No. ________

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2017

SHAUN MICHAEL BOSSE

Petitioner,

v.

THE STATE OF OKLAHOMA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

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December 20, 2017

CAPITAL CASE

QUESTION PRESENTED

DOES OKLAHOMA'S "ESPECIALLY HEINOUS, ATROCIOUS, OR CRUEL" AGGRAVATING CIRCUMSTANCE FAIL TO PERFORM THE NARROWING FUNCTION REQUIRED BY THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

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The Petitioner Shaun Michael Bosse respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Oklahoma Court of Criminal Appeals, entered in the above-entitled proceeding, on May 25, 2017.

LIST OF PARTIES:

All parties to this action are named in the caption.

OPINIONS BELOW:

The judgment for which certiorari is sought is *Bosse v. State*, 400 P.3d 834 (Okla. Crim. App. 2017). The decision in *Bosse* was filed on May 25, 2017.[1] *See* Appendix, Exhibit A. Rehearing was granted, but no relief afforded, on July 24, 2017. *See* Appendix, Exhibit B.

STATEMENT OF JURISDICTION IN THIS COURT:

The Oklahoma Court of Criminal Appeals, the highest Oklahoma court in which Petitioner may obtain relief, issued its decision affirming Petitioner's judgment and death sentence on May 25, 2017, and granted rehearing, yet denied any relief, in the case on July 24, 2017. Pursuant to this Court's Rule 13.5, Petitioner timely sought from the Honorable Associate Justice Sonia Sotomayor an extension of time to file a petition for a writ of certiorari. Justice Sotomayor entered an order on October 12, 2017, giving Petitioner Bosse

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[1] This opinion is actually the second opinion issued by the Oklahoma Court of Criminal Appeals in this case. The first, *Bosse v. State*, 360 P.3d 1203 (Okla. Crim. App. 2015), was vacated and remanded by this Court in *Bosse v. Oklahoma*, 580 U.S. __, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016), for further consideration in light of the strictures imposed on admission of victim impact evidence in *Payne v. Tennessee*, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). The Oklahoma Court of Criminal Appeals ordered the parties to submit briefs on that issue. Subsequent to this additional briefing, the Oklahoma Court issued the instant Opinion, stating, "This Opinion reflects our consideration of those briefs, as well as the other appellate briefs filed in the case, and replaces our original Opinion." *Bosse*, 400 P.3d. at 840.

up to and including December 21, 2017, to file a petition. This Court's jurisdiction arises pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

Constitutional Provisions:

Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States.

Okla. Stat. tit. 21, § 701.12 (2011) Aggravating Circumstances:

Aggravating circumstances shall be:

****

(4) The murder was especially heinous, atrocious, or cruel;

****

Oklahoma Uniform Jury Instruction 4-73

DEATH PENALTY PROCEEDINGS— HEINOUS, ATROCIOUS, CRUEL DEFINED

The State has alleged that the murder was "especially heinous, atrocious, or cruel." This aggravating circumstance is not established unless the State proves beyond a reasonable doubt:

First, that the murder was preceded by either torture of the victim or serious physical abuse of the victim; and

Second, that the facts and circumstances of this case establish that the murder was heinous, atrocious, or cruel.

You are instructed that the term "torture" means the infliction of either great physical anguish or extreme mental cruelty. You are further instructed that you cannot find that

"serious physical abuse" or "great physical anguish" occurred unless you also find that the victim experienced conscious physical suffering prior to his/her death.

In addition, you are instructed that the term "heinous" means extremely wicked or shockingly evil; the term "atrocious" means outrageously wicked and vile; and the term "cruel" means pitiless, designed to inflict a high degree of pain, or utter indifference to or enjoyment of the suffering of others.

STATEMENT OF THE CASE:

A. Facts Material to the Question Presented.

Petitioner Bosse was tried by a jury on three counts of First Degree Murder and one count of First Degree Arson for the deaths of Katrina Griffin and her two children, Chasity Hammer and Christian Griffin. Following guilty verdicts on all counts, the jury heard evidence in aggravation and mitigation and returned three death sentences on the three counts of First Degree Murder.

This petition questions whether the "especially heinous, atrocious, or cruel" aggravating circumstance sufficiently performs the narrowing function required by the Eighth and Fourteenth Amendments in death penalty cases in light of this Court's holdings in *Arave v. Creech*, 507 U.S. 463, 471, 113 S.Ct. 1534, 1540, 123 L.Ed.2d 188(1993) ("The State must channel the sentencer's discretion by *clear and objective standards* that provide specific and detailed guidance . . .") (internal quotation marks and citations omitted)(emphasis supplied); *Maynard v. Cartwright*, 486 U.S. 356, 362, 108 S.Ct. 1853, 1858, 100 L.Ed.2d 372 (1988)("[O]ur cases have insisted that the channeling and limiting of the sentencer's discretion in imposing the death penalty is a *fundamental constitutional requirement* for sufficiently minimizing the risk of wholly arbitrary and capricious action.")(emphasis supplied); and *Proffitt v. Florida*, 428 U.S. 242, 253, 96 S. Ct. 2960, 2967, 49 L. Ed. 2d 913 (1976)(an aggravating circumstance is constitutional only if the jurisdiction utilizing it applies and interprets it in a "limiting" and "consistent" manner).

Prior to trial, Mr. Bosse filed a motion to strike the especially heinous, atrocious, or cruel aggravating circumstance, arguing it was unconstitutional on its face and as applied. (O.R. 204-09) In conjunction with this motion, counsel also filed an "Objection to Standard Instruction and Verdict Form on 'Heinous, Atrocious or Cruel.'" (O.R. 243-45) Both motions were denied by the trial court. (M.Tr. 9/4/12 9-10, 23)

To prove this aggravator at trial, the State relied on the incorporation of guilt-stage evidence. (X Tr. 112) This evidence consisted primarily of testimony from the Medical Examiner, Dr. Inas Yacoub. An autopsy on the three bodies revealed that Ms. Griffin had thermal burns to her entire body, as well as multiple stab wounds, some of a defensive nature. (II Tr. 40; III Tr. 94-98; IV Tr. 156; V Tr. 78-81, 223, 229-30) Dr. Yacoub opined that "the sharp force trauma to the neck, because of the bleeding associated with it, including the bleeding inside the airway" was fatal. Dr. Yacoub estimated "the stab wounds that she had and the bleeding resulting from it, the bleeding in the airway can take anywhere for minutes to hours for her to die." (V Tr. 226, 231-32) Christian had four stab wounds to his throat and one in his arm. (IV Tr. 142-44; VI Tr. 22-23) Dr. Yacoub testified regarding Christian that, "it was my opinion that he died of multiple stab wounds." (VI Tr. 30) Dr. Yacoub opined Chasity died "from smoke inhalation and thermal injury." (VI Tr. 83) Dr. Yacoub also testified that Chasity had sustained blunt force trauma to her head. (VI Tr. 32-34, 79) She could not say whether this blunt force head trauma would have rendered Chasity unconscious. (VI Tr. 35) Not to minimize the horrific nature of Chasity Hammer's burn

injuries, but there was simply no conclusive evidence to establish that Chasity ever consciously suffered pain from these injuries.

In support of the claim that the deaths of Katrina Griffin and Christian Griffin were especially heinous, atrocious, or cruel, the State argued the physical effects of exsanguination and the length of time it takes for the body to shut down resulted in deaths that were especially heinous, atrocious, or cruel. The State also alleged as evidence in support of this aggravating circumstance "the number of stab wounds, the time between each stab wound, the level of consciousness and the fact that the deaths would not have been immediate." (O.R. 111-12, 574)

According to Dr. Yacoub, there was no evidence of soot in their airways or lungs, and they did not have any carbon monoxide in their blood. (V Tr. 226; VI Tr. 12-14) Dr. Yacoub testified that the kidneys of both victims were pale because their bodies were likely diverting blood away to other vital organs. (V Tr. 240-44; VI Tr. 25) Although the paleness of their kidneys may indicate both victims were alive for a time, it is not evidence they were conscious, which is the relevant inquiry here. Dr. Yacoub testified Katrina Griffin did not die immediately, but could not say how long it took her to lose consciousness. (V Tr. 226) Similarly, Christian Griffin could have been immediately incapacitated and could have become unconscious fairly quickly after suffering fatal stab wounds to his neck. (VI Tr. 27-28) As the State pointed out, due to the probable defensive wounds to their hands, Katrina and Christian were at least briefly aware of the knife attack and presumably suffered consciously for a measurable period of time. (V Tr. 225, 238; VI Tr. 20; XIII Tr. 11) Though

Dr. Yacoub did not testify that Katrina and Christian immediately lost consciousness, the physical evidence proves they likely lost consciousness in a fairly rapid manner.

B. How the Issue Was Raised and Decided Below.

Trial counsel filed a motion to strike the especially heinous, atrocious or cruel aggravating circumstance, arguing it was unconstitutional on its face and as applied. (O.R. 204-09) In conjunction with this motion, counsel also filed an "Objection to Standard Instruction and Verdict Form on 'Heinous, Atrocious or Cruel.'" (O.R. 243-45) Both motions were denied by the trial court. (M.Tr. 9/4/12 9-10, 23) Trial counsel also proposed a modified Jury Instruction, which highlighted the jury's duty to apply the aggravating circumstance in a narrowing manner, consistent with constitutional standards. (O.R. 1023, Tr. 200)[2]

On appeal to the Oklahoma Court of Criminal Appeals (OCCA), Petitioner recounted the checkered past of this aggravating circumstance, in Oklahoma and elsewhere. In 1980, this Court invalidated Georgia's version of this aggravator (there styled as "outrageously or wantonly vile, horrible or inhuman") because the terms of the aggravator were vague and

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[2] The relevant language of this proposed jury instruction is as follows, with proposed modifications in italics:

> You are instructed that the tern "torture" means the infliction of either great physical anguish or extreme mental cruelty *lasting a significant length of lime before death and designed to produce physical or mental anguish in addition to that which of necessity accompanies the underlying killing. The term "serious physical abuse" means the infliction of gratuitous violence beyond the act of killing.* You are further instructed that you cannot find that "serious physical abuse" or "great physical anguish" occurred unless you also find that the victim experienced conscious physical suffering prior to her death. *The term "conscious physical suffering" refers to suffering in addition to that brief period of conscious suffering present in virtually all murders.* In addition, you are instructed that the term "heinous" means extremely wicked or shockingly evil; the term "atrocious" means outrageously wicked and vile; and the term "cruel" means pitiless, designed to inflict a high degree of pain, or utter indifference to or enjoyment of the suffering of others.

overbroad. *Godfrey v. Georgia*, 446 U.S. 420, 428-29, 100 S.Ct. 1759, 1765, 64 L.Ed.2d 398 (1980) ("There is nothing in these few words, standing alone, that implies any inherent restraint on the arbitrary and capricious infliction of the death sentence. A person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.'"). Some years later, the Tenth Circuit reached the same conclusion regarding Oklahoma's heinous, atrocious or cruel aggravator. *Cartwright v. Maynard*, 822 F.2d 1477, 1491 (10th Cir. 1987). The court reached this conclusion because the terms *heinous*, *atrocious,* and *cruel* were vague and not sufficiently limited and defined for a jury's consideration, and also because the Oklahoma Court of Criminal Appeals was not applying a consistent, objective narrowing construction to this facially vague and overbroad aggravator. *Id.* at 1487-91. This Court upheld the Circuit Court's decision in *Maynard v. Cartwright*, 486 U.S. 356, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988).

Petitioner observed that the Oklahoma Court of Criminal Appeals ostensibly narrowed the aggravating circumstance by requiring that it be established only when the evidence proved beyond a reasonable doubt the murder was preceded by torture or serious physical abuse. *Stouffer v. State*, 742 P.2d 562, 563 (Okl.Cr. 1987). The Appeals Court identified two kinds of murder meeting this standard: murders involving the infliction of "great physical anguish" and murders involving the infliction of "extreme mental cruelty." *Cheney v. State*, 909 P.2d 74, 80 (Okl. Cr. 1995). According to the OCCA, the torture or serious physical abuse standard is met only when there is proof of inordinate conscious physical suffering beyond that attendant to the homicide. *See Crawford v. State*, 840 P.2d 627, 641

(Okl. Cr. 1992), *abrogated on other grounds by Malone v. State*, 168 P.3d 185, 196 n.48 (Okl.Cr. 2007).

With this background established, Petitioner reminded the OCCA that Oklahoma's use of the heinous, atrocious, or cruel aggravator has remained under scrutiny from the Tenth Circuit, which has expressed concern the use of this aggravator once again resembles the catch-all approach found unconstitutional in *Cartwright*. *See Romano v. Gibson*, 239 F.3d 1156, 1176 (10th Cir. 2001); *Thomas v. Gibson*, 218 F.3d 1213, 1229 n.17 (10th Cir. 2000); *Medlock v. Ward*, 200 F.3d 1314, 1324 (10th Cir. 2000) (Lucero, J., concurring).

Petitioner argued that, consistent with constitutional standards, aggravating factors must be neither vague nor overbroad. *Cartwright*, 822 F.2d at 1489. In Oklahoma, there is no consistent or reasoned basis upon which a murder can confidently be excluded as especially heinous, atrocious, or cruel. In *Romano v. Gibson*, 239 F.3d 1156, 1176 (10th Cir. 2001), the Tenth Circuit pointed to examples of this inconsistent application, citing *Fluke v. State*, 14 P.3d 565, 568 and n. 9 (Okl. Cr. 2000)(noting evidence victim was aware of attack sufficient to show torture); and *Washington v. State*, 989 P.2d 960, 974-75 (Okl. Cr. 1999)(holding sufficient evidence supported this aggravator where victim may have consciously suffered for less than one minute after defendant shot her eight times after brief encounter). There is certainly a concern that Oklahoma's interpretation of its narrowing language could again render this aggravator unconstitutional. *See Thomas*, 218 F.3d at 1228 & n.17.

Petitioner brought to the OCCA's attention that even that court's most recent attempts at narrowing the breadth of this aggravator have not done enough to guide the sentencer toward the small number of cases to which it is supposed to be applied. *See DeRosa v. State*, 89 P.3d 1124 (Okl.Cr.2004). The re-worked uniform instruction still fails to inform the jury that "extreme mental cruelty" and "great physical anguish" must last for an appreciable amount of time prior to death, and that "conscious physical suffering" is supposed to refer to suffering beyond the brief period of conscious suffering that accompanies virtually every homicide. Petitioner's Requested Jury Instruction No. 7, *see* n.2, *supra*, included these definitions but was denied by the trial court. (O.R. 1023; XIII Tr. 200) While the jury was issued the standard Uniform Jury Instruction No. 4-73, OUJI-CR(2d), (O.R. 1060), this instruction failed to inform the jury of the limiting constructions placed upon it by the OCCA.

Petitioner acknowledged that the OCCA has routinely and repeatedly rejected this very same claim. *See Coddington v. State,* 254 P.3d 684, 710 (Okl.Cr. 2011); *Underwood v. State*, 252 P.3d 221, 246-47 (Okl.Cr. 2011); *Cuesta-Rodriguez v. State*, 241 P.3d 214, 238-39 (Okl.Cr. 2010); *Rojem v. State*, 130 P.3d 287, 300-01 (Okl.Cr. 2006). Petitioner also acknowledged that the OCCA has offered by way of explanation that "an aggravating circumstance does not become 'overbroad' based upon the manner it is applied to particular cases." *Mitchell v. State*, 136 P.3d 671, 711 (Okl.Cr. 2006) (citing *DeRosa v. State*, 89 P.3d 1124, 1154-55 (Okl.Cr. 2004)). While this would certainly be true of a facially valid aggravator (*i.e.*, one that is neither vague nor overbroad *on its face*), the statutory language

has been found to be unconstitutionally vague and overbroad, *see Cartwright*, 822 F.2d 1491, and it is only the OCCA's narrowing construction *applied to particular cases* that has saved this aggravator from constitutional attack, *see, e.g., Romano*, 239 F.3d at 1175-76.

Petitioner also pointed out to the OCCA that ithad previously adopted a narrowing construction limiting this aggravator to "the conscienceless or pitiless crime which is unnecessarily torturous to the victim," *Nuckols v. State*, 690 P.2d 463, 471-73 (Okl.Cr. 1984), but the court's failure to apply that construction consistently, and to make that language mandatory, leaves the aggravator open to constitutional attack. *Cartwright*, 822 F.2d at 1488-89. In the same manner, failing to consistently and objectively apply the court's more recent narrowing constructions, essentially applying the aggravator to all murders except those involving instantaneous deaths, renders the constitutionality of this aggravator suspect once again. *See, e.g., Welch v. Workman*, 639 F.3d 980, 1006-07 (10th Cir. 2011) (evaluation of whether this aggravator has been constitutionally applied requires reviewing the state court's findings as to the duration of conscious suffering on the part of the victim); *see also Medlock*, 200 F.3d at 1324 (Lucero, J., concurring); *Thomas*, 218 F.3d at 1228 n.17.

Despite this compelling argument, the Oklahoma Court of Criminal Appeals once again rejected Petitioner's claim, with little explanation except to state that it has rejected these arguments before and does so again. *Bosse v. State*, 400 P.3d at 860. Whether the State had met its burden of proving the aggravator beyond a reasonable doubt, the appellate court found that "Chasity had blunt force trauma to her head, which may or may not have rendered her unconscious." *Id.* at 858. The court also found that Katrina was "most likely" conscious

when attacked, *id.*, and that "evidence that a victim was conscious and aware of an attack supports a finding of torture and serious physical abuse, as does the presence of defensive wounds." *Id.* at 859.

REASON THIS COURT SHOULD GRANT THE WRIT:

Certiorari Should Be Granted Because the Oklahoma Court of Criminal Appeals' Refusal to Either Consistently Apply its own Limiting Construction to the Heinous, Atrocious, or Cruel Aggravating Circumstance or to Require Juries be so Informed is Clearly Contrary to this Court's Capital Sentencing Jurisprudence and the Eighth Amendment.

Despite the basic requirement that aggravating circumstances narrow the class of murderers eligible for a death sentence, either by way of clear, limiting language in the aggravator itself or through the application of limiting construction in jury instructions or by the appellate courts on appeal, *see, e.g., Arave v. Creech*, 507 U.S. 463, 471, 113 S.Ct. 1534, 1540, 123 L.Ed.2d 188 (1993); *Maynard v. Cartwright*, 486 U.S. 356, 362, 108 S.Ct. 1853, 1858, 100 L.Ed.2d 372 (1988); and *Proffitt v. Florida*, 428 U.S. 242, 253, 96 S. Ct. 2960, 2967, 49 L. Ed. 2d 913 (1976), Oklahoma's "Heinous, Atrocious, or Cruel" aggravating circumstance as it is currently used does not accomplish this.

The bare language of the aggravator itself is vague and overbroad, seemingly applicable to almost every homicide wherein the victim does not die immediately and is unaware of his or her pending demise. Although the Oklahoma Court of Criminal Appeals has applied a limiting construction to this aggravator, that court neither routinely or consistently applies it to cases before it. Neither does that court require juries to be informed of the limiting construction, thus depriving them of the opportunity to constitutionally apply this aggravator in capital cases.

This Court has recognized that this very aggravating circumstance is unconstitutional in the past, and nothing has changed since. The Tenth Circuit Court of Appeals has recognized that Oklahoma is once again likely applying this aggravator in an unconstitutional manner. *See, e.g., Romano v. Gibson*, 239 F.3d 1156, 1176 (10th Cir. 2001); *Thomas v. Gibson*, 218 F.3d 1213, 1229 n.17 (10th Cir. 2000); *Medlock v. Ward*, 200 F.3d 1314, 1324 (10th Cir. 2000) (Lucero, J., concurring). In *Thomas*, the Circuit Court of Appeals noted:

> This court need not decide the question of the general viability of such an inference in this case because the inference fails for other reasons. Nevertheless, we would be remiss if we failed to note that the inference appears to raise serious constitutional questions about whether Oklahoma's heinous, atrocious, or cruel aggravator legitimately narrows the class of those eligible for death. *See Richmond v. Lewis*, 506 U.S. 40, 46, 113 S.Ct. 528, 121 L.Ed.2d 411 (1992)("The relevant Eighth Amendment law is well defined. . . . [A] statutory aggravating factor is unconstitutionally vague if it fails to furnish principled guidance for the choice between death and a lesser penalty."). Oklahoma adopted the "torture or serious physical abuse" overlay to the heinous, atrocious, or cruel aggravator, with its concomitant requirement of conscious suffering, for the very reason that Oklahoma's prior, unrefined version of the aggravator had been struck down by the Supreme Court as vague and overly broad. *See Maynard v. Cartwright*, 486 U.S. 356, 363-64, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988). The inference adopted by the OCCA, however, appears to completely unwind the requirement of conscious suffering: in every murder committed with more than one blow an inference would arise that the murder was heinous, atrocious, or cruel because no reasonable murderer would continue beating the victim if she had become unconscious after the first blow. *See Thomas I*, 811 P.2d at 1349. There exists, at a minimum, a serious constitutional question as to whether an aggravator which makes eligible for the death penalty all murderers who strike more than one blow adequately narrows the class of murderers eligible for the death penalty. *See Maynard*, 486 U.S. at 361-62, 108 S.Ct. 1853.

Thomas v. Gibson, 218 F.3d at 1229 n. 17.

More recently, the Tenth Circuit has again questioned Oklahoma's failure to apply any limiting construction to this aggravator. In *Pavatt v. Royal*, 859 F.3d 920, 930-38 (10th Cir.

2017), the federal appeals court recounted the tortured history of this aggravator in Oklahoma and again faulted the OCCA for failing to properly analyze this aggravating circumstance. The Tenth Circuit court granted relief, in part, because "the OCCA has not construed 'conscious physical suffering' in a way that distinguishes this case from the many cases in which the death penalty is not imposed. Virtually any murder in which the victim did not die instantly could qualify for the enhancement under this construction if there is a possibility that the act of murder did not immediately render the victim unconscious and the wounds could have caused pain." *Id.* at 936.

Noting the Court's "duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case," this Court granted certiorari in the case of *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995), because there was reason to question whether the Court of Appeals for the Fifth Circuit evaluated the significance of undisclosed evidence under the correct standard. *Id.* at 1560 (quoting *Burger v. Kemp*, 483 U.S. 776, 785 (1987)). Likewise, in this very case, this Court vacated and remanded the decision of the OCCA because that court refused to correctly apply constitutional norms in the capital sentencing stage of citizens facing the death penalty. *See Bosse v. Oklahoma*, 580 U.S. __, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016) (vacating and remanding the cause due to impermissible recommendations of a death sentence by the victims' family members).

The reason for granting certiorari in this case is similarly compelling, because the OCCA has signaled that it will continue to act in an unconstitutional manner on this issue

until told otherwise by this Court. Because Oklahoma is currently applying the especially heinous, atrocious, or cruel aggravator in a constitutionally vague and overly broad manner, and has failed to give capital juries constitutionally acceptable guidance regarding the situations to which it applies, Mr. Bosse's death sentences must be vacated.

CONCLUSION

Shaun Michael Bosse respectfully requests this Court grant this petition for certiorari to the Oklahoma Court of Criminal Appeals on the question presented. Petitioner further requests that this Court vacate the death sentence in this case and grant such other relief as it deems appropriate.

Respectfully submitted,

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APPENDIX:

Exhibit A: Opinion in *Bosse v. State*, 400 P.3d 834 (Okla. Crim. App. 2017)

Exhibit B: Order Withdrawing Mandate, Granting Petition for Rehearing and Denying Relief, and Issuing Mandate