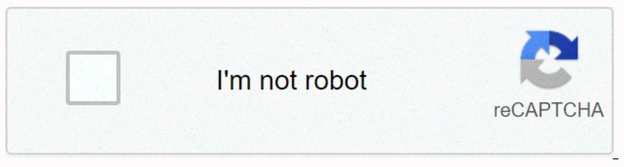

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Patricia Blackmon of Ballotpedia is a judge of the Ohio Eighth District Court of Appeals. She took office in 1997. Her current mandate expires on 10 February 2021. Elections 2020 See also: Ohio interim appellate court elections, 2020 Judge Patricia Blackmon did not file for re-election in 2020. General: She did not oppose the general election on 4 November 2014. [1] In previous elections, Blackmon was re-elected to the Eighth District Court for six years in November 2002 and 2008. [2] Blackmon received a bachelor's degree in African-American studies, political science and history from Tougaloo College. She continued to receive her J.D. from Cleveland-Marshall College of Law in 1975. She also worked as a professor and assistant director of the victims/witness program at College. [4] Awards and Associations 2001: Stellar Evening, Educational Day of Excellence, United Negro College Fund Graduates 1996: Alumna of the Year, Cleveland-Marshall College of Law [4] See also External Links ↑ Cuyahoga County Electoral Council, 2014 Candidate List, February 26, 2014 ↑ Ohio Secretary of State, 2002. 2014 Election Results, Court of Appeal Judge, November 5, 2002, available July 20, 2014 ↑ Ohio Secretary of State, 2008 election results, Judge of the Court of Appeal, November 4, 2008, access july 20, 2014 ↑ 4.0 4.1 4.2 Cite error: Invalid <ref> tag; no text was provided to the refs named in the bio Brief for the original submission filed by Maurice Parker, Dothan, the appellant. Michael Crespi, Dothan, and Bryan Stevenson, Montgomery, appealed for re-sorting. William H. Pryor, Jr., and Troy King, attys gen gen, and Bill Lisenby, Jr., deputy atty gen, and Stephen Shows and Cheryl Ann Schuetze, asst. attys. Gen. The appellant Patricia Blackmon was convicted of capital murder in the beating of her 28-month-old daughter Dominiqua. See § 13A-5-40 (a) (15), Ala.Code 1975, which makes capital for the deliberate murder of children under the age of 14. The jury recommended by votes 10-2 that Blackmon be sentenced to death. The county court followed the jury's recommendation and sentenced Blackmon to death. This appeal followed. State evidence had a tendency to show that on May 29, 1999, Blackmon phoned an emergency 911 to call paramedics to her mobile home in Dothan. She told the 911 operator that her child was not breathing. Eddie Smith, a paramedic in Dota, testified that he arrived at Blackon's mobile home at about 9:30 a.m.m and that he found Dominiqua lying on the captain's floor </ref>was wearing only diapers and blood-soaked socks, was covered with vomit, and was not breathing. There was a hematoma on her forehead and blood on her chest. After paramedics tried to resuscitate her, she was transported to flowers hospital emergency room.Dr. Matthew Krista testified that he treated Dominiqua when she was brought to the emergency room. He said he first developed the airway, but that at 10:22 a.m. .m she was pronounced dead. Dominiqua's pediatrician, Dr. Robert Head, was also called to the emergency room. Both doctors that the child has several bruises and concussions, and a shoe sole imprint on her chest.1 They also said that they observed marks from previous injuries to her body.Dr. Alfredo Parades, the medical examiner who performed the autopsy, testified that Dominiqua died from multiple blunt-force injuries to her head, chest, abdomen, and limb he detailed about 30 injuries that he discovered about the child's body. Dr. Parade testified: She has bruises in the anterior part of the lower chest and upper abdomen. Bruising around the right groin. She has a fracture, it's a fracture in her legs. And, for her part, she has bruises on the left time zone above her ear. She 's bruising on . ear to the left. She had bruises on the right cheek area. She had bruises on the side of the heel and foot area. Then on her back, she had several bruises on the lower back, bilaterally. These are both sides. Bruises in the buttocks, bruises behind the knee area and below the knee area. And on top of that she had a lot of linear, which I describe as parallel, like a train tack. There were many injuries in the pale area in between. the left buttock area. (R. 873) Parade also said that Dominiqua had two broken bones and many other injuries that were at different stages of healing. The parade also described many internal injuries. He said that Dominiqua also had an imprint of the sole of the shoe on her chest. Dr. James Downs, chief medical examiner for the state of Alabama, testified that he compared the sandals Blackmon was wearing on the day of the murder to a scanned image of the victim's chest, and it was his opinion that the imprint on Dominiqua's chest was under the only sandal. Downs also testified that it was his opinion that Dominiqua's recent injuries were consistent with being taken with a pool cue. There was evidence that Blackman had accepted Dominiqua about nine months before her death. The testimony also showed that Blackman was solely responsible for the child from the time her husband's father saw both of them earlier on the night of the murder until the child's death. Wayne Johnson, Blackmon's father, testified that at night Dominiqua killed he saw Dominiqua and she played and running normally. He said that Blackmon and Dominiqua left their house around 8:00 a.m. .m.A search of Blackmon's mobile home revealed several blood-splattered objects. Forensic tests revealed the presence of blood on a broken pool cue, a child's T-shirt, pink flat bed sheets, a blanket, and two napkins. The blood corresponded to Dominiqua's blood. Blackmon called several witnesses to testify in her defense. Judy Whatley, an employee of the Human Resources Department, said she had contact with Dominiqua and Blackmon once a month for five months before August 1998 and that she noticed that the two had a good relationship. Tammy Freeman, Blackmon's neighbor, testified that she often left her children with Blackmon.The jury convicted Blackmon of capital murder. There was a separate sentencing hearing in which the state relied on the aggravating circumstance that the murder was particularly cruel, cruel or cruel to support the death penalty. After the sentencing, which was heard by the jury, with a vote of 10 to 2, recommended that Blackmon be sentenced to death. After the report on the contour of the court was drawn up, it held a separate hearing. The District Court sentenced Blackmon to death. This appeal, which is an automatic case involving the death penalty that follows. See § 13A-5-55, Ala.Code 1975.Standard of ReviewBlackmon has been sentenced to death. In accordance with Rule 45A, Ala.R.App.P., that Court must review a simple error in the present case. Rule 45A states: In all cases where the death penalty has been imposed, the Court of Criminal Appeal shall declare any simple error or flaw in proceedings, whether or not referred to the court, and shall take appropriate measures taken where such an error has, or is likely to have, adversely affecting the appellant's essential rights. When discussing the application of a simple error review standard, the Court has stated: The review standard, when reviewing a claim according to the doctrine of simple error, is stricter than the standard used in revising an issue that was properly raised in court proceedings or on appeal. As the United States Supreme Court pointed out the United States opposed. Young, 470 U.S. 1, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985), the doctrine of simple error applies only if the error is particularly remote and if it seriously affects justice, integrity or public reputation in court proceedings. See Ex parte Price, 725 So.2d 1063 (Ala.1998), cert. Burgess v. Burgess v. Burgess v. Burgess v. Burgess v. Burgess v. Burgess v Country, 723 So.2d 742 (Ala.Cr.App.1997), aff'd, 723 So.2d 770 (Ala.1998), cert. Johnson v. Johnson v. Country, 620 So.2d 679, 701 (Ala.Cr.App.1992), rev'd other reasons, 620 So.2d 709 (Ala.1993), for remand, 620 So.2d 714 (Ala.Cr.App.), cert. Hall v. Country, 820 So.2d 113, 121-22 (Ala.Crim.App.1999), aff'd, 820 So.2d 152 (Ala.2001), cert. Although failure to object does not rule out our review, it weighs against any claim of bias. See Dill v. Public, 600 So.2d 343 (Ala.Crim.App.1991), aff'd, 600 So.2d 372 (Ala.1992).Ms Blackmon claims that the chain made an error in denying her proposal requesting the disclosure transcript of the grand-jury process. In particular, she claims that since she was accused of capital murder, she had a special need to review the grand jury process. In August 1999, Blackmon was charged with capital murder. In March 2001, Blackmon moved that she be allowed to disclose transcripts, exhibits, and any other memorialization of the grand-jury process. The proposal contained only one basis to support the discovery of this evidence that Blackstone was charged with capital murder. Alabama has long protected the secrecy of jury work. See § 12-16-214, Ala.Code 1975. The long-time rule sanctioned by our courts is that the process of grand jury is essentially a mystery. Stuart v. Country, 55 Ala.App. 238, 240, 314 So.2d 313, 315 (Ala.Crim.App.1975). However, the defendant may be allowed to examine the grand jury's trial if the defendant meets the threshold test to demonstrate a particular need for breach of the secrecy of those procedures. As the Court stated in Millican v Commission. State, 423 So.2d 268 (Ala.Crim.App.1982): Before the defendant is allowed to check the transcript of the public witness, who testified before the jury or before the trial the judge to conduct a camera examination of such testimony, see Palermo [v. USA, 360 US 343 (1959)] and Pate [v. State, 415 So.2d 1140 (Ala.1981)], the defendant should at least and very minimally make any offer of evidence (1) that the questions contained in the witness grand jury testimony relate to the subject matter of the prosecution; (2) and that there is a contradiction between the testimony of the jury and the testimony. Unless the defence counsel is just going on a fishing expedition, he will have some information about the specific non-compliance in the defendant's testimony. In this case, no such evidence was made and it was not even claimed that there was a contradiction between the witness's testimony and the testimony of the jury. Cooks [v. State, 50 Ala.App. 49, 276 So.2d 634 (Ala.Crim.App.1973)]. Moreover, there was no evidence that the testimony of the grand jury of the witness, if available, was such that without it the defendant's court would be fundamentally unfair. Cooks, 50 Ala.App. at 54, 276 So.2d 634. See also Husch v. Country, 211 Ala. 274, 276, 100 So. 321 (1924). (Moreover, if the lawyer had such a statement at his disposal, the defendant would require his production to be provided by the court if he thought it was favorable to him.) When determining the appropriate predicate for the examination of the testimony of a grand jury, it should also be established that the witness who testified before the jury and that such evidence is recorded or reduced to writing, unless a grand jury is called upon to disclose the witness's testimony. Alabama code 1975, 12-16.201. If the defendant actually asks the State District Prosecutor to produce the document, he must at least prove that the official of that state has such a document or a copy thereof before the hearing is erred. Strange v. Country, 43 Ala.App. 599, 606, 197 So.2d 437 [(1966)], cert. Once the defendant has identified an appropriate predicate for the impeachment of a witness testifying before a grand jury, the trial judge must carry out a camera check, as stated in Palermo, supra, and Pate, supra, to determine,1) whether the witness's statement before the grand jury was in no way different from the statements made to the jury during the trial. , Pate, supra, and (2) or grand jury testimony claimed by the defendant was of such a kind that without it the defendant's trial would be fundamentally unfair. Like, supra. This procedure will best preserve and protect the legislative decision that it is essential for fair and impartial litigation that all jury law procedures are secret and that the secrecy of such a procedure remains unsoerable. Alabama Code 1975, Sections 12-16-214 to 226. In Stallworth v. State, 868 So.2d 1128 (Ala.Crim.App.2001), the defendant claimed that the circuit court had made it possible to deny her proposal to rewrite the grand-jury testimony. Defending the chain of court ruling, we declared: Alabama has no statute that would require this testimony to be grand jury recorded. A grand jury does not have to collect records and testimony if there is no law requiring the proceedings to be preserved. National ex rel. Strawbridge, 52 Ala.App. 685, 296 So.2d 779 [(Ala.Crim.App.1974)]. There are no such statutes in this country. Sommerville v. Country, 361 So.2d 386, 388 (Ala.Cr.App.), cert. See also Gaines v. Country, 52 Ala.App. 29, 30, 288 So.2d 810, 812, sertif. 292 Cave. 720, 288 So.2d 813 (1973), cert. Since there was no legal requirement to register the law of the jury, this statement is without merit. Stallworth, 868 So.2d at 1139, quoting Hardy v. Country, 804 So.2d 247, 287 (Ala.Crim.App.1999), aff'd, 804 So.2d 298 (Ala.2000). See also Stuart v. State, supra. At the pre-trial hearing on the motion, the prosecutor stated that the district attorney's office's policy was not to register the jury process and that he was not aware that the law firms of the jury were registered in the case. Also, the Blackmon show specifically needed to violate the secrecy of the grand-jury process. On the basis of the above mentioned cases, we conclude that the district court did not make a mistake in denying that motion, which was made after Blackmon was indicted. Compare McKissack v. 926 So.2d 367 (Ala.2005) (a request to retain the grand-jury process was filed before the grand jury was empaneled).II. Blackmon claims that the circuit court has been attributed to denying her proposal to change seats. Blackmon said in her brief that there was evidence that about 60% of Houston county households may have been subjected to damaging pre-trial publicity about the case and that the public was so saturated with pre-trial publicity that she could not get a fair trial there. She also claims that with the same nature of the charges against her, there is a presumption of harm. At the hearing on the proposal to change the venue, two media representatives testified. Bill Perkins, editorial page editor of Dothan Eagle, testified that he obtained three articles that were written about child murder and that the paper distributed about 60% of care to Houston County households. Wayne May, a senior reporter for WTVY television station, testified that several stories were broadcast about the case. After the evidence was heard, the district court issued the following order, which denied the motion: at the hearing, the testimony consisted of two witnesses, a representative of Dothan Eagle and a WTVY television reporter. The newspaper editor testified that some newspaper articles were written over time on this particular case. The television station ran several stories consisting of the same information, but repeated during the newscasts of the day. Coverage in this case has been relatively low compared to other cases of high-profile capital. However, several editorial views of the pieces were denouncing, but there is a scant mention of the defendant. The defendant has failed to show community saturation or even widespread publicity. As indicated . Oryang v. [642 So.2d 979 (Ala.Crim.App.1993)], . the defendant to prove the bias, correctly, to ascertain whether unfavorable publicity can be biased potential jurors have with voir terrific examination. It is therefore ordered, recognised and declared that the defendant's proposal to change the venue is rejected. (KM 194-95.) In Blanton v. State, 886 So.2d 850, 876-77 (Ala.Crim.App.2003), we pointed out that with regard to the circuit court's ruling on the proposal to change the place: the Court of Justice is in a better position than the court of appeal to determine what effect, if any, pre-trial publicity could have in a particular case. The court has the best chance to assess the impact of any pre-trial publicity on society as a whole and on individual members of the jury venire. The court's decision on the proposal to change the venue will be annulled only if there are indications that the court has abused its discretion. Nelson v. 440 So.2d 1130 (Ala.Cr.App.1983). Carpenter v. Country, 651 So.2d 1155, 1156 (Ala.Cr.App.1994). Clemons v. Country, 720 So.2d 961, 977 (Ala.Crim.App.1996), aff'd, 720 So.2d 985 (Ala.1998). The 1990s, with popularity and media attention, is not enough to justify a change of seat. Rather, Ex parte Grayson[479 So.2d 76 (Ala.1985), in the judgment that the appellant must prove that he has suffered actual prejudice or that the community is saturated with harassment publicity. Slagle v. Country, 606 So.2d 193, 195 (Ala.Crim.App.1992). Moreover, the pace of time cannot be ignored as a factor in bringing objectivity to court. ' Whisenhant v. State, 555 So.2d 219, 224 (Ala.Crim.App.1988), aff'd, 555 So.235 (Ala.1989) (quoting Dannelly v. State, 47 Ala.App. 363, 364, 254 So.2d 434, 435 (Ala.Crim.App.1971)). In the context of pre-trial publicity, there are two situations that empower to change the venue: 1) when the accused has shown actual prejudice against him by the jury; 2) if there is a supposed bias arising from community saturation with such damaging pre-trial publicity that no impartial jury can choose. Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966); Rideau [v. Louisiana, 373 USA 723, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963)]; Estes v. Estes v. Estes v. Texas, 381 USA 532, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965); Ex parte Grayson, 479 So.2d 76, 80 (Ala.), cert. Coleman against. Zant, 708 F.2d 541 (11. Cir.1983). Hunting v. Country, 642 So.2d 999, 1042-43 (Ala.Crim.App.1993), aff'd, 642 So.2d 1060 (Ala.1994). Here, Blackmon claimed that, on the basis of pre-court publicity and possible community saturation, the alleged insemition standard applied in this case. In Blanton , we discussed burden on the defendant by the alleged prejudice standard. We stated: In order for bias to be accepted in accordance with this standard, the defendant must prove: 1) that pre-trial publicity was damaging and inflammatory and 2) that pre-trial pre-trial publicity saturated the public where the trial. See Coleman v. Kemp, 778 F.2d 1487 (11. According to this standard, the defendant has an extremely heavy burden of proof. Hunt relies on the supposed bias standard announced by Rideau [v. Louisiana, 373 USA 723 (1963)] and applied by the Us Supreme Court estes [v. Texas, 381 US 532 (1965)] and Sheppard [v. Maxwell, 384 US 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966)]. This standard was set by the Eleventh Federal Circuit Court of Appeals in Coleman v. Kemp, 778 F.2d 1487 (11th Cir.1985), cert. The court stated: Bias is accepted from pre-trial publicity when pre-trial publicity is sufficiently damaging and inflammatory and damaging pre-trial publicity saturated in the society where the trial was held. 778 F.2d at 1490 (emphasis added [in Hunt]). See also Holladay v. Country, 549 So.2d 122, 125 (Ala.Cr.App.1988), confirmed 549 So.2d 135 (Ala.), cert. In determining whether there is a possible standard of prejudice, the court must look for the sum of the facts surrounding it. Patton v. Patton v. Yount, 467 U.S. 1025, 104 S.Ct. 2885, 81 L.Ed.2d 847 (1984); Murphy v. Murphy v. Florida, 421 US 794, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975); Irvin v. Dowd, 366 US 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961). The possible prejudice standard is rarely applicable and is reserved only for emergencies. Coleman against. Kemps, 778 F.2d at 1537. In fact, our research has revealed only very little. where the relief was granted on the basis of a possible bias. Coleman against. Kemp, 778 F.2d at 1490. Hunt was obliged to prove that pre-court pre-court publicity saturated the public. Shepard, couple. [T]he burden imposed on the petitioner to prove that pre-trial publicity deprived him of the right to a fair trial before an impartial jury is a very heavy one. Coleman against. Kemps, 778 F.2d at 1537. Pre-trial publicity usually has to consist of much more than stating fees, and the show of pre-trial and trial. Publicity and prejudice are not the same. Excessive publicity automatically or necessarily does not mean that publicity was harmful. . . In order to meet the burden of changing the venue due to pre-court publicity on the basis of community the appellant has more than just that the case generates even widespread publicity. Oryang v. Country, 642 So.2d 979, 983 (Ala.Cr.App.1993), quote, Thompson v. Country, 581 So.2d 1216, 1233 (Ala.Cr.App.1991), cert. Newspaper articles alone do not require a change of venue, unless it is proved that the articles thus affected the general list of citizens, including such sensational, incriminating or denouncing statements that a fair and impartial trial is not possible. Patton v. Patton v. 246 Ala. 639, 21 So.2d 844 [(1945)]. Thompson, 581 So.2d at 1233, quoting McLaren v. Country, 353 So.2d 24, 31 (Ala.Cr.App.), cert. 886 So.2d at 877-78.We have reviewed the articles submitted in support of the proposal to change the site. Most were factual statements about the child's murder and Blackmon's arrest. There were several editorial articles denouncing Blackmon's actions; however, in these verses there were very few references to him. Compared to other capital murder cases, the publicity in this case was not extensive. We have also reviewed voir terrific examination of potential jurors. Only a handful of potential jurors had heard of the case. Voir's terrific disapproval of Blackmon's claim that society was imbued with pre-trial publicity for the murder. Clearly, Blackmon was unable to meet its burden, suggesting that the bias was accepted and that the change of venue was justified. The Circuit Court correctly denied Blackmon's proposal to change seats. III. Blackmon claims that the circuit court made a mistake in denying her Batson v. Kentucky, 476 USA 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), movement. Specifically, Blackmon claims that the state mistakenly removed five of the eight would-be black jurors in the jury venire and, she claims, the reasons given to the conspicuous jurors were not enough. In her brief, Blackmon is unable to identify any particular juror who was mistakenly struck. The recording shows that Blackmon pointed out that her reason for Batson's objection was that the state removed five of the eight black potential jurors on the jury venire.2 The Circuit Court found that Blackmon did not make a prima facie case of discrimination, but it nonetheless led the state to provide a justification for removing the black jurors. Although the court hearing the case acknowledged that the appellant did not prove that there had been a fumusiic case based solely on those numbers, it nevertheless requested the prosecutor to explain the reasons for his strikes. We therefore need to examine the justification. The prosecutor has offered a racially neutral explanation of the peremptory challenges and the court, which in court, has ruled on the final issue of intentional discrimination, the original question of whether the defendant has made a prima facie, which becomes a dispute. Hernandez v. Hernandez v. New York, 500 USA 352, 358-60, 111 S.Ct. 1859, 1866, 114 L.Ed.2d 395 (1991). Dallas v. Dallas v. 711 So.2d 1101, 1104 (Ala.Crim.App.1997). It is up to the court to determine whether the peremptory challenges of black jurors are based on intentional discrimination on the grounds of race. The Court's findings in this regard are very respectful and will not be lifted on appeal is not a clear error. Ex parte Lynn, 543 So.2d 709 (Ala.1988). Ex parte McNair, 653 So.2d 353, 357-58 (Ala.1994), quoting Jelks v. Caputo, 607 So.2d 177, 179 (Ala.1992). The state provided the following explanations for the removal of black potential jurors: Juror number 17 was removed because she had objected to the use of the death penalty and because her son had been convicted of a felony. See Click v. State, 695 So.2d 209 (Ala.Crim.App.1996) (the jury's view on the death penalty is a valid race-neutral reason to resort to the remark of a potential juror); Lewis v. Country, 741 So.2d 452 (Ala.Crim.App.1999) and Thomas v. State, 611 So.2d 416 (Ala.Crim.App.1992) (the fact that family members have prior punishment is a valid race-neutral reason to remove the juror). Juror number 21 was removed because her son was fined in Houston County for theft. Juror number 34 was surprised because she knew Louise Johnson, Blackmon's mother-in-law, who was supposed to testify. See Temmis v. National, 665 So.2d 953 (Ala.Crim.App.1994) (the fact that a prospective juror knows a witness is a valid race-neutral reason to remove the juror). Juror number 37 was surprised because her sister-in-law was in prison for the shooting, which took place in 1998. Juror number 47 was surprised because she knew Wayne Johnson, Blackmon's father-in-law, who was supposed to testify. Juror number 58 was surprised because she opposed the death penalty.3 As evidenced by the above mentioned cases, we have supported all the reasons given by the state. The Circuit Court made no mistake in denying Blackmon's Batson motion.IV. Blackmon claims that the court erred in denying her proposal for a verdict of acquittal because the state introduced direct evidence that directly linked Blackmon to any of the alleged death victims. She claims that there was insufficient evidence that she had committed any crime and that she was convicted of only conjecture, conjecture and speculation. It is the court's duty to determine whether there is sufficient legal evidence to justify the conviction of the accused. See Marlowe v. Country, 854 So.2d 1182 (Ala.Crim.App.2002). the most favourable country. Fitch v. Country, 851 So.2d 103, 120 (Ala.Crim.App.2001). The test used to establish the adequacy of the evidence to maintain a conviction is whether, when considering the evidence in the light of the most favorable prosecution, a rational seeker of fact was able to find the defendant guilty without reasonable doubt. Nunn v. Country, 697 So.2d 497, 498 (Ala.Crim.App.1997), quoting O'Neal v. Country, 602 So.2d 462, 464 (Ala.Crim.App.1992). If the defendant's conviction is based solely on circumstantial evidence, if the circumstances can be reconciled with the theory that someone else may have committed an act, then the conviction must be reversed. Ex parte Brown, 499 So.2d 787, 788 (Ala.1986) (emphasis original). Circumstantial evidence alone is sufficient to support a guilty verdict in the most heinous crime, where the jury feels without reasonable doubt that the accused is guilty. White v. Country, 294 Ala. 265, 272, 314 So.2d 857, cert. Circumstantial evidence is by no means considered to be inferior to the evidence and has the same meaning as direct evidence, provided that it indicates the accused's guilt. Cochran v. Cochran v. The state, 500 So.2d 1161, 1177 (Ala.Cr.App.1984), approved the relevant part, upside down, changed for other reasons, Ex parte Cochran, 500 So.2d 1179 (Ala.1985). There is no need for a conviction that the defendant has proven guilty of excluding every possibility of innocence. Burks v. Country, 117 Ala. 148, 23 So. 530 (1898). Facts and circumstances, which are evidence, if not melted and disconnected, can be weak and inconclusive; but their probative force when combined, as it was in the province of the jury to unite them, according to proper instruction from the court, may have satisfied them to blame the defendant. Howard v. Country, 108 Cave. 571, 18 So. 813, 815 (1895). White v. Country, 546 So.2d 1014, 1017 (Ala.Crim.App.1989). Accord Williams v. Country, 795 So.2d 753, 775 (Ala.Crim.App.1999), aff'd, 795 So.2d 785 (Ala.2001). Irvin v. Country, 940 So.2d 331, 361-62 (Ala.Crim.App.2005). [B]ecause intent is a state of mind, it is rarely susceptible to direct or positive evidence. Instead, the element of intent must normally be inferred from the facts which the witnesses prove, together with the circumstances developed by the evidence. Seaton v. Country, 645 So.2d 341, 343 (Ala.Crim.App.1994) (quoting McCord v. State, 501 So.2d 520, 528-29 (Ala.Crim.App.1986)). The intention can be inferred from the nature of the attack using a deadly weapon and other satellite conditions. Farrior v. State, 728 So.2d 691, 695 (Ala.Crim.App.1998) (quoting Jones v. State, 591 So.2d 569, 574 while quoting Johnson v. 390 So.2d 1160, 1167 (Ala.Crim.App.1980)). Finally, he intent on the defendant at a time when the offense is a matter for the jury. C.G. v. Public, 841 So.2d 281, 291 (Ala.Crim.App.2001), aff'd, 841 So.2d 292 (Ala.2002), quoting Downing v. Country, 620 So.2d 983, 985 (Ala.Crim.App.1993). Pilley v. Country, 930 So.2d 550, 564-65 (Ala.Crim.App.2005). Blackmon was charged with capital murder under § 13A-5-40 (a)(15), Ala.Code 1975. This section states: [is] an insuseration of capital [ ]: . [m]urder if the victim is less than fourteen years of age. (a) A person commits a murder crime if:(1) With the intention of causing the death of another person, it causes the death of that person or other person. § 13A-6-2 (a) (1), Ala.Code 1975.The national evidence showed that 28-month-old Dominiqua Blackmon was bludgeoned to death with a pool cue. Dominiqua died from several blunt-force injuries. There was blood in many places in the Blackmon trailer. The blood matched Dominiqua's. About two hours before paramedics were called to Blackmon's mobile home, Dominiqua showed no signs of injuries. Blackmon was the sole caretaker of the child during this period. The victim had an imprint of the sole of the shoe on her chest; that imprint matched the only shoes Blackmon was wearing at the time of the murder. Clearly, the evidence provided by the State was legally sufficient to present the question to the jury about Blackmon's guilt for its determination. The Circuit Court made an error in denying Blackmon's motion for a verdict of acquittal. Ms Blackmon claims that the circuit court made a mistake in denying her proposal for a new trial. She makes a number of different arguments to support this claim.A. Blackmon first argues that the choice of the age factor for potential victims as a determining factor in the prosecution of responsibility for capital murder is arbitrary and capric, lacking rational basis. She claims that § 13A-5-40 (a) (15), Ala.Code 1975, which defines capital violation as [m] urder, when the victim is under the age of fourteen violates her right to due process and equal protection of rights. In Ex parte Woodard, 631 So.2d 1065 (Ala.Crim.App.1993), this court upheld the constitutional § 13A-5-40 (a)(15), Ala.Code 1975. We said: The child murder rule is not arbitrary and does not violate the right to equal protection. The equal protection clause in the 14th amendment does not go beyond the prohibition of anti-discrimination. If there is any reasonable basis for the recognition of certain classes and if the difference in treatment between these classes is rational in relation to the objective that the legislators want to achieve, the Constitution is not offended. the infringement is caused only if the classification depends on the objective of the State which is entirely irrelevant to the achievement of the objective pursued; for a separate treatment, only one conclusion must be recognised, which is only one of the conclusions which is only one of the conclusions, without any rational doubt, that is to say that the basis is therefore arbitrary and inconseemly binding and is not relevant to the legislative objective. Goodson v. Country, 588 So.2d 509, 514 (Ala.Cr.App.1991) (quoting State v. Thompson, 133 N.J.Super. 180, 336 A.2d 11, 14 (1975)). Since the statutes do not provide that acts which are legally protected and do not include a legally comprehensible class of suspect, classification must be confirmed if the court has established or perceives it in any state of fact justifying it. United States v Holland, 810 F.2d 1215, 1219 (D.C.Cir.), cert. Hardy v. State, 576 So.2d 685, 686 (Ala.Cr.App.1991) (The legislature of Alabamawanted to lessu the risk that the drug would be readily available to students. Of course, it is rational to achieve this goal by increasing penalties for those who sell drugs near schools. '). Here the classification by the legislature of child murder as a capital offense is not arbitrary and capricious, but reasonable and appropriate. The court's condemnation is that Ala.Code 1975, § 13A-5-40 (a) (15) is not unconstitutional. 631 So.2d at 1073. Other countries have also supported the statute for the murder of children against allegations that there is no rational basis for distinguishing between the age of the victim in defining capital violations. See country v. Higgins, 265 Conn. 35, 826 A.2d 1126 (2003) (approved law that defined capital murder as the murder of children under the age of 16); Henderson v. Henderson v. Henderson v. State, 962 S.W.2d 544 (Tex.Crim.App.1997) (approved law that identified capital offences as the murder of children under 6 years of age). See country v. Smith, 193 Ariz. For the reasons set out by Woodard, Blackmon's argument is without merit. B Blackmon also makes a number of different arguments about the United States Supreme Court's decision in Apprendi v. New Jersey, 530 US 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). The United States Supreme Court in Apprendi considered that the fact of increasing the sentence above the statutory maximum must be submitted to the jury and proven without reasonable doubt. In Ring v. Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), the U.S. Supreme Court applied its earlier involvement in Apprendi's capital punishment cases and declared [c]apital defendants. be entitled to a panel decision on any fact for which the legislature conditions increased their maximum sentence. 4 Ring, U.S. at 589, 122 S.Ct. 2428.Since the U.S. Supreme Court released its decision in the Ring, this court has repeatedly repeatedly discussed the implications of this case. In Stallworth v. Nationally, 868 So.2d 1128 (Ala.Crim.App.2001) (opinion on the return of the remand), we believed that if the aggravating circumstance that the elevated sentence to death was also an element of death offense, Apprendi was not violated because the jury's verdict at the guilt stage found that there were no reasonable doubts. See also Barber v. Country, 952 So.2d 393 (Ala.Crim.App.2005); Pilley v. Country, 930 So.2d 550 (Ala.Crim.App.2005); Flowers v. Country, 922 So.2d 938 (Ala.Crim.App.2005); Walker v. Country, 932 So.2d 140 (Ala.Crim.App.2004); Jones v. Country, 853 So.2d 1036 (Ala.Crim.App.2002). Blackmon first claims that holding Apprendi makes Alabama's death penalty statute unconstitutional because the jury's verdict is counselor. - Turner v. Nationally, 924 So.2d 737 (Ala.Crim.App.2002), we specifically believed that the Ring did not invalidate the Alabama law, which provides for the final determination of sentences in the hands of a trial judge rather than a jury. 924 So.2d at 785. We mentioned a footnote to the United States Supreme Court in Ring, which states: He also states that the Sixth Amendment requires the jury to make a final decision whether to apply the death penalty. Ring, 536 U.S. at 597, n. 4, 122 S.Ct. 2428. Also Ex parte Waldrop, 859 So.2d 1181 (Ala.2002), the Alabama Supreme Court stated: [T] he determines whether aggravating circumstances outweigh the attenuating circumstances, not a factual finding or an element of offense. Consequently, the Ring and Apprendi do not require the jury to assess aggravating circumstances and attenuating circumstances. 859 So.2d at 1190.Blackmon also submits that the Apprendi decision authorises the use of a specific form of judgment so that the jury can determine the aggravating circumstances or circumstances which it found to exist. We specifically addressed and rejected this argument in Bryant v. Country, 951 So.2d 732, 737 (Ala.Crim.App.2003) (opinion on return to remand). We stated: [Bryant] claims that U.S. Supreme Court decisions in Apprendi and Ring mandate the use of such judgment forms. That Court has rejected similar actions in previous decisions on the death penalty. See, for example, Walker v. Country, 932 So.2d 140, 159 (Ala.Crim.App.2004); Adams v. Adams v. Adams v. Adams v. Adams v. Adams v. Adams v Country, 955 So.2d 1037, 1105 (Ala.Crim.App.2003). The Alabama Supreme Court also rejected this argument. The Supreme Court has ruled, in many cases, that a jury verdict finding the defendant guilty of capital murder during the vainu stage of his trial stated that the jury has unanimously found the proffered aggravating circumstance contained in § 13A-5-40 (a), 1975, indictment charges indictment. See, for example, Ex parte Hodges, 856 So.2d 936 (Ala.2003); Ex parte Waldrop, 859 So.2d 1181 (Ala.2002); Stallworth v. Country, 868 So.2d 1128 (Ala.Crim.App.2001) (opinion on the return to the second remand), cert. But see Ex parte McGriff, 908 So.2d 1024, 1039 (Ala.2004) (jot possible use of the penalty phase for special questioning). [5] In addition, Ex parte McNabb, 887 So.2d 998 (Ala.2004) the Supreme Court ruled that even an unwelcome panel recommendation in the event of death has shown that the jury, including the jury that voted against the death recommendation, unanimously found that there was an aggravating circumstance, even though the circumstance was not included in the indictment charge of the charge of the specific capital murder. because the court hearing the case had specifically referred the jury to the fact that it could not proceed with the vote on whether to impose the death penalty unless it had already unanimously agreed that the aggravating circumstance existed. Bryant, 951 So.2d at 750-51.In in this case, the only aggravating circumstance that was claimed and found out that there was that the murder was particularly heinous, atrocious, or cruel compared to other capital murders. See § 13A-5-49 (8), Ala.Code 1975. This aggravating circumstance was not an element of the capital start-up. However, the district court inseminoused the jury at the sentencing stage that it could not continue voting on whether to impose the death penalty unless it first determined that the aggravating circumstance that the violation was particularly heinous, atrocious or cruel was present. The Circuit Court's guidance on this issue was very specific and thorough. The jury recommended by votes 10-2 that Blackmon be sentenced to death. Thus, the jury's 10-2 vote recommending death found that the jury unanimously found that there was a particularly horrible, cruel or cruel question, giving the trial judge the discretion to sentence the Duke to death. Duke v. Public, 889 So.2d 1, 43 (Ala.Crim.App.2002) (footnote omitted), released for other reasons Roper v. Simmons, 543 5551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), Duke v. Alabama, 544 USA 901, 125 S.Ct. 1588, 161 L.Ed.2d 270 (2005). Thus, in the present case, there is no apprendi or ring case.VI. Blackmon claims that the circuit court has conceded, denying her proposal to challenge as unconstitutional her death sentence with an electric shock because the method of imposing the death penalty was changed. Blackmon was sentenced to death on June 7, 2002, the Alabama legislature introduced § 15-18-82.1, Ala.Code in 1975, effective July 1, 2002. This law specifically defines the Alabama lethal injection. Blackmon claims that because the method of execution was changed after her death sentence with an electric shock was handed down, her death sentence with an electric shock is unconstitutional. Section § 15-18-82.1(a), Ala.Code 1975, which takes effect July 1, 2002, provides: The death penalty is executed by lethal injection unless the person sentenced to death is affirmatively elected to execute by electric shock. This law applies to every person in Alabama, regardless of when his or her death sentence was handed down. As the legislature provided for 15-18-82.1(d): the provisions of opinion and all legal provisions adopted by the U.S. Supreme Court in Malloy v. South Carolina, 237 U.S. 180 (1915), finding that the Ex Post Facto clause in the U.S. Constitution has not been violated by the legislative introduced changes to the method of execution of death legally imposed on previously committed capital murders, adopted by the legislature as a law of that state. Alabama changes its method of execution to a lethal injection to cover Blackmon and makes this claim a dispute. Mr Blackmon argues that the state is not proving that the murder was particularly heinous, atrocious or cruel compared to other capital murders. In particular, she claims that the state has not demonstrated that the victim is aware of one of her attacks and that she suffered. In Alabama, for a type of murder to meet the statutory definition of a particularly terrible, cruel or cruel, murder must be an unnecessarily harrowing victim. See Ex parte Kyzer, 399 So.2d 330, 334 (Ala.1981). In making this commitment, we are considering whether the violence involved in the murder went beyond what was necessary to cause death, whether the victim experienced considerable suffering after a quick attack and whether there was psychological torture. See Norris v. Country, 793 So.2d 847 (Ala.Crim.App.1999). The law-court, when examining whether to submit this aggravating circumstance to the jury, stated: In Norris, the Court stated that the prosecution did not offer any evidence from which the Court was rightly unable to conclude that in the present case [the victim] was aware and aware of it after he was first shot. The only indication of his state of consciousness was Henson's testimony that in his phone conversation with Norri after Herbert's funeral, he told Norris that Herbert had never regained consciousness. The court goes on to say, moreover, the prosecution did not provide any evidence that Herbert would have felt pain in the event that he was unconscious. And then there's the note, Compare Brown v. [663 So.2d 1028, 1034 (Ala.Crim.App.1995)] in which the Court sed, especially the horrible, atrocious, or ruthless aggravating circumstance supported by medical evidence that although the victim was unconscious, he could still have felt pain. Again, Dr. Parades testified to this situation. That there is a certain feeling of pain if one is comatose or unconscious. Blow skull causes death possible, but not possible. Some injuries were caused while she was aware. And that said the injury was painful. In a Circuit Court order to determine Blackmon's sentence of death, the court drew the following conclusions on this aggravating circumstance: The court agrees with the jury's finding that this violation was particularly heinous, atrocious and cruel compared to other capital cases. Many doctors testified that about 30 fresh wounds were found on the body. One wound on the chest was strong enough to leave a footprint of the sandal mark on the child's chest. The evidence also indicated that the child was beaten repeatedly on the cue stick. The defendant claimed that medical experts could not say exactly what the order in which the damage was caused, nor could it indicate which injury caused the child's death. They also claimed that it was possible that the first blow killed the child, and therefore she would not have experienced the pain. However, Dr. Parades testified that bruising would not be caused if the heart was not pumping. He noted that there are more than 30 external and internal injuries. The victim would have experienced a lot of pain during the beating. He also pointed out that the injuries are beyond what is needed to cause death. There was a pattern of injuries that had more than one blow the victim would have been conscious during part of the attack. He also stated the injuries were severe and the pain associated with them would also be severe. Although he could not tell the order in which the blows fell, he believed that some of the injuries were caused while she was still conscious. Dr. Parades stated that it was possible that the blow to the skull might have caused unconsciousness, but still even one that is comatose or unconscious feels some pain. He also pointed out that a blow to the skull causing death was possible, but impossible. However, he could not tell how long she was alive. The court is convinced, without reasonable doubt, that this murder of capital was terrible, cruel and cruel compared to other capital offences. The court agrees with the jury's conclusion. Dr. Alfredo Parades testified at a fine phase hearing that Dominiqua had bruises all over his body and that the body usually bruises when the heart is not pumping. Parade said that all injuries to the victim would be painful, that they were extensive, more than necessary to cause death, and he felt based on the extent of the injury, Dominiqua was conscious initially and then fainted at some point during the attack. Evidence also showed that Dominiqua vomited during the beating. The doctors testified that Dominiqua was covered with vomit. Dominiqua's blood was also discovered in several areas of the trailer; she did not have a cloth, but diapers and socks when she was discovered; and her socks were soaked in blood. Clearly, the jury had enough evidence to conclude that the way of death in this case was particularly outrageous, cruel or cruel compared to other capital cases. We have consistently believed that brutal attacks that cause death meet the statutory definition of particularly heinous, atrocious, or merciless. See Brooks v. Country, 695 So.2d 176 (Ala.Crim.App.1996), aff'd, 695 So.2d 184 (1997); Smith v. Smith v. Country, 795 So.2d 788 (Ala.Crim.App.2000); Ashley v. Country, 651 So.2d 1096 (Ala.Crim.App.1994); McGahee v. McGahee v. McGahee v. McGahee v. McGahee v. McGahee v. McGa Country, 632 So.2d 976 (Ala.Crim.App.), aff'd, 632 So.2d 981 (Ala.1993); Freeman v. Freeman v. State, 555 So.2d 196 (Ala.Crim.App.1988). Other countries have also found that the brutal beatings that resulted in death are particularly heinous. See country v. Gerlaugh, 135 Ariz. Scott v. State, 494 So.2d 1134, 1137 (Fla.1986) (The brutal senseless beating of the victim was forced to continue to fix this crime, except to form the capital's felonies norm and clearly reflect the frictionless, pitiless and unnecessarily glossy nature of these crimes. Country v. Sepulvado, 672 So.2d 158 (La.1996). Blackmon brutally bludgeoned to death a helpless two-year-old child using a pool cue and occasionally during a beating stomped on to her chest. By what standards the murder in this case was particularly heinous, atrocious, or cruel. This aggravating circumstance was correctly established by both the jury and the circuit court. VIII. Last, as stated in § 13A-5-53, Ala.Code 1975, we review the decency of Blackmon's conviction and the death penalty. Blackmon was charged and convicted of murdering her two-year-old daughter in violation of § 13A-5-40 (a)(15), Ala.Code in 1975.The record reflects that Blackmon's sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor. Article 13A-5-53 13A-5.59. We detailed the chain court's conclusions on this circumstance earlier in that opinion and found that this aggravating circumstance was correctly applied in the present case. Commission 201 the court did not find a mitigating circumstance in the law, but found the following non-statutory circumstances, which were presented by the defence lawyer:(1) Patricia

Blackmon is a devoted wife. She should be a faithful wife. However, her husband was in prison and neither testified. He would be better off knowing if she was a faithful wife, not other family members. However, the Court considered that mitigating circumstance. (2) Patricia Blackmon is a devoted daughter-in-law. Louise Johnson, mother-in-law, testified of this fact. The Court also considers this mitigating circumstance. (3) Juvenile Court in Houston County guaranteed custody of Dominiqua Bryant Patricia Blackmon. This mitigators were proven by evidence, and the Court will consider the same. (4) The Houston County Department of Human Resources provided physical custody of Dominiqua patricia Blackmon. This mitigators were proven by evidence, and the Court will consider the same. (5) Tammy Wigfall re-uses Patricia Blackmon as a caregiver for her children. The Court considers this to be mitigator. (6) Patricia Blackmon has a positive impact in the Houston County Jail. The Court considers this to be mitigator. (7) Patricia Blackmon is a man. This mitigators are evil. All people are people. The Court considers this to be mitigator. The Circuit Court weighed aggravating and mitigating circumstances, considered the jury's recommendation for death, and sentenced Blackmon to death. Since Alabama Code 1975, we have independently weighed aggravating circumstances and mitigating circumstances to determine the similarity of Blackmon's sentence of death. Blackmon, in a cold and brutal way, bludgeoned her adopted two-year-old daughter to death with a pool cue. The Court is convinced that, after an independent assessment of aggravating and attenuating circumstances, death was an appropriate penalty in the present case. Blackmon's sentence was not disproportionate or excessive compared to the penalties imposed in similar cases. See Minor v. Country, 914 So.2d 372 (Ala.Crim.App.2004); Freeman v. Freeman v. State, 555 So.2d 196 (Ala.Crim.App.1988). Finally, we have been looking for a record of any error that might have adversely affected Blackmon's essential rights and have found none. See Rule 45A, Ala.R.App.P.Blackmon conviction and sentence of death is due and hereby confirmed. Confirmed. On application rehearingSuit, Patricia Blackmon, was convicted of capital murder for beating the death of her 28-month-old daughter, Dominiqua. See § 13A-5-40 (a) (15), Ala.Code 1975, which makes capital for the deliberate murder of children under the age of 14. The jury recommended that Blackmon be sentenced to death. The court accepted the panel's recommendation. On 5 August 2005, we approved Blackmon's conviction and death penalty in a 41-page opinion. 397. 3d (Ala.Crim.App.2005). The same day we released our decision in her case, Blackmon's attorney was suspended from the practice. Blackmon was appointed a new lawyer and that the lawyer was allowed to withdraw when Blackmon retained another lawyer. Because of the unique facts presented in this case, we allowed Blackmon's counsel to present a brief on the re-hearing, which raised new questions that had not previously been submitted to the Court of Justice in Blackmon's original brief.1 See Rule 2(a), Ala.R.App.P. The State petitioned for a ban on the Alabama Supreme Court at this court for accepting a new short for a re-hearing. On December 16, 2005, the Alabama Supreme Court by order denied the state's request for a ban. State v Blackmon [Ms. 1050175]. We now address Blackmon's claims raised for the first time in her rehearing brief.I. Blackmon claims that the circuit court erred in allowing the State to use its peremptory strikes in a discriminatory manner.2 Specifically, she argues that the state does not strike whites for the same reasons used to strike black peremptory jurors; thus, she claims that there is evidence of a different treatment of veniremembers in violation of Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). Because it is clear that we are the only basis put forward to support the Batson movement is the number of strikes the state had used to remove black potential jurors. This particular argument was not put forward to the circuit court; therefore, we are reviewing this claim as a simple error. See Rule 45A, Ala.R.App.P. We have painstakingly reviewed voir-dire's grueling examination of potential jurors and juror questionnaires that were filled in by jurors and sent to the court. The state used 18 peremptory strikes to remove potential jurors. Of the these 18 strikes, the country hit 6 black potential jurors; 2 black jurors sat in Blackmon's jury. Blackmon uses all of her 18 strikes to remove white potential jurors. Our record review shows that the state carried out its strikes to prevent such potential jurors:1. Outside sworn in number 89, a white man who noted in his juror questionnaire that he had a felony conviction in the state of California and had served time in prison.2. Prospective juror number 51, a white woman who stated in her questionnaire that her son had been convicted of assault and served time in prison.3. Prospective juror number 84, a black woman who pointed out during the voir terrific examination that she was against the death penalty.4. Prospective Juror 47, a black man who voir at the time stated that he knows one of the country's witnesses.5. Outdoor sworn in number 72, a white man who stated that he was not sure he would order anyone to death.6. Prospective juror number 2, a black woman who pointed out during the voir terrific that she knew a relative of the victim 7. Prospective juror 17, of a black woman who stated that she has reservations about the death penalty.8. Prospective juror number 45, a white man who stated in his questionnaire that he had served previous jurors and the jury had made an innocent verdict.9. Outlook juror number 83, a white woman who pointed to her juror's questionnaire that she could not truly state her views on the death penalty.10. Prospective juror number 71, a white woman who stated in her questionnaire that his sister had been raped.11. Prospective jury number 65, a white man who in his questionnaire indicated that he had been charged with a crime and who answered voir terrific at the time that he would not be comfortable sitting on the case.12. Prospective juror number 76, a white man who pointed out during the voir terrific that the film Green Mile had an impact on how he considered the death penalty.13. Prospective juror number 63, a white man who stated in his jury questionnaire that he had previously been sworn in a rape case and was not guilty.14. Prospective juror number 28, a white woman who pointed out that the film Green Mile had an impact on her views of the death penalty.15. Prospective jury number 91, a white man who stated that he had never been murdered.16. Prospective jury number 36, a black woman who stated that her son had been convicted of fifth-degree theft.17. Prospective juror number 37, a black woman who pointed out that her sister-in-law was in prison for the shooting.18. Prospective juror number 60, a white man who served as a substitute, who pointed to his questionnaire that he knew several members of the district attorney's office. In Blackmon's brief on the staging she quotes four white potential jurors, who she claims, were not removed, even though they indicated that they had been involved with law enforcement or that their family members had been involved in law enforcement. She specifically cites potential jurors 24, 46, 57, and 73.The record shows that potential jurors number 24 and 57 were removed by Blackmon for using her fifth and sixth peremptory strikes. Prospective juror number 46 stated during the voir dire that her nephew was involved in a case handled by the district attorney's office but that case was not completed. She also stated that she had not seen her nephew in a long time and had little information about the case for her nephew. The record no longer contains any information. juror no. However, she also stated during the voir terrific that she had been treated fairly and that the issue had been resolved to her satisfaction. The record also shows that white prospective jurors 89, 51, 65 were removed because they are bound by law or a family member is involved in the law. It seems that every potential juror who indicated that he was in prison or had a relative who had been or was in prison was removed. Prospective juror 46 did not indicate that she was a relative who had been convicted of any crime. United States Supreme Court, Hernandez v. New York, 500 USA 352, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991), it is stated that in terms of respect for the respect that we give a court judgment on Batson's proposal: In Batson, we explained that the court's decision on the final issue of discriminatory intent is a finding of a fact sort granted great respect to the appeal. Recently, Title VII discrimination case, we stated that the finding of intentional discrimination is a finding of fact which has the right to adequate respect by the review court. Anderson v. Bessemer City, 470 US 564, 573 (1985). Since the judge's findings in this context largely turn to the assessment of reliability, the review court should normally give those findings a great deal of caution. Id., pp. 575-576. Batson, supra, [476 US,] at 98, n. 21. In this context, it is particularly important that the findings of the court, which are particularly important, because, as We found in Batson, the finding will largely become an assessment of reliability. 476 USA, 98, n 21. A typical peremptory challenge to the investigation, the crucial question will be whether the lawyer's race-neutral explanation for the peremptory challenge would be believed. There will rarely be much evidence relating to this issue, and the best evidence will often be the demeanor of a lawyer who implements the challenge. As with the state of mind of the juror, the assessment of the prosecutor's state of mind based on demeanor and reliability is peculiar within the trial judge's province. Wainwright v. Witt, 469 US 412, 428 (1985), citing Patton v. Yount, 467 US 1025, 1038 (1984). 500 U.S. at 364-65, 111 S.Ct. 1859 (emphasis added). The Circuit Court ruling on Batson's objection is entitled to great respect, and we will reverse such a ruling only if it is clearly wrong. Brown v. Country, 982 So.2d 565, 587 (Ala.Crim.App.2006) (quoting Talley v. State, 687 So.2d 1261, 1267 (Ala.Crim.App.1996)). Based on our review of the record, we cannot say that the chain of judgment was manifestly flawed. Blackmon also argues that the state discriminated against jurors on the basis of sex. This issue is raised for the first time by re-admission; so we are reviewing this issue as a simple mistake. See Rule 45A of the Rules of Procedure, Ala.R.App.P. As the Alabama Supreme Court pointed out ex parte Trawick, 698 So.2d 162 (Ala.1997):P use, which batson or J.E.B. challenged is eligible to proceed from prima facie cases of discrimination, ... in the absence of such evidence, the prosecution is not obliged to state the reasons for its peremptory problems. Ex parte branch, 526 So.2d 609 (Ala.1987); Ex parte Bird, 594 So.2d 676 (Ala.1991). In the present case, the Court discussed a number of relevant factors which the defendant could submit in an attempt to establish a prima facie case of racial discrimination; these factors also apply in the case of a defendant who wishes to establish gender discrimination in the selection process of the jury. These factors, which are indicated in the manner applicable to gender discrimination, are: (1) evidence that the jurors concerned share only gender characteristics and were in all other respects as heterogeneous as the community as a whole; (2) strike pattern against same-sex jurors on a given venire; (3) similarity to public advocates using peremptory problems to strike members of the same sex; (4) the type and type of national issues and statements during the voir dire; (5) the nature and the nature of the questions raised by the jury at issue, including the lack of questions; (6) unlike members of the jury who have the same characteristics or who answered the question in the same way or in a similar manner; and (7) a separate examination of members venire. To find a simple error is tested Batson or J.E.B. violation, the record must be presented to the conclusion that the prosecutor was engaged in the practice of targeted discrimination. Ex parte Watkins, 509 So.2d 1074, 1076 (Ala.1987). Here the record shows that the country hit seven women and eleven men. The jury consisted of eight women and four men. Based on this record, there is no evidence to conclude that the state discriminated in violation of the J.E.B. Accordingly, we find no simple error.II. Blackmon claims that the prosecutor made a reversible error in making a direct comment about Blackmon's inability to testify. Specifically, Blackmon disputes the following argument of the prosecutor in his closing argument in the fault stage: She never made it. She never tried to perform CPR. But, they want you to think she did, and call these experts, these speculative. Just to have a cold mistake. Just to argue that. There wasn't a CPR attempt or trained doctors, board certified, some specialists who have prophetical pathologists said no. She's basically dead on the floor. She doesn't have a pulse. Pupils are fixed and expanded. Can not say clinical death, because he is not a doctor. She is dead already because of what Ms. Blackmon did to her. You've never heard of anything else about anyone else there. Ms. Blackmon and Dominiqua. She fell and hit her head once and eventually in this position. It just didn't happen. (R. 1016-17.) Initially, we observe that Blackmon never objected to the above comments. Therefore, we are reviewing this problem as that a simple error occurred. See Rule 45A, Ala.R.App.P. That court concluded that it was unable to object to the wrong arguments of the prosecutor should be weighed as part of our assessment of the claim of merit, as it supports that the defense did not consider the relevant comments to be particularly harmful. Kuenzel v. State, 577 So.2d 474, 489 (Ala.Crim.App.1990), aff'd, 577 So.2d 531 (Ala.), cert. Wainwright, 778 F.2d 623, 629 n. 6 (11th Cir.1985), cert. See also Johnson v. Johnson v. Country, 823 So.2d 1, 45 (Ala.Crim.App.2001). The Alabama Supreme Court has noted that the prosecutor's comments on the defendant's inability to testify: The prosecutor's comments on the defendant's testimony are very harmful and harmful, and the courts must be careful to guard against the defendant's constitutional privilege. Whitt [v. state], [370 So.2d 736] at 739 [(Ala.1979)]; Ex parte Williams, 461 So.2d 852, 853 (Ala.1984); See Ex parte Purser, 607 So.2d 301 (Ala.1992). That Court has held that the prosecutor's comments, which the jury may use as a reference to the defendant's inability to testify to Article I(6) of the Alabama Constitution of 1901. Ex parte Land, 678 So.2d 224 (Ala.1996); Ex parte McWilliams, 640 So.2d 1015 (Ala.1993); Ex parte Wilson, [571 So.2d 1251 (Ala.1990)]; Ex parte Tucker, 454 So.2d 552 (Ala.1984); Beecher v. Country, 294 Ala. 674, 320 So.2d 727 (1975). In addition, the fifth and fourteenth amendments to the U.S. Constitution may be violated if the prosecutor comments on the silence of the accused. Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); Ex parte Land, above; Ex parte Wilson, supra. According to federal law the commentary is wrong if it was obviously intended or was such that the jury of course and certainly believes that this is a comment about the Defendant's inability to testify.' United States against. Herring, 955 F.2d 703, 709 (11. Cir.), cert. Marsden v. Marsden v. Moore, 847 F.2d 1536, 1547 (11th Cir.), cert. United States v Betancourt, 734 F.2d 750, 758 (11th Cir.), cert. The Federal Courts describe the comments as direct or indirect, and, in any case, believe that an incorrect comment may not always be authorized to change. According to that line of argument, Alabama law distinguishes direct comments from indirect comments and states that a direct comment on the defendant's inability to testify authorizes a reversal of the defendant's conviction if the court hearing the case did not immediately win that comment. Whit v. Whitt v. Country, above; Ex parte Yarber, [375 So.2d 1231 (Ala.1979)]; Ex parte Williams, supra; Ex parte Wilson, supra. On the other hand, hidden or indirect, comments are interpreted against the defendant based on the literal construction of Ala.Code 1975, § 12-21-220, which created the virtual identification doctrine. Ex parte Yarber, 375 So.2d at 1234. Thus, where there was only an indirect reference to the defendant's failure to give evidence in order for the comment to be a reversible error, the defendant, as a person who has not become a witness, must have virtual identification. Ex parte Yarber, supra; Ex parte Williams, supra; Ex parte Williams, supra. Virtual identification will not exist if the prosecutor's comments were directed at the fact that no side evidence was presented or was not rejected. See Beecher v. Country, 294 Ala. 674, 682, 320 So.2d 727, 734 (1975); Ex parte Williams, supra; Ex parte purser, supra. However, in such circumstances, it becomes important to know whether the defendant alone could have provided the missing evidence. The disputed commentary of the prosecutor who made the closing arguments must be seen in the light of the evidence presented in the case and all of the closing arguments made to the jury both by the defense attorney and the prosecutor. Ex parte Land, above; Windsor v. Windsor v. Country, 683 So.2d 1021, 1023 (Ala.1994); Ex parte Musgrove, 638 So.2d 1360, 1368 (Ala.1993), cert. Here, the defense attorney argued that the state's evidence, because of its immoral nature, was insufficient to prove, without reasonable doubt, that the defendant had committed crimes. The defence lawyer insisted that the evidence gave rise to a reasonable hypothesis that there were unidentified fingerprints, unidentified public hair and unidentified semen at the crime scene, which, the defense attorney claimed, suggested that another person had committed crimes. In the rebuttal, the State commented on the fact that the defence counsel had not provided any evidence to support that claim and did not contest the state's evidence. The prosecutor highlighted convincing evidence affecting the defendant as a perpetrator of the crime and claimed in that regard that the defence lawyer's statement was empty. According to the specific facts of this case, we cannot establish that the prosecutor's statements were directed at the defendant's silence. Looking in the right context, it is clear that they were a response to a defense lawyer describing the implicit nature of state evidence in a way that created a reasonable hypothesis of innocence. Ex parte Musgrove, 638 So.2d 1360 (Ala.1993); check out Stephens v. Country, 580 So.2d 11 (Ala.Crim.App.1990), aff'd, 580 So.2d 26 (Ala.), cert. Merrit v. Merrit v. Country, 571 So.2d 409 (Ala.Crim.App.1990); Ex parte McWilliams, 640 So.2d 1015, 1019-20 (Ala.1993); Ex parte Wilson, 571 So.2d at 1262. The Criminal Court of Appeal rightly upheld the judgment of the court hearing the case, stating that the prosecutor had properly exercised his right to reply in kind. Ex parte Musgrove, 638 So.2d at 1368. Also in this case, the prosecutor's comments were in response to the defense attorney's argument. Ex parte Brooks, 695 So.2d 184, 188-90 (Ala.1997) (footnotes omitted). Blackmon's lawyer in court argued that Dominiqua's death could be the result of improper attempts to revive the victim. The prosecutor's comments were in response to this argument. III. Blackmon claims that the court's instructions on the jury's failure to draw any negative conclusions from Blackmon's failure to testify were erroneous and did not comply with the U.S. Supreme Court's decision in Carter v. Kentucky, 450 USA 288, 101 S.Ct. 1112, 67 L.Ed.2d 241 (1981). The recording shows that Blackmon requested the following jury instruction: Patricia Blackmon has chosen not to testify in this case. In accordance with the Constitution of the United States of America and the Alabama Constitution, Ms. Blackmon has the right to make such a choice, and I instruct you you cannot let it into your mind or your decision in any way, and you should not discuss it in any way. You must be sure you cannot allow it to enter; neither with regard to the defendant nor against him. The defendant has the right either to testify in his own name or not to testify in his own name. And the fact that she had to stay at the witness stand and not testify cannot be taken and considered by the jury in any way. Your duty is only to weigh and consider all the testimony in this case and form your own verdict of guilt or innocence of the defendant. (R. 1061) The Circuit Court noted, denying the specific instruction requested by the jury that it would give almost identical instructions and that there was no need to give instructions twice. On appeal, Blackmon claims for the first time that the jury's instruction was not sufficient to comply with Carter v. Kentucky, 450 USA 288, 101 S.Ct. 1112, 67 L.Ed.2d 241 (1981). She disputes the instructions given, which were almost identical to what she claimed. However, the appellant cannot seek the instructions that the instructions were erroneous. An error is then invited. Phillips v. Phillips v. State, 527 So.2d 154 (Ala.1988). Campbell v. Campbell v. Country, 654 So.2d 69, 72 (Ala.Crim.App.1994). Moreover, Carter's court did not attribute sufficient evidence to the defendant's failure to provide evidence. When discussing the adequacy of the unfavorable inference instructions, which is not unfavorable, as it related to the requested jury's instruction on the same subject, the United States Court of Appeals for the Tenth Circuit in United States v. Gomez-Olivas, Gomez-Olivas, 897 F.2d 500, 502 (10th Cir.1990), stated: In Carter [v. Kentucky, 450 U.S. 288 (1981)] the Supreme Court made it clear that a criminal judge must give no-adverse-inference jury instruction, only if the defendant so requests. 450 U.S. at 300, 101 S.Ct. at 1119; see also Coleman v. Brown, 802 F.2d 1227, 1234-35 (10th Cir.1986). We believe that this principle also applies to the forced aspect regarding the indications without an unfavourable principle. Because the reference to coercion highlights the fact that the defendant is allowed to take a position to testify, some defense attorney may not want to reference the instruction. Cf id. at 1235 (or require a no-unfavorable conclusion instruction is in accordance with the attorney's tactical discretion). A judge who has a court judge has the right to know when the defendant wants the instructions to include a coercive aspect. Since the defendant here is not please, neither the unfavorable the court hearing the case did not rule it out. In the proceedings, the defendant's only objection to the court's failure to inferiority was that it did not correspond to the wording required by him. Of course, it is well resolved that the type of jury instructions is in the course of the trial, and the court hearing the case should not be instructed in the exact form and language requested. For example, United States v Gallup, 812 F.2d 1271, 1279 (10. This principle applies equally to the guidance on adverse effects. See United States v. Backyard, 877 F.2d 1083, 1089 (1st Cir.1989); United States v Russo, 796 F.2d 1443, 1454-55 (11th Cir.1986). In the present case, the instructions were appropriate in such circumstances. We find no simple error reasons discussed in Gomez-Olivas.IV. Blackmon next claims that it was a reversible error in the chain of court to evidence that tests were carried out on the victim's body looking for evidence of sexual assault. During the testimony of Catherine K. McGeehan, a forensic conjured biologist: Q [prosecutor]: And, slides and smears engaged, are you looking for blood and sperm or basically biological evidence of sexual abuse? Is it right? A [McGeehan]: Slides and smears indicate that there is no presence of semen or sperm on these samples. Court of justice: Okay. And, gentlemen, I have now heard from several witnesses have mentioned negative or no evidence of sexual violence. It's not involved in this case, so let's just stay away from it. I do not see any meaning in this case. It wasn't, there is no evidence of it, so why are we wasting our time going into such evidence? Approach. Court: Why do you get into sexual assault? There is no evidence from Dr. [Robert] Head [Dominiqua's pediatrician] of this scientist; am I missing something here? Do you expect that somehow she was sexually assaulted? [Prosecutor]: No, sir. But, that's to prove that she wasn't. I don't want to leave them open to tell a mysterious person. True: So, that's the reason for it? Yes, sir. I'm not trying to be a work point, but trying to close the opportunity. Court: If it was raised, you could give people back a rebuttal. But, I think we've heard enough, and you don't need to spend much more time on non-existent sperm and sexual violence. Don't y'all agree? [Defense Attorney]: Your honor, I have no position in this area. (R. 747-78.) (Emphasis added.) We note that if any error occurs, blackmon actions were invited. See Campbell against the public, supra. Moreover, a similar question was dealt with by the Court above the State, 577 So.2d (Ala.Crim.App.1990), where we pointed out: The defendant also claims to have made the mistake of accepting oral,, and vaginal smears taken from the victim, where there was not even the slightest suggestion of evidence that the victim touched in any way other than the shots. . At the hearing, the defence counsel did not object to any of that evidence. We do not see the relevance of this evidence in this particular case. However, our review of the entire record shows that the prosecution did not unfairly benefit either this evidence or the evidence of fingerprints in an attempt to confuse the jury, or trying to point to the inference of facts that did not exist. We see in the show that the state tried to use this evidence to support a weak case against the defendant. There is no reversible error that the admission of only irrelevant and non-conclusive evidence is not reversible. See Gilley v. Denman, 185 Ala. 561, 567, 64 So. 97, 99 (1913). There has long been a rule that the erroneous adoption of evidence on a non-essential issue is harmless. Forest Investment Corp. v. Commercial Credit Corp., 271 Ala. 8, 12, 122 So.2d 131 (1960). The taking of non-essential evidence which is unlikely to affect the judgment is not a reversible error. Saunders v. Tuscumbia Roofing & Plumbing Co., 148 Ala. 519, 523, 41 So. 982, 984 (1906). 577 So.2d at 511-12. For the reasons mentioned by Kuenzel, we can see that if an error occurred, it was harmless.Mr Blackmon claims that the circuit court wrongly considered the aggravating circumstance of nonstatutory when it sentenced Blackmon to death. In particular, she claims that the district court wrongly considered the aggravating circumstances of non-status, that the victim was accepted and that the victim had been abused. Blackmon is based on a comment made by the circuit court during the sentencing hearing in court. After hearing the arguments for advice, the circuit court declared: But maybe that's how it should be. Perhaps the Court is the last resort of the impassive pleas of lawyers, the passion of the jury's verdict, because after all, as I pointed out above, it is the court, not the passion or emotion. It is difficult not to be passionate or emotional about such a thing. I will say that; that this court is a natural aversion to the rie, if you will, sentencing a woman to death. At the same time, this Court has a natural aversion or riu to what happened to this diticus for a year-old child. A child who was born in this world to a mother who would give her up. Given over to the state of Alabama to a woman who could take her life. I hope she is in a better place because her life here on this earth, although it was short, was pure hell. I say that because the evidence shows that not only was the attack that took her life but there was a history of abuse for this child. There were many injuries on the child's body that was old. So what can we say from that di&a years she was beaten repeatedly. And, I think in this case, which was your client's natural mother of these children, that maybe life in prison without the possibility of parole would be an appropriate sentence for every day of her life she could remember that child. But in this situation, she was not the biological mother of this child. It was a child whose life was only the beginning. No one knows what she might have become. (R. 1115-17.) 3 In the district court's sentencing order, the court stated: The law requires the court hearing the case to enter specific conclusions as to the existence or absence of any aggravating circumstance listed by the law. The Court of First Instance finds that the State demonstrated without reasonable doubt that there was one aggravating circumstance:(1) The irritability of capital was particularly heinous, cruel and cruel compared to other offences. (Emphasis added.) Again, at the end of the sentencing order chain, the court stated: If the Court weighs the aggravating circumstance against attenuating circumstances, as the law requires, there can be little doubt that the aggravating circumstance far outweighs the attenuating circumstances. (Emphasis added.) The Circuit Court's sentencing order reflects that it found and considered only one statutory aggravating circumstance that the murder was particularly heinous, atrocious, or cruel compared to other capital offenses. Clearly, the circuit court knew the law and applied it correctly. We assume that the judge knows and abide by the law. Ex parte Slaton, 680 So.2d 909, 924 (Ala.1996) (Judges who are subject to legal proceedings are considered to know the law and abide by them when making decisions.); and Carter v. State, 627 So.2d 1027, 1028 (Ala.Crim.App.1992) (The court judge's claims are believed to be correct if there is no opposite.). Ex parte Atchley, 936 So.2d 513, 516 (Ala.2006).VI.Blackmon claims that the circuit court mistakenly found that the murder was particularly heinous, atrocious, or cruel. We addressed this issue in depth in our initial opinion and see no reason to review our participation in the staging. However, as part of this issue Blackmon now argues that the aggravating circumstance that the murder was particularly heinous, atrocious, or cruel is unconstitutional because, she claims, it violates the Fifth, Eighth and Fourteenth Amendment to the U.S. Constitution.Alabama courts are there at the opposite. As we have pointed out: In the case of the Minor's constitutional challenge to the outrageous, atrocious, or cruel aggravating circumstance § 13A-5-49 (8), In 1975, the Court of Justice reaffirmed that circumstance against similar problems. See Duke v. Country, 889 So.2d 1 (Ala.Crim.App.2002); Ingram v. Ingram v. Country, 779 So.2d 1225 (Ala.Crim.App.1999), aff'd, 779 So.2d 1283 (Ala.2000); Freeman v. Country, 776 So.2d 160 (Ala.Crim.App.1999), aff'd, 776 So.2d 203 (Ala.2000); Bui v. Country, 551 So.2d 1094 (Ala.Crim.App.1988), aff'd, 551 So.2d 1125 (Ala.1989), judgment released on other grounds, 499 U.S. 971, 111 S.Ct. 1613, 113 L.Ed.2d 712 (1991); and Hallford v. Country, 548 So.2d 526 (Ala.Crim.App.1988), aff'd, 548 So.2d 547 (Ala.1989). Minor v. Country, 914 So.2d 372, 437 (Ala.Crim.App.2004). Finally, Blackmon now claims that the chain court's instructions on this aggravating circumstance were erroneous. We have carefully reviewed the guidance on this aggravating circumstance. They were both thorough and accurate. Moreover, the Court of Justice has upheld instructions similar to those given in the present case. See Stallworth v. Country, 868 So.2d 1128 (Ala.Crim.App.2001). VII.Blackmon claims that her conviction violates the U.S. Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). Most of Blackmon's arguments were addressed in our original opinion and will not be addressed again in this opinion. In Apprendi, the United States Supreme Court considered the fact that the sentence would increase the sentence above the statutory maximum must be submitted to the jury and prove without reasonable doubt. This participation was attributed to the death penalty cases in Ring v. Arizona, 536 USA 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Blackmon now claims that the jury's instructions here violated the Ring because the circuit court informed the jury that its verdict in the sentencing phase was a recommendation. In Duke v. Nationally, 889 So.2d 1, 43 (Ala.Crim.App.2002), we stated: Duke also claims that the Ring requires a penalty phase relief when the jury is told that its verdict is advisory or just a recommendation. Contrary to Duke's assertion, Ring does not address the advisory nature of the panel's sentencing recommendation. The Duke's jury was duly informed that, under Alabama law, its verdict was advisory. See § 13A-5-46, Ala.Code 1975. Consequently, the jury was not misled as to its role in the conviction decision. See Caldwell v. Mississippi, 472 U.S. 320, 328-29, 105 S.Ct. 2633, 86 L.Ed.231 (1985); Ex parte Taylor, 666 So.2d 73, 88 (Ala.1995), cert. Blackmon also claims that her death sentence violates Ring because the jury did not state that it was unanimous in determining the existence of aggravating circumstance and weight, which should be granted for that aggravating circumstance. Again, Duke we said: We note that the Ring requires only that the jury unanimously finds that there is an aggravating circumstance for the defendant to be eligible for support. Alabama law does not require a jury advisory verdict to be unanimous before it can recommend death. See § 13A-5-46(f), Ala.Code 1975. Nothing in the Ring supports Duke's claim that the jury's advisory verdict is not unanimous. Duke, 889 So.2d at 43 n. 4. Blackmon also claims that her conviction violates Apprendi and Ring, since the aggravating circumstance to which the State refers was not alleged. Moreover, in Duke, duke also claims, in connection with Ring's application, that his accusation is invalid, since the State has not demonstrated the aggravating circumstances of the charge. That court dismissed a similar action in Stallworth v 868 So.2d [1128 (Ala.Crim.App.2001)] (second-half return opinion). We said: In Poole v. State, 846 So.2d 370 (Ala.Crim.App.2001), we believed that while Apprendi [v. New Jersey, 530 U.S. 466 (2000)] demanded that the facts increase the sentence above the statutory maximum must be submitted to the jury, these facts should not be sent to the indictment. Recently, the Alabama Supreme Court accepted our participation in Poole. See Hale v. 848 So.2d 224 (Ala.2002). The parts of Poole and Hale are also consistent with previous case-law, which states that the indictment does not require the need to state aggravating circumstances. See Ex parte Lewis, 811 So.2d 485 (Ala.2001) and Dobard v. 435 So.2d 1338 (Ala.Crim.App.1982). 868 So.2d at 1186. Blackmon doesn't pay any relief for any of her Ring claims. MS Blackmon claims that the prosecutor's office denied her a fair trial. She cites a number of cases of alleged infringements in support of that judgment. We note that no objections have been raised to any of the alleged cases of infringement. We are therefore reviewing this claim as a simple error. See Rule 45A of the Rules of Procedure, Ala.R.App.P. As the Court has pointed out: When reviewing allegedly inappropriate arguments of the public prosecutor's office, we must first determine whether that argument was in fact irrelevant. In doing so, we must assess the prosecutor's comments in relation to the entire court. Duren v. Duren v. State, 590 So.2d 360 (Ala.Crim.App.), aff'd, 590 So.2d 369 (Ala.1991), cert. The prosecution, as well as the defense attorney, have the right to present their impressions from the evidence, and can argue every question of a legitimate conclusion that may be rightly taken from the evidence. Sanders v. Sanders v. 423 So.2d 348 (Ala.Cr.App.1982). Ingram v. Ingram v. State, 779 So.2d 1225, 1251 (Ala.Cr.App.1999). Moreover, in the absence of objections to a potentially inappropriate argument, the chmp concluded that the absence of objections to inappropriate arguments from the public prosecutor's office. Freeman v. Country, 776 So.2d 160 (Ala.Cr.App.1999), en cored kuenzel v. State, 577 So.2d 474, 489 (Ala.Cr.App.1990), aff'd, 577 So.2d 531 (Ala.), cert. Wainwright, 778 F.2d 623, 629 n. 6 (11th Cir.1985), cert. Johnson v. Johnson v. Country, 820 So.2d 842, 870 (Ala.Crim.App.2000). Moreover, it is not sufficient that the comments of the prosecutors were undesirable or even universally objectionable. Darden v. Wainwright, 699 F.2d [1031], at 1036 [(11th Cir.1983)]. The question in question is whether the prosecutors' comments have been so unfairly infected by the trial as to make the conviction a denial of due process. Donnelly v. DeHristoforo, 416 U.S. 637 (1974). Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986). At the beginning of the trial chain the court gave instructions on comments made by the prosecutor and defense attorney. The circuit court instructed the jury: Ladies and gentlemen, as I said, the opening statements and closing arguments of the lawyers are intended to help you understand the evidence and apply the law. But of course what they say is not evidence, not the law. (R. 551) We have reviewed each of the disputed notes and found evidence that any comment so infected the courts with dishonesty that Blackmon's conviction was a denial of due process. See Darden v. Wainwright.IX. Blackmon next challenges several circuit court jury instructions. Setting the standard for a simple error review of the jury's instructions, the court in the United States v. Chandler, 996 F.2d 1073, 1085, 1097 (11th Cir.1993), quoted Boyde v. California, 494 U.S. 370, 380, 110 S.Ct. 1190, 108 L.Ed.2d 316 (1990), make the proposition that an error arises only if there is a reasonable possibility that the jury will apply the instructions in an inappropriate manner. Williams v. Williams v. State, 710 So.2d 1276, 1306 (Ala.Cr.App.1996), aff'd, 710 So.2d 1350 (Ala.1997), cert. Broadnax v. Country, 825 So.2d 134, 196 (Ala.Crim.App.2000), quoting Pilley v. Country, 789 So.2d 870, 882-83 (Ala.Crim.App.1998). Moreover, when reviewing the instructions of the court chamber, we must look at them as a whole, not in pieces, and in a reasonable jury sle if we had interpreted them. Ingram v. Ingram v. 779 So.2d 1225 (Ala.Cr.App.1999). Johnson v. Johnson v. Country, 820 So.2d 874 (Ala.Crim.App.2000). Snyder v. State, 893 So.2d 488, 548 (Ala.Crim.App.2003).A. Blackmon claims that the chain of court instructions of intent violated the Supreme Court's involvement in Sandstrom v. Montana, 442 US 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979). Chain court instructions of intent, in part: Intent, which is a spiritual purpose or state of mind, it is rarely, if ever, susceptible to direct evidence. This is an inferin that infer the jury from the testimony of witnesses and facts in this case. A specific intent to kill is an essential component of murder or capital murder, as indicted in this indictment. And, it can be inferred from the nature of the attack or other attendant conditions. Such intent can be inferred if the act is carried out intentionally and death is reasonably apprehended or expected to be a natural and potential consequence of the act. But, the fact on which such inferination must be shown so clearly as not to leave reasonable doubt in the mind of the juror that at the same time complained that the defendant intended to kill the deceased, Dominiqua Deshay Bryant. Now, as I pointed out, the element of intent is a state of mind or mental purpose is usually impossible to direct evidence and can be inferred from the nature of the attack or other attendants' circumstances from the nature and force used for fatal damage. (R. 1053-54.) Blackmon claims that the circuit court's instruction created an irreputable presumption and impermissibly shifted the burden of proof to Blackmon. In Sandstrom [v. Montana, 442 U.S. 510 (1979)], the Supreme Court ruled that instructions given by a reasonable jury could be interpreted as an irrevocable direction by the court to find intent to violate the defendant's due process law. Sandstrom, 442 U.S. at 517, 99 S.Ct. at 2455-56. In the Sandstrom case, the instruction of the complaint was as follows: The law provides that a person intends to have the normal consequences of his voluntary activity. The Sandstrom instruction gave rise to a mandatory presumption. In DeRamus v. The state, 565 So.2d 1167 (Ala.Cr.App.1990), the lawsuit gave similar instructions to the jury as the one involved in the case. The instructions state: [Intent] may be inferred from the nature of the attack, the use of a deadly weapon, or any other circumstances. 565 So.2d 1170. We stated that this instruction gave rise to a tolerance, and that was not a mistake. A mandatory presumption instructs the jury that it should infer the possible fact if the State proves certain predifered facts. A request to the jury shows a possible conclusion to be drawn if the State proves predicative facts, but does not require the jury to draw the following conclusion. Francis v. Francis v. Franklin, 471 [307] 314, 105 S.Ct. [1965] 1971 [85 L.Ed.2d 344 (1985)]. The permissive conclusion only violates the Due Process Clause, if the proposed conclusion is not one that reason and common sense justify given the facts before [the] jury. 471 U.S. at 314, 105 S.Ct. 1971. The instructions quoted in this case led to a tolerant conclusion. The language in question cited by the appellant could not reasonably be understood as a presumption which relieved the State of its burden of proof as regards the purpose element. 565 So.2d at 1170. Hart v. Hart v. Country, 612 So.2d 520, 529 (Ala.Crim.App.1992). See also McNabb v. Country, 887 So.2d 929, 978-79 (Ala.Crim.App.2001). We have reviewed the guidance given in this case; the instruction created only an immisable presumption, not an unseemly or mandatory presumption. The jury's instruction doesn't violate Sandstrom v. Montana, supra. B Blackmon further claims that the chain of judicial instructions on the jury's consideration of blackmon's statements to the police was flawed. She quotes Bush v. Public, 523 So.2d 538 (Ala.Crim.App.1988) to support her argument. The District Court gave the following instruction: Ladies and gentlemen of the jury, the state has offered the statements it claims to Patricia Blackmon, and you heard from the criminal investigation department. You have to determine what weight and credit you will give each statement, and you may want to consider all the circumstances surrounding this statement. (R. 1063) As the court stated in McWhorter v. State, 781 So.2d 257 (Ala.Crim.App.1999): The appellant quotes Bush v. State, 523 So.2d 538, 560 (Ala.Cr.App.1988) and Ex parte Singleton, 465 So.2d 443, 446 (Ala.1985), in support of the principle that the trial should be instructed to instruct the jury to consider voluntary confessions; however, these cases were dealt with in situations in which the court hearing had informed the jury member before the jury's statement that it had already admitted to voluntary and admissible confessions; the appellant's reliance on those cases is therefore misrepreserly distributed. 781 So.2d at 289.When endorsing a similar instruction to McWhorter, the Court stated that the instruction had not informed the jury that the court had already made a decision on the voluntary ity of the defendant's statements to the police. The same applies to the instructions given in this case. In fact, we have confirmed the use of significantly similar instructions in Gaddy v. Country, 698 So.2d 1100, 1120 (Ala.Crim.App.1995) . C Blackmon next claims that the jury's instructions on reasonable doubt were erroneous and violated the U.S. Supreme Court's decision in Cage v. Louisiana, 498 USA 39, 111 S.Ct. 328, 112 L.Ed.2d 339 (1990) because, she the burden of proof of the country. The contour court gave the following instructions on reasonable doubts: The phrase of reasonable doubt seems somewhat self-evident, and the effort to define it does not always clarify. This is not just a fictional doubt, because everything persuasing to the human case is open to some possible or imaginary doubts. Reasonable doubt is doubt about a fair-minded juror honestly seeking the truth after a thorough and impartial examination of all the evidence in this case. This does not imply a vague or arbitrary concept, but it is a factual doubt based on evidence, lack of evidence, lack of evidence or a combination thereof. It is the doubt that remains after you go over your mind the whole thing and given all the testimony. This differs from the doubts that stem from only the possibility, from bare imagination or fictional assumption. The doubts justifying justification must be doubtful, from which you have a reason arising from the evidence, in part, their lack of evidence, and remain after careful examination of the evidence, such as reasonably thought-out and conscientious men and women, could have fun in all circumstances. The State does not have to prove that it is guilty, without doubt, but without reasonable doubt. (R. 1048-49.) United States Supreme Court, Cage v. Louisiana, considered the court's instructions as reasonable doubts, containing terms of moral certainty, serious uncertainty, and actual significant doubts were wrong because they undermined the state's burden of proof. In Victor v. Nebraska, 511 USA 1, 114 S.Ct. 1239, 127 L.Ed.2d 583 (1994), a re-decision by Cage, the United States Supreme Court ruled that the use of some terminology condemned by Cage would not automatically be mandated to be named if, in general, instructions to the jury correctly conveyed the reasonable concept of doubt. 511 U.S. at 22, 114 S.Ct. 1239 (quoting Holland v. United States, 348 U.S. 121, 140, 75 S.Ct. 127, 99 L.Ed. 150 (1954)). Here the instructions were accurate and properly defined justified doubts. The instructions do not contradict Cage v. Louisiana, supra.D. Blackmon claims that the chain of court instructions on mitigating evidence violated Mills v. Maryland, 486 USA 367, 108 S.Ct. 1860, 100 L.Ed.2d 384 (1988), because the instructions do not inform the jury that it does not unanimously agree on any mitigating circumstances. United States Supreme Court Mills v. Maryland, considered that if there was a high probability that the jury instructions at the sentencing stage meant that the finding of a mitigating circumstance was unanimous, then the death penalty should be ruled out. Discussing the impact of Mills v. Maryland In Calhoun v. State, 932 So.2d 923, 972 (Ala.Crim.App.2005), stated: As we pointed out in Tyson v. State, 784 So.2d 328 (Ala.Crim.App.), aff'd, 784 So.2d 357 (Ala.2000): The appellate courts of that state have consistently held, in the U.S. Supreme Court's decision in Mills, that, while there is no reasonable probability or probability that jurors felt that they had the unanimous agreement that there were any particularly mitigating circumstances, there was no error in the court's instructions on attenuating circumstances. Freeman [v. Country], 776 So.2d [160] at 195 [(Ala.Crim.App.1999)]. Also Ex parte Martin, 548 So.2d 496 (Ala.1989), cert. Williams v. Williams v. Williams v. Williams v. Williams v. Williams v Country, 710 So.2d 1276 (Ala.Cr.App.1996), aff'd, 710 So.2d 1350 (Ala.1997), cert. Brown v. State, 686 So.2d 385 (Ala.Cr.App.1995); Rieber v. Country, 663 So.2d 985 (Ala.Cr.App.1994), aff'd, 663 So.2d 999 (Ala.), cert. Holladay v. Holladay v. Country, 629 So.2d 673 (Ala.Cr.App.1992), cert. 784 So.2d at 351. We have carefully reviewed the circuit court's instructions on mitigating circumstances and did not consider that the jury would have considered its finding that the existence of attenuating circumstances was unanimous. In fact, the instructions were similar to the instructions of the sample jury. See Freeman v. Country, 776 So.2d 160 (Ala.Crim.App.1999), aff'd, 776 So.2d 203 (Ala.2000). Like this Court in Kalyuna, we have carefully reviewed the panel's instructions on mitigating circumstances and found that it was not possible for the jury to have considered that its finding of the existence of attenuating circumstances should have been decided unanimously. Calhoun, 932 So.2d at 972. There was no violation in Mills v. Maryland, supra. Blackmon also claims that the jury's instructions on mitigating circumstances were erroneous on the basis of the Alabama Supreme Court's decision in Ex parte Bryant, 951 So.2d 724 (Ala.2002). Following instructions that are fundamentally similar to those given in the present case, the Alabama Supreme Court in Ex parte McNabb, 887 So.2d 998, 1004 (Ala.2004), stated: The charge in the present case was not infected by a drink-free error in Bryant, that is, the jury in the present case was not called upon to recommend the death penalty without finding responsibility for the circumstances. It was this call to Bryant that caused an error in this case to raise to a simple error level, not an error that is reversible only with the appropriate opposition. Thus, in the present case, although the court does not specifically instruct the jury what to do if it finds that in circumstances that are equally balanced, we cannot conclude, given the entire accusation that the error seriously affects the integrity, integrity or reputation of [these] proceedings in the public interest, Ex parte Davis, 718 So.2d [1166] pp. 1173-174. Based on the Supreme Court's reasoning for McNabb, there was no error of sorts in the Supreme Court's decision to Bryant.Blackmon also argues, as part of this issue, that the circuit court erred in refusing to give its instruction on mercy. First, we note that Blackmon does not require grace instructions. The page number quoted by Blackmon in his short edition does not correspond to the requested grace instruction. The only reference to the grace Blackmon requested by the jury instructions is this sentence: an attenuating circumstance is something about Patricia Blackmon or a crime that, justice and mercy, should be taken into account when deciding on a sentence. (KM 281.) Moreover, we have considered that a jury cannot arbitrarily consider mercy when deciding whether the defendant should be sentenced to death or life imprisonment without the possibility of release. As we pointed out in Stallworth v. State, 868 So.2d 1128, 1167 (Ala.Crim.App.2001): In Alabama, the capital jury cannot arbitrarily consider mercy upon arriving at the sentencing. As we pointed out Gaddy v. Country, 698 So.2d 1100, 1142 (Ala.Crim.App.1995), aff'd, 698 So.2d 1150 (Ala.), cert. denied, 522 US 1032, 118 S.Ct. 634, 139 L.Ed.2d 613 (1997): Since the requested fee by the appellant shows that the jury recommends life without parole arbitrarily and based solely on grace, the instruction was incorrect. The jury cannot recommend mercy without reason. See Morrison v. Country, 500 So.2d 36 (Ala.Cr.App.1985), aff'd, 500 So.2d 57 (Ala.1986), cert. The jury has no unlimited opportunity to recommend a sentence of life without parole unless after weighing the aggravating and mitigating circumstances it finds that life without parole is justified. Williams v. Williams v. Williams v. Williams v. Williams v. Williams v Country, 601 So.2d 1062, 1081 (Ala.Cr.App.1991). In Alabama, the jury must take into account all the aggravating circumstances and attenuating circumstances at all, including all the uninfinite mitigating circumstances introduced by the appellant, which are relevant. The significance of the circumstances is a matter for the jury, and the record indicates that the jury was duly instructed how to weigh the circumstances. The jury was also ordered to assess the aggravating circumstances and attenuating circumstances before assessing whether the penalty was appropriate. Trial was in accordance with Alabama law. In this case, the chain of court instructions on mitigating circumstances stated, in part: Now, the attenuating circumstance should not be included in the list that I have read to you in order to examine it for you. In addition to the mitigating circumstances laid down above, mitigating circumstances include any aspect of the defendant's life, nature or record, as well as any of the circumstances of the offence offered by the defendant as a basis for a life sentence without parole at the place of death. You must consider all the evidence that is offered in mitigation. The weight you give to a particular attenuating circumstance is a matter of your moral and judgment. (R. 107-08.) The jury's instructions on mitigating circumstances were accurate and in accordance with Alabama law. See Stallworth.E. Blackmon claims that the circuit court has conceded, not to instruct the jury before each time it separates, that the juror should not discuss the case with each other. In particular, she claims that the circuit court failed to comply with Rule 19.3, Ala.R.Crim.P.Rule 19.3 (b), Ala.R.Crim.P., states: (b) Admonitions to Jurors. In all cases, the court informs the jury that they are not:(1) to discuss with each other any subject matter relating to the case until the case has been submitted for discussion; (2) Talk to anyone else on any subject related to the trial until they are released as jurors in the case; (3) knowingly expose yourself to external comments or news accounts about legal proceedings until they are executed as jurors in the case; or(4) To form or express its opinion on the case until it has been submitted for discussion. If a jury is allowed to separate, they may also nod to not see where the offence may have been committed. In this case, the circuit court did not give detailed instructions each time the jury separated; however, it provided detailed instructions before the trial and at various intervals during the proceedings. Before the trial, the circuit court gave the following instruction: I told you earlier, of course, that I'm not going to sequester this jury. You will be allowed to go to your respective home. The only stipulation there is, of course, you can't discuss this thing in the evening with your spouses. And of course you can't review any news coverage, watch, read, listen to any media coverage on this matter. And although there has not yet been an address or place where these events probably happened, there will be soon. And, I'm instructed that you can't go with there and perform any independent examination of the scene. Because the law says it would be wrong for you to do that. keep this in mind when we deepened for lunch and as we deepened in the evenings that you will not be able to go there. You have heard me say again, and you will do it again; do not speak to each other in this case and do not let anyone discuss it with you. In fact, if someone tries to discuss this with you, you immediately pay my attention. (R. 548) At various other times of recording, the circuit court gave a similar instruction. As we kept Smith v. State, 795 So.2d 788, 805 (Ala.Crim.App.2000): The lawsuit did not provide similar detailed instructions at each break in the trial. To require the court to do so would be unduly burdensome, disruptive and contrary to the clear wording of Rule 19.3(d). Indeed, Rule 19.3(d) does not require that hearings give admonitions at each court break. Indeed, Article 19(3)(d) does not state that those instructions must be given more than once in court proceedings. The record clearly shows that the jury was aware of their duties and responsibilities. Rule 19.3(d) was not breached. X.Blackmon claims that the chain made a mistake in making ex parte communication with one of the national expert witnesses. There was no objection to this alleged ex parte notification; therefore, we were limited to whether there was a simple error. See Rule 45A, Ala.R.App.P.We cannot agree with Blackmon's interpretation of what happened. The recording shows that the hearing, which discussed several proposals, occurred as follows: (Then all parties called and took the recess. After completing that recess, all parties returned to the courtroom and heard the following proceedings to-wit:)Court: For the recording, from the presence of the jury. Gentlemen, we have just reviewed some documents from the Department of Forensic Sciences on audit materials, accreditation materials. I talked to forensic Scien [tist] -her name is? [Prosecutor]: Phyllis Rollan. Court of Justice: Mr Rollan. She stated that she would do everything in her power to stand up with the appropriate features to get certain documents here. We have dealt with this situation and hopefully we will have that here in the morning at 8:30. What else is there? (R. 702) Clearly, the circuit court did not ex parte communication with Rollan. It appears that the court contacted this witness at the request of Blackmon and the state. In this case, there was no ex parte communications. The record does not support this statement. XI.Blackmon next claims that the state has not disclosed exculpative evidence in violation of Brady v. Maryland, 373 USA 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In particular, Blackmon claims that the State has not found evidence relating to Dr Alfredo's Qualifications. It briefly argues: The State initially stated that, as far as his release or retirement failed, and then stated that it had in possession of pension documents that had not been disclosed to the defence. (Blackmon Short, p. 95) The following questions took place: Court: Are there any pending proposals that we have not yet dealt with? No, sir. We are just waiting for the information that the Court is directing about Dr. Parade. But except that there is noone. [Prosecutor]: As far as his release or retirement, there is no. True: I'm sorry? [Prosecutor]: There is no such information. If [the defense attorney] would like to speak with Dr. Downs, he can confirm that himself. [Defense counsel]: If Dr. Downs says so, there is no documentation. [Prosecutor]: Unless you want retirement documents. He retired. True: Let me turn to a couple of issues through housekeeping. (R. 817. The State did not pass any exculpterative information, but made the pension documents available for defence. We didn't find any Brady misconduct. XII. Blackmon claims that the district court has made the alleged inability to charge the jury for the lesser-included criminal negligence murder. The record shows that Blackmon did not claim a sworn charge for a criminally negligent murder. Therefore, we apply a simple error review standard. See Rule 45A, Ala.R.App.P.Here, the circuit court gave the jury instructions on the less included offense of murder. We have stated that the Defendant has the right to an indictment for a less in-inclusion offence if there is a valid theory from evidence that could support this position. Ex parte Oliver, 518 So.2d 705, 706 (Ala.1987). Alabama Code 13A-2-2 of 1975. Thus, the instruction of a criminally negligent murder is given correctly only if the substantiated evidence shows that the appellant did not know that he had a significant and unjustifiable risk of death to another party. Wiggins v. Wiggins v. 491 So.2d 1046 (Ala.Cr.App.1986). Oddo v. Oddo v. Country, 675 So.2d 58, 61-62 (Ala.Crim.App.1995). Evidence showed that Blackmon beat a two-year-old child to death with a pool cue and then stomped on to her chest. There was absolutely no evidence to suggest that Blackmon did not perceive a significant and unreasonable risk that the outcome would occur or that circumstances existed. There was no rational basis for giving instructions on criminally negligent homicide. The County Court did not err in sending a jury Offense. Mr BLACKmon claims that the circuit court conceded that he accepted evidence of previous mitreat. Specifically, she claims it was a mistake to acknowledge evidence of the old injury the victim had suffered. There was no objection to evidence of a near relationship; so we limited itself to whether there is a simple error. See Rule 45A, Ala.R.App.P.Several doctors testified about the extent of the victim's injuries. Describing the injuries, doctors referenced new and old injuries to clarify those injuries that had occurred when the victim was beaten to death. Blackmon claims that references to old injuries meant that Blackmon had physically abused the victim before the beating that caused her death. In this case, evidence showed that the victim had been removed from his natural mother's home and placed under Blackmon's custody about nine months before she was killed. The state has never attributed the old injuries to Blackmon. In fact, after the defense had completed your case, the following happened: [prosecutor]: This is one of the things you said approach. I hope that in order to call a rebuttal witness, Ms. Reagan, in the period he founded with the DHR staff, my offer would be Ms. Reagan saw Ms. Blackmon striking her child during Dominiqua's time as soon as She was about eight months younger, while putting her very close to the time frame he founded with DHR, where she was transitioning her and screaming at her as she tried to get up the stairs. Lower steps, these were the steps a small child would not have been able to get up. She screamed at him and said she didn't get up the stairs fast enough. Court of Justice: [Defense counsel]. Yes, sir. First, I think [the prosecutor] said that he would offer this testimony when there is evidence from us that Ms. Blackmon never switched to Dominiqua. Which at this time is contrary to your glory. In Ms. Blackmon's statement, she admitted to being switched to Dominiqua. This is proof here. So, we feel first, according to the Court's ruling on the [Rule] 404B [, Ala.R.Evid.,] question, we believe that this is a false testimony and an incorrect rebuttal. Court of Justice: What does it disprove? [Prosecutor]: It refutes the testimony of Ms. Daniels and more recently Ms. Whatley. Everything was calm and nice, and there was no problem whatsoever. If you will also find this property in a month's time, this property is also a 10-minute walk from the child. Court of Justice: Well, the Court considers that this would not be correct to be rebuttable. This is the nature of previous bad actions. (R. 991-92. The record shows that there is no evidence to suggest that Blackmon caused any of the victim's oldest injuries. Do not Jury. Finally, the only evidence adopted before the bad act which the State attempted to present was declared inadmissible by the district court. In this case, we did not find any error.4 XIV. Blackmon claims that the circuit court erred in not penally condemning the rest of the doubt instruction. He claims that the United States Supreme Court recently granted certiorari in a case relating to the question of whether the defendant is entitled to the remaining indication of doubt at the capital court's penalty stage. He argues that we should stay in this case until the Supreme Court resolves this issue. However, the case referred to by Blackmon has now been released by the Supreme Court of the United States of America. See Oregon v. Guzek, 546 USA 517, 126 S.Ct. 1226, 163 L.Ed.2d 1112 (2006). In Oregon v. In Oregon v. Guzek, the Supreme Court considered the validity of the Oregon Supreme Court's decision, which held that the United States Constitution provides for the right to introduce alibi evidence at the penalty stage of the capital court. Reversing the lower court's decision, the U.S. Supreme Court declared: [S]ubsequent to Green [v. Georgia, 442 U.S. 95 (1979)], this court ruled Franklin v. Lynaugh, 487 164, 108 S.Ct. Lynaugh, 487 US. 164, 108 S.Ct. 2320, 101 L.Ed.2d 155 (1988) (pluralism opinion), and in this case, contrary to the understanding of the Oregon Supreme Court, it is clear that those previous cases have not interpreted the Eighth Amendment as giving the defendant the right to provide evidence designed to dispel doubts as to his conviction. Franklin pluralism said it was quite questionable that such a right exists. Id., 173, n. 6, 108 S.Ct. 2320. And two other members of the Court of Auditors added that your cases do not support such a right to a re-examination by the sentencing authority, which raises doubts as to guilt. Id., 187, 108 S.Ct. 2320 (O'Connor, J., with the consent of the judgment). See also Penry v. Lynaugh, Lynaugh, 492 U.S. 302, 320, 109 S.Ct. 2934, 106 L.Ed.256 (1989) (describing Franklin as a case where the majority agreed that the remaining doubts about Franklin's guilt were not constitutionally mandated to omit the mitigating factor (brackets)). Franklin did not prevent the eighth amendment from giving capital defendants such rights because pluralism believed that the sentencing scheme in question was constitutional, even if such a right existed. 487 USA, 174, 108 S.Ct. 2320. But the Court's statements on this issue clearly indicate that the Oregon Supreme Court erred in interpreting Green as providing the capital defendant with the constitutional right to introduce residual doubt evidence of conviction. In this case, we are once again faced with a situation where we do not have to resolve whether such rights exist, because even if they do, they could not be extended to ensure the defendant has the right to introduce such evidence. See, for example, the Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 461-462, 65 S.Ct. 1384, 89 L.Ed. 1725 (1945). The Eighth Amendment insists on credibility, stating that death is an appropriate penalty in a particular case. ' Penry, supra, 328, 109 S.Ct. 2934 (quoting Woodson v. North Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (multi-star opinion)). The Eighth Amendment also insists that the sentencing jury may consider and implement the impact on mitigating evidence of the defendant's nature or the circumstances of the recording or offence. Penry, supra, at 327-328, 109 S.Ct. 2934. However, the Eighth Amendment does not give the State the power to impose reasonable limits on the evidence that the defendant can submit and to control the manner in which it is presented. Rather, states are free to structure and remunerated the evidence of influence in an effort to achieve a more rational and fairer administration of the death penalty. Boyde v. California, 494 U.S. 370, 377, 110 S.Ct. 1190, 108 L.Ed.2d 316 (1990) (quoting Franklin, supra, at 181, 108 S.Ct 2320 (plural viewpoint)); see, for example, Johnson v. Texas, 509 USA 350, 362, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993); California v. Brown, 479 US 538, 543, 107 S.Ct.

837, 93 L.Ed.2d 934 (1987). 546 U.S. at 525-26, 126 S.Ct. at 1231-32.Alabama has consistently believed that the capital defendant is not entitled to jury instructions for remaining doubts in the penalty phase. Benjamin v. Country, 940 So.2d 371, 382-83 (Ala.Crim.App.2005), Myers v. Country, 699 So.2d 1281, 1283-84 (Ala.Crim.App.1996); Harris v. Harris v. Country, 632 So.2d 503, 535 (Ala.Crim.App.1992). The decision of the Supreme Court of the United States of America in Oregon against Guzek is in line with our previous decisions. The Circuit Court made no mistake in denying Blackmon's request for the remaining doubt instruction at the penalty stage. Mr Blackmon claims that the court of the scheme erroneously allowed the introduction of DNA evidence if there was no evidence that it was credible. In particular, she claims that the State failed to comply with Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) and Turner v. The state, 746 So.2d 355 (Ala.1998), because the state is not proving the reliability of testing and population frequency statistics. The Alabama Supreme Court in Turner sets out guidelines for the taking of DNA evidence. The court stated: [I]f the admissibility of DNA evidence is challenged during the hearing outside the jury's presence and in accordance with § 36-18-30[, Ala.Code 1975], determine whether the evidence supporter sufficiently determines whether the evidence supporter sufficiently determines whether the evidence supporter sufficiently determines whether the evidence is sufficient to support the evidence sufficiently answers to these two questions: I. Is the theory and technique (i.e. principle and methodology) on which the proffered DNA forensic evidence is based, based on plausible? II. Is the theory and technique (i.e. principle and methodology) on which the DNA evidence submitted is based relevant to understanding the evidence or determining the relevant fact? The court should use flexible analysis of Daubert [v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)] for the assessment of reliability (scientific validity). In carrying out this assessment, the courts should use the following factors: (1) the examination; (2) peer reviews; (3) error rate; and (4) general acceptance. The courts should carry out a conformity assessment, focusing on the suitability between what scientific theory and technique should demonstrate and what must be demonstrated to resolve the actual dispute before the court. Whether otherwise reliable, error-free testing procedures were carried out in the present case, is directed at the importance of the evidence and not on their admissibility. Only if a party disputes the execution of a reliable and essential technique and proves that the performance was so specific and critically incomplete that it would weaken the reliability of the technique will there be evidence that would otherwise be credible and essential will be considered unacceptable. Of course, when a given theory or technique is satisfied § 36-18-30, the court may accept a court statement on this theory or technical reliability. (Ex parte) Perry, 586 So.2d [242] at 10:00 p.m. [United States v.] Beasley, 102 F.3d [1440] at 1448 [(8th Cir.1996)] (admitting that the reliability of the polymerase chain reaction (PSR) DNA writing method would in future be subject to a court statement); [United States v.] Martinez, 3 F.3d [1191] 1197 [(8th Cir.1993)] (on the basis of the reliability of the limitation fragment length polymorphism (RFLP) procedure in a court statement). We are aware that the state of scientific theory and methods of obtaining DNA evidence are not static and that the scientific community will undoubtedly create new theories and techniques regarding DNA. Each new theory and technique will be subject to the above test until its credibility is justified by the court statement. 746 So.2d at 361-62 (footnotes omitted). In this case, the district court held a hearing outside the jury for the taking of DNA evidence. Phyllis T. Rollan, a forensic biologist at the Alabama Department of Forensic Science, testified about the DNA tests carried out in this case. Rollan showed that the laboratory uses the DNA test method for the polymerase chain reaction (PCR) method. She testified that the procedure was generally accepted or a resusable, that it is reliable and that quality checks have been introduced to ensure the accuracy of the test. She testified that Alabama had set up a database for population frequency statistics and was in line with other databases created throughout the county. Calculations are made using a computer, and then two scientists review the DNA profile. Rollan also pointed out that statistical information is generally accepted in the scientific community. Rollan last testified that she followed all the procedures that are generally accepted in the scientific community in this case and that the controls do not indicate that an error has occurred. It is clear here that the state has fulfilled Daubert's demands. The circuit court did not make a mistake in acknowledging the DNA evidence. Mr Blackmon claims that national experts were wrongly allowed to testify on the basis of evidence that was not put before the court. Specifically, she claims that Dr. James Downs was allowed to give his expert opinion on the victim's injuries and her death, but he never looked at the victim's body; moreover, he relied solely on the photographs, diagrams and observations of Dr. Alfredo Parede. The advisory committee's comments also state: This includes data provided to the expert by means other than personal perception, such as opinions, registers or reports of others. As the Alabama Supreme Court has pointed out: It is well resolved that any challenge to the facts on which the expert bases his opinion is of the importance of the evidence, not the admissibility. Dyer v. Dyer v. Traeger, 357 So.2d 328, 330 (Ala.1978). Baker v. Edgar, 472 So.2d 968, 970 (Ala.1985). The circuit court has not made a mistake in allowing experts to testify. Mr Xvii. Blackmon claims that the district court has made an allegation by acknowledging cumulative evidence of the victim's injuries. We initially note that there were no objections to this testimony; so we are reviewing the issue of a simple error. See Rule 45A, Ala.R.App.P.Even if we conclude that the circuit court has made it, we will find a reason to change this case. We have often stated that: The erroneous acceptance of evidence, which is only cumulative, is a harmless mistake. Dawson v. Dawson v. Dawson v. Dawson v. Dawson v. Country, 675 So.2d 897, 900 (Ala.Crim.App.1995). See also Yeomans v. Country, 641 So.2d 1269 (Ala.Crim.App.1993); McFarley v. McFarley v. McFarley v. McFarley v. McFarley v. McFarley v. McFar Country, 608 So.2d 430 (Ala.Crim.App.1992). In addition, it was Blackmon's claim that the injuries were caused by improper attempts to revive the victim. Thus, to what extent and the injuries was a highly contested issue. The District Court has not made a mistake in allowing cumulative evidence of the victim's injuries. XVIII. Blackmon claims that the circuit court has attributed the alleged rumor to evidence during Dr. Alfredo Paredes's testimony. Specifically, she claims that the court made a mistake in allowing Dr. Paredes to read from the report he had prepared. Blackmon argues briefly: Since Ms. Blackmon was not able to confront these out-of-court statements offered about their truth, their introduction was very damaging and corrupted justice in the trial. (Blackmon's rehearing short 114 pages) There was no objection to Dr Parades' testimony; so we are reviewing this issue as a simple mistake. See Rule 45A, Ala.R.App.P.The following happened during Dr. Parades testimony: Q [prosecutor]: Your final anatomical diagnosis at the front of the report-[Dr. Paredes]: Uh-huh. (Yes) Q: What I'd like to do is go through this list and explain what each thing means. A: Okay. Q: Start with the capital letter A and tell the ladies and gentlemen what the conclusion was. A: Let me read what I describe as capitalized A. Multiple punctate, which means, for example, accurately, linear, such as a line, a well-healed hypo pigmented, the hypo means less pigmentation than normal, scarring over the face, the anterior part of the neck, upper abdomen, left forearm, dorsum of the right arm, the fat right arm, arm and forearm, the anterior part of the right thigh, the left bottom and the back to the left lower. These were again several scars which I considered to be related to previous injuries. They were several, they were accurate, they were linear. Scarring is not, in my opinion, related to accidental injuries, especially in the back of the leg, in the front part of the neck. (R. 862-63) As we pointed out Williams v. State, 627 So.2d 985, 990 (Ala.Crim.App.1991): Defendant's Sixth Amendment rights to confrontation. restricts the use of prosecution notices of persons who do not testify in court and therefore cannot be subject to cross-examination. Such statements, if offered for the truth, are usually rumors. LaFave, Criminal Proceedings§ 23.3(1984). (Emphasis added to [Williams].) [T]it is an essential component necessary to activate the confrontation clause when it comes to hearing by the person who brings the evidence at the hearing. See LaFave, supra. The confrontation clause was not involved in this case, as Dr Paredes, the author of the report, was in court and was the subject of cross-examination. Blackmon was not denied her right to confront Dr. Paredes.XIX.Blackmon claims that her death sentence is grossly disproportionate to the crime. Specifically, she argues: Nothing about how the victim died, the scene of the crime, or the facts associated with Ms. Blackmon's actions that day show that Ms. Blackmon knowingly killed her child. (Blackmon's rehearing short 116 pages) Blackmon also claims that there are 300 murders each year involving parents who kill their children, and only a small percentage of these parents are sentenced to death. She also argues that the death penalty is disproportionately used against women in cases of domestic violence. In our previous opinion, we found that Blackmon's death sentence was not disproportionate. We have mentioned no reason to review our farm. Ms Blackmon claims that her right to a speedy trial was violated because of a 35-month delay between her arrest and her trial. In this case, Dominiqua was killed on 29 May 1999. Blackmon was arrested on 1 June 1999. Blackmon was charged in August 1999 with capital murder. In June 2000, the state informed the court that it was awaiting the results of an inspection from the Department of Forensic Science and was not prepared to pursue the case. In May 2001, Blackmon moved to a fast-moving court. In August 2001, a circuit court ordered the Department of Forensic Science to complete a blood test and have the results of a January 2002 trial date. On January 2, 2002, Blackmon requested continuity. On 10 January 2002, the case was continued by agreement between the two parties. On 16 January 2002, Blackmon requested further continuity. Blackmon then moved that the case should remain until the U.S. Supreme Court ruling in Ring v. Arizona, 536 USA 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). This proposal was rejected. In February 2002, the scheme's court transferred the date of the court ex mero motu from March 2002 to April 2002. Blackmon's trial began on April 18, 2002.As The Alabama Supreme Court announced Ex parte Walker, 928 So.2d 259, 263 (Ala.2005): The accused's right to a speedy trial is guaranteed by the Sixth Amendment to the U.S. Constitution and Article I, 6, of the Alabama Constitution, 1901. As noted, the argument about the accused's speedy court action requires that we balance the four factors that the United States Supreme Court has ruled on barker [v. Wingo, 407 US 514 (1972)]: [l]ength delay, delay reason, defendant's assertion of [her] rights, and without prejudice to the defendant. 407 US at 92 S.Ct. 2182 (footnote omitted). See also Ex parte Carrell, 565 So.2d [104] 105 [(Ala.1990)]. One factor is not always decisive, as it is a balancing test in which both prosecution and defensive action are weighed. Ex parte Clopton, 656 So.2d [1243] at 1245 [(Ala. 1995)] (quoting Barker, 407 USA at 530, 92 S.Ct. 2182). We test each factor in turn. (Footnotes omitted.) Delay duration. By examining the length of the delay, we apply the law, as persuesm of the Alabama Supreme Court Ex parte Walker: In Doggett v. United States, the U.S. Supreme Court explained that the first factor in the length of the delay-is actually a double investigation. 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). The first investigation under this factor is whether the duration of the delay is supposedly damaging. ' 505 US at 652, 112 S.Ct. 2686 (quoting Barker, 407 USA at 530-31, 92 S.Ct. 2182). The finding that the duration of the delay is likely to be detrimental to the examination of the other three factors of Barker. 505 In the USA, at 652 n. 1, 112 S.Ct. 2686 ([A] the term is used in this threshold context, the presumptive bias does not necessarily indicate the statistical probability of injury; it simply marks the point at which the courts believe that the delay is sufficiently unreasonable to initiate the Barker investigation.). See also Roberson v. Country, 864 So.2d 379, 394 (Ala.Crim.App.2002). Alabama's length of delay is measured from the date of the indictment or from the date of the arrest warrant's release, whichever is the earlier before the end of the trial. Roberson, 864 So.2d at 394. See § 15-3-7, Ala.Code 1975 (Prosecution may be initiated within the meaning of this chapter, finding an indictment, issuing a warrant or binding against the offender.); Article 2.1, Ala. R.Crim. The length of delay in this case was about 50 months: Walker was indicted on January 14, 2000, and she pleaded guilty on March 25, 2004. See Carrell, 565 So.2d at 107 (calculating the duration of the delay from the defendant's indictment until his plea of guilty). The state acknowledged (and both the court and the Court of Criminal Appeal ruled) that the 50-month delay in Walker's case was prede facto. 928 So.2d at 263-64 (footnotes omitted). Here there is no doubt that the delay was presusedditively damaging. Thus, we need to examine the remaining factors discussed in Barker v. Wingo. Reasons for delays. It seems that much of the delays were based on the proposals tabled by Blackmon. The delays related to the state were delays in the first undustics Justified delays involving cases such as missing witnesses or delays for which the defendant is primarily responsible are not assessed against the State. Barker, 407 USA at 531, 92 S.Ct. 2182. Walker, 928 So.2d at 265. The claim of the right to a speedy trial. Blackmon did not prosecute for a speedy trial until May 2001-2011 before she was tried. The accused does not renouncing the right to a speedy trial without simply inviting him. Barker, 407 USA at 528, 92 S.Ct. 2182. Even so, courts applying Barker factors must consider weighing the process, whether and when the accused claims the right to a speedy trial, 407 in the U.S. at 528-29, 92 S.Ct. 2182, and not every claim of the right to a speedy trial is judged equally. Compare Kelley v. State, 568 So.2d 405, 410 (Ala.Crim.App.1990) (Repeated requests for a speedy trial weigh heavily in favor of the accused.), with Clancy v. State, 886 So.2d 166, 172 (Ala.Crim.App.2003) (weighting the third factor against the accused, who claimed his right to a quick trial two weeks before the trial, and stating: The fact that the appellant has not claimed his right to a speedy trial is quicker to believe that he either beaten the delay or before that suffered minimal damage. (quoting Benefield against The State, 726 So.2d 286, 291 (Ala.Crim.App.1997), additional quotes released) and Brown v. State, 392 So.2d 1248, 1254 (Ala.Crim.App.1980) (no quick trial violation if the defendant claimed his right to a speedy trial three days before the trial). Ex parte Walker, 928 So.2d at 265-66.Prejudice defendant. Blackmon did not defend briefly, nor did she argued in court how she was particularly biased by the delay in her trial. Walker. neither claimed nor demonstrated how the delay actually worsened her defense, and both the court and the Criminal Court of Appeal dismissed Walker's prompt court action because of her failure to determine the actual bias. Ex parte Walker, 928 So.2d at 259.After reviewing Barker v. Wingo factors, we found no evidence that Blackmon was denied her constitutional right to a speedy trial. XXI.Blackmon claims that the circuit court has been attributed to denying her proposal to change seats. This issue was addressed extensively in our initial opinion, and we found that the circuit court made no mistake in denying Blackmon's proposal to change seats. We see no reason to revisit this issue of re-institutional attempts. XXII.Blackmon claims that the district court has made it possible to attribute its motion for an acquittal. We addressed this issue in our initial opinion and found that the evidence was more than sufficient to give the jury its determination. There is no reason to change this participation in the staging. XXIII.Blackmon claims that the circuit court made a mistake in denying proposal for a new judicial process. This issue was carefully addressed in our initial opinion. We believed that the circuit court was not held accountable. We have mentioned nothing that would give us reason to review this farm for re-judging. XXIV.Blackmon claims that the circuit court has made the attributive admitted photos of the victim's body and her injuries because they were inflammatory, repetitive, and damaging. There were no objections at the hearing; so we are reviewing this issue as a simple mistake. See Rule 45A of the Rules of Procedure, Ala.R.App.P. Alabama courts have held in many cases that photographs of crime scenes and victims are acceptable, even if they could be horrific and cumulative if they vanished on the issue of being tried. For example, Baird v. State, 849 So.2d 223, 246 (Ala.Crim.App.2002). McGahee v. McGahee v. McGahee v. McGahee v. McGahee v. McGahee v. McGa Country, 885 So.2d 191, 214 (Ala.Crim.App.2003). The photos were correctly received on the evidence. Ms Blackmon claims that her allegations were coercive and should not have been accepted in the evidence. This action was not brought before a circuit court; so we are reviewing this issue as a simple mistake. See Rule 45A, Ala.R.App.P.When reviewing the voluntary confessions we apply the standard formulated by the Alabama Supreme Court mcleod v. State, 718 So.2d 727 (Ala.1998): In order for a confession or incultation notice to be admissible, the State must prove, in advance the evidence, that it is voluntary. Ex parte Singleton, 465 So.2d 443, 445 (Ala.1985). The original decision is made by the court hearing the case. Singleton, 465 So.2d at 445. The decision of the hearing will not be disturbed unless it conflicts with the importance of the evidence or is manifestly incorrect. Marschke v. Marschke v. Country, 450 So.2d 177 (Ala.Crim.App.1984). The Fifth Amendment to the United States Constitution gives the appropriate part: No person is forced to be a witness against himself in any criminal case. Similarly, Article 6 of the Alabama Constitution of 1901 provides that the accused is not compelled to give evidence against himself in all prosecutions. These constitutional guarantees ensure that no coercive confessions or other incriminating statements are acceptable to convict the accused of a criminal offence. Culombe v. Connecticut, 367 USA 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961); Hubbard v. 283 Ala. 183, 215 So.2d 261 (1968). It has long been held that confessions or any inculpatory statement are coercive if it is either coerced by force or induced by a direct or indirect promise of leniency. Bram v. United States, 168 USA 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897). In Culombe, 367 IN THE U.S. at 602, 81 S.Ct 1879, the Supreme Court of the U.S. explained that confessions are voluntary, the defendant must have use your free will by choosing to confess. If his abilities have diminished, that is, if his will is exaggerated by coerciveness or encouragement, then confessions are coercive and cannot be accepted in evidence. Id. (emphasis added). The Supreme Court has stated that when the court determines whether a confession is given voluntarily, it must take into account the circumstances as a whole. Boulden v. Boulden v. Holman, 394 U.S. 478, 480, 89 S.Ct. 1138, 1139-40, 22 L.Ed.2d 433 (1969); Greenwald v. Greenwald v. Greenwald v. Greenwald v. Greenwald v. Greenwald v. Greenwald Wisconsin, 390 USA 519, 521, 88 S.Ct. 1152, 1154, 20 L.Ed.2d 77 (1968); see Beecher v. Alabama, 389 USA 35, 38, 88 S.Ct. 189, 191, 19 L.Ed.2d 35 (1967). The Alabama courts have also ruled that the court must take into account a set of circumstances to determine whether the defendant's will is a repressive or inducement. See Ex parte Matthews, 601 So.2d 52, 54 (Ala.) (pointing out that the court must analyse the confessions by looking at the set of circumstances), cert. Jackson v. State, 562 So.2d 1373, 1380 (Ala.Crim.App.1990) (stating that, in acknowledging the confession, the court must determine that the defendant's will was not overborne by the pressure and circumstances that swirled around him); Eakes v. Eakes v. State, 387 So.2d 855, 859 (Ala.Crim.App.1978) (stating that the true test employed is whether the defendant's will was overborne at the time he confessed) (emphasis added). 718 So.2d at 729 (footnote omitted). Uncontested evidence showed that Sgt . She also pointed to a form that she was not forced or promised anything to secure her statements. There was absolutely no evidence to suggest that Blackmon's statements were not made voluntarily. The Circuit Court did not make a mistake in acknowledging her statements as evidence. XXVI.Blackmon claims that the circuit court incorrectly denied its motion limine to prevent the state impeaching a protective witness with an indicable charge of child neglect. When that question was raised before the defense case-in-chief circuit court announced the following: The State is instructed not to enter that until it approaches the Court of Justice from the presence of the jury and bring it up at that time. I tend to agree with [the defense attorney] that this is usually not acceptable. However, I could foresee situations where this would lead to such a level of acceptability if you had to open the door to it somehow. So, you know, I don't want to close down opportunities where this might be acceptable and just give an ironclad ruling at present. But again, the country is instructed not to enter it unless and until it becomes an issue. Until such because it could possibly be acceptable, and then the state would have to go to the bench from the presence of the jury and grow up at that time. (R. 963) It is clear that there was no adverse decision. The Circuit Court agreed with the defense, and the matter was not brought up again during that witness's testimony. Blackmon's statement is not supported by the record. XXVII. She claims that part of the opening, bench conference, witness testimony, and jury questionnaires were omitted from the register. This claim is being raised for the first time on appeal and will be reviewed so that a simple error occurred. See Rule 45A, Ala.R.App.P.Initially, we note that the jury questionnaires have been omitted from the record unless we specifically send them to this Court. See Rule 10(a)(6), Ala.R.App.P. That court requested a chain employee to send those questionnaires to that court. State, 804 So.2d 1122, 1143-44 (Ala.Crim.App.2000): [I]t should have been clear to the defense during the trial that the court reporter had no record of some sidebars. That error was therefore called up by the appellant. In addition, one of Blackmon's appellate attorneys was also one of Blackmon's trial attorneys. If the appellant has the same lawyer in appeal proceedings and before a court, the appellant must prove that he has been harassed by the complete non-rewriting of the record, unless he has in his own right. See Ingram v. State, 779 So.2d 1225 (Ala.Crim.App.1999). Blackmon has no argument about how she was prejudiced by omission, which seems to be a small part of the record. After reviewing the pages quoted by Blackmon, it is clear that the omissions related to the scheduling problems. There is no reversible error here. XXVIII.Blackmon claims that the death of the qualifying jury gave a conviction to the probable jury and, she claims, denied her right to an impartial jury. This claim was not raised in the proceedings; therefore, we are only reviewing this issue as a simple mistake. See Rule 45A of the Rules of Procedure, Ala.R.App.P. United States Supreme Court Lockhart v. McCree, 476 U.S. 162, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986), believed that the U.S. Constitution does not prohibit the capital of the defendant's alleged jury from being death-qualified, and that doing so did not deprive the defendant of his constitutional right to a jury unbiased. 476 U.S. at 173, 106 S.Ct. 1758. Alabama has followed the holding in Lockhart v. McCree. See Johnson Country, 823 So.2d 1 (Ala.Crim.App.2001); Clemons v. Clemons v. State, 720 So.2d 961 (Ala.Crim.App.1996). XXIX.Blackmon last claims that the circuit court made a mistake in not allowing the disclosure of grand-jury material. We addressed this issue in our initial opinion and felt that there were no errors. We have mentioned there is no reason to re-enter our farm for re-entry. In our initial opinion we reviewed the courtesy of Blackmon's death sentence and found no violation of § 13A-5-53, Ala.Code 1975; nor do we find any simple errors. See Rule 45A, Ala.R.App.P.For the above reasons, Blackmon's re-seated application is and is therefore rejected. THE APPLICATION HAS BEEN REJECTED. I agree with the majority's decision to reject Blackmon's application for a re-election. I am particularly writing concerning the Court's decision to allow Blackmon to raise new questions in its re-invoeration application. As a general rule, neither the court nor any other Alabama court of appeal asks the party to raise new questions in its application for re-sorting. See, for example, Finley v. Patterson, 705 So.2d 834, 836 (Ala.1997) (See, J., agreeing specifically and pointing out that the Alabama Supreme Court will not normally address issues that have been raised for the first time on the sorting); Ex parte Jordan, 486 So.2d 485, 488 (Ala.1986) (pointing out that the Alabama Supreme Court usually hears issues that are first raised about re-sorting, but make an exception because the new argument was an extension of the argument that was raised and addressed to the original submission). See also Ex parte Hulsey, 536 So.2d 75, 78 (Ala.Civ.App.1988) (stating that [w], the court of appeal has delivered an opinion and an application for a reinvestigation has been made, new questions that were not raised after the initial appeal will not normally be dealt with. Stover v Alabama Farm Bureau Insurance Co., 467 So.2d 251 (Ala.1985). Holsonback v. Holsonback v. Holsonback, 518 So.2d 146, 148 (Ala.Civ.App.1987).) But see Williams v. State, 627 So.2d 994, 995 (Ala.Crim.App.1992) (opinion on the application for re-examination), aff'd, 627 So.2d 999 (Ala.1993) (stating that the court did not find a plain error about the original review, but still addressing the issues that were raised with new advice on repetition, because we understand that other appeals will review this death penalty case). Even if this case involves the final sentence, the death penalty, just as it was in Williams v. In the state's case, I doubt whether it was necessary to allow Blackmon's lawyer to submit new questions for a re-hearing, given that this Court sought a record of a simple error in our initial review of Blackmon's appeal. See Rule 45A of the Rules of Procedure, Ala.R.App.P. Thus, if it had been worthy of one of those questions, the Court would have been obliged, in accordance with Ala.R.App.P., have noticed errors. But our previous farm Williams v. The state—along with the very unusual facts of this case, namely the fact that Blackmon's original appellate lawyer was suspended from the practice law at the time our decision was released, leaving Blackmon without any legal representation—I would be dissented from the majority decision to review the merits of the new matter raised by Blackmon for a reinvestigation. Therefore, my vote in the present case should not be accepted as an indication that, in normal circumstances, I would allow the appellant to raise new questions when applying for reording. Indeed, if the Court were to allow the parties to continue to raise entirely new questions of reor april and then to deal with those new issues, the parties could possibly submit a second and successive order raising new questions and the judgments of the Court of Justice would not be final. However, in view of the unique facts of this case, I consider that the suspension of Blackmon's newly appointed appeal counsel from raising new questions for her re-opening application would not serve as a delay in the final solution to the case. I therefore agree with the majority's decision to make an exception to our general rule, which prohibits the appellant from raised new questions about sorting. FOOTNOTES1. The look up to the victim's chest was so different that a photograph of the victim's chest introduced evidence clearly showed tread soles shoe.2. Figures alone are not sufficient to determine the prima facie case of discrimination. The Circuit Court could have properly denied Blackmon's Batson motion without hearing the state's reasons for removing black potential jurors. Sharrief v. Gerlach, 798 So.2d 646 (Ala.2001).3. The state was ingested by the six prospective reasons for the removal of the black jurors. Apparently, the country's last strike, the substitute, was also a black individual. As defined in Rule 18.4(g)(3), [Ala.] R.Crim.P., The last person or persons affected are substitutes or substitutes. The court must therefore take the view that the alternate jurors are mourned for Batson and that court must assess the State's explanation of the conspicuous substitute. Ex parte Bankhead, 625 So.2d 1146, 1147 (Ala.1993). Ashley v. Country, 651 So.2d 1096, 1099 (Ala.Crim.App.1994).4. Participation in the Ring case is relevant to the present case, since the case was dealt with on a direct appeal when that decision was taken. See Griffith v. Kentucky, 479 USA 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987).5. Blackmon was tried before the Alabama Supreme Court released his decision to McGriff.FOOTNOTE. Note from reporter's decision: Slip opinion, issued by the Criminal Appeals Court on August 5, 2005, was 41 pages.1. Alabama Higher has long stated that new questions cannot be raised for the first time in a re-conscription: We cannot penalise the practice of submitting new questions for the first time by submitting an application for reording. Robinson v. Allison, 97 Ala. 596, 604, 12 So. 382, 604 [(1893)]. An application for re-contrition to the ground, which has not been claimed or recommended until our judgment has been passed, cannot now be considered. Kirkland v. Kirkland, 281 Ala. 42, 49, 198 So.2d 771, 777 (1967).2. In the original brief, Blackmon argued only that the reasons associated with striking six black potential jurors were not race neutral. We found that all the reasons were race neutral and did not contradict Batson. Blackmon creates a new argument for re-sitting.3. The judge of the court is obliged to be diligent, polite, patient, punctual, fair, fair and impartial. However, he doesn't have to have a Great Stone Face that doesn't show a reaction to anything that happens in his courtroom. Allen v. Allen v. 290 Ala. 339, 276 So.2d 583 (1973). Gwin v. Gwin v. Country, 425 So.2d 500, 506-07 (Ala.Crim.App.1982).4. Blackmon specifically cites the national exhibit's 40-confidential report from the DHR. However, this exhibit was not considered as evidence. McMillan, presiding judge. COBB, BASCHAB, SHAW, and WISE, JJ., agree. in the right.