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IN THE
INDIANA COURT OF APPEALS

CAUSE NO. 22-CR-01241

JASON D. BROWN	)	Appeal from the
	)	Marion County Superior Court,
Appellant (Defendant below)	)	Criminal Division 32
	)	
vs.	)	Cause No. 49G32-1708-MR-028177
	)	
	)	
STATE OF INDIANA	)	The Honorable
Appellee	)	Mark Stoner, Judge

BRIEF OF THE APPELLANT

Marion County Public Defender Agency,
Appellate Division
Ann M Sutton
Att. No. 16198-49
151 N. Delaware, Suite 200
Indianapolis, IN 46204
317-327-3982
Ann.sutton@indy.gov

Attorney for the Appellant

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The State failed to seek Jason Brown's blood for a toxicology analysis until nineteen days after the incident and after the hospital had destroyed the blood. When confronted with the destruction of the blood, the nurse suggested to the Detective that the urine sample was still available. The State then secured the urine and had it tested for drugs in Mr. Brown's system. The blood evidence, as everyone agrees, would have indicated what Mr. Brown was on, if anything, on July 27, 2017. Urine could only explain what Mr. Brown had ingested in the hours, days or weeks before the incident. By allowing the admission of the urine toxicology results, the Court permitted the State to advance the theory that Mr. Brown was under the influence of spice, which could only have been rebutted by blood toxicology results. This resulted in a due process violation of Jason Brown's right to a fair trial.

Based on the totality of the undisputed evidence, including evidence by the State's first scene witnesses and evidenced by the body video, Mr. Brown did not possess the knowing intent to be convicted of Murder.

STATEMENT OF THE CASE

1. Prior Proceedings

On August 1, 2017, Jason Brown was charged, as amended, with one count of Murder and Possession of Marijuana and its enhancement for having a prior Marijuana conviction, a Class A Misdemeanor [Appellant's Appendix ("App.").Vol. II, p. 137-139, 157-159]. On September 28, 2017, the State filed the Request for the Death Penalty [App. Vol. III, p. 47].

On May 24, 2021, the Defense filed a Motion to Exclude Evidence, namely the results of the urine toxicology analysis [App. Vol. IX, p. 129]. A hearing was held on August 11, 2021 [Transcript ("Tr."). Vol. IV, p. 39]. The parties then submitted Briefs in support of their positions [App. Vol XVII, p.165-228]. The Motion was denied on January 3, 2022 [App. Vol. XVII, p. 22-23].

On December 3, 2022, the parties entered an agreement in exchange for Brown waiving his right to a jury trial, the State dismissed the death penalty [App.Vol XVII, p. 247].

On February 1, 8, 9, 11, 14, 15, 2022, Mr. Brown was tried before the judge [App. Vol. II, p. 115-118]. At the end of the State's case, counsel for Mr. Brown moved for a directed verdict on Murder, and also moved for Rule 41 (b) dismissal of the LWOP based on **Castor v. State** [Tr. Vol. VII, p. 207-214]. The judge denied the directed verdict on Murder [Tr.Vol. VII, p. 214]. After affirming the State intended to present no further evidence as to the aggravator for LWOP, the judge ruled in favor of the defense, finding the aggravator was not supported by the evidence [Tr. Vol. VII, p. 214-217]. At the end of the presentation of witnesses and argument, the judge found Mr. Brown guilty as charged on Murder and Possession of Marijuana [Tr.Vol. VIII, p.211-214].

At sentencing, Mr. Brown presented witnesses and took the stand [Tr. Vol. VIII, p. 174-177, 184-185]. The State presented members of Lt. Allan's family [Tr. Vol. VIII, p. 178-184]. The Court then sentenced Mr. Brown as follows:

> THE COURT: We're back on record, State of Indiana v. Jason Brown. The Defendant is present in person and by counsel, the State by deputy prosecutors. Prior to the lunch recess, the Court had heard evidence and argument and now proceeds with the sentencing hearing. The Court would note several things. First in terms of the record, a number of items were submitted to the Court that the gallery and the media attention did not hear. The Court received letters from the State of Indiana from Nichole Proctor, Jennifer Clay, Ruth and Dennis Moore, Amy Brown, and particularly a moving tribute from Aunt Abbie. From the defense the Court had reviewed, as I indicated, a 14-minute video. The Court also received a report from Dr. Blake who was the neurologist that testified in the trial itself, and the Court reviewed that. Much of it was simply a review of her findings or testimony at trial. There was some (inaudible) the Court would refer to it as well. The Court also received a progress report, although it was very, very brief as Ms. Turner indicated, as to Mr. Brown's conduct in the Department of Correction.
>
> The first thing I want to do is what I almost always do when I have -- in homicide cases, and unfortunately having done this in one capacity or another for over 40 years, one simply can't ignore the fact that while I am sentencing the Defendant, I have to be mindful of the sacrifice and the impact of any case on the victim's family, and in this case the victim's family is extended, because it's not only the immediate family but also the brothers and sisters of Lieutenant Allan of the Southport Police Department.
>
> The emotion displayed by the officers on the stand today are a reminder of just how incredibly difficult your jobs are, that too often we concentrate and we think about the officers that do bad things because they get headlines. And that's the same thing in terms of crime. We have to deal with this every day, and yet it's the crimes that get the headlines because they're the abnormal things, they're the shocking things, and those things tend to color our perception of ourselves and our culture.
>
> Police officers sacrifice so much in terms of what they do, in terms of their service for their community, the same as the military. Although I've never had that personal experience and/ or honor myself, you see it every day in terms of the sacrifice that they make, the one officer particularly describing the impact it has on family, never knowing at any particular time when you may or may not come home to your family, and that's the very definition of selfless service to your community, whether it's the police, the military, sometimes first responders as well. And the Court wants to acknowledge your pain and the suffering that you have.
>
> My experience has been over a long period of time is that once this is done, the sentencing is

done, hopefully you will start to heal in a way that
you've never been able to until this time because you're wondering why you never get to talk to the Defendant, you never get to hear the Defendant acknowledge anything, you're constantly reminded every time there's a court hearing of how Lieutenant Allan died.
Every time you get a continuance, every time you get a motion, it brings back that pain and so you relive it and you relive it. Because this was a capital case and because of the unfortunate
timing of the pandemic, this family has suffered longer than most in terms of getting a resolution after some five years now. That is indeed unfortunate, and I can only hope again that once this day is over, you will have known that you will have honored Lieutenant Allan by your steadfast devotion to following this case, making sure that justice was done, that the person responsible was held accountable, and that by following through all the way through you have honored his presence, you have honored the obligation that you have to him. In that way and from this day forward, hopefully you will then be able to concentrate more on the way he lived as opposed to the way he died.
There's no question from the defense, from the State, from anyone who's looked at this set of circumstances, Lieutenant Allan died as a hero in the best sense of that, going selflessly to an accident, trying to assist someone in danger, in peril. As I indicated at the time of the verdict, that I think even the fact that he didn't identify himself, which made it impossible for the Court to make a finding on life without parole and would have been impossible on a death penalty case, that by not identifying himself, he was doing that through true best practices for police officers. He was there to help. He was not there to be the cop. And it's unfortunate that he lost his life in that, but that not only how he -- that portion of losing his life, that's what we should remember, not that 18 shots were fired, not that 11 shots went into his body, but he died as a hero trying to help someone who was helpless at the time.
Obviously, this was not an isolated circumstance. The Court's heard evidence longstanding of his devotion to his community, his devotion to his family, his willing to help other individuals, kids in trouble, defendants suffering from drug addiction. This does not make Lieutenant Allan unique. Police officers have done this throughout time. It's the better calling of what we do, the men and women in blue that serve our community. And again, too often we hear the bad things and we don't concentrate on the sacrifice that we see in the utter extreme today.
Having said that, I also want to caution the family that what the Court's about to do in terms of a sentencing procedure has nothing to do with the value of Lieutenant Allan's life. No amount of time will bring him back. No amount of time will make a difference as to how the family goes forward. It is simply an exercise of the Court looking at aggravating and mitigating circumstances and judging this case amongst the other homicides that I have seen over a period of 40 years. At least one of the letter writers addressed that basic fact, which I know is somewhat discomforting, the pain that you are

suffering is very real, it's very painful, it's very -- some of it will last for the rest of your lives. But again, hopefully as I say, starting from today you'll start to be able to put more concentration on how he lived as opposed to how he died. But this is an exercise of comparison. It is looking at how does this case fit amongst other defendants, other crimes, other situations. And so the letter writer, I don't remember which one, said, you know, to the Court it may be a statistic but to me it's a very real and human loss, and that is absolutely true. But as I indicate as I go through this exercise, whether I give him the maximum, whether I give him the minimum, it isn't going to bring him back. It is just simply a reflection of what the legal criteria are, and the Court does want to acknowledge your loss, and hopefully you will go forward and hopefully make something of the rest of his memory, which is so rich with the things that he did. It struck me a couple times as I was listening to the trial and looking at the autopsy photos, I was hoping someone would explain to me, Lieutenant Allan, I think, had a tattoo, a prominent one if I remember from the photographs. Everything I've heard, I don't know what the source of it is, it was just a matter of curiosity for me, but it struck me that everything I heard about Lieutenant Allan, that if he had met Mr. Brown in a different place, in a tattoo parlor or in some other place, they might have had a wonderful conversation, because he was such a caring individual, and Mr. Brown has so many challenges that Lieutenant Allan and the rest of the uniformed officers see every day on the streets and what this court sees everyday in the courtroom, individuals that have been brought up in terrible circumstances, have terrible family experiences, have been abused, have all kinds of things that we don't know about because we don't live with them, but we see them when they act out on the street, we see them when they come into our courts. The officers see them when they create situations that put their very lives and existence in peril. But that's what we see every day in the courtrooms.

And I think if Lieutenant Allan had a chance to talk to Jason Brown, not only would there have been an appreciation of his artistic talent, what he brought, but also some compassion and some understanding of where he came from, and I think Lieutenant Allan would have done everything he could to have helped Jason Brown. Everything I've heard about him tells me that he was that kind of compassionate, caring officer. The tragedy is is Lieutenant Allan didn't grow up or didn't come in to be Jason Brown's neighbor, someone from his community, and what a difference he might have made if he had been his father. Instead, we're left with the realty of the situation that we have before us.

As I look at aggravating and mitigating circumstances and then get to the actual function of sentencing, the Court is required by the Indiana General Assembly to look at some aggravating circumstances. Those are all put in the record under Indiana Code 35-38-1-7.1, a listing of aggravating and mitigating circumstances. Those were some of the aggravating and mitigating circumstances that both Ms. Turner and Mr. Anderson referred to. The Court would also note that while there's a specific list of aggravating and mitigating

circumstances, there's also a catchall under subsection C where the Court is allowed to consider other aggravating and mitigating circumstances, so I'm not restricted to specifically what the statute says.

I will note in terms of mitigating circumstances, the most significant circumstance in terms of mitigation is subsection 13, the Defendant suffers from documented brain injury trauma over a long period of time. It was documented within the record, specifically under State's Exhibit 196 that was introduced and also testified at length by Dr. Blake. That injury did not rise to the level of a defense as the Court indicated in the finding of guilt, but it is a significant mitigator.

The Court notes the Defendant did not have a significant criminal history. That's a mitigating circumstance as well. The Court will also note that while the Defendant did not have a criminal history, he was not a law-abiding citizen. He had used drugs, illegal drugs for a substantial period of time and simply had not been caught, and so the Court doesn't necessarily consider the minimal criminal history as being a significant mitigating circumstance.

The defense cited that these were circumstances that were unlikely to reoccur. I think as Ms. Turner acknowledged in her argument and as the Court said over and over again, that is an incredibly speculative portion for the Court to determine. It's very clear to the Court that if the Defendant had, and his family, in various stages of his life had done the responsible thing to acknowledge the physical trauma in addition to the emotional trauma, the documentation that's very extensive within the submitted presentence report: the Defendant has been suicidal in the past, the Defendant was a cutter, the Defendant had been bullied, the Defendant had all kinds of situations facing him that those of us who are born fortunate with parents that care about us and are responsible, and particularly that are born lucky as I was to have two parents that were working, law-abiding and emphasizing what responsibility as a citizen is required to take, Mr. Brown might not be here. But he did not have that, and it's very clear from that. As I indicated, if he had Aaron Allan as a father, Mr. Brown would not be here today.

But it's difficult when you're looking at a mitigating circumstance to say it's unlikely to reoccur. I would say it's probably unlikely to reoccur now because the very, very worst of avoiding the medical signs that should have gotten to him to a doctor years ago, not only as a juvenile but once he becomes an older person he had four automobile crashes that were documented within the presentence report.

As the Court indicated at the time of the guilty finding, you can't overlook those. Each and every one of those was a warning sign, a signal that he needed to go to the doctor. And even though his family had testified that they had tried to get him to the doctor, the answer still is he didn't want his license taken away, he didn't want his drug use to be exposed. Regardless of those challenges, responsible parents, responsible neighbors, responsible community members would have encouraged him to do that. I would also note that a responsible state that would have adequate

mental health resources would have made that decision easier, would have made the resources available and easier. It is well-documented the State of Indiana has miserably failed in that area and continues to do so. But unlikely to reoccur, probably now because he's in custody and now he knows exactly how damaging and dangerous his behavior would be, probably not likely to reoccur.

But if we hadn't this had intervention, this could have happened anywhere, at any time, to any person. He had the brain injury, he had the drug addiction, he had the mental health challenges, and he had access, easy access to a weapon, and he had a gun permit. And again, a gun permit where individuals don't have to reveal mental health backgrounds. We don't have background checks. We give guns to anyone, and here sits Jason Brown as damaged as he was, with the neurologist, and the evidence overwhelming that he absolutely should not have had a gun. That's part of Dr. Blake's, again, final determination. He should never have been driving a car. He should never have had a gun. But we don't check. We don't require that. We take the risk that the men and women in blue face these kinds of circumstances, and it is a tragedy and it is a tragedy that Lieutenant Allan lost his life.

The next mitigator argued was short-term imprisonment or probation would be appropriate. In this case, with all due respect, I don't think a minimum sentence on a murder at 45 years, I don't think we're talking about short-term imprisonment. I don't think that's what that mitigator is for, and so the Court doesn't give significant sway to that mitigating circumstance.

The character and the attitude of the Defendant was cited as well. I think that can be a mitigator, as well as I think he is extremely remorseful. Again, I'm mindful that the record in front of the gallery, the record in front of the media does not reflect his three-page statement to -- in his presentence report to the family of the victim. Again, it's somewhat unfortunate in the shortness of time that the family is not able to review that. I don't have any belief that that would change the family's perspective one iota, and I wouldn't expect it to, but I think it at least would give them some idea that Mr. Brown has had considerable time to think about this and the impact of his actions on the family of Lieutenant Allan and his loved ones. I do think his remorse is genuine. I do think it is a significant mitigator.

The Court would note, however, that I think that as with the State of Indiana, I think the lack of insight in terms of saying that the drugs and alcohol weren't a problem, I think is difficult to understand. I give the Defendant the benefit of the doubt that perhaps having been incarcerated for five years talking to the presentence writer, that maybe he doesn't think drugs and alcohol are an issue for him now. That might be what he meant, but it's awfully hard to sit and read that, knowing that so much of the defense was based upon the brain injuries as well as the drugs involved, and Dr. Blake's testimony again that he should never have been driving at all given his physical condition and should never have had a weapon.

Any time you have an individual with mental health issues, when

you mix it with drugs, whether it's marijuana or cocaine or meth or synthetic marijuana when you don't know exactly what it is you're getting on the street, it makes it incredibly dangerous. Some people get away their entire lives doing those kinds of things and there are never any negative consequences. The ones that don't, come to me, and that's just the realty, but it's always there.

It's why we always tell people when they get their medication, do not drive, do not operate heavy machinery, do not use -- do not come in with weapons, because you have enough challenges in terms of your mental health background that to add to it drugs that are not prescribed for you, it's just an absolute recipe for disaster and that's exactly what we've seen here.

So the Court gives the mitigating circumstance of being remorseful, again it's somewhat cut down by, again, the lack of insight and the fact the Defendant had knowledge, a reasonable knowledge of his medical condition and chose, one, not to address it, two, to aggravate it by adding illegal medication so that his conduct was in this case criminal.

The next aggravator or mitigator mentioned by the defense was that incarceration would create an undue hardship on the Defendant's dependents.

The Court notes that the Defendant clearly has good characteristics about himself. You're talented. You have an artistic talent. You have people, who despite being involved in one of the worst criminal offenses you can, the shooting, killing of a police officer, they are still here and they still love and care for you. They have been here throughout. The Court's heard how much they care about you, even while you've been locked up. That's not the normal experience I get with people that are charged with really, really bad offenses.

Most of the time their family has discarded them many years before, and they're certainly not in the gallery. But you are -- clearly you have good things about your background in terms of family, friends, and loved ones. But the law talks about an undue hardship, and to that extent I don't find that this is a mitigating circumstance that is any different than anyone else charged with a criminal offense.

You are going to go away to the Department of Correction, as you have been there, for a significant period of time. And as the State has pointed out, your child will definitely be a young man or a mature man by the time you finish your sentence. It is a hardship as it is on every defendant's family, but it's not an undue hardship within the meaning of the law, particularly when you talk about the -- compare it to the hardship of the family of Lieutenant Allan and the very real circumstances I know you already know, about how he doesn't have a father and he doesn't have someone that's going to take him to school and all of those things. You at least will be able to communicate with your son, teach him the messages, have an opportunity to show him that this, as your attorney said, that this incident doesn't define you. Lieutenant Allan's son will never have that, will never have that comfort. And so the Court doesn't find that this is an undue hardship within the meaning of the statute.

I think Ms. Turner also indicated that the Defendant has significant mental health and substance abuse issues. Even though he has been within a controlled environment

for the last five years, given the significance of the damage that was documented within the exhibit that I
referred to earlier, the Defendant is clearly, I think, going to need continuing mental health treatment.
Mr. Brown, there is nothing you can do to bring Lieutenant Allan back to life, but there are still things that you can do that can be positive for your son, for your community. You can talk about your background and experiences. You can express it through the very significant talent that you have as an artist and make some difference in some lives, but the first thing you have to do is forgive yourself. And I realize that's incredibly hard, particularly given the serious crime that you have committed here, but you can't take it back. All -- you are going to pay a substantial penalty for that, and that is your punishment, but you can't punish yourself further by not making something positive of the rest of your life. If you don't, then everything that Lieutenant Allan stood for, that people that have bad circumstances can get better, that there are people willing to help them, everything that he stood for that he was willing to do, he would have done for you now, and you need to try to find some way of making something positive of the rest of your life. If you do, at least some of what Lieutenant Allan sacrificed for won't totally have been in vain. You have that opportunity, and so I would ask you to reach within yourself, continue to get the counseling which I'm sure you sorely need.
The Court's very mindful that substance abuse issues typically aren't because people like drugs. Some people do. Most often it's because the substance abuse is a response to a very deep pain that you're suffering somewhere in your psyche, and your pain in your background is so clearly demonstrated within the presentence report, within the mitigation, evidence that I heard during the course of the trial. You can't do anything about the terrible upbringing you had in terms of your mom's life, her drug addiction, her lack of parental supervision or lack of being there for you, going in and out of foster homes, being beaten and abused by boyfriends who often times would regard you as competition for your mother's affections. All of those were problems that your mother had, that those other men had, and you had to absorb them as a child and it's coming out in terms of your substance abuse issues. It's clear it's coming out in terms of being a cutter and being suicidal in the past. Those are things that will continue to stay with you unless you work on them.
I've heard testimony that you found some comfort in faith. I think that's laudable if that is helpful to you, but I do want to strongly encourage you to get every mental health counseling and every substance abuse counseling you can get. Only then, I think, will you be able to make yourself whole and perhaps find the forgiveness for yourself that is so important for you to go forward from this terrible, terrible action that you've done.
Ms. Turner, have I missed any -- I think I've tried to address all of the mitigating circumstances that you've argued. I want to make sure that I don't miss anything. For the record, is there anything that you cited that I

haven't addressed?
MS. TURNER: No, Judge.
THE COURT: Okay. And looking then, the Court having addressed the mitigating circumstances, the Court then looks at the aggravating circumstances. Again, the discussion of the criminal history is the State cited that as an aggravating circumstance. I don't think the criminal history per se is. We have limited -- we have a 2014 marijuana possession as a Class A misdemeanor, we have a shoplifting incident that was a juvenile offense that may have been a felony if committed by an adult. Those were all somewhat in the past, but as the Court noted, the Defendant hasn't exactly been a law-abiding citizen through his illegal use of drugs. But the Court doesn't find that necessarily to be a substantial aggravating circumstance.
The Court notes that, as I've indicated a number of times, I think the most difficult thing here is the Defendant had adequate forewarning of the danger of his brain injuries, his reaction to it, the family members talking about him zoning out, the multiple car crashes and not seeking medical help for not -- because he did want to avoid the potential negative consequences of driving a car and acknowledging that he was a drug addict. The Court finds that to be -- that is an aggravating circumstance. I refer to his potential lack of insight in terms of the drug usage and how that aggravated or affected his mental health and his physical challenges.
The Court notes from the aggravating circumstances that, the State did specifically address that, but it's hard to ignore that the Defendant fired a fired a weapon 18 times at close range at an individual. Whether he knew he was a police officer or not, he was firing at a human being and emptied until the clip was emptied, and I believe the record was that he hit Lieutenant Allan 11 times. I may be wrong on the exact number, but it was a significant number.
The Court also notes that while the list of aggravating circumstances in 35-38-1-7.1 does not list the killing of a police officer as an aggravating circumstance, it's interesting it doesn't have that language, but the legislature saved that language for the imposition of the most extreme sanctions, life without parole and the death penalty. Specifically, within 35-50-2-9(b)(6), in which the killing of a law enforcement officer, those people that are involved in the kinds of occupations that I indicated earlier, those people that put their lives and their careers on the line to deal with the most challenging of our citizens, that's listed as an aggravating circumstance for those -- for death penalty and LWOP. The Court believes that that's also an aggravating circumstance the Court can consider within 35-38-1-7.1(C). And it's not because police officers are special. It's the -- they are, but it's because of the nature of the kind of work that they do and the sacrifice to the community. Our entire community is damaged, our entire community grieves for the loss of Lieutenant Allan, and the sacrifices the police officer made every day. And so when we see people that are killed in the line of duty, even if the evidence doesn't show they intentionally killed them in the line of duty, the

Court believes that's still an aggravating circumstance.
I'm mindful that there are individuals that would simply say if you kill a police officer that the maximum penalty ought to be there in every case, but that's not the law. It is a factor, and it's an aggravating factor but it's not the sole factor, and it has to be considered and balanced with the other mitigating circumstances that the Court has noted. And so I do find that to be a significant aggravator because it is a loss to the entire community, it's a loss to the Southport police officers, and to that extent I think it is, again as I indicated before, more of an undue hardship for them than it is as a mitigator for the victim.
Mr. Anderson, I believe I've addressed all of the aggravating circumstances that were argued by the State, but did I miss any?
MR. ANDERSON: That is correct, Judge, thank you.
THE COURT: Then in balancing, and again this is not as I've indicated before, this is not a value judgment on the life of Lieutenant Allan or trying to seek revenge for the killing of a law enforcement officer which every good citizen would abhor, but Indiana's Constitution, like so many other constitutions tell us that revenge is not the motivation for sentencing in the criminal justice system. It is rehabilitation. In balancing all of the factors, the aggravating and mitigating factors, the Court sentences the Defendant to a period of 58 years. The Court suspends three of those years to be placed on probation to make sure that if the Defendant survives this sentence, which I don't know as he will as a practical matter, but if you do, I want to make sure that when you come out that there will be mental health services available for you, substance abuse services available for you. I need to make sure that --because this isn't an isolated incident. This is a lifetime of being abused, a lifetime of having bad parental examples, a lifetime of accidents and mental health challenges, and to simply release you from the Department of Correction without supervision and without health would be not within trying to help you be integrated into society.
This is -- the math of 55 years, I think it's almost 46 actual years is what you're looking at. The technological changes, the changes in our culture, we look at just what's happened in the five or ten years of what we do in terms of technology. It's hard to imagine where we will be in 40 to 50 years, and coming back into a culture that you will have had no experience at all. If you do come back to that culture, it will be a significant challenge, so the Court wants to make sure that there are mental health and substance Abuse counselors available for you so that you get that help if it's available.
The Court does find the Defendant indigent as to fines and costs given the significant period of incarceration. The Court will waive all probation fees, except for the $100 administrative fee, assuming there is one at that time, because I want to make sure that the Defendant gets the help that he needs rather than that simply going to the probation department.
I'm about to give him his appeal rights. Is there anything illegal in terms of the sentence I'm imposing at this point, Ms. Turner?

> MS. TURNER: No, Judge.
> THE COURT: Mr. Anderson?
> MR. ANDERSON: No, Your Honor.
> THE BAILIFF: Put the minimum on the misdemeanor?
> THE COURT: Yes, thank you. On the misdemeanor offense for the possession of marijuana, one year executed to run concurrently with Count One.

[Tr. Vol. IX, p. 58-74].

2. Notice of Appeal

On May 31, 2022, a Notice of Appeal was filed [App. Vol. II, p. 2-5].

3. Record of Proceedings

The Notice of Completion of Transcript was deemed filed September 23, 2022.

STATEMENT OF THE FACTS

On July 27, 2017, a humid, overcast late summer day, at 2:38 pm in the afternoon, a 911 dispatch to a car accident on South Madison was made [Tr. Vol. VI, p. 7, 16]. At 2:40 pm, Lieutenant Aaron Allen [hereinafter Lt. Allan] responded he was on his way to the scene [Tr. Vol. VI, p. 7, 16]. At 2:44 pm, a Code One went out, indicating an Officer was down [Tr. Vol. VI, p. 16]. Six minutes and lives changed forever.

In and out of consciousness, hanging upside down stuck in the driver's seat of his car, a smell of chemicals and burnt rubber in the air, and surrounded by the sounds of voices and sirens, a man was trying to process what was happening to him [Tr.Vol V, p. 50, 52, Vol.VI, p. 92, 125, 209, 210, 224 Vol. VII, p. 29]. What started as a day for fun with his new girlfriend quickly changed as he and his friend hurled through space in his new car, travelling the length of a football field, hitting fences, concrete barriers, four foot high bushes, a tree, and finally after

flipping at least one time, coming to rest upside down in a yard, remaining three wheels spinning and debris leaving a path marking the destruction [Tr. Vol. VI, p. 92, 125, 209, Vol. VII, p. 29, V. VIII, p. 111-120]. The first two people who ran to aid observed the non-moving unconscious man, and assumed he was probably dead from the violence of the accident [Tr. Vol. V, p.53, Vol. VI, p. 220-221].

The day began with a first for his five year old son, Lt. Allen planned to start his work day a little later, holding his son's small hand in his own, escorting him to the adventure of his first day of his first year of formal learning, a milestone every parent dreads and looks forward to for their progeny [Tr.Vol..V, p. 171-172]. Later, back on duty, he heard a radio call to an accident with possible injury and with no hesitation jumped into help mode and responded he was on his way, as that is who he was, always at the ready to help whoever was in need [Tr.Vol. VI, p. 7, 16].

Tragically, the lives of these two men then collided. Lt. Allen, trying to calm and steady the potentially critically injured Jason Brown, crawled inside the overturned car and tried to render aid [State's Exhibit 148]. Then the shots started, and despite his best effort to retreat, Lt. Allen was shot at least ten times, and stood no chance of recovering from his wounds [State's Exhibit 148, Tr. Vol. V,p. 66, 184, Vol. VI, p. 183] . There were already many first responders to the crash scene, and even though Lt. Allen was quickly loaded into an ambulance, attempts at revival were futile. There was no surviving the attack [Tr. Vol. VI, p. 168-186].

Jason Brown, screaming, incoherent, making no sense, and scared, had found his gun in his back wasteband and on impulse grabbed it and shot towards the person coming towards him in the tiny compartment of his overturned vehicle [Tr. Vol. VI, p. 213, 226, State's Exhibit 148]. Brown unloaded his weapon until he could shoot no more [State's Exhibit 148]. By then he was

being shot by the many law enforcement officers also on the scene of the accident [Tr.Vol. V,p. 137-138, 181-182]. After he was no longer moving, he was cut from his seatbelt and dragged from his car like a rag doll [Tr. Vol. V, p. 138, Vol.VI, p. 137]. For a second time, the witnesses, primarily nurses, believed he was dead [Tr. Vol. VI, p. 60-61, 90-91, 134].

More facts shall be added as necessary.

SUMMARY OF THE ARGUMENTS

The main question is why did Jason Brown shoot Officer Allen. The scene was both a car accident and an investigation into shooting a beloved police officer. Two investigative groups were deployed, crash scene investigators and criminal homicide detectives. Despite the double investigative force, seemingly no one thought to preserve key evidence to what was going on with Brown that day, namely his blood. The homicide detective, nineteen days after the incident, went to the hospital with a warrant for the blood, and learned that the blood was destroyed the week before, but that the urine was available. The detective then secured a warrant for the urine and had a toxicology analysis performed, resulted in a report that at some point, Mr. Brown had ingested cocaine, marijuana and spice. However, without the blood evidence, there was no way to know what he had ingested that day. At trial, the State was allowed, after a hearing to exclude the urine results, to present evidence and argue that Mr. Brown had used spice on the day of the incident, causing his violent reaction to Lt. Allan. The defense renewed the objection, and preserved Mr. Brown's due process right to the fair presentation of evidence, which would not have let the State gain an advantage by the negligent destruction of evidence and use of the less reliable and less exact urine evidence.

The evidence at the bench trial left reasonable doubt that Jason Brown knowingly and intentionally killed Lt. Allan. Mr. Brown was in and out of consciousness in the moments before

the shooting, had endured a violent accident, and was trying to process what was happening to him as his hung precariously from his seat belt upside down in his car. He was shooting to protect himself from what he could not process, which tragically was Lt. Allan trying to aid him. He did not knowingly and intentionally shoot Lt. Allan. The urine sample analysis was unreliable evidence of what was in Mr. Brown's system at the time of the accident and should never have been admitted. The conviction for Murder should be reversed.

ARGUMENT ONE

THE EVIDENCE OF THE URINE TOXICOLOGY RESULTS SHOULD HAVE BEEN EXCLUDED

A nurse leaving the Community South surgery center was driving on Madison Avenue and saw a car crash that ended with the car upside down in a yard, and she immediately jumped out of her car and asked the car next to her to call 911 [Tr.Vol. V, p. 44-46, Vol. VI, p. 127] Soon another nurse stopped at the scene to assist, then a nurse from across the street came over [Tr. Vol. VI, p. 188, Vol. VII, p. 80]. The crash site itself was seven hundred and twenty five feet, over the length of a football field [Tr. Vol V, p. 247-248, Vol. VII, p. 28]. The car rolled at least one time [Tr. Vol. V, p 45, Vol. VI, p 123]. Jason Brown's car hit a concrete median, a fence, several shrubs and a pine tree, one neighbor quipped that it sounded like a dumpster being dropped [Tr.Vol VI, p. 92, 125, 209, Vol. VII, p. 29]. The front head and front side airbags had deployed [Tr. Vol. VII, p. 36]. The car was smoking and there was a burnt rubber smell [Tr. Vol. V, p. 50, Vol VI, p 210, 224] Mr. Brown was suspended by his seat belt in the overturned car, in and out of consciousness [Tr. Vol. V, p. 52, Vol. VI, p. 212]. Mr. Brown was incoherent and disoriented, moving his hands through the debris on the roof of his car [Tr. Vol. VI, p. 213, 226]. The nurses on the scene decided if he had a pulse, to leave him in the car as a precaution

against a cervical spine injury, but if no pulse, they would pull him out [Tr.Vol. V, p. 53, Vol. VI, p. 220-221]. He had a pulse, so they left him hanging in his car because they were afraid to move him [Tr. Vol. V, p. 53, 55, 57, Vol. VI, p. 220]. There was a passenger in the car, but he got out immediately after the accident [Tr. Vol. V, p. 54].

Lt. Aaron Allan responded to the 911 and was on scene [Tr. Vol. VI, p. 7, 16]. He crawled towards the inside of the vehicle and attempted to calm the then screaming Jason Brown [Tr. Vol. V, p. 127, Vol. VI, p. 133, State's Exhibit 148]. Lt. Allan had his body camera on and the entire interaction is memorialized [Tr Vol. VI, p. 10, State's Exhibit 148]. Lt. Allan tells Jason Brown to stop moving. Lt. Allan then realizes Mr. Brown is trying to grab something out of his pocket, and then the gunfire occurs [State's Exhibit 148]. Other officers on the scene began shooting Jason Brown [Tr.Vol. V,p. 137-138, 181-182]. The nurses tended to Lt. Allan, trying to get a pulse and trying to do compression, and he was quickly taken away in an ambulance [Tr. Vol. V, p. 65-67]. At the scene, it appeared that Lt. Allan was dead and a Code One alert was sent out [Tr. Vol. V, p. 184]. Jason Brown was hanging limp from his car, his seatbelt was cut and he was dragged from the car [Tr.Vol. V, p. 138, Vol. VI, p. 137]. Some witnesses thought he was dead, but he was taken by ambulance, unconscious, to the hospital [Tr.Vol.VI, p. 60-61, 90-91, 134].

As a result, the scene was processed as a crime scene and as a traffic accident, with two law enforcement teams investigating [Tr.Vol.VI p.158-159, Vol VII, p. 34]. The criminal investigation met in a command vehicle to discuss the different warrants they might need, and a blood draw never came up [Tr.Vol. VI, p. 146-147]. The crash scene investigators filed a report that said a blood alcohol test was performed on Mr. Brown, and then later amended the report over a year later to say it was not [Tr. Vol. VII, p. 31, 40]. After a later discussion with the

prosecutor, the lead detective decided to get a warrant for a blood sample from Jason Brown taken by the hospital [Tr. Vol. VI, p. 147]. The detective, with warrant in hand on August 15, 2017, went to Eskinazi, and a nurse informed him that the blood had been discarded the week before. [Tr.Vol. VI, p. 148]. The nurse did tip him off that the urine sample was still available, and he secured a warrant and retrieved the urine sample [Tr. Vol. VI, p. 148-149]. The detective sent the urine sample to a lab in Pennsylvania [Tr. Vol. VI, p. 153].

The toxicologist from the lab explained that urine results are an indicator of past usage, indicating what is in the system from ingestion either hours or days prior [Tr.Vol. VII, p. 180]. It does not indicate the causation of a person's behavior or the amount ingested at the time of the event like blood evidence would [Tr. Vol. VII, p. 180-181]. Urine is basically the waste product of the ingested matter, whereas blood can indicate what is currently accessible to the brain [Tr. Vol. VII, p. 184]. She indicated she found the inactive metabolite of THC, cocaine, BE (a metabolite of cocaine) and two synthetic cannaboids referred to as "spice" [Tr.Vol. VII, p. 188, 190, 193, 195]. She also found hydromorphine that was likely administered in the hospital for his treatment from the accident/incident [Tr. Vol. VII, p. 195]. Other than the hydromorphine, there is no way to pinpoint when any of the drugs were taken, even including possibly days before July 27. [Tr. Vol.VII, p. 250].

On May 24, 2021, Mr. Brown, by counsel, filed a Motion to Exclude the Toxicology results [App. Vol IX, p.129]. On August 11, 2021, the parties had a hearing on the Motion to Exclude the Toxicology results [Tr. Vol. IV, p. 39] The parties filed briefs on the issue [App. Vol. XVII, 165-128]. On January 3, 2022, the Court denied the Motion [App. Vol. XVII, 22-23]. This hearing and the pleadings were incorporated by reference during the trial [Tr. Vol. VI, p. 164-165]. Counsel for Mr. Brown again objected to the admission of the urine evidence at the

time the toxicologist tested [Tr. Vol. VII, p. 182].

The State relied on the evidence heavily. "Of course, they were getting high, Judge. Mr. Brown had gone 16 or 17 hours without cocaine. He needed something. Hasan London brought the Swishers, had the spice, according to Jason Brown." [Tr. Vol. VIII, p. 189]. The State argued the video shows someone who smoked spice and was having a bad reaction and hallucinations, thinking he is being robbed [Tr. Vol. VIII, p. 192]. Ultimately, the Court found Mr. Brown guilty of murder and possession of marijuana [Tr. Vol. VIII, p. 214].

The State, by its own negligence, failed to secure the evidence that would have indicated whether Jason Brown was under the influence of any substance at the time he crashed his car and shot Lt. Allan. Securing blood from a person after an accident, after a serious crime, after unloading a gun while screaming deliriously, would be basic law enforcement protocol. Substituting the missing evidence with less reliable evidence and creating an inference that it could replace the blood evidence is unacceptable and a deprivation of due process. While the loss of the blood evidence alone could have been characterized as the loss of "potentially useful" evidence, the State rendered it materially exculpatory when they decided to substitute the urine toxicology results in its stead.

The Due Process Clause of the Fourteenth Amendment requires the State to disclose favorable evidence that is material either to guilt or to punishment. **United States v. Agurs**, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); **Brady v. Maryland**, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Pursuant to the Due Process principles, criminal prosecutions must comply with prevailing notions of fundamental fairness. This standard of fairness requires criminal defendants be afforded a meaningful opportunity to present a complete defense. **California v. Trombetta**, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532, 81 L. Ed. 2d 413 (1984).

To safeguard that right, the Court has developed "what might loosely be called the area of constitutionally guaranteed access to evidence." **United States v. Valenzuela–Bernal**, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982). The violation is not negated when it is an actor of the State, and not the prosecutor themselves, who has failed to preserve the evidence. See **Kyles v. Whitley**, 514 U.S. 419, 115 S.Ct. 1555, 1569 (1995).

To prevail on a due process claim related to the suppression of exculpatory evidence, the burden on the defense is to show that the prosecution suppressed evidence, that the evidence was favorable to the defendant either as to guilt or punishment, and that the evidence was material, meaning there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different. **Brady v. Maryland**, 372 U.S. 83 (1963).

The failure to preserve certain critical evidence falls within the guarantee. In **Pimentel v. State**, 181 N.E.3d 474, 479–80 (Ind. Ct. App.), **transfer denied**, 188 N.E.3d 852 (Ind. 2022), this Court stated:

> To determine whether a defendant's due process rights were violated by the State's failure to preserve evidence, we must first determine whether the evidence was " 'materially exculpatory' " or " 'potentially useful.' " **Land v. State**, 802 N.E.2d 45, 49 (Ind. Ct. App. 2004) (quoting **Chissell v. State**, 705 N.E.2d 501, 504 (Ind. Ct. App. 1999), *trans. denied*), *trans. denied.* Evidence is materially exculpatory if it " 'possesses an exculpatory value that was apparent before the evidence was destroyed' " and must " 'be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.' " **Chissell,** 705 N.E.2d at 504 (quoting **California v. Trombetta**, 467 U.S. 479, 489, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984)). "While a defendant is not required to prove conclusively that the evidence was exculpatory, there must be some indication in the record that the evidence was exculpatory." **Chissell,** 705 N.E.2d at 504. "Exculpatory is defined as '[c]learing or tending to clear from alleged fault or guilt; excusing.' " **Land,** 802 N.E.2d at 49 (quoting **Wade v. State**, 718 N.E. 2d 1162, 1166 (Ind. Ct. App. 1999), *trans. denied*). When the State fails to preserve materially exculpatory evidence, a due process violation occurs regardless of whether the State acted in bad faith. **Terry**, 857 N.E.2d at 406.

Pimental at 479-480.

The State, via the detectives, negligently failed to secure relevant evidence, namely the blood. Had the State chosen to forego an argument that Jason Brown smoked spice that day, the failure to preserve the blood may have been less material, though it would have been helpful to the parties to know if Mr. Brown was under the influence or not. However, the State made the failure to preserve this evidence material when it decided to instead use the less reliable urine toxicology report, which could not be refuted as the blood evidence was destroyed. The State should not have been allowed to present this evidence and doing so was a due process violation. The State failed to preserve evidence that went to the mental state of Jason Brown, and directly relevant to the knowing and intentional elements of committing a murder. The State then bolstered the failure by presenting evidence that created an inference of a knowing ingestion of an illicit substance, that could not be refuted because the more exact blood evidence had been destroyed.

At a bench trial, the judge enjoys deference to evidentiary rulings, presuming to know the rules of evidence and able to ignore the extraneous and irrelevant evidence. **Ruiz v. State**, 926 N.E.2d 532, 535 (Ind. Ct. App. 2010). However, the record as a whole must be considered when deciding whether the admission of evidence rose to a level of a Constitutional violation. **Kyles** at 1566.

The defense moved to exclude the results of the urine toxicology results, and presented a full hearing with evidence and briefs, and the judge denied the exclusion. The defense then moved to exclude again at the time the evidence came in at trial. The judge denied this again. The judge did state in his ruling of guilt that he was free to disregard the argument that Jason Brown smoked spice that day, but he did not say that he did, but said that the State did disprove the defense theory of head trauma [Tr. Vol. VIII, p. 211-213]. The Court stated:

> This also is not a case where the State must prove the Defendant's intoxication beyond a reasonable doubt. This is not a crime, unlike operating a motor vehicle under the influence of liquor causing death, where intoxication is an element of the offense. If it were, the State's failure to obtain and preserve the Defendant's blood sample would have crippled its case. While the State has argued vigorously its theory of the case with an emphasis on the Defendant's drug use and/or Defendant's reaction to a potential drug withdrawal, the Court is not required to accept or even agree with that premise.
>
> [Tr. Vol. VIII, p. 211]

The problem is that the Court is acknowledging that the evidence it ruled was admissible was problematic, without acknowledging that the evidence that was admitted placed the defense and its witnesses at an extreme disadvantage. Certainly the expert witness, largely disregarded by the Court, would have had more credibility on causation and medical condition had she been able to testify what the blood toxicology results would have shown.

The State was responsible for the blood evidence not being available. The blood toxicology results would have gone directly to the mental condition of Jason Brown at both the time of the accident and the shooting. The issue was exacerbated by allowing the State then to present evidence of the urine toxicology results, which could only say Jason Brown had certain drug metabolites in his system and could not pinpoint when he had ingested them or whether he was even under the influence. The access to the blood was necessary to challenge the results of the urine toxicology report. Had the blood evidence been preserved, Jason Brown's defense of causation, important to the knowing and intentional element of Murder, could have had a completely different outcome. Expecting the blood evidence to be preserved is not excessive or unrealistic. The State should not have been allowed to present the urine toxicology evidence or use it to argue that Jason Brown smoked spice that day. The State should not have been allowed to profit from its own negligence. Based on the Due Process violation, Jason Brown's conviction must be reversed.

ARGUMENT TWO

JASON BROWN DID NOT KNOWINGLY OR INTENTIONALLY KILLED LT. ALLAN

The Court, in reviewing the issue of sufficiency of evidence, examines the evidence favorable to the judgment and all reasonable inferences drawn therefrom. **Case v. State,** 458 N.E.2d 223 (Ind. 1984)**; Clark v. State**, 695 N.E.2d 999 (Ind.Ct.App. 1998). When substantial evidence of probative value exists that establishes every material element of an offense beyond a reasonable doubt, the conviction will be affirmed. **Id**. When the record does not reveal substantial evidence of probative value and there is a reasonable doubt, the conviction must be reversed. **Id**. The reviewing Court will not engage in the re-weighing of evidence or the assessment of witness credibility. **Davis v. State**, 598 N.E.2d 1041 (Ind. 1992). Among the most fundamental precepts of American criminal justice is the accused is presumed innocent until proven guilty beyond a reasonable doubt. **McCowan v. State**, 27 N.E.3d 760, 761-62 (Ind. 2015)

Intent for Murder

Jason Brown was charged as follows:

> On or about July 27, 3017, JASON DANE BROWN did knowingly or intentionally kill another human being, to-wit: AARON ALLAN

[App. Vol. II, p. 137, 157].

To convict Jason Brown of murder, the State needed to prove that Mr. Brown knowingly or intentionally killed Lt. Aaron Allen. Indiana Code 35-42-1-1. Conduct is "knowingly" if, when engaged in the conduct, the actor is aware of a high probability that he is doing so, as opposed to "recklessly" where the conduct is done with plain, conscious, and unjustifiable disregard of harm

that might result, and that disregard is a substantial deviation from acceptable standards of conduct. 35-41-2-2 (b) & (c). It is important to note Mr. Brown was charged with a "knowing" act only, not reckless [App. 17].

A person knowingly kills when they are "aware of a high probability" that their actions may kill. Ind. Code § 35-41-2-2(b) (2008). "Because knowledge is the mental state of the actor, the trier of fact must resort to reasonable inferences of its existence." **Young v. State**, 761 N.E.2d 387, 389 (Ind. 2002).

Leonard v. State, 80 N.E.3d 878, 882–83 (Ind. 2017)

Jason Brown was involved in a violent wreck, that spanned over 700 feet, through concrete barriers, bushes, a tree, and rolling at least one time [V6, 92-96, 123-129]. His car came to rest upside down in a yard, Mr. Brown dangling upside down, caught by his seatbelt [V. 5, 46-54]. Mr. Brown was in and out of consciousness [V. 6, 214]. What happens next has been memorialized through Lt. Allan's body camera.

Defendant's Exhibit H is an enhanced video of what happened when Lt. Allan entered Mr. Brown's car. Mr. Brown is moving about, not making much sense, as Lt. Allan tries to calm him. Mr. Brown then finds his gun, and shoots Lt. Allan until the gun is unable to fire. Lt. Allan, who was trying to assist Mr. Brown, dies from his injuries. The entire incident, from the first 911 dispatch to the call of Code One officer down, was six minutes.

The scene witnesses who observed Mr. Brown prior to the shooting described him as basically non-responsive and then agitated. There was no conversation with Mr. Brown, there was no acknowledgement of a general understanding of what was happening to him. He was trapped, understandably scared, and confused. While it is known that Lt. Allan was not trying to hurt him, and trying to keep him calm, from Jason Brown's viewpoint, someone was crawling into his car. Mr. Brown's reaction was seemingly reflexive. A fight or flight response, but being

trapped upside down in his car, there was no flight, only fight.

There is a reasonable doubt that Jason Brown did not knowingly or intentionally kill Lt. Allan, as he was not processing the scene correctly. It is akin to self-defense, though his perception of what was happening was not reality. Jason Brown did not wake up that morning intending to inflict harm on anyone, the record is very clear. This was out of character for Jason Brown, that is also clear. What happened that day is truly tragic, and certainly not the outcome that Lt. Allan or his family deserved. As stated above in Argument One, the urine toxicology evidence should not have been admitted, nor the State allowed to argue that Jason Brown smoked spice that day. The State did not rebut the defense that Jason Brown suffered cognitively after the accident. The State has failed in its burden to prove, beyond a reasonable doubt, that Jason Brown knowingly and intentionally killed Lt. Allan. The conviction should be reversed.

CONCLUSION

For the foregoing reasons, Mr. Brown respectfully requests this Court to remand the case to the trial court to reduce his conviction to voluntary manslaughter and sentence accordingly in alliance with his due process rights and for all just relief.

Respectfully submitted,

_/s/Ann M. Sutton_____
Ann M. Sutton
Chief Counsel
Marion County Public Defender Agency
Att. No. 16198-49
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Appellant's Brief** has been delivered through **E-service using the Public Defender Information E-filing System** to Mr. Theodore Rokita, Attorney General of Indiana, 219 State House, Indianapolis, IN 46204, on this 18th day of January, 2023.

_/s/Ann M. Sutton_____
Ann M. Sutton

Marion County Public Defender Agency
Ann M. Sutton
151 N. Delaware, Suite 200
Indianapolis, IN 46204
317/327-3982
Ann.sutton@indy.gov