SUPREME COURT OF THE UNITED STATES

MICHAEL GORDON REYNOLDS *v.* FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 18–5181. Decided November 13, 2018

JUSTICE THOMAS, concurring in denial of certiorari.

On the night of July 21, 1998, petitioner Michael Gordon Reynolds murdered nearly an entire family. While the father, Danny Ray Privett, relieved himself outside the family's camping trailer, petitioner snuck up behind him and "viciously and deliberately battered [his] skull with a piece of concrete." *Reynolds* v. *State*, 934 So. 2d 1128, 1157 (Fla. 2006) (*Reynolds I*). Petitioner would later explain: "'[W]ith my record'"—which included aggravated robbery, aggravated assault, and aggravated battery—"'I couldn't afford to leave any witnesses.'" *Id.,* at 1149, 1157. So petitioner entered the trailer, where he brutally beat, stabbed, and murdered Privett's girlfriend, Robin Razor, and their 11-year-old daughter, Christina Razor. Robin "suffered multiple stab wounds along with multiple blows to the side of her face and a broken neck resulting in injuries to her spinal cord." *Id.,* at 1136. She desperately fought back, suffering "significant defensive wounds" and "torment wounds"—shallow slashes that occur when "the perpetrator tak[es] a depraved, measured approach to the infliction of the injury and tak[es] pleasure in his cruel activity." *Id.,* at 1136, 1153. Eleven-year-old Christina also resisted, suffering "blunt force trauma to her head, a stab wound to the base of her neck that pierced her heart, and another stab wound to her right shoulder that pierced her lung and lacerated her pulmonary artery." *Id.,* at 1136. Only petitioner knows whether Robin had to watch her daughter die, or whether Christina had to watch her mother die. "Regardless, in the close confines of that

cramped camping trailer, Christina Razor, in great pain and fear, was forced to fight a losing battle for her life knowing that either her mother had already been killed and she was next or that after Reynolds killed her, he was sure to end her mother's life." *Id.,* at 1154. "For a child to experience the fear, terror and emotional strain that accompanied Christina Razor as she fought for her life, knowing full well that she was fighting a losing battle, is unimaginable, heinous, atrocious and cruel." *Ibid.* "Christina was found not wearing any underwear," and petitioner's DNA was matched to both a pubic hair and Christina's underwear, both found near her body. *Reynolds* v. *State*, 99 So. 3d 459, 487–488, 501 (Fla. 2012). The sole surviving family member, Danielle, "was spared only because she was spending the night with a friend." Stutzman, Judge Gives Killer Death Sentence, Orlando Sentinel, Sept. 20, 2003, p. B7, col. 1. Danielle was devastated; "she wished she'd been home that night" to "f[ight] the attacker and tr[y] to save her sister and parents" or "di[e] alongside them." *Ibid.*

JUSTICE BREYER worries that the jurors here "might not have made a 'community-based judgment' that a death sentence was 'proper retribution' had they known" of his concerns with the death penalty. *Ante,* at 4 (statement respecting denial of certiorari). In light of petitioner's actions, I have no such worry, and I write separately to alleviate JUSTICE BREYER's concerns.*

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*JUSTICE BREYER cites several other cases in which we have denied certiorari today. *Ante,* at 3. He need not worry about the jury's decisions in those cases either. In *Guardado* v. *Florida,* No. 17–9284, petitioner, in need of money to "continue his recent crack cocaine binge," went to the home of a 75-year-old woman who had given him repeated assistance, struck her over and over with a "'breaker bar,'" and when "'she would not die,'" "pulled [a] kitchen knife and stabbed her several times, then slashed her throat." *Guardado* v. *State*, 965 So. 2d 108, 110–111 (Fla. 2007). In *Philmore* v. *Florida,* No. 17–9556, petitioner, in need of a getaway car for a planned bank robbery, asked

JUSTICE BREYER's first concern is "that the death penalty might not be administered for another 40 years or more" after the jury's verdict. *Ante,* at 4. That is a reason to carry out the death penalty sooner, not to decline to impose it. In any event, petitioner evidently is not bothered by delay. Petitioner has litigated all the way through the state courts and petitioned this Court for review three separate times. He can avoid "endur[ing]" an "unconscionably long dela[y]," *ante,* at 1–2, "by submitting to what the people of Florida have deemed him to deserve: execution." *Foster* v. *Florida*, 537 U. S. 990, 991 (2002) (THOMAS, J., concurring in denial of certiorari). "It makes 'a mockery of our system of justice for a convicted murderer, who, through his own interminable efforts of delay has secured the almost-indefinite postponement of his sentence, to then claim that the almost-indefinite postpone-

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the victim if he could use her phone, then pushed himself into her car, drove her to "an isolated area," "ordered her to walk towards high vegetation," and "shot her once in the head." *Philmore* v. *State*, 820 So. 2d 919, 923–924 (Fla. 2002). In *Tanzi* v. *Florida,* No. 18–5160, petitioner carjacked his victim by "punch[ing] her in the face until he gained entry," "forced [her] to perform oral sex," then "told [her] that he was going to kill her," put "duct tape over her mouth, nose, and eyes," and "strangle[d her] until she died." *Tanzi* v. *State*, 964 So. 2d 106, 110–111 (Fla. 2007). In *Franklin* v. *Florida*, No. 18–5228, petitioner stole a woman's car after invading her home and bashing her on the head with a hammer (leaving her "unable to live on her own"), asked a security guard at a local store for driving directions, bragged that he was going to come back and "'get'" the guard, and did just that, shooting the guard once in the back. *Franklin* v. *State*, 965 So. 2d 79, 84 (Fla. 2007). In *Grim* v. *Florida*, No. 18–5518, petitioner invited his neighbor over for coffee and then "repeatedly attacked [her] with a hammer, stabbed [her] multiple times," "forcefully inserted [an object] into her vagina," and dumped her body in Pensacola Bay. *Grim* v. *State*, 971 So. 2d 85, 89–90, 93 (Fla. 2007). Finally, in *Johnston* v. *Florida*, No. 18–5793, petitioner kidnaped his victim, "bea[t], raped, and manually strangled [her], then dragged her to a pond and left her nude, floating face down." *Johnston* v. *State*, 63 So. 3d 730, 735 (Fla. 2011).

ment renders his sentence unconstitutional.'" *Thompson* v. *McNeil*, 556 U. S. 1114, 1117 (2009) (THOMAS, J., concurring in denial of certiorari) (alterations omitted) (quoting *Turner* v. *Jabe*, 58 F. 3d 924, 933 (CA4 1995) (Luttig, J., concurring in judgment)).

It is no mystery why it often takes decades to execute a convicted murderer. The "labyrinthine restrictions on capital punishmen[t] promulgated by this Court" have caused the delays that JUSTICE BREYER now bemoans. *Glossip* v. *Gross*, 576 U. S. ___, ___ (2015) (Scalia, J., concurring) (slip op., at 6); see *Knight* v. *Florida*, 528 U. S. 990, 991 (1999) (THOMAS, J., concurring in denial of certiorari). As "the Drum Major in this parade" of new precedents, JUSTICE BREYER is not well positioned to complain about their inevitable consequences. *Glossip*, *supra,* at ___ (Scalia, J., concurring) (slip op., at 6).

JUSTICE BREYER's second concern is that petitioner's jury might have declined to impose the death penalty if it had known that other capital defendants "would be entitled to resentencing," while petitioner himself would not be resentenced. *Ante,* at 4. What this has to do with the original jury's judgment as to "'proper retribution,'" *ibid.*, is beyond me. Petitioner murdered Danielle Privett's entire family. Whether he deserves to be sentenced to death has nothing to do with whether a different person who engaged in different conduct might be entitled to be resentenced on procedural grounds. Moreover, if petitioner *had* been resentenced, and was again sentenced to death, I have little doubt that JUSTICE BREYER would instead be fretting that the original jury failed to consider his belief that resentencing "sharpen[s]" "[d]eath row's inevitable anxieties and uncertainties." *Foster*, *supra,* at 993 (opinion dissenting from denial of certiorari).

JUSTICE BREYER's third concern is that petitioner was "sentenced to death under a scheme that required the judge to make the ultimate decision to impose the death

penalty, and in which the jury was repeatedly instructed that its recommended verdict would be advisory." *Ante,* at 3. Once again, petitioner did not share JUSTICE BREYER's concern. "After thorough consultation with his attorneys and the trial court," petitioner waived "his right to a jury's penalty recommendation as to the appropriate sentence" and "waived the presentation of mitigating evidence before the penalty phase jury." *Reynolds I*, 934 So. 2d, at 1138, 1148. When the trial court did not allow petitioner to waive the jury's involvement, petitioner appealed, arguing that "the trial court abused its discretion and committed reversible error when it refused to honor" his waiver. *Id.,* at 1147–1148.

Contrary to JUSTICE BREYER's suggestion that the jury did not feel an adequate sense of "responsibility" for its recommendation, *ante,* at 3, the jury was instructed that a "'human life is at stake'" and that the trial court could reject the jury's recommendation "'only if the facts [are] so clear and convincing that virtually no reasonable person could differ.'" 251 So. 3d 811, 813, 828 (Fla. 2018) (*per curiam*). The jury was further instructed that its recommendation did not need to be unanimous. *Id.,* at 815. Nonetheless, the jury returned not one but two unanimous death recommendations. *Ibid.*

JUSTICE BREYER's final (and actual) concern is with the "'death penalty itself.'" *Ante,* at 4. As I have elsewhere explained, "it is clear that the Eighth Amendment does not prohibit the death penalty." *Baze* v. *Rees*, 553 U. S 35, 94 (2008) (opinion concurring in judgment); see *Glossip*, *supra,* at ___–___, and n. 1 (THOMAS, J., concurring) (slip op., at 1–2, and n. 1). The only thing "cruel and unusual" in this case was petitioner's brutal murder of three innocent victims.