

No. 21-6065
CAPITAL CASE

In the SUPREME COURT of the UNITED STATES

◆

MICHAEL DAVID BELCHER,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

◆

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTIONS PRESENTED (REPHRASED)**

Michael Belcher kidnapped, beat, and killed Samantha Payne. Belcher was subsequently charged and convicted of capital murder committed during the course of a kidnapping.

During its case-in-chief, the State introduced several crime-scene and autopsy photographs that were relevant to prove kidnapping and intentional murder. While Belcher objected to the autopsy photographs at trial, his claim that they were “gruesome” was raised for the first time on appeal. The Alabama Court of Criminal Appeals concluded that, while gruesome, the photographs were relevant and admissible, and the Alabama Supreme Court denied Belcher’s petition for writ of certiorari.

Belcher petition presents a single fact-bound assertion of error, but two questions arise from his petition. First, whether the admission of post-mortem photographs relevant and probative of the crime-scene and the victim’s injuries rendered Belcher’s trial fundamentally unfair where the trial court failed to *sua sponte* conduct a prejudice analysis on the record. And second, whether the lower courts erred in admitting gruesome photographs.

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STATEMENT OF THE CASE

During the early morning hours of November 2, 2015, Michael Belcher dragged Samantha Payne into the Talladega National Forest, tied her to a tree, and caused her death.

Earlier that morning, around 2:00 a.m., Samantha arrived at Wee Racing – a motor-vehicle repair shop owned by the Belcher family. (R. 467, 504, 687.)¹ When she arrived, Belcher, Chylli Bruce, and Steven George were inside getting high on methamphetamine provided to them by Belcher. (R. 471, 472, 501–04.) Shortly after Samantha’s arrival, Marcus George and Alyssa Watson arrived.² (R. 472, 504, 591–92.) Sometime thereafter, Steven decided to steal Samantha’s car, which he took to a bridge and burned. (R. 550–58.) Marcus and Watson joined Steven at the bridge (R. 557, 593), and after getting Steven clean clothes (R. 550, 558), the three returned to Wee Racing. (R. 559.)

When Samantha realized her car was gone, she accused Belcher of stealing it. (R. 472–73, 508.) Samantha and Belcher argued before Belcher pinned her to a wall. (R. 472–73.) Samantha tried to leave but Belcher would not let her. (R. 476.) Belcher, Samantha, and Bruce made their way outside (R. 473, 508), where Belcher forced Samantha onto the backseat of his car, held

¹ References to the trial transcript are referred to as “R. ___”, while references to the clerk’s record on direct are referred to as “CR. ___”.

² For clarity, the State will refer to Steven George as “Steven” and Marcus George as “Marcus”.

her down, and beat her. (R. 473–76.) Belcher gave his keys to Bruce and told her to drive them to his home. (R. 473–75.) Marcus, Steven, and Watson agreed to meet them there and drove to the home in Marcus’s Jeep. (R. 477, 559–60.)

The two groups arrived at Belcher’s home before sunrise. (R. 560, 562.) Once parked, Belcher took Samantha from the backseat of his car, threw her to the ground, and proceeded to hit and kick her in the face and about her body. (R. 561.) Samantha was bleeding severely. (R. 478, 562.)

At some point while at Belcher’s home, a patrol car passed nearby (R. 597, 562), so it was suggested that Samantha be taken to a different location. (R. 478, 562, 597.) Belcher then put Samantha on the backseat floorboard of his car and climbed on top of her, pinning her down. (CR. 155; R. 479, 562.) Bruce drove Belcher’s car off his property (R. 562), while Steven, Marcus, and Watson drove in Marcus’s Jeep. (R. 479, 562.) The two groups drove to an abandoned trailer. (R. 563.)

Once parked again, Belcher pulled Samantha from the car, stomped her face, and repeatedly kicked her in the ribs. (R. 564.) During the beatings, Samantha crawled across the ground, crying out “I love you. Y’all don’t have to do this.” (R. 564–65.) Despite Samantha’s pleas, Belcher continued to beat her. (*Id.*) During the beatings, Samantha scratched Belcher. (R. 610.) To get rid of any DNA evidence under Samantha’s nails, Bruce and Watson cut off her

acrylic fingernails with knives. (R. 480, 602, 610–11.) Some of Samantha’s natural nails were also removed. (R. 480.)

With the sun rising, the group decided to leave the abandoned trailer. (R. 482.) Belcher hog-tied Samantha with a cable wire, a shoestring, and her own belt, and then put her in the trunk of his car. (R. 565–66.) Belcher then got in the driver’s seat of his car, Bruce in the passenger seat, and Steven in the backseat (R. 482 565–68), while Marcus and Watson got in Marcus’s Jeep. (R. 567–68.) The two groups drove off the property towards the Talladega National Forest. (R. 569–70.)

On the way to the Forest, Belcher’s trunk popped open, and Samantha fell onto the road as the car traveled 40-45 m.p.h., and Michael and Steven put her back in the trunk. (R. 483, 569–70.) Once in the Forest, Belcher’s car ran out of gas, forcing him to pull over. (R. 570–71.) Rather than stop as well, Marcus and Watson kept driving. (R. 571–72.) Belcher told Bruce to call Marcus and Watson (R. 485, 572) and directed Steven to help him pull Samantha from the trunk. (R. 484.) Samantha was screaming. (R. 485.)

Belcher and Steven dragged Samantha into the woods and across a creek. (R. 572–74.) Samantha continued to scream, prompting Belcher to stomp her face and threaten to kill her if she did not “shut up”. (R. 574–75.) Samantha was bleeding severely. (R. 573.) Belcher told Steven to get more rope and asked for Steven’s knife. (R. 575.) Steven gave Belcher his knife and left

the woods but did not get Belcher more rope. (R. 575.) When Steven left Belcher with Samantha, she was alive and fully clothed. (R. 579–80.)

A week later, Samantha was found bare and decapitated with her hands bound around a tree – the binding made from a cable wire, shoestring, her belt, and some of her clothing. (CR. 219; R. 822–26.) Jeffery Eiland, who discovered Samantha’s remains, only recognized her remains as human because of her fingernails (R. 434–36), though some were missing. (CR. 332.) Samantha was likewise missing multiple teeth and most of her internal organs. (CR. 333; R. 830.) Several of her ribs were fractured (CR. 333), the flesh on her lower extremities mostly gone. (CR. 332.) According to the autopsy report, it was impossible to determine Samantha’s cause of death due to decomposition. (CR. 331.) But according to Bruce, Belcher told her that he killed Samantha by stabbing her. (R. 488.)

On January 28, 2016, a Tuscaloosa County Grand Jury indicted Belcher for one count of capital murder committed during the course of a kidnapping pursuant to ALA. CODE § 13A-5-40(a)(1). (CR. 16.) On March 5, 2019, the trial began. (R. 98.)

At trial, the State introduced several photographs of the scene where Samantha’s body was discovered (State’s Exhibits 1–4, and 38–58) (CR. 196–99, 218–38; R. 432–36, 824–32); a photograph of Samantha’s hands (States Exhibit 7) (CR. 203; R. 454–55); and autopsy photographs. (State’s Exhibits

147–161 and 173–175) (CR. 336–50; 362–64; R. 913–27.) Belcher did not object to these photographs as gruesome.³

The State used Exhibits 1–4 to illustrate the testimony of Eiland as they show what he saw as he walked up to Samantha’s remains. (R. 432–36.) Exhibit 7 was used by Samantha’s mother, Susanne Payne, to identify Samantha after her remains were found – Susanne recognized her daughter from her fingernails. (R. 454–55.) Exhibits 38–58 illustrate the testimony of Investigator Jason Mellown regarding the scene. Mellown used Exhibit 38 to point out the victim’s body in relation to the overall crime scene. (R. 824.) Exhibits 39, 40, and 46 show how Samantha was found – bound to a tree – and Exhibits 41, 45, and 56 show the material used to bind her. (R. 824–27, 830.) Exhibits 42–44 show where Samantha’s skull was found (R. 825–26) and Exhibits 54 and 55 show that her skull was missing teeth. (R. 829–30.) Exhibit 47 shows where different pieces of evidence were found and marked (R. 827–30) while Exhibits 48–55 illustrate the evidence marked in Exhibit 47. (*Id.*) Exhibit 56 depicts where Samantha’s clothes were found (R. 830) and Exhibits

³ Belcher did not object to the crime scene photographs at all. Belcher did, however, object to the autopsy photographs on the following grounds:

“[S]everal of them are repetitive, and several of the don’t relate to the body. They’re bindings and stuff like that which are already introduced through another witness. So I’m objecting to all of them going in and ask that the State cull out just the ones that related to the body.”

(R. 914.)

57 and 58 show how her remains were moved into a body bag, keeping everything as originally found. (R. 831–32.)

State’s Exhibits 147–155 show the victim’s wrists tied together and the extensive layering of the material used to bind her. (R. 913–19.) Exhibit’s 156–161 and 173–175 likewise show the injuries sustained by the victim – the removal of her fingernails and her missing teeth – as well as an identifiable tattoo. (R. 919–27.) The State must prove every element of its case, and these pictures were used to prove the kidnapping, that Belcher intended the victim’s death, and that Belcher intended to cause the victim harm.

The jury returned a verdict finding Belcher guilty of capital murder. (R. 1067.) The case then proceeded to the penalty phase (R. 1070), during which the State submitted to the jury two aggravating circumstances: that the murder was committed during the kidnapping, which was proven beyond a reasonable doubt by virtue of jury’s verdict, and the murder was especially heinous, atrocious, or cruel as compared to other capital murders. (R. 1074–92, 1174–81, 1191–95); *see also* ALA. CODE § 13A-5-49(4), (8). To prove beyond a reasonable doubt that the murder was heinous, atrocious, and cruel, as the State is required to do, it presented testimony from Susanne Payne and Investigator Richard Wilkins. (R. 1074–90.) It also incorporated the guilt-phase evidence, including the photographs at issue, which the State briefly referenced in its closing argument. (R. 1090–92, 1175.) The jury returned a

unanimous recommendation of death. (R. 1206.) The trial court conducted a sentencing hearing on April 3, 2019. (R. 1211.) After weighing the aggravating and mitigating circumstances, the court followed the jury's recommendation and sentenced Belcher to death. (R. 1215.)

On direct appeal, the Alabama Court of Criminal Appeals (hereinafter "ACCA") addressed at length Belcher's claim regarding the admission of "gruesome crime scene and autopsy photographs" and found "no error, much less plain error, in regard to this claim." Belcher v. State, No. CR-18-0740, 2020 WL 7382535, at *23, 25 (Ala. Crim. App. Dec. 16, 2020). However, because Belcher's claim was raised for the first time in the ACCA, that court reviewed his claim for "plain error" only.

REASONS FOR DENYING THE WRIT

Belcher fails to meet this Court's requirement that there be "compelling reasons" for granting certiorari. *See* Sup. Ct. R. 10. Although Belcher challenged the admission of the photographs at issue in the appellate courts below, he did not argue, as he does now, that the trial court improperly failed to *sua sponte* conduct a prejudice analysis on the record. Because Belcher waived the argument he presses before this Court, this case does not tee up Belcher's asserted reason for granting the writ, and this Court should deny Belcher's petition.

Moreover, this is a heavily fact-bound case that presents no novel questions for this Court to answer and involves no circuit split in need of resolution. Rather, Belcher takes issue with the routine application of state evidentiary law. But Belcher never objected to the gruesome nature of the autopsy and crime-scene photographs at trial, so there was no prejudice analysis done on the record.⁴ Despite this, the Alabama Court of Criminal Appeals concluded that there was no error, plain or otherwise, in admitting the photographs⁵ and the Alabama Supreme Court denied Belcher’s petition for writ of certiorari. This Court does not sit to correct narrow evidentiary rulings.

There is no question that Alabama courts understand this issue to be one of fundamental fairness implicating the Due Process Clause. Thus, the asserted error could consist only of “erroneous factual findings or the misapplication of a properly stated rule of law.” Sup. Ct. Rule 10. This Court “rarely grant[s] review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case.” *Salazar-Limon v. Houston*, 137 S. Ct. 1277, 1278 (2017) (Alito, J., concurring in denial of certiorari). “Error correction is outside the mainstream of the

⁴ See *supra* note 3.

⁵ *Id.* Belcher’s failure to raise this claim at trial limited the Alabama appellate courts’ review of the issue to a “plain error” review - 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.

Court's functions." *Cavazos v. Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J., dissenting) (cleaned up). And "because the present case is so unique, it is hard to see how it meets [this Court's] stated criteria for granting review." *McCoy v. Louisiana*, 138 S. Ct. 1500, 1515 (2018) (Alito, J., dissenting). Thus, this Court should deny Belcher's petition.

ARGUMENT

I. Belcher's Claim That the Trial Court Failed to Conduct a *Sua Sponte* Prejudice Analysis on the Record is Not Preserved for Review.

Belcher claims that "[t]he trial court failed to conduct even a cursory analysis of the risk of prejudice in these photographs." (Pet. at 14.) According to Belcher, "[b]ecause no prejudice analysis was conducted prior to the admission of the photographs presented in this case, [he] remains under sentence of death based on the outcome of a trial proceeding infected by passion and prejudice." (Pet. at 15.) Belcher did not object at trial to these photographs as gruesome, therefore, the photographs at issue were admitted without a prejudice analysis conducted *on the record* by the trial court. Thus, a proper reading of Belcher's claim is that the trial court failed to conduct a *sua sponte* prejudice analysis on the record in violation of federal constitutional law.

No document filed in the state appellate courts below challenged the trial court's failure to *sua sponte* conduct a prejudice analysis on the record. As such, Belcher did not provide the state courts an opportunity to consider his claim.

Because Belcher did not challenge the trial court’s failure to conduct a *sua sponte* prejudice analysis on the record, his claim is waived under this Court’s case law. *See generally Adams v. Robertson*, 520 U.S. 83, 90–91 (1997) (“Requiring parties to raise issues below not only avoid unnecessary adjudication in this Court by allowing state courts to resolve issues on state-law grounds, but also assists [in] deliberations by promoting the creation of an adequate factual and legal record.”); *Pierce Cty., Wash v. Guillen*, 537 U.S. 129, 140 (2003); *Bd. of Directors of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 549–50 (1987) (“It is well settled that this Court will not review a final judgment of a state court unless the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the same system.”) (quotation and citation omitted); *Webb v. Webb*, 451 U.S. 493, 498–99 (1981) (“[This] Court has consistently refused to decide federal constitutional issues raised . . . for the first time on review of state court decisions.”); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (“It was very early established that the Court will not decide federal constitutional questions raised here for the first time on review of state court decisions.”). On this ground alone this Court should deny Belcher’s petition for writ of certiorari.

Further, the ACCA’s “plain error” review of the admission of the photographs demonstrates that a *sua sponte* review by the trial court would

not have changed matters.⁶ *Belcher v. State*, CR-18-0740, 2020 WL 7382535, *23 (Ala. Crim. App. Dec. 16, 2020) (“Belcher next argues that the circuit court erred in admitting gruesome crime-scene and autopsy photographs that depicted the post-murder mutilation of Samantha’s body. He did not . . . object to those photographs on the ground that they were gruesome. Therefore, we review this claim for plain error.”) The ACCA found no error, plain or otherwise. *Id.* at *25. (“Evidence of the mutilation and the photographs of the body were clearly material and relevant to show where and in what condition Samantha’s body was found. Although some of the photographs were gruesome . . . we cannot say that the circuit court abused its substantial discretion Therefore, we find no error, must less plain error, in the admission of the photographs[.]”). Had the trial court conducted its own *sua sponte* review, there is no reason to suspect that it would have produced any other result.

Further, the ACCA’s holding of no plain error is an independent and adequate state-law ground for dismissing Belcher’s claim regarding the supposed necessity of *sua sponte* review. In *Sochor v. Florida*, this Court

⁶ Under Alabama law, when a defendant like Belcher has not raised an argument before the trial court, the appellate court cannot correct the purported error unless failure to do so would “seriously affect the fairness or integrity of the judicial proceedings.” *Ex parte Hodges*, 856 So. 2d 936, 947 (Ala. 2003). Thus, “the plain-error exception to the contemporaneous objection rule is to be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.” *Id.* (internal quotation marks omitted).

reviewed a Florida Supreme Court decision that rejected a petitioner's claims because (1) "they [were] not preserved for appeal," and (2) they "ha[d] no merit." 504 U.S. 527, 534 (1992). This Court held that the state court decision "indicate[d] with requisite clarity that the rejection of Sochor's claim was based on the alternative state ground that the claim was 'not preserved for appeal,' and Sochor has said nothing in this Court to persuade us that this state ground is either not adequate or not independent." *Id.* The same is true here. While the Alabama Court of Criminal Appeals did consider the merits of Belcher's claim and held that the trial court did not err, the appellate court also held that there was no plain error under Alabama law.

Finally, even assuming state plain-error review preserved review of the admission of the photographs in this Court, it did not preserve the first issue Belcher has presented to this Court—whether their admission without a *sua sponte* prejudice analysis by the trial court violated federal constitutional law. In state appellate courts, Belcher argued that the trial court, and subsequently the ACCA, improperly admitted gruesome photographs. Or in other words, he challenged the application of evidentiary law to a set of facts. Thus, Belcher preserved for review whether the lower courts improperly admitted these photographs under Alabama evidentiary law, not whether the trial court improperly failed to *sua sponte* conduct a prejudice analysis on the record.

II. This Court Should Not Grant Certiorari to Scrutinize State Court Findings That the Photographs Were Relevant and Admissible.

Belcher argues that “[t]he trial court’s failure to assess the prejudicial impact of 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.” [Pet. at 16.] Because there is no federal or state law, and Belcher cites to none, that requires a trial court to *sua sponte* conduct a prejudice analysis on the record, Belcher really challenges the trial court’s, and subsequently, the ACCA’s, application of state evidentiary law.

The Constitution “has never been thought [to] establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure.” *Spencer v. Texas*, 385 U.S. 554, 564 (1967). “[B]ecause the Bill of Rights speaks in explicit terms to many aspects of criminal procedure, the Due Process Clause has limited operation in the field.” *Kaley v. United States*, 571 U.S. 320, 334 (2014) (cleaned up). “[T]he Due Process Clause does not permit the federal courts to engage in a finely-tuned review of the wisdom of state evidentiary rules.” *Marshall v. Lonberger*, 459 U.S. 422, 438 n.6 (1983).

With that in mind, state-court evidentiary rulings implicate the Due Process Clause only when “the admission of evidence . . . so infected the [trial] with unfairness as to render the jury’s imposition of the death penalty a denial

of due process.” *Romano v. Oklahoma*, 512 U.S. 1, 12 (1994).⁷ Stated differently, the relevant question is whether the “evidence is so extremely unfair that its admission violates fundamental conceptions of justice.” *Perry v. New Hampshire*, 565 U.S. 228, 237 (2012) (cleaned up).

This Court has “defined the category of infractions that violate ‘fundamental fairness’ very narrowly.” *Dowling v. United States*, 493 U.S. 342, 352 (1990). Expanding “constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order.” *Medina v. California*, 505 U.S. 437, 443 (1992).

A. Admission of undistorted photographs relevant and probative of the crime-scene and the victim’s wounds did not render Belcher’s trial fundamentally unfair.

Under Alabama law, “[p]hotographic evidence is admissible in a criminal prosecution if it tends to prove or disprove some disputed or material issue, to illustrate some relevant fact or evidence, or to corroborate or dispute other evidence in the case. Photographs that tend to shed light on, to strengthen, or to illustrate other testimony may be admitted into evidence.” *Ex parte Siebert*, 555 So. 2d 780, 783 (Ala. 1989) (citing *Chunn v. State*, 339 So.

⁷ *Cf. Payne v. Tennessee*, 501 U.S. 808, 825 (1991) (“In the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.”).

2d 1100, 1102 (Ala. Crim. App. 1976)). Consequently, “[p]hotographs illustrating crime scenes have been admitted into evidence, as have photographs of victims and their wounds.” *Id.* (citing *Hill v. State*, 516 So. 2d 876 (Ala. Crim. App. 1987)); *see also Taylor v. Culliver*, No. 4:09-cv-00251-KOB-TMP (N.D. Ala. Sept. 26, 2012) (not selected for publication in F. Supp) (holding, in review of an action seeking habeas corpus relief from a capital murder conviction and death sentence, that autopsy photographs, including those evidencing the sawing and removal of a skull cap and brain, “did not render [the petitioner’s] trial fundamentally unfair” as they were relevant to prove intent to kill); *Stallworth v. State*, 868 So. 2d 1128, 1151 (Ala. Crim. App. 2001) (finding post-mortem photographs of the victims showing their cause of death and the extent of their injuries more probative than prejudicial); *Brown v. State*, 11 So. 3d 866, 895–96 (Ala. Crim. App. 2007) (finding that autopsy photographs of the victim depicting the character and location of the victim’s wounds were relevant and admissible); *Mitchell v. State*, 84 So. 3d 968, 1005–06 (Ala. Crim. App. 2010) (finding crime scene and wound-related photographs relevant and admissible to prove the extent of the victim’s injuries).

But the photograph “must be a true and accurate representation of the subject that it purports to represent.” *Ex parte Siebert*, 555 So. 2d at 783 (citing *Mitchell v. State*, 450 So. 2d 181, 184 (Ala. Crim. App. 1984)). Thus, the “gruesomeness” of a photograph becomes objectionable where: 1) there is

“distortion of the subject matter as where necrotic or other surgery caused exposure of nonprobative views, e.g., ‘massive mutilation’” or 2) there is “focal or prismatic distortion where the position of the camera vis-à-vis the scene or object to be shown gives an incongruous result, e.g., a magnification of a wound to eight times its true size.” *Ex parte Phillips*, 287 So. 3d 1179, 1218 (Ala. 2018) (internal citations and quotations omitted); *see also McKee v. State*, 31 So. 2d 656 (Ala. Ct. App. 1947); *Wesley v. State*, 26 So. 2d 413 (Ala. Ct. App. 1946). Therefore, when a crime scene or autopsy photograph depicting the crime scene or the victim’s wounds is not objectionable on distortion grounds, “the probative value outweighs any inflammatory or prejudicial effect.” *Id.* at 1219. *See also Acklin v. State*, 790 So. 2d 975, 997–98 (Ala. Crim. App. 2000) (finding that the probative value of the post-mortem photographs outweighed any potential prejudice where there was no showing that the photographs were distorted and the photographs were used to illustrate the testimony of the forensic pathologist concerning the victims’ wounds and cause of death); *Braswell v. State*, 288 So. 2d 757, 759–60 (Ala. Crim. App. 1974) (finding enlarged pictures of the victim’s wounds admissible as the enlargement did not distort the victim’s wounds).

In his petition, Belcher suggests that the photographs were irrelevant because they did not prove the “cause of death.” Indeed, because Belcher left his victim’s body in the woods where it was subject to decay and animal

predation, the exact cause of death could not be determined. (CR. 331.) But the relevance of the photographs does not begin and end with exactly *how* Belcher caused Samantha's death. At trial, the State introduced several photographs of the scene where Samantha's remains were discovered (State's Exhibits 1–4, and 33–58), including a photograph of Samantha's hands. (States Exhibit 7.) The State used Exhibits 1–4 to illustrate the testimony of Eiland as he described what he saw as he walked up to Samantha's remains. (R. 432–36.) Exhibit 7 was used by Samantha's mother, Susanne Payne, to identify Samantha after her remains were found – Susanne recognized her daughter from her fingernails. (R. 454–55.) Exhibits 38–58 illustrate the testimony of Investigator Jason Mellown regarding the scene. Mellown used Exhibit 38 to point out the victim's body in relation to the overall crime scene. (R. 824.) Exhibits 39, 40, and 46 show how Samantha was found – bound to a tree – and Exhibits 41, 45, and 56 show the material used to bind her. (R. 824–27, 830.) Exhibits 42–44 show where Samantha's skull was found (R. 825–26) and Exhibits 54 and 55 show that her skull was missing teeth. (R. 829–30.) Exhibit 47 shows where different pieces of evidence were found and marked (R. 827–30) while Exhibits 48–55 illustrate the evidence marked in Exhibit 47. (*Id.*) Exhibit 56 depicts where Samantha's clothes were found (R. 830) and Exhibits 57 and 58 show how her remains were moved into a body bag, keeping everything as originally found. (R. 831–32.)

The State likewise introduced several autopsy photographs. (State's Exhibits 147–161 and 173–175.) State's Exhibits 147–155 show the victim's wrists tied together and the extensive layering of the material used to bind them. (R. 913–19.) Exhibit's 156–161 and 173–175 likewise show the injuries sustained by the victim – the removal of her fingernails and her missing teeth – as well as an identifiable tattoo. (R. 919–27.) The State must prove every element of its case, and these pictures were used to prove kidnapping, that Belcher intended Samantha's death, and that Belcher intended to cause Samantha harm. Thus, the crime-scene and autopsy photographs were relevant under Alabama law. *Ex parte Siebert*, 555 So. 2d at 783; *Chunn*, 339 So. 2d at 1102; *Stallworth*, 868 So. 2d at 1151; *Brown*, 11 So. 3d at 895–96; *Mitchell*, 84 So. 3d at 1005–06; *Taylor v. Culliver*, No. 4:09-cv-00251-KOB-TMP (N.D. Ala. Sept. 26, 2012) (not selected for publication in F. Supp).

Belcher did not argue in the ACCA that the photographs were distorted or failed to accurately depict the crime scene or the autopsy, nor does he argue that in his petition before this Court. *See Ex parte Siebert*, 555 So. 2d at 783; *see also Ex parte Phillips*, 287 So. 3d at 1218. But even if he had, the record clearly reveals otherwise. Thus, under Alabama law, the probative value of the photographs outweighed any inflammatory or prejudicial effect their gruesome nature may have had on the jury, and their admission did not render Belcher's

trial fundamentally unfair. *Ex parte Phillips*, 287 So 3d at 1219; *Acklin*, 790 So. 2d at 997–98; *Braswell*, 288 So. 2d at 759–60.

As this was a narrow, fact-based application of state evidentiary law, this Court should not disturb the rulings below.

B. Alabama’s treatment of gruesome photographs is entirely in-step with other jurisdictions.

Alabama’s admission of gruesome photographic evidence is entirely consistent with other jurisdictions. Each state listed in Belcher’s petition⁸ utilizes some sort of safeguard against the admission of gruesome photographs. As explained above, so does Alabama – gruesome photographs are objectionable when entirely irrelevant or improperly distorted. That Alabama has not reversed a capital conviction due to the admittance of gruesome post-mortem photographs in the last 70 years does not place Alabama at odds with these jurisdictions. Nor does it create a circuit split in need of this Court’s resolution.

⁸ Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, South Carolina, and Utah.

CONCLUSION

For the reasons set forth above, this Court should deny Belcher's petition for writ of certiorari.

Respectfully submitted,

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