

IN THE SUPREME COURT
OF THE UNITED STATES

24-6248

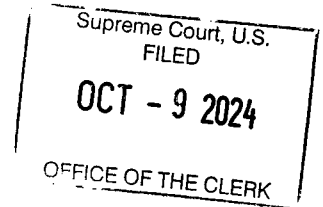
ORIGINAL

Kenneth Brown
Petitioner,
Pro Persona

v.

no: 24A139

(application no.)



Robert Adams, Jr., Warden

**PETITION FOR WRIT OF CERTIORARI FROM THE FINAL
JUDGEMENT OF THE SIXTH CIRCUIT COURT OF
APPEAL**

PARTIES:

a) Kenneth Brown, Pro Persona
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b) Robert Adams, Jr., Warden
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QUESTIONS PRESENTED

- I. Whether Trial Counsel Was Ineffective, Under Strickland, For Failing to Follow Through With Brown's Causation Defense Theory By Failing To Request a Jury Instruction On Proximate Causation?**
- II. Is The Causation Element In A Criminal Offense Restricted To Matters Of A State's Interpretation Of State Law Or Is It A Due Process Requisite Under The Fourteenth Amendment And Under Jackson?**
- III. Under The Sixth And Fourteenth Amendments Of The Constitution, When There Is Another Group, Other Than The Defendant's Group, Similarly Situated In The Criminal Offense That Caused The Death Of The Victim But The Prosecution Fails To Resolve Which Group Fired The Killshot, Does An Instruction On Proximate Causation Become An Essential Element For A Jury To Select Whether The Accused's Group, Alone, Is Criminally Responsible For The Underlying Offense Charged In This Causal Quandary?**
- IV. Under The Fourteenth Amendment Of The U.S. Constitution, Where The Prosecution's Burden Is To Prove, At The Least, That The Killshot Came From The Accused's Group, Does Proof That The Opposing Shooters May Have Killed The Victim Instead Sufficiently Invokes A Causation Dispute Warranting A Proper Jury Instruction On The Element?**
- V. When Does Proximate Cause Becomes An Essential Element In A Criminal Homicide Offense, Under Jackson v. Virginia?**
- VI. Where TCCA's Initial Assessment Of The Core Underlying Convicting Evidence On Direct Appeal Substantially Conflicts With That Same Court's**

Subsequent Assessment Of The Core Underlying Convicting Evidence After Revisiting The Trial Proof On Collateral Review, Do Conflicting State Court Opinions On The Convicting Evidence Sufficiently Qualify As A Due Process Reversible Error Related To IATC Causation Claim “Or” To The Insufficiency Of The Convicting Evidence Under Jackson?

VII. Whether The District Court And Appeal Court Applied A More Strict And Inflexible Version Of This Court's Rhines v. Weber Standard When Denying Stay Of Proceedings In Order To Exhaust Unexhausted State Remedy?

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TABLE OF AUTHORITIES CITED

CASES

A) **Strickland v. Washington**, 104 SCT 2052, 80 LED2D 674, 466 US 668

B) **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2D 560 (1979)

C) **In re Winship**, 397 US 358, 25 L Ed 2d 368, 90 SCT 1068

D) **Burrage v. United States**, 571 U.S. 204, 134 S. Ct. 881, 187 L. Ed. 2D 715, 2014 U.S. LEXIS 797

E) **Commonwealth v. Almeida**, 362 Pa. 596 (Pa. 1949)

F) **Commonwealth v. Root**, 403 Pa. 571 (Pa. 1961)

G) **People v. Cervantes**, 26 Cal.4th 860 (Cal. 2001)

D) **Miller-El v. Cockrell**, 537 U.S. 322, 154 L Ed 2d 931, 123 S. Ct 1029.

STATUTES AND RULES

Rules of The Supreme Court, **Rule 10(a)**

28 USC § 2253(c)

OTHER SOURCES:

Understanding Criminal Law, Joshua Dressler (7th Edition); Ch. 14,
CAUSATION [an element of criminal responsibility].

PETITION FOR WRIT OF CERTIORARI

Kenneth Brown, an inmate at the Hardeman County Correctional Facility in Whiteville Tennessee, pro persona, respectfully petitions this Honorable Supreme Court for a Writ of Certiorari to review the lower court judgments of:

- 1) The Tennessee Court of Criminal Appeal's 2014/2019 decision [TCCA];
- 2) The U.S. District Court, Western, of Tennessee's decision; and
- 3) The U.S. Sixth Circuit Court of Appeal's decision [6CAC]

OPINIONS BELOW

The decisions by the TCCA denying Mr. Brown's direct appeal is reported as **State of Tennessee v. Kenneth Brown**¹, 2014 Tenn. Crim. App. LEXIS 945; denial of post conviction appeal is reported as **Kenneth Brown v. State of Tennessee**², 2019 Tenn. Crim. App. LEXIS 121.

The decisions by the District Court denying writ of habeas corpus relief pursuant to 28 U.S.C. §2254 is reported as **Kenneth Brown v. Johnny Fitz**³, 2023 U.S. Dist. LEXIS 171928; and denial of Certificate of Appealability by the the U.S. Sixth Circuit Court of Appeals is reported as **Kenneth Brown v. Jerry Wardlow**⁴, 2024 U.S. App. LEXIS 12197.

All Orders from the lower courts are appended to this instant writ as noted.

1 Appendix (d)

2 Appendix (c)

3 Appendix (b)

4 Appendix (a)

JURISDICTION

May it please this Honorable Supreme Court:

Petitioner's Writ of Certiorari is timely and in compliance with Part III [Jurisdiction on Writ of Certiorari] of the Rules of the Supreme Court of the United States.

The Sixth Circuit Court of Appeals rendered her final Order on May 20, 2024 initially. Petitioner's deadline for filing his writ was automatically set at August 18, 2024. Petitioner filed Motion for extension of time which was granted and extended his filing to October 17, 2024. On October 9, 2024, Brown filed his writ of certiorari. On November 19, Brown received from the institution a letter from this court postmarked October 29, 2024. The letter, by clerk Scott Harris, informed Brown that his filing was postmarked October 9, 2024 but was not delivered to and received by this court until October 23rd. This court also returned Brown's writ for statutory irregularities, giving Petitioner 60 days to correct and resubmit his petition. Petitioner's writ is timely submitted and resubmitted, and this court has appropriate jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

6th AMENDMENT U.S. CONSTITUTION:

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

14th AMENDMENT U.S. CONSTITUTION:

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

STATEMENT OF THE CASE

This case presents the question of whether a jury instruction on proximate causation is warranted as an essential element to criminal homicide when there is a “Causal Quandary” raised by the circumstances and evidence adduced at trial.

Jackson v. Virginia guarantees protection of an accused's Fourteenth Amendment right to fair trial by a properly instructed jury upon all essential elements of the charged offense that are raised by the facts.

Burrage v. United States, 571 U.S. 204; 134 S. Ct. 881(2014), is the latest case, known of, to have allowed this Most Highest Supreme Court to address the question of causation involving a criminal homicide setting. However, Burrage involved penalty enhancement factors regarding a conviction for a drug transaction that allegedly caused the victim's death—which is uniquely distinct from Petitioner's instant question concerning a criminal homicide conviction involving multiple, independent, criminal actors that creates a causal quandary within the evidence.⁵

The ultimate question here is whether trial counsel was

⁵ There is no Supreme Court precedent that sufficiently addresses this question.

ineffective for failing to follow through with his causation defense theory by failing to request a jury instruction on proximate cause? In order to properly resolve this question, the Petitioner needs for this Most Highest Court to, first, resolve whether Brown was entitled to the causation instruction based on the facts adduced at trial.

1. The Death of Kimberly Jamerson

The victim, Kimberly Jamerson, was shot and killed by a .30 caliber class rifle bullet while attending a 2010, 4th of July party at her aunt's home at 2706 Northmeade Ave. She got caught in the midst of a shootout between some party attendants[her aunt's boyfriend, Felix Williams, brothers Mark and Steve Chambers, and Lemarcus Moore] and Brown's group[brothers Kenneth and Devon Brown, and David Richardson].

The altercation stemmed when Jamerson's cousin, Dena Watkins, and party attendant Nakia Greer were searching for a dealer to steal drugs from—specifically weed. Brown, a dealer, happened to be driving by at that time when he was flagged down by Greer who asked to be served a half ounce of weed. Brown left and came back with the half ounce weed for sale.

Dena Watkins took the weed around a car to examine it but came back and returned it to Brown after she stole a few grams

out of the quantity. Brown noticed and confronted her. A back-and-forward dispute took place for some time. Ultimately, the dispute escalated into a fist fight between the two groups when Jamerson's cousin, Robrecus Braxton, launched a can of beer through Brown's passenger window as he was trying to leave, assaulting Richardson. The physical altercation further escalated to this shoot-out when Brown's group was outnumbered and mobbed by the party members at the home.

Both groups retreated to get armed: Felix Williams recruited brothers Mark and Steve Chambers, and Pooty[Lemarcus Moore] for weapons auxiliary. Brown's group also retreated and returned armed, and the shoot-out began. Jamerson had just arrived for the party soon before gunfire erupted but had no idea what was going on. She was struck in the head by a stray bullet and killed. Kenneth and Devon Brown and David Richardson were the only group arrested and charged in connection with the death. Trials were severed.

2. The Trial Of Kenneth Brown

In trial, at opening statements during voir dire, the state presented that the trial proof would show the jury that the fatal bullet that killed Jamerson came from the location of Brown's group at the corner of Helmwood Street:

Opening Statement For The State:

You will also hear from the agent from the Tennessee Bureau of Investigation, and the evidence will also show as it unfolds this week, that the bullet that killed Kimberly Jamerson came from the casing from the gun at 3840 Helmwood, the same place where the Defendants admitted to firing shots.

[i.d., DE. 42-17, Page ID 1610]

At the actual evidentiary hearing, however, the substantial underlying dispute had changed into a dispute over which group actually shot the fatal .30 caliber bullet during the shootout between each other because, coincidentally, TBI expert testimony showed that both opposing groups were shooting the same type said caliber[.30 caliber] assault rifles at each other. The evidence also showed that in addition to CSI collecting the .30 carbine rifle casings from the location of Brown's group at the corner of Helmwood street, investigators also collected 7.62x39 assault rifle casings from along side Jamerson's body at her own location at Northmeade Ave. All witnesses on the state's behalf, from Jamerson's group, denied ever firing, seeing, or handling an assault rifle.

The state presented their Star Witness—a TBI weapons specialist—Agent Steve Scott, who ultimately determined that his testing results were inconclusive because both the .30 carbine and the 7.62x39mm bullet casings house .30 caliber

rifle rounds. Scott further cautioned the trial court that it would be misleading for him to specifically declare that the .30 caliber projectile that killed Jamerson belonged to a .30 carbine rifle particularly . The record reflects his testimony as follows:

A. The 7.62x39, those cartridge casings that we talked about just a moment ago, those rifle cartridge cases, those are .30 caliber cartridge cases.....

A. When I say “consistent with”--let me state it this way. Basically, when I examine two bullets,... I can form four opinions. One of those is that they match... One of those I could say that they don't match...there's two in the middle that are more inconclusive...

These two in the middle are more consistent—if you want to term it in that way—I know I've used that terminology...

A. Because I can't conclusively say that this is a .30 carbine bullet, I included those other calibers because I didn't want to be misleading in any way.

[***Brown v. Perry***, 2:20-cv-02315-shl-atc, ECF 42-22, page ID 2471-72; Id., ECF 42-23, page ID 2527(emphasis added)]

Errol Harmon, Brown's defense Counsel, in essence, argued causation as the essentially disputed element of the charged offense the entire trial. Although Harmon did not posit an affirmative defense theory regarding a lesser offense, Counsel told the jury, at closing arguments, that, per the testimony of the state's own TBI weapon's expert, because there was substantial evidence that Jamerson's group may have killed her, rather than Brown's group, that first degree murder was off the table because there was reasonable doubt as to whether Kenneth

Brown or someone from his group fired the fatal shot that caused the death:

Closing Argument For The Defendant

Ms. Hooks (co-counsel):

Do you remember when the TBI expert got up there and he testified and I asked him to pull out that bullet, that 7.62x39 bullet? I asked him specifically, "Is that a bullet that can be shot from a .30 caliber rifle?" His answer was, "It could have"....

So If you eliminate your experts to give you a definitive answer about what gun shot a projectile that killed Ms. Jamerson, the State didn't give you your meringue on your lemon meringue pie....

But remember, all the elements have to be met in first-degree murder, and I just gave you one that isn't.

[id. DE. 42-24, Page ID 2752]

At the conclusion of proof, the trial court instructed the jury on all offenses as charged and their elements, including lesser included offenses. Counsel Harmon, however, failed to solidify the defense's position on causation by failing to object to the omission of, and failing to request an inclusion of, the jury instruction on proximate causation as an essential element to proving first degree premeditated murder, beyond a reasonable doubt, based on the materially disputed fact that Jamerson's own group, more likely than not, due to the circumstances, killed her during the criminal conflict rather than Brown's

group.

Trial Counsel Harmon, despite rigorously arguing to the jury causation as the essential element of the prosecution's burden of proof, failed to request an instruction on proximate cause of death.

2. Direct Appeal

Counsel reinforced this argument on motion for new trial concerning the TBI agent's inability to rule out the possibility that the fatal shot came from Jamerson's own group, who initiated the encounter by searching for a dealer to steal drugs from. On direct appeal, however, TCCA determined that the trial evidence was sufficient in that the proof "clearly" showed, beyond a reasonable doubt, that the fatal bullet was shot from Brown's group, making them criminally responsible for the murder of Jamerson.

3. Collateral Review

On collateral review, petitioner presented his claim of ineffective assistance of trial counsel in violation of his sixth amendment right to counsel under the constitution of the United States. At an evidentiary hearing, Brown raised that counsel was ineffective for failing to request jury instruction on

proximate cause of death in support of the trial defense. Trial Counsel subsequently testified, conceding that his defense at trial substantially hinged on the evidence that the shooters from Jamerson's group had stolen from and attacked Brown earlier that day; that the shooters fired a 7.62x39mm assault rifle; that the TBI agent's results were inconclusive. The post conviction court denied relief. Dist. ct. 2:20-cv-02315-shl-atc, DE. 42-35, pg. ID 3274-75

On appeal from the denial, Brown re-raised his IATC claim for failing to request causation instruction—followed by an oral argument. TCCA now, contrary to its prior 2014 decision, conceded that the proof did, in fact, exist that the fatal shot may have been shot by Jamerson's group instead, but determined that “no evidence of an independent intervening act existed to warrant the jury instruction.”

4. Dist. Court, §2254 Habeas Corpus

Brown took his IATC claim to the U.S. District Court, Western Division of Tennessee. Relief was denied. That court determined that Petitioner did not satisfy the Strickland standard of showing that trial counsel was ineffective for failing to request the instruction. The district court also determined that proximate causation instructions would be warranted only in

instances were, for example, “Ms. Jamerson was killed by something other than gunfire, such as lightening or being struck by a car; and that the fact that the Chambers brothers returned fire is not, under Tennessee law, an independent, intervening act or omission that could not reasonably have been anticipated.”

The district court added that she is bound by the interpretation of Tennessee's state law regarding trial counsel's failure to request the instruction on proximate causation.

5. COA to 6th Circuit Appeals Court

Brown next filed for certificate of appealability to the sixth circuit court of appeals, maintaining that his trial jury was not instructed on causation as an essential element of the charged offense. COA was denied. That court determined that Brown could have easily anticipated that Jamerson's group would return fire. The appeal court also determined that “Because the proximate cause instruction did not apply based on the evidence presented at trial, the Tennessee court of criminal appeals concluded, Brown had failed to show that his trial counsel was deficient in failing to request the instruction or that the instruction would have changed the outcome of his trial.”

REASONS FOR GRANTING THE WRIT

A.) To Ensure That Due Process Remains Inviolable In Perplexed Criminal Trials Involving Multiple Criminal Actors And Multiple Actual Causes Of Harm, This Highest Court Should Clarify At What Point Proximate Causation Becomes An Essential Element For A Jury To Be Instructed Upon When There Is A “Causal Quandary.”

i. Necessity To Resolve Causal Quandary (Questions I-V)

These questions proposed to this Supreme Court are particularly inspired by the cumulative decisions of the lower courts' denials of relief. To-date, there has been no Decision of this kind: one that expounds on causation in criminal [homicide] offenses involving a causal quandary deriving from multiple actual causes. Causation is a well known, vital element in criminal responsibility.

Of the most resourceful on understanding the legal, textbook, properties of causation is provided in the Seventh Edition of Understanding Criminal Law, Joshua Dressler. (Hereafter will be cited as “UCL 7 Ed.”). Causation has a two-part analysis component: 1) Actual Cause and 2) Legal (or Proximate) Cause. UCL 7 Ed, §14.02[A]

Actual cause, which is determined by a court using the “but-

for” test, serves only to eliminate the candidates for responsibility. It does not, however, resolve the matter of ultimate causal responsibility, which awaits proximate cause analysis. *id.*

In Burrage v. U.S., this Court congruently manifested this practice when this Court—in an Opinion by Justice Ginsburg, Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, Breyer, Alito, and Kagan, JJ. with whom Justice Sotomayor joined in concurring—held that:

The law has long considered causation a hybrid concept, consisting of two constituent parts: actual cause and legal cause. When a crime requires not merely conduct but also a specified result of conduct, a defendant generally may not be convicted unless his conduct is both (1) the actual cause, and (2) the legal cause (often called the “proximate cause”) of the result.

see 187 L Ed. 2d 717

However, as stated before, Burrage does not sufficiently address Brown's unique factual circumstances. The general term that is used to describe Brown's type of circumstance is referred to as “Concurrent Sufficient Causes” when dealing with multiple actual causes. UCL 7 Ed, §14.02[C][2][b]. The doctrine provides that when dealing with concurrent sufficient causes, a causal quandary may be created. This causes the traditional “but-for” method to fail, and requires an innovative

approach in order to avoid a counter-intuitive result. Two methods are suggested: 1) by rephrasing the causation test to ask whether the defendant was a “substantial factor” in causing the prohibited harm; or 2) by retaining the but-for test but elaborating on the test, given the circumstances, by adding two words. For instance, *but-for* the defendant's *voluntary act* would the social harm have occurred when and as it did. *id.* The latter alternative test has been preferred in some cases.

The proximate cause of a social harm, on the otherhand, “*must be selected*” by the court or a jury. UCL 7 Ed., §14.03[A]. This is where the role of the jury became critical in deliberating on the facts presented at the defendant's [Brown's] trial.

Conclusory terms such as “superseding[intervening] cause” or “direct cause” are bandied about, by courts and lawyers, in association with the process of reaching a determination on the proximate cause of a social harm. *id.*

An “intervening cause” is an independent force, in criminal cases, that usually comes in the form of the wrongdoing by a third-party.⁶ Nevertheless, the proximate cause of a social harm has to be selected by a jury, as it should've been in Brown's

⁶ The complete text provides: wrongdoing by a third-party, the victim's own contributory negligence, a suicidal act, or a natural force (an act of God).

instance.

ii. Other state and district courts already embrace causation in perplex criminal trials

Brown does concede with the District Court's decision in one, single respect: Tennessee's law may be stone-age, in that it has not yet embraced the full context and many scenarios in which causation can become a critical issue in criminal offenses. This poses a threat to an accused's constitutional rights and to the very constitutionality of any defendant's jury trial proceeding and subsequent conviction except upon evidence sufficient to establish all elements to the charged offense.

Northern states and districts, it seems, have already, long ago, advanced to these perplex heights regarding criminal offenses. For example, in the Pennsylvania Supreme Court case of Commonwealth v. Almeida, 362 Pa. 596 (1949), the court rendered an in-depth ruling on a causation dispute pertaining to a felony murder, the facts of which involved three robbery assailants who caused an off-duty patrolman to be shot and killed by on-duty officers in the midst of the assailants' attempt to evade arrest by firing upon the on-duty policemen.

In the California Supreme Court case of People v. Cervantes, 26 Cal.4th 860 (Cal. 2001), which is precisely on-point with Brown's factual circumstances because it involves two opposing criminal factions shooting against each other, that court granted review in a murder case to answer a question concerning proximate causation. That court held:

We granted review to decide whether defendant, a member of a street gang, who perpetrated a nonfatal shooting that quickly precipitated a revenge killing by members of an opposing street gang is guilty of murder on the facts before us. We conclude that he is not.

In the U.S. District Court For the Eastern District of California case of Lopez v. Ducart, 2017 U.S. Dist. LEXIS 53252 (E.D. 2017), the defendant was convicted in California criminal court for a similar gang related murder. Lopez was found guilty of murder after a trial by jury. On later appeals leading up to his district court proceeding, Lopez had challenged the trial court's jury instruction on causation that was given to the jury. To no avail, He referenced the case cited above, People v. Cervantes, in support of his causation instruction challenge.

The district court denied Lopez relief and agreed with the California Supreme Court, referring to that state court's in-depth evaluation of the causation instruction provided in the trial court regarding “independent intervening cause” and

“foreseeability.” The district court cited this particular portion of the Lopez state court decision:

The jury was properly instructed with these concepts....The jury was instructed that the People must prove a reasonable person in Lopez's position would have foreseen there was a high probability that the chain of events started by Lopez would result in someone's death, and that Valles's death would not have occurred if Lopez had not committed the provocative act.

Habeas relief was ultimately denied. But the single, common aspect that all of these cases share is that their juries had properly received instructions on the element of causation as raised by the facts, unlike in the instant case.

Brown should have also received an instruction on proximate causation in support of his defense. Proximate cause was an essential element in the state's burden of proving, beyond a reasonable doubt, that Brown, or one of his co-defendants, killed Jamerson premeditatedly and intentionally. The state's initial criminal responsibility theory was based on aiding and abetting—positing that either Kenneth or Devon Brown or David Richardson fired the fatal shot from Helmwood and thereby shared criminal responsibility in the outcome. However, the substantial fact that additional criminal actors

from Northmeade, who were also firing a high powered .30 caliber assault rifle after their drug theft, should have dismantled that initial theory, creating this causal quandary in reasonable doubt, and should not have been overlooked as a break in the sequence of events. Since collateral proceedings, none of the lower courts decisions dispute the fact that the fatal bullet may have been shot by the independent criminal actors from Jamerson's own group. The problem is that these courts are avoiding the causation factor all-together.

The district court and the sixth circuit court of appeals left TCCA's decision undisturbed. By revisiting the trial evidence and recognizing that the causation dispute exists but subsequently finding that counsel was not ineffective for failing to request the instruction because no evidence of an intervening, independent act existed, TCCA, in essence, is saying that “unless or until Brown can prove that the fatal shot came from Jamerson's group at Northmeade an intervening force is not established and a causation instruction was not warranted.” This kind of ruling is unreasonable because 1) the state court unfairly shifted the state's burden of proof to the defendant, and 2) the state court erroneously created a hindsight application of a “dependent intervening

circumstance” when no such theory was pursued by the state as her burden in trial. Her [the state's] theory of criminal responsibility that the three co-defendants killed Jamerson. This theory did not induct criminal responsibility for a third-party's[other than the three accused's] action.

iii. Supreme Court Supervision Warranted

Thus, this Court is called upon to clarify whether proof that Jamerson's group probably fired the fatal shot, in and of itself, is sufficient as an “independent intervening circumstance” to warrant the causation instruction. Stated in better terms, was the dispute over the .30 caliber fatal rifle bullet, in and of itself, sufficiently shows Jamerson's group acted independently of Brown's group, so as to warrant a causation jury instruction?⁷ Petitioner believes that under our constitution, in order to protect the inviolate due process right of an accused from being wrongly convicted, it must be sufficient.

Justice so depends on the granting of this Certiorari because the state's witnesses' criminal conduct has been unfairly overlooked in this matter. Trial Counsel, Errol Harmon,

⁷ “independently” is used to describe a person who is not acting in concert with (i.e., is not an accomplice or co-conspirator of) another actor. UCL 7 Ed., Ch. 14

obviously knew the severe affect of this wrong because he framed Brown's entire defense—opening statements and closing arguments—around these substantial facts. The proximate cause of death jury instruction was essential to the jury giving a fair deliberation on all the proof presented to them at trial. That instruction would have allowed the jury to take into consideration the most damaging facts in the state's part of the case, e.g., the criminal conduct of their own witnesses.

Omission of the instruction so infected the outcome and fairness of Brown's trial because his jury was not allowed to ponder on the evidence that the residents at Northmeade were likely responsible[acted independently]. All instructions pointed only to obtaining conviction on Brown for first degree murder of Kimberly Jamerson. Without any knowledge of the proximate causation element, the jury had no idea that this evidence against the state's interest could be used to reach a different, more just, verdict. Trial counsel knew, though, but apparently acted deficient by failing to follow through with his defense by requesting the jury instruction on proximate cause. Had the jury known of the causation element, the trial court might have instructed, and the jury might have resolved the quandary by asking “whether Jamerson would still be alive but-for Brown being a dealer 'or' but-for Jamerson's group

searching for a dealer to scam;” another is “whether Jamerson would still be alive but-for Robrecus Braxton launching the can of beer at Brown as he was trying to leave after being paid, assaulting him 'or' but-for Brown getting out to fight after being assaulted, instead of driving away?” And, of the most critical, “Whether she would still be alive but-for Brown's group retreating and returning armed in preparation for a shoot-out 'or' but-for Jamerson's group, instead of calling the authorities, recruiting armed auxiliary in harmonious preparation for a shoot-out?” Viewed in this way, Brown likely would have been convicted of a lesser offense *Strickland*, 104 S. Ct. 2052, 80 L. Ed. 2d 674.

iv. Conflicting State Court Decisions On Convicting Proof (Question VI)

Because TCCA's 2019 decision on the core underlying convicting evidence—as it relates to the omission of the proximate cause of death jury instruction at trial—substantially conflicts with her prior 2014 decision on the sufficiency of the same core underlying convicting evidence, this Honorable Supreme Court would agree that reasonable jurists definitely would have debated on whether Brown's 6th and 14th Amendments constitutional rights had been substantially violated due to the omission of the instruction.

In 2014, TCCA determined that the trial evidence clearly proved, beyond a reasonable doubt and to a moral certainty, that Brown or one of his co-defendants from Helmwood fired the fatal shot that killed Kimberly Jamerson. However, in 2019 TCCA revisited the trial evidence and proceedings and determined that the trial proof, indeed, showed that the killshot likely had been fired by someone at the Northmeade location with Jamerson instead.

In 2014 TCCA held[*see Id.*, **DE 42-34, Page ID: 3112**(*dist.ct. record*)]:

However, it is clear that either appellant or one of the men with him fired the shots that killed Ms. Jamerson and wounded Mr. Moore. Because it is unknown which of the men fired the murder weapon, it is appropriate to apply a criminal responsibility theory to determine appellant's guilt. *see Brown, 2014 Tenn. Crim. App. LEXIS 945*(ROGER A. PAGE, J., delivered the opinion of the court, in which ALAN E. GLEN and CAMILLE R. MCMULLEN, JJ., joined)

In 2019 that same court, after revisiting the trial record and evidence, held[*see Id.*, **DE 42-40, Page ID: 3503**]:

Although this issue is reviewable on its merits, we nevertheless conclude that the Petitioner has failed to establish that trial counsel was ineffective in failing to request this instruction.....

Here, the proof showed that either the Petitioner or his co-defendants fired the fatal bullet *or someone from the Northmeade location fired the fatal bullet*, but there was no

evidence that Kimberly Jamerson's death was caused by an independent, intervening act or omission that the responsible party could not reasonably have anticipated. see Brown, 2019 Tenn. Crim. App. LEXIS 121 (Opinion by: CAMILLE R. MCMULLEN) (*emphasis added*)

This Honorable Supreme Court would agree that reasonable jurists would have found this conflicting state court decision to be a major shift in paradigms—a shift in the core underlying sufficiency of the convicting evidence itself—and highly debatable as it relates to TCCA's delayed recognition that evidence of the unlawful intervening conduct of the state's own witnesses existed, e.g. that someone from Northmeade may have killed Jamerson instead.

This in mind, 6CAC's opinion that “Brown and his co-defendants could reasonably have anticipated that persons attending the party at the Northmeade location would return fire,”[Doc. 10, at p. 6] was an erroneous retroactive and untimely ruling on the merits because “foreseeability” is a properly instructed jury's question. This prejudicial hindsight application of the causation instruction obscured the state court's error of answering a properly instructed jury's question on its own—after it[the court] had blatantly recognized that a causation dispute exists. Reasonable jurists definitely would've

disagreed with the district court's resolution because, while the TCCA finally shed light on its unreasonable determination of the trial evidence at the initial review in 2014, the 2019 opinion still resulted in an unreasonable application of Strickland in that the state court satisfied the first prong of Strickland by acknowledging that the dispute over whether the fatal .30 caliber bullet was fired from Northmeade instead, indeed, exists; however, she abandoned the second prong of Strickland by failing to attribute this substantial prejudicial error to the deficient performance of trial counsel who failed to request the instruction after fashioning his entire trial defense around this quandary. See Strickland v. Washington, 466 U. S. 668, 700, 104 S. Ct. 2052, 80 L. Ed. 2d 674

Instead, TCCA determines, on its own, that the state's witnesses' intervening criminal act of firing the 7.62[.30 caliber] rifle that they relentlessly denied firing or ever handling—which likely killed the victim—was not independent and could have been anticipated: a question[of “foreseeability”] that ONLY should have been answered by a jury. Based on this, this Honorable Supreme Court would agree that Reasonable Jurists would definitely agree that the state court determination was, apparently, Objectively Unreasonable and that the district court and 6CAC, therefore, erred in failing to issue a certificate

of appealability. *Miller-El v. Cockrell*, 537 U.S. 322, 154 L Ed 2d 931, 123 S Ct 1029.

B.) To Preclude A Lower Court's Unauthorized Departure From This Supreme Court's Well-Established Standard, Set In Rhines v. Weber, By Imposing Unreasonably Inflexible Versions Of The Standard On A Pro se Petitioner.

6CAC's acceptance, without question, of the District Court's reason for denying stay and abeyance pursuant to Rhines also falls right on alignment with undermining the COA process.

Certificate of Appealability should have issued because Brown did satisfy the Rhines standard. This Honorable Supreme Court would agree that 6CAC, on the otherhand, failed to acknowledge that the District Court did not properly demonstrate that Brown's motion to hold the instant proceeding in abeyance was a dilatory litigation tactic: Petitioner filed his motion to hold in abeyance, literally, less than one year after his habeas corpus petition had been reinstated—motion for relief from judgement granted on September 22, 2022; and Petitioner's motion to hold habeas proceeding in abeyance was filed July 27, 2023.

Furthermore, this Supreme Court can plainly see that the district court's reasons for denying Petitioner's motion imposed

a more strict and inflexible requirement than that set for pro se prisoners.

i. Stifled “Good Cause” Standard.

The District Court's reason for denying Petitioner's motion to Hold Habeas Proceeding in Abeyance imposed a more strict and inflexible requirement than the standard intended for unwary pro se petitioners like Brown.

In *Rhines v. Weber*, 544 US 269, this Honorable Supreme Court held—in an opinion joined by Stevens, J., Souter, J., Ginsburg and Breyer, JJ., concurring with the Supreme Court's opinion—that federal courts be directed to effecuate a “total exhaustion” requirement by “allowing a prisoner to return to a state court to present unexhausted claims to that court in the first instance.” [cite]

Concurring Justices also agreed to a prisoner's showing of “good cause” for failing to exhaust state remedies more promptly was not intended to impose the sort of strict and inflexible requirement that would trap an unwary pro se prisoner.”

Concurring, also held that “this procedure ought to be made unavailable on a demonstration of intentionally dilatory litigation tactics.”*Id.* This Honorable Supreme Court also held

that:

(a)...petitioners run the risk of forever losing their opportunity for federal review of their unexhausted claims; and

(b)AEDPA does not deprive district courts of the authority to issue stays that are a proper exercise of their discretion, but it does circumscribe that discretion.

[Rhines, 161 L Ed 2d 440, at *447]

The district court would not have abused its limited discretion by holding the habeas proceeding in abeyance while Petitioner exhausted unexhausted state post conviction remedies, i.e. Fingerprint Analysis Act of 2021. Petitioner thoroughly showed good cause in his motion to hold in abeyance[ECF 71]. The “good cause” is that:

(a)The Fingerprint Analysis Act of 2021 was literally enacted the year before Brown's habeas corpus was reinstated; [TCA 40-30-401: Short Title]

(b) that Brown had back-to-back discrepancies with retained, handsomely paid, habeas Counsels who went rogue--(1) Robert H. Golder who drafted the deficient, three-claims petition that is the subject of this Writ, and who is also responsible for the malpractice that resulted in the dismissal of Brown's habeas petition in the beginning stages of the proceeding in September 3, 2020. Also initiating the two year battle for relief from

judgement and reinstatement of habeas status[ECF 6, 24]; and (2) Luke Evans, second retained counsel who failed to complete the single task agreement to draft and file an adequate amended habeas petition with more cognizably explained constitutional claims for relief as initially instructed by the district court in an August 17, 2021[ECF 27] Order, just one year before reinstatement of the habeas petition;

(c) that, yet again, the pro se Petitioner did, in fact, file multiple attempts to amend his habeas petition—abreasting the district court of the fingerprint evidence petition—that [proposed amendments] were ultimately rejected by the district court for petty discrepancies in presentation[ECF 53, 54, 59, 69]; and

(d) that Brown further presented the district court with particular precedent from the U.S. Middle District Court for Tennessee, within our own sixth circuit, that granted a stay in abeyance to the petitioner Anthony Darrell Hines in the case of *Hines v Mays*, 814 Fed. Appx. 898, whose habe was held for four whole years.[ECF 71, p. 2]

ii. Stifled Standard Imposed More Strict And Inflexible Requirement Than Intended?

The district court's refusal to hold in abeyance became an abuse of discretion when the court blatantly expressed complete

disregard for, and omission of, her own intimate knowledge of and involvement with the facts of Brown's particular habeas process leading up to the filing of the motion. The district court's stiff standards can only be described as the sort of strict requirement that trapped Brown because the Petitioner's best explanation was not enough to meet the district court's version of the Rhines standard.

The district court, in her September 25, 2023 Order of Dismissal [ECF 74, at p. 14] described Brown's unexhausted state remedy filing as “tardy” and without “reasonable explanation”; and that the two year delay caused through the tedious filings—i.e., motions for relief from judgment, motions discharging counsels, and motions for sanctions upon counsels—and the subsequent issued Court Orders because of the apparent misconduct of both of Petitioner's rogue counsels is no excuse. Moreover, she opposed, Brown's “claim about the 7.62x39mm rifle casings was plainly meritless.”

In her Order, the district court held:

The mere act of initiating these tardy state court filings, however, does not meet the threshold for abeyance...

Brown has not satisfied these [Rhines] standards. First, he has not provided a reasonable explanation for why he waited until July 2023 to file these state court documents...

The Court has held that the purposed misconduct of

Brown's two habeas attorneys, Golder and Evans, does not excuse his failure to properly exhaust these claims in state court. The Court also held that the claim about the 7.62x39 rifle casings is plainly meritless.

[ECF 74, p.14(citations omitted)]

This Honorable Supreme Court would agree that reasonable jurists, undoubtedly, would readily disagree with the district court's resolution for multiple, somber reasons—many of which are (1) the state's star witness, convicted felon Felix Williams, denied ever firing a weapon of any sorte; (2) Mr. Williams, testified at trial to being closest to Ms. Jamerson while the shootout between the two groups was happening—particularly, he testified to walking her to her car; and (3) At Brown's 2017 post conviction hearing, however, Forensic Scientist TBI agent, James Russel Davis III, revealed that Williams had gunpowder on his hands on the night of the murder.

The likeliness that Felix Williams's fingerprints are on the 7.62 casings, alone, is powerful enough to have deserved granting of the Stay, since the state court had unfairly shifted the prosecution's burden of proof on to Brown in order to establish causation. To add, the filing was not tardy in state court because a Petition for Fingerprint Analysis can be filed at any time. see TCA 40-30-403(a). Neither was the filing for Stay and

Abeyance tardy, apparently, because the motion was filed less than one year after Brown's actual habeas corpus petition was reinstated to the docket—10 months to be exact. Hines v Mays, 814 Fed. Appx. 898.

Reasonable jurists would plainly see that the district court was being more strict and inflexible with its application of the Rhines requirement. 6CAC adds insult to injury by accepting without question the district court's jurisdictionless predetermination and conclusion of the outcome of the state court proceeding.

Conversely, it is self-evident that 6CAC undermined the fact that the district court should have granted the stay of proceedings because, in her Order, she expressly disregards her own acknowledgment of the importance of the post conviction fingerprint analysis. Court holds:

Brown also challenges the district court's statement that “it is extremely unlikely that DNA will be found on a spent shell casing....

Regardless, at this time, whether any DNA or fingerprint evidence would be recovered from the 7.62x39mm shell casings found near Kimberly Jamerson's body remains speculative.

For these reasons, we **DENY** Brown's motion for a

certificate of appealability and his motion to remand and **DENY AS MOOT** his motion for leave to proceed in forma pauperis.

[id. 23-5966, DE 10-1, at p. 7(*appeal record*)]

The point of holding the proceeding in abeyance was 1)to resolve the said dispute and speculation; 2)if the fingerprint analysis proceedings are favorable, to possibly give the state court its fundamental opportunity to correct its wrongs and, thereby, maybe relieving the federal court of intervening; and 3)to avoid unnecessary filings of second habeas proceedings. Based on this, Stay should have been granted.

CONCLUSION

For the foregoing reasons, Mr. Brown respectfully requests that this Court issue a writ of certiorari to review the judgments of the lower courts [sixth circuit court of appeals, district court, western, of Tennessee, and the Tennessee Criminal Court of Appeals].

Dated this 11th day of December, 2024.