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IN THE SUPREME COURT OF FLORIDA

ARNOLD JEROME KNIGHT,

Petitioner, Case No.: SC18-309

v.

STATE OF FLORIDA,

Respondent.
_____________________________/

BRIEF OF *AMICUS CURIAE*
FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
ON BEHALF OF PETITIONER

On Discretionary Review from the District Court of Appeal
First District of Florida

L.T. Case No.: 1D14-2382

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STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Florida Association of Criminal Defense Lawyers ("FACDL") is a statewide organization representing over 2,000 members, all of whom are criminal defense practitioners. FACDL is a non-profit corporation whose goal is to assist in the reasoned development of Florida's criminal justice system. Its founding purposes are promoting study and research in criminal law and related disciplines, ensuring the fair administration of criminal justice in the Florida courts, fostering and maintaining the independence and expertise of criminal defense lawyers, and furthering the education of the criminal defense community.

The issues here concern many of FACDL's founding purposes. The issues touch on the fair administration of criminal justice as well as the application and interpretation of this Court's precedent. This case has ramifications for practitioners and criminal defendants throughout the State of Florida on how to interpret this Court's binding precedent, non-majority opinions, and the jury pardon doctrine, all of which concern every criminal defendant and practitioner.

SUMMARY OF THE ARGUMENT

Based on the First District's decision in *Knight v. State*, 2018 Fla. App. LEXIS 2440 (Fla. 1st DCA February 19, 2018), there are now two ways to interpret this Court's opinions where neither the decision nor opinion enjoys a clear majority: 1) disregard the opinion for other binding precedent and seek appropriate clarification from this Court when necessary; or, 2) rely on district courts of appeal to consider piecemeal the possible holding that this Court intended based on plurality and concurring opinions to reach a majority that may reverse established precedent *sub silentio*. Of the two ways to interpret this Court's opinions, only one aligns with the Florida Constitution and this Court's precedent. This Court should quash *Knight* because it is an errant opinion in both how it came to conclude this Court abrogated the jury pardon doctrine, and because of the lack of substantive analysis when allegedly abrogating this law.

To begin with, the First District's decision in *Knight* implicates three bedrock principles on how to interpret this Court's non-majority opinions. First, Florida Supreme Court precedent is only created by a majority of the Court members joining both a decision and an opinion. Art. V, § 3(a), Fla. Const. (1980); *Santos v. State*, 629 So. 2d 838, 840 (Fla. 1994). Second, the presumption of stare decisis compels adherence to precedent once established. *Strand v. Escambia Cty.*, 992 So. 2d 150, 159 (Fla. 2008). Third, this Court does not overrule itself *sub silentio*. *Puryear v.*

State, 810 So. 2d 901, 905 (Fla. 2002). In finding this Court abrogated the jury pardon doctrine in *Dean v. State,* 230 So. 3d 420 (Fla. 2017), the First District failed to adhere to any of these principles.

Because of this failure, the First District's decision is an outlier in how courts, and practitioners, should interpret this Court's non-majority opinions. How the First District came to its conclusion, and its ultimate holding, if approved and repeated, will result in uncertainty for lower courts, practitioners, and defendants throughout the State of Florida. This is so because the court's erroneous holding is unsupported by this Court's per curiam opinion in *Dean* because there was never an express analysis about the Court's intent to abrogate the doctrine. Instead, by relying on four different opinions, and the parties' later motions, the First District incorrectly concluded that this Court "must" have abrogated the jury pardon doctrine. *Knight v. State*, 2018 Fla. App. LEXIS 2440, *8-9. This is both incorrect, and a dramatic departure from this Court's precedent. To approve the First District's decision in *Knight* would counter these bedrock interpretative principles and create uncertainty in the lower courts.

And although the First District held the alleged error Mr. Knight complained of arises from the jury pardon doctrine, this too is incorrect. The issue for Mr. Knight's alleged error rests in this Court's decision in *Haygood v. State*, 109 So. 3d 735 (Fla. 2013), and the choice of "mens rea" rationale, not the jury pardon doctrine.

Petitioner's Initial Brief at 30-32. Even if this Court finds the jury pardon doctrine is implicated, *Dean* does not abrogate the jury pardon doctrine, nor should this Court now. This doctrine is based in concepts of jury nullification that have deep roots in the common law and has explicitly been the law in the State of Florida for over forty years.

Amicus curiae submit this case is an opportunity for the Court to clarify what this Court considers its binding precedent, how to interpret its non-majority opinions, and expressly reiterate how and when this Court reverses itself. Clarification in these areas will assist defendants, practitioners, and the courts in interpreting this Court's decisions and opinions.

ARGUMENT

I. This Court should quash the First District's *Knight* because it is an outlier in this Court's jurisprudence on how Florida Supreme Court precedent is established, how to interpret the doctrine of stare decisis, and how intermediate appellate courts resolve uncertainty in this Court's non-majority opinions.

FACDL urges this Court to reject the decision of the First District Court of Appeal because of the court's drastic departure from settled law about how this Court establishes precedent and when this Court overrules its precedent. The First District's decision in *Knight* falls far astray of the constitutional mandates and prior guidance by this Court in these areas. The First District held this Court abrogated the jury pardon doctrine, a doctrine upheld by this Court for forty years, *sub silentio*,

by relying on four non-majority opinions and the parties' later motions. This drastic departure from the Florida Constitution and this Court's precedent, compel reversal of the court's decision.

A. The Florida Constitution and this Court require four members of the Court to join a decision and opinion to establish precedent.

The precedential value of Florida Supreme Court opinions begins with the Florida Constitution. Art. V, § 3(a), Fla. Const. (1980). This Court has explicitly stated that "both a binding *decision* and a binding precedential *opinion* are created to the extent that at least four members of the Court have joined in an opinion *and* decision." *Santos*, 629 So. 2d at 840 (emphasis added) (citing art. V, § 3(a), Fla. Const.). An "opinion" is "the entire written statement issued by the Court in reaching its decision in a case, including the analysis and reasoning." *Id.* at 840 n. 2. A "decision" is "the result reached by the Court in the case[.]" *Id.* at 840 n.1. The decision *and* opinion must be joined by four members of the Court to establish a majority and establish a precedent. *Santos,* 629 So. 2d at 840.

When a justice authors a separate concurring opinion, this "opinion usually indicates that the Justice fully agrees with the majority opinion but desires to supply additional reasons for supporting the decision and to make additional comments or observations." *See* Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29

Nova L. Rev. 431, 459-460 (2005). In this situation, concurring opinions "can constitute the fourth vote needed to establish both a decision and a Court opinion, subject only to any reservations expressly stated in the concurring opinion itself." *Id.* at 460. But, critically, "at least four Justices must concur in an opinion for it to have any precedential value beyond the case at hand." *Id.* at n.116 (citing *Greene v. Massey*, 384 So. 2d 24, 27 (Fla. 1980)). This Court long ago held that concurring opinions, in-and-of-themselves, have no precedential value. *See Greene v. Massey*, 384 So. 2d 24, 27 (Fla. 1980) ("A concurring opinion does not constitute the law of the case nor the basis of the ultimate decision unless concurred in by a majority of the Court. . . . The special concurring opinion has no precedential value and it cannot serve to condition or limit the concurrence in the [majority] opinion . . . ."); *see also*, *Lendsay v. Cotton*, 123 So. 2d 745, 746 (Fla. 3d DCA 1960) ("A concurring opinion has no binding effect as precedent; such an opinion represents only the personal view of the concurring judge and does not constitute the law of the case.").

Here, to reach its conclusion that this Court abrogated forty years of precedent, the First District relied on four separate, non-majority opinions and the parties' later motions. *Knight*, 2018 Fla. App. LEXIS 2440, *8-9. In concluding this Court "must" have abrogated the jury pardon doctrine in *Dean*, the First District looked to

> Justices Lewis, Canady, and Lawson['s] joined [ ] per curiam opinion affirming Dean's conviction. The per curiam opinion expressly incorporated by reference the reasons set forth in Justice Polston's concurring opinion,

> joined by Justices Canady and Lawson, which receded from the jury pardon doctrine. Thus, a majority consisting of four justices—Justices Lewis, Canady, Polston, and Lawson—concurred in the abrogation of the jury pardon doctrine. Both Justices Pariente and Quince recognized in their respective separate opinions that the majority of the court had abrogated the jury pardon doctrine. The petitioner in *Dean* moved for rehearing, arguing that the court should not have abrogated the jury pardon doctrine without at least allowing supplemental briefing on the issue. The State argued in its response that the court properly applied a harmless error analysis. The court denied rehearing and issued [its?] mandate. We thus must conclude that the Florida Supreme Court has abrogated the jury pardon doctrine.

Knight, 2018 Fla. App. LEXIS 2440, *8-9 (footnotes omitted).

Critical is the First District's belief that a majority of the Court abrogated the jury pardon doctrine based on the per curiam opinion's express reference to the reasons in Justice Polston's concurring opinion. *Id.* This is incorrect.

Justice Lewis did not join the concurring opinion. *Dean*, 230 So. 3d at 425. Because a "concurring opinion does not constitute the law of the case nor the basis of the ultimate decision unless concurred in by a majority of the Court," *Greene*, 384 So. 2d at 27, this doctrine was not abrogated. *See also* Petitioner's Initial Brief at 30-32. The per curiam opinion made no reference to abrogating the jury pardon doctrine, nor did Justice Lewis join this concurring opinion; thus a majority of the justices did not join in this finding. The First District's attempt at judicial discernment in *Knight* goes too far.

The First District held that this Court abrogated a long-standing doctrine, unsupported by the majority of the justices, and believed this Court did so without ever expressly considering whether it would overturn the applicable precedent in spite of the doctrine of stare decisis. The First District's decision shows an intermediate appellate court pushing the barriers of the doctrine of stare decisis to see how far it can go, and as discussed below, establishes why this Court should intercede? and reject both this decision, and the manner it was reached by the court.

B. *Knight* challenges the doctrine of stare decisis.

The doctrine of stare decisis is "one of the most sacred in law," and has been enshrined in the State of Florida since its founding. *Tyson v. Mattair*, 8 Fla. 107, 124 (1858). The United States Supreme Court has affirmed the critical importance of the doctrine by stating that "[a]dherence to precedent promotes stability, predictability, and respect for judicial authority." *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 783 (1992). This Court has too stated that "we are committed to the doctrine of stare decisis." *Strand v. Escambia County*, 992 So. 2d 150, 159 (Fla. 2002) (citing *N. Fla. Women's Health & Counseling Services, Inc. v. State,* 866 So. 2d 612, 637 (Fla. 2003)).

Established precedent is presumed to stand, unless this Court has evaluated the appropriateness and need to overturn prior precedent. *Strand*, 992 So. 2d at 159.

This Court has formulated three questions to determine whether to abandon prior precedent:

> (1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

Valdes v. State, 3 So. 3d 1067, 1077 (Fla. 2009) (quoting *Strand*, 992 So. 2d at 159). In neither *Knight*, nor *Dean*, are these questions explicitly asked about the jury pardon doctrine. Nor is any other precedent reviewed in this way. Still, the First District held that *Knight* abrogated the jury pardon doctrine based on four separate opinions and the parties' briefing. *Knight*, 2018 Fla. App. LEXIS 2440, *8-9. This holding, if allowed to stand, does violence to the doctrine of stare decisis. And as discussed below, also harms the doctrine that this Court does not overrule itself *sub silentio*.

C. If *Knight* is upheld, it eviscerates the concept that this Court does not overrule itself *sub silentio*.

This Court has been explicit: it "does not intentionally overrule itself *sub silentio*." *Puryear*, 810 So. 2d at 905. This Court has reaffirmed this position several times since. *See, e.g.*, *Stevens v. State*, 226 So. 2d 787, 792 (Fla. 2017) (expressly abrogating *Higgins v. State*, 565 So. 2d 698 (Fla. 1990)); *Arsali v. Chase Home Fin.*

LLC, 121 So. 3d 511, 516 (Fla. 2013) ("[W]e did not intentionally overrule our previous decision . . . *sub silentio*, because this Court does not engage in such practices."); *Roberts v. Brown*, 43 So. 3d 673, 683 (Fla. 2010) (stating that "[h]ad we intended to overrule our prior declaration of exclusive jurisdiction, we would have done so in a more definite and express manner[.]") (citing *Puryear*, 810 So. 2d at 901). When questions arise whether this Court has overruled itself, *Puryear* makes clear how a lower court should proceed. 810 So. 2d at 905-906.

This Court's direction to lower courts when interpreting its decisions is clear: "Where a court encounters an express holding from this Court on a specific issue and a subsequent contrary dicta statement on the same specific issue, the court is to apply our express holding in the former decision until such time as this Court recedes from the express holding." *Id.* at 905. Thus, when a lower court is uncertain in how to interpret one of this Court's cases, the proper process is not to issue an opinion with its view of the law, as occurred in *Knight*, but to "utilize their authority to certify a question of great public importance to grant this Court jurisdiction to settle the law." *Id.* at 906. The First District's decision in *Knight* conflicts with this Court's precedent on how to engage with non-majority opinions and is an outlier when compared to the prevailing position of the other district courts of appeal. As also shown by the fact that other First District opinions disagree with how it applied this process.

D. Contrary to the First District's decision in *Knight*, the prevailing understanding in the other district courts of appeal, including the First District, is that non-majority opinions should be disregarded for binding precedent.

The district courts of appeal throughout the State of Florida steadfastly rely on this Court's majority opinions. But when it comes to non-majority opinions, where the majority of the Court has not agreed to both a decision and an opinion, the lower courts have, at times, regarded the decisions as confusing and in need of further clarification. *See, e.g.*, *Lee v. State*, 854 So. 2d 709, 716 (Fla. 2d DCA 2003) (certifying question of great public importance because of the uncertainty created by this Court's plurality opinion in *Westerheide v. State*, 831 So. 2d 93, 100 (Fla. 2002)), *rev. denied*, 908 So. 2d 1057 (Fla. 2005), *overruled in part on unrelated grounds*, *DeBolt v. State*, 19 So. 3d 335 (Fla. 2d DCA 2009). When confused in this way, the proper step forward is to certify a question of great public importance for this Court's consideration. *Id.* That is not what happened here.

This confusion by lower courts has now resulted in at least two ways for Florida's district courts of appeal to proceed when interpreting these non-majority opinions: 1) disregard the non-majority opinion for other binding precedent, *Puryrear*, 810 So. 2d at 905-906; or 2) trying to piece together a holding based on a plurality opinion and concurring opinions to reach a majority, *Knight*.[1] Of these two

[1] Unlike when interpreting this Court's opinions, when one interprets United States Supreme Court plurality opinions, the holding of the Court is to be viewed as the

options, only the former aligns with the Florida Constitution and this Court's precedent. *Santos*, 629 So. 2d at 840, art. V, § 3(a), Fla. Const.; *Puryear*, 810 So. 2d at 906.

In line with this Court's direction, rather than try to decipher meaning from non-majority opinions (as the First District did in *Knight* with *Dean*) all the district courts of appeal that have addressed this issue (including the First District both before and after *Knight* was issued) uniformly view non-majority opinions as not binding precedent. *See, e.g., State v. A.R.S.*, 684 So. 2d 1383, 1386 n.1 (Fla. 1st DCA 1996); *Hart v. State,* 2018 Fla. App. LEXIS 7728 *13 n.2 (Fla. 1st DCA June 4, 2018) (holding that although the Supreme Court in *Morris*[2] granted relief to a defendant outside the class of offenders it has defined in *Henry,*[3] *Kelsey II,*[4] *Johnson,*[5] and *Lee,*[6] the decision in *Morris* does not control the outcome because only three justices concurred in the opinion requiring the court to follow the court's

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position taken by those members who concurred in the judgments on the narrowest grounds. *Marks v. United States,* 430 U.S. 188, 193 (1977). This manner of interpreting non-majority opinions is not without its issues and results in sometimes disparate interpretations, and although the United States Supreme Court was set to address this issue this last term, instead, the Court decided not to address the issue. *See Hughes* v. United States, 138 S. Ct. 1765 (2018). Thus, the *Marks* standard survives.

[2] *Morris v. State*, 2018 Fla. LEXIS 1046 (Fla. May 10, 2018).
[3] *Henry v. State*, 175 So. 3d 675 (Fla. 2015).
[4] *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016).
[5] *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017).
[6] *Lee v. State*, 234 So. 3d 562 (Fla. 2018).

precedents in *Henry, Kelsey II, Johnson,* and *Lee*); *Pole v. State*, 198 So. 3d 961, 964-965 (Fla. 2d DCA 2016); *Caruthers v. State*, 232 So. 3d 441 (Fla. 4th DCA 2017) (holding that the Court's decision in *Dean* was not binding because there was no four-vote majority). When viewed considering this precedent, *Knight*, not *Caruthers*, is the outlier. *Caruthers* properly applies this Court's precedent, and this is the proper means of interpreting this Court's non-majority opinions.

A district court's decision to disregard this Court's non-majority opinions is also in accord with this Court's own direction, *Puryear*, and consistent with its view of intermediate appellate plurality opinions as not binding precedent. *See, e.g., Tedder v. State*, 12 So. 3d 197, 197-198 (Fla. 2009) (Lewis, J., specially concurring) ("Consequently, the relevant reasoning—which was endorsed by a single judge—may not supply conflict jurisdiction and, furthermore, is not Florida precedent.") (citations omitted). This is addressed most often by this Court when considering whether two opinions are in conflict.

Conflict jurisdiction arises only from a lower court's decision and opinion, not merely a decision from a lower court. *See Seaboard Air Line R.R. v. Branham*, 104 So. 2d 356 (Fla. 1958). This Court has consistently held it will not accept non-majority opinions from intermediate appellate courts as a basis to establish conflict jurisdiction because these opinions do not create state law. *Kennedy v. Kennedy*, 641 So. 2d 408, 409 (Fla. 1994) (explaining that "this Court must look to [the] 'opinion'

upon which the district court's 'decision' is based to determine [the] probable existence of direct conflict," and holding that "because the [supplied analysis] exists only in [an] isolated plurality opinion, the [asserted] doctrine should not be considered the law of this state"). Thus, the principle at issue is reciprocal: neither a non-majority opinion of a district court, nor this Court, creates binding precedent.

Based on the above, *Caruthers* correctly relied on majority precedent in deciding the merits of its case, unlike the First District in *Knight*. As discussed below, approving of the First District's decision would cause uncertainty in the other district courts of appeal and throughout the State of Florida.

E. Accepting the First District's *Knight*, and its interpretation of *Dean*, would cause uncertainty in the lower courts about how to interpret this Court's non-majority opinions.

The First District veered from clearly established law when it found this Court abrogated the jury pardon doctrine in *Dean*. Rather than simply certifying a question of great public importance, as this Court mandated in *Puryear,* 810 So. 2d at 906, the First District went much farther. It explicitly held that this Court abrogated forty years of precedent based on four separate non-majority opinions and the parties' later motions. *Knight*, 2018 Fla. App. LEXIS 2440, *8-9. The First District had to piece together several opinions and motions to arrive at its holding to abrogate the jury pardon. *Knight*, 2018 Fla. App. LEXIS 2440, *8-9 (footnotes omitted). This

type of decision making by a lower court is not what the Florida Constitution, nor this Court's precedents, require.

If approved, *Knight* sets a drastically different path for how lower courts should interpret this Court's non-majority opinions, thus creating uncertainty in the lower courts. Rather than ensure reliance on clearly established doctrines like stare decisis, and that this Court does not overrule itself *sub silentio*, *Knight* invites district courts of appeal to cobble together this Court's non-majority opinions to come to a holding it considers correct. This is contrary to both the Florida Constitution and this Court's precedent. Art. V, § (3)(a), Fla.. Const.; *Santos*.

This Court's direction in *Puryear*—supported by the First District's *Hart* and other district courts of appeal—support the Florida Constitution, and these bedrock interpretative doctrines. The First District erred in finding this Court abrogated the jury pardon doctrine in *Dean* in two ways, both based in the manner it came to this conclusion, as just discussed above, and on the substantive merits as discussed below.

II. This case does not implicate the jury pardon doctrine, but even if it did, *Dean* did not abrogate the doctrine. If this Court seeks to abrogate the doctrine now, after nearly forty years, the Court should consider that the jury pardon doctrine is well established law in the State of Florida that should be upheld.

In his initial brief, Mr. Knight makes clear his requested relief does not rest on the jury pardon doctrine. Petitioner's Initial Brief at 30. Instead, it rests on this

Court's decision in *Haygood v. State*, 109 So. 3d 735 (Fla. 2013). Petitioner's Initial Brief at 30-32. *Haygood* outlines this Court's jurisprudence on the "choice of mens rea" rationale when a defendant requests a lesser included offense instruction. *Id.* Mr. Knight argues that *Haygood*, not the jury pardon doctrine, applies to his case because "the evidence and theory of defense argued by Knight's counsel placed his intent to cause death squarely in dispute." Petitioner's Initial Brief at 30-31. Thus, the jury pardon doctrine does not apply here. Yet even if this Court finds the jury pardon doctrine was implicated by Mr. Knight's requested relief, this Court has neither abrogated it, nor should it now.

The jury pardon doctrine, deriving from the broader notion of jury nullification, has deep historical roots in both the common law and the foundation of the American court system. While members of this Court have argued the jury pardon is without precedent in Florida, since at least since 1978 this Court has upheld its place in Florida's criminal justice system. *State v. Abreau*, 363 So. 2d 1063, 1064 (Fla. 1978). Later, this Court did so explicitly. *State v. Wimberly*, 498 So. 2d 929, 932 (Fla. 1986) ("The requirement that a trial judge must give a requested instruction on a necessarily lesser included offense is bottomed upon a recognition of the jury's right to exercise its pardon power.'") (citing *State v. Baker*, 456 So. 2d 419, 422 (Fla. 1984)). The jury pardon power has expanded beyond simply the State's case law.

This purported power has been reaffirmed by this Court throughout the years and was essentially codified into the Florida Rules of Criminal Procedure. *See* Fla. R. Crim. P. 3.490; *Sanders v. State*, 946 So. 2d 953, 957 (Fla. 2006) ("The Rules of Criminal Procedure have also incorporated the idea that the jury may consider lesser-included offenses … Florida Rule of Criminal Procedure 3.490 now states 'If the indictment or information charges an offense divided into degrees, the jury may find the defendant guilty of the offense charged *or any lesser degree supported by the evidence* .'") (emphasis in original). While criticism for the doctrine exists, *Haygood v. State*, 109 So. 3d 735, 749 (Fla. 2013) (Canady, J., dissenting), a reversal of this Court's precedent is unwarranted.

The jury pardon doctrine has not proved unworkable because of reliance on an *impractical* legal "fiction," *Valdes*, 3 So. 3d at 1077, because the jury pardon doctrine, is based on notions of jury nullification, which have been a part of the common law since time immemorial. A decision reversing the jury pardon doctrine would cause serious injustice to those who have relied on it and cause serious disruption in the stability of the law. *Id.* The implications are noted in Mr. Knight's initial brief. Petitioner's Initial Brief at 29 n.4 (noting the many cases that this Court would need to recede from). Finally, the factual premises underlying the decision have not changed at all, let alone so drastically as to leave the decision's central holding utterly without legal justification. *Valdes*, 3 So. 3d at 1077. In the past forty

years since this Court's decision in *Abreau*, nothing has materially changed that would warrant reversing this precedent.

The jury pardon doctrine is both well-integrated in the State of Florida's criminal justice system and has long been acknowledged and accepted by this Court. This Court should maintain this doctrine, as it has done for forty years.

CONCLUSION

If the First District's decision in *Knight* stands, the Court will be sending a message that district courts of appeal, trial courts, and practitioners, can derive meaning from multiple non-majority opinions to cobble together holdings that suit their respective positions. At issue are the interpretive principles that aid all parties in the criminal justice system in understanding this Court's precedent, and that promote the uniformity of this Court's decisions. To ensure uniformity among the district courts of appeal, this Court should quash the First District's decision in *Knight*, and approve the Fourth District's decision in *Caruthers*.

Respectfully submitted,

s/ Rocco J. Carbone, III
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to Counsel for Petitioner, Assistant Public Defender, Glen Gifford, at glen.gifford@flpd2.com, Counsel for Respondent, Assistant Attorney General, Kaitlin Weiss, at Kaitlin.Weiss@myfloridalegal.com, and Counsel for *Amicus Curiae* Florida Public Defender Association, Assistant Public Defender, Gary Lee Caldwell, at gcaldwel@pd15.state.fl.us, on this the 30th day of July, 2017.

Respectfully submitted,

s/ Rocco J. Carbone, III
ROCCO J. CARBONE, III

Certificate of Compliance

I HEREBY CERTIFY that this brief has been prepared with Times New Roman, 14-point type and complies with the font requirements of Rule 9.210.

Respectfully submitted,

s/ Rocco J. Carbone, III
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