No. 19-8800

In the
Supreme Court of the United States

JUSTICE KNIGHT,
Petitioner,
v.
STATE OF ALABAMA,
Respondent.

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

BRIEF IN OPPOSITION

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Capital Case

QUESTION PRESENTED FOR REVIEW

Under Alabama law, evidence offered to show a defendant's future dangerousness is inadmissible in the guilt phase of trial. At petitioner's trial, two witnesses testified that they were afraid of petitioner shortly before the murder, and one of the witnesses stated that testifying made him concerned for his safety. Petitioner did not object to these statements on grounds of future dangerousness, and the court below held that plain error did not occur because the testimony was not evidence of petitioner's future dangerousness. The question presented is:

Were petitioner's Fifth and Fourteenth Amendment rights violated?

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STATEMENT OF THE CASE

Petitioner Justice Jerrell Knight was convicted of three counts of murder made capital for killing Jarvis Daffin. Pet. App. 1a. Knight committed the murder so he could steal Daffin's tax refund and use the money to buy a new car. Id.

A. Statement of the Facts

As recounted by the trial court in its sentencing order, the evidence presented at Knight's capital murder trial showed the following:

> Knight and the victim Jarvis Denard Daffin were friends. Knight and Daffin both went to Charlotte King with C&A Tax Service in Dothan to file their federal taxes and request refunds. Daffin's refund request was approved, but Knight's request was rejected and according to King he became upset. Knight told King he needed the money to purchase a car in Florida. On February 13, 2012, Daffin received two tax refund checks totaling over $6,000.00 from the IRS. Knight went with Daffin to the Linden Street Grocery in Dothan, Houston County, Alabama to cash the refund checks. Store employee Peggy Reynolds cashed the checks, and Daffin placed $1,000.00 in his front pocket and the remainder in his back pocket.
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> Previously, Daffin had placed a $50.00 down payment on a car with Steve Carlisle in the Tumbelton area of southern Henry County in anticipation of completing the purchase upon receipt of his tax refund. After Daffin received his tax refund money from Reynolds, Knight and Antwain Wingard drove Daffin in Kamisha Wingard's (Antwain's mother) car for him to pay Carlisle and get the car. While in route to get the car[,] Daffin call[ed] Carlisle to tell him that he [wa]s on the way. Daffin never arrive[d] at Carlisle's business.
>
> The evidence establishe[d] that Wingard was the driver, Knight was in the back seat[,] and Daffin was in the front passenger seat. At some point in Henry County while in the car Knight sho[t] Daffin once in the back of the head with a 9mm handgun. The bullet passed through Daffin's skull and brain, out his face and through the car's glove box.

> The bullet was not recovered. The gunshot was fatal. Wingard and Knight then dump[ed] Daffin's body off of a dirt road in a rural and wooded area near a cotton field in Henry County and cover[ed] it with debris. They stole his tax refund money.
>
> The car's front passenger seat area was covered with a large amount [of] blood. Wingard and Knight went to O'Riley's [sic] Auto Parts Store in Dothan, where Knight used to work and had an account, and purchase[d] fabric dye, shop towels[,] and air fresheners. Ben Stringer, an O'Riley's [sic] employee, saw the men attempting to clean the car in the parking lot after the purchases. Knight and Wingard t[ook] the car to Coastal Car Wash in Dothan where a video capture[d] them attempting to clean the car.
>
> Manguel Wingard (Antwain's uncle) receive[d] a text message from Knight to call him, and Knight t[old] him[:] "it didn't go down right," he was leaving town and getting a new phone[,] and that he was sending the gun to him. Gwendolyn Wingard (Antwain's gandmother) stated Knight called her and told her to take the gun to Manguel Wingard. She also stated that Kamisha called her and told her there was blood in her car, the front passenger side seat belt was missing[,] and a hole was in the glove box. Gwendolyn also stated that Knight told her he was taking the bus to Florida.
>
> Knight was subsequently arrested in Florida for Daffin's murder and transported back to Alabama. Knight's DNA was found on the gun in analysis performed by the Alabama Department of Forensic Sciences. Antwain Wingard's DNA was not found on the gun. Antwain Wingard took investigators to Daffin's body in Henry County. Knight gave a recorded statement to Dothan police investigator John Crawford admitting he was present when Daffin was murdered, but he claimed Wingard committed the crimes and he denied any involvement.

See Sentencing Order 22-24; see also Pet. App. 1a-3a.

B. Proceedings and Disposition Below

On March 30, 2016, Knight was indicted in Henry County for three counts of capital murder: murder during a robbery, in violation of section 13A-5-40(a)(2) of

the Code of Alabama (1975); murder during a kidnapping or attempted kidnapping, in violation of section 13A-5-40(a)(1) of the Code of Alabama (1975); and murder while the victim was in a vehicle, in violation of section 13A-5-40(a)(17) of the Code of Alabama (1975). C. 1342-47.

Trial commenced on September 26, 2016. Pet. App. 26a. As relevant to Knight's petition, Charlotte King—the tax preparer Knight and Daffin had used—and King's son, Jetavian Bryant, testified. Pet. App. 18a. King stated that she was afraid of Knight after she had to tell him that his request for a tax refund had been rejected and that she had conveyed her fear to her son. R. 524-44, 550; see Pet. App. 18a. Bryant likewise recounted that he was "concerned" for his mother's safety. Pet. App. 18a. And after a rough direct examination—where "Bryant initially declined to be sworn in, was cautioned by the circuit court about committing perjury, and repeatedly testified that he could not remember details of his interactions with Knight or statements he had made to law enforcement—the prosecutor on re-direct asked Bryant: "As you sit there on the stand today, are you concerned for your own safety? Yes or no?" Pet. App. 18a; R. 929. Bryant answered that he was concerned for his safety. Id. Knight never asserted that this testimony was inadmissible evidence of future dangerousness. Pet. App. 18a.

The jury found Knight guilty of three counts of capital murder and recommended by a vote of eleven to one that he be sentenced to death. Pet. App. 1a.

On October 27, 2016, after a sentencing hearing, the trial court found that the aggravating circumstances substantially outweighed the mitigating circumstances, accepted the recommendation of the jury, and sentenced Knight to death. Id.; see J. 50; S. 29; C. 1522, 1524, 1526.

In his appeal before the Alabama Court of Criminal Appeals, Knight argued for the first time that the testimony given by King and Bryant was inadmissible because it contained evidence of his future dangerousness. Pet. App. 18a. Reviewing the challenge for plain error, the Court of Criminal Appeals agreed that "[e]vidence of future dangerousness is inadmissible in the guilt phase," but found that the testimony was not improper because it "was neither evidence of [Knight's] future dangerousness nor was it offered only to demonstrate his bad character." Id.

Knight sought rehearing from the Court of Criminal Appeals and petitioned the Alabama Supreme Court for certiorari review. Both petitions were denied. Pet. App. 1b; Pet. App. 1c.

REASONS FOR DENYING THE WRIT

While Knight alleges that a split of authority exists as to whether evidence of future dangerousness can be introduced at the guilt phase of a trial, Pet. 10, Alabama has long held fast to the rule Knight says is required—that such evidence is not admissible. See Ex parte State, 486 So. 2d 476, 479 (Ala. 1985) ("Berard") (holding that evidence of future dangerousness is inadmissible because it can "easily shift[]

the focus of the jury's attention to the issue of punishment, which is an improper consideration at the guilt phase of the trial"). And because Knight failed to preserve his evidentiary challenge in the trial court, the court below reviewed it for plain error. It found that there was no plain error because the evidence offered did not concern Knight's future dangerousness. Thus, Knight asks this Court to grant a writ of certiorari to review an evidentiary ruling that Knight did not object to, and to do so using a legal rule that the court below clearly applied. This Court should deny the petition. See Sup. Ct. R. 10 ("A petition for 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.").

I. Because Knight Did Not Preserve His Claim At Trial, The Decision Below Was Based In Part On State Procedural Grounds.

During the State's case in chief, two witnesses—King and Bryant—testified regarding Knight's behavior prior to the robbery and murder of Daffin. Both King and Bryant testified that they were afraid of Knight at the time. And King also testified that he was afraid to testify, though he did not identify Knight as the source of that fear. Pet. App. 18a. Knight now claims that this testimony amounted to evidence of his "future dangerousness" and was thus improper under this Court's holding in Simmons v. South Carolina, 512 U.S. 154 (1994). Pet. 7, 12-13.

Importantly, however, Knight did not preserve this challenge at trial. Pet. App. 18a. Thus, when he raised it for the first time on appeal, the Alabama Court of

Criminal Appeals reviewed the issue for "plain error" only—a standard that incorporates not only the merits, but also state-law procedural issues (such as whether the error was "plain"). See Rule 45A, Alabama Rules of Appellate Procedure. And the Alabama Supreme Court denied Knight's certiorari petition without issuing an opinion. Pet. App. 1c. These considerations thus make it extremely likely that the judgment below rests on adequate and independent state-law grounds. But even if there were a colorable argument otherwise, these procedural considerations make this petition an extremely poor vehicle to address the question presented.

II. Alabama Courts Have Long Applied The Legal Rule Knight Asks This Court To Adopt.

In an effort to shoehorn his claim into one of Rule 10's "compelling reasons" for granting certiorari review, Knight alleges that the supposed evidence of "future dangerousness" was allowed in his trial because of a "split among jurisdictions" as to whether evidence of future dangerousness is admissible in the guilt phase of a trial. Pet. 7, 10. And he contends that was error because, as this Court suggested in Simmons, "[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." Simmons, 512 U.S. at 163 (plurality opinion). Thus, Knight argues that this Court should resolve the purported

split and extend its observation in Simmons to make it clear that such evidence is not admissible in the guilt phase.

Neatly ignored in Knight's petition, however, is any recognition that Alabama has long disallowed the admission of evidence of future dangerousness during the guilt phase. (Indeed, without a single citation to an Alabama case, Knight claims that Alabama is one of the jurisdictions that "continue to allow criminal defendants to be convicted on the basis of allegations of future dangerousness." Pet. 10.) But the Alabama Supreme Court could not be clearer:

> [I]t is improper to elicit at the guilt phase of a capital trial evidence of a defendant's future dangerousness because such evidence … would tend only to confuse the jury in its consideration of whether the defendant was guilty of committing the offense.

Ex parte Boyd, 715 So. 2d 852, 854 (Ala. 1998). Under Alabama law, questions regarding a defendant's possible future conduct are considered "unfairly prejudicial to the defendant." Berard, 486 So. 2d at 479. Indeed, the court below said just that: "Evidence of future dangerousness is inadmissible in the guilt phase because this type of evidence could 'easily shift[] the focus of the jury's attention [away from the defendant's guilt] to the issue of punishment.'" Pet. App. 18a (alterations in original) (quoting Berard, 486 So. 2d at 479). Thus, even if other jurisdictions have different rules, Knight is not the person to challenge them. He has already benefitted from the very rule he says this Court should adopt, and a decision by this Court adopting such a rule would thus have no effect on Knight's case.

III. Knight's Evidentiary Challenge Is Fact-Bound And Lacks Merit.

Because the court below already applied the legal rule Knight now seeks, at most the petition presents only a fact-bound disagreement with the court over whether the testimony given by King and Bryant actually amounted to evidence of "future dangerousness." Such "fact-bound issue[s]" seldom warrant certiorari review because they "are unlikely to arise with any regularity." Massachusetts v. Sheppard, 468 U.S. 981, 988 (1984).

In any event, Knight's fact-bound argument is itself meritless because the testimony that he objected to on appeal isn't evidence of future dangerousness. Tellingly, Knight has failed to cite to any testimony that he posed a danger to anyone in the future. Nor has he cited to any prosecutorial argument regarding "future dangerousness." Instead, he constructs a straw man out of testimony offered by King and Bryant. Knight's first step is to conflate two separate lines of questioning: 1) testimony from King and Bryant regarding Knight's demeanor around the time that he murdered Jarvis Daffin, and 2) testimony from Bryant regarding his reluctance to testify and concern for his safety. Knight groups all this testimony together and argues that the court below "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.'" Pet. 13.

This argument misrepresents the holding below in two important ways. First, Knight implies that the Court of Criminal Appeals found the relevant testimony to be "future dangerousness evidence." It did not. Indeed, it specifically rejected Knight's arguments: "The testimony cited by Knight was neither evidence of his future dangerousness nor was it offered only to demonstrate his bad character." Pet. App. 18a. Thus, the court below *did not* find "the future dangerousness evidence" relevant to Knight's motive and state of mind. Rather, it found the evidence regarding Knight's *motive and state of mind* relevant to Knight's motive and state of mind.

Second, Knight fails to cite to any testimony or argument during the guilt phase regarding the danger that he might pose in the future. Instead, the only testimony about Knight's own behavior addressed his *past* actions. The State's questioning of Charlotte King makes that clear:

> Q. [Prosecutor]: Can you tell the ladies and gentlemen of the jury, after you informed J. J., Justice Knight, he was not going to get his money and how he acted, did you ever have any conversations with Jetavian, your son, about your safety?
>
> A. Yes.
>
> [...]
>
> Q. The judge said you can tell us what you told Jetavian about your safety with Knight, if anything. Not what he said, but what you told and discussed with him.
>
> A. I was afraid.

[...]

Q. [W]ere you concerned for your safety from Duke or Antwain in any way?

A. I was concerned with Justice.

R. 542-44, 550. Likewise, the State questioned Jetavian Bryant about his concerns for safety in the past:

Q. Did you talk with Mom [...] after Jarvis had been killed? Just did you talk with Mom? Yes or no?

A. Right. Yes.

Q. Okay. Your mom. Okay?

A. I said "yes."

Q. After that conversation that you talked with Mom on 2-4 of '12, after Jarvis had been killed, were you concerned for Mom's safety?

A. After then?

Q. Yes.

A. Yes.

R. 885-86. Neither witness was asked about, or testified about, any concern they had for Knight's *future* conduct.

Bryant also testified that he was afraid to testify at trial. But that testimony, too, had nothing to do with Knight's future dangerousness. As the court below explained:

The record clearly demonstrated Bryant's reticence to testify about Knight -- Bryant initially declined to be sworn in, was cautioned by the circuit court about committing perjury, and repeatedly testified that he

> could not remember details of his interactions with Knight or statements he had made to law enforcement. On re-direct examination the State asked Bryant, "As you sit there on the stand today, are you concerned for your own safety? Yes or no?" (R. 929.) Bryant answered that he was. Bryant's acknowledging his fear of testifying was relevant because it reflected on his own bias and credibility as a witness. "Bias, which may be induced by self-interest or by fear of testifying for any reason, is almost always relevant because it is probative of witness credibility." State v. McArthur, 730 N.W.2d 44, 51 (Minn. 2007) (citing State v. Clifton, 701 N.W.2d 793, 797 (Minn. 2005)).

Pet. App. 18a-19a. Knight makes no real effort to explain why this holding is wrong. Instead, he merely takes the Court of Criminal Appeals to task for "overlook[ing] the absence of any evidence that Mr. Knight ever threatened or attempted to intimidate" Bryant. Pet. 13. This argument suffers from two major flaws. First, it overlooks the purpose of the line of questioning, which was to explain the witness's demeanor and obvious difficulties in testifying. And second, "the absence of any evidence that Mr. Knight ever threatened or attempted to intimidate" Bryant itself belies Knight's suggestion that Bryant's testimony amounted to evidence of future dangerousness.

Moreover, it is significant that Knight has not alleged that there were any improper *arguments* to the jury about his future dangerousness, which was the concern of this Court in Simmons. See 512 U.S. at 163. That is because the prosecutor's guilt phase closing argument focused on the facts of the crime and the coverup. The single reference to Bryant's testimony focused on the fact that when, shortly before the murder, Knight found out that he wasn't getting a tax refund he

"was mad" and that Bryant "was afraid." (R. 1714.) Thus, as the court below correctly held, that testimony was relevant, admissible, and said nothing about Knight's future dangerousness.

Taken in context with the fact that *no witness* testified regarding any supposed "future dangerousness," the prosecutor's closing argument makes it clear that the testimony regarding Knight's *past* behavior and demeanor was admissible, relevant, and properly used by the prosecution. There is no genuine concern that the specter of "future dangerousness" affected the jury's guilt phase deliberations.

IV. Knight's Remaining Arguments Are Irrelevant To The Question Presented And Also Lack Merit.

Perhaps recognizing the weakness of his central claim that his guilt phase was infected with evidence and argument regarding "future dangerousness," Knight tries to shore up his petition by arguing that his pre-trial incarceration and supposed "racial bias" on the part of his jury made the (nonexistent) future dangerousness evidence "even worse." Pet. 14.

But first, as Knight concedes, he was never "cuffed or shackled in the courtroom." Pet. App. 4. As the court below explained:

> Here, though, there is no allegation that Knight stood trial while in jail clothing or physical restraints. It appears from the record that Knight was in jail clothing and physical restraints only while being escorted from the jail to the courtroom. This Court has held that it is not a "ground for a mistrial that an accused felon appears in the presence of the jury in handcuffs when such appearance is only a part of going to and from the courtroom. This is not the same as keeping an accused

> in shackles and handcuffs while being tried." White v. State, 900 So.2d 1249, 1256 (Ala. Crim. App. 2004) (citations and quotations omitted). "'"A sheriff who is charged with the responsibility of safely keeping an accused has the right in his discretion to handcuff him when he is bringing him to and from the courtroom, when the handcuffs are removed immediately after he is taken into the courtroom."'" Id. (quoting Young v. State, 416 So.2d 1109, 1112 (Ala. Crim. App. 1982), quoting in turn Moffett v. State, 291 Ala. 382, 384, 281 So.2d 630, 632 (1973)).
>
> Further, the circuit court properly instructed the jury at both the guilt phase and penalty phase that it could not consider in its deliberations Knight's jail clothing or physical restraints, and all jurors indicated that they could follow the instructions. "'[A]n appellate court "presume[s] that the jury follows the trial court's instructions unless there is evidence to the contrary."'" Thompson v. State, 153 So.3d 84, 158 (Ala. Crim. App. 2012) (quoting Ex parte Belisle, 11 So.3d 323, 333 (Ala. 2008)).

Pet. App. 5. Knight offers no meaningful explanation for how the unsurprising fact that he was incarcerated somehow exacerbated the effect of the (nonexistent) evidence of future dangerousness that he complains of. Nor does he cite to any authority that supports his argument. Consequently, this fact-bound argument is meritless and offers no support for granting certiorari review.

Finally, despite failing to point to *any* impermissible argument by the prosecutor, Knight confusingly claims that "*[t]his argument* was even more damaging" because jurors were allegedly racially biased against him. Pet. 14. But as already noted, there was no "argument" about Knight's future dangerousness. And as for his claim of racial bias in the jury, the court below also properly rejected that claim:

> Knight argues that he was denied a fair trial because, he says, half the jurors expressed a racial bias against black defendants. Veniremembers were presented with the following questions on their juror questionnaires: "Do you think blacks are more likely to be involved in crime than whites?" and "Do you think blacks are more likely to be involved in crimes of violence than whites?" Six selected to Knight's jury answered these questions in the affirmative. Knight did not raise this claim below. Consequently, it will be reviewed for plain error only.
>
> Knight asserts that these six jurors, through their answers on the juror questionnaires, displayed an "unambiguous racial bias" against blacks. (Knight's brief, at 44.)[8] This Court disagrees. Instead, the jurors' answers indicate merely their own perception of criminal demographics. The jurors did not indicate, for example, that they believed a black person was more likely to be involved in crime or violent crime because he or she was black. Further, all jurors who sat in judgment of Knight indicated on their juror questionnaires that they understood it was their role to determine the facts, that they believed Knight was innocent until proven guilty, that they could follow the instructions of the circuit court, and that they could render an impartial verdict based solely on the evidence.
>
> Knight has made no showing of racial bias on the part of the jurors. This Court finds no evidence or error, plain or otherwise, in the circuit court's actions.

Pet. App. 11.

Instead of citing to any direct support for the proposition that a statement about crime statistics equates to a confession of racial animus, Knight offers four bare citations to this Court's prior cases. To the extent that he relies on those cases, his reliance is misplaced. In Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 869 (2017), "a juror ma[de] a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant." No such statement occurred in this case.

In Buck v. Davis, 137 S. Ct. 759, 775 (2017), this Court addressed a situation in which defense counsel introduced evidence suggesting that "Buck was likely to act violently in the future" because of his race, and noted that an argument to that effect would be "patently unconstitutional." Id. Again, Knight has failed to point to any similar evidence or argument in the present case, and a review of the record demonstrates that there is none to be found. Finally, Deck v. Missouri, 544 U.S. 622 (2005), and Simmons, 512 U.S. 163, do not concern racial animus at all. At bottom, Knight has failed to show that evidence of future dangerousness was admitted at all, much less that it was somehow exacerbated by his incarceration or unproven racial bias.

CONCLUSION

For the foregoing reasons, this Court should deny the petition.

Respectfully submitted,

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