No. 21-7371
CAPITAL CASE

In the
Supreme Court of the United States

SHERMAN COLLINS,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEVE MARSHALL
Alabama Attorney General

Lauren A. Simpson
Assistant Attorney General
*Counsel of Record

OFFICE OF ALA. ATT'Y GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Lauren.Simpson@AlabamaAG.gov

March 24, 2022

CAPITAL CASE

QUESTION PRESENTED
(Restated)

At Sherman Collins's capital murder trial, several of the veniremembers in a small county indicated that they had used the services of one prosecutor at some point in the past, were distantly related to another prosecutor, or were friendly with the prosecutors. Challenges for cause were denied as to all five. Four were removed with peremptory strikes, while the fifth was an alternate and took no part in the deliberations. The question presented is:

> Did the court of appeals err in affirming the trial court's denial of challenges for cause where the defense failed to establish statutory grounds for a challenge or to elicit information from the challenged veniremembers showing bias?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

INTRODUCTION

Small counties generate small pools of potential jurors. Sumter County, Alabama, is one such place. Located in the central-western portion of the state, on the Mississippi border, Sumter County covers 913 square miles but had a population of only 12,345 as of the 2020 Census—the sixtieth in population of Alabama's sixty-seven counties.[1] As one veniremember stated, "Well, it's a small town."[2]

Sherman Collins, who blew away a third of Detrick Bell's skull with a .454 caliber pistol in an ill-conceived murder for hire, contends that the trial court erred in denying five of his challenges for cause during jury selection. The challenged veniremembers knew, either personally or professionally, one or more of the assistant district attorneys. After discussion, the trial court denied each challenge. None of these veniremembers were among the final twelve jurors. The Alabama Court of Criminal Appeals affirmed the trial court's decision,[3] and the Alabama Supreme

---

1. *Alabama: 2020 Census*, U.S. CENSUS BUREAU, https://www.census.gov/library/stories/state-by-state/alabama-population-change-between-census-decade.html (Aug. 25, 2021). The 2010 Census put Sumter County's population slightly higher at 13,763. *Sumter County, Alabama*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?g=0500000US01119&tid=DECENNIALPL2010.P1 (last visited Mar. 24, 2022).
2. R. 146. Record citations are as follows:

C.	Clerk's record
R.	Trial transcript
# Supp.	Supplemental record (NB: "2 Supp." refers to the two-volume supplemental record filed in November 2015. The "second supplemental record" received in August 2015 was a single cover page.)

3. *Collins v. State*, CR-14-0753, 2017 WL 4564447, at *20–24 (Ala. Crim. App. Oct. 13, 2017); *Collins v. State*, CR-14-0753, 2017 WL 940525 (Ala. Crim. App. Mar. 12, 2021) (overruling application for rehearing and affirming denial of challenge for cause as to R.C.).

Court denied certiorari on this ground.[4]

Collins's petition does not present a cert-worthy issue. Rather, he would have the Court grant review of a factbound matter and substitute its bias determinations for those of the lone circuit judge in the county. The Court should deny review.

STATEMENT OF THE CASE

A. The murder of Detrick Bell

Detrick "Speedy" Bell was slain just after midnight on June 17, 2012, outside the Morning Star Community Center near Cuba, a small town in Sumter County, Alabama.[5] His fatal error was attending a concert by a local rap group that evening. As the concert wound down, Bell met a visitor from New Orleans, Sherman Collins, and shook his hand.[6] Shortly thereafter, Bell was lying dead on the ground with a gaping wound in his head.[7] When the medical examiner received the "disaster bag" containing Bell's body, his brain was "essentially missing" from his ruined skull, having landed beside his shoulder.[8] The catastrophic damage to Bell's head initially led the medical examiner to conclude that he had been killed by a shotgun slug.[9]

The truth was rather different. As it so happened, Bell had an enemy, Kelvin Wrenn. That weekend, Wrenn and his girlfriend, Keon Jackson, had hosted a

4. *See Ex parte Collins*, No. 1200443, 2021 WL 5143906 (Ala. Nov. 5, 2021).
5. In the 2020 Census, Cuba had a population of 306. In 2010, the population was 346. *Explore Census Data*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci (last visited Mar. 24, 2022).
6. R. 446–47, 483, 485.
7. R. 446–47, 483, 485.
8. R. 882–83.
9. R. 887; *see* C. 346.

barbeque at their home; Keon's sister, Angela, and her boyfriend, Collins, had driven up to join them.[10] Wrenn believed that Bell had sent someone to break into his mother's house years before, and he asked Collins if Collins would kill Bell for $2000.[11] Collins agreed to the job, and Wrenn loaned him his "magnum pistol,"[12] a Taurus .454 Casull "Raging Bull" revolver.[13] The firearms dealer who had sold it to Wrenn testified that this gun was "very rare" and "the largest handgun ever made" at the time.[14] Collins confessed that Wrenn pointed out Bell at the rap concert, telling him, "[T]hat's the n***** right there, two grand," after which Collins shot Bell in the head, walked away, and tossed the gun into the woods.[15] The gun was never recovered, and Collins never received the promised $2000 for the murder.[16] But several of the concert attendees remembered the stranger in the orange Reese's T-shirt who strolled away after the shooting as people ran in terror.[17]

10. R. 329, 331–33.
11. C. 323 (Wrenn redacted), 338 (Collins); 3 Supp. 8–9 (Wrenn unredacted).
12. C. 338.
13. C. 323 (Wrenn redacted); 3 Supp. 8–9 (Wrenn unredacted); *see* C. 353–55 (purchase papers).
14. R. 869. As a gauge of this weapon's power, in 2018, *American Shooting Journal* named the Raging Bull one of its picks for defense against bears. *Best Bear Defense Handguns*, AM. SHOOTING J. (2018), https://americanshootingjournal.com/top-5-best-bear-defense-guns-for-your-money. The staff of Guns.com concurred. *Best Pistols and Revolvers for Bear Hunting*, GUNS.COM (Sept. 3, 2019, 12:30 AM), https://www.guns.com/news/2019/09/03/best-pistols-and-revolvers-for-bear-hunting.
15. C. 339.
16. C. 340; R. 710–11.
17. R. 450–51, 483 (Martez Rogers); R. 452–56, 467 (Tarrod Sturdivant); R. 555–56, 599–601, 612 (Tommy Charles Nixon).

B. The trial

Collins was indicted on charges of capital murder and conspiracy to commit murder in September 2012.[18] He refused a plea bargain,[19] and so his jury trial began on December 1, 2014, in Livingston, the seat of Sumter County.[20]

i. Demographics

Sumter County is among the least populous counties in Alabama. In 2010, it had only 13,763 residents,[21] a number that declined in the following decade. While the venire assembled for Collins's capital trial was quite large—226 members initially, 192 after several were excused[22]—the many repeated surnames in the venire are testament to how interconnected by blood and marriage the population is. The venire even contained two pairs of sisters.[23]

Unsurprisingly, the number of attorneys in Sumter County is low. As of this writing, there are only sixteen attorneys listed in the Alabama State Bar directory in Sumter County, including Collins's trial judge, the Honorable Eddie Hardaway, Jr.; there are only forty-five attorneys in the three-county 17th Judicial Circuit.[24] Thus, it was a virtual inevitability that members of the venire would be acquainted with

---

18. C. 17–18; *see* ALA. CODE §§ 13A-4-3, 13A-5-40(a)(7).
19. R. 585.
20. R. 1.
21. *Sumter County, Alabama*, U.S. CENSUS BUREAU.
22. *See* 1 Supp. 1–16. Aside from the early excuses, Ora Gibbs was excused as a Mississippi resident. R. 114. Angela Brown was not listed on the venire printout and was assigned number 9999. R. 198.
23. R. 41–42, 89.
24. *Member List by County*, ALA. STATE BAR, https://www.alabar.org/dashboard/member-list-county (last visited Mar. 24, 2022) (members-only area).

attorneys or other individuals connected with the case.

The attorneys for the prosecution came from the District Attorney's Office for the 17th Judicial Circuit: Gregory Griggers, the DA, and Nathan Watkins and Vincent Deas, both ADAs. Collins's counsel included John Stamps from Bessemer and Kyra Sparks and James Patrick Cheshire from Selma, all attorneys from outside Sumter County and the circuit,[25] and so less likely to be known to the prospective jurors. Of these six attorneys, Mr. Watkins was probably the most likely to have had prior contact with members of the venire, as he divided his time between the District Attorney's Office and his civil practice. While Mr. Watkins has been an ADA since 2002, he has also been a member of Watkins Cross, LLC, a small firm in Livingston, since 2009,[26] and he did other civil work before that time. His current firm represents clients in various matters, including real estate closings, wills, leases, divorces, prenuptial agreements, personal injury, and wrongful death.

ii. Challenges for cause

The veniremembers were asked to fill out questionnaires prior to voir dire.[27] After the venire was questioned, counsel and the trial court met to discuss challenges for cause.[28]

---

25. Selma is roughly a seventy-seven-mile drive to the east of Livingston, while Bessemer is roughly a one-hundred-mile drive to the northeast.
26. *Nathan Graydon Watkins*, WATKINS CROSS, LLC, https://www.watkinscross.com/attorneys/nathan-graydon-watkins (last visited Mar. 24, 2022); Amended Articles of Organization of Cross Law Firm, LLC, *nka* Watkins Cross, LLC (Jan. 9, 2009), https://arc-sos.state.al.us/ucp/B09029AA.A5H.pdf.
27. *See* 1 Supp. 22.
28. R. 191.

The State moved to strike nineteen veniremembers for cause:

- Not death-qualified: I.A. (1), J.B. (12), T.C. (32), M.D. (43), B.H. (91), S.R. (160), Z.R. (167), R.W. (203), B.W. (214), A.B. (9999)
- Would automatically vote for death: W.B. (22), R.G. (66), E.N. (146)
- Could not be fair or sit in judgment: C.A. (9), J.D. (40), K.S. (174), J.S. (190)
- Previously prosecuted but failed to answer a relevant question: J.H. (76)
- Emphatically did not want to serve: K.S. (185)

All of these strikes were granted.[29]

The defense moved to strike twenty-one veniremembers who had not already been struck on the prosecution's motion. Of these, five challenges were granted:

- Would automatically vote for death: R.L. (118)
- Could not be fair: L.A. (5)
- Would believe law enforcement over other witnesses: D.B. (16)
- President of the bank of which Mr. Watkins served on the board: E.D. (48)
- Hired Mr. Watkins to do legal work (deeds): T.B. (10)[30]

Several challenged veniremembers were rehabilitated based upon their other statements.[31] Five[32] challenged veniremembers who were permitted to remain are at issue in the present matter. Their challenges are addressed in numerical order.

29. R. 191–98.
30. R. 199, 212–13, 218
31. *E.g.*, J.H. (86), K.J. (103), J.M. (127), P.W. (202). R. 215–16.
32. Collins's petition raises issues concerning veniremembers R.C., T.D., Ka.S., Ke.S., and T.T. Pet. 6–8. He challenged N.J., who was a seated juror, in the Court of Appeals. *Collins*, CR-14-0753, 2017 WL 4564447, at *24. His claim at that time was that N.J. had married into the victim's family, but he was mistaken—N.J.'s *cousin* married into the victim's family. R. 61.

a. R.C. (25)

When the venire was questioned whether they had had business dealings with someone in the District Attorney's Office, R.C. said that he had dealt with Mr. Watkins when Mr. Watkins was with Pruitt, Pruitt, and Watkins.[33] The defense challenged him on this ground.[34] Mr. Watkins explained, "[R.C.] said when I was with Pruitt, Pruitt and Watkins that I had done some legal work for him. I really don't have any recollection of it. That was prior to 2002,"[35] or more than twelve years before Collins's trial. R.C. was not asked whether this would bias him, and the court denied the challenge.[36]

b. T.D. (53)

T.D. was challenged on three grounds. The first concerned his statement that he was related through marriage to Mr. Deas.[37] He was asked whether this would affect him as a juror:

MS. SPARKS	And would that relationship with Mr. [Deas] cause you to favor the District Attorney's case as opposed to listening to the evidence favorable to the defense?
[T.D.]	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.
MS. SPARKS	You would have difficulty in finding against the State's case because of your relationship with Mr. [Deas]?

33. R. 146.
34. R. 224–25.
35. R. 225.
36. *Id.*
37. R. 141.

[T.D.] Well, if it was—it's the kind of question to find out a decision, I would lean one way more than I would the other.

MS. SPARKS Are you saying you can't be fair to my client?

[T.D.] I'm not saying I cannot be fair. It just depends on how the case goes.

MS. SPARKS Do you think that the—are you saying that you would follow the—be able to follow the law and rule against the State's case if you found that they did not meet their burden of proof?

[T.D.] You have to follow the law, you know, so yeah, I think I could be fair and impartial.[38]

The defense challenged T.D. for his relationship to Mr. Deas and his alleged bias toward the prosecution.[39] But as the prosecution explained, the relationship was distant: T.D. had once been married to veniremember T.T.'s twin sister, who was Mr. Deas's wife's second cousin.[40] By the trial, she had been dead for approximately fourteen years. Moreover, T.D.'s statements about impartiality and following the law rehabilitated him.[41]

Second, T.D. was challenged for having stated in his questionnaire that he would automatically vote for the death penalty.[42] The following occurred during voir dire:

MR. GRIGGERS There was one response in the questionnaire that seemed to indicate that maybe you always thought

38. R. 184–85.
39. R. 210.
40. The district attorney said that T.T. was married to Mr. Deas's second cousin, R. 210, but T.T. clarified that Mr. Deas was married to *his* second cousin, R. 62.
41. R. 210–11.
42. R. 214.

that the death penalty should be imposed if a defendant was convicted of capital murder. Did I misunderstand that response or is that how you feel?

[T.D.] Well it depends on the evidence.

MR. GRIGGERS You understand there's a process that you've got to go through as a juror?

[T.D.] Right.

MR. GRIGGERS Are you telling the Court that you're willing to hear and weigh the evidence presented to you of mitigating circumstances why he shouldn't receive the death penalty?

[T.D.] That's right.

MR. GRIGGERS You'll consider that?

[T.D.] Yes.

MR. GRIGGERS And you'll decide your verdict based on that consideration?

[T.D.] That's right.[43]

Regarding this challenge, the prosecution stated, "My recollection is [T.D.] also clearly indicated that he was confused about the two-phase approach and that understanding that he would not automatically vote for the death penalty but would follow the Court's instructions as to aggravation and mitigation."[44] As T.D. had been rehabilitated, the challenge was denied.

The defense's third challenge concerned T.D.'s statement that he, a building contractor, had done work for Mr. Watkins, and that Mr. Watkins had done "attorney

43. R. 124–25.
44. R. 214.

work" for him.[45] He was not asked whether this would bias him. Here. Mr. Watkins stated:

> I think what [T.D.] actually said was that he was a contractor and he had done some contracting work for me in the past. I actually don't remember it, but it certainly was a long time ago if it ever happened. I have no current business relationship with him and he's not employed by me in any shape, form or fashion.[46]

Again, the challenge was denied.[47]

c. Ka.S. (179)

During voir dire, Ka.S. stated that she "had Mr. Watkins' grandchildren in my day care."[48] There were no follow-up questions posed about potential bias, but the defense moved to strike her, claiming that she "indicated that Mr. Watkins had done some work for her."[49] If Ka.S. indeed stated that Mr. Watkins had done legal work for her, this does not appear in the record beyond the defense's statement.

Mr. Watkins addressed the defense's contentions:

> I'm gone be fair to the defense. She said that she keeps my grandson at Little Eagles Day Care at Sumter Academy, 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. It's nothing current and I don't go to the Little Eagles Day Care. I'm not being facetious. I don't go out there, so she doesn't see me in that arena and I have nothing to do with Sumter Academy. So I'm not an employer or in a business relationship with her and she has not stated the fact that she keeps my grandson would make her unable to be fair and impartial.[50]

45. R. 145.
46. R. 224.
47. *Id.*
48. R. 146.
49. R. 225.
50. R. 225–26.

The challenge was denied.[51]

d. Ke.S. (186)

During the prosecution's questioning, Ke.S. stated, "Mr. Watkins is my personal attorney."[52] When the venire was then asked about personal relationships with members of the District Attorney's Office, Ke.S. replied, "Well, it's a small town. I'm friends with all three of those people right there."[53] The defense later asked the venire whether their business or other relationships to law enforcement or members of the District Attorney's Office—including, specifically, Mr. Watkins—"would cause you to lend more weight to the evidence that was presented[.]"[54] Ke.S. replied in the negative: "Just because we do business things together isn't going to change my opinion."[55]

The defense challenged Ke.S. for his business relationship with Mr. Watkins, claiming that it would make him biased toward the prosecution.[56] Both Mr. Watkins and the district attorney objected to this characterization:

> MR. WATKINS: [Ke.S.] 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.
>
> MR. GRIGGERS: He was one of the few—if the Court will recall, he also said this is a small county and just because I know him doesn't mean I would lean his way. I'll be

51. R. 226.
52. R. 145.
53. R. 146.
54. R. 178.
55. *Id.*
56. R. 222.

fair and base my verdict on the evidence. Even though he wasn't asked that, he made that statement voluntarily.

THE COURT: Anything further?

MS. SPARKS: No, sir.

THE COURT: And if I understand that, he didn't say that at the present time he has an ongoing business relationship?

MS. SPARKS: I don't recall that, Your Honor.

THE COURT: If he doesn't say that—

MR. WATKINS: I'm not in business with [Ke.S.] in any shape, form or fashion.

THE COURT: I'll leave him on for that.[57]

e. T.T. (192)

At the beginning of voir dire, when asked about blood or marriage connections to the attorneys, T.T. said that Mr. Deas "is married to my second cousin."[58] During the prosecution's questioning of the venire, T.T., following Ke.S., stated, "Mr. Watkins is my attorney as well."[59] Asked about personal relationships, he said, "Mr. Watkins and I have been friends for over 40 years."[60] He was not asked about whether these relationships would bias him.

The defense challenged T.T. for his relation to Mr. Deas and because "he indicated that he would be partial to the State's case . . . and said he could not be fair

57. R. 222–23.
58. R. 62.
59. R. 145.
60. R. 146.

to" Collins.[61] The following transpired:

> MR. WATKINS: Judge, in response [T.T.] stated that he was related by marriage to Mr. [Deas] who was married to his second cousin and we don't believe that that should be sufficient to challenge him for cause. I don't have any—for some reason I didn't take down any indication that he was going to be partial to the State.
>
> MR. GRIGGERS: I didn't put that down either.
>
> MR. WATKINS: I didn't hear it or either I missed it. I'm sorry.
>
> THE COURT: Anything else anybody else wants to say on it?
>
> MS. SPARKS: On that matter, no, sir. No, no.
>
> THE COURT: The basis is because?
>
> MS. SPARKS: The basis is he was related by marriage and he would show bias favoring the State's case over the defense.
>
> THE COURT: That is your position that he said that?
>
> MS. SPARKS: That's what I thought I heard, Your Honor.
>
> MR. GRIGGERS: I stipulate that he said he was married to Vince's second cousin, but—and again, in all respect, I didn't hear him say he would be biased against the State.
>
> MS. SPARKS: That was the gentleman in the back?
>
> MR. WATKINS: That's [T.D.]
>
> MS. SPARKS: I've got the wrong person.
>
> THE COURT: So [T.T.] is it still on.[62]

61. R. 209.
62. R. 209–10.

The defense tried again, arguing that T.T. had "indicated a business relationship with Mr. Watkins."[63] Mr. Watkins objected:

> MR. WATKINS: He stated that I was his personal attorney. I'm not in any kind of business relationship with [T.T.] of any kind whatsoever.
>
> THE COURT: Anything—ongoing business relationship?
>
> MR. STAMPS: Judge, when you say "personal attorney," is that not considered a business relationship?
>
> MR. WATKINS: 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 [Ke.S.], so I'm not in a current business relationship with him.
>
> MR. STAMPS: All right.
>
> THE COURT: I'll leave him on.[64]

***

The striking of the jury does not appear in the trial record. Each side had seventeen strikes, leaving a jury of twelve with two alternates.[65] The jury was seated and the rest of the venire excused at 1 p.m. the following day.[66] Of the five challenged veniremembers discussed above, only R.C. was seated, but he was an alternate and was dismissed prior to deliberations.[67]

Collins's confession to Bell's murder, including the facts that Wrenn offered

63. R. 223.
64. R. 223–24.
65. R. 227.
66. R. 290–91.
67. R. 1008.

him $2000 and gave him "a big Magnum pistol," which he disposed of in the woods after shooting Bell, was admitted into evidence.[68] The jury convicted Collins on both counts and recommended death 10–2.[69] After a separate sentencing hearing, the trial court sentenced Collins to death on the capital murder charge and to ten years' imprisonment for his part in the conspiracy.[70]

C. Direct appeal

The Alabama Court of Criminal Appeals affirmed Collins's convictions and sentences in October 2017. The court reviewed Collins's claims about veniremembers T.D., Ka.S., Ke.S., T.T., and N.J. at this time and found no error,[71] but it remanded the case for an amended sentencing order that satisfied the statutory requirements.[72] The trial court submitted a new sentencing order that December.[73]

On return to remand in July 2018, the Court of Criminal Appeals again asked for an amended sentencing order, as the trial court had made a factual error in the December 2017 version concerning the jury's verdict.[74] The trial court resubmitted its sentencing order as directed.[75] On return to second remand in October 2019, the Court of Criminal Appeals affirmed.[76] While the court denied rehearing in March

68. *Collins*, CR-14-0753, 2017 WL 4564447, at *3, 9–18.
69. R. 1010–11, 1099.
70. R. 1113; *see* C. 407, 414 (sentencing orders); 7 Supp. C. 3–10 (amended sentencing order).
71. *Collins*, CR-14-0753, 2017 WL 4564447, at *20–24.
72. *Id.* at *40.
73. 4 Supp. 9–15.
74. *Collins*, CR-14-0753, 2017 WL 4564447, at *45.
75. 5 Supp. 3–10.
76. *Collins*, CR-14-0753, 2017 WL 4564447, at *50.

2021, it acknowledged that it had failed to opine about veniremember R.C. in its previous writings and rectified the oversight, finding no error.[77]

Collins petitioned the Alabama Supreme Court for certiorari, raising numerous claims. That court granted certiorari only as to one issue, a *Blockburger v. United States*[78] challenge concerning Collins's dual convictions for capital murder for pecuniary gain and conspiracy to commit murder, a matter of first impression in Alabama. Ultimately, the court remanded the case in November 2021, instructing that the conspiracy charge be set aside but leaving Collins's capital murder conviction and sentence undisturbed.[79]

The present petition for writ of certiorari followed.

77. *Collins v. State*, CR-14-0753, 2021 WL 940525 (Ala. Crim. App. Mar. 12, 2021).
78. 284 U.S. 299 (1932).
79. *Ex parte Collins*, No. 1200443, 2021 WL 5143906, at *6

REASONS THE PETITION SHOULD BE DENIED

Collins's petition is not worthy of certiorari. He raises a factbound claim, asking this Court to substitute its judgment concerning the potential biases of the venire for the trial court's. As Collins has failed to point to decisions of federal appellate courts, state courts of last resort, or this Court with which the Alabama courts' decisions conflict, he has failed to raise a cert-worthy issue.

But even if the Court were inclined to review this factbound claim, the Court should deny Collins's petition because he failed to establish either the existence of statutory grounds for the dismissal of the challenged veniremembers or that they were so biased that they could not fairly sit in judgment.

I. Collins failed to identify a statutory ground for dismissal of the challenged veniremembers.

At the outset, Collins failed to identify a statutory ground that would mandate the removal of any of the challenged veniremembers.

The Code of Alabama enumerates twelve statutory grounds that constitute "good ground for challenge of a juror," such as minority, lack of state citizenship, felony conviction, recent indictment, "a fixed opinion as to the guilt or innocence of the defendant which would bias his verdict," or a relation "with the defendant or with the prosecutor or the person alleged to be injured" within the ninth degree of consanguinity or the fifth degree of affinity, "computed according to the rules of the

civil law."[80] Concerning the contested veniremembers, the only statutory ground to be considered is degree of relation to the prosecutor.

As used in section 12-16-150 of the Code of Alabama, "prosecutor" does not mean the district attorney or the assistant district attorney serving as counsel for the State. In Alabama, "[i]t is not ground for challenge for cause that a juror is related to counsel in a criminal case. That a juror is related to the district attorney or to the prosecuting attorney is no ground for challenge for cause."[81] Rather, the word "prosecutor," as used in this statute, means "one who instigates prosecution by making an affidavit charging a named person with the commission of a penal offense, on which a warrant is issued, or an indictment or accusation is based."[82] The complainant responsible for the warrant against Collins was Investigator Luther A. Davis,[83] and there was no challenge against a veniremember concerning relation to him.

Thus, for statutory purposes, the fact that T.T. and T.D. admitted affinity to ADA Vincent Deas is irrelevant; Mr. Deas was a prosecutor, certainly, but not the "prosecutor" under section 12-16-150. Still, it is worth considering the contested

80. ALA. CODE § 12-16-150. The rule is to begin with one of the two people at issue, then count steps up to the common ancestor and down to the other person. *E.g.*, *Duke v. State*, 58 So. 2d 764, 768 (Ala. 1952).
81. *Howard v. State*, 420 So. 2d 828, 831 (Ala. Crim. App. 1982) (citations omitted).
82. *Id.* (quoting *Wright v. State*, 111 So. 2d 588, 594 (Ala. 1958)); *see Evans v. State*, 794 So. 2d 411, 413 (Ala. 2000) ("Even the term 'prosecutor,' as it is used in § 12-16-150(4), means the person who instigates prosecution by making an affidavit charging a named person with the commission of a penal offense, not the district attorney that is prosecuting the case.").
83. C. 8.

veniremembers' relationships at this juncture. Here, T.T. said that Mr. Deas was married to his second cousin,[84] while T.D. had at one time been married to T.T.'s twin sister.[85] Second cousins are related in the sixth degree of consanguinity.[86]

If, hypothetically, *Mrs*. Deas had been the "prosecutor" for statutory purposes, then T.T. could have been challenged on consanguinity grounds. But the relations here are those of affinity, relation through marriage. The Alabama Supreme Court has explained:

> Affinity properly means the tie which arises from marriage betwixt the husband and the blood relatives of the wife, and between the wife and the blood relatives of the husband. But there is no affinity between the blood relatives of the husband and the blood relatives of the wife.[87]

Here, as Mrs. Deas's second cousin, T.T. would be related to Mr. Deas within the sixth degree of affinity, which is permitted. T.D., whose tie to Mr. Deas is through T.T.'s twin sister, is not an affine at all because the relationship there is that of the spouses of consanguineous people to each other. Thus, Collins failed to point to a statutory ground for these veniremembers' dismissal.

As a final note, Collins directs this Court[88] to *Taylor v. State*, in which the Mississippi Supreme Court held that the trial court should have removed a juror whose sister was an assistant district attorney who worked for the office prosecuting

84. R. 62.
85. R. 210–11.
86. Tables of consanguinity offering visualizations of these relationships are widely available online. *E.g.*, *Consanguinity/Affinity Chart*, ELAWS, http://nvrules.elaws.us/nac/281a.310 (last visited Mar. 24, 2022).
87. *Duke*, 58 So. 2d at 768 (quoting *Kirby v. State*, 8 So. 110, 111 (Ala. 1890)).
88. Pet. 16–17.

the case.[89] While acknowledging that the state legislature "ha[d] not codified specific grounds for a challenge for cause," that court decided that this veniremember was too close to be permitted to remain:

> One of the purposes of challenges, for cause and peremptory, is to eliminate jurors who have expressed or implied prejudices, or who may be put in an embarrassing position despite protestations to the contrary. Certainly, a juror who is the brother of an assistant district attorney is in such a position. That he is close to his sister and is her neighbor makes the problem more acute. While we cannot guarantee a defendant a perfect trial, we must endeavor to ensure that every defendant receives a fair trial free of implied bias that arises from the presence of a juror who is related to an attorney employed by the district attorney's office that is prosecuting the defendant.[90]

Even if Alabama were bound to follow Mississippi law—which it is not—*Taylor* is distinguishable because of the degree of relationship. In that case, the veniremember was related within the second degree of consanguinity to a member of the District Attorney's staff, a far closer relationship than the affinity ties identified in the record before the Court.

II. The trial court's denial of Collins's challenges for cause was within its discretion.

If a veniremember cannot be challenged based on a statutory ground, he can still be challenged based on other criteria, "some matter which imports absolute bias or favor, and leaves nothing to the discretion of the trial court."[91] As this Court has stated, in a capital case, "the exclusion of venire members must be limited to those" whose views substantially impair them from performing their duties as jurors "and

89. 656 So. 2d 104, 109–11 (Miss. 1995).
90. *Id.* at 111.
91. *Nettles v. State*, 435 So. 2d 146, 149 (Ala. Crim. App. 1983).

to those whose views would prevent them from making an impartial decision on the question of guilt."[92] In Alabama:

> The test to be applied is can the juror eliminate the influence of his scruples and render a verdict according to the evidence. Ordinarily a juror is not disqualified where it appears that he is willing to follow the instructions of law given by the trial court and is able to decide the case impartially according to the evidence notwithstanding his scruples. The determination of this question is based on the juror's answers and demeanor and is within the sound discretion of the trial judge. A juror is incompetent whose answers show that he would follow his own views regardless of the instructions of the court.[93]

Alabama appellate courts "give great deference to a trial judge's ruling on challenges for cause," as "[a] trial judge is in a decidedly better position than an appellate court to assess the credibility of the jurors during voir dire questioning."[94] Likewise, this Court has recognized the "ample discretion" afforded to federal trial judges in conducting voir dire, as they "must rely largely on [their] immediate perceptions."[95]

The burden of establishing that a veniremember should be removed for cause lies with the movant. This Court set forth in *Wainwright v. Witt*:

> As with any other trial situation where an adversary wishes to exclude a juror because of bias, then, it is the adversary seeking exclusion who must demonstrate, through questioning, that the potential juror lacks impartiality. It is then the trial judge's duty to determine whether the challenge is proper. This is, of course, the standard and procedure outlined in *Adams* [*v. Texas*, 448 U.S. 38 (1980)], but it is equally true

92. *Gray v. Mississippi*, 481 U.S. 648, 657–58 (1987) (citing *Witherspoon v. Illinois*, 391 U.S. 510, 522 (1968), and *Wainwright v. Witt*, 469 U.S. 412, 424 (1985)).
93. *Barbee v. State*, 395 So. 2d 1128, 1130–31 (Ala. Crim. App. 1981) (citations omitted).
94. *Turner v. State*, 924 So. 2d 737, 754 (Ala. Crim. App. 2002).
95. *Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981).

of any situation where a party seeks to exclude a biased juror.[96]

Collins attempts to shift this burden to the trial court, arguing that the court erred in relying on Mr. Watkins's statements clarifying the nature of his relationships to the challenged veniremembers "as justification for the trial court's denial of defense's challenge for cause."[97] But the trial court had before it the information provided by the questions *counsel posed* during voir dire, and as to the challenged jurors, neither side elicited information mandating removal.

It is notable that while Collins alleges that the trial court was unfair, in the case of E.D. (48), the court actually granted a challenge for cause when the defense failed to carry its burden and the *prosecution* supplied the missing information. E.D. stated that Mr. Watkins was "on our bank board,"[98] but there was no follow-up. Though the defense claimed that the relationship "would cause bias," the prosecution rightly pointed out that E.D. had never been questioned about bias.[99] Mr. Watkins then volunteered that he served on the board of directors of the bank for which E.D. was president, but he argued that cause still had not been shown:

> MR. WATKINS: Well, Judge, [E.D.] was not asked if that was gonna be a problem, if it was going to keep him from being impartial. Had he been asked that he would have had an opportunity to respond and I think he would have said clearly that it would not affect his ability—
>
> THE COURT: I think that's speculation, too. I'm going to [err] the other way since it's ongoing since you said you're on the bank—

96. 469 U.S. at 423 (citation omitted).
97. Pet. 14–15.
98. R. 145.
99. R. 217.

MR. WATKINS: I'm the director of the bank.

THE COURT: I'm going to take him off for cause then.[100]

Thus, though Collins contends, "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,"[101] the question more properly posed is whether he, the moving party, established that they were biased. In this case, he did not.

A. Professional relationship with Mr. Watkins

A previous attorney–client relationship involving a veniremember may give rise to an inference of bias. However, such a relationship does not necessarily merit removal for cause—it is not a statutory ground for dismissal in Alabama, and if the trial judge believes that the veniremember's answers indicate that he can be fair and follow the law, then removal for cause is unwarranted. Collins fails to point to any decision from this Court mandating that veniremembers with a prior professional association with an attorney must be removed for cause. Instead, he directs the Court

---

100. R. 218.

101. Pet. 17 (quoting *Irvin v. Dowd*, 366 U.S. 717, 723 (1961)). To quote *Irvin* more fully, the Court stated:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Id.

to state decisions from Indiana, Kentucky, New Hampshire, Virginia, and West Virginia,[102] all of which are distinguishable.

Before addressing the decisions Collins cites, it is worth reviewing the alleged relationships between Mr. Watkins and the challenged veniremembers:

- If Mr. Watkins did work for R.C., it was with his previous firm more than twelve years before Collins's trial.[103]
- Mr. Watkins did not remember doing legal work for T.D., nor did the two have a current business relationship.[104]
- There is no proof in the record that Mr. Watkins did any legal work for Ka.S. If he did, it was a house closing "years ago." Ka.S. did not work for him, but rather watched his grandson at daycare.[105]
- Mr. Watkins had done no recent work for Ke.S., and the two were not in business together.[106]
- Mr. Watkins was not in a business relationship with T.T., though he speculated that he "might" be asked to do legal work in the future if something arose.[107]

None of these veniremembers were asked for the specific dates of their last professional contact with Mr. Watkins or whether they intended to hire him in the future; only Ke.S. was asked about bias arising from his relationship with Mr. Watkins, and he answered in the negative.[108] With the foregoing in mind, none of the cases Collins cites suggest that the trial court erred.

In *Futrell v. Commonwealth*, the Kentucky Supreme Court wrote, "By itself,

102. Pet. 16–17.
103. R. 225.
104. R. 224.
105. R. 225–26.
106. R. 222–23.
107. R. 223–24.
108. R. 178.

trial counsel's prior representation of a potential juror does not imply so close a relationship as to require the juror's removal, but any suggestion of an on-going relationship with the prosecutor, such as the potential juror's intent to make use of his professional services again, is disqualifying."[109] An earlier decision from that court, *Fugate v. Commonwealth*, stated that "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."[110] In Collins's case, none of the challenged veniremembers had a current professional relationship with Mr. Watkins, nor were they asked about seeking him out as counsel at a later date.

This pattern repeats in the other cases Collins cites. In *State v. Hatley*, the West Virginia Supreme Court stated, "[W]hile an attorney-client relationship between a prospective juror and the prosecuting attorney does not *per se* disqualify that juror, such a relationship merits the closest scrutiny by the trial court, and the more prudent course may be to excuse the juror."[111] There, the court found that the trial court should have removed a veniremember for cause because the prosecutor had represented him "only a couple of years prior" to the trial at issue, and the veniremember stated that he would hire the prosecutor in the future if the need arose.[112] Likewise, in *Cantrell v. Crews*, the Virginia Supreme Court held that the

109. 471 S.W.3d 258, 274 (Ky. 2015) (citations omitted).
110. 993 S.W.2d 931, 938 (Ky. 1999).
111. 679 S.E.2d 579, 584 (W. Va. 2009).
112. *Id.*

trial court should have removed for a cause a veniremember who, "at the time of trial, was a client of the law firm representing the plaintiff."[113] In *Lamar v. State*, the Indiana Supreme Court affirmed the removal for cause of a veniremember who had recently had wills for herself and her husband drawn up by one of the defendant's attorneys.[114] And in *State v. White*, the New Hampshire Supreme Court affirmed the removal of a veniremember who had not only employed one of the defendant's attorneys in the past but was also "a steady client of an associate of [counsel] not engaged in the trial."[115] These situations are different from those of Collins's case, in which there was no testimony indicating that Mr. Watkins had done recent work for the veniremembers or that he had a current business relationship with any of them.

Thus, while Collins disagrees with the trial court's decisions, he failed to establish through voir dire that any of the challenged veniremembers had a current or ongoing professional relationship with Mr. Watkins that would prevent them from following the trial court's instructions and rendering an unbiased verdict.

B. Personal relationship with Mr. Deas or Mr. Watkins

Turning then to the issue of personal relationships, several of the challenged veniremembers claimed to have a connection to one or more of the prosecutors. To recapitulate:

- T.D. had been married to the second cousin of Mr. Deas's wife.[116]

113. 523 S.E.2d 502, 503 (Va. 2000).
114. 366 N.E.2d 652, 696 (Ind. 1977).
115. 196 A.2d 33, 33 (N.H. 1963).
116. R. 141, 210–11.

- Ke.S. said he was friends with all three of the prosecutors.[117]
- T.T. was another second cousin of Mr. Deas's wife and said that he and Mr. Watkins had been friends for forty years.[118]

Again, as the party challenging these veniremembers, the defense bore the burden of establishing impermissible bias. The record does not support this finding.

As Ke.S. stated, "Well, it's a small town."[119] That these veniremembers should know one or more of the prosecutors and have friendly relationships with them in a county of fewer than 14,000 people is not unimaginable. Ke.S. was questioned about his potential bias, and he denied that his relationships with the prosecutors would influence his decision.[120] The defense elicited nothing to rebut his statement. Likewise, T.D. was asked whether his relationship to Mr. Deas—again, the husband of the second cousin of his deceased wife—would bias him. While he initially wavered, under the defense's questioning, he gave a firm answer:

> MS. SPARKS — Do you think that the—are you saying that you would follow the—be able to follow the law and rule against the State's case if you found that they did not meet their burden of proof?
>
> [T.D.] — You have to follow the law, you know, so yeah, I think I could be fair and impartial.[121]

Again, the defense did not elicit testimony to rebut T.D.'s statement. As for T.T., he was never questioned about his potential bias, despite the confusion during the

117. R. 146.
118. R. 62, 146.
119. R. 146.
120. *Id.*
121. R. 185.

defense's challenges between his answers and T.D.'s.[122] Because T.T. was never asked about his bias, the trial court did not err by refusing to presume its existence.

III. Collins failed to establish that he was prejudiced by any of the seated jurors.

Collins contends that because these five challenges for cause were denied, the defense was forced to use peremptory strikes on these veniremembers and leave on others "who would have been struck had Mr. Collins retained his full [complement] of strikes."[123] Again, the strike list does not appear in the record, and so it is unknown which party struck which veniremember. There is also nothing in the record indicating that the defense would have struck the people Collins now claims would have been removed, though as each side had seventeen strikes, it may be deduced that none of them were at the top of the defense's list.[124] Assuming, however, that the defense indeed struck the five challenged veniremembers, Collins has failed to present evidence that his constitutional rights were violated by the presence of these other individuals on the jury.

---

122. *See* R. 209–10.
123. Pet. 12.
124. In fact, as sixteen of the defense's challenges were denied, all could have been removed using peremptory strikes. These veniremembers were:

R.C. (25): alternate	K.M. (142): struck
T.D. (53): struck	Ka.S. (179): struck
J.H. (86): struck	Ke.S. (186): struck
B.H. (92): seated	T.T. (192): struck
K.J. (103): seated	P.W. (202): struck
N.J. (104): seated	R.W. (206): struck
E.L. (114): struck	E.W. (209): alternate
J.M. (127): struck	L.W. (216): struck

A. J.D. (55)

J.D. (55) said that Brian Harris, the chief of police in York, was her first cousin.[125] While the lead investigator on the case, Luther Davis, worked for the Sumter County Sheriff's Office,[126] the York Police Department also assisted at the murder scene,[127] though no one from that office was called to testify. J.D. was not questioned about bias, nor was she challenged for cause.

B. K.E.J. (103)

K.E.J. (103) was questioned by the prosecution about his questionnaire responses:

> MR. GRIGGERS: [K.E.J.], there was at least one place where you put always and I just wanted to make sure that I understood it correctly. Are you of the opinion that a person convicted of capital murder should always receive the death penalty?
>
> [K.E.J.]: Yeah.
>
> MR. GRIGGERS: No matter what the evidence was presented to you during the sentencing phase?
>
> [K.E.J.]: I was thinking under the impression that it might be my son. If it was my son I would ask for it regardless of whatever.
>
> MR. GRIGGERS: Let me make sure I'm understanding that concept. So what you're telling me is if your son was the victim—
>
> [K.E.J.]: Correct.
>
> MR. GRIGGERS: —then you would always vote for death?

125. R. 148.
126. R. 230.
127. R. 426.

[K.E.J.]: No question.

MR. GRIGGERS: And I completely understand that. . . . And there's one thing I've seen through the years and I talk to people all the time about how they feel about this and how they feel about that and I promise you this, when it comes home, when it comes home and it's your own, you see it differently. And look, that's just human nature. I've had people fight me and then when it came home, aren't you gone do this, you know. And that's just human nature. So I understand what you're saying. My question to you is this: You know your son is not the victim in this case?

[K.E.J.]: Correct.

MR. GRIGGERS: So I need to know how you feel about this case. I understand how you feel about your son's case, but can you honor the process? Can you do what the law directs you to do, can you weigh the evidence that would be presented to you in support of the death penalty of what they would argue would direct you to life without parole and weigh that and then arrive at a verdict, an advisory verdict to the court?

[K.E.J.]: Yes, sir.

MR. GRIGGERS: Will you do that?

[K.E.J.]: Yes, sir.[128]

The defense challenged K.E.J., arguing that he "indicated a strong position for the death penalty" and its automatic imposition.[129] To this, the prosecution responded:

> Judge, you recollect that was [K.E.J.] that said it was only where it was his son. He said other than that, he said he would weigh mitigating and aggravating and arrive at a verdict based on a weighing of the evidence.

128. R. 127–30.
129. R. 215.

> Only if it was his son, which I've got him to say clearly you understand it's not your son and he said that's right.[130]

The challenge was denied.[131] As the prosecution argued—and the trial court apparently agreed—K.E.J. was rehabilitated and said that he could follow the law, and Collins presented nothing indicating that he failed to do so.

C. N.J. (104)

N.J. (104) was added late to the venire[132] and failed to return a juror questionnaire.[133] She also stated that her cousin married into the victim's family[134] and that she was a "[d]istant cousin" to York police chief Brian Harris.[135]

The defense challenged her for cause twice. First, as to the missing questionnaire, all the attorneys could do was speculate—perhaps she had never received one because she was added late, or perhaps she mailed it to the wrong address.[136] She was never questioned as to the particulars, and the court denied this challenge.[137]

Second, the defense challenged N.J. for her relation to the victim:

> MS. SPARKS: Juror number 104, [N.J.], indicated that she was related to—she was married into the Bell family.
>
> MR. STAMPS: To Detrick Bell's family.
>
> MR. WATKINS: I don't believe she—unlike some other people, she

130. *Id.*
131. *Id.*
132. R. 25.
133. R. 202.
134. R. 61, 157.
135. R. 151.
136. R. 202–05.
137. R. 205.

did not say that that was going to affect her ability to be fair and impartial and give this defendant a fair trial.

THE COURT: Anything else? I'll deny that one for cause.[138]

Collins states in his petition that N.J. "was related to the victim."[139] Before the Court of Criminal Appeals, he claimed that she was "a cousin of the victim."[140] While the latter is mistaken, the former is technically true, although the relation is through her cousin's marriage into the family. There is no information in the record about the relation of said cousin to N.J. (first, second, et cetera) or of how closely the cousin's spouse is related to the victim. Thus, as the Court of Criminal Appeals concluded in affirming, "There was no statutory basis to remove N.J. for cause based on her cousin's relationship to the victim, and there is nothing in the record that reflects that N.J. was biased."[141]

D. E.W. (209)

Like N.J., E.W. (209) did not return a juror questionnaire, nor did he respond when asked whether anyone had not returned one.[142] Again, as with N.J., E.W. was not asked for details about his questionnaire. Thus, when the defense challenged him, the trial court replied, "In view of the fact that we gave you all wide latitude to ask pretty much anything you wanted, I'll deny him and you'll have to use your strikes to

138. R. 226.
139. Pet. 18.
140. *Collins*, CR-14-0753, 2017 WL 4564447, at *24
141. *Id.*
142. R. 207.

try to take him off."[143]

E.W. answered no questions during voir dire, and he was seated as an alternate.[144] He and R.C. were dismissed prior to deliberations,[145] so even if Collins would have struck E.W., he suffered no harm for E.W.'s presence until the end of the guilt phase.

E. B.J.W. (217)

Finally, when asked about relatives in law enforcement, B.J.W. (217) stated, "I have a niece that's a sheriff in Chicago, Illinois," but no one locally.[146] She was not asked whether this would bias her, and she was not challenged for cause.

***

In sum, as to the five challenged veniremembers, Collins failed to establish either the existence of a statutory ground warranting dismissal of the veniremembers for cause or such bias as would necessitate their removal. As he was the movant, the burden was his to carry. While he alleges that defense counsel would have struck an additional five jurors (including an alternate) in their place if they had had sufficient peremptory strikes, he failed to offer evidence showing that any of these seated jurors were biased against him.

Collins may try to attribute his conviction and death sentence to the marriages of cousins, to friendships in a small community, to missing questionnaires, or to a

143. *Id.*
144. R. 290–91.
145. R. 1008.
146. R. 147.

niece in uniform in distant Chicago. What he refuses to accept is that he confessed to a heinous murder for hire, which he committed virtually on the spur of the moment. He ended Detrick Bell's life with a close-range blast from a hunter's sidearm on the promise of $2000 from his girlfriend's sister's boyfriend at a barbeque. He attended a rap concert, shook Bell's hand, then blew him away and strolled off to dump the gun in the woods, the stranger in the orange Reese's T-shirt. *That* is why Collins was convicted and sentenced to death, not because the trial court denied some of the defense's challenges for cause.

The trial court did not err by refusing to grant challenges based on inference and supposition, and the state courts' decisions do not conflict with this Court's jurisprudence. Therefore, certiorari is unwarranted.

CONCLUSION

Collins offers this Court a factbound claim, asking the Court to substitute its judgment for that of the trial court in determining whether defense counsel met their burden of supporting five challenges for cause. The Court of Criminal Appeals correctly affirmed the trial court's decision, and Collins has shown neither a conflict among lower courts nor a departure from this Court's precedents. Therefore, the Court should deny certiorari.

Respectfully submitted,

STEVE MARSHALL
Alabama Attorney General

/s/ Lauren A. Simpson
Lauren A. Simpson
Assistant Attorney General
*Counsel of Record

OFFICE OF ALA. ATT'Y GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Lauren.Simpson@AlabamaAG.gov