IN THE SUPREME COURT
STATE OF FLORIDA

Case No.: **SC17-506**
DCA No.: **5D16-1348**
Circuit Case No.: **10-1043CF**

RODRICK D. WILLIAMS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

On Appeal from the Fifth District Court of Appeal,
and
Seventh Judicial Circuit,
in and for Saint Johns County, Florida

INITIAL BRIEF

Valarie Linnen, Esq.
Florida Bar No. 63291
PO Box 330339
Atlantic Beach, FL 32233
888-608-8814
vlinnen@live.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

After a jury trial, Appellant, RODERICK D'ANTHONY WILLIAMS, was convicted of the following offenses:

I. Count I: First degree murder with a firearm, in violation of Sections 782.04(1), 790.001(6), and 777.011, Florida Statues (2010); and
II. Count II: Kidnapping in violation of Section 787.01(1)(a)2 and 3, Florida Statutes (2010).

Appellant was just 16 years old at the time of the offense. (R.619-22)

Following resentencing, Appellant was sentenced to life imprisonment (with the possibility of release after 25 years) as to Count I and 50-years imprisonment as to Count II (with the possibility of release after 20 years).

Citing Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012) and Horsley v. State, 160 So. 3d 393 (Fla. 2015), the Fifth District Court of Appeal reversed Appellant's sentence as to Count I and remanded for resentencing. Specifically, this Court instructed as follows:

> Because the jury did not find that Williams actually possessed and discharged a firearm during the crime, the court must make a written finding as to whether Williams killed, intended to kill, or attempted to kill the victim. Ch. 2014-220, § 1, Laws of Fla. Based on that determination, after holding the individualized hearing, the trial court may sentence Williams to life imprisonment if it finds that life is an appropriate sentence. Id. If the trial court determines that life is not an appropriate sentence, then it should sentence Williams to a term of at least forty years' imprisonment. Id.

(R.622)

Motion to Empanel a Jury

Pursuant to the *Opinion* of the Fifth District, Appellant moved on remand to empanel a jury. (R.643) Because the *Opinion* directed "the court must make a written finding as to whether Williams killed, intended to kill, or attempted to kill the victim" pursuant to Section 775.082(1)(b)(1) (R.622), Appellant argued that this was a factual determination that would increase his range of punishment:

- If it was found that Appellant actually killed, attempted to kill, or intended to kill the victim, then he faced a mandatory minimum sentence of 40 years imprisonment pursuant to Section 775.082(1)(b)(1) and would entitle him for review in 25 years. (R.644-45)
- If it was found that Appellant did not actually kill, attempt to kill, or intend to kill the victim, then he faced no mandatory minimum sentence under Section 775.082(1)(b)(2) and would entitle him for review in 15 years. (R.645)

Because this required a factual determination that increased the prescribed range of penalties to which Appellant was exposed, he argued that a jury was required to make such a factual determination. (R.645)

The trial court denied the motion to empanel a jury. (R.665) Specifically, the trial court interpreted the *Opinion* of the Fifth District as directing the trial court to make the factual finding rather than the jury. (R.665)

Order on Intent – Fla. Stat. 775.082(1)(b)(1)-(2)

The trial court conducted a hearing on whether Appellant actually killed, intended to kill, or attempted to kill the victim pursuant to Section 775.082(1)(b)(1)-(2) on October 30, 2015. (R.1162-1183) The State argued that Appellant actually killed or intended to kill the victim. (R.1165) Proceeding under both the premeditated murder and felony murder theories at trial (R.1165), the State pointed to Appellant's confession and the testimony of a jailhouse informant, Michael Rivers. (R.1166) The State asserted this hearsay testimony of a jailhouse informant was sufficient to prove beyond a reasonable doubt that Appellant actually killed the victim.

Arguing Appellant admitted in his confession that co-defendants Sharina Parker and Harry Henderson gave him a gun, the State claimed it would have been counterintuitive for them to give Appellant a gun if he did not intend to shoot the victim. (T.1168) As for his intent to kill the victim, the State argued that Appellant said he knew they what Henderson and Parker intended to do, which indicated he knew that the co-defendants intended to kill the victim. (R.1169) In sum, the State argued that Appellant intended for the victim to die, and in the alternative, Appellant actually killed the victim based on the hearsay testimony of jailhouse informant Rivers. (R.1170)

Defense counsel asserted that the State failed to seek a verdict form asking

the jury to make specialized finding whether Appellant actually possessed a firearm for the homicide charge. (R.1171) Specifically, defense counsel pointed out that the State sought such a specialized finding as to the second degree murder and manslaughter charges. (R.1171) Because the State failed to seek a specialized finding for the first degree murder charge, defense counsel argued that the trial court should apply the rule of lenity in favor of Appellant. (R.1171)

As for the evidence presented to the jury, defense counsel argued that there was no physical evidence linking Appellant to the actually shooting of the victim: no fingerprints, no DNA, no murder weapon. (R.1171) She pointed out that the only DNA found was that of Henderson on a t-shirt next to the victim's body. (R.1171) She argued there were only two pieces of evidence that implicated Appellant in the actual murder: Appellant's statement to Detective Hines and the hearsay testimony of jailhouse informant Rivers. (R.1171)

As for the statement, Appellant told the detective the fact that he did not bring his own gun to the drug house indicated that he did not intend to kill the victim. (R.1178) Further, defense counsel argued that there would have been no point in Appellant covering his face with a t-shirt if he knew the victim would not live to identify his assailant. (R.1173) As for the State's claim that Appellant knew what Henderson and Parker intended to do, defense counsel pointed to the transcript where Appellant actually stated "he had a feeling" that things were going

to go bad – not that Henderson and Parker informed him of their intent to murder to victim. (R.1177) Appellant repeatedly maintained in his statement to the detective that he was not the triggerman. (R.1173, 1176) In fact, defense counsel pointed out that "[w]hen Detective Hines leaves the room, and it's just Roderick and his mother alone and he thinks no one is watching, he tells his mother over and over 'I didn't do it, I'm a witness, I'm not the trigger man." (R.1176; see T.265-68) Defense counsel pointed out that Appellant told the detective he was afraid that Henderson would kill him if he ran away and that good things did not happen to snitches in his neighborhood.

As for jailhouse informant Rivers, defense counsel argued that his hearsay testimony was inherently unreliable. (R.1173) She pointed out the Rivers admitted that he knew the victim, that he read newspapers articles about the case, that he was housed in the county jail with Henderson for a month and a half, that Henderson helped Rivers write a successful court motion that resulted in dismissal of a drug charge against Rivers, and that he expected to be release from jail the following day in exchange for his testimony. (R.1173-74) According to defense counsel, this gave Rivers incentive to lie. (R.1173)

Defense counsel pointed out an oddity in Rivers' testimony where he used the phrase "accumulate" the crime – twice – rather than "accomplish" the crime. (R.1175; see T.318-19) She argued that the misuse of the word "accumulate"

evinced Rivers had been coached by a third party for his testimony because he could not remember the words be was instructed to use. Rivers' testimony was also rather extraordinary in his claim that Appellant, Henderson and Parker found $300,000.00 in the victim's safe and divided it three ways, that Appellant bought this mother a house and a new car, and that they buried the rest of the money. (R.1176) In stark contrast to Rivers' claims, it was revealed on cross-examination that Appellant and his mother had recently been evicted from their rental home. (R.1176)

Rivers' claims were further inconsistent with the evidence when claimed Appellant covered his face with a t-shirt to hide his identity from the victim. (R.1173, see T.321) According to defense counsel, there would have been no need for Appellant to hide his identity from the victim if he intended to kill him "because the victim wouldn't be around to tell anybody that it was Roderick Williams that shot him." (R.1173)

Defense counsel argued that Rivers could have misunderstood Appellant's statement to him, that perhaps Appellant said, "*They said* I murdered this guy" rather than saying he actually murdered the victim. (R.1174. Emphasis added.) Defense counsel likened the scenario to a schoolyard game "Telephone". (R.1174-75) Even if Appellant did make the statements to Rivers, she argued it was likely the result of a 16-year-old boy attempting "to make himself look meaner, look

tougher, look more street credible in the eyes of older – older inmates." (R.1175) Defense counsel also argued that jailhouse informant testimony is inherently unreliable.

In sum, defense counsel argued that the only evidence of Appellant's intent to kill the victim came from Rivers, a jailhouse snitch, which was too unreliable to base any intent finding. (R.1176) She argued Appellant was a 16-year-old kid working at the direction of a 30-year-old woman and 32-year-old man. (T.1177)

In the *Order*, the trial court found that Appellant actually killed the victim based on River's hearsay testimony and Appellant's own statements. (R.679) In the alternative, the court found:

> Additionally, even if another court were to find that there is no sufficient evidence that Defendant actually killed the victim, this Court is just as convinced that Defendant intended to kill the victim. Based on Defendant's admissions that the drove the victim to his death, that he knew the victim would be killed, and that he beat the victim, along with the text message sent to Ms. Parker, the Court finds that Defendant also intended to kill the victim. The Court notes that at trial, the jury found Defendant guilty of kidnapping and therefore rejected the defense of duress. (R.679-80)

Resentencing Hearing

At the resentencing hearing, Appellant presented the testimony of three witnesses: his mother, Carronto Clark; prison expert, Ronald McAndrew; and psychologist, Dr. Stephen Bloomfield.

Carronto Clark: Appellant's mother, Carronto Clark, testified that she was

just 17 years old when she gave birth to Appellant and received government assistance. (R.1191-92) She stated that she did not know who was Appellant's father so Appellant never knew his father either. (R.1191) Appellant's only father-like figure was his grandfather, Ms. Clark's father. (R.1192)

Clark admitted to being addicted to illegal drugs when Appellant was a small child. (R.1192) "I used to try to just get high so I wouldn't feel anything. So every time you see me, I had a little brown bag with me, some coke and weed, cigarettes and my cigars." (R.1192) Clark admitted that she was high the "[m]ajority of the time". (R.1192)

At one point, Clark left Jacksonville for Connecticut where it was not so easy for her to obtain drugs. (R.1192) While she was away, she became aware that her father badly beat Appellant so she returned to Jacksonville. (R.1193)

Clark testified that she had many paramours through the years who were violent toward Appellant. (R.1194) She described them as follows:

> Well, they all sold drugs. They all was from out the hood. They all just had this overrated jealousy where they always end up fighting. We fight every other day. The last one before the good guy I got now, he fought me every single day.

(R.1194) Clark recalled that one of her boyfriends punched Appellant in the chest while another pulled a gun on her and a 13-year-old Appellant. (R.1194) She professed that Appellant never had a stable male role model in his life. (R.1200)

While mother and son lived with Clark's father, the house was also occupied

by other family members, including Clark's brothers and sisters. (R.1195) She described how her brothers used illegal drugs. (R.1195) As for her father, she described him as showing "tough love". (R.1196) As for her sister, Clark became aware that her sister molested Appellant when he was 12 or 13 years old but "I'm hoping that's not true." (R.1196)

Clark described the neighborhood in which she and Appellant as low income "hood" where people do not call the police out of fear of being viewed as a snitch: "You going to get your behind killed...I'm sorry, but you gonna get killed. I mean, you just – a snitch get in the ditch." (R.1198) Clark testified that drugs and crime were common in the neighborhood and not many people graduated high school and went to college. (R.1198)

Around the time of the offense, Clark testified that her father had just passed away so it was an emotional time for 16-year-old Appellant. (R.1198) Clark recalled that she advanced to smoking $50-$100 dollars worth of drugs a day. (R.1199)

She described Appellant as "girl crazy" at the time. (R.1199) Clark testified she awoke one night to the sound of 16-year-old Appellant having sexual intercourse with 30-year-old Parker. (R.1200) She stated:

> I had somebody keep [Appellant] occupied where I could go back in my room and smoke because he always had a problem with me smoking…And one day I needed her to take him to get something to eat because I didn't feel like cooking, and that's how she entered into

our life. I though I was asking her for a favor. (R.1200)

After the offense, Clark testified that Appellant is no longer girl crazy and is a loving father. (R.1200) She stated, "That's about the best thing that boy feel like he ever accomplished. He love to tell me that's his baby."[1] (R.1201)

Clark told the trial court that Appellant is now working in the prison for the first time in his life in the laundry room and doing landscaping. (R.1201) She added, "He functioning as a man now." (R.1203)

Ronald McAndrew: Prison and jail consultant Ronald McAndrew also testified for Appellant. (R.1211) As the former warden of Florida State Prison, he testified that he reviewed Appellant's records from the Saint Johns County Jail and Department of Corrections prior to visiting Appellant in person. (R.1216) He described the worst that could happen to a juvenile incarcerated with adults as rape and death. (R.1219) Warden McAndrew testified that it is not unusual for a juvenile incarcerated with adult offenders to lie and inflate the nature of their offense as a survival mechanism. (R.1120)

Upon entering the Department of Corrections following his conviction, Warden McAndrew testified that Appellant was first housed at Hamilton Correctional Institute, which he described as "gladiator camp". (R.1220) He testified that the open bay sleeping arrangements at Hamilton CI it is more difficult

[1] Clark also pointed out to the court that she gave Appellant the nickname "Killa" as a baby which predated the offense in question. (R.1202)

to contain violent outbreaks with 50 men in the same room as opposed to two men sleeping in the same cell. (R.1222) "[T]he dead bodies that I've carried out of prisons came out of open bays." (R.1222)

Specifically, Warden McAndrew testified that Appellant was the victim of violence in an open bay sleeping dorm when he was stabbed by other inmates. (R.1222) Warden McAndrew noted that Appellant had no known gang affiliation in prison. (R.1223)

Following the stabbing, Appellant was transferred to Madison Correctional Institute where Warden McAndrew visited him. (R.1224) He reported that Appellant continues to work on his GED and was hoping to take the examination in the near future. (R.1225) As for employment, Warden McAndrew reported that Appellant is working as a groundskeeper within the prison and as an orderly in the dormitory. (R.1225) "And he has had a very serious adjustment in a positive way after arriving at Madison." (R.1225)

Warden McAndrew testified that Appellant is the youngest person in his housing unit. (R.1225) However, he claimed that the older inmates have had a positive influence on Appellant "making sure he's staying out of trouble" and advising him. (R.1226) To that end, Warden McAndrew stated that the prison guards and classification officer consider Appellant to be respectful and that he does not cause trouble for them. (R.1227)

He also told the court that Appellant believed his young daughter "was the best thing that's ever happened to him." (R.1228) According to the warden, Appellant views his daughter as the light at the end of the tunnel who gives him hope to be part of her future – as a father and provider – in a positive way. (R.1228) In his experience, he opined that fatherhood is one of the strongest motivating factors for an inmate to turn his life around, so much so that the Department of Corrections has started to provide child-friendly visitation rooms where incarcerated fathers can bond with their children. (R.1242) He added that many prisons have added playgrounds so that inmates can interact with the children. (R.1242) In sum, Warden McAndrew testified that Appellant's positive attitude is the best thing he has going for him. (R.1228)

Dr. Stephen Bloomfield: Appellant called psychologist Stephen Bloomfield to testify. (R.1245) Dr. Bloomfield stated that he first conducted a broadscale psychological evaluation in 2010. (R.1251) He measured Appellant's IQ as 82, which fell into the 12th percentile "so his range falls from the highest end of the borderline range of intellectual functioning to the low end of the low average range." (R.1252) Appellant's verbal comprehension skill level at that time was also in the 9th percentile. (R.1252)

Dr. Bloomfield reviewed the interrogation video of Appellant made in 2010. (R.1254) At the time of the offense, Dr. Bloomfield found Appellant to be

immature: "He was a child." (R.1254) Specifically, he stated he administered adult testing instruments to Appellant and found that Appellant's brain was functioning as a juvenile. (R.1255) In general, he stated that 16-year-old boys like Appellant do not have fully developed brains which affects their decision-making processes, causing impulsivity, and impairs their ability to resist negative influences: "more risk taking, more reckless, more apt to follow along, more susceptible to people leading him as opposed to not." (R.1256-57) He also stated that 16-year-old boys are more susceptible to peer pressure, so "if you're around pro-social people…versus asocial people, you'll develop pro-socially. And if you're around asocial people, you'll develop asocially." (R.1256-57) Sixteen year old boys are have a higher potential for rehabilitation because their brain and personality are not yet fully formed. (R.1257)

As to Appellant specifically at 16 years of age, Dr. Bloomfield opined that was susceptible to peer pressure or family influence, was impulsive, immature, and put more emphasis on the short-term gains of his actions rather than the long-term consequences. (R.1259)

As for his sexual relationship with 30-year-old Parker, Dr. Bloomfield opined that the relationship provided a "high risk recklessness" for the then 16-year-old Appellant and demonstrated his immaturity at the time. (R.1263)

In 2015, Dr. Bloomfield evaluated Appellant for a second time. (R.1259)

Dr. Bloomfield found that Appellant had matured physically and emotionally, and was more in control of his emotions. (R.1259) Dr. Bloomfield testified that he was impressed by the maturity in Appellant's interactions with the prison staff and people in authority: "he's an affable and cooperative young man." (R.1259-60) Dr. Bloomfield testified that Appellant is looking toward the future and that having a child helped him understand the long term consequences of his actions. (R.1260)

As for rehabilitation, Dr. Bloomfield testified that Appellant has a good prognosis for rehabilitation. (R.1263) He recommended a rehabilitation plan that includes work skill development, a reentry program, learning to deal with money, learning to develop positive relationships, parenting skills, developing pro-social problem solving skills, and learning the value of work. (R.1264) In sum, Dr. Bloomfield described 16-year-old Appellant at the time of the offense as less culpable than a similarly situation adult, but nonetheless culpable. (R.1265)

Mildreda Redding: Victim impact witness, Mildrea Redding, testified that the victim was her son. (R.1282) She asked that Appellant not be released from prison. (R.1286)

Closing Argument: While the court heard about Appellant's single mother, about drugs, violence, and sexual molestation, excessive punishment, lack of supervision, his low IQ, his tender age, and how snitches are viewed in his neighborhood, defense counsel argues that the court did not hear testimony from a

person who stepped into Appellant's like when he was headed down the wrong road and set him straight. (R.1287-88)

As for the factors set forth in Section 921.1402, defense counsel argued that the age of Appellant in contrast to those of the co-defendants should be taken into consideration when considering the nature and circumstances of the offense: Appellant was just 16 years old, while Park was 29 years old and Henderson 32 years old. (R.1288) "He was the child here." (R.1288)

Defense counsel also argued that Parker directed the entire operation and that it was Parker and Henderson – not Appellant – who were upset that the victim robbed that, who wanted access to the victim's safe, and who wanted revenge on the victim. (R.1288-89) It was also Parker's idea – not Appellant's – to keep the victim at the drug house, beat him, and then load him into the trunk of the car. (R.1289)

As for his age, maturity, intellectual capacity, and mental and emotional health at the time of the offense, she argued that Appellant was 16 years old with a sixth grade education and an IQ of just 82. (R.1289)

As for his background, defense counsel argued that Appellant grew up in a crime-ridden, drug infested neighborhood. (R.1289) In addition to witnessing his mother's drug addiction, he suffered excessive punishment at the hands of his grandfather and molestation at the hands of his aunt. (R.1289)

As for his immaturity, impetuosity, or failure to appreciate the risks and consequences of his participation in the offense, defense counsel argued that Appellant's brain was not fully developed, he was not fully capable of accurately weighing the long-term consequences against short-term gains, and was highly susceptible to peer pressure, especially when it came to being viewed as a "snitch". (R.1290; see T.222, 228-29)

As for the effect of youth on his judgment, defense counsel she cited Dr. Bloomfield's lengthy testimony about Appellant's diminished ability to weigh the long-term consequences of his behavior against the short-term gains. (R.1290)

As for rehabilitation, defense counsel argued that Dr. Bloomfield testified Appellant's potential for rehabilitation is good. (R.1291) Because Appellant is still young and has the ability to conform his behavior, she argued that a lengthy prison sentence was unwarranted. (R.1291)

As for other factors permitted by Section 921.1402(j), counsel argued that Appellant demonstrated remorse in 2010 and again in 2016. (R.1291) Specifically, she cited that Appellant told the detective in 2010 that the victim's death "hurt me to my soul." (R.1291; see T.235) She argued that Appellant has demonstrated maturity in the six years following the offense because he has learned a job skill and he has strongly bonded with his five year old daughter. Defense counsel asked the trial court to take note that, given Appellant's size (6'2,

185lbs.), his African-American ethnicity, and his incarcerated status, his ability to stay away from gang activity is remarkable especially at prisons such as Hamilton CI where gangs are a problem. (R.1292)

Although the cost of incarceration was not a statutory factor, defense counsel asked the trial court to nonetheless consider that the cost of incarceration, at approximately $18,000.00 per year, would amount to over $900,000.00 if Appellant were ordered to serve the existing 50-year sentence on Count II. (R.1292) "[A]nd that's just unnecessary expense to the taxpayer to protect them." (R.1292)

Finally, she argued that he Eighth Amendment required the trial court to conduct a proportionality review. (R.1292) Defense counsel pointed out that Parker orchestrated the entire offense and acted as a puppeteer for both Appellant and Henderson, yet was sentenced to only 30-years imprisonment. (R.1292) As for Henderson, he openly pled guilty and was sentenced to life imprisonment on both counts; counsel argued that Henderson was 32 years old and "not a young kid like Mr. Williams." (R.1292) Defense counsel argued that Appellant's inability to regulate his actions, his immaturity, and his impulsivity rendered him less deserving of punishment than that which Parker and Henderson received. (R.1292)

In the end, defense counsel pointed out to the trial court "the good things that Roderick has in his favor." (R.1293) She stated:

> Going forward I want this Court to know and I want Roderick Williams to know that he is worth more than the sum of his past mistakes, that he has the will and the ability and the motivation, that little girl is quite the motivation, … to turn his life around, and so I would ask this Court, I would ask this Court not to sentence Rodrick to spend the rest of his life in prison. Thank you. (R.1292)

Allocution: Thereafter, Appellant addressed the trial court. He expressed his condolences to the victim's family and acknowledged their pain. (R.1294) "I felt the pain. And I know other people feel the pain as well. And I know a life was took." (R.1297) Despite his incarceration, Appellant told the court that he wakes up each morning and vows to make the best of "whatever I can." (R.1296) He told the court that he finally has positive male role model in his life in his stepfather. (R.1298) Ultimately, Appellant requested forgiveness from the victim's family. (R.129)

Sentence: As to Count I, the trial court resentenced Appellant to life imprisonment with a review hearing after 25 years. (R.1303) As to Count II, he resentenced Appellant to the existing sentence of 50 years imprisonment with a review hearing after 20 years. (R.1303) Appellant then appealed the sentence and the underlying orders related to resentencing. (R.771)

Roderick Williams v. State, 5D17-1348

Appealing the new sentence, Appellant raised five issues:

1. Under the Eighth Amendment, Appellant's sentence of life imprisonment with a review hearing after 25 years for a homicide

offense committed when he was just 16 years old violates due process and constitutes cruel and unusual punishment because it is excessive, disproportionate to the crime, and disproportionate to the sentence of the more culpable adult co-defendants;

2. Under the Sixth Amendment, the trial court reversibly erred by making a factual finding that Appellant actually killed or intended to kill the victim which increased the range of punishment from no mandatory minimum sentence to a mandatory minimum sentence of 40-years imprisonment;
3. The trial court's factual finding that Appellant actually killed or intended to kill the victim is unsupported by substantial competent evidence;
4. Under the Eighth Amendment, the trial court reversibly erred by finding that mandatory minimum sentences were not unconstitutional as applied to Appellant and other similarly situated juvenile offenders; and
5. Under the Eighth Amendment, Appellant's sentence of 50-years imprisonment for the non-homicide offense of kidnapping is a de facto life sentence violative of the Eighth Amendment because it exceeds his projected life expectancy.

In the written opinion, the Fifth District addressed only the Sixth Amendment issue. Citing this Court's decision in Falcon v. State, 162 So. 3d 954, 963 (Fla. 2015), the Fifth District Court of Appeal affirmed the new sentence and reasoned that "[o]ur supreme court has expressly authorized a trial court to make a factual determination as to whether a defendant actually killed, attempted to kill, or intended to kill a victim." Williams v. State, 42 Fla. L. Weekly D 363 *6-7 (Fla. 5th DCA 2017). (Internal citations omitted.) However, the Fifth District certified the following question as one of great public importance:

> Does Alleyne v. United States, 133 S. Ct. 2151 (2013), require the jury to make the factual finding under Section 775.082(1)(b), Florida Statutes (2016), as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim?

Id. at *8. This appeal now follows.

SUMMARY OF THE ARGUMENT

The trial court violated Appellant's Sixth Amendment right to have a jury make the finding of fact that increased his range of punishment from no mandatory minimum to a mandatory minimum sentence of 40-years imprisonment. Under the Sixth Amendment, the trial court had two options upon resentencing: empanel a new jury to make the factual finding or apply the rule of lenity and sentence Appellant under Section 775.082(1)(b)(2).

ARGUMENT

I. Under the Sixth Amendment, the trial court reversibly erred by making a factual finding that Appellant actually killed or intended to kill the victim which increased the range of punishment from no mandatory minimum sentence to a mandatory minimum sentence of 40-years imprisonment.

Pursuant to the *Opinion* of the Fifth District Court of Appeal rendered on direct appeal, Appellant also moved to empanel a jury. (R.643) Because the *Opinion* directed "the court must make a written finding as to whether Williams killed, intended to kill, or attempted to kill the victim" pursuant to Section 775.082(1)(b)(1) (R.622), Appellant argued that this was a factual determination which would increase his range of punishment:

- If it was found that Appellant actually killed, attempted to kill, or intended to kill the victim, then he faced a mandatory minimum sentence of 40-years imprisonment pursuant to Section 775.082(1)(b)(1) and would be entitled for review in 25 years. (R.644-45)
- If it was found that Appellant did not actually kill, attempt to kill, or intend to kill the victim, then he faced no mandatory minimum sentence under Section 775.082(1)(b)(2) and would be entitled for review in 15 years. (R.645)

Because this required a factual determination that increased the prescribed range of penalties to which Appellant was exposed, he argued that the required a jury to make such a factual determination. (R.645)

At the hearing on intent, defense counsel asserted that the State failed to seek a bifurcated verdict form asking the jury to make specialized finding whether

Appellant actually possessed a firearm for the homicide charge. (R.1171) Specifically, defense counsel pointed out that the State sought such a specialized finding as to the second degree murder and manslaughter charges. (R.1171) Because the State failed to seek a specialized finding for the first degree murder charge, defense counsel argued that the trial court should apply the rule of lenity in favor of Appellant. (R.1171)

The trial court denied the motion to empanel a jury. (R.665) Specifically, the trial court interpreted the *Opinion* of this Court as directing the trial court to make the factual finding rather than the jury. (R.665)

Citing this Court's decision in Falcon v. State, 162 So. 3d 954, 963 (Fla. 2015), the Fifth District Court of Appeal affirmed and reasoned that "[o]ur supreme court has expressly authorized a trial court to make a factual determination as to whether a defendant actually killed, attempted to kill, or intended to kill a victim." Williams v. State, 42 Fla. L. Weekly D 363 *6-7 (Fla. 5th DCA 2017). (Internal citations omitted.) The Fifth District then certified the following question as one of great public importance:

> Does Alleyne v. United States, 133 S. Ct. 2151 (2013), require the jury to make the factual finding under Section 775.082(1)(b), Florida Statutes (2016), as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim?

Id. at *8.

However, the trial court reversibly erred, under the Sixth Amendment, by

making the factual determination that Appellant actually killed or intended to kill the victim rather than either: (1) empaneling a jury to make the determination, or (2) in the absence of a jury's factual finding, sentencing Appellant under Section 775.082(1)(b)(2).

Law: Section 775.082(1)(b)(1) provides that a juvenile who "actually killed, intended to kill, or attempted to kill the victim…shall be punished by a term of imprisonment of at least 40 years." Meanwhile, Section 775.082(1)(b)(2) provides that a juvenile who "did not actually kill, intend to kill, or attempt to kill the victim" is not subject to any mandatory minimum sentence.

Any fact which "increases the prescribed range of penalties to which a criminal defendant is exposed" are elements of a crime and the Sixth Amendment provides the defendant with the right to have the jury find those facts beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 484 (2000); Alleyne v. United States, 133 S. Ct. 2151 (2013).

In Alleyne, the defendant faced a statutory mandatory-minimum sentence for robbery with a firearm as follows: a mandatory-minimum of five years imprisonment if he carried a firearm during the offense, seven years for brandishing a firearm during the offense, and ten years for discharging the firearm during the offense. Id. at 2155-56. Although the jury found that the defendant used or carried the firearm during the offense, it did not find that he brandished or

discharged the firearm. Id. Despite the jury's factual finding, the federal district court made its own finding that the defendant brandished the firearm during the commission of the offense and sentenced him pursuant to the seven-year mandatory-minimum sentence. Id. Reversing the sentence, the Supreme Court of the United States held that "[b]ecause the finding of brandishing increased the penalty to which the defendant was subjected, it was an element, which had to be found by the jury beyond a reasonable doubt. The judge, rather than the jury, found brandishing, thus violating petitioner's Sixth Amendment rights." Id. at 2163-64.

On the other hand, this Court in Falcon directed the trial court to make a finding whether the defendant actually killed, intended to kill, or attempted to kill the victim. 162 So. 2d at 963. But it is to be noted that the issue in Falcon was solely the retroactivity of Miller v. Alabama, 132 S. Ct. 2455 (2012) and not the application of Alleyne. See id.

Analysis: The trial court reversibly erred by making the factual finding that Appellant actually killed or intended to kill the victim which increased his range of punishment from no mandatory minimum sentence, see Fla. Stat. 775.082(1)(b)(2), to a mandatory minimum sentence of 40-years imprisonment. See Fla. Stat. 775.082(1)(b)(1). Whether Appellant "killed, intended to kill, or attempted to kill" the victim constitutes an "ingredient of the offense" which increases the range of

punishment, see Alleyne, 132 S. Ct. at 2162-63:

- If found in the **affirmative**, the trial court was required to sentence Appellant to at least 40-years imprisonment and Appellant would be entitled to review of his sentence after 25 years. See Fla. Stat. § 775.082(1)(b)(1); see also Fla. Stat. § 921.1402(2)(a).
- If found in the **negative**, there was no mandatory minimum sentence and Appellant is entitled to review of his sentence after 15 years. See Fla. Stat. § 775.082(1)(b)(2); see also Fla. Stat. § 921.1402(2)(c).

Because a finding that Appellant killed, intended to kill, or attempted to kill increases the level of punishment to a mandatory minimum of 40-years imprisonment, the Sixth Amendment required a jury to make any factual finding that increased the range of punishment. See Alleyne, supra.

To the extent that the Fifth District relied upon this Court's opinion in Falcon to deny relief, the issues of whether the judge or jury was required to make the factual determination under Section 775.082(1)(b) was not raised by either party and therefore this Court does not appear to have considered the issue. See SC13-865.

The error is not an anomaly to Mr. Williams' case alone. Despite the U.S. Supreme Court's holding that a sentence of life imprisonment would be "uncommon", see 132 S.Ct. at 2465 ("…we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be **uncommon**" (emphasis added)), the result of permitting elected trial judges to make the factual finding under the statute has resulted in at least twenty-four juveniles sentenced to

life imprisonment under the new statute:

a. Rodrick Williams v. State, 5D16-1348 (resentenced to life imprisonment);

b. Ronald Bascom v. State, 5D16-3623 (resentenced to life imprisonment);

c. Kyle Hooper v. State, 5D16-4303 (resentenced to life imprisonment);

d. Morgan Leppert v. State, 5D16-2238 (resentenced to life imprisonment);

e. Amber Wright v. State, 5D16-799 (resentenced to life imprisonment);

f. State v. Konrad Schafer, 2013-CF-2802 (Fla. 9th Jud. Cir. 2016) (resentenced to life imprisonment – no appeal taken);

g. Kevin Cutts v. State, 4D16-2547 (resentenced to life imprisonment);

h. Javarous Dawson v. State, 4D16-3319 (resentenced to life imprisonment);

i. Darnell Razz v. State, 4D15-4115 (resentenced to life imprisonment with no review hearing);

j. Eric Ellington v. State, 3D14-2459 (resentenced to life

imprisonment);

k. Michael Hernandez v. State, 3D16-664 (resentenced to life imprisonment);

l. Ta Heem Blake v. State, 2D10-5700 (resentenced to life imprisonment);

m. Larry Brown v. State, 2D16-1941 (resentenced to life imprisonment);

n. Amer Ejak v. State, 2D13-532 (resentenced to life imprisonment);

o. Santos Hernandez Jr. v. State, 2D15-1559 (resentenced to life imprisonment);

p. Leoni Jones v. State, 2D17-139 (resentenced to life imprisonment);

q. Mychal King v. State, 2D15-2723 (resentenced to life imprisonment);

r. Curtis Shuler v. State, 2D16-2016 (resentenced to life imprisonment);

s. William Splain v. State, 2D15-2399 (resentenced to life imprisonment);

t. Sylathum Streeter v. State, 2D16-2262 (resentenced to life imprisonment);

u. Ashley Toye v. State, 2D16-5423 (resentenced to life

imprisonment);

v. Justin Wirth v. State, 2D16-2527 (resentenced to life imprisonment);

w. Nicholas Lindsey Jr. v. State, 2011CF004681 (Fla. Sixth Jud. Cir. 2017) (resentenced to life imprisonment); and

x. Alfred Hawkins v. State, 1D16-1120 (sentenced to life imprisonment).[2]

As the trial judges are making the factual findings rather than a jury, the sheer number of juveniles sentenced to life imprisonment by the trial courts is far too many to be considered "uncommon" as the U.S. Supreme Court dictated.

In the absence of a jury's factual determination from the original trial, the trial court had two options under the Sixth Amendment: empanel a new jury to make the factual finding or apply the rule of lenity and sentence Appellant under Section 775.082(1)(b)(2). See generally Carawan v. State, 515 So. 2d 161, 165 (Fla. 1987). Because the trial court usurped the venerated role of the jury as the ultimate finder of fact, Appellant's sentence under Section 775.082(1)(b)(1) violates the Sixth Amendment and must be reversed.

[2]Pursuant to Section 90.202, Appellant requests that this Court take judicial notice that the aforementioned juveniles are amongst those resentenced or sentenced by trial courts under the new framework to life imprisonment.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse his convictions and sentences, and award him any and all relief to which he is entitled.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following by electronic mail delivery on this 19th day of May 2017:

Office of the Attorney General, Criminal Appeals Division

crimappdab@myfloridalegal.com

CERTIFICATE OF TYPEFACE COMPLIANCE

I certify that the lettering in this brief is Times New Roman 14-point Font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Valarie Linnen
VALARIE LINNEN, ESQ.
Florida Bar No.: 63291
PO Box 330339
Atlantic Beach, FL 32233
888-608-8814
vlinnen@live.com
Attorney for Appellant