IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT NASHVILLE

ABU-ALI ABDUR'RAHMAN,	)	
	)	
Appellee,	)	
	)	**M2019-01708-CCA-R3-PD**
v.	)	**Davidson County**
	)	
STATE OF TENNESSEE,	)	**DEATH PENALTY CASE**
	)	**04/16/2020 execution stayed**
Appellant.	)	**pending appeal**

BRIEF AMICI CURIAE OF THE TENNESSEE CONFERENCE OF THE NAACP AND NAPIER-LOOBY BAR ASSOCIATION

ON APPEAL FROM THE JUDGMENT OF THE
DAVIDSON COUNTY CRIMINAL COURT

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This amici brief is filed contingent on the grant of the Motion for Leave to File Brief Amici Curiae, filed contemporaneously herewith. Though the interest of the Amici, the Tennessee Conference of the NAACP ("Tenn. NAACP") and the Napier-Looby Bar Association ("Napier-Looby") is set forth in full in that Motion, Amici note their special interest in ensuring racial justice in the Tennessee legal system and in ensuring the full participation, without restriction, of all Tennessee citizens who are called to perform their civic duty as jurors.

INTRODUCTION AND SUMMARY OF ARGUMENT

Abu-Ali Abdur'Rahman's capital trial before a virtually all-white jury in a county with a substantial Black population was not a fluke; it reflected Tennessee's troubling practice of excluding African Americans from juries. Amici are deeply familiar with this history and offer it to this Court as important context so that it may understand better the actions of John Zimmermann. Likewise, Amici are deeply familiar with the way that de jure discrimination in grand and petit jury selection gave way to de facto discrimination through the use of peremptory challenges so that race discrimination in jury selection was illegal in name but persisted in practice. Amici also seek to remind this Court of the strong connection between this state's history of excluding its Black citizens from jury service and the state's administration of capital punishment. Finally, Amici detail Mr. Zimmermann's misconduct in this case as it provides the context, following *Foster v. Chatman*, 136 S. Ct. 1737 (May 23, 2016), that this Court must consider in reviewing how race played an improper role during the selection of the jury that convicted and sentenced Mr. Abdur'Rahman to death. To allow Mr. Zimmerman's attitudes and behavior to exist uncorrected would further destroy public confidence in the fairness of our system of justice.

Thirty years after Mr. Abdur'Rahman was sentenced to death, General Glenn Funk, the elected District Attorney General for Davidson County, Tennessee, was present at a seminar at which Mr. Zimmermann served as a panelist. As he spoke to the junior and senior prosecutors in attendance, Mr. Zimmermann, who was the lead prosecutor in Mr. Abdur'Rahman's trial, extolled the virtues of using race in jury

selection. Mr. Zimmermann's comments and their insidious significance are discussed in other briefs previously submitted to this Court, but there can be no dispute that those comments contributed to General Funk's motivation to attempt to right what he perceived to be a wrong originating from the office he leads.

Given Tennessee's exclusionary jury practices as a backdrop, General Funk's efforts to recognize and atone on behalf of his office for racial animus in jury selection by an assistant district attorney general in his office should be applauded and upheld, not derided and set aside. Amici urge this Court to recognize that it is never too late to correct a racial injustice, and that General Funk's actions and the trial court's acceptance of the agreement are an important step to help restore public trust in Tennessee's criminal justice system.

ARGUMENT

I. Tennessee's Long History of Excluding African Americans from Juries is an Unbroken Thread to Contemporary Underrepresentation of Black People on Juries.

Beginning with statehood and continuing into the mid-twentieth century, Tennessee excluded African Americans from serving as both grand and petit jurors. It took over 150 years after statehood for Tennessee to recognize African Americans as full citizens with the right to serve on juries. *See Negro to Serve as Petit Juror*, The Nashville Banner, Nov. 7, 1949, at 22 ("For the first time in Davison County a young Negro today sat in the Criminal Court jury assembly room and will serve as a petit juror…"). As both federal and Tennessee state courts have recognized, "[d]iscrimination in jury selection…causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process." *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127, 140 (1994); *see also Woodson v. Porter Brown Limestone Co.*, 916 S.W.2d 896, 906 (Tenn. 1996) ("Once discrimination in jury selection has occurred, the harm is done. The system, the litigant, and the juror have already sustained injury.").

a. Tennessee Operated a *De Jure* System of Excluding African Americans from Juries until Reconstruction.

Prior to Reconstruction, the Tennessee Code explicitly conditioned jury service on race: "Every *white* male citizen who is a freeholder, or householder, and twenty-one years of age, is legally qualified to act as a grand or petit juror [.]" *See* Tenn. Code § 4002 (1858) (emphasis added). During this period, Tennessee courts, like the U.S. Supreme Court,

viewed African Americans as non-citizens, cut off from the privileges and immunities that attended to citizenship. *See* *Scott v. Sandford*, 60 U.S. 393 (1857) (concluding that framers did not contemplate including Black people as citizens when drafting the Constitution); *see also* *State v. Claiborne*, 19 Tenn. 331, 341 (1838) ("[W]e feel satisfied that [free negroes] are not citizens in the sense of the Constitution; and therefore when coming among us are not entitled to all the 'privileges and immunities' of citizens of this State.").

It was not until Reconstruction that federal law extended civil and political rights to African Americans. *See, e.g.*, Civil Rights Act of 1866, 14 Stat. 27-30 (codified as amended at 42 U.S.C § 1981 et seq.) (providing African Americans with equal rights under the law). Yet even during this era, lawmakers continued to prevent Black Tennesseans from serving on juries *See* Hilary A. Herbert, *Why the Solid South? or, Reconstruction and its Results*, 182 (R.H. Woodward & Co, 1890) (noting that Tennessee civil rights legislation enacted in 1866 explicitly denied African Americans the right to serve on a jury). The right to serve on a jury was one of the last rights afforded to Black Tennesseans. Tennessee's legislature first gave African Americans the right to *testify* in courts in January of 1866. *See The Tennessee Legislature-Passage of the Negro Testimony Bill*, N.Y. Times, Jan. 26, 1866, at 1.

In May of 1866, Tennessee lawmakers approved legislation that extended a range of civil rights to African Americans, but specifically denied them the right to serve on juries. *See* Hilary A. Herbert, *Why the Solid South? or, Reconstruction and its Results*, 182 (R.H. Woodward & Co, 1890). It would be nearly two more years until the legislature, in

January of 1868, passed a law declaring that "there shall be no disqualification for holding office, or sitting on juries, on account of race or color." *Id.* at 201 The end of *de jure* exclusion of African American jurors in Tennessee, however, did not end *actual* exclusion.

b. Tennessee Transitioned into *De Facto* Race-Based Exclusion from Juries until the Mid-Twentieth Century.

Although after 1868 state law no longer specified the race of prospective jurors, it afforded jury commissioners broad discretion to select jurors with certain desirable attributes, thus enabling state actors to continue excluding African Americans from service. *See*, e.g., *Neal v. Delaware*, 103 U.S. 370, 401 (1880) (Field, J., dissenting) (justifying Black juror exclusion on the ground that "the great body of black men … are utterly unqualified by want of intelligence, experience, or moral integrity to sit on juries.").

Tennessee began its own history of *de facto*, if not *de jure*, exclusion of African Americans from juries. First codified in 1884, Tennessee's jury selection law instructed commissioners to select "such persons only as they know, or have good reason to believe, possess the qualifications specified in this chapter, and are esteemed in their community for their integrity, fair character and sound judgment. . . ." *See, e.g.*, Tenn. Code § 4765 (1884); Tenn. Code § 9992 (1932). The State employed these vague juror selection provisions to effectively exclude Black jurors while still complying with federal law that prevented explicit race-based exclusion. *See* *Strauder v. W. Va.*, 100 U.S. 303 (1880) (holding that state law denying African Americans the right to serve on juries violated the Fourteenth Amendment); *see also* *Norris v. Alabama*, 294 U.S. 587 (1935)

(holding that the continuous and total exclusion of African Americans from juries violated the Fourteenth Amendment).

In fact, in the wake of the U.S. Supreme Court's decision in *Norris v. Alabama*, Tennessee's then Attorney General explained that the state's juror selection statutes did not discriminate based on race and thus, need not change in response to the Court's holding. *See, e.g.*, *No Law Change Necessary Here for Negro Juror: General Beeler Declares No Discrimination is Found in Tennessee Statutes*, The Nashville Banner, Apr. 9, 1935, at 6. And yet, Black jurors continued to be excluded from jury service.

During the first part of the twentieth century, legal challenges to *de facto* exclusion of Black jurors proved futile. In a 1905 Davidson County prosecution, the defendant moved to quash his indictment alleging a violation of his Fourteenth Amendment rights because the grand jury lacked African Americans. *See* *Ransom v. State*, 96 S.W. 953 (Tenn. 1906). In support, the defendant produced an affidavit explaining that "during a period covering the past 10 or 12 years [the affiant] has not known, heard, or seen a colored man called as a juror, grand or petit, in said court; that he himself has never been summoned to serve on said juries[.]" *Id.* at 955. In denying the appeal, the Tennessee Supreme Court reasoned that although the defendant's jury lacked African American representation, the evidence failed to show that "colored men were excluded from the jury on account of their race, color, or previous condition of servitude." *Id.* at 956.

c. African Americans Continue to be Underrepresented on Juries.

By the mid-twentieth century, *de facto* exclusion gave way to token representation of Black Tennesseans on juries. However, the state often limited participation to a single African American despite large Black populations in certain counties. Nearly a century after federal law prohibited the exclusion of jurors based on race, the first Black Tennessean served on a petit jury in Davidson County in 1949. *See Negro to Serve as Petit Juror*, The Nashville Banner, Nov. 7, 1949, at 22 ("[Floyd] Cowan was selected at the beginning of the September term of court, and at that time became the first Negro ever named on a regular jury panel here.").

At the time, Davidson County's population was more than 25% Black. *See* *Henderson v. Tollett*, 459 F.2d 237, 239 n.2 (6th Cir. 1972) (noting that African Americans comprised 25% of Davidson County's population when the first Black Tennessean appeared on a grand jury). This statistic clearly indicates that state actors had been considering race when empaneling all-white juries in decades prior. Over the next fifteen years, newspapers across the state reported on the "first Negros" to serve on juries in other counties. In 1965, a single African American served on a jury in Williamson County for the first time. *See* *Bonds v. State*, 421 S.W.2d 87, 89 (Tenn. 1972).

State law also afforded trial judges broad discretion in empaneling juries. First passed in 1947 and amended in 1972, the Private Acts provided criminal court judges significant control of juror selection. 1972 Tenn. Priv. Acts Chapter 332, Section 2. Specifically, trial judges could

remove names from potential jury pools if they believed a person was ineligible or incompetent to serve and, after securing the jury lists, a trial judge could rely on "the interest of justice" and/or "the needs of the Courts" to manipulate the jury composition. *Id.*

As such, Judge Raymond H. Leathers of Davidson County reported that in his first ten years on the bench, between 1958 and 1968, he "probably did not appoint more than one [B]lack person on any particular Grand Jury prior to May of 1968" and for some grand juries, he had not appointed any Black persons. *Jefferson v. State*, 559 S.W.2d 649, 651 (Tenn. Crim. App. 1977). In total, eight African Americans served on the grand jury in his courtroom. *Id.* The near total exclusion of African Americans on juries exacerbated the dearth of Black people in decision-making roles within Tennessee's criminal legal system.

II. Discrimination in Jury Selection Persists, Including in Tennessee, Despite Various Pronouncements that this Practice Violates the 14th Amendment.

In 1879, the United States Supreme Court announced the principle that race discrimination in jury selection was not to be countenanced. *Strauder v. W. Va.*, 100 U.S. 303, 307-308 (1880). Despite this pronouncement, discrimination in jury selection persisted, as discussed above. The United States Supreme Court directly contributed to the problem by appearing to set a very high bar for proving discrimination in jury selection. For example, in *Swain v. Alabama*, 380 U.S. 202 (1965), the Court emphasized that a party seeking to prove race discrimination must prove that a particular prosecutor engaged in a pattern and practice that extended beyond what occurred in a particular case. *Swain*, 380 U.S.

at 222-224. Even under a restrictive *Swain* standard, a prosecutor who admits to using race to select juries (and suggests in a seminar that other prosecutors do the same), may not be able to avoid a showing that he or she "engaged in a pattern and practice that extended beyond what occurred in a particular case."

In 1986, the United States Supreme Court recognized that *Swain* required too high an evidentiary burden to establish discrimination in jury selection, having been construed by lower courts to require "proof of repeated striking of blacks over a number of cases . . . to establish a violation of the Equal Protection Clause." *Batson v. Kentucky*, 476 U.S. 79, 92 (1986). Instead, the Court emphasized that the exclusion of ANY juror because of race constituted a violation and set forth the now familiar three-part test that could be used to determine constitutional compliance.

Despite the corrective standard offered in *Batson*, problems persisted in numerous jurisdictions, including in Tennessee. Tennessee courts' treatment of peremptory strikes against prospective Black jurors may have helped to create a climate in which Mr. Zimmermann could strike jurors based on race and know that his decisions would most likely escape meaningful judicial scrutiny. Of the over 50 *Batson* challenges amici have been able to identify in which Tennessee appellate courts have examined the peremptory removal of prospective Black jurors, a finding of race discrimination has been found or upheld in only one case. *State v. Collins*, No. M2015-01030-CCA-R3-CD, 2017 Tenn. Crim. App. LEXIS 384 (2017 WL 2126704) (Tenn. Ct. Crim. App. R. 19(4) May 16, 2017). The treatment by Tennessee's appellate courts of challenges when

prospective Black jurors may have emboldened Mr. Zimmermann to engage, persist, and to advocate for affirmatively using race in selecting juries.

Also worth noting is that *Batson* itself, although proffered as a solution to the shortcomings of *Swain*, proved insufficient to fully address insidious problems with racial considerations in jury selection. Accordingly, *Miller-El v. Cockrell*, 537 U.S. 322 (2003), *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005), *Snyder v. Louisiana*, 552 U.S. 472 (2008), *Foster v. Chatman*, 136 S. Ct. 1737 (May 23, 2016) and *Flowers v. Mississippi*, 139 S. Ct. 2228 (March 20, 2019) have altered the analyses under *Batson v. Kentucky*, 476 U.S. 79, 92 (1986) by bringing attention to juror comparison efforts, expanding the scope of relevant information to out-of-court considerations, and strengthening the standard to be applied. Each of these cases contemplates that a prosecutor's admonition to other prosecutors that the racial composition of a jury is fair game for consideration in jury selection is deeply troubling conduct. In this regard, Mr. Abdur'Rahman's position and General Funk's actions are not only appropriate, but are also necessary.

III. Tennessee's Legacy of Excluding African Americans from Juries Pervades the State's Capital Punishment System.

The lack of meaningful Black participation on juries in criminal trials has long impacted capital sentencing in Tennessee. During the period of total Black exclusion from juries, including capital juries, Tennessee executed more than twice as many African American defendants than white despite the fact that African Americans comprised a minority of the state's population. *See* Tennessee Executions,

Tennessee Department of Corrections, https://www.tn.gov/correction/statistics-and-information/executions/tennessee-executions.html (last visited Feb. 17, 2020) (between 1916—the first official record of executions—and 1950, Tennessee executed 79 African Americans and 37 white people).

In 2001, The Tennessean reported that since 1977, when the state reinstated the death penalty, one in four Black defendants on death row had been sentenced to death by all-white juries; including Black defendants in counties where 30% to 40% of the population was Black. *See* John Shiffman, *1 in 4 Blacks Condemned by All-White Juries*, The Tennessean (Nashville), July 27, 2001, at A1. Many scholars have examined the relationship between empathy and discriminatory jury verdicts, finding that "[r]acial differences between jurors and defendants increase the likelihood that" lawyers will exclude empathetic jurors, i.e. someone from the defendant's race. *See, e.g.,* Douglas O. Linder, *Juror Empathy and Race*, 63 Tenn. L. Rev. 887, 903-04 (1996). Notably, the current Black population in Tennessee is approximately 17%, but Black defendants currently comprise 49% of death row. *See* QuickFacts Tennessee, United States Census Bureau, https://www.census.gov/quickfacts/TN (last visited Feb. 17, 2020) and Death Row Facts, Tennessee Department of Corrections, https://www.tn.gov/correction/statistics-and-information/death-row-facts.html (last visited Feb. 17, 2020).

The tendency for white jurors to treat Black defendants more harshly than white defendants is well documented. *Linder* at 901; *see also* Mona Lynch & Craig Haney, *Looking Across the Empathic Divide:*

Racialized Decision Making On The Capital Jury, 2011 Mich. St. L. Rev. 573, 583 (2011). On juries lacking meaningful Black participation, white jurors can have difficulty recognizing commonalities between themselves and Black defendants, creating an "empathetic divide" and inability to consider mitigating evidence, leading to disparities in death sentencing. Craig Haney, *Condemning the Other in Death Penalty Trials: Biographical Racism, Structural Mitigation, and the Empathic Divide*, 53 DePaul L. Rev. 1557, 1582-84 (2004) (suggesting that empathic divide between Black defendants and white jurors interferes with the jurors' ability to take mitigation into account as they assess culpability). Furthermore, "the range of discretion entrusted to a jury in a capital sentencing hearing, [creates] a unique opportunity for racial prejudice to operate but remain undetected." *See* *Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion).

Tennessee's troubling history of excluding Black citizens from jury service has not gone unnoticed. In 1998, the Tennessee Supreme Court created a committee to help address racial, ethnic and gender unfairness. *See* *Implementing Fairness: The Report to the Committee to Implement the Recommendations of the Race and Ethnic Fairness Commission and Gender Fairness*, Presented to the Tennessee Supreme Court (October 2000).

A decade later, at the behest of an American Bar Association committee, Tennessee engaged in an in-depth analysis of its death penalty system. *See* American Bar Association, *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Tennessee Death Penalty Assessment Report* (2007).

The resulting report found that the state had failed to adopt the earlier Implementing Fairness recommendations regarding racial bias. *Id.* at xxxi-xxxii. Consequently, the exclusion of African Americans from juries and its impact on death sentencing remain an unaddressed aspect of Tennessee's criminal legal system.

IV. Brief Synopsis of Assistant District Attorney Zimmermann's Record As It Relates to this Amici Brief.

As shown by the foregoing summary, the practice of excluding African Americans from juries in Tennessee was initially sanctioned by the law and later occurred as matter of practice in the shadow of the law through implementation of race-neutral text. Even when the law expressly proscribed exclusion of African Americans from juries on the basis of race, successfully proving a violation of such law was exceedingly difficult and the proof had to clear a high bar. There is implicit acknowledgement that the system is flawed in the fact that the Tennessee Supreme Court formed a committee to implement racial, ethnic, and gender fairness. And there is express criticism that the system remains flawed by virtue of the American Bar Association's admonition that Tennessee failed to follow through on the recommendations of the report from that committee. Tennessee's jury selection system and procedures have at least failed to eradicate racially discriminatory practices, and at most (at times) protected and preserved them. That is what happened with Mr. Abdur'Rahman's case until it was re-opened. But it does not have to be what happens to Mr. Abdur'Rahman in the future or those who follow in the wake of his case.

Mr. Abdur'Rahman's case presents an opportunity to right a wrong in one case in Tennessee's criminal justice system while also sending a message that racial discrimination in jury selection will no longer be tolerated in the State of Tennessee.

The agreement between Mr. Abdur'Rahman and the Davidson County District Attorney's Office represents a good faith determination by the current District Attorney General, General Funk, that Mr. Abdur'Rahman's trial and sentencing were infected by racial animus. Two facts are clear from the District Attorney General's willingness to enter into an agreement in this case: (1) the District Attorney General believed that Mr. Abdur'Rahman was prejudiced by racial bias in the most severe manner possible—he was sentenced to death; and (2) the District Attorney General is legitimately concerned that Black citizens of Metropolitan Nashville and Davidson County, Tennessee were prevented from serving on Mr. Abdur'Rahman's jury due to that bias. It is for good reason that, when presenting the Agreed Order in this case for Judge Monte Watkins' consideration, General Funk stated, "Overt racial bias has no place in the justice system." Tr., Aug. 28, 2019, at 25.

Of course, the State's obligation to do justice never ends. As the comments to the Rules of Professional Responsibility make clear, a prosecutor's duty is "to seek justice rather than merely to advocate for the State's victory at any given cost." Tenn. S. Ct. R. 3.8, comment [1]. This principle is true in all cases. But in cases in which the prosecutor's racial animus has played a part, the State has a heightened responsibility to correct the error, because that is an area, unlike plain

errors of law, where the error springs from internal motivations rather than external considerations.

Trial and appellate courts in this case have previously heard and considered Mr. Zimmermann's and the prosecution's various statements made during the course of Mr. Abdur'Rahman trial, including the characterization of a college-educated prospective Black juror as "uncommunicative" and "uneducated," references to a "Belle Meade lifestyle" before the jury, Mr. Zimmermann's stated desire to have Black people on the jury who would not be offended by persons selling marijuana and could "explain it to the other jurors," and the questionable explanation by Mr. Zimmermann that he was actively seeking Black jurors for this reason despite the fact that he exercised peremptory challenges on all but one Black juror, and one alternate, and then only after he was on notice that a *Batson* challenge had been raised. (*See Foster v. Chatman*, 136 S. Ct. 1737 (May 23, 2016) (The State's claim that it was actively seeking a Black juror found not to be credible in light of all the contrary evidence found in the State's files). Trial and appellate courts in this case have also heard about how Mr. Zimmermann treated African American and white jurors differently. Mr. Zimmermann struck the former for perceived reservations regarding the death penalty—and pressed them with unusually vigorous questioning—while allowing the white jurors to serve. He struck African Americans for perceived deficiencies in education and communication skills while allowing white jurors with the same alleged deficiencies to serve. Mr. Zimmermann also struck Black potential jurors when they had rankings on the prosecution's rating system that were equal to or better than most or all

other jurors, while allowing the white jurors to serve even with rankings of "0."

This said, it is Mr. Zimmermann's efforts to teach other prosecutors to discriminate in jury selection that is of special significance. When Judge Watkins reopened Mr. Abdur'Rahman's post-conviction case on a juror race discrimination claim, General Funk could not simply turn a blind eye to the record in the case, nor to Mr. Zimmermann's outrageous racist remarks. In October 2015, shortly before Mr. Abdur'Rahman filed his motion to reopen his post-conviction case, Mr. Zimmermann served on a panel giving a CLE presentation to an audience of prosecutors at the Tennessee District Attorneys' annual fall conference. (T.R. 555). During the presentation, Mr. Zimmermann explained that he routinely struck jurors from the 37215 zip code (an affluent, predominantly white neighborhood that includes part of and borders on Belle Meade) if the case involved people from the inner city. (T.R. 555-59). He also bragged about his successful efforts to have jurors primarily of one race on a jury when the defendant was of another race. (T.R. 557-59). As Mr. Zimmermann confidently explained, everybody knows that "all Blacks hate Mexicans." (T.R. 556).

The magnitude of these words cannot be overstated. Their import is amplified by the context. This is what Mr. Zimmermann said when he had a chance to prepare his statement (not off the cuff in passing). This is what Mr. Zimmermann said during a public presentation (not in a private conversation). This is what Mr. Zimmermann said by way of teaching others, including young prosecutors, how to do their jobs (not in a context unrelated to his work). This is what Mr. Zimmermann said to

the group of people charged with seeking justice in the criminal justice system (not to someone who would have no opportunity to affect the outcomes of other court cases). This is what Mr. Zimmermann said when he was being held up and held out as an expert on the subject of jury selection. These statements can leave no doubt that Mr. Zimmermann used race during the jury selection process and uses it still. The brazenness and clarity of these statements also demonstrate that Mr. Zimmermann believes these actions will have no consequences in the criminal justice system. Mr. Zimmermann's racial bias was laid bare, as was his confidence that this is how the system works. There is no reason to believe he behaved differently during jury selection for Mr. Abdur'Rahman's trial.

CONCLUSION

For the reasons set forth above, the *Amici* request this Court to consider this brief and to uphold the trial court order reflecting the agreement between the District Attorney General and Mr. Abdur'Rahman. In doing so, and in light of the long history of racial animus and discrimination which has affected the ability of African Americans both to serve on juries themselves, and to obtain justice as defendants, the *Amici* request that the Court trust the decision of General Funk who (1) believed that a prosecutor in his office had in fact used race to select a jury and sentence a defendant to death, (2) felt that such action was in violation of fundamental tenets of justice going back to 1880 regarding race and justice, and (3) perceived the need to uphold the integrity of his office and the criminal justice system.

February 21, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Tenn. Sup. Ct. R. 46, § 3.02 the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, and this Certificate of Compliance, is 4,664. This word count is based on the word processing system used to prepare this brief.

s/ Alexandra MacKay
Alexandra T. MacKay

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, true and correct copies of the foregoing Brief of Amicus Curiae were served electronically, if available, or by first class mail, postage prepaid, addressed as set forth below:

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