

In the Supreme Court of Florida

MICHAEL H. HUNT,

Appellant,

v.

STATE OF FLORIDA,

Appellee. /

CASE NO.: SC2024-0096

LT. NO.: 2019-CF-02281

CAPITAL CASE

ON APPEAL FROM THE CIRCUIT COURT,
FOURTEENTH JUDICIAL CIRCUIT,
IN AND FOR BAY COUNTY, FLORIDA

ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS¹

I. Facts of the Case:

A. Background:

Hunt appeals his conviction and death sentence for first-degree murder of 19-year-old Alexandra Elise Peck (“Lexie”) in her Panama City, Florida home on April 4, 2019. Hunt and an accomplice forcibly entered the home with premeditated intent to kill one of the residents, 17-year-old P.O. Instead of killing P.O., the accomplice shot and killed Lexie due to mistaken identity between two teenage girls with red hair, living in the same home. P.O. was Hunt’s sexual battery and sexual trafficking victim and essential witness against him in Bay County criminal case, Case No. 2019-CF-1536A. Days before Lexie’s murder, Hunt was to be arrested in that case.

A Bay County grand jury indicted Hunt on five counts: Count I: First-degree capital murder; Count II: Armed burglary of an occupied dwelling; and Counts III, IV, and V: Attempted first-degree murder of Lexie’s stepfather James “Danny” Scoggins, Izac Rocker, and Brently

¹ Appellant Michael H. Hunt is referred to as “Appellant” or “Hunt”; Hunt’s Initial Brief is cited as “IB,” followed by page number(s). The direct appeal record is cited as “DAR,” followed by page number(s). The trial transcript is referred to as TT, followed by page number(s).

Riley, respectively. The State sought the death penalty for Lexie's murder based on six aggravating factors, although five were presented to the penalty phase jury. DAR 72-74, 79-80, 1494-96.

The jury found Hunt guilty of burglary of a dwelling with a firearm; first-degree murder with premeditation and during the commission of a burglary; and the three counts of attempted first-degree felony murder. DAR 63, 1470-79. The penalty phase jury found the State proved five aggravating factors beyond a reasonable doubt; that the aggravating factors outweighed any mitigating circumstances; and recommended Hunt be sentenced to death for Lexie's murder by a vote of 10 to 2. *Id.* at 1504-6. Following the *Spencer*² hearing and parties' sentencing memoranda, the trial court sentenced Hunt to death. *Id.* at 2851-67. Hunt now appeals the first-degree murder conviction and death sentence.³

² *Spencer v. State*, 691 So.2d 1062 (Fla. 1996).

³ Hunt was sentenced on Count II (armed burglary of a dwelling), Life, plus 25 years; and Counts III, IV, and V (attempted first-degree murder), individually, Life, plus 20 years. DAR 2886, 2905. He does not challenge or appeal these convictions or sentences.

B. Guilt Phase:

April 4, 2019 Murder

Lexie lived with her mother Jennifer Scoggins (“Jenna”); stepfather James Danny Scoggins (“Danny”); 17-year-old stepbrother Gabryal White (“Gabe”); Gabe’s friends 20-year-old Izac Rocker (“Izac”) and 21-year-old Brently Riley (“Brently”); and Gabe’s 17-year-old girlfriend, P.O. On April 4, 2019 at approximately 10:30 Danny was watching television; Jenna was at work; Gabe prepared to shower; Lexie was in the back of the; Gabe’s friends Izac and Brently were in their room in the back of the house; and P.O. had just got out of the shower. TT 43, 48-50, 80-81, 91, 147-48, 195-96.

Lexie and P.O. told Gabe someone was knocking on the front door and asked him to answer it. Gabe was getting in the shower and said, “get my dad to do it.” Lexie told Danny, “dad, there’s somebody at the door.” Danny went to the front door, opened it slightly and saw someone wearing dark clothing who said he had a pizza delivery. P.O. recalled hearing Danny ask the kids if they ordered a pizza. Danny told the individual no one ordered a pizza, but the man insisted. Danny repeated that no one ordered a pizza, asked him to please, go away, and tried to shut the front door, but

the man pushed in. The still unidentified individual entered the house and Danny said, “what the hell are you doing, get out of my house.” The man stood in front of Danny, said “shut the F up,” and pulled a gun from his pant waistband.” TT 50-52, 91, 148-49.

Danny did not yet recognize Hunt, who was wearing a black hoodie pulled down on his face, “almost to his nose.” The two men were less than two feet away from each other when the assailant “pulled his arm up” and pointed a gun in Danny’s face. The hoodie “slipped back,” Danny recognized Hunt’s face and “very distinctive” voice and yelled to the kids, “guys, run.” TT 52-53, 57, 74, 150, 182.

Hunt snatched Danny’s cell phone out of his hand, later found by a neighbor in the middle of the road one block away from the Scoggins’s home. TT 59, 149, 343, 362, 365-66. Hunt shot Danny in the neck with a .380 caliber semi-automatic pistol, briefly stood over him, then left.⁴ TT 53, 74, 259; DAR 2853.

After Danny was shot, he heard Lexie say, “Dad, help me . . . Please don’t kill me.” Danny did not see the second man, but heard a totally different voice, along with several gun shots coming from the

⁴ PCPD crime scene personnel recovered a spent .380 casing underneath the living room couch, close to the front door. TT 259.

back bedroom area. Gravely injured, Danny knew that he would die there or Hunt would shoot him again, and he crawled to the next-door neighbor's house. Danny told his neighbor Jerred Milliron, "I've been shot, Mike Hunt shot me." TT 42-43, 53-55. When Panama City Police Department ("PCPD") officers arrived, Danny told them Hunt shot him and everybody in the house, as far as he knew. When asked whether he had any doubt that Hunt shot him, Danny stated, "no doubt whatsoever." TT 56-60.

Gabe was in the shower when P.O. and Lexi told him someone was at the front door, telling them to ask dad to answer it. Gabe heard Danny say, "what are you doing here" and two gunshots. He heard several more gunshots from a different caliber firearm and knew Hunt owned both a .380 and .45 caliber semi-automatic pistols. Gabe turned off the shower and bathroom light so he would not be discovered and armed himself with a towel rack. Gabe heard two male voices and a police scanner sounding like a female police dispatcher.⁵ Police arrived, Gabe came out of the bathroom and saw blood all over the living room. He did not see his dad, but Brently

⁵ Witnesses testified that Hunt listened to a police scanner and was heard the night of Lexie's murder. See TT 56, 93-94, 423.

was being carried out of the house and Izac was on the front porch “holding his jaw together.” Gabe did not see either man, but recognized Hunt’s voice with “absolutely zero doubt.” TT 89-96, 343-344.

Izac, Gabe’s friend who lived with the Scoggins and shared the back room with Brently, was in their bedroom. The “back room” was a “weird set up” added onto the house, which could only be accessed by going through the kitchen pantry. Izac was asleep, but woke up when he heard Danny scream “guys, run” and was struck in his back “with something hard.” Izac was shot. TT 43, 47, 132-33, 179-82.

Lexie was in Izac and Brently’s bedroom when Izac saw a man with a “bandito” style bandana over his face hold a gun to her head. The man shot Lexie twice in the head and shot Izac a second time in the face, shattering his jaw, taking out 1½ inches of his tongue. Izac pulled the bullet out of his back, grabbed a weapon, and checked the house. He saw Danny on the floor choking, blood everywhere, the front door open. He went back to his bedroom and tried to call 911, but could not because of his injury. TT 183-86, 191, 202-18.

Prior to Lexie and Izac being shot, Brently was in bed scrolling through his cell phone, when Lexie ran in the room. She appeared

very afraid and terrified, and there was a man following her. The man stood directly behind Lexie and pointed a gun at the back of her head. Lexie cringed and tensed up like she knew what was coming, the man shot her twice in the back of the head. The gunman then shot Brently in the arm, chest, and stomach, turned around, and ran out of the room. TT 198-201, 221-22.

P.O. got out of the shower and spoke with Lexie and Gabe about someone at the front door. As P.O. was heading to her room, she saw Lexie go toward the back room and heard Danny ask if anyone ordered a pizza. She saw Danny open the front door, one person “go past Danny,” and another standing in front of him with a gun and take his cellular phone. P.O. then hid behind her bedroom door, heard Danny scream “guys,” and gunshots. P.O. did not come out of her room until law enforcement arrived. TT 43, 80, 118, 148-54.

Hunt’s Motive to Murder P.O.

Hunt’s relationship to P.O. prior to the attack on the Scoggins’s home and Lexie’s murder was central to the State’s case and established his motive and premeditation. Prior to moving in with Gabe and his family, 16-year-old P.O. lived with Hunt and his girlfriend Kaitlyn West (“Kaitlyn”). She met Hunt in late 2017 or early

2018 walking home from school when he approached her in his Black Ford Explorer and gave her a ride home. When they reached P.O.'s home, she learned that Hunt and her mother's boyfriend James Gothard ("Gothard") knew each other. Hunt later introduced P.O. to his girlfriend Kaitlyn and from then on, P.O. would "hang out" with them a couple times a week. TT 119-24.

Once, P.O. was out with Hunt and Kaitlyn when her mother called yelling at her to come home. Hunt drove P.O. home, finding her mother irate and for an unknown reason, she wanted to call the police, but Gothard stopped her. P.O.'s mother told her to pack her clothes and the 16-year-old inexplicably left to live with Hunt and Kaitlyn.⁶ TT 125-26.

While living with Hunt and Kaitlyn, P.O. was laying on the couch with a headache and asked Hunt for ibuprofen, but he gave her Xanax, instead. Hunt sent Kaitlyn out, leaving him alone with P.O, obscured the living room security camera, and "kept peering out of the window." P.O. recounted that Hunt "took off his boxers, he started to unclothe me. And after he unclothed me, he had put his

⁶ P.O. turned 17 on October 9, 2018. TT 128.

hand over my mouth and . . . he raped me.” P.O. did not report the rape because she was “terrified” of Hunt and the prior violence seen with him and Kaitlyn. TT 126-29.

Hunt began prostituting P.O. after the rape and sold her and Kaitlyn’s “bodies for sex” for approximately 1½ years in Panama City and Biloxi, Mississippi. TT 126, 129-31. The prostitution took place at Hunt’s Panama City business, Polecats, which P.O. described as,

. . . a dance studio, doing air quotes. . . . out in the open, was supposed to be a place where people could come and throw parties if they rented it out. So to everyone else, it was supposed to be about parties, but in reality, that’s where Mike would take me and Kait and sell us.

Id. at 126. P.O. recounted that one time at Polecats, Hunt grabbed her by the hair, put a knife to her throat and said, “if you ever tell anyone whatever happens I’m going to kill you.” *Id.* at 139.

P.O. began dating Lexie’s step-brother, Gabe, and Hunt regularly drove her to the Scoggins’s home to see him. Hunt got to know Gabe’s stepfather Danny and the others living in the house. He also became familiar with the house itself. After Hurricane Michael hit Panama City in October 2018, Hunt spoke with Jenna and Danny about renting the “back room” in their home because his house had been damaged. Hunt and Kaitlyn toured the room, but did not rent

it. TT 45-47, 82-83, 87, 131-33, 138, 143.

Hunt, Kaitlyn, P.O., and Gabe left Panama City for Mississippi and New Orleans, staying for three to four months. P.O. testified that the money to pay for hotel and food was obtained if P.O. and Kaitlyn got sold and if not, Hunt paid. However, Gabe testified that Hunt, Kaitlyn, and P.O. would often leave the hotel room at night for several hours to conduct “family business.” Hunt would threaten Gabe that if he told anyone “what’s going on, I have to end you, or if anything happens, you say someone saw me with a gun, I’m going to have to deal with y’all, take care of y’all.” TT 84-89, 134, 138-39, 421-24.

After the four of them returned to Panama City, P.O. moved into the Scoggins home in March 2019. She told Hunt and Kaitlyn she did not want to live with them anymore and wanted to be with Gabe. TT 45-46, 87, 138-40.

While P.O. was living with the Scoggins, Florida Department of Children and Families Child Protection Team (“DCF”) investigators visited her about Hunt. P.O. initially denied anything to do with Hunt and was hesitant to tell anyone about the rape and prostitution because she was “terrified.” After DCF left, P.O. confided in Jenna about Hunt, the prostitution, and sexual battery. P.O. then called

DCF, told them she lied, and spoke with a PCPD Child Protection Team Investigator Corporal Corrine Clarke. Cpl. Clark obtained information about a runaway juvenile living with an adult, which was P.O. Cpl. Clark met with P.O. on March 18, 2019 regarding Hunt's reported sex crimes, initiated a criminal investigation, and relayed the information to DCF. She specifically recalled that P.O. "had died red hair," who had a "red phase" and colored her hair like Lexie and Jenna. Gabe testified that both P.O. and Lexie had dark red hair, were about the same age and height, and "if you saw them from the back, they would almost look identical." TT 90, 140-46, 321-25; State Exhibit 265 (photo of Lexie and P.O.)

Cpl. Clark obtained an arrest warrant, intending to arrest Hunt at the Bay County Courthouse on April 1, 2019, when he and his defense attorney appeared in Bay County Circuit Court on two other criminal cases (2018-CF-4126 and 2018-CF-4127). When Hunt's cases were called, Assistant State Attorney Alexis Sykes informed the trial judge of an active arrest warrant in a new case of sexual battery on a person under 18, Case No. 2019-CF-1536A, for which P.O. was

the victim.⁷ TT 146, 321-25, 329-33; DAR 935, 1001, 1077.

The trial judge could not confirm the arrest warrant in the court system, recessed the proceeding, and instructed Hunt to “take a seat” so they could “get to the bottom” of it. When Hunt’s case was recalled, his attorney went to get him, but advised the court, “it appears Mr. Hunt has vacated the courthouse.” The trial judge issued a capias warrant, ordered Hunt be held without bond, and stated he “has not only willfully failed to appear, he showed up and then took off.” TT 331-35; DAR 935.

Learning that Hunt fled the courthouse, PCPD issued a BOLO for his black Ford Explorer and made extra patrols near the Scoggins home. Patrols were increased the next day because the Scoggins were worried that Hunt would do something. Cpl. Clark asked P.O. to leave and worked with DCF to get her into a safer place, but P.O. wanted to stay in the Scoggins’s home. TT 325-27.

Hunt contacted Kaitlyn after fleeing the courthouse, telling her the case was continued. The two headed for Atlanta, but not in Hunt’s Ford Explorer. Kaitlyn asked Becky Akins, a friend of her

⁷ Kaitlyn was charged with and pleaded guilty to deriving support of proceeds from prostitution of P.O. TT 417-18.

mother, to borrow her Ford Escape. Ms. Akins originally understood the pair would borrow the car only for the rest of the day, but, Hunt kept the car “longer and longer.” On April 3, 2019, Hunt and Kaitlyn returned to Panama City to pay Ms. Akins \$350.00 to keep the car. When they met, Ms. Akins noticed her car had new window tinting, which Hunt purchased at an Abbeville, AL AutoZone and installed on April 2, 2019. Ms. Akins observed that Kaitlyn looked scared. TT 347-48, 401-04, 424, 582-83, 587-91; State Exhibit 390.

Hunt turned off his primary cellular telephone (Apple iPhone) enroute to Atlanta. He purchased an LG cellular telephone at a Metro PCS, using T-Mobile service provider “so police couldn’t track him.” The T-Mobile and ATT iPhone were found in the Ford Escape when Hunt was apprehended and historical location data was obtained and analyzed. TT 351, 355-56, 425, 585-86, 594; State Exhibit 390.

On the way to Atlanta, Kaitlyn learned of the sexual battery charges against Hunt involving P.O. and discussed it with him. Regarding P.O.’s case, Hunt told Kaitlyn twice, he had to do what he had to do, “no witness, no case.” Kaitlyn did not ask Hunt any other questions because she was scared. TT 427, 447-53.

On April 2, 2019, Kaitlyn and Hunt stayed in a Motel 6

Swansee, GA, north of Atlanta for one night and registered under “Jermaine Smith” because Hunt “couldn’t rent rooms” and the police would not find him. While there, Hunt purchased a black hoodie at a local mall, which he was wearing when Danny identified him, was arrested, and interviewed by police on April 5, 2019. TT 219-20, 425-26, 520, 531-32, 585; State Exhibits 496 and 500.

On April 3, 2019, Hunt and Kaitlyn left Atlanta to return to Panama City, but stopped in Dothan, Alabama, for Kaitlyn to rent a car. Hunt was still driving the Ford Escape and told Kaitlyn he would not continue to Panama City, but would stay in Dothan, then drive back to Atlanta. When Kaitlyn returned to Panama City, she learned of the criminal charges against her, turned herself into police the day after the murder, and gave a sworn statement to PCPD Captain Kristian Shaw, the lead case agent in Lexie’s murder investigation. TT 336-37, 347, 428-30, 499; State Exhibit 499.

Murder and Shootings Investigation Trial Testimony

PCPD Sgt. Troy Shramek was the first responding officer at the Scoggins’s home and heard yelling and screaming as he approached the neighbor’s house. He saw Danny was bleeding profusely from his neck and asked him if he knew who did this. Danny responded,

“Mike or Michael.” That name was significant to Sgt. Shramek because of the extra police patrols of the Scoggins’s residence ordered earlier in the week regarding Michael Hunt. Sgt. Shramek left Danny with the neighbor and cleared the Scoggins’ house with the SWAT team. Officers encountered Gabe who was naked and in shock, P.O. coming out of her bedroom, and entered the bedroom behind the kitchen pantry. Sgt. Shramek saw Lexie lying on the floor in a pool of blood, noticed bullet wounds in the side of Lexie’s head and one in her neck, and determined she was deceased. A male was screaming in pain on the floor with multiple gunshot wounds. TT 232-41.

PCPD Sgt. Eric Beaty (ret.) found Danny at the neighbor’s home bleeding and in serious condition. Thinking Danny was going to die, Sgt. Beaty asked him if he knew who shot him. Danny vocalized “Mike,” through his gurgling, and mouthed “Mike” again. Sgt. Beaty put out a radio transmission for the suspect as “Mike.” TT 224-28.

No firearms were recovered at the scene on April 5, 2019, but it was determined Lexie, Brently, and Izac were all shot with a .45 caliber handgun and Danny was shot with a .380 caliber handgun, evidenced by several shell casings and fired projectiles recovered by PCPD crime scene in the home. TT 273-79. Florida Department of

Law Enforcement (“FDLE”) firearms section analysts conducted ballistics testing on the .380 and .45 ammunition cartridge jackets recovered. *Id.* at 605, 609-10, 615.

However, on January 4, 2020, retired Los Angeles police lieutenant Charles Long recovered a .380 caliber semi-automatic pistol in the bushes at his home, located “a few blocks” from Hunt’s business Polecats and two blocks from the Scoggins home. Mr. Long contacted PCPD, who took possession of the firearm, which was in poor condition. FDLE processed the recovered .380 pistol, which was rusted and not operational. Ballistics testing of the .380 pistol and recovered casings was conducted by using a laboratory reference firearm frame to test fire the gun. FDLE confirmed the recovered .380 pistol ballistically matched the expended ammunition cartridge jackets and was the weapon used to shoot Danny Scoggins. TT 305-10, 313, 359-362, 619-21; State Exhibit 530.

PCPD crime scene investigators collected numerous latent fingerprint lifts and DNA swab samples from various areas throughout the house, as well as Danny’s recovered cell phone for testing. TT 243-293. However, FDLE laboratory analysts Tara Welch and Jennifer Halter testified that no forensic information was

identified, including no DNA profiles identified or latent fingerprints recovered linking Hunt to the crime scene. *Id.* at 627-53.

The investigation's lead case agent, PCPD Capt. Shaw, testified that search warrants were obtained for the crime scene, historical data of Hunt's cellular telephone and providers, and the Ford Escape. He described the crime scene, that nothing of value was taken from the home and that Hunt was identified as a suspect quickly due to Danny and Gabe's visual and voice identifications. TT 338-43.

Former Bay County Sheriff's Office Senior Intelligence Analyst Lyndsey Miller testified to the detailed cellular telephone tracking data analysis, business security video and still images, and license plate reader information documenting Hunt's travels in the Ford Escape between April 1, 2019 (Bay County courthouse) and April 5, 2019 when he was captured.⁸ TT 467-517; State Exhibits 507-510. Key aspects to the testimony were: 1) April 4, 2019 images of Hunt driving the Ford Escape and two men at the Pilot Travel Center in Temple, GA at 5:08 pm EST; 2) images of Hunt and the two men at a Dollar General store in Pine Mountain, GA, heading south at 7:08 pm

⁸ PCPD Capt. Shaw provided the license plate reader images to Ms. Miller. TT 687-89; State Exhibit 492.

EST; 3) southbound travel toward Panama City is detailed at 8:32 CDT and an incoming call is the last activity on the burner phone on April 4, 2019; and 4) April 4 license plate reader, northbound I-85 in Georgia captured the Ford Escape at 4:06 am EDT. TT 347-48, 351-52, 378-79, 497-504; State Exhibit 510.

The most significant evidence was the April 4, 10:22 pm security video from the Panama City My Thai restaurant, which was close to the Scoggins's home. The video showed the Ford Escape heading toward the Scoggins's home. TT 389-97; State Exhibits 493, 494. The license plate reader and cell phone data later placed the Ford Escape northbound I-85 in Georgia on April 5, 2019 at 3:06 am CDT, approximately five hours after the murder and the first cell phone activity an hour later north of Atlanta. 503-06; State Exhibit 494.

A CODIS hit on a cigarette butt inside the Ford Escape identified Lamar Woods, also seen on the Pilot and Dollar General security camera videos traveling with Hunt. Although Woods was interviewed, no evidence placed Woods in the house. A third individual, Ephran Evans, was also identified in the video recordings and considered a suspect in this case by PCPD at the time of Hunt's trial, but had not been located. TT 279-83, 343, 358-59, 368, 373-74, 377-78.

On April 5, 2019, the United States Marshal Service apprehended Hunt driving the Ford Escape heading southbound on I-85 to Panama City, wearing a black hoody and a woman's wig. TT 348-49, 517-20; State Exhibit 500. A warrant search of the car revealed several receipts and electronic keys for the hotels Hunt stayed in, and receipts for the cellular telephones, window tint, black hoodie, and a woman's wig was recovered in the front passenger seat. *Id.* at 349, 583, 594; State Exhibit 470. DNA testing samples were taken from the Ford Escape, but none of the victims' blood or DNA was identified. *Id.* at 369-70.

The Defense Case

Hunt's guilt phase defense was primarily made through cross-examination of State witnesses and focused on: 1) the undisputed fact that a second unidentified man killed Lexie and not Hunt; 2) an attack of Danny and Gabe's visual and voice identifications; and 3) highlighting the absence of forensic evidence to place him in the house or the victims' blood in the Ford Escape. *See also* Defense Closing Argument, TT 812-40.

The defense moved for judgment of acquittal, arguing there was insufficient evidence of first-degree murder to present to the jury

that: 1) Danny identified Hunt's voice after only "three seconds"; 2) witnesses testified another individual and not Hunt, actually shot Lexie; and 3) no physical evidence placed Hunt in the house or showed he committed the murder. The trial court denied the motion. Following the court's colloquy, Hunt knowingly and voluntarily waived his right to testify. TT 708-14.

The defense presented one witness to rebut the State's cellular tracking data testimony, forensic photograph and evidence documentation specialist Robert Wyman. TT 720-62. Mr. Wyman reviewed Hunt's cellular telephone tracking data between Panama City and Georgia and found no activity between April 4 at 8:33 pm EDT near the Florida/Alabama border and April 5, 2019. He agreed that his time study between the Dollar General in Pine Mountain, Georgia and the Scoggins's home on April 4, as well as that conducted by PCPD, would have given Hunt plenty of time to carry out his plan. Importantly, Mr. Wyman did not disagree with Ms. Miller's analytical findings. *Id.* at 756, 759-61.

The defense rested and renewed its motion for judgment of acquittal, which was denied. The trial court asked Hunt whether he wanted additional evidence presented or to call witnesses and he

declined. TT 762-66.

During the charge conference, the defense renewed its objection to the transferred intent instruction and objected to the principal instruction arguing the State did not make a principal case. The trial court overruled the objections, giving the transferred intent instruction which only applied to the first-degree murder charge and the principal culpability instruction as the State presented evidence that more than one person committed the crime, including Hunt. TT 779, 866, 869, 894. The case was presented to the jury and Hunt was convicted on all counts. *Id.* at 918-922.

C. Penalty Phase and Sentencing:

Hunt's penalty phase commenced on September 15, 2023 and the State argued five aggravating factors:

1. Hunt was previously or contemporaneously convicted of attempted first-degree murder, a felony involving the use or threat of violence of the person;
2. The first-degree murder was committed while Hunt was engaged or an accomplice in the commission of a burglary;
3. Hunt committed the first-degree murder to disrupt or hinder the lawful exercise of a governmental function or enforcement of laws;

4. The first-degree murder was especially heinous, atrocious, or cruel; and

5. The first-degree murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

DAR 1494-96; 2765-68. The State presented victim impact evidence through Danny, Gabe, and Lexie's mother, Jenna. *Id.* at 2684-94. The State made no further presentation.

Defense counsel intended to call two mitigation expert witnesses, neuropsychologist Dr. Michael Collins and sociologist Dr. Micah Johnson. However, Hunt decided he did not want either expert witness to testify, as a defense "strategic decision" and he had "concerns" that had not been disclosed to the court. The trial court confirmed Hunt's decision not to call Dr. Collins or Dr. Johnson in mitigation and that his attorney "is going along with your wishes." DAR 2658-60, 2697, 2704.

Hunt waived his right to testify, but called two mitigation witnesses. Hunt's sister and legal guardian since he was 14-years-old, Reverend Wanda Waters, discussed Hunt's life; their family's community involvement and Soul City Club business; their "loving mother," who was a "perfect grandmother," schoolteacher, and

involved in her church; they “were such a close knit family,” and were “secure . . . really didn’t want for anything and we had the love of family members.” She described Hunt’s hardship at age seven when his father died and his family “smothered him . . . we all stepped in and tried to make up for what he lost.” Another traumatic event was that the family’s Soul City Club and home burned down the same night. Rev. Waters also spoke about Hunt’s military enlistment in 1983 and military service ending in his court martial and dishonorable discharge in his late 20’s. On cross-examination of Rev. Waters, the State established that Hunt performed well in school and was raised to know right from wrong. DAR 2699-2716, 2723-28.

Hunt’s niece and Rev. Waters’s daughter Pasha Daniels briefly testified to his community involvement and “rap” he performed on behalf of a recreation center. The defense rested. DAR 2729-32.

The penalty phase jury unanimously found the State proved all five aggravating factors beyond a reasonable doubt; considered mitigating circumstances presented; weighed the proven aggravating factors against proven mitigating circumstances; considered whether Hunt should be sentenced to life imprisonment; and ultimately recommended Hunt be sentenced to death for Lexie’s murder by a

vote of 10-2. DAR 1504-06; 2784-90.

The *Spencer* hearing was held on November 21, 2023. The defense did not present evidence of statutory mitigating circumstances, but decided to call one witness, Dr. Micah Johnson, who Hunt declined to call in the jury presentation. Dr. Johnson, a sociologist trained in criminology and psychiatric epidemiology, briefly testified regarding social disadvantage and trauma effects on Hunt's individual development. Dr. Johnson testified that Hunt was exposed to "diverse forms of trauma and adversity" through childhood and adolescence; the adversity affected his adult development; and Hunt was exposed to "a plethora of risk factors" and had a "deficit of protective factors. DAR 2615-47.

According to Dr. Johnson, Hunt had "significant experiences" to explain "why someone is capable of this" including Hunt's: father's death at age 7; home and "family business" burned down at age 12; mother's death at age 14; sister's death at age 21; and "losing his military career" and "reputation" and sex offender designation because of a court martial and dishonorable discharge. Defense counsel summed up Hunt's experiences as his "exposure to the constant trauma as a young boy, adolescent, and even as an adult,

and also, the loss of his family and his emotional and social home base,” with which Dr. Johnson agreed. DAR 2624-25.

On Dr. Johnson’s cross-examination, the State confirmed that during his interview with Hunt, Hunt did not express how the traumas affected him. Instead, Dr. Johnson testified that Hunt “expressed [his trauma] by not expressing it.” Hunt maintained “decent” grades in school, did not report “poor” relationships with either his mother or father, and had a good relationship with his elder sister who raised Hunt after their parents died. Finally, Dr. Johnson acknowledged, Hunt was “accountable for the choice he makes . . . another excellent point.” DAR 2626-33.

Hunt then personally addressed the court. DAR 2636-44. Contrary to Dr. Johnson’s testimony, Hunt stated upfront, “no type of trauma would cause me to shoot anyone . . . that’s not an excuse to be here.” *Id.* at 2637, 2639. Hunt claimed no legal responsibility for Lexie’s murder because he did not actually kill her, stating,

I did not shoot this person. I was not involved in that. And I think the evidence was overwhelming that I did not do this. . .

More than that, no DNA evidence. Three of the eyewitnesses telling you it was not me. I did not even fit the description. Even the cell phone pings do not put me

at that address. Yet a person who says he saw a black guy, who had it out for Michael Hunt, will say it's Michael Hunt. And what was I convicted on? Hearsay testimony, no evidence.

Id. at 2637. He further disparaged Kaitlyn West and P.O.'s testimony as, "all lies." DAR 2639-42.

Hunt's October 14, 2023 sentencing memorandum included adverse developmental factors, Dr. Johnson and Michael Collins, Ph.D.'s evaluations, and 53 non-statutory mitigating circumstances, which the trial court grouped into nine categories:

1. Family dynamic;
2. Childhood trauma;
3. Childhood achievements;
4. Military career;
5. Adult achievements and personal life;
6. Physical health;
7. Mental health;
8. Conduct while awaiting trial; and
9. Potential for rehabilitation.

DAR 1531-49, 2862-66. The State's October 2, 2023 sentencing memorandum argued 1) five aggravating factors were proven beyond a reasonable doubt to support a death sentence; and 2) any mitigation found should be given little weight. DAR 1522-27.

At the January 19, 2024 sentencing hearing, defense counsel renewed the objection to amended Florida Statute §921.141(2)(c)

(2023) authorizing a nonunanimous jury recommendation of a death sentence. DAR 2901, 1221-25. Hunt briefly addressed the court stating he forgave the family “for accusing me of something that I’m sure that they know I didn’t do” and called Danny a coward to “run to the neighbor’s” when the kids were being shot. *Id.* at 2901.

The trial court found five aggravating factors proved beyond and to the exclusion of every reasonable doubt and assigned weight:

1. Prior felony conviction involving the use or threat of violence. Very great weight;
2. The capital felony was committed while Hunt was engaged or accomplice in the commission of a burglary. Great weight;
3. The capital felony was committed to disrupt or hinder the lawful exercise of government function or the enforcement of laws. Very great weight;
4. The capital felony was especially heinous, atrocious, and cruel. Very great weight; and
5. The capital felony was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification. Very great weight.

DAR 2859-62, 2902-03. Three mitigating circumstances were found by the greater weight of the evidence: Hunt’s 1) family dynamic (little weight); 2) childhood trauma (some weight); and 3) mental health (little weight). *Id.* at 2903-04. The court determined the five

aggravating factors outweighed mitigation presented and sentenced Hunt to death for Lexie's murder. *Id.* at 2851-67, 2904.

II. Pretrial Proceedings:

Throughout the pre-trial proceedings, Hunt sent numerous correspondence and filed several *pro se* motions regarding discovery, trial processes, complaints about defense counsel and Judge Shonna Gay.⁹ *See e.g.* DAR 178-87, 196, 205, 357-367, 368-69, 395-406, 817-38, 1055-62, 1065-66, and 2803-22. Hunt would directly address the trial judge during the proceedings and was advised to relay his concerns to defense counsel. *See e.g.* DAR 217-19. Judge Garcia informed Hunt that because he was represented by counsel, “[u]nless your attorneys make these requests, these are not requests that will be considered by the Court.” *Id.* at 993-97, 999-1000.

Hunt also raised a possible conflict with his defense counsel, Philip Massa, due to representation in cases involving the DCF.¹⁰ Mr. Massa advised the court that he never represented or appeared on

⁹ Judge Ana Maria Garcia was appointed on June 28, 2019; and Judge Shonna Gay was appointed on December 30, 2021.

¹⁰ DCF investigated Hunt's exploitation and sexual battery of P.O., which is tied to the facts of this case, discussed *infra*.

behalf of a DCF or a DCF client and the trial court took no action. Hunt then filed a *pro se* motion for a *Nelson*¹¹ inquiry, Mr. Massa responded, and the hearing was held on October 8, 2020. Judge Garcia denied the motion finding Mr. Massa had not been ineffective. Hunt raised a *Nelson* issue two years later regarding discovery and lack of communication with counsel. Judge Gay had since been appointed to Hunt's case, conducted another *Nelson* inquiry, and found that Mr. Massa was not ineffective. DAR 221-23, 227-238, 262-267, 272-335, 799, 804-815.

The State filed two pre-trial Notices of Similar Fact Evidence under § 90.404(2), Fla. Stat. regarding criminal charges against Hunt for human trafficking and sexual battery of P.O., intending to use the evidence to prove his motive, identity, and premeditation of the killing. DAR 428-29, 933-34. At the April 17, 2023 motion hearing, the State argued that the charges of human trafficking and sexual battery of P.O. were Hunt's motive for her murder at the intended target and attempted murder of three others "that resulted in the death of one young lady that looked a lot like the . . . intended victim,"

¹¹ *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973).

P.O. DAR 1016-17.

The defense objected, but acknowledged that the proposed evidence was “inextricably intertwined” in the case as motive to kill P.O. The State agreed that the evidence was inextricably intertwined, but filed the similar fact notices in an abundance of caution. Mr. Massa requested that if granted, the testimony be “specifically tailored and sanitized,” not become a feature of the trial, or for the trial to be unduly prejudiced by those facts. The trial court’s written order recognized the evidence was “certainly prejudicial to the Defendant,” but found it admissible because “its probative value outweighs its prejudicial effect.” Importantly, the trial court ruled it would “not allow the evidence to become a feature of the trial” and cautioned the parties “against any unnecessary or in-depth discussion.” DAR 1017-20, 1077-79.

The defense moved to declare multiple sections of Florida’s capital sentencing statute unconstitutional. *See* DAR 650-53, 660-85. 689-721. Those motions were denied. *Id.* at 1067-76, 1086-1087.

On June 6, 2023, the State moved to utilize amended Florida Statute §921.141(2)(c) (2023), providing if at least eight jurors

determine a defendant be sentenced to death, the jury's recommendation to the trial court must be a sentence of death. DAR 1088-91. Hunt objected that allowing the determination to recommend a death sentence by a minimum of eight jurors, instead of a unanimous recommendation was unconstitutional under *Hurst v. Florida*, 577 U.S. 92 (2016) and an *ex post facto* change of the law. *Id.* at 1221-25. Following the parties' arguments at the August 30, 2023 hearing, the trial court orally granted the State's motion and in its written order. *Id.* at 1241-43, 1271-76.

SUMMARY OF ARGUMENT

ISSUE I: The trial court did not abuse its discretion admitting State's inextricably intertwined evidence of Hunt's relationship to P.O., that he prostituted her and Kaitlyn West, sexually battered P.O., and was to be arrested for the sexual battery and prostitution. This evidence was offered to prove Hunt's motive and intent to eliminate P.O. as a witness. The trial court limited the evidence presented so as not to become a feature of the trial and no prejudice resulted.

ISSUE II: The trial court did not abuse its discretion giving the transferred intent jury instruction where Hunt's plan to kill P.O. was carried out by his associate, who shot and killed Lexie through mistaken identity.

ISSUE III: The trial court did not commit fundamental error because a penalty phase jury's determination upon weighing the sufficiency of aggravating factors against mitigating circumstances to recommend a death sentence, is not made beyond a reasonable doubt standard of proof.

ISSUE IV: The recent amendment to Florida's death penalty statute allowing nonunanimous jury death sentence recommendations, the number of capital statutory aggravating factors, and this Court's abolition of proportionality review in *Lawrence v. State*, 308 So.3d 544 (Fla. 2020) do not increase arbitrariness in capital sentencing in violation of the Eighth Amendment and *Furman v. Georgia*, 408 U.S. 238 (1972). IB 46. This combination constitutional challenge is meritless and this Court has previously rejected similar challenges, most recently in *Cox v. State*, ___ So.3d ___, 49 Fla. L. Weekly S197, 2024 WL 3364911 (Fla. July 11, 2024). Where this Court followed United States Supreme Court precedent, an Eighth Amendment violation cannot possibly be created. Therefore, Florida's current death penalty regime does not violate the Eighth Amendment

ISSUE V: The United States and Florida constitutions do not require unanimous jury recommendations to impose a death sentence and Florida's amended death penalty statute does not violate *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020). The Sixth Amendment only requires unanimity of a capital jury's finding of an aggravating factor, not unanimity regarding the jury's sentencing recommendation.

Both the United States Supreme Court and this Court agree that the constitution only requires that the jury find a single aggravating factor. *McKinney v. Arizona*, 589 U.S. 139 (2020); *State v. Poole*, 297 So.3d 487 (Fla. 2020). This Court should not reconsider its prior decision in *State v. Poole*, 297 So.3d 487 (Fla. 2020), because *Ramos* does not change *Poole*'s analysis in any manner, firmly established by the United States Supreme Court in *McKinney*. Florida's current death penalty statutes do not violate *Ramos*.

ISSUE VI: Florida's capital sentencing scheme does not violate Ex Post Facto principles or Florida's savings statute. Decades ago, in *Dobbert v. Florida*, 432 U.S. 282 (1977), the United States Supreme Court rejected an ex post facto attack applying an amended death penalty statute to a murder that had occurred before the amendment, which is indistinguishable and controls. Nor did applying Florida's amended death penalty statute to Hunt violate the savings statute, § 775.022, Fla. Stat. (2024), which was applied prospectively to Hunt, as required by the text of the savings statute. The trial court properly granted the motion to apply to the current version of the death penalty statute to the upcoming penalty phase.

ARGUMENT

ISSUE I

Whether the Trial Court Abused its Discretion Admitting the State's Inextricably Intertwined Evidence? [Restated]

Hunt asserts that the trial court abused its discretion admitting State's evidence of his relationship with P.O. and Kaitlyn, that he sexually battered P.O., and prostituted P.O. and Kaitlyn. IB 31, 33. Hunt agreed that the dissimilar fact evidence was relevant, but argues its admission exceeded the scope of that necessary to adequately describe the charged offenses, became a feature of the trial, transcended the bounds of relevancy, and caused undue prejudice. *Id.*

The trial court properly admitted the State's evidence because 1) it was directly relevant as dissimilar fact and inextricably intertwined evidence to prove Hunt's premeditated intent and motive to kill P.O.; 2) its probative value was not substantially outweighed by any risk that Hunt would be unfairly prejudiced or denied a fair trial because: 3) the issue was thoroughly litigated; and 4) the trial court expressly limited the scope of the evidence and did not allow it to become a feature of the trial.

Standard of Review

Trial courts have broad discretion to determine the relevance of evidence, including admission of inextricably intertwined evidence, and that discretion will not be disturbed on appeal absent clear abuse of discretion. *Kirkman v. State*, 233 So.3d 456, 467 (Fla. 2018) (citing *McGirth v. State*, 48 So.3d 777, 786 (Fla. 2010)); *Poole v. State*, 151 So.3d 402, 414 (Fla. 2014); and *Wright v. State*, 19 So.3d 277, 291 (Fla. 2002) (abrogated on other grounds of proportionality review). Abuse of discretion is that which is “arbitrary, fanciful, or unreasonable” or where no reasonable man would take the trial court’s view. *Ballard v. State*, 66 So.3d 912, 917 (Fla. 2011).

The trial court’s discretion is limited by the rules of evidence. *See Kirkman*, 233 So.3d at 467 (quoting *Hudson v. State*, 992 So.2d 96, 107 (Fla. 2008)); *McDuffie v. State*, 970 So.2d 312, 326 (Fla. 2007). Discretion is abused if a ruling is based on a clearly erroneous view of the law or assessment of evidence. *See Kirkman*, 233 So.3d at 467; *Salazar v. State*, 991 So.2d 364, 373 (Fla. 2008) (quoting *Cooter & Gell v. Hartmarx Corp*, 496 U.S. 384, 405 (1990)).

Merits

Relevant evidence tending to prove a material fact is admissible

unless it is excluded by law. *See Joseph v. State*, 336 So.3d 218, 235 (Fla. 2022); *Poole*, 151 So.3d at 414; *Victorino v. State*, 23 So.3d 87, 98 (Fla. 2009); § 90.401, Fla. Stat. Relevant evidence is inadmissible if its probative value is *substantially* outweighed by the danger of *unfair* prejudice, confuses the issues, misleads the jury, or is needlessly cumulative. *See Victorino*, 23 So.3d at 98, *Kirkman*, 233 So.3d at 468 (quoting *Truehill*, 211 So.3d 930, 945 (Fla. 2017); § 90.403, Fla. Stat. Trial courts are “afforded significant discretion” to make this determination. *Rodriguez v. State*, 753 So.2d 29, 42 (Fla. 2000).

Unfair prejudice is described as “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional” basis. *Abdool v. State*, 53 So.3d 208, 218 (Fla. 2010) and *Wright*, 19 So.3d at 296 (quoting *Brown v. State*, 719 So.2d 882, 885 (Fla. 1998)). This exclusionary rule contemplates evidence “which enflames the jury or appeals improperly to the jury’s emotions.” *Wright*, 19 So.3d at 296.

This Court defines dissimilar fact evidence as “uncharged crimes which are inseparable from the crime charged, or evidence which is inextricably intertwined with the crime charged,” and is not

*Williams*¹² rule evidence. *Kirkman*, 233 So.3d at 467, *Campbell v. State*, 271 So.3d 914, 932 (Fla. 2018) (quoting *Griffin v. State*, 639 So.2d 966, 968 (Fla. 1994)). Inextricably intertwined evidence is governed by, and admissible under, §90.402, Fla. Stat. as “a relevant and inseparable part” of the act which is in issue [and] necessary . . . to adequately describe the deed.” *Id.* The State’s use of dissimilar fact or inextricably intertwined evidence is limited and not become a feature of the trial or be used solely to show bad character. *See Smith v. State*, 126 So.3d 1038, 1046 (Fla. 2013).

To convict Hunt of first-degree murder, the State was required to prove in part, his premeditated design to effect Lexie’s death under §782.04, Fla. Stat. To do so, any fact relevant to prove Hunt’s premeditation, motive, or identity was admissible, unless precluded by a specific exclusionary rule. Premeditation may be shown by circumstantial evidence. *See Provenzano v. State*, 497 So.2d 1177, 1181 (Fla. 1986). Evidence of Hunt’s relationship with P.O. and Kaitlyn, sexual battery of P.O., and prostitution of both P.O. and Kaitlyn was necessary 1) to prove requisite elements of the crime

¹² *Williams v. State*, 110 So.2d 654 (Fla. 1959).

charged; and 2) for the jury's clear understanding of the case facts, circumstances, crimes charged, and what led to his motive and premeditated plan to kill P.O.

The State filed its initial Notice of Similar Fact Evidence under §90.404(2), Fla. Stat in September 2021, and amended the notice in March 2023, intending to introduce the following to prove Hunt's motive, intent, and premeditation:

On or between January 1, 2018 and April 5, 2019, in Bay County, Florida, defendant did, in violation of Florida Statute 787.06(3)(a), engage in human trafficking, to wit: By subjecting P.O., a child younger than 18 years of age to commercial sexual activity and/or benefited financially by receiving U.S. currency . . . for her services . . .

On or about July, 2018, in Bay County, Florida, defendant did, in violation of Florida Statute 794.011(S)(a), commit sexual battery upon P.O., a person 12 years of age or older, but less than 18 years of age . . .

DAR 428-29, 933-34. Initially characterized as "*Williams Rule*" evidence, the parties agreed that it was dissimilar fact or inextricably intertwined evidence. *Id.* at 471-72. At the hearing, the State explained that evidence that Hunt prostituted and sexually battered P.O. and was criminally charged, was necessary to prove identity, motive, intent, and premeditation to murder P.O., resulting in Lexie's death and attempted murders of three others. *Id.* at 1016-17. The

arrest warrants were pending when Hunt fled the courthouse and

. . . the individuals that were targeted or that ended up being the victims of this crime were shot on April the 4th, that resulted in the death of one young lady that looked a lot like the victim, the intended victim, excuse me, P.O., in the case, as well as Mr. Scoggins and two other individuals.

....

. . . there will be testimony that the defendant, just two days before this tragedy occurred, remarked to [Kaitlyn], "no witness, no crime," when he was discussing the newest allegations, that being the substance of the sexual battery and human trafficking charge. When he was discussing it with this witness, he said, "no witness, no crime." Then two days later, a witness looking like P.O., the victim in those cases . . . was murdered in her family's home and then Mr. Scoggins and two other individuals were shot.

DAR 1016-20.

The defense argued although there was no similarity between Lexie's murder and the "other crimes," the evidence may be "inextricably intertwined" as motive to kill P.O. Counsel requested that if allowed, the evidence "be specifically tailored and sanitized so that it doesn't become a feature of the trial itself. . . We don't want this trial unduly prejudiced by those other facts." DAR 1018-20.

In its written order, the trial court allowed admission of the State's evidence that Hunt prostituted and sexually battered P.O. as

dissimilar fact evidence under § 90.402, Fla. Stat. The court found the evidence was inextricably intertwined with Hunt's case and "relevant to provide an intelligent account of the events leading up to the commission of the charged offenses." DAR 1077-78. It reasoned,

Without such evidence, the State would be unreasonably hampered in establishing the entire context out of which the charged crimes arose. Furthermore, such evidence is relevant to establish identity, intent, motive, and/or premeditation. Although the evidence is certainly prejudicial to the Defendant, its probative value outweighs its prejudicial effect.

Id. at 1078-79. Importantly, the trial court would "not allow the evidence to become a feature of the trial" and cautioned the parties "against any unnecessary or in-depth discussion." *Id.* at 1079. The objection was renewed at the start of trial and denied. TT 9.

The probative value of the State's evidence was not substantially outweighed by any danger of unfair prejudice to Hunt where its use was limited and the trial court prevented it from becoming a feature of the trial. The trial testimony relevant to this issue is summarized:

PCPD Cpl. Corrine Clark: Investigated the case leading to Hunt's subsequent arrest warrants. Testimony was limited and solely referenced P.O.'s "allegations" and "possible sex crimes." No detailed information about the acts was discussed. TT 321-27.

P.O.: P.O. lived with Hunt near his business Polecats, “where Mike would take me and Kait and sell us.” In response to the State’s inquiry whether Hunt was violent with her or Kaitlyn or if he did something “inappropriate,” P.O. described the sexual battery which led to her testimony that Hunt “sold” her and Kaitlyn, the locations where the prostitution took place, and their clientele. TT 126-31.

Finally, P.O. briefly testified about travel to Mississippi after the hurricane and that Gabe did not know about the prostitution:

[By the State]: . . . who was paying for the hotel room?

[By P.O.]: Mike.

Q. What about food and things like that?

A. It would be me and Kait if we were able to get sold. If not, the money would come from Mike.

Q. . . . did [Gabe] know that this was going on?

A. Nope.

Q. Well, how is it that you guys are staying in one hotel room and he doesn't know what's going on?

A. Because I had to lie to him.

Q. . . . Would the prostitution go on in that hotel room or somewhere else?

A. We would take it somewhere else. So we would stay - -

Id. at 134-35. Defense counsel then objected that P.O.'s testimony was going beyond the scope of the trial court's order on the inextricably intertwined evidence and into prostitution in Mississippi. Hunt's counsel acknowledged,

It was . . . the sexual relations he was allegedly having with her which led to her complaint to DCF, which led to the warrant, which led to the motive. And I think that's been pretty well covered.

TT 135. The State responded that P.O. corroborated Gabe's testimony that he "wouldn't know what was going on." Counsel then informed the court, he "was actually about to move on from this." *Id.* at 136. The trial court allowed P.O. to answer the State's last question, but instructed the State to move on. *Id.* at 136-37. The State's examination continued,

[By the State]: I believe you were stating that you all would have to -- or you would lie to Gabe about what was going on and that you all would leave; is that correct?

[By P.O.]: Yes.

Q. . . . Now, eventually, after, you know, being in Biloxi and things like that, did you guys ever go to Louisiana?

A. Yes.

BY MR. MASSA: Objection.

THE COURT: Overruled.

Q. So you all went to Louisiana?

A. Yes.

Q. All right. And eventually did you make your way back to Panama City?

A. Yes.

The State's line of questioning ended. *Id.* at 138-39.

Gabe White: Gabe recounted staying in Mississippi with Hunt, Kaitlyn, and P.O., did not mention prostitution, but briefly discussed that the three of them would leave the room at night for several hours. He discussed "some things going on" with P.O. that ultimately involved the police and a criminal complaint against Hunt. Gabe further testified he became aware of extra police patrol, which took place on or about April 1, 2019 and after P.O. lodged the criminal complaints against Hunt. TT 85-88, 96-97.

Alexis Sykes, Esquire: Former Assistant State Attorney Sykes testified about the new arrest warrant to have been executed on April 1, 2019 and video of the court proceedings that day. TT 330-35. The most specific reference was "a warrant for Michael Harrison Hunt for sexual battery on a person under 18." *Id.* at 333 .

PCPD Capt. Kristian Shaw: Capt. Shaw testified that Kaitlyn went to the PCPD the day after the murder, was interviewed, provided information about her trip to Atlanta, and was arrested. TT 346-47. Capt. Shaw began to recount Hunt's discussion with Kaitlyn about his new case regarding P.O., but the State *immediately* stopped him. *Id.* at 437. On cross-examination, the defense inquired about Kaitlyn's arrest warrant for human trafficking, accused of prostituting, or receiving proceeds. The State objected as the parties' agreed not to raise Kaitlyn's criminal charges regarding P.O. and the State agreed not to delve into this information. The trial court sustained the State's objection noting the parties agreed to limit testimony to Kaitlyn's felony convictions. *Id.* at 380-86.

Kaitlyn West: Prior to Kaitlyn's testimony, the defense objected to the relevancy of anything that did not "relate to the trip to Atlanta and back and any testimony that she and Hunt were involved in P.O.'s prostitution. TT 296. The State noted that the information was already in evidence through P.O., Kaitlyn's testimony was necessary in part to corroborate it, and would be used to establish Hunt's motive. *Id.* at 297-300. The trial court allowed limited testimony offered to prove motive and corporation and stated,

. . . this will not become a focus of the trial. . . her state of mind, I do not find is relevant or the fact that it was control over her, I do not find as relevant.

. . . I know y'all got to a certain point and then did not go any further based on a ruling I had regarding Mississippi . . . But I will allow it for the limited purpose of the motive and to corroborate the testimony of the other witness.

Id. at 300-01. Without further defense objection, Kaitlyn testified about her 5-year relationship with Hunt; she and P.O. were prostituted; and two felony convictions including deriving proceeds from prostitution of P.O. Testimony about her, Hunt, P.O., and Gabe's stay in Mississippi after the hurricane was limited and Kaitlyn denied that she and P.O. were prostituted while away. *Id.* at 415-24.

The foregoing testimony was relevant to prove Hunt's motive and premeditation through a continuing chain of events leading up to Lexie's murder. *See Victorino*, 23 So.3d at 99 (dissimilar fact evidence was relevant and admissible to show a continuing chain of events leading up to murder). *See also Delhall v. State*, 95 So.3d 134, 166-67 (Fla. 2012) (dissimilar fact evidence was relevant and admissible to prove defendant's motive to kill witnesses); *Smith*, 126 So.3d at 1045-46 (evidence that defendant "hoped to commit sexual battery" was relevant and danger of unfair prejudice did not outweigh

its probative value); *Joseph v. State*, 336 So.3d 218, 235 (Fla. 2022) (no abuse of discretion to admit evidence of events two days prior to the murder offered to prove defendant’s motive). The 1959 *Williams* Court notably held that evidence was clearly admissible as “[i]t definitely had probative value to establish plan, scheme or design . . . and had a substantial degree of relevance in order to identify the accused.” *Williams*, 110 So.2d at 663.

The State was entitled to present evidence to paint “an accurate picture of the events surrounding the crimes charged,” without making it a feature of the trial. *Campbell*, 271 So.3d at 932 (quoting *Griffin*, 639 So.2d at 970). See also *Smith v. State*, 126 So.3d 1038, 1045-47 (Fla. 2013). Moreover, the State’s dissimilar fact evidence was properly admitted because it “help[ed] to put the entire case into perspective,” as long as it is not outweighed by prejudicial effect. *Kirkman*, 233 So.3d at 467 (quoting *Kopsho v. State*, 84 So.3d 204, 212 (Fla. 2012). Although not specifically stated in Hunt’s case, testimony about incidents prior to Lexie’s murder could have been relevant to show a reason for Hunt’s “aggression towards” his victims. See *Joseph*, 336 So.3d at 235.

A reasonable view of the testimony demonstrates that it assisted

the jury to see a clear picture of the events and circumstances leading up to Hunt's plan to kill P.O. and attack on the Scoggins's home resulting in Lexie's death. The evidence laid out Hunt's plan, scheme, and design and it cannot be suggested that the evidence confused the jury. Far from it, the evidence proved important facts and elements of the case, Hunt's motive and premeditation.

The factual connection and relevant context between the evidence and the murder is clear as it must have been to the jury: P.O. was the sole reason for Hunt's premeditated motive, plan, and execution of that plan even though P.O. and Lexie looked so similar that it resulted in the mistaken identity of the intended murder victim and Lexie losing her life. Without the evidence, the attack on the Scoggins's home would have made no sense to the jury and the State could not have proven Hunt's premeditation.

Illustrative is *Ballard v. State*, 66 So.3d 912 (Fla. 2011), where the trial court in that case did not abuse its discretion admitting collateral crime evidence of the defendant's sexual relations with his homicide victim's minor daughter/Ballard's step-granddaughter Suny. *Ballard*, 66 So.3d at 918. The State presented multiple witnesses who testified that Ballard "engaged in inappropriate

conduct.” Suny also testified that she and Ballard frequently engaged in sexual intercourse during her entire eighth grade school year.” *Id.* The Court agreed with the State that the evidence of the sexual relationship was “relevant to show motive and inextricably intertwined with testimony needed to establish the crime.” *Id.* It held that the evidence was not “wholly inflammatory without any relevance to the case” and was “relevant to establish why Ballard would want to murder” Suny’s mother. *Id.*

Hunt’s assertion that the State’s inextricably intertwined evidence was not limited, became a feature of the trial, or was unfairly prejudicial is unsupported and meritless. His sole references in support were “P.O. and [Kaitlyn] were prostituted”; Hunt’s “relationship with and alleged sexual battery of P.O., relationship with [Kaitlyn]”; and travel back and forth to Mississippi and New Orleans” as separated in time and place and only bolstered the implication P.O. and Kaitlyn were sexually trafficked “on that trip.” IB 31, 33. Hunt fell woefully short of showing that the State’s inextricably intertwined evidence in any way transcended the bounds of relevancy and caused Hunt unfair prejudice.

Hunt cites *Ritz v. State*, 101 So.3d 939 (Fla. 1st DCA 2012) where an aggravated battery conviction was reversed because testimony of a prior bad act was improperly admitted. This DCA case is far from persuasive and does not override this Court's precedent on dissimilar fact evidence. First, *Ritz* involves *Williams* rule evidence that the defendant was seen holding an ax at an unidentified time prior to the battery, for which the state failed to provide notice. This is not the case, in Hunt's case. Second, even if the evidence in *Ritz* was inextricably intertwined, its reason for admission was legally insufficient as it was offered to prove why the defendant was living on the victim's property and why the victim wanted him to leave. See *Id.* at 943. Unlike Hunt's case, the inadmissible evidence in *Ritz* was substantially outweighed by the prejudice as it failed to adequately describe the events leading up to the crime charged, did not establish the entire context for the crime charged, and certainly did not lend itself to motive or premeditation, required in Hunt's conviction.

This Court has importantly stated, "indeed, as a practical matter, almost all evidence introduced during a criminal prosecution is prejudicial to a defendant." See *Hampton v. State*, 103 So.3d 98, 115 (Fla. 2012), *Wright*, 19 So.3d at 296, and *Jones v. Moore*, 794

So.2d 579, 584 (Fla. 2001) (quoting *Sexton v. State*, 697 So.2d 833, 837 (Fla. 1997)). In Hunt's case, evidence of sexual battery and prostitution was certainly prejudicial. But because the elicited facts were so intertwined with and at the root of the murder, the evidence was essential to prove the State's case. There is no showing that the evidence's probative value was not substantially outweighed by any unfair prejudice or that the evidence became a feature of the trial.

To determine whether admission of the evidence transcended the bounds of relevancy to the first-degree murder charge, this Court has explained, "it is not solely the quantity but also the quality and nature of the collateral crimes evidence in relation to the issues to be proven" that is determinative. *Cozzie v. State*, 225 So.3d 717, 732 (Fla. 2017). The limited quantity and restrained quality of the evidence presented established the State did not "devolve[] from development of facts pertinent to" Hunt's guilt or innocence into an assault on his character. *See Delhall*, 95 So.3d at 166.

The court and counsel limited the scope of the evidence throughout Hunt's trial to prove his motive and paint the picture for the jury this involved homicide case. Witnesses were not permitted to engage in overtly detailed narratives of the events or to editorialize

his monstrous conduct. Nor did anyone testify, for example, to the personal tolls the experiences with Hunt must have exacted.

Ballard is closely on point, as the inextricably intertwined evidence of the human trafficking and sexual battery charges is so closely linked to the facts of Lexie's murder and support for the State's theory of the case and Hunt's motive and premeditation, it could not be effectively separated or excluded. Without the evidence, the State would have been hamstrung to present and prove its case without an accurate picture of the events precipitating Lexie's murder and Hunt's plan to kill P.O. *See Ballard*, 66 So.3d at 918.

Hunt has not shown how any of the testimony became a focal point of the trial or that he was unfairly prejudiced. All testimony was limited in duration and scope by both counsel and the trial court. Even Kaitlyn's testimony benefited Hunt as she contradicted P.O.'s testimony that Hunt prostituted them while in Mississippi.

The jury instructions also balanced the evidence's potential prejudice with its probative value and was informed, for example:

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a

reasonable doubt of the existence of premeditation at the time of the killing.

....

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

....

You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

....

Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

DAR 1434, 1457-59, 1461.

If this Court were to find that the trial court should have *further* limited the State's evidence beyond what was limited, any error for failing to do so is harmless. As the *Delhall* Court observed, the harmless error test "is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming

evidence test.” *Delhall*, 95 So.3d at 167. In addition to the trial court limiting the testimony, the jury instructions further ensured that Hunt’s due process rights were protected and he received a fair trial.

Accepting Hunt’s example that testimony regarding prostitution taking place in Mississippi or New Orleans was improper and applying the harmless error test, this Court focuses “on the effect of the error on the trier-of-fact.” *Delhall*, 95 So.3d at 167. Eliminating this testimony would still leave ample proof that Hunt prostituted and raped P.O., leading to the additional criminal charges from which Hunt fled, and seeded his motive and premeditated plan to kill her.

The record before this Court demonstrates that the trial court was fully cognizant of the dissimilar fact evidence’s significance and confirms that it was well-versed in the law and properly limited the evidence’s admission for specific purposes. The record clearly shows that admission of the inextricably intertwined evidence was used to prove Hunt’s premeditation and motive, as well as to paint a cohesive picture of the facts and circumstances for the jury, without being a focal point of the trial. Therefore, because Hunt failed to show any prejudice by admission of the State’s inextricably intertwined evidence this issue is meritless and no abuse of discretion occurred.

ISSUE II

Whether the Trial Court Abused its Discretion Giving the Transferred Intent Jury Instruction? [Restated]

Hunt asserts that the trial court abused its discretion instructing the jury on transferred intent. IB 34. He argues the instruction was in error because factual scenario did not fit the traditional transferred intent doctrine and another person shot and killed Lexie. *Id.* He further suggested because the principal instruction was also given, the jury was potentially confused as to whose intent could be transferred. *Id.* at 37. The jury was properly instructed and the record does not indicate that the instructions confused the jury, resulting in a tainted verdict.

Standard of Review

Trial courts may not give confusing, contradictory, or misleading jury instructions. *State v. Floyd*, 186 So.3d 1013, 1018 (Fla. 2016). Jury instructions given by a trial court are subject to the abuse of discretion standard of review. *Armstrong v. State*, 73 So.3d 155, 173 (Fla. 2011). *See also Ballard*, 66 So.3d at 917.

Merits

The transferred intent jury instruction was addressed multiple

times during the trial proceedings, beginning with the September 11-12, 2023 Preliminary Charge Conference. TT 544-51, 565-69. First, the parties agreed to the Principal jury instruction, applied to all counts and lesser included offenses:

PRINCIPALS

. . . if the defendant helped another person or persons commit a crime, the defendant is a principal and must be treated as if he had done all the things the other person or persons did if:

1. the defendant had a conscious intent that the criminal act be done and
2. the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist, or advise the other person or persons to actually commit the crime.

To be a principal, the defendant does not have to be present when the crime is committed.

TT 547; DAR 1456.

The State then requested transferred intent standard jury instruction 3.6(o) be given: and to apply only to Count I-First Degree Murder and lesser included offenses:

If a person intends to shoot a person, and in the process shoots a different person, the law transfers the intent to shoot the intended person to any person who was actually shot.

DAR 1439; TT 547-48, 772-73. The “usual case of transferred intent” was described as “when a defendant aims and shoots at A intending to kill him but instead misses and kills B. As a matter of law, this original malice is transferred from the one against whom it was entertained to the person who actually suffered the consequences of the unlawful act.” *Provenzano*, 497 So.2d at 1080.

In support of the instruction, Assistant State Attorney Overstreet explained that Hunt’s premeditated intent to kill P.O. transferred to Lexie, who was shot and killed by the other principal, albeit by mistaken identity. It distinguished application of the two instructions where 1) the principal instruction applied the facts supporting felony murder and Hunt’s actions to encourage, incite, or even hire the second person, so the jury would not say no one intended Lexie to be killed and therefore, Hunt is not guilty of premeditation; and 2) transferred intent instruction addressed the foregoing quandary of intent where Lexie was killed, but the actual intent was to kill. TT 548-49, 566-67.

ASA Overstreet relied on *Mordica v. State*, 618 So.2d 301 (Fla. 1st DCA 1993), which focused on the defendant’s original intent as the key aspect of the transferred intent doctrine. TT 548. Despite

that the district court of appeal reversed the conviction for battery on a law enforcement officer, it observed,

The doctrine of transferred intent, by definition, operates to transfer the defendant's *intent as to the intended victim* to the unintended victim, and nothing more. . . Accordingly, the doctrine of transferred intent as adopted by the supreme court of this state is governed and limited by the intent operative as to the intended victim, not the unintended victim, and the severity of the offense predicated on the doctrine of transferred intent is that applicable had the intended victim been the one injured.

Mordica, 618 So.2d at 304 (emphasis in original). See also *Brown v. Sec'y, Fla. Dep't of Corr*, 2020 WL 1862605, *11 (M.D. Fla.) (quoting *Mordica*, 618 So.2d at 304). The State argued *Mordica* held the purpose of the doctrine is not limited to the traditional application, but extended to the specific facts of Hunt's case. TT 548-49.

The State cited Standard Jury Instruction 3.6(o) comments which proves:

Comments

See *State v. Brady*, 745 So.2d 954 (Fla. 1999) and *Nelson v. State*, 853 So.2d 563 (Fla. 4th DCA 2003). Also, in *Mordica v. State*, 618 So.2d 301, 303 (Fla. 1st DCA 1993), the First District rejected the contention that the doctrine of transferred intent is applicable only where the defendant entirely misses the intended victim and hits the unintended victim.

The doctrine of transferred intent may not apply to the

crime of Attempted First Degree Murder. *See Bell v. State*, 768 So.2d 22 (Fla. 1st DCA 2000)(stating that if the issue is whether the defendant attempted to murder multiple victims, then such specific intent is not subject to transfer but rather such intent should be independently evaluated as to each victim); *but see Frederick v. State*, 93 So.3d 445 (Fla. 4th DCA 2012) (holding that the giving of a transferred intent instruction was not fundamental error because defendant was not charged with attempting to murder multiple victims).

In re Standard Jury Instructions in Criminal Cases, 229 So.3d 87, 88 (Fla. 2017); TT 550.

The State argued that *Brady* addressed the transfer of ill will, evil intent, or depraved mind and that non-premeditated intent still transfers to an unintended target. TT 566-67. Focusing on Hunt's specific premeditated intent to kill, it is his intent which transferred to the unintended victim and proposing he was not culpable for Lexie's murder, is a misstatement of the law. *Id.*

The defense objected multiple times between the preliminary charge conference and the court's final instructions to the jury. TT 548-69, 576-77, 702-06, 772-773, 912-13. Aggregately, Mr. Massa argued that the facts of the case did not support transferred intent instruction, Hunt did not shoot Lexie, and he would have intended to shoot Danny Scoggins, but killed another person. *Id.* at 548. As

to Lexie's shooter, Mr. Massa stated, "whoever he was, intended to shoot" Lexie and "whether it was mistaken identity or not does not go to transferred intent." *Id.* at 657-68.

The trial court approved the transferred intent instruction and additionally considered *Provenzano, Coston v. State*, 190 So. 520, 522 (1939) (holding the "law, as well as reason, prevents plaintiff in error from taking advantage of his own wrong doing [sic], or excusing himself when this unlawful act, if committed by plaintiff in error, strikes down an unintended victim. The original malice as a matter of law is transferred from the one against whom it was entertained to the person who actually suffered the consequences of the unlawful act."); and *Lee v. State*, 141 So.2d 257, 259 (Fla. 1962) (holding "this court is committed to the doctrine that one who kills a person through mistaken identity or accident, with a premeditated design to kill another is guilty of murder in the first degree if the indictment in such a case properly alleges that the premeditated design was to effect the death of the person actually killed. The law transfers the felonious intent in such a case to the actual object of his assault, and the homicide so committed is murder in the first degree), and *Yates v. Evatt*, 500 U.S. 391 (1991). TT 548, 565-69, 576-77, 702-04.

The defendant in *Provenzano* shot, killed, and injured multiple persons in an Orange County courthouse. Provenzano alleged giving the transferred intent instruction was reversible error and not supported by the trial evidence. *Provenzano*, 497 So.2d at 1080. As stated above, *Provenzano* espoused the “usual case” and application of the transferred intent doctrine. *Id.* However, the *Provenzano* Court found the instruction was clearly supported by the evidence and held the transferred intent doctrine “is not limited to the usual example” when a defendant’s “original malice is transferred from the one against whom it was entertained to the person who actually suffered the consequences of the unlawful act.” *Id.* at 1180.

Hunt’s case is analogous to *Provenzano* as it involves a far less common, but equally valid factual scenario which warranted the transferred intent instruction. *See Provenzano*, 497 So.2d at 1181. The trial record clearly illustrates Hunt’s criminal design and scheme to murder P.O., using the pizza delivery ruse to forcibly enter the Scoggins’s home. The record also supports the reasonable inference that Hunt’s plan included the specific strategy that two men entered the house, but the other was to kill P.O. The evidence showed that Hunt stayed at the front door and engaged Danny, who was the most

logical impediment to his plan. It is then reasonably inferred that Hunt directed the second perpetrator to seek out and kill P.O., but instead found and killed Lexie. These events occurred in seconds, the roles were set prior to knocking on the front door, and there was no discussion between the two men to figure out who was to do what.

The inferences drawn from the evidence also explain why Lexie was killed instead of P.O. No evidence existed that Hunt's accomplice knew either girl, leading to mistaken identity between two teenage girls with red hair. No evidence existed that the accomplice had any intent or motive to kill Lexie, knew the Scoggins family, or it was his premeditated plan. The burglary was not motivated by theft, as Hunt knew the Scoggins's family and nothing was taken, except the cell phone snatched from Danny's hand. TT 59, 343. The motive was something else, the intentional killing of one or more of the occupants. Four people were shot, one was killed, and both perpetrators were in and out of the house in minutes. The evidence proved Hunt intended for a killing to occur and that intent was transferred, warranting the instruction under these specific facts.

Even if this Court finds that the transferred intent instruction was given in error, doing so was harmless beyond a reasonable doubt

because of the additional case theory under which Hunt was convicted. The unknown gunman's act of shooting and killing Lexie was not an independent act, divorced from Hunt's intent and premeditated plan. The fact that Hunt employed another person to fulfill and execute his original intent, the second man was sent to find and kill P.O., ultimately killing the wrong person because of mistaken identity, does not and should not diminish Hunt's culpability when his intent was to commit first-degree murder.

As a general rule, felons are responsible for the acts of their co-felons and as perpetrators of an underlying felony, and co-felons are principals in any homicide committed in furtherance of the initial criminal design. See *Jackson v. State*, 18 So.3d 1016, 1026 (Fla. 2009). *Archer v. State*, 613 So.2d 446 (Fla. 1993) is a case factually comparable to Hunt's case, where the capital defendant did not actually kill the victim, but enlisted someone else to do it.

In *Archer*, the capital defendant was fired from his job and agreed to pay Bonifay to kill the person responsible. *Id.* at 447. On Bonifay's first trip to the business, he could not go through with the murder. Archer "got after" Bonifay for not killing the clerk who fired him. Bonifay went back the next day, shot and killed someone, but

it was the wrong clerk. *Id.* The *Archer* Court affirmed the first-degree murder conviction finding, “Archer created the situation, and the victim’s death was a natural and foreseeable result of Archer’s actions.” *Id.* at 448. That Bonifay actually killed the victim “was not an independent act for which Archer can deny responsibility.”¹³ *Id.*

The *Archer* Court quoted *Coston* and *Provenzano*, that law and reason prevented Hunt from taking advantage of his own wrongdoing or to excuse himself from orchestrating someone to be murdered. See *Archer*, 613 So.2d at 448. The jury found Hunt guilty of first-degree felony murder after the State proved beyond a reasonable doubt that 1) Lexie was dead; 2) Lexie’s death was caused by Hunt or his accomplice while in the commission of or in the attempt of a burglary; and 3) Hunt or a person other than Hunt killed Lexie, but both were principals in commission of the burglary. DAR 1435.

Hunt’s physical absence when Lexie was killed in the back room does not in and of itself establish that the murder was an independent act of one, when at Hunt’s initiation, two men forcibly

¹³ *But see, Archer*, 613 So.2d at 448 (death sentence vacated and remanded for a new penalty phase based on the heinous, atrocious, and cruel aggravating factor).

entered the house and Danny was shot. *See Jackson*, 18 So.3d at 1026. In *Chamberlain v. State*, 881 So.2d 1087 (Fla. 2004), capital defendant who did not actually pull the trigger, but “played an integral part” in the murder, was guilty of first-degree murder as a principal. *Id.* at 1105 (quoting *Ferrell v. State*, 686 So.2d 1324, 1329-30 (Fla. 1996) (defendant did not pull the trigger, but “he played a [sic] integral part in these crimes and in actually luring the victim to his death. Thus, at a minimum, he is guilty as a principal under the statute.”)). *See also Cruz v. State*, 320 So.3d 695, 716-17 (Fla. 2021) (competent, substantial evidence supported first-degree premeditated and felony murder (armed burglary) where “entire episode was a joint operation by” two defendants). Hence, the first-degree felony murder conviction stands on its own.

The State maintains the transferred intent instruction applied to the specific facts of Hunt’s case and did not confuse the jury or taint the premeditated first-degree murder conviction. However, the jury’s independent conviction of felony murder and the principal application rendered any error of the transferred instruction harmless beyond a reasonable doubt.

ISSUE III

Whether Failing to Instruct the Penalty Phase Jury that its Determinations on Weighing Sufficiency of Aggravating Factors Against Mitigating Circumstances to Recommend a Death Sentence Must be Made Beyond a Reasonable Doubt is Fundamental Error? [Restated]

Hunt asserts, failing to instruct the penalty phase jury that it must apply the beyond a reasonable doubt standard to the determination whether aggravating factors are sufficient to recommend a death sentence, when weighed against mitigation, is fundamental error. IB 38. He raises the issue solely for “preservation purposes” and acknowledges it is well-settled against his argument. Hunt cites this Court’s decision in *Craft v. State*, 312 So.3d 45 (Fla. 2020), which is dispositive, along with its progeny. IB 38, fn. 6. The issue is nonetheless meritless and contrary to existing law.

Standard of Review

Because defense counsel did not object or raise the issue at trial, this Court conducts its review *de novo* for fundamental error. *Smith v. State*, 320 So.3d 20, 27 (Fla. 2021). Fundamental error is that which reaches “down into the validity of the sentencing proceeding” and the sentence could not have been obtained without

the alleged error. *Smiley v. State*, 295 So.3d 156, 174 (Fla. 2020).

Merits

Hunt concedes that *Rogers v. State*, 285 So.3d 872 (Fla. 2019) and *State v. Poole*, 297 So.3d 487 (Fla. 2020) collectively provide that aggravating factors sufficient to impose the death penalty and weighing against mitigating circumstances are not elements of capital first-degree murder which must be found beyond a reasonable doubt. IB 39-40. However, he unsuccessfully re-asserts the argument made many times before, that *Rogers* and *Poole* are incompatible with the *Ring* and *Apprendi* line of cases.¹⁴ *Id.* at 40.

The *Craft* Court rejected the claim that the trial court fundamentally erred by failing to determine beyond a reasonable doubt that the aggravating factors were sufficient to justify imposition of the death penalty. *Craft*, 312 So.3d at 57. The Court stated, it has “repeatedly held that this determination is ‘not subject to the beyond a reasonable doubt standard of proof.’” *Id.* (citing *Newberry v. State*, 288 So.3d 1040, 1047 (Fla. 2019); *McKinney v. Arizona*, 589 U.S. 139 (2020) (explaining, under *Ring* and *Hurst*, “a

¹⁴ *Ring v. Arizona*, 536 U.S. 584 (2002); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

jury must find the aggravating circumstance that makes the defendant death eligible” but that “*Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances”); and *Poole*, 297 So.3d at 505, 507 (receding from *Hurst* and holding, a qualifying aggravating factor is the only finding a capital jury must make unanimously and beyond a reasonable doubt).

This Court declined to re-visit this argument in post-*Craft* decisions and consistently applied its well-settled jurisprudence that “only the *existence* of a statutory aggravating factor must be found beyond a reasonable doubt.” *McKenzie v. State*, 333 So.3d 1098, 1105 (Fla. 2022) (emphasis in original). Most recently, this Court declined to revisit the issue in *Orme v. State*, 361 So.3d 842 (Fla. 2023). The *Orme* Court reiterated that § 921.141, Fla. Stat. does not impose the reasonable doubt standard on sufficiency and weighing determinations and only subjects the finding of the existence of at least one aggravating factor to the beyond a reasonable doubt standard. *Id.* at 845. *See also Bevel v. State*, 376 So.3d 587, 597 (Fla. 2023) (commenting where the issue is raised solely for preservation purposes, defendant “is correct, that we have repeatedly reaffirmed our conclusion that determinations regarding the

sufficiency and relative weight of the proven aggravators are not subject to proof beyond a reasonable doubt”); *Wells v. State*, 364 So.3d 1005, 1014 (Fla. 2023) (rejecting “time and time again,” the premise that beyond a reasonable doubt standard applies to weighing the sufficiency of aggravators and mitigation); and *Fletcher v. State*, 343 So.3d 55, 59-60 (Fla. 2022).

Hunt’s limited argument suggests the foregoing precedent is wrong, yet offers no substantive reason for this Court to retreat from its well-settled decisions. Therefore, this Court should again decline the invitation to revisit this issue. *See also* Issue V, *infra*.

ISSUE IV

Whether Florida’s Capital Sentencing Regime Violates the Eighth Amendment by Permitting a Nonunanimous Jury Recommendation of Death, Not Requiring Proportionality Review, and Providing for Numerous Statutory Aggravating Factors

Hunt asserts that the combination of the recent amendment to Florida’s death penalty statute allowing nonunanimous jury recommendations of death, the number of statutory aggravating factors in the death penalty statute, in addition to this Court abolishing proportionality review in *Lawrence v. State*, 308 So.3d 544

(Fla. 2020), increases arbitrariness in capital sentencing in violation of the Eighth Amendment and *Furman v. Georgia*, 408 U.S. 238 (1972). IB 46. This Court has previously rejected similar combination constitutional challenges to Florida’s death penalty regime, in numerous cases, including most recently in *Cox v. State*, ___ So.3d ___, 49 Fla. L. Weekly S197, 2024 WL 3364911 (Fla. July 11, 2024), where this Court referred to such constitutional combination challenges as being “well-worn.” Additionally, in two of the areas challenged, this Court was simply following United States Supreme Court precedent, as it is required to do under the state constitutional conformity clause. A state supreme court following United States Supreme Court’s Eighth Amendment precedent cannot possibly create an Eighth Amendment violation. Florida’s current death penalty regime does not violate the Eighth Amendment.

The Trial Court’s Ruling

In the lower court, the defense filed several motions challenging various individual aggravating factors on various constitutional grounds and their application to this case. DAR 650-720. But none of those motions raised a combination challenge to Florida’s death penalty scheme. No motion was filed below challenging Florida’s

death penalty scheme as unconstitutional on Eighth Amendment grounds, arguing that the combination of permitting a nonunanimous jury recommendation, the sheer number of statutory aggravating factors in Florida's death penalty statutes, in combination with the Florida Supreme Court abolishing proportionality review in *Lawrence* amounted to a violation of *Furman v. Georgia*. There is no ruling from the trial court on this issue.

Not Preserved

To be properly preserved for appeal, the appellate issue must be the same “specific contention” asserted below and any motion or objection must be “sufficiently precise” to apprise the trial court of the grounds for the objection and the relief sought. *Figueroa-Sanabria v. State*, 366 So.3d 1035, 1049 (Fla. 2023) (citing §924.051(1)(b), Fla. Stat. and *Steinhorst v. State*, 412 So.2d 332, 338 (Fla. 1982)). This issue is not preserved and no such combination constitutional challenge was raised below.

Because this particular claim was not preserved, it may be raised on appeal only under the rubric of fundamental error. *Noetzel v. State*, 328 So.3d 933, 945 (Fla. 2021) (explaining that, if an issue raised on appeal was not preserved, reversal is warranted only if the

defendant establishes fundamental error citing § 924.051(3), Fla. Stat. (2020), and *Hopkins v. State*, 632 So.2d 1372, 1374 (Fla. 1994)).

Standard of review

The standard of review for a claim that a statute violates the federal constitution is de novo. *Brown v. State*, 260 So.3d 147, 150 (Fla. 2018) (stating that a statute’s constitutionality is a question of law reviewed de novo). Claims of fundamental error are also reviewed de novo. *State v. Smith*, 241 So.3d 53, 55 (Fla. 2018) (stating that whether an error is fundamental “is a question of law we review de novo”); *State v. Garcia*, 346 So.3d 581, 585 (Fla. 2022) (citing *Cromartie v. State*, 70 So.3d 559, 563 (Fla. 2011)).

Merits

Statutes, including Florida’s death penalty statute, are “clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome.” *Planned Parenthood of S.W. & Central Fla. v. State*, 384 So.3d 67, 76 (Fla. 2024) (citing *Lewis v. Leon Cnty.*, 73 So.3d 151, 153 (Fla. 2011)).

The United States Supreme Court, starting with *Furman v. Georgia*, 408 U.S. 238 (1972), has imposed Eighth Amendment limits on capital sentencing to minimize the risk of arbitrary and capricious

imposition of the death penalty. *See Ring*, 536 U.S. at 606 (citing *Maynard v. Cartwright*, 486 U.S. 356, 362 (1988)). Neither nonunanimous jury recommendation, the number of statutory aggravating factors in Florida’s death penalty statutes, nor abolishing proportionality review, either individually or in combination, violate these Eighth Amendment limitations.

This Court has previously rejected similar Eighth Amendment combination constitutional challenges to Florida’s current death penalty regime in numerous cases. *Colley v. State*, 310 So.3d 2, 15-16 (Fla. 2020) (rejecting argument that Florida has an overprovision of aggravating factors); *Wells v. State*, 364 So.3d 1005, 1015 (Fla. 2023) (rejecting Eighth Amendment challenge based on the combination of the number of aggravating factors and the lack of proportionality review after *Lawrence*), *cert. denied*, *Wells v. Florida*, 144 S.Ct. 385 (2023); *Bevel*, 376 So.3d at 597 (rejecting Eighth Amendment combination challenge based on abolished proportionality review in *Lawrence* and the “overprovision” of aggravating factors in the death penalty statutes), *cert. denied*, *Bevel v. Florida*, 2024 WL 2262375 (U.S. May 20, 2024); *Miller v. State*, 379 So.3d 1109, 1127 (Fla. 2024) (rejecting Eighth Amendment challenge

based on the combination of the lack of proportionality review under *Lawrence*, abolishing the “reasonable hypothesis of innocence” standard, and the number of aggravating factors);¹⁵ *Loyd v. State*, 379 So.3d 1080, 1098 (Fla. 2023) (rejecting due process/Eighth Amendment combination challenge based on the lack of proportionality review after *Lawrence*, the failure to narrow the class of first-degree murders eligible for the death penalty, and the wholly circumstantial evidence standard), *pet. for cert. filed*, *Loyd v. Florida*, No. 23-7391 (U.S. May 6, 2024); and *Cox v. State*, ___ So.3d ___, 49 Fla. L. Weekly S197, 2024 WL 3364911, *8 (Fla. July 11, 2024) (rejecting Eighth Amendment challenge to Florida’s death penalty statute based on the combination of abolishing proportionality review and the numbers of aggravating factors). Indeed, this Court recently referred to such combination challenges to Florida’s death penalty regime as being “well-worn.” *Cox*, 2024 WL 3364911, at *8.

While opposing counsel acknowledges this Court’s decision in *Loyd*, she does not acknowledge that this Court would also have to recede in whole, or in part, from *Colley*; *Wells*; *Bevel*; *Miller*; and *Cox*,

¹⁵ This Court earlier abolished the “reasonable hypothesis of innocence” test in *Bush v. State*, 295 So.3d 179, 200 (Fla. 2020).

as well as *Loyd*, to grant relief on this issue. IB 45, n.8.

Furthermore, in two of the areas challenged, nonunanimous jury recommendations and abolishing proportionality review, this Court was simply following United States Supreme Court precedent, as required by the state constitution's conformity clause regarding Eighth Amendment issues. Art. I, § 17, Fla. Const. This Court followed *Spaziano v. Florida*, 468 U.S. 447 (1984) and *Harris v. Alabama*, 513 U.S. 504, 515 (1995) in *Poole*, 297 So.3d at 505, *Dillbeck v. State*, 357 So.3d 94, 104 (Fla. 2023), *cert. denied*, *Dillbeck v. Florida*, 143 S.Ct. 856 (2023), and *Zack v. State*, 371 So.3d 335, 350 (Fla. 2023), *cert. denied*, *Zack v. Florida*, 144 S.Ct. 274 (2023), regarding jury sentencing in capital cases. And, this Court followed *Pulley v. Harris*, 465 U.S. 37 (1984) in *Lawrence v. State*, 308 So.3d 544 (Fla. 2020), regarding proportionality review. Following the United States Supreme Court cases of *Spaziano*, *Harris*, and *Pulley v. Harris*, as this Court was required to do in the area of Eighth Amendment jurisprudence under the state constitution, it cannot create an Eighth Amendment violation.

In *Miller*, this Court rejected another combination challenge and reasoned that the defendant had failed to explain how eliminating a

confusing and unwarranted standard could create “a constitutional problem.” *Miller*, 379 So.3d at 1127. Likewise, opposing counsel has failed to explain how this Court following United States Supreme Court precedent regarding the Eighth Amendment could create “a constitutional problem.” It is hard to comprehend how a state supreme court faithfully following the holdings of United States Supreme Court caselaw regarding an Eighth Amendment issue, could possibly create an Eighth Amendment violation, even in a state without a conformity clause. Hence, Florida’s current death penalty regime does not violate the Eighth Amendment or *Furman*.

ISSUE V

Whether the Sixth Amendment Requires a Unanimous Jury Recommendation of Death and Whether this Court Should Reevaluate Its Precedent in Light of *Ramos v. Louisiana*, 590 U.S. 83 (2020). [Restated]

Hunt asserts that the Sixth Amendment and the Eighth Amendment require unanimous death recommendations, relying on *Ramos v. Louisiana*, 590 U.S. 83 (2020). IB 62. Additionally, he urges this Court to reconsider its holding in *State v. Poole*, 297 So.3d 487 (Fla. 2020), in light of *Ramos*. The Sixth Amendment only

requires unanimity regarding a capital jury's finding of an aggravating factor, not unanimity regarding the jury's sentencing recommendation. Both the United States Supreme Court and this Court agree that the constitution only requires that the jury find a single aggravating factor. *McKinney v. Arizona*, 589 U.S. 139 (2020); *State v. Poole*, 297 So.3d 487 (Fla. 2020). The unanimity requirement of *Ramos* applies to a capital jury's finding of an aggravator, not to a capital jury's sentencing recommendation. Indeed, as the *McKinney* Court explained, the Sixth Amendment does not require a jury make any sentencing recommendation at all, much less a unanimous one. Florida's death penalty statutes require the jury to find any aggravator unanimously, in compliance with *Ramos*. This Court should not reconsider its prior decision in *Poole* because *Ramos* does not change *Poole's* analysis in any manner, firmly established by the United States Supreme Court in *McKinney*. Florida's current death penalty statutes do not violate *Ramos*.

Trial Court's Ruling

The defense moved to declare Florida's amended death penalty statute unconstitutional on ex post facto grounds and a response to the State's motion to use the current eight-to-four amended death

penalty statute. DAR 1221-25. Following a hearing, the trial court denied the motion. *Id.* at 1241. However, the motion did not argue that the amended death penalty statute violated *Ramos v. Louisiana*, 590 U.S. 83 (2020). *Ramos* was not cited once in that defense motion. The motion's argument and supporting caselaw were focused exclusively on arguing a violation of ex post facto principles. There is no ruling from the trial court regarding the affect of *Ramos* on Florida's current death penalty statute.

Not Preserved

This issue is not preserved. *Figueroa-Sanabria*, 366 So.3d at 1049 (citing § 924.051(1)(b), Fla. Stat. and *Steinhorst*, 412 So.2d at 338). Because this particular claim was not raised below, the issue is not preserved and may be raised on appeal only under the rubric of fundamental error. *Noetzel*, 328 So.3d at 945 (citing § 924.051(3), Fla. Stat. (2020)), and *Hopkins*, 632 So.2d at 1374).

Standard of review

The standard of review for a claim that a statute violates the federal constitution is de novo. *Brown v. State*, 260 So.3d 147, 150 (Fla. 2018) (stating that a statute's constitutionality is a question of law reviewed de novo). Claims of fundamental error are also reviewed

de novo. *Smith*, 241 So.3d at 55 (stating that whether an error is fundamental “is a question of law we review de novo”); *Garcia*, 346 So.3d at 585 (citing *Cromartie*, 70 So.3d at 563).

Merits

Ramos v. Louisiana, 590 U.S. 83 (2020), which was not a capital case, is not the controlling United States Supreme Court precedent regarding a jury’s role in capital sentencing. *McKinney v. Arizona*, 589 U.S. 139 (2020), which was a capital case, is the controlling precedent regarding a jury’s role in capital sentencing. But *McKinney* only requires a capital jury find an aggravating factor. *McKinney* does not require a capital jury make any sentencing recommendation, much less a unanimous recommendation.

Ramos v. Louisiana

In *Ramos v. Louisiana*, 590 U.S. 83 (2020), the United States Supreme Court held that jury verdicts in state courts must be unanimous, under the incorporation doctrine of *Malloy v. Hogan*, 378 U.S. 1 (1964). The *Ramos* Court explained that, under the incorporation doctrine, if the Sixth Amendment’s right to a jury trial requires a unanimous verdict to support a conviction in federal court,

it requires no less in state court, leaving “no question” that the “Sixth Amendment’s unanimity requirement applies to state and federal criminal trials equally.” *Id.* at 93; *Ramos*, 590 U.S. at 124-125 (Kavanaugh, J., concurring). The four-justice plurality opinion noted that “at the time of the Sixth Amendment’s adoption, the right to trial by jury *included* a right to a unanimous verdict.” *Id.* at 100 (emphasis in original); *Ramos*, 590 U.S. at 124 (Kavanaugh, J., concurring) (stating that both “original meaning” and the Court’s “precedents establish that the Sixth Amendment requires a unanimous jury”). The *Ramos* Court concluded that the Sixth Amendment right to a jury trial requires a verdict to be unanimous as to all the essential elements of the crime. But *Ramos* does not apply to a jury’s recommendation of death in a capital case because a jury’s recommendation is not equivalent to a verdict. It is a capital jury’s finding of an aggravating factor that is equivalent to a verdict and it is that finding that must be found by the jury, not their sentencing recommendation, as the United States Supreme Court explained in *McKinney v. Arizona*, 589 U.S. 139 (2020).

McKinney v. Arizona

In *McKinney v. Arizona*, 589 U.S. 139 (2020), the United States Supreme Court explained that while “a jury must find the aggravating circumstance that makes the defendant death eligible,” the jury “is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision.” The *McKinney* Court explicitly rejected a claim that a jury had to weigh the aggravating factors against the mitigating circumstances, in the wake of *Ring* and *Hurst v. Florida*. The High Court observed that their prior decisions in *Ring* and *Hurst* had “nothing to do with jury sentencing” and did not require jury weighing of the aggravation and mitigation. *McKinney*, 589 U.S. at 144 (explaining that a jury “is not constitutionally required to weigh the aggravating and mitigating circumstances”). The *McKinney* Court explained that, under their precedents, it is the finding of one aggravating circumstance that makes a defendant eligible for a death sentence, nothing more. *McKinney*, 589 U.S. at 141 (citing cases). The *McKinney* Court held that their Sixth Amendment jurisprudence only requires that the jury find “one aggravating circumstance.” *Id.* at 141. The *McKinney* Court explicitly stated that States “that leave the ultimate life-or-death

decision to the judge may continue to do so.” *Id.* at 145.

It is clear from the holding and reasoning of the United States Supreme Court in *McKinney* that a jury recommendation of death is not constitutionally required. Jury recommendations in capital cases are not required by the Sixth Amendment, much less unanimous recommendations. See *e.g.*, *Davis v. Jenkins*, __ F.4th __, 2024 WL 3873457, at *7 (6th Cir. Aug. 20, 2024) (stating that Ohio, which occasionally leaves the ultimate life-or-death decision to the judge “may continue to do so,” relying on *McKinney*); *State v. Trail*, 981 N.W.2d 269, 308-09 (Neb. 2022) (holding Nebraska’s death penalty statute, which provides for a three-judge panel to perform the weighing of aggravating and mitigating circumstances in capital cases does not violate the Sixth Amendment, relying on *McKinney*). Because a jury recommendation is not constitutionally required at all, there is no unanimity requirement regarding a jury’s recommendation of death.

Rather, as explained by the *McKinney* Court, it is the aggravator which makes the defendant eligible for a death sentence that must be found by a jury and, in the wake of *Ramos*, found unanimously. It is the finding of one aggravator that is the equivalent of a verdict.

Ramos only applies to the aggravators, not to the jury’s sentencing recommendation.

Florida’s death penalty statutes require penalty phase juries find “each” aggravating factor “unanimously.” § 921.141(2)(b), Fla. Stat. (2024) (providing the “jury shall return findings identifying each aggravating factor found to exist” and that a “finding that an aggravating factor exists must be unanimous.”); § 921.142(3)(b), Fla. Stat. (2024) (providing the “jury shall return findings identifying each aggravating factor found to exist” and that a “finding that an aggravating factor exists must be unanimous”). Thus, Florida’s death penalty statutes comply with *Ramos*.

A sentencing recommendation is not a fact or an element

A jury’s sentencing recommendation in a capital case is not a fact or an element. The United States Supreme Court has explained that, while aggravators are “purely factual determinations,” mitigators are “largely a judgment call (or perhaps a value call).” *Kansas v. Carr*, 577 U.S. 108, 119 (2016) (rejecting Eighth Amendment claim that a capital jury had to be instructed that mitigating circumstances need not be proven beyond a reasonable

doubt). And the ultimate question of whether mitigating circumstances outweigh aggravating circumstances “is mostly a question of mercy.” *Carr*, 577 U.S. at 119. In the United States Supreme Court’s view, neither mitigation nor weighing are factual determinations. A jury sentencing recommendation, while involving the findings of aggravators, consists largely of deciding the mitigation and then weighing the aggravation against the mitigation, is not a fact. Rather, a sentencing recommendation is a “moral judgment.” *Poole*, 297 So.3d at 503.

Because most of the components of a jury’s sentencing recommendation are moral judgments rather than factual findings, a sentencing recommendation is not the equivalent of a guilty verdict. The aggravating factors are the factual determination. It is the finding of one aggravating factor, and that finding only, that must be found unanimously, beyond a reasonable doubt, by the jury under *Ramos* because it is that finding that makes a defendant eligible for a death sentence, both constitutionally and under Florida’s statute. § 921.141(2)(a), Fla. Stat. (2024) (providing after “hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state

has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6)"). It is the jury's decision regarding the aggravators, not the jury's recommendation, that must be unanimous.

Nor is a jury's sentencing recommendation an element of capital murder. *In re Winship*, 397 U.S. 358, 364 (1970) (explaining an element is a fact that the prosecution must prove beyond a reasonable doubt under the Due Process Clause). As this Court has observed of a jury's sentencing recommendation, such "subjective" determinations, involving weighing and mercy, which cannot be objectively verified, "cannot be analogized to an element." *Poole*, 297 So.3d at 503.

The United States Supreme Court has explained, the greater offense of capital murder constitutionally is the lesser-included offense of murder "plus one or more aggravating circumstances." *Sattazahn v. Pennsylvania*, 537 U.S. 101, 111 (2003). *See also Poole*, 297 So.3d at 502 (same quoting *Sattazahn*). Because "aggravating factors operate as the functional equivalent of an element of a greater offense," the "Sixth Amendment requires that they be found by a jury." It is aggravators that are facts, proven by the prosecution, at

the beyond-a-reasonable-doubt standard of proof, that are elements of the crime of capital murder and akin to a verdict.

After *Ramos*, aggravating factors must be found unanimously by the jury. But that is exactly what Florida’s death penalty statutes provide. § 921.141(2)(b), Fla. Stat. (2024) (providing that a “finding that an aggravating factor exists must be unanimous.”); § 921.142(3)(b), Fla. Stat. (2024) (providing that a “finding that an aggravating factor exists must be unanimous”). Florida’s death penalty statutes comply with *Ramos* because both statutes require the penalty phase jury to find the aggravators unanimously.

Sixth Amendment case, an Eighth Amendment case

Opposing counsel asserts that nonunanimous jury recommendations increase arbitrariness in violation of the Eighth Amendment. But *Ramos* cannot support such an Eighth Amendment argument because it is not an Eighth Amendment case. *Ramos* was a Sixth Amendment case, not an Eighth Amendment case. *Ramos* involved the Sixth Amendment right-to-a-jury-trial provision. Neither the *Ramos* plurality nor the concurrence invoked the Eighth Amendment at any point.

Indeed, *Ramos* was not even a capital case. Rather, it was a charge of, and a conviction for, second-degree murder. *State v. Ramos*, 231 So.3d 44, 46 (La. Ct. App. 2017). The Eighth Amendment caselaw requiring increased reliability in capital cases does not apply to non-capital cases. *See e.g., Lockett v. Ohio*, 438 U.S. 586, 604-05 (1978). So, it is understandable that the *Ramos* Court did not cite the Eighth Amendment.

Even under the Eighth Amendment jurisprudence requiring increased reliability in capital cases, unanimity is not required for a sentencing recommendation. Unanimity does not increase reliability or accuracy in capital sentencing. The dissent in *Ramos* pointed to rogue jurors as a good policy reason to allow nonunanimous verdicts. *Ramos*, 590 U.S. at 142 & n.3 (Alito, J., dissenting). Justice Alito observed that prominent scholars, some of whom relied on military court-martial verdicts, advocated nonunanimous verdicts in part due to their increased reliability. *Id.* at 143, n.7.

Nor does the *Ramos* plurality support the assertion that unanimity increases reliability or accuracy. The “badly fractured” *Ramos* Court did not disagree about the problem posed by rogue jurors and such juror’s ability to undermine reliability and accuracy.

Instead, the plurality relied exclusively on historical requirement of unanimity at common law and in the federal courts. *Id.* at 92. The *Ramos* plurality openly admitted that it was not any cost-benefit analysis or any determination regarding whether unanimity was “important enough,” or any Eighth Amendment concern regarding reliability, that mandated its holding. *Id.* at 100. Rather, it was the common law, historical practice, and the incorporation doctrine that mandated the holding in *Ramos*. The basis for the decision in *Ramos*, according to both the plurality and the critical fifth concurring opinion, was not reliability or increased accuracy; it was the incorporation doctrine. *Ramos*, 590 U.S. at 93, 100; *id.* at 124-125 (Kavanaugh, J., concurring).

But the incorporation doctrine leads to the opposite result in the area of capital sentencing. The jury had no role in capital sentencing at common law or historically in America. The jury’s role was limited to convicting a defendant of a capital crime and then a judge alone sentenced the defendant to death and that death sentence was often mandatory. *Woodson v. North Carolina*, 428 U.S. 280, 289 (1976) (observing that “at common law, all homicides that were not involuntary, provoked, justified, or excused constituted

murder and were automatically punished by death”). Indeed, at “the time the Eighth Amendment was adopted in 1791, the States uniformly followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses.” *Woodson*, 428 U.S. at 289. Based on common law and history, the argument that a jury must be involved in any way in capital sentencing necessarily fails.

Moreover, the argument regarding arbitrariness and nonunanimous jury recommendations totally ignores the role of judges in Florida’s capital sentencing regime. Florida’s current death penalty statute requires eight jurors to recommend a death sentence and the trial judge to independently agree with the jury’s recommendation of death for a death sentence to be imposed. § 921.141(3)(a)2., Fla. Stat. (2024); § 921.141(4), Fla. Stat. (2024) (requiring a written order including the reasons for rejecting the jury’s recommendation within 30 days).

Florida, like many other states, adopted judicial involvement in capital sentencing in the wake of *Furman v. Georgia* to decrease arbitrariness in capital sentencing. The United States Supreme Court stated regarding Florida’s capital regime that “judicial

sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences similar to those imposed in analogous cases” in *Proffitt v. Florida*, 428 U.S. 242, 252 (1976). See also *Pulley v. Harris*, 465 U.S. 37, 46 (1984) (observing “vesting ultimate sentencing authority in the judge rather than the jury,” in capital cases, Florida’s death penalty “statute was expected to yield more consistent sentencing at the trial court level”). Many jurisdictions, in the wake of *Furman v. Georgia*, wanted judges, with their greater experience in criminal matters, to be the sentencer in capital cases in a belief that a judge’s involvement increased both reliability, accuracy and uniformity. Florida’s death penalty statute provides for significant judicial involvement in capital sentencing instead of relying only on the jury and decreases in arbitrariness in capital sentencing in compliance with the Eighth Amendment.

Florida’s death penalty statutes, by permitting nonunanimous jury recommendations, increase accuracy by accounting for “rogue” jurors, such as jurors who are unwilling to follow the law regarding the death penalty. *White v. Wheeler*, 577 U.S. 73, 77 (2015) (noting

“the State’s strong interest in having jurors who are able to apply capital punishment within the framework state law prescribes.”) By permitting penalty phase jury recommendations by a vote of eight-to-four jurors, Florida’s death penalty statutes do not violate the Eighth Amendment requirement of reliability in capital sentencing.

No reason to reconsider *State v. Poole*

There is no valid reason for this Court to reconsider its holding in *State v. Poole*, 297 So.3d 487 (Fla. 2020), in the wake of *Ramos*, in light of *McKinney v. Arizona*, 589 U.S. 139 (2020). See *Planned Parenthood of Sw. & Cent. Florida v. State*, 384 So.3d 67, 88 (Fla. 2024) (explaining there must be a valid reason to recede from prior precedent citing *Poole*, 297 So.3d at 506-07). The first requirement to revisit any precedent is establishing that there was some “error in legal analysis” of that precedent. *Poole*, 297 So.3d at 506.

There was no error in this Court’s *Poole* analysis. Indeed, the United States Supreme Court’s later decision in *McKinney* reads like a condensed version of this Court’s holding, reasoning, and supporting citations in *Poole*, which are remarkably similar. As this Court observed, the United States Supreme Court’s decision in

McKinney confirmed that this Court “correctly interpreted” *Hurst v. Florida*, 577 U.S. 92 (2016), in *Poole. Owen v. State*, 304 So.3d 239, 241-42 (Fla. 2020).

Ramos did not alter *McKinney* in any manner. *McKinney* was decided on February 25, 2020, and *Ramos* was decided a few months later, on April 20, 2020. So, *Ramos* was decided a mere 55 days after *McKinney* and by the same Court. Yet, the *Ramos* Court did not mention *McKinney* once, even in passing, much less overrule it. *McKinney*’s holding remains completely intact.

Again, *Ramos* was not a capital case. Rather, it was a charge of, and a conviction for, second-degree murder. *State v. Ramos*, 231 So.3d 44, 46 (La. Ct. App. 2017). But both *McKinney* and *Poole* were capital cases and both reflect capital jurisprudence, such as the constitutionally required finding of an aggravator and the jury’s constitutional role at a penalty phase, unlike *Ramos*.

Ramos does not impact this Court’s prior holding in *State v. Poole* in any manner. This Court should once again reject the invitation to recede from *State v. Poole*. See, e.g., *Herard v. State*, ___ So.3d ___, 2024 WL 3281897, 49 Fla. L. Weekly S177 (Fla. July 3, 2024) (declining an invitation to recede from *State v. Poole*).

Florida's current death penalty statutes providing for an eight-to-four jury recommendation of death do not violate *Ramos*.

ISSUE VI

Whether the 2023 Amendment to Florida's Death Penalty Statutes Providing for an Eight to Four Jury Recommendation Violates the Ex Post Facto Clause of the Federal or State Constitution or Runs Afoul of Florida's Savings Statute, Section 775.022, Florida Statutes (2024)?[(Restated)]

Hunt asserts that the amendments to Florida's death penalty statutes, permitting a jury recommendation of death by a vote of eight to four, violate Ex Post Facto principles and Florida's savings statute. IB 72. But the United States Supreme Court rejected an ex post facto attack applying an amended death penalty statute to a murder that occurred before the amendment, decades ago in *Dobbert v. Florida*, 432 U.S. 282 (1977). *Dobbert* is indistinguishable and controls.

Applying the amended death penalty statute to Hunt did not violate the savings statute either. § 775.022, Fla. Stat. (2024). The amended death penalty statute was applied prospectively to Hunt, as required by the text of the savings statute. The trial court properly granted the motion to apply to the current version of the death

penalty statute to the upcoming penalty phase.

The Trial Court's Ruling

The State filed a motion to utilize the amended death penalty statute allowing a death recommendation by eight votes at the upcoming future penalty phase. DAR 1088-1091. The State relied mainly on *Love v. State*, 286 So.3d 177 (Fla. 2019), and *Dobbert v. Florida*, 432 U.S. 282 (1977), to support its argument that the procedural statute in effect on the date of the penalty phase should be followed at that penalty phase. DAR 1089-90.

The defense filed a motion to declare the amended death penalty statute unconstitutional on ex post facto grounds and a response to the State's motion to use the amended statute. DAR 1221-25. The defense cited two trial court orders in support of its argument that applying the amended 8 to 4 statute to Hunt would be an ex post facto violation. *Id.* at 1223 (citing *State v. Lobato*, 2020-CF-8754, Polk Cnty. and *State v. Riley*, 2021-CF-6615, Polk Cnty.)

On August 30, 2023, the trial court held a hearing on these motions. DAR 1271-1281. In a written order, the trial court granted the State's motion to use the amended version of the death penalty statute at the future penalty phase and denied the defense's motion

to declare the death penalty statute unconstitutional. *Id.* at 1241. The lower court relied on *Dobbert v. Florida*, 432 U.S. 282 (1977), and *State v. Victorino*, 372 So.3d 772 (Fla. 5th DCA 2023), to conclude that applying the amended statute to Hunt would not amount to an ex post facto violation.

Preservation

The ex post facto issue was preserved. To preserve an issue for appellate review, a litigant must present the issue to the trial court in a timely, specific manner and obtain a ruling. *Sparre v. State*, 289 So.3d 839, 848 (Fla. 2019) (citing *Corona v. State*, 64 So.3d 1232, 1242 (Fla. 2011), and *Rhodes v. State*, 986 So.2d 501, 513 (Fla. 2008)). The defense filed a motion challenging application of the amended death penalty statute to Hunt on ex post facto grounds in the lower court and properly obtained a ruling. But the issue of whether applying the amended death penalty statute to Hunt violates the savings statute, § 775.022, Fla. Stat. (2024), was not preserved. The motion filed below did not argue or cite to the savings statute.

Standard of review

The standard of review for a claim that a statute violates the federal constitution is de novo. *Brown v. State*, 260 So.3d 147, 150

(Fla. 2018) (stating that a statute’s constitutionality is a question of law reviewed de novo). Issues of statutory interpretation are also reviewed de novo. *Statler v. State*, 349 So. 3d 873, 878-79 (Fla. 2022) (stating that both issues of statutory interpretation and constitutionality are reviewed de novo), *cert. denied*, *Statler v. Florida*, 143 S.Ct. 836 (2023).

Merits

Article I of the United States Constitution states neither Congress nor any State shall pass any “ex post facto Law.” Art. I, § 9, cl. 3, § 10, cl. 1, U.S. Const. The Florida Constitution contains a similar limitation. Art. I, § 10, Fla. Const. Ex post facto clauses prohibit the Government or a state from retroactively changing the definition of a crime to make formerly innocent behavior criminal or increasing the punishment. *Lynce v. Mathis*, 519 U.S. 433, 441 (1997); *Collins v. Youngblood*, 497 U.S. 37, 43 (1990) (“Legislatures may not retroactively alter the definition of crimes or increase the punishment for criminal acts” citing *Beazell v. Ohio*, 269 U.S. 167 (1925)). A law is being retrospectively applied, if it is applied to events that occur “before its enactment” to the “disadvantage” of the offender. *Lynce*, 519 U.S. at 441. A law, however, does not violate

the ex post facto clause unless it is both retrospective in its effect and alters the definition of a crime or increases the sentence. *Griffin v. State*, 980 So.2d 1035, 1036 (Fla. 2008).

Ex Post Facto and *Dobbert v. Florida*

The issue of whether applying an amended death penalty statute to a murder that occurred before the amended statute was enacted violates ex post facto principles was settled over 40 years ago by the nation's highest court. And the United States Supreme Court did so in a capital case involving amendments to Florida's death penalty statute.

In *Dobbert v. Florida*, 432 U.S. 282 (1977), the United States Supreme Court held that applying a newer version of a death penalty statute did not violate ex post facto or equal protection. Dobbert murdered his young daughter in December of 1971 and then he murdered his young son sometime in early 1972. *Dobbert*, 432 U.S. at 284-84, 288. He was convicted of first-degree murder for the murder of his daughter and sentenced to death. At the time of the murder in 1971, Florida's death penalty statute provided that a person convicted of a capital felony was to be punished by death

unless the verdict included a recommendation of mercy by a majority of the jury. *Id.* at 288. There was a presumption that a death sentence was the appropriate penalty under the version of the death penalty statute in effect on the date of the murder.

After the murder, in June of 1972, the United States Supreme Court struck down capital punishment as violating the Eighth Amendment in *Furman v. Georgia*, 408 U.S. 238 (1972). In response to *Furman*, many states, including Florida, enacted new death penalty statutes. Many of these new death penalty statutes, including Florida's, were based on the Model Penal Code's death penalty provision which included detailed aggravating and mitigating circumstances. Dobbert was sentenced to death using the post-*Furman* amended death penalty statute which had been enacted after his crimes.

Dobbert raised an ex post facto and an equal protection challenge to Florida's amended death penalty statute. *Dobbert*, 432 U.S. at 287. He argued that Florida had no valid death penalty statute in effect on the date of the murder because that statute was unconstitutional under *Furman*. Dobbert also argued he had a "substantial right" to have the jury alone determine the penalty

instead of having the jury make a recommendation and the judge make the ultimate sentencing decision, as provided for in the amended statute. *Id.* at 292.

The *Dobbert* Court concluded that the amendments to Florida’s death penalty statute were procedural and ameliorative, in the sense that the changes were a benefit to the defendant. *Dobbert*, 432 U.S. at 292. The Supreme Court concluded that Florida’s amended death penalty statute was both procedural and ameliorative. *Id.* at 294. Therefore, there was no ex post facto violation.

In a footnote, the majority explained that these holdings were “independent” and that, even if the changes to the statute were not ameliorative, there would still be no ex post facto violation from applying a new procedural statute to a murder that occurred before the amendment. *Dobbert*, 432 U.S. at 292, n.6.¹⁶ The *Dobbert*

¹⁶ *Dobbert* involves two alternative holdings on the ex post facto issue—one holding was ameliorative amendments do not violate ex post facto principles and the other holding was procedural amendments do not violate ex post facto principles. When a decision has alternative holdings, both holdings are binding. Neither is dicta. *Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949) (stating that when a decision rests on two or more grounds, none can be relegated to the category of dicta). In the words of the Eleventh Circuit, “alternative holdings are as binding as solitary holdings.” *United States v. Files*, 63 F.4th 920, 926 (11th Cir. 2023). This is what the

majority explained that, even when the amendments to a statute, compared to the prior version of the statute, “work to the disadvantage of a defendant, a procedural change is not ex post facto.” *Id.* at 293 (citing *Hopt v. Utah*, 110 U.S. 574 (1884), and *Thompson v. Missouri*, 171 U.S. 380 (1898)).

The Court concluded the amendments were “clearly procedural.” *Dobbert*, 432 U.S. at 293. The amendments to Florida’s death penalty statute were procedural because they merely “altered the methods employed in determining whether the death penalty was to be imposed; there was no change in the quantum of punishment attached to the crime.” *Id.* at 293-94. The crime, the punishment, and the quantity or the degree of proof necessary to establish his guilt, “all remained unaffected by the amendments.” *Id.* at 294.

There was no notice or fair warning concern in applying the amended statute to *Dobbert* because the punishment under the prior version of the statute, in effect on the date *Dobbert* committed the murder, included the possibility of a death sentence and that was

Dobbert Court meant by stating the rulings were “independent bases for our decision.” *Dobbert*, 432 U.S. at 292, n.6. Both holdings of the *Dobbert* Court are equally valid but independent of the other holding.

equally true of the newer version of the death penalty statute. In the Court's words, the statute on the books at the time he committed the murder provided fair warning that Florida treated "the act of murder" as one of the most serious crimes. *Dobbert*, 432 U.S. at 297. The *Dobbert* Court reasoned that the prior version of Florida's death penalty statute served to warn him of the penalty if he was convicted of first-degree murder and that statutory notice was "sufficient compliance with the ex post facto provision of the United States Constitution." *Id.* at 298. The Court's basic reasoning was that there was a death penalty in Florida when Dobbert committed the murder and, following the amendment to the death penalty statute in the wake of *Furman*, there was still a death penalty in Florida. The punishment under the prior version of Florida's death penalty statute included the possibility of a death sentence and the newer version of Florida's death penalty statute did too. Dobbert being sentenced to death was a possibility at the time he committed the crime. The penalty had not changed. He had notice that his conduct was a serious crime and fair warning that death was a possible sentence for murder in Florida. So, there was no notice or fair warning problem with applying the amended version of Florida's death penalty

statute to him.

Alternatively, *Dobbert* argued that at the time he murdered his daughter there was no valid death penalty statute in effect in Florida due to *Furman*. *Dobbert*, 432 U.S. at 297. The Court dismissed this argument as being “sophistic” and one that “mocks” the substance of the Ex Post Facto Clause. *Id.* The existence of the death penalty statute was an “operative fact” that served “to warn the petitioner of the penalty which Florida would seek to impose on him if he were convicted of first-degree murder” which was “sufficient compliance” with the ex post facto clause. *Id.* at 298. *See also Miller v. Florida*, 482 U.S. 423, 433 (1987) (stating that “no ex post facto violation occurs if the change in the law is merely procedural”).

Here, as in *Dobbert*, there was no ex post facto violation from applying the amended death penalty statute to Hunt at his penalty phase because the amendments are procedural. And, here, as in *Dobbert*, the “crime, the punishment, and the quantity or the degree of proof necessary to establish his guilt, all remained unaffected by the amendments.” *Dobbert*, 432 U.S. at 294. Additionally, as in *Dobbert*, Hunt had notice that his sentence could be a death sentence from the statute as it existed at the time he committed the murder.

He had statutory notice that the act of murder was criminal and he also had fair warning that first-degree murder in Florida was punishable by the death penalty from the 2019 death penalty statute. *Dobbert* is indistinguishable.

In *Victorino v. State*, 241 So.3d 48 (Fla. 2018), this Court held that Florida's new death penalty statute, enacted in the wake of *Hurst v. Florida*, 577 U.S. 92, (2016), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016), was not being applied in violation of the ex post facto prohibition. This Court noted that for a criminal law to be an ex post facto violation, the new law must be applied retrospectively. *Victorino*, 241 So.3d at 50. This Court explained that retrospective application means that the law is being applied to "events that occurred before its enactment." *Id.* at 50.

In addition to being applied retrospectively rather than prospectively, the new law "must alter the definition of criminal conduct or increase the penalty by which a crime is punishable." *Victorino*, 241 So.3d at 50 (quoting *Lynce v. Mathis*, 519 U.S. 433, 441 (1997)). This Court reasoned that Florida's new capital sentencing regime, § 921.141(2), Fla. Stat. (2017), enacted in the wake of *Hurst*, neither altered the definition of criminal conduct nor

increased the penalty and therefore, was not being applied in violation of the ex post facto prohibition. *Victorino*, 241 So.3d at 50.

The District Courts' decisions on the amendment

The defense below relied on the trial court's order in *State v. Lobato*, 2020-CF-8754, to argue that applying the amended death penalty statute to Hunt at the upcoming penalty phase would violate ex post facto principles. But the Sixth District Court vacated that order recently in *State v. Lobato*, 2024 WL 2789409 (Fla. 6th DCA May 31, 2024) (6D2023-3201). Lobato committed the murder years before Florida's death penalty statute was amended to permit a nonunanimous jury recommendation in 2023. *Lobato*, 2024 WL 2789409, at *1. Before the penalty phase started, the prosecution filed a motion in the trial court to apply the amended statute to the upcoming penalty phase arguing that the amendments were procedural in nature. *Id.* at *2. The trial court denied the motion on ex post facto grounds.

The State filed a petition for a writ of certiorari in the Sixth District challenging that ruling. *Lobato*, 2024 WL 2789409, at *1,*2, & n.1. The Sixth District started its analysis by describing the effects

of the recent amendments on Florida’s capital proceedings. *Id.* at *1. The Sixth District noted that the new law left the “overall framework” of Florida’s death penalty proceeding “untouched” but decreased the number of jurors necessary to make the recommendation of death from twelve jurors to eight jurors and additionally, required the judge to prepare a written order if he imposed a life sentence which included the reasons he rejected the jury’s sentencing recommendation of death. *Id.* at *1. The Sixth District then discussed *Dobbert v. Florida*, 432 U.S. 282 (1977), at some length and concluded that it was “dispositive.” *Id.* at *3-*4. The Sixth District reasoned that the two changes in the new law were “procedural in both nature and effect” and, therefore, under *Dobbert*, applying the amended death penalty statute to the upcoming penalty phase would not violate the ex post facto clauses. *Id.* at *4. The Sixth District also relied on *Collins v. Youngblood*, 497 U.S. 37 (1990). *Id.* at *4.

The Sixth District additionally rejected an ex post facto challenge based on the risk analysis of *Peugh v. United States*, 569 U.S. 530 (2013). The *Lobato* panel explained that risk analysis applied to the federal sentencing guidelines and parole, which differed “in kind” from capital sentencing. *Lobato*, 2024 WL 2789409,

at *5. But, in the alternative, applying a *Peugh* risk analysis, the Sixth District concluded that there was an insufficient risk of a greater sentence because the “essential framework” of a penalty phase in Florida remained “entirely intact” observing that eight jurors were still required for a jury’s recommendation of death after the amendments. *Id.* at *6. Unlike the federal sentencing guidelines at issue in *Peugh*, which in practice usually controlled the sentence, as the *Peugh* Court itself had emphasized, the amendments to Florida’s death penalty statutes did not pose the same risk of an increased sentence. While a detrimental change in the federal sentencing guidelines “virtually” guaranteed an increase in the defendant’s sentence, the two changes in Florida’s death penalty statutes did not “virtually” guarantee a death sentence. *Id.*¹⁷ See also *Victorino*, 372

¹⁷ Regardless of the nature, scope, or one’s understanding of *Peugh*, *Dobbert* controls. The “state courts and the other federal courts have a constitutional obligation to follow a precedent of this Court unless and until it is overruled.” *Ramos v. Louisiana*, 140 S.Ct. 1390, 1416, n.5 (2020). If a Supreme Court case has direct application in a case, yet appears to rest on reasons rejected in some later decisions from the Supreme Court, the lower courts “should follow the case which directly controls.” *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). So, when two lines of Supreme Court cases are in tension, a lower court should follow the case that is closest factually to the case at hand. *Jefferson Cnty. v. Acker*, 210 F.3d 1317, 1320-21 (11th Cir. 2000) (discussing the

So.3d at 777-78 (concluding recent amendments to the death penalty statute, § 921.141, Fla. Stat. were “quintessentially procedural” changes that had “no substantive effect” citing *Dobbert*, 432 U.S. at 293-94 and *Victorino*, 241 So.3d at 50).

Procedural and prospective

The amended death penalty statute, involving a procedural

phrase “directly controls” in *Rodriguez de Quijas* and noting the “directly” controlling case applies if the facts of the Supreme Court case “line up closely with the facts” of the case before the court). *Dobbert* literally involves amendments to Florida’s death penalty statute, that were enacted after the murders, and whether the new death penalty statute could be applied to a capital defendant without violate ex post facto. So, *Dobbert* is both factually and legally indistinguishable from this case, unlike *Peugh*.

Furthermore, the continuing viability of risk analysis as a test for ex post facto violations is questionable, unlike the traditional analysis of *Dobbert*. *Peugh*, 569 U.S. at 544-46 (Justice Kennedy refusing to join majority as to Part III–C without a separate opinion); *Peugh*, 569 U.S. at 551-63 (Thomas, J., dissenting) (criticizing the “unworkability” of risk analysis in the Court’s ex post facto jurisprudence and advocating a return a more original understanding of ex post facto principles based on *Calder v. Bull*, 3 U.S. 386, 390 (1798)); *Peugh*, 569 U.S. at 563 (Alito, J., dissenting) (declining to reconsider risk analysis). The *Peugh* Court consisted of two justices who wanted to overrule *California Dep’t of Corr. v. Morales*, 514 U.S. 499, 509 (1995), and three justices who were open, to various degrees, to reconsidering risk analysis in a future case. This Court should follow *Dobbert*, not *Peugh*.

change, was applied prospectively only to Hunt. The amendments to the death penalty statutes were procedural changes exclusively. As the Sixth District noted, the two changes to the statute were a decrease in the number of penalty phase jurors required for a death recommendation and requiring the judge to prepare a written order if the judge imposed a life sentence. *State v. Lobato*, 2024 WL 2789409, at *1. The Sixth District concluded that the amendments to Florida's death penalty statute were "procedural in both nature and effect." *Id.* at *4.

An amendment involving the number of jurors is procedural. In *Edwards v. Vannoy*, 593 U.S. 255 (2021), the High Court addressed whether its earlier decision in *Ramos*, holding that the Sixth Amendment requires unanimous verdicts, was substantive or procedural for purposes of retroactivity. The *Edwards* Court concluded that a rule regarding juror unanimity was procedural because affected "only the manner of determining the defendant's culpability," not the conduct the law punishes. *Id.* at 264, n.3 (quoting *Schiro v. Summerlin*, 542 U.S. 348, 353 (2004)). The number of jurors is a procedural matter.

And procedural amendments do not violate the ex post facto

clauses. *McGill v. Shinn*, 16 F.4th 666, 669-706 (9th Cir. 2021) (holding the amendment to Arizona’s death penalty statute, enacted in response to *Ring* and providing for jury rather than the judge to make the finding of the aggravating circumstance, could be applied to a murder committed before the amendment was enacted because the amendment was procedural and “mere procedural changes” that simply alter the methods employed in determining a sentence do not violate ex post facto, even if detrimental to a defendant, “because they do not change the quantum of punishment attached to the crime” (quoting *Dobbert*, 432 U.S. at 293–94)). The amendments to Florida’s death penalty statutes were procedural only.

Furthermore, those procedural amendments were applied prospectively only. The amended statute was applied prospectively, as explained by this Court in *Love v. State*, 286 So.3d 177 (Fla. 2019), and by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

In *Love v. State*, 286 So.3d 177, 190 (Fla. 2019), this Court held that an amendment to the stand-your-ground statute, § 76.032(4), Fla. Stat., would apply to all immunity hearings conducted after the effective date of the amendment. This Court explained the distinction

between substantive law and procedural law. Substantive law is that which declares what acts are crimes and prescribes the punishment for those crimes, while procedural law provides or regulates the steps by which one who violates a criminal statute is punished. *Id.* at 185. This Court concluded that the amendment at issue was procedural rather than substantive, observing that historically, amendments to statutes regarding the burden of proof have been viewed as procedural. *Id.* at 186. This Court explained that, if the amended statute was applied to upcoming hearings, it was not being applied retroactively. This Court, in *Love*, discussed and relied on *Landgraf*. *Love*, 286 So.3d at 187 (citing *Landgraf*, 511 U.S. at 275, n.29). This Court noted that application of a new procedural statute to a “pending case is not a retroactive application.” *Id.* at 189. The *Love* Court explained that whether a statute is being applied retroactively or prospectively turns on “the posture of the case, not the date of the events giving rise to the case.” *Id.* at 187.

In *Landgraf*, the United States Supreme Court held that a new civil rights statute allowing for punitive damages did not apply to a case that was pending on appeal. *Landgraf*, 511 U.S. at 247. The *Landgraf* Court discussed the presumption against statutory

retroactivity. *Id.* at 269-274. But the Court also noted that changes in procedural rules may be applied in suits arising before their enactment without raising concerns about retroactivity. *Id.* at 275. The Court explained that, while new procedural statutes or rules generally apply to pending cases, the application of even a new procedural statute or rule depends on the stage of trial or the “posture of the particular case.” *Id.* at 275, n.29. The *Landgraf* Court gave an example of a new statute governing evidence, adopted after the evidentiary stage of the trial had been completed, explaining that the new procedural statute would not apply because the evidence stage was completed and the new statute would not require a new trial either. *Id.*

Justice Scalia, in his concurring opinion, explained the meaning of retroactive application of a new statute or rule. *Landgraf*, 511 U.S. at 290 (Scalia, J., concurring).¹⁸ Justice Scalia gave the

¹⁸ Justice Scalia’s concurrence was not critical to the five-justice majority holding in *Landgraf*. See *Marks v. United States*, 430 U.S. 188, 193 (1977) (discussing concurring opinions that are critical to the holding of the case). But the majority seems to have adopted Justice Scalia’s approach to determining whether a new statute or rule was actually being applied retrospectively or prospectively in the footnote of the majority opinion. *Landgraf*, 511 U.S. at 275, n.29.

example of a new statute governing expert testimony, explaining the relevant event used as a baseline for a retroactivity analysis of the new statute would be the date of the expert's testimony at trial. The new procedural statute would not be applied to expert testimony if the expert had already testified before the new statute's effective date but would be applied to any expert's testimony after the effective date. *Id.* at 291-92. "No one has a vested right in any given mode of procedure." *Landgraf*, 511 U.S. at 291 (citing cases).

The amendments to Florida's death penalty statute, which related to how a penalty phase is conducted, became effective on April 20, 2023, and Hunt's penalty phase was held on September 15, 2023. Florida's amended death penalty statute was not applied retrospectively to him. Rather, it was applied prospectively to a penalty phase that occurred over four months after the effective date of the amended statute. Because the amended statute was applied to a judicial proceeding that occurred after its enactment, its application to Hunt was prospective only and therefore, did not violate the prohibition on ex post facto laws.

Savings statute

The “effect of reenactment or amendment of criminal statutes” statute, § 775.022, Fla. Stat. (2024), in its entirety, provides:

(a) This section precludes the application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and

(b) An act of the Legislature reenacting or amending a criminal statute not be considered a repeal or an implied repeal of such statute for purposes of s. 9, Art. X of the State Constitution.

(2) As used in this section, the term “criminal statute” means a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.

(3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5), the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

(a) The prior operation of the statute or a prosecution or enforcement thereunder.

(b) A violation of the statute based on any act or omission occurring before the effective date of the act.

(c) A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

(4) If a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture,

or punishment, if not already imposed, must be imposed according to the statute as amended.

(5) This section may not be construed to limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature in a criminal case that has not yet resulted in the imposition of a judgment or sentence by the trial court or an appellate decision affirming a judgment or sentence of the trial court.

(6) A reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference.

ch. 2019-63, § 1, Laws of Fla, eff. June 7, 2019. This statute was enacted after the state constitutional savings provision was amended by the electorate in 2018. *Jimenez v. Jones*, 261 So.3d 502, 503 (Fla. 2018) (noting the effective date of the constitutional amendment was January 8, 2019).

The words of a statute are “paramount” and, those words, in context, are “what the text means.” *Advisory Opinion to the Governor re: Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So.3d 1070, 1078 (Fla. 2020); *see generally Conage v. United States*, 346 So.3d 594 (Fla. 2022) (adopting an expansive but nuanced view of plain meaning textual analysis); Nicholas P. McNamara, *What the Textualist Revolution in Florida Jurisprudence*

Means for Practitioners, 98 Fla. B. J. 44 (June 2024) (discussing this Court’s textual analysis in *Conage*). The sub-issue here is the meaning of the statutory phrase “operates prospectively” in the savings statute.

This Court typically looks to dictionaries for the “best evidence” of the ordinary meaning of words. *Conage*, 346 So.3d at 599. The word “prospective” is defined as being “effective or operative in the *future*.” BLACK’S LAW DICTIONARY 1477 (11th ed. 2019) (emphasis added). It is also defined as “relating to or effective in the *future*.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003) (emphasis added). In contrast, “retrospective” is defined as “extending in scope or effect to matters that have occurred in the *past*.” BLACK’S LAW DICTIONARY 1432 (9th ed. 2009) (emphasis added). The distinction in these dictionary definitions is between past and future events.

The amended death penalty statute was applied to a future event, not a past event. It was applied to a penalty phase that occurred months after the effective date of the amendment, not to a penalty phase that occurred before the effective date of the amendment. Under the text of the savings statute, the amendment

to Florida's death penalty statute operated prospectively and did not abate the murder prosecution or the prior punishment of death.

As explained earlier, under the logic of this Court's decision in *Love* and the Supreme Court's decision in *Landgraf*, a procedural statute is being applied prospectively if it is being used at a stage of a judicial proceeding that is held after its effective date. In Hunt's case, the amended death penalty statute, requiring eight jurors to vote for a death recommendation, was applied to a penalty phase that occurred months after the effective date of the amendment. Thus, the new amended death penalty statute was applied prospectively, according to caselaw, as well as under the text of the savings statute.

Hunt argues that the savings statute applies to any criminal statute, whether "substantive or procedural" that deals "in any way with a crime or its punishment," relying on § 775.022(2). IB 78. But § 775.022(2) is merely a definitional subsection that does not mandate any particular conduct. It is the savings statute's remaining sections that contain mandates and one of those mandates is that criminal statutes that do not operate to reduce the penalty apply prospectively.

The State is not arguing that the savings statute does not apply

to this case. Rather, the State argues that the trial court complied with the savings statute when it granted the State's motion to use the amended death penalty statute at Hunt's upcoming penalty phase because the amendment was a procedural amendment to a procedural statute that was applied to a penalty phase that occurred after the effective date of the amendments to the death penalty statutes. The amended version of the death penalty statute was applied "prospectively," which fully complies with the text of the savings statute.

Opposing counsel relies on *Fla. Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So.3d 187, 196 (Fla. 2011), for the proposition that, if the Legislature includes an effective date for a statute, that is evidence of its intent that the statute be applied prospectively. IB 78. That argument merely begs the question of the meaning of "operates prospectively." Both the dictionary definitions and the caselaw answer that question in a manner that makes clear the death penalty statute was applied "prospectively" to Hunt.

Furthermore, § 775.022(4) of the savings statute does not apply at all because the amendments to the death penalty statute did not reduce the sentence. The recent amendments to the death penalty

statute did not reduce the “penalty, forfeiture, or punishment” for a violation of the murder statute. The penalty for first-degree murder in Florida remained the same after the amendments to the death penalty statutes as it was before the amendments. The punishment before the amendments to the death penalty statute was either a life-without-parole sentence or a death sentence and the punishment after the amendment is still a life-without-parole sentence or a death sentence. The punishment was not reduced or lessened in any manner. There was no actual change in the penalty. Therefore, § 775.022(4) is not in play.

Even if § 775.022(4) applied, then the amended version of the death penalty statute was still properly applied to Hunt because his sentence had not “already” been “imposed,” so any sentence had to “be imposed according to the statute as amended.” The application of the amended death penalty statute to Hunt at the penalty phase did not violate Florida’s savings statute.

STATEMENT ON SUFFICIENCY OF THE EVIDENCE

This Court has a mandatory obligation to independently review the evidence in Hunt's case to determine whether competent, substantial evidence supports the first-degree murder conviction. *Colley v. State*, 310 So.3d 2, 19 (Fla. 2020) (competent, substantial evidence supported conviction of both premeditated and felony murder); *Johnson v. State*, 238 So.3d 726, 742 (Fla. 2018); *Jordan v. State*, 176 So.3d 920, 937 (Fla. 2015).

Determining legal sufficiency of the evidence to support a criminal conviction requires this Court to view the evidence in the light most favorable to the State. It asks whether "a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Bush v. State*, 295 So.3d 179, 200 (Fla. 2020). The jury determines "whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt" and this Court sustains jury verdicts supported by competent, substantial evidence." *Johnson*, 238 So.3d at 742 (quoting *Twilegar*, 42 So.3d 177, 188 (Fla. 2010) and *State v. Law*, 559 So.2d 187, 189 (Fla. 1989)).

Hunt was convicted of first-degree murder, based on the both

premeditated and felony murder, armed burglary, and three counts of attempted first-degree murder. DAR 1470-79. On first-degree premeditated murder, the State was required to prove 1) Lexie was dead; 2) her death was caused by Hunt's criminal act; and 3) Lexie's killing was premeditated. *Id.* at 1434, 1470. On the count of first-degree felony murder, the State was required to prove 1) Lexie was dead; 2) Hunt or his accomplice caused Lexie's death while engaged in the commission or attempt to commit a burglary; and 3) Hunt actually killed Lexie or another person killed her, but both Hunt and the person who killed Lexie were principals in the commission of the burglary. *Id.* at 1434, 1470-71.

Hunt's jury found the State proved the facts of Hunt's case and elements of first-degree and felony murder convictions beyond a reasonable doubt that Hunt: 1) was to be arrested for the human trafficking and sexual battery of P.O. at the Bay County Courthouse on April 1, 2019; 2) defied the trial judge's instructions to wait while the arrest warrant for the new case could be verified; 3) interfered with lawful judicial process, exercise of government function, and enforcement of laws by fleeing the courthouse and jurisdiction; 4) formed the premediated intent and plan to eliminate P.O. as the

victim and key witness in the new case; 5) attempted to conceal his identity by using another's vehicle, not his own vehicle to flee the jurisdiction; 6) attempted to conceal his identity by purchasing and installing window tints on the Ford Escape; 7) attempted to avoid tracking and capture by turning off his primary cellular telephone and buying a burner phone to use "so police couldn't track him"; 8) used fictitious names to check into hotels; 9) was observed travelling in the Ford Escape by cellular telephone tracking, license plate readers; 10) was observed in business security camera recordings of the Ford Escape close to the Scoggins home, minutes before the murder; 11) forcibly entered the Scoggins home with another individual, using a pizza delivery ruse; 11) was identified by Danny Scoggins visually and by his "very distinctive voice," who informed police and his neighbor Hunt shot him; 12) was identified by voice by Gabe; 13) was apprehended driving the Ford Escape on April 5, 2019 heading back to Panama City and tried to conceal his identity wearing a woman's wig; 14) was apprehended wearing the black hoody observed on the night of murder and shootings; and 15) disclosed his plan to eliminate P.O. to his girlfriend Kaitlyn West stating, he had to do what he had to do in the sexual battery case

and “no witness, no case.” The foregoing competent, substantial evidence supported Hunt’s convictions.¹⁹ See *Cruz*, 320 So.3d at 716-17 (Fla. 2021) (competent, substantial evidence supported first-degree premeditated and felony murder (armed burglary) where “entire episode was a joint operation by” two defendants)

Akin to the *Archer* Court’s finding that the evidence was sufficient to support a first-degree murder conviction, Hunt created the situation where Lexie’s death was a natural and foreseeable result of his intent and plan to kill P.O. Lexie’s death at the hand of another was not an independent act for which Hunt can deny or escape responsibility. See *Archer*, 613 So.2d at 448. Were this Court to reject the reasonable inferences Hunt’s jury must have drawn from the evidence to reach its verdict, it would in effects be saying, “a jury is required to entertain ‘a mere possible doubt, a speculative, imaginary, or forced doubt,’ contrary to the standard jury instructions given in all criminal cases.” *Bush*, 295 So.3d at 201. As

¹⁹ Hunt’s Sentencing Memorandum conceded: 1) the facts surrounding Lexie’s murder did not absolve him of “culpability of the homicide as found by the jury”; and 2) the State “succeeded in establishing beyond a reasonable doubt that Mr. Hunt was involved in planning and coordinating the overall events of April 4, 2019.” DAR 1552.

the record reflects, competent, substantial evidence supports the jury's finding that Hunt was guilty of first-degree premeditated and felony murder.

CONCLUSION

The State of Florida respectfully requests this Court affirm the Appellant's first-degree murder conviction and death sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2024, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: **Barbara J. Busharis, Assistant Public Defender**, Office of the Public Defender, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, Florida 32301, **barbara.busharis@flpd2.com**.

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CERTIFICATE OF FONT AND WORD LIMIT COMPLIANCE

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