No. 14-8189

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2014

CHRISTIE SCOTT,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

The State's Brief in Opposition largely ignores the outlier status of Alabama's death penalty scheme. The State does not dispute that Alabama is alone in allowing, without restriction, elected judges to reject death-qualified jury sentencing verdicts of life without parole. It does not dispute that there is a clear trend away from override decisions, both with respect to the number of states where override is permitted and with respect to the number of cases where it occurs, even in Alabama. The State does not dispute that arbitrary, unfair, and unregulated imposition of the death penalty violates the Eighth Amendment and evolving standards of decency under this Court's precedents. And the State does not dispute that the Eighth and Sixth Amendments are implicated when judges impose death sentences in an arbitrary manner and based on factual findings that have been rejected by the jury.

What the State does suggest is that the constitutional questions about judicial override can be ignored as long as the judge's ultimate decision is understandable based on the facts of the case. To this end, the State's brief attempts to provide justifications for the judge's order sentencing Ms. Scott to death. The State's description of the facts, however, is incomplete, and its attempts to justify the override decision actually reinforce the constitutional questions that this case presents, and thus reinforce the need for a grant of certiorari.

I. The State's Presentation of the Facts in This Case Is Incomplete and Not Responsive to the Eighth Amendment Questions Presented in Ms. Scott's Petition.

A death-qualified jury in Franklin County, Alabama returned a sentencing verdict for life without parole following Christie Scott's capital murder trial. Although this jury had convicted Ms. Scott of capital murder for the death of her six-year-old son, Mason Scott, who died in a fire at their home, jurors voted against a death sentence. Under Alabama law, this necessarily meant that they made a finding that the aggravating circumstances did not outweigh the mitigating circumstances.

During the four-week trial, the jury heard testimony concerning the State's loss of critical evidence, (see, e.g., R. 1538-39, 1636, 1726-30, 1898, 3417-20), the State's fire investigators' inability to determine how this fire started, (R. 927-28, 1850, 2824-26, 3908), the defense experts'[1] determination that there was no scientific basis for concluding this fire was arson, and that the State had failed to follow scientific protocols and had based its conclusions regarding arson on outdated methodology and myth. (R. 3279-80, 3296-3300, 3391-92.)

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[1] Defense expert Doug Carpenter is a nationally known expert in fire cause and origin, a fire protection engineer, and a professor at the University of Maryland. (R. 3227.) Defense expert John Lentini is board certified by the International Association of Arson Investigators, the National Association of Fire Investigators and the American Board of Criminalists, has 30 years of experience in fire investigation and has testified in more than 200 trials. (R. 3371-72.)

Given the mishandled evidence and the absence of a known cause for this fire, the prosecutor was left to rely on circumstantial evidence to obtain a capital murder conviction. In its Brief in Opposition, the State describes a selection of the circumstantial evidence that the jury heard, primarily regarding Christie Scott's actions immediately before and after this house fire. (State's Br. Opp'n 2-3.) The record, however, reveals serious questions about the reliability and probative value of this evidence, and undermines the State's attempt to defend the trial judge's sentencing decision below.

The State argues, for example, that override was justified in this case because insurance money was a motivating factor, and throughout its pleading refers to the trial judge's statement, "[k]illing your own child for money by burning him alive is too much to overcome[.]" (State's Br. Opp'n 4, 9.) But the State's brief does not reveal that the evidence at trial about insurance was conflicting. Although the State notes that Ms. Scott obtained life insurance for Mason months before his death, and submitted a third policy twelve hours before the fire, (State's Br. Opp'n 1, 2), it neglects to acknowledge that Ms. Scott and her father, Donald Bray, worked in the insurance business and regularly purchased various types of insurance policies for the entire family. (R. 3128-29, 3142-45.) Ms. Scott, her husband Jeremy Scott, and her father were particularly attuned to insuring Mason, as his medical diagnosis grew

more severe and they perceived the challenges of obtaining insurance for him as he grew older. (R. 3638, 3769-73.) More importantly, the testimony at trial revealed that the policies on which the State relies actually were not in effect yet at the time of the fire, (R. 3091; see also R. 2023-25, 3771), which Ms. Scott well knew from her own experience as an insurance agent. (R. 3961-62.)

The State also asserts that an autopsy revealed that Mason had high levels of medication in his blood when he died. (State's Br. Opp'n 2.) Mason, who had been diagnosed with pervasive developmental disorder and Asperger's disorder, had been under the care of a psychiatrist who testified to prescribing Mason multiple medications and increasing dosages in the months before his death. (R. 2379-93.) As the State's own expert testified, amphetamine levels can concentrate in the blood after death, (R. 2526); further, amphetamines are associated with excitability as much as with sedation, (R. 2532-34); thus the State's suggestion that Ms. Scott over-medicated Mason so he would not wake up during the fire is contradicted by the evidence.

Despite the fact that much of the evidence was heavily contested, the same death-qualified jury ultimately convicted Ms. Scott of three counts of capital murder. Yet, even after returning these convictions, this jury determined that Ms. Scott did not deserve the death penalty. The arguments made by the State in its Brief in Opposition

about the facts of these crimes, as well, does nothing to undermine the fact that the jury had already considered all of this, along with extensive mitigation, and voted against death.

Ms. Scott's jury vote was strongly supported by compelling mitigation. (See Pet. for Cert. 8-10, 14-16.) The State does not dispute this. The judge used unreliable evidence to undermine the jury's verdict. The State's brief repeats this error. Alabama stands alone in using a capital sentencing scheme that permits the arbitrariness demonstrated in this case, and this Court should grant certiorari to determine whether Ms. Scott's Eighth Amendment right was violated by the trial judge's override.

II. The State's Attempts to Justify Ms. Scott's Death Sentence Actually Reinforce the Constitutional Questions Presented in this Case.

The State attempts to justify the trial judge's override of the jury's life verdict by arguing that the sentencing judge "focused on the aggravated nature of Scott's crime[,]" and "the circumstances of the murder, not the testimony of the victim's family." (State's Br. Opp'n 9.) But the State's argument fails to properly consider important facts in this case, primarily the wealth of mitigation. The jury and the sentencing judge heard identical evidence regarding the circumstances of this offense. No new information was presented to the judge to support his rejection of the life

verdict, thus reinforcing the arbitrary nature of Alabama's override scheme, where a judge has unfettered discretion to simply disagree with a jury's findings and its verdict.

The jury heard from 29 witnesses in testimony that spanned 124 pages of the record, who testified as to Ms. Scott's kindness and good character and their belief that a death sentence could not be justified, in part to spare her five-year-old son from suffering the loss of his mother. (R. 4101-4225.) This testimony came from the people closest to Mason Scott and Christie Scott, all of whom spoke of her love and devotion to her family and friends, and asked that her life be spared. (See, e.g., R. 4148, 4179, 4208, 4212, 4214, 4219, 4221-25.) To a person, each of these witnesses, including Mason's father, grandparents, aunts, and cousins, uniformly testified that a death sentence for Ms. Scott would not make them whole. (R. 4236 (closing statement of prosecutor acknowledging he had no victim witnesses)). The jury then rendered a verdict of life without parole. (R. 4258.) This verdict conformed to the requirements of Alabama's capital sentencing scheme, see Ala. Code § 13A-5-52 ("mitigating circumstances shall include any aspect of a defendant's character or record"), as well as this Court's jurisprudence requiring sentencing decisions to give effect to the character and record of an offender. Woodson v. North Carolina, 428 U.S. 280, 304 (1976).

Despite the jury's verdict of life without parole, the judge sentenced Ms. Scott to death in part because he felt the need to stand up for the victim because members of the victim's family did not ask for death. (C. 9.) The State does not dispute that this consideration is explicit in the judge's sentencing order. As Ms. Scott argued in her opening brief, this consideration raises Eighth Amendment questions, especially in comparison to the Courtney Lockhart case where the override was justified, in part, by the court because the victim's family did ask for the death penalty. Lockhart v. Alabama, No. CR.-10-0854, 2013 WL 4710485, at *41 (Ala. Crim. App. Aug. 30 2013) (emphasizing in sentencing order that victim's family asked that Lockhart receive the death penalty, a factor that "weighs in favor of judicial override"). The reliance on opposite requests from survivors to override jury verdicts and impose death sentences demonstrates a clear lack of "meaningful restraint on the arbitrary and capricious infliction of the death sentence." Godfrey v. Georgia, 446 U.S. 420, 428 (1980) (plurality opinion).

In its Brief, the State responds to Ms. Scott's argument by asserting that her case is unrelated to Lockhart and has more in common with other cases in which defendants have been sentenced to death for committing similar crimes. The State then cites three cases in which defendants have been sentenced to death for convictions involving the deaths of children. (State's Br. Opp'n 11-12). But these

cases are inapposite because none of them involved judicial override. See Blackmon v. State, 7 So. 3d 397, 406 (Ala. Crim. App. 2005); Gobble v. State, 104 So. 3d 920, 935 (Ala. Crim. App. 2010); Dunaway v. State, 746 So. 2d 1021, 1023 (Ala. Crim. App. 1998) (juries rendering sentences of death by votes of 10 to 2.) The State's attempts to justify this override based on the multiple capital convictions and the circumstances of the crime are simply not responsive to Ms. Scott's claim that the judge's decision to override was based on non-record, unproven, and thus, arbitrary reasons.

III. The State Does Not Adequately Respond to Ms. Scott's Argument that a Death Sentence Is Not Possible Under Alabama Law Unless There Is a Finding that the Aggravating Circumstances Outweigh the Mitigating Circumstances.

The State asserts that three factors found by the jury at the guilt phase made Ms. Scott eligible for a death sentence. (State's Br. Opp'n 21, 23-24.) However, while Alabama law permits a capital conviction pursuant to those three factors, see Ala. Code § 13A-5-40(a)(7), (9), (15), it does not permit the jury to render a death verdict unless it finds that the aggravating circumstances outweigh the mitigating circumstances. Ala. Code § 13A-5-46(e).

In its brief, the State contends that the judge relied heavily on the nature of the crime and his finding that it was especially heinous, atrocious, and cruel as compared

with other capital cases to override the jury's life verdict,[2] (State's Br. Opp'n 3, 9, 10), thus conceding that the "heinous, atrocious and cruel" finding operated like an aggravator. But because there was no evidence that the jury found this fact, the State's attempt to defend the override in this case actually raises questions about the viability of judicial override in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring v. Arizona, 536 U.S. 584, 602 (2002) ("If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt."). Ms. Scott would not have been sentenced to death without the trial judge finding facts not found by this jury. Thus, by acknowledging that the judge overrode the jury's verdict in this case based on factual findings the jury did not make, the State validates the arguments Ms. Scott made in her certiorari petition that her death sentence was imposed in violation of Ring and Apprendi.[3] (See Pet. for Cert. 27-28.)

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[2] In fact, the judge devotes nearly two pages of his eleven-page sentencing order setting out his findings with regards to this aggravator in such an explicit fashion that leaves no doubt his findings were different from the jury. (C. 6 ("To intentionally murder your child by burning him is shockingly evil. Even in society today where horrible circumstances lead to capital murder convictions, it is hard to find a set of facts worse than a mother killing her son by fire. All capital offense are heinous and atrocious and cruel. The Court challenges anyone to find a capital offense involving a single victim that is more heinous, atrocious, and cruel.")).

[3] This Court recently granted certiorari in Hurst v. Florida, No. 14-7505, to consider whether Florida's death penalty sentencing scheme violates the Sixth and

In addition, the State's brief highlights the conflict that is ripe for this Court's adjudication: where a State conditions the death penalty on a finding that aggravation outweighs the mitigation, must that finding be determined by a jury? Alabama law requires the finding of an aggravating circumstance and a determination that the aggravating circumstances outweigh the mitigating circumstances. Ala. Code § 13A-5-46(e)(1), (2); § 13A-5-47(d), (e). The State, citing Ex parte Waldrop, 859 So. 2d 1181 (Ala. 2002), asserts that only the first finding is subject to Ring and, alone, makes a defendant eligible for the death penalty. (State's Br. Opp'n 22–24.) But the State does not explain why the second finding, which a capital sentence is also contingent upon, is exempt from the requirements of Ring.

Moreover, the State's arguments about why there is not a conflict between Alabama and other jurisdictions is not persuasive. In both Woldt v. People, 64 P.3d 256, 265 (Colo. 2003), and State v. Whitfield, 107 S.W.3d 253, 259 (Mo. 2003), the courts examined their states' death penalty statute to determine that weighing aggravation and mitigation was a necessary "step" before a death sentence can be imposed. Thus, the courts held that Ring required the weighing "step" to be

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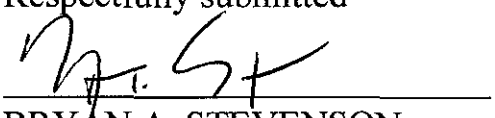
Eighth Amendments in light of Ring. As in Hurst, there can be no confidence in Ms. Scott's case that the factual determination that made her eligible for the death penalty was unanimously found by a jury beyond a reasonable doubt.

determined by a jury. Woldt, 64 P.3d at 265–66; Whitfield, 107 S.W.3d at 261. Alabama's sentencing scheme similarly requires weighing before a death sentence may be imposed. Its status as a hybrid jury-judge sentencing state does not diminish the necessity that the factfinder decide aggravation outweighs mitigation. Thus, because a defendant may not be sentenced to death without this "step," the holding from the Alabama Supreme Court is in conflict with courts from Colorado and Missouri. This Court should grant certiorari to determine whether the Sixth Amendment requirements under Ring and Apprendi are applicable.

CONCLUSION

For these reasons, Ms. Scott prays that this Court grant a writ of certiorari to review whether the trial judge's decision to override a jury verdict for life without parole offends the Sixth, Eighth, and Fourteenth Amendments.

Respectfully submitted



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