NO. 23-7727

IN THE SUPREME COURT OF THE UNITED STATES

EVERETT MILLER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

[Capital Case]

Whether certiorari review should be denied where the Florida Supreme Court's affirmance of the cold, calculated and cruel aggravator is a matter of primarily state law, does not present conflict with any court, does not involve an important federal question, and the issue was properly decided by the Florida Supreme Court?

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The petition seeks review of a decision of the Florida Supreme Court affirming the death sentence of Everett Miller for the first-degree premeditated murders of Kissimmee Police Officers Matthew Baxter and Richard "Sam" Howard. That decision appears as *Miller v. State*, 379 So. 3d 1109 (Fla. 2024).

JURISDICTION

Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. Respondent acknowledges that section 1257 sets out the scope of this Court's certiorari jurisdiction but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

FACTS AND PROCEDURAL BACKGROUND

On the night of the murders, Officer Baxter approached Maribel Gonzalez King, who had an open beer container, and her two friends (nicknamed "Dash" and "Blaze") who were all loitering on a street corner in Kissimmee. King knew Officer Baxter (and Sergeant Howard) from

previous interactions. Officer Baxter was in full police uniform, had a marked car, and was, according to King, "calm and relaxed, like normal."

During Officer Baxter's interaction with the three individuals, Miller pulled up in his vehicle, stopped suddenly, got out, and walked toward Officer Baxter. After an obnoxiously loud Miller told Officer Baxter to stop harassing people and requested that Officer Baxter call his superior, Officer Baxter radioed his location and that a black male wanted to speak to Sergeant Howard. Within minutes, Sergeant Howard arrived in a marked car and full police uniform and, according to King, "stayed calm the whole time." Neither Officer acted aggressively, threatened to use a weapon, or gave any commands to Miller.

Sergeant Howard's demeanor changed after Miller commented that he feared for his life and was eligible to carry a concealed weapon. Upon hearing those words, Sergeant Howard instructed King and her friends to move along. King, the last to walk away, made it only halfway down the street when she heard two gunshots, a pause, and two more gunshots. After hearing a car speed away, King looked back and saw two officers on the ground.

A woman who lived close to the murders also heard noises—interrupted by a pause—that sounded like possible gunshots. She looked outside her house and saw two police vehicles and a dark vehicle. After seeing an individual speed away in the dark vehicle, she saw two officers on the ground and called 911.

The first officers to arrive at the scene, Lieutenant Christopher Paul Succi and Officer David Toro, noticed the bodies were unusually situated. That is, Officer Baxter and Sergeant Howard—each with a fully loaded pistol still securely holstered and an undeployed taser—were "both on their backs, feet straight, arms to the side," and were "laying parallel next to each other, a few feet apart." In other words, their bodies had been positioned.

Sergeant Howard had no defensive wounds, a "near contact" gunshot wound on the left side of his head in the temporal region, and a "near contact or intermediate" gunshot wound just above the upper lip. Officer Baxter had some abrasions that were consistent with a fight or altercation but also consistent with simply falling and being scraped on the pavement. Officer Baxter also had two gunshot wounds to the head—one through the lower lip, the other to the back left side of the head—

both of which were "contact wounds." The four bullets were ultimately recovered during the Officers' autopsies.

Later the night of the shootings, the lead investigator, Corporal Charles Hess, became aware that Dash had provided to law enforcement a brief video he had taken of Officer Baxter's interaction with the black male. After an investigator recognized Miller in the video, a bulletin was put out, and the video was sent to the field units.

In the meantime, Miller abandoned his vehicle in a woman's yard and eventually made his way to Roscoe's, a local bar. Upon entering Roscoe's, Miller—an unfamiliar face—commented that "there was some crazy stuff going on outside" and that he "was gonna stay and have a drink." Miller proceeded to the bar area, where he was calm and coherent until a patron approached and asked if Miller had shot two cops. Miller became agitated, denied shooting any officers, and claimed he had been there at Roscoe's. Another patron overheard Miller say at one point that the Officers "got what they deserved."

Miller's behavior at Roscoe's soon led to his arrest. After the owner of Roscoe's contacted law enforcement about an agitated person and provided a description matching the individual in Dash's video, multiple

deputies entered Roscoe's and arrested Miller, who was carrying a black 9mm Sig Sauer, a knife, and a small .22 caliber "single action" revolver. The .22 revolver—which was found in Miller's front pocket, holds five rounds, and does not eject shell casings—had one live round and four that had been fired. Firearms testing later confirmed that the four bullets recovered during the Officers' autopsies were fired from Miller's revolver.

Within days of the murders, Corporal Hess discovered Miller had a YouTube channel for firearms instruction and review. One video showed Miller using a single-action .22 caliber revolver to rapidly fire successive bullets into a target's head from approximately ten yards.

Corporal Hess also discovered Miller had been making anti-law-enforcement posts on a Facebook page under the profile name of Malik Mohammad Ali. For example, on August 12, 2017, Miller posted comments including this one: "Punk AssBlack Cop. Here is a real nigger! I would love to meet him." That same day, Miller also posted a picture of a law enforcement officer, with certain captions including "There Are No 'Good Cops.' " And as previously mentioned, on August 18, 2017, hours before the murders, Miller posted: "Am I the only one. Fuck a Cop ... Racist Fuckers."

Lastly, Corporal Hess became aware that a jailhouse informant came forward about conversations with Miller regarding the murders. At trial, the informant testified that, among other things, Miller used the Officers' names as though he knew them, said he "hated them" for always harassing people, and talked about what he would have done if he had his AR-15.

At trial, Miller did not dispute that he killed both Officers. The defense instead argued that premeditation was lacking, and that Miller committed second-degree murder. After hearing all the evidence, the jury unanimously convicted Miller of two counts of first-degree premeditated murder. *Miller v. State*, 379 So. 3d 1109, 1114–16 (Fla. 2024). In the penalty phase, the State presented additional witnesses and evidence, including additional Facebook posts by Miller. In the posts, all but one of which were made on the day of or within days before the murders, Miller expressed animus against white people, indicated he identified as a Moor, or suggested an alternative view of history. And in a post from a year before the murders, Miller shared a meme of someone repeating themes and theories of sovereign citizens. *Id.* at 1116-17.

The jury unanimously recommended death sentences for each murder, finding beyond a reasonable doubt the existence of all four proposed aggravators.[1] Each juror also found that no mitigating circumstance was established. *Id.* at 1119.

In the end, the court imposed a sentence of death for each murder after concluding "that the aggravating factors far outweigh[ed] the mitigating circumstances and support[ed] the recommendations of the jury for a sentence of death as to [each murder]."[2] The court further found that "any of the considered aggravating factors found in this case, standing alone, would be sufficient to outweigh the mitigation in total." *Id.* at 1119-20 (Fla. 2024).

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[1] The court merged them to three, as follows: (1) prior capital felony or felony involving the use or threat of violence to another person (based on the contemporaneous murders); (2A) the capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws, merged with (2B) the victim was a law enforcement officer engaged in the performance of his official duties; and (3) CCP. The court assigned each aggravator very great weight. *Id.*

[2] The court found that one "statutory" mitigator had been proven, namely no significant history of prior criminal activity (moderate weight). As to the remaining proposed mitigation, which Miller grouped into seven "categories," the court found that the mitigation was generally established and assigned it varying weight. *Id.*

Miller raised seven issues in his direct appeal, the only one of which is relevant here being that the aggravating factor that the murders were cold, calculated and premeditated was misapplied in his case. Specifically, he argued that the "calculated" and "heightened premeditation" aspects of CCP were missing as this was an unplanned double homicide. The Florida Supreme Court held that the trial court's determination that CCP was present was properly found given the execution-style killings committed without provocation or much if any resistance, with a weapon Miller had shown his friend weeks earlier while discussing a potential police encounter. *Miller v. State*, 379 So. 3d 1109, 1124–26 (Fla. 2024). The Florida Supreme Court affirmed Miller's convictions and sentences on February 29, 2024. *Id.* at 1130. The mandate was issued on March 21, 2024.

REASONS FOR DENYING THE WRIT

Certiorari review should be denied because the Florida Supreme Court's decision on the applicability of an aggravating factor in a particular case is a matter of primarily state law and does not conflict with any decision of this Court or involve an important, unsettled question of federal law, and that application does not render Florida's death penalty sentencing scheme unconstitutional.

Petitioner requests this Court review the Florida Supreme Court's decision finding the aggravating factor that the murders were "cold, calculated and premeditated" (CCP) applied to the killings of Officers Matthew Baxter and Richard "Sam" Howard. He argues that applying the aggravator under the facts of his case means Florida is failing to sufficiently narrow death-eligible defendants, and therefore the state's capital sentencing scheme is unconstitutional.

Petitioner states his question for review as whether the Florida Supreme Court's expansion of the applicability of the CCP aggravating circumstance renders the death penalty scheme unconstitutional as applied because it does not sufficiently narrow the class of death-eligible first-degree murders. (Petition at i, iii, 11, 15-16).

As Applied Challenge

Petitioner's "as applied" argument cannot be the basis for federal

review. In *Lewis v. Jeffers*, 497 U.S. 764, 778-80 (1990), this Court stated clearly that the question whether state courts properly have applied an aggravating circumstance is separate from the question whether the circumstance, as narrowed, is facially valid. Petitioner does not, and cannot, argue Florida Statute § 921.141(5)(i)-the statute on the "cold, calculated and premeditated" aggravating circumstance- is facially invalid. The Florida Supreme Court has interpreted the statute to require a "heightened" degree of premeditation and has upheld the factor as thus limited. *Brown v. State*, 473 So. 2d 1260 (1985). Florida's application of this factor has also been upheld by the Court of Appeals for the Eleventh Circuit, which observed that "...while the line between 'ordinary' premeditation and the 'heightened' cold, calculated premeditation is a thin one, petitioner has not shown that the state has applied this factor in an unconstitutionally arbitrary manner." *Harich v. Wainwright*, 813 F.2d 1082 (11th Cir. 1987). *See also Henderson v. Dugger*, 925 F.2d 1309 (11th Cir. 1991).

Instead, Petitioner contends that the cold, calculated and premeditated factor has been *applied* in an inconsistent manner. (Petition at 16). This "inconsistency" seems to be based on Petitioner's

claim that the Florida Supreme Court has expanded the criteria under which CCP can be established and proven, specifically as it pertains to the "calculated" and "heightened premeditation" elements. (Pet at 15).

In *Jeffers*, this Court rejected the "as applied" challenge with respect to the HAC aggravator, citing *Walton v. Arizona*, 497 U.S. 639, 655-656 (1990):

> This Court held in *Walton*:
>
> > The Arizona Supreme Court's construction also is similar to the construction of Florida's "especially heinous, atrocious, or cruel" aggravating circumstance that we approved in *Proffitt v. Florida*, 428 U.S., at 255-256, 96 S. Ct., at 2968 (joint opinion of Stewart, Powell, and STEVENS, JJ.). Recognizing that the proper degree of definition of an aggravating factor of this nature is not susceptible of mathematical precision, we conclude that the definition given to the "especially cruel" provision by the Arizona Supreme Court is constitutionally sufficient because it gives meaningful guidance to the sentencer. Nor can we fault the state court's statement that a crime is committed in an especially "depraved" manner when the perpetrator "relishes the murder, evidencing debasement or perversion," or "shows an indifference to the suffering of the victim and evidences a sense of pleasure" in the killing. *See* 159 Ariz., at 587, 769 P. 2d, at 1033.
>
> > Walton nevertheless contends that the heinous, cruel, or depraved factor has been applied in an arbitrary manner and, as applied, does not distinguish his case from cases in which the death sentence has not been imposed. In effect Walton challenges the proportionality review of the Arizona Supreme Court as erroneous and asks us to overturn it.

> This we decline to do, for we have just concluded that the challenged factor has been construed by the Arizona courts in a manner that furnishes sufficient guidance to the sentencer. This being so, proportionality review is not constitutionally required, and we "lawfully may presume that [Walton's] death sentence was not 'wantonly and freakishly' imposed-and thus that the sentence is not disproportionate within any recognized meaning of the Eighth Amendment." *McCleskey v. Kemp*, 481 U.S. 279, 306, 308, 107 S. Ct. 1756, 1774, 1775, 95 L.Ed.2d 262 (1987); *Pulley v. Harris*, 465 U.S. 37, 43, 104 S. Ct. 871, 875-876, 79 L.Ed.2d 29 (1984). Furthermore, the Arizona Supreme Court plainly undertook its proportionality review in good faith and found that Walton's sentence was proportional to the sentences imposed in cases similar to his. The Constitution does not require us to look behind that conclusion.

Walton v. Arizona, 497 U.S. 639, 655-656 (1990) (overruled by *Ring v. Arizona*, 536 U.S. 584 (2002) to the extent Arizona allowed a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty); *Jeffers*, 497 U.S. at 779. *See also Arave v. Creech*, 507 U.S. 463, 476-477 (1993) (a federal court may consider state court formulations of a limiting construction to ensure that they are consistent, but our decisions do not authorize review of state court cases to determine whether a limiting construction has been applied consistently.)

This Court further noted in *Jeffers*:

> Our decision in *Walton* thus makes clear that if a State

> has adopted a constitutionally narrow construction of a facially vague aggravating circumstance, and if the State has applied that construction to the facts of the particular case, then the "fundamental constitutional requirement" of "channeling and limiting ... the sentencer's discretion in imposing the death penalty," *Cartwright*, 486 U.S., at 362, 108 S. Ct., at 1858, has been satisfied.

Jeffers, 497 U.S. at 779.

There is no conflict with this Court's precedent or another appellate court on the question presented. Consequently, Petitioner fails to present any basis for which this Court should grant certiorari review.

Argument that Florida Has Expanded CCP

To breathe life into a non-viable claim, Petitioner asserts that the Florida Supreme Court has "expanded" CCP and applied that aggravating circumstance inconsistently, resulting in an insufficient narrowing of death eligible individuals. (Pet. at 12) Petitioner presents no important federal question or cite the case of any other court with which the decision in this case may conflict. Further, the Florida cases cited by Petitioner do not support his argument, which is completely without merit. To the contrary, CCP has been, and continues to be, applied consistently by the Florida Supreme Court.

The Florida Supreme Court has explained that in order to prove the

CCP aggravator, the evidence must show that: the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); that the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated); that the defendant exhibited heightened premeditation (premeditated); and that the defendant had no pretense of moral or legal justification. *Joseph v. State*, 336 So. 3d 218, 239 (Fla. 2022) (quoting *Franklin v. State*, 965 So. 2d 79, 98 (Fla. 2007).

Claiming that over the last several decades the Florida Supreme Court has expanded the CCP aggravator, Petitioner cites *Mason v. State*, 438 So. 2d 374, 379 (Fla. 1983). Petitioner argues that *Mason* demonstrates how "originally, the state had to provide substantial competent evidence that the defendant had a careful plan or prearranged design to commit murder *before* the fatal incident, but that now careful planning can now be *just before* the crime itself". As to the expansion theory, *Mason* was decided *forty-one years ago* and is cited by other Florida Supreme Court cases as precedent to establish CCP. *See Chandler v. State*, 534 So. 2d 701, 704 (Fla. 1988) (in finding the heightened level of premeditation needed to support the cold, calculated,

and premeditated aggravating factor to be present the court distinguished between the situation where a robber is startled or goaded into attacking a victim, and the defendant in this case arming himself, marching the victims from their home, and striking the victims in the head repeatedly with the baseball bat); *Buzia v. State*, 926 So. 2d 1203, 1215 (Fla. 2006) (holding that procurement of a weapon need not be that far in advance).

Furthermore, the Florida Supreme Court has established that to find the heightened premeditation required for the cold, calculated, and premeditated aggravator, the evidence must show that the defendant had a "careful plan or prearranged design to ***kill***." *Rogers v. State,* 511 So. 2d 526, 533 (Fla. 1987) (emphasis added). Nowhere does the explanation necessitate a specific timeframe for the defendant to have had to plan to commit murder. Rather, what is required is that the murderer fully contemplate effecting the victim's death.[3] *Hardwick v. State*, 461 So. 2d 79, 81 (Fla. 1984).

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[3] The Florida Supreme Court has distinguished that a plan to kill cannot be inferred solely from a plan to commit, or the commission of, another felony. *Jackson v. State,* 498 So. 2d 906, 911 (Fla. 1986); *See Geralds v. State,* 601 So. 2d 1157, 1164 (Fla. 1992) (vacating

The Florida Supreme Court has also firmly established that the *manner* in which a murder is carried out can also indicate a cold and calm plan. A plan to kill may be demonstrated by the defendant's actions and the circumstances surrounding the murder even when there is evidence that the final decision to kill was not made until shortly before the murder itself. *Durocher v. State*, 596 So. 2d 997, 1001 (Fla. 1992); *Russ v. State*, 73 So. 3d 178, 193 (Fla. 2011). Specifically, as it relates to Petitioner's case, the Florida Supreme Court has held and affirmed on numerous occasions, an execution-style killing is by nature a "cold" killing and can support a finding of "calculated" as well. *Eutzy v. State*, 458 So. 2d 755, 757 (Fla. 1984); *Pearce v. State*, 880 So. 2d 561, 576 (Fla. 2004); *Ibar v. State*, 938 So. 2d 451, 473 (Fla. 2006).

Petitioner also argues that a "careful plan" no longer requires much thinking, citing *Ford v. State*, 802 So. 2d 1121, 1133 (Fla. 2001), and *Walls v. State*, 641 So. 2d 381 (Fla. 1994). Neither *Ford* nor *Walls* support this argument. In *Ford*, the court relied on the following evidentiary support for the CCP aggravator:

CCP where defendant presented a reasonable, alternate hypothesis, and the evidence regarding premeditation was susceptible to divergent interpretations).

> After learning that the Malnorys were planning to go fishing at the sod farm Sunday afternoon, Ford injected himself into their outing; at the sod farm, he led them to a secluded spot near the levee where they were unlikely to be disturbed or seen; prior to going to the sod farm, he asked a friend if he had any .22 caliber cartridges, and when the friend replied that he did not, Ford said that he had four cartridges left and that would be enough (the victims were each killed with a single shot from a .22 caliber gun); he shot the Malnorys with a single-shot rifle, which means he had to stop and reload after the first shot; he shot the victims "execution-style," i.e., he shot Greg in the back of the head and Kim through the roof of her mouth; based on the placement of the shots, it can be deduced that neither victim was threatening Ford at the time he or she was shot; during the course of the murders, Ford assaulted the Malnorys with three different weapons, i.e., a gun, a blunt instrument such as an ax, and a knife; and finally the crime scene is devoid of evidence of a frenzied attack. Based on the foregoing, the trial court did not err in giving the CCP instruction and in finding CCP as an aggravator.

Ford v. State, 802 So. 2d 1121, 1133 (Fla. 2001).

In *Walls*, the victim was asleep when Walls intentionally woke her and her boyfriend up. She was forced to tie up her boyfriend, then was taken to another room and was bound and gagged. She had to listen to her boyfriend's struggle with their attacker, followed by the sound of shots, at which point Walls returned to her. Walls then told Peterson that he was going to "hurt" her because of what her boyfriend had done. In examining the facts, the Florida Supreme Court found that at the point

where Walls left Alger's body, he obviously had formed a "prearranged design" to kill Peterson, a conclusion only reinforced by the time it took for him to kill her and Walls' confession. In finding that "heightened premeditation" existed beyond any reasonable doubt, the state court noted that the acts by Walls were not only calm and careful, but they exhibited a degree of deliberate ruthlessness, as shown by the way he toyed with Peterson prior to her death. *Walls v. State*, 641 So. 2d 381, 387–89 (Fla. 1994).

Petitioner's comparison of the cases to attempt to establish inconsistency accomplishes just the opposite. Not only do *Ford* and *Walls* contradict Petitioner's argument, but the cases cite established precedent and do not create an "expanded" construction of "careful planning" under CCP.

Nor does Petitioner's argument that the Florida Supreme Court has expanded the circumstances in which the state can demonstrate "heightened premeditation" hold water. The Florida Supreme Court has consistently held for over 40 years that the CCP aggravator may be proven by demonstrating such facts as (1) "advance procurement of a weapon," (2) "lack of resistance or provocation," (3) "the appearance of a

killing carried out as a matter of course," and (4) "[t]aking a victim to an isolated location or choosing an isolated location to carry out an attack." *Burr v. State*, 466 So. 2d 1051, 1054 (Fla. 1985); *Eutzy v. State*, 458 So. 2d 755, 757 (Fla. 1984); *Swafford v. State*, 533 So. 2d 270, 277 (Fla. 1988); *Cruz v. State*, 320 So. 3d 695, 729 (Fla. 2021). The aggravating factor has also been found when the evidence showed reloading, *Phillips v. State*, 476 So. 2d 194, 197 (Fla. 1985), because reloading demonstrates more time for reflection and therefore "heightened premeditation." *See Herring v. State*, 446 So. 2d 1049, 1057 (Fla. 1984).

There is no merit to Petitioner's argument that the Florida Supreme Court has expanded the application of the CCP aggravator. To the contrary, CCP has been, and continues to be, applied consistently by the Florida Supreme Court based on decades long established precedent.

The Opinion Below Does Not Conflict with the Decision of Any Other Court or Present an Important Federal Question

Petitioner's "as applied" argument is not appropriate for certiorari review, does not present an important federal question, and does not conflict with any other court's decision. The CCP expansion argument is based on an inaccurate analysis, and an accurate analysis demonstrates there is no conflict with any court's decision and presents no important

federal question. Petitioner does not provide any "compelling" reason for this Court to review his case. U.S. Sup. Ct. R. 10. This case involves neither conflict nor unsettled federal law.

This case does not merit consideration by this Court. Petitioner cites generally to *Espinosa v. Florida*, 505 U.S. 1079 (1992) and *Sochor v. Florida*, 504 U.S. 527 (1992); however, he makes no argument as to how those cases apply to, or conflict with, the present case. (Petition at 12). *Espinosa* and *Sochor* involved Florida's jury instructions as they relate to aggravating circumstances, not whether the aggravating circumstance was being applied indiscriminately to the extent it renders Florida's death penalty is unconstitutional.

Since the Florida Supreme Court's decision does not conflict with any decision by any court and does not decide any important, unsettled question of federal law, certiorari review should be denied.

The Case Was Properly Decided Below

Petitioner argues on page 15-26 that CCP was inappropriately applied in his case.[4] The Florida Supreme Court properly decided the

[4] This argument shows that Petitioner's real complaint is the application of CCP in his case. Certiorari is inappropriate because

claim raised on direct appeal: whether the CCP aggravating circumstance applies in this case. This case was decided correctly through an independent analysis of the totality of the circumstances. Specifically, as to "a careful plan" or "prearranged design to commit murder", the state court held:

> Here, competent, substantial evidence supported the trial court's conclusion that Miller had a "prearranged design to commit violence upon law enforcement officers" and that he expressed that prearranged design "before and after the murders in several different ways." That evidence included: Miller's Facebook posts; Miller showing Albright the small firearm and claiming he was "not gonna be another statistic"; Miller's jailhouse comments; Miller's comment in Roscoe's that the Officers "got what they deserved"; Miller summoning a second officer to the scene; and the execution-nature of the killings using a concealable firearm Miller was proficient in using to shoot bullets into a target's head. One can conclude from this body of evidence that the killings were "calculated." *See Russ v. State*, 73 So. 3d 178, 194 (Fla. 2011) ("[W]here a defendant arms himself in advance, kills execution-style, and has time to coldly and calmly decide to kill, the element of 'calculated' is supported.").

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the issue presented in this petition is of no significance to anyone other than Petitioner. This claim cannot be decided without engaging in the sort of fact specific discussion of the case that this Court has repeatedly refused to undertake. This Court's precedent is well-settled that a writ of certiorari is not issued to review evidence and find facts. *United States v. Johnston,* 278 U.S. 220, 227 (1925); *Rice v. Sioux City Cemetery,* 349 U.S. 70, 79 (1955). Because the fact-specific issue contained in the petition is of extremely limited significance, it is unworthy of this Court's attention. *Rice v. Sioux City Cemetery, supra..*

Miller at 1125.

As to the "premeditated" element of CCP, the state court held:

> The "premeditated" element of CCP "is heightened premeditation, defined as 'deliberate ruthlessness.' " *Ballard*, 66 So. 3d at 919 (quoting *Wuornos v. State*, 644 So. 2d 1000, 1008 (Fla. 1994)). Although "heightened premeditation" requires some period of reflection, there is no "bright-line rule for how much reflection suffices." *Colley*, 310 So. 3d at 14. Miller certainly had time to reflect, given that he requested the presence of a second officer and then managed to shoot two armed officers with point-blank shots to the head. The execution-style nature of the murders supports this element, *see Chamberlain v. State*, 881 So. 2d 1087, 1107 (Fla. 2004) ("[W]holly unnecessary, execution-style murders are prime examples of the 'deliberate ruthlessness' for which application of the CCP aggravating factor is reserved."), as does the other evidence relied on by the trial court. The court quite sensibly determined the most "reasonable sequence of events" was that Miller shot each Officer to the back left side of the head (shooting the larger Sergeant Howard first), and then positioned the bodies before shooting each Officer directly in the face. Needless to say, such "conduct ... exhibited deliberate ruthlessness." *Bonifay v. State*, 680 So. 2d 413, 419 (Fla. 1996).

Id.

Furthermore, the court rejected Miller's fact-based arguments he "was always armed" as irrelevant, even more so given that he showed his friend a similar weapon and made comments indicating preparedness for a police encounter. Also found irrelevant—even if true—was Miller's

claim he did not target these two specific Officers, citing *Bell v. State*, 699 So. 2d 674, 678 (Fla. 1997) ("The focus of the CCP aggravator is the manner of the killing, not the target." (citing *Sweet v. State*, 624 So. 2d 1138, 1142 (Fla. 1993))). In any event, at a minimum, the state court found that Miller targeted "law enforcement personnel" generally. *See Howell v. State*, 707 So. 2d 674, 682 (Fla. 1998) (upholding CCP where defendant "had sufficient opportunity to formulate the intent that law enforcement personnel would be the bomb's intended victim").

Lastly, the court noted that they have upheld CCP in certain cases in which the defendant murdered a police officer not long after becoming ensnared in a police inquiry. *See Jackson v. State*, 704 So. 2d 500, 501-02, 504-05 (Fla. 1997) (defendant self-vandalized her car and then murdered officer who was preparing the police report and who attempted to arrest defendant); *Valle v. State*, 581 So. 2d 40, 43, 48 (Fla. 1991) (defendant executed officer during traffic violation stop). The court found CCP far more compelling here, where Miller, who had been making hateful anti-law-enforcement posts, executed two officers after inserting himself into a situation having nothing to do with him. *Id.* at 1124–26.

The Florida Supreme Court, as it always does, made an independent determination of the totality of the circumstances in arriving at the conclusion that ***all*** elements of the CCP aggravator had been met. The detailed analysis conducted by the state supreme court shows that CCP is being applied in the most egregious cases and the court is conducting an independent analysis in each case. The CPP aggravating circumstance was properly applied in this case, based on firmly established precedent.

Any Error Would Be Harmless On These Facts

Finally, even if this issue had merit, this Court should deny review because even if this Court found error with regard to the CCP factor, it would not affect the judgment or sentence. *See Coleman v. Thompson*, 501 U.S. 722, 730 (199l) ("When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. 1257, it is reviewing the judgment; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do."); *Princeton University v. Schmid*, 455 U.S. 100, 102 (1982) ("However, if the State were the sole appellant and its jurisdictional statement simply asked for review and declined to take a position on the merits, we would have dismissed the appeal for want of a

case or controversy."); *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) ("We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.").

The court found three aggravating factors for the murders of Officer Baxter and Howard and assigned each aggravator very great weight. The court further found that "any of the considered aggravating factors found in this case, standing alone, would be sufficient to outweigh the mitigation in total." *Miller* at 1119–20. Even if this Court believes that the Florida Supreme Court improperly expanded the CCP aggravator to Petitioner's case, the CCP finding would have no impact on the outcome below.

First, Florida recently receded from its requirement that all death penalty cases receive a proportionality review comparing each case to other death penalty cases. *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020). Striking one of the three aggravators would not have affected the Florida Supreme Court's decision because Petitioner remains death eligible due to the other several aggravators. Additionally, even had a proportionality

analysis been used, this case is one of the most highly aggravated against very uncompelling mitigation. Thus, on the face of the record, if the CCP factor were stricken, the error would be harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967).

Petitioner has offered this Court no reason to accept certiorari review, and accordingly this Court should deny review.

CONCLUSION

For the foregoing reasons, the Court should DENY the petition for certiorari review of the decision of the Florida Supreme Court entered below.

Respectfully submitted,

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