

IN THE
Supreme Court of the United States

MARTEZ ABRAM,

Petitioner,

v.

THE STATE OF MISSISSIPPI,

Respondent.

—————
**On Petition for a Writ of Certiorari to the
Supreme Court of Mississippi**

—————
BRIEF IN OPPOSITION

—————
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**CAPITAL CASE
QUESTIONS PRESENTED**

1. Whether, in establishing that arson may elevate a murder to capital murder, Mississippi law violates the Eighth Amendment by failing to meaningfully narrow the class of persons subject to capital punishment.

2. Whether the evidence was sufficient to support petitioner's convictions for capital murder.

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OPINION BELOW

The Mississippi Supreme Court's opinion affirming petitioner's capital-murder convictions and sentence (Petition Appendix (App.) A) is reported at 420 So. 3d 881.

JURISDICTION

The Mississippi Supreme Court's judgment was entered on August 7, 2025. *See* App. A. That court denied rehearing on October 16, 2025. *See* App. B. On December 31, 2025, Justice Alito extended the time to file a petition for certiorari to February 13, 2026. The petition was filed on February 13, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

STATEMENT

Days after petitioner was suspended from his employment at a Walmart for threatening a co-worker, he returned to the store with guns and gasoline. He fatally shot two employees, set a fire inside the store, and shot a responding police officer while trying to flee. The jury found that petitioner committed the murders while engaged in an arson, convicted him of capital murder, and sentenced him to death. The Mississippi Supreme Court affirmed, rejecting petitioner's challenge to the sufficiency of the evidence that he killed while engaged in an arson. The petition seeks review of that decision.

1. On July 27, 2019, petitioner reportedly threatened a fellow employee of the Walmart in Southaven, Mississippi. App.2–3 (¶ 4). Store manager Anthony Brown suspended petitioner. *Ibid.*

Petitioner responded by preparing a “retaliatory attack.” App.3 (¶ 5). He rented a Kia Soul from the Memphis International Airport. *Ibid.* He stocked that car “with firearms, loaded magazines, two gallons of gasoline, a bulletproof vest, and his passport.” *Ibid.* On July 30, he “arriv[ed] at Walmart in the Kia Soul, before 6:00 a.m.” (when Brown typically arrived at work) and “moved the car between several parking spots before settling in one with a clear view of the lot.” App.3 (¶¶ 5, 6).

Brown arrived for work at 6:00 a.m. App.3 (¶ 6). “[A]s Brown walked toward the [store] entrance,” petitioner “drove up and shot him in the neck, without leaving his vehicle.” *Ibid.* Brown fell and died at the scene. *Ibid.* Petitioner then drove to the entrance and entered carrying a bag “filled with firearms, ammunition, and one gallon of gasoline.” App.3–4 (¶ 7). Once inside, he “chas[ed] store manager Brandon Gales,” “shot Gales once, disabling him,” and “then shot Gales again, at close range, killing him.” App.4 (¶ 7). Petitioner then “poured gasoline over toilet paper and other flammable merchandise and ignited it with a lighter.” App.4 (¶ 9). Petitioner tried to destroy in this fire one of the pistols used in the murders. *Ibid.* He then fled the store. *See* App.4 (¶¶ 9–10).

As petitioner “attempted to flee through the parking lot,” he “fired on responding officers and bystanders.” App.4 (¶ 10). He shot Officer Brandon Billingsley in the back. App.4–5 (¶ 10). Officer Kevin Ware fired back at petitioner, “striking [petitioner] and causing him to fall.” App.5 (¶ 11). Police apprehended petitioner and the fire was extinguished after authorities secured the building. *Ibid.*

2. The State indicted petitioner on two counts of capital murder (Brown and Gales) and one count of attempted murder (Officer Billingsley). (The petition

challenges only the capital-murder convictions, so we focus on those.) To find petitioner guilty of capital murder, the jury was required to find: (1) that petitioner killed another person, and (2) that he did so while engaged in one of several enumerated serious felonies. *See* Miss. Code Ann. § 97-3-19(2)(e). The capital-murder statute does not require the underlying felony to have caused the victim's death: the felony instead serves to elevate the murder to capital murder. *See ibid.* Here, the felony that elevated the murders of Brown and Gales to capital murder was the arson that petitioner committed inside the Walmart. App.9 (¶33).

At trial, the State introduced evidence that petitioner carried out the attack that killed Brown and Gales. Security footage displayed petitioner's actions from his arrival through arrest, including the shootings of Brown and Gales and the arson. App.16 (¶ 35). Walmart employees testified to seeing petitioner carry out the attack. App.4 (¶¶ 7–8). Experts testified that petitioner fired the ammunition used to kill Brown and Gales. App.5 (¶ 13). An arson investigator testified that petitioner used an accelerant to start the fire. App.6 (¶ 14). The State introduced a list of “things I need” found inside petitioner's rental car. App.3 (¶ 5). That list included a reminder to fill gas containers and to “be there by 5:30.” *Ibid.* Evidence showed that Walmart employees were aware that Brown routinely arrived for work at 6:00 a.m. *Ibid.*

Petitioner testified. App.8 (¶ 19). He admitted that he shot Brown, Gales, and Officer Billingsley. *Ibid.* He admitted to setting the fire and confirmed that the security footage reflected his actions: “That's me. I take responsibility for it.” *Ibid.* He admitted that he waited for Brown to arrive before killing him, brought gasoline and

weapons to the store, tried to destroy the murder weapon in the fire, fled the scene, and stored more weapons in his truck parked at the airport. *Ibid.*

At the guilt phase of petitioner's trial, the jury found petitioner guilty of both counts of capital murder and one count of attempted murder. Clerk Papers (CP) 586–89. The jury also found that Brown's and Gales's deaths occurred while petitioner "was engaged in the commission of the crime of arson," elevating both murders to capital murder. CP 586-89. As to the arson, the jury found that petitioner willfully, maliciously, and unlawfully burned the Southaven Walmart in violation of Miss. Code Ann. § 97-17-5. CP 586–89, 591.

At the sentencing phase, the jury found three aggravating circumstances for each capital-murder count: (1) petitioner knowingly created a great risk of death to many people; (2) the capital offense was committed during the commission of an arson; and (3) the capital offense was committed to avoid or prevent lawful arrest or to affect an escape from custody. App.9–10 (¶¶ 21–22). For Gales' murder, the jury also found "that the capital offense was committed to disrupt or hinder the lawful exercise of a governmental function or enforcement of laws." App.9 (¶ 22). On the capital-murder convictions, the jury found that the aggravating circumstances outweighed any mitigating circumstances, and sentenced petitioner to death. App.9–10 (¶¶ 21–22). For the attempted murder of Officer Billingsley, the jury imposed a life sentence. App.10 (¶ 23).

3. The Mississippi Supreme Court affirmed. App.21 (¶ 48). As relevant here, the court rejected petitioner's claim that the State failed to present sufficient evidence that the killings occurred during the commission of arson. App.16 (¶ 35). The court

held that the evidence was sufficient to establish that the arson and homicides were part of a single continuous transaction and were sufficiently connected to support the capital-murder convictions. *Ibid.* The court explained that “Mississippi follows the one-continuous-transaction doctrine to determine ‘whether the evidence establishes the requisite nexus between the killing and the underlying felony to constitute capital murder.’” App.15 (¶ 34). That doctrine provides that “where the two crimes [here, murder and arson] are connected in a chain of events and occur as part of the res gestae, the crime of capital murder is sustained.” *Ibid.* Further, “[a]n indictment charging a killing occurring ‘while engaged in the commission of’ one of the enumerated felonies [necessary to elevate murder to capital murder] includes the actions of the defendant leading up to the felony, the attempted felony, and flight from the scene of the felony.” App.15–16 (¶ 34). Applying these principles, the court ruled that “[f]or purposes of the one-continuous-transaction doctrine, the fact that neither victim was burned from the fire or died from fire is of no consequence.” App.16 (¶ 35). The court rejected petitioner’s sufficiency-of-the-evidence claim, ruling that “[t]he arson and murders are clearly connected in a continuous chain of events that began when [petitioner] shot Brown in the Walmart parking lot and ended with his apprehension by law enforcement.” *Ibid.*

REASONS FOR DENYING THE PETITION

Petitioner seeks review on two questions. The Mississippi Supreme Court addressed only one of those questions, and its factbound rejection of that splitless question is correct. Further review is not warranted. The petition should be denied.

1. Petitioner asks this Court to decide whether, in providing that arson may elevate a murder to capital murder, Mississippi law violates the Eighth Amendment by failing to meaningfully narrow the class of persons subject to capital punishment. *See* Pet. iii, 6-15.

That question is not presented. The Mississippi Supreme Court did not resolve that question. That court did not mention the Eighth Amendment, the issue of narrowing, or anything else that would signal that it resolved that question. That is unsurprising: petitioner did not argue below that Mississippi law violates the Eighth Amendment by failing to meaningfully narrow the class of persons subject to capital punishment. So he forfeited the argument and cannot seek review of that question now. Petitioner suggests that the court below necessarily decided that question, but he cites nothing—in the opinion below, in caselaw, or in anything else—that supports that claim. *See* Pet. 8. At all events, the unstated ruling that petitioner reads into the decision below is not a sound vehicle for this Court’s review.

Petitioner also does not show any lower-court conflict on that question. His three cited cases from other jurisdictions (Pet. 14) do not address the Eighth Amendment narrowing issue that he asks this Court to decide. Two of those cases never mention the Eighth Amendment or narrowing. *See Hansen v. State*, 845 P.2d 449 (Alaska Ct. App. 1993); *Commonwealth v. Treiber*, 874 A.2d 26 (Pa. 2005). The third case mentions the Eighth Amendment once, but does not address the issue that petitioner now raises. *See Commonwealth v. Dougherty*, 860 A.2d 31, 37 (Pa. 2004).

In any event, Mississippi law meaningfully narrows the class of persons subject to capital punishment.

The Eighth Amendment prohibits capital-sentencing schemes that permit arbitrary or unguided imposition of the death penalty. States must adopt objective standards that meaningfully narrow the class of death-eligible defendants and channel the sentencer's discretion through specific, non-vague aggravating factors. *See Furman v. Georgia*, 408 U.S. 238, 309–10 (1972); *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980); *Maynard v. Cartwright*, 486 U.S. 356, 361–62 (1988); *Arave v. Creech*, 507 U.S. 463, 470 (1993). A capital-sentencing scheme comports with these principles if it “provides for categorical narrowing at the definition [eligibility] stage, and for individualized determination and appellate review at the selection stage.” *Zant v. Stephens*, 462 U.S. 862, 879 (1983).

Mississippi law meets these requirements. Before a jury can consider a death verdict, it must first find the defendant guilty of capital murder. *See* Miss. Code Ann. § 99-19-101. To be guilty of capital murder, the jury must find that the defendant (1) killed another person, (2) did so without authority of law, and (3) did so while engaged in one of several serious felonies (listed in Miss. Code Ann. § 97-3-19(2)(e)) beyond a reasonable doubt. *Id.* § 97-3-19(2)(e). The jury must then unanimously find at least one statutory aggravating circumstance, beyond a reasonable doubt. *Id.* § 99-19-101(2)(b). The jury must also unanimously find that the defendant killed, attempted to kill, intended that a killing take place, or contemplated that lethal force would be employed. *Id.* § 99-19-101(7)(a)–(d). And the jury must further determine whether mitigating circumstances outweigh the aggravating circumstances. *Id.* § 99-19-101(2)(c). Based on these considerations, the jury must determine whether the defendant should be sentenced to life imprisonment without eligibility for parole, or

death. *Id.* § 99-19-101(2)(d). Only where the aggravating circumstances outweigh the mitigating evidence can the jury render a death verdict. *Id.* § 99-19-101(2)(a)–(d). Mississippi law thus limits the jury in capital cases and channels the jury’s discretion by applying clearly defined statutory factors. And those statutory factors offer the information and guidance necessary to eliminate the danger of an arbitrary death verdict.

Mississippi’s statutory aggravating factors are also not vague. *Contra* Pet. 7. A vague aggravating factor is one that “fails to channel the sentencer’s discretion.” *Stringer v. Black*, 503 U.S. 222, 235 (1992). Unlike in *Maynard* or *Godfrey*, where the jury merely needed to decide if the murder was “especially heinous, atrocious, or cruel,” or “outrageously or wantonly vile, horrible and inhuman,” the jury in petitioner’s case could reach a death verdict only if it found that the clearly defined statutory aggravating factors existed beyond a reasonable doubt. *See* Miss Code Ann. §§ 97-3-19; 99-19-101. This narrowing of the jury’s discretion achieves what this Court’s precedents require. *Gregg v. Georgia*, 428 U.S. 153, 189 (1976); *Godfrey*, 446 U.S. at 427–28; *Zant*, 462 U.S. at 874.

Petitioner contends that Mississippi’s capital-sentencing scheme violates the Eighth Amendment because the feature that elevated Brown and Gales’s murders to capital murder—arson—did not cause either victim’s death. Pet. 6-7. But the Eighth Amendment does not bar a State from establishing that arson can elevate a murder (particularly, as here, an intentional and premeditated murder) to capital murder if the arson does not itself cause death. If a State “establish[es] a threshold below which the [death] penalty cannot be imposed,” and “ensure[s] that capital sentencing

decisions rest on individualized inquiry based on the ‘character and record of the individual offender and circumstances of the particular offense,’” it has wide latitude to prescribe when a murder will be capital murder. *Romano v. Oklahoma*, 512 U.S. 1, 6–7 (1994) (quoting *McClesky v. Kemp*, 481 U.S. 279, 305 (1987)). The State has not exceeded that latitude. By requiring the jury to find that petitioner committed arson while also killing Brown and Gales, Mississippi law does what the Eighth Amendment commands: it narrows the class of persons eligible for the death penalty by relying on clearly defined statutory terms that limit the jury’s discretion. *Contra* Pet. 6–15.

2. Petitioner also asks this Court to decide whether the evidence was sufficient to support his convictions for capital murder. *See* Pet. iii, 15–16. That question is factbound and splitless. Petitioner does not contend otherwise. And the Mississippi Supreme Court resolved that question correctly. *See* App.14–16 (¶¶ 31–35).

Evidence is sufficient to support a conviction if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Coleman v. Johnson*, 566 U.S. 650, 654 (2012). That standard is met here.

To find petitioner guilty of capital murder, the jury needed to find that he killed Brown and Gales while engaged in the crime of arson. Miss. Code Ann. § 97-3-19(2)(e). The jury was instructed that “a killing occurring while engaged in the commission of an arson includes the actions of the Defendant leading up to the arson, the arson, and the flight from the scene of the arson.” CP 592. Neither section 97-3-19 nor anything else required the jury to find that any victim died as a result of the arson.

As the Mississippi Supreme Court concluded, the evidence was sufficient for a reasonable factfinder to find the necessary elements beyond a reasonable doubt. The evidence of petitioner's guilt is overwhelming. Petitioner admitted to killing Brown and Gales at the Walmart and admitted to pouring liquid on the floor and lighting the accelerant on fire. App.16 (¶ 35). Petitioner also admitted that he tried to destroy one of his weapons in the fire, admitted to shooting Officer Billingsley in the parking lot while attempting to flee, and admitted that the security footage taken from the Walmart reflected each of his actions that day, testifying: "That's me. I take responsibility for it." App.8 (¶ 19); App.14 (¶ 30); App.16 (¶ 35). These admissions alone satisfied the elements of capital murder under Mississippi's well-established "one-continuous-transaction" rule. *See Pickle v. State*, 345 So. 2d 623, 624–26 (Miss. 1977); *Batiste v. State*, 121 So. 3d 808, 832–33 (Miss. 2013); *Fulgham v. State*, 46 So. 3d 315, 328–29 (Miss. 2010); *Ronk v. State*, 172 So. 3d 1112, 1129 (Miss. 2015). And plenty of surveillance video and witness testimony fortified those admissions and supplied more than enough evidence to convict. App.16 (¶ 35).

CONCLUSION

The petition should be denied.

Respectfully submitted.

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