No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

SHERMAN COLLINS,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

RANDALL S. SUSSKIND
COUNSEL OF RECORD
JAMES M. HUBBARD
122 Commerce Street
Montgomery, AL 36104
(334) 269-1803
rsusskind@eji.org
mhubbard@eji.org

March 7, 2022

Counsel for Petitioner

CAPITAL CASE

QUESTION PRESENTED

In a capital trial, does a trial court's erroneous failure to remove for cause jurors that have personal and professional relationships with a prosecuting attorney violate the Due Process Clause of the Fourteenth Amendment?

RELATED PROCEEDINGS

State v. Collins, Sumter County Circuit Court, No. CC-2012-109. Order of conviction entered December 5, 2014; sentencing order entered on January 13, 2015.

Collins v. State, Alabama Court of Criminal Appeals, No CR-14-0753. Opinion remanding the case issued October 13, 2017; opinion remanding the case a second time issued July 13, 2018; opinion on return to second remand issued October 25, 2019; rehearing denied March 12, 2021.

Ex parte Collins, Alabama Supreme Court, No. 1200443. Opinion issued November 5, 2021.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Alabama Court of Criminal Appeals affirming Mr. Collins' convictions but remanding the case for correction of the sentencing order, *Collins v. State*, No. CR-14-0753, 2017 WL 4564447 (Ala. Crim. App. Oct. 13, 2017), the court's opinion on return to remand, *Collins v. State*, No. CR-14-0753, 2017 WL 4564447, at *42 (Ala. Crim. App. July 13, 2018), and the court's opinion on return to second remand, *Collins v. State*, No. CR-14-0753, 2017 WL 4564447, at *46 (Ala. Crim. App. Oct. 25, 2019), are not yet reported and are attached as Appendix A. The court's opinion denying rehearing is not yet reported and is attached as Appendix B. The order of the Alabama Supreme Court granting Mr. Collins' petition for a writ of certiorari as to whether his conviction for conspiracy violated the Double Jeopardy Clause and denying it as to all other claims is unreported and attached as Appendix C. The opinion of the Alabama Supreme Court reversing Mr. Collins' conviction of conspiracy and affirming his capital conviction and death sentence, *Ex parte Collins*, No. 1200443, 2021 WL 5143906 (Ala. Nov. 5, 2021), is unreported and attached as Appendix D. The Alabama Supreme Court's certificate of judgment is attached as Appendix E.

STATEMENT OF JURISDICTION

The Alabama Court of Criminal Appeals affirmed Mr. Collins' convictions, but remanded the case for correction of the sentencing order on October 13, 2017. *Collins v. State*, No. CR-14-0753, 2017 WL 4564447 (Ala. Crim. App. Oct. 13, 2017). On return to remand, the Alabama Court of Criminal Appeals again remanded the case for correction of the sentencing order. *Collins v. State*, No. CR-14-0753, 2017 WL 4564447, at *45 (Ala. Crim. App. July 13, 2018). On return to second remand, the Alabama Court of Criminal Appeals affirmed Mr. Collins' death sentence on October 25, 2019. *Collins v. State*, No. CR-14-0753, 2017 WL 4564447, at *49 (Ala. Crim. App. Oct. 25, 2019). The Alabama Court of Criminal Appeals denied rehearing on March 12, 2021. *Collins v. State*, No. CR-14-0753, 2021 WL 940525 (Ala. Crim. App. Mar. 12, 2021). The Alabama Supreme Court denied Mr. Collins' petition for a writ of certiorari as to all claims except whether his conspiracy conviction violated the Double Jeopardy Clause on June 24, 2021. Order, *Ex parte Collins*, No. 1200443 (Ala. June 24, 2021). On November 5, 2021, the Alabama Supreme Court reversed Mr. Collins' conviction for conspiracy to commit murder, but affirmed his capital murder conviction and sentence of death. *Ex parte Collins*, No. 1200443, 2021 WL 5143906 (Ala. Nov. 5, 2021). This Court granted Mr. Collins' application to extend the time to file a petition for writ of certiorari on January 25, 2022, extending the time to file to

March 7, 2022. *Collins v. Alabama,* No. 21A351 (Jan. 25, 2022). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

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

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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

I. Facts Concerning the Offense and Subsequent Investigation

Around midnight on Saturday, June 16, 2012, Detrick Bell was shot in the head at close range outside of the Morningstar Community Center in Sumter County, just after the conclusion of a rap concert. (C. 318; R. 405-07.)[1] Luther Davis, lead investigator with the Sumter County Sheriff's Department who had never been in charge of a homicide investigation before, developed Kelvin Wrenn, whose car had been left a few feet from the shooting, as a suspect. (R. 673, 728.) After several interrogations with Davis, Wrenn provided a statement

[1]"C." refers to the clerk's record; "R." refers to the trial record; and "S.R.2" refers to the second supplemental record. Citations to the second supplemental record are to the page number stamped on the upper right margin of each page when filed with the Alabama Court of Criminal Appeals.

identifying the shooter as Sherman Collins, a New Orleans, Louisiana, resident visiting Sumter County at the time with his girlfriend and her family to see his girlfriend's sister, who was dating Wrenn. (C. 323; R. 327-28; 673, 729-30.) Investigator Davis acknowledged at trial that none of his interrogations, of any suspect or witness, were recorded in any way and that he personally handwrote every written statement he took from these individuals. (R. 743.)

Davis interviewed Wrenn "several times" in the days following the investigation. (R. 731.) At trial, Davis could not recall and had no notes about how long his interviews of Wrenn lasted or even what time the interview started on the night of shooting. (R. 730.) All he could remember is that he "did develop Sherman Collins' name in talking to Kelvin Wrenn." (R. 731.) Yet, in his first two written statements to Davis on June 17, 2012, Wrenn did not even implicate Mr. Collins. (S.R.2 124-26.) The next day, on June 18, 2012, Wrenn signed a statement implicating Mr. Collins as the shooter. (C. 322-24; R. 791-92.) The day after Davis secured this statement from Wrenn, he had investigators from the Alabama Bureau of Investigation (ABI) drive to Sumter County and take a similar statement from Wrenn for the first time. (C. 319-21; R. 844.)

Once he had Wrenn's statements identifying Mr. Collins as the shooter, Davis traveled to Louisiana to extradite Mr. Collins to Alabama on July 2, 2012. (R. 675-77, 735.) Mr. Collins was initially taken to the Marengo County Jail,

allegedly to keep him separate from Wrenn at the Sumter County jail. (R. 678.) On July 11, 2012, Mr. Collins was taken to court for his initial appearance, for which Davis was present. (R. 258.) Immediately after this initial appearance, Davis and Lieutenant Tubs of the ABI attempted to interview Mr. Collins at the Marengo County jail. (R. 680.) After being read his rights, Mr. Collins initialed the form at 9:15 a.m. indicating that he understood those rights but refused to waive any. (C. 351; R. 257-58, 679-82.) Mr. Collins was then moved to a holding cell at the Sumter County jail and kept in solitary confinement for several weeks.[2] (R. 684-85.)

Late in the night on August 4, 2012, Davis again met with Mr. Collins for several hours, and at the end of this interrogation, Mr. Collins signed a three-page statement handwritten by Davis. (C. 337-40; R. 261-63, 698.) At the pretrial hearing on the motion to suppress this statement, Mr. Collins testified that

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[2] During the time that Mr. Collins was awaiting trial, his codefendant Wrenn, waiting to be separately tried for capital murder, was cutting Davis's and the Sumter County Sheriff's hair "[t]wice a month," which led to "ongoing conversations." (S.R.2 22-23.) The trial court had to admonish the State "Y'all got the inmate cutting your hair? Y'all need to get your hair cut somewhere else," and "Y'all get your hair cut somewhere else. We don't need that kind of problem with this case." (S.R.2 23-24.)

Subsequently, the Alabama Supreme Court impeached the Sumter County Sheriff, first elected in 2011, a year before this case, for seven specified acts of "willful neglect of duty" and three specified acts of "corruption in office" due in large part to how he managed the Sumter County jail and its inmates. *State ex rel. Strange v. Clark*, 216 So. 3d 426 (Ala. 2016).

investigators initiated this interrogation and offered him a deal of ten years in exchange for his statement. (R. 261-63.) Davis testified that he did not videotape the interrogation of Mr. Collins because the Sumter County Sheriff's Office did not have any audio or video recording equipment at the time, although such equipment was used by Davis just a few days later for other aspects of his investigation. (C. 145; R. 718.) After he signed the statement, Mr. Collins was removed from solitary confinement and placed in general population. (R. 761.)

II. Facts Concerning Jury Selection

The case proceeded to trial on December 1, 2014, with jury selection beginning that morning. After voir dire, the defense challenged several potential jurors for cause due to their close ties to prosecutors in the case. (R. 222-26.) Rather than conduct further voir dire, the trial court denied each challenge relying on the prosecutors' representations about their own impressions of their relationships to the prospective jurors.

Venire member T.T. stated that Assistant District Attorney Watkins was his personal attorney and that the two "have been friends for over 40 years." (R. 145-46.) After defense counsel's challenge, Watkins responded, "He stated that I was his personal attorney. I'm not in any kind of business relationship with [T.T] of any kind whatsoever." (R. 223.) Pressed further, Watkins repeated, "I'm just saying I'm not in business with him. He did say that I'm his attorney. I

guess if he had some legal work to do, I might be asked to do it. I'm not doing anything for him currently or for [juror Ke.S.], so I'm not in a current business relationship with him." (R. 223.) Additionally, potential juror T.T. revealed during voir dire that he was related to Assistant District Attorney Dees, who was married to his second cousin (R. 62.)

Similarly, potential juror Ke.S. had been represented by Watkins in prior legal proceedings and stated that "Mr. Watkins is my personal attorney" (R. 145), and the two "do business things together" (R. 178, 222). When asked whether he knew anybody from the district attorney's office, Ke.S. stated, "I'm friends with all three of those people right there." (R. 146.) Watkins, as noted above, denied being in a business relationship with Ke.S. (R. 223), and explained, "He said that I have represented him. I haven't done any legal work for him recently. He did say that I was his personal attorney, but I don't recall him being asked if that was gonna affect his ability to be fair." (R. 222.)

Venire member T.D. was related to prosecutor Dees, indicated he would be partial to the State's case, and had also completed contracting work for prosecutor Watkins in the past. (R. 141, 145, 184, 224.) When asked if his relationship with a member of the district attorney's office would make him favor the State's case, T.D. stated "I couldn't really say, you know. I'd kind of lean toward your kin for things. I can't answer that honestly to tell you the

truth." (R. 184.) He reiterated, "I would lean one way more than I would the other." (R. 184.) Arguing against defense counsel's challenge, Watkins asserted he did not recall the contracting work and said he "ha[d] no current business relationship with him and he's not employed by me in any shape, form or fashion." (R. 224.)

Potential juror R.C. sua sponte offered during voir dire that he had retained Watkins for legal services. (R. 146, 225.) In response to defense counsel's challenge, Watkins responded, "I really don't have any recollection of it. That was prior to 2002." (R. 225.) Lastly, potential juror Ka.S. "ha[d] Mr. Watkins' grandchildren in my day care" and had retained Watkins for legal services in the past. (R. 146, 225.) Watkins responded, "I'm gone [sic] be fair to the defense. She said that she keeps my grandson . . . but there was no question to her whether that would affect her ability to be fair and impartial. And as far as any legal work, I might have done a house closing for her and her husband, but it would have been years ago. . . . So I'm not an employer or in a business relationship with her . . . ." (R. 225-26.)

The trial court denied defense counsel's challenges and did not remove these jurors for cause, forcing counsel to expend peremptory strikes on each. As a result, seated jurors included several individuals challenged by defense counsel or who they would have likely struck. Juror J.D. reported being related to the

chief of police in York, one of the responding agencies in this case. (R. 148, 426.) Juror B.J.W. reported a niece who was a sheriff in Chicago. (R. 147.) Juror K.E.J. stated on his questionnaire and during voir dire that he believed a person convicted of capital murder should always receive the death penalty, though the defense challenge was denied after the State asserted he had been rehabilitated. (R. 127-29, 215.) Juror E.W. did not return the questionnaire and was unsuccessfully challenged by the defense on that basis. (R. 207.) Juror N.J., who was unsuccessfully challenged for cause by the defense, also did not return the questionnaire and noted that she was related to the victim. (R. 202, 226.)

III. Facts Concerning Trial

At trial, the prosecution's entire case turned on the admissibility and reliability of codefendant Wrenn's statements to police and the statement the police obtained from Mr. Collins. No witness ever identified the victim's shooter or claimed to have seen the shooting, even though several were just a few feet away when the victim was shot. (R. 445, 450-56, 459, 461-62, 483, 486-89, 526, 529, 560-63, 605.) Instead, the State chiefly relied on Wrenn's statements to police implicating Mr. Collins and the alleged confession by Mr. Collins, handwritten by Davis a month after Mr. Collins was arrested and extradited to Sumter County. (C. 319-24, 338-40; R. 308, 770-73, 791-92, 845-49, 939, 966, 976-78, 983-87.)

Wrenn's statements were admitted though he never testified and was never subject to any cross-examination despite repeated objections by the defense.[3] (C. 319-24; R. 768-70, 773-87, 789, 791, 849, 854.) At trial, Mr. Collins's statement and both of Wrenn's statements were read aloud to the jury by investigators. (R. 703-05, 790-91, 850-52.) The State relied upon all of these statements in closing arguments, reading directly from both of Wrenn's redacted statements but simply summarizing Mr. Collins' statement. (R. 939-940, 978, 984-90.) These statements were the only evidence directly implicating Mr. Collins. And the sole evidence that the murder was committed pursuant to a contract or for hire—the only capital elevator and also only aggravating factor offered in this case—was the statement that Davis handwrote for Mr. Collins.

On December 5, 2014, the jury convicted Mr. Collins of one count of capital murder for hire and one count of conspiracy to commit murder.[4] (C. 380-81; R.

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[3]On appeal, the Alabama Court of Criminal Appeals found that the admission of Wrenn's statements violated this Court's precedent in *Bruton v. United States*, 391 U.S. 123 (1968), but, over dissent, that the error was harmless. *Collins v. State*, No. CR-14-0753, 2017 WL 4564447, at *27 (Ala. Crim. App. Oct. 13, 2017); *id.* at *40-41 (Joiner, J., dissenting); *see also Collins v. State*, No. CR-14-0753, 2021 WL 940525, at *8 (Ala. Crim. App. Mar. 12, 2021) (per curiam) (Cole, J., dissenting) (agreeing with Judge Joiner that error was not harmless beyond reasonable doubt).

[4]The Alabama Supreme Court reversed Mr. Collins' conviction for conspiracy to commit murder after finding that it was a lesser included offense of the capital conviction and that this violated the Double Jeopardy Clause. *Ex parte Collins*, No. 1200443, 2021 WL 5143906, at *5-6 (Ala. Nov. 5, 2021).

1010-11.) On December 8, 2014, after a brief penalty phase where the State asserted only the single aggravating factor arising out of the guilt-phase verdict and introduced only victim-impact evidence,[5] the jury recommended 10 to 2 to impose death. (C. 254; R. 1099.) On January 13, 2015, the trial court independently decided to sentence Mr. Collins to death in a one-paragraph sentencing order.[6] (C. 414; R. 1113.)

This petition follows.

REASONS FOR GRANTING THE WRIT

"[T]he Due Process Clause protects a defendant from jurors who are actually incapable of rendering an impartial verdict, based on the evidence and the law" and "circumstances that create the likelihood or the appearance of bias." *Peters v. Kiff*, 407 U.S. 493, 501-02 (1972). "Voir dire examination serves to protect that right by exposing possible biases, both known and unknown, on

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[5]The Alabama Court of Criminal Appeals held that victim impact evidence regarding a witness's opinion of Mr. Collins was error, but that it was harmless beyond a reasonable doubt. *Collins*, 2017 WL 4564447, at *36.

[6]Because the one paragraph sentencing order violated Alabama law, the Alabama Court of Criminal Appeals remanded the case for the trial court to make findings of fact regarding the offense and aggravating and mitigating circumstances. *Collins*, 2017 WL 4564447, at *40. On return to remand, the Court of Criminal Appeals found the trial court had misstated the jury's vote in recommending death and that it had made statements inconsistent with that non-unanimous recommendation before remanding the case for correction of the sentencing order a second time. *Id.* at *45.

the part of potential jurors." *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984); *see also Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) ("Voir dire plays a critical function in assuring" criminal defendant's constitutional protections).

In this capital case, the trial court denied defense counsel's challenges for cause against several venire members who revealed during voir dire that they had retained the prosecuting attorney for legal work or that he was their "personal attorney" and who asserted their friendship with him. The trial court erroneously denied the defense's challenges for cause as to each of these jurors, based primarily on the statements of the prosecuting attorney alone, forcing Mr. Collins to expend peremptory strikes to remove each. As a result, the seated jury included jurors whom the defense had also challenged for cause and who would have been struck had Mr. Collins retained his full compliment of strikes. This violated the minimum due process requirements of the Fourteenth Amendment, and the lower court's affirmation of these errors conflicts with this Court's decisions in *Peters*, *McDonough*, and other cases protecting a defendant's right to secure an impartial jury, and it conflicts with the decisions of other jurisdictions holding that personal and professional relationships with prosecutors warrants a juror's removal. Therefore, certiorari is appropriate. *See* Sup. Ct. R. 10(b), (c).

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE TRIAL COURT VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IN DENYING DEFENSE'S MOTIONS TO EXCLUDE JURORS WHO HAD PROFESSIONAL AND PERSONAL RELATIONSHIPS WITH THE PROSECUTING ATTORNEYS.

The Due Process Clause requires "a jury capable and willing to decide the case solely on the evidence before it," *Smith v. Phillips*, 455 U.S. 209, 217 (1982), and it protects defendants from "jurors who are actually incapable of rendering an impartial verdict." *Peters v. Kiff*, 407 U.S. 493, 501 (1972). In this case, the trial court failed to uphold the minimum standards of due process when it denied the defendant's multiple challenges for cause against jurors who believed the prosecuting attorney was their personal attorney. The Alabama Court of Criminal Appeals failed to find error, erroneously relying as the trial court did on representations of the prosecuting attorney rather than the impressions of the prospective jurors. As a result of the trial court's repeated failure to remove potential jurors who had clear business and personal relationships with the prosecution, counsel was forced to expend peremptory strikes on each and the resulting seated jurors included several jurors defense counsel had challenged or who would have likely been struck.[7]

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[7]In *Ross v. Oklahoma*, when reviewing the erroneous denial of a single juror who was then peremptorily struck, this Court did not "decide the broader question whether . . . 'a denial or impairment' of the exercise of peremptory challenges occurs if the defendant uses one or more challenges to remove jurors who should have been excused for cause." 487 U.S. 81, 91 n.4 (1988).

A juror may be excused for cause if their responses to questions during voir dire demonstrate bias. *McDonough Power Equip., Inc.*, 464 U.S. at 554; *see also United States v. Wood*, 299 U.S. 123, 133 (1936) ("The bias of a prospective juror may be actual or implied; that is, it may be bias in fact or bias conclusively presumed as matter of law."). The relevant inquiry for determining whether a juror was appropriately challenged for cause based on bias is whether the juror can "decide the facts impartially and conscientiously apply the law." *Adams v. Texas*, 448 U.S. 38, 45 (1980); *Wainwright v. Witt*, 469 U.S. 412, 423-24 (1985) (noting *Adams* is relevant to "any situation where a party seeks to exclude a biased juror.").

In this case, the trial court repeatedly denied defense counsel's challenges to jurors who had clear relationships with the prosecuting attorneys. Venire member T.T. stated during voir dire that Assistant District Attorney Watkins was his personal attorney and friend "for over 40 years," and that Assistant District Attorney Dees was related to him by marriage, but the trial court made no inquiry into whether T.T. could be fair and impartial in light of his close and long-standing relationships with two lawyers for the State. Similarly, venire member Ke.S. shared that Watkins was his "personal attorney," that the two "do business things together," and that he was friends with all three of the district attorneys (R. 145, 178, 222.) For both jurors, the lower court relied on Watkins's

statement that he did not " not currently represent" the two venire members as justification for the trial court's denial of defense's challenges for cause. *Collins v. State*, No. CR-14-0753, 2017 WL 4564447, at *22 (Ala. Crim. App. Oct. 13, 2017).

Potential jurors R.C. and Ka.S. also stated that they had retained Watkins for legal services and Ka.S. additionally informed the court that she provided daycare for Watkins' grandchildren. (R. 146.) The trial court denied the defense's challenges for cause of both R.C. and Ka.S. because, as to R.C., Watkins stated he had no recollection of the business relationship (R. 225), and, as to Ka.S., Watkins explained he did not presently have an ongoing business relationship with Ka.S. and he himself did not go to the daycare premises (R. 225-26). Again, like the trial court's denial, the lower court's reasoning relied solely on Watkins's testimony. *Collins*, 2017 WL 4564447, at *23; *Collins v. State*, No. CR-14-0753, 2021 WL 940525, at *2 (Ala. Crim. App. Mar. 12, 2021) (addressing the claim as to R.C. in its opinion denying rehearing because court had failed to do so in its initial opinion).

Lastly, venire member T.D. informed the court that he was both related to prosecutor Dees "through marriage" and had completed contracting work for Watkins in the past (R. 141, 145, 184, 224.) Here, although potential juror T.D. explicitly stated on the record that he "couldn't really say" whether his

relationships would make him favor the State and that he would "kind of lean toward your kin for things" and "lean one way more than [he] would the other," the lower court still upheld the trial court's denial of defense's removal of cause because Watkins noted that he did not remember the contracting work and that he had no current business relationship with him. (R. 184); *Collins*, 2017 WL 4564447, at *24.

The trial court's denials of the challenges for cause and the appellate court's affirmation of them was error. Indeed, other courts have reversed where trial courts have failed to exclude jurors with professional relationships with prosecutors. *See, e.g.*, *Futrell v. Commonwealth*, 471 S.W.3d 258, 274-75 (Ky. 2015) (finding reversible error where trial court's failed to remove juror who had relationship with prosecutor); *State v. Hatley*, 679 S.E.2d 579, 584 (W. Va. 2009) (finding reversible error where trial court failed to strike juror who had attorney-client relationship with prosecuting attorney); *Fugate v. Commonwealth*, 993 S.W.2d 931, 938-39 (Ky. 1999) (holding "a trial court is required to disqualify for cause prospective jurors who had a prior professional relationship with a prosecuting attorney and who profess that they would seek such a relationship in the future" and reversing where trial court failed to strike three jurors who had been previously represented by prosecutor); *Taylor v. State*, 656 So. 2d 104, 110-11 (Miss. 1995) (finding reversible error where trial court failed to strike

juror related to prosecuting attorney); *see also, e.g.*, *Cantrelle v. Crews*, 523 S.E.2d 502, 504 (Va. 2000) (finding error where trial court refused to remove for cause juror represented by plaintiff's attorney); *Lamar v. State*, 366 N.E.2d 652 (Ind. 1977) (affirming removal of juror in criminal case previously represented by defense attorney in estate planning matter); *State v. White*, 196 A.2d 33, 34 (N.H. 1963) (affirming removal of juror in criminal case who had been previously represented by defense attorney in real estate matter).

There was no evidence that potential jurors T.T., Ke.S., R.C., Ka.S., or T.D. could "lay aside [their] impression or opinion and render a verdict based on the evidence presented in court." *Irvin v. Dowd*, 366 U.S. 717, 723 (1961). T.D., the only juror responding on the question of partiality, equivocated and said he would "kind of lean toward [his] kin for things." (R. 184.) Nevertheless, the trial court repeatedly denied the challenges for cause, relying solely on the statements provided by prosecuting attorney Watkins. The complete lack of inquiry into the venire members' state of mind makes it impossible to determine whether the potential jurors would "set aside their own beliefs in deference to the rule of law" in light of their long-standing relationships with the State's attorney. *Lockhart v. McCree*, 476 U.S. 162, 176 (1986). Because there is no evidence that these jurors' relationships with the prosecuting attorneys would not "prevent or substantially impair" their duty as jurors, the trial court should

have granted defense's challenges for cause. *Gray v. Mississippi*, 481 U.S. 648, 658 (1987) (quoting *Wainwright*, 649 U.S. at 424) (internal quotation marks omitted); *see also United States v. Quinones*, 511 F.3d 289, 302 (2d Cir. 2007) ("Irrevocable bias would be so evident from these written responses [asserting relationships to the prosecution] as to render superfluous further oral inquiry about the juror's ability to follow legal instructions and to serve impartially.").

As a result of the trial court's repeated errors in denying defense's challenges for cause, the defense was unable to utilize peremptory strikes to remove other jurors that it had challenged for cause or that would have otherwise been peremptorily struck. Jurors K.E.J. and N.J. were seated on the jury that convicted and sentenced Mr. Collins to death despite the fact that defense had challenged each of them for cause. (R. 127-28, 202, 226). K.E.J. had stated on his questionnaire and during voir dire that he believed a person convicted of capital murder should always receive the death penalty (R. 127-28), and N.J., who did not return a questionnaire, was related to the victim (R. 202, 226). Other seated jurors included several whom the defense would likely have struck had the defense not been forced to expend peremptories on the juries that should have been removed for cause. Juror J.D. reported being related to the chief of police in York, one of the responding agencies in this case. (R. 148, 426.) Juror E.W. did not return the questionnaire and was unsuccessfully challenged

by the defense on this basis. (R. 207.) Juror B.J.W. reported a niece who was a sheriff in Chicago. (R. 147.) Defense's inability to retain its full compliment of strikes due to the trial court's errors violated Mr. Collins' due process rights.

Accordingly, this Court should grant review to make explicit that Due Process does not permit a trial court in a capital case to deny defense challenges for cause where potential jurors have asserted personal and professional relationships with prosecuting attorneys, resulting in the expenditure of defense peremptories and the seating of jurors that the defense had challenged and would have otherwise struck.

CONCLUSION

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

Respectfully Submitted,

/s/ Randall S. Susskind
RANDALL S. SUSSKIND
COUNSEL OF RECORD
JAMES. M. HUBBARD
122 Commerce Street
Montgomery, AL 36104
(334) 269-1803
rsusskind@eji.org
mhubbard@eji.org

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Counsel for Petitioner