Hunter S. Conrad
Clerk of the Circuit Court
4010 Lewis Speedway
St. Augustine, Florida 32084
(904) 819-3600 ext 4488

May 23, 2017

JOHN CHRISTOPHER MARQUARD
Appellant

VS

STATE OF FLORIDA
Appellee

SC CASE NO: SC17-862

LT CASE NO: 91002418CF

RECORD ON APPEAL

[Pages 1-121]

PROCEEDINGS IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, STATE OF FLORIDA

HONORABLE HOWARD M MALTZ
Presiding
St. Augustine, Florida

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cc: Ali A. Shakoor
12973 N. Telecom Parkway
Temple Terrace, FL 33637
Shakoor@ccmr.state.fl.us

Hon. Pam Bondi, Attorney General
Department Of Legal Affairs
444 Seabreeze Blvd, 5th Floor
Daytona Beach, Florida 32118

JOHN CHRISTOPHER MARQUARD
APPELLANT

VS

STATE OF FLORIDA
APPELLEE

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY

L.T. CASE NO: 91002418CFMA

H.T. CASE NO: SC17-862

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01 10, 2017	DEFENSE ATTORNEY: SHAKOOR, ALI ASSIGNED
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01 04, 2008	JUDGE BERGER, WENDY W ASSIGNED
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10 18, 2004	(ABSHIRE) (COPY) MOTION TO CORRECT ILLEGAL SENTENCE
09 21, 2004	(ABSHIRE)5TH DCA MANDATE 9/20/04 (5D03-2388) 092104/SB
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09 17, 2003	(ABSHIRE) DIRECTIONS TO THE CLERK(08-22-03)
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07 29, 2003	649-(ABSHIRE) ACKNOWLEDGMENT OF NEW CASE/072903-RW
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07 24, 2003	647-(ABSHIRE) 5TH DCA ORDER RECORD SHALL BE COMPLETED IN 25 DAYS/072903-RW
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06 11, 2003	643-(ABSHIRE)ORDER ON PETITION FOR WRIT OF HABEAS CORPUS TO FILE BELATED RULE 3.850 MOTION (DENIED) 061303/AB
06 05, 2003	(ABSHIRE) LTR TO CLERK FROM DEFT
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05 07, 2003	SUPREME COURT OF FLORIDA (APPELLANT/PETITIONER'S MOTION FOR REHEARING)(DENIED)
11 26, 2002	SUPREME COURT OF FLORIDA ORDER (AFFIRM LOWER COURT'S DENIAL OF 3.850 MOTION FOR POST CONVICTION RELIEF AND DENY PETITION FOR HABEAS CORPUS)
06 27, 2002	LETTER TO JUDGE THOMAS HALL FROM LESLIE ANNE SCALLEY
06 26, 2001	REPLY BRIEF OF THE APPELLANT
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05 22, 2001	LETTER DATED 05-16-01 TO CLERK FROOM CCRC/NOTICE OF APPEARANCE
04 10, 2001	LETTER DATED 4-02-01 TO SUPREME COURT FROM CCRC/SUPPLEMENTAL BRIEF
03 16, 2001	LETTER DATED 03-12-01 TO SUPREME COURT SUPPLEMENT TO NOTICE OF APPEAL SENT
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02 09, 2001	=-DEFT'S 2ND PRO SE MOTION FOR POST CONVICTION RELIEF-R MATHIS, CIRCUIT JUDGE-R CALHOUN, ASST STATE ATTY-MOTION DENIED FOR LACK OF JURISDICTION W/O PREJUDICE
02 08, 2001	SUPREME COURT OF FLORIDA ORDER MOTION TO SUPPLEMENT THE RECORD IS GRANTED IN PART
02 05, 2001	SUPREME OURT OF FLORIDA ORDER APPELLANT'S MOTION TO SUPPLEMENT THE RECORD IS GRANTED IN PART(FAX)
02 01, 2001	LTR TO JUDGE MATHIS FROM DEFT
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01 26, 2001	NOTICE TO R CALHOUN,OFFICE OF THE ATTY GENERAL AND J AULISIO-HRG 2/9/01 @ 9:00AM
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01 11, 2001	DEFT'S SECOND MOTION FOR POST CONVICTION RELIEF AND/OR HABEAS CORPUS PURSUANT TO RULE 3.850
12 08, 2000	APPELLLANT'S MOTION TO TOLL TIME
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12 05, 2000	MOTION FOR REHEARING
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11 30, 2000	SUPPLEMENTAL DIRECTIONS TO THE CLERK
	SUPPLEMENTAL STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
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11 29, 2000	RESPONSE TO DEFT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS (FROM FDLE)
11 01, 2000	ORDER ON MOTION FOR POST CONVICTION RELIEF
	APPELLEE/RESPONDENT'S MOTION TO HOLD IN ABEYANCE PENDING ISSUANCE OF FINAL ORDER IS GRANTED
10 12, 2000	SUPREME COURT OF FLORIDA ORDER MOTION TO HOLD IN ABEYANCE PENDING ISSUANCE OF FINAL ORDER FRANTED
07 31, 2000	INITIAL BRIEF OF THE APPELLANT
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03 24, 2000	MOTION FOR PAYMENT OF LODGING/ORDER
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12 10, 1999	STATE'S RESPONSE TO DEFENDANT'S SECOND AND THIRD AMENDED MOTIONS TO VACATE JUDGMENT AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND

12 06, 1999	THIRD AMENDED MOTION TO VACATE JUDGMENT OF CONVICTIONCS & SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
11 18, 1999	MOTION TO AMEND PLEADING TO CONFORM WITH THE EVIDENCE
	=-HEARING ON EVIDENTARY HEARING CONTINUES, 2:40 PM, MOTION TO AMEND PLEADING TO CONFORM WITH THE EVIDENCE IS GRANTED, DEFENSE ATTORNEY CLOSING ARGUMENTS @ 2:40 AM, STATE ATTORNEY CLOSING ARGUMENTS @ 3:20 PM, DEFENSE ATTORNEY REBUTTAL @ 3:50 PM, HEARING ENDED @ 3:55 PM, JUDGE TO DO ORDER
11 16, 1999	DEFT'S 'PRO-SE MOTION FOR INQUIRY PURSUANT TO SECTION 27.710(12), FLORIDA STATUTE (SUPP.1998) AND REQUEST TO AMEND POST-CONVICTION MOTION WITH ADDITIONAL FACTS AND CLAIM'
	AMENDED MOTION TO VACATE JUDGMENT AND SENTENCE WITH REQUEST FOR LEAVE TO AMEND
	=-MOTION FOR EVIDENTIARY HEARING-JUDGE MATHIS, J. AULISIO, COURT REPORTER-CARMEN, DEPUTY CLERK-MARY FOUST, BATLIFF-HAYES, MOTION FOR AMENDED INFORMATION TO BE FILED-GRANTED, MOTION FOR FILE OF PRO-SE IS D DENIED, DEFENSE WITNESS(ES)-MARIAH HARRELSON SWORN @ 9:20 AM, MICHAEL ABSHIRE SWORN @ 9:30 AM, ERIK WALLEN SWORN @ 10:25 AM, REBECCA MARQUARD HICK SWORN @ 11:05 AM, MICHAEL ABSHIRE RECALLED AS DEFENSE WITNESS @ 11:35 AM, GARY WOOD SWORN @ 11:37 AM, HEARING IN RECESS @ 12:35 PM, HEARING CONTINUES @ 1:50 PM, GARY WOOD RETURNS TO STAND, HOBERT HARRISON SWORN @ 2:25 PM, DR. MICHAEL AMIEL SWORN @ 2:40 PM, DR. BARRY CROWN SWORN @ 3:14 PM, SHIRLEY FURTICK SWORN @ 4:02 PM, STATES WITNESS(ES-ROGER MARQUARD SWORN @ 4:52 PM, HEARING TO BE CONTINUE ON THURSDAY, NOVEMBER 18, 1999, @ 2:30 PM
	SUBPOENA # 994310 RETD (MARQUARD)
11 12, 1999	ORDER GRANTING DEFENDANT'S MOTION TO TRANSPORT WITNESS (HOBERT HARRISON FOR EVIDENTIARY HEARING 11-16-99 @ 9AM)
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11 10, 1999	PRAECIPE FOR WITNESS SUBPOENA
11 05, 1999	NOTICE OF APPEARANCE (ROSEMARY CALHOUN, ASST STATE ATTY, KENNETH NUNNELLY, ASST ATTY GENERAL)
11 03, 1999	CRIM WITNESS SUBP#994188 RET'D
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11 02, 1999	ORDER
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10 27, 1999	NOTICE OF HEARING
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10 04, 1999	LETTER TO CLERK FROM JULIUS AULISIO, LAW OFFICE OF CAPITAL COLLATERAL (DTD 10-4-99)
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07 06, 1999	571-(ABSHIRE) LETTER DATED 07-02-99 TO CLERK FROM JULIUS AUL -LISIO, ASST. CCRC/072199-RLW
05 13, 1999	CLOSED FOR POST CONV RELIEF
	ORDER ON AMENDED MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE - CLAIM VII IS DENIED, CLAIM VIII IS DENIED, AND EVIDENTIARY HEARING TO BE HELD FOR CLAIMS I AND II ON 8-17-99 @9:00AM
05 10, 1999	STATE'S RESPONSE TO DEFENDANT'S AMENDED MOTION TO VACATE JUDGMENT OF CONVICTIONS AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
04 23, 1999	(COPY)LETTER TO CLERK FROM AMY SETTLEMIRE, ASST CAPITAL COLLATERAL REGIONAL COUNSEL W/AMENDED MOTION TO VACATE JUDGMENT OR CONVICTIONS AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
04 14, 1999	NOTICE OF APPEARANCE
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03 18, 1999	LETTER DATED 03-15-99 TO CLERK FROM AMY C. SETTLEMIRE ASST. CCRC
02 22, 1999	AMENDED MOTION TO VACATE JUDGMENT OF CONVICTIONS & SENT -ENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
12 23, 1998	ORDER ON MOTION TO COMPEL - DENIED
12 07, 1998	NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY
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12 04, 1998	NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY
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11 23, 1998	NOTICE OF PRODUCTION OF REQUESTED DOCUMENTS
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	LTR FROM LAW OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE (DTD 9-13-96)
	LETTER DATED 11-12-98 TO CLERK FROM AMY C. SETTLEMIRE
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11 05, 1998	RESPONSE TO REQUEST FOR RECORDS AND NOTICE OF OBJECTIONS
11 04, 1998	NOTICE OF NON COMPLIANCE TO REQUEST FOR DOCUMENTS
10 26, 1998	LTR FROM L JOHANSEN TO CLERK DTD 10-22-98
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10 19, 1998	NOTICE OF FILING , REQUESTS FOR PRODUCTION OF PUBLIC RECORDS & RETURN RECEIPTS
10 09, 1998	NOTICE OF FILING : REQUESTS FOR PRODUCTION OF PUBLIC RE-CORDS & RETURN RECEIPTS
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07 06, 1998	NOTICE OF FLORIDA SUPREME COURT ORDER
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12 19, 1997	NOTICE OF LOSS OF DESIGNATED COUNSEL
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10 17, 1997	NOTICE OF APPEARANCE
08 07, 1997	NOTICE OF APPEARANCE AS CO COUNSEL
06 10, 1997	FLA SUPREME COURT ORDER GRANTING MOTION TO TOLL TIME UNDER FRCP 3.852 UNTIL SEPT 1, 1997
05 19, 1997	NOTICE OF STAY REGARDING PUBLIC RECORDS
05 05, 1997	LTR FROM E RICE SHERIFF, PINELLAS CO, FL (DTD 4-30-97)
04 25, 1997	RESPONSE OF THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.852 REQUEST FOR PRODUCTION
	DEFENDANT'S RESPONSE TO THE PINELLAS COUNTY SHERIFF'S MOTION FOR PROTECTIVE ORDER AND OBJECTION TO PRODUCTION OF PUBLIC RECORDS
	LETTER TO CLERK FROM PETER MILLS, LAW OFFICE OF CAPITAL COLLATERAL REPRESENTATIVE (DTD 4-24-97)
	NOTICE OF PRODUTION, CERTIFICATE OF DILIGENT SEARCH AND MOTION FOR PROTECTIVE ORDER AND OBJECTION TO PRODUCTION OF PUBLIC RECORDS

	LETTER TO CLERK FROM PINELLAS CO SHERIFF'S OFFICE (DTD 4-22-97)
04 14, 1997	NOTICE OF FILING
03 26, 1997	MOTION TO VACATE JUDGEMENT OF CONVICTIONS AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
	MOTION TO VACATE JUDGEMENT OF CONVICTIONS AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND (FILED 3-24-97)
	NOTICE OF FILLING (ATTORNEY GENERAL)
03 14, 1997	NOTICE OF FILING (OFFICE OF MEDICAL EXAMINER)
03 11, 1997	NOTICE OF FILING (REQUESTS FOR PRODUCTION OF PUBLIC RECORDS
	MOTION TO COMPEL (FILED 3-10-97)(MARQUARD)
	LTR MS MILLER FROM P MILLS (DTD 5-5-97)
	NOTICE OF FILING(CERTIFIED MAIL RCPTS)
03 07, 1997	NOTICE OF FILING(CERTIFIED MAIL RCPTS)
03 06, 1997	NOTICE OF FILING
	LTR MS MILLER FROM M J MINERVA (DTD 3-3-97)
11 25, 1996	518-(BOTH)LETTER TO CARL MARKEL, CLERK OF COURT, FROM CHARLES FORMOSA, CCR INVESTIGATORE (DTD 9-28-96)
11 18, 1996	517-(BOTH) LETTER TO CARL MARKEL, CLERK OF COURT, FROM CHARLES FORMOSA, CCR INVESTIGATOR (DTD 9-28-96)
09 20, 1996	ORDER DETERMINING CONTINUING INDIGENCY TO INITIATE AND TO PROSECUTE POST-CONVICTION PROCEEDINGS
09 16, 1996	ATTORNEY'S WRITTEN CERTIFICATE OF CLIENT'S INDIGENCY
	MOTION TO DETERMINE DEFENDANT'S INDIGENCY TO INSTITUTE AND PROSECUTE POST-CONVICTION PROCEEDINGS
05 08, 1996	513-(ABSHIRE)TRANSCRIPT OF COURT PROCEEDING BEFORE JUDGE WATSON 11-1-93 11:00 AM 050996/DBM
	512-(ABSHIRE)NOTICE OF FILING OF TRANSCRIPTS 050996/DBM
04 10, 1996	511-(ABHSIRE)SUPREME COURT ORDER - CCR TO DESIGNATE COUNSEL AND FILE PLEADINGS UNDER RULE 3.850 FRCP 041996/TLD
05 18, 1995	SUPREME COURT OF FLORIDA ORDER - MOTION FOR EXTENSION OF TIME FOR FILING PLEADINGS IS EXTENDED, TIME TO DESIGNATE COUSEL IS EXTENDED
11 29, 1994	467-(HERNANDEZ)FLORIDA STATE SUPREME COURT ORDER - APPROVE 5TH'S DECISION IN HERNANDEZ AND DISAPPROVE FERGUSON 112994/TLT
11 21, 1994	ORDER/SENTENCING HRG 1-23-94 @ 9AM
09 26, 1994	MANDATE SUPREME COURT OF FLORIDA - AFFIRM CONVICTIONS AND SENTENCES
	SUPREME COURT OF FLORIDA - APPELLANT'S MOTION FOR REHEARING DENIED
08 29, 1994	SUPREME COURT OF FLORIDA - MOTION FOR REHEARING DENIED
06 15, 1994	SUPREME COURT OF FLORIDA (AFFIRM CONVICTIONS AND SENTENCES)
10 28, 1993	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE CHECK TO COMFORT INN)
10 18, 1993	SUPREME COURT OF FL (MOTION FOR ORDER PAYMENT (GRANTED)
09 08, 1993	CERTIFICATE OF CLERK
	DEFT REQUEST JURY INST. PENALTY PHASE & OBJECTIONS TO STANDARD INSTUCTIONS
09 07, 1993	MOTION TO TOLL TIME/GRANTED
08 25, 1993	MOTION TO TOLL TIME
	MOTION TO SUPPLEMENT THE RECORD
04 30, 1993	LETTER OF TRANSMITTAL TO 5TH DCA
04 02, 1993	PROCEEDINGS ON 1-14-93

	PROCEEDING FROM VOLUME VI
	TESTIMONY AND PROCEEDING TAKEN ON 1-13-93
03 31, 1993	CONTINUATION OF TRIAL PROCEEDINGS BEFORE JUDGE WATSON 1-12-93 (VOL IV, PGS 387-551)
	TRIAL PROCEEDINGS BEFORE JUDGE WATSON 1-12-93 (VOL III, PGS 234-386)
	TESTIMONY AND PROCEEDINGS BEFORE JUDGE WATSON 1-11-93 (VOL II, PGS 116-234)
	TESTIMONY AND PROCEEDINGS BEFORE JUDGE WATSON 1-11-93 (VOL I, PGS 1-115)
03 25, 1993	PROCEEDINGS HELD BEFORE JUDGE WATSON 7-21-92 @ 3:25 PM
03 22, 1993	MOTION FOR COSTS INCURRED/ORDER (CLERK OF COURT SHALL ISSUE A CHECK PAYABLE TO JACK MERWIN, PH.D. FOR $1500)
03 10, 1993	INVOICE #03483 FROM SUPREME COURT OF FLORIDA
03 05, 1993	TESTIMONY AND PROCEEDINGS BEFORE JUDGE WATSON 9-24-92
03 04, 1993	SUPREME COURT OF FLORIDA ORDER (DIRECTIONS TO COURT REPORTER, ETC)
	RECEIPT FROM SUPREME COURT OF FLORIDA (NOTICE OF APPEAL, ORDER OF INSOLVENCY)
03 02, 1993	EXCERPT OF PROCEEDINGS HELD BEFORE JUDGE WATSON 2-5-93 @ 10:30 AM
03 01, 1993	PROCEEDINGS HELD BEFORE JUDGE WATSON
02 24, 1993	ORDER ADJUDGED INSOLVENT, APPT OF PUBLIC DEFENDER, ETC
	DESIGNATION OF THE RECORD TO THE COURT REPORTER
	DIRECTIONS TO THE CLERK
	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
	NOTICE OF APPEAL
02 11, 1993	MOTION/ORDER (ST AUGUSTINE TRAVEL $1,189.00)
	395-(BOTH) ORDER (ST JOHNS COUNTY MEDICAL EXAMINER AND/OR SJSO SHALL RELEASE ALL REMAINS OF DECEASED VICTIM, EXCEPT THOSE HELD AS EVIDENCE, TO THE PARENTS FOR BURIAL) 021193/CS
	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE A CHECK TO MONSON MOTOR LODGE FOR $468.00)
	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE A CHECK TO ANDREW BEYER FOR $52.00)
	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE A CHECK TO MICHAEL INGRAM FOR $52.00)
	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE A CHECK TO PATRICIA SIPPEL FOR $130.00)
	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE A CHECK TO ARTHUR WILLETTS FOR $362.00)
	MOTION/ORDER (CLERK OF CIRCUIT COURT SHALL ISSUE A CHECK TO MARGARET WILLETTS FOR $364.00)
02 05, 1993	CASE# 91002418CFMA - SENTENCED: IMPOSED: 2/5/1993 EFFECTIVE DATE: 2/5/1993 - MAX CONF - PRISON DEATH - CHRG 001 SENTENCE PROVISION - NOT APPLICABLE - CHRG 001 SENTENCE PROVISION - SENTENCING GUIDLINES - CHRG 001 -
	388-(ABSHIRE) WITNESS SUBP# 15900 (M ABSHIRE SERVED 1-12-93)
	387-(MARQUARD)ORDER FOR PAYMENT FOR SERVICES RENDERED 020893/CS
	386-(MARQUARD)MOTION FOR ORDER FOR PAYMENT FOR PROFESSIONAL SERVICES RENDERED 020893/CS

	385-(MARQUARD)MOTION TO RELEASE REMAINS 020893/CS
	384-(MARQUARD)ORDER (DEFT'S MOTION FOR RELEASE OF EVIDENCE IS GRANTED) 020893/CS
	383-(MARQUARD)MOTION FOR RELEASE OF EVIDENCE 020893/CS
	382-(MARQUARD)ORDER (DEFT ADJUDGED INSOLVENT UPON APPEAL PUBLIC DEFENDER APPT'D, ETC) 020893/CS
	381-(MARQUARD)AFFIDAVIT OF INSOLVENCY FOR PURPOSES OF APPEAL 020893/CS
	380-(MARQUARD)SEALED PRESENTENCE INVESTIGATION REPORT DTD 2-5-93) 020893/CS
	379-(MARQUARD)CONFIDENTIAL VICTIM INFORMATION FORM 020893/CS
	378-(MARQUARD)RESTITUTION ORDER 020893/CS
	SENTENCING GUIDELINES SCORESHEET
	UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS
	(CT2)JUDGMENT/SENTENCE (JUDGE WATSON)
	(CT1)JUDGMENT AND SENTENCE (JUDGE WATSON)
	373-(ABSHIRE)ORDER (DEFT ADJUDGED INSOLVENT UPON APPEAL DAVID MORGAN, APPT'D ATTY, ETC) 020893/CS
	372-(ABSHIRE)SEALED PRESENTENCE INVESTIGATION (DTD 2-5-93) 020593/CS
	371-(ABSHIRE)CONFIDENTIAL VICTIM INFORMATION FORM
	370-(ABSHIRE)RESTITUTION ORDER 020593/CS
	369-(ABSHIRE)SENTENCING GUIDELINES SCORESHEET 020593/CS
	368-(ABSHIRE)UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS 020593/CS
	367-(ABSHIRE) (CT2)JUDGMENT/SENTENCE (JUDGE WATSON) 020593/CS
	366-(ABSHIRE) (CT1)JUDGMENT AND SENTENCE (JUDGE WATSON) 020593/CS
	(VOL II) CONTINUANCE OF TRIAL PROCEEDINGS BEFORE JUDGE WATSON 1-15-93 @ 1:50 PM
	(VOL I) TRIAL PROCEEDINGS HELD BEFORE JUDGE WATSON 1-15-93 @ 9AM
	(CT1)ADJ:GUILTY-SENT:DEATH AS PRESCRIBED BY LAW, 30 DAYS TO APPEAL, (CT2)ADJ:GUILTY-SENT:LIFE IMPRISONMENT, CONSEC TO CT1, 30 DAYS TO APPEAL
	=-(SENTENCING) DEF MOTION FOR NEW TRIAL - DENIED
	XX-(ABSHIRE) (CT1)ADJ:GUILTY-SENT:DEATH AS PRESCRIBED BY LAW, 30 DAYS TO APPEAL, (CT2)ADJ:GUILTY-SENT:LIFE IMPRISONMENT, CONSEC TO CT1, 30 DAYS TO APPEAL
	=-(ABSHIRE) (SENTENCING) DEF MOTION FOR NEW TRIAL - DENIED
02 02, 1993	363-(ABSHIRE)PROCEEDINGS HELD BEFORE JUDGE WATSON 10-3-92
	STATE'S MOTION FOR COSTS/ORDER
01 29, 1993	361-(ABSHIRE)MOTION TO TRANSPORT PRISONER/ORDER (PUTNAM COUNTY JAIL SHALL DELIVER DEFT FOR SENTENCING 2-5-93 @ 10:30 AM)
01 28, 1993	(ABSHIRE)NOTICE TO DEFT OF SENTENCING 2-5-93 @ 10:30
	NOTICE TO DEFT OF SENTENCING 2-5-93 @ 10:30 AM
	MOTION TO PAY EXPERT OR SKILLED WITNESS/ORDER
	359-(BOTH)NOTICE OF HEARING (HRG 2-5-93 @ 10:30 AM -- DEFT'S MOTIONS FOR NEW TRIAL) 012893/CS
01 26, 1993	358-(BOTH)LETTER TO CLERK'S OFFICE FROM JUDGE WATSON RE: SENTENCING 2-5-93 @ 10:30 AM
01 25, 1993	MOTION FOR NEW TRIAL
01 15, 1993	NOTIFICATION RE: PRE-SENTENCE INVESTIGATION

	STATE'S EVIDENCE #24 (CERTIFIED COPY OF JUDGMENT/SENTENCE FROM NORTH CAROLINA #91-CR-1084)
	STATE'S EXHIBIT #HH (FAX COPY OF JUDGMENT/SENTENCE FROM NORTH CAROLINA #87-CR-18396)
	STATE'S EXHIBIT #GG (CERTIFIED COPY OF JUDGMENT/SENTENCE FROM NORTH CAROLINA #88-CRS-20658)
	STATE'S EVIDENCE #22 (TRANSCRIPT STATEMENT OF MARQUARD)
	EXHIBITS AT TRIAL LIST
	SENTENCING RECOMMENDATION
	PENALTY PROCEEDINGS
	=-(PENALTY PHASE)STATE WITNESS #1 - JUDGE SHELLY HOLT, SWORN 9:10 AM, STATE WITNESS #2 - PATRICIA RAWLS, SWORN 11:00 AM, DEFENSE WITNESS #1 - DR HARRY KROP, SWORN 11:11 AM, STATE'S REBUTTAL WITNESS - DR JACK MERWIN, SWORN 1:52, JURY IN - 4:19 JURY OUT - 5:10 PM, JURY RECOMMENDATION - DEATH AS PRESCRIBED BY LAW, PSI ORDERED
01 13, 1993	VERDICT - COUNT 2 (GUILTY OF ARMED ROBBERY WITH A DEADLY WEAPON AS CHARGED)
	VERDICT - COUNT 1 (GUILTY OF FIRST DEGREE MURDER AS CHARGED)
	CLOSING JURY INSTRUCTIONS
	PRELIMINARY INSTRUCTIONS TO JURY
	=-STATE WITNESS #10 - DR WILLIAM MAPLES, SWORN 9:30 AM, STATE WITNESS #11 - DET FRANK WELBORN SWORN 10:02, DEFENSE RENEWS ANY PRE-TRIAL MOTIONS, MOTION TO SUPPRESS AND RENEWS MOTION FOR MISTRIAL DENIED, STATE WITNESS #12 - MICHAEL INGRAM, SWORN 11:17 AM, JURY IN 3:40 PM / JURY OUT 5:25 PM, VERDICT - CT1 - GUILTY AS CHARGED, CT2 - GUILTY AS CHARGED, PENALTY PHASE TO BEGIN 1-15-93 @ 9AM
01 12, 1993	STIPULATION (OF EVIDENCE & FACTS)
	=-STATE WITNESS #4 - DR TERRY STEINER, SWORN 10:44 AM, STATE WITNESS #5 - DET PAT GREENHALGH, SWORN 11:08, STATE WITNESS #6 - DET JOSEPH FRESHELY, SWORN 12:48, STATE WITNESS #7 - MICHAEL ABSHIRE, SWORN 1:11, DEFENSE MOTIONS FOR MISTRIAL - DENIED, STATE WITNESS #8 - MARTIN DOMALEWICTZ, SWORN 4:28
	=-JURORS PRESENT - SWORN 9:08 AM, STATE WITNESS #1 - JERRY STALVEY, JR, SWORN 9:30, WITNESSES: P SIPPELL, ANDREW BEYER, DEP C BRADLEY, SWORN 9:37 AM, STATE WITNESS #3 - S BIESIADA, SWORN 9:42
01 11, 1993	=-(TRIAL - RICHARD O WATSON, PRESIDING JUDGE, P CANAN/ S ALEXANDER, ASST STATE ATTY, H PEARL/ G WOODS, DEFENSE ATTY) JURORS SELECTED
	MOTION TO TRANSPORT PRISONER/ORDER (PUTNAM COUNTY JAIL SHALL DELIVER MICHAEL ABSHIRE TO GIVE TESTIMONY DURING TRIAL 1-12-93 @ 9AM)
01 08, 1993	WITNESS SUBPOENA #15552 (D MCDOUGALL, A MILLER, S LEARY SERVED 11-20-92)
01 07, 1993	WITNESS SUBPOENA #15423 (H HARRISON SERVED 12-28-92)
01 06, 1993	ORDER ON STATE'S MOTION TO APPOINT MENTAL HEALTH EXPERT FOR THE PURPOSES OF CAPITAL SENTENCING PROCEEDINGS, AND TO ORDER MENTAL HEALTH EXAMINATION OF DEFENDANT IN THE STATE OF FLORIDA VS JOHN C MARQUARD
01 05, 1993	WITNESS SUBPOENA #15784 (HARRY KROP SERVED 12-22-92)
	WITNESS SUBPOENA #15783 (HARRY KROP SERVED 12-23-92)
	WITNESS SUBPOENA #15782 (M INGRAM SERVED 12-28-92)
01 04, 1993	=-MOTION GRANTED FOR EVALUATION OF DEFENDANT

12 30, 1992	335-(BOTH)ORDER AUTHORIZING SHERIFF TO HOUSE DEFENDANT, MARQUARD, IN THE ST JOHNS COUNTY JAIL, AND AUTHORIZING SHERIFF TO HOUSE DEFENDANT, ABSHIRE, IN THE PUTNAM COUNTY JAIL 123092/CS
12 22, 1992	MOTION TO TRANSPORT/ORDER TO TRANSPORT (PUTNAM COUNTY SO SHALL DELIVER DEFT FOR HRG 1-4-93 @ 1:30 PM)
12 18, 1992	AMENDED NOTICE OF HEARING (HRG 1-4-93 -- STATE'S MOTION TO APPOINT MENTAL HEALTH EXPERT)
12 16, 1992	ORDER TO TRANSPORT WITNESS (SJSO SHALL TRANSPORT MICHAEL ABSHIRE TO COURT WEEK OF 1-11-93)
	MOTION TO TRANSPORT WITNESS
	ORDER TO TRANSPORT WITNESS (SJSO SHALL TRANSPORT HOBART HARRISON TO COURT WEEK OF 1-11-93)
	MOTION TO TRANSPORT WITNESS
	MOTION TO TRANSPORT/ORDER TO TRANSPORT (SJSO SHALL DELIVER DEFT FOR TRIAL 1-11-93 @ 8:30 AM
	MOTION TO TRANSPORT/ORDER TO TRANSPORT (SJSO SHALL DELIVER DEFT FOR HRG 12-18-92 @ 1:30 PM)
12 11, 1992	WITNESS SUBPOENA #15553(DR SCALES, R BARKOSKI, R JOHNSON SERVED 11-14-92)(T RISINGER SERVED 11-23-92)(B SUSSMAN SERVED 11-25-92)
12 09, 1992	ORDER FOR PAYMENT/ORDERED
12 08, 1992	NOTICE OF HEARING (HRG 12-18-92 @ 1:30 PM STATE'S MOTION TO MENTAL HEALTH EXPERT)
	WITNESS SUBPOENA# 15558 (DR W MAPLES SERVED 11-23-92)
12 07, 1992	MOTION TO APPOINT MENTAL HEALTH EXPERT FOR THE PURPOSES OF CAPITAL SENTENCING PROCEEDINGS AND TO ORDER MENTAL HEALTH EXAMINATION OF DEFENDANT IN THE STATE OF FLORIDA VS JOHN MARQUARD
12 04, 1992	WITNESS SUBPOENA #15549 (F EDMONSON SERVED 11-20-92)
	WITNESS SUBPOENA #15545 (M INGRAM, P SIPPEL, A BEYER SERVED 11-24-92)
12 03, 1992	ORDER FOR PAYMENT
11 25, 1992	WITNESS SUBPOENA #15551 (OFFICER COOK, DET FRESHLEY, DET NESTOR - SENT VIA CERT MAIL)
11 23, 1992	WITNESS SUBPOENA #15547 (P RAWLS, SGT CONNOLLY, JUDGE HOLT - SENT VIA CERT MAIL)
	WITNESS SUBPOENA DUCES TECUM #15568 (P RAWLS - SENT VIA CERT MAIL)
	WITNESS SUBPOENA #15557 (M ABSHIRE NOT SERVED)
	ORDER/TRIAL 1-11-93 @ 9AM
	=-TRIAL CONTINUED UNTIL 1-11-93
11 20, 1992	WITNESS SUBPOENA #15556 (DR STEINER, M BENNETT SERVED 11-19-92)
	WITNESS SUBPOENA #15550 (R JONES SERVED 11-19-92, M DOMALEWICTZ SERVED 11-18-92)
	WITNESS SUBPOENA #15554 (J STALVEY JR, J STALVEY SR SERVED 11-20-92)
	WITNESS SUBPOENA #15555 (DET GREENHALGH, DET WELBORN, DEP BRADLEY, S BIESIADA SERVED 11-18-92
	WITNESS SUBPOENA #15548 (A MARQUARD, M MARQUARD, M MARQUARD, J QUAILE - SENT CERTIFIED MAIL)
11 19, 1992	WITNESS SUBPOENA #15546 (M WILLETTS, A WILLETTS - SENT VIA CERT MAIL)
11 18, 1992	WITNESS SUBPOENA #15274 (D MCDOUGALL, A MILLER, S LEARY, DR D SCALES, B SUSSMAN SERVED 10-27-92, R BARKOSKI & R JOHNSON SERVED 10-26-92)
	WITNESS SUBPOENA #15426 (H HARRISON SERVED 11-10-92)

	WITNESS SUBPOENA #15423 (H HARRISON SERVED 11-10-92)
	WITNESS SUBPOENA #15298 (H HARRISON NOT SERVED)
11 16, 1992	DEPOSITION OF MICHAEL G ABSHIRE TAKEN 10-28-92
11 13, 1992	WITNESS SUBPOENA #15299 (M INGRAM - CERT MAIL - RETURNED BY POST OFFICE)
	WITNESS SUBPOENA #15318 (A MARQUARD & M MARQUARD NOT SERVED)
11 12, 1992	WITNESS SUBPOENA #15272 (M INGRAM, A BEYER P SIPPEL NOT SERVED)
	WITNESS SUBPOENA (M INGRAM NOT SERVED)
11 06, 1992	WITNESS SUBPOENA# 15319 (JUDGE S HOLT SERVED 10-27-92)
	WITNESS SUBPOENA #15320 (P RAWLS SERVED 10-27-92)
	WITNESS SUBPOENA# 15271 (F EDMONSON SUB SERVED P VAN ARNAM 10-28-92)
11 05, 1992	MOTION IN LIMINE
	SUBPOENA #15276 - MARGARET & ARTHUR WILLETTS SERVED 10-28-92
	SUBPOENA #15273 - FRESHLEY SERVED 10-26-92 - NESTOR SERVED 10-23-92
	SUBPOENA #14967 - CRAFT SERVED 10-28-92
10 30, 1992	ORDER FOR PAYMENT
	ORDER FOR TRANSCRIPTS
	CERTIFICATE OF REQUIREMENT FOR DEPOSITION TRANSCRIPTS
	ORDER AUTHORIZING SHERIFF TO HOUSE DEFENDANT, MARQUARD, IN THE ST JOHNS COUNTY JAIL DURING JURY TRIAL, AND AUTHORIZING SHERIFF TO HOUSE DEFENDANT, ABSHIRE, IN THE PUTNAM COUNTY JAIL DURING DEFENDANT, MARQUARD'S, JURY TRIAL
	WITNESS SUBPOENA #15274 (D MCDOUGALL, S LEARY, A MILLER NOT SERVED)(DR SCALES, B SUSSMAN SERVED 10-16-92)(R BARKOSKI, F JOHNSON SERVED 10-1592)
	WITNESS SUBPOENA #15277 (R JONES, M DOMALEWITICTZ SERVED 10-22-92)
	J STALVEY JR, J STALVEY SR, M ABSHIRE, DEP C BRADLEY, DET GREENHALGH SERVED 10-23-92) DET LEVECK, DET WELBORN SERVED 10-22-92) (S BIESIADA SERVED 10-26-92)(DR T STEINER SERVED 10-21-92)
	WITNESS SUBPOENA #15298 (H HARRISON NOT SERVED)
10 29, 1992	WITNESS SUBPOENA #15270 (DR W MAPLES SERVED 10-23-92)
	ORDER FOR PAYMENT
10 27, 1992	WITNESS SUBPOENA #15298 REISSUED TO PUTMAN CO JAIL 10-26-92)
10 26, 1992	WITNESS SUBPOENA #15340 (M BEENENT SERVED 10-22-92)
	ORDER TO TRANSPORT WITNESS
	MOTION TO TRANSPORT WITNESS
	MOTION TO TRANSPORT/ORDER TO TRANSPORT (SJSO SHALL DELIVER DEFT FOR TRIAL 11-23-92 @ 8:30AM
	WITNESS SUBPOENA #15270 (DR W MAPLES, PH D SERVED 10-13-92)
	WITNESS SUBPOENA #15271 (F EDMONSON SERVED 10-14-92)
	WITNESS SUBPOENA #15301 (M ABSHIRE SERVED 10-14-92)
10 23, 1992	SUBPOENA #15272 - M INGRAM SERVED 10-15-92 P SIPPEL & A BEYER SERVED 10-14-92
	SUBPOENA #15273 - OFFICER COOK & DET FRESHLEY SERVED 10-14-92, DET NESTOR SERVED 10-12-92
10 21, 1992	SUBPOENA #15340 - NEVER ISSUED - CASE CONTINUED
	ORDER FOR TRANSCRIPTS
	CERTIFICATE OF REQUIREMENT FOR DEPOSITION TRANSCRIPTS
10 20, 1992	ORDER TO TRANSPORT WITNESS
	MOTION TO TRANSPORT WITNESS

	MOTION TO TRANSPORT/ORDER TO TRANSPORT
10 19, 1992	ORDER/TRIAL 11-23-92 @ 9AM
	=-DEFT MOTION FOR CONT-GRANTED, TRIAL 11-23-92
	=-DEFT MOTION FOR CONTINUANCE-GRANTED, TRIAL 11-23-92
10 16, 1992	SUBPOENA #15278 - STALVEY JR & STALVEY SR SERVED 10-15-92 - GREENHALGH, LEVECK, WELBORN, BRADLEY, BIESIADA & ABSHIRE SERVED 10-13-92 - STEINER SERVED 10-14-92
	SUBPOENA #15277 - JONES & DOMALEWITICTZ SERVED 10-14-92
	SUBPOENA #15299 - INGRAM SENT CERT MAIL 10-14-92
	SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
10 15, 1992	NOTICE OF STATE'S INTENT TO RELY UPON CHILD HEARSAY TESTIMONY F.S. 90.803(23) MEMORANDUM OF LAW FOR PROOF OF F.S. 921.141(5)(B) BASED UPON INSTANT CONVICTION IN NORTH CAROLINA OF 'TAKING INDECENT LIBERTIES WITH A MINOR'
	MOTION TO TRANSPORT/ORDER TO TRANSPORT
	SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
	MOTION TO TRANSPORT/ORDER (MOTION GRANTED)
	MOTION TO TRANSPORT/ORDER (MOTION DENIED)
10 14, 1992	SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
	NOTICE OF TAKING DEPOSITION
10 13, 1992	SUBPOENA #15275 - RISINGER SENT CERT MAIL 10-12-92
	SUBPOENA #15276 - M WILLETTS & A WILLETTS SENT CERT MAIL 10-13-92
	NOTICE OF REQUEST FOR JUDICIAL NOTICE
	NOTICE OF REQUEST FOR JUDICIAL NOTICE
	NOTICE OF REQUEST FOR JUDICIAL NOTICE
	SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
10 08, 1992	228-(BOTH)MOTION TO TRANSCRIBE COURT PROCEEDINGS/ORDER
10 05, 1992	224-(MARQUARD)SUBPOENA #14793 - SIPPEL, BEYER & INGRAM RETURNED UNEXECUTED 100792/JM
10 03, 1992	222-(ABSHIRE)SENTENCING RECOMMENDATION 100592/CS
10 01, 1992	215-(ABSHIRE) COUNT 2 - VERDICT (GUILTY OF ARMED ROBBERY WITH DEADLY WEAPON AS CHARGED) 100592/CS
	214-(ABSHIRE) COUNT 1 - VERDICT (GUILTY OF FIRST DEGREE MURDER AS CHARGED) 100592/CS
	205-(ABSHIRE)EXHIBITS AT TRIAL LIST 100592/CS
09 30, 1992	204-(BOTH)ORDER FOR PAYMENT 093092/CS
	ORDER FOR PAYMENT
09 29, 1992	202I-(BOTH)DEPOSITION OF MICHAEL SEAN INGRAM TAKEN 9-10-92 @ 3:30 PM 100592/CS
	202G-(BOTH)DEPOSITION OF PAT GREENHALGH TAKEN 9-10-92 @ 2:15 PM (VOLUME II) 100592/CS
09 28, 1992	ORDER (DEFT'S MOTION TO DISMISS - DENIED)
09 25, 1992	DEFENSE EXHIBIT #3 (AFFIDAVIT)
	STATE'S EXHIBIT #1 (CONSTITUTIONAL RIGHTS)
	DEFENSE EXHIBIT #2 (CERTIFICATE - TRUE COPY OF A PORTION OF AUDIO RECORDING OF 11-17-91 FIRST APPEARANCE - PINELLAS COUNTY)
09 24, 1992	=- (HEARING)DEF MOTION IN LIMINE-STIPULATED BY BOTH STATE AND DEFENSE NOT TO OFFER TESTIMONY AS TO PARAGRAPHS 1 AND 2 OF MOTION UNTIL SUCH TIME THAT IT'S OFFERED ON PROFFER, DEF FIRST MOTION TO SUPPRESS FILED WITH THE COURT ON 8-17-92 - DENIED, DEF SECOND MOTION

	TO SUPPRESS FILED WITH THE COURT ON 8-17-92 - TAKEN INTO CONSIDERATION, STATE'S WITNESS #1-FRANK WELBORN, SWORN 9:35, STATE'S EXHIBIT #1-COPY OF DEFENDANT'S CONSTITUTIONAL RIGHTS FORM, DEFT EXHIBIT #1-AUDIO TAPE OF ADVISORY HRG OF J MARQUARD ON 11-17-92, DEF EXHIBIT #2-CERTIFICATE FROM TERESSA CRAFT, DEPUTY CLERK OF PINELLAS CO, DEFT EXHIBIT #3-AFFIDAVIT OF J MARQUARD DATED 11-19-91, STATE'S WITNESS #2-JENNIFER STRICKLAND SWORN 10:05, DEFT'S MOTION TO EXCLUDE EVIDENCE AND EX POST FACTO ARE TO BE TAKEN INTO CONSIDERATION
09 21, 1992	NOTICE OF HEARING (9-24-92 @ 9AM - DEFT'S MOTIONS)
09 18, 1992	MOTION TO TRANSPORT PRISONER/ORDER (PUTNAM CO JAIL SHALL DELIVER DEFT FOR HRG 9-24-92 @ 9AM
	ORDER AUTHORIZING TRANSCRIPT OF DEPOSITIONS
	MEMORANDUM OF LAW IN OPPOSITION TO DEFENSE MOTION TO PROHIBIT APPLICATION OF VICTIM IMPACT EVIDENCE
09 15, 1992	MOTION TO PROHIBIT APPLICATION OF CHAPTER 92-81 AS AN EX POST FACTO LAW
09 11, 1992	AMENDED NOTICE OF TAKING DEPOSITION
09 10, 1992	WITNESS SUBPOENA #14967 (T CRAFT SERVED 8-28-92)
09 01, 1992	DEPOSITION OF JP STRICKLAND TAKEN ON 8-05
	ORDER FOR PAYMENT
	DEPOSITION OF THOMAS NESTOR TAKEN 8-17-92 @ 12:20 PM
	DEPOSITION OF JOSEPH FRESHLEY TAKEN 8-17-92 @ 1:35 PM
08 31, 1992	WITNESS SUBPOENA #14781 (R BARKOSKIE R JOHNSON SERVED 8-18-92)(B SUSSMAN SERVED 8-19-92) (T RISINGER BY MAIL)
08 27, 1992	ORDER FOR PAYMENT OF PROFESSIONAL SERVICES
	MOTION FOR ORDER FOR PAYMENT FOR PROFESSIONAL SERVICES RENDERED
08 26, 1992	SUPPLEMENTAL DEFENDANT'S WITNESS LIST
	ORDER FOR PAYMENT OF PROFESSIONAL SERVICES
	MOTION FOR ORDER FOR PAYMENT FOR PROFESSIONAL SERVICES RENDERED
	ORDER/PRETRIAL 10-19-92 @ 1:30 PM & TRIAL 10-26-92 @ 9AM
08 25, 1992	WITNESS SUBPOENA #14890 (T CUSHMAN SERVED 8-20-92)
	171-(BOTH)MOTION FOR COMPENSATION OF EXPERT/ORDER ON MOTION FOR COMPENSATION OF EXPERT 082592/CS
08 24, 1992	170A-(BOTH)DEPOSITION OF H HARRISON TAKEN ON 8-12-92
	170-(BOTH)DEPOSITION OF D BLANKS TAKEN ON 8-12-92
	WITNESS SUBPOENA #14894 (DET NESTOR SERVED TO V FAIRCHILD 8-18-92)
	=-CONTINUED
	169-(BOTH)SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
	168-(BOTH)NOTICE OF TAKING DEPOSITIONS 082592/CS
	TRAVERSE TO DEFENDANT'S AMENDED MOTION TO DISMISS
08 20, 1992	ORDER FOR TRANSCRIPTS
	CERTIFICATE OF REQUIREMENT FOR DEPOSITION TRANSCRIPTS
08 19, 1992	SUBPOENA #14796 - INGRAM RETURNED UN-EXECUTED - FRESHLEY SUB MCNEILY SERVED 8-12-92 - NESTOR SUB FAIRCHILD SERVED 8-11-92
	STATE'S MEMORANDUM IN OPPOSITION OF DEFENSE AMENDED MOTION TO DISMISS
	SUBPOENA #14783 - SCALES SERVED 8-7-92
	SUBPOENA #14795 - TREEN SERVED 8-17-92
	SUBPOENA #14779 - VERSAGGI SERVED 8-18-92 - HANSON RETURNED UNEXECUTED - STALVEY SR SUB MRS S STALVEY JR SERVED 8-11-92 - STALVEY

	JR SUB S STAL-VEY JR (WIFE) SERVED 8-11-92
08 18, 1992	SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
08 17, 1992	CRIMINAL WITNESS SUBPOENA (D MCGOUGALL/DR D SCALES) #14889
	WITNESS SUBPOENA #14786 (DR KROPP SUB-SERVED W PETERSON 8-10-92)
	WITNESS SUBPOENA #14788 (D BLANKS SERVED 8-11-92) (H HARRISON SERVED 8-11-92)
	WITNESS SUBPOENA #14794 (DR MAPLES SUB-SERVED W WALI 8-11-92)
	WITNESS SUBPOENA #14796 (M INGRAM RETURNED BY CERTIFIED MAIL UNCLAIMED)
	WITNESS SUBPOENA #14858 - (M ABSHIRE SERVED 8-14-92)
	WITNESS SUBPOENA #14859 - (M ABSHIRE SERVED 8-14-92)
	AMENDED MOTION TO DISMISS
	MOTION IN LIMINE
	MOTION TO SUPPRESS
	DELETION FROM DEFENDANT'S WITNESS LIST
08 14, 1992	142-(BOTH)NOTICE OF TAKING DEPOSITION 081492/DM
	141-(BOTH)NOTICE OF TAKING DEPOSITION 081492/DM
	SUPPLEMENT RESPONE TO DEMAND FOR DISCOVERY
08 13, 1992	WITNES SUPBOENA #14795 (D TREEN REISSUED TO ADD ON BACK OF SUBPOENA 8-13-92)
	WITNESS SUBPOENA #14765 (DET GREENHALGH, DET M LEVECK, DET F WELLBORN, DET J STRICKLAND, DEP C BRADLEY SERVED 8-05-92)(DR T STEINER SERVED 8-07-92)
	WITNESS SUBPOENA #14721 (DR H KROP SERVED 8-04-92)
	WITNESS SUBPOENA #14857 (DR D SCALES CERT MAIL 8-13-92)
08 11, 1992	135-(BOTH)WITNESS SUBPOENA #14579 (DAVID BLANKS SERVED 7-10-92)081292/DM
	WITNESS SUBPOENA #14792 (M WILLETS, A WILLETTS SERVED VIA CERT MAIL 8-6-92)
	WITNESS SUBPOENA #14791 (DET G LANDRY SERVED VIA CERT MAIL 8-6-92)
	WITNESS SUBPOENA #14790 (DR C BIGGERSTAFF SERVED VIA CERT MAIL 8-6-92)
	WITNESS SUBPOENA #14787 (M LEDFORD SERVED VIA CERT MAIL 8-6-92)
	WITNESS SUBPOENA (J PONCE STRICKLAND SERVED 8-3-92)
	ORDER FOR PAYMENT FOR SERVICES RENDERED
	MOTION FOR ORDER FOR PAYMENT FOR SERVICES RENDERED
	127-(BOTH)MOTION FOR COMPENSATION OF EXPERT/ORDER ON MOTION FOR COMPENSATION OF EXPERT 081192/CS
08 10, 1992	MOTION TO EXCLUDE EVIDENCE OR ARGUMENT DESIGNED TO CREATE SYMPATHY FOR THE DECEASED
08 07, 1992	125-(BOTH)DEPOSITION OF PATRICIA GREENHALGH TAKEN 7-21-92 @ 1:37 PM 080792/CS
	124-(BOTH)DEPOSITION OF MARY L LEVECK TAKEN 7-21-92 @ 11:18 AM 080792/CS
	123-(BOTH)DEPOSITION OF FRANK WELBORN TAKEN 7-21-92 @ 10:15 AM 080792/CS
	122-(BOTH)DEPOSITION OF TERRANCE STEINER, M.D., TAKEN 7-21-92 @ 12:05 PM 080792/CS
	121-(BOTH)DEPOSITION OF SUSAN BIESIADA TAKEN 7-21-92 @ 1:30 PM 080792/CS
08 06, 1992	NOTICE OF TAKING DEPOSITION
	119-(BOTH)NOTICE OF TAKING DEPOSITION 080692/CS

	CERTIFICATE OF REQUIREMENT FOR DEPOSITION TRANSCRIPTS/ORDER
08 05, 1992	MOTION TO TRANSPORT/ORDER TO TRANSPORT (DEFT SHALL BE DELIVERED FOR TRIAL 8-24-92 @ 8:30 AM
	WITNESS SUBPOENA #14743 (J P STRICKLAND SERVED 7-31-92)
	116-(BOTH)PROCEEDINGS HELD BEFORE JUDGE WATSON 7-21-92 @ 3:25 PM 080592/CS
	DEFENDANTS WITNESS LIST
	ORDER TO TRANSPORT DEFENDANT TO PUTNAM COUNTY JAIL FOR HOUSING
	MOTION TO TRANSPORT DEFENDANT TO PUTNAM COUNTY JAIL FOR HOUSING
	ORDER FOR PAYMENT OF PROFESSIONAL SERVICES
	MOTION FOR ORDER FOR PAYMENT FOR PROFESSIONAL SERVICES RENDERED
	AMENDED MOTION TO TRANSPORT/AMENDED ORDER
	ORDER TO TRANSPORT WITNESS
	108-(BOTH)MOTION TO TRANSPORT WITNESS 080592/CS
	107-(BOTH)ORDER TO TRANSPORT WITNESS 080592/CS
	106-(BOTH)MOTION TO TRANSPORT WITNESS 080592/CS
08 04, 1992	105A-CRIMINAL WITNESS SUBPOENA (DR C BIGGERSTAFF) #14764
08 03, 1992	462-(BOTH)WITNESS SUBPOENA DUCES TECUM DR C BIGGERSTAFF CERT MAIL 8-04-92 080692/DM
	104E-(BOTH)WITNESS SUBPOENA DUCES TECUM DR H KROPP CERT MAIL 8-03-92 080692/DM
	104D-(BOTH) WITNESS SUBP# 14757 - (H HARRISON SENT CERTIFIED MAIL 8-3-92) 080592/KB
	104C-(BOTH) SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
	104B-(BOTH) AMENDED NOTICE OF TAKING DEPOSITIONS
	NOTICE OF TAKING DEPOSITION
07 28, 1992	MOTION TO TRANSPORT/ORDER (DEFT SHALL BE TRANSPORTED TO DR. HARRY KROP'S OFFICE FOR EXAMINATION 8-12-92 @ 9AM)
	103-(BOTH)LETTER TO RICHARD R WHITSON, ESQ, FROM JUDGE WATSON (DTD 6-1-92) 072892/CS
	102-(BOTH)MOTION FOR ORDER TO SHOW CAUSE 072892/CS
	ORDER FOR PAYMENT OF PROFESSIONAL SERVICES
	MOTION FOR ORDER FOR PAYMENT FOR PROFESSIONAL SERVICES RENDERED
	ORDER FOR PAYMENT OF PROFESSIONAL SERVICES
	MOTION FOR ORDER FOR PAYMENT FOR PROFESSIONAL SERVICES RENDERED
07 27, 1992	97B-(BOTH) SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
	TRAVERSE
	ORDER/ON MOTION TO DECLARE DEATH PENALTY UNCONSTITUTIONAL (DENIED)
	96-(BOTH)ORDER FOR TRANSCRIPTS 072792/DM
	95I-(BOTH)CERTIFICATE OF REQUIREMENT FOR DEPOSITION TRANSCRIPTS 080392/CS
07 24, 1992	ORDER (MOTION FOR USE OF SPECIAL VERDICT FORM DENIED)
	MOTION FOR USE OF SPECIAL VERDICT FORM FOR THE UNANIMOUS JURY DETERMINATION OF STATUTORY AGGRAVATING CIRCUMSTANCES
	ORDER (MOTION TO DECLARE DEATH PENALTY UNCONSTITUTIONAL DENIED)
	MOTION TO DECLARE THE DEATH PENALTY UNCONSTITUTIONAL BASED ON PROSECUTORIAL DISCRETION
	ORDER (MOTION TO PROHIBIT DENIED)
	MOTION TO PROHIBIT ANY REFERENCE TO THE ADVISORY ROLE OF THE JURY

	AT SENTENCING
	ORDER (MOTION FOR STATEMENT OF PARTICULARS (DENIED)
	MOTION FOR STATEMENT OF PARTICULARS RE: AGGRAVATING CIRCUMSTANCES
07 21, 1992	=-(BOTH)DEF MOTIONS TO WITHDRAW MOTION TO DISMISS -GRANTED, DEF MOTIONS TO RESCHEDULE HEARING ON MOTION IN LIMINE - GRANTED, TO BE RESET AT LATER DATE, DEF MOTION TO DECLARE DEATH PENALTY UNCONSTITUTIONAL TO BE TAKEN UNDER ADVISEMENT 072392/CS
07 20, 1992	ORDER (EVIDENCE CUSTODIAN SHALL DELIVER REMAINS OF VICTIM TO DR ARTHUR BURNS FOR EXAMINATION)
	=-DEFT REMAINS SET FOR TRIAL ON 8-24-92
07 16, 1992	(BOTH)WITNESS SUBPOENA #14580 H HARRISON (SERVED 7-14-92)
07 13, 1992	MOTION IN LIMINE
	MOTION TO DISMISS
	MOTION TO DECLARE SECTION 921.141, FLORIDA STATUTES UNCONSTITUTIONAL FOR FAILURE TO PROVIDE JURY ADEQUATE GUIDANCE IN THE FINDING OF SENTENCING CIRCUMSTANCES, AND TO PRECLUDE DEATH SENTENCE
	NOTICE OF HEARING 7-21-92 @ 3:00 PM (DEFT'S MOTIONS)
07 09, 1992	89-(BOTH)WITNESS SUBPOENA #14554 (P GREENHALGH, F WELBURN, M LEVECK SERVED 7-6-92, DR M VERSAGGI, DR TERRANCE STEINER SERVED 7-7-92) 071492/CS
	88-(BOTH)NOTICE OF TAKING DEPOSITIONS 071092/CS
	87-(BOTH)NOTICE OF TAKING DEPOSITIONS 071092/CS
	ORDER (EXPERT APPOINTED)
	MOTION FOR APPOINTMENT OF EXPERT
07 06, 1992	ORDER APPOINTING EXPERT
	MOTION FOR APPOINTMENT OF EXPERT
	MOTION TO TRANSPORT/ORDER (DEFT SHALL BE DELIVERED TO DR DAVID SCALES FOR EXAMINATION 7-8-92 @ 10:30 AM)
	81-(BOTH)AMENDED NOTICE OF TAKING DEPOSITIONS
06 29, 1992	(BOTH) SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
06 25, 1992	79-(MARQUARD)AMENDED ORDER APPOINTING A NEUROLOGIST TO EXAMINE DEFENDANT PURSUANT TO RULE 3.216(A)
06 23, 1992	78-(BOTH)DEPOSITION OF PATRICIA SIPPEL
	77-(BOTH)DEPOSITION OF ANDREW BEYER
06 22, 1992	76-(ABSHIRE)WITNESS SUBPOENA #14396 (P GREENHALGH, F WELBURN & M LEVECK SERVED 6-5-92, DR M VERSAGGI SERVED 6-15-92, DR TERRANCE STEINER SERVED 6-9-92, H HANSON SERVED 6-18-92) 062392/CS
	75-(ABSHIRE)WITNESS SUBPOENA #14471 (S BIESIADA SERVED 6-18-92) 062392/CS
06 19, 1992	ORDER TO TRANSPORT (DEFT SHALL BE DELIVERED TO DR. DAVID SCALES' OFFICE FOR EVALUATION 6-29-92 @ 3:00 PM)
	MOTION TO TRANSPORT
	ORDER FOR COMPETENCY AND SANITY EVALUATION AND NOTICE OF HEARING
	MOTION FOR PSYCHIATRIC EXAMINATION
	70-(ABSHIRE)SECOND AMENDED NOTICE OF TAKING DEPOSITION
06 18, 1992	69-(ABSHIRE)AMENDED NOTICE OF TAKING DEPOSITION
	68-(ABSHIRE)AMENDED NOTICE OF TAKING DEPOSITION
06 17, 1992	67-(BOTH)SUPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY

06 16, 1992	66-(ABSHIRE)WITNESS SUBPOENA #14395 (W MAPLES, PHD, SERVED 6-09-92)061692/DM
06 15, 1992	ORDER FOR PAYMENT (ST JOHNS CO BOARD OF CO COMMISSIONERS SHALL PAY $200.00 TO KANABAY & KANABAY, COURT REPORTERS)
	MOTION FOR ORDER OF PAYMENT FOR PROFESSIONAL SERVICES RENDERED
	ORDER FOR PAYMENT (ST JOHNS CO BOARD OF CO COMMISSIONERS SHALL PAY $83.40 TO GARRY L WOOD, ASST PUBLIC DEFENDER)
06 08, 1992	62-(ABSHIRE)NOTICE OF TAKING DEPOSITION 060892/CS
	61-(ABSHIRE)NOTICE OF TAKING DEPOSITION 060892/CS
	60-(ABSHIRE)NOTICE OF TAKING DEPOSITION 060892/CS
06 04, 1992	ORDER DIRECTING SHERIFF TO TRANSPORT DEFENDANT BACK TO ST JOHNS COUNTY JAIL FOR HOUSING
06 01, 1992	58-(BOTH)LETTER TO RICHARD WHITSON, ESQ, FROM JUDGE WATSON (DTD 6-1-92) 060192/CS
05 26, 1992	57-(BOTH)SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY
	56-(ABSHIRE)LETTER TO JUDGE WATSON FROM ROBERT MCLEOD,ESQ (DTD 5-20-92) 052992/CS
	55-(ABSHIRE)NOTICE OF APPEARANCE, WAIVER OF ARRAIGNMENT AND PLEA OF NOT GUILTY ON SUPERSEDING INDICTMENT (ROBERT L MCLEOD, II) 052792/CS
	ORDER CORRECTING ORDER FOR PAYMENT
05 20, 1992	53-(ABSHIRE)AMENDED ORDER DENYING DEFENDANT, ABSHIRE'S, MOTION TO STRIKE SUPERSEDING INDICTMENT 052192/CS
05 19, 1992	52-(ABSHIRE)MOTION TO TRANSPORT/ORDER TO TRANSPORT (SHERIFF OF ST JOHNS COUNTY SHALL DELIVER DEFT FOR ARR 6-1-92 @ 1:30 PM) 051992/CS
	51-(ABSHIRE)STATE'S MOTION TO SET ARRAIGNMENT ON SUPERSEDING INDICTMENT/ORDER SETTING ARRAIGNMENT (ARR 6-1-92 @ 1:30 PM) 051992/CS
	50-(BOTH)ORDER ON MOTION FOR COMPENSATION OF EXPERT
	49-(BOTH)MOTION FOR COMPENSATION OF EXPERT 051992/CS
05 14, 1992	48-(ABSHIRE)ORDER DENYING ABSHIRE'S MOTION TO STRIKE SUPERSEDING INDICTMENT 051492/DM
05 12, 1992	CAPIAS W/ATTACHED BOOKING SHEET (SERVED 5-4-92)
	ORDER FOR THE PRODUCTION OF MEDICAL AND/OR PSYCHIATRIC (PSTCHOLOGICAL) RECORDS OF JOHN MARQUARD
	ORDER DIRECTING THE DEFENDANT, JOHN MARQUARD TO SUBMIT TO HANDWRITING EXEMPLARS
05 11, 1992	ORDER FOR PAYMENT/ORDERED FOR BOARD OF CO COMM SHALL PAY DR.H KROP, PH.D
	44-(ABSHIRE)MOTION TO STRIKE SUPERSEDING INDICTMENT
	43-(ABSHIRE)MOTION FOR STATEMENT OF PARTICULARS
05 07, 1992	MOTION TO TRASNPORT PRISONER/ORDER FOR (PUTNAM CO JAIL SHALL DELEVER DEFT FOR TRIAL 8-24-92 @ 9AM)
05 06, 1992	MOTION TO TRANSPORT PRISONER/ORDER (PUTNAM COUNTY JAIL SHALL DELIVER DEFT FOR PRETRIAL 7-20-92 @ 1:30 PM)
	WAIVER OF SPEEDY TRIAL
	WAIVER OF ARRAIGNMENT AND WRITTEN PLEA OF NOT GUILTY
05 04, 1992	ORDER PRETRIAL 7-20-92 @ 1:30PM TRIAL 8-24-92 @ 9AM
	=-DEFT MOTION FOR CONT, GRANTED, RESET PRETRIAL 7-20-92 TRIAL 8-24-92
	(BOTH) WITNESS SUBPOENA #14154 (P SIPPEL, A BEYER SERVED 4-28-92)(M INGRAM SERVED 4-30-92)

05 01, 1992	MOTION TO TRANSPORT PRISONER/ORDER (PUTNAM COUNTY JAIL SHALL DELIVER DEFT FOR HRG 5-4-92 @ 1:30)
04 28, 1992	36-(ABSHIRE)FIRST APPEARANCE FORM (NO BOND) 042892/CS
	35-(ABSHIRE)CAPIAS W/ATTACHED BOOKING SHEET (SERVED 4-25-92) 042892/CS
04 24, 1992	=-(BOTH) FALL TERM GRAND JURORS PRESENT, INTERIM PRESENTMENT, TRUE BILL - SUPERSEDING INDICTMENT -CT1 - 1ST DEGREE MURDER, CT2 - ARMED ROBBERY W/DEADLY WEAPON, CAPIAS ORDERED ON BOTH DEFTS, NO BOND ALLOWED, JURORS DISMISSED UNTIL FURTHER NOTICE 042492/CS
	NOTICE OF HEARING (HRG 5-4-92 @ 1:30 PM STATE'S MOTION FOR ORDER DIRECTING PRODUCTION OF PSYCHIATRIC RECORDS, MOTION FOR HANDWRITING EXEMPLARS)
	AMENDED MOTION FOR ORDER DIRECTING PRODUCTION OF PSYCHIATRIC AND MEDICAL RECORDS OF JOHN MARQUARD
	MOTION FOR ORDER DIRECTING PRODUCTION OF PSYCHIATRIC RECORDS OF JOHN MARQUARD
	++++++ (BOTH)CAPIAS ISSUED 4-24-92 ++++++ 042492/CS
	31-(BOTH)SUPERSEDING INDICTMENT 042492/CS
04 22, 1992	30A-(BOTH) NOTICE OF TAKING DEPOSITION 042892/KB
	ORDER FOR PAYMENT (BOARD OF COUNTY COMMISSIONERS SHALL PAY $350 TO DR. HARRY KROP)
04 21, 1992	29-(BOTH)STATE COMPLIANCE WITH DISCOVERY PER 3.220 FRCRP, DEMAND FOR NOTICE OF ALIBI PER 3.220 FRCRP
04 16, 1992	NOTICE OF HEARING (STATE'S MOTION TO DETERMINE COMPETENCY FOR TRIAL -- 5-4-92 @ 1:30 PM)
	MOTION TO DETERMINE COMPETENCY FOR TRIAL
04 13, 1992	26-(ABSHIRE)DEFENDANT'S NOTICE OF INTENT TO PARTICIPATE IN AND DEMAND FOR DISCOVERY 041392/CS
	25-(ABSHIRE)NOTICE OF APPEARANCE, WAIVER OF ARRAIGNMENT AND PLEA OF NOT GUILTY (ROBERT L MCLEOD, II)
04 08, 1992	24-(ABSHIRE)ORDER/PRETRIAL 7-20-92 @ 1:30 PM & TRIAL 7-27-92 @ 9:00 AM 040992/CS
	23-(ABSHIRE)ORDER APPOINTING ATTORNEY FOR DEFENDANT, ABSHIRE (ROBERT L MCLEOD, II, ESQ) 040892/CS
03 30, 1992	22-(ABSHIRE)FIRST APPEARANCE FORM (NO BOND) 040292/CS
	21-(ABSHIRE)CAPIAS W/ATTACHED BOOKING SHEET (SERVED 3-29-92) 040292/CS
03 26, 1992	20-(ABSHIRE)NOTICE TO DEFT OF ARR 4-6-92 @ 1:30 PM
03 24, 1992	19-(ABSHIRE)MEMO REQUEST FOR NOTICE OF ARR 4-6-92 @ 1:30 PM 032592/CS
	18-(ABSHIRE)INPUT SHEET FROM COURT SERVICES (PER CHARLENE, DEFT TO BE BROUGHT IN ON 4-6-92 @ 1:30 PM FOR ARR) 032592/CS
03 18, 1992	ORDER TO TRANSPORT (PUTNAM CO SHERIFF SHALL DELIVER DEFT TO DR HARRY KROP'S OFFICE, ORANGE PARK, 4-8-92 @ 9AM FOR MENTAL EVALUATION)
	MOTION TO TRANSPORT
01 23, 1992	15-(BOTH)MOTION TO TRANSPORT PRISONER/ORDER (PUTNAM COUNTY JAIL SHALL DELIVER DEFT FOR PRETRIAL 5-18-92 @ 1:30 PM) 012392/CS
01 17, 1992	14-(ABSHIRE)LETTER TO STATE ATTY FROM C PEOPLES, NORTH CAROLINA DEPARTMENT OF CORRECTION, RE: INTERSTATE AGREEMENT ON DETAINERS (DTD 1-14-92)
	13-(ABSHIRE)INPUT SHEET FROM COURT SERVICES (ARR 2-3-92 @ 1:30 PM, DEFT TO BE TRANSPORTED FROM NORTH CAROLINA, PER C SIMPSON, STATE ATTY'S OFFICE)

	MOTION TO TRANSPORT PRISONER FOR SAFE-KEEPING/ORDER (SJSO SHALL DELIVER DEFT TO PUTNAM COUNTY FOR SAFEKEEPING)
	11-(ABSHIRE) AGREEMENT ON DETAINERS: FORM VII -PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH AN INMATE'S REQUEST FOR DISPOSITION OF A DETAINER
01 15, 1992	ADDITIONAL LIST OF STATE'S WITNESSES
12 20, 1991	ANSWER TO DEMAND FOR DISCOVERY, ANSWER TO MOTION FOR STATEMENT OF PARTICULARS, DEMAND FOR NOTICE OF INTENTION TO CLAIM ALIBI, WITNESS LIST
12 18, 1991	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY
	7-(ABSHIRE/MARQUARD)VICTIM IMPACT STATEMENT 121991/DM
12 10, 1991	FIRST APPEARANCE FORM (NO BOND)
	CAPIAS W/ATTACHED BOOKING SHEET (SERVED 12-6-91)
12 09, 1991	ORDER/PRETRIAL 5-18-92 @ 1:30 PM & TRIAL 5-26-92 @ 9:00 AM
	=-DEFT GIVEN CONST RIGHTS, ADJUDGED INSOLVENT, ASST PD APPT'D, ARRAIGNED-PLEA-NOT GUILTY PRETRIAL 5-18-92 & TRIAL 5-26-92
12 06, 1991	+++CAPIAS ISSUED+++
	=-(GRAND JURY FALL TERM INTERIM PRESENTMENT) TRUE BILL PRINC TO FIRST DEGREE MURDER, ISSUE CAPIAS AS TO EACH DEFT, NO BOND ALLOWED, ABSHIRE TO BE EXTRADITED GRAND JURY IN RECESS UNTIL FURTHER NOTICE
	COMPLAINT AFFIDAVIT W/ATTACHED SERVED FELONY WARRANT
	INTERIM PRESENTMENT - A TRUE BILL - PRINCIPAL TO FIRST DEGREE MURDER
	INDICTMENT
11 22, 1991	++++ SUPERSEDING INDICTMENT SEE PAGE 31 +++++
	PINELLAS COUNTY ARREST AFFIDAVIT
11 21, 1991	FIRST APPEARANCE FORM (NO BOND)
	FELONY WARRANT W/ATTACHED BOOKING SHEET

Filing # 29797781 E-Filed 07/17/2015 03:04:13 PM

IN THE CIRCUIT COURT OF SEVENTH JUDICIAL CIRCUIT, CRIMINAL DIVISION, IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA, **CASE NO. CF91-2418**

Plaintiff,

v.

JOHN MARQUARD,

Defendant.

_____/

DEFENDANT'S DEMAND FOR ADDITIONAL MEDICAL RECORDS AND AFFIDAVIT IN SUPPORT

The defendant, by and through undersigned counsel, hereby makes demand of the Florida Department of Corrections (DOC) under Florida Rule of Criminal Procedure 3.852(i), for additional records pertinent to this case. Also, based on an email correspondence from Rana M. Wallace, Assistant General Counsel for DOC, I can inform this court of the fact that DOC is in possession of a properly executed DC4-711B medical records release.

1. Undersigned counsel represents that, after a timely and diligent search, the records specifically described below:

   (a) are relevant to a proceeding under Rule 3.851; or
   (b) appear reasonably calculated to lead to the discovery of admissible evidence; and
   (c) have not been obtained previously in discovery or from a prior public records request from either the above-named person or agency or any other; and
   (d) are not available from the public records repository, because they were recently created by medical staff at the Union Correctional Institution (UCI).

2. The records requested are as follows:

   All medical records, including prescriptions and psychological records and, including any patient notes and treatment plans created by Dr.

John G. Shobris, pertaining to the treatment and diagnosis of Defendant, John Marquard, from July 1, 2014, until the date of the signing of the Order in support of this Demand.

Respectfully Submitted,

Ali A.Shakoor
Florida Bar No. 0669830

CERTIFICATE OF ACKNOWLEDGEMENT

State of: Florida

County of: Hillsborough

This instrument was acknowledged before me this 17th day of July, 2015.
By Ali A. Shakoor, who is personally known to me.

Katrina D. Feliciano
Signature of Notary Public

(Seal)

Print, Type or Stamp Commissioned

Name of Notary

KATRINA D. FELICIANO
Commission # FF 020529
Expires June 10, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by portal delivery to opposing counsel and to the assigned Judge J. Michael Traynor on July 17, 2015.

ALI ANDREW SHAKOOR
Florida Bar No. 669830
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive
Suite 210
Tampa, Florida 33619
shakoor@ccmr.state.fl.us
813-740-3544
813-740-3554 (Facsimile)

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO. CF91-2418
DIVISION 56

STATE OF FLORIDA,

vs.

JOHN MARQUARD,
Defendant.
_____/

ORDER CANCELLING HEARING

THIS MATTER came to be considered upon notification to the Court that Rana Wallace, Assistant General Counsel and Ali Shakoor, Esquire agree that the Department does not object to production of the records and that Mr. Shakoor is in agreement to cancel the hearing, and the Court having considered the notification and being more fully advised in the premises, it is, therefore,

ORDERED AND ADJUDGED:

1. That the hearing set on the Defendant's Demand for Additional Medical Records and Affidavit in Support is and the same is hereby cancelled.

DONE AND ORDERED in Chambers, at St. Augustine, St. Johns County, Florida this 24th day of July, 2015.

J. MICHAEL TRAYNOR, CIRCUIT JUDGE

Copies to: 7/24/15 KM

Rana M. Wallace, Assistant General Counsel
Ali A. Shakoor, Esquire

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

v. Case No:: CF91-2418

JOHN MARQUARD

Defendant.
_____/

NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS TO RECORDS REPOSITORY

TO: **CAPITAL COLLATERAL POSTCONVICTION RECORDS REPOSITORY**
State Archives of Florida
Attn: CCR Records Archivist
R.A. Gray Building, MS 9-3
500 South Bronough Street
Tallahassee, FL 32399-0250

The undersigned, Rana M. Wallace, hereby gives notice to the Capital Postconviction Record Repository, that certain records delivered on July 27, 2015, are confidential or exempt from the requirements of section 119.07(1), Florida Statutes. These public unredacted records have been separately contained, sealed and are labeled in accordance with Florida Rule of Criminal Procedure 3.852(f). The nature of the public records and the legal bases under which the public records are exempt have been identified. The Department has designated the unredacted records placed at the Repository as exempt, under the authority of Florida Rule of Criminal Procedure 3.852(f).

Additionally, in accordance with the submission of a valid medical release form and the relevant provisions of Florida Rule of Criminal Procedure 3.852, a copy of the Defendant's medical records were delivered directly to counsel.

Respectfully submitted,

RANA WALLACE
Florida Bar No.: 0028619
Assistant General Counsel
Florida Department of Corrections
501 S. Calhoun Street
Tallahassee, FL 32399-2500
P: (850) 717-3597

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via US MAIL on this, the 28 day July, 2015, to the following:

Honorable J. Michael Traynor
Circuit Judge
Seventh Judicial Circuit
4010 Lewis Speedway, Suite 305
St. Augustine, Florida 32084

Rosemary Calhoun
Assistant State Attorney
Office of the State Attorney
251 N. Ridgewood Avenue
Daytona Beach, Florida 32114
E: CalhounR@sao7.org

Stacy Kircher
Assistant Attorney General
Office of the Attorney General
444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, Florida 32118
E: stacey.kircher@myfloridalegal.com
E: capapp@myfloridalegal.com

Ali A. Shakoor
Assistant Capital Collateral Regional Counsel—Middle
Office of the Capital Collateral Regional Counsel—Middle
3801 Corporex Park Drive
Suite 210
Tampa, Florida 33619
E: shakoor@ccmr.state.fl.us

RANA WALLACE

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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA, **CASE NO. CF91-2418**

Plaintiff,

v.

JOHN MARQUARD,

Defendant.
_____/

SECOND SUCCESSIVE MOTION TO VACATE DEATH SENTENCE

Defendant, JOHN MARQUARD, by and through undersigned counsel, files this second successive motion to vacate under Fla. R. Crim. P. 3.851. This motion is filed in light of a change in Florida law following the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016), the enactment of Chapter 2016-13 on March 7, 2016 and the Florida Supreme Court opinions in *Hurst v. State*, No. SC12-1947 (Fla. Oct. 14, 2016) and *Perry v. State*, No. SC16-547 (Fla. Oct. 14, 2016).

(A) JUDGMENT AND SENTENCE UNDER ATTACK

John Marquard was convicted at a jury trial of first-degree murder and sentenced to death. Mr. Marquard unsuccessfully appealed his first degree murder conviction and death sentence. *Marquard v. State*, 641 So.2d 54 (Fla. 1994). Mr. Marquard filed a Petition for Writ of Certiorari to the United States Supreme Court which was denied. *Marquard v. Florida*, 115 S.Ct. 946 (1995).

Mr. Marquard then pursued post-conviction relief in state court. On May 12, 1999, the trial court issued an order on Mr. Marquard's amended motion to vacate judgment of conviction and sentence. The trial court granted an evidentiary hearing on Claims one and two, which were

ineffective assistance of counsel claims. The court held Claims three, four, five, and eight were procedurally barred. The court denied Claims six and seven.

An evidentiary hearing was held on Claims one and two on November 16 and 18, 1999. The court denied relief. Mr. Marquard appealed to the Florida Supreme Court but was denied relief. *Marquard v. State*, 850 So.2d 417 (Fla. 2002).

Mr. Marquard filed a petition for habeas corpus in federal court. The district court denied the amended petition on April 6, 2004 with prejudice as to all grounds except those listed in paragraph 2. On January 14, 2005, the district court entered a denial of Mr. Marquard's writ. An appeal was filed with the Eleventh Circuit Court of Appeals on May 24, 2005. On November 10, 2005, Mr. Marquard's appeal to the Eleventh Circuit Court of Appeals was denied. Marquard v. Secretary for Dept of Corrections, 429 F.3d 1278 (11th Cir. 2005). This was followed by a Petition for Writ of Certiorari to the United States Supreme Court which was filed on March 20, 2006. The Petition for Writ of Certiorari was denied on June 5, 2006. Mr. Marquard filed a Successive Motion for Postconviction Relief on September 11, 2007. The state court denied the motion by written order on January 3, 2008, which was affirmed by the Florida Supreme Court on September 24, 2008.

The Court found the following Aggravators:

(1)The judge found that the murder was committed while Mr. Marquard was under sentence of imprisonment;
(2) was committed during the course of a robbery;
(3) was especially heinous, atrocious, or cruel; and
(4) was cold, calculated, and premeditated.

The Court found the following Mitigators:

No statutory mitigation was found by the court.

As nonstatutory mitigation, the court found:

(1)The Court finds the Defendant had an unstable family life as a child and lacked the emotional support and care he should have received.
(2)The Court finds that Defendant suffers from either a personality disorder not otherwise specified or an antisocial personality. There is not much difference between the two.
(3)The Court further finds Defendant did not have a stable home, but had divorced parents and an alcoholic mother with whom he lived. He had a difficult childhood.
(4)He may have been sexually abused on one occasion.
(5)Defendant used various drugs and alcohol, however, there is no evidence that use of those had anything whatsoever to do with the commission of the murder.

On direct appeal, Marquard raised twelve claims concerning the trial court erred in ruling on the following matters:

(1) excusing for cause a death-qualified venireperson;
(2) refusing to suppress knives and camouflage pants;
(3) permitting the State to introduce evidence of Marquard's talk of how to kill people with knives and how to make a "silent kill;" (Note: This was based on Marquard reading fictional books).
(4) denying defense request for judgment of acquittal on the armed robbery count;
(5) refusing to allow defense counsel to argue to the jury concerning the consequences of life imprisonment;
(6) permitting cross-exam into Marquard's criminal history during the penalty phase;
(7) in instructing on and finding the aggravating circumstance of commission while under sentence of imprisonment;
(8) in instructing on and finding that the murder was especially heinous, atrocious, or cruel;
(9) in finding that the murder was for pecuniary gain;
(10)in finding that the murder was cold, calculated, and premeditated;
11) the cumulative effect of numerous minor errors;
(12) the constitutionality of the death penalty scheme

The judgment and sentence for first degree murder in this case were affirmed on appeal by the Florida Supreme Court on June 9, 1994. *Marquard v. State*, 641 So. 2d 54 (Fla. 1994).

(B) PREVIOUS POST-CONVICTION CLAIMS AND DISPOSITION

Mr Marquard was denied relief by the Florida Supreme Court on the following claims. See *Marquard v. State*, 850 So.2d 417 (Fla. 2002).

Specifically, in postconviction, Marquard alleged:

(1) newly discovered evidence as to Abshire's life sentence establishes that Marquard's death sentence is disproportional;
(2) newly discovered evidence relative to Abshire's recent testimony requires that Marquard's sentence be reduced;
(3) Marquard had ineffective assistance of counsel at the penalty phase (Most notably, trial counsel abrogated his penalty phase responsibility to Dr. Harry Krop, and refused to properly investigate readily available mitigation);
(4) he was denied a full and fair postconviction evidentiary hearing;
(5) Marquard had ineffective assistance of counsel at the guilt phase;
(6) defense counsel failed to object to comments by the prosecutor and trial judge which diminished the jury's role in sentencing;
(7) Marquard was unconstitutionally shackled during the trial;
(8) the rule prohibiting counsel from interviewing the jurors is unconstitutional;
(9) the jury instructions during the penalty phase were vague or overbroad; and
(10) cumulative errors justify relief.

(C) NATURE OF RELIEF SOUGHT

1. Marquard respectfully requests that he be granted leave to amend as necessary.

2. Marquard requests that this Court vacate his death sentences.

3. Any other relief that this Court may find appropriate.

(D) REASON CLAIMS RAISED IN PRESENT MOTION WERE NOT RAISED IN FORMER MOTION

On January 12, 2016, *Hurst v. Florida*, 136 S. Ct. 616 (2016), issued. It declared Florida's capital sentencing scheme unconstitutional. On March 7, 2016, Chapter 2016-13 was enacted. It was the legislature's effort to rewrite § 921.141 in the wake of *Hurst* to cure the constitutional deficiencies. It was intended to apply in any trial, penalty phase, retrial or resentencing conducted in Florida, even when the homicide at issue had occurred prior to March 7, 2016. The revised sentencing statute provided that when 3 or more jurors voted in favor of a life sentence, the judge could not impose a death sentence. For a death recommendation to be returned, 10 jurors must have voted in favor of a death sentence.

On October 14, 2016, the Florida Supreme Court issued its decision in *Perry v. State*, No. SC16-547 (Fla. Oct. 14, 2016), and declared the 10-2 provision contained in Chapter 2016-13 to

be unconstitutional under *Hurst v. Florida*. In *Perry*, the Florida Supreme Court concluded that the Sixth and the Eighth Amendment required a unanimous jury verdict recommending a death sentence before one could be imposed. Accordingly, the jury must unanimously find that sufficient aggravators existed to justify a death sentence and that the aggravators outweighed the mitigating factors that were present in the case. Finally, if a unanimous death recommendation is not returned, a death sentence cannot be imposed. Thus, a life sentence is mandated if one or more jurors vote in favor of a life sentence due to a desire to be merciful even if the jury unanimously determined that sufficient aggravators existed and that they outweighed the mitigators that were present. *Perry v. State*, Slip Op. at 20, (quoting *Hurst v. State*, _So. 3d __, 2016 WL 6036978 at *15) (Fla. October 14, 2016)[1] ("'the penalty phase jury must be **unanimous in making the critical findings and recommendation** that are necessary **before a sentence of death may be considered by the judge or imposed.**'") (Emphasis added). *See also Hurst v. State*, No. SC12-1947 (Fla. Oct. 14, 2016). On the basis of the new Florida law arising from *Hurst v. Florida*, the enactment of Chapter 2016-13, *Perry v. State*, and *Hurst v. State*, Marquard files this motion to vacate and presents his claims for relief arising from the resulting new Florida law.

Timeliness

This motion is filed within one year of the issuance of *Hurst v. Florida*, the enactment of Chapter 2016-13, the issuance of *Perry v. State*, and the issuance of *Hurst v. State*, all of which established new Florida law. The claims presented herein could not have been presented before the change in Florida law that these cases and statutory amendment

[1] The opinion in *Hurst v. State* also issued on October 14, 2016, simultaneous with the release of the opinion in *Perry v. State*.

brought about. The claims were simply not ripe before because the basis for the Defendant's claims did not exist before the change in Florida law resulting from *Hurst v. Florida*, the enactment of Chapter 2016-13, the issuance of *Perry v. State*, and the issuance of *Hurst v. State*. Accordingly, this motion is timely.

Retroactivity

On Deceniber 22, 2016, the Florida Supreme Court explicitly decided that, as a matter of state law, there are two classes of defendants who are entitled to the retroactive application of *Hurst v. State*: Those whose sentences became final after the Supreme Court issued its decision in *Ring*; and those who specifically preserved the *Ring* issue. *See*, *Mosley v. State*, No. SC14-436, --So. 3d--, 2016 WL 7406506 (Fla. Dec. 22, 2016) at *42-45 & fn.13 (citing *James v. State*, 615 So. 2d 668 (Fla. 1993). Considerations of fundamental fairness dictate the application of the requirements contained in *Hurst v. Florida* to this class of defendant. Mr. Marquard is within the class, because he "raised a *Ring* claim at his first opportunity and was then rejected at every turn ... fundamental fairness requires the retroactive application of *Hurst*, which defined the effect of *Hurst v. Florida*," to him. *Mosley* at *45.

Furthermore, like Mosley, Mr. Marquard, challenged the constitutionality of Florida's death penalty sentencing scheme in pre-trial motions and on direct appeal. *See. Mosely* at fn. 11; and contrast with *Asay v. State*, No. SC16-223 (Fla. Dec. 22, 2016) at *12, fn. 12. Together, these efforts constitute a pre-*Ring* effort to raise a *Ring*-like claim.

The same conclusion as to the retroactivity of *Hurst* can be arrived at by analyzing the third *Witt* factor, a change of fundamental significance, using the first category of cases - where the constitutional change in the law "places beyond the authority of the State the power to ...impose

certain penalties." As in *Walls*[2] and *Falcon*[3], *Hurst* and *Hurst v. State* increase the number of potential cases in which the State cannot impose the death penalty. Before *Hurst*, a death recommendation was acknowledged where there was a mere majority of the jurors advising the judge to impose a death sentence. Additionally, a judge could sentence anyone to death, even if the jury recommended life. *Hurst* overruled *Spaziano*[4] and it is no longer constitutional for a trial court to override a jury's life recommendation. Now, only where a jury has unanimously found that sufficient aggravators exist to justify a death sentence, and that the aggravators outweigh the mitigating factors that were present in the case, and have unanimously recommended death can a defendant be sentenced to death.

Additionally, once this Court determined in *Mosley* that the *Hurst* decisions were retroactive to some cases on collateral review, it became prohibited under the United States and Florida Constitutions from arbitrarily limiting that retroactivity. The concept of partial retroactivity has no basis in the Florida Supreme Court's or the United States Supreme Court's precedent, and will lead to bizarre and unfair results, and would violate the Eighth and Fourteenth Amendments. *See Asay*, at *74 (Perry, J., dissenting) ("Undoubtedly, there will be situations where persons who committed equally violent felonies and whose death sentences became final days apart will be treated differently without justification from this Court."). As the Florida Supreme Court has explained in the retroactivity context, "[c]onsiderations of fairness and uniformity make it very 'difficult to justify depriving a person of his liberty or his life under a process no longer considered acceptable and no longer applied to indistinguishable cases.'" *Falcon v. State*, at 962 (quoting *Witt*, 387 So. 2d at 929). Accordingly, "[t]he doctrine of

[2] *Walls v. State*, No. SC15-1449 (October 20, 2016).
[3] *Falcon v. State*, 162 So. 3d 954 (Fla. 2015).
[4] *Spaziano v. Florida*, 468 U.S. 447, 104 S. Ct. 3154, 82 L. Ed. 2d 340 (1984).

finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications." *Witt*, 387 So. 2d at 925. *See also*, Justice Anstead's prescient dissent in *Johnston v. State*, 904 So.2d 400, 417-429 (Fla. 2005), and at FN 14, the long list of decisions that have been applied retroactively.

"[R]etroactivity is a binary—either something is retroactive, has effect on the past, or it is not." *See, Asay*, at *71 (Perry, J., dissenting). This legal reality is highlighted by the United States Supreme Court's decision in *Montgomery v. Louisiana*,[5] the Delaware Supreme Court's recent decision in *Powell v. Delaware*[6] and the Florida Supreme Court's decision in *Falcon*. If the Court decides to endorse "partial retroactivity," it will be the outlier, *see Powell*, (holding *Hurst v. Florida* retroactive to *all* prisoners), and constitutional challenges in the United States Supreme Court will likely follow.

Finally, where a constitutional rule is substantive, the Supremacy Clause of the United States Constitution requires a state post-conviction court to apply it retroactively. *See, Montgomery*, ("Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge."). In *Hurst v. State*, the Florida Supreme Court announced not one, but two substantive constitutional rules. *First*, the Florida Supreme Court held that the Sixth Amendment requires that a jury decide whether those aggravating factors that have been proven beyond a reasonable doubt are sufficient in themselves to warrant the death penalty and, if so, whether those factors outweigh the mitigating circumstances. Such findings are manifestly substantive. *Second*, the Florida

[5] *Montgomery v. Louisiana*, 136 S. Ct. 718, 731-32 (2016).
[6] *Powell v. Delaware*, 2016 WL 7243546 (Del. Dec. 15, 2016).

Supreme Court determined that the Eighth Amendment requires a unanimous determination that all the evidence presented to a jury at the penalty phase warrants a death sentence. Likewise, the unanimity rule is substantive. Therefore, the *Hurst* rulings should apply to this case.

(E) CLAIMS NOT REQURING AN EVIDENTIARY HEARING UNLESS FOUND NECESSARY BY THE FLORIDA SUPREME COURT

The claim and sub-claims that follow come before this Court with a complete trial record and a complete post-conviction record. Both records are more than sufficient for this Court to render a decision that is right and follows the United States and Florida Constitutions.

All factual allegations contained within this motion and set forth in the Defendant's previous motions to vacate, and all evidence presented by him during the previously conducted evidentiary hearing on the previously presented motion to vacate are incorporated herein by specific reference and may apply to all the claims.

CLAIM 1

IN LIGHT OF *HURST,* DEFENDANT'S DEATH SENTENCE VIOLATES THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDEMENTS OF THE UNITED STATES CONSTITUTION, THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

This claim is evidence by the following:

1. The Sixth Amendment right enunciated in *Hurst v. Florida,* and found applicable to Florida's capital sentencing scheme, guarantees that all facts that are statutorily necessary before a judge is authorized to impose a sentence of death are to be found by a jury, pursuant to the capital defendant's constitutional right to a jury trial. *Hurst v. Florida* held that "Florida's capital sentencing scheme violates the Sixth Amendment . . . ." It invalidated Fla. Stat. §§ 921.141(2) and (3) as unconstitutional. Under those provisions, a defendant who has had been

convicted of a capital felony could be sentenced to death only after the sentencing judge entered written fact findings that: 1) sufficient aggravating circumstances existed that justify the imposition a death sentence, and 2) insufficient mitigating circumstances existed to outweigh the aggravating circumstances. *Hurst*, 136 S. Ct. at 620-21. *Hurst v. Florida* found Florida's sentencing scheme unconstitutional because "Florida does not require the jury to make critical findings necessary to impose the death penalty," but rather, "requires a judge to find these facts." *Id.* at 622. On remand, the Florida Supreme Court held in *Hurst v. State* that *Hurst v. Florida* means "that before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death." *Hurst v. State*, 2016 WL 6036978 at *13.

2. The Sixth Amendment error under *Hurst v. Florida* cannot be proven by the State to be harmless beyond a reasonable doubt in Mr. Marquard's case. Although Mr. Marquard's death recommendation was unanimous, even a unanimous death recommendation would not mandate a finding of harmless error, as that is only one of several inquiries that juries must make under *Hurst v. Florida*. The only document returned by the jury was an advisory recommendation that a death sentence should be imposed. Mr. Marquard's penalty phase jury did not return a verdict making any findings of fact, so we have no way of knowing what aggravators, if any, the jurors unanimously found were proven beyond a reasonable doubt, if the jurors unanimously found the aggravators sufficient for death, or if the jurors unanimously found that the aggravating circumstances outweighed the mitigating circumstances. In *Hurst v. Florida*, the Supreme Court found:

> Florida concedes that *Ring* required a jury to find every fact necessary to render Hurst eligible for the death penalty. But Florida argues that when Hurst's sentencing jury recommended a death sentence, it "necessarily included a finding of an aggravating circumstance."... The State fails to appreciate the central and singular role the judge plays under Florida law....The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires. *Id.* at 622. (Emphasis added).

In *Hurst v. State*, The Florida Court quoted the Supreme Court, "The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact-finding. Florida's sentencing scheme ... is therefore unconstitutional." The Florida Court went on to note, "In reaching these conclusions, the Supreme Court flatly rejected the State's contention that although '*Ring* required a jury to find every fact necessary to render Hurst eligible for a death penalty,' the jury's recommended sentence in Hurst's case necessarily included such findings. *Id.* at 622. (Emphasis added.)

3. In the wake of *Hurst v. Florida* and the resulting new Florida law, the jury under *Caldwell v. Mississippi*, 472 U.S. 320 (1985), must be correctly instructed as to its sentencing responsibility. This means that post-*Hurst* the individual jurors must know that each will bear the responsibility for a death sentencing resulting in a defendant's execution since each juror possesses the power to require the imposition of a life sentence simply by voting against a death recommendation. *See Perry v. State*. As was explained in *Caldwell*, jurors must feel the weight of their sentencing responsibility if the defendant is ultimately executed after no juror exercised his or her power to preclude a death sentence. In Mr. Marquard's case, the jury was not told that each individual juror carried responsibility for whether a death sentence was authorized or a life sentence was mandated. The chances that at least one juror would not join a death recommendation

if a resentencing were now conducted is highly likely given that proper *Caldwell* instructions would be required.

4. Further scrutiny must also be given to the mitigating evidence presented by the defense. While the sentencing judge downplayed the significance of the mitigating circumstances, the jurors under *Hurst* would have been free to conclude that the defense had established the existence of mitigating factors which were presented in Mr. Marquard's case and given them greater weight.

5. In *Hurst v. State*, the Florida Supreme Court stated that error under *Hurst v. Florida* "is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, No. SC12-1947 at 54. "[T]he harmless error test is to be rigorously applied, and the State bears an extremely heavy burden in cases involving constitutional error." *Id.* (internal citations and quotation marks omitted). Therefore, as to *Hurst* error, "the burden is on the State, as beneficiary of the error, to prove *beyond a reasonable doubt* that the jury's failure to unanimously find all the facts necessary for imposition of the death penalty did not contribute to [the defendant]'s death sentence in this case." *Id.* at 54-55 (emphasis added).

6. The *Hurst* error in Mr. Marquard's case warrants relief. The State simply cannot show the error to be harmless beyond a reasonable doubt that no properly instructed juror would have refused to vote in favor of a death recommendation. Unless it is proven beyond a reasonable doubt that no juror would have voted for a life sentence and through such a vote mandated that Mr. Marquard receive a life sentence, Mr. Marquard's death sentence must be vacated and a resentencing ordered. Because the State cannot meet its burden here, Rule 3.851 relief is required.

CLAIM 2

UNDER *HURST V. STATE*, DEFENDANT'S DEATH SENTENCE VIOLATES THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

This claim is evidence by the following:

1. In *Hurst v. State*, the Florida Supreme Court:

> In addition to the requirements of unanimity that flow from the Sixth Amendment and from Florida's right to trial by jury, we conclude that juror unanimity in any recommended *verdict* resulting in a death sentence is required under the Eighth Amendment. (Emphasis added)....The foundational precept is the principle that death is different. This means that the penalty may not be arbitrarily imposed, but must be reserved only for defendants convicted of the most aggravated and least mitigated of murders. Accordingly, any capital sentencing law must adequately perform a narrowing function in order to ensure that the death penalty is not being arbitrarily or capriciously imposed. (FNs omitted) ... If death is to be imposed, unanimous jury sentencing recommendations, *when made in conjunction with the other critical findings unanimously found by the jury*, provide the highest degree of reliability in meeting these constitutional requirements in the capital sentencing process. (Emphasis added)

Mr. Marquard's sentence was not the product of unanimous jury findings. He had a mere advisory panel. His sentence was the product of an arbitrary and capricious system that did not afford him the rights that the Eighth Amendment guarantees.

2. The Florida Court also ruled that on the basis of the Eighth Amendment and on the basis of the Florida Constitution, evolving standards of decency now require jury "unanimity in a recommendation of death in order for death to be considered and imposed". 2016 WL 6036978 at *17. Quoting the US Supreme Court, the Court in *Hurst* noted "that the 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" 2016 WL 6036978at *17. Then from a review of the capital sentencing laws throughout the United States, the Court in *Hurst v. State* found that a national consensus reflecting society's evolving standards of decency was apparent:

> The vast majority of capital sentencing laws enacted

> in this country provide the clearest and most reliable evidence that contemporary values demand a defendant not be put to death except upon the unanimous consent of the jurors who have deliberated upon all the evidence of aggravating factors and mitigating circumstances.
>
> 2016 WL 6036978 at *17. Accordingly, the Court in *Hurst v. State* concluded:
>
> the United States and Florida Constitutions, as well as the administration of justice, are implemented by requiring unanimity in jury verdicts recommending death as a penalty before such a penalty may be imposed. 2016 WL 6036978 at *18.

3. What constitutes cruel and unusual punishment under the Eighth Amendment turns upon considerations of the "evolving standards of decency that mark the progress of a maturing society." *Atkins v. Virginia*, 536 U.S. 304, 312 (2002).[7] "This is because '[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.' *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C. J., dissenting)." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008). According to *Hurst v. State*, the evolving standards of decency are reflected in a national consensus that a defendant can only be given a death sentence when a *properly instructed* penalty-phase *jury* has voted unanimously in favor of the imposition of death. The US Supreme Court has explained that the "near-uniform judgment of the Nation provides a useful guide in delimiting the line between those jury practices that are constitutionally permissible and those that are not." *Burch v. Louisiana*, 441 U.S. 130, 138 (1979). The near-uniform judgment of the states is that

[7] "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man... The Amendment must draw its meaning from the evolving standards that mark the progress of a maturing society." *Atkins*, 536 U.S. at 311-12 (internal quotation marks omitted).

only a defendant who a jury unanimously concluded should be sentenced to death, can receive a death sentence. As a result, those defendants who have had one or more jurors vote in favor of a life sentence are not eligible to receive a death sentence. This class of defendants, those who have had jurors formally vote in favor a life sentence, cannot be executed under the Eighth Amendment.

4. Mr. Marquard is within the protected class. Mr. Marquard did not receive the benefit of a penalty phase jury verdict. His case was only heard by an advisory panel and the verdict was rendered by a judge. Under the Eighth Amendment, his execution would thus constitute cruel and unusual punishment. His death sentences must accordingly be vacated.

5. Mr. Marquard's sentence of death stands in violation of the Eighth Amendment and the Florida Constitution. *Hurst v. State*. Rule 3.851 relief must issue and Mr. Marquard's death sentences must be vacated and life sentences substituted. At the very least, he should receive a new penalty phase.

CLAIM 3

IN LIGHT OF *HURST, PERRY V. STATE* AND *HURST V. STATE*, DEFENDANT'S DEATH SENTENCE VIOLATES THE FLORIDA CONSTITUTION, INCLUDING ARTICLE I, SECTIONS 15 AND 16, AS WELL AS FLORIDA'S HISTORY OF REQUIRING A UNANIMOUS JURY VERDICT.

On remand the Florida Supreme Court applied the Supreme Court's decision in Hurst in light of the Florida Constitution and held:

> As we will explain, we hold that the Supreme Court's decision in *Hurst v. Florida* requires that all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury. We reach this holding based on the mandate of *Hurst v. Florida* and on Florida's constitutional right to jury trial, considered in conjunction with our precedent

> concerning the requirement of jury unanimity as to the elements of a criminal offense. In capital cases in Florida, these specific findings required to be made by the jury include the existence of each aggravating factor that has been proven beyond a reasonable doubt, the finding that the aggravating factors are sufficient, and the finding that the aggravating factors outweigh the mitigating circumstances. We also hold, based on Florida's requirement for unanimity in jury verdicts, and under the Eighth Amendment to the United States Constitution, that in order for the trial court to impose a sentence of death, the jury's recommended sentence of death must be unanimous.

Hurst v. State, No. SC12-1947, 2016 WL 6036978, at *2 (Fla. Oct. 14, 2016). In *Perry v. State*, the Florida Supreme Court found Florida's post-Hurst revision of the death penalty statute was unconstitutional after reviewing the statute in light of the its opinion in *Hurst*. The Florida Supreme held,

> that as a result of the longstanding adherence to unanimity in criminal jury trials in Florida, the right to a jury trial set forth in article I, section 22 of the Florida Constitution requires that in cases in which the penalty phase jury is not waived, the findings necessary to increase the penalty from a mandatory life sentence to death must be found beyond a reasonable doubt by a unanimous jury.4 Hurst, SC12-1947, slip op. at 4. Those findings specifically include unanimity as to all aggravating factors to be considered, unanimity that sufficient aggravating factors exist for the imposition of the death penalty, unanimity that the aggravating factors outweigh the mitigating circumstances, and unanimity in the final jury recommendation for death.

Id. at 23-24, 36. Thus, the new statute was unconstitutional.

Mr. Marquard has a number of rights under the Florida Constitution that are at least coterminous with the United States Constitution, and possibly more extensive. This Court should

also vacate Mr. Marquard's death sentences based on the Florida Constitution. Article I, Section 15(a) provides:

> (a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.
>
> Article I, Section 16(a) provides in relevant part:
>
> (a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges . . .

In *Hurst*, the United States Supreme Court applied *Ring* to Florida's system and held that a jury must find any fact that subjects an individual to a greater penalty. Prior to *Apprendi, Ring,* and *Hurst*, the United States Supreme Court addressed a similar question in a federal prosecution and held that: "elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt" *Jones v. United States*, 526 U.S. 227, 232, 119 S. Ct. 1215, 1219 (1999). Because the State proceeded against Mr. Marquard under an unconstitutional system, the State never presented the aggravating factors of elements for the Grand Jury to consider in determining whether to indict Mr. Marquard. A proper indictment would require that the Grand Jury find that there were sufficient aggravating factors. Mr. Marquard was denied his right to a proper Grand Jury Indictment. Additionally, because the State was proceeding under an unconstitutional death penalty scheme, Mr. Marquard was never formally informed of the full "nature and cause of the accusation" because the aggravating factors were not found by the Grand Jury and contained in the indictment.

In addition to United States Constitution's requirement that Mr. Marquard's death

sentences be vacated, this Court should also vacate Mr. Marquard's death sentences because his death sentences were obtained in violation of the Florida Constitution.

CLAIM 4

THE DECISIONS IN *HURST V. STATE* AND *PERRY V. STATE* ARE NEW LAW THAT WOULD GOVERN AT A RESENTENCING AND MUST ALSO BE CONSIDERED WITH PREVIOUSLY RAISED POSTCONVICTION CLAIMS. THE NEW LAW, DUE PROCESS PRINCIPLES, AND THE EIGHTH AMENDMENT ALL REQUIRE THIS COURT TO REVISIT MR. MARQUARD'S PREVIOUSLY PRESENTED CLAIMS AND DETERMINE WHETHER THE EVIDENCE PRESENTED TO SUPPORT EACH CLAIM AND ALL THE OTHER ADMISSIBLE EVIDENCE AT A FUTURE RESENTENCING WOULD PROBABLY RESULT IN A LIFE SENTENCE IN LIGHT OF THE NEW LAW THAT WOULD GOVERN AT A RESENTENCING.

This claim is evidence by the following:

1. On March 7, 2016, Chapter 2016-13 was signed it law by Governor Scott. It substantially revised Florida's capital sentencing statute. It constitutes new law cognizable in Rule 3.851 proceedings. As the Staff Analysis of the Criminal Justice Subcommittee accompanying HB 7101 (Chapter 2016-13) makes clear, its adoption was intended to cure the constitutional defect in Florida's capital sentencing scheme identified in *Hurst v. Florida*, 136 S. Ct. 616 (2016). *See* House of Representatives Final Bill Analysis, H.B. 7101, at 8 (Fla. 2016) ("The bill amends ss. 921.141 and 921.142, F.S., to comply with the United States Supreme Court's holding that a jury, not a judge, must find each fact necessary to impose a sentence of death.").

2. In *Perry v. State*, the Florida Supreme Court addressed the newly revised statute. While generally approving all other aspects of the newly revised statute, it held that the 10-2 provision was unconstitutional under *Hurst v. Florida* because to be constitutional the findings of fact and the death recommendation necessary to authorize the imposition of a death sentence

had to be reached unanimously by the jury. The Florida Supreme Court held in *Perry* that

> to increase the penalty from a life sentence to a sentence of death, the jury must unanimously find the existence of any aggravating factor, that the aggravating factors are sufficient to warrant a sentence of death, that the aggravating factors outweigh the mitigating circumstances, and must unanimously recommend a sentence of death.

Slip Op. at 20. This is the law that now governs when a death sentence is vacated and a resentencing is ordered in a capital case. In *Hurst v. State*, the Florida Supreme Court explained:

> Requiring a unanimous jury recommendation before death may be imposed, in accord with precepts of the Eighth Amendment and Florida's right to trial by jury, is a critical step toward ensuring that Florida will continue to have a constitutional and viable death penalty law, which is surely the intent of the Legislature. The requirement will dispel most, if not all, doubts about the future validity and long- term viability of the death penalty in Florida.

2016 WL 6036978 at *17.

3. In *Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla.2014), the Florida Supreme Court explained then when presented with qualifying newly discovered evidence:

> the postconviction court must consider the effect of the newly discovered evidence, in addition to all of the evidence that could be introduced at a new trial. *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). In determining the impact of the newly discovered evidence, the court must conduct a cumulative analysis of all the evidence so that there is a 'total picture' of the case.

In *Swafford*, the Florida Supreme Court indicated the evidence to be considered in evaluating whether a different outcome was probable, included "evidence that [had been] previously excluded as procedurally barred or presented in another proceeding." *Swafford v. State*, 125 So.

3d at 775-76. The "standard focuses on the likely result that would occur during a new trial with all admissible evidence at the new trial being relevant to that analysis." *Id.* Put simply, the analysis requires envisioning how a new trial or resentencing would look with all of the evidence that would be available. Obviously, the law that would govern at a new trial or resentencing must be part of the analysis. Here, the revised capital sentencing statute would apply at a resentencing and would require that the jury unanimously determine that sufficient aggravating factors existed to justify a death sentence and unanimously determine that the aggravators outweigh the mitigating factors. It would also require the jury to unanimously recommend a death sentence before the sentencing judge would be authorized to impose a death sentence. One single juror voting in favor of a life sentence would require the imposition of a life sentence.

4. This is new Florida law that did not exist when Mr. Marquard previously presented his 3.851 post-conviction claims. Accordingly, before the enactment of Chapter 2016-13 on March 7, 2016, and before the issuance of *Perry v. State* and *Hurst v. State* on October 14, 2016, Mr. Marquard could not present his claim as set forth herein because the new law that would govern any resentencing ordered in Mr. Marquard's case was previously unavailable.

Implicit in the justification for the new Florida law is an acknowledgment that death sentences imposed under the old capital sentencing scheme were (or are) less reliable. Before executions are carried out in cases in which the reliability of a death sentence is subpar, a re-evaluation of such a death sentence in light of the changes made by Chapter 2016-13, *Hurst v. State*, and *Perry v. State* is warranted. A previous rejection of a death sentenced defendant's post-conviction claims should be re-evaluated in light of the new requirement that juries must unanimously make the necessary findings of fact and return a unanimous death

recommendation before a death sentence is even a sentencing option.

5. In *Hurst v. State*, the first advisory panel that heard his case did so without the benefit of mental health mitigation and recommended death eleven to one. When the second advisory panel heard this mitigation, only seven to five recommended death for the stabbing of the clerk. During Mr. Marquard's post-conviction pleadings and proceedings, additional substantial mitigation and other evidence was presented. A properly instructed jury would have the benefit of hearing about the substantial abuse Mr. Marquard experienced in his youth and the mental illness he has, and still does, suffer from. The jury would learn about the mitigation information disregarded by trial counsel, who essentially turned his penalty phase investigation responsibilities over to Dr. Harry Krop and failed to follow up and prepare in a timely manner.

This Court must re-visit and re-evaluate the rejection of Mr. Marquard's previously presented post-conviction claims in light of the new Florida law which would govern at a resentencing. In light of the important information that a jury was never able to consider and weigh in Mr. Marquard's case, it is apparent that the outcome would probably be different and that Mr. Marquard would likely receive a binding life recommendation from the jury. When a re-evaluation is conducted, the State cannot meet its burden that there is no reasonable possibility that the *Hurst* error contributed to Mr. Marquard's sentence. Accordingly, he is entitled to Rule 3.851 relief on his 3.851 post-conviction claims on the basis of new Florida law set forth in *Perry v. State* and *Hurst v. State*. Mr. Marquard's death sentences should be vacated and a new penalty phase ordered.

CLAIM 5

THIS COURT SHOULD VACATE MR. MARQUARD'S DEATH SENTENCE BECAUSE THE FACT-FINDING THAT SUBJECTED MR.

MARQUARD TO THE DEATH WAS NOT PROVEN BEYOND A REASONABLE DOUBT.

In *In re Winship* the United States Supreme Court held that the elements necessary to adjudicate a juvenile and subject him or her to sentencing under the juvenile system required each fact necessary be proved beyond a reasonable doubt. The Court made clear, "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970).

In *Ivan V. v. City of New York*, the Supreme Court applied Winship's proof-beyond-a-reasonable doubt standard retroactively, stating,

> 'Where the major purpose of new constitutional doctrine is to overcome an aspect of the criminal trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect. Neither good-faith reliance by state or federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice has sufficed to require prospective application in these circumstances.' *Williams v. United States*, 401 U.S. 646, 653, 91 S.Ct. 1148, 1152, 28 L.Ed.2d 388 (1971). See *Adams v. Illinois*, 405 U.S. 278, 280, 92 S.Ct. 916, 918, 31 L.Ed.2d 202 (1972); *Roberts v. Russell*, 392 U.S. 293, 295, 88 S.Ct. 1921, 1922, 20 L.Ed.2d 1100 (1968).
>
> Winship expressly held that the reasonable-doubt standard 'is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and

> elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law' . . . 'Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' 397 U.S., at 363—364, 90 S.Ct., at 1072.
>
> Plainly, then, the major purpose of the constitutional standard of proof beyond a reasonable doubt announced in Winship was to overcome an aspect of a criminal trial that substantially impairs the truth-finding function, and Winship is thus to be given complete retroactive effect.
>
> *Ivan V. v. City of N.Y.*, 407 U.S. 203, 204–05, 92 S. Ct. 1951, 1952, (1972).

In *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881 (1975), the Court held that the Due Process Clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case. *Id.* at 704, 1892. Thus, under the Due Process Clause, it is the state, and the state alone, which must prove each element beyond a reasonable doubt and has the burden of persuasion. Again, this right was so fundamental that the United States Supreme Court found no issue with retroactive application in *Hankerson v. N. Carolina*, 432 U.S. 233, 240–41, 97 S. Ct. 2339, 2344, (1977).

Hurst v. Florida mandates that the State prove each element beyond a reasonable doubt. Mr. Marquard was denied a jury trial on the elements that subjected him to the death penalty. It necessarily follows that he was denied his right to proof beyond a reasonable doubt.

CONCLUSION

Based on the foregoing, Mr. Marquard prays for the following relief, based on his prima

facie allegations showing violation of his constitutional rights: 1) a "fair opportunity" to demonstrate that his death sentence stands in violation of the Sixth and Eighth Amendments and *Hurst v. Florida, Perry v. State* and *Hurst v. State*; 2) a re-evaluation of his previously presented postconviction claims in light of the new Florida law that would govern at a resentencing in order to enhance the reliability of any resulting death sentence; 3) an opportunity for further evidentiary development to the extent necessary; 4) authorization to proceed *in forma pauperis*; 5) leave to supplement this motion should new claims, facts, or legal precedent become available to counsel; and, 6) on the basis of the reasons presented herein, Rule 3.851 relief vacating his death sentences and substituting a life sentence on the basis of Claim 2, or alternatively a new penalty phase proceeding on the basis of Claim 1, Claim 3, Claim 4 and Claim 5.

CERTIFICATION PURSUANT TO FLA. R. CRIM. P. 3.851 (e)

Pursuant to Fla. R. Crim P. 3.851(e)(2)(A) and (e)(1)(F), undersigned counsel hereby certifies that discussions with Mr. Marquard of this motion and its contents has occurred over a period time as relevant new Florida has unfolded during the past year. Counsel has endeavored to fully discuss and explain the contents of this motion with Mr. Marquard, and that counsel to the best of his ability has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that this motion is filed in good faith.

Respectfully submitted,

/s/ Ali A. Shakoor
ALI A. SHAKOOR
Florida Bar No. 0669830
Assistant CCRC
CCRC - MIDDLE
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
813-558-1600
Shakoor@ccmr.state.fl.us
support@ccmr.state.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of January 9, 2017, I electronically filed the foregoing Motion with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following, Assistant State Attorney, CalhounR@sao7.org Stacey Kircher, Assistant Attorney General , Stacey.Kircher@myfloridalegal.com CapApp@myfloridalegal.com I further certify that a copy has been furnished by U.S. Mail to, John Marquard: DOC##122995 , Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
ALI A. SHAKOOR
ASSISTANT CCRC-M
FLORIDA BAR NO. 669830
Capital Collateral Regional Counsel - Middle
12973 N. Telecom Parkway
Temple Terrace, Florida 33637-0907
813-558-1600
Shakoor@ccmr.state.fl.us
Support@ccmr.state.fl.us

IN THE CIRCUIT COURT SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO. CF 91-2418
DIVISION 55

CIR CT MINUTE 126 PAGE 35

STATE OF FLORIDA

vs.

JOHN CHRISTOPHER MARQUARD,

Defendant.

JUDGMENT AND SENTENCE

The Defendant, John Christopher Marquard, has been tried and found guilty under Count I of murder in the first degree of Stacey Ann Willets. The verdict of guilty was returned by the jury on the 13th day of January, 1993. On January 15th, 1993, the same jury rendered an advisory sentence recommending to the Court that the death penalty be imposed upon Defendant, John Christopher Marquard. Their vote was 12 - 0 in favor of the death penalty. The Court heard all of the evidence, considered the advisory sentence, the arguments of the attorneys and a presentence investigation.

The Defendant, John Christopher Marquard, being personally before the Court with his attorneys, Garry Wood, Esq. and Howard Pearl, Esq., for sentencing and no cause having been shown by Defendant why Defendant should not be adjudicated guilty, it is ordered that Defendant is adjudicated guilty of murder in the first degree under Sections 782.041 (a) 1 and 782.04 (1) (a) 2, F.S.

AGGRAVATING CIRCUMSTANCES

1. The capital felony was committed by a person under a sentence of imprisonment or placed on community control. Parole status is the equivalent of imprisonment or community control. This aggravating circumstance was proved beyond a reasonable doubt.

Defendant was placed on parole in March of 1991 in the state of North Carolina for the misdemeanor of larceny. He was still on parole when Stacey Ann Willets was murdered.

2. The crime for which the Defendant is to be sentenced was committed while he was engaged in the commission of robbery or was committed for financial gain. This aggravating circumstance was proved beyond a reasonable doubt.

The jury which found Defendant guilty of first degree murder also

returned a verdict of guilty for armed robbery with a deadly weapon. There is no doubt that a principal motive of Defendant and his accomplice, Michael Abshire, was the taking of the automobile, money and other property from Stacey Ann Willets. Immediately upon rendering Stacey Ann Willets helpless Defendant took her money, her purse and wallet. He and Abshire took her car and other property. When Abshire was arrested he was in possession of her car. When Marquard was arrested he was in possession of her stereo.

3. The crime for which the Defendant is to be sentenced was especially heinous, atrocious or cruel. "Heinous" means extremely wicked or shockingly evil. "Atrocious" means outrageously wicked and vile. "Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. The kind of crime intended to be included as heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to the victim. If the victim in this case lost consciousness, any event which occurred after unconsciousness began cannot be considered as evidence of the especially wicked, evil, atrocious or cruel nature of the crime. Any event after the death of the victim cannot be considered as evidence of the especially wicked, evil, atrocious or cruel nature of the crime.

Chopping and stabbing and attempting to drown a defenseless, unsuspecting 22 year old woman, with a bowie knife, a dagger and attempting to cut her head off with a Gurkha head knife is extremely wicked and shockingly evil. Such conduct is designed to inflict a high degree of pain with indifference to the suffering of Stacey Ann Willets. Marquard cut Stacey's throat, stabbed her in the chest, attempted to drown her and attempted to behead her.

Marquard threw her to the ground after cutting her throat and stabbing her. He held her face under water until she stopped breathing. When she began breathing again he then held her face under water until she finally stopped breathing.

Abshire stabbed her at Marquard's instruction then Marquard struck the back of her neck with his Gurkha head knife. Abshire did the same with his bowie knife.

Stacey did not die instantly. She was breathing when Marquard first tried to drown her. She started breathing after that first attempt. Marquard again tried to drown her.

The attack was without provocation and she vainly sought to defend

herself by struggling. Marquard had one hand over her mouth and a knife in the other hand cutting her throat and stabbing her in the chest. Haliburton v. State, 561 So.2d 248 (Fla. 1990).

Attempting to drown the victim is comparable to strangulation and would involve fore knowledge of death, extreme anxiety or fear.

4. The crime for which the Defendant is to be sentenced was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

Before Marquard and Abshire left North Carolina, they discussed killing Stacey Ann Willets. Marquard brought it up again while in South Carolina and had tried to persuade Abshire to find a place on the way to Florida to kill her. After Marquard, Abshire and Stacey had been in St. Augustine for a few days Marquard and Abshire went to rent a room for two. On the way back to their motel they made their final plans to lure Stacey into the woods and kill her. There is overwhelming evidence that the idea of killing Stacey originated with Marquard. The afternoon before she was actually killed Marquard and Abshire carefully concocted a story to lure her into an isolated area. Such planning is proof beyond reasonable doubt of the heightened premeditation required by this aggravating circumstance.

There is no proof at all of any moral or legal justification. The three identifiable motives are:

(1) to get rid of her because she was a burden;

(2) to take her property; and

(3) to experience killing a human being.

None could conceivably qualify as a pretense of moral or legal justification.

MITIGATING CIRCUMSTANCES

1. Statutory Mitigating Circumstances

There are none.

2. Any aspect of Defendant's character or record or any other circumstance of the offense (non-statutory mitigating circumstances).

Dr. Harry Krop, a clinical psychologist, interviewed Defendant on two occasions and administered a battery of personality and neuropsychological tests. He reviewed Defendant's psychiatric records, various depositions, police records and records relating to criminal offenses and interviewed by telephone Defendant's father, Roger Marquard, and Defendant's mother, Johnnie Gresham. Dr. Krop found Defendant to be a "seriously disturbed individual with a number of personality deficiencies and defects."

Defendant's parents were separated and divorced when he was 6 or 7 years old. Defendant reported to Dr. Krop that both parents abused him. Defendant was placed in the custody of his mother, who has a history of alcoholism. Defendant was separated from his father for 4 or 5 years. According to Defendant's mother Defendant did not want to see his father because he was afraid of him. His father had custody of his two sisters so he was also separated from them.

Defendant told Dr. Krop and Dr. Krop told the jury that Defendant started drinking at age 8 and using drugs at ages 8 or 9. There is no documentation of addiction and there is no indication in later years that Defendant had an alcohol or drug problem. Dr. Krop mentioned he relied on Defendant's statements and the records but those records were admissions of drug use, not addiction to drugs. In 1989 Defendant denied to counselors that he had a drug or alcohol problem.

Defendant told Dr. Krop he had been sexually abused by an adult neighbor when he was 5 or 6 years old. That may or may not be true. According to Krop Defendant informed some mental health counselors of the abuse. There is no documentary support of the abuse and apparently Dr. Krop did not speak with the mental health counselors.

When Defendant was 11 years old he was sent to a group home for 18 months. He was brought to the attention of Social Services by being charged with theft of a firearm. He was having behavioral problems and began to get in trouble. When he returned home he regressed and was then placed in therapeutic foster care where he remained for 15 months. He then lived with his father for approximately 2 years. He experienced problems adjusting and was placed in a group home for emotionally disturbed adolescents and was then transferred to the state hospital for about 16 months. He was placed in the group home when he was charged with sexual battery and threatened to use a firearm. After discharge he lived on his own.

The Court finds the Defendant had an unstable family life as a child and lacked the emotional support and care he should have received.

Defendant reported to Dr. Krop he had a number of head injuries. Those are not documented nor did Dr. Krop describe how they occurred, when they occurred or the nature of the injuries. Such testimony and those of blackouts as related to the jury by Defendant via Dr. Krop are highly suspect. The Court places very little weight on such testimony.

Dr. Krop diagnosed Defendant as a personality disorder not otherwise specified. In other words, Defendant has characteristics which fit different

personality diagnoses. Those traits are inappropriately acting out in response to stress, being manipulative, self-injurious, self-destructive, engaging in attention getting behavior, explosive personality, poor impulse control, low frustration tolerance, failing to look at consequences of his behavior, basically selfish, a liar and a person who engages in behaviors that are against the values of society. Dr. Krop mentioned also that such a person can engage in psychotic behavior, but there is no evidence of such behavior.

Dr. Jack Merwin, an equally qualified psychologist, opined that Defendant suffered from an antisocial personality disorder, which affects 3% of American males.

The Court finds that Defendant suffers from either a personality disorder not otherwise specified or an antisocial personality. There is not much difference between the two. The Court further finds Defendant did not have a stable home, but had divorced parents and an alcoholic mother with whom he lived. He had a difficult childhood. He may have been sexually abused on one occasion. Defendant used various drugs and alcohol, however, there is no evidence that use of those had anything whatsoever to do with the commission of the murder.

SUMMARY

The four (4) aggravating circumstances overwhelm the mitigating circumstances. The strongest mitigating circumstance is Defendant's difficult childhood. He did not have a stable home. He was in a group home, a therapeutic foster home and the state hospital. He lived with an alcoholic mother.

The murder of Stacey Ann Willets was brutal, senseless and completely unnecessary. The murder was Defendant's idea. He planned to kill Stacey before he, Abshire and Stacey left North Carolina. He would have killed her sooner, but for Abshire's lack of cooperation. She was no threat to Defendant. She shared with him her money, her property and her body. She trusted Defendant and Michael Abshire. How else could they have lured her into a remote area of the woods after dark on foot, on the representation they were going to a party?

Stacey was completely defenseless. The attack was unprovoked. Defendant attacked her from behind. He cut her throat, stabbed her, tried to drown her twice, then attempted to behead her. She struggled, but she was no match for Defendant. Defendant could have taken her money, her car and property without a struggle.

She was killed for three reasons:

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(1) Defendant wanted to get rid of her. She argued with him and hadn't found a job and he, Abshire and Stacey were short on money, two people spend less money than three.

(2) Defendant wanted her car, her money and other property. Defendant and Abshire had no transportation without Stacey's car.

(3) Defendant and Abshire played games. They discussed killing people and how you would kill someone with knives. Defendant wanted to know what it was like to kill someone.

The murder of Stacey Ann Willets was a cold blooded, premeditated murder. The death penalty is the appropriate punishment.

SENTENCE

It is the sentence of the law and judgment of the Court that you, John Christopher Marquard, are hereby sentenced to death. You are remanded to custody instanter and without bail for return to the Department of Corrections.

The Department of Corrections shall keep the Defendant in close confinement in the State Correctional System until a date is set for his execution as provided by law.

The Court does now advise you, Defendant, John Christopher Marquard, that it is your right to appeal from this Judgment and Sentence within a period of thirty (30) days from the rendition of this Judgment and Sentence. You have the right to be represented by an attorney on the appeal. By separate order the Public Defender will be appointed to represent you on the appeal.

DONE AND ORDERED in Open Court at St. Augustine, St. Johns County, Florida, this 5th day of February, 1993.

Richard O. Watson

Richard O. Watson, Circuit Judge

Filing # 51757365 E-Filed 01/27/2017 04:44:41 PM

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **CASE NO. 551991CF002418XXAXMX**

JOHN CHRISTOPHER MARQUARD,

Defendant,

_____/

STATE'S RESPONSE TO DEFENDANT'S SECOND SUCCESSIVE MOTION TO VACATE DEATH SENTENCE

COMES NOW the State of Florida, by and through the undersigned Assistant Attorney General, and pursuant to *Florida Rule of Criminal Procedure* 3.851, respond as follows to John Marquard's (hereafter, "Marquard" or "Defendant") second successive motion for postconviction relief.

STATEMENT OF THE FACTS

The Florida Supreme Court summarized the facts in its most recent opinion affirming Marquard's sentence of death:

> Marquard was found guilty of first-degree murder and sentenced to death based on the following facts:
>
> > John Marquard, Mike Abshire, and the victim, Stacey Willets, decided to move from North Carolina to Florida in June 1991 using Stacey's car and sharing expenses. Prior to leaving, Marquard and Abshire discussed killing Stacey for her car and money, and during a stop in South Carolina Marquard told Abshire that he was going to kill her because he was tired of arguing with her. In St. Augustine,

> Marquard and Abshire formulated a plot to kill Stacey that night after luring her into the woods.
>
> Marquard and Abshire invited Stacey to attend a party, drove her to a deserted area, and walked her into the woods. Marquard grabbed her from behind, stabbed her, threw her to the ground, and sat on her back. She was still breathing, so Marquard held her head under the rainwater that had accumulated in a puddle until she stopped breathing. When her body convulsed, he held her head underwater again. Abshire then stabbed her and the two tried to decapitate her. Marquard was arrested and confessed, saying he remembered walking into the woods with Stacey and standing over her body with a knife in hand. Abshire testified at trial, giving a detailed account of the murder.
>
> Marquard was convicted of first-degree murder and armed robbery. The State put on a single witness to establish aggravation during the penalty phase-a parole officer who testified that Marquard was on parole in North Carolina at the time of the killing. Marquard called Dr. Harry Krop to establish mitigation, and Dr. Krop testified extensively concerning Marquard's deprived childhood and present psychological state. The State put on its own mental health expert, Dr. Merwin, in rebuttal. The jury recommended death by a twelve-to-zero vote, and the court imposed death, finding four aggravating circumstances and a number of nonstatutory mitigating factors. The court imposed a consecutive life term for the armed robbery conviction.

Marquard v. State, 641 So. 2d 54, 55-56 (Fla.1994) (footnotes omitted). This Court affirmed his convictions and sentences. *Id.*

Codefendant Abshire was tried separately, was found guilty of first-degree murder, and was likewise sentenced to death. This Court subsequently reversed Abshire's conviction and vacated his death sentence based on the fact that during Abshire's trial, the assistant state attorney indicated that he sought to exclude women from the jury solely because of gender. *Abshire v. State*, 642 So. 2d 542 (Fla.1994). Upon remand, Abshire received a life sentence.

> Marquard filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, and on May 12, 1999, the trial court ordered a hearing. Defense counsel amended the motion, asserting that Marquard's death sentence should be vacated based on newly discovered evidence that Abshire's sentence was reduced to life and Abshire's admission to cutting the victim's neck while she was still alive. After holding an evidentiary hearing, the trial court denied relief but reserved jurisdiction on Marquard's proportionality claim. Marquard appealed the denial of relief, and this Court temporarily relinquished jurisdiction for the sole purpose of allowing the circuit court to enter an order on proportionality. After reviewing the record, the trial court found that Marquard's sentence of death was proportional. This consolidated appeal and petition for writ of habeas corpus followed.

Marquard v. State, 850 So. 2d 417, 422–23 (Fla. 2002).

Defendant's case became final when his effort to obtain certiorari review by the United States Supreme Court was denied on January 23, 1995. *Marquard v. Florida,* 513 U.S. 1132, 115 S. Ct. 946, 130 L. Ed. 2d 890 (1995).

Marquard filed his first motion to vacate judgment of conviction and sentence on March 17, 1997, and filed amended motions on February 18, 1999, November 16, 1999, and December 2, 1999. The Circuit Court granted an evidentiary hearing and denied relief on December 21, 1999. After the Florida Supreme Court relinquished to this Court to rule on the proportionality issue, this Court denied relief on October 27, 2000. Marquard filed a *Pro Se* motion for post conviction relief on January 10, 2001, which was stricken by this Court on February 9, 2001. He appealed to this Florida Supreme Court and also filed a petition for habeas corpus. That Court denied relief on November 21, 2002. *Marquard v. State/Moore*, 850 So. 2d 417 (Fla. 2002). On October 20, 2003, Marquard filed an Amended Petition for Writ of Habeas Corpus in Federal Court. The

United States District Court for the Middle District denied relief on January 13, 2005. On May 24, 2005, an appeal was filed with the Eleventh Circuit. On November 10, 2005, the denial of relief was affirmed. *Marquard v. Secretary, Dep't of Corr.*, 429 F.3d 1278 (11th Cir. 2005). A Petition for Writ of Certiorari to the United States Supreme Court was denied on June 5, 2006. *Marquard v. McDonough*, 547 U.S. 1181 (2006).

Marquard filed a Successive Motion for Post Conviction Relief on September 11, 2007. After this Court held a hearing on December 14, 2007, the Court summarily denied relief on January 3, 2008. The Court found:

> As to Defendant's first claim regarding the constitutionality of execution by lethal injection, the Court finds that under the recent decision in *Lightbourne v. McCollum*, the method of execution by lethal injection currently used in Florida is constitutional. *Lightbourne, v. McCollum*, No. SC06-2391, 2007 WL 3196533 (Fla. Nov. 1, 2007).
>
> In *Lightbourne*, the Supreme Court addressed whether the lethal injection procedures currently in place in Florida, as actually administered, violated the constitutional prohibition against cruel and unusual punishment. *Id.* at 14. The court noted that because it had already upheld the method of lethal injection as constitutional in *Sims v. State*, 654 So. 2d 657 (Fla. 2000), the more specific inquiry was whether the concerns raised as a result of the execution of angel Diaz and the response of the executive branch to those concerns would compel the Court to recede from the essential holding in *Sims*. *Lightbourne*, at 6.
>
> The execution of Angel Diaz took place in December 2006 and was administered under the Department of Corrections' August 2006 procedures. *Id.* at 1. After the execution, the Department of Corrections revised its lethal injection procedures in May 2007, and again in August 2007, based on findings and recommendations of a Commission created by the Governor and a task force created by the Department to review the method in which the lethal injection procedures are administered by the department of Corrections. *Id.* at 2-3. In its review, the Commission found numerous failures that occurred during the Diaz execution; however, the

Commission's opinion was that "an agency following procedures framed in its recommendations could carry out an execution in a constitutional manner using the current three–chemical combination." *Lightbourne*, at 2. The trial court in *Lightbourne* found the August 2007 lethal injection procedures constitutional. *Lightbourne*, at 3. Lightbourne appealed the trial court's decision to the Supreme Court of Florida.

Like the Defendant in the present case, Lightbourne did not argue that lethal injection is inherently cruel and inhumane, but rather that if lethal injection is not properly carried out, there will be a risk of unnecessary pain. The constitutional standard employed when a court is reviewing a method of execution is whether the method involves torture or a lingering death or the infliction of unnecessary and wanton pain. *Lightbourne*, at 20. The Supreme Court extensively reviewed the August 2007 procedures in light of the claims raised by Lightbourne, and the Court held that "Lightbourne has failed to overcome the presumption of deference we give to the executive branch in fulfilling its obligations, and he has failed to show that there is any cruelty inherent in the method of execution provided for under the current procedures." *Id.* at 23. The Court also noted:

> [I]f the Court did review this claim under a 'foreseeable risk' standard as Lightbourne proposes or 'an unnecessary' risk as the *Baze* petitioners propose, we likewise would find that Lightbourne has failed to carry his burden of showing an Eighth Amendment violation... In light of these additional safeguards [to ensure unconsciousness] and the amount of the sodium pentothal used, which is a lethal dose in itself, we conclude that Lightbourne has not shown a substantial, foreseeable or unnecessary risk of pain in the DOC's procedures for carrying out the death penalty through lethal injection that would violate the Eighth Amendment protections.

Id. (*citing Baze v. Rees*, 217 S.W.3d 207, 209 (Ky. 2006)).

In ground two, Defendant claims that Section 27.702, *Florida Statutes*, which prohibits CCRC from filing a Section 1983 claim in federal court on Defendant's behalf, deprives Defendant of due process and equal protection. Section 27.7020), *Florida Statutes* provides:

> The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the

> sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeal for the Eleventh Circuit, and the United States Supreme Court. The capital collateral regional counsel and the attorneys appointed pursuant to § 27.710 shall file only those postconviction or collateral actions authorized by statute....

The Supreme Court of Florida has held that postconviction or collateral actions authorized by statute do not include civil rights actions under 42 U.S.C. § 1983. *Diaz v. State*, 945 So. 2d 1136 (Fla. 2006) (*citing State ex rel. Butterworth v. Kenny*, 714 So. 2d 404, 410 (Fla. 1998)). The defendant in Diaz argued that his due process rights were violated because his CCRC attorneys could not file a section 1983 action in federal court and that no other avenue was available to bring a federal challenge to Florida's lethal injection procedures and lethal injection as a method of execution. *Diaz*, 945 So. 2d at 1154. In *Hill v. McDonough*, the United States Supreme Court held that "a challenge to the constitutionality of the lethal injection procedure did not have to be brought in a habeas petition, but could proceed under section 1983." Diaz, 945 So .2d at 1154 (*citing Hill v. McDonough*, 126 S.Ct. 2096, 165 L.Ed.2d 44 (2006)). However, as noted in *Diaz*, "the United States Supreme Court did not hold that a constitutional challenge to lethal injection procedures could not be brought under a habeas petition." *Diaz*, 945 So. 2d at 1154 (emphasis added). The Court determined that "had Diaz raised a lethal injection claim in either of his two state habeas petitions that were filed after lethal injection was adopted as the. method of execution in Florida, he could have then raised the claim in his initial federal habeas petition that was pending from 1999 until 2004." *Id.* at 1155.

Similarly in this case, Defendant filed a Petition for Writ of Habeas Corpus in state court on July 28, 2000, several months after section 922.105, Florida Statutes was amended to provide for lethal injection as the method of execution in Florida. If Defendant had raised this claim in his Petition, he could have then raised the claim in his initial federal petition for habeas corpus filed on September 5, 2003. Therefore, Defendant's due process rights are not violated by prohibiting CCRC from filing a federal claim under 42 U.S.C. § 1983 because Defendant was not estopped from raising such claim in his prior Petition for Writ of Habeas Corpus filed in state court.

> Furthermore, in *Kilgore v. State*, the Supreme Court of Florida analyzed Section 27.702 in conjunction with the other sections included in part IV of chapter 27 and found that "CCRC is not expressly authorized under the applicable statutes to collaterally challenge a noncapital conviction." No. SCO6-1763, 2007 WL 4142744, at 5 (Fla. Nov. 21, 2007). The Court reached this conclusion by reading the statutes governing CCRC in conjunction with statutes governing registry counsel. Id. Section 27.711(11) provides that an attorney appointed under Section 27.710, the provision relating to registry counsel, is prohibited from representing the capital defendant during any civil litigation other than habeas corpus proceedings. Reading Section 27.711(11) in conjunction with Section 27.702, as the Court did in *Kilgore*, it appears that the Legislature did not intend for CCRC to represent a capital defendant during any civil litigation other than habeas corpus proceedings. Based on the Supreme Court's holdings in *Diaz* and *Kilgore*, ground two of Defendant's Motion will be denied.
>
> In ground three of his Motion, Defendant argues that the new ABA Report demonstrates that the Florida death penalty system is intrinsically flawed and unconstitutional in its current state. The Supreme Court of Florida has held that the ABA Report is not newly discovered evidence because it is "a compilation of previously available information related to Florida's death penalty system and consists of legal analysis and recommendations for reform, many of which are directed to the executive and legislative branches." *Rutherford v. State*, 940 So.2d 1112, 1117 (Fla. 2006); see also Diaz, 945 So.2d at 1145-1146; *Rolling v. State*, 944 So.2d 176, 181 (Fla. 2006). The Court also stated that "even if we were to consider the information contained in the ABA Report, nothing therein would cause this Court to recede from its decisions upholding the facial constitutionality of the death penalty." *Rutherford*, 940 So.2d at 1118.
> Therefore, ground three of Defendant's Motion will be denied.

(*Circuit Court Order*, January 3, 2008).

Marquard then appealed this Court's decision to the Florida Supreme Court, and raised ten claims. Specifically, Marquard alleged: (1) newly discovered evidence as to Abshire's life sentence establishes that Marquard's death sentence is disproportional; (2) newly discovered evidence relative to Abshire's recent testimony requires that Marquard's

sentence be reduced; (3) Marquard had ineffective assistance of counsel at the penalty phase; (4) he was denied a full and fair postconviction evidentiary hearing; (5) Marquard had ineffective assistance of counsel at the guilt phase; (6) defense counsel failed to object to comments by the prosecutor and trial judge which diminished the jury's role in sentencing; (7) Marquard was unconstitutionally shackled during the trial; (8) the rule prohibiting counsel from interviewing the jurors is unconstitutional; (9) the jury instructions during the penalty phase were vague or overbroad; and (10) cumulative errors justify relief. The Florida Supreme Court summarily disposed of claims (6), (8), and (9) as procedurally barred and claim (10) because it was meritless. *Marquard v. State*, 850 So. 2d 417, 423 (Fla. 2002).

The Florida Supreme Court summarized the postconviction procedural history in in Defendant's most recent appearance before the Court:

> John Christopher Marquard, a prisoner under sentence of death, appeals the circuit court's denial of his successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. After this Court affirmed Marquard's conviction and sentence on direct appeal, *see Marquard v. State,* 641 So. 2d 54, 58 (Fla. 1994), Marquard unsuccessfully sought postconviction relief in this Court and the federal courts. *See Marquard v. State,* 850 So. 2d 417 (Fla. 2002) (affirming the circuit court's denial of Marquard's rule 3.850 motion and denying Marquard's petition for writ of habeas corpus); *Marquard v. Sec'y for Dept. of Corr.*, 429 F.3d 1278 (11th Cir.2005) (affirming the federal district court's denial of Marquard's petition for writ of habeas corpus), *cert. denied,* 547 U.S. 1181 (2006).
>
> Marquard's current appeal represents a broad attack on the constitutionality of Florida's lethal injection system and, to a lesser extent, the inability of postconviction counsel to mount such attacks. Specifically, Marquard argues that: (1) newly discovered evidence, namely the circumstances

> surrounding the execution of Angel Diaz, proves that execution by lethal injection violates the Eighth Amendment prohibition against cruel and unusual punishment; (2) section 27.702, Florida Statutes (2006), which prohibits postconviction counsel from filing a civil rights claim under 42 *U .S.C.* § 1983, violates his rights to due process and equal protection; and (3) a recent American Bar Association report demonstrates that Florida's death penalty system is unconstitutional. However, we recently rejected each of these claims. *See Henyard v. State,* Nos. SC08–222, SC08–1544, & SC08–1653, 2008 WL 4148992, at *6–8 (Fla. Sept. 10, 2008); *see also Lightbourne v. McCollum,* 969 So. 2d 326 (Fla. 2007); *Schwab v. State,* 969 So. 2d 318 (Fla. 2007); *Diaz v. State,* 945 So. 2d 1136 (Fla. 2006); *Rutherford v. State,* 940 So. 2d 1112 (Fla. 2006); *State ex rel. Butterworth v. Kenny,* 714 So. 2d 404 (Fla. 1998). Accordingly, the circuit court order is hereby affirmed.

Marquard v. State, 993 So. 2d 513 (Fla. 2008).

This Answer to Defendant's second successive motion to vacate follows.

Preliminary Matters

Preliminarily, Postconviction Counsel was not authorized to file this successive motion to vacate. Pursuant to §27.702, "[t]he capital collateral regional counsel and the attorneys appointed pursuant to s. 27.710 shall file only those postconviction or collateral actions authorized by statute." The Florida Supreme Court has recognized the legislative intent to limit collateral counsel's role in capital post-conviction proceedings. *See State v. Kilgore*, 976 So. 2d 1066, 1068-1069 (Fla. 2007).

The term "postconviction capital collateral proceedings" is defined in §27.711(1)(c), Fla. Stat., as follows:

> "Postconviction capital collateral proceedings" means one series of collateral litigation of an affirmed conviction and sentence of death, including the proceedings in the trial court that imposed the capital sentence, any appellate review of the sentence by the Supreme Court, any

> certiorari review of the sentence by the United States Supreme Court, and any authorized federal habeas corpus litigation with respect to the sentence. The term does not include repetitive or successive collateral challenges to a conviction and sentence of death which is affirmed by the Supreme Court and undisturbed by any collateral litigation.

§27.711(1)(c), Fla. Stat. Marquard is not entitled to any relief because collateral counsel is not authorized to file this unauthorized, non-complying successive motion to vacate.

Additionally, the motion is time-barred because *Hurst* does not apply retroactively. Defendant's second successive motion to vacate should be summarily denied.

Hurst Decision

On January 12, 2016, the United States Supreme Court ruled in *Hurst v. Florida*, 136 S. Ct. 616 (2016), that Florida's sentencing scheme, which permitted the judge alone to find the existence of an aggravating circumstance, is unconstitutional under the Sixth Amendment of the United States Constitution. *Hurst* is an extension of *Ring v. Arizona*, 536 U.S. 584 (2002) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). In *Ring*, an Arizona capital sentencing scheme that permitted a judge rather than the jury to find the facts necessary to sentence a defendant to death was held to be unconstitutional.

On October 14, 2016, the Florida Supreme Court ruled in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) and *Perry v. State*, 41 Fla. L. Weekly S449, 2016 WL 6036982 (Fla. Oct. 14, 2016), that the Sixth Amendment required that all of the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury. *Hurst*, 202 So. 3d at 44. The specific findings include the

existence of each aggravating factor that has been proven beyond a reasonable doubt, the finding that the aggravating factors are sufficient, and the finding that the aggravating factors outweigh the mitigating circumstances. *Id.* The *Hurst* decision also included a holding that under the Eighth Amendment to the United States Constitution, the jury's recommended sentence of death must be unanimous in order for the trial court to impose a sentence of death. *Id.* The Court ruled that a harmless error review would focus on the effect of the error on the trier of fact and that there is no reasonable possibility that the error contributed to the sentence. *Id.* at 68.

Neither the *Hurst v. Florida* ruling nor the *Hurst v. State* ruling addressed the issue of retroactivity. Subsequently, in two recent Florida Supreme Court rulings that consolidated four cases, *Mosley v. State/Jones*, 41 *Fla. L. Weekly* S629, 2016 WL 7406506 (Fla. Dec. 22, 2016); and *Asay v. State/Jones*, 41 *Fla. L. Weekly* S646, 2016 WL 7406538 (Fla. Dec. 22, 2016), the Court addressed the issue of retroactivity for cases that became final before the ruling in *Ring*. The Court analyzed the *Hurst* issue using *Witt v. State*, 387 So. 2d 922 (Fla. 1980), which provides a framework for determining whether a change in decisional law should be applied retroactively. The Court stated the following:

> When considering the three factors of the *Stovall/Linkletter* test together, we conclude that they weigh against applying *Hurst* retroactively to all death case litigation in Florida.

Asay v. State/Crews, 41 *Fla. L. Weekly* at S652.

SUMMARY OF ARGUMENTS

Marquard's second successive Rule 3.851 motion is time-barred and does not come within any exception to Rule 3.851(d)(2). The motion is an attempt to relitigate his previously-denied ineffective assistance of counsel claims under the recently-decided *Hurst*. Despite Defendant's insistence to the contrary, *Hurst* grants Defendant no relief, because the Florida Supreme Court did not hold that the *Hurst* decision established a new fundamental constitutional right that is to apply retroactively to cases decided prior to *Ring*. Thus, Defendant's motion is untimely, successive, procedurally barred, meritless, and unauthorized under Rule 3.851, *Florida Rules of Criminal Procedure*.

STANDARDS OF REVIEW

Florida Rule of Criminal Procedure 3.851(f)(5)(B) permits summary denial of a successive motion for post-conviction relief without an evidentiary hearing "[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief." *Williamson v. State*, 961 So. 2d 229, 234 (Fla. 2007). The Florida Supreme Court reviews this Court's decision to summarily deny a successive rule 3.851 motion *de novo*, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief. *Walton v. State*, 3 So. 3d 1000, 1005 (Fla. 2009), *citing State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003); *Fla. R.Crim. P.* 3.851(f)(5)(B). In order to support summary denial, "the trial court must either state its rationale in the order denying relief or attach portions of the record that would refute the claims." *Nixon v. State*, 932 So. 2d 1009, 1018 (Fla. 2006).

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ARGUMENT

Defendant, a death row inmate whose conviction became final January 23, 1995, seeks relief pursuant to the United States Supreme Court's opinion in *Hurst v. Florida*, 136 S. Ct. 616 (2016), and the Florida Supreme Court's opinion in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). Defendant's successive motion for postconviction relief was filed on January 9, 2017, which is well beyond the one-year time limitation after his judgment and sentence became final. *See Fla. R. Crim. P.* 3.851(d) (1). Therefore, Defendant's successive motion is untimely and subject to summary denial unless his claim is either based on newly discovered evidence that could not have been ascertained by the exercise of due diligence, or a fundamental constitutional right not established within one year of his judgment and sentence becoming final and the constitutional right *has been held to apply retroactively. See Fla. R. Crim. P.* 3.851(d) (2) (emphasis added).

As will be established below, Defendant cannot meet these requirements, and his motion must be summarily denied.

HURST DOES NOT RETROACTIVELY APPLY.

In *Hurst v. Florida*, the United States Supreme Court declared the portion of Florida's capital sentencing scheme requiring the judge, rather than a jury, to find each fact necessary to impose a sentence of death unconstitutional in light of *Ring v. Arizona*, 536 U.S. 583 (2002). The Florida Supreme Court has recently held that *Hurst v. Florida* can be retroactively applied to cases that were not final when the *Ring* opinion was issued June 24, 2002. *Mosley v. State*, Case Nos. SC14-436, SC14-2108, 2016 WL 7406506

(Fla. Dec. 22, 2016). Significantly, the Court also held that any case in which the death sentence was final before *Ring* was decided would not receive relief based on *Hurst*. *Asay v. State*, No. SC16-102, 2016 WL 7406538, *13 (Fla. Dec. 22, 2016); *see also Mosley v. State*, No. SC14-2108, 2016 WL 7406506, *18 (Fla. Dec. 22, 2016) ("[W]e have now held in *Asay v. State* that *Hurst* does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in *Ring*.").

Defendant's death sentence was final on Jan. 23, 1995. *Marquard v. Florida*, 513 U.S. 1132, 115 S. Ct. 946, 130 L. Ed. 2d 890 (1995). This was certainly before *Ring* was decided in 2002. Under the Florida Supreme Court's controlling precedent of *Asay*, *Hurst* is not retroactive to Defendant. *Asay*, No. SC16-102, 2016 WL 7406538 at *13.

Moreover, in a recent ruling, the Florida Supreme Court reiterated its limitations on the applicability of *Hurst* under *Asay* in *Gaskin v. State*, No. SC15-1884 (Fla. Jan. 19, 2017):

> Because Gaskin's sentence became final in 1993, Gaskin is not entitled to relief under *Hurst v. Florida*. *See Asay v. State*, No. SC16-223, 2016 WL 7406538 at *13 (Fla. Dec. 22, 2016) (holding that *Hurst* is not retroactive to cases that became final before the United States Supreme Court decided *Ring v. Arizona*, 536 U.S. 584 (2002)).

Gaskin, at 5.

Despite the Florida Supreme Court's unequivocal rulings in *Asay* and *Gaskin*, Defendant asserts that "fundamental fairness" requires that *Hurst* be retroactively applied to his case. Fairness requires no such thing. Defendant cannot validly claim that his

sentencing procedure was less accurate than future sentencing procedures employing the new standards announced in *Hurst v. State*. Just like *Ring* did not enhance the fairness or efficiency of death penalty procedures, neither does *Hurst*. *Johnson v. State*, 904 So. 2d 400, 409 (Fla. 2005). As the United States Supreme Court has explained, "for every argument why juries are more accurate factfinders, there is another why they are less accurate." *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004). Because the accuracy of Defendant's death sentence is not at issue, fairness does not demand retroactive application of *Hurst v. State*.

The Florida Supreme Court made it very clear that *Hurst* should not be applied retroactively to cases in which the death sentence became final before the issuance of *Ring*. Defendant's case squarely falls before Ring, outside the parameters the Florida Supreme Court determined to be entitled to retroactive application of *Ring*. Therefore, relief must be denied.

DEFENDANT HAS FAILED TO ESTABLISH HARMFUL ERROR, AS ANY ALLEGED *HURST* ERROR IS HARMLESS BEYOND A REASONABLE DOUBT.

Even if *Hurst* were retroactively applied to Defendant's case, he still would not be entitled to relief in his highly aggravated, minimally mitigated, unanimous recommendation case. In *Hurst v. State*, the Florida Supreme Court set out the requirements for a harmless error analysis based upon a *Hurst* claim. "Where the error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, 202 So. 3d at 68, citing *Zack v. State*, 753

So. 2d 9, 20 (Fla. 2000). In order to be entitled to relief, the alleged *Hurst* error must not be harmless beyond a reasonable doubt. *See Hurst v. State*, 202 So. 3d 40, 67 (Fla. 2016) (recognizing that a *Hurst* error is capable of harmless error review); and *Hurst v. Florida*, 136 S. Ct. 616, 624 (2016) (remanding to the state court to determine whether the error was harmless).

The Florida Supreme Court applied this in *Davis v. State*, 2016 WL 6649941 (Fla. Nov. 10, 2016), where the jury unanimously recommended a death sentence for the murder of two people in Polk County. *Id.* at *1, 11. The Court found that Davis' unanimous jury recommendations of death "allow us to conclude beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." *Davis* at *29. The Court cited the standard jury instructions that were given to the jury – in Davis and here – informing the jury that "it needed to determine whether sufficient aggravators existed and whether the aggravators outweighed the mitigation *before* it could recommend a sentence of death." *Id.* (emphasis in original). The jury was presented with evidence of mitigating circumstances and was properly informed that it may consider mitigating circumstances that are proven by the greater weight of the evidence. *Id.* The Court also stated the following:

> Even though the jury was not informed that the finding that sufficient aggravating circumstances outweighed the mitigating circumstances must be unanimous, and even though it was instructed that it was not required to recommend death even if the aggravators outweighed the mitigators, the jury did, in fact, unanimously recommend death. *See id.* ("If, after

> weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death."). From these instructions, we can conclude that the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendations. Further supporting our conclusion that any *Hurst v. Florida* error here was harmless are the egregious facts of this case—Davis set two women on fire, one of whom was pregnant, during an armed robbery, and shot in the face a Good Samaritan who was responding to the scene. The evidence in support of the six aggravating circumstances found as to both victims was significant and essentially uncontroverted.
>
> We conclude that the State can sustain its burden of demonstrating that any *Hurst v. Florida* error was harmless beyond a reasonable doubt. Here, the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that Davis be sentenced to death for the murders of Bustamante and Luciano. The unanimous recommendations here are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death. Accordingly, Davis is not entitled to a new penalty phase.

Id. at *29-30.

Accordingly, Marquard is not entitled to be resentenced. The jury's death recommendations came after it considered a full presentation of mitigating circumstances and aggravating factors. As in the *Davis* case, the jury was given the standard jury instructions that if the jurors found that the aggravators outweighed the mitigators, they may recommend death but were not required to recommend a death sentence. In *Davis*,

the Court found that from these standard instructions, the Court could "conclude that the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendations." *Davis* at *29. The same is true of Marquard, where the jury unanimously recommended death, despite being instructed that there was no requirement to do so. The Florida Supreme Court determined that a unanimous recommendation satisfied the constitutional requirements to impose a death sentence. Marquard's argument that a properly instructed jury would have voted for life instead of unanimously returning a death recommendation has no support, no merit, and the holding in *Davis* is dispositive.

In addition, the extreme aggravation weighs against any finding of harmful error. The fact that this case is one of the most aggravated and least mitigated is evident on the facts and the record and the facts that the jury unanimously recommended death. The large amount of evidence proving Marquard was the murderer was uncontroverted, and included Marquard's confession that he remembered walking into the woods with Stacey and standing over her body with a knife in his hand, and co-defendant Abshire's testimony at trial, giving a detailed account of the murder. The jury heard how Marquard took the victim to a secluded area under false pretenses to steal her car and money, grabbed her from behind, stabbed her, threw her to the ground, and sat on her back. The jury heard how, while she was still breathing, Marquard held her head down in a muddy puddle until she stopped breathing, and then shoved her head underwater again to make

sure he killed her. Defendant and Co-defendant then stabbed her and tried to cut off her head. *Marquard v. State*, 641 So. 2d at 55; *Marquard v. State*, 850 So. 2d at 422.

Marquard was convicted, not only of first-degree murder, but also of armed robbery. Therefore, the jury unanimously found him guilty of a contemporaneous crime that support the aggravating circumstance that the murder was committed during the course of a felony. In addition, Marquard was on parole for larceny in North Carolina at the time of the killing, and under a sentence of imprisonment. *Marquard v. State*, 850 So. 2d 417, 422 (Fla. 2002). The jury clearly found that the capital felony was committed in the course of a robbery given the contemporaneous convictions, and the fact that the defendant was under a sentence of imprisonment is indisputable. Had the jury been told that it had to unanimously find the other aggravating circumstances, that the murder especially heinous, atrocious, or cruel; and was cold, calculated, and premeditated, and that the aggravation was sufficient to warrant death, it would have clearly done so under these facts.

The court found no statutory mitigation and only minimal, non-compelling nonstatutory mitigation that:

> Defendant had an unstable family life as a child and lacked the emotional support and care he should have received.....The Court finds that Defendant suffers from either a personality disorder not otherwise specified or an antisocial personality. There is not much difference between the two. The Court further finds Defendant did not have a stable home, but had divorced parents and an alcoholic mother with whom he lived. He had a difficult childhood. He may have been sexually abused on one occasion. Defendant used various drugs and alcohol, however, there is no evidence that use of those had anything whatsoever to do with the commission of the murder.

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Marquard v. State, 641 So. 2d at 56 n 2.

Marquard's argument that the standard jury instructions diminished the jury's sense of responsibility in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985) is foreclosed by *Davis*. In *Davis*, like the case at bar, the standard jury instructions were utilized. As cited *supra*, *Davis* analyzed the standard jury instructions in the context of Hurst as follows:

> Even though the jury was not informed that the finding that sufficient aggravating circumstances outweighed the mitigating circumstances must be unanimous, and even though it was instructed that it was not required to recommend death even if the aggravators outweighed the mitigators, the jury did, in fact, unanimously recommend death. *See id.* ("If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death."). From these instructions, we can conclude that the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendations.
>
> ...
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> Here, the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that Davis be sentenced to death for the murders of Bustamante and Luciano. The unanimous recommendations here are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death.

Davis v. State, 2016 WL 6649941, at *30.

Although the Florida Supreme Court determined that *Mosley* was entitled to a new penalty phase based upon *Hurst*, *Mosley* is distinguishable from this case. In *Mosley*, which involved the death of an adult and a child, the jury recommendation for death was not unanimous and the jury recommended life for the other murder. "In light of the disparate jury recommendations of life for the murder of Wilkes and the eight-to-four recommendation of death for the murder of Jay-Quan and the twenty-nine mitigating circumstances, the State has failed to show beyond a reasonable doubt that the *Hurst* error was harmless." *Mosley* at 64. In contrast, Marquard's death recommendation was unanimous. The State has met its burden of proving that any *Hurst* error was harmless. The defendant is not entitled to a new penalty phase based upon *Hurst*. Claims 1 and 3 should be denied.

While Defendant claims that the State cannot show beyond a reasonable doubt that the *Hurst* error was harmless, it is not the State's burden to prove. Unlike a direct appeal, the State has no burden of proving harmless error in postconviction proceedings. Rather, it is the movant that must show entitlement to relief. *See Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000) (explaining that in order to obtain postconviction relief, "[t]he defendant bears the burden of establishing a prima facie case based upon a legally valid claim."); *see also Ives v. State*, 993 So. 2d 117, 121 (Fla. 4th DCA 2008) (observing that the burden is generally on the State to prove harmlessness on direct appeal, but rests with the defendant to prove prejudice in postconviction); *but see Mosley v. State*, No. SC14-

2108, 2016 WL 7406506, at *25-26 (Fla. Dec. 22, 2016). Thus, it is Defendant's burden to meet, and he has failed to do so in this case.

The Florida Supreme Court has unequivocally determined that *Hurst* does not apply retroactively to cases like Defendant's that were final prior to the issuance of *Ring* in 2002. *Asay*, No. SC16-102, 2016 WL 7406538, at *13. The Florida Supreme Court has also held that unanimous recommendations comply with the requirements of *Hurst*. *See Davis*. Defendant has not, and cannot prove harmful error or *Strickland* prejudice in this unanimous case. Accordingly, this claim must be summarily denied.

DEFENDANT IS NOT ENTITLED TO RELIEF UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION BASED ON *HURST*.

Defendant next asserts that his death sentence violates the Eighth Amendment. He specifically alleges that defendants who did not receive unanimous jury recommendations are not eligible to receive death sentences. This claim is flawed and meritless.

In *Spaziano v. Florida*, 468 U.S. 447, 463–64, (1984), the United States Supreme Court held that the Eighth Amendment is not violated in a capital case when the ultimate responsibility of imposing death rests with the judge. *Spaziano v. Florida*, 468 U.S. 447, 463–64, (1984) overruled by *Hurst v. Florida*, 136 S. Ct. 616 (2016). In deciding *Hurst v. Florida*, the United States Supreme Court analyzed the case pursuant to Sixth Amendment grounds and overruled *Spaziano* to the extent that it allows a sentencing judge to find aggravating circumstances independent of a jury's fact-finding. *Hurst v. Florida*, 136 S. Ct. at 618. The Court did not address the issue of any possible Eighth

Amendment violation, and similarly, it did not overrule *Spaziano* on Eighth Amendment grounds. The United States Supreme Court has never held that a unanimous jury recommendation is required under the Eighth Amendment.

While the Florida Supreme Court initially included the Eighth Amendment as a reason for warranting unanimous jury recommendations in its *Hurst v. State* decision, the Court did not, and cannot, overrule the United State Supreme Court's surviving precedent in *Spaziano*. In addition, Florida has a conformity clause in its state constitution that requires the state courts to interpret Florida's prohibition on cruel and unusual punishments in conformity with the United States Supreme Court's Eighth Amendment jurisprudence. Art. I, § 17, Fla. Const.; *Henry v. State*, 134 So. 3d 938, 947 (Fla. 2014) (noting that under Article I, section 17 of the Florida Constitution, Florida courts are "bound by the precedent of the United States Supreme Court" regarding Eighth Amendment claims). Given that there is no United States Supreme Court case holding that the Eighth Amendment requires the jury's final recommendation be unanimous, Defendant's argument must fail.

Lastly, Defendant's reliance on *Walls v. State*, 41 Fla. L. Weekly S466, 2016 WL 6137287 (Fla. Oct. 20, 2016), is misplaced. In *Walls*, the Florida Supreme Court determined that *Hall v. Florida*, 134 S. Ct. 1986 (2014), was retroactive under *Witt v. State*, 387 So. 2d 922 (Fla. 1980). *Walls*, 2016 WL 6137287 at *5-*6. *Walls*, however, concerned intellectual disability, not non-unanimous jury recommendations. Defendant

does not belong to any Eighth Amendment protected class that would implicate his death sentence so this claim should be summarily denied.

DEFENDANT IS NOT ENTITLED TO A RE-EVALUATION OF HIS PREVIOUSLY LITIGATED CLAIMS.

In his final claim, Defendant argues he is entitled to a re-evaluation of his previously presented newly discovered evidence and ineffective assistance of counsel claims. *Hurst*, a Sixth Amendment right-to-a-jury-trial case, does not operate to breathe new life into previously denied due process claims.

Defendant's reliance on *Hildwin v. State*, 141 So. 3d 1178 (Fla. 2014), and *Swafford v. State*, 125 So. 3d 760 (Fla. 2013), is misplaced. Both cases require a cumulative analysis of all the evidence when a claim of newly discovered evidence is being raised, but a *Hurst* claim is not a claim of newly discovered evidence. Also, both cases concern the treatment of evidence, not pure legal issues, which is what a *Hurst* claim is. Neither *Hildwin* nor *Swafford* can be read as resurrecting previously denied legal claims. No view of the scope of the holdings of either *Hurst v. Florida* or *Hurst v. State* supports this claim.

Defendant further argues that the new requirements for jury unanimity would impact the prejudice prong of his previously litigated *Strickland v. Washington*, 466 U.S. 668, 695 (1984), claim because he would allegedly be more likely to receive a life sentence. This argument assumes he is entitled to relief under *Hurst*, when as previously explained, he is not. It further assumes that his *Strickland* claim can be resurrected, when

it cannot be. Even if Defendant could relitigate his previously disposed of *Strickland* claim, he would be entitled to no relief because the prejudice standard requires a showing that the defendant was prejudiced by his counsel's errors, not a Sixth Amendment fact-finding error. *Strickland*, 466 U.S. at 695.

For all these reasons, this claim should be summarily denied along with every other claim in Defendant's successive motion.

CONCLUSION

Based on the foregoing arguments and authority, Defendant's successive postconviction motion is without merit and must be summarily denied.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Stacey E. Kircher

STACEY E. KIRCHER
ASST. ATTORNEY GENERAL
Florida Bar No. 50218
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32118
Office: (386) 238-4990
stacey.kircher@myfloridalegal.com
capapp@myfloridalegal.com
CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2017, a true and correct copy of the foregoing was filed via e-Portal to the St. Johns County Clerk, and by e-Portal/e-mail service to: Rosemary Calhoun, Assistant State Attorney, calhounr@sao7.org; eservicestjohns@sao7.org; Office of the State Attorney, 251 N. Ridgewood Avenue, Daytona Beach, FL 33115; and Ali A. Shakoor, Asst. CCRC, shakoor@ccmr.state.fl.us [and] cbus03@gmail.com [and] support@ccmr.state.fl.us, CCRC-Middle, 12973 N. Telecom Parkway, Temple Terrace, FL 33637, the attorney for Defendant.

/s/

Assistant Attorney General

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 91002418CF
DIVISION: 56

v.

JOHN CHRISTOPHER MARQUARD,
Defendant.
_____/

ORDER SCHEDULING CASE MANAGEMENT CONFERENCE

PLEASE TAKE NOTICE that on the **20th day of February, 2017, at 9:00 a.m.**, a case management conference will be held on the following:

DEFENDANT'S SECOND SUCCESSIVE MOTION TO VACATE DEATH SENTENCE

before the undersigned judge, in Courtroom 328, of the Richard O. Watson Judicial Center, 4010 Lewis Speedway, St. Augustine, Florida.

DONE AND ORDERED in chambers, in St. Johns County, Florida, on 31 day of January, 2017.

1/31/2017 3:32 PM
91002418CFMA

e-Signed 1/31/2017 3:32 PM
91002418CFMA

CIRCUIT JUDGE

Copies to:
Stacey E. Kircher, Assistant Attorney General
stacey.kircher@myfloridalegal.com

Filed for record 01/31/2017 03:32 PM Clerk of Court St. Johns County, FL

capapp@myfloridalegal.com
Rosemary Calhoun, Assistant State Attorney
calhoun@sao7.org
eservicestjohns@sao7.org
Ali A. Shakoor, Assistant CCRC
shakoor@ccmr.state.fl.us
cbus03@gmail.com
support@ccmr@state.fl.us

Louise Pomar, Official Court Reporter
lpomar@circuit7.org

REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES **If you are a person with a disability who needs an accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court Administration, 125 E. Orange Ave., Ste. 300, Daytona Beach, FL 32114, (386) 257-6096, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

THESE ARE NOT COURT INFORMATION NUMBERS

SOLICITUD DE ADAPTACIONES PARA PERSONAS CON DISCAPACIDADES
Si usted es una persona con discapacidad que necesita una adaptación para poder participar en este procedimiento, usted tiene el derecho a que se le proporcione cierta asistencia, sin incurrir en gastos. Comuníquese con la Oficina de Administración Judicial (Court Administration), 125 E. Orange Ave., Ste. 300, Daytona Beach, FL 32114, (386) 257-6096, con no menos de 7 días de antelación de su cita de comparecencia ante el juez, o de inmediato al recibir esta notificación si la cita de comparecencia está dentro de un plazo menos de 7 días; si usted tiene una discapacidad del habla o del oído, llame al 711.

ESTOS NUMEROS TELEFONICOS NO SON PARA OBTENER INFORMACION JUDICIAL

Filing # 51956920 E-Filed 02/02/2017 09:14:48 AM

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **CASE NO: 551991CF002418XXAXMX**

JOHN CHRISTOPHER MARQUARD,
Defendant.

_____/

STATE'S MOTION REQUESTING PERMISSION TO APPEAR BY TELEPHONE FOR THE CASE MANAGEMENT CONFERENCE SET FOR FEBRUARY 20, 2017

Comes now, the State, by and through the undersigned counsel and pursuant to Fla. R. Jud. Admin. 2.530, hereby respectfully requests for any party wishing to appear telephonically for the case management conference scheduled for February 20, 2017 at 9 a.m. be allowed to do so. Defendant's counsel has also requested to appear telephonically and has detailed the instructions in their proposed order.

/S/ Stacey E. Kircher

STACEY E. KIRCHER
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 50218
Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32118
Stacey.Kircher@myfloridalegal.com
CapApp@MyFloridaLegal.com
(386)238-4990
(386)226-0457 (FAX)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Febuary 2, 2017, a true and correct copy of the foregoing was filed via e-Portal to the St. Johns County Clerk, and by e-Portal/e-mail service to: Rosemary Calhoun, Assistant State Attorney, calhounr@sao7.org; eservicestjohns@sao7.org; Office of the State Attorney, 251 N. Ridgewood Avenue, Daytona Beach, FL 33115; and Ali A. Shakoor, Asst. CCRC, shakoor@ccmr.state.fl.us [and] cbus03@gmail.com [and] support@ccmr.state.fl.us, CCRC-Middle, 12973 N. Telecom Parkway, Temple Terrace, FL 33637, the attorney for Defendant.

/S/ Stacey E. Kircher

STACEY E. KIRCHER
ASSISTANT ATTORNEY GENERAL

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA — CASE NO.: CF91-2418

vs. — DIVISION: 56

JOHN CHRISTOPHER MARQUARD,
Defendant,
_____/

ORDER GRANTING STATE'S MOTION REQUESTING PERMISSION TO APPEAR TELEPHONICALLY

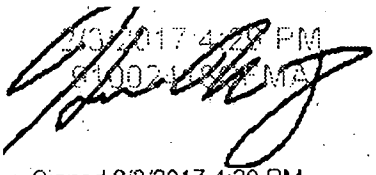
This cause came before the Court pursuant to the State's Motion Requesting to Appear by Telephone at the Case Management Conference scheduled for February 20, 2017. The Court having reviewed the Motion and being fully advised in its premises, it is:

ORDERED and ADJUDGED that:

1. The State's motion, including all other counsel wishing to appear telephonically at the case management conference, is GRANTED.

2. Counsel wishing to appear telephonically shall make arrangements with counsel from the Attorney General's Office and a conference call placed to the judge's chambers at the appropriate time of the hearing. The number to the judge's chambers is 904-827-5600.

DONE AND ORDERED in chambers, in St. Johns County, Florida, on 03 day of February, 2017.



e-Signed 2/3/2017 4:29 PM
91002418CFMA

CIRCUIT JUDGE

Copies Furnished to:

Stacey E. Kircher, Asst. Attorney General
Stacey.Kircher@myfloridalegal.com
CapApp@myfloridalegal.com

Rosemary Calhoun, Asst. State Attorney
calhounr@sao7.org
eservicesfjohns@sao7.org

Ali A. Shakoor, Asst. CCR
shakoor@ccmr.st.fl.us
cbus03@gmail.com
support@ccmr.state.fl.us

Hearing Notes

DATE: February 20, 2017
CIRCUIT JUDGE: MALTZ
STATE ATTORNEY: KIRCHER (OFFICER ATTORNEY GENERAL) / CALHOUN
DEFENSE ATTORNEY: SHAKOOR
CLERK: GRIFFIS, VERONICA
BAILIFF: IN CHAMBERS
COURT REPORTER: ANDREA GORMAN

STATE VS.: MARQUARD, JOHN CHRISTOPHER
CASE #:91002418CFMA

CHARGE #: FIRST DEGREE PREMEDITATED OR FIRST DRGREE FELONY MURDER / ROBBERY WITH A DEADLY WEAPON

TELEPHONIC STATUS CONFERENCE

9:05 COURT COMES TO ORDER IN CHAMBERS

9:07 DEFENSE AGREES EVIDENTIARY HEARING NOT NEEDED IN THIS CASE

9:08 DEFENSE ARGUMENT

9:24 STATE ARUGMENT (KIRCHER)

9:33 DEFENSE REBUTTAL

9:37 UNDER ADVISEMENT

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418
DIVISION: 56

STATE OF FLORIDA,

vs.

JOHN CHRISTOPHER MARQUARD,
Defendant.
_____/

ORDER ON DEFENDANT'S SECOND SUCCESSIVE MOTION TO VACATE DEATH SENTENCE

THIS CAUSE came before the Court on Defendant's "Second Successive Motion to Vacate Death Sentence" filed pursuant to Rule 3.851, Florida Rules of Criminal Procedure. The Court has reviewed and considered Defendant's Motion and the State's Response thereto, and has heard and considered the argument of counsel, and being otherwise fully advised in the premises finds as follows:

Defendant was charged with first-degree murder and armed robbery with a deadly weapon. A jury found Defendant guilty as to both counts and Defendant was sentenced on February 5, 1993, to death for the murder conviction and life in prison for the armed robbery conviction. Defendant appealed his first-degree murder conviction and death sentence, and the Supreme Court of Florida affirmed Defendant's conviction and sentence on June 9, 1994, rehearing denied, August 23, 1994. On November 21, 1994, Defendant filed a Petition for Writ of Certiorari

with the United States Supreme Court which was denied on January 23, 1995. Defendant filed his first Motion for Post-conviction Relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure on March 26, 1997, which included a special request for leave to amend. Thereafter, Defendant filed an amended Motion for Post-conviction Relief on February 22, 1999, raising eight grounds, including five claims alleging ineffective assistance of counsel. The Court held an evidentiary hearing on two of the grounds and summarily denied the remaining grounds. Following the evidentiary hearing, the Court denied the remaining grounds on December 21, 1999. Defendant appealed the Court's denial of his Post-conviction Motion to the Supreme Court of Florida, and while his appeal was pending, Defendant filed a Petition for Writ of Habeas Corpus with the Supreme Court of Florida. The Supreme Court of Florida affirmed the Court's denial of Defendant's Motion for Post-conviction Relief and denied the Petition for Writ of Habeas Corpus on November 21, 2002. Defendant's request for rehearing on the Petition for Habeas Corpus was denied on July 15, 2003. Subsequent thereto, Defendant filed a Petition for Writ of Habeas Corpus with the United States District Court, Middle District which was denied and dismissed with prejudice on January 18, 2005, which was affirmed by the United States Court of Appeals, Eleventh Circuit on November 10, 2005. Thereafter, Defendant filed a Petition for Writ of Certiorari with the United States Supreme Court which was denied on June 5, 2006. On September 12, 2007, Defendant filed a Successive Motion for Post-

conviction Relief pursuant to Rule 3.851 claiming newly discovered evidence. The Court held an evidentiary hearing on Defendant's motion on December 14, 2007 and rendered an order denying that motion on January 8, 2008.

Presently before the Court is Defendant's "Second Successive Motion to Vacate Death Sentence," filed January 9, 2017. The Defendant seeks to have his death sentence vacated pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So.3d 40 (Fla. 2016). Additionally, many of Defendant's arguments flow from some of the more nuanced matters inherent in Florida's post-*Hurst* retroactivity decisions, including whether a *Ring*-like challenge was previously raised, a distinction between the Sixth Amendment and Eighth Amendment issues addressed in *Hurst v. State*, substantive versus procedural rule changes, applicability of the Supremacy Clause, and the potentially arbitrary effects of using *Ring* as a bright-line cutoff for retroactivity. However, the Florida Supreme Court's recent decisions clearly establish that defendants whose judgments and sentences of death became final prior to the U.S. Supreme Court's decision in *Ring* are not entitled to relief via retroactive application of *Hurst v. Florida* and its Florida progeny.

Because the Defendant's judgment and sentence became final on January 23, 1995, before the *Ring v. Arizona*, 536 U.S. 583 (2002) opinion was issued on June 24, 2002, the Defendant is not entitled to retroactive *Hurst* relief. *See Asay v. State*, No. SC16-102, 2016 WL 7406538 at *13 (Fla. Dec. 22, 2016).

Alternatively, even if the Court were to apply *Hurst* retroactively in this case, the Defendant would not be entitled to relief because the jury's unanimous recommendation of death rendered any error harmless. In *Hurst v. State*, the Florida Supreme Court set out the requirements for a harmless error analysis based upon a *Hurst* claim: "Where the error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, 202 So. 3d at 68, citing *Zack v. State*, 753 So. 2d 9, 20 (Fla. 2000). In *Davis v. State*, the Florida Supreme Court applied this standard and found that the jury's unanimous recommendations of death "allow us to conclude beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." 207 So. 3d 142, 174 (Fla. 2016), *reh'g denied*, SC11-1122, 2017 WL 56089 (Fla. Jan. 5, 2017); *King v. State*, SC14-1949, 2017 WL 372081 (Fla. Jan. 26, 2017); *Knight v. State*, SC14-1775, 2017 WL 411329 (Fla. Jan. 31, 2017); *Kaczmar v. State*, SC13-2247, 2017 WL 410214 (Fla. Jan. 31, 2017); *Hall v. State*, SC15-1662, 2017 WL 526509 (Fla. Feb. 9, 2017); *Jones v. State*, SC14-990, 2017 WL 823600, at *16 (Fla. Mar. 2, 2017).

The Court also reasoned as follows:

> Here, the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that Davis be sentenced to death for the murders of [the victims]. The

> unanimous recommendations here are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death. Accordingly, Davis is not entitled to a new penalty phase.

Davis, 207 So. 3d at 175.

Here, the jury recommended death in Defendant's case after considering a full presentation of mitigating circumstances and aggravating factors. Additionally, as in *Davis*, the jury unanimously recommended death, despite being instructed that there was no requirement to do so. Further, the Court notes that the mitigation in this particular case was neither extensive nor compelling. For the aforementioned reasons, the Court concludes, beyond a reasonable doubt, that the jury unanimously made the requisite factual findings to support a death sentence before it returned the unanimous recommendations. Accordingly, the Court finds that although *Hurst* does not apply to Defendant's case, any *Hurst* error would have been harmless.

Finally, the timeliness of the instant motion turns on whether *Hurst v. Florida* and its Florida progeny have been held to apply retroactively to Defendant. Rule 3.851 (d) provides, in relevant part, that "any motion to vacate judgment of conviction and sentence of death shall be filed by the defendant within 1 year after the judgment and sentence become final" unless "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively." Fla. R. Crim. P. 3.851. Because

Hurst and the fundamental constitutional rights relied on by Defendant have not been held to apply retroactively to defendants whose judgment and sentence became final prior to *Ring*, the instant motion is untimely under Rule 3.851(d).

Defendant is not entitled to relief under any of his current claims, all of which depend upon a retroactive application of *Hurst*, because his judgment and sentence became final on January 23, 1995. Alternatively, the jury's unanimous recommendation of death following a full presentation of mitigating circumstances and aggravating factors renders any error harmless. Accordingly, it is:

ORDERED AND ADJUDGED that:

1. Defendant's "Second Successive Motion to Vacate Death Sentence" is hereby DENIED.

2. Defendant shall have 30 days from the date of this Order to appeal this Court's decision.

DONE AND ORDERED in chambers, in St. Johns County, Florida, on 31 day of March, 2017.

3/31/2017 7:10 AM
91002418CFMA

e-Signed 3/31/2017 7:10 AM
91002418CFMA

CIRCUIT JUDGE

Copies furnished to:

Stacey E. Kircher, Asst. Attorney General
Stacey.Kircher@myfloridalegal.com; CapApp@myfloridalegal.com

Rosemary Calhoun, Asst. State Attorney
calhounr@sao7.org; eservicestjohns@sao7.org

Ali A. Shakoor, Asst. CCR
shakoor@ccmr.st.fl.us; cbus03@gmail.com; support@ccmr.state.fl.us

Filing # 55726962 E-Filed 04/28/2017 12:31:59 PM

IN THE CIRCUIT COURT OF SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418

STATE OF FLORIDA,
Plaintiff,

vs.

JOHN MARQUARD,
Defendant.
_____/

NOTICE OF APPEAL

Defendant, **JOHN MARQURD**, takes and enters his appeal to the Supreme Court of Florida to review the Orders or Judgments of the Circuit Court of the Seventh Judicial Circuit, and any and all other rulings, or acts adverse to the Defendant in support of said judgment.

The nature of the Orders appealed from are the denial of Mr. Marquard's Second Successive Motion to Vacate Death Sentences, filed by attorney Ali A. Shakoor on January 9, 2017, pursuant to Florida Rule of Criminal Procedure 3.851. The order denying relief styled **ORDER DENYING DEFENDANT'S SECOND SUCCESSIVE MOTION TO VACATE DEATH SENTENCE**, was filed on March 31, 2017. Jurisdiction of this appeal is properly in the Supreme Court of Florida and this appeal is timely.

All parties to said cause are hereby notified of the entry of this appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2017, I electronically filed the forgoing Notice of Appeal with the Clerk of the Court by using Florida Courts e-portal filing system which will send a notice of electronic filing to the following: Louise Pomar and Andrea Gorman, Court Reporting Services, lpomar@circuit7.org, stenographesr@circuit7.org; Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com, and CapApp@myfloridalegal.com; Assistant State Attorney Rosemary Calhoun, CalhounR@sao7.org, and the Honorable Howard M. Maltz, by way of Rebecca S. Helton, bhelton@sjccoc.us, . I further certify that I mailed the forgoing document to John Marquard, DOC#122995, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
ALI A. SHAKOOR
Florida Bar No. 0669830
Assistant CCC
CAPTIAL COLLATERAL REGIONAL
COUNSEL – MIDDLE REGION
12973 N. Telecom Parkway
Temple Terrace, FL 33637
(813) 558-1600

Filing # 55726962 E-Filed 04/28/2017 12:31:59 PM

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418

STATE OF FLORIDA,
Plaintiff,

vs.

JOHN MARQUARD,
Defendant.
_____/

DIRECTIONS TO THE CLERK

The Defendant, **JOHN MARQUARD** directs the Clerk to include all items filed in this post-conviction proceeding in the record on appeal, including all pleadings, original documents, exhibits, and all transcripts of hearings, including:

1. 1/9/17 Second Successive Motion to Vacate Death Sentence.
2. 1/27/17 State's Response to Defendant's Second Successive Motion to Vacate Death Sentence.
3. 2/20/17 Transcript of Case Management Conference.
4. 3/31/17 Order on Defendant's Second Successive Motion to Vacate Death Sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2017, I electronically filed the forgoing Directions to the Clerk with the Clerk of the Court by using Florida Courts e-portal filing system which will send a notice of electronic filing to the following: Louise Pomar and Andrea Gorman, Court Reporting Services, lpomar@circuit7.org, stenographesr@circuit7.org; Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com, and CapApp@myfloridalegal.com; Assistant State Attorney Rosemary Calhoun, CalhounR@sao7.org, and the Honorable Howard M. Maltz, by way of Rebecca S. Helton, bhelton@sjccoc.us, . I further certify that I mailed the forgoing document to John Marquard, DOC#122995, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
ALI A. SHAKOOR
Florida Bar No. 0669830
Assistant CCC
CAPTIAL COLLATERAL
REGIONAL
COUNSEL – MIDDLE REGION
12973 N. Telecom Parkway
Temple Terrace, FL 33637
(813) 558-1600

Filing # 55726962 E-Filed 04/28/2017 12:31:59 PM

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO. CF91-2418

STATE OF FLORIDA,
Plaintiff,

vs.

JOHN MARQUARD,
Defendant.
_____/

DEFENDANT'S DESIGNATION TO COURT REPORTER

I. Designation.

Defendant, files these designations to the Court Reporter: Andrea Gorman, Court Reporting Services, 1769 E. Moody Blvd, Bldg. 1, Bunnell, Florida 32110. The following hearings should be transcribed and the transcript forwarded to the St. Johns County Clerk of Court for inclusion in the record on appeal:

1. The hearing conducted before the Honorable Howard M. Maltz held on February 20, 2017.

I, Ali Shakoor, counsel for Defendant, certify that satisfactory financial arrangements have been made with the official court reporter for preparation of the transcript.

/s/ Ali A. Shakoor
Ali A. Shakoor
Attorney for John Marquard

II. REPORTER'S ACKNOWLEDGMENT

1. The following designation was served on _____, 2017, and received on _____, 2017.

2. Satisfactory arrangements have/have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2017.

3. Number of hearing days to be transcribed: _____.

4. Estimated number of pages: _____.

5a. The transcript will be available within _____ days of service of the foregoing designation and will be filed on or before the ____ day of _____, 2017.

OR

5b. For the following reason(s) the court reporter requests an extension of time of _____ days for preparation of the transcript which will be filed on or before the ____ day of _____, 2017.

6. Completion and filing of this acknowledgment by the court reporter constitutes submission to the jurisdiction of the Court for all purposes in connection with these appellate proceedings.

7. The undersigned court reporter certifies that the foregoing is true and correct and that a copy has been furnished by mail/hand delivery this _____day of _____, 2017, to each of the parties or their counsel.

_____
Court Reporter/Transcriptionist

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2017, I electronically filed the forgoing Designation to Court Reporter with the Clerk of the Court by using Florida Courts e-portal filing system which will send a notice of electronic filing to the following: Louise Pomar and Andrea Gorman, Court Reporting Services, lpomar@circuit7.org, stenographesr@circuit7.org; Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com, and CapApp@myfloridalegal.com; Assistant State Attorney Rosemary Calhoun, CalhounR@sao7.org, and the Honorable Howard M. Maltz, by way of Rebecca S. Helton, bhelton@circuit7.org, . I further certify that I mailed the forgoing document to John Marquard, DOC#122995, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
ALI A. SHAKOOR
Florida Bar No. 0669830
Assistant CCC
CAPTIAL COLLATERAL REGIONAL
COUNSEL – MIDDLE REGION
12973 N. Telecom Parkway
Temple Terrace, FL 33637
(813) 558-1600

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

JOHN MARQUARD
Appellant

CASE NO: 91002418CF

VS

STATE OF FLORIDA
Appellee

DIVISION: 56

ORDER OF INSOLVENCY FOR APPEAL PURPOSES

THIS CAUSE having come before the court upon the Defendant's motion, and the court having reviewed said cause, determines that the defendant is an insolvent person. It is therefore:

ORDERED AND ADJUDGED by the Court as follows:

1. The Defendant is hereby adjudged to be currently indigent for the purpose of Appeal and is entitled to proceed in the appellate court without further application to the court and without either the prepayment of fees or costs in this tribunal or the giving of security therefore.

2. The court reporter is hereby directed to transcribe the proceedings in said cause as designated by the Defendant unless otherwise ordered by this Court or Appellate Court.

3. The cost of transcribing said proceedings shall be borne by the State of Florida.

DONE AND ORDERED in Chambers at St. Augustine, St. Johns County, Florida, this _____ day of May 2017.

05/02/2017
Howard M Maltz, Circuit Judge

cc: Defendant
Court Reporters

Filed for record 05/02/2017 12:43 PM Clerk of Court St. Johns County, FL

State of Florida vs. John Marquard
Case No.: CF91-2418

COURT REPORTER'S ACKNOWLEDGMENT

The foregoing Defendant's Designation to Court Reporter was served on April 28, 2017, and received on May 2, 2017.

An Order of Insolvency for Appeal Purposes was received on May 2, 2017.

Number of trial or hearing days: 1.

Estimated number of transcript pages: 30.

Transcript will be completed on June 1, 2017.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Acknowledgment has been furnished this 3rd day of May, 2017, to the Supreme Court of Florida via efile@flcourts.org; Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com, and CapApp@myfloridalegal.com; Assistant State Attorney Rosemary Calhoun, CalhounR@sao7.org; Ali A. Shakoor, Asst. CCRC, shakoor@ccmr.state.fl.us and cbus03@gmail.com and support@ccmr.state.fl.us; and Hunter S. Conrad, Clerk of Court, Attn.: Nicole Cooper, Appeals Clerk, 4010 Lewis Speedway, St. Augustine, FL 32084 via nicooper@sjccoc.us.

DATE: May 3, 2017

s/ANDREA GORMAN, RPR
Andrea Gorman, RPR
Court Reporters, 7th Judicial Circuit
1769 East Moody Blvd., Bldg. 1
Bunnell, FL 32110

Filing # 56097399 E-Filed 05/08/2017 09:23:47 AM

State of Florida vs. John Marquard
Case No.: CF91-2418

COURT REPORTER'S ACKNOWLEDGMENT

The foregoing Defendant's Designation to Court Reporter was served on April 28, 2017, and received on May 2, 2017.

An Order of Insolvency for Appeal Purposes was received on May 2, 2017.

Number of trial or hearing days: 1.

Estimated number of transcript pages: 30.

Transcript will be completed on June 1, 2017.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Acknowledgment has been furnished this 3rd day of May, 2017, to the Supreme Court of Florida via e-file@flcourts.org; Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com, and CapApp@myfloridalegal.com; Assistant State Attorney Rosemary Calhoun, CalhounR@sao7.org; Ali A. Shakoor, Asst. CCRC, shakoor@ccmr.state.fl.us and cbus03@gmail.com and support@ccmr.state.fl.us; and Hunter S. Conrad, Clerk of Court, Attn.: Nicole Cooper, Appeals Clerk, 4010 Lewis Speedway, St. Augustine, FL 32084 via nicooper@sjccoc.us.

DATE: May 3, 2017

s/ANDREA GORMAN, RPR
Andrea Gorman, RPR
Court Reporters, 7th Judicial Circuit
1769 East Moody Blvd., Bldg. 1
Bunnell, FL 32110

Filing # 56295448 E-Filed 05/11/2017 11:10:26 AM

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
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MARK CLAYTON
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STAFF ATTORNEY

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ACKNOWLEDGMENT OF NEW CASE

May 11, 2017

RE: JOHN CHRISTOPHER MARQUARD vs. STATE OF FLORIDA

CASE NUMBER: SC17-862
Lower Tribunal Case Number(s): 551991CF002418XXAXMX
Lower Tribunal Filing Date: 4/28/2017

The Florida Supreme Court has received the following documents reflecting a filing date of 5/4/2017.

Notice of Appeal

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tw
cc:
VIVIAN SINGLETON
ALI ANDREW SHAKOOR
HON. HOWARD MASON MALTZ, JUDGE
ROSEMARY CALHOUN
HON. HUNTER S. CONRAD, CLERK
COURT REPORTERS, 7TH JUDICIAL CIRCUIT
HON. TERENCE ROBERT PERKINS, CHIEF JUDGE

Filing # 56295448 E-Filed 05/11/2017 11:10:26 AM

Supreme Court of Florida

THURSDAY, MAY 11, 2017

CASE NO.: SC17-862
Lower Tribunal No(s).:
551991CF002418XXAXMX

JOHN CHRISTOPHER MARQUARD vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

We have received a notice of appeal (3.851-Summary Denial) in the above-captioned case, which is an appeal from a first-degree murder conviction with a sentence of death.

Pursuant to Florida Rule of Appellate Procedure 9.142(a)(1), the Honorable Terence Robert Perkins, Chief Judge of the Tenth Judicial Circuit Court of Florida, is hereby appointed to monitor the preparation of the complete record in the circuit court for timely filing in this Court.

The transcripts should be filed with the trial court clerk **within fifty days from the filing of the notice of appeal in this Court.** As the time for filing the transcript has already been extended, the Court does not anticipate that any further extensions of time will be necessary.

The trial court clerk shall have twenty days after the filing of the transcript(s) in which to file the record on appeal with this Court. The complete record in a death penalty appeal shall include all items required by rule 9.200 and by any order issued by the supreme court. In any appeal following the initial direct appeal, the record transmitted shall begin with the most recent mandate issued by the supreme court, or the most recent filing not already transmitted in a prior record in the event the preceding appeal was disposed of without a mandate, and shall exclude any materials already transmitted to the supreme court as the record in any prior appeal. The supreme court shall take judicial notice of the appellate records in all prior appeals and writ proceedings involving a challenge to the same judgment of conviction and sentence of death. Appellate records subject to judicial

notice under this subdivision shall not be duplicated in the record transmitted for the appeal under review.

Pursuant to Florida Rule of Judicial Administration 2.215(i), the circuit judge assigned to the case shall take such action as may be necessary to ensure that a complete record on appeal is properly prepared and filed. Judge Howard Mason Maltz) is directed to hold a status conference **within thirty days from the date of this order** which shall be attended by the Clerk of Court (or the clerk's designee), all appropriate court reporters, counsel, and such other persons Judge Maltz may deem necessary. Judge Maltz may enter such orders as necessary for the timely completion and filing of the record on appeal with this Court. The time and place of the status conference shall be set by Judge Maltz for the purpose of ensuring that the record on appeal is complete. Judge Maltz shall file with this Court, **within twenty days from the date of the status conference**, a report detailing the current status of the record preparation. The record on appeal shall be timely filed with this Court unless there are substantial reasons requiring delay. The trial court is reminded that only this Court can extend the deadline for filing the record on appeal.

Pursuant to Florida Rule of Appellate Procedure 9.200(e), the burden to ensure that the record on appeal is prepared and transmitted in accordance with the Florida Rules of Appellate Procedure shall be on the appellant. Counsel for the appellant is hereby directed to file Status Reports with this Court **every twenty days** regarding the progress of the completion of the record on appeal.

The failure to timely file a record on appeal substantially affects this Court's ability to timely process its death cases and will not be tolerated.

A True Copy
Test:

CASE NO.: SC17-862
Page Three

tw
Served:

VIVIAN SINGLETON
ALI ANDREW SHAKOOR
HON. HOWARD MASON MALTZ, JUDGE
ROSEMARY CALHOUN
HON. HUNTER S. CONRAD, CLERK
COURT REPORTERS, 7TH JUDICIAL CIRCUIT
HON. TERENCE ROBERT PERKINS, CHIEF JUDGE

Filing # 56234336 E-Filed 05/10/2017 11:16:25 AM

APPEAL TRANSCRIPT

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF91-2418

STATE OF FLORIDA

versus HEARING

JOHN MARQUARD,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

PAGES 1 THROUGH 29

DATE TAKEN: February 20, 2017

TIME: 9:05 a.m - 9:38 a.m.

PLACE: Richard O. Watson Judicial Center
4010 Lewis Speedway
St. Augustine, FL 32084

BEFORE: The Honorable Howard M. Maltz
Circuit Judge

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were **stenographically reported** by:

Andrea Gorman, RPR
Court Reporters, Seventh Judicial Circuit
Kim C. Hammond Justice Center
Bunnell, FL (386) 313-4571

APPEAL TRANSCRIPT

A P P E A R A N C E S

STACEY E. KIRCHER, ESQUIRE (via telephone)
Assistant Attorney General
444 Seabreeze Blvd., Ste. 500
Daytona Beach, Florida 32118

ROSEMARY CALHOUN, ESQUIRE (via telephone)
Assistant State Attorney
251 N. Ridgewood Avenue
Daytona Beach, Florida 32114

Appearing for State of Florida

ALI ANDREW SHAKOOR, ESQUIRE (via telephone)
Assistant Capital Collateral Regional Counsel-Middle Region
12973 North Telecom Parkway
Temple Terrace, Florida 33637

Appearing for Defendant

Also appearing:
Margot Roche

APPEAL TRANSCRIPT

P R O C E E D I N G S

THE COURT: Let's go on the record on this.

This is State of Florida versus John Marquard. This is Case No. 1991-2418-CF here for a status conference on the 3.851 hearing.

Let me have, for the record, counsel for the defendant state his or her presence.

MR. SHAKOOR: Yes, Your Honor. Thank you.

My name is Ali Shakoor. Last name is S-h-a-k-o-o-r. I'm here on behalf of Mr. John Marquard.

THE COURT: Okay. Thank you. Mr. Shakoor, good morning.

MR. SHAKOOR: Good morning.

THE COURT: On behalf of the State, I know that the Assistant Attorney General mentioned it, but if she can state her presence again, and then whoever else is on the line.

MS. KIRCHER: Yes, Your Honor. Good morning.

This is Stacey Kircher, K-i-r-c-h-e-r for the Office of the Attorney General.

THE COURT: Okay. Is there any assistant or are there any Assistant State Attorneys on the line?

MS. CALHOUN: Yes, Your Honor. Rosemary, R-o-s-e-m-a-r-y, Calhoun, C-a-l-h-o-u-n is present on

behalf of the Office of the State Attorney for the Seventh Judicial Circuit.

THE COURT: Okay. Well, good morning, everybody. As I stated a moment ago, we're here for a status conference pursuant to rule 3.851.

Let me start off by asking the parties -- I guess I'll start with the defendant.

Is the defendant ready to proceed on the -- not today, I mean, but -- but on the motion that you've already filed, or do you feel that you need to do anything more?

MR. SHAKOOR: No, Your Honor. We are prepared to proceed. And it's my understanding that this is a case management conference. But if Your Honor would just rather prefer this be a status conference and set this off for another day, I will, you know, defer it to the Court. It's my understanding that today was a case management conference.

THE COURT: It is a case management conference, but there's not a lot of difference -- at least I'm -- you know, obviously the rule is slightly different as it pertains to it, but there's not a lot of difference in my mind between a status conference and a case management conference.

But, Mr. Shakoor, do you agree that this is a

case that does not need an evidentiary hearing?

MR. SHAKOOR: Yes, Your Honor, I can say that at this point. Yes, Your Honor. I agree. I would say these are strictly legal claims.

THE COURT: Okay. Is there anything that you wanted to raise today at the case management conference? Any issues still lingering out there?

MR. SHAKOOR: Yes, Your Honor, I would actually like to make a formal argument today.

First off, I'd like to just state that anything that I don't get through today or get to today that's in my motion, I don't intend to negate or waive anything just by not talking about it. Just for the sake of brevity and the sake of not being redundant, there's some claims that I might not articulate fully today in my argument, but I still would want to rely on them, the four pages of the documents that I filed in regards to my second successive motion.

THE COURT: Okay. Let me -- let me ask the State. Is the State ready to present some legal argument today?

MS. KIRCHER: Yes, Your Honor, we're ready.

We -- it was our understanding, as well, that it's a case management conference, so we're fully ready to go ahead and make legal argument to the Court

today.

THE COURT: The issues here are pretty defined.

Mr. Shakoor, correct me if I'm wrong, this is pretty much all -- all -- not pretty much, but it is all Hurst issues, is it not?

MR. SHAKOOR: Yes, Your Honor. Hurst and its progeny and things that relate to Hurst, but that -- that is correct, Your Honor.

THE COURT: Right. There is quite a progeny developing rapidly post-Hurst.

MR. SHAKOOR: Yes.

THE COURT: And this is -- Mr. Marquard's sentence was final prior to Ring. Is that correct?

MR. SHAKOOR: Yes, Your Honor.

THE COURT: Okay. Okay. Go ahead, Mr. Shakoor.

MR. SHAKOOR: Thank you, Your Honor.

First of all, Your Honor, I'd like to state that I know the State of Florida intends to rely on Asay v. State, and Gaskin v. State, and their argument in trying to make a case that this -- the Hurst relief -- Hurst v. Florida and Hurst v. State should not apply retroactively to my client.

I would like the Court to be aware that Asay is still not quite final. It is my understanding that the counsel for Asay intends to file cert with the

United States Supreme Court, so I'd ask the Court to hold off on the ruling on this case until we find out whether or not the United States Supreme Court plans to accept cert on the Asay v. State case.

And, also, Your Honor, regarding Gaskin --

THE COURT: I'm going to stop you from time to time. And it's a little hard, obviously, with the phone to stop you from time to time.

You said you -- that counsel for Asay anticipates filing cert. Has a petition for cert, to your knowledge, been filed in Asay?

MR. SHAKOOR: Not to my knowledge, Your Honor. Not quite yet, to my knowledge. But I can say specifically that in Gaskin v. State, a motion for rehearing has been filed. That's actually a case out of my office, so I know that counsel for Mr. Gaskin has already filed a motion for rehearing, which has not been ruled upon. And if the motion for rehearing were not successful for Mr. Gaskin, I know that particular counsel intends to file cert with the United States Supreme Court.

THE COURT: Okay. Gaskin's --

MR. SHAKOOR: With regard to Asay, I'm not sure whether or not cert has been filed quite yet, but it's my understanding that they intend to within a time

limit.

THE COURT: That could take some time. Even if a petition's filed, it could take some time for the U.S. Supreme Court to even decide whether they're going to take the case.

Are you proposing that we not move forward on this case pending the U.S. Supreme Court's determination of cert in Asay, assuming a petition for cert even gets filed?

MR. SHAKOOR: Yes, Your Honor, just in the interest of judicial economy, I'm not saying -- I would say -- I would ask this Court to take matters today under advisement after we complete argument and then see what happens with the United States Supreme Court in Asay, and perhaps later in Mosley.

And then -- because if those cases were to turn out in favor of the Defense, it might obviously affect this Court's ruling.

THE COURT: Okay. Is it your office -- is it your office -- is it your office representing Mr. Asay, as well?

MR. SHAKOOR: No, Mr. Gaskin. We represent Mr. Gaskin.

THE COURT: I understand that. Okay. All right. Go ahead.

APPEAL TRANSCRIPT

MR. SHAKOOR: Thank you, Your Honor.

Your Honor, it's arbitrary and capricious to draw a line based on when a case falls on a calendar, when we're talking about retroactive effect of Hurst v. Florida or Hurst v. State. My defendant -- I'm sorry, my client's case was final, I believe, in 1994, when cert was denied. However, there are cases in which -- and the crime in the case -- the crime in our case happened in 1991, but there are cases where the defendant committed a crime or alleged -- or was alleged to have committed a crime back as far as the '80s. And based on circumstances, as far as remands or just the way the judicial system works when it comes to capital jurisprudence, some of those cases -- even though the crime itself happened prior to when my client's crime happened, they don't -- they would get the benefit of Hurst relief because their case became final after June 24th, 2002.

So, Your Honor, I would state that it's absolutely arbitrary and capricious to draw a line just strictly on when a case is determined to be final.

Secondly, Your Honor, I would cite the James v. State, and it's cited in my motion, but I can give the cite again, 615 So.2d 668. And that's a case that

Justice Wells relied on and in his concurring opinion in Asay. And that goes to the fact that if a Hurst-like claim -- I'm sorry, if a Ring-like claim was filed prior to Ring, then that's something that the Court should consider in giving retroactive relief. I mean, obviously a -- a defendant doesn't have the gift of foresight to anticipate any changes in the law, as far as a specific case. Ring did not exist when my client raised this Ring-like claim.

And on July 23rd, 1992 --

THE COURT: Let me stop you. Hang on. Let me stop you. Let me stop you for a minute.

MR. SHAKOOR: -- his defendant -- his -- trial counsel for my -- for my client, raised a Ring-like claim at the pretrial level.

THE COURT: Okay. Tell me about that. Hang on. Tell -- tell me about that. Let's go there. And I don't think -- I don't think any Court yet has said that that's sufficient, but nevertheless, what was the claim raised at the trial level that you contend was a Ring-type claim, specifically? Not merely that the death penalty was unconstitutional or the death penalty violated the Fifth Amendment or the Sixth Amendment or Fourteenth Amendment. Give me the specifics and tell me where I can find it in the

record, that you contend that the trial counsel below raised a Ring-type argument.

MR. SHAKOOR: Yes, sir, Your Honor.

I'm sorry. I don't have the record cite in front of me, but I can tell you the date that it was filed and ruled upon, and that's July 23rd, 1992.

And the specific claim -- the trial counsel raised a series of claims attacking the sentencing scheme of Florida. But specifically, what I would contend is a Ring-like claim, is trial counsel -- trial counsel raised the claim requiring unanimous jury findings via special verdict forms. So the trial counsel had the foresight to see that there was a problem with the Florida death penalty scheme.

And then on direct appeal, there's a general attack on the Florida sentencing scheme at the time. And, of course, that was denied on direct appeal as having no merit, because at that time, the Court was not aware that our -- our death penalty statute was, in fact, unconstitutional.

THE COURT: Okay. So let me stop you.

MR. SHAKOOR: Well, Your Honor, I can -- I can tell you the date. It was filed July 23rd, 1992, that's the case -- that's the date I got out of the trial index. I don't have the --

APPEAL TRANSCRIPT

THE COURT: Okay. Let me ask you -- let me ask you a question.

MR. SHAKOOR: Yes, sir, Your Honor.

THE COURT: You said that at the trial level, trial defense counsel attacked Florida's death penalty scheme saying that a unanimous verdict's required.

Did the trial counsel say that a unanimous -- or argue that a unanimous verdict or unanimous finding by the jury was required for the aggravating factors, or merely for the death recommendation?

MR. SHAKOOR: I believe for the aggravating factors, Your Honor, because they requested special verdict forms.

THE COURT: Okay. All right. Go ahead.

MR. SHAKOOR: So, Your Honor, I would contend -- and I would contend that this Court should rely on Justice Lewis's concurring opinion in Asay, based on the fact that trial counsel did what he could at the time in order to preserve this type of issue.

Also, Your Honor, regarding retroactivity, the Florida Supreme Court has given relief in Walls v. Florida, Walls v. State of Florida, and Falcon v. State of Florida.

Walls v. State is based on the fact that -- it's a -- it's a -- it determines that Hall v. Florida is

retroactive. Hall v. Florida is based on the fact that if a person has an IQ at 70 or above, it's unconstitutional to make that a cutoff without getting into several other factors, specifically three other factors regarding the intellectual disability issue.

Walls v. State of Florida determined that Hall v. Florida is retroactive.

Similarly, Your Honor, at Falcon v. State, Falcon v. State determined that Miller v. Alabama is given a retroactive effect in Florida. It's also that -- it's also on Montgomery versus Louisiana, which determined that just because a juvenile commits a certain type of crime, it's unconstitutional to automatically give a juvenile life in prison without the possibility of parole.

So, Your Honor, those two cases, placed beyond the power of the State to impose a specific -- to impose a certain type of sentence or penalty on a class of individuals.

In our case, Your Honor, my client never had a legitimate jury. He had a merely -- he merely had an advisory panel.

So it is beyond -- pursuant to Hurst v. Florida, and Hurst v. State, and Perry v. State, I would submit it's beyond the power of the State to impose a

sentence based on the findings of an improperly-instructed jury.

I know we have a 12-0 in this case, and I'll get to that later, but I would -- I would state, Your Honor, that Asay was wrongly decided, and I would hope that -- you know, the United States Supreme Court would make that determination, based on the fact that they don't have to get into the Linkletter factors from Witt v. State.

Based on the fact that my client did not have a legitimate jury is now beyond the power of the State to impose the death sentence on anybody without a properly-instructed jury. In my client's case, the judge made the findings of fact, which is unconstitutional.

Also, Your Honor -- so that goes to retroactivity, so based on James v. State, and Hall v. Florida -- I'm sorry, Walls v. State and -- and Falcon v. State, my client is entitled to retroactive relief.

Now, I also anticipate the State trying to make the case that my client should not receive relief because he had a 12-0 jury recommendation.

Your Honor, a 12-0 jury recommendation does not negate the fact that my client did not have a legitimate jury, he had a mere advisory panel.

So, first of all, that's a violation of Caldwell v. Mississippi, with that specific cite cited in my motions. But I can give it to the Court again.

472 U.S. 320, it's a 1985 case, stands for the proposition that you cannot diminish the -- the -- you cannot diminish the effect of what a jury's supposed to find. A jury's -- a jury's role cannot be diminished. In our case, not only was it diminished, my client didn't even have a legitimate jury, it was a mere advisory panel. So I would state that based on the fact that my client never had a real jury, he's entitled to Hurst relief.

And, Your Honor, I'd also like to point out that Mr. Marquard's penalty-phase jury or advisory panel did not return a verdict making any findings of fact. So we have no way of knowing what aggravators, if any, these jurors unanimously found. These aggravators must be proven beyond a reasonable doubt and the jurors must unanimously find that the aggravators were sufficient for death. Or if the jurors -- and if the jurors unanimously found the aggravators outweighed the mitigating circumstances, they still had to unanimously recommend death.

So we have an advisory panel recommending death in this case, but we still don't have a jury making

these specific findings of fact with -- with regard to the aggravators unanimously. So that also further substantiates the point that my client did not have a legitimate jury trial, which is a violation of his Sixth Amendment right.

And, Your Honor, his Eighth Amendment rights were also violated. Hurst v. State and Perry v. State took Hurst v. Florida and also included an Eighth Amendment analysis on top of the Sixth Amendment analysis.

So the fact that my client did not have a legitimate jury, but rather had a mere advisory panel, I would submit that's also a violation of his Eighth Amendment rights.

And an Eight Amendment violation is a substantive violation. I mean, I anticipate the argument from the State to differentiate Walls v. State and Falcon v. State, by saying that those cases are substantive. But, Your Honor, there's nothing more substantive than an Eighth Amendment violation when we're talking about how death is different.

And if we're talking Falcon, of juveniles, life without parole, and Atkins -- I'm sorry, and Walls, you're talking about intellectual disability, you know, whether or not we can sentence somebody to death based on a cutoff score of 70.

In this case, Your Honor, it's an Eight Amendment violation to sentence somebody to death, whether it's unanimous or not, if the jury is not properly instructed.

There's nothing more fundamental in American jurisprudence, particularly in a capital case, than having a legitimate jury trial.

And, Your Honor, Florida has required unanimous jury findings even before we were a state, something we've always required. So not only did he not have a legitimate jury trial, the jurors also were not given the aggravating factors in an indictment.

In the indictment, it would be a -- it would be a proper -- it would be proper for the State to submit the aggravating factors in a -- in a grand jury indictment and then at that time Mr. Marquard would be aware of exactly what the State's trying to pursue against him. That was not done in this case.

Moreover, Your Honor, these jurors -- these aggravating factors were not found beyond a -- beyond a reasonable doubt. They -- the jury made a determination of beyond a reasonable doubt for certain guilt-phase claims, but not specific -- specific to every aggravating factor in which the State tried to use against Mr. Marquard. So those factors were not

proven beyond a reasonable doubt.

And lastly, Your Honor, Mr. Marquard also had substantial post-conviction proceedings. At any substantive penalty-phase proceedings, regardless of whether or not my client's trial counsel was found to be deficient, and regardless of whether or not the trial court made a determination that there was no prejudice in regards to not finding certain issues or presenting certain issues, at a penalty-phase proceeding, at a new penalty-phase proceeding, more evidence was going to come in, evidence found by CCRC in regards to things that could have been presented to the jury. But just because State can make the case that it wasn't a violation -- there wasn't an ineffective assistance of counsel violation, we're still talking about additional matters that could come before a properly-instructed jury. So I would like -- I would wish for the Court or hope for the Court to also take that into account.

Your Honor, beyond addressing some matters in rebuttal, that's all I have at this time and I'll rely on my -- my pleadings.

THE COURT: Okay. Let me hear from the State. And I'd like the State, first of all, to address whether we should -- or I should stand down on

entering an order awaiting the determination of the yet-to-be-filed petition for certiorari in Asay. And also when the State's responding, let's focus in on the retroactivity issue. Of course I've seen the arguments. Focus in on that and less on the harmless error issues.

MS. KIRCHER: Yes, Your Honor.

This is Stacey Kircher from the Office of the Attorney General. I'll be speaking on behalf of the State for today's hearing, unless Ms. Calhoun would like to add something in addition.

But the -- first, in responding directly to Your Honor's question, I don't believe that this requires the Court to stand down, because though this issue is in flux in several verifications, two things do not seem to be in flux. And that is that the Florida Supreme Court has drawn -- CCRC called it arbitrary, but they have drawn a bright line with cases that are finalized pre-Ring versus those cases that are finalized post-Ring. And that issue was discussed in full by the Florida Supreme Court with dissenting opinions by Justice Quince and retired Justice Perry, who made that very same argument. That the Court should not be making a bright-line distinction between pre-Ring and post-Ring cases, but that is the law of

the land as it currently stands.

The second thing that is not in flux is that unanimous cases comply with Hurst. In this case, the Florida Supreme Court has, in fact, only found error to be harmless, sentencing error under Hurst to be harmless, when there is some specific situation like the defendant has waived a sentencing-based jury, or has conceded to certain aggravators, or in the case of a unanimous jury, the Court has now consistently said that though sentencing under Hurst is an unconstitutional sentencing, it's a harmless error based on that unanimous jury recommendation.

And under Davis, which I've cited in my case -- or, excuse me, in my brief, the Court goes through the analysis in the other unanimous case of Davis, and that would be dispositive in this case. But saying that even though the jury did not make those requisite findings that in Hurst they said are now necessary, an example, that the aggravators outweigh the mitigators, that the aggravators are sufficient to warrant death, that the aggravators were found beyond a reasonable doubt, in a unanimous jury recommendation, the Court is comfortable saying that, yes, those questions were answered and each of the jurors did find that each of those questions was answered because of the unanimous

jury recommendation. And so here we have a double layer of analysis that takes Mr. Marquard out of any Hurst protection. That he was pre-Ring, so Hurst is not even retroactive to him and he's not entitled to analysis under Hurst. But also if he were entitled to analysis under Hurst, it would clearly be harmless under Davis.

And in those cases, again, the Florida Supreme Court has said that in unanimous cases, similarly Enoch Hall, that I apologize is not cited in my brief, but Mr. Shakoor and Ms. Mirialakis are my opposing counsel on Enoch Hall, that has come out subsequent to briefing in this case, that is another unanimous recommendation, where the Court has said in those cases that are unanimous, we feel comfortable saying that those jurors did make the requisite findings that are now required under Hurst.

So that -- you know, putting aside the harmless error argument as to, you know, the confession and the aggravators that would have been irrefutable -- irrefutably found by the jury, that would be the argument that we make.

Mr. Marquard's case was final on January 23rd, 1995, when his cert denial -- when the U.S. Supreme Court denied his petition for writ of certiorari,

which is well before Ring in 2002.

As for the cases that Mr. Shakoor discussed, Gaskin, of course, the Defense filed a motion for rehearing in the Florida Supreme Court on February 3rd, so there's approximately ten more days in that case to find out whether or not the Florida Supreme Court will grant or deny that motion for rehearing.

In Asay, the motion for rehearing was filed, I believe, on January the 6th. It was final -- well, the case was finalized on 12-22, and then the motion for rehearing was filed, which is currently pending.

THE COURT: I thought Asay's motion for rehearing was denied.

MS. KIRCHER: I'm sorry. Yes, Asay's motion for rehearing was denied on February 1st, and -- I apologize, I misspoke. And if CCRC is to file a petition for cert, that would be due 90 days from February 1st, which would put it to May 2nd.

I don't think, specifically responding to the Court's question, that it would be appropriate to hold time or to wait on this case to see whether or not Defense counsel will be filing a petition for cert, because without the petition for cert right now, that case is final.

And our position would be that -- that Asay made very clear that all cases prior to the decision in Ring are not entitled to retroactive application of Hurst.

And because Mr. Marquard was both not entitled to retroactive application of Hurst, this is his second successive 3.851, our position is that it's time barred with no exception. He's not entitled to retroactive application of Hurst. And going through the analysis that the Court did in Davis and Gaskin and in Hall, since he was unanimous, even going through a harmless error analysis, it would clearly be harmless on the facts of the case.

And Your Honor has posed a question to my opposing counsel about what claims were raised below, and I do point out in my brief, at Page 7, that Mr. Marquard did not raise a Ring claim on direct appeal.

Now, that's not to say that the Court might not do an analysis under Ring anyway, but the claims that were raised on direct appeal to the Florida Supreme Court were specifically a newly discovered evidence claim as to Abshire's life sentence and disproportional sentencing. Number two, relating to Abshire's testimony. Claim three, that he had

ineffective assistance of counsel at the penalty phase. He was denied full and fair evidentiary hearing. He had ineffective assistance of counsel at the guilt phase. He failed to object to comments by the prosecutor and the trial judge, which diminished the jury's role, a Caldwell claim. He was unconstitutionally shackled during the trial. The rule prohibiting counsel from interviewing jurors is unconstitutional. The jury instructions during the penalty phase were vague or overbroad. And cumulative errors justify relief.

Let's see. Going to -- does the Court want me to address the second claim, the Eighth Amendment claim argument?

THE COURT: No, you don't need to address that argument.

MS. KIRCHER: Okay. Unless the Court has any other specific questions or argument that you'd like to hear, we would rely on our brief for the remaining argument.

THE COURT: Okay. Thank you.

Mr. Shakoor, any brief response?

MR. SHAKOOR: Yes, briefly, Your Honor.

For specificity regarding the Ring-like claim that I asserted earlier that was raised at the trial

court level, this is a very old record, as the Court's aware, but it looks like it's Volume I starting on Page 142, that's when the motion was filed requesting special verdict forms for unanimous jury determination of statutory aggravating circumstances.

Volume 142 -- I'm sorry, Volume I, Page 142. And it looks like the order denying that claim was Volume I, Page 144. I can give an additional note that in that order at the top it says, Circuit Court Minutes, 120, Page 929. That might mean more to Your Honor as far as what that means as far as the record, but I wanted to be as specific as I could regarding the fact that a Ring-like claim was raised at the trial level.

And I believe that the State mentioned a lot of claims already on direct appeal. Claim 12 was an attack on the scheme itself, so I would further ask the Court to take that into consideration.

Also, Your Honor, a Hurst petition has been filed by the State of Florida regarding the fact that they're -- they're asking the United States Supreme Court to -- to address Hurst v. State and Perry v. State, based on how the State of Florida has interpreted the United States Supreme Court's Hurst findings. So I think -- the State can correct me if

I'm wrong, but I think they're also, perhaps, requesting in cases that are post-Ring for the Court to delay ruling and to -- until there's a determination whether or not the United States Supreme Court decides to accept cert on that Hurst case.

So, Your Honor, since things are kind of in flux right now, I would just say that there's really no rush. I'd ask this Court to just wait until Asay cert -- petition for cert is filed and whether or not it's accepted or denied.

And the Gaskin, I would submit, Gaskin is probably even more an extensive analysis by the State of Florida than even Asay, and a motion for rehearing has been filed in Gaskin.

So I'd just ask the Court to just wait until we get a little bit more finality before the Court were to rule on such a -- such a matter.

Beyond that, Your Honor, I would rely on my pleadings and just request a new penalty phase for Mr. Marquard with a properly-instructed jury.

THE COURT: Okay. I don't know how a cert that Gaskin had more detail than Asay on that issue since Gaskin's was about a page, wanted to address that issue. And, of course, they are seeking rehearing on that, and that's my next hearing in about nine

minutes, is on Gaskin, which is also my case.

MR. SHAKOOR: Your Honor, and on -- Gaskin raised Sixth Amendment claims.

THE COURT: Okay.

MR. SHAKOOR: And --

THE COURT: All right. Thank you, everybody.

MR. SHAKOOR: According to footnote 12 of Asay, Mr. Asay did not raise a Sixth Amendment claim. The thing in Asay, and the reason I think that Justice Lewis -- the reason why I think Justice Lewis concurred in Asay, is because Defendant Asay did not raise a Sixth Amendment claim at any point.

That differentiates Mr. Asay from my client Marquard and from Mr. Gaskin.

THE COURT: Okay. Thank you very much, everybody. I will take the matter under advisement. I appreciate the arguments. I appreciate you-all calling in this morning. Okay.

Thank you.

MR. SHAKOOR: Thank you for letting us appear by phone, Your Honor.

Thank you for your time.

THE COURT: Sure. You-all have a good day.

MS. KIRCHER: And, Your Honor, I'm sorry. This is Stacey Kircher from the Office of the Attorney

APPEAL TRANSCRIPT

General again, I just wanted to clarify.

I said on direct appeal, I -- I meant on original 3.851 motion, those were the claims that were raised, the ones that I brought out.

And Mr. Shakoor is correct. We have filed a petition for writ of cert in the Hurst v. State case with the U.S. Supreme Court. And, of course, we're waiting to see whether the U.S. Supreme Court will accept or deny cert on that case.

THE COURT: Okay. Thank you very much.

I appreciate everybody. You-all have a good day.

MS. KIRCHER: Bye-bye.

MS. CALHOUN: Thank you.

Bye-bye.

(Proceedings concluded at 9:38 a.m.)

APPEAL TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF FLAGLER)

I, Andrea Gorman, Registered Professional Reporter, Seventh Judicial Circuit of Florida, do HEREBY CERTIFY that I was authorized to and did **stenographically report** the foregoing proceedings, and that the transcript, Pages 1 through 28, is a true and correct record of my **stenographic notes.**

Signed this 8th day of May, 2017, at Bunnell, Flagler County, Florida.

s/ANDREA GORMAN, RPR
Andrea Gorman, RPR
Seventh Judicial Circuit of Florida

CERTIFICATE OF CLERK

STATE OF FLORIDA
COUNTY OF ST. JOHNS

I, **HUNTER S. CONRAD**, Clerk of the Circuit Court for the County of St. Johns, State of Florida, do hereby certify that the foregoing pages of 1-92 inclusive contain a correct copy of the record in the case of:

JOHN CHRISTOPHER MARQUARD
Appellant

VS

STATE OF FLORIDA
Appellee

S.C. Case No: SC17-862
L.T. Case No: 91002418CF

and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in said record by the directions furnished to me. Pages 93-121 inclusive, embraces the transcribed notes of the reporter as made at court proceedings, certified to be by her.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 23RD day of May 2017.

Circuit Court Clerk
Summa Cuique
St. Johns County, Florida

HUNTER S. CONRAD
CLERK CIRCUIT COURT

By
Nicole Cooper, Deputy Clerk

CIRCUIT COURT,
7th JUDICIAL CIRCUIT,
ST. JOHNS COUNTY, FLORIDA