NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

AARON MATTHEW RENTFROW
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 23-60054

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The district court erred by failing to grant a mistrial. Error in the following four respects, viewed in aggregate, deprived Mr. Rentfrow of his Sixth Amendment right to a fair trial:

1) Failing to limit the number of United States Marshals guarding witness Brandon Fritts;

2) Failing to cure the prejudice caused by Fritts's testimony regarding his risk of death, based on his cooperation with the prosecution;

3) Admitting photographs of Mr. Czeck because they lacked probative value and inflamed the jury; and

4) Failing to dismiss the two jurors who discussed the case and their safety concerns with each other before deliberations began.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes:

Rules:

I. OPINIONS BELOW

On September 22, 2020, the grand jury in the Southern District of Mississippi indicted Mr. Rentfrow and multiple co-defendants with two counts of violating 18 U.S.C. §§ 1959(a)(3) and 1959(a)(5), Violent Crime in Aid of Racketeering ("VICAR"). The charges stemmed from an assault in FCI Yazoo City, in which an inmate, MM, was beaten and stabbed. The Indictment alleged that Mr. Rentfrow stabbed MM to gain entrance to the Aryan Circle, a whites-only prison gang ("AC"). The prosecution alleged that William Glenn Chunn ordered the assault.

During the trial, Mr. Rentfrow made or joined three separate motions for mistrial. The trial court denied all three motions. Mr. Rentfrow made a Rule 29 motion at the close of the prosecution's case and renewed that motion after he rested his case. The trial court denied both motions.[1]

The jury returned a guilty verdict against Mr. Rentfrow on both counts of the Indictment. Mr. Rentfrow then filed a Motion for New Trial, which the trial court denied.

[1] Mr. Rentfrow argued in his motion for acquittal that the charge for accessory before the fact should be dismissed. The prosecution stated that it had conceded in the jury instruction conference that it would forgo that charge against Mr. Rentfrow. The trial court agreed and granted that part of Mr. Rentfrow's motion. The two VICAR charges were not dismissed.

Prior to sentencing, the trial court entered an Agreed Order to vacate conviction on Count 1 of the Indictment to avoid a multiplicitous sentence that would violate the Double Jeopardy Clause of the United States Constitution. On January 25, 2023, the trial court sentenced Mr. Rentfrow to ten years in prison "to run consecutively to the undischarged term of imprisonment" Mr. Rentfrow was already serving. The Judgment was filed February 2, 2023. The district Court's Judgment is attached hereto as Appendix 1.

Mr. Rentfrow timely filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. He filed the Notice on February 6, 2023. On February 21, 2024, the Fifth Circuit filed an Opinion through which it affirmed the district court's rulings. The court filed a Judgment on the same day. The Fifth Circuit's Opinion and its Judgment are attached hereto as composite Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on February 21, 2024. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISION INVOLVED

The district court's trial rulings implicate the right to a fair trial under the Sixth Amendment to the United States Constitution. The Sixth Amendment states:

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

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Rentfrow for racketeering, in violation of 18 U.S.C. §§ 1959(a)(3) and 1959(a)(5). The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Rentfrow arose from the laws of the United States of America.

B. Statement of material facts.

1. The Aryan Circle.

The Aryan Circle ("AC") began inside the Texas state prison system in 1985. It is governed by a constitution and run with a hierarchical leadership structure. The leadership of AC has a five-member "upper board" at the top and leadership groups for the five branches of membership – state prisons (Texas and out-of-state), federal prisons, and the "free world" (Texas and out-of-state). There were also units for discipline (the "task force") and investigations ("internal affairs"). Brandon Fritts, a former member of the AC "upper board" testified that all members pay dues, and that the organization also supports itself through criminal activity.

In addition to being a white separatist group, the AC does not associate with gay people. Brandon Fritts testified that homosexuality conflicted with the AC's belief in "procreation, man and wife." AC members in prison cannot allow a gay person to live on their unit and are obligated to force the prison administration to remove any gay inmate via an act of violence.

2. Prison culture.

According to witnesses who testified, federal prison is largely segregated by race. Inmates further segregate themselves into groups. Some white inmates join gangs, like the Aryan Circle, while others join the Independents. The "Independents" operate in many ways like a gang as a form of protection because "the white gang members were bullying just normal, regular white people that came into prison."

Independents further segregate themselves into "cars," based on their place of origin. For example, all inmates from Iowa would form a "car," and that "car" serves as a social circle. The independent group works like a "buddy system," but it is more fluid. Inmates must learn to navigate many different groups, so independents may align with one group on one issue but with a different group on another. Ultimately, however, race determines allegiance in a volatile situation.

The same hierarchical structure of gangs also exists for Independents. Just like in a gang, the leader of the Independents is known as a "shot caller." A "shot

caller" has the authority to tell other inmates what to do, including attacking other inmates. These attacks are called "putting in work." If an independent chooses not to "put in work," he will become a target.

Prison personnel also know about "shot callers" and sometimes utilize them to manage issues in the prison population. For example, the Special Investigative Services agent who investigated the stabbing in this case testified that it was common for prison officials to talk to a "shot caller" before placing a potentially problematic inmate in a unit.

At the administrative level, the Bureau of Prisons ("BOP") has some policies for keeping certain inmates apart – such as members of rival gangs. Inside the individual institutions, BOP personnel take precautions to keep inmates with certain traits or identities safe. For example, inmates who were gay, inmates who had a history of sexualized behavior, and inmates who had convictions for sex offenses posed a general threat. Other inmates might pose a direct threat based on their individual history, including their record in prison or their status as a cooperating witness.

3. Mr. Rentfrow's involvement in the alleged incident.

Mr. Rentfrow was an inmate housed in the J2 Unit at FCI Yazoo City. He became acquainted with three members of AC who were also housed in that unit – William Glenn Chunn, Jeremy Dennis, and Malachi Wren. Mr. Rentfrow decided

to become a "prospect" in the summer of 2017. Prospects earned membership (called their "patch") by committing acts of violence. Brandon Fritts described earning membership as "blood work." Jeremy Dennis, another AC leader, testified that "[y]our blood work is where you have to push the steel, push a knife, and shed blood in order to gain your prospect period – your full membership from your prospect period."

4. Details about the alleged incident.

At the trial, three former inmates on the J2 Unit – Andy Atwood (Independent), Jeremy Dennis (AC), and Johnathon Reynolds (Independent and former AC prospect) – gave conflicting stories about what happened on August 17, 2017. Corrections Officer ("CO") Jacob Morrison also gave an account of what he observed. Additionally, the prosecution submitted video evidence from the J2 Unit. Based on this information, Mr. Rentfrow submits the following facts:

On August 17, 2017, a new inmate, MM, entered the J2 Unit at FCI Yazoo City after being released from the special housing unit ("SHU"). MM had some physical disabilities and psychological issues. The AC members on the unit perceived that MM was gay.

MM arrived at the J2 Unit sometime after 4:00 PM but before dinner time at 5:00 PM.[2] CO Morrison checked in with him and the other new inmates from the SHU to make sure they had all their necessities.

Johnathon Reynolds testified that he was in a group with the ACs on August 17, 2017, when MM arrived. William Glenn Chunn and Jeremy Dennis went to MM's cell to meet him. When they returned to the group, they stated that MM could not stay on the unit because he was homosexual.

At dinner time, Chunn spoke to the Independent's shot caller, apparently in a bid to have the independents attack MM to get him off the unit because MM qualified as an independent. The independent shot caller refused, claiming it was not their business. By the close of dinner time, Chunn was advising the other inmates on the unit that the AC's prospect, Mr. Rentfrow, would handle the issue.

Johnathon Reynolds testified that Jeremy Dennis, on behalf of Chunn instructed Mr. Rentfrow to stab MM, but Reynolds did not see a knife. Jeremy Dennis also advised Reynolds that Chunn was ordering him to go up to MM's cell and make sure that Mr. Rentfrow "took care of his business."

[2] Andy Atwood, an inmate on the J2 unit, testified that MM was on the unit before lunchtime because Chunn wanted to talk to Atwood about having the independents get MM off the yard. All other evidence indicates that MM did not arrive on the unit until after the daily head count at 4:00 PM.

When Mr. Rentfrow went into MM's cell, Johnathon Reynolds held the door shut and watched the attack. Reynolds testified that Chunn was downstairs at the time and that Chunn ordered him not to let MM out of his cell afterwards. Mr. Rentfrow returned to MM's cell for "round two" after Jeremy Dennis ordered him to do so, allegedly at Chunn's behest.

The surveillance video shows that MM was attacked shortly after 8:00PM. MM is seen coming out of his cell and standing at the rail for several minutes at 8:39PM. However, CO Morrison testified that he did not see MM, even though he was at the guard station.

MM exited the cell again around 9:08PM and leaned on the rail. Trial Tr., This time, CO Morrison saw him and noted that his jumpsuit was covered with a dark red substance. CO Morrison claimed that he did not immediately think the substance was blood – he thought it might be "art supplies" because MM was "just standing up against the rail like nothing was wrong." CO Morrison stated that even after speaking with MM, he did not realize MM was injured until he looked inside the cell.

At that time – around 9:09 PM – CO Morrison initiated the emergency protocol, and MM was transported to the hospital. MM was treated at UMMC for six days before he was discharged back to FCI Yazoo City.

5. Relevant evidence and events at trial.

a. Introduction.

Mr. Rentfrow and Chunn were tried jointly in an eight-day trial that began on September 13, 2022 and concluded on October 3, 2022. The trial was interrupted once due to the trial court's schedule and again when Chunn's counsel tested positive for COVID-19. The following events that occurred during the trial are relevant to demonstrate that Mr. Rentfrow did not receive a fair trial.

b. Security for prosecution witness Brandon Fritts' testimony.

The prosecution called Brandon Fritts, a former AC upper board member, to testify to establish that the AC was a "criminal enterprise." Before he was called to the witness stand, counsel for Mr. Rentfrow objected to "the number of extra security noticeable in the courtroom for this witness." Counsel for Chunn joined the objection, noting for the record that "I think I counted 12 armed deputy U.S. [M]arshals in this rather small courtroom." He also noted that there was only one spectator – his teenage son – in the courtroom, making the "battalion of armed law enforcement" even more conspicuous. Counsel particularly objected by stating "the two deputies, one sitting on either side of the witness stand, that are clearly federal agents."

The prosecution stated that it would "defer[] to the marshals' discretion on security" for Fritts. The trial court overruled the objection on the grounds that it

had previously ordered that the U.S. Marshals could adopt whatever security measures they saw fit to implement. This erroneous decision set the tone for other events that followed.

c. Fear of death.

During his direct testimony, Fritts testified to the responsibilities of an AC member. He stated that "we see ourselves as our own society, our own government. We don't care what goes on with the United States government or the laws of the land or none of that. This [the AC constitution] is our laws right here." The prosecution then asked Fritts about forbidden conduct under the AC's constitution:

> Q: Now, we read in the bylaw section some of the conduct that is forbidden: homosexuality, no fighting amongst members. Is there any accusation that's considered the most severe or more severe?
>
> A: Being an informant, cooperating with the Government would be one that's – anything considered treason. . . .Any form of treason is the ultimate sin. Doing what I'm doing right now is treason.
>
> Q: And what – and what could be the consequences of treason?
>
> A: It's the ultimate punishment, if possible.
>
> Q: And what is the ultimate punishment?
>
> A: Death.

After this testimony, counsel for Chunn then asked to approach the bench. He asked for a mistrial, and counsel for Mr. Rentfrow joined. Defense counsel

argued that Fritts' testimony violated the trial court's order and the prosecution's agreement that it would not elicit testimony that people feared being killed by AC members. Counsel contended that asking the question about the ultimate punishment violated the order.

The prosecution insisted that it had not violated the court's order because Fritts had not indicated that he was afraid. Defense counsel responded that the prosecution was splitting hairs. The court overruled the objection and denied the motion for a mistrial but asked the prosecution to move on.

d. Photos of murder victim Jamie Czeck.

As part of the prosecution's evidence to prove the existence of an "enterprise," it questioned Fritts about his involvement with a murder in 2012. Shortly after his testimony that the ultimate punishment for treason is death, Fritts explained that he murdered ex-AC member Jamie Czeck.

Fritts told the jury that Czeck wanted to leave AC and move to Arizona with his wife. AC was fine with Czeck leaving the gang, but he made the mistake of telling a member that he wanted to join another gang – the Hells Angels Motorcycle Club. Fritts described Czeck's intention to join another gang as "utmost disrespectful. I mean, it's treason and it's disrespect to the organization, and it's just one of those things that can't be tolerated."

At that time, Fritts was living in Oklahoma and was a task force member, which was a group of ACs who served as a disciplinary force. He also had regular, almost daily contact with Czeck, who lived across the state line in Arkansas. When Fritts heard the news about Czeck's "treason," he discussed it with another AC member, and they agreed not to take immediate action.

The next morning, however, Fritts heard that Czeck told a second AC member of his plans. Fritts testified that he felt that Czeck was "rubbing it in our face." Fritts immediately stopped what he was doing and worked to "call a vote" on punishing Czeck. The vote came back to remove Czeck's patch, which meant to remove his tattoo. Fritts took it upon himself, however, to murder Czeck. The murder was not only to punish Czeck, but also to set an example "for everyone else to see that stuff won't be tolerated."

Fritts then described in graphic detail how he intended to kill both Czeck and Czeck's wife. That plan was foiled when the couple's children came home from school. So Fritts and another AC member lured Czeck away from his home, drove him around, bought and gave him methamphetamine before driving him to an alleyway. As shots were fired at Czeck, he began running. Czeck fell to the ground, then Fritts fired two bullets into the back of his head.

The prosecution then sought to introduce three gruesome photographs of Czeck's deceased body after he was found by law enforcement. Counsel for Chunn

and Mr. Rentfrow objected. Counsel for Chunn argued the objection, stating that the defendants were willing to stipulate to every bit of Fritts' testimony about the murder, which occurred five years before the 2017 assault on MM. Counsel contended that the graphic nature of the photographs was inappropriate and unnecessary to establish the prosecution's case. The prosecution contended that it had a right to put forth proof of racketeering, that the photos helped describe the scene and the fact of the murder. The prosecution denied that the photographs were "extensive."

The trial court noted that Fritts "went on and on for pages without any objection" and asked why the jury needed to see the photos, particularly Exhibit 120. Ultimately, however, the trial court allowed the prosecution to introduce two of the photographs – Exhibits 118 and 119. The defendants renewed their objection.

e. The juror's note.

At the end of the sixth day of trial, right before the prosecution rested its case, the trial court called counsel to the bench. The court received an unsigned note that stated:

> We (*some* of the members of the jury) were wondering if Chunn is incarcerated or not? Also . . . we (some of the jurors) are concerned about our safety after the trial is over and wondering if there has ever been harm to jurors any time (days/weeks/months) after the trial has concluded? (This harm I mentioned may come from persons in the trial or may come from associates with persons in the trial.)

(Emphasis in original note as read by the trial court). The trial court indicated that he needed to respond in some way. Counsel for Mr. Rentfrow immediately moved for a mistrial, stating that the jury would not be able to deliberate fairly with those feelings. Counsel for Chunn joined, stating that the defense offered to stipulate to the evidence that he believed led to the jurors having safety concerns.

After a recess to consult with their clients, defense counsel argued in support of a motion for mistrial. Counsel argued: (1) that the jurors were discussing the case in violation of the court's instructions; (2) that at least one juror made up their mind on guilt, which also violated the court's instructions; and (3) that the jurors who were involved in the discussions would have been out for cause on *voir dire* because they could not be fair and impartial as required.

After briefing, the trial court opted to interview each juror individually in chambers to find out how many jurors were involved and what they had discussed. Juror No. 1 admitted that she wrote the note and said that she should have signed it. She wrote it on behalf of herself and Juror No. 2, but she took the initiative on her own to write the note. Juror No. 1 explained that based on the "matter" being discussed in the courtroom and the knowledge that there were AC members in the free world, she and Juror No. 2 wondered if there had been any retaliation against jurors. Juror No. 1 insisted that they had not discussed anything about the case other than the safety concerns. Juror No. 1 stated that she could deliberate fairly

and impartially even if the trial court never answered her questions about safety. She also agreed that she had followed and would continue to follow the court's instructions.

Juror No. 2 did not know that Juror No. 1 had written a note, but she did say that she discussed safety issues with her. She expressed discomfort with the way the defendants "looked at her,"[3] and described the situation as "scary." They also wondered aloud to each other whether the defendants were incarcerated. She expressed particular concern about driving two hours to attend trial and the fact that she lived alone. She described herself as being "on edge, nervous, you know, the whole time" about being on the road and in Jackson for the trial. She also stated that she had a hard time with "looking at the pictures and the blood and stuff like that" because she had a weak and nervous stomach. She volunteered that she thought she was going to be sick due to nerves the first day. She said, however, that she could follow the court's instruction and deliberate fairly.

None of the other jurors admitted they were aware of the note or the conversations between Jurors No. 1 and No. 2.

[3] There is no evidence besides this statement that either defendant "looked at" any of the jurors. None of the other jurors stated that the defendants "looked at" them.

In discussing next steps, the trial court noted that Juror No. 14 called to report a positive COVID-19 diagnosis. She was the second juror to drop out due to COVID-19, leaving only the twelve jurors and one alternate.

The trial court heard final argument on the motion for mistrial. Counsel for Mr. Rentfrow argued that Jurors No. 1 and No. 2 misunderstood that their discussion was a violation of the court's instructions and that they had, in fact, discussed the case improperly. With respect to Juror No. 1, counsel argued "Even after Your Honor said that you weren't even going to answer the question [about repercussions for jurors], she still brought that back up." Her concern demonstrated that she could not be fair and impartial. With respect to Juror No. 2, her concerns about the way the defendants look at her and her expressed concerns about her safety as she moved about in the world demonstrated that she could not be fair and impartial.

Counsel for Chunn noted that the jurors wanted to please the court, but the court could not "erase or undo" the fact that two jurors "do have in the forefront of their mind that their service here and that their verdict itself may put them in harm's way." He argued that, if the jurors would not pass *voir dire* today, they should not be allowed to continue to sit. To allow them to continue to serve would infringe on the defendants' constitutional right to a fair trial. He noted that Juror

No. 2 was more overt in expressing her fear, but Juror No. 1 wrote a note that exaggerated the number of jurors who were concerned.

The prosecution argued that the jurors stated they could be impartial and to presume otherwise was to speculate. The trial court denied the motion for mistrial, finding that there was insufficient evidence to remove the jurors.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

The district court erred in four respects during Mr. Rentfrow's trial. We contend that any one of these errors warrant remand of the case for retrial. For purposes of this Petition for Writ of Certiorari, however, we focus on the cumulative error doctrine, which calls for the reversal of a conviction when a series of non-reversible individual trial rulings come together to taint the entire trial proceeding. In such cases, a defendant's Sixth Amendment right to a fair trial is violated. In Mr. Rentfrow's case, four preserved errors, considered in aggregation, resulted in a denial of his Sixth Amendment right.

First, the trial court erred by allowing 12 United States Marshals to be visibly present in the courtroom during Brandon Fritts's testimony, with two of them sitting next to the witness. Second, the trial court erred by overruling defense counsel's objection to Fritts's testimony about death being the punishment for committing "treason" by cooperating and testifying against other AC members. Third, the trial court erred by admitting prosecution's Exhibits 118 and 119, which depicted the gruesome murder of Jamie Czeck because its probative value was trivial and cumulative considering Fritts' detailed narrative of the crime.

The fourth error is particularly concerning in the fair trial context. The trial court erred by retaining Juror No. 1 and Juror No. 2 following their discussion of

safety concerns and fear of retribution with each other, in violation of the trial court's instructions. The three evidentiary-based errors described in the previous paragraph combined to create an atmosphere of fear for these two jurors. Their continued presence on the jury tainted the subsequent deliberations and convictions.

In summary, the trial court erred in its rulings regarding the four above-described errors. Any one of these errors, in isolation, arguably represents reversible error. Viewed in aggregate, the combined effect of these four errors resulted in a deprivation of Mr. Rentfrow's Sixth Amendment right to a fair trial.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." This Court should grant certiorari to address the important constitutional issue presented by Mr. Rentfrow's case.

B. Mr. Rentfrow was deprived of his right to a fair trial under the cumulative error doctrine.

1. Introduction and legal framework.

"The cumulative error doctrine . . . provides that an aggregation of non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless errors) can yield a denial of the constitutional right to a fair trial, which calls for a reversal." *United States v. Munoz*, 150 F.3d 401, 418 (5th Cir. 1998). The errors cited above and discussed below were both "synergistic and repetitive." *See United States v. Delgado*, 672 F.3d 320, 344 (5th Cir. 2012). When viewed together, they

created a theme for the jury: the Aryan Circle operates in a universe of its own creation with the mindset that the gang trumps all. Even the smallest perceived slight to the group could result in death, and it took very few members to agree to impose that punishment. The evidence presented because of these errors created a sense of fear in two of the jurors that led them to violate the court's instruction and taint the jury's deliberative process, thus depriving Mr. Rentfrow of his right to a fair trial.

Even though the trial court seated three alternates, two jurors were excused during the trial because they contracted COVID-19 and needed to quarantine. That left only one alternate. As a result, had the trial court dismissed the two jurors who violated the rules, the trial court would have had no choice but to declare a mistrial.

2. The trial court erred by failing to limit the number of United States Marshals guarding witness Brandon Fritts.

"Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that 'one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.'" *Holbrook v. Flynn*, 475 U.S. 560, 567 (1986) (quoting *Taylor v. Kentucky*, 436 U.S. 378, 485 (1978). This Court held that the use of a security force inside the courtroom is not inherently

prejudicial, but in certain circumstances, it could be. *Holbrook*, 475 U.S. at 568. In Mr. Rentfrow's case, it was.

Counsel for the defendants attempted to circumvent this issue ahead of trial and again before the jury witnessed the "battalion" of United States Marshals sent in to provide security while Brandon Fritts testified. Defense counsel noted that twelve Marshals positioned themselves in the courtroom. Before Fritts testified, the jury saw an empty courtroom with one spectator. More importantly and most imposing, the trial court allowed large deputies to sit on either side of Fritts during his testimony. Counsel cited two reasons that the sheer number of Marshals prejudiced Mr. Rentfrow: (1) their presence bolstered Fritts' testimony; and (2) their presence gave the impression that Fritts was in danger, ostensibly from Mr. Rentfrow and Chunn. Trial Tr., ROA. 1210-11.

The fact that the Marshals descended on the courtroom *en masse* only for Fritts' testimony, took up a post on either side of him during his testimony, and then left the courtroom after his testimony created an impression that prejudiced at least two members of the jury. Juror No. 1 and Juror No. 2 both expressed fears based on information they heard during Fritts' testimony. Accordingly, the trial court erred by deferring to the Marshals and failing to mitigate the impact of their presence in the courtroom.

3. The trial court erred by failing to cure the prejudice caused by Fritts's testimony regarding his risk of death, based on his cooperation with the prosecution.

Fritts testified that his decision to cooperate with the prosecution and testify put him at risk of "the ultimate punishment" – death. Counsel for the defendants immediately objected and requested a mistrial because Fritts' testimony violated the trial court's order barring any testimony regarding fear of death. Any testimony on the issue of fear of reprisal was to be couched in vague terms.

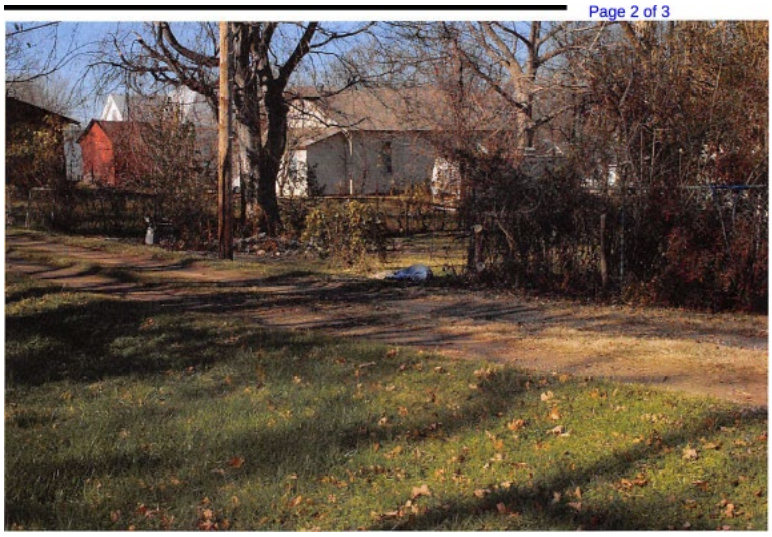
The prosecution's argument that Fritts had not expressed fear was a distinction without a difference. The trial court overruled the objection and denied the motion for a mistrial but implicitly acknowledged that the witness had overstepped by asking the prosecution to move on. The trial court erred by not sustaining the objection and issuing a curative instruction to the jury. The substance of this improperly admitted testimony directly impacted Juror No. 1 and Juror No. 2.

4. The trial court erred by admitting photographs of Mr. Czeck because they lacked probative value and inflamed the jury.

As proof of racketeering activity, the Government elicited testimony from Fritts regarding the murder of AC member Jamie Czeck in 2012, some five years before Mr. Rentfrow encountered the AC. The Government chose to put on evidence of this horrific, senseless crime even though it had ample evidence of other crimes committed by the enterprise that qualified as racketeering, including

evidence of drug trafficking inside the prison and Fritts' own admissions of drug trafficking and robbery. *See* 18 U.S.C. § 1961 (defining racketeering for purposes of 18 U.S.C. § 1959).

When the prosecution sought to introduce three photos depicting the gruesomeness of the crime, defense counsel objected. Defense counsel offered to stipulate to the truth of the crime against Jamie Czeck, but the prosecution insisted that it should be able to introduce the photographs. The trial court seemed inclined to agree with defense counsel, stating "we have all this testimony of Suboxone. That establishes the drug activity that was going in, all this other stuff. Why does the jury need to see this man dead?" When the prosecution insisted that it did not want the jury to question the lack of photographic evidence during deliberations, the trial court relented and allowed the prosecution to introduce two of the three photographs as Exhibit G-118 and G-119. Depictions of the photos entered as G-118 and 119 follow:



Gov. Exh.118

Gov. Exh. 119

The Fifth Circuit has held that the admission of photographs such as these is not an abuse of discretion so long as the photographs have "nontrivial probative value." *United States v. Perry*, 35 F.4th 293 (5th Cir. 2022). In all the cases in which the Fifth Circuit has upheld admission of shocking or gory visual evidence, it has done so because the evidence at issue was directly related to the crime

charged. For example, in *Perry*, the photographs of the murder victim were proof of the conspiracy under RICO and supported the testimony of witnesses who described the murders. *See Perry*, 35 F.4th at 325-26. The Fifth Circuit recently affirmed the requirement that the evidence be central to the prosecution's case to have "nontrivial probative value." *United States v. Shows Urquidi*, 71 F.4th 357, 373-74 (5th Cir. 2023) (reviewing for plain error). In *Shows Urquidi*, the court held that "[t]he photographic evidence was *critical* in proving many of the counts of the indictment." *Id.* (emphasis added).

The photographs of Jamie Czeck were not critical to or even directly related to the crimes charged against Mr. Rentfrow. The trial court noted that the prosecution presented ample evidence of racketeering activity without any mention of Czeck's murder. Additionally, Fritts testified in graphic detail about the murder. Under these facts, the district court erred by admitting the gruesome photographs of the murder victim.

Also, as presented in detail under the next subheading of this Petition, the trial court's error in admitting these photographs had a profound effect on Juror No. 1 and Juror No. 2. The vivid photographic proof of how the AC takes revenge on people for any perceived act of disrespect or disloyalty – no matter how small – created fear that led them to violate the trial court's instructions not to discuss the case.

5. The trial court erred by failing to dismiss the two jurors who discussed the case and their safety concerns with each other before deliberations began.

The inflammatory evidence presented over the objections of defense counsel influenced Juror No. 1 and Juror No. 2. Both jurors admitted that they were afraid of retribution based on the evidence that they heard during the trial and that they discussed their fears with each other. Juror No. 2 in particular expressed fear of the defendants, saying that she felt they were looking at her "hard." She repeatedly mentioned feelings of anxiety and nervousness causing physical symptoms due to the subject matter.

Although both jurors told the judge that they had not discussed the case, it is clear that they did not understand that they had, in fact, done so. Their answers, while not deliberately deceptive, call into question their assurances to the trial judge that they could continue to serve and to follow his instructions.

It is also apparent that the situation placed the trial judge in a difficult position. Granting the defense's motion for a mistrial meant re-trying the case. This is true because of the court granted the defense's motion to dismiss Juror No. 1 and Juror No. 2, it would have also been required to declare a mistrial because only 11 jurors would have been left on the panel. The only option that did not result in a mistrial was to deny the motion. In light of the jurors' misgivings and fears, it was error to allow them to deliberate.

VI. CONCLUSION

Under the cumulative error doctrine, a series of non-reversible errors can result in a violations of a defendant's Sixth Amendment right to a fair trial. While we are not conceding that each of the errors described above are non-reversible in isolation, the cumulative effect of the Errors certainly deprived Mr. Rentfrow of his fundamentally important right to a fair trial. We ask the Court to grant certiorari to address this issue.

Submitted May 17, 2024 by:

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Attorney for Defendant-Petitioner

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

AARON MATTHEW RENTFROW
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 23-60054

CERTIFICATE OF SERVICE

I, Omodare B. Jupiter, appointed under the Criminal Justice Act, certify that today, May 17, 2024, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. XXX, addressed to:

The Honorable Elizabeth B. Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

Thomas Creagher Turner, Jr.

Thomas Creagher Turner, Jr. (MB #99695)
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MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), Petitioner Aaron M. Rentfrow requests leave to file the accompanying Petition for Writ of Certiorari from the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), in the United States District Court for the Southern District of Mississippi and on appeal to the United States Court of Appeals for the Fifth Circuit.

Date: May 17, 2024.

Respectfully submitted,

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