

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

CAPITAL CASE

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March 25, 2025

CAPITAL CASE
QUESTION PRESENTED

After learning that a member of the jury that convicted Petitioner Kayle B. Bates of first-degree murder was related to the victim, Bates sought to interview the juror to confirm the relation, and thus, his bias. Due to a Florida law that forbids defendants from interviewing jurors, however, Bates has been precluded from demonstrating to the court that the juror in question failed to disclose the relationship during voir dire at Bates' 1983 jury trial. Having suffered the denial of his rights, Bates presents the following question:

- I. Whether Florida unconstitutionally limits post-verdict contact between former jurors and attorneys.

PARTIES TO THE PROCEEDINGS

Petitioner, Kayle Barrington Bates, was the Petitioner/Appellant in the Florida Circuit Court in and for Bay County, Florida and the Florida Supreme Court.

Respondent, State of Florida, was the Respondent/Appellee in the Florida Circuit Court in and for Bay County, Florida and the Florida Supreme Court.

No corporations are involved.

LIST OF DIRECTLY RELATED PROCEEDINGS

Trial and Sentencing

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Convicted, January 20, 1983; Jury Advisory Recommendation, January 21, 1983; Sentence of Death, March 11, 1983.

Unreported

Direct Appeal

Florida Supreme Court

Docket Number: SC63594.

Case Caption: Kayle Barrington Bates v. State of Florida

Date of Entry of Judgment: Opinion January 31, 1985 remanded for resentencing; Rehearing Denied March 25, 1985; Mandate, April 29, 1985.

Bates v. State, 465 So. 2d 490 (Fla. 1985).

Appeal after New Sentencing Hearing

Florida Supreme Court

Docket Number: SC67422.

Case Caption: Kayle Barrington Bates v. State of Florida

Date of Entry of Judgment: Opinion April 16, 1987; Rehearing Denied June 3, 1987; Mandate, July 6, 1987.

Bates v. State, 506 So. 2d 1033 (Fla. 1987).

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: No. 87-5215

Case Caption: Kayle Barrington Bates, Petitioner, v. Florida

Date of Entry of Judgment: October 5, 1987

Bates v. Florida, 484 U.S. 873 (1987).

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Postconviction relief granted in part (new penalty phase trial), denied in part. July 25, 1990; State's rehearing denied on September 24, 1992.

Unreported.

Appeal from denial of postconviction relief, Cross-Appeal of grant of postconviction relief and Consolidated State Habeas Petition

Florida Supreme Court

Docket Number: SC74972, SC76538.

Case Caption: Kayle Barrington Bates, Petitioner, v. Richard L. Dugger, etc., Respondent and Kayle Barrington Bates, Appellant, Cross-Appellee, v. State of Florida, Appellee, Cross-Appellant.

Date of Entry of Judgment: Opinion, July 23, 1992. Rehearing Denied September 24, 1992; Mandate September 24, 1992.

Bates v. Dugger, 604 So. 2d 457 (Fla. 1992)

Petition for Writ of Prohibition

Florida Supreme Court

Docket Number: SC60-85056

Case Caption: Kayle Barrington Bates vs. Don T. Sirmons, Judge, Etc.

Date of Entry of Judgment: Petition Denied, February 16, 1995.

Unreported

Petition for Writ of Prohibition and Mandamus

Florida Supreme Court

Docket Number: SC60-85681

Case Caption: Kayle Barrington Bates vs. Don T. Sirmons, Judge, Etc.

Date of Entry of Judgment: Petition Granted, May 12, 1995.

Unreported

Retrial on Sentencing

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Jury Advisory Recommendation May 25, 1995; Sentence of Death, July 25, 1995

Unreported; *State v. Bates*, 1995 WL 17974217 (Fla. Cir. Ct.).

Appeal from Resentencing

Florida Supreme Court

Docket Number: 86,180

Case Caption: Kayle Barrington Bates v. State of Florida

Date of Entry of Judgment: Opinion October 7, 1999. Rehearing Denied Dec. 10, 1999; Mandate, January 12, 2000

Bates v. State, 750 So. 2d 6 (Fla. 1999).

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: No. No. 99-9526.

Case Caption: Kayle Barrington Bates, petitioner, v. Florida.

Date of Entry of Judgment: October 2, 2000. Rehearing Denied Nov. 27, 2000. *See* 531 U.S. 1030 (2000); *Bates v. Florida*, 531 U.S. 835 (2000).

Motion for DNA Testing

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Denied, March 17, 2004

Unreported; *State v. Bates*, 2004 WL 6081032 (Fla. Cir. Ct.)

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Order Denying Relief in Part and Order Granting Evidentiary Hearing, July 29, 2005; Order Denying Defendant's Motion for Post-Conviction Relief Following Evidentiary Hearing, February 28, 2007

Unreported; *State v. Bates*, 2005 WL 6798590 (Fla. Cir. Ct.); *State v. Bates*, 2007 WL 7758068 (Fla. Cir. Ct.)

Appeal from Denial of DNA Testing, Denial of Postconviction, and State Habeas Petition

Florida Supreme Court

Docket Number: SC07-611, SC08-66

Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee, and Kayle Barrington Bates, Petitioner, v. Walter A. McNeil, etc., Respondent.

Date of Entry of Judgment: Opinion, January 30, 2009; Rehearing Denied: February 24, 2009; Mandate, March 12, 2009

Bates v. State, 3 So. 3d 1091 (Fla. 2009)

Federal Habeas Petition

United States District Court, Northern District of Florida, Panama City Division

Docket Number: 5:09-cv-00081MCR,

Case Caption: Kayle Barrington Bates, Petitioner v. Michael D. Crews, Secretary, Florida Department of Corrections, Respondent

Date of Entry of Judgment: Petition Denied, September 28, 2012; Order Granting Motion To Alter Or Amend Judgment & Order Amending Ground I of Order Denying Habeas Relief, March 25, 2013. Unreported

Appeal from the Denial of Petition of Federal Habeas Corpus

United States Court of Appeals, Eleventh Circuit.

Docket Number: No. 13-11882

Case Caption: Kayle Barrington Bates, Petitioner–Appellant, v. Secretary, Florida Department of Corrections, Respondent–Appellee.

Date of Entry of Judgment: September 5, 2014; Denial of Rehearing and Rehearing En Banc, December 16, 2014; *Bates v. Sec'y, Florida Dept. of Corr.*, 768 F.3d 1278 (11th Cir. 2014)

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: 14-9864.

Case Caption: Kayle Barrington Bates, petitioner, v. Julie L. Jones, Secretary, Florida Department of Corrections.

Date of Entry of Judgment: October 5, 2015.

Bates v. Jones, 577 U.S. 839 (2015)

DNA Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Order denying, May 24, 2016. Unreported

Appeal from Denial of DNA Testing

Florida Supreme Court

Docket Number: No. SC16-1178

Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee

Date of Entry of Judgment: Opinion, May 18, 2017; Mandate, June 8, 2017

Bates v. State, 218 So. 3d 426 (Fla. 2017)

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Denied, April 10, 2017. Unreported

State Habeas Petition

Florida Supreme Court

Docket Number: SC16-1199

Case Caption: Kayle Barrington Bates vs. Julie L. Jones, Etc.

Date of Entry of Judgment: Petition Stricken, July 08, 2016; Reconsideration Denied, July 26, 2016. Unreported

Appeal from Denial of Postconviction and State Habeas Petition

Florida Supreme Court

Docket Number: SC17-850; SC17-1224

Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee, and Kayle Barrington Bates, Petitioner, v. Walter A. McNeil, etc., Respondent.

Date of Entry of Judgment: Opinion, January 22, 2018; Rehearing Denied [struck] February 22, 2018; Mandate; February 22, 2018

Bates v. State, 238 So. 3d 98 (Fla. 2018); *Bates v. State*, 2018 WL 1004180 (Fla. Feb. 22, 2018).

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: 17-9161

Case Caption: Kayle Barrington Bates, petitioner, v. Florida, et al.

Date of Entry of Judgment: October 1, 2018.

Bates v. Florida, 139 S. Ct. 124 (2018).

Motion to Interview Juror

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: November 6, 2023; Rehearing denied December 21, 2023.

Appeal from Denial of Motion to Interview Juror

Florida Supreme Court

Docket Number: SC2023-1683

Case Caption: Kayle B. Bates, Appellant v. State of Florida, Appellee.

Date of Entry of Judgement: Opinion, October 24, 2024; Rehearing Denied, November 25, 2024.

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- E. Petitioner's Motion to Interview Juror, filed in the Fourteenth Judicial Circuit in and for Bay County, Florida, Case No. 82-0661-CFMA, May 31, 2023.
- F. Petitioner's Motion for Rehearing of the Circuit Court's Denial of the Motion to Interview Juror, November 20, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Kayle B. Bates, respectfully requests that this Court issue a Writ of Certiorari to review the Opinion of the Florida Supreme Court in this case.

JURISDICTION & OPINIONS BELOW

The Order of the Circuit Court in and for the Fourteenth Judicial Circuit of Bay County, Florida is unpublished and is attached as part of the appendix. (Appendix C) The Opinion of the Florida Supreme Court and is attached as part of the appendix. (Appendix A) The Florida Supreme Court issued its decision on October 24, 2024 and subsequently denied Bates' Motion for Rehearing on December 12, 2024 (Appendix B).

On February 7, 2025, the Honorable Clarence Thomas extended the date for the filing of this Petition to March 25, 2025. (Application – 24A763). As such, this Petition is timely and this Court has jurisdiction to review the decision of the Florida Supreme Court pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part, that: “[i]n all criminal prosecutions, the accused shall [be tried] by an *impartial* jury . . .” U.S. Const. amend. VI (emphasis added). The Eighth Amendment to the United States Constitution provides, in relevant part, that “cruel and unusual punishments [shall not be] inflicted.” U.S. Const. amend. VIII. The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that: “No State . . . shall . . . deprive any person of life, liberty, or property, without due process

of law; nor deny to any person . . . the equal protection of the laws.” U.S. Const. amend. XIV. Finally, Florida’s Rule of Criminal Procedure 3.575, in pertinent part, provides that a motion to conduct a post-verdict interview of a juror “shall be filed within 10 days after the rendition of the verdict, unless good cause is shown . . .”

STATEMENT OF THE CASE AND HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

I. PROCEDURAL HISTORY¹

On January 21, 1983, Kayle Bates was convicted by an all-white jury of first-degree murder and other charges. The State obtained a conviction by presenting mostly circumstantial evidence against Bates. A non-unanimous jury recommended a death sentence by an 11-1 vote. R.1-210. The trial court followed that recommendation and imposed a death sentence². R.1-224. Bates has maintained, and continues to maintain, his innocence.

On direct appeal, the Florida Supreme Court affirmed the conviction, but vacated the death sentence after finding insufficient evidence to support two aggravating factors. *Bates v. State*, 465 So. 2d 490 (Fla. 1985). The trial court, without convening a new jury, re-imposed the death sentence and the Florida Supreme Court affirmed on appeal. *Bates v. State*, 506 So. 2d 1033 (Fla. 1987). Bates sought a writ of certiorari from the United States Supreme Court, which was denied. *Bates v. Florida*, 484 U.S. 873 (1987).

On September 27, 1989, the Governor of Florida signed Bates' death warrant.

¹ Citations to Petitioner's 1983 trial record on appeal will be designated as (R.1-[page number]). Citations to Petitioner's 2024 record on appeal will be designated as R.2-[page number]). Citations to Petitioner's 2008 Initial Brief during postconviction will be designated as (IB- ____).

² In sentencing Bates to death, the trial court found five aggravating circumstances: 1) committed during the commission of three felonies; 2) committed for the purpose of avoiding or preventing arrest; 3) committed for pecuniary gain; 4) especially heinous, atrocious, and cruel (HAC); and 5) committed in a cold, calculated, and premeditated (CCP) manner. R.1-222-25. The court found that Mr. Bates had no significant history of criminal activity as statutory mitigation. R.1-224.

Bates moved for postconviction relief and sought a stay of his execution in the circuit court in October and November 1989, respectively. The circuit court granted a stay of execution and scheduled an evidentiary hearing on one of Bates' claims in his motion for postconviction relief on December 1, 1989. After a two-day evidentiary hearing, the circuit court vacated Bates' death sentence upon finding that trial counsel's ineffectiveness prejudiced Bates and ordered a new penalty phase. The subsequent resentencing resulted in a mistrial due to juror misconduct, and a new resentencing proceeding was scheduled for May 25, 1995. The jury recommended a death sentence by a 9-3 verdict, and the trial court, again, sentenced Bates to death. On appeal, the Florida Supreme Court affirmed Bates' death sentence, and this Court denied certiorari. *Bates v. State*, 750 So. 2d 6 (Fla. 1999), *cert. denied Bates v. Florida*, 531 U.S. 1030 (2000).

On September 10, 2001, Bates filed a motion for postconviction relief, which he later amended, as well a motion for DNA testing in the circuit court. The circuit court denied relief on all three motions. The Florida Supreme Court affirmed on appeal, and denied Bates' state habeas petition. *Bates v. State*, 3 So. 3d 1091 (Fla. 2009).

Bates filed a timely federal habeas petition. The Federal District Court denied Bates habeas relief and the Eleventh Circuit Court of Appeal affirmed. *Bates v. Sec'y, Fla. Dept. of Corr.*, 768 F.3d 1278 (11th Cir. 2014); *cert. denied, Bates v. Jones*, 577 U.S. 839 (2015). Bates sought DNA testing again and was, again, denied an opportunity to prove his innocence. *Bates v. State*, 218 So. 3d 426 (Fla. 2017). After this Court decided *Hurst v. Florida*, 577 U.S. 92 (2016), Bates sought relief based on

the decision. Here too, he was denied relief in state court and this Court denied certiorari. *Bates v. State*, 238 So. 3d 98 (Fla. 2018); *Bates v. Florida*, 586 U.S. 845 (2018).

Bates was told by another inmate that a relative of the victim may have served on his jury. After alerting his federal counsel, the Office of the Federal Public Defender for the Northern District of Florida’s Capital Habeas Unit (“CHU”), CHU counsel diligently attempted to verify the relationship by reviewing various records and conducting genealogy research. On June 2, 2022, CHU counsel determined that Juror Hubert Donald Gilmore’s³ second cousin, Billy Joe Gilmore, was married to Mary Floyd-Gilmore, the victim’s sister, at the time of Bates’ 1983 trial.

On May 31, 2023, Bates filed a motion to interview Juror Gilmore pursuant to Fla. R. Crim. P. 3.575, and Rule 4-3.5(d)(4), Rules Regulating the Florida Bar. Following the State’s reply, Bates filed a Response. R.2-49-71; R.2-72-80. On November 6, 2023, the state trial court denied the Bates’ motion. R.2-83-88. Bates then timely a Motion for Rehearing which was also denied. The Florida Supreme Court affirmed. *Bates v. State*, 398 So. 3d 406, 408 (Fla. 2024).

³ Hereinafter, Hubert Donald Gilmore will be referred to as “Juror Gilmore”.

II. FACTS RELEVANT TO THE PETITION

a. Jury Selection in Bates' Case

The one-day jury selection in Bates' trial took place on January 17, 1983, and was hardly adequate to ensure that Bates received a fair trial from an unbiased jury, as guaranteed by the Sixth Amendment.

The court and the attorneys for both sides attempted to uncover potential relationships between the prospective jurors and any witnesses to the case. There were a number of prospective jurors that informed the court and the attorneys about their relationships to the case and/or to the potential witnesses. For instance, several witnesses reported knowing the victim's husband, Randy White. R.1-1243; R.1-1327. During voir dire, the entire panel remained in the courtroom and could hear all the questions and answers from the other prospective jurors. After the first panel of prospective jurors was sworn in, the trial judge instructed the prospective jurors seated in the courtroom to listen carefully stating,

Now, . . . questions that I address to this panel will also be addressed to all of you sitting out here since you're all prospective jurors in this case. I want you to listen, both if you're on the jury and if you're sitting in the courtroom, I want you to listen carefully to the questions that are asked these jurors, it will help us appreciably . . .

R.1-1214. Fourteen times, either defense counsel, the prosecution, or the trial judge asked whether any of the prospective jurors knew the victim, Janet Renee White. R.1-1217, 1222, 1225, 1258, 1261, 1264, 1289, 1311, 1314, 1338, 1345, 1346, 1367, 1372. The State Attorney asked the panel if they knew the victim by her maiden name of Floyd. R.1-1264. Juror Gilmore never disclosed his relation through his wife.

The trial court, in fact, removed sixteen potential jurors for cause in front of

Juror Gilmore, including at least one juror who was related to the victim's husband through marriage. Early on in voir dire, the state attorney explained that even remote familial relationships should be brought to the court's attention; the prosecutor explicitly stated: "*If you're related within the third degree, by law you may be excused.*" R.1-1238 (emphasis added).

Prior to the court conferring with the attorneys at the bench, the court announced:

[A]nd I want to tell you that the rules of the [c]ourt permit each side to relieve or excuse a certain number of jurors without giving reason for it. So [,] if you are relieved from serving on this panel, don't think it's an attack upon your integrity, your good name or upon your honor, or anything . . . The attorney's task is to pick a fair and impartial jury and in doing that, they may think that some of the jurors might be better suited for service on this jury . . .

R.1-1306-07. Juror Gilmore also heard, in open court in front of the entire panel, which prospective jurors were struck by the defense.⁴ R.1-1309; R.1-1343. Juror

⁴ Prospective juror Johnny Johnson knew the husband of the victim, Randy White, as well as Dr. Joseph Sapala who performed the autopsy of the victim, and Dr. William Sybers who took over Dr. Sapala's office after his departure and was removed by the court. R.1-1327-28; R.1-1359. Additionally, prospective juror Mary Miller worked at Margaret Fashions at the time of the crime, and was colleagues with the victim's sister, the wife of Robert Benefield whom was listed as a witness for the State but not called, and Betty Griffeth, the wife of prospective juror Billy Griffeth. R.1-1222; R.1-1244-45; R.1-1288. Mary Miller and Robert Benefield were also neighbors. R.1-1244. Ms. Miller was removed by the Court before the defense could exercise a preemptory challenge. R.1-1277. Prospective juror Unni Dover lived three houses down from State witness Geraldine Gilchrist and was removed by the Court. R.1-1243; R.1-1249. Ms. Gilchrist was also summoned to serve on Bates' jury, but was unable to serve as she was already set to testify. Finally, alternate juror Robert Lee Exley and Judge Turner were former neighbors. R.1-1363. All of this information came from the jurors disclosing their relationships to the court.

Before the jury was seated, defense counsel used one last strike to remove Mr. Hubbard. R.1-1358-59. Defense counsel struck Mr. Hubbard based on an Assistant

Gilmore was questioned as a potential juror after the defense had used fourteen peremptory challenges. R.1-1343.

The court struck some jurors in an abundance of caution, including the juror who was questioned immediately before Juror Gilmore:

THE COURT: I think out of an abundance of caution, we'll let him go home, his wife is confined to bed and he has three teenagers there. Even if his wife wasn't there, the teenagers would drive him crazy or he'd go crazy thinking about who's feeding them and this sort of thing.

MR. SMITH: Actually I was looking forward to being sequestered.

THE COURT: Well, I think you would be worrying about it, so I'm going to excuse him. That's Mr. Smith, Mr. Smith, I'm going to excuse you, sir. All right, now, that leaves us with seven. We need another seven jurors, Mr. Clerk.

THE CLERK: All right. Juror number 95, Charles Carver. Juror number 98, Mutsuko Frost. Juror number 102, Hubert Gilmore.

R.1-1344-45. Before asking if the jurors could impose death the trial court specifically asked the jurors:

Do you know of any reason why you couldn't sit as a fair and impartial jury, fair to the State and fair to the Defendant and render your verdict solely on the evidence that you hear and see and the charge of the Court as to the law, those are the only two things you have to worry about, the evidence and the law. Is there anybody that can't do that?

R.1-1037-48. (emphasis added). The prospective jurors, including Juror Gilmore, all affirmed their ability to impose death and indicated that there was no reason they

State Attorney having drafted his will ten years ago and him having worked with potential witness Robert Benefield in pest control, "for a couple of months." R.1-1346-47; R.1-1350-51. Mr. Hubbard did not socialize with Mr. Benefield. R.1-1351. When it came time to exercise strikes, the court was able to anticipate that defense counsel was going to strike Mr. Hubbard.

could not "sit as a fair and impartial jury, fair to the State and fair to the Defendant." R.1-1348.

Juror Gilmore was asked to give some background about himself, to which he stated: "My name is Hubert Gilmore, I'm with RCA out at Tyndall. My wife works at Sears, and I have three children, and I have no law enforcement experience." R.1-1348. He did not mention his relationship to the victim.

The prosecutor then asked the prospective jurors: "Do each of you – there was a list of witnesses who are potential witnesses and may be called in this case, do any of you know any of those possible witnesses or are related in any way?" R.1-1350. The list of potential witnesses, including the victim's husband, had been provided for the potential jurors earlier. R.1-1242-44. Again, Juror Gilmore did not inform the prosecutor of his relationship to the victim.

The prosecutor then gave the new prospective jurors another chance to disclose any biased relationship, asking:

Do any of you know of any question that was asked earlier or some other time that you feel should be brought to your attention and the Court? In response to one of those questions or some other thing that you feel is important to direct to the Court? Do each of you feel you could be fair and impartial, both to the State and to the Defense? Any pressing problems, **family members** or anything of this nature?

R.1-1352 (emphasis added). A few prospective jurors brought to the court's attention some scheduling issues, but Juror Gilmore continued to remain silent. Finally, defense counsel made one more attempt to determine any relationships:

DEFENSE: [] Now, it's always the possibility that the attorneys don't ask you a question and if they had asked you, you would have them to, do any of you have anything that you feel that should be told us?

Just something in a relationship or anything that might in some far stretch of the imagination have a bearing later on, even if we haven't asked the question, anything that you feel that you should disclose that we haven't asked? I know that's a catch-all question, but can you think of anything either the State or I that you wished I had asked or the State had asked that we haven't? Someone said they hadn't read or heard anything or has everyone heard or have heard or read something about this case -- that was you that hadn't heard or read anything - - -

JUROR FRANCK: No, I work, I said I knew the people.

R.1-1357-58 (emphasis added). Still, Juror Gilmore remained silent. The jury was sworn without any disclosure from Juror Gilmore, thereby depriving Bates of a fair and impartial jury. Juror Gilmore had been repeatedly informed of his duty to disclose relevant familial connections to the case, had been provided examples of how these connections could manifest, and was asked by three different state actors—yet, Juror Gilmore refused to disclose his relationship to the victim.

b. Bates' Awareness of the Juror

Bates was told by a fellow prisoner from Bay County, Florida, that there was a Black man convicted in Bay County by a jury that contained a family member of the victim. Apparently, this is well known in the Bay County and is still talked about today. Although convicted in Bay County, Bates is not from Bay County, did not reside there, and does not have family in the area that would have known of this shocking revelation. Upon first hearing about the case, Bates did not know whether the prisoner was referring to his own case.

Bates initially informed his federal counsel of the possibility that he was convicted by a biased and related juror. Such a mere possibility would be insufficient for any attorney to file a motion for relief or to interview the juror on Bates' behalf.

Much investigation needed to be done, especially considering the protection that the legal system provides jurors once a case has been determined. So, Bates diligently pursued the truth. First, he was able to determine that one juror was actually related to the victim—specifically, Juror Gilmore’s second cousin was married to the victim’s sister. *See Florida Marriage Index*, 1927-2001. The presence of a victim’s relative on the jury, as can be imagined, was an earth-shattering revelation for Bates. Following Florida Rule of Criminal Procedure 3.575, Bates filed a motion to interview Juror Gilmore and assumed the burden of proof.

III. THE FEDERAL QUESTIONS RAISED BELOW

Bates initially raised the Federal Questions by filing a motion to interview Juror Gilmore. This motion was filed under Florida Rule of Criminal Procedure 3.575⁵, which provides “[a] party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview of a juror or jurors to so determine.” Under this Rule such a motion must be filed within 10 days of the verdict, “unless good cause is shown for the failure to make the motion within that time.” *Id.*

Bates met all of the requirements of Rule 3.575, pleading that good cause was through the unique circumstances of this case. The motion required nothing further—as it can be anticipated that a second motion would be required to obtain relief after

⁵ Bates notes that Fla. R. Crim. Pro. 3.575 was enacted on January 1, 2005 but his conviction was rendered in 1983. *See Amends. to Fla. Rules of Crim. Proc.*, 886 So. 2d 197 (Fla. 2004). Bates had no reason to suspect jury misconduct until he was able to ascertain that the rumor that a black man in Bay County was sentenced to death by a jury which contained a family member of the victim referred to his case.

the juror interview was conducted.

The State responded and argued that the motion was untimely and without merit, relying on its interpretation of this Court's case law, amongst other courts. In reply, Bates refuted those arguments and argued that jury interviews were allowed under this Court's precedent. The trial court denied Bates his right to interview Juror Gilmore and, in a motion for rehearing, he argued that the circuit court violated his rights under the United States Constitution, noting:

Mr. Bates is sentenced to the most serious and extreme penalty possible. He has a right to challenge his conviction and death sentence under the habeas clauses of the United States and Florida Constitutions. Despite the injustices he has suffered, here and throughout his case, Mr. Bates sought relief in a respectful and fair manner. He merely seeks to answer important questions that have arisen concerning his right to a fair and unbiased jury. The time and invasiveness would be limited because Mr. Bates seeks to only ask narrowly-tailored questions, even if they go to essential rights. This Court's order also denied Mr. Bates' due process under the United States Constitution and the Florida Constitution. *See Chambers v. Mississippi*, 410 U.S. 284, 285 (1973) (holding that a state rule violated due process when used to deny a substantive federal constitutional right).

Motion for Rehearing, at Appendix F, pages 11-12. Still, the Florida Supreme Court affirmed the trial court's denial. Accordingly, this case arises from the Florida courts' denial of a motion for a post-verdict interview with Juror Gilmore, pursuant to Fla. R. Crim. P. 3.575. Bates, a state inmate sentenced to death, raised egregious Sixth and Fourteenth Amendment violations which warranted the granting of the aforementioned post-verdict interview.

REASONS FOR GRANTING THE PETITION

As Bates vigorously litigated his innocence throughout the last 40 years, he always had a strange inkling that there was something deeply wrong with the criminal proceedings against him. This Court can only imagine what Bates thought when he heard the shocking news that a Black man had been convicted and sentenced to death by a jury with a venireperson who was related to the victim. Like Bates had always suspected, something was terribly wrong with his criminal proceeding.

Bates learned about Juror Gilmore's relation to the victim far later than ten days after the verdict was rendered. Fla. R. Crim. Pro. 3.575 permits a motion to be brought after this 10-day period, but only if "good cause is shown." Bates filed his motion to interview Juror Gilmore only after his federal counsel confirmed Juror Gilmore's relationship to the victim in his case. The circuit court erroneously denied this motion and the Florida Supreme Court affirmed the denial by inappropriately asserting that Bates' efforts were "40 years late," even though knowledge of the factual basis for the motion was not available forty years ago.

I. PETITIONER HAS A RIGHT TO INTERVIEW JURORS THROUGH DUE PROCESS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

A jury trial constitutes “the great foundation and first principle and essence of a common law trial.” *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 440 (1830). “One touchstone of a fair trial is an impartial trier of fact” – specifically, a jury that will decide the case solely based on the evidence presented at trial. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984). “[T]he theory of the law is that a juror who has formed an opinion cannot be impartial.” *United States v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807).

The United States adopted the right to an impartial jury trial to:

safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge ... Fear of unchecked power, so typical of our State and Federal Government in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.

Duncan v. Louisiana, 391 U.S. 145, 151-56 (1968). To be impartial, “a juror must be as ‘indifferent as he stands unsworne’... regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies.”

Irvin v. Dowd, 366 U.S. 717, 721–22 (1961) (quoting Lord Coke, *Co. Litt* 155 *b*). And “[t]he right to trial by jury should mean no less today than it did at the Nation’s founding.” *Rimlawi v. United States*, 145 S. Ct. 518-19 (2025) (Gorsuch, J., dissenting from denial of certiorari).

This Court “has long held that the remedy for allegations of juror partiality is

a hearing in which the defendant has the opportunity to prove actual bias.”⁶ *Smith v. Phillips*, 455 U.S. 209, 215 (1982). A petitioner must demonstrate that (1) the juror failed to honestly answer a material voir dire question; and (2) a correct and honest response from the juror could provide a valid basis for a cause challenge. *McDonough*, 464 U.S. at 556. A variety of events can occur that can deny an accused the right to a fair and impartial jury.⁷

And Justice O’Conner wrote separately in *Smith* to highlight that there are “some extreme situation[s] that would justify a finding of implied bias . . . [such as when] the juror is a close relative of one of the participants in the trial . . . or that the juror was a witness or somehow involved in the criminal transaction.” *Smith*, 455 U.S. at 222 (O’Conner, J., concurring). Bates’ case is one of the extreme situations that Justice O’Connor contemplated; it is simply incomprehensible that a juror can be impartial to a defendant charged with murdering his relative. *Id.* Similarly, Justices Marshall, Brennan, and Stevens agreed with Justice O’Conner’s notion that

⁶ This Court has grappled with the difference between actual bias and implied bias. *See, e.g., Dennis v. United States*, 339 U.S. 162, 171-72 (1950) (refusing to introduce a bright line rule for instances of implied juror bias, but holding that “[p]reservation of the opportunity to prove actual bias is a guarantee of a defendant’s right to an impartial jury”); *Remmer v. United States*, 347 U.S. 227 (1954) (highlighting the importance of a hearing to determine allegations of juror partiality and actual bias).

⁷ See Michael Hall, *The Juror Who Found Herself Guilty*, TEXAS MONTHLY (Feb. 2024), https://www.texasmonthly.com/news-politics/the-juror-who-found-herself-guilty/?utm_source=texasmonthly.com&utm_medium=referral&utm_campaign=sharebutton (Detailing a juror who, twenty-seven years after she sat on a criminal jury trial, insisted that the conviction be reviewed, and helped to uncover the defendant’s actual innocence. For this wrongly convicted defendant, a 27-year-old phone call from a guilt phase juror was enough reason to investigate the defendant’s potential innocence.)

some instances of juror bias cannot be uncovered in a hearing. *Id.* at 229 (Marshall, J., dissenting). Implicit or “unconscious bias” occurs “where the probability of bias is very high, and where the evidence adduced at a hearing can offer little assurance that prejudice does not exist, the juror should be deemed biased as a matter of right.” *Id.* at 231.

Further, a conclusive presumption of bias in limited circumstances aligns with this Court’s historical roots. *Id.* at 232. As Judge Blackstone noted in his Commentaries on the English common law, exclusion of a prospective juror for implied bias is justified when there is a showing:

that a juror is of kin to either party within the ninth degree; that he has been arbitrator on either side; that he has an interest in the cause; that there is an action depending between him and the party; that he has taken money for his verdict; that he has formerly been a juror in the same cause; that he is the party’s master, servant, counselor, steward or attorney, or of the same society or corporation with him.

³ William Blackstone, *Commentaries* *222 (internal citations omitted).

The majority opinion in *Smith* also made clear that due process does not end when a defendant is convicted; a criminal defendant’s rights to due process continue throughout the trial and into the postconviction phase:

Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen. Such determinations may properly be made at a hearing.

Smith, 455 U.S. at 209; *see also Wellons v. Hall*, 558 U.S. 220, 220 (2010) (finding “[f]rom beginning to end, judicial proceedings conducted for the purpose of deciding whether a defendant shall be put to death must be conducted with dignity and

respect”).

Here, the record is clear that Juror Gilmore was present in the courtroom when juror after juror was dismissed for relationships far more remote than his. Prospective jurors were dismissed for having neighborly relationships,⁸ working briefly with a state witness,⁹ and relationships with the victim’s husband.¹⁰ But Juror Gilmore was silent. Even after explicitly being informed that all familial relations “within the third degree”¹¹ should be disclosed, Juror Gilmore failed to alert the court about his relation to the victim.

Bates could not have filed the motion to interview Juror Gilmore within ten days of the verdict because he did not know a relative of the victim sat on the jury that convicted him at that time. The information was never disclosed at trial. A juror interview is the only way that this Court can ensure that the constitutional standards were met in Bates’ case. *See Wellons*, 558 U.S. at 220-21 (noting that defense counsel only learned of the juror misconduct *after* the trial); *Smith*, 455 U.S. at 229 (Marshall, J., dissenting) (noting that some forms of unconscious bias may not be discoverable through a hearing).

Bates has long urged the state courts to allow him to interview jurors, either based on the nature of his case and as a matter of constitutional right. In 2008, on appeal from the denial of postconviction relief, he raised this argument:

⁸ R.1-1243, 1249, 1363.

⁹ R.1-1327-28, 1359.

¹⁰ R.1-1287-88.

¹¹ R.1-1238.

ARGUMENT IV - OTHER ERRORS

A. Juror Interview ban is unconstitutional.

Rule 4-3.5(d)(4), Rules Regulating the Florida Bar is unconstitutional. The rule prevents Mr. Bates from investigating any claims of jury misconduct or racial bias that may be inherent in the jury's verdict. Misconduct may have occurred that Mr. Bates can only discover by juror interviews. Cf. *Turner v. Louisiana*, 379 U.S. 466 (1965); *Russ v. State*, 95 So. 2d 594 (Fla. 1957).

Mr. Bates requests that this Court declare Rule 4-3.5(d)(4), Rules Regulating the Florida Bar invalid as being in conflict with the Eighth and Fourteenth Amendments to the United States Constitution and to allow Mr. Bates unfettered discretion to interview the jurors in this case. The failure to allow Mr. Bates the ability to freely interview jurors is a denial of access to the courts of this state under article I, section 21 of the Florida Constitution. Even if this Court does not find the rule unconstitutional, Mr. Bates is still entitled to interview jurors on the basis of good cause. Evidence exists that the community pressured judges, and most likely jurors, to convict and sentence Mr. Bates to death. The files and records did not conclusively rebut this claim. An evidentiary hearing is required.

IB-pages 78-79. The brief went on to note:

In *Buenoano v. State*, 708 So. 2d 941 (Fla. 1998), this Court acknowledged that failure of a juror to answer truthfully can constitute grounds for relief. However, in *Buenoano*, the Court found the issue procedurally barred because collateral counsel failed to exercise due diligence in discovering that a juror had lied during voir dire. For this reason, it is essential that Mr. Bates be permitted to interview the jurors who convicted him and sentenced him to death

IB-footnote 6, page 79. The reproduction and reassertion of this right is necessary for two reasons: First, it shows that Bates was raising the issue of a biased jury long before he knew that he was tried by one. Contrary to the state courts' view below, he was not too late to raise a biased jury claim because he had sought to do so since his 1999 postconviction motion. Second, had the state courts allowed juror interviews

when Bates initially made his request, inevitably information that is critical to litigating his right to a fair and unbiased jury would have come to light; only once Juror Gilmore admits he was aware of his relationship to the victim, can Bates state with certainty that he was tried by a biased juror. Given Juror Gilmore's silence, Bates had no reason to know that he should investigate the jury immediately after trial, and because juror misconduct is properly investigated in postconviction, Bates asked for juror interviews when his case was in the state postconviction phase. *See Wellons*, 558 U.S. at 220 (noting that “[a]lthough the trial looked typical, there were unusual events going on behind the scenes” and the discovery of inappropriate gifts between jurors and bailiffs occurred “[o]nly after the trial”).

Moreover, only after learning of the potential for bias could Bates' counsel diligently investigate the matter. *See Fla. R. Crim. P. 3.575* (stating, “A party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview of a juror or jurors to so determine”). Bates' counsel utilized various genealogy and ancestry databases to confirm Juror Gilmore's relationship to the victim. This took time, and Bates should not be penalized for seeking a level of certainty before asserting a claim, especially when he filed the claim within one-year of determining that the rumor applied to his case.

This Court has previously explored a defendant's repeated attempts to obtain relief regarding juror misconduct and observed how “procedural morass” prevented him from obtaining justice:

Wellons has repeatedly tried, in both state and federal court, to find out what occurred, but he has found himself caught in a procedural morass:

He raised the issue on direct appeal but was constrained by the nonexistent record, and the State Supreme Court affirmed his conviction and sentence. [] He sought state habeas relief and moved to develop evidence. But the court held that the matter had been decided on appeal and thus was res judicata.[]. He raised the issue again in his federal habeas petition, seeking discovery and an evidentiary hearing. But the District Court ‘concluded that Wellons’s claims … were procedurally barred, and accordingly denied his motion for an evidentiary hearing on these claims.’[]. Before the Eleventh Circuit, Wellons ‘argue[d] that the district court erred in denying his motions for discovery and an evidentiary hearing to develop his judge, juror, and bailiff misconduct claims because they are not procedurally barred.’ [] The court disagreed, holding that Wellons’ claims were procedurally barred.

Wellons, 558 U.S. at 221–22 (internal cites omitted). Wellons was only able to litigate his claim of juror misconduct after this Court granted his writ of certiorari and remanded for further proceedings. *Id.* at 226. Similarly, Bates suffers from a procedural morass: he could not have possibly raised a claim regarding Juror Gilmore’s misconduct on direct appeal, and he certainly could not have raised this claim within ten days of the verdict. *See id.* Now, “40 years late[r,]”¹² Bates is forced to overcome significant procedural hurdles to develop his constitutional claim of juror misconduct.

Condemned individuals have no means of obtaining information to assert claims of juror misconduct, unless some sort of information becomes known outside of the case. *See, e.g., Wellons*, 558 U.S. at 220-21 (noting that defense counsel could not have learned of the misconduct until after the trial). In other words, Florida death sentenced individuals must wait for someone to mention the misconduct in the visiting room, or other such fortuitous occurrence. The rights protected by the

¹² *Bates v. State*, 398 So. 3d 406, 407 (Fla. 2024).

Constitution should not depend on serendipity. *See id.* at 220 (noting that capital proceedings must be “conducted with dignity and respect”).

Bates should have been allowed to interview jurors during postconviction and should not have been forced to wait until, by chance, he learned of the egregious constitutional violation he suffered. This is especially true because, as in the case of Bates, the information may become known too late for any meaningful consideration of the error by a federal court considering the limitations placed on second or successive federal habeas petitions. *See* 28 U.S.C. § 2244(b)(3) and (4). The law as it stands in Florida provides no meaningful access to the courts and no way to raise, in a meaningfully way, serious issues of juror bias.

Bates, like anyone facing execution after a trial, has a right to interview jurors to protect his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, and the right to seek habeas corpus and access to the courts under the Florida and United States Constitutions. This Court should grant certiorari and hold that juror interviews are permitted upon good faith belief of potential juror misconduct.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing reasons, Mr. Bates respectfully requests that this Court grant a writ of certiorari, vacate the decision below, and remand his case to the Florida Supreme Court with instructions to permit Bates to interview the jurors from his 1983 trial.

Respectfully submitted,

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