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IN THE SUPREME COURT OF FLORIDA

MICHAEL HARRISON HUNT,

Appellant,

vs.

CASE No. SC24-0096
L.T. No. 19-2281-CF

STATE OF FLORIDA,

Appellee.

_____/

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

# REPLY BRIEF OF APPELLANT

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## ARGUMENT IN REPLY

### I. The Court Abused Its Discretion in Admitting Unduly Prejudicial Evidence of Unrelated Acts that Were Not Inextricably Intertwined with the Charged Offenses.

The State is correct that Florida courts have allowed "inextricably intertwined evidence" of collateral acts when the acts are relevant to a defendant's alleged motive. *E.g.*, *Victorino v. State*, 23 So. 3d 87 (Fla. 2009). However, even when collateral acts are arguably relevant to motive, the evidence admitted for that purpose cannot exceed the scope of what is necessary to establish motive, or it transcends the bounds of relevancy and becomes unduly prejudicial. *See Delhall v. State*, 95 So. 3d 134, 167 (Fla. 2012).

In *Delhall*, the defendant's brother had been charged with a murder that took place in 1998, but left the jurisdiction and was not arrested and returned to Florida until 2001. *Id.* at 143-44. At an *Arthur* hearing for his brother in September 2001, the defendant learned of a potential witness against his brother. *Id.* The defendant was charged with shooting and killing the witness in November 2001. *Id.* at 144. The fact of the earlier murder and the defendant's knowledge of the identity of a witness who could help convict his brother were relevant to establishing that the defendant had a

motive to kill the witness. *Id.* at 166-67. Importantly, however, this Court held that extensive evidence of the earlier murder exceeded the scope of what was necessary to establish that the defendant had a motive to kill the victim, and in particular held the trial court abused its discretion in admitting a photograph of the first victim's body. *Id.* at 167 (finding the error harmless in the context of other evidence in the case).

Of the cases cited by the State, *Delhall* illustrates one of the larger time spans between the collateral acts and the charged offense. *See id.* However, even in that case, the time period between when the defendant learned of the witness and the shooting for which the defendant was on trial was about two and a half months. *See id.* at 144. In *Victorino*, the "continuing chain of events" that were found to be relevant to the defendant's motive began on Friday, July 30, 2004, and ended with murders committed one week later, on August 6, 2004. *See* 23 So. 3d at 91. The specific collateral acts to which the defendant in that case objected took place only two days before the murders. *Id.* at 98. Similarly, in *Joseph v. State*, 336 So. 3d 218 (Fla. 2022), where the Court found collateral acts were relevant to establishing motive, the collateral acts happened within five days of the charged offense. In that case,

five days before allegedly shooting his mother's girlfriend and the girlfriend's daughter, "K.C.," the defendant was heard yelling to his mother that K.C. had "one more time to make him mad." *Id.* at 225.

In *Smith v. State*, 126 So. 3d 1038 (Fla. 2013), a post-conviction capital case also cited by the State, the collateral crime issue was whether trial counsel had been ineffective for failing to object to testimony that the defendant planned to rape a female guard as part of a prison escape plan. This Court held the evidence of the defendant's intent was relevant to establish the context of the escape and was probative of the defendant's state of mind at the time. *Id.* at 1045-47. However, that is completely different from offering evidence of collateral acts taking place weeks, months, or years before the charged offense. *Smith* does not support the admission of the collateral act evidence at issue here.

Here, based on *Delhall*, the trial court was arguably correct that some evidence of P.O's complaint against Mr. Hunt was relevant to the State's theory about the motive for the shooting, even though there was some time between the alleged sexual assault and her reporting it. However, as in *Delhall*, the scope of the evidence that was presented far exceeded what was necessary to explain to the jury why the State believed there was a motive to kill

P.O. at all. Gabryal White, P.O., and Ms. West testified about events predating Hurricane Michael, which took place in October 2018, and continuing through 2019. Testimony about alleged prostitution and trafficking spanned that entire time period and were not necessary to explain the State's theory about motive; that testimony was improper character evidence. Testimony about going back and forth from Florida to New Orleans, and later to Mississippi, was also not necessary to support the State's theory about the motive for the shootings, and merely bolstered the other allegations of trafficking. The history of Ms. West's relationship with Mr. Hunt was not necessary to establish anything about the shootings.

Because the collateral act evidence exceeded what was necessary to establish any motive for the shootings, it crossed the line from relevant to unduly prejudicial. Therefore, and in continued reliance on the Initial Brief, the trial court abused its discretion in allowing collateral act evidence to such a wide extent.

## II. The Court Abused its Discretion in Giving an Instruction on Transferred Intent.

Defendant relies on his Initial Brief as to this issue.

### III. Fundamental Error Occurred When the Court Failed to Instruct the Jury It Had to Determine Beyond a Reasonable Doubt that the Aggravating Factors Were Sufficient to Justify Death.

The argument that the death sentence in this case is constitutionally deficient under Amendments V, VI, and XIV to the U.S. Constitution, as well as Article I, sections 9 & 17, of the Florida Constitution, is made to preserve the issue. Defendant relies on his Initial Brief.

## IV. Florida's Capital Sentencing Scheme Violates the Eighth Amendment to the United States Constitution and Its State Counterpart, Article I, Section 17 of the Florida Constitution, Because It Does Not Meaningfully Guard Against Arbitrary and Capricious Imposition of the Death Penalty.

As Florida has systematically eliminated features of its capital sentencing scheme that were included to guard against arbitrary, irrational, unfair, and thus unconstitutional results, the Court has repeatedly rejected arguments that Florida's sentencing scheme no longer complies with the principles set out in *Furman v. Georgia*, 408 U.S. 238 (1972), and thus violates both the federal and state constitutions. U.S. Const., amend. VIII; Art. I, § 17, Fla. Const. However, with all due respect, these arguments are not "well-worn." Sooner or later comes the straw that breaks the camel's back. And, as pointed out in the Initial Brief, the Court has not yet examined the effects of the 2023 statutory amendments.

The recent decision in *Cox v. State*, ___ So. 3d ___, 49 Fla. L. Weekly S197, 2024 WL 3364911 (Fla. July 11, 2024), cited in the Answer Brief, is based on a sentence handed down in 2022, before unanimity was abolished. The defendant in *Cox* could not present an individual or cumulative argument about the effect of sentencing

by a non-unanimous jury on the overall constitutionality of Florida's capital sentencing scheme and, a fortiori, that argument could not be rejected.

For this reason, the Answer Brief is incorrect to assert that this Court would have to recede from a line of cases upholding Florida's capital sentencing scheme. *See* Ans. Br. at 74 (citing cases). All of the cases cited for that assertion predate the abolition of the unanimity requirement. The Court merely needs to recognize a change in the law; the statutes those cases were affirming are no longer in place.

The Answer Brief refers to the Court "following United States Supreme Court precedent" regarding nonunanimous jury recommendations. Ans. Br. at 75. This ignores the 2023 legislative changes. Whether this Court was following precedent when it said *Hurst v. State* was wrong to require unanimity does not change the fact that it was applying a statute requiring unanimity. The United States Supreme Court has been "unwilling to say that there is any one right way for a State to set up its capital sentencing scheme." *Spaziano v. Florida*, 468 U.S. 447, 464 (1984), overruled in part, *Hurst v. Florida*, 577 U.S. 92, 101 (2016). Instead, the Court examines a sentencing scheme as a whole to determine whether it

contains adequate safeguards to guard against arbitrary and unconstitutional results. *See Proffit v. Florida*, 428 U.S. 242, 248-53 (1976) (examining Florida's post-*Furman* sentencing scheme in light of then-current constitutional standards).

When Florida's sentencing scheme, as modified in 2023, is considered in its entirety, it is lacking in the constitutional safeguards the United States Supreme Court found in *Proffit*, and no longer "assure[s] that the death penalty will not be imposed in an arbitrary or capricious manner." 428 U.S. at 252-53. The statute no longer satisfies the requirements of the Eighth Amendment and Article 1, section 17 of the Florida Constitution.

## V. The Sixth and Eighth Amendments to the Federal Constitution Require a Unanimous Determination that Death is the Appropriate Sentence, and this Court Should Reevaluate Its Precedent in Light of *Ramos v. Louisiana*.

While *McKinney v. Arizona*, 589 U.S. 139 (2020), does involve capital sentencing, the decision does not speak directly to the issue of unanimity. *McKinney* was decided on collateral review over 20 years after the defendant's death sentence was first affirmed. *See id.* at 141-42. The issue presented was whether, after an error in considering mitigation was identified on collateral review, the Arizona Supreme Court could reweigh the aggravating and mitigating circumstances. *Id.* at 142. The Court held, among other things, that jury weighing of aggravating and mitigating circumstances was not required. *Id.* at 145. And, because the defendant's sentence had become final before *Ring v. Arizona* and *Hurst v. Florida*, the sentence did not have to be based solely on a jury's fact-finding. *See id.* at 146 (citing *Ring v. Arizona*, 536 U.S. 584 (2002) and *Hurst v. Florida*, 577 U.S. 92 (2016)).

The Answer Brief raises the specter of the "rogue juror." This has become a synonym for a jury that cannot reach the unanimous result the State is seeking. "But who can say whether any

particular hung jury is a waste, rather than an example of a jury…deliberating carefully and safeguarding against overzealous prosecutions?" *Ramos v. Louisiana*, 590 U.S. 83, 99 (2020).

## VI. Allowing a Death Sentence to Be Imposed in This Case Without Requiring Jury Unanimity Violates the *Ex Post Facto* Clauses of the United States and Florida Constitutions, As Well As Florida Statutory Law.

Defendant respectfully disagrees that *Dobbert v. Florida*, 432 U.S. 282 (1977), is indistinguishable. As stated in the Initial Brief, *Dobbert* rejected an ex post facto challenge to a completely different statutory scheme. The opinion notes that the Ex Post Facto clause does not "limit the legislative control of remedies and modes of procedure which do not affect matters of substance." *Id.* at 293 (citing *Beazell v. Ohio*, 269 U.S. 167, 171 (1925)). The opinion also states "it is axiomatic that for a law to be ex post facto it must be more onerous than the prior law." *Id.* at 295.

To resolve the issue the *Dobbert* court compared the pre- and post-*Furman* statutory sentencing schemes, particularly with respect to the function of judge and jury in imposing sentence. *See id.* at 288-92. The Court concluded, as a result of that comparison, that the protections for capital defendants had been enhanced, not decreased, and thus that the law was not ex post facto. *Id.* at 296.

As set out more fully in the Initial Brief, the 2023 statutory abolition of unanimity in capital sentencing was more than a

procedural change. It was a change specifically intended and designed to make it easier to obtain sentences of death for a greater number of defendants. It is thus completely distinguishable, both in intent and operation, from the statutory scheme upheld in *Dobbert*.

## CONCLUSION

For the reasons stated above and in continued reliance on his Initial Brief, Mr. Hunt requests either a new trial or that that his sentence of death be vacated as unconstitutional and as violative of section 775.022, Florida Statutes.

## CERTIFICATES OF SERVICE AND FONT SIZE

I certify that a copy of the foregoing has been furnished electronically via the Florida Courts e-filing portal to Janine Robinson, Assistant Attorney General, Capital Appeals Division, capapp@myfloridalegal.com, on October 7, 2024. I certify that this brief complies with the font and word count provisions of the Florida Rules of Appellate Procedure.

Respectfully submitted,

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