

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
BRIAN DUANE BROOKINS,

*Petitioner,*

v.

STATE OF GEORGIA,

*Respondent.*

\_\_\_\_\_  
On Petition for Writ of Certiorari  
to the Georgia Supreme Court

\_\_\_\_\_  
**CAPITAL CASE**

**PETITION FOR WRIT OF CERTIORARI**

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## CAPITAL CASE

### QUESTION PRESENTED

In this Georgia death penalty case, the local Sheriff gave key testimony for the State, detailing his investigation of the crime and arrest of Petitioner Brookins. The Sheriff described to the jury how he personally convinced Brookins not to commit suicide and instead hand the murder weapon to the Sheriff and submit to custody without incident. The Sheriff also testified for the State about Brookins's mental illness and intellectual disability.

The same local Sheriff also served as the custodian of the jury during the five-day guilt phase—in which the Sheriff testified—and the two-day sentencing phase. Specifically, the judge introduced the Sheriff to the jury before the trial started. The Sheriff then met with the jurors in the courtroom and addressed the jury off the record. And throughout the trial, the Sheriff oversaw the juror's breaks, meals, lodging, transportation, and access to phones, computers, televisions, and the Internet.

The question presented is this:

Did the Sheriff's dual role as prosecution witness and custodian of the jury strip Brookins of his constitutional right to an impartial jury and reliable determination of sentence in violation of *Turner v. Louisiana*, 379 U.S. 466 (1965)?

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**PARTIES TO THE PROCEEDING**

Petitioner Brian Duane Brookins was the defendant/appellant in the proceedings below. Respondent State of Georgia was the plaintiff/appellee in the proceedings below.

**LIST OF RELATED PROCEEDINGS**

Trial and Direct Appeal

*State v. Brookins*, Baldwin Cty. No. 06CR45776 (Oct. 16, 2007)

*Brookins v. State*, Ga. No. S22P0556 (Oct. 4, 2022)

## **PETITION FOR WRIT OF CERTIORARI**

Petitioner Brian Duane Brookins respectfully petitions this Court for a writ of certiorari to review the judgment of the Georgia Supreme Court.

### **OPINIONS BELOW**

The decision of the Georgia Supreme Court affirming Petitioner’s conviction and death sentence is reported at *Brookins v. State*, 879 S.E.2d 466 (Ga. 2022). *See* App. 1a-73a.

### **JURISDICTION**

The Georgia Supreme Court affirmed Petitioner Brookins’s conviction and death sentence on October 4, 2022. Petitioner timely moved for reconsideration of the judgment, but the Georgia Supreme Court denied that motion on November 2, 2022. *See* App. 74a. On January 11, 2023, Justice Thomas extended the time for filing this petition to and including March 2, 2023. *See Brookins v. Georgia*, No. 22A623 (Jan. 11, 2023). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

### **RELEVANT CONSTITUTIONAL PROVISIONS**

The Sixth Amendment to the United States Constitution provides, in relevant part: “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 . . . .”

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “[N]or 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 Sheriff of Baldwin County played a pivotal role in the State’s case against Brookins. Brookins was charged with the shooting death of his wife, Suzanne Brookins, and her fifteen-year-old daughter, Samantha Giles. Vol. 1, R. 8-13.<sup>1</sup> After the shooting, Brookins drove straight to his mother’s house. Vol. 28, T. 25. There, he placed a call to Baldwin County Sheriff Bill Masee. Vol. 28, T. 69-70. The Sheriff—who knew the Brookins family well<sup>2</sup>—already knew about the shooting and had been to the crime scene. Vol. 28, T. 66.

At Brookins’s trial, the Sheriff recounted his involvement in the investigation for the jury. He testified that when Brookins called him, he was already on his way to Brookins’s mother’s house, where he “figured [Brookins] would be.” Vol. 28, T. 69. When he arrived, Brookins was outside his mother’s home and still in possession of the gun. Vol. 28, T. 71-72. While there were “a number of deputy sheriffs” at the Brookins house already, Vol. 28, T. 69, Brookins was waiting to speak with the Sheriff. The Sheriff saw Brookins standing behind a truck. Vol. 28, T. 71. He walked

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<sup>1</sup> All citations to the record refer to the record on appeal that was docketed at the Georgia Supreme Court in the appeal below. Citations denoted “Vol. \_\_, R. \_\_” refer to the clerk’s record. Citations denoted “Vol. \_\_, T. \_\_” refer to the reporter’s transcript.

<sup>2</sup> The Sheriff testified at trial that he knew Suzanne and Samantha personally. Vol. 28, T. 66. He grew up with Suzanne and had seen Samantha with her family “over the years.” Vol. 28, T. 66-67. His connection with the victim’s family ran deep because Suzanne’s brother, Steve McDade, was also a Baldwin County Deputy Sheriff. Vol. 28, T. 67. The Sheriff also knew Brookins and his family. Vol. 28, T. 68.

up to the other side of the truck, even though with “an incident like this, you never know what’s gone [sic] happen.” Vol. 28, T. 72.

The two men had an intense dialogue in the driveway for about an hour. Vol. 28, T. 71-77. During this time, Brookins held the gun to his own head and repeatedly threatened to kill himself. Vol. 28, T. 73-74. The Sheriff tried to dissuade Brookins from committing suicide. Vol. 28, T. 73-75. The Sheriff told the jury he was determined to resolve the crisis so that he could walk his daughter, then a high school senior at Georgia Military College, “across the football field at half-time” that night. Vol. 28, T. 76. After a tense hour of conversation, the Sheriff was able to convince Brookins to put down the gun. Vol. 28, T. 80-81. The Sheriff then arrested Brookins. Vol. 28, T. 81.

The State charged Brookins with multiple counts of malice murder, felony murder, aggravated stalking, cruelty to children in the third degree, and possession of a firearm by a convicted felon, and noticed its intent to seek the death penalty. Vol. 1, R. 17-19, 34-36.

Knowing that it would be improper for the Sheriff to serve simultaneously as prosecution witness and custodian of the jury, defense counsel filed a pretrial motion requesting “an impartial witness monitor.” Vol. 1, R. 275-79. In the motion, defense counsel explained:

To allow the sheriff’s office to act as a witness monitor is closely akin to putting the proverbial fox in the chicken house. It is apparently the practice of this Court to use deputy sheriffs from that agency as courtroom bailiffs. It is improper for the investigatory agency to also serve as an arbiter of compliance or non-compliance with this Court’s rulings and orders.



Vol. 1, R. 277. The trial court acknowledged defense counsel's concerns and assured counsel that they could "work out" an arrangement whereby deputies from the sheriff's office would not serve as witness monitors. Vol. 15, T. 7-9.

Nevertheless, immediately after the jury was selected, the trial court instructed the jurors that, for the remainder of the trial, in which they were sequestered, the jurors would be under the control of the Sheriff. Specifically, the court told the jurors:

- "Ladies and gentleman, if I can have your attention for just a few more minutes. In just a moment, I'm going to turn all of you over to the Sheriff of Baldwin County and he'll give you further instructions as needed. He'll meet with you here in the courtroom."
- "You'll only be allowed to make phone calls at the direction of the Sheriff."
- "You're going to be allowed to watch television, except you'll not be allowed to watch any news programs whatsoever or certain other stations. You'll receive further instructions on that from the Sheriff."
- "Ladies and gentlemen, you may not have in your possession any communication device, that includes pagers, cell phones and so forth, except as approved by the Sheriff."
- "You may bring a computer with you – I remember last week a few of you asked if you could bring computers. You may do that, except you may not connect to the internet except under the instructions established by the Sheriff."
- "[A]side from the time that you're in court, you'll be under the control – or under the direction of the Sheriff."
- "Now, with those instructions in mind, I'm going to introduce you and turn you over to the Sheriff of Baldwin County, Mr. Bill Masee. He's going to meet with you in here. I think that will be much easier and he'll tell you what to do at that point. . . . Sheriff Masee, if you want to address the jury."

Vol. 26, T. 527-31. Consistent with the trial court's instructions, the Sheriff initially met with the jurors in the courtroom and addressed them off the record. Vol. 26, T. 530-31. The Sheriff was also in charge of arranging the jury's breaks, meals, lodging, and transportation during the five-day merits phase of the trial.

The Sheriff interacted with jurors prior to taking the witness stand. During one of the first breaks, the trial court noted that the Sheriff had the responsibility of "get[ting] [the jurors] fed somewhere and they've got to be happy." Vol. 27, T. 86. To that end, the Sheriff planned to "feed them downtown tonight, take them to the Brick and then, then we can get them back early . . . ." Vol. 27, T. 86. On the second day of trial, the Sheriff testified, describing for the jurors his personal intervention into the investigation of the crime and his singular effort to calm Brookins and bring him into custody.

Brookins did not contest the fact that he shot and killed the two victims. Instead, his defense was that he was guilty but intellectually disabled and/or guilty but mentally ill. Importantly, the Sheriff testified about Brookins's mental health and intellectual disability—issues that were hotly contested. He described Brookins's demeanor for the jury, both in the immediate aftermath of the offense and during numerous interactions the two previously had. Vol. 28, T. 82-84. He testified that Brookins was "excitable" but "never had any problem communicating." Vol. 28, T. 82. Thus, the Sheriff saw no reason to think that Brookins was suffering from mental illness at the time of the crime. When asked by the State about

Brookins’s “mental capacity from a . . . layperson’s perspective,” the Sheriff also dismissed the contention that Brookins had an intellectual disability:

PROSECUTOR:           Okay. You realize one of the issues in this case is whether or not Defendant’s mentally retarded. I’m not asking you that because I know you’re not a psychologist, but what I’m getting at is observations you’ve seen and anything else you can think of about his mental capacity from a lay – a Sheriff or a layperson’s perspective. You said when you talked to him it’s normal --

SHERIFF:                I’ve never had a --

PROSECUTOR:           -- lucid conversations.

SHERIFF:                -- problem communicating with him. He’s always communicated with me whether it’s an issue of him being in court or the day he asked me about going to get his property from their house on Merry Drive.

PROSECUTOR:           Are these logical, intelligent conversations that you have --

SHERIFF:                Yes, sir.

PROSECUTOR:           -- with him?

SHERIFF:                Yes, sir.

Vol. 28, T. 84.

After his testimony, the Sheriff’s personal role in managing the jury continued throughout the guilt phase of the trial. *See, e.g.*, Vol. 29, T. 110 (Sheriff discussing the jury’s lunch break with the judge); Vol. 29, T. 143 (Judge requesting the jurors to “just go with the Sheriff” and the Sheriff addressing the jurors about taking the jury out for their lunch break); Vol. 30, T. 105 (Sheriff addressing the

jury and judge about the jury's lunch arrangements); Vol. 31, T. 126 (Sheriff informing the judge that the jury's food has not arrived at the courthouse yet). The jury found Brookins guilty on all counts. Vol. 32, T. 93-98.

The Sheriff continued to serve as custodian of the jury during the sentencing phase. Vol. 33, T. 309 (Judge instructing the jurors to wait in the courtroom until the Sheriff releases them); Vol. 33, T. 385 (Judge instructing the jury that the Sheriff will arrange for transportation); Vol. 33, T. 386 (Sheriff bringing jurors into the courtroom after they reached a verdict); Vol. 33, T. 394 (Judge informing jurors that they will "be taken by the Sheriff back to Morgan County"). After two days of deliberations, the jury returned a death sentence. Vol. 33, T. 387-88. The trial court then sentenced Brookins in accordance with the jury's verdict. Vol. 33, T. 392-93.

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

The Sheriff's dual role as prosecution witness and custodian of the jury stripped Brookins of his constitutional rights to an impartial jury and reliable determination of sentence. The Sheriff was clearly a significant witness in the case, and the Georgia Supreme Court found that the Sheriff also "was responsible, at least ultimately, for arranging the jurors' transportation, for arranging their meals, and for logistical matters such as their access to telephones, televisions, and computers." App. 25a. But the court declined to find reversible error, reasoning that there is no "reasonable probability" that the impropriety "led to the jury's decision to impose a death sentence." App. 25a-26a. That decision cannot be squared with this Court's recognition of the "extreme prejudice inherent in this continual

association throughout the trial between the jurors and [a key witness] for the prosecution.” *Turner v. Louisiana*, 379 U.S. 466, 473 (1965). This Court should reverse the decision below.

**I. Brookins’s Constitutional Right to an Impartial Jury Was Violated When the Sheriff Doubled as a Key Prosecution Witness and the Custodian of the Jury.**

This Court has held that a person’s constitutional right to an impartial jury is violated when a sheriff doubles as a key prosecution witness and custodian of the jury. *Turner v. Louisiana*, 379 U.S. 466, 474 (1965). In *Turner*, two deputy sheriffs were key prosecution witnesses at trial. 379 U.S. at 467. The deputies testified about their investigation of the crime scene and their arrest of Turner. *Id.* The trial court put the Sheriff in charge of the jurors, who were sequestered at trial. Deputies from the sheriff’s office—including the two deputies who served as key prosecution witnesses—interacted with the jurors during the trial. The deputies “drove the jurors to a restaurant for each meal, and to their lodgings each night.” *Id.* at 468. They also conducted errands for the jurors and conversed with them. *Id.* At the conclusion of trial, Turner was convicted and sentenced to death. *Id.* at 469.

This Court concluded that “[w]hat happened in this case operated to subvert th[e] basic guarantees of trial by jury.” *Id.* at 473. The Court noted that the deputy sheriffs’ testimony was “not confined to some uncontroverted or merely formal aspect of the case,” but instead, played an important role in determining whether Turner “was to be sent to his death.” *Id.* Although there was no evidence to suggest that the deputy sheriffs discussed the case with the jurors, the Court stated that “it

would be blinking reality not to recognize the extreme prejudice inherent in this continual association throughout the trial between the jurors and these two key witnesses for the prosecution.” *Id.* As a result, the Court reversed Turner’s conviction—without requiring him to demonstrate prejudice from the deputy sheriffs’ actions. *Id.* at 474; *see also Gonzales v. Beto*, 92 S. Ct. 1503, 1505 (1972) (Stewart, J., concurring) (noting that “the adversary system of justice is perverted” when a key prosecution witness simultaneously serves as “the officer of the court specifically charged with the care and protection of the jurors”).

Here, the Sheriff’s testimony was not confined to an “uncontroverted or merely formal” aspect of Brookins’s case. In gripping detail, the Sheriff described his pivotal role in the events leading up to the arrest of Brookins. Vol. 28, T. 66-81. The Sheriff addressed whether, in his view, Brookins had an intellectual disability or was suffering from mental illness at the time of the crime—testimony that went directly to the most contested issues at Brookins’s trial. Vol. 28, T. 82-84. The Sheriff’s testimony was central to the prosecution’s case.

The Sheriff also had “continuous and intimate association” with the jurors throughout the five-day trial and two-day sentencing proceeding. The Georgia Supreme Court found that “[t]he record shows that throughout Brookins’s trial the sheriff of Baldwin County was responsible, at least ultimately, for arranging the jurors’ transportation, for arranging their meals, and for logistical matters such as their access to telephones, televisions, and computers.” App. 25a. Indeed, the trial court introduced the Sheriff to the jury before the trial started. Vol. 26, T. 530. The

court also told the jurors they were “under the direction of the Sheriff.” Vol. 26, T. 529. Consistent with the court’s instructions, the Sheriff met with the jurors in the courtroom, addressed the jury off the record, and facilitated the jurors’ breaks, meals, lodging, transportation, and access to phones, computers, televisions, and the Internet. Thus, the record firmly establishes that the Sheriff exercised continuing authority over the jurors throughout the trial. *See, e.g.*, Vol. 29, T. 110, 143; Vol. 30, T. 105; Vol. 31, T. 126, 309, 385-86, 394. The Sheriff’s dual role as prosecution witness and custodian of the jury stripped Brookins of his constitutional rights to an impartial jury and reliable determination of sentence in violation of *Turner*.

## **II. Certiorari Is Appropriate Because the Georgia Supreme Court’s Ruling Conflicts Directly with This Court’s Decision in *Turner*.**

This Court should grant certiorari because the Georgia Supreme Court addressed the *Turner* issue on the merits with respect to sentencing, and its analysis is incompatible with this Court’s precedent. In its decision, the Georgia Supreme Court concluded that the claim was waived as to Brookins’s conviction because the defense failed to object in the trial court. App. 25a. However, the court addressed the claim as to sentencing as part of its capital sentencing review, which is guided by the procedural and substantive protections of the United States Constitution. *Conner v. State*, 303 S.E.2d 266, 273 (Ga. 1983).<sup>3</sup> App. 25a-26a. In its

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<sup>3</sup> The Georgia Supreme Court has explained that the purpose of its capital sentencing review is to ensure that death sentences do not violate the federal Constitution. *Id.* To that end, the court consistently addresses federal constitutional claims on the merits to ensure that any alleged error did not result in an arbitrary death sentence. *See, e.g., Sprouse v. State*, 296 S.E.2d 584, 586-87 (Ga. 1982) (vacating the death sentence due to the improper limitation of mitigating evidence); *Hawes v.*

analysis, the court concluded that the Sheriff's dual role as custodian of the jury and key prosecution witness did not have any effect on the jury's decision to return a death sentence. App. 25a-26a. As the court explained, "in light of Brookins's clear position at trial that he was not contesting his guilt and in light of the limited nature of the sheriff's testimony about his ability to communicate with Brookins, we concluded that this claim does not change our analysis in our Sentence Review below." App. 26a (citing *Martin v. State*, 779 S.E.2d 342, 360 (Ga. 2015)). That decision was incorrect and should be reversed.

The state court's decision cannot be squared with *Turner*. In *Turner*, this Court recognized that "it would be blinking reality not to recognize the extreme prejudice inherent in th[e] continual association throughout the trial between the jurors and [a] key witnes[s] for the prosecution." 379 U.S. at 473. The prejudice in *Turner* was particularly extreme because the key witnesses were deputy sheriffs, which "could not but foster the jurors' confidence in those who were their official guardians during the entire period of the trial." *Id.* at 474. By contrast, the Georgia Supreme Court ignored that reality and concluded that the error was harmless. However, neither this Court nor other state courts have required a defendant to show actual prejudice to obtain relief for claims arising under *Turner*. See *United States v. Olano*, 507 U.S. 725, 739 (1993) (recognizing that prejudice is presumed for claims arising under *Turner*); *Ex parte Pierce*, 851 So. 2d 606, 612 (Ala. 2000)

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*State*, 240 S.E.2d 833, 839 (Ga. 1977) (vacating the death sentence due to prosecutorial misconduct during the closing argument); *Martin*, 779 S.E.2d at 363-64 (reviewing claim that victim impact evidence was improperly admitted during the sentencing phase of Martin's capital trial).



(holding that “the defendant does not have to show actual prejudice” to prevail on a *Turner* claim); *Jenkins v. State*, 825 A.2d 1008, 1027-29 (Md. 2003) (recognizing the “inherent prejudice” that arises from contact between testifying witnesses and jurors); *Barral v. State*, 353 P.3d 1197, 1198-99 (Nev. 2015) (recognizing that errors under *Turner* are “structural errors” that “preclude the need for showing actual prejudice to warrant relief”).

The state court’s decision also cannot be squared with the record in this case. The Georgia Supreme Court specifically found that: (1) the Sheriff “was responsible” for the care of the jury during Brookins’s trial; (2) it was “no surprise” that the Sheriff testified, given the role he played in the investigation of the case; and (3) the Sheriff provided testimony bearing on Brookins’s lucidity and potential intellectual disability. App. 25a. Nevertheless, the court concluded that the Sheriff’s testimony was minimal because he only briefly testified regarding Brookins’s intellectual disability and mental illness. App. 26a. That analysis is incorrect for two reasons. First, even though the Sheriff’s testimony as to Brookins’s intellectual disability was brief, it was not limited in substance. The prosecution asked the Sheriff for his opinion—from “a Sheriff or a layperson’s perspective”—as to Brookins’s intellectual functioning. Vol. 28, T. 84. In response, the Sheriff told the jury that Brookins had “logical, intelligent conversations” with him for years, Vol. 28, T. 84, which was critical testimony given the disputed issues in the case. Second, aside the Sheriff’s impressions of Brookins’s mental functioning, the Sheriff also provided emotional testimony about his involvement in the investigation and denouement of the crime,

culminating in powerful testimony about his efforts to convince Brookins to turn himself in to the police. Thus, by any measure, the Sheriff was an essential prosecution witness whose role in the State's case "could not but foster the jurors' confidence" in the person who was the jurors' "official guardians during the entire period of the trial." *Turner*, 379 U.S. at 474.

The Sheriff's dual role as custodian of the jury and key prosecution witness operated to undermine Brookins's right to an impartial jury and cannot be harmless. The decision below should be reversed.

### **CONCLUSION**

Petitioner Brian Duane Brookins respectfully requests that this Court grant certiorari and reverse the judgment of the Georgia Supreme Court.

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**CERTIFICATE OF SERVICE**

I certify that on March 2, 2023, I served a copy of the attached petition for writ of certiorari on the State of Georgia by sending the petition by e-mail and by first-class mail, addressed as follows:

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