

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

|                            |   |                                       |
|----------------------------|---|---------------------------------------|
| <b>LEE HALL,</b>           | ) |                                       |
|                            | ) | <b>No. E1997-00344-SC-DDT-DD</b>      |
| <b>Petitioner,</b>         | ) |                                       |
|                            | ) | <b>Hamilton Co. Nos. 308968 (PC),</b> |
| <b>v.</b>                  | ) | <b>308969 (ECN), and 222931 (MTR)</b> |
|                            | ) |                                       |
| <b>STATE OF TENNESSEE,</b> | ) | <b>(CAPITAL CASE)</b>                 |
|                            | ) |                                       |
| <b>Respondent.</b>         | ) | <b>Execution Set for Dec. 5, 2019</b> |

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**LEE HALL'S MOTION TO RECALL THE MANDATE,  
STAY MR. HALL'S EXECUTION, AND  
REMAND THE CASE FOR A HEARING**

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Lee Hall, pursuant to Tenn. R. App. P. 42(d), Article I §§ 8 and 16 of the Tennessee Constitution, and the Eighth and Fourteenth Amendments of the United States Constitution, respectfully moves this Court to recall the mandate issued on March 18, 1998,<sup>1</sup> affirming Mr. Hall's convictions and death sentence, due to the subsequent discovery that a member of his jury withheld information upon answering the trial

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<sup>1</sup> The Clerk's office has confirmed that the case tracking system used by the court in 1997 was different—the assigned case number at that time was 03S01-9701-CR-00010. So, the Court's December 15, 1997 opinion and order, and the mandate can be found under that number. See attached case history.

court's jury questionnaire and in voir dire which disqualifies her for cause.<sup>2</sup>

On November 28, Mr. Hall filed his motion to stay execution of his death sentence pending resolution of appeals of right in collateral litigation in this case. For the same reasons noted in his stay motion,<sup>3</sup> this Court should recall the mandate, stay Mr. Hall's execution, and remand this cause for a full and fair hearing in the trial court.

In support of this motion, Mr. Hall states as follows:

1. Rule 42(d), Tennessee Rules of Appellate Procedure, empowers this Court to recall the mandate. T.R.A.P. 42(d) ("The power to stay a mandate includes the power to recall a mandate.") This power shall be used "sparingly" but particular circumstances call for the exercise of the Court's jurisdiction to remedy a wrong. *See State v. Smith*, 151 S.W.3d 533, 544 (Tenn. Crim. App. 2003) ("this court is mindful of the fact that it has the power to recall a mandate in particular circumstances in order that the court may take further action in a case"). In *Smith*, the intermediate court quoted from an order of this Court in discussing the power to recall the mandate. *Id.*, quoting *State v. Abu-Ali Abdur'Rahman*, M1998-00026-SC-DPE-PD (Tenn. Apr. 5, 2002) (order):

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<sup>2</sup> The juror, "Juror A," failed to disclose a history of severe domestic abuse and admits that she "hated" Mr. Hall and was "biased" against him during his trial.

<sup>3</sup> Petitioner moves to incorporate herein the facts and arguments set forth in his November 28, 2019 Motion for a Stay of Execution and his Reply to the State's Response filed December 3, 2019.

The power to recall mandate is an extraordinary remedy and should be exercised sparingly. *See, e.g., Calderon v. Thompson*, 523 U.S. 538, 550 (1998) (stating that the power to recall mandate “is one of last resort, to be held in reserve against grave, unforeseen contingencies”). Moreover, to warrant a recall, the circumstances should be “sufficient to override the strong public policy that there should be an end to a case in litigation.”

*Id.* Either party may file a motion to recall the mandate. *See, e.g., Pendleton v. State*, No. 01-C-01-9305-CR-00149, 1996 WL 50986, at \*1 (Tenn. 1996) (“The State has also filed a Motion for the Recall of the Mandate, which the Court has considered and concludes should be granted. Tenn. R. App. P. 42.”).

2. While this Court exercises its power to recall the mandate “sparingly,” the equities of Mr. Hall’s case require recall of the mandate and review of the merits in order to protect fundamental constitutional rights—specifically the foundational right to a fair and impartial tribunal and the right to be free from cruel, unusual, or arbitrary treatment. This is literally a matter of life and death. This Court has noted that state courts must be mindful that “a sentence of death is final, irrevocable, and ‘qualitatively different’ than any other form or level of punishment.” *Pike v. State*, 164 S.W.3d 257, 266 (Tenn. 2005) (citation omitted). The Supreme Court of the United States has held: “When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.” *Kennedy v.*

*Louisiana*, 554 U.S. 407, 420 (2008). Decency and restraint favor recall of the mandate and a remand to the trial court in these circumstances.

3. Juror A would have been subject to a challenge for cause under federal and state law. Jurors “who have had life experiences or associations which have swayed them ‘in response to those natural and human instincts common to mankind,’ interfere with the underpinnings of our justice system.” *State v. Akins*, 867 S.W.2d 350, 354 (Tenn. Crim. App. 1993) (citing *Durham v. State*, 182 Tenn. 577, 188 S.W.2d 555, 559 (1945)). This Court has explained: “potential bias arises if a juror has been involved in a crime or incident similar to the one on trial.” *Smith v. State*, 357 S.W.3d 322, 347 (Tenn. 2011).

4. Juror A’s affirmative misrepresentations and omissions rendered Mr. Hall’s capital murder trial fundamentally unfair. The presence of a biased juror constitutes structural error and warrants reversal of conviction and his death sentence. Denial of the right to an impartial jury is a structural constitutional error that compromises the integrity of the judicial process and cannot be treated as harmless error. *State v. Odom*, 336 S.W.3d 541, 556 (Tenn. 2011); *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008). Structural errors “necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.” *Neder v. United States*, 527 U.S. 1, 9 (1999). Because structural errors deprive a defendant of a right to a fair trial, they are subject to automatic reversal. *Rodriguez*, 254 S.W.3d at 361.

5. The Supreme Court of the United States reaffirmed in *Peña-Rodriguez* that “[t]he jury is a central foundation of our justice system and our democracy.” *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855, 857 (2017). This Court has likewise been clear on the foundational nature of this right. *State v. Smith*, 418 S.W.3d 38, 44 (Tenn. 2013) (“The right to a trial by jury . . . is a foundational right protected by both the federal and state constitutions.”) (footnote omitted). “The right to a jury trial envisions that all contested factual issues will be decided by jurors who are unbiased and impartial.” *Id.* (citations omitted). “Trial courts must ensure the integrity of the jury system by holding jurors accountable to the highest standards of conduct.” *Id.* (citation omitted). Mechanisms in our legal process to ensure juror impartiality protect not only “the fairness of the trial itself” but also serve to “promote[ ] and preserve[ ] the public’s confidence in the fairness of the system.” *Id.* (citations omitted). “Like judges, jurors must be—and must be perceived to be—disinterested and impartial.” *Id.* (citation omitted).

6. When an error occurs with a jury, it crumbles the foundation upon which a criminal trial and conviction are built. For this reason, trial courts are empowered at any point of trial or in a motion for new trial to investigate and take action if it appears that any member of the jury has compromised the process. *See Smith*, 418 S.W.3d 38 at 46 (finding that when misconduct involving a juror is brought to a trial court’s attention, “it [is] well within [the judge’s] power and authority to launch a full scale investigation by summoning . . . all the affiants and other members of the jury, if need be, with a view of getting to the bottom of the matter, and

this, if necessary, upon [the judge's] own motion") (quoting *Shew v. Bailey*, 37 Tenn. App. 40, 54–55, 260 S.W.2d 362, 368 (Tenn. App. 1951).

7. The trial court had full power and authority to investigate Juror A's untruthful answer to the court's questions in the questionnaire and in voir dire as soon as they were discovered. The trial court had full power and authority to conduct an inquiry had Juror A come forward when memories and emotions about her first marriage "flooded" her during the course of trial—and prior to deliberations—had she come forward. She did not. Nor did she disclose this information in a long, wide-ranging interview with investigators in 2014. It was only in late September 2019 that Juror A finally disclosed the information which would have led to her excusal for cause.<sup>4</sup>

8. As this Court found in *Smith*, our "American judicial system 'depends upon public confidence in the jury's verdict.'" 418 S.W.3d at 49–50 (quoting *United States v. Siegelman*, 640 F.3d 1159, 1186 (11th Cir. 2011)). The proper remedy to ensure public confidence, as it was in *Smith*, is to remand this case to the trial court for an evidentiary hearing. *Id.* at 50.

WHEREFORE, Mr. Hall respectfully requests that this Court recall the mandate issued on March 18, 1997, stay Mr. Hall's execution,

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<sup>4</sup> The interview memo from 2014 is among the hundreds of pages of exhibits tendered as an offer of proof, which are critical to a complete understanding of the claims raised by Mr. Hall, so that the courts can fairly consider this important, foundational constitutional claim.

and remand this case to the trial court for a full and fair hearing<sup>5</sup> on the merits of his biased juror claim.

Respectfully submitted,

/s/ Kelly A. Gleason

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### Certificate of Service

I hereby certify that a true and exact copy of this Motion was delivered via email to the following counsel in the Office of the Attorney General: Amy Tarkington, Amy.Tarkington@ag.tn.gov, Leslie Price, Leslie.Price@ag.tn.gov, and Zachary Hinkle, zachary.hinkle@ag.tn.gov on December 3, 2019.

/s/ Kelly A. Gleason

Kelly A. Gleason

Assistant Post-Conviction Defender

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<sup>5</sup> Mr. Hall's counsel was allowed a rushed offer of proof on November with just days to prepare. Mr. Hall is an entitled to a full and fair hearing on this matter to accord with due process. *See Burford v. State*, 845 S.W.2d 204 (Tenn. 1992).

4/13/98 CASE HISTORY LIST FOR CASE # 03S01-9701-CR-00010

PAGE 11

PANEL #:

PANEL: 03S02 WRDROWOTA, J.

03S07 CCANDERSON, J.

03S08 CCREID, J.

03S09 CCBIRCH, J.

03S11 CC HOLDER, J.

STATE V. LEROY HALL, JR. /

2/06/98

TO A.O.C. aw

FILE DATE: 3/18/98

MANDATE ISSUED TO THE TRIAL COURT CLERK aw

FILE DATE: 3/30/98

LETTER FROM U.S. SUPREME COURT THAT DEFENDANT HAS  
FILED A WRIT OF CERTIORARI 3-16-98 & PLACE ON  
THEIR DOCKET #97-8364. br

FILE DATE: 3/31/98

\*\*COSTS FIGURED THIS DATE. BILL IN THE AMOUNT OF  
3,444.00 BILLED TO STATE OF TENNESSEE. APPELLANT  
IS INDIGENT. EXECUTION KS245. MFA

FILE DATE: 4/06/98

MOTION TO STAY APPELLANT'S EXECUTION SET FOR APRIL  
22, 1998 AND RESETTING IT FOR DECEMBER 16, 1998.  
BY DONALD E. DAWSON & PAUL MORROW. br

FILE DATE: 4/16/98

TO J#1.

FILE DATE: 4/13/98

MOTION TO WITHDRAW THE RECORD IN THIS CAUSE FOR 4  
WEEKS FROM THE DATE OF MAILING FROM THE CLERK'S  
OFFICE (AFFIDAVIT) BY PAUL MORROW. br

4/13/98

TO J#1.