ORIGINAL

No. 25-5797

IN THE SUPREME COURT OF THE UNITED STATES

MS. LEIGHA PAGE ACKERSON,

Petitioner,

v.

THE STATE OF COLORADO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the United States

PETITION FOR A WRIT OF CERTIORARI

Leigha Page Ackerson

Pro se

Register No. 190304

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QUESTIONS PRESENTED

1. Whether the procedure to affirm an LWOP sentence for felony murder once the Felony Murder bill 21-124 became effective is in the interest of justice, *People v. Mcrae*, Colo. 91 (2019) "even if the amendments do not apply retroactively."?
2. Should the court of appeals have relied on *People v. Sellers,* 2022 COA 102 to determine that a sentence of life without the possibility of parole for felony murder is not grossly disproportionate in light of the General Assembly's recent reclassification of the offense to a class 2 felony, not heeding the various factors that may be considered in a proportionality review determined by *Wells-Yates v. People,* 2019 CO 90, rather than Ms. Ackerson's case alone

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1. Petitioner was sentenced Nov. 13, 2020 and the senate bill 21-124 became effective September of 2021.
2. Petitioner has no prior convictions or charges.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner (the defendant below) is Ms. Leigha Ackerson.

Respondent (the plaintiff below) is the Supreme Court of the United States.

No party is a corporation.

RELATED PROCEEDINGS

Trial and Direct Appeal

People v. Ackerson, No. 2018CR85 (Eagle Cnty, Dist. Ct. November 13, 2020)

(entry of judgment of conviction and sentence)

People v. Ackerson No. 2021CA52 (Colo. Ct. App. September 28, 2023)

(judgment affirmed in part and vacated in part, and case remanded with directions)

People v. Ackerson No. 2023SC814 (Colo. Sup. Ct. April 14, 2025)

(cert. pet. denied)

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ISSUE PRESENTED

Ms. Ackerson's codefendant killed the victim single-handedly. Ms. Ackerson was found by a jury of her peers that she neither conspired nor intended to commit murder. Because she was deemed to have committed aggravated robbery by "snatching" the victim's cell phone in the course of the killing, a jury convicted her of felony murder which, at the time, held a mandatory sentence of life without the possibility of parole (LWOP). Within a year of her sentencing, the General Assembly reclassified felony murder to a class 2 felony, lowering the sentencing range from 16 to 48 years with the possibility of parole.

Ms. Ackerson raised the LWOP sentences as constitutionally disproportionate on appeal, but the court rejected the challenge relying primarily on *People v. Sellers,* 2022 COA 102, *cert. granted,* No. 22SC738, 2023

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1. These changes to the felony murder bill became effective September 15, 2021, and are not applicable retroactively. They are located in sections 18-3-103(1)(b), (1.5) C.R.S. (2023).

WL 3479427 (Colo. May 15, 2023). Ms. Ackerson is challenging the reliance on *Sellers* case to determine that felony murder is always *per se grave and serious* ergo an LWOP sentence is not grossly disproportionate in every case is not heeding *Wells-Yates v. People,* 2019 CO 90M regarding all the factors courts may consider when conducting an abbreviated proportionality review, nor *People v. Mcrae,* 2019 Colo. 91 where (quoting) "...the court should consider any relevant legislative amendments enacted after the dates of those offenses, even if the amendments do not apply retroactively."

The issue presented is whether the court of appeals erred in: (1) relying on *People v. Sellers,* 2022 COA 102, *cert. granted,* No. 22SC738, 2023 WL 3479427 (Colo. May 15, 2023), to conclude that a sentence of life without the possibility of parole for felony murder is not grossly disproportionate in the wake of the Colorado General Assembly's reclassification of that offense to a class 2 felony; and, (2) failing to heed the Colorado Supreme CO

Court's pronouncements in *Wells-Yates v. People,* 2019 90M, concerning the various factors courts may consider when conducting an abbreviated proportionality review.

JURISDICTION STATEMENT

A grand jury returned an indictment charging Ms. Ackerson on March 28, 2018. The charges were one count of First Degree Murder – Intent and After Deliberation, 18-3-102(1)(a), C.R.S., one count First Degree Murder – Felony Murder, 18-3-102(1)(b) C.R.S. (2018), one count of Conspiracy to Commit First Degree Murder. 18-2-201 and 18-3-102(1)(a), C.R.S., one count of First Degree Burglary, 18-4-202(1), C.R.S., one count of Aggravated Robbery, 18-4-302(1)(a), C.R.S., one count of Conspiracy to Commit First Degree Burglary, 18-2-201 and 18-4-202(1), one count of Conspiracy to Commit Aggravated Robbery, 18-2-201 and 18-4-302(1)(a), and one count of Tampering with Physical Evidence, 18-8-610(1)(a), C.R.S. The indictment alleged that the offenses that occurred on or between January 24-25, 2018.

Ms. Ackerson took her case to trial which occurred October 19, 2020 through November 13, 2020. Ms. Ackerson was acquitted by the jury for First Degree Murder – Intent and After Deliberation, Conspiracy to Commit First Degree Murder – Intent and After Deliberation, and Tampering with Physical Evidence, but convicted her of the remaining counts.

On December 18, 2020, the trial court sentenced Ms. Ackerson to an LWOP sentence plus 48 years in the Department of Corrections.

On July 5, 2022, Ms. Ackerson pursued a direct appeal. On September 28, 2023, the Colorado Court of Appeals filed an opinion affirming in part and vacating in part and remanding the case with directions. It was unpublished.

An extension of time to file a Writ of Certiorari to the Colorado Supreme Court was granted and the Writ of Certiorari was filed December 28, 2023. An order was issued by the Supreme Court October 21, 2024 notifying

Ms. Ackerson's Certiorari Petition would be held in abeyance pending resolution of *Sellers v. People*, case No. 22SC738. On April 14, 2025, the Supreme Court ordered Ms. Ackerson's Cert. Pet. was denied.

Ms. Ackerson not petitions this Court for review. This Court's certiorari jurisdiction emanates from USCS Const. Art. III, 2, Cl 2.

STATEMENT OF THE CASE

C.K. was horribly and brutally murdered in her own home by Jacob White, who, at the time, was Ms. Ackerson's abusive and mentally unstable husband. The issue at trial was to what extent Ms. Ackerson voluntarily or willingly participated or was culpable for the crimes surrounding the homicide.

1. Leigha Ackerson and Jacob White

Within a year of Ms. Ackerson's marriage to Mr. White, he became physically and psychologically abusive. (TR 11/4/20, p 184:1-2; TR 11/5/20, pp 7-10, 156; TR 11/9/20, pp 62-63). Experts stated that Ms. Ackerson's

strict religious upbringing and troubled family history inhibited her from removing herself from the marriage. (TR 11/4/20, pp 190:12-23, 194:13-16; TR 11/5/20, pp 15-18, 159-60, 258-61, 278-79, 302-03; TR 11/6/20, pp 139-45). Over time, Mr. White adopted apocalyptic theories and extreme conspiracy theories and messianic beliefs. (TR 11/4/20, pp 140-42; TR 11/6/20, pp 19-21, 60-61; TR 11/9/20, pp 99-100). With no evidence that Ms. Ackerson left with Mr. White voluntarily, Mr. White drove the couple out to the woods.

Experts opined – and Ms. Ackerson confirmed – that her strict religious upbringing and troubled family history prevented her from extricating herself from the relationship. (TR 11/4/20. pp 190:13-16; TR 11/5/20, pp 15-18, 159-60, 258-61, 278-79, 302-03; TR 11/6/20, pp 139-45). Whether Ms. Ackerson suffered from acute trauma at the time of C.K.'s murder, and whether this – in combination with other factors – explained her actions was disputed. (TR 11/5/20, pp 221-24, 260-80; TR 11/6/20, pp 139-45; TR 11/9/20, pp 83-84, 114-15, 155-59,

180-82).

2. Murder of C.K.

In mid-January of 2018, Mr. White drove the couple to the middle of the woods near the Edward area in Colorado from Pennsylvania where Mr. White intended to live off the land in the woods. (TR 11/3/20, pp 198-99; TR 11/4/20, pp 143-47). The two women who had passed the couple in the woods said that Mr. White dominated the conversations and that Ms. Ackerson looked malnourished and subservient and had visible bruising and scratches on her face. (TR 10/26/20, pp 138-42, 153-54, 167-71, 177-78, 182-90, 191-94). Ill-equipped to embark of such an ambitious endeavor, Mr. White decided to move the couple out of the woods – cold and wet from a snow storm. (TR 11/3/20, pp 199-200; TR 11/4/20, pp 148-49, 151-53).

On January 23, 2018, Mr. White and Ms. Ackerson emerged from the woods near a gated subdivision where C.K. lived, and, in an apparent act of desperation, Mr.

White decided to break into C.K.'s house in search of shelter, warmth, and food. (TR 11/3/20, pp 200-01; TR 11/4/20, pp 153-54). Ms. Ackerson testified that Mr. White threatened to kill her if she didn't join him in the house. (TR 11/4/20, pp 131-32, 154-55; TR 11/5/20, pp 69-70). White thereafter attempted to prepare a meal, but aborted the effort when C.K. returned home unexpectedly. (TR 11/4/20 pp 155-56). Mr. White, by threating to hurt her or her family, pressured Ms. Ackerson to secretly stay in a guestroom in the house that night, along with her dog.

Although account differ, a decision was made that Ms. Ackerson would approach C.K. the next day and inform her that she and Mr. White had broken into her home and they were cold and hungry. (*Compare* TR 11/3/20, pp 203-05, 215-26 *with* TR 11/4/20, pp 131-32, 135-36, 159, 60). Ms. Ackerson did so, and C.K. reportedly offered them food. (TR 11/3/20, pp 205-06; TR 11/4/20, pp 139-40, 159-60; TR 11/5/20, pp 26-27.) Ms. Ackerson asked

to use C.K.'s phone, and C.K. offered the cell phone, stating it didn't work and then offered use of the landline. (TR 11/3/20, pp 133-35, 203-04; TR 11/4/20, pp 136:1-9, 160-61; TR 11/5/20, p). As C.K. was retrieving food from the refrigerator, Mr. White attacked her from behind and began strangling her with some paracord he'd fashioned into a garrote. (TR 11/3/20, pp 205-06; TR 11/4/20 pp 161-62). Mr. White dragged C.K. to the master bathroom, where he proceeded to smash her skull against the wall, stab her through her eye, and make a deep cut to her wrist. (TR 11/3/20 pp, 206-07; TR 11/4/20, pp 163-66; TR 11/5/20, pp 26-27). An autopsy determined that C.K. died from strangulation, and the various other injuries she sustained were likely inflicted postmortem. (TR 10/29/20, pp 136/49).

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1. The brutality of the killing evidently stemmed from White's fear of C.K. returning as a zombie.

White attempted to clean up the crime scene, tried to conceal C.K.'s body, and collected food, cash, credit cards from the victim' wallet, along with other supplies. (TR 10/29/20, pp 75-77; TR 11/2/20, pp 152-66; TR 11/3/20, pp 211-12; TR 11/4/20, pp 171-73). After attempting unsuccessfully to start C.K.'s car and steal it, White arranged an Uber. (TR 10/27/20, pp 50/61; TR 11/3/20, pp 52-54, 65-66, 213-14; TR 11/4/20, pp 174-75).

The caretaker of the subdivision observed a vehicle idling outside the entrance gate to the property and went to investigate. (TR 10/27/20, pp 119-20). After talking with the Uber driver, the caretaker became suspicious and instructed his wife to call 911. (TR 10/27/20, 123-32, 143-44).

3. Arrest and Investigation

Law Enforcement arrived and soon discovered C.K.'s body, along with evidence suggesting that the home and been burglarized and that the suspects has fled into the

woods. (TR 10/27/20, pp 156-58, 162-63, 173-78, 182-83). Ms. Ackerson and Mr. White were located nearby amongst a stand of trees; after a momentary standoff with White, they bother surrendered. (TR 10/28/20 pp, 190-92; TR 11/4/20, pp 179-81).

Deputies who has contact with Ms. Ackerson described her as a "zombie" with a "thousand mile stare," and characterizer her as exceptionally odd. (TR 10/28/20, pp 43:16-23, 152-55). She presented as emaciated and exhibited reliable noticeable bruising under her eyes and abrasions on her face. (TR 10/28/20, pp 25-26, 92-93; TF 11/3/20, pp 19-20). White, for his part, had rope burns on his hands when arrested, and would only supply law enforcement a false name when pressed for identifying information. (TR 10/28/20, pp 190-92; TR 11/3/20, pp 26-27).

Forensic testing established that White's DNA was detected on the handle of the knife planted in C.K.'s head

and on the length of paracord used to strangle her. (TR 11/2/20, pp 79-84, 87-88). Ms. Ackerson could not be linked to these items. (TR 11.2.20, pp 79-84, 112-13, 116-17).

All evidence inculpating Ms. Ackerson in C.K.'s murder came from Heather Sellers, a fellow inmate a the county jail desperately looking to improve her situation. (TR 11.3.20, pp 187-89, 193-96; TR 11/4/20, pp 22-26). Ms. Ackerson admitted she stoke to Sellers about her case, but otherwise disputed Seller's retelling of their conversation. (*Compare* TR 11/3/20, pp 203-06, 215-18, *with* TR 11/4/20, pp 130-32, 135-36; TR 11/5/20 26-27). Sellers later recanted her allegations, but ultimately reversed position and cooperated with the government. (TR 11/3/20, pp 223-27; TR 11/4/20, pp 53-54).

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS ERRED IN: (1) RELYING ON *PEOPLE V. SELLERS,* 2022 COA 102, 521 P.3D 1066, *CERT. GRANTED,* NO. 22CS738, 2023 WL 3479427 (COLO. MAY 15, 2023), TO CONCLUDE THAT A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR FELONY MURDER IS NOT GROSSLY DISPROPORTIONATE IN THE WAKE OF THE COLORADO GENERAL ASSEMBLY'S RECLASSIFICATION OF THAT OFFENSE TO A CLASS 2 FELONY; AND, (2) FAILING TO HEED THE COLORADO SUPREME COURT'S PROPOUNCEMENTS IN *WELLS-YATES V. PEOPLE,* 2019 CO 90M, 454 P.3D 191, CONCERNING THE VARIOUS FACTORS COURTS MAY CONSIDER WHEN CONDUCTING AN ABBREVIATED PROPORTIONALITY REVIEW.

A. PRESERVATION AND STANARD OF REVIEW

This issue wasn't raised below, and therefor hasn't been preserved for review.

Our courts review de novo the legal question whether a sentence is grossly disproportionate. *Wells-Yates v. People,* 2019 CO 90M, where, as here, a proportionality challenge is unpreserved, the standard for reversal is plain error. *People v. Walker,* 2022 COA 15.

B. DISCUSSION

The United States and Colorado Constitutions prohibit the infliction of cruel and unusual punishments. *Walker,* 2022 COA 15, 509 P.3d at 1075 (citing U.S. Const. amend. VIII and Colo. Const. art. II 20). This prohibition includes a proportionality principle, which is a "foundational 'precept of justice'" that dictates "the punishment should fit the crime." *People v. Wells-Yates* ("Wells-Yates II"), 2023 COA 120. The inquiry is dynamic and must take account of "the evolving standards of decency that mark the progress of a

maturing society." Proportionality review is composed of two steps: in Colorado legal parlance, step one has become known as an

abbreviated proportionality review," while step two is referred to as an "extended proportionality review." *Wells-Yates I,* P 10.

Step one of Colorado's proportionality review proceeds in two sub-parts. At sub-part one, the court must evaluate the gravity or seriousness of the offense, which includes consideration of the harm caused or threatened to the victim or society and the culpability of the offender. *People v. Castillo,* 2022 COA 20. However, Colorado law "allows a shortcut in some situations that [effectively] bypass [the entire two-step] analysis" by declaring some crimes "inherently (or per se) grave or serious for proportionality purposes." *Wells-Yates I,* PP 13, 62. When such crimes are at issue, a court may skip step one and proceed directly to step two. *Id.* But, in virtually all instances, the step two inquiry is a mere formality, as a

per se grave or serious designation "renders a sentence nearly impervious to attack on proportionality grounds." *Id.* At P 62. Because designating a crime as "per se" grave or serious functionally ends the proportionality analysis, the Colorado Supreme Court has cautioned that such a designation "must be reserved for those rare crimes which, based on this statutory elements. . . would be grave or serious in **every potential factual scenario.**" *Id.* (emphasis added).

If the crime is not deemed per se grave or serious, the sub-part one inquiry proceeds afoot. The inquiry has been characterized as "somewhat imprecise," but includes consideration of numerous factors, including any relevant "fact and circumstances surrounding th[e] offense." *Wells-Yates II,* PP 33-34. This inquiry is not binary: the question is not whether "the offense is serious or not," but rather "one of degree – **how** serious is the offense – as a precursor to the next step of balancing the seriousness of

the offense against the harshness of the penalty." *Id.* At P 36.

In addition, Colorado's courts will consider statutory amendments enacted after the date of the offense, because they are "the most valid indicia of Colorado's evolving standards of decency." *Id.* At P 35 (quoting *Wells-Yates I,* PP 45, 48). Such amendments are not "determinative of whether an offense is grave or serious" but must be considered along with the "facts and circumstances surrounding the crime committed." *Id.* (quoting *People v. McRae,* 2019 CO 91, P 16). That said, the most reliable objective indicia of evolving standards of decency that reflects public attitudes toward a given sanction are statutes passed by elected representatives, and thus courts must consider legislative actions that alter penalties for, and societal conceptions of the culpability that attaches to, certain crimes in resolving proportionality challenges. *Wells-Yates I,* P 52.

At step two, Colorado courts must consider the harshness of the penalty, which includes consideration of the length of the sentence as well as parole eligibility. *Id.* At P 40.

If the initial two-step analysis does not give rise to an inference of gross disproportionality, however, the court must consider conduct intra-jurisdictional and inter-jurisdictional comparisons. *Id.*

Bearing the above principles in mind, Ms. Ackerson asserts that the Colorado court of appeals' resolution of her proportionality challenge to her LWOP sentence for felony murder is fundamentally flawed in two respects: (1) it's heavily reliant on the suspect analysis in *Sellers*, a decision the Colorado Supreme Court elected to review, and (2) it misapplies, or otherwise misinterprets the Colorado Supreme Court's pronouncements in *Wells-Yates I* and *People v. McRae.*

1. **The Court of Appeals Erred In Relying On *Sellers* To Conclude That A Sentence Of Life Without The Possibility Of Parole For Felony Murder Is Not Grossly Disproportionate In The Wake Of The Colorado General Assembly's Reclassification Of That Offense To A Class 2 Felony.**

The division in this case followed *Sellers'* lead in concluding that felony murder is a per se grave and serious offense, reasoning that, because aggravated robbery has previously been deemed inherently grave and serious, a conviction for felony murder predicated on that offense must likewise be deemed grave and serious in all instances. *People v. Ackerson,* Colorado Court of Appeals Case No. 21CA52, slip op. PP 109-12. Having thus short-circuited the proportionality analysis, the division – again relying on *Sellers* – summarily concluded that, even though Ms. Ackerson's LWOP "sentence is **potentially** substantially longer than the maximum forty-eight

years a defendant in her shoes could receive under the amended statute, and that Ackerson is not eligible for parole, these difference do not mean that [her] sentence is grossly disproportionate." *Id.* At P 113. The division's reflexive reliance on *Sellers* was error.

Ms. Ackerson asserts that: (1) *Sellers'* determination that "[f]elony murder is a per se grave or serious offense because it necessarily involves committing a violent predicate felony that results in the death of a person," and "[t]hus, every factual scenario giving rise to a charge of felony murder will be grave or serious," rests on shaky foundations; and (2) it's determination that nothing in the legislature's reclassification of felony murder suggests that an LWOP sentence is grossly disproportionate to the current range of 16 to 48 years reflects a fundamental misunderstanding of the Colorado Supreme Court's pronouncements in *Wells-Yates I* and the General Assembly's intent in reducing the penalties for felony

murder. 2022 COA 102, PP 65-67.

First, one need look no further than this case to discern the fundamental defect in *Sellers'* contention that "every factual scenario giving rise to felony murder will be grave or serious." *Id.* There was no violence associated with the burglary committed in this case, and to the extent that the aggravated robbery count was predicated on defendant's alleged seizure of C.K.'s cell phone, there was no violence or explicit threat of violence associated with that act either. And, it's more or less uncontroverted that Ms. Ackerson didn't commit the homicidal act or any act of violence resulting in C.K.'s death. So, it can't possibly be true (and this has been borne out again and again in these cases) that **every** factual scenario giving rise to felony murder will be grave or serious.

Second, *Sellers* seriously downplays both the significance of the legislature's reclassification of felony murder and the tremendous disparity in

penalties that has resulted from that legislative action. The **only** penalty the trial court could impose in this case was LWOP; not, a trial court can impose a sentence as short as 16 years for the same crime. Even the maximum sentence of 48 years would still give a person in Ms. Ackerson's position a meaningful opportunity at parole. The legislature has spoken clearly and unequivocally that LWOP is no longer a reasonable or appropriate penalty in **any** case of felony murder. The legislative history underlying the reclassification of felony murder makes abundantly clear that the General Assembly reached the considered judgment that mandatory LWOP sentencing for felony murder is out of step with both national norms and evolving standard of decency in Colorado. (Hearings on S.B. 21-124 before the H. Judiciary Comm. (Apr. 7, 2021), at 4:28, 4:23:41;

4;26;19, 5:22-23, 5:59:28). The Court should therefore reject *Sellers* and, by extension, should repudiate the division's decision in this case.

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1. Ms. Ackerson was 27 years old at the time of sentencing.
2. While in no way dispositive of the legal question, it bears mention that a juror who deliberated in Ms. Ackerson's trial testified in support of the legislative changes to felony murder, speaking passionately about why "the punishment did not fit the crime" in this particular case. *See* April 7, 2021 House Judiciary Committee Proceedings *https://tinyurl.com/yu5abcc* (5:16:30-5:19:31).

3. The Court of Appeals Failed To Heed The Colorado Supreme Court's Pronouncements in *Wells-Yates I* Concerning The Various Factors Courts May Consider When Conducting An Abbreviated Proportionality Review.

Relatedly, because the Colorado Supreme Court reached the precipitous conclusion that the predicate act of aggravated robbery in this case was per se grave and serious and that, by the transitive property, Ms. Ackerson's conviction for felony murder was necessarily grave and serious, it never engaged in the sort of case-specific analysis that *Wells-Yates I* contemplates. As the division in *Well-Yates II* recently observed, courts "may look beyond the elements of [the] offense to the facts and circumstances of the offense **as committed**" when assessing the gravity and seriousness of the offense. 2023 COA 120, PP 3, 27.

As noted, Ms. Ackerson's conviction for burglary and aggravated robbery do not involve violence or even

the explicit threat of violence. Even when viewed in the light most favorably to the prosecution, the most that can be said is that defendant may have "snatched" the phone from C.K., which on the scale of the sort of force, threats or intimidation contemplated by the aggravated robbery statute, must be regarded as de minimis. The court of appeals considered none of this, and instead applied the sort of "one-size-fits-all" analysis specifically rejected by the Colorado Supreme Court in *Wells-Yates I.*

CONCLUSION

Given the "sea change" in Colorado law with respect to how felony murder is classified and punished and the Colorado Supreme Court's grant of certiorari in *Sellers,* and finally given the extraordinarily harsh penalties in this case for a crime in which Ms. Ackerson played at most a peripheral role, Defendant respectfully submits that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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