Case No. 18-6884

IN THE SUPREME COURT OF THE UNITED STATES

ISAIAH GLENNDELL TRYON,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

On Petition for Writ of Certiorari to the
Oklahoma Court of Criminal Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITES

FEDERAL CASES

STATE CASES

STATE STATUTES

FEDERAL RULES

CAPITAL CASE
QUESTION PRESENTED

Should this Court grant certiorari review of the Oklahoma Court of Criminal Appeals' state law decision during its statutory mandatory sentence review that the aggravating circumstances outweighed the mitigating evidence?

No. 18-6884

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent respectfully urges this Court to deny the petition for writ of certiorari to review the published opinion of the Oklahoma Court of Criminal Appeals (OCCA) entered May 31, 2018, *Tryon v. State*, 423 P.3d 617 (Okla. Crim. App. 2018).

STATEMENT OF THE CASE

Petitioner is currently incarcerated pursuant to a Judgment and Sentence rendered in the District Court of Oklahoma County, State of Oklahoma, Case No. CF-2012-1692. Petitioner was convicted by a jury of murdering nineteen year old Tia Bloomer. The jury found the existence of four statutory aggravating circumstances: 1) the defendant was previously convicted of a violent felony; 2) the defendant committed the murder while serving a sentence of imprisonment for a felony; 3) the defendant is a continuing threat to society; and 4) the murder was especially heinous, atrocious or cruel. The jury recommended Petitioner be sentenced to death. In accordance with the jury's verdict, the trial court sentenced Petitioner to death for the murder.

The OCCA affirmed Petitioner's conviction and death sentence in a published opinion. *Tryon v. State*, 423 P.3d 617 (Okla. Crim. App. 2018). On June 29, 2018, the OCCA denied Petitioner's request for rehearing and his motion to recall the mandate. *Order Denying Petition for Rehearing*, No. D-2015-331 (Okla. Crim. App. month day, 2018).

Petitioner's petition for certiorari was placed on this Court's docket November 30, 2018.

STATEMENT OF THE FACTS[1]

The facts of this case are largely undisputed. Nineteen year old Tia Bloomer died from multiple stab wounds to her upper torso, including her face, neck and chest (Tr. IV 986; State's Ex. 57). Petitioner and Ms. Bloomer began dating when Ms. Bloomer was 14 or 15 years old (Tr. VIII 2017). Ms. Bloomer's parents did not approve of the relationship, but ultimately Ms. Bloomer moved in with Petitioner and his family (Tr. VI 1381; Tr. VIII 2018-2019). Ms. Bloomer became pregnant and gave birth to a baby boy, R.T. (Tr. VIII 2019). Throughout the relationship, Petitioner was abusive to Ms. Bloomer (Tr. VIII 2064-2065). Ms. Bloomer attempted to help Petitioner change his life, but in the end was not successful and decided she no longer wanted to be in a relationship with Petitioner.

Approximately a week before the murder, Ms. Bloomer was choked and police investigated the incident (Tr. III 844). Detective Jeffrey Padgett of the Oklahoma City Police Department was assigned to follow-up on the domestic abuse against Ms. Bloomer (Tr. III 841-842). Detective Padgett contacted Ms. Bloomer on March 15, 2012 and she told him that Kuinton Terrion Johnson was responsible for the abuse (Tr. III

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[1] Record references to the transcript of the trial will be abbreviated as (Tr.), references to state court exhibits will be abbreviated as (State's Ex.) and references to the original record will be (O.R.). All records are currently on file with the clerk of the OCCA and are cited in conformity with this Court's rules. *See* SUP. CT. R. 12.7.

843-844). Ms. Bloomer agreed to meet with Detective Padgett the next day at 1:00 p.m. to discuss her domestic violence case (Tr. III 842, 850). Evidence indicated Ms. Bloomer decided to tell the police that it was Petitioner who actually committed the abuse and she informed Petitioner of same via a text message (Tr. III 826-827; State's Ex. 38). That following day, Ms. Bloomer made her way to the Metro Transit Center, a bus station (at the time of trial Embark Transit Center). Unfortunately for Ms. Bloomer, Petitioner, armed with a steak knife, also went to the Metro Transit Center.

A video surveillance camera captured Ms. Bloomer's murder (State's Ex. 4). In addition to that, witnesses testified to the horror they saw unfold that morning. As seen on the video surveillance, Petitioner approached Ms. Bloomer, who immediately stood up and attempted to walk away from Petitioner. Petitioner and Ms. Bloomer can be seen talking, but when Ms. Bloomer tried to walk away, Petitioner grabbed her and began stabbing her (State's Ex. 4). Deborah Sealy was at the bus station that morning and saw Petitioner and Ms. Bloomer (Tr. III 656). She heard Ms. Bloomer say "leave me alone" and then saw Petitioner hit her in the neck (Tr. III 660). Ms. Sealy heard Ms. Bloomer say "help" and then saw her hit the glass door (Tr. III 660). Ms. Bloomer fell to the floor and Petitioner crouched down, sat on her and continued to stab her (Tr. III 661; State's Ex. 4). A bystander noticed and tried to pull Petitioner off Ms. Bloomer (Tr. III 662; State's Ex. 4). However, Petitioner held Ms. Bloomer and dragged her with him. Finally, Petitioner was separated from Ms. Bloomer and detained (Tr. III 663; State's Ex. 4).

Petitioner was detained at the murder scene by the security officer on duty, with the help of bystanders. Petitioner had an injury to his hand treated before he was transported to the police department (Tr. III 704). Once there, Detective Robert Benavides advised Petitioner of his *Miranda* warnings which Petitioner acknowledged he understood. Petitioner indicated he wanted to talk with Detective Benavides (Tr. III 873-874). During the interview, Petitioner was very calm and had no difficulty answering Detective Benavides' background/historical questions. Petitioner initially denied knowing Ms. Bloomer would be at the bus station that morning (State's Ex. 58) During the interview, Petitioner told Detective Benavides that he did not want to be without Ms. Bloomer and he did not want her to be with anybody else (State's Ex. 58 at 29:45). He told Detective Benavides he stabbed Ms. Bloomer six times with a knife he took from his home (State's Ex. 58 at 29:20). Detective Benavides asked Petitioner if the reason he took the knife with him was because he had already determined he was going to stab Ms. Bloomer if he saw her (State's Ex. 58 at 29:30) Petitioner acknowledged that was the reason he took the knife with him (State's Ex. 58 at 30:00). Although he was not certain he would see her at the bus station, he knew she had business to take care of so he took the knife with him "just in case [he] did see her" (State's Ex. 58 at 30:30).

Petitioner described in detail what happened at the bus station. When he saw Ms. Bloomer, she was talking with a man who was drawing a portrait of her (State's Ex. at 31:15). Ms. Bloomer paid for the portrait, approached Petitioner and asked what

he was doing at the bus station. Petitioner told her he was going to enroll in some GED classes and she told Petitioner that she did not want to talk to him and to get away from her (State's Ex. 58 at 31:40). Petitioner told Detective Benavides that is when he started stabbing her (State's Ex. 58 at 32:10). Petitioner told Detective Benavides that Ms. Bloomer was facing him and that he reached out and grabbed her with his right hand and started stabbing her with his left hand (State's Ex. 58 at 32:20). Petitioner demonstrated how he stabbed Ms. Bloomer, telling Detective Benavides he was left handed and he stabbed her in the side and in the neck, correctly indicating where Ms. Bloomer's injuries were (State's Ex. 58 at 32:25). He said Ms. Bloomer fell to the ground, but that he continued to stab her (State's Ex. 58 at 33:00). He clarified for Detective Benavides that he stabbed her twice while she was standing up and four more times after she fell to the ground (State's Ex. 58 at 33:10) Petitioner said somebody tried to pull him off Ms. Bloomer (State's Ex. 58 at 33:40).

After describing his murderous act, Petitioner acknowledged the cut on his hand was from the knife he used to kill Ms. Bloomer (State's Ex. 58 at 34:35). When asked what medicine he was taking, Petitioner told the officer he took Seroquel and Zoloft for depression and suicidal thoughts and had been on those medicines since 2004 (State's Ex. 58 at 57:00). When informed he was going to the county jail, Petitioner asked to be put in protective custody. When asked why he needed to be housed in protective custody, he told Detective Benavides that people in jail are going to try to kill him because they do not "like that type of shit" (State's Ex. 58 at 58:20). When Detective

Benavides told the defendant Ms. Bloomer was dead, he showed absolutely no emotion (State's Ex. 58 at 1:43). Additional facts will be presented as they relate to the State's argument.

REASONS FOR DENYING THE WRIT

Respondent submits that Petitioner is not entitled to certiorari review of this claim. Rule 10, *Rules of the Supreme Court of the United States*, provides in pertinent part the following:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for *compelling reasons*. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
> >
> > (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
> >
> > (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Petitioner advances no compelling reason to grant certiorari. The OCCA found that because Petitioner's sentences for his prior convictions had been suspended, the aggravating circumstance that he committed the murder while serving a sentence of imprisonment was not satisfied as a matter of law, and it struck the aggravator. *Tryon*, 423 P.3d at 650. The OCCA found that two of the three remaining aggravators "enabled the jury to give aggravating weight to the same facts and circumstances used to support the invalid aggravator" and found no constitutional error. *Id.* at 656 (citing *Brown v. Sanders*, 546 U.S. 212, 220 (2006)). Petitioner does not challenge that finding. Thus, there is no constitutional error, and nothing for this Court to review.

Further, Petitioner is not attacking his death sentence based on the jury's findings at trial. Instead, Petitioner seeks review of the OCCA's holding made during its mandatory sentence review that despite the invalid aggravator, the evidence supporting same was properly admitted and the death sentence was proper. Pursuant to Oklahoma law, every death sentence is subject to a mandatory sentence review by the OCCA. Okla. Stat. tit. 21, § 701.13(C) (2011). Here, as part of Oklahoma's mandatory sentence review, the OCCA independently reweighed the aggravating and mitigating circumstances to determine the validity of Petitioner's death sentence. *Tryon*, 423 P.3d at 656-657. The independent reweighing "is implicit to [the OCCA's] statutory duty to determine the factual substantiation of a verdict and validity of a

death sentence." *Id.* . The OCCA, pursuant to Okla. Stat. tit 21, § 701.13 also found sufficient evidence supported the continuing threat aggravating circumstance.[2]

Petitioner seeks certiorari review of the OCCA's appellate reweighing in its state-required mandatory sentence review. Yet, Petitioner's arguments rely on case law from this Court pertaining to a capital defendant's right to have certain jury determinations made beyond a reasonable doubt at trial. Petitioner argues the OCCA's reweighing made in its mandatory sentence review is inconsistent with *Ring v. Arizona*[3] and *Hurst v. Florida*[4]. As shown below, neither case has any applicability to appellate court reweighing. Petitioner wholly ignores *Clemons v. Mississippi*[5], which specifically authorizes appellate reweighing.

Petitioner provides no compelling reason why this Court should exercise jurisdiction over this case. Petitioner has not demonstrated his case presents an important federal issue that has not been, but should be, settled by this Court. He fails to show there is a conflict among state courts or federal circuits and is likewise unable to show the OCCA's decision in any way conflicts with this Court's precedents. For these reasons, Respondent urges this Court to deny certiorari review of this claim.

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[2] The sufficiency of the evidence regarding this aggravating circumstance was not challenged on direct appeal. Regardless, pursuant to the mandatory sentence review, the OCCA reviews the evidence to determine if the jury's finding is supported.

[3] 536 U.S. 584 (2002)

[4] __ U.S. __, 136 S. Ct. 616 (2016).

[5] 494 U.S. 738 (1990)

THE OCCA'S DETERMINATION THAT PETITIONER'S DEATH SENTENCE IS NOT UNCONSTITUTIONAL IS NOT BEING CHALLENGED BY PETITIONER. PETITIONER'S CLAIM MERELY FOCUSES ON THE OCCA'S REWEIGHING OF THE AGGRAVATING AND MITIGATION CIRCUMSTANCES DURING ITS STATUTORY MANDATORY SENTENCE REVIEW AND DOES NOT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW THAT NEEDS RESOLUTION BY THIS COURT.

Petitioner does not challenge the OCCA's finding that his death sentence is constitutional. Rather, Petitioner's question presented focuses on reweighing that was done as part of the OCCA's statutorily-required mandatory sentence review. Petitioner's argument regarding the OCCA's review cannot affect the judgment below.

On direct appeal, the OCCA, as stated above, found the aggravating circumstance that Petitioner was serving a sentence of imprisonment when he murdered Ms. Bloomer invalid as the state law definition of that aggravator did not encompass a suspended sentence. *Tryon*, 423 P.3d at 650. The OCCA determined the evidence supporting the invalid aggravator did not skew the sentence imposed, holding that "[t]he prior violent felony aggravator and continuing threat aggravator enabled the jury to give aggravating weight to the same facts and circumstances used to support the invalid aggravator." *Tryon*, 423 P3d at 656. "Thus, the invalid aggravator could not have skewed the sentence imposed, and **no constitutional violation occurred**." *Id.* (emphasis added) (citing *Brown v. Sanders*, 546 U.S. 212, 220 (2006)).

Contrary to Petitioner's assertions, the OCCA did not find that no constitutional error occurred by reweighing the evidence. Cert. at 8. Rather, after finding no

constitutional violation pursuant to *Brown v. Sanders*, the OCCA conducted an independent reweighing pursuant to Oklahoma law. *Tryon*, 423 P.3d at 656-657 ("With this finding, we conduct an independent reweighing of the aggravating and mitigating evidence to determine the validity of Appellant's death sentence.")

In *Brown v. Sanders*, this Court held that "[a]n invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process unless one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances." *Sanders,* 546 U.S. at 220 (footnote omitted). When "the presence of the invalid sentencing factor allowed the sentencer to consider evidence that would not otherwise have been before it, due process would mandate reversal . . . ." *Sanders,* 546 U.S. at 220-221. This Court held that "such skewing will occur, and give rise to constitutional error, **only where the jury could not have given aggravating weight to the same facts and circumstances under the rubric of some other, valid sentencing factor**." *Id.* (emphasis added). The OCCA's decision is in complete conformity with *Sanders.* Petitioner does not claim otherwise.

This case is not a good vehicle for certiorari review as the OCCA's determination that Petitioner's death sentence is constitutional is a straight up application of *Brown v. Sanders.* This Court decides cases only "in the context of meaningful litigation," and when the challenged issue may not affect the ultimate judgment of the court below,

that issue "can await a day when [it] is posed less abstractly." *The Monrosa v. Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959).

Petitioner's challenge is based on reweighing the aggravating circumstances against the mitigating circumstances the OCCA did during its state statutory mandatory sentence review. Pursuant to its mandatory sentence review, the OCCA acknowledged it previously invalidated one aggravating circumstance and had already found sufficient evidence supported both the especially heinous, atrocious or cruel and prior violent felony aggravating circumstances.[6] *Tryon*, 423 P.3d at 655-656.

Petitioner's question to this Court is "whether under the circumstances of this case the reweighing of aggravating and mitigating circumstances by a state appellate court violates the Sixth Amendment in light of *Ring v. Arizona* and *Hurst v. Florida*." Petitioner is mixing apples and oranges. Clearly, the teachings of *Ring* and *Hurst* - which will be discussed more below - are inapplicable to a state appellate court's state statutory law of mandatory sentence review. Further, even if the OCCA had reweighed as a matter of constitutional law, such would have been unnecessary because the OCCA first found no constitutional error. It bears repeating that Petitioner does not challenge that finding. Petitioner's failure to claim that the jury's consideration of an invalid aggravating circumstance resulted in constitutional error is the end of his quest for review.

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[6] The OCCA found the evidence of four prior convictions for Assault with a Dangerous Weapon that supported the invalid aggravating circumstance also supported the prior violent felony aggravator. *Tryon*, 423 P.3d at 656.

PETITIONER IGNORES *CLEMONS V. MISSISSIPPI*. HIS FOCUS ON TRIAL PRACTICE IS A RED HERRING.

Even assuming Petitioner had shown constitutional error, his petition would not be worthy of this Court's consideration. Petitioner asks this Court to hold that a capital jury must find, beyond a reasonable doubt, that aggravating circumstances outweigh mitigating circumstances. Respondent assumes Petitioner then wants this Court to go a step further, and hold that appellate courts may not conduct reweighing, although he makes scant argument in that regard. However, Petitioner ignores that this Court has already approved of appellate reweighing in *Clemons*. This Court has not overruled *Clemons* and Petitioner is not asking it do so. There is no compelling question warranting this Court's review.

In *Ring v. Arizona*, this Court held that the Sixth Amendment requires that Arizona's enumerated aggravating circumstances be found by a jury because such circumstances "operate as 'the functional equivalent of an element of a greater offense'". *Ring*, 536 U.S. 584, 608 (2002) (quoting *Apprendi v New Jersey*, 530 U.S. 466, 494, n. 19 (year)). Oklahoma follows this requirement. Okla. Stat. tit. 21, § 701.11 (2011); *Torres v. State*, 58 P.3d 214, 216 (Okla. Crim. App. 2002). Thus, Petitioner was afforded a jury who made such determination and Petitioner does not challenge the jury's finding. .

In *Hurst*, this Court invalidated Florida's sentencing scheme in which the jury's verdict was merely advisory and the trial court was alone responsible for determining whether aggravating circumstances were proven. *Hurst*, 136 S. Ct. at 622. Pursuant

to state statute, in Florida, the trial court was required to find the existence of aggravating circumstances and thereafter weigh them against any mitigating circumstances. *Id.* Although this Court noted that the trial court was responsible for determining whether the aggravating circumstances outweigh the mitigating circumstances, *id.* at 622, this Court held only that the Sixth Amendment was violated because it was the judge who determined the existence of an aggravating circumstance and not a jury. *Id.* at 624 ("The decisions are overruled to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty.") (emphasis added). See also *Ring*, 536 U.S. at 612 (Scalia, J. concurring) ("What today's decision says is that the jury must find the existence of the fact that an aggravating factor existed. Those States that leave the ultimate life-or-death decision to the judge may continue to do so - by requiring a prior jury finding of aggravating factor in the sentencing phase . . . .").

Petitioner claims the holdings of *Ring* and *Hurst* mandate that the weighing of aggravating and mitigating circumstances must also be made by the jury. Petitioner then asks whether, if under *Ring* and *Hurst*, "the Sixth Amendment requires that finding to be made by a jury, can a state appellate court engage in a reweighing process if an aggravating circumstance is invalidated on appeal." Cert. at 18. This question is not unanswered. In *Clemons*, 494 U.S. at 741, this Court found "the Federal Constitution does not prevent a state appellate court from upholding a death sentence

that is based in part on an invalid or improperly defined aggravating circumstance either by reweighing of the aggravating and mitigating evidence or by harmless-error review." *Ring* and *Hurst* do not discuss appellate reweighing and neither case has overruled *Clemons*. *See Bosse v. Oklahoma*, __U.S. __, 137 S. Ct. 1, 2 (2016) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."). Petitioner does not acknowledge *Clemons*, much less ask this Court to overrule it.[7]

The OCCA employed a straight-forward application of *Brown* and ultimately, although not constitutionally required, reweighed the aggravating and mitigating circumstances during its mandatory sentence review, consistent with *Clemons*. Petitioner's request for review is based on theoretical questions that are not implicated by the OCCA's decision. Accordingly, this Court should deny Petitioner's request for certiorari review as he has failed to present a compelling issue that needs to be resolved by this Court.

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[7] Petitioner's argument that there is a split amongst the states as to whether a jury must make the weighing determination beyond a reasonable doubt is a red herring for the reasons advanced above. Further, his reliance on *Hurst v. State*, 202 So.3d 40 (Fla. 2016) (*per curium*) as a state court that so requires is misleading. A review of Florida's capital sentencing since this Court's holding in *Hurst* shows that now a unanimous jury, rather than a trial court, makes the determination of whether aggravating circumstances have been proven beyond a reasonable doubt. Fla. Stat. § 921.141(2)(a)(2017). After this finding, the jury also performs the weighing function. However, there is no beyond a reasonable doubt standard employed during the actual weighing process. Fla. Stat. § 921.141(2)(b)(2)(2017).

CONCLUSION

For the reasons stated above, Respondent respectfully requests this Court deny the petition for writ of certiorari.

Respectfully submitted,

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