

# Trial by an Impartial Jury—*State v. Miller*: Tennessee’s Credulous Approach to Reviewing Death-Qualification Judgments in Capital Cases

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## I. INTRODUCTION

The law surrounding jury selection in capital cases carries great weight. Because the life of a defendant is potentially at stake, courts must go to great lengths to ensure the impartiality of the jury that is ultimately seated. One particularly challenging task for courts in states, such as Tennessee, that still issue the death penalty is determining the extent that prospective jurors’ personal views on the death penalty affect their ability to impartially issue a lawful punishment. Trial courts assess prospective jurors’ personal views on the death penalty through questioning in the voir dire process and must dismiss jurors who are not “death qualified,” meaning their personal views about the death

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penalty would prevent them from considering all available forms of punishment, including capital punishment. Reviewing courts are limited in their ability to overturn trial court death-qualification rulings on appeal because the trial court decision must be granted at least a presumption of correctness. A recent decision by the Tennessee Supreme Court, which imposed an even higher standard of review for death qualification, makes it even more difficult for capital defendants in Tennessee to show they were subjected to a trial without an impartial jury.

The Tennessee Supreme Court (“Supreme Court”) in *State v. Miller* sought to clarify a confusing area of Tennessee law by adopting abuse of discretion as the appropriate standard of review concerning for cause challenges of prospective jurors in capital cases.<sup>1</sup> The defendant, Urshawn Eric Miller, was convicted by a jury for first-degree premeditated murder and first-degree felony murder for the fatal shooting of a convenience store clerk during an attempted robbery.<sup>2</sup> The jury imposed the death penalty for the first-degree murder convictions.<sup>3</sup> On appeal to the Supreme Court, the defendant claimed the trial court erred in its rulings on for-cause challenges for certain jurors during the individual voir dire process, denying his constitutional right to an impartial jury.<sup>4</sup> Applying the abuse of discretion standard of review, the Court *held* that the trial court’s rulings on whether prospective jurors were excusable for cause did not constitute reversible error nor deprive the defendant of a trial by an impartial jury. *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021).

Although reviewing under a different standard would likely not have reversed the defendant’s death sentence, the Supreme Court’s decision in *Miller* to adopt an abuse of discretion standard of review was partly based on a misinterpretation of case law, resulting in a standard of review that unnecessarily limits reviewing courts’ ability to ensure death sentences are imposed only by impartial juries. Part II of this comment reviews the statutory and case law history of courts’ efforts to protect capital defendants’ right to an impartial jury through the voir

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1. *State v. Miller*, 638 S.W.3d 136, 151 (Tenn. 2021).

2. *Id.* at 143.

3. *Id.* The Tennessee Court of Criminal Appeals affirmed the trial court’s judgments concerning both the defendant’s guilt and the death penalty. *State v. Miller*, No. W2019-00197-CCA-R3-DD, 2020 WL 5626227, at \*24 (Tenn. Crim. App. Sept. 18, 2020), *aff’d in part, rev’d in part*, 638 S.W.3d 136 (Tenn. 2021).

4. *Miller*, 638 S.W.3d. at 148–49.

dire process. Part III closely examines the facts and procedure of *Miller*. Part IV analyzes the Court's decision in *Miller* to adopt the abuse of discretion standard, including how it will affect the legal landscape going forward and whether alternative standards of review could have been adopted. Part V argues the Court in *Miller* should have retained a clear and convincing error standard of review to better ensure capital defendants are tried by an impartial jury.

## II. HISTORY OF RELEVANT CASE LAW

The Constitution of the United States guarantees criminal defendants the right to a trial by an impartial jury.<sup>5</sup> The United States Supreme Court historically has sought to uphold this right by protecting capital defendants from juries unfairly organized to impose a death sentence.<sup>6</sup> For example, in *Witherspoon v. Illinois*, where forty-seven prospective jurors were excused for expressing opposition to the death penalty, the Court held that the death sentence cannot be imposed by a jury where every prospective juror that expressed a general objection to the death penalty was excused for cause.<sup>7</sup> Although the *Witherspoon* decision prevented courts from dismissing prospective jurors simply for opposing the death penalty,<sup>8</sup> it did not specify when the Constitution

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5. U.S. CONST. amend. VI; *see also* TENN. CONST. art. I, § 9.

6. *See generally* *Witherspoon v. Illinois*, 391 U.S. 510, 522 (1968) (concluding Defendant was tried by an impartial jury when all prospective jurors who expressed opposition to the death penalty were excused for cause); *Wainwright v. Witt*, 469 U.S. 412, 424 (1985) (providing a standard to determine when it is proper for courts to dismiss prospective jurors for caused based on their views of the death penalty); *Lockhart v. McCree*, 476 U.S. 162, 176–77 (reasoning an impartial jury must consist of jurors who can properly apply the law to the facts of the case); *Ross v. Oklahoma*, 487 U.S. 81, 88 (1988) (concluding that a trial court commits reversible error in its jury selection if the jury that is ultimately seated cannot consider all available forms of punishment).

7. *Witherspoon*, 391 U.S. at 514–15, 522 n.21. Specifically, the death sentence can only be imposed where the only veniremen who were excluded for cause were those that made it “unmistakably clear” that they would automatically vote against the death penalty despite what evidence may be presented. *Id.* at 522 n.21.

8. *Id.* at 522.

allows courts to dismiss a prospective juror based on that juror's views about capital punishment.<sup>9</sup>

In *Wainwright v. Witt*, the Court clarified the *Witherspoon* rule by providing a standard (the “*Wainwright* standard”) to guide trial courts in excusing potential jurors for cause due to their views on the death penalty.<sup>10</sup> The *Wainwright* standard allows a trial court to dismiss a potential juror for cause only when that juror's views would “prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.”<sup>11</sup> The *Wainwright* Court also ruled that, because trial judges are in a better position to make judgments about a potential juror's state of mind based on “demeanor and credibility,” a reviewing federal court must grant a presumption of correctness to the trial court's decision concerning juror exclusion.<sup>12</sup>

In Tennessee, trial courts are tasked with ensuring criminal defendants are tried by an impartial jury during the voir dire process.<sup>13</sup> Trial judges and counsel use a series of questioning to determine if a potential juror is death qualified, meaning capable of considering all three potential forms of punishment: a life sentence with the possibility of parole, a life sentence without parole, or the death penalty.<sup>14</sup> To remove a potential juror during the voir dire process due to that juror's death qualification, a party may move to challenge the juror for cause

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9. See Eric Schnapper, *Taking Witherspoon Seriously: The Search for Death-Qualified Jurors*, 62 TEX. L. REV. 977, 989–93 (1984) (discussing the difficulty in finding death-qualified jurors under *Witherspoon*).

10. *Wainwright*, 469 U.S. at 424.

11. *Id.* The Court reversed the court of appeals' finding that a juror had been improperly excluded for expressing a general opposition to the death penalty, concluding the excusal was proper if, in the trial judge's judgment, the juror's views would prevent her from following the judge's instructions. *Id.* at 424–26.

12. *Id.* at 428.

13. See generally TENN. R. CRIM. P. 24 (listing requirements for trial courts in jury selection). In capital cases, the same jury that determines guilt also determines what penalty is imposed. See TENN. CODE ANN. § 39-13-204(a) (2022). Thus, trial courts evaluate the impartiality of jurors regarding punishment during the singular voir dire process.

14. TENN. CODE ANN. § 39-13-204(a) (2022); see also, e.g., *Lockhart v. McCree*, 476 U.S. 162, 167 (1986) (addressing a challenge to a trial court's death-qualification decision); *State v. Sexton*, 368 S.W.3d 371, 390 (Tenn. 2012) (discussing the trial court's method for determining death qualification).

or use a peremptory challenge to strike the juror.<sup>15</sup> Trial court death-qualification determinations have a significant impact on the composition of capital juries and the outcome of capital trials.<sup>16</sup> And, because death-qualification judgments are findings of fact,<sup>17</sup> capital defendants may appeal trial court death-qualification decisions.<sup>18</sup>

The Tennessee Supreme Court in *State v. Alley* adopted the same standard of review as *Wainwright* for Tennessee appellate courts.<sup>19</sup> Like *Wainwright*, the Court in *Alley* granted the trial court's death-qualification judgment a presumption of correctness, adding that the burden is on the appellant to show with clear and convincing evidence that the trial court's excusal of a potential juror for cause was erroneous.<sup>20</sup> Although an abuse of discretion standard is generally used

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15. TENN. R. CRIM. P. 24(e)(1). In Tennessee, a defendant who has been charged with a crime “punishable by death . . . is entitled to fifteen peremptory challenges.” TENN. R. CRIM. P. 24(e)(1); *see also* *State v. Howell*, 868 S.W.2d 238, 248 (Tenn. 1993) (citing *Ross v. Oklahoma*, 487 U.S. 81, 88 (1988)) (reasoning that a trial judge's error determining whether a prospective juror should be dismissed for cause is grounds for reversal if a defendant has exhausted all his peremptory challenges and an impartial jury has been imposed upon him).

16. *See* Aliza P. Cover, *The Eighth Amendment's Lost Jurors: Death Qualification and Evolving Standards of Decency*, 92 IND. L.J. 113, 141 (2016) (using death-qualification data to conclude that death verdicts would not be attainable without death qualification exclusions). The study examined death-qualification exclusions in Louisiana over a five-year period. *Id.* at 131. The author also concluded that the number of death verdicts obtained in practice does not accurately reflect death penalty support in the community and that death qualification exclusions are disproportionately issued against African American veniremen. *Id.* at 141.

17. *See Wainwright v. Witt*, 469 U.S. 412, 428 (1985) (reasoning that a trial court's judgment concerning juror bias is a “finding of fact” and, thus, granted a presumption of correctness).

18. *See* TENN. R. APP. P. 13 (permitting parties to bring appeals of final judgments and interlocutory appeals to the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court).

19. *State v. Alley*, 776 S.W.2d 506, 518 (Tenn. 1989). The Supreme Court reviewed the trial court's decision to excuse two jurors for cause, including one juror who stated, “I'm not sure that I could,” when asked if he could impose the death penalty. *Id.* at 517.

20. *Id.* at 518. Mississippi also uses the clear and convincing error standard for death-qualification judgments. *see Scott v. State*, 878 So. 2d 933, 959–61 (Miss. 2004) (applying the standard of review prescribed in *Wainwright*). Some jurisdictions give even greater discretion to the trial court's judgment. *See, e.g., United States v. Chanthadara*, 230 F.3d 1237, 1269 (10th Cir. 2000) (stating that an abuse of discretion

to review other potential areas of jury disqualification, leading to some inconsistency in appellate review of prospective juror challenges,<sup>21</sup> the *Alley* rule has been the primary standard of appellate review for death-qualification determinations in Tennessee.<sup>22</sup> For example, in *State v. Sexton*, the Tennessee Supreme Court applied an abuse of discretion standard to review whether potential jurors' exposure to information about the case before trial would substantially affect their judgment.<sup>23</sup> However, the Court in *Sexton* applied the clear and convincing error standard originally prescribed in *Alley* to review the trial court's determination of a potential juror's death qualification.<sup>24</sup> Tennessee courts, thus, permit individuals with a general opposition to the death penalty to sit on capital juries if the individual is able to fairly consider all available forms of punishment.

### III. *STATE V. MILLER* FACTS AND PROCEDURE

*State v. Miller*, a 2021 Supreme Court capital murder case, involved the fatal shooting of a convenience store clerk during an armed robbery.<sup>25</sup> In November 2015, a man attempting to rob the Bull Market convenience store in Jackson, Tennessee, fatally shot a twenty-four-

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is normally used by the Tenth Circuit Court of Appeals to review judgments of juror bias).

21. See, e.g., *State v. Sexton*, 368 S.W.3d 371, 398 (Tenn. 2012) (concluding the trial court did not abuse its discretion when it did not excuse one potential juror for his exposure to news reports about the case and another potential juror for her views on the death penalty).

22. See *State v. Miller*, 638 S.W. 136, 150 (Tenn. 2021) (first citing *Alley*, 776 S.W.2d at 518; then citing *State v. Schmeiderer*, 319 S.W.3d 607, 633 (Tenn. 2010); then citing *State v. Reid*, 213 S.W.3d 792, 835–36 (Tenn. 2006); then citing *State v. Thomas*, 158 S.W.3d 361, 378 (Tenn. 2005); and then citing *State v. Austin*, 87 S.W.3d 447, 473 (Tenn. 2002)).

23. *Sexton*, 368 S.W.3d at 395.

24. *Id.* at 392 (citing *Austin*, 87 S.W.3d at 472–73). The Supreme Court reviewed the trial court's excusal of some potential jurors based on their response to single question on a questionnaire, and the Court ruled that the excusal was an error because the response to a single question is not sufficient to determine that the prospective juror's views on the death penalty would substantially impair their ability to perform their duties in accordance with their instructions and oath under *Wainwright*. *Sexton*, 368 S.W.3d at 392–95.

25. 638 S.W.3d at 143.

year-old store clerk named Ahmad Dhalai.<sup>26</sup> The man pointed a gun at Dhalai in an attempt to order him to empty the cash register, but the man shot Dhalai in the back of the head as Dhalai turned to walk away.<sup>27</sup> After shooting Dhalai, the man fired another shot in the direction of a store employee and fled after unsuccessfully attempting to open the cash register himself.<sup>28</sup> Soon after, police tracked a suspect, who was later identified as Urshaw Eric Miller, to a nearby wooded area and subsequently arrested him.<sup>29</sup> A jury convicted Miller of first-degree premeditated murder and first-degree felony murder and sentenced him to death.<sup>30</sup>

As part of the voir dire process prior to trial, prospective jurors completed a questionnaire and were subject to general questioning that sought to ascertain each potential juror's views on the death penalty.<sup>31</sup> Following the voir dire questioning, each party was permitted to challenge potential jurors for cause or exercise peremptory challenges if the trial court did not grant a challenge for cause.<sup>32</sup> In reviewing the trial court's judgments regarding challenges for cause, the Court clarified that abuse of discretion was the appropriate standard of review of a trial court's decisions concerning a juror's death qualification.<sup>33</sup> Applying

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26. *Id.* at 144. According to witnesses, the shooter was wearing black clothing and a white face covering. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 145. Police found a black hoodie, a portion of a white t-shirt, and a revolver in the area near where Miller was arrested. *Id.* Investigators found another portion of a white t-shirt in Miller's bedroom, and Miller's DNA was on each of these discovered items. *Id.* at 145–46.

30. *Id.* at 143. Miller was also convicted and received an additional thirty-year sentence for attempted second-degree murder, attempted especially aggravated robbery, aggravated assault, employing a firearm during the commission of a dangerous felony, evading arrest, and resisting arrest. *Id.* The appellate court affirmed the convictions and sentences but vacated the application of the felony murder aggravating circumstance. *Id.*

31. *Id.* at 151–53.

32. *Id.* at 152.

33. *Id.* at 151. Under Tennessee law, the abuse of discretion standard is also used to review jury selection in many non-capital cases. *Id.* For the death-qualification issue, Tennessee reviewing courts previously applied the standard of review set forth in *State v. Alley*, which required appellants to show with clear and convincing evidence that the trial court's judgment was erroneous. *State v. Alley*, 776 S.W.2d

the abuse of discretion standard, the Court affirmed the trial court's decision to deny the defendant's challenges for cause concerning three prospective jurors who expressed an inclination to impose the death penalty,<sup>34</sup> and it affirmed the trial court's decision to grant the State's challenge for cause concerning three prospective jurors who each indicated they were hesitant to impose the death penalty.<sup>35</sup> The Court also affirmed the trial court's decision to deny Miller's challenge for cause concerning juror Crum after Miller exhausted all his peremptory challenges.<sup>36</sup> In sum, the Court affirmed the defendant's conviction and death sentence and held that Miller was unable to show the trial court abused its discretion for any of his appeals concerning juror selection.<sup>37</sup>

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506, 518 (Tenn. 1989). See *infra* Section IV for a discussion of the Court's decision in *Miller* to replace the *Alley* standard with abuse of discretion.

34. *Miller*, 638 S.W.3d at 152–54. Prospective jurors Robinson, Little, and Graves each expressed an apprehension towards imposing a life sentence with the possibility of parole, but the trial court found that each would ultimately be able consider all three forms of punishment. *Id.* As a result of the trial court's dismissal of his challenge for cause, the defendant used peremptory challenges to excuse all three. *Id.* at 152.

35. *Id.* at 154–55. In addition to expressing doubt about imposing the death penalty, prospective jurors Eads, Milhorn, and Sesti each expressed that they could consider the death penalty at some point during the voir dire questioning. *Id.* However, the Court agreed with the trial court's finding that none of the three could fairly consider the death penalty. *Id.* at 155.

36. *Id.* at 157. The defendant argued that an impartial jury was imposed upon him when the trial court denied his challenge for cause concerning juror Crum because all his peremptory challenges had been used. See *id.* at 155–56 (citing *Ross v. Oklahoma*, 487 U.S. 81, 89 (1988)). Juror Crum repeatedly expressed doubt about whether she could impose a life sentence with the possibility of parole but ultimately stated she would consider all three forms of punishment. *Id.* at 157. The Court acknowledged that juror Crum “presented a closer question” but found the defendant could not prove the trial court abused its discretion. *Id.*

37. *Id.* at 143. Addressing the defendant's other challenges, the Court also concluded (1) the evidence was sufficient to establish the defendant's identity and guilt concerning the charges against him; (2) the trial court properly admitted video evidence during the penalty phase of a prior felony committed by the defendant; (3) the death penalty and lethal injection do not constitute cruel and unusual punishment under the Eighth Amendment of the Constitution; and (4) the death sentence was a proper punishment under the Court's mandatory review required under Tenn. Code Ann. § 39-13-206. *Id.* The Tennessee Supreme Court, thus, affirmed the Court of Criminal Appeals decision for all the issues on appeal except the issue of whether to vacate the i(7) aggravating circumstance, which the Court found did apply to the



IV. ANALYSIS OF *MILLER* AND ALTERNATIVE STANDARDS OF REVIEW

The Supreme Court's decision to adopt abuse of discretion as the appropriate standard of review for death-qualification judgments of potential jurors unnecessarily limits reviewing courts' ability to ensure death sentences are imposed by an impartial jury. The standard of review originally prescribed in *Alley*, which required appellants to show with clear and convincing evidence that the trial court's judgment was erroneous, is better suited to this end.<sup>38</sup> In holding that abuse of discretion is the appropriate standard of review in these cases, the Court sought to clarify an unsettled area of Tennessee law.<sup>39</sup> The Court offered two primary reasons to support its determination that abuse of discretion was the appropriate standard of review going forward. First, trial judges are better positioned to determine whether a potential juror is death qualified because they can directly observe the potential juror's "facial expressions, degree of candor, and overall demeanor."<sup>40</sup> Second, abuse of discretion is a standard that Tennessee appellate courts are familiar with because it is used in many non-capital cases.<sup>41</sup>

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felony murder conviction. *Id.* at 164–65. However, the main issue addressed in this Comment is the Court's standard of review concerning juror selection.

38. Compare *State v. Alley*, 776 S.W.2d 506, 518 (Tenn. 1989) (adopting a clear and convincing error standard of review), with *Miller*, 638 S.W.3d at 151 ("A court abuses its discretion when it causes an injustice to the party challenging the decision."). Under a clear and convincing error, or "clearly erroneous," standard of review, appellate courts may reverse the factual findings of district courts when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). In contrast, an abuse of discretion is considered an error of law. See *Koon v. United States*, 518 U.S. 81, 100 (1996), *superseded by statute as recognized in United States v. Stultz*, 356 F.3d 261, 264 (2d. Cir. 2004). The United States Supreme Court, however, has characterized questions of juror bias as findings of fact, making clear and convincing error the more appropriate standard of review for death-qualification judgments. See *Wainwright*, 469 U.S. at 428 (reasoning that a trial court's judgment concerning juror bias is a "finding of fact" and, thus, granted a presumption of correctness).

39. *Miller*, 638 S.W.3d at 151.

40. *Id.* This reason is consistent with reasoning used by the United States Supreme Court to adopt a presumption of correctness standard. See *Wainwright v. Witt*, 469 U.S. 412, 428 (1985).

41. *Miller*, 638 S.W.3d at 151 n.12.

The Court misinterpreted the cases it used to justify adopting the abuse of discretion standard. The Court relied on the decisions in *Howell* and *Sexton* to show that some Tennessee courts applied the abuse of discretion standard when reviewing death-qualification judgments.<sup>42</sup> Although the Court in *Howell* reviewed the trial court's findings on juror impartiality, it did not review the issue of death qualification specifically.<sup>43</sup> The Court in *Sexton* only applied the abuse of discretion standard to a review of death qualification when it was simultaneously reviewing the issue of prior knowledge about a case.<sup>44</sup> When the Court in *Sexton* focused solely on death qualification, it reviewed under the clear and convincing standard prescribed in *Alley*.<sup>45</sup> The appropriate standard of review for death-qualification judgments was, thus, not as unclear as the Court in *Miller* characterized it.<sup>46</sup> Tennessee reviewing courts consistently used the clear and convincing error standard from *Alley* prior to the Court's decision in *Miller*.

Going forward, Tennessee appellate courts will be required to apply the abuse of discretion standard in capital cases when reviewing death-qualification decisions.<sup>47</sup> As a result, reviewing courts have less discretion in determining whether a trial court erred in making a death-qualification judgment. Rather than merely determining whether there is sufficient evidence to conclude the trial court misapplied the *Wainwright* standard, the reviewing court can only reverse a trial court's death-qualification determination if there is evidence the trial court committed one of the enumerated "injustice[s]" that constitutes an abuse of discretion.<sup>48</sup> A trial court's decision regarding death-qualification, therefore, is more likely to be affirmed due to the narrower abuse of discretion standard.

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42. *Id.* at 150–51 (first citing *State v. Howell*, 868 S.W.2d 238, 249 (Tenn. 1993); and then citing *State v. Sexton*, 368 S.W.3d 371, 392–95 (Tenn. 2012)).

43. *See Howell*, 868 S.W.2d at 247–48.

44. *See Sexton*, 368 S.W.3d at 395–96.

45. *See id.* at 392.

46. *See Miller*, 638 S.W.3d at 151.

47. *Id.*

48. *See id.* (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)) ("A court abuses its discretion when it causes an injustice to the party challenging the decision by "(1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.").

Although it was in the Court's prerogative to adopt the abuse of discretion standard, other courts and jurisdictions have reviewed death-qualification judgments under different standards. The United States Supreme Court did not apply an abuse of discretion standard of review in *Wainwright*,<sup>49</sup> nor did the Tennessee Supreme Court in *Alley* when it ruled that state reviewing courts need only accord a presumption of correctness to a trial court's findings on death qualification that the appellant can show was erroneous with clear and convincing evidence.<sup>50</sup> Before considering the abuse of discretion standard, the Court in *Miller* cited a number of Tennessee Supreme Court cases that applied the *Alley* Standard of Review.<sup>51</sup> In one instance, the Tenth Circuit Court of Appeals opted to apply a de novo review instead of the normally applied abuse of discretion standard when the trial court made a death-qualification decision based solely on responses to a written questionnaire.<sup>52</sup> Mississippi also uses a "presumption of correctness" standard, rather than abuse of discretion, when reviewing trial court death-qualification judgments.<sup>53</sup>

#### V. EVALUATION OF *MILLER*

By determining that abuse of discretion was the appropriate method of review for death-qualification judgments, the Supreme Court set a clear standard to be used by Tennessee appellate courts

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49. See *Wainwright*, 469 U.S. at 426–27 (concluding that federal courts must accord the factual findings of the state trial court's death-qualification judgments a presumption of correctness).

50. *State v. Alley*, 776 S.W.2d 506, 518 (Tenn. 1989).

51. See *Miller*, 638 S.W.3d at 150 (first citing *Alley*, 776 S.W.2d at 518; then citing *State v. Schneiderer*, 319 S.W.3d 607, 633 (Tenn. 2010); then citing *State v. Reid*, 213 S.W.3d 792, 835–36 (Tenn. 2006); then citing *State v. Thomas*, 158 S.W.3d 361, 378 (Tenn. 2005); and then citing *State v. Austin*, 87 S.W.3d 447, 473 (Tenn. 2002)).

52. *United States v. Chanthadara*, 230 F.3d 1237, 1269–70 (10th Cir. 2000) (reasoning that the trial judge was in no better position to assess prospective jurors' written answers concerning death penalty views). Under de novo review, reviewing courts give no deference to findings of the trial court. See *id.* at 1270.

53. See, e.g., *Scott v. State*, 878 So. 2d 933, 960–61 (Miss. 2004) (applying the "presumption of correctness" standard prescribed in *Wainwright*); see also *Wainwright v. Witt*, 469 U.S. 412, 426 (2004) (citing 28 U.S.C. § 2254(d)).

going forward.<sup>54</sup> Additionally, the Court's application of this newly adopted standard to the facts of the case was sound. However, the Court's decision runs contrary to the preponderance of Tennessee case law,<sup>55</sup> which applied the *Alley* standard of review to questions of death qualification.<sup>56</sup> As a result, appellate courts are unnecessarily limited in their ability to overturn a trial court's death-qualification judgment, which could increasingly subject defendants to sentences imposed by impartial juries. The extent to which jurors' personal views concerning the death penalty impacts their ability to apply the law is notoriously difficult to assess.<sup>57</sup> Although trial judges are better positioned to consider factors such as demeanor and credibility, appropriately entitling them to a presumption of correctness,<sup>58</sup> such access does not make their death-qualification judgments immune to error.<sup>59</sup> When a defendant's life is at stake, such a large amount of deference should not be accorded to a single trial judge.<sup>60</sup>

The Court in *Miller*, instead, should have followed the preponderance of Tennessee case law and affirmed the standard of review prescribed in *Alley*, where a trial judge's death-qualification decision is granted "a presumption of correctness and the burden shall rest upon the appellant to establish by convincing evidence that that determination was erroneous."<sup>61</sup> The *Alley* standard of review is more

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54. *Miller*, 638 S.W.3d at 151.

55. See discussion *supra* Part IV para. 2.

56. See *supra* note 51 and accompanying text.

57. See *Wainwright v. Witt*, 469 U.S. 412, 424–26 (1985) (concluding that juror bias does not have to be proven with "unmistakable clarity" because bias cannot be made clear through a record of questioning and answering); see also Eric Schnapper, *Taking Witherspoon Seriously: The Search for Death-Qualified Jurors*, 62 TEX. L. REV. 977, 989–93 (1984) (discussing the difficulty appellants had in showing jury bias with "unmistakable clarity").

58. See *Wainwright*, 469 U.S. at 428.

59. See, e.g., *State v. Sexton*, 368 S.W.3d 371, 392–93 (Tenn. 2012) (finding that trial judge erred in excusing a prospective juror for cause based on a single response to a question in a written questionnaire).

60. See *Cover*, *supra* note 16, at 141 (concluding the number of death verdicts obtained in practice does not accurately reflect death penalty support in the community and that death qualification exclusions are disproportionately issued against African American veniremen). Considering findings such as these, a reviewing needs more discretion to help ensure the jury imposing a death sentence is impartial.

61. *State v. Alley*, 776 S.W.2d 506, 518 (Tenn. 1989).

appropriate for questions of jury selection because death qualification is not merely a question of discretion, but also a question of fact.<sup>62</sup> Under the *Alley* standard of review, appellate courts would have more discretion to find a trial court erred in its death-qualification judgment, adding an extra level of accountability, because they would not be limited by the enumerated errors under the abuse of discretion standard.<sup>63</sup> The Court in *Miller*, by adopting abuse of discretion as the standard of review of death-qualification judgments, put capital defendants in Tennessee at greater risk of receiving punishments from impartial juries.

## VI. CONCLUSION

It is incredibly difficult for courts to assess the degree to which jurors' personal views about the death penalty affects their ability consider all available forms of punishment in capital cases. In *State v. Miller*, the Tennessee Supreme Court adopted abuse of discretion as the standard of review for death qualification. The Court justified its decision by claiming some of its prior decisions already used abuse of discretion to review death-qualification judgments, but this claim was based on a misinterpretation of case law. Prior to *Miller*, Tennessee reviewing courts consistently reviewed death-qualification judgments under a clear and convincing error standard. The Court in *Miller* should have affirmed the clear and convincing error standard. Although the difference between the two standards is slight, the clear and convincing error standard gives greater discretion to appellate courts to find

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62. See *Wainwright*, 469 U.S. at 428 (reasoning that a trial court's judgment concerning juror bias is a "finding of fact" and, thus, granted a presumption of correctness).

63. See, e.g., *State v. DeBow*, No. M1999-02678-CCA-R3-CD, 2000 WL 1137465, at \*9–10 (Tenn. Crim. App. Aug. 2, 2000) (finding the trial court erred by dismissing two jurors for cause who merely expressed discomfort at the idea of sitting in a murder trial). The court found that the trial court's dismissal of the two jurors constituted a clear error under *Alley* because the jurors' statements did not reveal their views of the death penalty, nor did their statements show they would be unable to follow the law. *Id.* at \*27–32 (citing *Alley*, 776 S.W.2d at 518). This case demonstrates how the *Alley* standard gives an appellate court greater discretion to find reversible error when reviewing death-qualification judgments. To find reversible error under the abuse of discretion standard, the reviewing court would have to find that the trial court met one of *Miller's* enumerated "injustices." See *supra* note 48 (listing the injustices).

reversible error in a trial judge's death-qualification judgments and, thus, helps ensure capital defendants are tried by an impartial jury.