No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JUSTICE KNIGHT, *Petitioner*,

v.

STATE OF ALABAMA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ALABAMA COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

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June 19, 2020

CAPITAL CASE

QUESTIONS PRESENTED

In a capital case in which the defendant's jury observes him in shackles and jail clothing, and multiple members of the jury expressed the belief that African American people are more likely to engage in violence, are the Fifth and Fourteenth Amendments violated when the State introduces irrelevant evidence at the guilt phase alleging the defendant poses an ongoing risk of violence?

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Petitioner Justice Knight respectfully petitions for a writ of certiorari to review the judgement of the Alabama Court of Criminal Appeals in this case.

OPINIONS BELOW

The decision of the Alabama Court of Criminal Appeals affirming Mr. Knight's conviction and sentence is Knight v. State, No. CR-16-0182, 2018 WL 3805735 (Ala. Crim. App. Aug. 10, 2018), and is attached as Appendix A. The order of the Alabama Court of Criminal Appeals denying rehearing is unreported and is attached as Appendix B. Knight v. State, No. CR-16-0182 (Ala. Crim. App. Oct. 5, 2018). The

order of the Alabama Supreme Court denying Mr. Knight's petition for writ of certiorari is also unreported and is attached as Appendix C. Ex parte Knight, No. 1180031 (Ala. Jan. 24, 2020).

JURISDICTION

The Alabama Court of Criminal Appeals affirmed Mr. Knight's capital conviction and death sentence on August 10, 2018. Knight v. State, No. CR-16-0182, 2018 WL 3805735 (Ala. Crim. App. Aug. 10, 2018). The Alabama Supreme Court denied Mr. Knight's petition for a writ of certiorari on January 24, 2020. On March 19, 2020, this Court expanded the time to file this petition for a writ of certiorari to 150 days, until June 22, 2020. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

The Fourteenth Amendment of the United States Constitution provides in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, wthout due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Relevant Facts.

It was undisputed at trial that, on February 3, 2012, Justice Knight was accompanying his close friend Jarvis Daffin on some errands that Mr. Daffin had to run. (R. 480-83, 1047-48.)[1] Mr. Knight had borrowed a car from Comeshia Wingard and was driving Mr. Daffin around. (R. 1045-46; C. 1894-95.) At some point during the day Antwain Wingard joined them. (R. 492, C. 1894.) The State's evidence demonstrated that Mr. Daffin had received his income tax return and subsequently cashed his return check at a local grocery store in Houston County. (R. 450-51, 484-85, 1048-49.) Mr. Daffin planned to use his return money to purchase a car from Steve Carlisle in Henry County. (R. 551-55, 560.)

According to prosecution witnesses, Mr. Knight and Mr. Daffin had previously been out to put a deposit on the car and, after taking Mr. Daffin to cash his check, Mr.

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[1] "C." and "R." refer to the clerk's record and trial record, respectively. "S." and "S2." refer to the first and second supplemental records. "P." refers to the penalty phase proceedings. "J." refers to the judicial sentencing proceedings. "M." refers to the motion for new trial hearing. "H1." refers to the pre-trial hearing on June 5, 2012; "H2." to the hearing on Jan. 1, 2013; "H3." to the hearing on Oct. 20, 2013; "H4." to the hearing on Mar. 5, 2015; "H5." to the hearing on Oct. 5, 2015; "H6." to the hearing on July 28, 2016; "H7." to the hearing on Sept. 16, 2016; "H8." to the hearing on Sept. 22, 2016.

Knight was driving him out to Steve's Automotive. (R. 554, 558-59, 1123, 1149, 1612.) On the way to pick up the car, Mr. Daffin called Steve Carlisle twice, leaving a message and then calling back to let him know they were 15 minutes away. (R. 561.)

Mr. Knight's statement to law enforcement provided the only account at trial regarding what happened next. He explained he was driving along when Mr. Wingard demanded Mr. Daffin give him some of his tax return money. (C. 1931.) The two got into an argument with Mr. Daffin saying he could not afford to loan Mr. Wingard any money. (C. 1931.) Mr. Knight stated he was driving and was not "paying it too much really attention" when he heard a "gunshot out the blue." (C. 1895, 1918, 1931.) Prior to the altercation beginning, Mr. Knight had no idea Mr. Wingard was going to rob Mr. Daffin. (C. 1905, 1918.)

Mr. Knight told police that he was "scared for his life" after his friend got shot and he stopped the car and got out on the side of the road. (C. 1931-32.) Mr. Wingard was still in possession of the pistol and ordered him back in the car. (C. 1931-32.) Mr. Knight explained he was "cooperating at this point cause [Mr. Wingard] technically still does have the gun." (C. 1932.) The two men traveled to a field where they left Mr. Daffin's body, then returned to Houston County to clean up and return the borrowed vehicle. (C. 1932-35.) That day, Mr. Knight boarded a bus to Florida to be with Natasha McCrary and his son, Justin McCrary. (C. 1496, 1906.)

During jury selection, defense counsel objected to the prosecution's

discriminatory exercise of peremptory challenges to strike African American potential jurors. (R. 299-302.) The trial court found the State's reasons for striking two African American veniremembers were pretextual, and that there was a "violation . . . in the striking of the jury under Alabama law and the law from the United States Supreme Court." (R. 338-39, 320, 321, 326.) Defense counsel requested that the illegally struck African American potential jurors be replaced on the panel (R. 321, 329-30), but the court accepted the State's proposal to remove two seated white jurors, and replace them with the State's final two strikes, two other white veniremembers. (R. 333-34).

Additionally, seven veniremembers who were subsequently seated on the jury responded in juror questionnaires that they believed either that "blacks are more likely to be involved in crime than whites" or that "blacks are more likely to be involved in crimes of violence than whites."[2] Six of these veniremembers were originally seated on the jury, and one was an alternate. When D.M., one of the jurors who expressed racial bias was dismissed, M.E., an alternate who also expressed racial bias was seated on the jury.

At trial, defense counsel argued that Mr. Knight had no initial involvement in the offense, arguing that Antwain Wingard initiated the altercation with Mr. Daffin, and that Mr. Wingard shot him without Mr. Knight having any idea what was going

[2]See Juror Questionnaires for: M.E. #36 at *12, J.H. #47 at 12; D.M. #63 at *12; K.P.L. #76 at *12; D.S. #93 at *12; L.W. #113 at *12; and R.W #115 at *12.

on or ever forming an intent to rob or kill the victim. (R. 444-46, 1735-37, 1742-43, 1749.) The State lacked direct evidence that Mr. Knight was responsible for the shooting and instead relied on a number of witnesses connected to Mr. Wingard to make out a circumstantial case, including: Mr. Wingard's grandmother, his uncle, his uncle's significant other, and a shop owner who was previously involved in a long term relationship with Mr. Wingard's grandmother. (R. 450, 471, 700-02, 1042, 1130, 1144, 1169.) The defense cross-examined these witnesses on the basis of their relationships with Mr. Wingard and sought to point out that the firearm was recovered at the Wingard home and that Mr. Wingard's grandmother withheld $1,000 she received from Mr. Wingard until the third time she was questioned by police. (R. 1128-29, 1743.)

The prosecution also introduced testimony from two witnesses at trial, Charlotte King and her son Jetavian Bryant, who stated they were afraid of Mr. Knight. (R. 544, 550, 885-86, 929.) Defense counsel objected, but the trial court allowed the testimony. (R. 539, 543, 885, 927.) In response to questioning by the State, Ms. King testified that she was afraid of Mr. Knight. (R. 544, 550.) Her son subsequently testified that he was "concerned for [his] Mom's safety" and that he was "concerned for [his] own safety" as he testified "there on the stand today." (R. 885-86, 929.)

During trial, defense counsel also asked the court for a mistrial following the jury's repeated observations of Mr. Knight in jail clothing, handcuffs, and leg

shackles. (R. 970-71; P. 5-6.) Although the jurors saw Mr. Knight in prison attire on a number of occasions, including when jurors rode the elevator with him while he was shackled and handcuffed, the trial court denied defense counsel's mistrial motions. (R. 690-700, 970-71; P. 5-6.)

B. How the Federal Question Was Presented and Decided Below.

In his brief to the Alabama Court of Criminal Appeals, Mr. Knight argued that the trial court's ruling that multiple witnesses were allowed to testify that Mr. Knight posed an ongoing risk of future dangerousness violated the Fifth, Sixth, Eighth, and Fourteenth Amendments. The court found no reversible error holding that the testimony was relevant to Mr. Knight's "state of mind and his motive" and "because it reflected on [the witness's] own bias and credibility." Knight, 2018 WL 3805735, at *23.

REASONS FOR GRANTING THE WRIT

I. REVIEW SHOULD BE GRANTED TO RESOLVE A SPLIT AMONG JURSIDICTIONS AS TO WHETHER THE FIFTH AND FOURTEENTH AMENDMENTS ARE VIOLATED WHEN THE STATE INTRODUCES IRRELEVANT EVIDENCE AT THE GUILT PHASE ALLEGING THE DEFENDANT POSES AN ONGOING RISK OF VIOLENCE.

The Constitution protects criminal defendants from conviction on the basis of assertions that they pose some risk of future violence or dangerousness. See Simmons v. South Carolina, 512 U.S. 154, 163 (1994) (plurality opinion). In a trial involving Mr. Knight, an African American defendant facing a death sentence, where half of Mr.

Knight's jury expressed the belief that African American people were more likely to be violent or commit crimes, and members of the jury repeatedly saw Mr. Knight shackled and in prison clothing, the prosecution repeatedly introduced testimony during the guilt phase of Mr. Knight's trial that improperly characterized him as posing an ongoing risk of violence. This included eliciting testimony that one witness was "concerned for [his] own safety" as he "[sat] there on the stand today." (R. 929.) The Alabama Court of Criminal Appeals approved of the prosecution's argument, holding it relevant to Mr. Knight's "state of mind and his motive" and finding "it reflected on [the witness's] own bias and credibility." Knight v. State, No. CR-16-0182, 2018 WL 3805735, at *23 (Ala. Crim. App. Aug. 10, 2018). This Court should grant certiorari review in this case to make clear that the introduction of evidence of future dangerousness at the guilt phase of a capital trial is a due process violation.

In Simmons, this Court held that, where the State argues during the penalty phase of a capital trial that a defendant poses a risk of future dangerousness, "and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the capital sentencing jury-by either argument or instruction-that he is parole ineligible." 512 U.S. at 178 (J. O'Connor, concurring in judgment). In reaching this decision, a plurality of this Court recognized that there is a substantial risk that jurors will misuse evidence of future

dangerousness at the guilt phase of a trial, observing that "[a]rguments relating to a defendant's future dangerousness ordinarily would be inappropriate at the guilt phase of a trial, as the jury is not free to convict a defendant simply because he poses a future danger; nor is a defendant's future dangerousness likely relevant to the question whether each element of an alleged offense has been proved beyond a reasonable doubt." Id. at 163 (plurality opinion). Although members of this Court recognized the risk this type of evidence poses, this Court limited its holding on future dangerousness to protections for capital defendants at the penalty phase of bifurcated trial proceedings. See O'Dell v. Netherland, 521 U.S. 151, 158-159 (1997) (observing that J. O'Connor's concurrence was the decisive opinion).

The Constitution does not tolerate convictions on the basis of an allegation of future dangerousness. A number of jurisdictions have made clear that evidence of future dangerousness cannot be used at the guilt phase of trial. See Fulton v. State, 597 S.E. 2d 396, 402 (Ga. 2004) ("It is manifestly improper for a prosecutor to argue to the jury during the guilt-innocence phase of any criminal trial that if found not guilty, a defendant poses a threat of future dangerousness."); Alexander v. Com.,No. 2008–CA–000479–MR, 2009 WL 2834957, at *2 (Ky. Ct. App. Sept. 4, 2009) ("As the United States Supreme Court has stated, "[a]rguments relating to a defendant's future dangerousness [are ordinarily] inappropriate at the guilt phase of a trial, as the jury is not free to convict a defendant simply because he poses a future danger.")

(quoting Simmons plurality opinion); Reed v. State, 644 S.W.2d 479, 481 (Tex. Crim. App. 1983) ("Further, any testimony relative to future dangerousness of an accused is clearly not admissible at the guilt stage[.]"); White v. State, 228 So. 3d 893, 909 (Miss. Ct. App. 2017) ("It is impermissible to use appeals to the fears of juries, such as a defendant's future danger to society, at the guilt or sentencing phases of trials.")

However, because the Simmons Court failed to clearly hold that evidence of a defendant's future dangerousness was "inappropriate at the guilt phase of a trial," a number of jurisdictions, including Alabama, continue to allow criminal defendants to be convicted on the basis of allegations of future dangerousness, with many courts finding Simmons narrowly limited to the penalty phase of capital trials. See Robinson v. Beard, 762 F.3d 316, 327 (3d Cir. 2014) (rejecting application of Simmons to claim of guilt phase evidence of future dangerousness); Bell v. Evatt, 72 F.3d 421, 434 (4th Cir. 1995) (protections required by Simmons do not apply to guilt phase); State v. Williams, 22 So. 3d 867, 896 (La. 2009) (State entitled to argue dangerousness in its closing arguments); State v. Cooper, 700 A.2d 306, 331 (N.J. 1997) (Simmons protections not required at guilt phase); Com. v. Patterson, 91 A.3d 55, 79 (Pa. 2014) (refusing to extend Simmons protection to guilt phase of trial).

This Court has carefully guarded against the risk that a criminal defendant's right to a fair trial may be undermined by any assertions that he poses an ongoing threat to society. In Simmons, a plurality of this Court stated that evidence asserting

a criminal posed an ongoing risk was inadmissible at the guilt phase of a capital trial. 512 U.S. at 163 (plurality opinion). This Court has provided additional protections from the risk that improper considerations will undermine the presumption of innocence in a number of contexts. In Buck v. Davis, 137 S. Ct. 759 (2017), this Court made clear that assertions about future dangerousness where they "appealed to a powerful racial stereotype—that of black men as "violence prone" were a "particularly noxious strain of racial prejudice" that severely prejudiced a defendant who was sentenced to death. Id. at 776.[3] Additionally, in Deck v. Missouri, this Court reiterated that jurors' observation of criminal defendants in identifiable jail clothing and restraints at trial "undermines the presumption of innocence and the related fairness of the factfinding process . . . [because] [i]t suggests to the jury that the justice system itself sees a "need to separate a defendant from the community at large." 544 U.S. 622, 630 (2005) (quoting Estelle v. Williams, 425 U.S. 501 (1976)).

Studies of capital trials have shown that jurors are overwhelmingly preoccupied with fears that a capital defendant is at risk of future acts of violence, even where the prosecution does not deliberately introduce evidence of future dangerousness. John H. Blume et. al., Future Dangerousness in Capital Cases: Always "At Issue", 86

[3]In Pena-Rodriguez v. Colorado, 137 S. Ct. 855 (2017), this Court held that "blatant racial prejudice is antithetical to the functioning of the jury system and must be confronted in egregious cases like this one despite the general bar of the no-impeachment rule." Id. at 871.

Cornell L. Rev. 397, 398–99 (2001); see William W. Berry III, Ending Death by Dangerousness A Path to the De Facto Abolition of the Death Penalty, 52 Ariz. L. Rev. 889, 901 (2010) ("Unequivocally, future dangerousness is the predominant consideration of jurors during sentencing in capital cases."). This overwhelming concern can lead jurors to "discussions of the defendant's dangerousness during guilt deliberations [that] enable jurors to side-step the question of the defendant's guilt." Elizabeth S. Vartkessian, What One Hand Giveth, The Other Taketh Away: How Future Dangerousness Corrupts Guilt Verdicts and Produces Premature Punishment Decisions in Capital Cases, 32 Pace L. Rev. 447 (2012).

In this case, the prosecution introduced testimony from two witnesses at trial, Charlotte King and her son Jetavian Bryant, that they were afraid of Mr. Knight. (R. 544, 550, 885-86, 929.) Defense counsel objected, but the trial court allowed the testimony. (R. 539, 543, 885, 927.) Ms. King testified first, and was asked to "tell us what you told Jetavian about your safety with Knight, if anything." (R. 544.) In response, she stated she was "afraid" of Mr. Knight. (R. 544.) The prosecution went on to ask if she was "concerned for [her] safety from Duke or Antwain [Wingard] in any way?" (R. 550.) Ms. King replied she "was concerned with Justice." (R. 550.)

The prosecution emphasized Ms. King's alleged fear during the testimony of her son, Jetavian Bryant. During questioning, the State asked Mr. Bryant, "[a]fter that conversation that you talked with Mom . . . after Jarvis had been killed, were you

concerned for Mom's safety?" (R. 885.) Mr. Bryant said that he was. (R. 886.) The prosecution then expanded the family's alleged fear of Mr. Knight to the day of trial, asking: "As you sit there on the stand today, are you concerned for your own safety? Yes or no? A. Yes." (R. 929.) Because the Simmons Court did not squarely address the introduction of this type of testimony, Mr. Knight was convicted on the basis of explicit testimony asserting he posed an ongoing risk of violence towards Mr. Bryant and his mother.

The lower court found the future dangerousness evidence was relevant to Mr. Knight's "state of mind and his motive" and that "it reflected on [the witness's] own bias and credibility." Knight, 2018 WL 3805735, at *23. The court below did not explain how evidence that a witness was afraid of the defendant was relevant to either the defendant's motive or state of mind. In finding the evidence was admissible to explain the witness's "bias and credibility," the court below overlooked the absence of any evidence that Mr. Knight ever threatened or attempted to intimidate the witness or engaged in any behavior that would relate to the witness's reticence in testifying. The lower court's holding also overlooked that the allegation of Mr. Knight's ongoing risk of violence directly prejudiced his primary defense at trial, that he was unaware of his co-defendant's intent to rob and kill the victim. (C. 1894-95, 1909, 1918, 1925, 1928, 61 1930; R. 444-46, 1735-37, 1742-43). The introduction and emphasis on evidence suggesting Mr. Knight was engaged in ongoing violent, threatening behavior

was incredibly prejudicial because it suggested Mr. Knight was the kind of person who would engage in violence, and thus was more likely to be the shooter than his co-defendant. Simmons, 512 U.S. at 163 ("[J]ury is not free to convict a defendant simply because he poses a future danger.") (plurality opinion).

This argument was even more damaging to Mr. Knight's defense where there were additional, arbitrary factors that undermined Mr. Knight's guarantee of the presumption of innocence. Mr. Knight was convicted and sentenced to death in a proceeding where half the jurors expressed their belief that African American people were "more likely to be involved in crimes of violence" than white people and were "more likely to be involved in crimes" than white people. Additionally, the trial court refused to prevent jurors from repeatedly viewing him in shackles and jail clothing at multiple points throughout the trial. (R. 651, 655, 690-92, 695-96, 699; P. 5-6, 10-11.) Given the unambiguous expression of racial bias against African American defendants like Mr. Knight, and the likelihood that jurors would conclude that he was being held in jail during trial because he posed an ongoing risk to society, the introduction of explicit testimony that Mr. Knight posed a specific risk to multiple witnesses was highly prejudicial. Pena-Rodriguez, 137 S. Ct. 855; Buck, 137 S. Ct. 759; Deck, 544 U.S. 622; Simmons, 512 U.S. 163 (plurality opinion).

This Court should grant certiorari review in this case to address whether the introduction of evidence of evidence of future dangerousness at the guilt phase of a

capital trial is constitutionally permissible under the Fifth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

The state courts below rejected Mr. Knight's argument that the prosecution improperly introduced evidence at the guilt phase of his trial alleging he posed a risk of future dangerousness to multiple witnesses, but there is a split among jurisdictions on whether what the prosecution did in this case is constitutional. Mr. Knight prays this Court will grant a writ of certiorari to review whether the State's introduction of evidence alleging the defendant posed a risk of future dangerousness offends the Fifth and Fourteenth Amendments.

Respectfully submitted,

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