IN THE SUPREME COURT OF FLORIDA

SCOTTIE D. ALLEN,

Appellant,

v. Case No. **SC19-1313**

STATE OF FLORIDA,

Appellee.

On Appeal from the Circuit Court of the Second Judicial Circuit in and for Wakulla County, Florida

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REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONS

RULES

CASES

OTHER AUTHORITIES

ARGUMENT

I. Reversible Error Occurred When the Court Failed To Renew the Offer of Counsel Prior to the Penalty-Phase Trial Because, as a Matter of Law, Renewing That Offer Was Required at That Stage of the Proceedings, and the Error Was Fundamental.

A. Under Article I, Section 16, of the Florida Constitution, the court was required to renew the offer of counsel at the penalty-phase trial because the penalty-phase trial was a subsequent crucial stage of the proceedings.

The State appears to acknowledge that, under this Court's precedent, Article I, Section 16, required the court to renew the offer of counsel at the penalty-phase trial. [AB 45-46]

B. This Court should not recede from its precedent requiring the renewal of an offer of counsel at each crucial stage because that would be inconsistent with any view of the approach to stare decisis outlined in *Poole v. State*, or alternatively, it would be inconsistent with a properly clarified view of that approach.

While the State claims this Court should recede from precedent, the State fails to appreciate that the precedent is not clearly erroneous, and regardless, it is fundamentally inconsistent with the doctrine of stare decisis to regularly recede from precedent based *solely* on a conclusion that it is clearly erroneous. The State argues this Court should recede from *Traylor v. State*, 596 So.2d 957 (Fla. 1992).[1] [AB 53-59] More specifically, the State essentially faults this Court for "us[ing] Article I,

[1]Presumably, the State also believes this Court should abandon Florida Rule of Criminal Procedure 3.111(d)(5). Of note, that portion of the Rule predates *Traylor*. *See Traylor*, 596 So.2d at 968 n.29.

Section 16 of the Florida Constitution, not the Sixth Amendment, to impose the requirement that trial courts renew the offer of court-appointed counsel." [AB 46, 59]

Further, the State claims that, where a defendant waives his right to counsel, renewing the offer of counsel at each subsequent crucial stage "'go[es] too far' and interfere[s] with a defendant's right of self-representation." [AB 53-59] On that note, the State posits that, "even though the Florida Constitution does not contain a conformity clause for the Sixth Amendment," the "right to self-representation under the Sixth Amendment limits the ability of this Court to impose additional protections on the right to counsel under Article I, section 16." [AB 55-56]

This Court should not recede from its precedent that establishes Article I, Section 16, requires the renewal of an offer of counsel at each crucial stage of the proceedings. In short, doing so would be inconsistent with any view of the approach to stare decisis outlined in *Poole v. State*, SC18-245, 2020 WL 3116597, at *14-15 (Fla. Jan. 3, 2020). Alternatively, this Court should clarify possible misunderstanding regarding the approach to stare decisis outlined in *Poole*, and receding from the precedent at issue here would be inconsistent with a properly clarified approach.

1. *Receding from precedent requiring the renewal of an offer of counsel at each crucial stage would be inconsistent with any view of the approach to stare decisis outlined in* Poole *because that precedent is not clearly erroneous*.

In *Poole*, this Court acknowledged precedent is presumed to be correct. "It is no small matter for one Court to conclude that a predecessor Court has clearly erred.

The later Court must approach precedent presuming that the earlier Court faithfully and competently carried out its duty." *Id.* at *14.

Further, this Court recognized that reasonable differences of opinion are not sufficient to justify receding from precedent. "A conclusion that the earlier Court erred must be based on a searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion. '[T]here is room for honest disagreement, even as we endeavor to find the correct answer.'" *Id.*

Instead, to justify receding from precedent, the precedent must be "clearly erroneous." *Id.* at *15. That is, it must "clearly conflict[]" with "a higher legal authority–whether it be a constitutional provision, a statute, or a decision of the Supreme Court." *Id.*

Applying that approach here, Article I, section 16, provides: "In all criminal prosecutions the accused . . . shall have the right . . . to be heard in person, by counsel, *or both* . . . ." Art I. § 16, Fla. Const (emphasis added). In *Traylor*, this Court elaborated on how that broad rule applied to a particular case:

> [W]e hold that a prime right embodied by the Section 16 Counsel Clause is the right to choose one's manner of representation against criminal charges. In order for this right to have meaning, it must apply at least at each crucial stage of the prosecution. . . .
>
> Once the defendant is charged–and the Section 16 rights attach–the defendant is entitled to decide at each crucial stage of the proceedings whether he or she requires the assistance of counsel. At the commencement of each such stage, an unrepresented defendant must be informed of the right to counsel . . . . Where the right to counsel has been properly waived, the State may proceed with the stage in issue; but

> the waiver applies only to the present stage and must be renewed at each subsequent crucial stage where the defendant is unrepresented.

Id. at 968; *see also* Fla. R. Crim P. 3.111(d)(5).

With that in mind, assume reasonable minds could even disagree that the application of "the right to be heard in person, by counsel, or both" to a particular case requires renewing the offer of counsel at each crucial stage of the proceedings. Even then, such a conclusion is not clearly erroneous.

More specifically, under our federal system of government, this Court has obvious authority to interpret Article I, Section 16, to accord greater protection to Florida defendants' right to counsel than the Sixth Amendment. In fact, this Court has a duty to prioritize the Florida Constitution and independently consider whether state constitutional provisions accord greater protections than similar federal constitutional provisions. Further, a conclusion that the application of "the right to be heard in person, by counsel, or both" requires renewing the offer of counsel at each crucial stage does not conflict–much less clearly conflict–with the Sixth Amendment right to self-representation.

(a) *Under our federal system of government, this Court has obvious authority to interpret Article I, Section 16, to accord greater protection to Florida defendants' right to counsel than the Sixth Amendment*.

"As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Thus, though "the Constitution begins with the principle

that sovereignty rests with the people, it does not follow that the National Government becomes the ultimate, preferred mechanism for expressing the people's will." *Alden v. Maine*, 527 U.S. 706, 759 (1999).

In other words, "States, upon ratification of the Constitution, did not consent to become mere appendages of the Federal Government." *Federal Maritime Com'n v. South Carolina State Ports Authority*, 535 U.S. 743, 751 (2002). They "entered the Union 'with their sovereignty intact.'" *Id.*

And "[s]tate sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'" *New York v. United States*, 505 U.S. 144, 181 (1992). Simply put, "a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory*, 501 U.S. at 458; *see also State v. Kelly*, 999 So.2d 1029, 1043-44 (Fla. 2008).

All that being the case, "it is elementary that States are free to provide greater protections in their criminal justice system than the Federal Constitution requires." *California v. Ramos*, 463 U.S. 992, 1013-14 (1983); *see also State v. Horowitz*, 191 So.3d 429, 438 (Fla. 2016). Stated differently, "the federal Constitution generally sets the floor, not the ceiling, with regard to the extent of personal rights and freedoms afforded by the State of Florida." *Kelly*, 999 So.2d at 1042; *see also Traylor*, 596 So.2d at 962. The bottom line: "state courts are absolutely free to

interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution." *Arizona v. Evans*, 514 U.S. 1, 8 (1995).

(b) *In fact, this Court has a duty to prioritize the Florida Constitution and independently consider whether state constitutional provisions accord greater protections than similar federal constitutional provisions*.

Unlike "their federal counterparts, state courts and constitutions have traditionally served as the prime protectors of their citizens' basic freedoms." *Traylor*, 596 So.2d at 961. Not surprisingly then, this Court is "bound under federalist principles to give primacy to our state Constitution and to give independent legal import to every phrase and clause contained herein." *Id.* at 962; *see also Kelly*, 999 So.2d at 1041, 1044.

Further, "[n]o other broad formulation of legal principles, whether state or federal, provides more protection from government overreaching or a richer environment for self-reliance and individualism than" the Florida Declaration of Rights. *Traylor*, 596 So.2d at 963; *see also In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989). As a result, "an independent analysis under the Florida Constitution is necessary." *Kelly*, 999 So.2d at 1042; *see also Horowitz*, 191 So.3d at 438.

(c) *A conclusion that the application of "the right to be heard in person, by counsel, or both" to a particular case requires renewing the offer of counsel at each crucial stage does not conflict–much less clearly conflict–with the Sixth Amendment right to self-representation*.

As an initial matter, the United States Supreme Court has concluded that the

Sixth Amendment "implies a right in the defendant to conduct his own defense." *McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984); *see also Indiana v. Edwards*, 554 U.S. 164, 170 (2008). Simply put, the "Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants the accused personally the right to make his defense." *Faretta v. California*, 422 U.S. 806, 819 (1975).

Further, a "defendant's right to self representation plainly encompasses certain specific rights to have his voice heard." *McKaskle*, 465 U.S. at 174. "The *pro se* defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at . . . trial." *Id.*

But the Sixth Amendment "right to self-representation is not absolute." *Martinez v. Court of Appeal of California, Fourth Appellate District*, 528 U.S. 152, 161 (2000); *see also McCray v. State*, 71 So.3d 848, 868 (Fla. 2011). For instance, a "trial judge may . . . terminate self-representation or appoint 'standby counsel'–even over the defendant's objection–if necessary." *Martinez*, 528 U.S. at 162; *see also Jones v. State*, 449 So. 253, 258 (Fla. 1984). And "standby counsel may participate in trial proceedings, even without the express consent of the defendant, as long as that participation does not 'seriously undermin[e]' the 'appearance before the jury' that the defendant is representing himself." *Martinez*, 528 U.S. at 162. Finally, a trial judge may refuse to allow a competent defendant to represent himself if he suffers

"from severe mental illness to the point where [he is] not competent to conduct trial proceedings." *Edwards*, 554 U.S. at 178.

Against that background, in "determining whether a defendant's *Faretta* rights have been respected, the primary focus must be on whether the defendant had a fair chance to present his case in his own way." *McKaskle*, 466 U.S. at 177, 183.

Applying those principles here, renewing the offer of counsel at each crucial stage does not–in any way–affect a defendant's "chance to present his case in his own way." In addition, the Supreme Court has made clear that it does not conflict with the Sixth Amendment right to self-representation to (1) appoint standby counsel over the defendant's objection; (2) allow limited participation by standby counsel without the defendant's express consent; and (3) refuse to allow a severely mental ill, but competent, defendant to represent himself. If that is true, it is necessarily true that simply renewing the offer of counsel at each crucial stage does not conflict with that right.

On the flip side, assume this Court concluded that simply renewing the offer of counsel at each crucial stage does conflict with the Sixth Amendment right to self-representation. In that event, what restriction or limitation could ever be placed on that right in Florida?

2. ***Alternatively, this Court should clarify possible misunderstanding regarding the approach to stare decisis outlined in* Poole*, and receding from precedent requiring the renewal of an offer of counsel at each crucial stage would be inconsistent with a properly clarified approach.***

This Court's precedent requiring the renewal of an offer of counsel at each crucial stage of the proceedings is not clearly erroneous. *See* discussion *infra* pp. 4-8. But assume otherwise. In that event, this Court should clarify possible misunderstanding regarding the approach to stare decisis outlined in *Poole*. In short, viewed in isolation, that approach would represent a radical departure from this Court's historical approach, as well as the approaches of the United States Supreme Court and other state high courts. But this Court does not overrule itself silently, and thus, this Court's historical approach to stare decisis remains operative.

With that in mind, receding from precedent requiring the renewal of an offer of counsel at each crucial stage would be inconsistent with a properly clarified approach to stare decisis. In short, even assuming that the precedent is clearly erroneous, it is not unworkable, circumstances have not changed, and atypical reliance interests are not present. Further, regularly receding from precedent in those circumstances–as this Court has done recently–is fundamentally inconsistent with the doctrine of stare decisis.

(a) *This Court should clarify any misunderstanding regarding the approach to stare decisis outlined in* Poole *because (1) viewed in isolation, it would represent a radical departure from this Court's historical approach, as well as the approaches of the Supreme Court and other state high courts; (2) but this Court does not overrule itself silently; and (3) thus, this Court's historical approach remains operative.*

In *Poole*, this Court observed that "'[p]erpetuating an error in legal thinking under the guise of stare decisis serves *no one* well and *only* undermines the integrity

and credibility of the court.'" 2020 WL 3116597, at *14 (quoting *Shephard v. State*, 259 So.3d 701, 707 (Fla. 2018)) (emphasis added).[2] This Court also stated: "we are wary of any invocation of multi-factor *stare decisis* tests or frameworks like the one set out in" *North Florida Women's Health & Counseling Services, Inc. v. State*, 866 So.2d 612 (Fla. 2003). *Poole*, 2020 WL 3116597, at *15.

> They are malleable and do not lend themselves to objective, consistent, and predictable application. They can distract us from the merits of the legal questions and encourage us to think more like a legislature than a court. And they can lead us to decide cases on the basis of guesses about the consequences of our decisions, which in turn can make those decisions less principled. Multi-factor tests or frameworks like the one in *North Florida Women's Health* often serve as little more than a toolbox of excuses to justify a court's unwillingness to examine a precedent's correctness on the merits.

Id.

Against that backdrop, this Court declared: "once we have chosen to reassess a precedent and have come to the conclusion that it is clearly erroneous, the proper question becomes whether there is a valid reason *why not* to recede from that precedent." *Id.* Finally, this Court noted that the "critical consideration ordinarily will be reliance." *Id.*

All that being the case, viewed in isolation, *Poole* could be read to establish a simple proposition: if precedent is clearly erroneous, this Court will recede from it

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[2]This proposition was originally offered by Justice Ehrlich in a concurrence in part and dissent in part. *Smith v. Department of Insurance*, 507 So.2d 1080, 1096 (Fla. 1987) (Ehrlich, J., concurring in part and dissenting in part). Justice Ehrlich offered no citation in support of his claim.

unless reliance interests dictate otherwise. Such a conclusion would be based on the following chain of logic. Receding from erroneous precedent preserves the integrity of the judicial process. As a result, when deciding whether to recede from precedent, this Court will focus almost exclusively on whether the precedent at issue is clearly erroneous. If it is, *not* receding from it requires some special justification. And in determining whether any such special justification exists, the main–if not sole–consideration is reliance interests.

But such an approach to stare decisis would represent a radical departure from this Court's historical approach, as well as the approaches of the Supreme Court and other state high courts. Further, this Court does not overrule itself silently, and thus, this Court's historical approach to stare decisis remains operative.

(1) Viewed in isolation, the approach to stare decisis outlined in *Poole* would represent a radical departure from this Court's historical approach to stare decisis.

First, this Court has repeatedly recognized that *not* receding from precedent promotes stability in the law and preserves the integrity of the judicial process. Over 150 years ago, this Court declared: "'It is an established rule to abide by *former precedents*, *stare decisis*, where the same points come again in litigation, . . . to keep the scales of justice even and steady, and not liable to waiver with every new judge's opinion.'" *Tyson v. Mattair*, 8 Fla. 107, 124 (Fla. 1858) (quoting W. Blackstone, Commentaries on the Laws of England 69 (1765)); *see also Old Plantation Corp. v.*

Maule Industries, Inc., 68 So.2d 180, 183 (Fla. 1953).

More recently, this Court has affirmed that "the doctrine of stare decisis . . . 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process'" *Muhammad v. State*, 782 So.2d 343, 365 n.16 (Fla. 2001); *see also Puryear v. State*, 810 So.2d 901, 904-05 (Fla. 2002).

Second, this Court has repeatedly acknowledged that there is a strong presumption *in favor of* abiding by precedent. *See, e.g.*, *Robertson v. State*, 143 So.3d 907, 910 (Fla. 2014); *Brown v. Nagelhout*, 84 So.3d 304, 309 (Fla. 2012).

Third, this Court has repeatedly recognized that receding from even erroneous precedent requires some special justification. For instance, over 60 years ago, this Court emphasized that abiding by precedent "is considered appropriate in most cases in order to produce consistency in the application of legal principles unless for some compelling reason it becomes appropriate to recede therefrom." *Forman v. Florida Land Holding Corp.*, 102 So.2d 596, 598 (Fla. 1958); *see also State v. Johnson*, 107 Fla. 47, 50 (Fla. 1932). More recently, this Court has affirmed that it does not recede from precedent "'based on a conclusion that a precedent is merely erroneous.'" *Roughton v. State*, 185 So.3d 1207, 1211 (Fla. 2016); *see also Telli v. Broward County*, 94 So.3d 604, 512 (Fla. 2012).

Fourth, this Court has repeatedly indicated that, in determining whether a

special justification for receding from precedent exists, relevant considerations include, but are *not* limited to, reliance interests. For instance, this Court has stated that "stare decisis bends where there has been a significant change in circumstances since the adoption of the legal rule." *Puryear*, 810 So.2d at 905; *State v. J.P.*, 907 So.2d. 1101, 1109 (Fla. 2004). This Court has also observed that receding from precedent may be appropriate "when an established rule of law has proven unacceptable or unworkable in practice." *Allstate Indem. Co. v. Ruiz*, 899 So.2d 1121, 1131 (Fla. 2005).

More recently, on multiple occasions, this Court has explained:

> Stare decisis does not yield based on a conclusion that a precedent is merely erroneous. The gravity of the error and *the impact of departing from precedent must be carefully assessed*. The United States Supreme Court has succinctly summarized the salient relevant factors:
>
> "In deciding whether to depart from a prior decision, one relevant consideration is whether the decision is 'unsound in principle.' Another is whether it is 'unworkable in practice.' And, of course, reliance interests are of particular relevance because '*[a]dherence to precedent promotes stability, predictability, and respect for judicial authority*.'"

Nagelhout, 84 So.3d at 309 (emphasis added) (internal citations omitted); *see also Roughton*, 185 So.3d at 1211 (Fla. 2016).

(2) Viewed in isolation, the approach to stare decisis outlined in *Poole* would represent a radical departure from the United States Supreme Court's approach to stare decisis.

First, the Supreme Court has repeatedly recognized that *not* receding from precedent promotes stability in the law and preserves the integrity of the judicial

process. Stare decisis "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986). More recently, the Court has explained:

> Overruling precedent is never a small matter. *Stare decisis*–in English, the idea that today's Court should stand by yesterday's decisions–is "a foundation stone of the rule of law." Application of that doctrine, although "not an inexorable command," is the "preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." It also reduces incentives for challenging settled legal precedents, saving parties and courts the expense of endless relitigation.

Kimble v. Marvel Entertainment, LLC, 135 S.Ct. 2401, 2409 (2015) (internal citations omitted); *see also Gamble v. United States*, 139 S.C.t 1960, 1969 (2019).

Second, the Supreme Court has repeatedly acknowledged that "'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'" *Knick v. Township of Scott, Pennsylvania*, 139 S.Ct. 1262, 2177 (2019); *see also State Oil Co. V. Khan*, 522 U.S. 3, 20 (1997). In other words, "adherence to precedent is the norm." *Ramos v. Louisiana*, 140 S.Ct. 1390, 1413 (2020) (Kavanaugh, J., concurring in part).

Third, the Supreme Court has repeatedly recognized that receding from even erroneous precedent requires some special justification. For instance, the Court

recently declared:

> Respecting *stare decisis* means sticking to some wrong decisions. . . . Indeed, *stare decisis* has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up. Accordingly, an argument that we got something wrong–even a good argument to that effect–cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then. To reverse course, we require as well what we have termed a "special justification"–over and above the belief "that the precedent was wrongly decided."

Kimble, 135 S.Ct. at 2409; *see also Allen v. Cooper*, 140 S.Ct. 994, 1003 (2020).

Decades ago, Justice Scalia sounded a similar note:

> The doctrine of stare decisis protects the legitimate expectations of those who live under the law, and, as Alexander Hamilton observed, is one of the means by which exercise of "an arbitrary discretion in courts" is restrained. The Federalist No. 78, p. 471 (C. Rossiter ed. 1961). Who ignores it must give reasons, and reasons that go beyond mere demonstration that the overruled opinion was wrong (otherwise the doctrine would be no doctrine at all).

Hubbard v. United States, 514 U.S. 695, 716 (1995) (Scalia, J., concurring in part and concurring in the judgment).

Fourth, the Supreme Court has repeatedly indicated that, in determining whether a special justification for receding from precedent exists, relevant considerations include, but are *not* limited to, reliance interests. For instance, the Court has explained:

> Our cases identify factors that should be taken into account in deciding whether to overrule a past decision. Five of those are important here: the quality of [the precedent's] reasoning, the

> workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision.

Janus v. State, County, and Municipal Employees, 138 S.Ct. 2448, 2478-79 (2018); *see also Ramos*, 140 S.Ct. at 1414-16 (Kavanaugh, J., concurring in part).

(3) Viewed in isolation, the approach to stare decisis outlined in *Poole* would represent a radical departure from the approach to stare decisis taken by other state high courts.

First, other state high courts have repeatedly recognized that *not* receding from precedent promotes stability in the law and preserves the integrity of the judicial process. *See, e.g.*, *Commonwealth v. Le*, 208 A.3d 960, 976 n.17 (Pa. 2019); *McShane v. Stirling Ranch Property Owners Assoc, Inc.*, 393 P.3d 978, 984 (Colo. 2017); *People v. Peque*, 3 N.E.3d 617, 635 (N.Y. 2013).

Second, other state high courts have repeatedly acknowledged that a decision to recede from precedent should be "undertaken with caution" and not made "lightly." *See, e.g.*, *People v. Lopez*, 453 P.3d 150, 168 (Cal. 2019); *State v. Hambright*, 447 P.3d 972, 978 (Kan. 2019); *Haynie v. State*, 664 N.W.2d 129, 136 (Mich. 2003).

Third, other state high courts have repeatedly recognized that receding from even erroneous precedent requires some special justification. *See, e.g.*, *People v. Espinoza*, 43 N.E.3d 993, 1002 (Ill. 2015); *State v. Witt*, 126 A.3d 850, 868 (N.J. 2015); *State v. Hickman*, 68 P.3d 418, 426 (Ariz. 2003).

Fourth, other state high courts have repeatedly indicated that, in determining

whether a special justification for receding from precedent exists, relevant considerations include, but are *not* limited to, reliance interests. *See, e.g.*, *SRM Group, Inc. v. Travelers Property Casualty Co. Of America*, 841 S.E.2d 729, 734 (Ga. 2020); *Groch v. Gen. Motors Corp*, 883 N.E.2d 377, 401 (Ohio 2008); *Johnson Controls, Inc. v. Employers Ins. Of Wasau*, 665 N.W.2d 257, 287 (Wis. 2003).

(4) But this Court does not overrule itself silently, and thus, this Court's historical approach to stare decisis remains operative.

As an initial matter, "'this Court does not intentionally overrule itself sub silentio.'" *Stevens v. State*, 226 So.3d 787, 792 (Fla. 2017); *see also Puryear*, 810 So.2d at 905. For instance, in *Roberts v. Brown*, 43 So.3d 673, 683 (Fla. 2010), this Court stressed: "Had we intended to overrule our prior [decision], we would have done so in a more definite and express manner . . . ."

With that in mind, in *Poole*, 2020 WL 3116597, at *15, this Court indicated it was "wary" of *North Florida Women's Health*, 866 So.2d at 612. But this Court never definitely and expressly receded from that earlier decision.

Moreover, assume otherwise. Even then, this Court's historical approach to stare decisis is founded on decades, if not centuries, of other decisions. *See* discussion *supra* pp. 11-13. And in *Poole*, this Court barely mentioned, much less definitely and expressly receded from, any of those decisions.

Accordingly, this Court's historical approach to stare decisis remains operative. In short, assume a precedent is clearly erroneous. Even then, there remains a

recognition that *not* receding from precedent promotes stability in the law and preserves the integrity of the judicial process. Thus, a strong presumption *in favor of* abiding by precedent exists. By the same token, receding from precedent requires some special justification. And in determining whether such a justification exists, relevant considerations include, but are *not* limited to, reliance interests.

(b) *Receding from precedent here would be inconsistent with a properly clarified approach to stare decisis because (1) even assuming that the precedent is clearly erroneous, it is not unworkable, circumstances have not changed, and atypical reliance interests are not present; and (2) regularly receding from precedent in those circumstances is fundamentally inconsistent with the doctrine of stare decisis.*

Continue to assume this Court's precedent requiring the renewal of an offer of counsel at each crucial stage of the proceedings is clearly erroneous. Even then, there has been no significant change in circumstances since that rule was adopted almost 30 years ago. The rule has not proven unacceptable or unworkable in practice. And no atypical reliance interests weigh in favor of receding from that rule.[3]

Further, in essentially similar circumstances, this Court has recently receded from precedent with regularity. *See Phillips*, 2020 WL 2563476, at *8-9; *Bush v. State*, SC18-227, 2020 WL 2479140, at *1, 14-15 (Fla. May 14, 2020); *Pedroza v. State*, 291 So.3d 541, 543,548-49 (Fla. 2020); *Poole*, 2020 WL 3116597, at *9-15;

[3]In that context, this Court has recently singled out society's interest in the finality of judicial proceedings. *See Phillips v. State*, SC18-1149, 2020 WL 2563476, at *9 (Fla. May 21, 2020); *Poole*, 2020 WL 3116597, at *15. But that reliance interest is *typical*; it is present in every case.

Knight v. State, 286 So.3d 147, 151-54 (Fla. 2019); *Lieupo v. Simon's Trucking, Inc.*, 286 So.3d 143, 144-47 (Fla. 2019); *Hooks v. State*, 286 So.3d 163, 164-65, 169 (Fla. 2019); *Rogers v. State*, 285 So.3d 872, 885-86, 890 (Fla. 2019).

With all that in mind, it is fundamentally inconsistent with the doctrine of stare decisis to again recede where the precedent at issue is (assumed to be) clearly erroneous, but it is not unworkable, circumstances have not changed, and atypical reliance interests do not weigh in favor of receding. First, as previously mentioned, stare decisis "contributes to the . . . perceived integrity of the judicial process," *Kimble*, 135 S.Ct. at 2409. But regularly receding from precedent based *solely* on a conclusion that it is clearly erroneous undermines those interests. In short, it weakens society's presumption "that bedrock principles are founded in the law rather than in the proclivities of individuals," *Vasquez*, 474 U.S. at 265-66.

Second, as previously mentioned, stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, [and] fosters reliance on judicial decisions," *Kimble*, 135 S.Ct. at 2409. But regularly receding from precedent based *solely* on a conclusion that it is clearly erroneous undermines those interests. In fact, it provides "incentives for challenging settled legal precedents." *Kimble* 135 S.Ct. at 2409. A case in point: here, the State asks this Court to recede from at least three distinct lines of long-settled precedent, [AB 53-59, 74-79, 87-88].

Understandably, abiding by clearly erroneous precedent may undermine–to an

extent–the integrity of the judicial process. But it undermines the integrity of that process far more to regularly recede from precedent based *solely* on a conclusion that it is clearly erroneous. Moreover, determinations as to whether precedent is unworkable and circumstances have changed may be "malleable" and require the exercise of judgment. But so does a determination as to whether precedent is clearly erroneous. Finally, the former determinations may require courts to consider, in addition to the merits of a legal question, the consequences of deciding that question. But, if courts do not account for a decision's effect on the perceived integrity of the judicial process and the stability of the law, who will?[4]

C. The court's failure to renew the offer of counsel prior to the penalty-phase trial amounted to fundamental error.

While the State disagrees, it overlooks that (1) a Florida defendant has the right to be heard "both" himself at one stage and by counsel at another stage; (2) the court's post hoc efforts here did not "cure" its earlier failure to renew the offer of counsel; and (3) merely acquiescing to fundamental error does not equate to inviting it. As a general matter, the State cites *Murray v. State*, 265 So.3d 723 (Fla. 2d DCA

[4] At an absolute minimum, assume this Court were to ultimately decide to recede from its precedent requiring the renewal of an offer of counsel at each crucial stage. In that event, Florida Rule of Criminal Procedure 3.111(d)(5) would still contain that basic requirement. Thus, rather than reconsidering the precedent at issue in the present case, this Court should refer the issue to the Criminal Procedure Rules Committee, and in the meantime, continue to adhere to that precedent. *Cf. Davis v. State*, 286 So.3d 170, 171, 175 (Fla. 2019).

2019), and claims Allen "does not argue that the trial court committed *per se* reversible error." [AB 45]

More particularly, the State essentially contends any error related to the court's failure to renew the offer of counsel prior to the penalty-phase trial was not fundamental because it did not vitiate the basic validity of that trial. [AB 51] In that context, the State emphasizes that (1) during the pre-trial stage of the proceedings, the court conducted two extensive colloquies and accepted Allen's waiver of his right to counsel; (2) at the guilt-phase-trial stage, the court renewed the offer of counsel; (3) *following* the penalty-phase-trial stage, the court questioned Allen, and later conducted another extensive colloquy and accepted his waiver of his right to counsel; and (4) during the court's questioning and later colloquy *following* the penalty-phase-trial stage, Allen maintained he had not wanted to be represented by counsel during that stage. [AB 48-51] Ultimately, the State attempts to analogize those circumstances to the circumstances present in *State v. Roberts*, 677 So.2d 264 (Fla. 1996), and *Muehleman v. State*, 3 So.3d 1149 (Fla. 2009).

Alternatively, the State basically argues that, if the court's failure to renew the offer of counsel amounted to fundamental error, Allen "waived" that fundamental error. [AB 47-48] More specifically, the State cites *Universal Ins. Co. of North America v. Warfel*, 82 So.3d 47, 65 (Fla. 2012), and appears to assert Allen invited any fundamental error. [AB 47-48]

First, any dispute over whether the court's error in failing to renew the offer of counsel should be labeled "fundamental" or "per se" is beside the point. For one, in support of his argument that the error was fundamental, Allen previously highlighted that, in *Murray* and multiple other decisions, Florida district courts "have repeatedly held that a failure to renew the offer of counsel prior to the sentencing stage of proceedings amounts to *per se* reversible error." *See* Initial Brief p.33. And regardless, "[f]undamental error is not subject to harmless error review." *Ramroop v. State*, 214 So.3d 657, 665 (Fla. 2017). Thus, regardless of label, the basic point is the same: the error at issue should not be subjected to harmless error review.

Second, even if a Florida defendant chooses to be heard in person at one crucial stage of the proceedings, he has the right to choose to be heard by counsel at another crucial stage. Article I, section 16, provides that a defendant has "the right . . . to be heard in person, by counsel, *or both*." Art I. § 16, Fla. Const. (emphasis added). Thus, Article I, Section 16, recognizes that circumstances change over the course of a criminal proceeding, and thus, a defendant's choice as to the manner in which he is heard can also change. In short, he has the right to be heard "both" himself at one stage and by counsel at another stage.

Not surprisingly then, a "defendant is entitled to decide at each crucial stage of the proceedings whether he or she requires the assistance of counsel." *Traylor*, 596 So.2d at 968. To that end, if "a waiver is accepted at any stage of the

proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent" crucial stage. Fla. R. Crim. P. 3.111(d)(5); *see also Traylor*, 596 So.2d at 968.

Moreover, circumstances do, in fact, change significantly from one crucial stage of the proceedings to another. As an initial matter, "a 'crucial stage' is any stage that may significantly affect the outcome of the proceedings." *Traylor*, 596 So.2d at 968. More to the point, each crucial stage "has a separate function and consequence." *Travis v. State*, 969 So.2d 532, 533 (Fla. 1st DCA 2007); *see also Sammons v. State*, 265 So.3d 720, 722 (Fla. 2d DCA 2019).

Third, with that in mind, the court here did conduct two extensive colloquies and accept Allen's waiver of his right to counsel at the pre-trial stage of the proceedings, and the court renewed the offer of counsel at the guilt-phase-trial stage. [R80-81, 859-78, 936-43, 1250] Even so, the court's failure to renew the offer of counsel prior to the penalty-phase-trial stage vitiated the basic validity *of the penalty-phase trial*.

More specifically, when the proceedings advanced from the guilt-phase-trial stage to the penalty-phase-trial stage, the circumstances changed significantly. And though Allen had waived his right to counsel at earlier stages, he was still "entitled to decide at [that] crucial stage of the proceedings whether he . . . require[d] the assistance of counsel." *Traylor*, 596 So.2d at 968. But the court failed to renew the

offer of counsel.

Undoubtedly, the impact of the court's error on the penalty-phase trial is difficult to measure. However, the right to counsel is "fundamental," *Luis v. United States*, 136 S.Ct. 1083, 1089 (2016); it is "indispensable to the fair administration of our adversary system of criminal justice," *Brewer v. Williams*, 430 U.S. 387, 398 (1977). With that in mind, the court's failure to renew the offer of counsel "infect[ed] the entire [penalty-phase] trial process," *Brecht v. Abrahamson*, 507 U.S. 619, 630 (1993). Simply put, it went to the foundation of the case and was equivalent to a denial of due process. *See* Initial Brief pp. 32-33.

That conclusion is reinforced by multiple Florida appellate decisions. In short, district courts of appeal have repeatedly concluded reversible error occurred where the trial court conducted at least one extensive colloquy and accepted the defendant's waiver of his right to counsel at a crucial stage of the proceedings, but failed to renew the offer of counsel at a subsequent crucial stage. *See, e.g.*, *Sammons*, 265 So.3d at 721-22; *Murray*, 265 So.3d at 723-24; *Birlkey v. State*, 220 So.3d 431, 432-36 (Fla. 4th DCA 2017); *Howard v. State*, 147 So.3d 1040, 1041-44 (Fla. 1st DCA 2014).

Allen previously highlighted those persuasive decisions. *See* Initial Brief p. 33. The State makes no effort to distinguish them.

Fourth, *following* the penalty-phase-trial stage, the court did question Allen and later conduct another extensive colloquy, and Allen did maintain he had not

wanted to be represented by counsel during that stage. [R891-93, 900-08; T403-04] But those post hoc efforts did not "cure" the court's earlier failure to renew the offer of counsel prior to the penalty-phase trial.

As an initial matter, both the court's questioning and later colloquy were preceded by remarks that made clear Allen's opportunity to be heard by counsel at the penalty-trial-phase stage had already come and gone. Prior to the questioning, the State asked "that Mr. Allen reaffirm that he did not want . . . counsel at the penalty phase," and the court advised Allen: "I just need for you to affirmatively respond that during the course of this trial, you have not wanted counsel to represent you." [T403] Similarly, prior to the later colloquy, the State suggested the court "make the record clear that Mr. Allen wanted to represent himself and understood the consequences of it at the time, which he's reaffirmed . . . it never hurts to tie up every loose end." [R898]

Further, the later colloquy was essentially focused on whether Allen wanted to waive his right to counsel at the upcoming *Spencer* hearing. [R900-08] And again, even if a Florida defendant chooses to be heard in person at one crucial stage of the proceedings, he has the right to choose to be heard by counsel at another crucial stage. With that in mind, though Allen exercised his right "to decide at [the *Spencer*-hearing] stage of the proceedings whether he . . . require[d] the assistance of counsel," *Traylor*, 596 So.2d at 968, he never had the opportunity to exercise such a right at the

earlier penalty-phase-trial stage.

Multiple Florida district court decisions reinforce that the court's post hoc efforts did not "cure" its earlier failure to renew the offer of counsel prior to the penalty-phase trial. First, in *Birlkey*, 220 So.3d at 432-33, 435, the trial court found the defendant in violation of probation and failed to renew the offer of counsel before sentencing. But, immediately after being sentenced, the defendant "maintained his desire to proceed *pro se* at his trial on the underlying charges." *Id.* at 433, 436.

Even so, on appeal, the district court basically rejected an argument that those post hoc statements "cured" the trial court's earlier failure to renew the offer of counsel prior to sentencing. *Id* at 436. It reasoned that, though it was "highly probable" the defendant would have maintained he did not want to be represented by counsel if the court had renewed the offer of counsel, "without engaging in speculation, it is not entirely certain." *Id.*

Similarly, in *Howard*, 147 So.3d at 1041-42, the defendant was found guilty at trial, and the court failed to renew the offer of counsel before "Phase I" of sentencing. But, at subsequent sentencing hearings, the court renewed the offer of counsel and even conducted an extensive colloquy, and the defendant maintained he did not want to be represented by counsel. *Id.* at 1042. Even so, on appeal, the district court essentially concluded the trial court's post hoc efforts "after the sentencing phase began came . . . too late to cure the earlier omission." *Id.* at 1043.

Fifth, the present case is distinct from *Roberts*. There, during an aggravated assault trial, the defendant "requested permission to proceed *pro se*." 677 So.2d at 264-65. After conducting an extensive colloquy and accepting the defendant's waiver of his right to counsel, the court "declared a mistrial" to provide the defendant "with the opportunity to prepare his case." *Id.* at 265. The court later conducted a second colloquy and reappointed counsel before subsequently conducting a third colloquy and again accepting the defendant's waiver of his right to counsel. *Id.* Prior to trial, the court then failed to renew the offer of counsel. *Id.*

On discretionary review, this Court concluded reversal "would produce an absurd result." *Id.* In support of that conclusion, this Court highlighted the general principle that "the exercise of a defendant's right to self-representation 'is not a license to . . . frustrate orderly proceedings, and a defendant may not manipulate the proceedings by will-nilly leaping back and forth between the choices.'" *Id.* at 265-66. Applying that principle, this Court elaborated:

> Roberts had already caused a mistrial by deciding to represent himself during his first trial. In addition, Roberts had been given three *Faretta* hearings, and he opted to represent himself once again, even after the public defender's office had been reappointed. Had the trial court provided Roberts with counsel again at the beginning of the second trial, another postponement would have occurred.

Id.

Unlike there, here, Allen never frustrated or manipulated the proceedings. Indeed, the court specifically found that it "did not have a single issue with

Defendant's conduct during the entirety of the proceedings." [R819] More specifically, unlike the defendant in *Roberts*, Allen neither "caused a mistrial by deciding to represent himself" nor "leap[t] back and forth between the choices." As a result, though reversal in *Roberts* may have produced an absurd result, that is not true in the present case.

Sixth, *Muehleman* is simply inapplicable. There, "the trial court advised [the defendant] of his right to appointed counsel at every critical stage in the proceedings." 3 So.3d at 1157. On appeal, the defendant's basic claim was the court failed to conduct an extensive colloquy before accepting his waiver of his right to counsel at the pretrial stage. *Id.* at 1156, 1160-61.

In contrast, the court here failed to advise Allen of his right to counsel at every crucial stage of the proceedings. Further, Allen's basic claim focuses not on any colloquy during the pretrial stage, but rather the court's failure to later renew the offer of counsel prior to the penalty-phase trial.

Finally, Allen did not invite the fundamental error at issue. "Fundamental error is waived under the invited error doctrine because 'a party may not make or invite error at trial and then take advantage of the error on appeal.'" *Warfel*, 82 So.3d at 65. But a fundamental error is not invited where a party "'merely acquiesced to" it. *Lowe v. State*, 259 So.3d 23, 50 (Fla. 2018); *see also State v. Spencer*, 216 So.3d 481, 486 (Fla. 2017).

Instead, for a fundamental error to be invited, a party must have "'requested'" it, or at least have been aware of it and "'affirmatively agreed'" to it. *Lowe*, 259 So.3d at 50; *see also Warfel*, 82 So.3d at 65. For instance, in *Ray v. State*, 403 So.2d 956, 961 (Fla. 1981), this Court observed: "If Ray's counsel had requested the improper instruction, or had affirmatively relied on that charge as evidenced by argument to the jury or other affirmative action, we could uphold a finding of waiver . . . ."

Applying those principles here, Allen did not invite the court's failure to renew the offer of counsel prior to the penalty-phase trial. He certainly never requested the court not renew that offer. And there is no indication that, at the beginning of the penalty-phase trial, Allen was aware of the court's duty to renew that offer, but affirmatively agreed to the court not fulfilling its duty. At worst, when he later maintained that he had not wanted to be represented by counsel during the penalty-phase-trial stage, Allen merely acquiesced to the court's earlier failure.

II. Reversible Error Occurred When the Court Allowed the State To Introduce Dr. Prichard's Testimony Because, By Introducing That Testimony, The State Used Allen's Compelled Statements to Prichard Against Allen, and the Error Was Fundamental.

A. By introducing Prichard's testimony, the State used Allen's compelled statements to Prichard against Allen.

The State does not appear to dispute that, by introducing Prichard's testimony, the State used Allen's compelled statements to Prichard against Allen. [AB 73, 80]

B. The introduction of Prichard's testimony amounted to fundamental error.

The State essentially argues that Prichard's testimony was not "necessary to obtain the death sentence." [AB 80-85] But, without the assistance of that testimony, the court's decision to sentence Allen to death could not have been obtained. *See* Initial Brief pp. 45-46.

C. This Court should not consider the State's argument that this Court should recede from "any decisions that interfere with a defendant's right to self-representation," or alternatively, this Court should not recede from the precedent to which the State may be referring.

While the State claims this Court should recede from a largely indeterminate class of cases, the State fails to appreciate that (1) its argument concerns independent questions of law; (2) regardless, the precedent to which it may be referring is not clearly erroneous; and (3) even assuming otherwise, it is fundamentally inconsistent with the doctrine of stare decisis to regularly recede from precedent based *solely* on a conclusion that it is clearly erroneous. The State argues this Court should recede from "any decisions that interfere with a defendant's right to self-representation." [AB 74-79] Apparently, those decisions at least include precedent requiring a knowing, voluntary, and intelligent waiver of the right to present mitigating evidence, as well as precedent allowing a trial court to appoint independent special counsel to present such evidence where a defendant refuses to do so. [AB 75-79] In support of its argument, the State appears to claim that such procedures interfere with a

defendant's Sixth Amendment right to self-representation. [AB 75-79]

This Court should not consider the State's argument. Alternatively, this Court should not recede from the precedent to which the State may be referring.

1. *This Court should not consider the State's argument that this Court should recede from "any decisions that interfere with a defendant's right to self-representation" because that argument concerns independent questions of law, and the State did not file a cross appeal.*

As an initial matter, the "tipsy coachman" rule is not applicable to the State's argument. Under that rule, "if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record." *Dade County School Board v. Radio Station WQBA*, 731 So.2d 638, 644-45 (Fla. 1999). Applying that rule here, the result at issue is the court having allowed the State to use Allen's compelled statements to Prichard against Allen. But assume this Court receded from its precedent requiring a waiver of the right to present mitigating evidence and allowing the appointment of independent special counsel to present such evidence. That would *not* be a "basis which would support" the court having allowed the State to use Allen's compelled statements.

More generally, the State's argument that this Court should recede from "any decisions that interfere with a defendant's right to self-representation" exceeds the scope of this Court's review. In criminal appeals, the "court shall review all rulings and orders appearing in the record *necessary to pass upon the grounds of an appeal*." Fla. R. App. P. 9.140(i) (emphasis added). With that in mind, "[f]ailure to file a cross

appeal from an *independent ruling on a question of law* ordinarily prohibits any further argument concerning the correctness of the ruling." Philip J. Padovano, *Florida Appellate Practice* § 27:33 (2019) (emphasis added); *see also State v. Rogers*, 565 So.2d 724, 725 (4th DCA 1990). In short, "an appellee . . . is not authorized to use its status as such to argue positions as an aggrieved party in derogation of the appealed order." *Premier Industries v. Mead*, 595 So.2d 122, 124 (Fla. 1st DCA 1992).

Applying those principles here, a "ground" of the present appeal concerns the court having allowed the State to use Allen's compelled statements to Prichard against Allen. In a presumed attempt to rebut that ground, the State appears to focus on the court's "rulings and orders" related to securing a waiver of Allen's right to present mitigating evidence and appointing independent special counsel to present such evidence. But reviewing those rulings and orders is *not* "necessary to pass upon" the ground of appeal concerning the State's use of Allen's compelled statements. Again, if this Court receded from its precedent requiring a waiver and allowing the appointment of special counsel, that would not legitimize the State's use of Allen's compelled statements.

Instead, the court's rulings and orders related to securing a waiver and appointing special counsel are "independent rulings on questions of law." And the State did not file a cross appeal. Thus, as the appellee, the State is not allowed to

"argue positions as an aggrieved party in derogation of" those independent rulings.

2. ***Alternatively, this Court should not recede from the precedent to which the State may be referring because that would be inconsistent with any view of the approach to stare decisis outlined in* Poole*, or even assuming otherwise, it would be inconsistent with a properly clarified view of that approach.***

(a) *Receding from the precedent to which the State may be referring would be inconsistent with any view of the approach to stare decisis outlined in* Poole *because that precedent is not clearly erroneous*.

To justify receding from precedent, the precedent must "clearly conflict[]" with "a higher legal authority–whether it be a constitutional provision, a statute, or a decision of the Supreme Court." *Poole*, 2020 WL 3116597, at *14; *see also* discussion *supra* pp. 2-3.

Applying that approach here, this Court has held that "a defendant may waive the presentation of mitigation only when the waiver is made knowingly, voluntarily, and intelligently." *Brooks v. State*, 175 So.3d 204, 228 (Fla. 2015). This Court has also held that "if the PSI and the accompanying records alert the trial court to the probability of significant mitigation, the trial court has the discretion . . . to appoint an independent, special counsel, who can call witnesses to present mitigation evidence." *Marquardt v. State*, 156 So.3d 464, 491 (Fla. 2015).

With that in mind, assume reasonable minds could even disagree as to the appropriateness of those conclusions. Even then, they are not clearly erroneous. In particular, those conclusions do not conflict–much less clearly conflict–with the Sixth

Amendment right to self-representation.

In short, that right is not absolute, and in determining whether it has been violated, "the primary focus must be on whether the defendant had a fair chance to present his case in his own way." *McKaskle*, 466 U.S. at 177, 183; *see also* discussion *supra* pp. 7-8. Applying that principle here, it does not affect a defendant's "chance to present his case in his own way" to require a knowing, voluntary, and intelligent waiver of the right to present mitigating evidence and to allow the appointment of independent special counsel to present such evidence where a defendant refuses to do so. *See, e.g.*, *Barnes v. Sec'y, Dep't of Corr.*, 888 F.3d 1148, 1159-60 (11th Cir. 2018).

(b) *Alternatively, this Court should clarify possible misunderstanding regarding the approach to stare decisis outlined in* Poole*, and receding from the precedent to which the State may be referring would be inconsistent with a properly clarified approach*.

In short, viewed in isolation, the approach to stare decisis outlined in *Poole* would represent a radical departure from this Court's historical approach, as well as the approaches of the United States Supreme Court and other state high courts. *See* discussion *supra* pp. 9-17. But this Court does not overrule itself silently, and thus, this Court's historical approach to stare decisis remains operative. *See* discussion *supra* pp. 17-18.

With that in mind, receding from the precedent to which the State may be referring would be inconsistent with a properly clarified approach to stare decisis.

Even assuming that the precedent is clearly erroneous, it is not unworkable, circumstances have not changed, and atypical reliance interests are not present. In addition, regularly receding from precedent in those circumstances–as this Court has done recently–is fundamentally inconsistent with the doctrine of stare decisis. *See* discussion *supra* pp. 18-20.

III. In Response to the State's Additional Arguments, Allen Relies on the Arguments Raised in His Initial Brief.

CONCLUSION

Multiple errors demand reversal here. First, the court failed to renew the offer of counsel prior to the penalty-phase trial. Second, the court instructed the jury that the court's job was to determine the sentence, and the State later indicated it would ask the jury to return a "recommendation" of death.

Third, the court allowed the State to introduce Dr. Prichard's testimony at the *Spencer* hearing. Finally, the court failed to instruct the jury to determine beyond a reasonable doubt whether the aggravating factors were sufficient to justify the death penalty and whether those factors outweighed the mitigating circumstances.

Allen's death sentence should be vacated. And this case should be remanded for a new penalty-phase trial. Alternatively, this case should be remanded for a new *Spencer* hearing followed by the issuance of a revised sentencing order, or at a minimum, for reevaluation of the mitigating evidence and the sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically via the Florida Courts E-filing portal to Michael T. Kennett, Assistant Attorney General, Capital Appeals Division, and by U.S. Mail to Appellant, Scottie D. Allen, #B01314, Union Correctional Institution, P.O. Box 1000, Raiford, FL, 32083, on this 29th day of June, 2020.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Times New Roman, 14 point.

Respectfully submitted,

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