IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
		Case No. 2022-1182
Plaintiff-Appellant,	:	
		On Appeal from the
v.	:	Hamilton County Court of Appeals, First Appellate District
RICKEY BROWN,	:	
		COA Case No. C-210355
Defendant-Appellee.	:	

MERIT BRIEF OF AMICUS CURIAE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLEE RICKEY BROWN

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

STATEMENT OF INTEREST OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER 1

INTRODUCTION 2

ARGUMENT 3

APPELLANT'S FIRST PROPOSITION OF LAW:

An individual is a victim of robbery under R.C. 2911.02(A)(2) when that individual is the owner of what is stolen, is the offender's intended target, and is also in close proximity to the gun brandished by the offender as the property is taken. 3

APPELLANT'S SECOND PROPOSITION OF LAW:

A *Brady* violation does not occur under Crim.R. 33(A)(2) when a witness confirms the suspect's identification via social media and such evidence is available at trial. 3

CONCLUSION 15

CERTIFICATE OF SERVICE 16

TABLE OF AUTHORITIES

Page No.

CASES:

Berger v. United States, 295 U.S 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935).....4

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)..... *passim*

Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).....4

State v. Boaston, 6th Dist. Lucas, 2017-Ohio-8770, 100 N.E.3d 1002 .....2, 11, 12

State v. Brown, Hamilton County C.P. No. B20-02726 .....12, 14

State v. Howard, 56 Ohio St.2d 328, 383 N.E.2d 912 (1978) 2, 12

State v. Iacona, 93 Ohio St.3d 83, 752 N.E.2d 937 (2001) 11

Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).....4, 5

United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976).....4, 6, 7

United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985) 4, 5, 7

United States v. Olsen, 737 F.3d 625 (9th Cir.2013).....8

United States v. Patrick, 965 F.2d 1390 (6th Cir.1992) 10

United States v. Pollack, 175 U.S.App.D.C. 227, 534 F.2d 964 (1976).....11

United States v. Word, 806 F.2d 658 (6th Cir.1986) 10

Wardius v. Oregon, 412 U.S. 470 (1973) 6

STATUTE:

R.C. 2911.02 3

RULES:

Crim.R. 16.....2, 11

Crim.R. 33.....3

OTHER AUTHORITIES:

% Exonerations By Contributing Factor, https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx 9

Armstrong and Possley, *Investigations Part 1: The verdict: Dishonor*, Chicago Tribune, Jan. 11, 1999 9

Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 Wm. & Mary L. Rev. 1587 (2006).....8

David Keenan, Deborah Jane Cooper, David Lebowitz & Tamar Lerer, The Myth of Prosecutorial Accountability After *Connick v. Thompson*: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct, 121 Yale L.J. Online, Forum (Oct. 25, 2011).....8

DPIC Special Report: The Innocence Epidemic, https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-reports/dpic-special-report-the-innocence-epidemic 10

Kathleen Ridolfi & Possley, *Preventable Error: A Report On Prosecutorial Misconduct In California, 1997–2009*, A Veritas Initiative Report (2010).....9

Model Code of Prof'l Conduct DR 7-103(B) (1980).....4

Prosecutorial Oversight: A National Dialogue in the Wake of *Connick v. Thompson*, https://www.innocenceproject.org/wp-content/uploads/2016/04/IP-Prosecutorial-Oversight-Report_09.pdf.....9, 10

Sarma, Using Deterrence Theory to Promote Prosecutorial Accountability, 21 Lewis & Clark L. Rev. 573 (2017) 8

STATEMENT OF THE CASE AND FACTS

Amicus curiae adopts and incorporates the statement of the case and facts as set forth by Mr. Brown in his merit brief.

STATEMENT OF INTEREST OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER

The Office of the Ohio Public Defender ("OPD") is a state agency that represents indigent criminal defendants and coordinates criminal-defense efforts throughout Ohio. The OPD also plays a key role in the promulgation of Ohio law and procedural rules. A primary focus of the OPD is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The mission of the OPD is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems.

As amicus curiae, the OPD offers this court the perspective of experienced practitioners who routinely litigate criminal cases in Ohio courts. This work includes representation at both the trial and appellate levels. The OPD has an interest in the present case because, at its heart, it involves a constitutional issue that is of vital importance to individual liberty, due process, and an equitable process. Courts around the country have recognized that *all* evidence that may inculpate or exculpate a defendant must be shared with the defense team. The state is, regularly, in the position of power and control over the evidence. This court should uphold its prior standard that the state *must* share all *Brady* material with the defense, even when the evidence may affect a government witness's credibility. When the state fails to do so, regardless of the timing, it is error attributed to the state.

INTRODUCTION

This case offers the opportunity for this court to reinforce two fundamental principles associated with criminal trials: 1) that equitable, meaningful discovery is necessary for due process and fundamental fairness, and 2) that failure to disclose either material evidence or evidence that may be used for impeachment purposes continues to remain impermissible behavior by prosecutors.

Criminal Rule 16 governs discovery and inspection of evidence in criminal cases. The purpose of the criminal rules is "to remove the element of gamesmanship from a trial." *State v. Boaston*, 6th Dist. Lucas, 2017-Ohio-8770, 100 N.E.3d 1002, ¶ 53, citing *State v. Howard*, 56 Ohio St.2d 328, 333, 383 N.E.2d 912 (1978). The discovery rules *require* the state to provide "items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at trial." Crim.R. 16(B). Withholding such evidence may violate a defendant's due process rights if the evidence is material to guilt or punishment. *Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Frankly put, defendants are at the mercy of the state to provide the discovery it anticipates presenting at trial. When the state fails to turn over evidence critical to the defense's theory of the case and impeachment of state's witnesses, the state violates its discovery and *Brady* obligations. Such failures prevent defendants from investigating the case, determining which witnesses to call, adequately prepare for trial, and determining whether to accept a plea offer.

This court must uphold its previous precedent and require the disclosure of all evidence material to a defendant's case in discovery. Even delayed disclosure, mid-trial, erodes the fairness and due process that form the criminal legal system.

ARGUMENT

APPELLANT'S FIRST PROPOSITION OF LAW

An individual is a victim of robbery under R.C. 2911.02(A)(2) when that individual is the owner of what is stolen, is the offender's intended target, and is also in close proximity to the gun brandished by the offender as the property is taken.

Amicus relies upon the arguments as stated in Mr. Brown's Merit Brief.

APPELLANT'S SECOND PROPOSITION OF LAW

A *Brady* violation does not occur under Crim.R. 33(A)(2) when a witness confirms the suspects identification via social media and such evidence is available at trial.

The criminal legal system is predicated on the flow of information from the prosecutor to the individual accused of committing a crime. That information is necessary for defendants to evaluate the evidence which may be used to convict them, including the credibility of witnesses who may testify against them. The state, which includes the prosecutor and law enforcement among others, is *obligated* to provide that information. When the state fails to disclose that a witness searched for an individual on social media, identified a person online by a photo, and provided that photo to the police *prior* to the photo identification procedure executed by police, it violates its discovery obligations and *Brady* requirements. *Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). That this evidence was discovered *midtrial* does not excuse the state's failure, rather it only serves to further disadvantage a defendant who did not know of the evidence, was unable to prepare for it, and must adapt their strategy mid-witness and mid-trial.

I. Due Process and fairness are achieved when prosecutors are required to meet their *Brady* obligations.

A. A Prosecutor's *Brady* obligations are a cornerstone of our adversarial criminal justice system and rooted in fairness.

The criminal legal system is designed to be fair. "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). Perhaps the most consequential figure in ensuring fairness in a criminal proceeding is the prosecutor. The prosecutor is a "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). A prosecutor's actions or inactions affect the rights of defendants. *E.g., United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 111 (1976) ("This description of the prosecutor's duty illuminates the standard of materiality that governs his obligation to disclose exculpatory evidence."); *see also United States v. Bagley,* 473 U.S. 667, 105 S.Ct. 3375 (1985), at 675 n.6.

Born from the need for fundamental fairness, *Brady v. Maryland* places upon the prosecutor an *obligation* to disclose favorable, material evidence to the defendant. *Brady*, 373 U.S. at 87. Evidence is favorable to the accused if it is either exculpatory in nature or because it may be used for impeachment. *Strickler v. Greene*, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286, 282 (1999). Evidence is 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." *Bagley*, 473 U.S. at 682. A "reasonable probability" is a probability "sufficient to undermine confidence

in the outcome." *Id.* When determining if suppressed evidence creates a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different, the evidence in question must be considered collectively, rather than item-by-item. *Kyles v. Whitley,* 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d. 490, 436 (1995). When making a materiality determination, *it is not* a prerequisite that the suppressed evidence would have resulted in an acquittal. *Id*. at 434.

The *Brady* obligation attaches to the prosecutor regardless of whether or not the defendant requests the materials. *Agurs*, 427 U.S. at 107. That obligation extends to all arms of the prosecution, including police officers. *Kyles,* 514 U.S. at 438. The obligation requires the prosecutor to "learn of any favorable evidence known to others acting on the government's behalf." *Strickler*, 527 U.S. at 281; citing *Kyles*, 514 U.S. at 437. It is an "inescapable" duty mandated by due process. *Kyles*, 514 U.S. at 438. Simply stated, fairness and due process require the prosecutor to assist the defense. *Bagley*, 473 U.S. at 675, fn.6. This obligation is mirrored in the American Bar Association's Model Code of Professional Conduct[1].

At the heart of the *Brady* obligation is a recognition that in any given criminal proceeding, the state will almost certainly have more resources at its disposal to zealously prosecute a case than a defendant has to competently defend against it. Federal courts have confirmed this imbalance:

[1] "A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment." Model Code of Prof'l Conduct DR 7-103(B)(1980). governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice. Where the prosecutor is recreant to the trust implicit in his office, he undermines confidence, not only in his profession, but in government and the very ideal of justice itself.").

> Besides greater financial and staff resources with which to investigate and scientifically analyze evidence, the prosecutor has a number of tactical advantages. First, he begins his investigation shortly after the crime has been committed when physical evidence is more likely to be found and when witnesses are more apt to remember events. ***by the time the defendant or his attorney begins any investigation into the facts of the case, the trail is not only cold, but a diligent prosecutor will have removed much of the evidence from the field.*** the prosecutor may compel people, including the defendant, to cooperate.*** The prosecutor may force third persons to cooperate through the use of grand juries and may issue subpoenas requiring appearance before prosecutorial investigatory boards. With probable cause the police may search private areas and seize evidence and may tap telephone conversations. They may use undercover agents and have access to vast amounts of information in government files.

Wardius v. Oregon, 412 U.S. 470, 475 (1973), fn.9. With access to police officers, detectives, coroners, crime laboratories, and the ability to compel witness testimony, the prosecutor is, almost always, at an advantage in discovering evidence that is potentially favorable to a defendant. That resource disparity threatens to undermine the fairness and due process upon which our system was built. In an adversarial criminal justice system devoted to fairness, the state, given its superior resources, must uphold its legal and moral obligations to ensure that all *Brady* materials are received by the defense.

B. Given the speculative nature of the *Brady* materiality analysis, human psychology, and a lack of accountability, prosecutors are required to disclose *more* favorable, material evidence, not less.

The materiality analysis a prosecutor must utilize to adhere to its obligations under *Brady* and its progeny invites intentional and unintentional *Brady* violations. The material importance of any given piece of evidence will be difficult to ascertain without the hindsight of a complete record. *Agurs* at 427 U.S. at 108. It is difficult to ascertain the ways in which any given piece of favorable evidence may impact the investigation conducted by the defense, the kinds of witnesses the defense may choose to call to testify, the kinds of evidentiary objections the

defense may raise, or how the defense may utilize the evidence for impeachment purposes. It is similarly difficult to assess the reaction an empaneled jury will have to any given piece of evidence. *Bagley*, 473 U.S. at 693 ("The private whys and wherefores of jury deliberations pose an impenetrable barrier to our ability to know just which piece of information might make, or might have made, a difference.") In his dissent in *Bagley*, Justice Marshall described the problem this way:

> At best, this standard places on the prosecutor a responsibility to speculate, at times without foundation, since the prosecutor will not normally know what strategy the defense will pursue or what evidence the defense will find useful. At worst, the standard invites a prosecutor, whose interests are conflicting, to gamble, to play the odds, and to take a chance that evidence will later turn out not to have been potentially dispositive.

Bagley, 473 U.S. at 701 (Marshall, J., dissenting). Neither a prosecutor's good faith nor their failure to appreciate the significance of the evidence will excuse the failure to disclose it. It is the best practice for a prosecutor to resolve legitimate questions of materiality in favor of disclosing the materials to the defense. *Agurs* at 427 U.S. at 108-110.

Research also suggests that prosecutors should err in favor of more disclosures, not less. Winning cases and obtaining convictions is often tied to a prosecutor's personal, professional, and political success. This can create a bias when making a materiality assessment.

> *Brady* requires a prosecutor who is determining whether to disclose a piece of evidence to the defense to speculate first about how the remaining evidence will come together against the defendant at trial, and then about whether a reasonable probability exists that the piece of evidence at issue would affect the result of the trial. During the first step, a risk exists that prosecutors will engage in biased recall, retrieving from memory only those facts that tend to confirm the hypothesis of guilt. Moreover, because of selective information processing, the prosecutor will accept at face value the evidence she views as inculpatory, without subjecting it to the scrutiny that a defense attorney would encourage jurors to apply.

> Cognitive bias would also appear to taint the second speculative step of the *Brady* analysis, requiring the prosecutor to determine the value of the potentially exculpatory evidence in the context of the entire record. Because of selective information processing, the prosecutor will look for weaknesses in evidence contradicting her existing belief in the defendant's guilt. In short, compared to a neutral decision maker, the prosecutor will overestimate the strength of the government's case against the defendant and underestimate the potential exculpatory value of the evidence whose disclosure is at issue. As a consequence, the prosecutor will fail to see materiality where it might in fact exist.

Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 Wm. & Mary L.Rev. 1587 (2006).

Add to these concerns the fact that disciplinary accountability for prosecutors that engage in willful *Brady* violations is virtually nonexistent, and you have an unfortunately common legal scenario in which "all the incentives prosecutors confront encourage them not to discover or disclose exculpatory evidence." *United States v. Olsen*, 737 F.3d 625, 630 (9th Cir.2013) (Kozinski, J., dissenting). *See also*, David Keenan, Deborah Jane Cooper, David Lebowitz & Tamar Lerer, The Myth of Prosecutorial Accountability After Connick v. Thompson: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct, 121 Yale L.J. Online, Forum (Oct. 25, 2011); *see also* Sarma, *Using Deterrence Theory to Promote Prosecutorial Accountability*, 21 Lewis & Clark L.Rev. 573 (2017).

All parties to a criminal proceeding must be cognizant of the very real danger of *Brady* violations. To mitigate this ever-present danger in criminal matters, this court must maintain the explicit mandates of *Brady* and its progeny. This court must avoid diminishing the protections that *Brady* grants not only to individual defendants but to the overarching goal of fairness in our criminal legal system.

C. Prosecutorial misconduct persists in our criminal justice system and has detrimental real-world consequences.

It is an unfortunate fact that prosecutorial misconduct, of which *Brady* violations feature prominently, are a persistent feature of our criminal legal system. Over 59% of recorded exonerations in this country involve state misconduct.[2] A 1999 Chicago Tribune report found that since 1963, at least 381 homicide convictions across the United States were reversed because prosecutors withheld exculpatory evidence or presented evidence known to be false. Armstrong and Possley, *Investigations Part 1: The verdict: Dishonor*, Chicago Tribune (Jan. 11, 1999).

The Northern California Innocence Project ("NCIP") reviewed over 4,000 appellate rulings, as well as numerous media reports and trial court decisions between 1997 and 2009. NCIP found that there were 707 cases in which courts explicitly found that prosecutors committed misconduct. This number is necessarily an underreporting of the true scale of the issue since NCIP could only pinpoint a small cross-section of cases that went through trial proceedings and then post-trial litigation in which prosecutorial misconduct was raised. Kathleen Ridolfi and Possley, *Preventable Error: A Report On Prosecutorial Misconduct In California, 1997–2009*, A Veritas Initiative Report (2010).

A coalition survey conducted by the Innocence Project, Innocence Project New Orleans, Resurrection After Exoneration, and the Veritas Initiative identified 660 criminal cases with confirmed prosecutorial misconduct between 2004 and 2008 out of Arizona, California, Pennsylvania, New York, and Texas. Prosecutorial Oversight: A National Dialogue in the Wake of *Connick v. Thompson*, https://www.innocenceproject.org/wp-content/uploads/2016/04/IP-

[2] % Exonerations By Contributing Factor, available at: https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx (last visited April 12, 2023).

Prosecutorial-Oversight-Report_09.pdf (last accessed April 6, 2023). A study conducted by the Death Penalty Information Center found that of the 185 death penalty exonerations recorded since 1973, 69.2% of them included official misconduct by police, prosecutors, and other government officials. DPIC Special Report: The Innocence Epidemic, https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-reports/dpic-special-report-the-innocence-epidemic (last accessed April 9, 2023). Official misconduct was present in more than three-quarters of cases involving a black exoneree, and more than two-thirds of cases involving a Latinx exoneree. *Id.*

Given the cognitive pitfalls that even the most well-intentioned prosecutor can fall into when making a materiality decision, the lack of adequate accountability measures, and the pervasive, real-world harms that befall citizens due to prosecutorial misconduct, this court should not diminish or otherwise narrow the *Brady* obligations placed upon prosecutors. To guarantee that our system adheres to the fundamental principle of fairness, *Brady* demands that prosecutors adhere to a broad understanding of *Brady,* not a narrow one.

II. A surprise "disclosure" of favorable, material evidence at trial does not comport with a prosecutor's *Brady* obligation.

The goal of *Brady* and its progeny is to promote fairness and to ensure that a defendant's constitutional due process rights are upheld. And while most *Brady* analyses concern evidence uncovered sometime after a defendant's trial, even delayed disclosures of favorable, material evidence can run afoul of *Brady* if the late disclosure prejudices the defendant. *See United States v. Word*, 806 F.2d 658, 665 (6th Cir.1986) ("If previously undisclosed evidence is disclosed, as here, during trial, no *Brady* violation occurs unless the defendant has been prejudiced by the delay in disclosure."); *United States v. Patrick*, 965 F.2d 1390, 1400 (6th Cir.1992) ("Delay only violates *Brady* when the delay itself causes prejudice.") (vacated and remanded on other

grounds); *State v. Iacona*, 93 Ohio St.3d 83, 100, 752 N.E.2d 937 (2001) ("…the philosophical underpinnings of *Brady* support the conclusion that even disclosure of potentially exculpatory evidence during trial may constitute a due process violation if the late timing of the disclosure significantly impairs the fairness of the trial.") The later a disclosure of favorable, material evidence is, the less time the defense has to investigate, prepare, and synthesize the material into a cogent litigation strategy. To truly promote fairness, a disclosure by the prosecutor "must be made at such a time as to allow the defense to use the favorable material effectively in the preparation of its case." *United States v. Pollack*, 175 U.S.App.D.C. 227, 534 F.2d 964, 973 (1976).

Requiring the timely disclosure of favorable, material evidence also dissuades prosecutors from intentionally springing such information on defendants midtrial in an attempt to performatively satisfy his obligations under *Brady* while strategically minimizing the potential effectiveness of the material. This kind of gamesmanship must be prohibited if our criminal justice system is to remain fair and impartial.

Not only does *Brady* prohibit this type of gamesmanship, but the discovery rules do also. Criminal Rule 16(A) is meant "to provide all parties in a criminal case with the information necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system and the rights of the defendants, and to protect the well-being of witnesses, victims, and society at large." The rules specifically provide for a continuing reciprocal duty to provide discovery with "items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at trial." Crim.R. 16(B). The purpose of the criminal rules is "to remove the element of gamesmanship from a trial." *State v. Boaston*, 6th Dist. Lucas, 2017-Ohio-8770, 100 N.E.3d

1002, ¶ 53, citing *State v. Howard*, 56 Ohio St.2d 328, 333, 383 N.E.2d 912 (1978). Alongside a demand for discovery, defense counsel for Rickey Brown filed an explicit demand for *Brady* material. *State v. Brown,* Hamilton County C.P. No. B20-02726, Defendant's Motion For *Brady* Material (July 24, 2020). Here, these obligations were not fulfilled by the mid-trial disclosures from the state.

The present case comes down to the identification of Mr. Brown by Ms. Smothers and Ms. Johnson. No forensic evidence ties Mr. Brown to the crime. He has maintained his innocence and even presented alibi witnesses at trial. The identification by Ms. Smothers and Ms. Johnson *is* the *entirety* of the state's case.

In his opening statement, the prosecutor outlined what he believes to be the causal trajectory of the police investigation against Mr. Brown: the robbery occurs; the police are given the name "Danny Buckley"; the police trace the name "Danny Buckley" to the name and photo of Rickey Brown; a photo of Rickey Brown is put into a photo lineup for both Ms. Smothers and Ms. Johnson to view; they both independently identify Rickey Brown from the lineup. Tr. 15-18. According to the prosecutor, after the lineup, the victims were able to find Mr. Brown on Facebook and pull photos from his page. Tr. 19. As the trial progressed, it became clear that this was a critical mischaracterization of how Mr. Brown's name and photograph were brought into the robbery case.

In actuality, Ms. Smothers communicated with the alleged seller "Danny Buckley" via the Letgo app. Tr. 76, 78. Shortly after the robbery occurred, Ms. Smothers conducted her own investigation to ascertain the identity of Danny Buckley. Tr. 85. Ms. Smothers somehow connected an email associated with Danny Buckley to Mr. Brown's Facebook page. Tr. 84-86. She obtained pictures from Mr. Brown's Facebook page and submitted them to the police, but

only after showing those same photographs to Ms. Johnson. Tr. 117, 118. Police then used the photographs taken from Mr. Brown's Facebook page to identify him. Those witnesses, who had already seen photos of Mr. Brown and identified him as the individual they believed robbed them, performatively picked Mr. Brown out of a photo lineup. Tr. 48. The two witnesses had already seen photos of Mr. Brown, by way of Ms. Smother's personal investigation, before ever stepping foot inside the police station. It is further unclear whether the exact photos provided by Ms. Smothers were the photos of Mr. Brown placed into the lineup.

The entire police investigation is predicated on this initial, questionable "investigation" by Ms. Smothers. The police did not subpoena records for a Danny Buckley through the Letgo App or Google. Tr. 154-155. Police never submitted a subpoena for the phone records of Ms. Smothers. Tr. 158. And though asked several times, Ms. Smothers failed to provide her phone to detectives to review messages between her and "Danny Buckley." T.p. 143-156.

Evidence of the initial investigation conducted by Ms. Smothers and the knowledge that the photo lineups conducted by Ms. Smothers and Ms. Johnson were irrevocably tainted is indeed material and favorable evidence to the defense. In explaining its decision as trier of fact, the trial court properly described the primary issue in the case as one of identity. Tr. 310. That court also remarks that both women "identified Rickey Brown from a photo lineup administered by a Blind Administrator officer Jason Horner." The court gave an unwarranted level of credibility to the photo lineup. Tr. 312. It did not acknowledge the confirmation bias at play between Ms. Smothers finding photos of Mr. Brown, Ms. Smothers showing those photos to Ms. Johnson, Ms. Smothers sending those photos to police, and then the police creating a lineup including the individual from those photos which Ms. Smothers and Ms. Johnson had already seen, and relying on an identification of that tainted lineup.

While it is apparent from the state's opening statement that it was unaware of the true order of investigative events, the police officers who testified *were aware* that Ms. Smothers conducted her own investigation when she provided them with the photographs they would later use to identify Mr. Brown as the perpetrator. Tr. 86-87, 137-39, 143, 153-156. In a case that hinges entirely on the validity and veracity of the identification by Ms. Smothers and Ms. Johnson of Mr. Brown, this is a clear failure of the state's discovery and *Brady* obligations. And though this information was disclosed to the defense at trial by way of surprise testimony, the delay in disclosure clearly prejudiced Mr. Brown. Had Mr. Brown known that Ms. Smothers conducted her own investigation, found his photos on social media, and gave them to the police before her photo identification, he would have bolstered his defense by attacking her credibility. Mr. Brown would have filed a motion to suppress the photo lineup identifications. *State v. Brown,* Hamilton County C.P. No. B20-02726, Rickey Brown Motion for New Trial, p.6 (May. 25, 2021). Additionally, Mr. Brown would have called an expert witness to explain how unreliable the witnesses' identifications were. *Id.*

The disclosure of Ms. Smother's personal investigation also highlights that the police did not investigate any other potential suspects, rather, they honed in on Mr. Brown because Smothers identified him from her social media investigation. T.p. 143-145, 153-156. Nonetheless, the disclosure negates the validity of the photo lineup.

Though defense counsel attempted to utilize the delayed disclosure to benefit her client, through attempts at impeachment, defense counsel had additional avenues of investigation, expert consultation, and preparation foreclosed by the delayed disclosure.

The state seeks to penalize the defense for not asking for a continuance. State's Brief, p. 14. The state claims that the failure of trial counsel to ask for a continuance should alleviate

concerns over the state's dereliction of its *Brady* obligation. *Id.* This is a dangerous reimagining of the purpose of *Brady* and an impermissible attempt to shift the obligations from the state onto the defense. The *Brady* obligations imposed upon the state are broad and absolute. They are obligations that exist above the potential gamesmanship inherent in our adversarial criminal justice system. For *Brady* to have its intended effect of mitigating the evidence gathering disparity between the state and the defendant, this court should not impose additional requirements upon the defense when the state is not diligent in finding and disclosing favorable, material evidence. Here, the delayed disclosure undermined the core issue of this case – the identification of Mr. Brown. The state's failure to disclose potent *Brady* material undermines confidence in the outcome of this trial.

CONCLUSION

Discovery and *Brady* obligations are not easily dispensed with. This court should maintain and uphold its prior precedents and require the state to fulfill its obligations to perpetuate fairness and due process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was electronically delivered to Assistant Hamilton County Prosecutor Paula E. Adams at paula.adams@hcpros.org and Mark J. Trapp, counsel for Rickey Brown, at mjtrapp@netzero.net, on this 18th day of April, 2023.

/s/ *Addison Spriggs*
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