

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2021

MICHAEL BELCHER, 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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CAPITAL CASE

QUESTION PRESENTED

At Michael Belcher's capital murder trial, the State introduced over 40 gruesome autopsy and crime scene photographs of the victim's body, depicting post-mortem decomposition and animal predation. The State's medical examiner admitted that the photographs told the jury nothing about the victim's cause of death. Despite the inflammatory nature of these photographs and their conceded lack of probative value, the trial court failed to conduct even a cursory analysis of the risk of prejudice before admitting the photos. The Alabama Court of Criminal Appeals affirmed, similarly without conducting a prejudice analysis. The question presented is thus:

In a capital case, does the admission, without an analysis of the risk of prejudice, of over 40 gruesome photographs of the victim's body, depicting post-mortem decomposition and animal predation, violate a defendant's Eighth and Fourteenth Amendment rights to due process, a fair trial, and a reliable conviction and sentence?

STATEMENT OF RELATED CASES

State of Alabama v. Michael Belcher, No. 2016-161, Tuscaloosa County Circuit Court. Judgment entered April 3, 2019.

Michael Belcher v. State of Alabama, No. CR-18-0740, Alabama Court of Criminal Appeals. Opinion entered December 16, 2020.

Ex parte Michael Belcher, No. 1200374, Alabama Supreme Court. Order entered May 21, 2021.

State of Alabama v. Michael Belcher, No. 2016-161.60, Tuscaloosa County Circuit Court. Petition for post-conviction relief currently pending, filed May 12, 2021.

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PETITION FOR WRIT OF CERTIORARI

Michael Belcher respectfully petitions for a writ of certiorari to review the judgment of the Alabama Court of Criminal Appeals.

OPINIONS BELOW

The opinion of the Alabama Court of Criminal Appeals affirming Mr. Belcher's conviction and death sentence, *Belcher v. State*, No. CR-18-0740, 2020 WL 7382535 (Ala. Crim. App. Dec. 16, 2020), is attached as Appendix A. The order of that court denying Mr. Belcher's application for rehearing on February 16, 2021, is unreported and is attached as Appendix B. The order of the Alabama Supreme Court denying Mr. Belcher's petition for writ of certiorari is also unreported and is attached as Appendix C. *Ex parte Belcher*, No. 1200374 (Ala. May 21, 2021).

JURISDICTION

The Alabama Court of Criminal Appeals affirmed Mr. Belcher's capital convictions and death sentence on December 16, 2020. See Appendix A. That court overruled a timely application for rehearing on February 26, 2021. See Appendix B. The Alabama Supreme Court denied Mr. Belcher's petition for a writ of certiorari on May 21, 2021. Under this Court's orders of March 19, 2020, and July 19, 2021, the deadline for this petition was extended to October 18, 2021. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment to the United States Constitution provides:

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

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

No State shall...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.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

On November 2, 2015, sometime after 6 a.m., Hale County, Alabama Deputy Enoch Rose responded to a call concerning two individuals walking along South Sandy Road asking for gas near the South Sandy shooting range in Talladega National Forest. (R. 614-15.)¹ When Deputy Rose arrived on the scene, he found two individuals, who he identified to be Chylli Bruce and Steven George, standing by a green car. (R. 617-19.) He was familiar with Mr. George because of his criminal history. (R. 618.) Both had disheveled appearance, and Ms. Bruce had blood smeared down both legs of her jeans. (R. 621-22.) When asked if she had any weapons, Ms. Bruce produced a knife and some other items. (R. 620.) Deputy Rose also searched Mr. George and found he was in possession of meth. (R. 620.) Mr. George was acting very nervous and both

¹“C.” refers to the clerk’s record, “R.” to the reporter’s transcript, “S” to the supplemental record, and “SX.” to the State’s Exhibits.

of them, especially Ms. Bruce, appeared high on meth. (R. 625–26.) Deputy Rose searched the car, which he determined was registered to Michael Belcher. (R. 622–23.) He found drug paraphernalia and money, but he did not notice any blood at that time. (R. 629.) He did find a large knife laying open on the ground near the passenger side front tire (R. 626), which was later identified as belonging to Mr. George (R. 578, 717).

Around 10 or 11 a.m. that morning, Michael Belcher knocked on the door of Lauren Harvey, located on Bear Creek Road, near Duncanville, several miles from where Ms. Bruce and Mr. George were arrested , and asked to use the phone. (R. 423, 645-46, 651, 655.) Ms. Harvey did not let him in, but called her father-in-law, Ted Harvey and law enforcement. (R. 648, 650, 655.) Mr. Harvey found Mr. Belcher sitting on a bridge on the side of South Sandy Road. (R. 657-58.) He was wearing shorts and boots but no shirt. (R. 658.) Mr. Belcher told him he had been walking all night after some friends drove off and left him. (R. 659.) Mr. Harvey took Mr. Belcher to the Duncanville Feed and Seed, bought him something to drink, and called his father to come get him. (R. 659.)

Meanwhile, Lieutenant Al Jackson of the Tuscaloosa Sheriff's Office responded to Ms. Harvey's call (R. 671), so Mr. Harvey took Mr. Belcher back to where he had met him (R. 661). Mr. Belcher spoke with Lt. Jackson and explained that he had been riding around with his girlfriend, as well as George and his girl, and that the others had driven off and left him. (R. 674.) He said he lost his shirt in the creek when he was washing his face. (R. 676.) Lt. Jackson did not notice any blood on Mr. Belcher, but did notice some briar scratches. (R. 681-82.) Mr. Belcher's father came to pick him up, and

Mr. Belcher was permitted to leave with him. (R. 676-77.)

One week later, on November 9, 2015, a hunter discovered a badly decomposed and mutilated human body in the woods, approximately 200 feet from where Ms. Bruce and Mr. George had been arrested. (R. 34, 435-36.) The body was later identified to be Samantha Payne (R. 453-54, 718), whose mother had reported her missing that same day (R. 451-52). Ms. Payne's hands were tied to a tree with a belt and coaxial cable. (R. 918.) The level of animal predation and decomposition was so advanced that it was impossible to determine a cause or manner of death (R. 922-23; C. 330-31), or even to determine whether there was "injury disease, anything else that may have been of importance." (R. 922-23; see also C. 331-32.) Although her skull was found 14 feet from her body, it was impossible to determine whether this occurred pre- or post-mortem and may have been the result of animal predation. (R. 865-66, 933-34.)

The same day that Ms. Payne's body was discovered, Ms. Bruce, Mr. George, and Mr. Belcher were arrested and charged with capital murder. (R. 488-490.) Law enforcement then searched Wee Racing, a motorcycle and four-wheeler repair shop owned by Michael Belcher's father, and Mr. Belcher's home. (R. 725, 748.) No evidence was presented at trial from these searches that connected Mr. Belcher to Ms. Payne's death. (R. 726-727, 748-49.) Law enforcement also searched Mr. Belcher's car, which had been impounded since Mr. George and Ms. Bruce were arrested. (R. 750.) Locations in the car and trunk tested presumptively positive for the presence of blood, but no conclusive test was performed. (R. 838, 852-57; C. 325.) The Department of Forensic Sciences tested only one swab from the car for DNA. (C. 324-29.) The results

were inconclusive and could not be linked to Ms. Payne. (C. 328.)

Investigators also submitted several additional items of evidence for DNA testing. Steven George's shirt and a cellphone in his possession when he was arrested both tested positive for Ms. Payne's DNA. (C. 326; R. 949.) A jacket found in Mr. Belcher's car also tested positive for Ms. Payne's DNA, but no evidence was presented as to whom the jacket belonged. (C. 326; R. 793.) Steven George's knife tested presumptively positive for the presence of blood, but no confirmatory test was performed. (C. 325.) While the handle of Steven George's knife contained a mixture of DNA that included Mr. Belcher, the results for the blade of the knife were inconclusive and could not be linked to Ms. Payne. (C. 328.)

At Mr. Belcher's trial, the State relied primarily on the testimony of Steven George and Ms. Bruce. Both testified in exchange for favorable plea deals that permitted them to plead to the reduced charge of felony murder. (C. 388–91.) Ms. Bruce's agreement provided that she was to be given probation and released from jail. (R. 799; *see also* R. 317.) At the time of trial, she was living in the community at a sober living facility.² (R. 462-64, 495-97.) Mr. George's agreement provided that he was to receive life with parole. (C. 390-91.) Their testimony placed nearly all the blame for Ms. Payne's death on Mr. Belcher, but each repeatedly responded that they didn't

² Ms. Bruce's plea agreement reflects that she was to receive 20 years, split 5 to serve in the Department of Corrections. (C. 388–89.) She expected that she would receive credit toward the carceral portion of her sentence for at least three years she had spent in drug rehabilitation programs while the other cases were tried. (R. 495–96.)

know or remember basic details outside of their prepared testimony. (R. 462-611.) Mr. Belcher, by contrast, testified that Ms. Brue and Mr. George played a much larger role, and that Ms. Payne was alive when he left her with them. (R. 952-1000.)

Steven George testified that on the night of November 1, 2015, he was hanging out at Wee Racing. (R. 553.) Also present at various points in the evening were Michael Belcher, Chylli Bruce, Alyssa Watson and Marcus George.³ (R. 552.) They were all using methamphetamine throughout the night and early morning (R. 469, 471-2, 508, 553, 955-56, 998.) Around 2 a.m., Samantha Payne joined them. (R. 472, 554.)

Steven George decided that he wanted to drive Ms. Payne's vehicle. (R. 556.) When she went to the bathroom to use methamphetamine, he stole her keys. (R. 555.) He and Marcus George then drove Ms. Payne's vehicle down the road. (R. 556.) Steven George decided that he was going to take the catalytic converter and other parts out of the car in order to get some money, so he took Marcus George back to the shop to get some tools. (R. 556, 558.) Marcus George and Alyssa Watson met Steven George under the Harrisburg bridge in Marcus's Jeep, where Steven George removed the car battery and catalytic converter from Ms. Payne's car, drained the gas into a bucket, and then set the car on fire. (R. 557-58.) Steven George testified that taking and destroying Ms. Payne's car was entirely his idea and that Mr. Belcher had nothing to do with it. (R. 594.) Indeed, this was something that he had done before. (R. 594.)

Both Mr. Belcher and Ms. Bruce testified that when Ms. Payne discovered her

³ Marcus George and Steven George are not related. (R. 552.)

car was missing, she became angry. (R. 472-73, 960.) Mr. Belcher testified that this resulted in Ms. Payne getting into a physical confrontation with Ms. Bruce, and when she returned, also with Ms. Watson. (R. 961-65.) Ms. Watson pulled out a gun and hit Ms. Payne with it after which Steven George tied her hands with a belt. (R. 964-65.) Ms. Watson continued to wave the gun around, and Mr. Belcher, who had seen Ms. Watson shoot at people before, intervened to try to get them to leave his father's shop. (R. 965-66.)

Ms. Bruce, on the other hand, testified that, when Ms. Payne learned her car was missing, she got into a confrontation with Mr. Belcher. (R. 472-73.) Ms. Bruce drove Mr. Belcher's car the short distance to the old mill building where Mr. Belcher lived, with Mr. Belcher and Ms. Payne in the car. (R. 473, 475-77, 966.) Steven George, Marcus George, and Ms. Watson drove in Marcus George's Jeep. (R. 477, 966-67.)

Mr. Belcher testified that, when they arrived, Steven George, Marcus George, Ms. Watson, and Ms. Bruce began arguing about what to do with Ms. Payne because they did not want to go to jail for destroying her car. (R. 967-68.) Steven George and Ms. Bruce then pulled Ms. Payne half out of the car and beat her. (R. 968.) Marcus George handed Steven George a hammer, and he hit Ms. Payne in the head with it. (R. 968.) Steven George and Ms. Bruce, however, claimed Mr. Belcher had beaten Ms. Payne, although Ms. Bruce was unclear about who else might have been involved. (R. 478, 561-62.)

After police drove by, Marcus George directed the group to move to an abandoned trailer on property owned by Ms. Watson's family. (R. 478-80, 562-63,

968-69.) Once there, Mr. Belcher took Ms. Payne out of his car. (R. 970.) Mr. Belcher testified that shortly after that, he attempted to leave, but he got stuck in a ditch. (R. 970.) Steven George, however, claimed that Mr. Belcher beat Ms. Payne while they were at the trailer. (R. 564.) Ms. Bruce testified that Marcus George also beat her. (R. 481, 516.) Steven George admitted that he located some cable wire and shoestrings and participated in tying Ms. Payne's feet and hands together. (R. 564-65.) Ms. Bruce acknowledged that she used a knife to remove Ms. Payne's fingernails. (R. 480, 515-18, 530.)

Marcus George assisted Mr. Belcher in getting his car unstuck, but, in the process, damaged Mr. Belcher's trunk so that it did not close properly. (R. 567-68, 970.) Ms. Payne was put into Mr. Belcher's trunk. (R. 482, 566, 971.) Both vehicles drove to Talladega National Forest. (R. 482, 570.) Steven George sat in the back seat of Mr. Belcher's car and repeatedly poked Ms. Payne with a stick. (R. 482, 601-02, 972-73.) On the way, Ms. Payne fell out of the trunk, and they stopped and put her back in. (R. 483, 569-70, 973.)

Mr. Belcher's car ran out of gas. (R. 484, 571, 974.) Marcus George's Jeep passed them but did not stop. (R. 571-72, 974.) Steven George and Mr. Belcher took Ms. Payne out of the trunk. (R. 484, 975.) Mr. Belcher testified that he then walked off and left Ms. Payne, still alive, with Ms. Bruce and Steven George. (R. 975.) Steven George testified he and Mr. Belcher took Ms. Payne into the woods, and that Mr. Belcher then asked for his knife and told him to go get more rope. (R. 572-75.) Steven George said he did not return, but instead he and Ms. Bruce walked down the road looking for gas

and then were ultimately arrested. (R. 575-77.)

At the penalty phase of the trial, the defense presented expert testimony from Dr. Randall Griffith that Mr. Belcher suffers from mild neurocognitive disorder, likely due to head injuries from motorcycle crashes. (R. 1109, 1111-12.) This would have negatively impacted his decision-making and made him more vulnerable to addiction. (R. 1109-12.) Dr. Griffith also found that Mr. Belcher had a stimulant use disorder due to his addiction to meth at the time of this offense. (R. 1112-13.)

The defense also presented testimony from a guard at the county jail about Mr. Belcher's good behavior as an inmate (R. 1101-02) and from several family members about the positive changes that they had seen in him since he had been in jail and sober (R. 1139-40, 1145-46, 1169). Mr. Belcher's family also testified about their love for him, as well as his close relationship with his 11-year-old daughter, Leah, for whom he had been a very involved and loving father. (R. 1136-70.) In particular, Mr. Belcher's father testified about how his divorce from Leah's mother, during which he was not able to see Leah for an extended period of time, had been devastating for him and the beginning of a dark time in his life. (R. 1144-45.) He also testified about Mr. Belcher's military service and strong mechanical skills. (R. 1142-43, 1146.)

The defense argued that Mr. Belcher would be able to make positive contributions even from prison by teaching other inmates and maintaining relationships with his family. (R. 1183-84.) They also argued that given the sentences of his co-defendants — in addition to Ms. Bruce's probationary sentence and Steven George's life with parole sentence, both Marcus George and Alyssa Watson were

sentenced to 30 years — it would be inequitable to sentence Mr. Belcher to death. (R. 1181–82.)

B. PROCEEDINGS BELOW

On January 28, 2016, Michael Belcher was indicted for one count of capital murder during the course of a kidnapping pursuant to Alabama Code § 13A-5-40(a)(1). (C. 16–17.)

During Mr. Belcher’s trial, the prosecution introduced over 40 color photographs depicting post-crime mutilation of the victim’s body,⁴ including many that featured “a headless corpse that ha[d] been eaten by animals” (R. 294), degraded body parts covered in “maggots [and] fly larvae (R. 917),” and magnified images of a decapitated skull (R. 919). These inflammatory photographs were a defining feature of the trial despite testimony from State witnesses that “[t]hings happened after death which make it impossible to really know what happened.” (R. 931.)

After a full week in the woods, the victim’s body’s level of decomposition and subjection to animal predation (R. 294, 917, 922, 925, 933) was so significant that it was not only impossible to determine the cause of death (R. 922, 931, 1015; C. 330–31), it was impossible to determine the manner of death (C. 330–31); impossible to determine whether the victim’s head had been removed by people before death or by animals after (R. 30, 294, 866, 1015); and impossible to even determine whether there

⁴ The State’s 44 photographs depicting post-crime mutilation were admitted as Exhibits 1–4, 7, 38–58, 147–161, and 173–175. (C. 196–99, 203, 218–238, 336–350, 362–364.)

was “injury, disease, anything else that may have been of importance” (R. 922–23). The autopsy report’s final diagnosis noted the “absence of identifiable **antemortem** trauma.” (C. 330 (emphasis added).)

Medical examiner Steven Dunton specifically testified that the victim’s body revealed nothing about how she had died:

[T]here’s no way to assess whether there had been some sort of brain trauma. . . . [T]here’s no way to know if there was injury, disease, anything else that may have been of importance. . . . [There was] no way to tell whether there had been some sort of perforating trauma that went through and through the arms or the legs that might have had something to do with her death.

(R. 922–23.)

The body was so distorted by events after death that the hunter who discovered her did not immediately recognize that the remains were human. (R. 434–35.) Her head had been separated from her body, and the bones of the neck were exposed. (R. 917.) The skin, flesh, and soft tissue was almost completely gone from her arms and legs. (R. 917.) What remained of the body was covered in maggots (R. 917), and several photographs showed close up images of maggots consuming exposed flesh (*see, e.g.*, C. 339, 343–44, 346).

Over defense counsel’s objection, the prosecution introduced dozens of autopsy photos. (R. 914.; C. 335–66.) The prosecution also admitted over 20 photographs of the body or body parts taken at the scene where the body was discovered. (R. 822–32, 914–20.) This included 16 images of the decomposed headless corpse (C. 196–98, 218–19, 222, 227, 237, 238, 336–342) and nine images of the victim’s skull (C. 223, 224,

231–34, 347, 348, 350). The trial court conducted no analysis of the prejudicial impact of the photographs before they were admitted. (R. 433, 454, 823, 915.)

Subsequently, on March 14, 2019, the jury convicted Mr. Belcher of one count of capital murder in the course of a kidnapping. (C. 126, 138; R. 1067.) On March 18, 2019, the jury returned verdicts finding that the offense was especially heinous, atrocious, and cruel, and recommending that Mr. Belcher be sentenced to death. (C. 126, 140–41; R. 1206–07.) On April 3, 2019, the trial court sentenced Mr. Belcher to death. (R. 1209–16; C. 148–70.)

On appeal, Mr. Belcher argued that the presentation of these photographs was substantially more prejudicial than probative, and violated Mr. Belcher’s rights to due process, a fair trial, an impartial jury and a reliable conviction and sentence under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. *Darden v. Wainwright*, 477 U.S. 168, 171 (1986); *see also Holbrook v. Flynn*, 475 U.S. 560, 567–68 (1986). The Alabama Court of Criminal Appeals held that, “[a]lthough some of the photographs were gruesome, based on the holdings of the above-cited cases, we cannot say that the circuit court abused its substantial discretion in admitting the photographs.” *Belcher*, 2020 WL 7382535, at *25. The court did not conduct any case-specific analysis of the probative value of the photographs as compared to their prejudicial impact, but simply cited to prior cases that had found limited numbers of photographs showing injuries that occurred during the crime or some level of decomposition to be admissible. *Id.* at *24–25 (citing, e.g., *Dawson v. State*, 266 So. 2d 806, 809–10 (Ala. Crim. App. 1972) (upholding admission of 3

photographs of the victim's decomposed body); *Loggins v. State*, 771 So. 2d 1070, 1077 (Ala. Crim. App. 1999) (finding photographs showing mutilation of the victim's body that occurred during the crime were admissible); *Smith v. State*, 246 So. 3d 1086, 1111 (Ala. Crim. App. 2017) (upholding admission of photographs showing decomposition to illustrate wounds inflicted during the offense)).

The Alabama Supreme Court denied Mr. Belcher's petition for writ of certiorari. *Ex parte Belcher*, No. 1200374 (Ala. May 21, 2021). This petition follows.

REASONS FOR GRANTING THE WRIT

- I. THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER, IN A CAPITAL CASE, THE ADMISSION OF MORE THAN FORTY GRUESOME POST-MORTEM PHOTOGRAPHS OF THE VICTIM'S BODY, SHOWING DECOMPOSITION AND ANIMAL PREDATION, WITHOUT AN ANALYSIS OF THE RISK OF PREJUDICE, VIOLATES DUE PROCESS AND THE EIGHTH AMENDMENT.**
 - A. The Admission of These Photographs Injected Passion and Prejudice into the Trial, and Resulted in the Denial of Due Process and an Unreliable Conviction and Sentence.**

This Court should grant certiorari to establish that the introduction into evidence, at a capital trial, of over 40 gruesome color photographs of the victim's body, depicting post-mortem decomposition and animal predation, is so prejudicial that it violates a defendant's right to due process, as well as his right to receive a sentence that is neither arbitrary nor capricious. To allow a capital conviction and sentence of death to stand when such incredibly gruesome and unnecessary photographs were introduced at trial, without any analysis of their prejudicial impact, would violate Mr. Belcher's right to due process, as well as his rights under the Eighth Amendment.

In this case, authorities discovered the victim’s body in Talladega National Forest a week after her death. (R. 294, 917, 922, 925, 933.) At trial, the State presented over 40 color photos depicting the victim’s “very decomposed” (R. 922–23) body, including many that featured “a headless corpse that ha[d] been eaten by animals” (R. 294), degraded body parts covered in “maggots [and] fly larvae (R. 917),” and magnified images of a decapitated skull (R. 919). These photographs featured prominently at Mr. Belcher’s capital trial, despite the fact that the State’s medical examiner admitted he was unable to determine the cause of the victim’s death from the photographs because “so much of her remains were gone . . . there’s no way to know if there was injury, disease, [or] anything else that may have been of importance. . . . We just don’t have enough remaining of her body to be able to identify why she died.” (R. 922–23.)

The trial court failed to conduct even a cursory analysis of the risk of prejudice inherent in these photographs. (R. 913–15.) On appeal, the Alabama Court of Criminal Appeals similarly declined to analyze prejudice, instead upholding the trial court’s admission of the photos simply by citing state precedent. *Belcher v. State*, No. CR-18-0740, 2020 WL 7382535, at *24–25 (Ala. Crim. App. Dec. 16, 2020).

Prior decisions from this Court establish that, in a capital case, because “death is a punishment different from all other sanctions,” *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976) (citing *Furman v. Georgia*, 408 U.S. 238, 284 (1972) (Brennan, J., concurring)), the Constitution demands that capital proceedings adhere to a heightened standard of reliability, designed to protect against the unacceptable risk of wrongful execution. *Moore v. Texas*, 137 S. Ct. 1039, 1044 (2017); *Hall v. Florida*,

572 U.S. 701, 704 (2014); *see also California v. Ramos*, 463 U.S. 992, 998–99 (1983).

Of special concern is the risk that a jury may base its life-or-death decision on “caprice or emotion” rather than on the law and admissible evidence. *Gardner v. Florida*, 430 U.S. 349, 358 (1977). For this reason, this Court has conditioned the constitutionality of capital punishment on the implementation of safeguards which protect defendants against unreliable verdicts. *Gregg v. Georgia*, 428 U.S. 153, 189 (1976).

In the context of gruesome photographs, a trial judge’s assessment that the risk of prejudice substantially outweighs the probative value of the evidence serves as a critical constitutional safeguard. Ala. R. Evid. 403; *accord* Fed. R. Evid. 403. Because no prejudice analysis was conducted prior to the admission of the highly inflammatory photographs presented in this case, Mr. Belcher remains under sentence of death based on the outcome of a trial proceeding infected by passion and prejudice, in violation of his Eighth and Fourteenth Amendment rights. *Gregg*, 428 U.S. 153, 167; *see also Darden v. Wainwright*, 477 U.S. 168, 181 (1986).

Science confirms the tendency of gruesome color photographs to produce biased verdicts. A growing body of research documents that such photographs prime jurors to convict by producing emotions such as anger and disgust, which impair a juror’s cognitive ability to process evidence impartially. In particular, jurors exposed to gruesome photos demonstrate an inability to meaningfully consider evidence presented by the defense in a criminal case and a tendency to accord undue weight to the State’s evidence. Jessica M. Salerno, Hannah J. Phalen, *The Impact of Gruesome Photographs*

on Mock Jurors’ Emotional Responses and Decision Making in A Civil Case, 69 DePaul L. Rev. 633, 644 (2020); Jessica M. Salerno, *Seeing Red: Disgust Reactions to Gruesome Photographs in Color (But Not in Black and White) Increase Convictions*, 23 Psychol., Pub. Policy, & L. 336 (2017).

The risk of cognitive bias was especially high here, considering the weaknesses in the State’s case. The prosecution presented no direct physical evidence linking Mr. Belcher to the victim’s death (R. 896–97, 922–23, C. 325–27), and based its guilt-phase case on the accounts of two testifying co-defendants who took the stand in exchange for leniency (R. 464, 585, C. 388–91). The trial court’s failure to assess the prejudicial impact of the more than 40 gruesome color photos of the victim’s decomposed body thus invited jurors to disregard the holes in the prosecution’s case-in-chief, and to instead convict based on caprice and emotion. *Gardner*, 430 U.S. at 358. Under this Court’s precedent, such a conviction and death sentence cannot stand. *Furman*, 408 U.S. 238 at 284; *Gregg*, 428 U.S. at 189 (1976); *Woodson*, 428 U.S. at 303.

B. Across Jurisdictions, Disparate Case Outcomes Demonstrate the Risk of Prejudice that Accompanies the Introduction of Gruesome Post-Mortem Photographs.

Given the discretion afforded to lower courts to manage the conduct of criminal trials and determine the admissibility of evidence, jurisdictions vary widely in their treatment of gruesome crime scene photos. Where post-mortem photographs are “so graphic as to arouse the passion of the jury,” a number of states have reversed homicide convictions based on the risk that inflammatory photos biased the verdict.

McNeal v. State, 551 So. 2d 151, 159 (Miss. 1989) (photographs depicting a “full-color, close-up view of the decomposed, maggot-infested skull” of the victim merely a “ploy of the prosecutor” to inflame the jury in a case based primarily on circumstantial evidence).

In particular, the highest courts in Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, South Carolina, and Utah have all reversed homicide convictions and vacated death sentences based on the prosecution’s introduction of prejudicial post-mortem photos. *See Young v. State*, 234 So. 2d 341, 347–48 (Fla. 1970) (reversing capital murder conviction and death sentence based on trial court’s admission of 45 autopsy photographs, over half of which depicted the victim’s decomposed body); *Brown v. State*, 302 S.E.2d 347, 351 (Ga. 1983) (reversing murder conviction based on trial court’s admission of a gruesome, close-up photograph of the victim’s chest wound with powder burns, such graphic photos not admissible absent showing of “compelling necessity”); *Kiefer v. State*, 153 N.E.2d 899, 905 (Ind. 1958) (reversing murder conviction where presentation of photographs of female victim’s nude body “caused [jurors] to abandon any serious consideration of the facts of the case and give expression only to their emotions,” depriving the accused of a fair trial); *State v. Adam*, 896 P.2d 1022, 1032 (Kan. 1995) (reversing murder conviction where trial court admitted “extremely gruesome” photograph of victim’s heart cut open, which served only to “shock and revolt” the jury and did not help jurors understand the evidence); *Funk v. Commonwealth*, 842 S.W.2d 476, 478 (Ky. 1992) (reversing

manslaughter conviction where photographs depicted “close-ups of various rotting and decomposed portions of the victim’s head, neck and thigh; massive maggot infestation; [and an] area where the flesh had been torn away from the thigh by dogs”); *State v. Morris*, 157 So. 2d 728, 730–32 (La. 1963) (reversing capital murder conviction and death sentence where State introduced “grotesque and revolting” post-mortem photographs showing bloodied organs of victim); *Bonds v. State*, 138 So. 3d 914, 917–20 (Miss. 2014) (introduction of photograph depicting “decaying flesh and maggot-infested eye sockets” was “gruesome in the extreme,” requiring reversal of murder conviction); *State v. Haselden*, 577 S.E.2d 445, 451 (S.C. 2003) (death sentence vacated where photograph of child victim’s dilated anus serves only to inflame jury); *State v. Poe*, 441 P.2d 512, 514–15 (Utah 1968) (reversing capital murder conviction and death sentence where admission of gruesome color photographs depicting victim’s dismembered skull “only . . . served . . . to inflame and arouse the jury” and where the photos “would have been gruesome in black and white but the color accentuates the gruesomeness”). By contrast, citing trial court discretion, high courts in other jurisdictions have upheld the admission of concededly gruesome post-mortem photographs in homicide cases. *People v. Hendricks*, 43 737 P.2d 1350, 1356 (Cal. 1987) (noting that “murder is seldom pretty, and pictures, testimony and physical evidence in such a case are always unpleasant,” and finding that admission of two post-mortem photographs of the victim’s body were not unduly gruesome); *Commonwealth v. Reyes*, 130 N.E.3d 728, 738 (Mass. 2019) (trial court does not abuse discretion where it admits admittedly

graphic photos of homicide victim's injuries, while excluding photos of victim's lifeless body); *People v. Wood*, 591 N.E.2d 1178, 1181 (N.Y. 1992) (color photos of female homicide victim at crime scene admissible where "sole purpose was not to arouse the emotions of the jury"); *State v. Smith*, 684 N.E.2d 668, 687 (Ohio 1997) (upholding admission of post-mortem photographs because "blood stains do not have the shock value equivalent to . . . photograph[s] of [a] corpse").

As these vastly different outcomes illustrate, a trial court's prejudice analysis plays an important role in ensuring fairness in criminal trials through setting "reasonable limits" on the State's presentation of post-mortem photographs. *Young*, 234 So. 2d at 348; *cf. Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993) (recognizing the power of trial judges to guard against prejudice through evaluating evidence prior to admission). As the record establishes, no such analysis was ever conducted in this case.

In the past 70 years, Alabama has never reversed a homicide conviction due to the introduction of gruesome photographs, despite many highly inflammatory examples.⁵ *See, e.g., Ex parte Phillips*, 287 So. 3d 1179, 1219 (Ala. 2018) (autopsy photograph of murder victim's mutilated uterus, ovaries, and fallopian tubes, removed from her body, carved open, and placed on a table, still dripping blood); *Ferguson v. State*, 814 So. 2d 925, 944–45 (Ala. Crim. App. 2000), *aff'd, Ex parte Ferguson*, 814 So. 2d 970 (Ala. 2001) (photographs of homicide victims' bodies after they had been

⁵ Alabama last reversed a homicide conviction based on the introduction of gruesome photographs in 1947. *See McKee v. State*, 31 So.2d 656 (Ala. 1947).

recovered from a creek, including close-up photographs of gunshot wounds to the head); *Magwood v. State*, 494 So. 2d 124, 141–42 (Ala. Crim. App. 1985), *aff'd*, *Ex parte Magwood*, 494 So. 2d 154 (Ala. 1986) (gruesome photos of victim's gunshot wound, which portrayed extensive amounts of blood and pieces of flesh); *Smith v. State*, 246 So. 3d 1086, 1111 (Ala. Crim. App. 2017) (“gory” photographs depicting the victim's decomposed body, which had become infested with insect larvae); *Woods v. State*, 460 So. 2d 291, 293 (Ala. Crim. App. 1984) (post-surgery photograph of homicide victim's body depicting showing a large abdominal incision which had been sewn back together, a tube coming out of the stomach, an intravenous catheter going into a vein below the right collarbone, another intravenous catheter in the right elbow, EKG electrodes on the shoulders, two tubes in the deceased's mouth and a bandage on his left arm). These cases further underscore the importance of pre-admission prejudice analysis as a critical constitutional safeguard in capital cases.

C. The Failure of Alabama's Trial and Appellate Courts to Consider the High Risk of Prejudice that These Photos Presented Fell Below the Minimum Constitutional Safeguards that Other Jurisdictions Provide.

As illustrated in Section IB infra, interjurisdictional variability in the treatment of gruesome post-mortem photographs leads to differences in homicide case outcomes at the trial and appellate level. In the capital context, an evidentiary balancing analysis serves as a critical safeguard against the arbitrary imposition of the death penalty, in violation of the Eighth Amendment. *Furman*, 408 U.S. at 309 (Stewart, J., concurring) (“These death sentences are cruel and unusual in the same way that being

struck by lightning is cruel and unusual.”). Accordingly, in cases in which an individual’s life is at stake, appellate courts “strongly caution . . . judicious use of gruesome photographs,” *State v. Ford*, 140 N.E.3d 616, 676–77 (Ohio 2019), and recognize that proper application of the exclusionary rule guards against the risk that gruesome photographs will lure a capital jury into convicting based on impermissible considerations. *United States v. Savage*, 970 F.3d 217, 306 (3d Cir. 2020).

The trial judge in this case did not balance the high risk of prejudice inherent in these photos against their lack of probative value prior to admitting them. Similarly, Alabama’s appellate courts, in evaluating the propriety of Mr. Belcher’s capital murder conviction and death sentence, failed to assess the prejudicial impact of the gruesome color photos on the jury’s death verdict. This Court should grant certiorari to consider whether, at minimum, in a capital case, state courts must balance the prejudicial impact of post-mortem photographs against their probative value prior to admitting the photos. The failure of the courts below to conduct such an analysis violated Mr. Belcher’s Eighth and Fourteenth Amendment rights.

As jurisdictions differ in their treatment of gruesome post-mortem photographs generally, so they differ in acceptable purposes for admission. Commonly, jurisdictions balance the risk of prejudice against a photograph’s value in demonstrating the cause or manner of death. *State v. Schad*, 633 P.2d 366, 381 (Ariz. 1981) (black-and-white photo of decomposed corpse admissible where not unduly inflammatory and probative as the only photo available to illustrate manner of death); *People v. Steskal*, 485 P.3d 1, 21–22 (Cal. 2021) (while recognizing that “during the guilt phase [of a capital case],

there is a legitimate concern that crime scene evidence can produce a visceral response that unfairly tempts jurors to find the defendant guilty,” in the instant case, photographs of police officer’s patrol car necessary for jury to assess the angle at which he was shot); *Venturino v. State*, 830 S.E.2d 110, 116 (Ga. 2019) (autopsy photograph admissible because “although the photograph was relatively gruesome, the record showed it depicted the only way the medical examiner could insert the trajectory probes to accurately show the precise path the bullets traveled through the victim’s body”).

In other cases, courts base admissibility rulings on a photo’s tendency to prove intent, or to disprove a claim of self-defense. *Reyes*, 130 N.E.3d at 738 (photograph of victim’s body admissible as material to disprove claim of self-defense); *Martin v. State*, 289 So. 3d 703, 706 (Miss. 2019) (two photographs of victim’s body admissible to disprove self-defense); *Commonwealth v. Small*, 741 A.2d 666, 680 (Pa. 1999) (photos of victim’s corpse admissible where they demonstrate the position of her body, relevant to the intent element on separate count of attempted rape).

In a third subset of cases, state courts uphold the admission of gruesome photographs where they establish some material fact that the State cannot prove through any other admissible evidence. *Sparre v. State*, 289 So. 3d 839, 856 (Fla. 2019) (upholding, in a capital case, the admission of 35 photographs of the victim’s body because, where the accused allegedly inflicted 88 wounds, and photographs proved more probative than testimony of medical examiner alone); *Cross v. State*, 848 S.E.2d

455, 460 (Ga. 2020) (three post-incision autopsy photos “were necessary to show the extent of her internal injuries because the decomposition of her body obscured injuries that might otherwise have been visible externally”); *Ford*, 140 N.E.3d at 676 (admission of 15 post-mortem crime-scene photographs in capital case not abuse of discretion where necessary to depict the location of the murder weapon and the extent of victim’s injuries).

As the record in this case establishes, the over 40 gruesome post-mortem color photographs admitted here do not fit within any of these categories of admissible, probative evidence. Depicting the victim’s decomposed body following extensive animal predation (R. 294, 917–19), the photos did nothing to help the jury understand how the victim died, whether someone killed her intentionally, or even whether another person killed her at all (R. 922–23). The crime scene photographs did not depict the alleged murder weapon, a knife which authorities found not at the crime scene but instead by the roadside near testifying co-defendants Steven George and Chylli Bruce. (R. 951, 1028.) Finally, in contrast to cases in which high courts have upheld the admission of photographs that proved more probative than testimony alone, here, the State’s medical examiner, who performed the autopsy on the victim’s body, conceded that the photographs did not tell the jury anything about the victim’s death or the extent of her injuries. (R. 922–23.)

Despite variation on the justifications for admission across jurisdictions, and despite a generally-held reluctance among state appellate courts to overturn the admissibility rulings of trial judges, most especially in homicide cases, courts across

the country rely on the evidentiary balancing rule as a minimally necessary constitutional safeguard. *Schad*, 633 P.2d at 381 (probative black-and-white photograph of victim's corpse presents lower risk of prejudice, as compared to color photograph); *Steskal*, 485 P.3d at 22 (holding that "the jury can, and must, be shielded from depictions that sensationalize an alleged crime, or are unnecessarily gruesome" but upholding admission of crime scene photos where they presented "an accurate depiction of the charged crimes that does not unnecessarily play upon the emotions of the jurors"); *Young*, 234 So. 2d at 347–48 (reversing murder conviction after finding that "the fact that the photographs are offensive to our senses and might tend to inflame the jury is insufficient by itself to constitute reversible error, but the admission of such photographs, particularly in large numbers" were unduly prejudicial when considered against their lack of independent probative value or tendency to corroborate other evidence); *McCullough v. State*, 341 S.E.2d 706, 707 (Ga. 1986) (state cannot introduce post-autopsy photograph of victim's skull where not probative of any material fact); *Kiefer*, 153 N.E.2d at 905 (photos should have been excluded where their "only value was to arouse the emotions of the jury"); *Adam*, 896 P.2d at 1032 ("extremely gruesome" photograph of victim's heart cut open should have been excluded where medical examiner's testimony could have established same facts); *Holland v. Commonwealth*, 703 S.W.2d 876, 880 (Ky. 1985) (reversing where photos lacked probative value and "served to arouse passion at the sight of extensive animal mutilation"); *Morris*, 157 So. 2d at 730–32 ("shocking and emotionally disturbing")

photos erroneously admitted where cause of death established by other evidence); *Reyes*, 130 N.E.3d at 738 (upholding admission where photographs probative of two material issues, and trial judge took steps to mitigate prejudice); *Bonds*, 138 So. 3d at 919 (“Meaningful limits must be placed on a trial judge’s discretion to admit photographs, and those limits must be defined by weighing a photograph’s probative evidentiary value against its prejudicial potential to arouse the passions of the jury.”); *Poe*, 441 P.2d 514–15 (where material facts already established by uncontested medical testimony, gruesome photographs served only to inflame the jury).

Had the trial judge conducted the required balancing analysis in this case, these photographs would not have been admitted. Given the need for reliability and the Eighth Amendment concerns that exist when a man’s life is at stake, the unconsidered admission of more than 40 gruesome color photographs depicting post-mortem decomposition and animal predation cannot be tolerated by this Court.

D. Conclusion

In this case, the State introduced over 40 color photographs depicting the victim’s decomposed body, which served no purpose other than to inflame the passions of the jury. The trial court failed to conduct even a cursory prejudice analysis prior to admission, and Alabama’s appellate courts similarly failed to conduct this analysis when reviewing Mr. Belcher’s death sentence. Had the courts below conducted such an analysis, these photos would not have been admitted, and his capital murder conviction and death sentence would not have been upheld. Instead, the unconsidered introduction of these photographs rendered Mr. Belcher’s capital trial fundamentally

unfair, led to an unreliable verdict, and violated his constitutional rights to due process, a fair trial, and a reliable sentence under the Eighth and Fourteenth Amendments to the United States Constitution. This Court should grant certiorari to address this important federal issue.

CONCLUSION

For the foregoing reasons, Petitioner prays that this Court grant certiorari to the Alabama Court of Criminal Appeals.

Respectfully Submitted,

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