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IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CASE NO.: SC19-1511
4th DCA NO.: 4D17-3034
LT NO.: 94-12537CF10A

DAVID PUZIO,

Defendant/Petitioner
vs.

STATE OF FLORIDA,

Plaintiff/Respondent.
_____/

PETITIONER'S REPLY BRIEF ON THE MERITS

On Review from the District Court of Appeal
Fourth District, State of Florida

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PRELIMINARY STATEMENT

David Puzio will be referred to in this brief as “Petitioner, Defendant, or Mr. Puzio." The State of Florida, the Plaintiff, will be referred to as "the State, or Respondent."

The following symbols will be used in citations to the record and transcripts:

R: Record on Appeal

R2: from Petitioner’s “Appendix to Motion to Supplement the Record on Appeal”

S: sentencing order of the trial court, issued on May 11, 2018, from Petitioner’s “Appendix to Motion to Supplement the Record on Appeal”

IB: Petitioner’s initial brief to the 4th DCA, docketed in case # 4D17-3034

PIB: Petitioner’s initial brief to the Supreme Court of Florida

AB: Respondent’s answer brief to the 4th DCA, docketed in case # 4D17-3034

RAB: Respondent’s answer brief to the Supreme Court of Florida

ARGUMENT

None of Respondent's arguments justify Petitioner's illegal and unconstitutional sentence. Throughout the Answer Brief, Respondent attempted to undermine the jury's finding. Indeed, the first sentence of Respondent's brief states that the jury "found [Petitioner] guilty of murdering two young women." (RAB 1).

This is false. The jury did not find that Petitioner murdered two young women. To the contrary, the jury found that Petitioner did not commit the murders; that the murders were committed by another individual; and that Petitioner's participation in the murders was relatively minor. (R2 2099).

In the Answer Brief, Respondent made two arguments. First, Respondent contended that due to the trial judge's comment in the sentencing order, Petitioner is not entitled to resentencing. According to Respondent, *Muyico v. State*, 50 So. 3d 1227 (Fla. 4th DCA 2011); *Brooks v. State*, 969 So. 2d 238 (Fla. 2007); and similar cases apply to Petitioner's case and justify denying Petitioner resentencing in accordance with his jury's findings.

Second, Respondent raised a separate claim that is unrelated to Petitioner's case or any argument or briefing by the parties before this Court or the Fourth District Court of Appeal (4th DCA). Respondent told this Court that its decision in *Gaymon v. State*, 288 So. 3d 1087 (Fla. 2020) overruled its decision in *Williams v. State*, 242 So. 3d 280 (Fla. 2018). Notably, this Court made no such assertion in *Gaymon*.

Respondent argued that because *Williams* is now overruled, the State can empanel another jury in Petitioner's case and attempt to convince that jury that Petitioner killed the victims. Once again, Respondent ignored that Petitioner's jury found that Petitioner did not kill the victims. Even if *Gaymon* overruled *Williams*, empaneling a new jury in Petitioner's case will violate double jeopardy.

I. Respondent claimed that Petitioner is not entitled to resentencing

A. Respondent argued that not all sentencing errors require reversal

Three cases cited by Respondent on this issue addressed a scoresheet error. In this respect, the cases are no different from *Brook*s and *Muyico*. See: *Anderson v. State*, 905 So. 2d 111, 112 (Fla. 2005) (would-have-imposed-test applies to scoresheet errors raised on direct appeal or under rule 3.850); *Tundidor v. State*, 221 So. 3d 587, 605 (Fla. 2017) (scoresheet error is harmless if record conclusively shows the trial court would have given the same sentence with a correct scoresheet); *State v. Mackey*, 719 So. 2d 284, 285 (Fla. 1998) (not all cases involving scoresheet errors must be automatically reversed for resentencing).

Respondent extracted a phrase from *Tundidor* to claim that, "Correction is the proper remedy if an *Alleyne* error 'did not impact the [trial court's] determination of the sentence' and remedying the error requires only a change to the defendant's disposition order." (RAB 16). This is a mischaracterization of *Tundidor*. *Tundidor* addressed the standard for a harmless scoresheet error.

Tundidor never mentioned *Alleyne* or "a change to the defendant's disposition order." Respondent constructed its own, new test for harmfulness and remedy for an *Alleyne* error. However, the test to determine harmfulness and the remedy was decided in *Williams*.

Respondent cited *United States v. Keene*, 470 F.3d. 1347, 1350 (11th Cir. 2006) (reversal not required; judge stated at sentencing hearing he would give same sentence regardless of the guideline enhancement) and *United States v. Brown*, 879 F.3d 1231, 1239-40 (11th Cir. 2018) (defendant's presence required when judge modifies the sentence pursuant to §2255 when the error undermines the sentence as a whole and court is required to use significant discretion in modifying sentence, perhaps on questions the court was not asked to consider at original sentencing).

Neither case applies to Petitioner. However, even under the applicable question in *Brown*, the trial court's error in Petitioner's case did undermine the sentence. The sentence was based on the judge's false and illegal conclusion that Petitioner killed the victims. At resentencing, the trial judge would exercise discretion and would be asked to appropriately consider the jury's finding.

Respondent cited *Jordan v. State*, 143 So. 3d 335 (Fla. 2014) (error under Fla. R. Crim. P. 3.180(a) was harmless; defendant was already serving a life sentence on another count) and *Coleman v. State*, 65 So. 3d 1210 (Fla. 2011) (resentencing hearing was unnecessary and pointless in a postconviction jury override case when

this Court concluded that a reasonable basis existed for the jury's life verdict). Neither apply to Petitioner's case.

Respondent used *Coleman* to argue that this Court does not require "pointless" resentencing hearings. However, *Coleman* addressed the distinct and unique issue of a jury override. It was disingenuous to argue that a resentencing in Petitioner's case would be pointless based on *Coleman*.

Petitioner agrees that not all sentencing errors require reversal. Specifically, harmless errors do not require reversal. However, in Petitioner's case, the 4th DCA held, and the State conceded, that the *Alleyne* error was harmful. *Puzio v. State*, 278 So. 3d 82, 86 (Fla. 4th DCA 2019); (AB 16).

B. Respondent argued that there is no per se rule requiring resentencing for an *Alleyne* error

Respondent cited only three cases to support this argument: one case from the Supreme Court of Michigan and two unpublished cases from the Third and Seventh Circuit Courts of Appeal. (RAB 15). Unpublished dispositions have no precedential value. See: *Gawker Media*, *LLC v*. *Bollea*, 170 So. 3d 125, 133 (Fla. 2d DCA 2015).

None of the cases are binding on this Court. Notably, when *Williams* was decided, neither this Court nor the United States Supreme Court had addressed whether *Alleyne* violations were subject to harmless error review. *Id*. at 289. *Williams* concluded that *Alleyne* violations can be harmless. *Id*.

Harmless *Alleyne* violations do not require resentencing. *Williams*, at 294. Harmful *Alleyne* errors require resentencing. *Id*. In the Answer Brief, Respondent never mentioned that the *Alleyne* violation in Petitioner's case was harmful error.

C. Respondent claimed that *Williams* did not consider whether an *Alleyne* error could be remedied by correcting the disposition

This is only Respondent's assumption. In *Williams*, the Court had the benefit of its previous decisions with scoresheet, procedural, and constitutional sentencing errors. The Court decided the applicable question to determine whether the *Alleyne* error was harmful: does the record demonstrate beyond a reasonable doubt that a rational jury would have found the defendant attempted, intended, or actually killed the victim? *Williams*, at 290 The question was not: would the trial court have given the same sentence under the correct statute? The Court then determined that the remedy for a harmful *Alleyne* violation was resentencing. *Id*. at 282

Further, in *Toye v. State*, 2019 WL 6720431, at *3 (Fla. 2d DCA Dec. 11, 2019), the State argued that to cure the harmful *Alleyne* violation, the trial court needed only to correct the disposition order and allow a sentence review at 15 years. The Court disagreed and held that the proper remedy was a resentencing pursuant to *Williams*. *Toye*, at *3

D. Respondent argued that a ministerial correction is the proper remedy because the *Alleyne* violation "did not affect the trial court's determination of Petitioner's sentence"

As discussed, this is Respondent's proposed applicable question to determine whether the *Alleyne* error is harmless, not the Court's. However, even under Respondent's proposed test, in Petitioner's case, the *Alleyne* violation did affect the trial court's determination of Petitioner's sentence. The is evident from the trial judge's statements at the sentencing hearing (R 124-126) and from judge's findings in his sentencing order nine months later. (S 3-6)[1]. The trial judge sentenced Petitioner to 60 years because he decided that Petitioner killed the victims.

E. Respondent argued that the trial court's comment in the sentencing order was not outside its limited jurisdiction, and if it was, it does not matter

When an appellate court relinquishes jurisdiction to the trial court, the appellate court has discretion over the scope the trial court's jurisdiction. (Fla. R. App. P. 9.600(b)). In Petitioner's case, the 4th DCA exercised its discretion to limit the trial

[1] The trial court found: (1) Petitioner was convicted of killing the victims; (2) Petitioner shot the victims multiple times from behind with a .380 semi-automatic gun, causing both of their deaths; (3) Petitioner killed one victim first "then turned the gun" on the other victim; (4) Petitioner shot the victims from behind and dumped their bodies on the road; (5) the jury found Petitioner guilty, as charged, by committing first degree murder by shooting the victim with a handgun; (6) Petitioner is being resentenced as the shooter and primary person to effect the death of the victim

court's jurisdiction. The 4th DCA relinquished jurisdiction "to permit the trial court to make findings of fact, as set forth in Petitioner's motion." (Order Relinquishing Jurisdiction, docketed in 4D17-3034).

Petitioner's motion requested the trial judge to comply with Section 775.082(1)(b)3. The statute requires the judge to do one thing: state in writing whether a defendant is eligible for a sentence review at 15 years or 25 years. Thus, the trial court's comment was outside its jurisdiction as determined by the 4th DCA.

Respondent argued that if the comment was outside of the trial court's limited jurisdiction, it is of no importance. The comment in the sentencing order was part of the record, and the 4th DCA relied on it. (RAB 18-19). In support, Respondent cited *Anderson*; *Moreno v. State*, 266 So. 3d 1246 (Fla. 4th DCA 2019); and *Noa v. State*, 199 So. 3d 1004 (Fla. 4th DCA 2016). None of the cases addressed a jurisdictional argument.

F. Respondent repeated that *Brooks* and *Muyico* apply to Petitioner's case

As discussed, these cases do not apply to Petitioner's case. (PIB 27-37). Yet, it is worth noting that in *Brooks*, *Muyico*, and the other cases cited by Respondent, when the appellate court determined that the trial judge "would have imposed" the same sentence despite the error, the error became harmless. For example, the Court explained in *Anderson* that when a scoresheet error must be merely corrected, the error is harmless. *Id*. at 114 On the other hand, when the error warrants correction

and resentencing, the error is harmful. *Id*. Respondent ignored that the error in Petitioner's case was harmful.

Inexplicably, Respondent then claimed that "Petitioner makes too much of *Brooks* and *Muyico*." And "whether they are analogous or not doesn't matter." (RAB 20) Yet *Brooks* and *Muyico* were the 4th DCA's sole justification for allowing Petitioner's unconstitutional sentence to remain and for denying Petitioner resentencing vis-à-vis his jury's findings. Indeed, most of Respondent's cases simply repeat the same issue and standard in *Brooks* and *Muyico*.

In this section, Respondent attempted once again to offer fresh cases: *Jackson v. State*, 983 So. 2d 562, 578 (Fla. 2008) (partial deprivation of counsel under these facts is not fundamental error) and *United States v. Mathenia*, 409 F.3d 1289, 1291–92 (11th Cir. 2005) (constitutional errors are harmless when the government can show beyond a reasonable doubt that the error did not contribute to the sentence).

Neither apply to Petitioner's case. However, even applying test in *Mathenia*, the State cannot show beyond a reasonable doubt that the trial judge's *Alleyne* error did not contribute to the sentence. To the contrary, the 60-year sentence was a direct result of the judge's erroneous conclusion that Petitioner killed the victims. (S 3-6) See supra FN 1.

G. Respondent claimed that *Ashley v. State*, 850 So. 2d 1265 (Fla. 2003) is not relevant to Petitioner's case

To the contrary, relying on the judge's written comment nine months after the sentencing hearing conflicts with *Ashley*. In *Ashley*, this Court cited a long-standing principal of law that a court's oral pronouncement of sentence controls over the written documents. *Ashley*, at 1269 citing *State v. Jones*, 753 So. 2d 1276, 1277 (Fla. 2000). Consistent with the holding in *Ashley*, cases cited by Respondent that found harmless error did so based on the judge's comments at the sentencing hearing.

See: *Muyico*, at 1229 (judge's comments at sentencing hearing show he would have imposed the same sentence); *Moreno*, at 1247 (judge's comments at sentencing establish sentence would have been the same); *Noa*, at 1005 (judge's comments at sentencing show same sentence would have been imposed); *Keene*, at 1349 (judge explicitly stated at sentencing that he would impose the same sentence regardless of the enhancement).

H. Respondent argued that *Shull v. Dugger*, 515 So. 2d 748 (Fla. 1987) is not applicable to Petitioner's case

According to Respondent, Petitioner's claim that trial court added the comment in the sentencing order to justify his sentence is speculation. (RAB 21 FN 3). However, the trial court was clear in the sentencing order. The trial court was aware of *Williams,* which rendered the trial court's sentence illegal. (S3 FN 2).

Immediately after the trial court addressed *Williams*, the judge made the comment

that "although" the court sentenced Petitioner as the shooter, it equally finds a 60-year sentence appropriate under Section 775.082(1)(b)2 "in light of the facts of the case." (S3). This comment is, by definition, a justification.

Respondent argued that the trial court's statement that it was aware of *Williams* "does not evince any improper motive." (RAB 21 FN 3). The trial court's motive is irrelevant. *Shull* makes no reference to motive. Nor did Petitioner allege an improper motive.

Shull seeks to prevent a trial court from providing an after-the-fact justification, or new reasons, for a sentence which was determined illegal by an appellate court. *Shull*, at 749-50. Just so here. The trial court provided new reasons, "the facts of the case," to justify his 60-year sentence after *Williams* held that the sentence was unconstitutional.

I. Respondent argued that the trial court's sentence of 60 years is not tainted by his false, illegal, and unconstitutional conclusion that Petitioner killed the victims

Respondent argued that the "facts of the case" the trial court mentioned in the sentencing order are separate from the judge's determination that Petitioner killed the victims. However, the judge's sentencing order reveals that "the facts of the case" were false and in direct opposition to the jury's findings. (S 3-6) See supra FN 1.

Respondent attempted to separate the judge's illegal finding from his subsequent justification for his sentence. Respondent claimed that the "facts of the case"

included "a brutal double murder in which a group of young men killed two women on the road, dumped their bodies and stole their car." (RAB 22). This "fact" does not appear in the court's sentencing order; nor did the judge mention this during the sentencing hearing. The court did not find that "a group of young men" killed two women. The trial court found unequivocally and falsely that Petitioner shot and killed the victims.

J. Respondent claimed that even if the trial judge's 60-year sentence is based on his finding that Petitioner killed the victims, "the determination would be valid"

According to Respondent, the trial court can find by competent, substantial evidence that Petitioner killed the victims. (RAB 22). Respondent disregarded that Petitioner's jury found that Petitioner did not kill the victims. Respondent ignored that a determination of whether a defendant attempted, intended, or actually killed the victim is a fact that must be found by a jury beyond a reasonable doubt. *Williams*, at 292

To support this claim, Respondent cited to *J.M.H. v. State*, 2020 WL 1313662 (Fla. 2d DCA Mar. 20, 2020). *J.M.H.* held that the trial court abused its discretion by sentencing the defendant to life in prison after a resentencing hearing pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012). *J.M.H.* at *1 Specifically, the trial court abused its discretion in its application of Section 921.1401 (c)(d)(e)(f)(g)(i)&(j). The trial court failed to meaningfully assess J.M.H.'s youth and background; the

traumatic abuse and manipulation that J.M.H. suffered at the hands of the victim when she was a child; and J.M.H's remarkable rehabilitation and transformation in prison. *Id*. at 9-12 Notably, *J.M.H*. did not address Section 921.1401 (a) the nature and circumstances of the offense or (f) the defendant's participation in the offense.

J.M.H. does not support Respondent's argument. A trial court's findings of fact under Section 921.1401 are reviewed for the existence of competent, substantial evidence in the record. *Id*. at *8 The appellate court reviews the trial court's sentencing decision based on those findings for an abuse of discretion. *Id*.

In Petitioner's case, competent, substantial evidence in the record includes Petitioner's jury's finding that Petitioner did not kill the victims, and that Petitioner's participation in the murders was relatively minor, along with the jury's other findings.[2] In other words, a finding that Petitioner killed the victims under Section 921.1401 (a) or (f) would not be supported by competent, substantial evidence in the

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[2] At the penalty phase, Petitioner's jury found: (1) Petitioner did not commit the murders; Petitioner was an accomplice to the murders, but the murders were committed by another individual, and Petitioner's participation in the murders was relatively minor; (2) Petitioner was under the influence of extreme mental or emotional disturbance when the victims were killed by another person; (3) Petitioner acted under extreme duress or under the substantial domination of another person; and (4) Petitioner's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. (R2 2099).

record. To the contrary, the finding would be in direct opposition to Petitioner's jury and the evidence in the record.

Petitioner's jury was presented with evidence and argument from the State that Petitioner killed the victims. The jury explicitly rejected this theory and found that Petitioner did not kill the victims. Thus, a sentence under Section 775.082(1)(b)2 in which the judge determined under Section 921.1401(a) or (f) that Petitioner killed the victims would be an abuse of discretion.

Remarkably, Respondent attempted to offer evidence that Petitioner killed the victims. Respondent cherry-picked and paraphrased portions from trial transcript. (RAB 23). As discussed, Petitioner's jury rejected the argument that Petitioner killed the victims and found the opposite. On appeal, the State conceded the jury's finding. (AB 16). Respondent cannot take opposite positions. See: *McPhee v. State*, 254 So. 2d 405, 410 (Fla. 1st DCA 1971) ("A party cannot occupy inconsistent positions in the course of a litigation" quoting 12 Fla.Jur.2d 678-680, Estoppel and Waiver § 59).

II. Respondent claimed that *Gaymon* overruled *Williams*; the State can attempt to convince another jury that Petitioner killed the victims

A. Respondent failed to appropriately raise the issue in the appellate process

Respondent claimed that raising this issue anytime before its Answer Brief to this Court would have been futile because *Williams* was still binding (RAB 25). There are three problems with this argument.

First, *Williams* was not decided when Petitioner appeared for his resentencing. In fact, Petitioner informed the trial court that the Fifth District Court of Appeal had certified a question to be of great public importance to this Court in *Williams v. State*, 211 So. 3d 1070 (Fla. 5th DCA 2017) (R 39 - 40). The issue was ripe for argument. The State did not argue to empanel a jury and failed to preserve the issue. See: *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003) (requirement to preserve error for review in the trial court).

Second, Petitioner filed the notice of appeal on September 25, 2017. *Williams* was not decided until February 18, 2018. Respondent did not file a cross appeal on a question of law pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(K). See: *Rice v. State*, 774 So. 2d 40 (Fla. 2d DCA 2000); *Pope v. State*, 884 So. 2d 328 (Fla. 2d DCA 2004) (State failed to properly preserve the issue for review).

Third, Petitioner asked this Court to accept jurisdiction on September 13, 2019. *Gaymon* was decided on January 23, 2020. Respondent did not file a notice of supplemental authority with this Court pursuant to Florida Rule of Appellate Procedure 9.225. Indeed, even after this Court accepted jurisdiction on June 25, 2020, Respondent did not file a notice of supplemental authority.

Once this Court has jurisdiction in a case, it has jurisdiction to consider all issues "appropriately raised in the appellate process." *Savoie v. State*, 422 So. 2d 308, 312 (Fla. 1982). The authority to consider other issues is discretionary and "should be

exercised only when these other issues have been properly briefed and argued and are dispositive of the case." *Id*. See also: *Wong v. State*, 212 So. 3d 351, 360 (Fla. 2017). Indeed, the Amendments to Florida Rules of Appellate Procedure 9.120 and 9.210, 2020 WL 7062674 (Fla. Dec. 3, 2020) (effective Jan. 1, 2021), ensure that the parties will properly brief any issue that they intend to raise before the court. In Petitioner's case, Respondent failed to appropriately raise the issue in the appellate process. Further, the issue is not dispositive of Petitioner's case.

B. *Gaymon* did not overrule *Williams*

This Court "does not intentionally overrule itself sub silentio." *Puryear v. Florida*, 810 So. 2d 901, 905 (2002). In *Williams*, Chief Justice Canady authored the concurring and dissenting opinion. The opinion expressed skepticism of the majority's decision to preclude the State from empaneling a jury as a remedy for a harmful *Alleyne* violation. *Id*. at 294

Chief Justice Canady then authored the majority opinion in *Gaymon*. In *Gaymon*, the Court held that "the proper remedy for harmful error resulting from the court, not the jury, finding the fact of dangerousness under Section 775.082(10) is to remand for resentencing with instructions to either impose a nonstate sanction of up one year in the county jail or to empanel a jury to make the determination of dangerousness, if requested by the State." *Id.* at 1089-90 (footnote omitted). On

multiple occasions, *Gaymon* referenced Chief Justice Canady's concurring and dissenting opinion in *Williams*. *Gaymon*, at 1092

Further, Justice Labarga, who authored *Williams*, concurred fully in *Gaymon*. In other words, if this Court intended for *Gaymon* to overrule to *Williams*, the Court would have said so. When this Court recedes from precedent, it does so explicitly. See: e.g., *State v. Poole*, 297 So. 3d 487, 505 (Fla. 2020).

Gaymon and *Williams* are not in conflict. The cases are factually different and address different questions of law. In *Gaymon*, the Court determined the remedy for a harmful *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Blakely v. Washington*, 542 U.S. 296 (2004) violation under Section 775.082(10). *Gaymon*, at 1089-90

In *Williams*, the Court determined the remedy for a harmful *Alleyne* violation under Section 775.082(1)(b)1. The remedy was resentencing. *Williams* at 282 Likewise, the remedy for the harmful error in *Alleyne* itself was for resentencing consistent with the jury's verdict. *Alleyne v. United States*, 570 U.S. 99, 118 (2013).

In situations like *Gaymon*, the State seeks to have the potential punishment increased with a finding of dangerousness. The State has a similar interest in a death penalty case. In both contexts, the jury proceedings must be bifurcated.

Bifurcation is necessary in a situation like *Gaymon* to ensure that the defendant's presumption of innocence is not diminished by evidence of dangerousness. Moreover, evidence of dangerousness only becomes relevant if the defendant is

found guilty of a qualifying offense. In a situation like *Gaymon*, during the second proceeding, the jury does not deliberate on any fact or statutory element of the qualifying offense.

Conversely, in *Williams*, and those alike, the original jury deliberated on the statutory elements of first-degree murder based on multiple theories of guilt. The jury was given a general verdict form and reached a verdict of guilty. If the State empaneled a second jury, that jury would determine whether the defendant attempted, intended, or actually killed the victim.

The State would re-litigate the facts related to the defendant's guilt and ask the jury to find each statutory element necessary to convict the defendant of a crime. A mini trial would ensue. The second jury would deliberate on facts and elements previously presented to and considered by the original jury. This would violate due process and the protection against double jeopardy.

Surely, the double jeopardy concerns explain the amendment to Florida Standard Jury Instruction 7.3 crafted in response to *Williams*. A general verdict form for First Degree Murder without a specific finding of premeditation now requires the jury instruction: "if you find (the defendant) guilty of first degree murder, you must also determine whether the State proved beyond a reasonable doubt that (defendant) [actually killed] [intended to kill] or [attempted to kill] (victim)." The instruction ensures the jury will make the finding of whether the defendant attempted, intended,

or actually killed the victim when they decide if the defendant is guilty.

C. Empaneling a jury in Petitioner's case will violate double jeopardy

Petitioner's jury determined that Petitioner did not kill the victims. Allowing the State an opportunity to convince a second jury of a fact that Petitioner's first jury explicitly rejected violates double jeopardy. "Facts found by new jury at a resentencing cannot *conflict* with any facts found by the original jury in connection with the defendant's conviction." *Galindez v. State*, 955 So. 2d 517, 527 (J. Cantero, specially concurring) (emphasis in original).

See also: *Williams v. State*, 595 So. 2d 936, 938 (Fla. 1992) ("The double jeopardy clause prevents a new penalty phase proceeding before a new jury that could subject the defendant to an increased penalty.") citing *Arizona v. Rumsey*, 467 U.S. 203 (1984); *Bullington v. Missouri,* 451 U.S. 430 (1981); and *United States v. Jorn,* 400 U.S. 470 (1971).

Just so here. The double jeopardy clause bars the State from attempting to convince a second jury that Petitioner killed the victims. In Petitioner's case, the jury has spoken: Petitioner did not kill the victims; the victims were killed by another individual; and Petitioner's participation in the crimes was relatively minor. (R2 2099).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Kevin A. Golembiewski, Deputy Solicitor General, Office of the Attorney General, PL-01, the Capitol, Tallahassee, Florida 32399 at Kevin.Golembiewski@myfloridalegal.com this 15th day of December, 2020.

CERTIFICATE OF FONT AND TYPE SIZE

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