

104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and *Patterson v. State*, 2002 OK CR 18, 45 P.3d 925 (Proposition 2). In conjunction with these claims, Appellant requested an evidentiary hearing and tendered materials in support thereof. See Rule 3.11, *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S., Ch. 18, App. (2010).

Before filing a brief in response, the Office of Attorney General filed notice stating that it agreed an evidentiary hearing was warranted on the *Brady* and *Strickland* claims. By Order issued November 23, 2010, this Court held further briefing in abeyance, and remanded the matter to the District Court of Muskogee County for an evidentiary hearing. The hearing was held January 5, 2011. Appellant presented one witness, and the parties stipulated to the court's consideration of certain other evidence. First, they stipulated to trial defense counsel's affidavit that he failed to adequately investigate and utilize available information affecting the credibility of a number of witnesses called by the State at trial. This information was detailed in Appellant's Rule 3.11 Application for Evidentiary Hearing and supporting materials. Second, the parties stipulated that at the time of Appellant's trial, the State had, in its possession, information about a key prosecution witness which it should have disclosed to the defense but failed to do so.²

On January 10, 2011, the Honorable Thomas H. Alford, District Judge,

² This information concerned the criminal history of Peter Williams who for a time was in custody with Appellant at the Muskogee County Jail. Williams testified at trial that Appellant gave a "jailhouse confession" to the murder, offering many details which were consistent with the physical evidence. The State failed to disclose to Appellant's trial counsel that Williams had received benefits in exchange for his testimony, namely, lenient treatment with regard to his own pending criminal matters.

issued Findings of Fact and Conclusions of Law. Judge Alford found that trial counsel's "failure to review the discovery and conduct a defense investigation fell below prevailing standards of professional practice," and concluded that Appellant was prejudiced thereby. Judge Alford also found that the State's failure to disclose, to the defense, favorable treatment to a key prosecution witness as a reward for his cooperation at Appellant's trial denied Appellant due process of law.

The parties filed briefs in this Court after the evidentiary hearing. In its response brief, the State did not challenge the district court's findings and conclusions, and conceded that Appellant had been denied a fair trial.³

Although this Court must make the ultimate determination of whether relief is warranted, we give great deference to the district court's findings on the issue, and review them only for an abuse of discretion. *Patterson*, 2002 OK CR 18, ¶ 19, 45 P.3d at 930; Rule 3.11(B)(3)(b)(iv), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2001). We observe that the judge who conducted the evidentiary hearing was the same judge who presided at Appellant's trial, and was thus in the best position to assess how the errors in question might have affected the outcome of that trial. And while we consider the entire record before us, we also give considerable weight to the State's concession that the trial court's conclusions after the evidentiary hearing were

³ The Attorney General concedes that trial defense counsel rendered ineffective assistance, but makes no comment on whether the prosecutor committed any misconduct.

sound.⁴ See *Day v. State*, 1960 OK CR 46, Syl. 2, 352 P.2d 935.

We find that Propositions 1 and 2 of Appellant's brief have merit. Accordingly, the case is **REVERSED AND REMANDED FOR A NEW TRIAL**. Our resolution of these two issues renders the remaining propositions in Appellant's brief moot.

DECISION

The Judgment and Sentence of the district court is **REVERSED AND REMANDED FOR A NEW TRIAL**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MUSKOGEE COUNTY
THE HONORABLE THOMAS H. ALFORD, DISTRICT JUDGE

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⁴ We also commend the Office of Attorney General for giving thoughtful consideration to the merits of Appellant's claims before filing a response brief, and for conceding early on that an evidentiary hearing was warranted.

OPINION BY C. JOHNSON, J.

A. JOHNSON, P.J.: CONCUR

LEWIS, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR

SMITH, J.: CONCUR

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