No. 16-7685
CAPITAL CASE

In the SUPREME COURT of the UNITED STATES

TAURUS CARROLL,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

On Petition for a Writ of Certiorari to the
Alabama Supreme Court

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Steven T. Marshall
Alabama Attorney General

Andrew Brasher
Solicitor General

Beth Jackson Hughes
Assistant Attorney General
Counsel of Record *

Office of the Attorney General
501 Washington Avenue
Montgomery, Alabama 36130-0152
bhughes@ago.state.al.us
(334) 353-3637 Fax
(334) 242-7300, 242-7392 *

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

1. Should this Court decline to review Carroll's claim that he is intellectually disabled where the underlying basis for this claim is not worthy of this Court's review and where Carroll is not intellectually disabled?

2. Should this Court decline to review Carroll's claim that the Alabama courts refused to apply current medical standards in evaluating his intellectual disability claim where this claim is without merit?

3. Should this Court decline to review Carroll's claim that his death sentence should be vacated based on this Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), where this claim was not properly raised in the Alabama Court of Criminal Appeals and where the claim is without merit?

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STATEMENT OF THE CASE

A. The Proceedings Below

Taurus Carroll was convicted of convicted of capital murder for stabbing to death another inmate, Michael Turner, with a prison made knife in the St. Clair Correctional Facility because he erroneously believed Mr. Turner had stolen his contraband cell phone. Carroll was indicted by the Grand Jury of St. Clair County, Alabama, for the following capital offenses: murder by a defendant who has been convicted of another murder in the 20 years preceding the crime in violation of Ala. Code § 13A-5-40(a) (13) (1975) and murder committed while the defendant is under sentence of imprisonment in violation of Ala. Code § 13A-5-40(a) (6) (1975). The jury found Carroll guilty of both counts of the indictment. A jury sentencing was then held. After deliberating the jury unanimously recommended a death sentence for Carroll.

The trial court then conducted its own sentencing hearing. After this hearing, the trial court found that the following aggravating circumstances existed: the murder was committed by a person under sentence of imprisonment under Ala. Code § 13A-5-49(1) (1975); that Carroll had previously been convicted of another capital offense or a felony involving the use or threat of violence to the person (Carroll had a previous capital

murder conviction) under Ala. Code § 13A-5-49(2) (1975); and, that the capital murder was especially heinous, atrocious or cruel as compared to other capital offenses under Ala. Code § 13A-5-49(8) (1975). The trial court found that the following non-statutory mitigating circumstances existed: the circumstances of Carroll's upbringing; that Carroll has less than average intelligence (but is not intellectually disabled); Carroll's incarceration beginning at a young age; and, Carroll's request for mercy. After weighing the aggravating and mitigating circumstances, the court sentenced Carroll to death.

The Alabama Court of Criminal Appeals affirmed Carroll's capital murder convictions and his death sentence. *Carroll v. State*, CR-12-0599, 2015 WL 4876584 (Ala. Crim. App. Aug. 14, 2015). The Alabama Supreme denied Carroll's petition for writ of certiorari.

B. Statement of the Facts

1. Facts Elicited During Carroll's Trial

The Alabama Court of Criminal Appeals set forth the following facts concerning this capital murder:

> In 1997, Carroll was convicted of capital murder and was sentenced to death for killing Betty Long during the course of a first-degree robbery. *See* § 13A–5–40(a)(2), Ala.Code 1975; *Carroll v. State,* 852 So.2d 801, 804 (Ala.Crim.App.1999). On appeal, the Alabama Supreme Court affirmed Carroll's capital-

murder conviction but reversed his sentence of death and remanded the cause with instructions that Carroll be resentenced to life in prison without the possibility of parole. *Ex parte Carroll,* 852 So.2d 833, 837 (Ala.2002).

On September 14, 2009, Carroll, who was serving his sentence of life without the possibility of parole at St. Clair Correctional Facility, mistakenly believed that Turner, another inmate at St. Clair Correctional Facility, had stolen his cellular telephone. That evening, Carroll asked Turner if Turner had taken Carroll's telephone. Turner stated that he did not take Carroll's telephone. Carroll did not believe Turner and told Turner that Turner needed to go find something to fight with because Carroll would be back to fight. Carroll then followed Turner to Turner's cell block, and the two separated.

Carroll returned twice, both times confronting Turner about the telephone. At some point, Carroll asked Turner whether Turner was going to return the telephone to Carroll. Turner stated that he did not have the telephone, and Carroll responded, "don't worry about it, I don't want it back. I'm fixing to kill your bitch ass. You need to go get you some help or get you a knife." (State's exhibit # 30.) Later, Carroll again asked Turner for the telephone. Turner again denied having the telephone and walked past Carroll. When Turner walked past Carroll, Carroll stabbed him in the back with a knife fashioned out of part of an air-conditioner vent. Turner then ran from Carroll and tried to take cover in a prison cell by shutting the door. Carroll chased Turner and pushed his way into the prison cell. Once in the cell, Carroll stabbed Turner, who was unarmed, repeatedly in the head, neck, and body. While Carroll was stabbing Turner, Turner stated he did not have the telephone and begged Carroll not to kill him. At that point, Carroll stopped stabbing Turner and said: "Man, you could have did this before it came to this point, now you want to tell me somebody else [has] got it." (State's exhibit # 30.) At that point, Carroll started stabbing

Turner again. During the attack, Carroll cut one of his own fingers.

After repeatedly stabbing Turner, Carroll walked away, threw the knife in a trash can, and went up stairs to the second tier of the prison. Once upstairs, Carroll took his shirt off and threw it on the ground. He then washed Turner's blood off his hands and arms.

At the same time, Turner left the cell and fell to the ground at the bottom of the stairs separating the first and second tiers of the prison. Turner was bleeding and complaining that he could not breathe. He was placed on the prison ambulance—a modified golf cart—and taken to the prison infirmary. While in the infirmary, Turner continued to complain that he could not breathe. Shortly after arriving at the infirmary, Turner died as a result of his wounds.

Meanwhile, prison guards went to the cell where Turner had been stabbed to investigate the disturbance. After washing his hand and arms, Carroll came back down the stairs and indicated to prison guards that it was he who had stabbed Turner. After Carroll received medical treatment for the cut on his finger, Carroll was placed in segregation where he admitted to correctional officer Brandon Carter that he had intended to kill Turner.

Early the next morning, Carroll was interviewed by two investigators, Robert G. Holtam and Milton Charles "M.C." Smith, with the Investigation and Intelligence Division of the Alabama Department of Corrections ("I and I Division"). Carroll was read his *Miranda* rights, indicated that he understood those rights, and stated that he wished to waive them. Carroll then gave a full confession, which was recorded. During the investigation, officers recovered the knife from the trash can where Carroll said he disposed of it. Officers also

> seized the pants Carroll had been wearing during the attack. DNA testing indicated that blood recovered from the knife and Carroll's pants belonged to Turner.
>
> The autopsy performed by Dr. Emily Ward indicated that Turner sustained 16 stab wounds to his head, neck, and body. One stab wound to his head penetrated his skull. Turner was also stabbed in the neck, penetrating the muscle and severing the right jugular vein. Additionally, Turner's right lung was punctured. According to Dr. Ward, Turner's wounds would have been extremely painful, and he would have experienced the feeling of suffocating. Dr. Ward testified that Turner "would have been suffering a combination of fear and panic, not being able to breathe and also the pain associated with the injuries." (R. 708.) Dr. Ward further testified that "Turner died as a result of multiple stab wounds and cuts." (R. 708.) (footnote omitted)

Carroll v. State, CR-12-0599, 2015 WL 4876584, at *1-2 (Ala. Crim. App. Aug. 14, 2015).

2. Facts Elicited During *Atkins* Hearing

On April 9-10, 2012, the trial court held an evidentiary hearing on Carroll's *Atkins* claim. (R. 46-234) Five witnesses testified at this hearing.

Carroll's counsel first called Susan Wardell, a mitigation specialist, to testify at the hearing. (R. 49) It was Ms. Wardell's opinion that Carroll has significant deficits in his adaptive behavior. (R. 70) However, Ms. Wardell was not sure how many areas of adaptive skills there are and was not able to name all of these areas. (R. 61) While Ms. Wardell believed that Carroll

has significant deficits in his adaptive functioning, she was not aware that he was a cook in prison and that Carroll had obtained his GED while in prison. (R. 80-81) She also testified that Carroll was good in math in school. However, Ms. Wardell did not remember that the only special class Carroll was in was reading. (R. 84) Ms. Wardell admitted that Carroll was able to show goal-oriented behavior. (R. 82) Even though Ms. Wardell was assessing Carroll's adaptive behavior, she did not read Carroll's statement to the correctional officers about this offense, did not look into the facts of the case, and did not discuss the offense with him. (R. 82) Finally, Ms. Wardell admitted that she did not want Carroll to get the death penalty. (R. 83)

Next, Carroll's counsel called Dr. Robert Shaffer, a clinical psychologist, to testify. Dr. Shaffer testified that, in his opinion, Carroll is mildly mentally retarded. (R. 125-126) Dr. Shaffer did not perform an IQ test on Carroll. Instead, he relied on a test administered by a Dr. Gragg where Carroll had a full scale IQ score of 71. (R. 100-101) Dr. Shaffer testified that, after applying the Flynn effect to Carroll's IQ score, his IQ was 69.5 (R. 120-123) Dr. Shaffer also performed a neuropsychological battery of tests on Carroll. Dr. Shaffer testified that Carroll performed in the impaired range on 9 of 14 measures on these tests. (R. 110-111) Dr. Shaffer also assessed Carroll's adaptive behavior and found that Carroll was in the

impaired range. (R. 115-119) Dr. Shaffer admitted that he had to rely on Carroll's uncles to tell the truth when he was assessing Carroll's adaptive functioning and that someone on death row would have a reason to malinger. (R. 129-134) Dr. Shaffer testified that his hourly rate was $200 and that his bill for his assessment of Carroll would be approximately $14,000. (R. 128) Finally, Dr. Shaffer testified that he was not aware that the American Psychiatric Association does not recognize the Flynn effect. (R. 134-135)

The prosecution called Dr. Susan K. Ford, the director of Psychological and Behavioral Services for the Division of Developmental Disabilities with the Alabama Department of Mental Health, to testify at the *Atkins* hearing. (R. 143) Dr. Ford administered the Adaptive Behavior Scale for Residential and Community Living on Carroll to assess his adaptive functioning. (R. 147-148, 150) According to Dr. Ford, this test is recognized in the field of psychology as an appropriate and reliable means of measuring adaptive functioning. (R. 150) It took Dr. Ford two hours to administer this test to Carroll. (R. 150) The comparison group for this test are intellectually disabled persons. (R. 152) Because Dr. Ford could not verify the information given to her by Carroll from other sources, she had Carroll explain what he meant when he gave certain answers. (R. 153-154) Carroll tested in at least the above average range in all of the test domains

and in the superior range in five of the domains. (R. 156) Carroll was not deficit in any of the adaptive functioning domains on this test. (R. 156) It was Dr. Ford's opinion that Carroll falls in the borderline range of adaptive functioning which is a higher level of functioning than intellectual disability. (R. 156)

While interviewing Carroll, Dr. Ford learned that he had only gone through the eighth grade in school because of his incarceration at a young age but that he had obtained a GED while in prison. (R. 170) It was Dr. Ford's opinion that most intellectually disabled individuals could not pass the GED. (R. 170-171) Dr. Ford testified that Carroll told her that he was in learning disability classes for reading but was in regular classes for math. (R. 172) According to Dr. Ford, there was nothing in Carroll's records indicating that he was ever classified as educably mentally retarded. (R. 173-174) Carroll had no problems understanding Dr. Ford's questions and was able to communicate his answers to her with no problem. (R. 175) Dr. Ford testified that Carroll's behavior during this crime was not the behavior of someone with intellectual disability because of the planning aspect of the crime. (R. 177-178) Dr. Ford also testified that Carroll's actions after the crime – leaving the scene when he learned that the officers were coming, discarding the knife in the trash can, and washing the blood off of his hands

– indicated that Carroll understood the consequences of his actions. (R. 178) It was Dr. Ford's opinion that the results of the adaptive functioning tests and her interview with Carroll were consistent with her general impression of Carroll's adaptive functioning range. (R. 178-179)

Dr. Ford also reviewed Dr. Gragg's report and testified that Dr. Gragg's testing of Carroll revealed that he had a full scale IQ score of 71. According to Dr. Ford, this IQ score falls in the borderline range of mental retardation. (R. 179) Dr. Ford also testified that the Department of Corrections classified Carroll's range of functioning in the below average range. (R. 180) Finally, Dr. Ford testified that she had reviewed a report from Dr. King that placed Carroll in the average range of intelligence. (R. 181)

On redirect examination, Dr. Ford testified that the standard error of measurement runs both ways and could raise Carroll's IQ score to 75 or 76. (R. 195) She also testified that the American Psychological Association issued a statement that subtracting points from an IQ test administered by someone else is not an accepted practice. (R. 195) Finally, Dr. Ford testified that the Flynn effect is not used in social security or education cases and it is not recommended by the American Psychological Association. (R. 195-196)

The State also called Officer Brian Griffith, a correctional officer at St. Clair Prison, to testify at the *Atkins* hearing. Officer Griffith has known Carroll five and one-half years. (R. 198) Officer Griffith has supervised Carroll as he worked in the kitchen. (R. 199) According to Officer Griffith, Carroll is one of the better kitchen workers. Carroll is able to do his job effectively and completes his tasks in the kitchen without a problem. (R. 200-201) Officer Griffith has no problem communicating with Carroll. (R. 200-201) Carroll is able to follow his directions and the directions from other correctional officers. (R. 201) Officer Griffith testified that Carroll is able to make decisions and to follow through on the decisions he makes. (R. 201)

Investigator M. C. Smith from the I & I division of the Department of Corrections investigated the murder of Michael Turner. (R. 213-214) During his investigation of this murder, Investigator Smith talked to Carroll. (R. 216) Before questioning Carroll, Investigator Smith had Carroll read his rights form. (R. 216) Investigator Smith had Carroll read one sentence from the form out loud to make sure that Carroll could read. (R. 217) During the interrogation, Carroll was able to respond to questions from the rights form and his speech was coherent. (R. 217) Carroll had no problem understanding any questions and Investigator Smith had no problems

understanding Carroll's responses to questions. (R. 217-218) After the murder, Investigator Smith entered Carroll's cell in the segregation unit. Carroll had eight or nine paperback books in his cell, two Jet magazines, and a USA Today magazine. (R. 219-220) Carroll also had newspaper articles about his case in his cell, including one concerning his mental evaluation hearing. (R. 220) The fact that Carroll cooperated with the department of corrections official did not make Investigator Smith believe that Carroll is intellectually disabled. (R. 232)

The record also contains two IQ scores from Carroll's education records. In 1984, Carroll was given a Wechsler Intelligence Scale for Children - Revised IQ test. Carroll received a full scale score of 85 on this IQ test. (CR. 401) Three years later a second Intelligence Scale for Children – Revised was given to Carroll. Carroll received a full scale score of 87 on this IQ test. (CR. 402)

After the evidentiary hearing, the trial court entered an extensive order finding that Carroll is not intellectually disabled. (CR. 122-127)

REASONS FOR DENYING THE PETITION

It is worth noting at the outset that Carroll has not alleged – let alone proven – any traditional ground for certiorari. He has not, for instance, argued that the decision of the Alabama Court of Criminal Appeals conflicts the decisions of other state courts, *see*, Sup. Ct. R. 10(b), or that this case presents a novel and important federal question, *see* Sup. Ct. R. 10(c). At bottom, Carroll requests that this Court engage in a fact-bound review of his particular case. This Court should deny the petition.

I. This Court should decline to grant relief on Carroll's claim that he is intellectually disabled and cannot be executed.

Carroll contends that his case should be remanded to the Alabama Court of Criminal Appeals because the lower court imposed a strict IQ cutoff score and refused to take into account the standard error or measurement when it denied his claim that he is mentally retarded. This Court should deny certiorari on this argument for at least two reasons.

A. Certiorari should be denied because the underlying issue is not worthy of this Court's review.

First, this Court should deny certiorari on this question because Carroll seeks only fact-bound error correction. Certiorari is not a matter of right, but of judicial discretion, and will be granted only where there are special and important reasons. In addition, the demands on this Court's time

mandate that it select for review only those truly important cases that will have a wide ranging impact. Carroll has not alleged compelling grounds for this Court to grant certiorari on this claim. Moreover, the instant case involves a simple application of established precedent to the facts of this case. For that reason, a decision in this case would be of such narrow scope and limited precedential value that it is not worthy of certiorari consideration.

B. The Alabama Court of Criminal Appeals properly denied relief on Carroll's claim that he is intellectually disabled.

In *Atkins v. Virginia*, 536 U.S. 304 (2002), this Court held that the execution of capital offenders who are intellectually disabled violates the Eighth Amendment's prohibition against cruel and unusual punishment. In reaching that result, this Court observed that "clinical definitions of mental retardation require not only sub-average intellectual functioning, but also significant limitations in adaptive skills." *Id.* at 318. This Court, however, declined to create a national standard that lower courts should use in determining whether a capital offender is intellectually disabled[1] and, therefore, not eligible for the death penalty. *Id.*, at 317. Instead, this Court

[1] This Court began using the term "intellectually disability" rather than "mental retardation" in *Hall v. Florida*, 134 S. Ct. 1986, at 1990 (2014). In keeping with this decision by this Court, the State will also use the term "intellectual disability" rather than "mental retardation" in its brief.

left to the individual states "the task of developing appropriate ways to enforce the constitutional restriction upon their execution of sentences." *Id.*

Even though the various statutory definitions that were in effect when *Atkins* was decided are not identical, the states that had enacted statutes to prohibit the execution of intellectually disabled criminals had reached a consensus on the general aspects of intellectual disability. The statutes that were enacted in those states "generally conform to the clinical definitions" of the American Association on Mental Retardation (AAMR)[2] and the American Psychiatric Association (APA). *Atkins*, 536 U.S. at 317 n. 22.

In *Ex parte Perkins*, 851 So. 2d 453, 455-456 (Ala. 2002), the Supreme Court of Alabama noted that the Alabama Legislature has not enacted a statute to instruct courts in Alabama how to determine whether a capital offender is intellectually disabled and, therefore, ineligible for the death penalty. Although the court, in *Perkins*, declined to encroach on the Alabama Legislature's prerogative of making that policy decision, the court addressed the petitioner's intellectual disability claim. *Id.* To frame its analysis of the petitioner's claim, the court set forth the following standard for reviewing an intellectual disability claim:

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[2] The members of the American Association on Mental Retardation voted to change the name of their organization. As of January 1, 2007, the AAMR will be known as the American Association on Intellectual and Developmental Disabilities (AAIDD).

> Those states with statutes prohibiting the execution of a mentally retarded defendant require that a defendant, to be considered mentally retarded, must have significantly sub-average intellectual functioning (an IQ of 70 or below), and significant or substantial deficits in adaptive behavior. Additionally, these problems must have manifested themselves during the developmental period (i.e. before the defendant reached age 18).

Id. at 456. Thus, the court applied the broad definitions of intellectual disability highlighted in *Atkins* – significantly sub-average general intellectual functioning accompanied by significant deficits in adaptive functioning, both of which must have manifested before the age of eighteen – in reviewing Perkins's *Atkins* claim. *Id.* In Alabama, a capital offender must prove that he or she satisfies all three elements of the definition of intellectual disability that the Supreme Court of Alabama announced in *Perkins* to establish that he or she is intellectually disabled. It is of no legal consequence that an offender can prove that he or she satisfies some of the elements of the intellectual disability definition if he or she cannot satisfy all of them.

This Court visited its holding in *Atkins* in *Hall v. Florida*, 134 S. Ct. 1986 (2014). In *Hall*, this Court concluded that the Florida Supreme Court had too narrowly interpreted its intellectual disability law. Specifically, this Court explained: