

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

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BENJAMIN YOUNG,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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February 21, 2023

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## CAPITAL CASE

### QUESTION PRESENTED

Whether, as in the sentencing phase of a capital trial under *Dawson v. Delaware*, 503 U.S. 159 (1992), the First and Fourteenth Amendment prohibit the introduction in the culpability phase of a capital trial the fact that the defendant was a member of a gang, where the prosecution did not establish the evidence would be relevant to any issue of guilt.

## RELATED PROCEEDINGS

*State v. Young*, Colbert County Circuit Court, No. CC-2016-339. Order of conviction entered February 9, 2018; sentencing order entered on March 13, 2018.

*Young v. State*, Alabama Court of Criminal Appeals, No CR-17-0595. Convictions and sentence affirmed August 6, 2021; application for rehearing overruled February 4, 2022.

*State v. Young*, Colbert County Circuit Court, No. CC-2016-339.60. Order dismissing petition for relief pursuant to Ala. R. Crim. P. 32 entered January 12, 2022.

*Ex parte Young*, Alabama Supreme Court, No. 1210291. Petition for writ of certiorari denied October 21, 2022.

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## PETITION FOR A WRIT OF CERTIORARI

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### OPINIONS BELOW

The opinion of the Alabama Court of Criminal Appeals affirming Mr. Young's convictions and sentence of death, *Young v. State*, No. CR-17-0595, 2021 WL 3464152 (Ala. Crim. App. Aug. 6, 2021), is not yet reported and attached as Appendix A. The court's opinion denying rehearing is not reported and is attached as Appendix B. The order and certificate of judgment of the Alabama Supreme Court denying Mr. Young's petition for a writ of certiorari, *Ex parte Young*, No. 1210291 (Ala. Oct. 21, 2022), is unreported and attached as Appendix C.

### STATEMENT OF JURISDICTION

The Alabama Court of Criminal Appeals affirmed Mr. Young's convictions and sentence of death on August 6, 2021. *Young v. State*, No. CR-17-0595, 2021 WL 3464152 (Ala. Crim. App. Aug. 6, 2021). The Alabama Court of Criminal Appeals denied rehearing on February 4, 2022. *Young v. State*, No. CR-17-0595 (Ala. Crim. App. Feb. 4, 2022). The Alabama Supreme Court denied Mr. Young's petition for a writ of certiorari as to all claims on October 21, 2022. Order, *Ex parte Young*, No. 1210291 (Ala. Oct. 21, 2022). This Court granted Mr. Young's

application to extend the time to file a petition for writ of certiorari on January 10, 2023, extending the time to file to February 21, 2023. *Young v. Alabama*, No. 22A621 (Jan. 10, 2022). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

### **CONSTITUTIONAL PROVISIONS INVOLVED**

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **STATEMENT OF THE CASE**

The shooting occurred on March 1, 2016, just after 11:00 p.m. Ki-Jana Freeman and Tyler Blythe were sitting in Mr. Freeman’s car in the parking lot of the Spring Creek apartment complex in Tuscumbia, Alabama. (R. 549, 587.)<sup>1</sup>

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<sup>1</sup> “C.” and “R.” refer to the clerk’s record and reporter’s transcript, respectively. “S3.” refers to the third supplemental record. “DX3. HH:MM:SS” refers to timestamps of Defense Exhibit 3, the police interrogation of Austin



According to testimony at trial, they were waiting in the parking lot to sell “acid strips” to De’Vontae Bates. (R. 519-20, 551, 579, 757-60.) Shortly after they arrived, a white pick-up truck entered the area. (R. 554-55.) The driver and a passenger, Peter Capote, exited the truck, with Capote firing 15 shots from an assault rifle, killing Mr. Freeman and wounding Mr. Blythe. (R. 650, 656, 702.)

At trial, three witnesses testified to hearing gunshots or observing the truck, but no witnesses, including Mr. Blythe, were able to identify Mr. Young or any of the other alleged participants. (R. 559-60, 593-94, 600, 629.) Surveillance footage from the apartment complex partially captured the incident, recording the truck from a distance. (R. 672-79.) The footage was grainy and taken at night without proper lighting. The primary camera was far from the scene making it impossible to identify any suspects from the recording. (R. 704; C. 422.) Lead investigator Detective Holland could not even “determine from the video whether or not the passenger or the driver was black or white.” (R. 704.)

Austin Hammonds and De’Vontae Bates were the first suspects interviewed by the police. (R. 686-88, 772-73.) Mr. Hammonds and Mr. Bates were in contact with the victim throughout the day of the offense and social media messages along with multiple witnesses, including Mr. Freeman’s

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Hammonds.

girlfriend and Tyler Blythe, established the men sought to meet Mr. Freeman that evening at the apartment complex. (R. 509-10, 548, 755, 816; C. 474-79, 481-85.) No evidence at trial indicated Mr. Young knew or had ever been in communication with Mr. Freeman or Mr. Blythe. (R. 753, 813.)

Prior to meeting with law enforcement, Mr. Bates and Mr. Hammonds coordinated the story that they told police about the offense. (R. 772-73, 836.) The men explained that they had been at the scene of the crime, with Mr. Hammonds dropping off Mr. Bates. (R. 771-73, 836.) They subsequently revised aspects of their story while talking with police, explaining portions were “lie[s]” and saying they had not been at the apartment complex. (R. 771-73, 836.) The two claimed a number of other men were involved, including Thomas Hubbard, Peter Capote, Michael Blackburn, Riley “Tre” Hamm, and Benjamin Young. (R. 744, 748, 874-75.) Following their statements, Mr. Capote, Mr. Hubbard, and Mr. Young were arrested. (R. 928, 940.) When police attempted to pull over Mr. Young, he drove off at high speed from the Muscle Shoals area across the state line to Tennessee, where he was apprehended. (R. 936-38.)

Both Mr. Bates and Mr. Hammonds ultimately cooperated with the prosecution in order to avoid more serious punishment. Mr. Bates agreed to plead guilty to conspiracy to commit murder and testify against Mr. Young in exchange for the prosecution’s recommendation that he receive a 20-year

sentence for his role in the offense. (S3. 36-42.) During Mr. Hammonds's interrogation, police threatened him with capital murder charges and incarceration, and Mr. Hammonds repeatedly pleaded with officers to help him avoid prosecution, offering to say "anything" in order to avoid prosecution.<sup>2</sup> For example, Mr. Hammonds made the following statement to officers:

I just don't want to go to jail. I will tell you anything if you can look out for me. I'm not trying to go to jail. That is a promise right there. That is a man's word. Just two grown ass men. Promise me you will look after me, I will do anything then.

(DX3. 00:36:23.) Mr. Hammonds was never charged in this case.

Benjamin Young denied any involvement in the offense. He made no inculpatory statement to law enforcement or at trial and had no prior relationship with the victim. The State lacked direct physical evidence inculcating Mr. Young and no eyewitnesses connected him to the offense. (R. 467, 559-60, 593-94, 600, 629.) Additionally, the assault rifle used in the offense was connected to two other individuals, Thomas Hubbard and Peter Capote. (C. 480; R. 749, 751, 815-16, 920.)

The prosecution's theory at trial was that the offense was motivated by a burglary of Thomas Hubbard's home, which took place a few days before the shooting while Mr. Hubbard attended his grandmother's funeral. (R. 437-38,

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<sup>2</sup> (DX3. 00:13:55, 00:16:28, 00:17:30, 00:34:17, 00:35:18, 00:35:30, 00:36:23, 00:37:44, 00:41:52.)

730, 1291.) Mr. Hubbard was angry about the break-in and called police, reporting as stolen a television and a video game system belonging to Austin Hammonds. (R. 730-31, 741.)

Mr. Bates and Mr. Hammonds both testified for the State and admitted that they participated in the offense but sought to minimize their own roles. (R. 722-23, 749-50, 812-13, 836, 841-43; S3. 36-42.) The men claimed to have joined a planning session following the robbery with Mr. Hubbard, Mr. Capote, Mr. Blackburn, Mr. Hamm, and Benjamin Young, where the group planned the abduction and murder of Mr. Freeman. (R. 744, 749, 811-12, 815, 826-27, 829.) Mr. Hammonds admitted that he was the one who identified Mr. Freeman as the person who broke into Mr. Hubbard's home and, along with Mr. Bates, attempted to contact Mr. Freeman to facilitate Mr. Hubbard's revenge scheme. (R. 755, 816-17; C. 474-79, 481-85.) Mr. Hammonds claimed he went to work prior to the plan being executed and, although he was aware the men intended to kill Mr. Freeman, he did not reach out to warn the victim or law enforcement. (R. 826-27; DX3. 00:32:20-32.) Mr. Bates testified that he lured Mr. Freeman to the apartment complex by asking to purchase LSD. (R. 757-61.)

Mr. Bates and Mr. Hammonds were the first individuals implicated in the offense who provided statements to law enforcement and were the only source of the alleged conspiracy to kill Mr. Freeman at trial. (R. 454, 1265-66, 1268-70,

1273.) The prosecution relied on the two men's testimony to try to establish that Benjamin Young was involved in the planning session for the offense, that he was aware the group intended to kill Mr. Freeman, that he took steps in support of the plan, that he was the driver of the vehicle used in the offense, and that he made an incriminating statement about the number of shots fired after the offense. (R. 748-49, 765, 773-74, 815, 826-27, 830, 834-35.)

The prosecution also introduced testimony from Mr. Young's former girlfriend, Meagan Bryant, who testified she purchased rifle ammunition at Mr. Young's direction on the night of the offense. (R. 876, 880.) When they returned from the store, Ms. Bryant "took a lot of drugs" and "went to sleep." (R. 891.) Ms. Bryant did not did not testify regarding the purpose of the ammunition or Mr. Young's knowledge of the alleged plan and did not observe Mr. Young leave to go to the apartment complex. (R. 890-91, 898.)

There was no evidence besides the testimony of Mr. Bates and Mr. Hammonds that placed Mr. Young at the scene of the offense. (R. 559-60, 592-94, 600, 629, 678, 704.) The men testified that they were able to identify Mr. Young as the driver of the vehicle from surveillance footage. (R. 774, 832.) No other witnesses who reviewed the footage found it clear enough to identify anyone, especially as the driver was obscured by the truck. (R. 599-600, 678, 704.)

The State argued Mr. Young was the driver of the truck, and conceded that

he did not possess or fire the assault rifle that killed the victim. (R. 444, 448, 1244.) Although the prosecution asserted that Mr. Young fired a handgun during the offense, they did not introduce physical evidence in support of this argument. (R. 1204-05.) The only firearm evidence at trial was the assault rifle, projectiles from the rifle, and casings from the rifle. (R. 920, 1194-95, 1202, 1204-05.)

In addition to evidence related to the offense, the prosecution introduced extensive evidence that Mr. Young was in a leadership position with a criminal street gang called the “Almighty Imperial Gangsters.”<sup>3</sup> (R. 727-30, 741-44, 804-07, 811, 827-28, 868, 913, 1277, 1282). The State elicited the gang membership allegations through multiple witnesses, with testimony covering the gang’s activity and drug sales, hierarchy, and specific gang members’ roles. (R. 727-30, 741-44, 804-07, 811, 827-28, 835-36, 868, 913.) There was no evidence, however, that the victim was affiliated with any gang or was aware of the Imperial Almighty Gangsters, no evidence Mr. Hubbard’s home was robbed because of alleged gang activity, and no evidence that the gang’s operations were impacted by the robbery. (R. 437-38, 1291.) In fact, the State never asserted that the evidence of gang activity was connected to the offense or to their underlying theory that Mr. Hubbard sought revenge for the robbery of his home. (R. 437-38,

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<sup>3</sup> The gang was alternatively identified as the “Almighty Imperial Gangsters” (R. 727) and “Imperial Almighty Gangsters” (R. 804) throughout witness testimony.

1291.) In closing argument, the State urged the jury to rely on the gang evidence to find Mr. Young guilty of capital murder. (R. 1277, 1282 (“[T]hey are fellow gang members of the community. He chose to associate with them.”).)

Mr. Young maintained his innocence throughout trial and sought to support his defense by demonstrating credibility issues with the prosecution’s critical witnesses, arguing to the jury in closing that “we got two witnesses in this case and two question marks.” (R. 453-56, 1268, 1274-75, 1265-70.) In response, the prosecution vouched for the credibility of both Hammonds and Bates in their rebuttal argument, assuring the jury that both witnesses were “telling the truth.” (R. 1276-77, 1282-85.) Following the presentation of evidence at the culpability phase, the jury convicted Mr. Young of capital murder where the victim was in a vehicle and first-degree assault. (C. 339-41; R. 1344.)

At the sentencing phase, the jury found the existence of two aggravating circumstances and reached a non-unanimous sentence of death by a vote of 11 to 1. (C. 342-43.)

### **REASONS FOR GRANTING THE WRIT**

In this capital case, to bolster its case and paper over the lack of direct evidence of Mr. Young’s guilt, the State introduced extensive evidence of alleging Mr. Young was involved in a gang led by one of the codefendant’s as well as extensive evidence of the gang’s hierarchy, drug dealing, and members’

respective roles. Yet, there was no evidence that the victim was involved in a gang or that the killing was the product of a gang dispute. The prosecution did not offer any argument as to why the gang affiliation evidence was admissible and the trial court gave no instruction limiting how the jury should consider the gang affiliation evidence. Thus, without a proper predicate establishing limited admissibility or any limiting instruction, admitting evidence of Mr. Young's gang affiliation violated his rights under the First and Fourteenth Amendments. The lower court's opinion to the contrary conflicts with this Court's opinion in *Dawson v. Delaware*, 503 U.S. 159 (1992), and perpetuates a jurisdictional split about the applicability of *Dawson* to adjudications of guilt. Therefore, certiorari is appropriate. See Sup. Ct. R. 10(b), (c).

**I. DAWSON V. DELAWARE REQUIRES A PREDICATE TO INTRODUCE CHARACTER EVIDENCE THAT IS OTHERWISE CONSTITUTIONALLY PROTECTED AND THE POLICIES UNDERLYING THIS REQUIREMENT IN CAPITAL SENTENCING APPLY WITH EQUAL FORCE IN THE CULPABILITY PHASE OF A CAPITAL TRIAL.**

In *Dawson v. Delaware*, this Court held that the First and Fourteenth Amendments prohibit the introduction of evidence that a defendant is a member of a prison gang at sentencing in a capital trial where that evidence is not relevant to proving any aggravating circumstance or rebutting any mitigating circumstance. 503 U.S. 159, 166-67 (1992). Explicit in the opinion was that “the Constitution does not erect a *per se* barrier to the admission of evidence



concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Id.* at 165. Rather, the prosecution must establish its relevance in order to support the admissibility of such evidence. *Id.* at 165-66 (discussing alternative methods prosecution could have established relevance and therefore admissibility).

This Court explained that, "[b]ecause the prosecution did not prove" the gang membership was relevant to any aggravating or mitigating circumstance, the First Amendment prevented gang membership from being "viewed as relevant 'bad' character evidence in its own right." *Id.* at 167-68. Further, evidence merely establishing the defendant held beliefs that were "morally reprehensible" served no constitutionally permissible purpose in capital sentencing. *Id.* at 167.

Nothing about what this Court stated in *Dawson* is specific to the circumstances of a capital sentencing. Without demonstrating relevance, evidence of gang membership would invite the jury to convict on "'bad' character evidence" simply because the defendant held "morally reprehensible" views and serve no "legitimate purpose." *Id.* at 166, 168. As this Court explained in *Old Chief v. United States*, such evidence only enhances the "risk that a jury will convict for crimes other than those charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment." 519 U.S. 172, 181

(1997) (quoting *United States v. Moccia*, 681 F.2d 61, 63 (1st Cir. 1982)). In general, there is a strong likelihood that a jury hearing evidence of a defendant's gang affiliation at the culpability phase will "tak[e] that as raising the odds that he did the [] bad act now charged." *Id.*

Despite the general applicability of the principles underlying *Dawson*, jurisdictions are split in their reliance on the opinion. In *Kipp v. Davis*, the Ninth Circuit Court of Appeals found that the prosecutor's introduction of evidence regarding the defendant's belief in Satan in the culpability phase of a capital trial violated *Dawson*'s holding, but found the error harmless. 971 F.3d 866, 876 (9th Cir. 2020); *see also, e.g., State v. Turnidge*, 374 P.3d 853, 909 (Or. 2016) (applying *Dawson* to culpability phase); *State v. Driscoll*, 55 S.W.3d 350, 354 (Mo. 2001) (en banc) ("The holding of *Dawson* . . . appears equally applicable to [the] guilt phase."). On the other hand, the Fifth Circuit has noted that "[i]t is unclear whether *Dawson* should be applied at the guilt-innocence phase." *Doyle v. Johnson*, 93 F.3d 180, 185 n.9 (5th Cir. 1996).

This Court should grant certiorari and extend its holding in *Dawson* and affirm that guarding against these risks is of constitutional necessity in the culpability phase. Doing so and applying the rule of *Dawson* to the culpability phase, which would require predicate demonstration of relevancy to introduce evidence of association, would mirror the processes that this Court has found

protect other constitutionally enshrined rights. For example, this Court, to vindicate the Fifth Amendment privilege to remain silent, has required proof that a defendant's statements were intelligently and voluntarily made before they may be introduced into evidence. *Miranda v. Arizona*, 384 U.S. 436, 475 (1966). To permit introduction of testimonial statements that would otherwise violate the Confrontation Clause, the prosecution must establish that the declarant is unavailable and that the defense had previously had an opportunity to cross examine the declarant. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). Thus, extending *Dawson* to proceedings adjudicating guilt would resolve any uncertainty about the extent to which the First Amendment protects the freedom of association and follow a deep line of cases requiring the government make a preliminary showing to protect constitutional rights.

## **II. THE STATE'S USE OF GANG AFFILIATION EVIDENCE IN THIS CASE VIOLATES THE PRINCIPLES ESPOUSED IN *DAWSON V. DELAWARE*.**

In this case, the State introduced evidence of Mr. Young's gang affiliation without establishing its relevance to any issue of guilt. In fact, the State's evidence established that the underlying facts did not arise out of gang-related conduct. Yet, because there was no direct evidence establishing Mr. Young's guilt, the State improperly relied upon evidence of his gang affiliation to distract the jury from this evidentiary gap.

A. *The State Introduced Evidence of Gang Affiliation to Secure a Conviction in a Weak Case Lacking Direct Evidence of Guilt.*

The State's theory at Mr. Young's capital trial was that the offense arose out of a personal dispute between Thomas Hubbard and the victim, Ki-Jana Freeman, regarding the burglary of Mr. Hubbard's home. (R. 437-38, 869-70, 1241, 1291.) As the Court of Criminal Appeals recognized, "the matter did not directly involve gang-related business." *Young*, 2021 WL 3464152, at \*23. Nevertheless, the State was allowed to improperly introduce irrelevant and highly prejudicial evidence that Mr. Young was a high-ranking member of the "Imperial Almighty Gangsters," and that the gang's activity included the sale of drugs, without any connection to the charged offense. (R. 727-44, 804-07, 811, 827-28, 835-36, 868, 913, 1277, 1282.)

The Court of Criminal Appeals, despite recognizing that "the matter did not directly involve gang-related business," determined that "the evidence of Young's gang affiliation was relevant to show his motive for his involvement in Freeman's death." *Young*, 2021 WL 3464152, at \*23. Notably, the court relied upon *United States v. Peete*, a case in which the prosecution pursued an interlocutory appeal to challenge a pretrial ruling that it could not introduce evidence of gang affiliation. 781 F. App'x 427, 431 (6th Cir. 2019). Yet, the lower court here failed to recognize that there was no predicate showing in Mr. Young's case that any gang affiliation evidence would be relevant.

In fact, there was no demonstrable connection between Mr. Young's alleged gang affiliation and the offense. The only testimony about the alleged planning meeting where the codefendants, two of whom lived with Mr. Young, discussed killing Mr. Freeman came from De'Vontae Bates and Austin Hammonds. (R. 747-54, 810-17.) At no point in either of their testimony about the planning meeting did they indicate that the offense had any relationship to the Imperial Almighty Gangsters, that the victim was involved in any gang activity, that gang members were ordered to participate in the offense, that the gang's structure dictated the roles the men played in the offense, that the murder advanced a gang objective, or that anyone acted on orders from Mr. Hubbard. (R. 747-54.)

Further, testimony indicated that the perpetrators voluntarily participated in the offense (R. 753, 763, 813), contrary to the lower court's statement that "Hubbard, as the leader of the Almighty Imperial Gangsters, recruited the other gang members to assist him," *Young*, 2021 WL 3464152, at \*23. Bates, for example, made clear that he was not ordered to participate in the offense:

- Q. Let me ask you, De'Vontae, what was to be your role in this conspiracy to kill KJ Freeman?
- A. I was supposed to text him and lead him to Spring Creek Apartments.
- Q. Were you asked to do that?
- A. No, sir.
- Q. Nobody asked you to do that?
- A. No, sir.

Q. You volunteered to do it?

A. Yes, sir.

(R. 752-53.) Bates also testified that Mr. Young volunteered to obtain ammunition for the offense (R. 763), further rebutting the claim that anyone acted on orders from a superior.<sup>4</sup>

Indeed, evidence presented by the State actually contradicted the contention that gang participation provides a motive here. For example, Meagan Bryant, Mr. Young's former girlfriend, testified that she and Mr. Young lived with Mr. Hubbard at the time the home was burglarized, providing a natural connection between Mr. Hubbard and Mr. Young irrespective of any gang affiliation. (R. 867.) Likewise, the State's theory at trial was that the victim was killed following the burglary of a home where Thomas Hubbard, Benjamin Young, and Peter Capote all resided. (R. 437-38, 807, 869-70, 1241, 1291.)

Ultimately, when every reference to the gang activity is removed from the record, the motive and elements of the offense remain unchanged, a fact illustrated by the State's opening and initial closing arguments that did not once mention the gang or gang activity (R. 437-42, 1238-60), and a fact ignored by the lower court when it found that "the State did not advance as Young's motive a

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<sup>4</sup> Thus, this case is even further distinguishable from *Peete* because there "another gang member [] had **ordered** [the defendant] to assist him **as part of [the defendant]'s duties as a security team member**," 781 F. App'x at 438 (emphasis added).

personal dispute,” *Young*, 2021 WL 3464152, at \*21. Critically, the underlying dispute here, over the theft of an Xbox, simply has no plausible connection to gang activity. The motive for the offense here was entirely personal, a point the prosecution repeatedly emphasized at trial through testimony and argument about Mr. Hubbard’s feelings of anger. (R. 437-38, 463, 730, 810, 895-96.) Accordingly, the gang evidence was inadmissible for any purpose at trial and this Court should grant certiorari and reverse.

*B. The Improper Gang Evidence Prejudiced Mr. Young’s Defense at Trial.*

Without being required to lay an evidentiary foundation to establish the relevance of any gang affiliation evidence, the State was permitted to take advantage of improper character evidence to paper over gaps in its case and undermine Mr. Young’s defense. Mr. Young denied any participation in the offense and there was minimal evidence connecting him to it. Evidence that Mr. Young was a leader of a criminal gang and that he engaged in drug sales critically undermined his defense and the risk of prejudice was significant given: 1) the inherently prejudicial nature of the gang evidence; 2) the prosecution’s reliance on witnesses with significant credibility issues; and 3) the lack of evidence of Mr. Young’s guilt.

First, there is evidence in the record that the jurors in this case were directly impacted by the specter of Mr. Young’s alleged gang membership. On

the evening of February 7, following the jury's guilt phase verdict and before the outset of the penalty phase, juror B.M. contacted the sheriff's department because he was afraid of activity outside his home. (R. 1349-50.) B.M. reportedly "noticed some suspicious activity in [his] neighborhood last night which made [him] uneasy and concerned [him] that there may be some relation to this case." (R. 1349-50.) Although the sheriff's office concluded that the activity was related to some "break-ins that's going on out there right now" (R. 1351), B.M.'s fear of potential retaliation for his verdict is likely a direct reflection of the fears that stem from irrelevant gang evidence.

The State's extensive use of the gang evidence was especially prejudicial to Mr. Young given the relatively weak nature of the evidence against him. As defense counsel argued at trial, Mr. Young's entire "defense in this case [was] a very simple and honest defense. He didn't do it. He wasn't there." (R. 453.) Mr. Young's defense was supported by the lack of direct evidence connecting him to the offense. He had no prior relationship with the victim, gave no inculpatory statement, was not clearly identified on the surveillance footage, was not identified at the scene by the surviving victim or the eyewitnesses, and was not connected to the crime by DNA or fingerprint evidence.<sup>5</sup> Although the State

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<sup>5</sup> The State did introduce evidence that Mr. Young's DNA was on a soda can inside the truck seen at the offense. (R. 854, 1067.) However, testimony established that Mr. Young had access to the vehicle for weeks before the



asserted Mr. Young possessed a handgun and fired it during the offense, there were no bullets or shells recovered from this alleged gun and the weapon itself was never recovered, nor was it identified or readily observable in the surveillance footage. (C. 422; R. 671.) At the same time, codefendants Peter Capote and Thomas Hubbard were directly connected to the murder weapon (C. 480; R. 749, 751, 815-16, 920), and coconspirators Austin Hammonds and De’Vontae Bates admitted both that Mr. Young had no prior relationship to the victim and that they were in contact with the victim on the day that he was killed. (C. 474-79, 481-85; R. 753-55, 813, 818-19.) Given the lack of direct evidence of Mr. Young’s guilt, there is an impermissible risk that the jury found him guilty not on the evidence but merely by association.

## CONCLUSION

In *Dawson*, this Court held that the freedom of association prohibits the State from obtaining a death sentence based merely on membership in a “morally reprehensible” group without first establishing its relevance to any mitigating or aggravating circumstance. The lower court’s opinion in this case established that the State of Alabama could obtain a capital conviction based on membership in a morally reprehensible group without first establishing its

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offense, was often present in the truck, and frequently “drank sodas in a can” indicating his DNA could have been left in the truck at any point in those weeks before the offense. (R. 797, 899.)

relevance to any issue of guilt. This Court should resolve this conflict and affirm that *Dawson* applies to the entirety of a capital trial. For the foregoing reasons, Petitioner Benjamin Young prays that this Court grant a writ of certiorari to the Alabama Court of Criminal Appeals.

Respectfully Submitted,

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