

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

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STEVEN MULKEY,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE ALABAMA COURT OF CRIMINAL APPEALS

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CORRECTED PETITION FOR A WRIT OF CERTIORARI

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May 19, 2026

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## **CAPITAL CASE**

### **QUESTION PRESENTED**

Whether a capital defendant's Sixth and Fourteenth Amendment rights are violated where (a) during voir dire the trial court publicly sanctioned and jailed one prospective juror in front of the entire jury venire; and (b) failed to conduct any inquiry into how other members of the venire were impacted by the court's conduct, despite indications that multiple jurors were intimidated or otherwise affected?

## **PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT**

Petitioner is Steven Mulkey. Respondent is the State of Alabama. No Party is a corporation.

## **RELATED PROCEEDINGS**

*State v. Mulkey*, Jefferson County Circuit Court, No. CC-2019-980.00. Order of conviction entered April 23, 2023; sentencing order entered on April 27, 2023.

*Mulkey v. State*, Alabama Court of Criminal Appeals, No. CR-2023-0304. Conviction and sentence affirmed May 2, 2025.

*Ex parte Mulkey*, Alabama Supreme Court, No. SC-2025-0615. Petition for writ of certiorari denied December 19, 2025.

*State v. Mulkey*, Jefferson County Circuit Court, No. CC-2019-980.60. Petition for relief pursuant to Ala. R. Crim. P. 32 pending.

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## PETITION FOR A WRIT OF CERTIORARI

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### OPINIONS BELOW

The opinion of the Alabama Court of Criminal Appeals affirming Mr. Mulkey's convictions and sentence of death, *Mulkey v. State*, No. CR–2023-0304, 2025 WL 1272751 ((Ala. Crim. App. May 2, 2025), is not yet reported and is attached as Appendix A. The court's opinion denying rehearing is not reported and is attached as Appendix B. The order and certificate of judgment of the Alabama Supreme Court denying Mr. Mulkey's petition for a writ of certiorari is unreported and attached as Appendix C.

### STATEMENT OF JURISDICTION

In a decision dated May 2, 2025, the Alabama Court of Criminal Appeals affirmed Mr. Mulkey's convictions and death sentence. *Mulkey v. State*, No. CR–2023-0304, 2025 WL 1272751 ((Ala. Crim. App. May 2, 2025). The Alabama Court of Criminal Appeals denied rehearing on August 15, 2025. The Alabama Supreme Court denied Mr. Mulkey's petition for a writ of certiorari as to all claims on December 19, 2025. Order, *Ex parte Mulkey*, No. SC-2025-0615 (Ala. Dec. 19, 2025.) This Court granted Mr. Mulkey's application to extend the time to file a petition for writ of certiorari on March 9, 2026, extending the time to file to April 17, 2026. *Mulkey v. Alabama*, No. 25A987 (March 9, 2026). The

jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

### **CONSTITUTIONAL PROVISIONS INVOLVED**

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides  
in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **STATEMENT OF THE CASE**

Steven Mulkey has struggled with mental illness his entire life. Born in 1990 with Fetal Alcohol Syndrome Disorder (“FASD”), he did not begin to walk until he was three, did not speak in words until age three or sentences until age

six or seven, and was not toilet trained until partway through elementary school. (R. 1315, 1323.) His mother, a 15-year-old who struggled with alcoholism at the time of his birth, was only allowed to spend two weeks with him after he was born before she was made to return to a juvenile facility. (R. 1314.) Raised by grandparents who abused him—including by being repeatedly tied to a chair with duct tape—Mr. Mulkey was first sent to a psychiatric hospital when he was eight years old. (R. 1332–34.) Over the next ten years, Mr. Mulkey was diagnosed with bipolar disorder, major depressive disorder, psychotic disorder and schizoaffective disorder, Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder, childhood onset, (R. 849–850), and hospitalized at least 21 times in at least ten different psychiatric hospitals, group homes and other residential treatment facilities across Alabama and Tennessee. (R. 1363.)

After being kicked out of DHR custody when he turned 18 years old in 2008, Mr. Mulkey spent some time homeless living off of SSI disability payments. (R. 862, 1378–79.) He was arrested for robbery in 2011, but was found incompetent to stand trial. (R. 863–64, 1372–73; C. 704–05.) Following nearly two more years of inpatient psychiatric treatment, during which he was first diagnosed with FASD, Mr. Mulkey pleaded guilty to third-degree robbery in 2013. (R. 1373; C. 706–07.) Mr. Mulkey was released from incarceration in

February 2018. (R. 1376.) Denied SSI disability benefits, Mr. Mulkey was unable to obtain the psychiatric medication he needed, and resorted to self-medicating with marijuana, cocaine, and methamphetamine. (R. 1379.) By September 2018, Mr. Mulkey was sleeping at an Econo Lodge in Ironwood, Alabama, and subsisting on day labor work. (R. 918–20.)

On September 16, 2018, Mr. Mulkey was hired by Siu Mei Kao and Ching Kao, the owners of the Siesta Motel in Irondale, to do some landscaping work at the motel and another nearby property. (R. 926–927.) Mr. Mulkey drove to the other property with Mrs. Kao, mowed the grass, smoked marijuana, and then returned to the Siesta Motel. (Id.) Mrs. Kao entered the office area of the motel, while Mr. Mulkey put away the lawn mower. (Id.) At this time, Mr. Mulkey consumed approximately a gram of cocaine and methamphetamine. (R. 927–928.)

Surveillance footage from the Siesta Motel shows that Mr. Mulkey entered the motel office several minutes later—after Mrs. Kao had stepped out of the office—and began to argue with Mr. Kao. (State Ex. 171.) Mrs. Kao then re-entered the office and joined the argument. (Id.) Several moments later, Mr. Mulkey abruptly pulled out a hammer and struck Mr. and Mrs. Kao repeatedly, killing both. (Id.) Mr. Mulkey also cut Mrs. Kao’s throat with a knife, and then left the scene. (Id.) Two days later, the surveillance video shows Mr. Mulkey

removing the Kaos' bodies and a safe from the motel, and placing them into the Kaos' silver Chevrolet Impala. (R. 669, 725.) Mr. Mulkey left the Kaos' bodies in a wooded area (R. 743–44) and left the Birmingham area, intending to travel to New York City. (R. 937–38.)

Mr. Mulkey was arrested on September 24, 2018. (C. 223.) On March 8, 2019, Mr. Mulkey was indicted on three counts of capital murder: murder of two or more persons pursuant to one course of conduct, in violation of Alabama Code Section 13A-5-40(a)(10) (Count One); murder of Siu Mei Kao in the course of committing a theft, in violation of Alabama Code Section 13A-5-40(a)(2) (Count Two); and murder of Ching Kao in the course of committing a theft, in violation of Alabama Code Section 13A-5-40(a)(2) (Count Three). (C. 221–22.)

Mr. Mulkey's trial commenced with jury selection starting on April 17, 2023. Potential jurors completed questionnaires on the first day. (R. 172.) On the second day, the State and defense counsel conducted group voir dire, (R. 228–377), followed by individual voir dire. (R. 382–505). On the morning of the second day of jury selection, prior to group and individual voir dire, the trial court—in front of the entire pool of potential jurors—ordered that a potential juror be arrested and placed in contempt of court for running late to jury service:

Juror [J.F.], juror number 230, we were able to just reach him at 9:30, and he indicated taht he was getting dressed to come down. The Court is not going to delay this process any more. For the record, the Court has

ordered that Mr. Fields be taken into custody, and he will be held in contempt of court.

(R. 228. Potential jurors subsequently expressed concern throughout voir dire that they would get in trouble or be “charged or thrown in jail” if they gave answers that did not comply with the judge’s instructions or the law. (See, e.g., R. 409, 482.)

During the State’s case-in-chief at the guilt-phase, the State relied on surveillance footage from the Siesta Motel, which showed the killing of the Kaos on camera, as well as Mr. Mulkey’s attempts to remove their bodies. (R. 598–601; State Ex. 171.) Defense counsel did not dispute that Mr. Mulkey killed Mr. and Mrs. Kao (R. 603) but argued that Mr. Mulkey lacked the requisite mental state to commit capital murder (R. 607–08). The defense argued that Mr. Mulkey was not guilty by reason of mental disease or defect” (R. 609–610) and that he was too intoxicated to form intent (R. 606–07, 1038–41). With respect to Counts 2 and 3, defense also pursued a theory that Mr. Mulkey did not have the intent to rob the Kaos at the time of their murder. (R. 609.)

On April 24, 2023, the jury returned a verdict of guilty as to Count 1, intentional murder of two or more people, but not guilty as to Counts 2 and 3, intentional murder during the course of a robbery. (R. 1111, C. 189–94.)

The penalty-phase took place from April 24 to April 26, 2023. The State sought two aggravating circumstances: that Mr. Mulkey killed two or more

people, and that Mr. Mulkey was previously convicted of a felony involving the use or threat of violence to a person (namely, third-degree robbery). (R. 1125–26; 1145–46.) The State presented no additional witnesses at the penalty-phase. (R. 1146.)

The defense sought to establish that the crime was committed while Mr. Mulkey was under extreme mental or emotional disturbance, and that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. (R. 1138.) Defense counsel presented testimony from several expert witnesses who testified that Mr. Mulkey suffers from FASD, was abandoned by his mother and his family, and was raised in numerous hospitals, group homes or mental facilities between the ages of 6 and 18. (R. 1139–41.)

On April 26, 2023, the jury reached a penalty-phase verdict, unanimously finding two aggravating circumstances and “recommend[ing]” that Mr. Mulkey be sentenced to death by a vote of 12 to 0. (R. 1455–56; C. 196–197.) The judge immediately sentenced Mr. Mulkey to death (R. 1457–58) and issued a sentencing order the next day on April 27, 2023 (S1. 202–03). The Alabama Court of Criminal Appeals affirmed Mr. Mulkey’s convictions and death sentence on May 2, 2025. *Mulkey v. State*, No. CR–2023-0304, 2025 WL 1272751 ((Ala. Crim. App. May 2, 2025).

## REASONS FOR GRANTING THE WRIT

In this capital case, the trial court abdicated its duties to ensure a fair and impartial jury during voir dire, by holding a prospective juror in contempt of court and jailing him, and telling the entire jury venire that it was doing so. The trial court's extreme action undermined Mr. Mulkey's right to a fair trial and impartial jury under the Sixth and Fourteenth Amendments. The lower court's opinion to the contrary conflicts with this Court's precedents. Therefore, certiorari is appropriate. *See* Sup. Ct. R. 10(b), (c).

### **I. THE TRIAL COURT'S DECISION TO PUBLICLY PLACE A PROSPECTIVE JUROR IN CONTEMPT IN FRONT OF THE ENTIRE JURY POOL VIOLATES THE SIXTH AND FOURTEENTH AMENDMENTS AND THIS COURT'S PRECEDENT.**

Prior to group and individual voir dire, the trial court announced to the entire jury venire that because prospective juror J.F. (No. 230) was running late to jury service, "the Court has ordered that [J.F.] be taken into custody, and he will be held in contempt of court." (R. 227–28.) The court later disclosed to the parties that J.F. was "currently in jail" and would be left there "overnight." (R. 391.) J.F., a young Black man, (S3. 303), was otherwise a qualified juror who indicated on his questionnaire that he could be fair and impartial, and that he was death qualified. (See, e.g., Q. 19, 37, 42–43.)

In affirming Mr. Mulkey's conviction and sentence, the court below found that "Alabama courts have the authority to issue orders to prevent hindrance of

its proceedings,” and that therefore, the court “finds no plain error in the circuit court’s actions.” Mulkey, 2025 WL 1272751, at \*10. As applied to the trial court’s actions, however, this finding conflicts with this Court’s longstanding precedent requiring trial courts to protect a defendant’s right to an impartial jury and to take measures to ensure that outside influences do not impinge this right: “Due process requires that the accused receive a trial by an impartial jury free from outside influences. . . . the trial courts must take strong measures to ensure that the balance is never weighed against the accused.” Sheppard v. Maxwell, 384 U.S. 333, 362 (1966).

Here, the trial court’s extreme actions during the voir dire process, affected both Mr. Mulkey’s fair trial rights, as well as his rights to truthful answers during voir dire, and to an unbiased and impartial jury. See, e.g., Gomez v. United States, 490 U.S. 858, 876 (1989) (quoting Gray v. Mississippi, 481 U.S. 648, 668 (1987)) (“Among those basic fair trial rights that ‘can never be treated as harmless’ is a defendant’s ‘right to an impartial adjudicator, be it judge or jury.’”). The trial court’s actions further deprived Mr. Mulkey of his Sixth and Fourteenth Amendment rights to “a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.” Smith v. Phillips, 455 U.S. 209, 217 (1982).

As an initial matter, this Court has consistently reaffirmed the critical

significance of jury service to the integrity of the entire trial process, and the importance of protecting a juror's right not to be unlawfully, or arbitrarily, excluded from jury service. Miller-El v. Dretke, 545 U.S. 231, 238 (2005) (discriminatory or unlawful jury selection jeopardizes “the very integrity of the courts” and “undermines public confidence in adjudication”); Powers v. Ohio, 499 U.S. 400, 407–08 (1991) (holding that discriminatory jury selection violates the equal protection clause and noting that “[j]ury service preserves the democratic element of the law, as it guards the rights of the parties and ensures continued acceptance of the laws by all of the people.”). J.F., although running late, was on his way to jury service and was otherwise qualified to serve on Mr. Mulkey's jury. (See, e.g., Q. 19, 36, 37, 42–43.)

This Court has also consistently emphasized the critical importance of voir dire in a criminal case:

[V]oir dire represents jurors' first introduction to the substantive factual and legal issues in a case. To detect prejudices, the examiner . . . must elicit from prospective jurors candid answers about intimate details of their lives. The court further must scrutinize not only spoken words but also gestures and attitudes of all participants to ensure the jury's impartiality.

Gomez, 490 U.S. at 874–75 (noting that the “atmosphere of the voir dire . . . may persist throughout the trial”); see also Rosales-Lopez v. United States, 451 U.S. 182, 188 (1981) (“Voir dire plays a critical function in assuring the criminal

defendant that his Sixth Amendment right to an impartial jury will be honored”).

Here, the trial judge’s actions had a significant impact on the remainder of the venire, and the jurors’ ability to be open and honest about beliefs they might hold that are contrary to the law or the trial judge’s instructions. The trial court announced that it would place J.F. in contempt in front of the entire venire, but did not take any steps to ensure that this would not affect jurors’ impartiality or ability to answer questions freely and honestly. Phillips, 455 U.S. at 217.

Indeed, the record below indicates that prospective jurors *were* affected by the trial court’s excessive and abusive actions. Prospective juror G.S. (No. 530), expressed concern that she would be “charged or thrown in jail.” (R. 409). Other jurors expressed similar concerns during individual voir dire, including prospective juror K.E. (No. 221), who stated, “I don’t want to get in trouble for my beliefs” (R. 482), after being questioned about his prior statement that he would not consider mitigation (R. 481). Jurors were also described as “com[ing] in here looking nervous” when they entered for individual voir dire (R. 518), “coming in like it’s the trouble seat,” (R. 558), or that the judge “heard somebody say uh-oh” when they were called back for individual voir dire (R. 467). The trial court gave no instructions related to J.F.’s contempt and failed to question jurors

to ascertain whether this would affect their ability to answer questions honestly and to be impartial adjudicators.

The trial court had an obligation under this Court's precedents to "determine the circumstances" of any irregularities or misconduct affecting the jury, "the impact thereof upon the juror, and whether or not it was prejudicial, in a hearing with all interested parties permitted to participate." Remmer v. United States, 347 U.S. 227, 230 (1954). It conducted no such inquiry.

Jurors act "as a vital check against the wrongful exercise of power by the State." Powers, 499 U.S. at 411. However, where a judge displays an abusive show of authority as it did in Mr. Mulkey's case, the jury's ability to fulfill its critical role is affected. Historically, the framers intended the Due Process Clause of the Fourteenth Amendment to protect against just such abuses, "to prevent government 'from abusing [its] power, or employing it as an instrument of oppression,' . . . Its purpose was to protect the people from the State." DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 196 (1989) (quoting Davidson v. Cannon, 474 U.S. 344, 348 (1986)).

This Court should grant certiorari and resolve whether the trial court's drastic action in placing prospective juror J.F. in contempt of court for running 30 minutes late to jury service resulted in the violation of Mr. Mulkey's rights protected by the Sixth and Fourteenth Amendments to the United States

Constitution.

## CONCLUSION

For the foregoing reasons, Mr. Mulkey's petition for certiorari should be granted.

Respectfully Submitted,

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