No. 21-7300

In The

Supreme Court of the United States

LEMARICUS D. DAVIDSON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF TENNESSEE

PETITIONER'S REPLY TO BRIEF IN OPPOSITION OF PETITION FOR WRIT OF CERTIORARI

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I. The State's assertion that Mr. Davidson's application of the presumed prejudice doctrine to a claim of ineffective assistance of counsel is novel is erroneous and the State ignores a relevant split of authority following this Court's decision in *Weaver v. Massachusetts.*

In *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017), this Court addressed an ineffective assistance of counsel claim involving trial counsel deficiency that resulted in a structural error. There, trial counsel failed to object to the closure of the courtroom to members of the public during jury selection proceedings where limited courtroom space precluded the trial court from accommodating all the prospective jurors. *Id.* at 1902. Had counsel objected to courtroom closure, it would have been considered a structural error for which no showing of isolatable prejudice would be required to overturn the conviction. But trial counsel did not object and the claim proceeded through the lens of ineffective assistance of counsel during collateral proceedings. *Id.* This Court formulated the issue before it as follows:

> This case requires a discussion, and the proper application, of two doctrines: structural error and ineffective assistance of counsel. The two doctrines are intertwined; for the reasons an error is deemed structural may influence the proper standard used to evaluate an ineffective-assistance claim premised on the failure to object to that error.

Id. at 1907.

After noting that structural errors "def[y] analysis by harmless error standards," this Court noted "three broad rationales" why prejudice is presumed for such errors and reversal of convictions is automatic. This Court set forth the following non-rigid categories of structural errors, which guided its analysis:

(1) Structural Errors Not Designed to Protect Defendant. This Court noted that some structural errors are designed to protect other interests. For example, a defendant's right to represent himself will often harm his defense, but it is based on the "fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his liberty." *Id.* at 1908.

(2) Structural Errors that are Too Hard to Measure. Sometimes it is impossible to know whether the defendant is harmed by a structural error, such as when a defendant is denied his choice of counsel. *Id.*

(3) Structural Errors that Always Result in Fundamental Unfairness. No matter the circumstances, these errors, e.g., denial of the right to counsel, result in fundamental unfairness to the defendant. *Id.*

In addressing the ineffective-assistance claim involving the closure of the court for voir dire, this Court noted that a public-trial violation does not "render[] a trial fundamentally unfair in every case." *Id.* at 1910 (citing multiple examples). Accordingly, that structural error required a showing of actual prejudice to prevail on an ineffective assistance claim. *Id.* However, this Court noted that "[n]either the reasoning nor the holding here calls into question the Court's precedents determining that certain errors are deemed structural and require reversal because they cause fundamental unfairness, either to the defendant in the specific case or by pervasive undermining of the systemic requirements of fair and open judicial proceedings." *Id.* at 1911.

This language raised the question of what to do with ineffective assistance of counsel claims involving structural errors that always result in fundamental unfairness. Contrary to the State's contention, courts have split on that issue.

For example, in *Hutchison v. Superintendent Greene SCI*, 860 Fed.Appx. 246 (3rd Cir. 2021), the Third Circuit addressed a *Batson v. Kentucky*, 476 U.S. 79 (1986)

race discrimination claim raised through the lens of ineffective assistance of counsel. In addressing the claim, the court conceded that a *Batson* error was structural and warranted automatic reversal when properly raised at the trial level or on direct appeal but declined to presume the prejudice prong of the ineffective assistance of counsel analysis. *Id.* (noting that this Court "has not taken a position on whether the 'result should be any different if the error was raised instead in an ineffective-assistance claim on collateral review"); *see also Pirela v. Horn*, 710 Fed.Appx. 66 (3rd Cir. 2017).

Likewise, the Fifth Circuit, in *Canfield v. Lumpkin*, 998 F.3d 242 (5th Cir. 2021), noted that *Weaver* left open the question of how to address a structural error/ineffective-assistance claim, and contended that this uncertainty precluded the court from finding a violation of clearly established law. *Id.*

Multiple state courts have taken a different view of *Weaver* and its implications for ineffective assistance claims resulting in a structural error that always creates fundamental unfairness. For example, in *Krogmann v. State*, 914 N.W.2d 293 (Iowa 2018), the Iowa Supreme Court presumed the prejudice prong of an ineffective-assistance claim where the structural error caused by trial counsel's deficient performance resulted in fundamental unfairness. As the court noted, the defendant had "been harmed twice: once by the government when it [caused the structural error], and once by his lawyers who failed to properly preserve the issue in the district court." *Id.* at 325. Given that the structural error at issue "affected the entire

proceeding and not just two days of pretrial jury voir dire" (as was the case in *Weaver*), the prejudice was presumed. *Id.*

Likewise, in *Reams v. State*, 560 S.W.3d 441 (Ark. 2018), the Arkansas Supreme Court found that an ineffective assistance of counsel claim regarding to failure to raise a fair cross-section argument warranted relief without a showing of prejudice. The court noted that the fair cross-section violation "necessarily renders one's trial fundamentally unfair." *Id.* at 455. Accordingly, an ineffective assistance of counsel claim that involved fundamental fairness could prevail without a specified showing of prejudice. *Id.*

The above cases are just those involving structural errors after this Court's decision in *Weaver*. In *Quintero v. Bell*, 368 F.3d 892 (6th Cir. 2012), the court determined that counsel's failure to object to the presence of jurors who had convicted the defendant's co-defendants on his jury warranted a presumption of prejudice. *Id.* Other cases decided before *Weaver* have reached a similar conclusion. *See, e.g., State v. Smith*, 357 S.W.3d 322, 345 (Tenn. 2011).

In short, this case presents an opportunity for this Court to clarify the scope of its opinion in *Weaver*. The right to an impartial jury, when implicated, always affects the fundamental fairness of a defendant's criminal trial. Thus, this case is appropriate for this Court's review, especially since this Court has noted that "the reasons an error is deemed structural may influence the proper standard used to evaluate an ineffective-assistance claim premised on the failure to object to that error." *Weaver*, 137 S. Ct. at 1907.

II. Contrary to the State's assertion, Mr. Davidson's pretrial publicity claim is in harmony with this Court's more recent cases.

The State asserts that Petitioner's position is contrary to this Court's recent precedent. It cites *United States v. Tsarnaev*, 142 S. Ct. 1024 (2022) to support this assertion. However, *Tsarnaev* is readily distinguishable from the present case.

Notably, *Tsarnaev* did not deal with the presumed prejudice doctrine. In fact, the First Circuit denied relief on the issue of presumed prejudice and the defendant did not appeal that ruling to this Court. *See United States v. Tsarnaev*, 968 F.3d 24 (1st Cir. 2020). The sole question before this Court in *Tsarnaev* was whether a federal court of appeals can exercise its "supervisory powers" to supplant a district court's discretion over the way jury selection was conducted. *Tsarnaev*, 142 S. Ct. 1024 (2022). Thus, *Tsarneav* dealt with an issue that is inapposite to this case.

The State further relies upon *Mu'Min v. Virginia*, 500 U.S. 415 (1991) to support this contention. *Mu'Min*, like *Tsarnaev*, dealt with whether the lower court was compelled to ask specific media content questions during voir dire. *Id.* Thus, like *Tsarnaev*, *Mu'Min* was not a presumed prejudice case like *Rideau v. Louisiana*, *Estes v. Texas*, *Sheppard v. Maxwell*, and *Skilling v. United States*. *Id.* at 429 ("[W]e acknowledged that 'adverse pretrial publicity can create such a presumption of prejudice in a community that jurors' claims that they can be impartial should not be believed,' but this is not such a case"). The reason *Mu'Min* did not rise to the level of presumed prejudice, as is the case with Petitioner's case, is apparent in the distinguishable facts between *Mu'Min* and the present case:

(1) *Mu'Min* involved a murder in Washington D.C., a large, diverse metropolitan area whereas this case arose from Knox County, Tennessee, a smaller, more insular community.

(2) *Mu'Min* involved 47 newspaper articles covering the case whereas this case involved 322 newspaper articles (100 of which were on the front page) and 3,111 television broadcasts and thus several times greater the level of pretrial publicity.

(3) Multiple seated jurors in *Mu'Min* had not been exposed to media accounts of the case whereas every single juror in this case had been exposed, including multiple jurors who had watched portions of a co-defendant's televised trial.

(4) No jurors in *Mu'Min* admitted to preformed opinions about the case whereas over half the jurors in the present case did.

(5) News reports in *Mu'Min*, while not favorable, did not contain the same sort of damaging information that was contained in the press coverage concerning this case ("Much of the pretrial publicity was aimed at the Department of Corrections and the criminal justice system in general, criticizing the furlough and work-release programs that made this and other crimes possible" *Id.* at 429).

In short, the State's reliance on *Mu'Min* is misplaced.

The State further posits the jury bias cases cited in Petitioner's brief are not structural error cases because some circuits have determined that presumed juror bias can be rebutted. This Court, in *Weaver*, noted "the term 'structural error' carries with it no talismanic significance as a doctrinal matter. It means only that the government is not entitled to deprive the defendant of a new trial by showing the error was 'harmless beyond a reasonable doubt.'" *Weaver*, 137 S. Ct. at 1910. Petitioner has cited multiple pretrial publicity cases, all of which remain good law, where that has been the case. *See Rideau v. Louisiana*, 373 U.S. 723 (1963); *Estes v. Texas*, 381 U.S. 532 (1965); *Sheppard v. Maxwell*, 384 U.S. 333 (1966). Furthermore,

in *Skilling*, the majority opinion declined "to decide whether the presumption is rebuttable." *Skilling*, 561 U.S. 358, 438 (2010).[1]

III. This case is an appropriate vehicle for this Court to rule on the intersection between ineffective assistance of counsel and presumed prejudice created by prejudicial pretrial media coverage.

The Tennessee Court of Criminal Appeals, in addressing this claim, held that "Petitioner failed to demonstrate prejudice because he did not meet his burden to show actual jury bias." *Davidson v. State*, 2021 WL 3672797, at *42. The court stated that "[t]his is not a direct review of his convictions and sentences, as was the case in *Skilling*," and thus applied the prejudice test articulated in *Strickland*, which required Petitioner to "demonstrate that actual prejudice resulted from counsel's decision." *Id.* at *41. The fact that the post-conviction trial court conducted an erroneous analysis of the *Skilling* factors[2] does not change the fact that the highest court in Tennessee that has considered the issue requires an actual showing prejudice for an ineffective assistance of counsel claim of this nature. Whether such a showing is required under the Sixth Amendment and this Court's ineffective assistance of counsel jurisprudence is a question ripe for this Court's determination.

Had the trial court, rather that Mr. Davidson's deficient trial counsel, denied him an out-of-county venire, the analysis would support presumed prejudice under

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[1] Even assuming the presumption is rebuttable, it was not rebutted in this case, as discussed herein.

[2] The State asserts that the post-conviction court "declined to find prejudice, presumed or otherwise." State's Brief in Opposition at 12. This is a misleading assessment of the post-conviction court's findings. The post-conviction court's holding on this issue was as follows: "At this point the Court need not resolve this close issue, as the Court finds that even if there is presumed prejudice in the jury venire, it has been rebutted." Order Denying Post-Conviction Relief at 61.

the factors articulated in *Skilling*. Petitioner relies primarily on his Petition for Certiorari for this point but will address some of the contentions raised by the State below.

First, the State contends that because Knox County, Tennessee is larger than the communities analyzed in some of this Court's presumed prejudice cases, the presumption of prejudice does not attend under these facts. The State ignores that roughly 97% of the prospective jurors had been exposed to information concerning the case, including all the sitting jurors who decided Mr. Davidson's fate. Thus, the size of the community did not assist the trial court or the parties in selecting a jury untainted by the extensive media coverage surrounding the case. Moreover, Knox County, Tennessee is far from a large metropolitan area, like Washington D.C. (*Mu'Min*), Boston (*Tsarnaev*), or Houston (*Skilling*). It is a fraction of the size of those communities, has one local newspaper of large circulation and three local television stations that repeatedly covered the case, and was united in its interest in the case and sympathy for the victims and their families. The extreme local interest in the case is demonstrated by the large disparity in media coverage between Knox County and other Tennessee media markets, information that was presented to the post-conviction court during the evidentiary hearing:

See PC Exhibit 113 (comparing the television broadcast stories concerning this case).[3]

Second, while Mr. Davidson did not confess to the crime as did the defendant in *Rideau*, there was unquestionably a deluge of wildly prejudicial information contained in the pretrial publicity. As this Court noted in *Skilling*, this factor looks not only at the presence of a confession in the pretrial coverage, but also "other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." *Skilling*, 561 U.S. at 382. In Petitioner's case, as set out in in the Petition for Certiorari, information of this type, including information that was inadmissible at Mr. Davidson's trial, was repeatedly disseminated to the Knox County community.

Third, contrary to the State's assertion, there was no "cool down" period in the coverage surrounding Mr. Davidson's case. The press coverage ramped up to an unprecedented level during co-defendant Letalvis Cobbins's trial, which occurred roughly one month prior to jury selection in Mr. Davidson's trial. Not only were these proceedings televised live and summarized with daily front page newspaper articles,

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[3] The State appears to take issue with Petitioner's data, showing that Knox County residents viewed the television coverage surrounding the case millions of times "even though there were only 430,000 people total in Knox County." Brief in Opposition at 11. The post-conviction record makes clear that number of viewers data reflects the number of times a broadcast was viewed, not the number of unique viewers. The State further contends that the news reports "could have been viewed by people all over the world." *Id.* at 12. Given the stark disparity in coverage of the case between Tennessee jurisdictions, these assertions are misleading. The interest in this case was local and residents of Knox County were repeatedly exposed to prejudicial information where other Tennesseans clearly were not. There is no clearer example of how the pretrial coverage was localized than the trial of George Thomas, where none of the Chattanooga jurors who decided the case had been exposed to any pretrial publicity prior to juror service. PC Exhibit 22. These Chattanooga jurors would have been the ones who decided Mr. Davidson's case had his trial counsel heeded the trial court's advice to ask for an out-of-county venire.

the disappointment from the victims' family members that Cobbins did not receive the death penalty took center stage in the coverage.

Fourth, Mr. Davidson was not acquitted of any of the nearly forty counts brought against him, although he was found guilty of three lesser included offenses. He was sentenced to death four times, while his codefendants, each of whom received an out-of-county jury, were not sentenced to death for any of the same death-eligible offenses that were brought against Mr. Davidson.

In summary, all four *Skilling* factors support a presumption of prejudice. This presumption should be sufficient to demonstrate the prejudice prong of Mr. Davidson's ineffective assistance of counsel claim.

IV. This Court has never found that presumed prejudice caused by pretrial publicity can be rebutted, but even if the presumption can be rebutted, the jury selection procedures in the present case were insufficient to do so.

As stated above, this Court has never ruled on whether a presumption of prejudice based on extensive pretrial publicity can be rebutted through a review of a trial court's jury selection procedures. Even assuming such a presumption could be rebutted, however, the jury selection in this case is insufficient to do so as set forth below.

A. Seated jurors were not asked about their exposure to the case's most prejudicial pretrial publicity.

Prospective jurors "may have an interest in concealing [their] own bias" or "may be unaware of it." *Smith v. Phillips*, 455 U.S. 209, 221–22 (1982)(O'Connor, J., concurring). Given this reality, asking jurors only "whether they had read anything

that might influence their opinion does not suffice, for that question in no way elicit[s] what, if anything, they have learned, but let[s] [them] decide for themselves the ultimate question of whether what they [have] learned had prejudiced them." *United States v. Tsarnaev*, 968 F.3d 24, 58 (1st Cir. 2020)(quoting *United States v. Rhodes*, 556 F.3d 599, 601 (1st Cir. 1977)); *see also Coleman v. Kemp*, 778 F.2d 1487, 1542 (11th Cir. 1985). Without content-specific questions posed to prospective jurors exposed to prejudicial pretrial publicity, courts "can assume that some [of the prejudicial] material reached members of the jury." *Sheppard*, 384 U.S. at 357. Because of the pervasiveness of the reporting and the failure to ask content-specific questions about the most prejudicial and widely disseminated information, the jury selection procedures in Mr. Davidson's case could not identify and remove biased jurors.

For nearly all the seated jurors, no questions were asked by the court, the defense, or the State about their exposure to the following information widely publicized in the pretrial media: (1) Mr. Davidson's media-given designation as the "ringleader" of the offense; (2) Mr. Davidson's prior offenses, including his prior carjacking offense; (3) Mr. Davidson's statement to police, published in full by the *Knoxville News Sentinel*[4]; (4) the police statements of Mr. Davidson's co-defendants, published in full by the Knoxville News Sentinel; (5) reports concerning Mr.

[4] The State appears to posit that Mr. Davidson's statement was not prejudicial because it contained no confession. This ignores the fact that the defense sought to suppress the statement, the State used the statement against Mr. Davidson at his trial, and the Tennessee Supreme Court used his statement as evidence to support the jury's verdict and to rule against Mr. Davidson on his sufficiency of the evidence claim on direct appeal. *State v. Davidson*, 509 S.W.3d 156, 214 (2016).

Davidson's DNA and fingerprints at the crime scene; (6) the federal trial of Eric Boyd, at which Boyd was convicted of aiding Mr. Davidson after his commission of the offense; (7) the trial of co-defendant Letalvis Cobbins, broadcast live on television, where he testified in his own defense that Mr. Davidson was the primary culprit, and at which Cobbins was convicted and sentenced to life without the possibility of parole for his role in the offenses; (8) information concerning the race of the victims, the race of the defendants, whether the crime was racially motivated, or the multiple white supremacy groups who protested and wrote about the case; (9) the reactions in the media to the victims' family members, including their desire for the defendants to receive the death penalty and their disappointment that Cobbins was given a life sentence.

The media covered these elements of Mr. Davidson's case repeatedly before the trial. Because few jurors were asked questions about any of these media reports, the jury selection was inadequate to ferret out prejudice arising from them. These questions were essential given that over half the seated jurors admitted to having preformed opinions concerning the case, as set forth in Mr. Davidson's Petition for Certiorari. Thus, the jury selection in this case could not rebut any presumed prejudice.

B. The court's use of leading, rehabilitative questions during voir dire insulated biased jurors from revealing their prejudice and encouraged jurors to downplay the extent of the pretrial knowledge of the case.

The court's repeated use of leading, rehabilitative questions during voir dire decreases the reliability of the jurors' assertions regarding their ability to set aside

the information that they were exposed to prior to trial. Leading questions, by definition, are those that "suggests the answer to the person being interrogated." Black's Law Dictionary (11th ed. 2019). These questions improperly minimized the extent to which jurors were exposed to biasing information and coached them on how to qualify themselves for jury service. *See Coleman*, 778 F.2d at 1542 (noting that "leading questions and conclusory answers were typical of the manner in which [the defendant's] voir dire was conducted," and thus, the questions were not "calculated to elicit the disclosure of the existence of actual prejudice").

For nearly all the seated jurors, the court used leading questions to minimize the extent to which the jurors were exposed to pretrial publicity.[5] The trial court's statements to these jurors are belied by the responses the same jurors provided in their questionnaires, as most of the jurors admitted to having formed opinions about the case and its participants prior to their jury service and all of them revealed exposure to pretrial publicity about the case.[6] *See, e.g., Stewart v. United States*, 366 U.S. 1, 15 (1961)(noting that "leading questions may not properly be put unless the inference, if drawn, would be factually true"). The court's leading questions

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[5] "I see you don't know much about the case." PC Exhibit 120 (Voir Dire of Juror Robert G.); "It doesn't look like you have an overwhelming amount of information about the case." *Id.* (Voir Dire of Juror Cynthia G.); "You really don't know anything about [Mr. Davidson]." *Id.* (Voir Dire of Juror Daniel A.); "It doesn't indicate—you don't indicate you've heard a great deal." *Id.* (Voir Dire of Juror Christopher B.); "[Y]ou really don't know much about the case, you haven't heard much about the case." (Voir Dire of Juror Darryl A.); "You say you don't know all the facts and the proof." *Id.* (Voir Dire of Juror Katherine D.); "Ann, you don't know much about the case, which I'm pleased to see, or at least you don't have many opinions, is that fair?" *Id.* (Voir Dire of Juror Ann. C.); "[The court had] a note on here that you are a good prospect." *Id.* (Voir Dire of Juror Jane P.); "It doesn't look like you know a great deal about the case," which is a "good opinion." *Id.* (Voir Dire of Juror Daniel N.); "It says here that you've heard about the case but not very much." *Id.* (Voir Dire of Juror Lara K.); "[You are a] good prospect" and "it appears that you don't know much about the case." *Id.* (Voir Dire of Juror Greg W.); "[Y]ou say you have paid little attention [to the case]." *Id.* (Voir Dire of Juror Amy F.).

[6] *See* PC Exhibit 120.

encouraged the jurors to minimize their pretrial exposure to information about the case; indeed, for multiple jurors, the court told them having minimal information about the case was a "good answer" or that having little information made the jurors "good prospect[s]."

Even more problematic was the court's use of leading questions for all the seated jurors regarding their ability to set aside information they heard and opinions they formed to serve as jurors.[7] Three jurors, all of whom admitted to having preformed opinions about the case (Juror Rodney R., Juror Amy F., and Juror Cynthia G.), had to be pressed further by the court when they equivocated about their ability to be fair. *Id.* Two jurors (Amy F. and Darryl A.) never provided an unequivocal "yes" to the court's leading questions concerning their impartiality. *Id.*

The limited value of these "set aside" questions in highly publicized cases, such as those employed by the trial court, has been considered in numerous social psychology studies. These studies further illustrate the inadequacy of the court's jury

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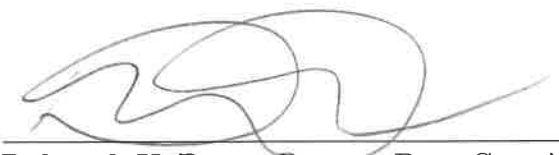
[7] "So you—you can be a fair and impartial juror, is that a fair thing to say?" *Id.* (Voir Dire of Juror Robert G.); "I would remind you several times before and during the trial, Mr. Davidson although he's been accused of this, is presumed innocent under our system and it's up to the State to prove him guilty," and could "you honestly afford him the presumption of innocence?" *Id.* (Voir Dire of Juror Cynthia G.); "Can you tell both sides here that if you got picked to be on this jury that you would base your decisions on what you hear in the courtroom?" *Id.* (Voir Dire of Juror Daniel A.); "Well, do you feel that—you know, Mr. Davidson is sitting right over here. These are his lawyers here. Do you feel that, that if you get picked on this panel you can give him a fair trial?" *Id.* (Voir Dire of Juror Christopher B.); "So you have no real opinion about—about his involvement in this case" and "you don't have anything to set aside, basically." *Id.* (Voir Dire of Juror Darryl A.); "You could tell both sides here that if you're a juror in this case, you're going to base your decision solely on what you hear in this courtroom." *Id.* (Voir Dire of Juror Ann. C.); "Can you tell both sides in this case that if you were selected as a juror that you would base your decision solely on what you hear in the courtroom?" *Id.* (Voir Dire of Juror Daniel N.); "Can you tell both sides here that if you wre on this panel that you would base your decision in this case solely on what you hear in the courtroom?" *Id.* (Voir Dire of Juror Lara K.); "Can you base your decision solely on what you hear in this courtroom?" *Id.* (Voir Dire of Juror Greg W.); "Can you tell both sides here that if you're a juror in this case you're going to base your opinion on what you hear in the courtroom and disregard anything you might have heard outside?" *Id.* (Voir Dire of Juror Robin G.).

selection methods in Mr. Davidson's case.[8] Thus, in cases such as this one, where jurors were repeatedly exposed to sensational, prejudicial, and constant pretrial publicity prior to juror service, leading voir dire questions about jurors' ability to set aside prejudicial information are ineffective in producing an unbiased jury. These questions are unreliable because asking "whether they had read anything that might influence their opinion does not suffice" in eliminating media-created bias. *See Tsarnaev*, 968 F.3d at 58. Further, the ability of the trial judge to detect bias is called into question by his active drug addiction during Mr. Davidson's trial.

CONCLUSION

For the foregoing reasons, Petitioner prays that his Court grant the petition for writ of certiorari.

Respectfully submitted,



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[8] *See, e.g.*, Norbert L. Kerr, Et Al., On the Effectiveness of Voir Dire in Criminal Cases with Pretrial Publicity: An Empirical Study, 40 Am. U.L. Rev. 665 (1991) (concluding that jurors who admitted forming an opinion from media exposure that could not be set aside were no more or less likely to convict than those exposed to pretrial publicity who did not report such opinions); Neil Vidmar, When All of Us Are Victims: Juror Prejudice and "Terrorist" Trials, 78 Chi.-Kent. L. Rev. 1143 (2003) (concluding that professions of juror impartiality were not reliable); Christina A. Studebaker & Steven D. Penrod, Pretrial Publicity: The Media, the Law, and Common Sense, 3 Psychol. Pub. Pol'y & L. 428, 433-38 (1997) (describing the propensity of self-assessed impartial jurors to return guilty verdicts).