

IN THE SUPREME COURT OF OHIO

CASE NO. 2022-0117

APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA
COUNTY, OHIO EIGHTH APPELLATE DISTRICT
NO. 109699

STATE OF OHIO
Plaintiff/Appellant

Vs.

MICHAEL BUEHNER
Defendant- Appellee

MEMORANDUM IN OPPOSITION TO JURISDICTION ON BEHALF OF APPELLEE
MICHAEL BUEHNER

/s/ Russell A. Randazzo

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**THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL
QUESTION OR ISSUE OF GREAT PUBLIC OR GENERAL INTEREST**

The State of Ohio would like to try and claim that the decision in *State of Ohio vs. Michael Buehner* 8TH Dist. Cuyahoga No. 109699, 2021-Ohio-4435, somehow changes the standard for Court's reviewing *Brady* violations. Such is not even remotely accurate. If it were even remotely accurate they would have and should have filed App.R. 26(A)(1) and (2) motion for reconsideration and motion for *en banc* reconsideration. Since the State of Ohio did not file such motions, they should be foreclosed from seeking jurisdiction herein.

The State of Ohio would prefer to misrepresent to this Court that the Eighth District Court of Appeals somehow deviated from their standard, rather than acknowledge the admissions of its own Prosecutor Richard Bombik in which he testified regarding specific instances of withholding evidence, failing to identify necessary witnesses, and not even personally knowing of police reports related to this incident prior to trial. The State of Ohio believes the issue of suppression of evidence is highly contested here. Although the State of Ohio claims all reports were read to defense counsel, there is no question the State of Ohio on at least three separate occasions stated "no exculpatory evidence was available to or in the possession of the prosecuting attorney." *Buehner III*, 8th Dist. No. 109699, 2021-Ohio-4435 at ¶58. The State of Ohio further conceded that Wilhelmina Mason's identity was never provided to defense counsel and she was not listed on the witness list for the State of Ohio. *Buehner III*, 8th Dist. No. 109699, 2021-Ohio-4435 at ¶61. The Eighth District Court of Appeals Decision was correct and should not be reviewed by this Court.

The State of Ohio second claims that the public has an interest in matters affecting the administration of justice. Unfortunately, the State of Ohio is on the wrong side of the miscarriage of justice. Here, it is Mr. Buehner who has been the victim of the true miscarriage of

justice and not the State of Ohio. Mr. Buehner has already spent twenty years in prison for a crime where there is no forensic or physical evidence linking him to the crime. Indeed, if the State of Ohio believes so strongly in its case, it can once again try Mr. Buehner with those facts (along with the newly discovered evidence) and see if justice requires a guilty verdict. It is not for the State of Ohio to try and revive a flawed prior conviction upon partial testimony and evidence, but justice would and does currently allow them to try Mr. Buehner again if they believe they have sufficient evidence. The Eighth District Court of Appeals Decision was correct and should not be reviewed by this Court.

Third, the State of Ohio once again believes that the Eighth District Court of Appeals somehow changed the standard in reviewing a denial of a motion for new trial. That is patently false. The Eighth District Court of Appeals did indeed review the circumstantial evidence presented by the State of Ohio. However, in light of the testimony of Prosecutor Bombik that he (1) did not identify any exculpatory evidence, (2) did not disclose the identity of Detective Gary Garisek, (3) did not disclose the identity of Wilhelmina Mason, and (4) did not read to defense counsel the police report related to “Country”, the Eighth District Court of Appeals found direct evidence of a *Brady* violation. The Eighth District Court of Appeals Decision was correct and should not be reviewed by this Court.

Lastly, the State of Ohio again misrepresents the record on what the evidence reflects. The only evidence of disclosure of any police statements is the self-serving testimony of Prosecutor Richard Bombik as to his procedures generically. He admits he has no specific recollection as to reading any of the reports, who he read them to, when he read them, where he read them, or any other such evidence. Rather, the direct evidence reflects that he denied any exculpatory evidence existed when he knew such evidence existed. Moreover, it would stand the only reason he would read the Debbie Anderson, Wilhelmina Mason, and Gail Jenkins

statements was if he deemed them to be exculpatory and therefore required to do so. As he deemed them not to be exculpatory, he therefore would not have read such reports. In contrast, Michael Buehner's defense attorney specific recalls not seeing or hearing the content of Debbie Powell's statement until provided by Michael Buehner in 2014, and Wilhelmina Mason's when provided by the undersigned between 2016-2018. As the Eighth District Court of Appeals considered all evidence which was presented by both parties, the properly decided the below issue properly and this Court should deny jurisdiction to review the present case.

STATEMENT OF THE CASE AND FACTS

The present matter has a fairly tortured procedural past. The current position is that the Eighth District Court of Appeals has determined Michael Buehner is entitled to a New Trial for charges stemming from a May 24, 2001 crime due to *Brady* violations by the State of Ohio. The Eighth District Court of Appeals previously held in its November 1, 2018 decision the State of Ohio improperly withheld exculpatory evidence from Michael Buehner and remanded the case for a hearing on materiality. (Eighth District Court of Appeals Decision dated November 1, 2018.) After that decision the State of Ohio attempted to have this Court exercise jurisdiction. This Court declined jurisdiction on July 23, 2019 and remanded the case back to the trial court. (Denial of Jurisdiction by Ohio Supreme Court.)

On November 25, 2019 and November 26, 2019 the trial court conducted a hearing on Michael Buehner's motion for new trial not just as to materiality but as to all issues involved in the *Brady* claim. (Full Transcript of Motion for New Trial Hearing.) Michael Buehner presented testimony of the following witnesses: Deborah Powell, Tom Pavlish, Michael Beaman, Sahir Hasan, James Kersey, Christopher Keim, and Richard Bombik. The State of Ohio did not call any additional witnesses but rather merely cross-examined the witnesses called by Michael Buehner.

On April 16, 2020, Judge Peter Corrigan issued a decision denying Michael Buehner's Motion for New Trial after conducting the hearing. Michael Buehner appealed that decision, which the Eighth District Court of Appeals reversed on the issue of the denial of his motion for new trial and ordered his conviction vacated and he receive a new trial. (Eighth District Court of Appeals Decision dated December 16, 2021.) The State of Ohio did not seek reconsideration or *en banc* reconsideration by the Eighth District Court of Appeals. The State of Ohio now seeks to have this Court exercise jurisdiction over this matter. For the reasons which follow, there is no Constitutional question or issue of great public interest involved in the present matter as it is situated, and Michael Buehner respectfully requests this Honorable Court deny jurisdiction and remand to the trial court for further proceedings.

I. PRE-TRIAL DISCOVERY AND TRIAL

After being arrested for the alleged crime, Michael Buehner was appointed Thomas Gill and James Kersey as legal counsel on his behalf. In 2002, both legal counsel were seasoned lawyers having already tried hundreds of criminal jury trial cases, including murder trials. Upon being appointed legal counsel on January 17, 2002, James Kersey immediately started filing requests for discovery, motion for bill of particulars, request for evidence motions. On January 24, 2002, the initial pre-trial was held as reflected on the "Green Card" produced by the Cuyahoga County Prosecutors Office. (CCPO 3204 "Green Card" Motion for New Trial Hearing Exhibit V.) On the Green Card, Assistant Prosecuting Attorney listed as conducting the pre-trial is "R.B." which was identified as Richard Bombik. The content of what was discussed, disclosed, exchanged, read, or otherwise provided to defense counsel is not listed on the Green Card despite having the ability to do so.

On February 8, 2002, another pre-trial was conducted with Richard Bombik again and the content of that pre-trail was recorded as "reviewed Randy Price statement and his girlfriend's

statement with counsel.” (CCPO 3204 “Green Card” Motion for New Trial Hearing Exhibit V.)

On February 26, 2002, another pre-trial was held and Richard Bombik recorded the content of that pre-trial including “PT held with Kersey: he wants to see photos & shell casings and bullets.” *Id.* On February 28, 2002, the State of Ohio through Prosecutor Richard Bomik responded to Crim.R. 16 request for discovery. Contained in the State of Ohio’s responses were the following statement: “No exculpatory material is available to or in the possession of the Prosecuting Attorney.” (State of Ohio Responses to Discovery Motion for New Trial Hearing Exhibit O.) Prosecutor Bombik listed proposed witnesses in the discovery responses but neglected to include any of the following names: Detective Gary Garisek, Wilhelmina Mason, Robert “Sonny” Allen, or Eric “Country” Grant. *Id.*

After receiving the State of Ohio’s discovery responses, Mr. Kersey caused to be filed a Motion to Disclose Exculpatory Evidence, and Motion to Divulge Considerations Given to Prosecution Witnesses. On May 8, 2002, another pre-trial was conducted with Richard Bombik and he recorded those activities as “provided counsel with copies of Price’s 2nd written statements; copy of agreement of plea; they want to get shell casings and bullets.” On May 17, 2002, another pre-trial was conducted during which Richard Bombik “met with Kersey & Gill in my office; provided counsel with copy of trace evidence and allowed them to inspect pellet and spent casings. Beaman and Hasan were present. Beaman will get crime scene photos, a copy of two SIU reports and locate morgue pellet.” The content of this shows that as late as May 17, 2002, defense counsel had still not even been able to review crime scene photos or two SIU reports. This is direct evidence reflecting that this information was not previously provided to defense counsel. Moreover, nowhere in any of the pre-trial handwritten notes does Prosecutor Bombik reflect reading the police report statements of (1) Gail Jenkins, (2) Debbie Powell, (3) Wilhelmina Mason, or (4) Eric “Country” Grant. Had these exculpatory statements been read to

defense counsel, surely Prosecutor Bombik would record them being read.

On May 10, 2002, Brenda Dennis (decedent's sister) provided further information regarding a potential other suspect Eric "Country" Grant. Richard Bombik testified at the motion for new trial hearing as such:

Q. And when you're looking at this Defendant's Exhibit L, it's **identifying a person by the name of Eric Grant** –

A. Okay.

Q. -- who the police found to be a **black male**, correct?

A. That's what it -- okay. **Correct**.

Q. And **with a lengthy criminal history, including felonious assault/shootings and drug offenses**, correct?

A. **That is correct**.

Q. **And do you have any specific recollection of providing that statement to the Defense attorney any time between May 10th and June 10th when you started trial?**

A. **I don't ever recall seeing this.** How about that?

(Full Transcript of Motion for New Trial Hearing P. 226- 227) (**Emphasis added.**)

Prosecutor Richard Bomik did not include the identities of Detective Gary Garisek, Wilhelmina Mason, Robert "Sonny" Allen, or Eric "Country" Grant in his responses to discovery; failed to identify any exculpatory evidence available to the State of Ohio; and did not even see the police report regarding Eric "Country" Grant until November 26, 2019.

II. FIRST APPELLATE DECISION

After the trial court's denial of Michael Buehner's motion for leave to file a motion for new trial on August 26, 2018, he appealed that decision. The Eighth District Court of Appeals reversed that decision holding Michael Buehner had proven that exculpatory evidence had been improperly withheld from his defense in 2002, and remanded the case to the trial court for a hearing on the materiality of the withheld evidence pursuant to *Brady*. The State of Ohio attempted to have reconsideration and *en banc* reconsideration to change the outcome of that decision twice. The outcome remained the same. The State of Ohio then tried to have this Court

accept jurisdiction which was declined. At that point, the law of the case was such that the State of Ohio improperly withheld exculpatory evidence from his defense. The matter was remanded for a hearing on materiality.

III. MOTION FOR NEW TRIAL HEARING

After some delay, the trial court conducted a two-day hearing on Michael Buehner's motion for new trial. Several documents were marked as exhibits from the Prosecutor's file from 2002. None of the documents marked as exhibits ever reference the State of Ohio reading statements of Gail Jenkins, Tierra Edwards, Debbie Powell, or Wilhelmina Mason to defense counsel. Former Prosecutor Bombik testified that he failed to include witnesses on his response to discovery which should have been included.

Q: Okay. And you'd also agree that there is not a Detective Garisek in there; correct?

A: Oh, my goodness. Yeah, he should be. But no, I see that he's not.

Q: And Garisek was the one that actually compiled the interviews from witnesses on the date of the incident; correct?

A: That is correct.

Q: And he's the one that put together that initial original investigation report and signed his name to it; right?

A: That's correct.

Q: **So he should have been identified as a witness for the defense; would you not agree?**

A: **Well, yeah, his name should be there. I can't deny that.**

(Full Transcript of Motion for New Trial Hearing P. 178-179.)(Emphasis added.)

The State of Ohio would like to have this Court accept jurisdiction to review whether the testimony of Former Prosecutor Bombik stating he has no specific recollection of reading nay of the statements to defense counsel, but believes it was his practice, is sufficient to weigh against granting Michael Buehner a new trial in light of the previously identified admissions of failures by Former Prosecutor Bombik. Former Prosecutor Bombik's testimony regarding what he read to the defense is as follows:

Q: You believe that you would have done it because that's what you generally

would do, correct?

A: Yes. That's a fair statement.

Q: But **you do not have one specific recollection of whether you were sitting at a table at the end of the hall talking to Tom Gill, correct?**

A: **That's correct.**

Q: Or at the end of the hall **talking to Jim Kersey**, correct?

A: **That's correct.**

Q: You don't know if you were in the back by chambers for any of these, correct?

A: That's correct. I do remember, I have a specific recollection of them meeting in my office that one day, but...

Q: Which is recorded. Which, actually, there's evidence to support that because it's your handwritten notes identifying that that actually occurred, correct?

A: Yeah.

Q: Exhibit V?

A: Yes, that's correct.

Q: **You also don't have any specific recollection of the day that any of those reports would have been read to anyone?**

A: **No, I don't have a specific recollection, no I don't. No.**

(Full Transcript of Motion for New Trial Hearing P. 272-273.) (Emphasis added.)

In direct contrast, Defense Counsel James Kersey has a specific recollection of never being read the statements of Debbie Powell or Wilhelmina Mason. Attorney Kersey testified as follows:

Q: When was the first time that you learned of the existence of this statement?

A: I don't know. I would say the last year or something. I can't remember. But I was – I was surprised to see it, to tell you the truth.

Q: You never knew of the contents—

A: No.

Q:-- of that statement before the prosecution—

A: No.

Q:-- correct?

A: No I did not.

(Full Transcript of Motion for New Trial Hearing P. 124-125.)

Q: If you look at previously marked Exhibit H—

A: Okay.

Q: -- was this another document that I gave you?

A: Absolutely.

Q: Did you ever see that witness or supplementary report prior to commencement of the trial against Michael Buehner?

A: No, I didn't As a matter of fact, I – you gave that to me, I was looking at it, and then I went down and I looked at the discovery that was provided by the State of Ohio, and I went down and saw Ms. Mason. I'm looking for Mason

on this document right here and I couldn't find it.

Q: And you're looking at Defendant's Exhibit O?

A: That's correct.

Q: That's the response to discovery?

A: Right. I didn't see Ms. Mason on there at all. So I had no way of – you know, that's something that—that's the first time I saw that because it wasn't on my list. I'm not a mind reader.

(Full Transcript of Motion for New Trial Hearing P. 125-126.)

Rather than a generic statement about what his custom was, Attorney Kersey unequivocally testified he was never provided the information contained in either of these statements. This testimony along with all the other previously identified failures of the State of Ohio, reflect there is a substantial likelihood of a different outcome had this evidence been available to the defense for use at trial. Therefore, the decision of the Eighth District Court of Appeals is correct and this Court should deny jurisdiction.

IV. SECOND APPELLATE DECISION

The State of Ohio would like this Court to believe there was no evidence before the Eighth District Court of Appeals which would substantiate its decision to grant Michael Buehner a new trial. Each of the above incidents are all independently sufficient to hold that exculpatory evidence was improperly withheld from defense counsel. The Eighth District Court of Appeals considered all the evidence presented at the motion for new trial hearing and weighed it against the “strength” of the State of Ohio’s case against Michael Buehner. The Eighth District Court of Appeals correctly noted that there is **no forensic or physical evidence linking Michael Buehner to the crime.** (Eighth District Court of Appeals Decision dated December 16, 2021 at ¶27.) The State of Ohio’s entire case relied exclusively upon the testimony of Randy Price and Lawone Edwards, both of which had contested issues as to their credibility even at the original trial without any of the new evidence available to the defense. *Id.* The weakness of the State of Ohio’s case, contrasted with the new evidence which includes testimony by Deborah Powell that the shooter was a black male (Michael Buehner being a white male) established there was a

reasonable probability the outcome would have been different had the withheld evidence been disclosed to the defense. The Eighth District Court of Appeals decision further highlights that Prosecutor Bombik admitted he did not “attach a lot of significant” to Anderson’s statement, because he opined he did not believe “anybody can reach a conclusion that there weren’t two white people involved in this crime. I don’t see how you possibly reach that conclusion.” (Eighth District Court of Appeals Decision dated December 16, 2021 at ¶30.) The Decision then points out that the State of Ohio’s own initial investigation report, dated May 24, 2001, listed the suspects as being “one white male and two black males.” *Id.* and (Appendix 3 at 241.)

Proposition of Law I: Michael Buehner met his burden of proving suppression under *Brady v. Maryland*, 373 U.S. 83 (1963) where the prosecuting attorney admits to failing to identify several witnesses possessing exculpatory evidence, responded in discovery that no exculpatory evidence existed, and failed to possess any specific recollection of reading any of the statements to defense counsel.

The State of Ohio wants to ignore the direct evidence available to the Eighth District Court of Appeals and would rather hold on to speculation and circumstantial evidence to try and refute the evidence of suppression. In both *Buehner II* and *Buehner III*, the Eighth District Court of Appeals held there was exculpatory evidence which was improperly withheld from Michael Buehner’s Defense. However, during *Buehner III*, the Court of appeals had the ability to review the testimony of Former Prosecutor Bombik who clearly and unequivocally testified to (1) failing to identify Detective Gary Garisek as a witness, (2) failing to identify Wilhelmina Mason as a witness, (3) failing to identify Robert “Sonny” Allen as a witness, (4) stating no exculpatory evidence existed, and (5) having no specific recollection about reading any of the police reports to defense counsel.

The Eighth District Court of Appeals further had the testimony of James Kersey who testified he never knew of or heard the content of the police reports of Debbie Powell or Wilhelmina Mason. James Kersey testified he would have called both of them as witnesses in the

original trial if he had information about the content of their statements and what they would testify about. The fact these witnesses were not called to testify in Michael Buehner's defense is the best evidence the defense team was not made aware of the content of their statements.

There is no question the State of Ohio has an affirmative Constitutional obligation to produce to Michael Buehner all exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194. (holding the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.) Exculpatory evidence is evidence that would tend to exculpate a defendant of guilt or reduce a defendant's penalty. This is the 'favorable' evidence contemplated under *Brady* and its progeny, which also includes impeachment evidence bearing on the credibility of the state's witnesses. *State v. Glover*, 2016-Ohio-2833, 64 N.E.3d 442, ¶ 41 (8th Dist.) Evidence is considered material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Royster*, 2d Dist. Montgomery No. 26378, 2015-Ohio-625, ¶ 16, quoting *Bagley* at 682. "A reasonable probability does not mean that the defendant 'would more likely than not have received a different verdict with the evidence,' only that the likelihood of a different result is great enough to 'undermine * * * confidence in the outcome of the trial.'" *Lemons v. State*, 8th Dist. Cuyahoga No. 109188, 2020-Ohio-5619, ¶ 65, quoting *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

Whereas each bit of omitted evidence standing alone may not be sufficiently material to justify a new trial, the net effect, however, may warrant a new trial." " *State v. Glover*, 2016-Ohio-2833, 64 N.E.3d 442, ¶ 41 (8th Dist.); quoting *State v. Larkins*, 8th Dist. Cuyahoga No. 82325, 2003-Ohio- 5928, ¶33. Whether a *Brady* violation is material is a question of law subject to de novo review. *State v. Glover*, 2016-Ohio-2833, 64 N.E.3d 442, ¶ 35. Under a de novo

standard of review, the Court of Appeals gives no deference to a trial court's decision. *Brownlee v. Cleveland Clinic Found.*, 8th Dist. Cuyahoga No. 97707, 2012-Ohio-2212, ¶ 9, citing *Akron v. Frazier*, 142 Ohio App.3d 718, 721, 756 N.E.2d 1258 (9th Dist.2001).

Here, the testimony of Former Prosecutor Bombik clearly and unequivocally shows he (1) failing to identify Detective Gary Garisek as a witness, (2) failing to identify Wilhelmina Mason as a witness, (3) failing to identify Robert "Sonny" Allen as a witness, (4) stated at least three times no exculpatory evidence existed, and (5) had no specific recollection about reading any of the police reports to defense counsel. Michael Buehner believes that each of these alone does sustain his burden that material exculpatory evidence was improperly withheld from his defense. Therefore, Michael Buehner requests this Court deny jurisdictional review of *Buehner III*.

Proposition of Law II: Michael Buehner has sustained his burden as to materiality in a *Brady v. Maryland*, 373 U.S. 83 (1963) analysis where the evidence withheld taken in light of the State's case against Michael Buehner shows a likelihood of a different result great enough to undermine the confidence in the outcome of the trial.

The cumulative effect of all the withheld information from the defense demands the Eight District Court of Appeals' reversal and grant of a new trial for Michael Buehner. A court should consider the cumulative effect of all nondisclosures in determining whether reversal is required. *State v. Glover*, 2016-Ohio-2833, ¶34, 64 N.E.3d 442, U 41 (8th Dist.), citing *Kyles v. Whitley*, 514 U.S. 419, 419,115 S.Ct. 1555,131 L.Ed.2d 490 (1995). “Whereas each bit of omitted evidence standing alone may not be sufficiently material to justify a new trial, the net effect, however, may warrant a new trial.” *Id.*, quoting *State v. Larkins*, 8th Dist. Cuyahoga No. 82325, 2003-Ohio-5928, ¶ 33.

Here, all of the witnesses who provided statements have differing understandings of the facts which occurred. Randy Price's own testimony conflicts with that of the State's other witness Lawone Edwards. Randy Price claims Michael Buehner was wearing a long sleeve green

work jacket. Lawone Edwards claims Michael Buehner was wearing a white t-shirt and could see forearm tattoos. In terms of the other witnesses' identification of the occupants of the black pick-up truck, Gail Jenkins stated the white male driver of the truck "brandishe[d] a gun and "fire[d] two shots at the victim." Tierra Edwards saw a white mail driver and a black passenger but did not see the middle passenger. As previously stated, Deborah Powell identified all the participants in the crime as black males. The jurors during the original trial, without having testimony of Gail Jenkins or Deborah Powell presented to them questioned whether the State's witnesses accurately placed Michael Buehner at the scene. The jurors wrote several questions to the Judge during their deliberations questioning the truth of Randy Price and Lawone Edwards. (Appendix 3, AT Page 131-132, Exhibit U.) Had these jurors had testimony identifying the shooter as a black male, or identifying the driver as the shooter, there is a reasonable probability there would have been a different outcome.

The lack of evidence against Michael Buehner allows for a determination that even just one of the individual *Brady* violations would result in a different outcome. When you take all of the State of Ohio's failures in this case weighed against the State's case, it has a reasonable probability that the result would have been different. Michael Buehner is not required to prove actual innocence here, as the State of Ohio would like to impose upon him. Rather, he needs to show that a reasonable probability that a different outcome could have occurred. At the end of the day, the State of Ohio still has the ability to re-try Michael Buehner if it believes so strongly in its case. If the State of Ohio believes the evidence it previously presented, along with the new evidence which is available will result in the same outcome, then the State of Ohio should have no concern over a re-trial of Michael Buehner. However, here, where Michael Buehner has already served twenty years in prison, and with new exculpatory evidence available, viewed against a case that is only supported by two state's witnesses who received concessions for their

testimony, Constitutional protections warrant a new trial. The Eighth District Court of Appeals decision properly reviewed all of the evidence presented at the Motion for New Trial Hearing, the trial transcript, the exhibits, the weight of the evidence against Michael Buehner at the original trial, and concluded that the competent credible evidence presented sufficiently undermined the confidence in the jury's verdict. *Buehner III* held there is a reasonable probability the jury would have reached a different decision if the exculpatory evidence had been known at trial. (Eighth District Court of Appeals Decision dated December 16, 2021 at ¶71) The Eighth District Court of Appeals held there were three distinct and separate *Brady* violations which deprived Michael Buehner of his Constitutional right to due process i.e. the State of Ohio's failure to disclose the statements of Anderson, Jenkins, and Mason. Therefore, the Eighth District Court of Appeals decision was founded upon existing case law and a determination of the review of the facts in accordance with those standards and should remain. Michael Buehner respectfully requests this Court deny jurisdiction to review this decision.

CONCLUSION

As nothing in the Eighth District Court of Appeals present a Constitutional Question or Issue of Great Public Interest which needs to be reviewed, and the decision in *Buehner III*, properly applied the current caselaw to review a motion for new trial decision, Michael Buehner respectfully requests this Court decline jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Appellant's Opposition to Memorandum for Jurisdiction was sent this 2nd day of March 2022, to Michael C. O'Malley and Daniel T. Van via electronic mail and notice as provided through the Court's online docket.

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