No.

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SUPREME COURT OF THE UNITED STATES

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MAURICE BELLAMY,

Petitioner

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vs.

UNITED STATES OF AMERICA,

Respondent

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On Petition for a Writ of Certiorari to the
District of Columbia Court of Appeals

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# PETITON FOR A WRIT OF CERTIORARI

Steven R. Kiersh
5335 Wisconsin Avenue, N.W.
Suite 440
Washington, D.C. 20015
(202) 347-0200

Attorney for Petitioner
Member of the Bar of the
United States Supreme Court.

## QUESTIONS PRESENTED

I. Whether the trial court erred when it denied defendant's repeated motions to sever counts in the indictment

II. Whether the cruel, heinous and atrocious enhancement is unconstitutionally vague and whether the District of Columbia Court of Appeals incorrectly concluded the issue was not preserved for appellate review

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## PARTIES TO THE PROCEEDINGS

1. **Petitioner Maurice Bellamy:** Maurice Bellamy is an individual and resident of the District of Columbia. He was convicted before the Superior Court of the District of Columbia of two separate first-degre murders and related weapons offenses. His convictions were affirmed by the District of Columbia Court of Appeals. Petitioner is currently serving a 60 year sentence in a United States Penitentiary.

2. **United States of America:** The United States prosecuted Petitioner in the Superior Court of the District of Columbia.

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## Opinion Below

On June 29, 2023, the District of Columbia Court of Appeals affirmed Petitioners convictions for two separate counts of first degree murder and related weapons offenses. (D.C. Court of Appeals Case No. 19-CF-0004). A copy of the Opinion is included in the attached Appendix Exhibit #1).

## JURISDICTION

Petitioner's direct appeal was denied on June 29, 2023. Review by the United States Supreme Court is sought pursuant to Supreme Court Rule 10(b) as the considerations for the Petitioner for Writ of Certiorari have been satisfied in this matter.

Petitioner invokes this Court's jurisdiction under 28 U.S.C. Sec. 1257, Petitioner having timely filed this Petition for Writ of Certiorari within 90 days of the judgment of the District of Columbia Court of Appeals.

## PETITION FOR WRIT OF CERTIORARI

Petitioner, Maurice Bellamy, currently in the custody in the United States Bureau of Prisons, having been convicted of two counts of first degree murder while armed in the Superior Court of the District of Columbia, respectfully petitions this Court for a Writ of Certiorari to review the judgment of the District of Columbia Court of Appeals entered on June 29, 2023.

## CONSTITUTIONAL PROVISIONS

Defendant relies upon the Due Process Clause of the United States Constitution in seeking the relief requested herein. The Due Process clause of the Fifth Amendment to the United States Constitution mandates that no person shall be deprived of life, liberty, or property without due process of law.

## STATEMENT OF THE CASE

Maurice Bellamy was charged by indictment with two counts of first-degree murder and related weapons offenses. One murder was the December 15, 2015, murder of Devonte Washington. The second murder was the felony/murder of Arthur Baldwin on March 26, 2016

A pretrial Motion to Sever Counts was filed and denied before the Honorable Lynn Leibovitz in November 2017. The motion to sever was renewed and denied before the Honorable Juliet McKenna following the close of the government's evidence in its case-in-chief.

Trial commenced before Judge McKenna in February 2018. In March 2018, the jury returned verdicts of guilty as to all counts in the indictment.

Defendant was sentenced to a term of imprisonment of ***60*** years. A timely Notice of Appeal was filed.

## STATEMENT OF MATERIAL FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW

Damin Bynum knew Dennis Morton and Ronika Minnick as good friends with whom he had lived in Southwest, Washington, D.C. Charlie and "Mo", (defendant), would also stay with them. Bynum was good friends with the defendant with whom he went to middle school. Bynum spoke with defendant over the telephone concerning a shooting at the Deanwood Metro. Morton was informed by Bynum that defendant committed the shooting at Deanwood. Defendant stated, "he just shot a boy…he couldn't tell me why."

Metropolitan Police Department Officer Edward Hanson of the D.C. Department of Forensic Services had been assigned to the Mobile Crime Unit on March 26, 2016. He responded to the Deanwood Metro station as the lead technician. Bullet fragments, a jacket, a cellphone from the decedent, currency, and fingernail clippings from the decedent were recovered.

On March 26, 2016, Morton went to a go-cart track with defendant, his wife Ronika and their son. They were at a shopping center to get some food, took the R-12 bus and arrived at the Deanwood Metro

station. Morton identified a video recording and addressed his group going up an escalator. He heard defendant say “why the fuck you looking at me? and the decedent say “what.” Morton ran towards defendant before he opened fire after seeing him grab a gun from his pocket. Morton identified defendant’s gun as a chrome .38 revolver.

Mo told Morton that the incident happened because “DeVonte was walking up on him.” Morton agreed to help get defendant to Baltimore. Even though Morton testified he took the police to Mo’s cousin’s house, he did not call the police when Mo came to his house. “Petey”, an older dude and drug dealer in the neighborhood, saw Morton and his wife get into a police car. Petey had sons who were involved in murders and robberies in the neighborhood.

The government transitioned Morton’s testimony into the Arthur Baldwin murder as Morton was an eyewitness to the murder. Defendant used the same gun that he used at the Deanwood murder. Charlie, the other shooter, used a .22 revolver. Petey had informed Morton there was a guy sitting in Morton’s neighborhood who was of interest. According to Petey, “Arthur Baldwin was going down to Jason to get a lot of pounds of weed from him and he wanted us to run him from right there.”

Defendant fired the first shot as Baldwin was trying to get out of the car and a second shot was then fired. Charlie fired a shot at Baldwin "right out front of the car." Baldwin ran across the street and collapsed in the grass. An I-pad and a wallet were taken from Baldwin's car. They all assembled at Morton's house right after the shooting. Petey came to the house and Morton said, "You made me kill that person over nothing."

Ronika Minnick, the wife of Denis Morton, lived on Irvington Street with her husband, son, cousin and Maurice. She knew Maurice as "Mo, Mikey B, Mo-Mo" Minnick acknowledged receiving an I-pad from Maurice. She took the I-pad to the pawnshop not knowing who it belonged to. She later heard Maurice, her husband, cousin and two other guys, including Petey, talking about what happened and about robbing someone.

Minnick was at the Deanwood Metro station on March 26, 2016 with her husband, her son and Mo. They went up the Deanwood platform and Maurice "was arguing with DeVonte Washington. Maurice was saying that "DeVonte kept like mugging him." Maurice asked him "What the F he keep looking at him for." Minnick saw defendant shoot DeVonte Washington that day.

Bellamy went to Minnick's house that evening. Subsequently, she made her husband call the police. She and Morton walked to the end

of the street and the police picked them up. Minnick told the police Maurice killed DeVonte. She did not tell the police about the conversation she heard in the hallway when she spoke with the police on March 27, 2016. Id. 192.

Firearms examiner Christopher Coleman was qualified as an expert in the area of firearms examination and tool mark identification. He examined bullets in this case but not cartridge casings. Coleman opined that two .38 caliber/.357 bullets DW (DaVonte Washington) and two .38 caliber/.357 bullets AB (Arthur Baldwin) were fired from the same rifle barrel). Coleman additionally examined four .22 caliber rimfire bullets and could not come to any conclusions as the bullets "were so mushroomed and deformed…."

Coleman acknowledged there were no casings provided to him to examine. If you had casings, "you can get an idea of potential guns that could have fired them…looking at the class characteristics." Id. 66. Casings can be very valuable and if he had casings, he would have examined them. All guns, except shotguns, have rifling. Id. 67.

Coleman conducted a reexamination of the ballistics in this case at the request of the Office of the U.S. Attorney. Both the original examiner (Webster) and Coleman were both working on behalf of the Department of

Forensic Sciences in the preparation of their individual reports. Coleman had no reason to question the credentials of Webster. Tr. 81-82

Webster prepared a report in this case dated April 14, 2016. Webster's conclusions were that with respect to the .22 firearms, "although compatible with having been fired from the same firearm, these items lack sufficient individual matching markings to identify or eliminate them as having been fired from the same barrel."

Webster prepared an earlier report on April 6, 2016, concluding that, "Items 1 through 5, Items A-1 through 5 and Number 2 consists of two caliber .38/.357 magnum brass and copper bullets which were fired from a barrel with five grooves right to twist. Although compatible with being fired from the same firearm, these items lack sufficient markings to identify or eliminate them as having been fired from the same weapon…." Coleman agreed that Webster's report of April 6, 2016 memorialized an inconclusive finding. Id.

The following questions were asked and answers elicited from Coleman.

Q. Now, you agree that ballistics, while it's interesting and while it's helpful, is not an exact science; isn't that correct?

A. I wouldn't say it's not an exact science, no.

Q. Well you do not render your opinions to 100 percent degree of certainty, do you?

A. No.

Q. Do you know what percentage or can you quantify a percentage?

A. We don't…We don't talk about percentages

Q. Okay. So you have no idea what percentage are right or wrong, correct?

A. Okay. I'll let you go with that one.

If there is a disagreement among examiners, the case is submitted to an arbitration process. When asked if the examiners are called to testify during the arbitration process Coleman responded, "I—I don't know. I have never been involved in something like that." Coleman added, "Like I said, I don't know. I've never—I'm not aware of a situation where it has gone to arbitration and both people come in and talk about different things…." Coleman further testified, "We found errors in Mr. Barrett's work and in Mr. Webster's work…And we did have differing results on lots of different things."

Coleman was asked if the arbitrator rules that one of the analysts was incorrect, do they withdraw their opinions? He responded "I

don't know. It depends on what the arbitrator decides. One person might just say, well, okay." Another question was posed, "Not might. Do you know? To which he responded, "I don't know because I've never gone through an arbitration process."

At the conclusion of the government's case defendant moved for judgment of acquittal and renewed his motion for severance of counts. Judge McKenna denied the motion because of the existence of the gun as the "connective tissue" between the two homicides. Defendant's argument was based on Federal Rule of Evidence 403.

The prejudicial effect was argued as follows: "We had three witnesses introduced by the government and they were victim's families, starting with Mr. Baldwin, his father and his girlfriend. And they were heart wrenching. His father is a retired police officer, his girlfriend is a very solid citizen. And they came in here and they just broke down on the stand. No human being could not be affected and have an incredible amount of sympathy for these people…."

"And then we go to the DaVonte Washington murder, which has nothing to do with the Baldwin murder. This is not a racketeering case. This is not a conspiracy case. These are not separate overt acts that are

combined. These are two completely separate cases…we have the shooting death of Mr. Washington and his mother came in and she also seemed like an incredibly compelling person, and she fell apart on the witness stand…she's an eyewitness to this vicious shooting of her son at a metro station. And it's in front of her daughters. She chases the person down the stand…And again, the only connection…is Morton and the gun. And so any person who saw any of these three witnesses had to have been moved by their testimony. And plus the fact with DaVonte Washington, you've got a juvenile who is the victim." Id. 6-7.

Addressing the gun, defendant argued, "There is the first ballistic report, which the Government brought in the second examiner to say, well, I examined 35 of this person's reports and we need to do a redo. Whatever it is, I believe the jury will give the weight…they think is necessary to the ballistics testimony…the first examiner had six years at DFS and this specific report and that's why there's all this questioning about arbitration. This was never rejected by an independent arbitrator…the second examiner came in and said, I dispute his findings, and both were put to the jury. And the jury can consider whatever they want to consider…."

The trial court denied the motions determining the "ballistics

evidence is—there is substantial overlap here that would make those findings admissible in separate trials." Id. 10. The court added "it does not appear that there would have been any meaningful way to separate out their [Morton and Rinnick] involvement in each of these homicides…."

## REASONS FOR GRANTING THE PETITION

### I. It was a violation of due process of law to deny the repeated Motions to Sever the two homicides

District of Columbia Superior Court Criminal Rule 8(a) permits the joinder of offenses…if they "are of the same or similar character." Super. Ct. Crim. R. 14 provides, in relevant part that, "[i]f it appears that a defendant…is prejudiced by a joinder of offenses…in an indictment…or by such joinder for trial together, the trial court may…order separate trials of counts…or provide whatever other relief justice requires."

"When joinder is based on the 'similar character' of the offenses, a motion to sever should be granted unless (1) the evidence as to each of the joined crimes is separate and distinct, and thus unlikely to be amalgamated in the jury's mind into a single inculpatory mass, or (2) the evidence of each of the joined crimes would be admissible at the separate trial of the others." *Arnold v. United States*, 511 A.23d 399, 404-05 D.C. 2012), citing *Bridges v. United States*, 381 A.2d 1073,1075 (D.C. 1977).

**a. The pretrial challenge to joinder of the offenses**

Defendant filed a pretrial Motion to Sever Counts related to the homicides of Arthur Baldwin and DeVonte Washington. The Honorable Lynn Leibovitz conducted a hearing on November 9, 2017 and denied the Motion to Sever Counts. Defendant proffered as follows:

> The crux of this issue really is prejudice. And that you have one premeditated murder, one felony murder. There is very, very little in common between these two events. So the issue of prejudice is paramount in this case, because honestly if the jury convicts Mr. Bellamy of the felony one murder, they are likely to…convict him of the other murder.

Defendant added:

> In this circumstance we have two very significant murders --all murders are significant, but these are heinous murders. These are murders that the jury is certainly going to be concerned when they hear the testimony with either one of the murders. We have a teenager who was gunned down on a Metro platform. And so the risk of prejudice in this case is so high because of the nature of the offenses, the type— The type of activities that preceded the murders and the fact that, particularly with respect to the teenager, the fact that there is no apparent reason that this murder occurred. There is no motive. This isn't a drug offense. This isn't a robbery, so if the jury hears about the murder of the Secret Service officer for which there was specific planning and it was committed during the course of a felony, then they are going to clearly prejudice Mr. Bellamy in raising any particular defenses with respect to the murder of the teenager on the Metro platform.
>
> In response to the Court's inquiry as to how the evidence of the

separate murders will be presented, the government responded, “But we will present all of the evidence with respect to one murder. And then we will move on to the evidence with respect to the second murder….”

The trial court denied defendant’s pre-trial Motion to Sever Counts.

b**. The government conflated the two murders during the presentation of its case-in-chief**.

At the very start of the case during opening statement, the government presented its case in an impermissibly and highly prejudicial manner.

> This is as senseless as murder gets. And if this was where the case ended, we would ask you all to vote on the first-degree murder count. We’re going to talk more about the crimes that are charged and the elements of each crime as we make our way together through this opening statement. but that’s not where this case ends because not long after the defendant killed DeVonte, the police learned, through first some witnesses that were fiends of the defendant’s that the defendant used the same gun three months earlier to kill a young man by the name of Arthur Baldwin.

The government continued:

> So ladies and gentleman, this case involves not one, but two murders by the defendant. And we’re going to ask you, at the end of the case, to hold him accountable for what he decided to do, two senseless murders. The robbery gone bad was one of an innocent man, and a murder inspired by somebody looking at you wrong was the second one.

Dennis Morton, the man who took defendant into his home as a teenager, arguably was the government's most important witness. Morton was an active participant in the robbery/murder of Arthur Baldwin. Morton set up the plan to commit the robbery with individuals other than defendant, and Morton left a grievously wounded Arthur Baldwin to die in the street while he ransacked Baldwin's vehicle for property to steal.

Rather than put Baldwin on the stand two separate times to address the two separate murders, as contemplated by Judge Leibovitz but not required by her, the government used Morton to transition from one murder to the other murder. Morton provided the factual backdrop for the premeditated murder of DaVonte Washington, he provided details concerning where defendant was prior to the shooting, what defendant was doing prior to the shooting and what defendant actually did at the time of the shooting. Morton provided critical testimony concerning defendant's confession to the DaVonte Washington murder.

Morton then transitioned directly into the felony/murder of Arthur Baldwin providing significant details concerning the planning of the robbery, the actual robbery as well as defendant's involvement in the actual robbery/murder.

Similarly to Dennis Morton, his wife Ronika Minnick was an essential government witness whose testimony about the two murders was conflated. She first testified about receiving an I-Pad from the Baldwin murder and taking it to a pawnshop. Minnick testified she received the I-Pad from defendant. She then, just as with Morton, transitioned into the DaVonte Washington murder without interruption providing graphic details related to defendant's involvement.

**c. The trial court's denial of the renewed Motion to Sever Counts**

At the conclusion of the government's case, defendant again moved for a severance of the two homicide charges. Judge McKenna denied the renewed Motion to Sever Counts.

> And in my view, based upon the evidence that's come out during the course of the trial, that evidence really falls into three separate categories. Yes, there is, of course, the ballistics evidence. And the jury has heard testimony from Mr. Coleman, who was qualified as an expert witness. And based upon his examination of the bullets, he concluded that these bullets were fired from the same firearm. And, in fact, the match was obviously only able to be made after the shooting in the DaVonte Washington case.
> So clearly, the ballistics evidence is—there is substantial overlap here that would make those findings admissible in separate trials. But I think even separate and apart from the ballistics evidence, the second category that has come out during the course of the testimony is both the testimony of Mr. Morton and Ms. Minnick…it does not appear that there would have been any meaningful way to separate out their involvement in each of these homicides to fairly place

> their testimony and the actions that they did and did not undertake without having both homicides joined for purposes of trial…And, then, finally, I think to a lesser extent, the homicides were appropriately joined in order to fairly assess the investigative steps that the Metropolitan Police Department took in this case….

Judge McKenna added, "I will further note that the way that the evidence has come out, during the course of the trial, leads me to conclude that there is no undue prejudice that has been suffered by Mr. Bellamy as a result of the joinder of the two crimes."

**d. The government repeatedly conflated the two murders during both its initial closing argument and during its rebuttal closing argument**

In its initial closing argument, the government wasted no time conflating the two murders.

> What did you know Maurice Bellamy knew when he pulled that gun out? He knew that gun worked because he knew that he used it to kill someone else, Arthur Baldwin some three months earlier. It's not just his choice of weapon. It's how many times he used it. One fatal shot to the chest, another fatal shot to the chest. DeVonte wasn't coming to him. He couldn't come to anybody. That's when he got his second shot. That's how you know he did this on purpose.

In rebuttal closing argument, leaving the defense absolutely no opportunity to address the impermissible and highly prejudicial conflating of the two murders, the government continued to tie the two murders together.

"our hearts break for DeVonte's Washington family and for Arthur Bellamy's family and for Maurice Bellamy's mother." The only purpose for conflating the three families together was to unduly prejudice defendant by improperly arousing the passions of the jury to blame him for the heartbreak suffered by three families.

The rebuttal continued with the conflating of crimes in an emotional appeal to the jurors.

> With respect to Arthur Baldwin, he took Arthur Baldwin Arthur, Junior. And I know our hearts break in so many ways in *these cases*. But when you saw Arthur Baldwin, Senior walk through the well of this court and choke back tears with each of the the answers to the questions I could bring myself to ask him, he took this young man and together with his cohorts, this is what he did to him….

The final words to the jurors were, "This is only Mr. Bellamy's day in court. Because he did *these* things, we ask you, respectfully, that you simply hold him accountable for the decisions that he made to take *these two lives*." emphasis supplied.

### e. The government did not need ballistics testimony to prove the murder of DaVonte Washington

The ballistics evidence in the DaVonte Washington case was, at most, of marginal value in the prosecution of this offense. The far more

significant evidence included as follows:

1. A graphic video from the Deanwood Metro station depicting both defendant and DaVonte Washington entering the metro station at the same time and being together on the platform of the metro station. The video depicts the actual shooting. The video was played multiple times during the trial and as received in evidence so that the jury had more than ample opportunity to review the contents of the video.

2. The government introduced the testimony of eyewitness and mother of decedent. She provided a chilling account of what the decedent was doing moments before the shooting and what occurred during the actual shooting. She described chasing the defendant down the escalator and made a positive identification of him in the courtroom.

3. Morton and Rinnick, both of whom knew defendant for a substantial period of time, testified to spending the hours before the shooting with defendant, were with defendant at the Deanwood Metro station and on the platform of the metro station and gave vivid accounts of the shooting of DaVonte Washington directly implicating defendant in the shooting. They were both walked frame by frame through the video of the shooting and Morton testified regarding defendant's confession to the murder.

4. A medical examiner opined regarding the cause of death from gunshot wounds to the chest.

This summary of the evidence begs the question why the government even needed the ballistics match. The ballistics evidence did not add any powerful evidence to defendant's involvement in the crime. It is unquestionable that defendant would have been convicted of the killing of Davonte Washington even in the absence of the ballistics evidence.[1] The ballistics evidence was necessary for the sole purpose of providing a connection between the two homicides.

Federal Rule of Evidence 403 states:

> The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.[2]

In assessing Federal Rule of Evidence 403, the D.C. Court of Appeals recently held, "A wide variety of factors are considered in this analysis (F.R.E. 403), including the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence probably will rouse



[1] The killing of DaVonte Washington by defendant was conceded during closing argument

[2] The D.C. Superior Court and the District of Columbia Court of Appeals adopted the policy set forth in Federal Rule of Evidence 403 providing for the exclusion of evidence if its probative value is substantially outweighed by the danger of unfair prejudice. *Johnson v. United States,* 683 A.2d 1087, 1090 (D.C. 1990) (en banc).

the jury to overmastering hostility." *Jackson v. United States*, 210 A.3d 800, 805 (D.C. 2019), citing *United States v. Morton*, 50 A.3d 476,482 (D.C. 2012). The *Jackson* Court acknowledged, "Regardless of whether such evidence is admissible under Drew or Toliver/Johnson, it is still subject to a balancing of its probative value and prejudicial effect."

Applying the *Jackson* factors to this matter, it is undeniable that the trial court erred in denying the motions to sever the two homicides. The need for the evidence was marginal; there was an abundance of powerfully incriminating alternative proof; and the emotions of the jury had to have been roused to outright hostility toward defendant. It is reminded that parents of both homicide victims provided forceful, tearful and highly emotional testimony, the premeditated murder involved a teenager who was with his family on Metro platform on their way to go holiday shopping, and the felony murder involved a law enforcement official who was innocently waiting in his vehicle for his girlfriend and callously left to die in the street while the assailants ransacked his car to steal whatever they could find.

f**. Petitioner had separate defenses to the two homicide counts and evidence of each of the homicides was not mutually admissible in separate trials.**

The Davonte Washington murder was charged as first-degree premeditated murder. The Arthur Baldwin murder was charged as felony murder. The defense to the Washington murder was that it was not a first-degree murder. The defense to the Baldwin murder was identification.

In *Drew v. United States*, it was established that evidence of other crimes is admissible when relevant to

> (1) motive, (2)intent, (3) the absence of mistake or accident, (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other, and (5) the identity of the person charged with the commission of the crime on trial.

331 F.2d 85,90 (1964); *see also* Federal Rule of Evidence 404(b).

The two charged murders, separated by months in time, separated by defenses asserted at trial and separated by different motivations clearly do not fall within any of the *Drew* exceptions. Even assuming *arguendo* that the evidence fits within one of the Drew exceptions, and defendant is not making any such concession, Federal Rule of Evidence 403 prohibits joinder due to the overwhelming prejudice of allowing a joined trial. *see also*, *Light v. United States*, 360 A.2d 479, 480 (D.C. 1976).

Defendant was confounded in the presentation of two entirely

separate defenses to the two counts of first-degree murder. The necessity of presenting two separate defenses to two distinct crimes was confusing, confounding and highly prejudicial. "If…it appears at any…stage in the trial that defendant will be embarrassed in making his defense or that there is a possibility that the jury will become confused, then, upon proper motion, the trial judge should order severance. *Drew v. United States*, 331 F.2d at 93.

**g. The trial court's reliance on *Atchison v. United States*, 982 A.2d 1138 (2009) was not controlling as this case was readily distinguishable.**

Judge Leibovitz determined in the pretrial severance motion hearing as follows:

> The Atchison case in my view is significantly on point and in that case it was not error to deny a motion to sever offenses that were arguably more different than these two. They were sufficiently similar to merit joinder. Two witnesses testified as to both. And the same weapon was used in both crimes. The evidence as to each crime was presented separately…Mr. Kiersh has said cryptically, and this not in opposition or in the original motion, that defenses could be different as to each. I am not ruling on whether defenses will be different or how defenses articulated will effect a subsequent motion for severance, but on the motion before me, I deny the motion for severance of counts. And with that, you can go ahead and decide what your defenses are going to be.

*Atchison v. United States* involved trial of an indictment for first degree murder and assault with a dangerous weapon (ADW). The D.C.

Court of Appeals upheld the trial court's denial of a motion to sever the murder and the ADW but specifically pointed out as follows:

> Moreover, the first jury convicted Atchison of ADW but was unable to reach a verdict on the murder charge, demonstrating that it successfully evaluated the evidence of each crime independently. Accordingly, the trial court did not abuse its discretion in denying Atchison's motion to sever.

982 A.2d 1138 (D.C. 2009).

The critical distinction between this case and *Atkinson* unambiguously demonstrates the prejudice defendant suffered by allowing joint trial of the two homicides. Herein, the verdicts of the jury show that they could not and did not successfully consider each crime separately. Rather, the verdicts were the product of confusion and an emotional appeal necessarily caused by the joint trial.

Rule 10 (b) of this Court, in assessing the reasons governing review on Writ of Certiorari, states in relevant part as follows: "The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

"Fed. R.Crim.P.14 allows a district judge to sever charges for separate trials if '[i]t appears that a defendant or the government is prejudiced by a joinder of [the] offense… for trial." *U.S. v. Dixon*, 184 F.3d 643, 645 (7th Cir. 1999). Severance of offenses in this matter should have been granted because "there [was] a serious risk that a joint trial would compromise a specific trial right of [Maurice Bellamy]…. or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States,* 506 U.S. 534, 539 (1993). In order to "constitute reversible error, the verdict must have been 'substantially swayed by the error." *Atchison v.* United States, 982 A.2d 1138, 1144 (D.C. 2009) citing *Kotteakos v. United States*, 328 U.S. 750, 765 (1946).

The verdict in this matter had to have been affected by joinder of the distinct homicide charges in this case. There was a tremendous emotional toll attached to each of the respective charges and they were entirely factually distinct from one another. Then District of Columbia of Appeals, in its opinion affirming the convictions specifically noted, "We can agree that the evidence showed vicious, gratuitous crimes against totally innocent victims.:" Opinion, page 16.

Because the evidence of the two homicides was distinct and

unnecessary to prove the separate homicides, the only basis for admitting the evidence of the separate crimes was to improperly prejudice defendant. Such a purpose was improper and inconsistent with prevailing standards governing joinder.

Petitioner's specific constitutional right of due process of law was violated by permitting the two homicides to proceed to trial before a single jury.

**II. The Cruel, Heinous and Atrocious Enhancement is Unconstitutionally Vague. The Government Should Have Been Precluded From Using the Vague Statute in Eliciting Highly Prejudicial Expert Testimony and Arguing the Statute in Closing. The District of Columbia Court of Appeals erroneously concluded that Defendant did not raise an objection to the vagueness of the statute thereby depriving defendant of due process of law.**

The trial court instructed the jury as follows: "If you find that Maurice Bellamy committed the offense of first degree-premeditated murder while armed, you should go on to determine, beyond a reasonable doubt, whether the murder was especially heinous, atrocious or cruel." Tr. 3/7/18, 94.

The first note from the jury during deliberations provoked the following discussion among the court and counsel:

The Court: Okay. So, the jury did send a note asking if there is clarification

or further guidance as to the definition of heinous, atrocious and cruel. The statute does not further define those terms. So, Mr. Kiersh, how would Mr. Bellamy request that we respond to that note?

Mr. Kiersh: Well, this is a problem with the statute.

The Court: Right, a problem.

Mr. Kiersh: And it doesn't define the term in the statute. I would submit to the Court is impermissibly vague…in response to the jury's question…my recommendation is just simply state, read the statute again…And we can't be making up definitions if there are no definitions in the statute.

The Court: Does the government want to be heard?

Mr. Kirschner: Your Honor, we don't—we don't necessarily disagree with Mr. Kiersh. There is no further definition we can give them. I think, at most, we can either say you are not going to be provided with any further definitions, or we could say, just, you can give those words their ordinary meaning, which I don't see as objectionable.

Mr. Kiersh: My request is the Court simply to respond to the jury and the first part of the Court's—

The Court: The statute does not further define especially heinous, cruel and atrocious?

Mr. Kiersh: Yes.

The Court: Any objection from the government?

Mr. Kirschner: No objection.

Tr. 3/8/18, 81-82.

The court sent a note back to the jurors instructing "the statute does not further define especially "heinous, atrocious or cruel." Id. 83.

The District of Columbia Court of Appeals Court has held,

> A criminal statute is void on vagueness grounds when it provides no standards by which conduct falling within its scope may be ascertained. Such a statute infringes upon due process rights by failing to provide fair warning of what is prohibited and inviting capricious and arbitrary enforcement by public officials.

*Parnigoni v. District of Columbia*, 933 A.2d 823, 826 ( D.C. 2007), citing *Leiss v. United States*, 364 A.2d 803, 806 (D.C. 1976).

This Court has determined with regard to statutory vagueness that "a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits…." *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966).

In the context of this jury's deliberations this issue is not an

academic or hypothetical concern. The jury specifically and unequivocally asked for a further definition of “heinous, atrocious and cruel.” The trial court was unable to provide further definition because the statute admittedly was vague and therefore no further definition existed.

Defendant was prejudiced by the unconstitutionally vague statute because the government relied upon the existence of the statute in formulating direct examination of an expert witness.

Maryland Medical Examiner Jack Titus testified regarding the death of DaVonte Washington that was ruled a homicide. Government counsel asked Dr. Titus whether after receiving two gunshot wounds could DeVonte Washington have been conscious for a period of time. This question drew an objection that was overruled. Dr. Titus responded “Yes. Like I said, it would take minutes for him to pass out from the blood loss.” Id. 142-143.

Government counsel continued, “Could he have been kind of aware of his circumstances--” Id. 143. This question was objected to and the following colloquy occurred between counsel and the Court.

The Court: Hold on a minute. This objection I’ll sustain. I think it’s been covered by your earlier questions.

Mr. Kirshner: Okay. Are you saying that's asked and answered, your Honor? Can I approach just briefly?

The Court: Sure, I can have you approach with counsel. So, I thought it was a fair opinion question to ask, based upon his training and experience, whether or not he would have immediately lost consciousness. But this question that you just asked seems somewhat more subjective about whether he could have been aware of his circumstances minutes after the injuries were inflicted.

Mr. Kirshner: And to be frank, your Honor, I usually wouldn't ask that in a gunshot wound case, but because the aggravator, unusual and heinous—cruel, atrocious and heinous was indicted, I am asking a few more questions about that.

The Court: Okay. Understanding that there is additional relevance, then I will reverse my decision and the objections is overruled.

Mr. Kiersh: And I understand the Court overruling the objection, but it has now been established sufficiently, I would submit, to satisfy the elements of the initial—the aggravating circumstances of the statute. Now I believe any more of these questions would be cumulative and prejudicial, in fact would outweigh the probative value because the statute has been satisfied.

Following the overruling of the objection, the medical examiner was allowed to opine "He could have been. Again, it could take time, minutes to lose blood for him to lose consciousness." Id. 146. On cross-examination, the medical examiner could not offer an opinion to a reasonable degree of medical certainty concerning the length of time it takes for a person to bleed out.

In closing argument, the government reinforced the prejudice to defendant by its dismissive remarks about second degree murder and its comments relying on the unconstitutional statute.

> Now, you are going to be instructed on second-degree murder while armed as a lesser included. *I'm not going to waste your time with that*. Judge McKenna's instructions are very clear and you got that evidence in front of you. But with respect to the first-degree murder case, *there is one other thing for you to decide and that is whether this murder was especially, atrocious and cruel.* We submit that we have proved that. Shooting an unarmed 15-year-old, totally unprovoked, in front of his mama and his baby sisters in broad daylight. We submit all of those factors have been met on these facts.

The prejudice was further compounded by the government's immediate transition in closing argument to the Arthur Baldwin murder having just completed its accusation of defendant committing undefined "especially atrocious and cruel" crimes in the context of an unrelated

homicide of a teenager.

At the end of the government's rebuttal closing argument the government again went back to the vague statute and again conflated the two homicides. "Aggravating circumstances exist in both of these cases murders that the defendant perpetrated, plain and simple, based on the evidence in this case."

Bellamy argued that regardless of whether the subject statute was used by the trial court in the imposition of its sentence, defendant suffered significant and irreparable prejudice by the undefined and vague statutory language serving as a basis for an expert medical opinion and being argued to the jury as both a reason to dismiss consideration of the lesser included offense of second-degree murder as well as to impermissibly arouse the passions of the jury.

The District of Columbia Court of Appeals erroneously ruled that "we do not reach this constitutional argument, however, because appellant's sentence for Washington's murder was well within the time proscribed for incarceration for first-degree murder…." Opinion, 21.

Tio begin with, the record could not be clearer that an objection to the statute was made on grounds of unconstitutional vagueness. A very

specific objection based upon vagueness was offered by Bellamy in response to a jury note regarding the enhancement.

Mr. Kiersh: Well, this is a problem with the statute.

The Court: Right, a problem.

Mr. Kiersh: And it doesn't define the term in the statute. I would submit to the Court is impermissibly vague…in response to the jury's question.

The Court of Appeals noted, "even assuming the statutory terms are impermissibly vague and that the enhancement would be unconstitutional if applied in this case---questions we do not decide—appellant cannot show that his substantial rights were violated because he did not receive an enhanced sentence." Opinion, 23.

" A criminal defendant who wants to preserve a claim of error for appellate review must inform the trial judge of (1) the action the party wishes the court to take, or (2) the party's objection to the court's action and grounds for that objection." *Holguin-Hernandez v. United States*, 140 S.Ct. 762, 763 (2020).

The jury very specifically requested guidance on an ambiguous statute. Bellamy noted very clearly the statute was unconstitutionally vague. The issue was preserved and the District of Columbia Court of

Appeals, in a manner that was inconsistent with precedent established by this Court, refused to rule on the preserved issue.

## CONCLUSION

Maurice Bellamy prays this Honorable Court grant his Petition for Writ of Certiorari in order to address the issues raised herein.

Respectfully submitted,

_____/s/_____
Steven R. Kiersh#323329
5335 Wisconsin Avenue, N.W.
Suite 440
Washington, D. C. 20015
(202) 347-0200

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was mailed, postage prepaid, on this the 25th day of September, 2025 to the Office of Solicitor General, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

_____/s/_____
Steven R. Kiersh