

No. 17-7676

IN THE
Supreme Court of the United States

CEDRIC ALLEN RICKS,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Criminal Appeals of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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This is a capital case.
QUESTIONS PRESENTED

1. Ricks stabbed to death his girlfriend and her son, critically injured a second child, and abandoned a crying infant when he fled his apartment. Responding officers entered the apartment pursuant to the exigent circumstances exception to the Fourth Amendment warrant requirement, to assist the injured child, recover the crying infant, and verify that the assailant was gone and the premises were safe. During this entry, the officers saw, in plain view, blood on the walls and floors, bloody clothing, two homicide victims, and a blood-covered knife. The responding officers secured the premises and waited for officers from the Criminal Investigations Division and the Medical Examiners' Office to arrive and collect the items seen in plain view.

Where officers are permitted to seize any evidence seen in plain view during the course of their legitimate exigent or emergency activity, did the State violate Ricks's Fourth Amendment rights by admitting evidence observed in plain view during the initial exigent entry, but collected by different officers after the premises were secured?

2. Has Ricks presented a compelling reason to revisit *Walton v. Arizona*, 497 U.S. 639 (1990)—holding that a state may properly place a burden on the defendant to prove mitigating circumstances—by relying on *Kansas v. Marsh*, 548 U.S. 163 (2006), in which this Court reaffirmed the portion of *Walton* allowing the burden to be placed on the defendant?

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner Cedric Allen Ricks was properly convicted and sentenced to death for the murder of Roxann Sanchez and her eight-year-old son, Anthony Figueroa. Ricks's conviction and sentence were upheld by the Texas Court of Criminal Appeals (CCA) on direct appeal. Ricks now seeks certiorari review of the CCA's determination, but he is unable to present any special or important reason for granting certiorari review. Ricks cannot demonstrate any violation of his constitutional rights. Therefore, this Court should deny Ricks's petition.

STATEMENT OF THE CASE

I. Facts of the Crime

The CCA accurately summarized the facts of the crime as follows:

BACKGROUND

The evidence at trial showed that [Ricks] and Roxann Sanchez lived together at the Colonial Village Apartments in Bedford, Texas. [Ricks] and Sanchez had a child together, nine-month-old Isaiah. Sanchez's two sons from a previous marriage also lived with them: eight-year-old Anthony Figueroa and twelve-year-old Marcus Figueroa.

Shortly after 7:00 p.m. on May 1, 2013, Sanchez and her three sons arrived home from the grocery store. Sanchez carried Isaiah and some of the groceries upstairs to their third-floor apartment, leaving some of the groceries in the car. Anthony, Marcus, and Isaiah went to their bedroom to play while Sanchez cooked dinner. Between 7:10 and 7:20 p.m., a neighbor heard [Ricks] yelling expletives and stating something to the effect of, "Don't have me fucking come down here and waste my mother-fucking time on this bullshit." [Ricks] had stopped yelling once the neighbor passed

[Ricks] and Sanchez on the stairwell. Sanchez, who was carrying two bags of groceries, appeared distraught.

While the boys remained in their bedroom, [Ricks] and Sanchez began arguing in the apartment. When the yelling turned into screaming, Anthony and Marcus ran to the living room. [Ricks] and Sanchez were hitting each other, and [Ricks] pushed Sanchez to the floor. Anthony and Marcus tried to get between them to break up the fight, but [Ricks] pushed Marcus down and continued hitting Sanchez with his fists. [Ricks] then got a knife from a kitchen drawer and stabbed Sanchez multiple times while she tried to protect herself. Marcus ran to his bedroom closet and tried to call the police, but [Ricks] followed him and pulled the closet door open. Marcus dropped the phone, and in an effort to protect himself, grabbed the knife that [Ricks] was holding, but the knife cut his hand.

[Ricks] chased Marcus back into the living room. Anthony was standing next to the couch with blood on his face and asking Marcus to get help. [Ricks] pushed Marcus to the ground, held his head down, and stabbed him multiple times in the back of his neck. [Ricks] then pushed Anthony to the ground next to Marcus and [Ricks] stabbed Anthony while Marcus watched. [Ricks] stopped stabbing Anthony after Anthony made a “gargling noise.” When Marcus tried to get up, [Ricks] got on top of him and began stabbing him again. [Ricks] finally stopped stabbing Marcus after Marcus played dead by imitating the gargling noise Anthony had made.

[Ricks] then put the knife in the kitchen and washed his hands before going to the master bedroom and taking a shower. [Ricks] made a telephone call, packed his clothes, placed Isaiah in his crib, and eventually left the apartment. Although Marcus was bleeding badly, he remained still because he was afraid that [Ricks] would stab him again if he got up. Marcus stayed on the floor until he was confident that [Ricks] would not return. When Marcus finally got up and looked out the window, his mother’s car was gone.

After leaving the apartment, [Ricks] called his cousin, Tamara Butts, who lived with her parents in Mansfield, Texas. He told Butts that he “did something bad” and asked to speak to her father,

Joseph Sanders. [Ricks] told Sanders that he “messed up” and that he “killed [Sanchez] and the boys.” [Ricks] asked Sanders to get Isaiah from the Bedford apartment. When [Ricks] spoke with Butts again, he told her that he killed Sanchez, Anthony, and Marcus and that his hands were injured and cut. [Ricks] refused to tell Butts how he killed them or where he was. He insisted that Butts go to the Bedford apartment to get Isaiah. When Butts urged [Ricks] to turn himself in, [Ricks] stated that he would die before he went to jail.

After [Ricks] hung up, Butts called 911 and then headed with her parents to the Bedford apartment to get Isaiah. As they drove to Bedford, the police called and asked them to go to the police station instead. At the station, Butts and Sanders told the police about their telephone conversations with [Ricks]. Butts gave the police [Ricks’] cellular telephone number, and she continued to text [Ricks] in an attempt to help the officers locate him.

Meanwhile, in response to Butts’ 911 call, Bedford Police officers Clayton Baxley, Brian Meaders, Brett Bowen, Noel Scott, and Crowell¹ were dispatched to [Ricks’] apartment at 8:42 p.m. on a welfare check. Baxley arrived first and heard a baby screaming inside the apartment, but he was instructed over his radio not to enter until a back-up officer arrived at the scene. During this time, Marcus called 911 from inside the apartment and told the operator that his “mom’s boyfriend killed [his] mom and [his] other brother,” that he stabbed them, and that he “took [Sanchez’s] car” and left. The 911 operator relayed this information to Baxley at the scene while she talked to Marcus. Marcus was unable to open the apartment door for Baxley due to the injuries to his hands, but he gave the operator permission for Baxley to open the door. When Baxley opened the door, he found Marcus covered in blood from head to toe. Baxley called to Marcus to exit the apartment. When Marcus came through the door, Baxley saw that the back of Marcus’s head, neck, and shoulders were severely lacerated and that he was bleeding profusely. Marcus was unable to sit down because he was in shock.

¹ The reporter’s record does not include Officer Crowell’s first name. [Footnote in original under different number.]

When Meaders arrived at the scene, he and Baxley entered the apartment to make a quick sweep for additional victims or suspects and to locate the baby. There was blood on the linoleum tile just inside the doorway. Sanchez's and Anthony's bodies were lying on the floor in copious amounts of blood. The officers found Isaiah crying in a crib in the back bedroom. Having determined the apartment was safe, they left Isaiah there because he appeared uninjured and they were more concerned about getting medical attention for Marcus.

Meaders and Baxley cared for Marcus until the paramedics and other officers arrived. Due to the severity of Marcus's injuries, he was flown by helicopter to Cook Children's Medical Center. He later recovered physically from his injuries. Isaiah was also taken to Cook Children's Medical Center as a precautionary measure, but was found to be unharmed.

Autopsies were conducted on Sanchez and Anthony. Sanchez had suffered an instantly fatal stab wound to her neck that transected her upper cervical spinal column at the brain stem, and a potentially fatal stab wound to her neck that transected her right carotid artery. She had suffered multiple other stab wounds and defensive wounds, and there was evidence of blunt force injuries and manual strangulation. Her cause of death was "stab wounds of the neck, blunt force injuries of the head, and asphyxia as a combination." Anthony had suffered several potentially fatal stab wounds: a head wound penetrated Anthony's skull into the temporal lobe of his brain; a neck wound injured his external jugular vein and part of his carotid artery, and penetrated his larynx; and a second head wound penetrated the left side of his nose down through the cartilage of his septum into the oral cavity toward the base of his tongue and the back of his throat. Anthony had suffered numerous other non-fatal stab wounds and various contusions. His cause of death was "[s]tab wound[s] to the head and neck."

Ricks v. Texas, No. AP-77,040, 2017 WL 4401589, at *1-3 (Tex. Crim. App. 2017); Petitioner's Appendix A, at 3-4.

II. Facts Pertaining to Punishment

A. Evidence presented by the State

At the punishment phase of trial, the jury heard the full extent of Marcus's injuries. Marcus was in critical condition, had lost over forty percent of his blood, and would have died without immediate medical intervention. 35 RR 78-79. Marcus suffered from three separate stab wounds to the head, with one penetrating bone; nine wounds to the back of the neck; shoulder wounds that aligned with neck wounds, indicating that the knife entered the back of Marcus's neck, exited the side of his neck, and then struck his shoulder; a right-side wound that missed his carotid artery and jugular vein by one or two millimeters; and wounds to both hands. 35 RR 87-89, 92-94. Marcus initially underwent a six-hour surgery to close his wounds, followed by a two-hour surgery the next day to repair nerve damage in his hands. 35 RR 80, 90. After leaving the hospital, Marcus underwent additional hand surgeries, physical therapy, and counseling. 34 RR 16-17; 35 RR 81. Following the crimes, Marcus was no longer a happy boy, but kept to himself, was afraid to sleep alone, did not trust people, and was afraid to be left alone. 34 RR 30.

The jury heard that, when Ricks was placed in the Garvin County Detention Center following his arrest in Oklahoma, he requested to be placed in a cell with other people. 39 RR 237-38. Ricks was warned, given the nature of his crime and for his own safety, not to tell his cellmates why he was there.

39 RR 238. Ricks nevertheless bragged to his cellmates that he stabbed his wife and kids to death, and showed little emotion other than pride in his actions. 39 RR 255-57. Ricks subsequently got into an altercation with his cellmates. 39 RR 256. Afterward, he asked to sign his extradition papers. 39 RR 240.

Evidence obtained from Ricks's car and apartment suggested that Ricks had stolen prescription note pads from two doctors when he worked as a medical assistant through Medical Clinics of North Texas (MCNT), and had illegally obtained prescriptions. 37 RR 70-71, 89-92. Sanchez's mother found the prescription notepads and medication in her daughter's apartment, which the noted doctors denied prescribing. 34 RR 17, 19; 35 RR 10; 37 RR 73-78, 86, 91-99. And when Ricks's car was processed after his arrest, officers found drug samples, drug vials, prescription bottles, needles, and syringes. 35 RR 38-48, 66-69.

Sanchez's best friend, Amanda Gomez, testified that Sanchez met Ricks through work and became pregnant with Isaiah a few months later. 35 RR 147, 150-51. Ricks did not like Gomez and would not allow her to see Sanchez or Isaiah. 35 RR 147-48, 151-52. When Gomez and Sanchez did go out together, Ricks followed them and argued with Sanchez. 35 RR 148-49. The Friday before Sanchez was murdered, Gomez accompanied Sanchez to sign a lease on

a new apartment; Sanchez wanted to leave Ricks and start over. 35 RR 155. Gomez never saw Sanchez again. 35 RR 155-56.

Evidence demonstrated that Ricks was violent towards Sanchez. On November 2, 2012, during an argument, Ricks choked Sanchez to the point of unconsciousness and beat her head on the bathroom floor; Sanchez's sons were in their bedroom at the time. 40 RR 30, 32. Sanchez pretended to go to work so that Ricks would let her leave the apartment the next day. 34 RR 36. After dropping the kids off at school, Sanchez and her mother went to the police station to report the assault. 34 RR 21-23, 33. Police photographed her injuries, which included a scratch and bruising to her neck, red spots on her neck from Ricks's hands, injuries and bloodstains on her scalp, and a large bruise to her left arm. 34 RR 24, 33, 36-40. Sanchez was scared, visibly shaking, and tried to hide when she saw Ricks come into the police station to give a statement. 34 RR 24; 40 RR 34. Sanchez left the police station and went to the hospital, where she told a nurse that her boyfriend strangled her, pounded her head on the floor, and choked her until she passed out. 34 RR 25; 35 RR 12-13, 17, 19. Sanchez indicated domestic violence was involved in the assault. 35 RR 17-18.

Ricks was arrested for domestic violence and child abuse. 34 RR 84-85. Sanchez obtained an emergency protective order prohibiting Ricks from going to her apartment, work, children's school, or mother's house. 34 RR 26-27. However, shortly after his release from jail, Ricks went to Sanchez's house and

knocked on her door for several hours, calling her names and demanding to be let in. 35 RR 153-54. Ricks admitted to violating the protective order immediately following his release. 40 RR 37, 66. Sanchez nevertheless reconciled with Ricks and he moved back into the apartment. 34 RR 26, 28; 35 RR 154.

Following the November 2012 assault, CPS received a referral in which Isaiah was the victim and Ricks the perpetrator. 34 RR 46, 48. Ricks lied to CPS investigators about his criminal record, claiming he only had two prior misdemeanors, no prior assault cases, no CPS history, no mental-health or substance-abuse issues and no domestic-violence history; CPS did not run an out-of-state check on Ricks to verify his history. 34 RR 56-57, 64-66. While Ricks admitted physically assaulting Sanchez after a verbal disagreement that began when Ricks threw Isaiah across the bed and punched him in the chest, Ricks's account of the assault was inconsistent with the report of the incident and with Sanchez's version. 34 RR 60-65. Ricks said that he wanted to reconcile with Sanchez and that he had begun anger-management classes and counseling. 34 RR 63, 69. Ricks signed a CPS safety plan in which he agreed to comply with Sanchez's protective order, refrain from physical altercation, continue counseling and anger management, and cooperate with CPS. 34 RR 66-67. Ricks and Sanchez attended couples counseling, 35 RR 22-24, 26; and in February 2013, Ricks received a certificate of completion for the anger-

management program, 35 RR 54-55, 97-98-103, 108. CPS closed its case in January 2013, believing the children were safe. 34 RR 67-68.

The State offered other evidence of Ricks's violence towards women. In his junior year of high school in 1991, Ricks was arrested for an incident involving his then-girlfriend, Tina Brown. After being suspended from the school and taken home, Ricks returned in his father's car, forcibly removed Brown from the school, and tried to drive away with her. A school security officer stopped the car and had Ricks arrested. 36 RR 7, 9-18; 38 RR 144. Ricks testified at trial that he was arrested a couple of times for incidents involving Brown. 40 RR 62.

Ricks was physically violent towards ex-wife Tashana Singleton, before and during their marriage. 37 RR 9-14. Ricks first assaulted her in 1998 when Singleton tried to break up with him; he punched her in the jaw. 37 RR 13. Singleton described an incident in 2000 for which Ricks was arrested, where Ricks kicked her, punched her, and pushed her head into a wall, and then held a butcher knife on her. 37 RR 14-16. The two reconciled and Singleton became pregnant with their son. However, after the child was born, Ricks told Singleton, "I hope it dies." 37 RR 15-16, 44.

In 2001, Ricks knocked Singleton to the ground while she was holding their one-month-old son. 37 RR 17. Ricks stabbed a knife into the floor next to her head multiple times, threatening to kill her. 37 RR 17-19. A few months

later, Ricks punched her in the jaw and broke her tooth. 37 RR 19-20. And a few months later Ricks became upset with Singleton while driving with her and her children, and threatened to kill them all by driving off a cliff. 37 RR 22-23.

In 2002, Singleton filed for divorce and obtained a protective order, which Ricks constantly violated by making harassing phone calls, sending threatening text messages, and threatening her family. 37 RR 20-22, 40. Ricks would say frightening things to Singleton when she dropped off their son at his parents' house for visitation, and Ricks would threaten to kill Singleton and her father when her father accompanied her to drop off the child. 37 RR 23-25, 63. Ricks, Singleton, and their parents attended counseling sessions at their church, but Ricks was disrespectful toward the pastor and did not like Singleton's parents being present. 37 RR 65-66. Ricks threatened to kill Singleton's father on several occasions, including once at the courthouse when Ricks looked at her father and motioned his hand across the front of his throat. 37 RR 28, 60-62. In July 2003, the police escorted Singleton and her father to Ricks's parents' house to drop off his son. 37 RR 26. Ricks threatened them when they arrived, broke Singleton's phone, and became irate with the police; Ricks was arrested and the exchange location for the child was changed to the police department. 37 RR 25-27.

In May 2004, Ricks became angry because Singleton drove another man's car to pick her son up from Ricks. 37 RR 28-32. In front of the police station, Ricks choked and beat Singleton in the face and head until she was unconscious, while their son stood by crying. 37 RR 32, 47-50, 53. The assault continued even after police tried to intervene. 37 RR 51-53. Ricks was arrested and sentenced to probation, which required him to serve jail time and participate in domestic-violence counseling. 37 RR 37-38.

In June 2004, Ricks entered a relationship with Tamara Partridge. 36 RR 22-24. Ricks was initially charming and generous, but became violent as the relationship progressed. 36 RR 26, 31. Ricks hit Partridge in the face and knocked her down when she confronted him about talking to another woman. 36 RR 31-32. Ricks lied to her about his domestic-violence history, and why he had to spend time in jail. 36 RR 26. Ricks belittled Partridge and easily became jealous of her. 36 RR 32, 35-36. He once smashed her laptop computer and hit her in the leg for talking to a male friend. 36 RR 32-33. On his birthday in 2007, Ricks broke Partridge's phone, held her against the wall, and choked her because she had a missed-call from a male friend. 36 RR 33-35.

Ricks was arrested for being involved in a bar fight. Partridge picked him up from jail and drove him to the impound lot to retrieve his car. 36 RR 38; 40 RR 60. Upon learning the lot was closed, Ricks climbed the fence, broke into the office to get his keys, and then rammed his car into the locked gate in an

effort to get out. 36 RR 38-41. Ricks was charged with property damage. 40 RR 61. Partridge described other incidents where Ricks became angry at strangers on a train and in a restaurant because he believed they were judging him for being in an interracial relationship. 36 RR 41-43. Partridge believed Ricks was dangerous and would hurt her, and she broke up with him after four years because she could no longer endure his jealousy and abuse. 36 RR 38.

In late 2008, Ricks began a relationship with Jennifer Clark. 35 RR 109-11. Ricks was jealous of Clark's dead ex-husband, and became agitated when Clark's daughters would grieve for their father. 35 RR 121-22, 138. Ricks was also jealous of Clark's relationship with her daughters. 35 RR 139. Clark and Ricks began to have physical disagreements towards the end of the relationship. 35 RR 130. On one occasion, Ricks refused to leave when asked, and threatened to kill Clark when she tried to call the police. 35 RR 131. Clark in turn threatened Ricks with a shotgun; he moved out a few weeks later. 35 RR 131.

While in jail, awaiting trial for capital murder, deputies found thirteen contraband pills hidden in Ricks's cell. 36 RR 78-81, 84. Ricks was also caught smuggling a pencil—which could have been used as a weapon—in his jail smock when he was being transported for voir dire proceedings. 36 RR 57-60, 72-73.

The jury heard from a former prison classification committee member regarding the classification freedoms and restrictions an inmate sentenced to life without parole would face. 37 RR 126-38, 144.

B. Evidence presented by the defense

Ricks presented evidence that he did not start the fight in the Oklahoma jail, 38 RR 17-18; and that he waived extradition and agreed to return to Texas. 38 RR 20-21. And detention officer Justin Crooks testified that he has not had any problems with Ricks while he was in jail awaiting trial. 38 RR 170-72.

Jane Crossley, Ricks's former Sunday school teacher, testified that Ricks's family was very supportive of the church, and that, when he was younger, he attended church every Sunday. 38 RR 27-28. Ricks was a very involved and faithful member of the church. 38 RR 28. Crossley was shocked when she heard what Ricks was accused of doing. 38 RR 29.

Cortland Byrd, Jr., testified that he and Ricks grew up together in Chicago. 38 RR 41-42. Byrd described Ricks as a good football player but with a short fuse. 38 RR 45-48. Byrd spoke to Ricks a few days before the murders; he sensed something was wrong and Ricks indicated that he wanted to return to Chicago. 38 RR 54-55.

Bonnie McCullough testified that she had known Ricks since he was born. 38 RR 61-62. McCullough described a change in Ricks's behavior beginning around the age of 8 or 9—Ricks began getting in trouble at school

and once started a fire in her car. 38 RR 63-67. Ricks's parents sought help for him. 38 RR 65-66.

Steven Ware also grew up with Ricks in Chicago. 38 RR 73. Ricks was a class clown and fun to be around, but he also got into a lot of trouble in school. 38 RR 75. In 2007, Ware was hospitalized after a car accident. Ricks visited him in the hospital every day and, when Ricks heard that he lost his shoe in the accident, he bought him a replacement pair. 38 RR 77-78. Ricks also brought Ware's girlfriend newspapers and magazines while she stayed with Ware at the hospital. 38 RR 78.

Curtis Crossley, II, testified that he knew Ricks from church during their childhood. 38 RR 101. Curtis described Ricks as jovial and athletic, but competitive and tough. 38 RR 102-03. Curtis thought Ricks was a little more aggressive than necessary when playing sports, and that he always wanted to win. 38 RR 103-05.

Ricks's childhood friend, Keith Griffin, testified that he played sports with Ricks; Ricks was a "scrappy, hardworker," who was aggressive when he played sports. 38 RR 152-55. Griffin said Ricks was intense off the court too—he had a short fuse and did not like being pushed around. 38 RR 156. Griffin visited Ricks after he was arrested for murder; Ricks broke down and cried and was inconsolable. 38 RR 160-61.

John McGee testified that he began coaching Ricks in football around the age of eight. Ricks was a normal, competitive kid, who tried hard and did what he was told when he was with McGee. 40 RR 8-11. Gary Korhonen was Ricks's high school football coach. 40 RR 15-19. Korhonen recalled that Ricks was a very good player. 40 RR 19. He was also a compassionate, well-liked person; Korhonen recalled a time Ricks ran onto the field to aid an injured player. 40 RR 19-20.

Ricks's cousin, Thomas Abner, testified that Ricks called him eight days before the murders. 38 RR 83. Abner felt like Ricks was in need—he was worried about money and seemed stressed. 38 RR 84-85. Abner offered to help by sending money in a few months. 38 RR 84-85. Ricks wanted to give Abner some jewelry, which Abner found strange. 38 RR 85-86. Cousin Kimberly McCullough described Ricks as a mischievous kid. 38 RR 91. His family became concerned about his behavior as he got older. 38 RR 93.

Ricks's father, Shederick Ricks, testified that his son began exhibiting behavioral problems as early as kindergarten. 38 RR 117. Initially he was mischievous and hyperactive, but the problems got worse as he got older. 38 RR 118-19. When Ricks was eight or nine Shederick caught him setting a fire next to the house; when he was ten, Ricks threw a brick through a picture window. 38 RR 123, 130-31. They sought professional help from counselors and therapists, and even had Ricks admitted to a hospital for a month when he was

older. 38 RR 124-27. After he was released from the hospital, Ricks would not take his medication. 38 RR 143. Shederick got Ricks and his brother pipe-fitter jobs and got them into the union so they could make a living but, during the recession in 2007, they were both laid off. 38 RR 134-36.

Brother Dewayne Ricks testified that he was more academic and a loner, while Ricks was athletic and jovial, and the life of the party. 38 RR 180. Dewayne stated that church was a big part of their lives growing up. 38 RR 181-82. He described Ricks as aggressive, and acted like he carried the weight of the world. 38 RR 183. Ricks had a good work ethic, and worked hard. 38 RR 185-86.

Ricks's mother, Helen Ricks, admitted smoking during her pregnancy. 39 RR 191. She testified that Ricks was a sickly child who frequently had to go to the emergency room for breathing problems. 39 RR 192. He started behaving in an aggressive, mischievous, hyperactive manner when he was toddler. 39 RR 192. A doctor suggested putting him on Ritalin but Helen did not want to drug her son. 39 RR 194-95. Helen testified to a third fire that Ricks caused—he set his grandmother's curtains on fire. 39 RR 195. They took Ricks to see different counselors and even had an MRI, but could find nothing wrong with Ricks; the continued to punish him for his behavior but it did not help. 39 RR 196. According to Helen, she and her husband, as well as the teachers at his school, tried to help and support Ricks as best they could. 39 RR 198-99. Helen

testified that they had Ricks admitted to a psychiatric ward after an incident involving Tina Brown; he was released after thirty days but refused to take his prescribed medication. 39 RR 203-04.

Dr. Jeffery Lewine is a principal scientist at MINDSET, a non-profit organization that provides neuroscience consulting in civil and criminal cases. 39 RR 91, 95-98. Dr. Lewine testified about neurological and other testing performed on Ricks. The results showed that Ricks had a biological predisposition toward violence and aggression. 39 RR 131-33, 136, 145. There was no evidence of brain tumor or major traumatic brain injury. 39 RR 115, 123, 131, 167. Rather, Ricks goes into sensory overload at a lower level of sound intensity than neurotypical individuals, so he cannot control his impulses during a heated argument and would theoretically fall back on impulsive and aggressive tendencies in a noisy environment. 39 RR 142-43, 154-55. Lewine testified that Ricks's MRI showed he was not a psychopath, but he acknowledged that some of Ricks's scores on the Psychopathy Checklist should possibly have been higher, which would place Ricks's score in a range that might in certain circumstances be considered a psychopath. 39 RR 122, 124-25, 132-33, 159-67. Combining impulsive behavior with dangerous and violent tendencies makes a potentially dangerous person, and Ricks has gone beyond potential. 39 RR 157. Ricks has exhibited a life-long pattern of aggression and violence, and is predisposed towards that. 39 RR 160. Lewine opined that, if

Ricks were sentenced to life without parole, his future risk was “probably somewhere in the middle” of the risk scale. 39 RR 147-52. But if Ricks were in the same situation in a relationship, this could happen again. 39 RR 151. Overall, Ricks’s testing corroborated his history of violent, aggressive and impulsive behavior. 39 RR 170.

Ricks took the stand in his defense. Ricks admitted that Dr. Lewine was accurate about his impulsiveness and aggressiveness. 40 RR 44. He admitted he was in a rage and could not control himself when he stabbed Sanchez, Anthony, and Marcus. 40 RR 45, 49. Ricks admitted that his trouble letting go of things and controlling his anger dates back to early elementary school, and every time he lost control with a significant other it began as an argument. 40 RR 39, 44, 47. Ricks also claimed that he overpowered and stabbed Sanchez and her sons because he feared for his life and was defending himself when the “whole house” attacked him and ganged up on him. 40 RR 77-81.

Ricks admitted he has been arrested for domestic violence five or six times; he could not remember how many times he had been arrested for violating a protective order; and he had been arrested five times for resisting arrest. 40 RR 59. The day before the murders, Ricks admitted that he had appeared in court on the pending charges for assaulting Sanchez, and that he knew he would not get out of those charges like he had before. 40 RR 35, 50-51. He also admitted that he and Sanchez were in the process of splitting up

but she never had the chance to move out because he murdered her. 40 RR 53-54. He also admitted that he overreacted when he murdered Sanchez and Anthony, punched Partridge, choked Singleton, and forced his highschool girlfriend into his car. 40 RR 54-56. When asked about his history of overreacting, Ricks said, “Well, once you analyze every situation, yeah, you always think you could have done something different. That’s—that’s everybody’s life . . . I mean, nobody’s perfect.” 40 RR 56.

III. Pretrial Hearing on Motion to Suppress Evidence

The CCA also summarized the facts related to the pretrial hearing on the motion to suppress evidence as follows:

MOTION TO SUPPRESS EVIDENCE

The trial court held a hearing on [Ricks’s] pre-trial motion to suppress evidence. The evidence showed that Bedford police officers were dispatched to the apartment at 8:42 p.m. on May 1, 2013, in response to [Butts’s] 911 call reporting that [Ricks] claimed to have killed Sanchez and two of her sons. Bedford police officers were familiar with the couple due to a November 12, 2012 assault complaint, and they were aware that the couple lived at the apartment and had a child together. Also, following [Butts’s] call, Marcus called 911 from inside the apartment and told the dispatcher that two people in the apartment were dead and that his little brother was crying. Marcus identified [Ricks] as the perpetrator, and he said that he believed that [Ricks] had left. He also stated that his mother’s car was missing.

When Officer Baxley arrived at the scene, he was instructed not to enter the apartment alone, but to call Marcus to the doorway. When Officer Meaders arrived, Baxley was standing on the apartment landing with Marcus who was covered in blood. Officers Bowen, Crowell, and Scott were also dispatched to the scene. The

officers could hear Isaiah crying inside. Bowen, Crowell, and Scott entered the apartment to perform a protective sweep to look for suspects and victims, and to make sure that the area was safe.² Scott testified that they saw in plain view two bodies on the floor, blood on the walls, and a bloody knife in the kitchen sink. They also found Isaiah in a crib in the master bedroom.

When emergency medical personnel arrived to check the status of Sanchez and Anthony, officers remained in the apartment in order to preserve any evidence that might be in plain view. After the emergency medical personnel left at approximately 9:00 p.m., an officer secured the apartment until members of the Criminal Investigation Division and the Medical Examiners' Office arrived. Bedford Police Detective Joey Gauger and Crime Scene Technician Brittany Grice arrived at the crime scene at 11:18 p.m. The officer who had secured the apartment informed them of the items of evidence the responding officers had seen in plain view during their protective sweep of the apartment. The pair entered the apartment and photographed and videotaped the scene. After the Medical Examiner's team arrived, Gauger and Grice collected the items that the responding officers had observed, including the knife in the kitchen sink. They also took swabs of the blood found throughout the apartment. A member of the Medical Examiners' team informed Gauger that he could see a knife that appeared to have blood on it in an open kitchen drawer. Grice documented and collected the bloody knife. Gauger testified that he and Grice collected the following evidence in the master bedroom that was not observed in plain view: bandage wrappers from under a bed cover; and a wallet, a photograph, and paperwork from inside the nightstand. Some of the paperwork had [Ricks'] name on it. Gauger, Grice, and the Medical Examiner's team left the apartment at 4:38 a.m. A search warrant for the apartment was issued at 10:13 a.m. that same morning.

² There are discrepancies between the trial-on-the-merits record and the hearing record pertaining to who entered the apartment for the protective sweep as the same officers did not testify at both. Which particular officers entered during the initial protective sweep has no bearing on the merits of the suppression issue. [Footnote in original under different number.]

Following the hearing, the trial court granted the motion to suppress as to the photograph and papers from the nightstand and as to the bandage wrappers collected from under the comforter. As to all other evidence, the trial court denied the motion. The trial court did not make written findings.

Petitioner's Appendix A, at 4-6.

IV. Direct Appeal and Postconviction Proceedings

In May 2014, Ricks was convicted of capital murder and sentenced to death for the murders of Anthony Figueroa and Roxann Sanchez during the same criminal transaction. *See* 2 CR 475-79, 517-19. Ricks's conviction and sentence were affirmed by the CCA on October 4, 2017. Petitioner's Appendix A. After receiving one extension of time, Ricks filed the instant petition.

REASONS FOR DENYING THE WRIT

Review on writ of certiorari is not a matter of right but of judicial discretion, and it will be granted only for "compelling reasons." Sup. Ct. R. 10. Ricks advances no compelling reason in this case, and none exists. In his first claim, Ricks seeks clarification of the limitations on the exigent-circumstances exception to the Fourth Amendment warrant requirement, arguing that evidence seen in plain view during a proper exigent entry was improperly collected after the exigency expired. But the CCA's rejection of this Fourth Amendment claim was reasonable and in keeping with established precedent of this Court. In his second claim, Ricks asks the Court to revisit *Walton v.*

Arizona, 497 U.S. 639 (1990), arguing that the Texas death penalty scheme impermissibly places a burden of proof on the defendant to prove mitigation. But Ricks offers no compelling reason to grant certiorari. Indeed, the caselaw he cites in support reaffirms *Walton*. For the reasons that follow, this Court should deny Ricks’s request for certiorari review.

ARGUMENT

I. Ricks Demonstrates No Fourth Amendment Violation from the Collection of Evidence Found in Plain View During an Exigent Entry.

Ricks asks the Court to grant certiorari review to clarify the limitations on the exigent circumstances exception to the Fourth Amendment warrant requirement. Petition at 7-11. But Ricks fails to demonstrate a need for certiorari review because the CCA’s rejection of Ricks’s Fourth Amendment claim was based upon clearly established law of this Court, which needs no clarification.

Under the Fourth Amendment, any search and seizure conducted without prior judicial approval is *per se* unreasonable, subject to a few well-delineated exceptions. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978); *Katz v. United States*, 389 U.S. 347, 357 (1967). As relevant to this case, the Fourth Amendment does not bar police officers from making a warrantless entry and search when they reasonably believe that a person within needs immediate aid, or the officers need to determine whether other victims or the assailant

are still on the premises. *Mincey*, 437 U.S. at 392. The police may seize any evidence seen in plain view during the course of their legitimate exigent or emergency activity. *Id.* at 393. In this case, the CCA concluded that exigent circumstances justified the warrantless entry into Ricks's apartment: the still-living victim was found covered in blood and in need of medical assistance, two victims were lying on the floor, a baby was heard crying in the apartment, and the officers needed to verify that the assailant had indeed left and the apartment was safe. Petitioner's Appendix A, at 9.

Ricks does not dispute that exigent circumstances existed for the initial entry. Petition at 8. Ricks instead argues that, because the exigent circumstances ceased when the officers removed the surviving victim and the baby and concluded that the assailant was no longer on the premises, the reentry and subsequent collection of evidence seen in plain view during the initial entry violated his Fourth Amendment rights. But the CCA declined to hold that a subsequent search, no more expansive than the first, was unreasonable merely because the initial exigencies ceased to exist. Petitioner's Appendix A, at 9. In arriving at this conclusion, Ricks contends the CCA departed from the law of this Court and seeks clarification of "the lines drawn after an exigency has clearly ended." Petition at 11. But the CCA followed this Court's precedent and no clarification is necessary.

Under state law, the seizure of an object in plain view is lawful if (1) the officers were lawfully in a place where the object was “plainly viewed”; (2) the “incriminating character of the object in plain view is “immediately apparent”; and (3) the officers had the right to access the object. *Keehn v. State*, 279 W.W.3d 330, 334 (Tex. Crim. App. 2009). This law is consistent with Supreme Court precedent. *See Texas v. Brown*, 460 U.S. 730, 736-37 (1983) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 465-70 (1971) (plurality opinion)) (“Plain view” doctrine permits warrantless seizure where (1) the police lawfully made the “initial intrusion” or were properly in a position to view a particular area; (2) the officer “inadvertently” discovered the incriminating evidence; and (3) it must be “immediately apparent” that the observed items were evidence of a crime, contraband, or subject to seizure.) The CCA denied Ricks’s challenge to the seizure of certain evidence from his apartment, finding that during the initial search, the responding officers saw, in plain view, blood-covered walls, floors, and clothing; two homicide victims; and blood-covered knives. Petitioner’s Appendix A, at 9. Because the incriminating character of this evidence was immediately apparent, “the officers were permitted to seize any evidence they discovered in plain view during the course of their legitimate emergency activities.” *Id.*; *Mincey*, 437 U.S. at 393.

Ricks nevertheless argues that because the responding officers did not seize the evidence on the initial entry, they lost the right to seize the evidence

until a warrant was obtained. *See* Petition at 8-10. The CCA disagreed. Relying on *Texas v. Brown*, the CCA concluded that the subsequent entry and collection of this plain-view evidence by different officers was reasonable, and no more intrusive or expansive than the initial search. Petitioner’s Appendix A, at 9. In *Brown* this Court reasoned, that “when a police officer has observed an object in ‘plain view,’ the owner’s remaining interests in the object are merely those of possession and ownership[.]” *Brown*, 460 U.S. at 739. Thus, requiring the police “to obtain a warrant once they have obtained a first-hand perception of . . . incriminating evidence generally would be a ‘needless inconvenience’ that might involve danger to the police and public.” *Id.* (citing *Coolidge*, 403 U.S. at 468). This Court noted that “the permissibility of a particular law enforcement practice is judged by balancing its intrusion . . . on Fourth Amendment interests against its promotion of legitimate government interests.” *Brown*, 460 U.S. at 739 (citing *Delaware v. Prouse*, 440 U.S. 648, 654 (1979)).

In this case, the responding officers removed the surviving victims, and secured the apartment and preserved evidence in plain view until members of the Criminal Investigations Division and the Medical Examiners’ Office arrived. Petitioner’s Appendix A, at 5. The officer who secured the scene told the Crime Scene Technicians about the evidence seen in plain view during the initial entry, while a member of the Medical Examiners’ Office notified them of a second bloody knife seen in an open kitchen drawer; the items were

collected. *Id.* This subsequent collection resulted in no additional intrusion on Ricks’s Fourth Amendment rights than if the responding officer had stopped attending to the needs of the surviving victims and collected the evidence during the initial entry. The officers should not be punished for prioritizing the security of the scene and the victims. Any subsequent entry to collect what was seen in plain view should be considered a continuation of the lawful entry. *See Michigan v. Tyler*, 436 U.S. 499, 510-11 (1978) (Because fire officials did not need a warrant to remain on premises for a reasonable time to determine cause of fire they had just extinguished, their departure because of limited visibility and subsequent reentry was “no more than an actual continuation of the first, and the lack of a warrant thus did not invalidate the resulting seizure of evidence.”)

Ricks argues that the assumption that he suffered no harm from the reentry ignores the risk that the police will conduct a search beyond the perimeters of the exigency-authorized observations—as the police did in this case. Petition at 9; *see* Petitioner’s Appendix A, at 5 (evidence collected from master bedroom that was not in plain view). However, as the CCA noted, the trial court did, in fact, suppress other items that were not in plain view at the time of the initial exigent entry, allowing admission of only those items found in plain view. Petitioner’s Appendix A, at 9, 16 n.48. Therefore, the Fourth Amendment did indeed protect Ricks from this purported harm. The reentry

and subsequent seizure in this case were thus “strictly circumscribed to the exigencies which justif[ied] its initiation.” *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968); *Mincey*, 437 U.S. at 393.

Ricks demonstrates no Fourth Amendment violation, and no reason to revisit *Mincey* or *Brown* which allow the seizure of evidence in plain view during the course of a legitimate entry. The officers’ reentry to collect evidence seen in plain view was permissible under *Tyler*, and was no more intrusive than the initial entry. Certiorari review under these circumstances is unwarranted.

II. The Texas Mitigation Special Issue is Constitutionally Sound.

Ricks ask the Court to grant certiorari to revisit *Walton v. Arizona*, 497 U.S. 639 (1990), because the Texas death penalty scheme improperly places the burden of proof on the defendant to establish that sufficient mitigation exists to warrant a life sentence, without properly defining “sufficiency” or providing guidance on how to weigh the evidence. Petition at 11-14. Contrary to Ricks’s arguments, Texas does not assign any burden of proof on the mitigation special issue, *see Mays v. State*, 318 S.W.3d 368, 397 (Tex. Crim. App. 2010); Tex. Code. Crim. Proc. Art. 37.071, § 2; and this Court does not require that the State bear a burden of proof on that special issue. The CCA denied relief on this claim, declining to reconsider its prior decisions rejecting

similar claims. Petitioner’s Appendix A, at 11. Ricks seeks certiorari review, but gives the Court no reason to revisit *Walton*.

As support for his argument, Ricks cites to *Kansas v. Marsh*, 548 U.S. 163 (2006), arguing that the death penalty schemes of “other states” impose a burden of proof upon the government to prove that mitigation does not outweigh the aggravating factors, beyond a reasonable doubt. Petition at 13. However, in *Marsh*, this Court reaffirmed the portion of *Walton* holding that “a state death penalty statute may place the burden on the defendant to prove that mitigating circumstances outweigh aggravating circumstances.” 548 U.S. at 169-73. “So long as a State’s method of allocating the burdens of proof does not lessen the State’s burden to prove every element of the offense charged, or ... to prove the existence of aggravating circumstances, a defendant’s constitutional rights are not violated by placing on him the burden of proving mitigating circumstances sufficiently substantial to call for leniency.” *Walton*, 497 U.S. at 650.

While other death-penalty-schemes in different states may place the burden of disproving mitigation on the prosecution, this Court has never required that the State bear that burden. In *Kansas v. Carr*, this Court rejected the argument that the Eighth Amendment requires capital-sentencing courts “to affirmatively inform the jury that mitigating circumstances need *not* be proven beyond a reasonable doubt.” 136 S. Ct. 633, 642 (2016) (citing *State v.*

Gleason, 329 P.3d 1102, 1148 (2014)) (emphasis added). The Court’s reasoning in rejecting Carr’s argument lends support to the proposition that the State bears no burden to disprove the mitigation special issue beyond a reasonable doubt, as suggested by Ricks. Petition at 13.

Addressing the question in *Carr* in the “abstract,” the Court “doubt[ed] whether it is even possible to apply a standard of proof to the mitigating-factor determination (the so-called ‘selection phase’ of a capital-sentencing proceeding).” 136 S. Ct. at 642. The Court explained that requiring a burden of proof for “the aggravating-factor determination (the so-called ‘eligibility phase’)” was possible because it was a purely factual determination—the facts either did or did not exist, and one could thus require proof of existence beyond a reasonable doubt. *Id.* But the existence of a mitigating factor is a “judgment call” and subject to the individual juror’s discretion. *Id.* “And of course the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy[.]” *Id.*

Texas capital juries make the death-eligibility determination at the guilt-innocence phase, and then determine whether the sentence should be imposed at the sentencing phase—the “selection phase.” *Turner v. Quarterman*, 481 F.3d 292, 299–300 (5th Cir. 2007); *see also Johnson v. Texas*, 509 U.S. 350, 362 (1993). The Texas special issues do not “increase[] the penalty for [capital murder] beyond the prescribed statutory maximum” in

violation of the Constitution. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

And although a Texas capital-sentencing jury must specifically answer the mitigation special issue in the negative to render a death sentence, the actual function of that special issue inures to the defendant's benefit by allowing the jury an avenue to give effect to mitigating evidence. Thus, the mitigation special issue is a vehicle through which the jury is given the opportunity to make an individualized determination of the offender's moral culpability, as required by the Supreme Court. *Penry v. Johnson*, 532 U.S. 782, 797 (2001) (*Penry II*); *Eddings v. Oklahoma*, 455 U.S. 104, 111-12 (1982). In making the decision, the jury is instructed to consider all the evidence, including the circumstances of the offense, the defendant's character and background, and general moral culpability of the defendant. Tex. Code Crim. Proc. art. 37.071, § 2 (e) & (f). The jury is not required to agree on what evidence supports an affirmative answer. *Id.* The mitigation issue confers upon the jury a broad ability to show leniency and *reduce* the defendant's sentence to life imprisonment.

Ultimately the *Carr* Court concluded that the existing case law did not require jury instruction that mitigating circumstances need *not* be proven beyond a reasonable doubt. *Id.* In support, this Court relied on *Buchanan v. Angelone*, 522 U.S. 269, 275 (1998), in which the Court upheld a death sentence

even though the trial court “failed to provide the jury with express guidance on the concept of mitigation;” as well as *Weeks v. Angelone*, 528 U.S. 225, 232-33 (2000), in which the Court reaffirmed that it has “never held that the State must structure in a particular way the manner in which juries consider mitigating evidence” and rejected argument that it was unconstitutional to instruct jurors to “consider a mitigating circumstance if you find there is evidence to support it,” without additional guidance. The same logic extends to preclude any burden-of-proof requirement for the mitigation special issue, or supplemental instruction on how the jury must consider mitigating evidence.

Ricks’s citation to *Marsh*—which confirms that a burden of proof may constitutionally rest upon the defense to present mitigating evidence—gives the Court no reason to revisit this issue. For this reason, certiorari review should be denied.

CONCLUSION

Ricks has no constitutional right to the relief he seeks. For all the reasons discussed above, the Court should deny Ricks’s petition for a writ of certiorari.

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