

Case No.: 21A774

In The
Supreme Court of the United States

WESTLEY DEVONE HARRIS,

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

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CAPITAL CASE QUESTIONS PRESENTED

In this capital case, Petitioner Westley Devone Harris' selected jury consisted of jury persons who, by failing to disclose material details and by providing incomplete answers on the jury questionnaire and during voir dire, deprived Mr. Harris of his right to a fair and impartial jury. Specifically, Jurors Reginald Greene and Retha Johnson each gave incomplete and dishonest answers during voir dire. Juror Greene dishonestly failed to disclose during voir dire that he had a close personal relationship with one of the victims, such that he served as a pallbearer at that victim's funeral. Juror Johnson failed to disclose that she had an eyewitness account of Mr. Harris' movements on the morning after the murders—movements which were the subject of the State's testimony at crucial points of the trial—despite having been explicitly asked if she had any knowledge of the case. The information withheld by both jurors undeniably created a bias in their opinions of the testimony and evidence presented during Mr. Harris' trial, and thus impacted the jury's verdict against Mr. Harris.

In his Alabama Rule 32 Petition for post-conviction relief, Mr. Harris claimed that such juror misconduct deprived him of his right to a fair and impartial jury.

The Circuit Court of Crenshaw County summarily denied Mr. Harris' Rule 32 Petition without a hearing. The Alabama Court of Criminal Appeals affirmed that denial.

The two questions presented are as follows:

1. Whether a criminal defendant is deprived of his Sixth and Fourteenth Amendment rights to an impartial jury when a jury member gives dishonest and incomplete answers during voir dire regarding his or her knowledge and familiarity with the defendant and the case.

2. Whether a criminal defendant is deprived of his Sixth and Fourteenth Amendment rights to an impartial jury when a jury member has a personal firsthand eyewitness account of the defendant's whereabouts during a time-period relevant to the state's case, thereby considering extraneous evidence during guilt and penalty phase deliberations.

PARTIES TO THE PROCEEDING

Petitioner is Westley Devone Harris (“Mr. Harris”).

Respondent who was respondent below is the State of Alabama (“State”).

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Westley Devone Harris respectfully petitions for a writ of certiorari to review the judgment of the Alabama Court of Criminal Appeals.

OPINIONS BELOW

The Circuit Court of Crenshaw County's order denying Mr. Harris' request for post-conviction relief from a sentence of death is attached as Appendix A. The Alabama Court of Criminal Appeals' opinion denying Mr. Harris' appeal of the denial of his request for post-conviction relief from a sentence of death is attached as Appendix B. The denial of Mr. Harris' motion for rehearing is attached as Appendix C. The denial of Mr. Harris' certiorari petition to the Alabama Supreme Court is attached as Appendix D.

STATEMENT OF JURISDICTION

The Alabama Court of Criminal Appeals affirmed the dismissal of Mr. Harris' post-conviction petition in a decision dated July 9, 2021. The Alabama Court of Criminal Appeals denied Mr. Harris' Application for Rehearing on all claims on December 10, 2021. Mr. Harris timely filed his petition for certiorari with the Alabama Supreme Court on December 23, 2021, and certiorari was denied on March 11, 2022. This Court granted Mr. Harris an extension of time within which to file a petition for writ of certiorari, up to and including July 11, 2022. *See Harris v. Alabama*, No. 21A774 (May, 31, 2022).

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOKED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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

This is a capital case arising out of the death of six family members of Ms. Janice Denise Ball (“Ms. Ball”) on August 26, 2002. Mr. Harris was arrested, charged, and later convicted for the murder of Mila Ruth Ball, JoAnne Ball, Willie Haslip, John Ball, Jerry Ball, and Tony Ball (collectively, the “Ball Family”). *See* T.R. 9240-9241.¹

Prior to trial, Mr. Harris’ defense counsel and the State engaged in jury selection to select jurors to sit for the guilt and penalty phases of trial. During the jury selection process, Juror Reginald Greene (“Juror Greene” or “Greene”) and Juror Retha Johnson (“Juror Johnson” or “Johnson”) provided dishonest responses in their juror questionnaires and during voir dire. Juror Greene omitted the crucial fact that he had served as a pallbearer at the funeral service for one of the victims. Juror Johnson concealed her first-hand knowledge of Mr. Harris and the case, failing to disclose that she had witnessed Mr. Harris’ actions the morning after the murders.

Specifically, Juror Johnson failed to disclose that, on August 27, 2002, Juror Johnson saw Mr.

¹ Throughout this petition, citations to the Trial Reporter’s Transcript in Mr. Harris’ criminal trial will be preceded by the letter “T.R.”. Citations to the Trial Clerk’s Record in Mr. Harris’ criminal trial will be preceded by the letter “T.C.”. Citations to the Clerk’s Record in Mr. Harris’ Rule 32 case will be preceded by the letter “C.”

Harris drive past her house in a red car while mowing her lawn on a riding lawn mower outside of her house, located at the corner of School Street and Tyner Road in Dozier, Alabama. *See* C. 843. She saw Mr. Harris drive south on School Street and then make a left onto Tyner Road. *Id.* When she witnessed this, Juror Johnson was driving a lawn mower while facing School Street with Tyner Road to her left. *Id.* Mr. Harris was driving slowly, and further slowed down as he turned onto Tyner Road. *Id.* Juror Johnson was closest to the driver's side of the car, and Mr. Harris was only a few yards from her as he made the turn, which allowed Juror Johnson to clearly see Mr. Harris' face. *Id.* Mr. Harris did not wave or acknowledge Juror Johnson in any manner. *Id.* Juror Johnson found this to be unusual, as she believed Mr. Harris would have ordinarily waved at or otherwise acknowledged her if he saw her. *Id.* Juror Johnson was able to remember the events of August 27, 2002 because she later learned from news reports that six family members of Ms. Ball, Mr. Harris' then-girlfriend, had been killed at Moody's Crossroads the day before she had seen Mr. Harris while mowing her lawn. C. 845. Indeed, during the guilt phase of Mr. Harris' trial, the State presented evidence about Mr. Harris' whereabouts in the days and hours after the killings at Moody's Crossroads on August 26, 2002. During trial, the State's evidence included testimony that Mr. Harris visited Jarvis Scanes in Dozier, Alabama on August 27, 2002. T.R. 7545 (Ms. Ball testifying that she and Mr. Harris went to visit Mr. Scanes on August 27, 2002); *see also* T.R. 7520-23 (Ms. Ball describing another meeting with Mr. Scanes).

The guilt-phase portion of Mr. Harris' trial began on June 1, 2005. At the end of the guilt phase, after deliberating for just one day after a two-week trial, the jury convicted Mr. Harris of five counts of capital murder: (i) one count of murder of two or more persons during one scheme or one course of conduct, Ala. Code § 13A-5-40(a)(10), and (ii) four counts of murder during a burglary, for the murder of Mila Ruth Ball, Joanne Ball, John Ball, and Tony Ball, Ala. Code § 13A-5-40(a)(4). T.R. 9240-9241. Thereafter, the penalty phase portion of the trial began on June 15, 2005, and ended the following day, on June 16, 2005. At the conclusion of the penalty phase trial, the same jury that had convicted Mr. Harris of five counts of capital murder voted seven to five to spare his life, and sentence him to life without the possibility of parole. T.R. 9538. After the sentencing hearing on August 12, 2005, the Circuit Court overrode the jury's recommendation that Mr. Harris be sentenced to life without parole and sentenced Mr. Harris to death. T.R. 9594.

Mr. Harris timely appealed his conviction and sentence, and on December 21, 2007, the Alabama Court of Criminal Appeals ("Alabama Court of Criminal Appeals") affirmed his conviction and sentence of death. *See Harris v. State*, 2 So. 3d 880, 931 (Ala. Crim. App. 2007). On August 15, 2008, the Supreme Court of Alabama denied Mr. Harris' petition for a writ of certiorari and issued a Certificate of Judgment. *Ex parte Harris*, No. 1070871 (Ala. Aug. 15, 2008). Mr. Harris petitioned the United States Supreme Court for a writ of certiorari. His petition

was denied on January 26, 2009. *Harris v. Alabama*, 555 U.S. 1155 (2009).

Thereafter, Mr. Harris timely filed his Rule 32 Petition for relief from judgment (the “Rule 32 Petition”) pursuant to the Alabama Rules of Criminal Procedure in August 2009. C. 2. He amended his Petition with leave of the court and filed the following: the First Amended Petition in February 2010, C. 219, the Second Amended Petition in November 2010, C. 376, and the Third Amended Petition on July 5, 2011. C. 613.

In November 2019, the Crenshaw County Circuit Court issued an order summarily dismissing Mr. Harris’ Petition without having held an evidentiary hearing on Mr. Harris’ juror misconduct claims. Because the Circuit Court in these Rule 32 proceedings summarily dismissed Mr. Harris’ Rule 32 Petition in its entirety, without any evidentiary hearing, the matter is still at the pleading stage, where the issues are “pure questions of law,” namely, whether Mr. Harris’ Rule 32 Petition has adequately pled the claims of juror misconduct. *See Daniel v. Commissioner*, 822 F.3d 1248, 1274 (11th Cir. 2016) (citing *Ex parte Williams*, 651 So. 2d 569, 573 (Ala. 1992)). On appeal, the Alabama Court of Criminal Appeals affirmed. The Alabama Supreme Court denied certiorari. This Petition follows.

REASONS TO GRANT THIS WRIT

The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant on trial for his life the right to an impartial jury. *Ross v.*

Oklahoma, 487 U.S. 81, 85 (1988). A jury must stand impartial and indifferent. *See Morgan v. Illinois*, 504 U.S. 719, 727 (1992) (citations omitted). Indeed, the benchmark of a fair trial is an impartial trier of fact. *McDonough Power Equip. v. Greenwood*, 464 U.S. 548, 554 (1984). “Due process means a jury [must be] capable and willing to decide the case solely on the evidence before it.” *Smith v. Phillips*, 455 U.S. 209, 217 (1982). “Voir dire examination serves to protect that right by exposing possible biases, both known and unknown, on the part of potential jurors. Demonstrated bias in the responses to questions on voir dire may result in a juror’s being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.” *McDonough*, 464 U.S. at 554. “The motives for concealing information may vary, but only those reasons that affect a juror’s impartiality can truly be said to affect the fairness of a trial.” *Id.* at 556.

This case presents a unique factual circumstance in which two jurors who concealed—or, at best, failed to disclose—their connections to the case were empaneled to serve on a jury tasked with determining Mr. Harris’ innocence or guilt in a capital case. The necessity of a fair and impartial jury cannot be understated where, as here, a defendant is faced with the potential sentence of life without parole or the death sentence. Nevertheless, in Mr. Harris’ case, two jurors withheld accurate answers in their questionnaires and voir dire, leaving Mr. Harris with a biased and partial jury. Specifically, Jurors Reginald

Greene and Retha Johnson intentionally provided inaccurate responses and omitted their personal knowledge of and involvement with the defendant and victims. Had the jurors provided accurate responses, Mr. Harris' defense counsel would have successfully challenged the jurors for cause or removed them from the venire by preemptory strike.

As explained below, the Alabama Court of Criminal Appeals improperly found that neither juror engaged in juror misconduct on the basis that they had no duty to disclose the information at issue because Mr. Harris' defense counsel failed to ask them directed questions, and further found that the voir dire questioning failed to alert the jurors of the significance of the information that was withheld. Indeed, the Alabama courts failed to give meaningful consideration as to whether the jurors had any biases that impacted their ability to be impartial. Therefore, summary reversal is appropriate in this case because the ruling of the Alabama Court of Criminal Appeals conflicts directly with this Court's precedents governing juror misconduct and voir dire. Alternatively, this Court should reverse and remand the Alabama Court of Criminal Appeals' decision back for an evidentiary hearing on the claims at hand. In either scenario, the case is well-suited for review, as the constitutional issue was squarely presented and preserved in the state courts.

I. MR. HARRIS WAS DEPRIVED OF HIS SIXTH AMENDMENT AND THE FOURTEENTH AMENDMENT RIGHT TO A FAIR AND IMPARTIAL JURY WHEN CERTAIN JURY MEMBERS GAVE FALSE AND MISLEADING RESPONSES DURING VOIR DIRE

The voir dire process safeguards the right to a fair and impartial jury “by seeking to prevent jurors who are incapable of impartiality from deciding the case.” *Torres v. First Transit, Inc.*, 979 F.3d 876, 882 (11th Cir. 2020) (quoting *McDonough*, 464 U.S. at 554). “These safeguards cannot function effectively when a . . . juror commits misconduct by failing to honestly answer questions posed on voir dire.” *Id.* In *McDonough*, this Court enunciated the applicable standard for determining when a juror’s response during voir dire warrants a new trial: (1) “a party must first demonstrate that a juror failed to answer honestly a material question on voir dire,” and (2) a party must “further show that a correct response would have provided a valid basis for a challenge for cause.” *Id.* at 556. This Court has granted certiorari on numerous occasions to address issues of juror partiality and misconduct. *See Williams v. Taylor*, 529 U.S. 420 (2000) (granting certiorari to review the Fourth Circuit Court of Appeals’ decision, which denied petitioner an evidentiary hearing on its claim that his trial was rendered unfair by the seating of a juror who at voir dire had not revealed possible sources of bias and the prosecutors’ misconduct in failing to reveal its knowledge of the juror’s possible bias); *see also*

Chandler v. Florida, 449 U.S. 560 (1981) (granting certiorari to hear a claim of implied juror bias); *Smith*, 455 U.S. 209 (granting certiorari to review the Second Circuit Court of Appeals' decision affirming a grant of habeas corpus to respondent where it was discovered that a juror had applied to a position in the district attorney's office during defendant's trial).

Two jurors in Mr. Harris' trial gave incomplete and dishonest answers during voir dire, depriving Mr. Harris of his right to a fair and impartial jury. Specifically, during voir dire, Juror Greene dishonestly failed to disclose that he had served as a pallbearer at the funeral of one of the victims of the murders for which Mr. Harris was charged. Additionally, Juror Johnson dishonestly failed to disclose that she came into contact with Mr. Harris during the time period directly following the murders, despite having been explicitly asked if she had any knowledge of the case. The information withheld by both jurors undeniably biased their opinions of the testimony and evidence heard throughout Mr. Harris' case, and thus impacted the jury's verdict against Mr. Harris. Equally undeniable is that the information withheld would have—if disclosed—provided Mr. Harris' defense counsel with ample grounds to dismiss both jurors from the jury panel. The Alabama Court of Criminal Appeals' decision affirming the dismissal of Mr. Harris' claims regarding the two jurors who gave false and misleading answers to material questions during voir dire conflicts with United States Supreme Court precedent. Therefore, this Court should grant certiorari in this capital case.

(a) Juror Reginald Greene

Juror Reginald Greene failed to disclose during voir dire that he had served as a pallbearer at the funeral of one of the victims of the crimes for which Mr. Harris was charged. C. 850-52. When asked whether he had attended the funeral of any of the victims, Juror Greene answered that he had. However, his answer was incomplete and misleading. Juror Greene failed to disclose that he had such a close connection with one of the victims as to have served as a pallbearer at his funeral. Specifically, Juror Greene was asked during voir dire:

[DEFENSE COUNSEL]: Did anyone here, friends or family, go to the funerals that were had for the victims, for the Ball family and Mr. Haslip?

...

[DEFENSE COUNSEL]: Mr. Green, did you go or somebody else went?

MR. REGINALD GREENE: I went too. C. 851-52.

—

[DEFENSE COUNSEL]: You checked that you had personal knowledge of this case, was that — do you have personal knowledge of this case or was that a mistake?

MR. REGINALD GREENE: I think that was a mistake. I think I interpreted personal knowledge as far as hearsay on what happened.

[DEFENSE COUNSEL]: You don't know anything first hand. You just heard about it?

MR. REGINALD GREENE: No.

[DEFENSE COUNSEL]: Okay. Where would you have gotten your information?

MR. REGINALD GREENE: From TV, newspapers.

[DEFENSE COUNSEL]: Can you remember what you heard about it?

MR. REGINALD GREENE: I just heard some members, I think, six members of the Ball family had been killed at the home and Westley Devone Harris was the suspect.

[DEFENSE COUNSEL]: Other than that no details?

MR. REGINALD GREENE: No details. C. 851.

Despite Juror Greene's failure to disclose that he served as a pallbearer for one of the victims, the Court of Criminal Appeals held that there was no juror misconduct because "prospective jurors were not asked if they had participated in the victims' funerals, [Juror Greene] did not fail to answer any questions truthfully during voir dire." Pet. App. B-45. The Court of Criminal Appeals ignored, however, that Juror Greene's answers—including that he knew "[n]o details" regarding the case and that he had made a "mistake" when he indicated in his juror questionnaire that he had personal knowledge—actively concealed material information about his connection with the case, particularly his involvement with the funerals for the victims and any knowledge he had gained regarding the case as a result of his role as a pallbearer. In holding that there was no juror misconduct, the Court of Criminal Appeals disregarded United States Supreme Court precedent. In *McDonough*, this Court held that a defendant is entitled to a new trial where the record established both that a juror "failed to answer honestly a material question" and that a "correct response would have provided a valid basis for a challenge for cause." *McDonough*, 464 U.S. at 556. Moreover, this Court has held that defendants alleging juror impartiality are entitled to a hearing to prove bias. *Smith*, 455 U.S. at 215 ("This Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."). Finally, this Court has emphasized the importance of jurors providing truthful responses during voir dire. *McDonough*, 464 U.S. at 554 ("Demonstrated bias in the responses to questions on *voir dire* may result in a

juror's being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.”).

Had Juror Greene properly disclosed his close connection to one of the victims in this case, Mr. Harris' defense counsel would have undoubtedly had a basis to challenge Juror Greene for cause, because maintaining a close relationship with a victim of the murders Mr. Harris allegedly committed unquestionably demonstrates bias and lack of impartiality. “When a juror demonstrates actual bias, or if bias is implied due to a special relationship with a party, removal is required.” *United States v. Cannon*, 987 F.3d 924, 945 (11th Cir. 2021). In fact, the Eleventh Circuit has specifically held that seating a juror who had a close relationship with a victim is a reversible error that entitles the defendant to a new trial. *See id.* (determining that the district court did not abuse its discretion in dismissing a juror who knew the defendant's wife and styled her hair on a regular basis, as it “was well within the district court's discretion to conclude that . . . [this] relationship...created a greater likelihood of her being ‘influenced by her relationship’”); *United States v. Perkins*, 748 F.2d 1519, 1532 (11th Cir. 1984) (“A relationship between a juror and defendant, albeit a remote one, can form the basis of a challenge for cause.”) (citation omitted).

The Alabama Court of Criminal Appeals failed to even consider the issue of bias. Juror Greene's omission of the critical fact that he maintained such a

close relationship with a victim of the murders as to have served as a pallbearer at his funeral rendered Juror Greene a biased and unfit juror, thereby denying Mr. Harris his right to a fair and impartial jury as required by the Sixth and Fourteenth Amendments of the United States Constitution and this Court's precedent. As such, this Court should grant certiorari to address the Alabama Court of Criminal Appeals' blatant disregard of United States Supreme Court precedent.

(b) Juror Retha Johnson

During voir dire, Juror Retha Johnson failed to fully answer a material and relevant question posed to her—whether she had any knowledge of Mr. Harris' case. *See* C. 853-54. In response to the question, Juror Johnson disclosed that her son was an acquaintance of Mr. Harris, but failed to explain that she had seen Mr. Harris the morning after the murders, thereby making her an eyewitness. This encounter with Mr. Harris is particularly relevant, because it caused her to draw inferences about Mr. Harris' involvement in the crime. Specifically, because Mr. Harris did not wave to her when she saw him shortly after the murders were committed, Juror Johnson concluded that he was involved in the murders. *See Id.*

Had Juror Johnson provided a true and complete response to the questions posed to her during voir dire, her answer would have indicated her bias, which would have enabled Mr. Harris' defense counsel to successfully challenge her for cause, or to use a peremptory challenge to strike her from serving on Mr. Harris' jury. Juror Johnson's failure to reveal her

personal knowledge of the case evidences juror misconduct that infringed upon Mr. Harris' constitutional right to a fair trial and impartial jury.

The Court of Criminal Appeals stated that, "Alabama has never imposed a duty on a prospective juror to volunteer information during voir dire examination." Pet. App. B-39. In so finding, the Court of Criminal Appeals ignored the fact that Juror Johnson did not merely fail to volunteer information, but instead provided an incomplete and therefore inaccurate response to a directed question. Juror Johnson was asked if she had any personal knowledge of Mr. Harris or of the case, but her answer omitted both that she saw Mr. Harris shortly after the murders, and that she drew conclusions about his guilt from that sighting. *See* C. 853-54, 56-57. During voir dire, Juror Johnson was asked:

41. The Defendant in the case being tried is Westley Devone Harris and the case involves the charge of capital murder. Please answer the following:

- (a) Do you have any personal knowledge of this case, of Westley Devone Harris, or of anyone who may be connected with this case?

Yes. Acquaintance [sic].

- (b) Have you seen anything about this case in the newspapers?

Yes.

(c) Have you seen and/or heard anything about this case on TV?

Yes.

(d) Have you heard anything about this case on the radio?

Yes.

(e) Has the case been mentioned or discussed by anyone in your presence or hearing?

Yes.

In your opinion, whatever the reason may be, do you have such a strong opinion of murder, in general, that you feel it would be difficult for you to give a fair and impartial trial, sitting as a juror, to one charged with murder?

No.

C. 853-54. Had Juror Johnson honestly answered that she saw Mr. Harris shortly after the murders, Mr. Harris' defense counsel would have had a valid basis for exercising a challenge for cause. *See McDonough*, 464 U.S. at 556 (explaining that a new trial is due in a situation where the juror failed to answer "material question[s] on voir dire" honestly and "a correct response would have provided a valid basis for a challenge for cause").

In addition to her bias, Juror Johnson lacked the indifference and impartiality that is constitutionally required of jurors. *See Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (“The right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors.”). By seeing Mr. Harris and drawing conclusions about his involvement in the murders, Juror Johnson undoubtedly thwarted her ability to rely solely on the evidence presented to her. Due to Juror Johnson’s encounter with Mr. Harris, which caused her to believe he was involved in the crimes, it is clear that Juror Johnson did not possess the requisite indifference and impartiality that would be required for Mr. Harris to have a fair trial. Accordingly, Juror Johnson’s failure to truthfully and accurately answer the voir dire question of whether she had any personal knowledge of Mr. Harris or the case denied Mr. Harris his right to a fair trial. As such, this Court should grant certiorari on the issue.

II. MR. HARRIS WAS DEPRIVED OF HIS SIXTH AMENDMENT AND THE FOURTEENTH AMENDMENT RIGHT TO A FAIR AND IMPARTIAL JURY WHEN CERTAIN JURY MEMBERS CONSIDERED EXTRANEOUS EVIDENCE

It is well-established that jurors are not permitted to consider evidence that is extraneous to the trial in which they are charged with determining the facts. *See Turner v. Louisiana*, 379 U.S. 466, 472-73 (1965) (“In the constitutional sense, trial by jury in a criminal case necessarily implies at the very least

that the ‘evidence developed’ against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendants right to confrontation, of cross-examination, and of counsel.”); *see also Irvin*, 366 U.S. at 722. This requirement “goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.” *Turner*, 379 U.S. at 472. Indeed, extrinsic evidence, evidence that has not been subject to the procedural safeguards of a fair trial, threatens constitutional safeguards such as a defendant’s right to confrontation, to cross-examination, and to counsel. *Id.* at 473. “Juror misconduct involving the introduction of extraneous information necessitates a new trial only when: ‘(i) the jury verdict is shown to have been actually prejudiced by the extraneous material; or (ii) the extraneous material is of such a nature as to constitute prejudice as a matter of law.’” *Resurrection of Life, Inc. v. Dailey*, 311 So. 3d 748, 755 (Ala. 2020) (citing *Ex parte Apicella*, 809 So. 2d 865, 870 (Ala. 2001) (abrogated on other grounds, *Betterman v. Montana*, 136 S. Ct. 1609 (2016))).

The Court of Criminal Appeals improperly held that Mr. Harris’ claim was insufficiently pleaded because Mr. Harris made a “bare and speculative allegation” that Juror Johnson’s eyewitness account of Mr. Harris the morning after the murders caused her to believe the State’s theory of the case. Pet. App. B-57. To the contrary, Juror Johnson’s first-hand eyewitness account of the events that occurred on August 27, 2002—improperly concealed by Juror Johnson during voir dire—was unquestionably extraneous knowledge, and Mr. Harris adequately

pleaded that it impacted Juror Johnson's ability to serve as a fair and impartial juror. The Court of Criminal Appeals improperly found that Mr. Harris was required to allege whether Juror Johnson shared her firsthand knowledge of extraneous information with other jurors. Pet. App. B-57. Not so. Even a single juror's consideration of or reliance on extraneous evidence is sufficient to taint the independence of a jury, so, whether Juror Johnson shared her first-hand knowledge with other jurors is irrelevant. *Crowell v. Montgomery*, 581 So. 2d 1130, 1132-33 (Ala. Crim. App. 1990) (reversing conviction where a juror used her own extraneous knowledge of the crime scene as a basis for crediting the prosecution's evidence); *Williams v. State*, 570 So. 2d 884, 884-87 (Ala. Crim. App. 1990) (reversing conviction where a juror used her own extraneous knowledge of the crime scene as a basis for discrediting a witness's testimony).

As discussed above, *supra* Point I.B, Juror Johnson disclosed that she was personally acquainted with Mr. Harris because he was in the same circle of friends as her son. See C. 842. However, Juror Johnson failed to disclose that she had an eyewitness account of Mr. Harris the morning after the murders had been committed. Furthermore, because of Mr. Harris' unusual behavior on August 27, 2002, she presumed that he must have been involved in the killings. *Id.* This extraneous evidence is of such a nature as to constitute prejudice.

Mr. Harris has sufficiently shown how Juror Johnson was prejudiced by the extraneous evidence she considered. Indeed, Juror Johnson knew that Mr.

Scanes' family lived on Tyner Road in Dozier, Alabama in August 2002. The evidence that Mr. Harris visited Mr. Scanes on August 27, 2002 was consistent with what Juror Johnson saw when she witnessed him turning onto Tyner Road. Juror Johnson evaluated the credibility of the State's evidence and determined that Mr. Harris was guilty based on her own firsthand knowledge of Mr. Harris' movements on August 27, 2002. In considering firsthand extraneous evidence, Juror Johnson ultimately prejudiced the jury's verdict.

Therefore, Juror Johnson's firsthand knowledge and eyewitness account of Mr. Harris' actions denied Mr. Harris his right to a fair and impartial jury. Accordingly, this Court should grant certiorari on this issue.

CONCLUSION

For the foregoing reasons, Mr. Harris' petition for certiorari should be granted.

Respectfully submitted,

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