/2017)
12/08/2017	26	MOTION for extension of time filed by Stephen David Hawke on behalf of Mike Kemna. Suggestions in opposition/response due by 12/22/2017 unless otherwise directed by the court. (Hawke, Stephen) (Entered: 12/08/2017)
12/11/2017	27	RESPONSE to order re 23 Order filed by Stephen David Hawke on behalf of Respondent Mike Kemna. (Related document(s) 23) (Hawke, Stephen) (Entered: 12/11/2017)
12/19/2017	28	ORDER (1) denying Petitioner's motion pursuant to Rule 60(b) (Doc. 21) for the reasons set forth in Respondent's response thereto (Doc. 27); (2) granting Respondent's motion for extension of time (Doc. 26). This case remains closed. Signed on 12/19/2017 by District Judge Gary A. Fenner. This is a TEXT ONLY ENTRY. No document is attached.(Casey, Susan) (Entered: 12/19/2017)
12/28/2017	29	PETITIONER'S REPLY to Doc. 27 filed by Steven B Turner. (Richard, Tracey) (Entered: 12/28/2017)

**Additional material
from this filing is
available in the
Clerk's Office.**