

MONTGOMERY COUNTY COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, : Case No. 2019-CR-1088  
Plaintiff, : Judge Huffman  
v. :  
TEAVEN CURTISS, :  
Defendant. :

**MOTION FOR RECUSAL**

Now comes the Defendant, Teaven Curtiss, and moves this Court for an order recusing itself from further proceedings in this case for the reasons set forth in the accompanying memorandum.

Respectfully submitted,

**/s/Eric G. Eckes**

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## MEMORANDUM IN SUPPORT

### I. RELEVANT BACKGROUND

The Second District Court of Appeals opinion contains the necessary findings to evidence several *Brady* violations occurred at the hands of the trial judge, as set out more fully in the accompanying motions to dismiss. This Court's failure to disclose *Brady* evidence gives the appearance that this Court's impartiality is questionable. Whether true or not, the appearance is there, which requires recusal.

Furthermore, as a result of the withheld *Brady* material identified by the court of appeals, Curtiss has filed two motions to dismiss, one on the basis of violations by this Court and the other on the basis of violations by the state. Because this Court cannot be a neutral arbiter and maintain the appearance of impartiality in deciding the motions, this Court should recuse itself.

### II. ARGUMENT

#### A. The appearance of impartiality is sufficient to warrant recusal.

A judge should step aside if a reasonable objective observer would harbor serious doubts about the judge's impartiality. "The law requires not only an impartial judge but also one who appears to the parties and the public to be impartial." *In re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720, ¶ 11.

Canon 1 of the Ohio Code of Judicial Conduct provides that "[a] judge shall uphold and promote the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of *impropriety*." (Emphasis sic.) Jud.Cond. Canon 1. Within Cannon 1, Rule 1.2 provides that "[a] judge shall act at all times in a manner that promotes public confidence in the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the

appearance of *impropriety*.” (Emphasis sic.) Jud.Cond. Rule 1.2. “‘Impartial,’ ‘impartiality,’ and ‘impartially’ mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.” Jud.Cond., Terminology. “The test for appearance of impropriety is an objective standard that focuses on whether the conduct would create, in reasonable minds, a perception that the judge violated this code, engaged in conduct that is prejudicial to public confidence in the judiciary, or engaged in other conduct that reflects adversely on the judge’s ... impartiality.” Jud.Cond. Rule. 1.2, Comment [5]; *see also In re: Disqualification of Martin*, 75 N.E.3d 225, 2016-Ohio-8590, ¶ 3 (“The proper test for determining whether a judge’s participation in a case presents an appearance of impropriety is ... an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.”).

Canon 2 of the Ohio Code of Judicial Conduct provides that “[a] judge shall perform the duties of judicial office *impartially*, competently, and diligently.” (Emphasis sic.) Jud.Cond. Canon 2. Within Canon 2, rule 2.11(A) of the Ohio Code of Judicial Conduct provides that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned. . .” Jud.Cond. Rule 2.11(A). “Under this rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of divisions (A)(1) to (6) apply.” Jud.Cond. Rule. 2.11, Comment [1].

This motion will not spend significant time detailing the *Brady* violations perpetrated by the trial court for three reasons. First, the fact that the trial court committed *Brady* violations is now well-established by the Second District Court of Appeals’ opinion. Second, defense counsel is still not privy to the scope and details of the *Brady* violations because the actual *Brady* evidence has not been turned over to the defense at this point in the proceedings. Third, because a more

detailed explanation of the trial Court's *Brady* violations is included in the accompanying motion to dismiss, it will not be restated here. Consequently, at issue is what remedy is appropriate for this Court's due process violations.

As set out more fully in the accompany motion to dismiss, a trial court does have discretion to dismiss this case for *Brady* violations at this stage. *Brady* violations can serve as both the reason overturning a conviction on appeal and the basis for a dismissal with prejudice upon remand. *State v. Keenan*, 143 Ohio St. 3d 397, 2015-Ohio-2484, 38 N.E.3d 870, ¶ 12. According to the Supreme Court of Ohio,

In so holding, we reject the state's argument that because the *Brady* violations led to the granting of the writ of habeas corpus, they cannot also serve as the basis of a dismissal with prejudice. It is possible for a *Brady* violation (or other type of discovery abuse) to be so severe, so detrimental to the interests of justice that it can be the basis for the granting of a great writ and for the subsequent granting of a motion for dismissal.

*Id.* However, prior to dismissing a case with prejudice, “[a] trial court must inquire into the circumstances surrounding [the] violation . . .” *City of Lakewood v. Papadelis*, 32 Ohio St. 3d 1, 1, 511 N.E.2d 1138 (1987).

**B. This Court cannot maintain the appearance of impartiality while investigating itself.**

A Court addressing Curtiss' motions to dismiss must conduct an investigation into the circumstances surrounding the due process violations. This Court cannot investigate itself and remain in compliance with Canons 1 and 2 of the Ohio Code of Judicial Conduct.

**C. This Court cannot maintain the appearance of impartiality while sitting in judgment of itself.**

After an investigation, the court is then tasked with ruling on the motions to dismiss, which requires analysis of the *Parson* factors. The Ohio Supreme Court in *Parson* “established three

factors that should govern a trial court's exercise of discretion in imposing a sanction for a discovery violation. The *Parson* factors are: (1) whether the failure to disclose was a willful violation of Crim.R. 16, (2) whether foreknowledge of the undisclosed material would have benefited the accused in the preparation of a defense, and (3) whether the accused was prejudiced. *State v. Darmond*, 135 Ohio St. 3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 35, citing *State v. Parson*, 6 Ohio St.3d 442, 445, 453 N.E.2d 689 (1983), syllabus. See also *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 115.

This Court cannot sit in judgment of itself and remain in compliance with Canons 1 and 2 of the Ohio Code of Judicial Conduct. As the entity standing accused of the violations, the Court cannot also be the arbiter of the seriousness of the allegations and the remedy for the due process violations. Notably, this is not a situation where the defense is accusing the trial court of due process violations haphazardly in attempt to for the assigned judge to recuse. Rather, the appellate court already found a violation of due process perpetrated by the trial judge, as outlined more fully in the simultaneously filed motions to dismiss.

To be clear, Curtiss is claiming this Court's conduct was willful. During a hearing on September 1, 2020, the trial judge stated: "I personally went through each and every page of the [MCCS] records that were provided to me." Tr. of Proc., p. 43. Either this Court deliberately withheld exculpatory material, or this Court did not recognize the material for what it was. Either way, this Court cannot impartially determine whether its own conduct was willful.

Further, this Court cannot impartially determine the proper remedy for its own due process violations. For instance, part of determining a remedy includes consideration of the deterrent effect. It borders on incoherent logic for this Court to be tasked with deciding the remedy to deter its own alleged conduct, now and in the future.

In short, a reasonable and objective observer would harbor serious doubts about whether this Court could be impartial when sitting in judgment of its own conduct.

**D. This Court should recuse itself in anticipation of being a material witness.**

Relatedly, this Court could be a material witness in an investigation and subsequent court hearing regarding the circumstances of the violation.

To be sure, under Canon 3(E)(1)(d)(v) of the Ohio Code of Judicial Conduct, a judge who knows that he or she is “likely to be a material witness in the proceeding” must step aside, but “[w]here the evidence concerning the transactions in issue may be obtained from witnesses other than the trial judge, then the trial judge is not such a material witness as to require a disqualification.” *Bresnahan v. Luby* (1966), 160 Colo. 455, 458, 418 P.2d 171.

*In re Disqualification of Warren*, 113 Ohio St. 3d 1239, 2006-Ohio-1388, 863 N.E.2d 638, ¶ 7.

Here, this Court is the only witness who can provide evidence regarding the circumstances surround what this Court received and reviewed and to what extent its conduct was willful. Consequently, this Court should step aside pursuant to Rule 2.11 (A)(2)(d) which requires a judge to disqualify himself or herself if she is likely to be a material witness in the proceeding.

**E. This Court cannot maintain the appearance of impartiality while sitting in judgment of a *Brady* violation by the state when it committed the same violation.**

Separately, the motion to dismiss filed on the basis of the state’s misconduct also warrants recusal to avoid the appearance of impartiality. This Court cannot be a neutral arbiter of the remedy for the state’s *Brady* violation because the state’s due process violations *overlap* with this Court’s due process violations. An objective observer would reasonably question whether this Court was motivated to reach a certain outcome given that the due process violation committed by the state is similar to the due process violation the Court has already been found to have committed.

**F. This Court should recuse itself because its statement indicating a fixed anticipatory judgment gives the appearance of impartiality, particularly when combined with the *Brady* issues.**

Lastly, this Court made a statement in its bond motion that gives the appearance of a fixed anticipatory judgment. As the Ohio Supreme Court observed in *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, 767 N.E.2d 166, ¶ 34, “[i]t is well settled that a criminal trial before a biased judge is fundamentally unfair and denies a defendant due process of law.” In *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus, the court described judicial bias as “a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts. “The question is whether the trial judge’s remarks evinced a “fixed anticipatory judgment” as opposed to “an open state of mind.” When the trial court makes a statement expressing his opinion on what the outcome should be prior to the conclusion of the litigation, this constitutes a “fixed anticipatory judgment.” *See State v. Jaloweic (In re Burge)*, 136 Ohio St.3d 1205, 2013-Ohio-2726, 991 N.E.2d 237, ¶ 5. Such comments are pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office, in connection with an impending case, as well as with cases and controversies that are likely to come before the court. *See* Jud.Cond. Rule. 2.10.

Such a fixed anticipatory judgment is evidenced in this Court’s Decision, Order and Entry Sustaining Motion to Hold Defendant Without Bond. In short, this Court exhibited hostility to Curtiss’ assertion of his innocence. Specially, in response to the defense’s assertion that Curtiss may in fact be innocent and the allegations may in fact have been fabricated by Mother, this Court’s response was that Curtiss does not appreciate the seriousness of the allegations. Furthermore, as

part of his request for his bond to be reinstated, Curtiss' noted that the Court of Appeals decision eviscerated the state's case. This Court twisted this assertion by counsel into a concern that, somehow, since Curtiss thinks he may be acquitted upon remand, Curtiss would be non-compliant with terms and conditions of bond. This further evidences this Court's inability to be impartial in this case.

### **III. CONCLUSION**

For the foregoing reasons, it is respectfully submitted that this Court is required to recuse itself from further participation in this case to avoid the appearance of impartiality, and that the case should be reassigned to another Judge for all future proceedings. The Defendant has no objection to the Court placing of record an Entry of Recusal without a hearing. Otherwise, Defendant requests a hearing on this motion.

Respectfully submitted,

**/s/Eric G. Eckes**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via this Court's electronic filing system on all counsel of record on this 28th day of February 2022.

**/s/Eric G. Eckes**  
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