IN THE SUPREME COURT OF FLORIDA

THOMAS DEWEY POPE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. SC17-1812

DEATH PENALTY CASE

STATE'S REPLY TO JANUARY 4, 2018 ORDER TO SHOW CAUSE

COMES NOW, APPELLEE, State of Florida, by and through the undersigned counsel, and files its reply to Appellant's Response to Order to Show Cause filed on January 24, 2018 pursuant to this Court's Order dated January 4, 2018 and asserts that this Court should affirm the denial of Appellant's successive postconviction motion in accordance with *Asay v. State*, 210 So.3d 1 (Fla. 2016); *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017); *Asay v. State, 224 So.3d 695 (Fla. 2017)*; *Lambrix v. State*, 227 So.3d 112 (Fla. 2017) and therefore states:

STATEMENT OF THE CASE AND FACTS

A grand jury indicted Thomas Dewey Pope ("Pope") for the first-degree murders of Al Doranz ("Doranz"), Caesar DiRusso ("DiRusso"), and Kristine Walters ("Walters"). The jury found Pope guilty as charged and recommended life for the murders of Doranz and DiRusso, and death for Walters' murder. (ROA-R.7

1265-67)[1] *Pope v. State*, 441 So.2d 1073 (Fla. 1983). On October 27, 1983, this Court affirmed finding:

> On January 19, 1981, the bodies of Al Doranz and Caesar Di Russo were discovered in an apartment rented to Kristine Walters. Both had been dead several days but Di Russo's body was in a more advanced state of decomposition than Doranz's. Both victims had been shot, Doranz three times and Di Russo five times. A spent .22 caliber shell casing was found under Di Russo's body. Three days later, the body of Kristine Walters was found floating in a canal. She had been shot six times with exploding ammunition, her skull was fractured and she had been thrown into the canal while still breathing.
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> All three victims had been shot with exploding ammunition, so ballistics comparison was impossible. However, parts of an AR-7 rifle were found in the canal near Walters's body and the spent shell casing under Di Russo's body had been fired from an AR-7 weapon.
>
> Investigation led to appellant's girlfriend, Susan Eckard, and ultimately police were able to show that Doranz purchased an AR-7 rifle for Pope shortly before the murder. Eckard and Pope admitted being with Doranz and Walters at Walters's apartment on Friday night, the night Doranz and Di Russo were killed. Eckard later testified that Pope had arranged a drug deal with Doranz and Di Russo. She stated that she and Pope left Walters's apartment to visit Clarence "Buddy" Lagle and to pick up some hamburgers. They then returned to the apartment where Pope and Doranz convinced Walters to go with Eckard to the apartment where Pope had been staying.
>
> Later that same night, Pope arrived at his apartment and told the women there had been trouble and that Doranz had been injured but that it was best for Walters to stay away from him for a while. Eckard said she knew that Di Russo and Doranz were dead, and that she had known Pope intended to kill them at this

[1] Identifying the direct appeal record; "2017PCR" references the instant record.

> point. The next day, Walters checked into a nearby motel, where Pope supplied her with quaaludes and cocaine. On Sunday, Pope told Walters he would take her to see Doranz. Eckard testified that Pope had told her that he knew he had to get rid of Walters but that he regretted it because he had become fond of her. According to Eckard, Pope described Walters's murder when he returned and said the gun had broken when he beat Walters over the head with it. The next day Eckard went with Pope to the scene of the crime to collect fragments of the broken stock and to look for the missing trigger assembly and receiver.
>
> Buddy Lagle told the police he had made a silencer for the AR-7 rifle at Pope's request. Because Lagle planned to leave the jurisdiction to take a job on a ship in the Virgin Islands, he was deposed on videotape pursuant to an order granting the state's motion to perpetuate testimony. When the state was unable to produce him at trial, the videotape was admitted into evidence.
>
> Pope was convicted of three counts of first degree murder. The jury recommended a life sentence for the murders of Doranz and Di Russo and death for Walters's murder. The state indicated its agreement with that recommendation, and the trial court imposed sentence accordingly.

Pope, 441 So.2d at 1074-75. Rehearing was denied on January 11, 1984 and Pope did not seek certiorari review; thus, for purposes of postconviction litigation, his case became final 90-days later on April 10, 1984 under Rule 3.851, Fla. R. Crim. P.

On September 17, 1984, Pope filed a postconviction relief motion (entitled Motion for New Trial) and later amended it. Following an evidentiary hearing, the trial court denied relief and on October 11, 1990, this was affirmed by this Court. *Pope v. State*, 569 So.2d 1241 (Fla. 1990). During the pendency of

that motion, Pope filed a petition for writ of habeas corpus with this Court which denied relief. *Pope v. Wainwright*, 496 So.2d 798, 801-03 (Fla. 1986) *cert. denied*, 480 U.S. 951 (1987).

In September 1991, Pope filed a federal habeas petition,[2] however, in March 1995, Pope filed a second state postconviction relief motion. Ultimately, on May 29, 1996, the trial court summarily denied relief as procedurally barred. This Court affirmed. *Pope v. State*, 702 So.2d 221 (Fla. 1997). Also during the pendency of his federal litigation, Pope filed successive postconviction motions and appeals. *See Pope v. State*, 845 So.2d 892 (Fla. 2003); *Pope v. Crosby*, 921 So.2d 629 (Fla. 2005) (Tables); *Pope v. State*, 27 So.3d 661 (Fla. 2010).

On January 10, 2017, Pope filed his fourth successive postconviction motion in which he challenged his capital sentence based on *Hurst v. Florida*, 136 S.Ct. 616 (2016). Following his May 31, 2017 amendment, Pope relied upon *Hurst v. State*, 202 So.3d 40 (Fla. 2016). (2017PCR 3-53, 81-106). On September 6, 2017, relief was denied summarily. (2017PCR 141-44) On January 4, 2018, this Court issued an Order to Show Cause.

ARGUMENT

In spite of his conviction and sentencing becoming final

[2] Later, Pope returned to federal court were eventually all relief was denied. *See, Pope v. Sec'y, Florida Dept. of Corr.*, 680 F.3d 1271 (11th Cir. 2012); *Pope v. Sec'y, Florida Dept. of Corr.*, 752 F.3d 1254, 1256 (11th Cir. 2014).

before June 24, 2002, the day *Ring v. Arizona*, 536 U.S. 584 (2002) was issued, *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017), *cert. denied*, 138 S.Ct. 513 (2017), does not preclude the relief Pope seeks. He challenges his death sentence as unconstitutional under the Sixth, Eighth, and Fourteenth Amendments as interpreted and applied in *Hurst v. Florida* and *Hurst*. Further, he claims that refusing to find *Hurst v. Florida* and *Hurst* retroactive to his case merely because his case was final before *Ring,* is a denial of due process. Pope suggests that *Hurst* should be retroactive under federal law. Also, he claims Chapter 2017-1, Laws of Florida is a substantive change in the law, thus entitling him to resentencing.

Contrary to Pope's suggestions otherwise, this Court applied state law correctly in finding *Hurst v. Florida* and *Hurst* not to be retroactive to cases final before June 24, 2002 and should continue to follow the precedent of *Asay v. State*, 210 So.3d 1 (Fla. 2016) and *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017), *cert. denied*, 138 S.Ct. 513 (2017); *Asay v. State, 224 So.3d 695 (Fla. 2017)*; *Lambrix v. State*, 227 So.3d 112 (Fla. 2017), *cert. denied*, 135 S.Ct. 312 (2017) as well as *Mosley v. State*, 209 So.3d 1248 (Fla. 2016) and the cases reviewed as a result of that precedent. Pope has not offered any arguments that have not been presented to this Court previously and rejected after due consideration. He has offered nothing to

cause this Court to alter its precedent. As such *Hitchcock* and *Lambrix* foreclose Pope's challenges here. Additionally, this Court has made clear that the new statute should not be applied retroactively and that neither the Sixth nor the Eighth Amendments provide Pope with an avenue for relief. *See*, *Asay*, 210 So.3d at 22; *Hitchcock; Lambrix*; *Asay, 224 So.3d at 703 (rejecting claim that Hurst and Chapter 2017-1, Laws of Florida should be applied retroactively to defendant whose case became final before June 24, 2002)*. Pope is not entitled to relief as those cases reject each of his arguments for retroactivity to cases final before June 24, 2002.

This Court has held *Hurst v. Florida* and *Hurst* are not retroactive to cases final before June 24, 2002, the day *Ring v. Arizona*, 536 U.S. 584 (2002) issued. *See Asay*, 210 So.3d at 8, 22. *See also, Asay, 224 So.3d at 703* (reiterating *Hurst* and *Hurst v. Florida* not retroactive to cases final before *Ring*); *Hitchcock*, 226 So.3d at 217 (stating "[w]e have consistently applied our decision in *Asay V*, [210 So.3d at 22], denying the retroactive application of *Hurst v. Florida* as interpreted in *Hurst v. State* to defendants whose death sentences were final when the Supreme Court decided *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).")

In *Asay*, 210 So.3d at 15-16, this Court applied the *Witt v. State*, 387 So.2d 922 (Fla. 1980) analysis for determining

whether *Hurst* was retroactive under state law, "which provides ***more expansive retroactivity standards*** than those adopted in *Teague [v. Lane]*, 489 U.S. 288 (1989)," which enumerates the federal retroactivity standards. *Id*. (emphasis in original), *quoting Johnson v. State*, 904 So.2d 400, 409 (Fla. 2005). *See also Danforth v. Minnesota*, 522 U.S. 264, 280-81 (2008) (allowing states to adopt retroactivity test that is broader than *Teague*). As recognized in *Hitchcock*, after *Asay, 210 So.3d at 1*, this Court has adhered staunchly to using the *Ring* decision date as the bright-line cutoff point for retroactivity of *Hurst* claims. This Court has refused to extend *Hurst v. Florida* and *Hurst* to any defendant whose case was final before *Ring*.[3]

[3] In just the last week, this Court has reaffirmed *Hurst* is not retroactive to cases final before June 24, 2002 and affirmed the denial of the *Hurst* claim on that basis. *See Stein v. State*, SC17-1547, 2018 WL 636066, at *1 (Fla. Jan. 31, 2018); *Gordon v. State*, SC17-1133, 2018 WL 636418, at *1 (Fla. Jan. 31, 2018); *Whitton v. State*, SC17-1118, 2018 WL 635982, at *1 (Fla. Jan. 31, 2018); *Krawczuk v. State*, SC17-1142, 2018 WL 635983, at *1 (Fla. Jan. 31, 2018); *Sireci v. State*, SC17-1143, 2018 WL 635985, at *1 (Fla. Jan. 31, 2018); *Rodriguez v. State*, SC17-1268, 2018 WL 635986, at *1 (Fla. Jan. 31, 2018); *Consalvo v. State*, SC17-1309, 2018 WL 635988, at *1 (Fla. Jan. 31, 2018); *Sliney v. State*, SC17-1074, 2018 WL 636103, at *1 (Fla. Jan. 31, 2018); *Miller v. Jones*, SC17-1211, 2018 WL 636104, at *1 (Fla. Jan. 31, 2018); *Lamarca v. State*, SC17-1179, 2018 WL 618728, at *1 (Fla. Jan. 30, 2018); *Whitfield v. State*, SC17-1399, 2018 WL 615022, at *1 (Fla. Jan. 30, 2018); *Mendoza v. State*, SC17-1324, 2018 WL 618592, at *1 (Fla. Jan. 30, 2018); *Gudinas v. State*, SC17-919, 2018 WL 618595, at *1 (Fla. Jan. 30, 2018); *Sochor v. State*, SC17-1343, 2018 WL 618698, at *1 (Fla. Jan. 30, 2018); *Fotopoulos v. State*, SC17-971, 2018 WL 579814, at *1 (Fla. Jan.

On August 10, 2017, this Court reaffirmed *Asay* stating:

> Although Hitchcock references various constitutional provisions as a basis for arguments that *Hurst v. State* should entitle him to a new sentencing proceeding, these are nothing more than arguments that *Hurst v. State* should be applied retroactively to his sentence, which became final prior to *Ring*. As such, these arguments were rejected when we decided *Asay*. Accordingly, we affirm the circuit court's order summarily denying Hitchcock's successive postconviction motion pursuant to *Asay*.

Hitchcock, 226 So.3d at 217; *see also Asay, 224 So.3d at 703* (rejecting claim chapter 2017-1, Laws of Florida, "creates a substantive right to a life sentence unless a jury unanimously recommends otherwise"); *Lambrix*, 227 So.3d at 113 (rejecting arguments based on Eighth Amendment, due process, equal protection, and a substantive right based on new legislation).

Here, just as was presented in *Hitchcock*, Pope raises various constitutional provisions to argue that *Hurst* should be applied retroactively to him. He claims that denying him retroactive application of *Hurst* violates the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution as he was not provided Due Process and Equal Protection. As determined in *Asay*, 210 So.3d at 8, 22 and reaffirmed in *Hitchcock*, 226 So.3d at 117; *Lambrix*, 227 So.3d at 113; and *Asay, 224 So.3d at 703*, *Hurst* does not apply

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29, 2018); *Marquard v. State*, SC17-862, 2018 WL 524794, at *1 (Fla. Jan. 24, 2018). *See also Asay*, 210 So.3d at 8, 22(sentence final in 1991); *Hitchcock*, 226 So.3d at 216; *Lambrix v. State*, 217 So.3d 977, 989 (Mar. 2017)(sentence final in 1986).

retroactively. Here, Appellant's case became final on April 10, 1984, 90-days after affirmance on direct appeal. See Rule 3.851(d). Hence, *Hurst* and *Hurst v. Florida* are not retroactive to this case and the trial court's order denying the successive postconviction relief motion should be affirmed.

Furthermore, reliance on the federal retroactivity assessment identified in *Teague* or suggestion that there has been a substantive rule announced by *Hurst* do not further Appellant's position. *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004), and its determination that *Ring* was not retroactive supports the conclusion that *Hurst v. Florida,* which was an expansion of *Ring* to Florida capital cases, would likewise not be retroactive under a *Teague* analysis. Despite Pope's claim that *Hurst* created a substantive change requiring federal retroactivity, *Schriro* forecloses that assertion. There the Supreme Court determined that *Ring* was a procedural rule and did not create a substantive constitutional change in the law because it only "altered the range of permissible methods for determining whether a defendant's conduct is punishable by death, requiring that a jury rather than a judge find the essential facts bearing on punishment." *Schriro*, 542 U.S. at 353. *Ring* did not alter the "range of conduct or the class of persons that the law punishes." *Id*. Thus, *Ring* "announced a new procedural rule that does not apply retroactively to cases

already final on direct review." *Id*. at 358. Because *Hurst v. Florida* is an expansion of *Ring* to Florida, *Hurst v. Florida* and this Court's resulting Hurst decision, like *Ring* did not create a substantive rule and are not retroactive under federal law.[4]

Furthermore, with retroactivity, there is usually a cutoff date to provide for finality in appellate processing. *Penry v. Lynaugh*, 492 U.S. 302, 314 (1989) (holding finality concerns in retroactivity are applicable in the capital context). In *Griffith*, the Supreme Court held "that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule

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[4] The Eleventh Circuit has rejected the argument that *Hurst* is retroactive under federal law, stating: "[t]he Supreme Court has held that *Ring* does not apply retroactively to cases on collateral review. *See Schriro v. Summerlin*, 542 U.S. 348, 358[ ] (2004) (holding that *Ring* does not apply retroactively under federal law to death-penalty cases already final on direct review.)." *Lambrix v. Sec'y, Fla. Dep't of Corr.,* No. 17-14413, 2017 WL 4416205, *8 (11th Cir. Oct. 5, 2017), *cert. denied Lambrix v. Florida*, Nos. 17-6290, 17A380, 2017 WL 4456332 (Oct. 5, 2017). Further, the Eleventh Circuit held that this Court's ruling, that *Hurst* did not apply retroactively to Lambrix, whose judgment was final in 1986, "is fully in accord with the U.S. Supreme Court's precedent in Ring and *Schriro*." *Lambrix*, 2017 WL 4416205 at *8. The Eleventh Circuit also rejected the statutory retroactivity argument stating:

> jurists of reason would not find this position debatable: the Florida court's rejection of Lambrix's constitutional-statutory claim was not contrary to, or an unreasonable application of, the holding of a Supreme Court decision.

Id. at *9; *see Dobbert v. Florida*, 432 U.S. 282, 301 (1977).

constitutes a 'clear break' with the past." *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987); *see also Smith v. State*, 598 So.2d 1063, 1065 (Fla. 1992). Under this "pipeline" concept, only those still pending on direct review would receive the benefit of relief from *Hurst* error. The fact that this Court has drawn the line at the decision date of *Ring* instead of the decision date in *Hurst*, benefits more defendants. Thus, this Court's retroactivity cutoff does not violate the Fourteenth Amendment's guarantee of equal protection and due process.

In *Asay*, 210 So.3d at 11-19, this Court also discussed the role the *Apprendi* opinion had in the Supreme Court's decisions in *Ring* and *Hurst*. There however, "the Supreme Court distinguished capital cases from its holding in *Apprendi*." *Asay*, 210 So.3d at 19; *citing Apprendi v. New Jersey*, 530 U.S. 466, 496-97 (2000) ("this Court has previously considered and rejected the argument that the principles guiding our decision today render invalid state capital sentencing schemes . . ."). Because *Apprendi* does not apply to capital cases, it should not be used as the cutoff date for *Hurst* retroactivity.

Also, the fact the Legislature enacted a new statute following *Hurst*, that does not give Appellant a new substantive right. *See Asay*, 210 So.3d at 8, 22 and reaffirmed in *Hitchcock*, 226 So.3d at 217; *Lambrix*, 227 So.3d at 113; and *Asay, 224 So.3d at 703.* Furthermore, the new statute does not apply to Pope.

Yet, even if *Hurst* were to be applied retroactively, relief would not be warranted under *Caldwell v. Mississippi*,[5] or *Hurst* as any error would be harmless beyond a reasonable doubt. In this case, the jury convicted Pope of three counts of first degree murder and distinguished between the homicides committed during a drug buy and the death of Kristine Walters who was duped into going to a hotel where Pope kept her drugged while contemplating killing her because he did not want a witness to the prior murders. In discussing aggravation, this Court stated:

> …the court found four aggravating circumstances. First, the *defendant had been convicted of another capital felony, the murders of Donranz and Di Russo*. ... Second, *the capital felony was committed for the purpose of avoiding or preventing lawful arrest*. The defendant's own statements to Susan Eckard as well as the circumstances surrounding the murder show, beyond a reasonable doubt, that this was the sole motive for the murder. ... Third, the *capital felony was*

[5] First, any complaint about jury instructions at this point is untimely and procedurally barred. *Troy v. State*, 57 So. 3d 828, 838 (Fla. 2011). Second, in order to establish constitutional error under *Caldwell*, a defendant must show the instructions "improperly described the role assigned to the jury by local law." *Romano v. Oklahoma*, 512 U.S. 1, 9 (1994). Here, the jury was instructed properly on its role based upon then existing law. It is absurd to suggest the jury should have been instructed in accordance with a constitutional change in the law which occurred some 34 years after the trial. Third, Pope's claim is based on pure speculation. There is nothing in the record to support the proposition that the jury's sentencing responsibility was diminished or rendered the recommendation unreliable. This is especially true where the jury differentiated the killing of the male victims involved in a drug trade and that of Walters who was kept secluded and sedated over the weekend before she was killed. Clearly, the jury understood its great responsibility and exercised it.

> *committed in a cold, calculated and premeditated manner*. Susan Eckard's testimony about Pope's discussions of the murder with her prior to the killing supports beyond a reasonable doubt the finding of premeditation as required by this statutory aggravating factor. ... Fourth, *the capital felony was especially heinous, atrocious or cruel*. The medical examiner's testimony at trial revealed that the pattern of gun-shot wounds on Walter's body revealed, without indicating the sequence of shots, that she had been shot from the rear, had attempted to flee the attack, and had been shot twice with the gun pressed close to her abdomen. The wounds caused by the explosion of the bullets at impact would have been extraordinarily painful without causing unconsciousness or death. When this had failed to kill her, she had been clubbed over the head with the gun barrel. When the gun barrel broke before the murderous end had been achieved, the defendant dragged his still-living victim to the canal where he threw her to drown. The evidence of conscious psychological and physical suffering is clear from the medical examiner's testimony and supports a finding that this murder was heinous, atrocious and cruel to an extent greater than that inherent in all murders. ... We find no merit to appellant's assignment of error to the finding of any of these factors.

Pope, 441 So.2d at 1076–77. The "convicted of another capital felony" was inherent in the jury's verdict and the avoid arrest, CCP, and HAC aggravators are undeniable given Pope's admissions and medical examiner's testimony.

Pope's jury was given the standard jury instructions. Further, the jury's guilt phase verdicts support the finding of aggravation making Appellant death eligible based on a unanimous jury finding, i.e., (1) previously convicted of another violent

felony, the murders of two other victims.[6] While recognizing this Court's precedent to the contrary, the State maintains there is no Sixth Amendment error here as Pope became death eligible upon conviction. Without question, and as the jury found by its guilt phase verdict, the murder of Walters was committed after Pope had killed Doranz and DiRusso, thus rendering Pope death eligible. The Sixth Amendment requires nothing more than jury fact-finding sufficient to support the resulting sentence; it does not mandate any specific jury verdict or recommendation as a pre-requisite to a given sentence.

Although this Court declined to follow the State's argument in *Pagan v. State*, SC17-872, slip op. (Fla. Feb. 1, 2018)

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[6] There is no doubt the jury found the prior conviction of a capital felony given the murders of Doranz and DiRusso. Also, based on the case facts, avoid arrest and CCP were proven through Pope's admission that he had a silencer made for the murders of Doranz and DiRusso, had Walters taken from the scene and kept drugged over the weekend before announcing he regretted having to kill her to as he had become fond of her, but he could not have a witness. On the day of her death, Walters was taken to a remote location, shot, bludgeoned when the shots did not kill, then drowned when the gunstock broke. Such show heightened planning, cold execution, the intent to avoid arrest, and the HAC nature of the killing. *Pope*, 441 So.2d at 1076–77. A rational jury would have found unanimously aggravators if it had been instructed to, and would have found unanimously they were sufficient to support a death sentence, and that they outweighed the mitigation especially in light of the fact no statutory and only two non-statutory mitigators (service in Vietnam and honorable discharge) were found. Such pales in weight to the aggravation here. A rational jury, properly instructed would have found unanimously that the aggravation outweighed the mitigation given this was a CCP homicide, committed after a double homicide and to avoid arrest.

regarding *Jenkins v. Hutton*, 137 S. Ct. 1769 (2017), it bears repeating. In *Jenkins*, the Supreme Court confirmed the constitutionality of an Ohio death sentence based on a jury's guilt-phase determination of facts. In *Jenkins*, the lower court ordered a new sentencing because, in that court's view, the penalty phase jury failed to make the necessary factual findings to support a death sentence. However, because the necessary aggravating factors were established beyond a reasonable doubt by the jury during the guilt phase, the Supreme Court reversed and reinstated the death sentence. *See Waldrop v. Comm'r, Alabama Dep't of Corr.*, 15-10881, 2017 WL 4271115, at *20 (11th Cir. Sept. 26, 2017) (explaining its rejection of a *Hurst* claim, Appeals Court stated: "Alabama requires the existence of only one aggravating circumstance in order for a defendant to be death-eligible, and in Mr. Waldrop's case the jury found the existence of a qualifying aggravator beyond a reasonable doubt when it returned its guilty verdict. *See* §13A-5-45(e).").

As Pope's case was final in April 1984 and this Court has rejected all of the instant claims, the denial of relief should be affirmed. Also, given that the guilt phase verdict rendered Pope death eligible, there is no Sixth Amendment violation.

CONCLUSION

WHEREFORE, the Appellee, State of Florida, respectfully requests this Honorable Court to affirm the trial court's order.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

_/S/ Leslie T. Campbell_____
LESLIE T. CAMPBELL
Senior Assistant Attorney General
Florida Bar No. 0066631
1515 N. Flagler Dr. - Suite 900
West Palm Beach, Florida 33401
Office: (561) 837-5016
Facsimile: (561) 837-5108
E-Service: CapApp@MyFloridaLegal.com
Secondary E-Mail:
Leslie.Campbell@MyFloridaLegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 6th day of February, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: to Rachel Day, Esq., at dayr@ccsr.state.fl.us, and William M. Hennis, III, Esq. at HennisW@ccsr.state.fl.us at Capital Collateral Regional Counsel-South, One Broward Blvd, Suite 444, Fort Lauderdale, FL 33301.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of the type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Leslie T. Campbell
COUNSEL FOR APPELLEE