

No. _____

In The
Supreme Court of the United States

URSHAWN ERIC MILLER,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Whether Tennessee's comparative proportionality review, the state's chosen safeguard against arbitrary and capricious imposition of the death penalty, satisfies the requirements of the Eighth Amendment, when it compares the death sentence under review only to similar cases in which capital punishment was sought and imposed and ignores all similar cases where defendants were sentenced to less than death?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. The petitioner is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Urshawn Eric Miller respectfully seeks a writ of certiorari to review the judgment of the Supreme Court of Tennessee.

OPINIONS BELOW

The reported opinion of the Supreme Court of Tennessee is available at 638 S.W.3d 136 (Tenn. 2021). The unreported opinion of the Court of Criminal Appeals of Tennessee is available at No. W2019-00197-CCA-R3-DD, 2020 WL 5626227 (Tenn. Crim. App. September 18, 2020). Both opinions are attached, respectively, as Appendix A and B.

STATEMENT OF JURISDICTION

The Supreme Court of Tennessee affirmed Petitioner's convictions and sentence on direct appeal and entered judgment on December 7, 2021. *State v. Miller*, 638 S.W.3d 136 (Tenn. 2021), Appendix A. The Honorable Justice Kavanaugh granted Petitioner's Motion for Extension of Time for the Filing of the Petition for Writ of Certiorari until and to include May 6, 2022. This Court has jurisdiction under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

At all times relevant to this case, Section 39-13-206 of the Tennessee Code Annotated provides in part:

(a)(1) Whenever the death penalty is imposed for first degree murder and when the judgment has become final in the trial court, the defendant shall have the right of direct appeal from the trial court to the court of criminal appeals. The affirmance of the conviction and the sentence of death shall be automatically reviewed by the Tennessee supreme court. Upon the affirmance by the court of criminal appeals, the clerk shall docket the case in the supreme court and the case shall proceed in accordance with the Tennessee Rules of Appellate Procedure.

(c)(1) In reviewing the sentence of death for first degree murder, the reviewing courts shall determine whether:

(A) The sentence of death was imposed in any arbitrary fashion;

(B) The evidence supports the jury's finding of statutory aggravating circumstance or circumstances;

(C) The evidence supports the jury's finding that the aggravating circumstance or circumstances outweigh any mitigating circumstances; and

(D) The sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant.

(2) The Tennessee supreme court may promulgate rules as it deems appropriate to establish such procedures as are necessary to enable the reviewing courts to properly review the death sentence.

Tenn. Code Ann. § 39-13-206.

STATEMENT OF THE CASE

A constitutional bedrock principle of capital jurisprudence in the United States is the need for procedural protections against “random or arbitrary imposition of the death penalty.” *Gregg v. Georgia*, 428 U.S. 153, 206 (1976); *see also Mills v. Maryland*, 486 U.S. 367, 383-84 (1988) (“Evolving standards of societal decency have imposed a correspondingly high requirement of reliability on the determination that death is the appropriate penalty in a particular case.”) Tennessee has attempted to safeguard against arbitrariness prohibited by *Gregg* and its progeny by requiring appellate review of death sentences to determine whether they are comparatively proportional to “similar cases, considering both the nature of the crime and the defendant.” *State v. Barber*, 753 S.W.2d 659, 663 (Tenn. 1988); *State v. Middlebrooks*, 840 S.W.2d 317, 343 (Tenn. 1992) (superseded by statute on other grounds) (in the modern death penalty era, the Tennessee Supreme Court has relied primarily on procedural protections such as its comparative proportionality analysis to ensure its death penalty statute is in compliance with Eighth Amendment principles).

While meaningful comparative proportionality review has the potential to function as a final check that prevents aberrational imposition of the death penalty, Tennessee courts have not properly carried out this weighty task. Over the years, the proportionality analysis has been reduced to looking for at least one other capital case in which a sentencing hearing was held and has at least some similarity to the case at hand in order to justify the sentence under review, without determining whether any non-capital cases with similar facts exist. *See State v. Pruitt*, 415 S.W.3d 180,

223-232 (Tenn. 2013) (dissenting opinion). The result is that arbitrary and capricious death sentences have continued to be imposed and are unchecked, summarily affirmed on appeal notwithstanding comparative proportionality review.

Continuing to follow this misguided approach, the Tennessee Supreme Court found Mr. Miller's sentence to be not arbitrary without determining whether other similar non-capital cases or capital cases in which defendants were sentenced to less than death exist. Instead, it simply compared Mr. Miller's case to four other capital cases involving robbery murder, but with facts more egregious than those in the present case. This purported proportionality analysis simply failed to comply with requirements of the Eighth Amendment as interpreted by *Gregg v. Georgia*.

FACTUAL STATEMENT

According to the testimony at trial, on the night of November 25, 2015, a man wearing dark clothing, a hoodie, and a white mask walked into a Bull Market convenience store and demanded money from the clerk, Ahmad Dhalai, threatening to shoot him in the head if he did not comply. *Miller*, 638 S.W.3d at 144. The man fired a shot which barely missed Mr. Dhalai. *Id.* As Mr. Dhalai turned and started to walk away, the man shot him in the back of the head. *Id.* He then shot in the direction of another employee, Austin Lawrence, who was attempting to hide by the store refrigerators, but did not hit him. *Id.* Following the shots, the man jumped over the counter and tried to open the cash register, but when he was unable to do so, he fled the store. *Id.* Mr. Dhalai died at the scene. *Id.* 145. The entire incident was captured on the store's surveillance cameras. *Id.* at 144.

Two witnesses testified that they observed the man exit the store and run around the side of the building. *Id.* One of the witnesses called 911 and once the police arrived, the witnesses provided the police with the man's description and the direction in which he ran. *Id.* 144-45. The police deployed approximately 20 officers to set up a perimeter around the area and a K-9 unit to search for the suspect. *Id.* at 145. An officer with his K-9 tracked the suspect from the store to a wooded area by the nearby Lion's Field at Lambuth University. *Id.*

Once the officers observed the suspect hiding in the woods, they instructed him to come out, but he refused. The K-9 officer released his dog, which captured the individual by biting him in the shoulder and forcing him to the ground. *Id.* When the person continued to struggle with the dog, one of the officers hit him on the head with a gun and another officer used a taser on him. *Id.* At that point, the police arrested the suspect and took him first to a hospital for treatment and then to the jail. *Id.* The police searched the area where the individual was arrested and found black pants and a jacket with a hood, a belt, grey gloves, a piece of white T-shirt, a cell phone, a set of keys, and a .38 caliber revolver. *Id.* The revolver had three live rounds and three spent shell casings. *Id.* The police identified the suspect as the defendant, Urshawn Miller. *Id.*

The police executed a search warrant at Mr. Miller's residence and discovered that the keys found at the scene of the arrest fit his house lock and the trunk lock of the car registered to him. *Id.* From the inside of Mr. Miller's bedroom, the police recovered a torn white T-shirt. *Id.* According to the analysis performed by the

Tennessee Bureau of Investigation (TBI), Mr. Miller was a major contributor of the DNA found on the T-shirt and the piece of white shirt from the scene of the arrest appeared to be torn from it. *Id.* at 145-46. Mr. Miller was also identified as the major contributor of the DNA found on the left gray glove, the hooded sweatshirt, the black pants, and the revolver. *Id.* Finally, the TBI examiners determined that three spent shell casings recovered from the revolver were fired by that revolver, and that three projectiles that had been recovered from the Bull Market could have been fired from the same gun. *Id.* at 145.

At the close of the State's proof, the trial court granted the defense motion for acquittal with respect to attempted murder of Mr. Lawrence and instructed the jury as to the lesser-included offense of attempted second degree murder instead. *Id.* 146. The jury convicted Mr. Miller of that count, as well as first degree premeditated murder and first degree felony murder of Mr. Dhalai, attempted especially aggravated robbery of Mr. Dhalai, employment of firearm during commission of a dangerous felony, evading arrest, and resisting arrest. *Id.*

At sentencing, the State relied on Mr. Miller's prior conviction for aggravated robbery and the murder being committed during the commission of attempted aggravated robbery as aggravating circumstances. *Id.* The State presented victim impact testimony and evidence regarding the prior aggravated robbery but stood on the evidence adduced at trial with respect to the felony murder aggravating circumstance. *Id.* According to the testimony regarding the prior aggravated robbery, the incident took place in 2008 at the Riverside Express convenience store and

involved taking money at gunpoint. *Id.* Mr. Miller was one of the three defendants in that case. The robbery was captured by the surveillance video, which was played to the jury in the present case over the defense objection. *Id.* Mr. Miller had turned himself in, admitted participation, pled guilty, and received an eight-year prison sentence. *Id.*

Two mental health experts testified in mitigation. Dr. James Walker, a neuropsychologist, opined that Mr. Miller suffered from post-traumatic stress (PTSD), antisocial personality, cannabis use, and cognitive disorders. *Id.* 147. According to Dr. Walker, Mr. Miller's IQ was 86 and he performed very poorly on the tests measuring memory and ability to focus. *Id.* He had dropped out of school in tenth grade, had a very limited employment history, and smoked excessive amounts of marijuana for many years. *Id.* Dr. Walker testified regarding trauma experienced by Mr. Miller, including the fact that his mother smoked marijuana while pregnant with him, he was abandoned by his father, and his mother had a series of abusive boyfriends and husbands. *Id.* One of them tortured Mr. Miller by pouring alcohol on his penis. Mr. Miller was also abused by his alcoholic grandmother and mistreated by his mother, who often called him "dumb" or "stupid." *Id.*

Dr. Keith Caruso, a psychiatrist, also testified about the abuse and neglect Mr. Miller suffered during his formative years, and that in addition to PTSD, Mr. Miller also had attention deficit hyperactivity disorder (ADHD) as a child. *Id.* at 148. Both experts agreed that based on his family history, Mr. Miller had genetic predisposition to antisocial personality disorder and substance abuse. *Id.* at 147-148. In rebuttal,

the State presented testimony of Dr. Kimberly Brown, a psychologist, who agreed that Mr. Miller had a traumatic childhood, antisocial personality and cannabis use disorders, and a history of ADHD. *Id.* at 148. She described Mr. Miller as low-average intelligence based on his 86 IQ and testified that in her opinion he did not meet all the criteria of the PTSD diagnosis. *Id.*

The jury sentenced Mr. Miller to death for first degree premeditated murder and first degree felony murder of Mr. Dhalai. *Id.* The court merged the first degree murder counts and subsequently imposed a 30-year-sentence for the related convictions, to be served concurrently with the death sentence. *Id.* The Court of Criminal Appeals affirmed, *see* 2020 WL 5626227, as did the Tennessee Supreme Court, with one Justice dissenting and finding that Mr. Miller's death sentence was excessive and disproportionate. *Id.* at 178. Mr. Miller now asks that this Court exercise its discretionary review and grant this petition.

REASONS FOR GRANTING THE PETITION

It is well-established that the Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment. U.S. Const. Amend. VIII. In the context of the death penalty, the Eighth Amendment requires that capital punishment not be administered in an arbitrary and capricious manner. *Furman v. Georgia*, 408 U.S. 238 (1972); *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). The guiding principle is “that capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.” *Kennedy v. Louisiana*, 554 U.S. 407, 420, 436 (2008) (internal quotation marks and citations omitted).

Tennessee chose to comply with the mandate of the Eighth Amendment by requiring its Supreme Court to conduct a mandatory proportionality review of every death sentence issued by the trial court. See Tenn. Code Ann. § 39-13-206. At its inception in 1977, the proportionality review process required comparison of each death sentence under review with other similar cases to determine whether imposition of capital punishment was excessive or disproportionate. See e.g., *State v. Barber*, 753 S.W.2d at 666; see also *State v. Hodges*, 944 S.W.2d 346, 358 (Tenn. 1997). However, in 1997 the Tennessee Supreme Court, in a sharply divided 3-2 opinion, narrowed the comparison pool of cases from all with similar circumstances of the offense and characteristics of the defendants to only those in which a death sentence had been sought and a sentencing hearing conducted. *State v. Bland*, 958 S.W.2d 651, 666 (1997). The Court also changed the standard of review, holding that a death

sentence could be found disproportionate only when it was plainly inconsistent with the circumstances of similar cases in which defendants were sentenced to death. *Id.* at 665. This departure from the original proportionality review process constitutes a failure by Tennessee to ensure that the death penalty is not arbitrarily and capriciously administered, as mandated by the Eighth Amendment.

The history of Tennessee's proportionality review is directly tied to this Court's holdings in *Furman v. Georgia* and *Gregg v. Georgia*. In *Furman*, this Court struck down Georgia's death penalty statute as unconstitutional under the Eighth Amendment's prohibition of cruel and unusual punishment, because it created a substantial risk that capital punishment would be inflicted in an arbitrary and capricious manner. *Furman*, 408 U.S. at 239-240; *Gregg*, 428 U.S. at 188 (1976) (describing the Court's holding in *Furman*). This Court found in *Furman* that the Georgia system was representative of the systems of states throughout the country where death sentences were "wantonly and...freakishly imposed." *Id.* at 310. The statutes were cruel and unusual "in the same way that being struck by lightning is cruel and unusual." *Id.* at 309.

In *Gregg*, four years later, this Court upheld Georgia's modified death penalty statute, because it protected against arbitrary sentences by requiring 1) specific jury findings; and 2) an automatic appellate review of the sentencing, including a proportionality review in which the Supreme Court of Georgia would compare the death sentence at hand to the sentences imposed on similarly situated defendants to ensure that the sentence under review was not disproportionate. *Id.* at 198. This

Court expressly held that the appellate review requirement served as an important safeguard against the “random or arbitrary imposition of the death penalty.” *Id.* at 206.

Based on this Court’s decision in *Gregg*, Tennessee amended its death penalty statute in 1977 to comply with the Eighth Amendment requirements by modeling the statute on Georgia’s capital sentencing scheme. Tennessee’s statute, like Georgia’s, relies on proportionality review to check capriciousness. *Barber*, 753 S.W.2d at 663-64 n.1. Because Tennessee’s statute does not sufficiently narrow the class of homicide defendants that are eligible for the death penalty, the constitutional requirement of narrowing has been left to appellate review. *State v. Middlebrooks*, 840 S.W.2d at 343. Specifically, the Tennessee Supreme Court was charged to determine whether “[t]he sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant.” Tenn. Code Ann. § 39-13-206(c)(1)(D). To assist in this task, the Tennessee Supreme Court adopted Tennessee Supreme Court Rule 12, which requires trial courts to submit a detailed report following every trial in which the accused is convicted of first degree murder. Tenn. Sup. Ct. R. 12; *State v. Pruitt*, 415 S.W.3d 180, 226.

To properly narrow the application of the death penalty and ensure against arbitrary and disproportionate imposition, the appellate court review must provide a principled way to distinguish the death-sentenced case before it from the many cases in which death was not imposed, and that differentiation must be objective, even-handed, and substantially rational. *Middlebrooks*, 840 S.W.2d at 343, (citing *Godfrey*

v. Georgia, 446 U.S. 420, 433 (1980)). Between 1977 and 1997, with the aid of Rule 12 reports, the Tennessee appellate courts conducted their proportionality analysis of “similar cases” by reviewing all cases that resulted in a conviction for first degree murder. *See Barber*, 753 S.W.2d at 666; *State v. Hodges* 944 S.W.2d at 358. Throughout its application of this approach, the Tennessee Supreme Court consistently stated that the statute’s purpose is to ensure that the death penalty is imposed rationally and consistently. *See, e.g., Barber*, 753 S.W.2d at 665-66. In a sharply divided 3-2 opinion in *Bland*, however, the Tennessee Supreme Court abruptly departed from its twenty-year approach to proportionality review by enacting a precedent-seeking method of comparative proportionality review by which the court compares the case before it only to similar cases in which capital sentencing hearings were conducted. *Bland*, 958 S.W.2d at 665-66. This new pool of “similar cases” constitutes a radically reduced subset of Tennessee cases resulting in first degree murder convictions.

Moreover, the Tennessee Supreme Court changed its standard of review by holding that a death sentence will be found to be disproportionate only if “the case, taken as a whole, is plainly lacking in circumstances consistent with those in similar cases in which the death penalty has been imposed.” *Bland*, 958 S.W.2d at 665 (emphasis added) (citing *State v. Ramsey*, 864 S.W.2d 320, 328 (Mo. 1993)). Thus, despite nominally being in the “pool” for proportionality review, cases in which a death sentence was sought but not imposed, no longer serve as a basis for considering whether the death sentence under review is disproportionate. *State v. Godsey*, 60

S.W.3d 759, 782 (Tenn. 2001). As a result, reviewing courts, after articulating the formal boundaries of the “pool,” only consider for comparison those cases in which a death sentence was imposed. *See e.g., State v. Thacker*, 164 S.W.3d 208, 234-45 (Tenn. 2005); *State v. Faulkner*, 154 S.W.3d 48, 63-64 (Tenn. 2005); *State v. Rollins*, E2003-01811-CCA-R3-DD, 2005 WL 924292, *17-18 (Tenn. Crim. App. Apr. 21, 2005), *aff’d*, 188 S.W.3d 553 (Tenn. 2006). This last departure, which has no basis in the statute, effectively eliminates from comparison all cases in which life imprisonment or life without parole was the final sentence and prevents the reviewing courts from determining whether the case under review more closely resembles cases that resulted in sentences less than death. This drastically curtailed proportionality review conflicts with the intent of *Furman* and its progeny and continues to divide the Tennessee Supreme Court. *See Miller*, 638 S.W.3d at 169, (dissenting opinion); *Pruitt*, 415 S.W.3d at 223-32 (dissenting opinion).

The *Bland* proportionality review, Tennessee’s chosen method to comply with Eighth Amendment requirements, fails to ensure that the death penalty is not arbitrarily and capriciously imposed. By limiting the pool of comparison cases to only those in which capital punishment had been sought and imposed, the Tennessee Supreme Court unreasonably excludes whole classes of “similar” cases, resulting in an incomplete and distorted view of proportionate punishment. In essence, the Court looks to see whether there is a capital case with similar circumstances, and if there is, it finds the sentence under review to be proportionate. This process completely ignores the possibility that there are hundreds of other cases with similarly situated

defendants who did not receive a death sentence. It is entirely possible that one or few cases where the death penalty was imposed are an anomaly when compared to other similar but non-capital cases. It may be that the death sentences in the few cases can be linked to racial or geographical factors. However, the Tennessee Supreme Court would not know that because it chooses to ignore those cases.

States which impose capital punishment can impose various procedures to ensure that they are not administering the death penalty arbitrarily or capriciously. Tennessee chose the method of comparative proportionality review. Once this choice had been made, Tennessee needed to take all the steps necessary to make sure that the process in fact serves its purpose of determining whether imposition of a death sentence is consistent with sentencing determinations in other factually similar cases. The Tennessee Supreme Court's *Bland* analysis fails to reach this goal. As the dissent in *State v. Godsey*, one of the cases applying the narrow *Bland* standard, aptly put it:

Under the current protocol, a sentence may be found "proportionate" based on minimal similarities to a prior death penalty case even if the defendant can point to similar cases in which a life sentence was imposed. "Proportionality" implies consistency and balance in sentencing, neither of which is accomplished when distinguishable penalties are imposed in indistinguishable cases.

State v. Godsey, 60 S.W.3d 759, 794 (Tenn. 2001).

Applying this faulty protocol, Tennessee continually deprives capital defendants, including Mr. Miller, of their Eighth Amendment right to be free from cruel and unusual punishment. *See Harris v. Blodgett*, 853 F. Supp. 1239, 1291 (W.D. Wash. 1996) (a state's chosen proportionality review method must satisfy the 14th

Amendment requirements of due process). In 2013, a dissent in another case, *State v. Pruitt*, analyzed the efficacy of the narrowed proportionality review. The dissent noted that since *Bland*, the Court had considered fifty-four death penalty cases and found only one death sentence to be disproportionate. *Pruitt*, 415 S.W.3d 180, 229 citing *Godsey* at 781-93. In one case, the Court had actually reversed the Court of Criminal Appeals' finding of a disproportionate sentence and reinstated the death penalty. *Id.*, citing *State v. Copeland*, 226 S.W.3d 287, 305-07. As the *Pruitt* dissent concluded, "*Bland's* version of the proportionality analysis conflicts with the plain language of Tenn. Code Ann. § 39-13-206(c)(1)(D) and with the intent of the United States Supreme Court precedents that undergird this statute." *Id.* at 230.

Mr. Miller's case is yet another example of Tennessee's failure to conduct a constitutionally sound proportionality review. The Court's majority pointed to four capital cases where defendants committed murder while attempting robbery and held that because the juries in those cases found the death sentence to be appropriate, imposition of capital punishment in Mr. Miller's case was not disproportionate. *Miller*, 638 S.W.3d at 168. Although the cases cited by the majority did involve killing during a robbery, as the dissent points out, their facts were more egregious than those in Mr. Miller's case. Where here Mr. Miller was convicted of killing one person shortly after entering the store, the other cases involved either death of multiple victims or additional cruelty such as having a victim disrobe prior to killing or firing multiple rounds at unresisting victims lying on the ground, and in one of the cases, the

defendant had been previously convicted of attempted first degree murder. *Id.* at 168, 175-176.

The majority did not discuss any similar capital cases that resulted in a sentence of less than death, even though seemingly they would be appropriate to include in the already narrowed *Bland* analysis. However, according to the dissent, at least four capital murder robbery cases exist in which juries returned the verdict of life without the possibility of parole or life. *Id.* 176-77. In fact, two of these cases involved killing multiple victims, one a defendant stomping the victim to death, and another an elderly victim and a defendant with a prior first degree murder conviction. *Id.* The circumstances of Mr. Miller's case are less egregious than the four cases in which Tennessee capital juries decided to impose a sentence of less than death.

Unlike the majority, the dissenting justice in Mr. Miller's case conducted a much more thorough proportionality review. Relying on the Rule 12 reports, the dissent analyzed 399 reported first degree murder convictions for killing a single victim for pecuniary gain between 1978 and 2021 in Tennessee. *Id.* at 172. In 90.2 % of the cases, the defendants were sentenced to life or life without the possibility of parole. *Id.* Although 9.8 % of the defendants were initially sentenced to death, 82.1% of them had their sentences subsequently reduced to lesser punishment. *Id.* As the result, only 1.75 % of defendants who killed a single victim for pecuniary gain remained on Tennessee's death row following the appeals. *Id.* The dissent analyzed the facts of all seven of these cases and found that they "involved more premeditation,

depravity and cruelty, and/or a defendant with a more lengthy and violent criminal history than Miller.” *Id.*

With respect to non-capital first degree murder for pecuniary gain involving one victim, the dissent discussed cases that have facts most similar to the present case. *Id.* at 177. These cases involved circumstances such as kidnapping, elderly victims, and brutal methods of killing, including stabbing, beating to death, or stuffing the victim’s mouth with paper towels and suffocating him with a plastic bag. In addition, all the defendants in these four cases had prior felony convictions, including three with aggravated assault convictions. *Id.* Following the in-depth analysis, the dissent found Mr. Miller’s death sentence to be more in line with cases where defendants were not sentenced to death, and thus disproportionate. *Id.* at 177-178.

The careful analysis conducted by the dissent in the present case underscores the inadequacy of the majority’s narrowed approach to proportionality review. The Tennessee Supreme Court, applying the *Bland* analysis, ignored that in 98.25 % of first degree murder cases involving a single victim killed for pecuniary gain, the defendants received a sentence of less than death. Instead, out of the remaining seven cases, it picked four, even though their facts were more egregious than those in the present case and held that Mr. Miller’s death sentence was proportionate. This Court should grant the Writ of Certiorari to determine whether Tennessee’s narrow proportionality review in this case satisfied Due Process requirements as well as the

Eighth Amendment mandate that the sentence of death not be arbitrary and thus cruel and unusual.

CONCLUSION

For the foregoing reasons, the petitioner prays that the petition for a writ of certiorari be granted.

Respectfully submitted,



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