

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-2323

JUSTIN CURTIS HEYNE

Appellant,

v.

STATE OF FLORIDA

Appellee.

SUPPLEMENTAL
ANSWER BRIEF OF APPELLEE

ON APPEAL FROM THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

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SUPPLEMENT TO ANSWER BRIEF

COMES NOW the State of Florida, and files this supplement to its previously filed answer brief. As grounds for accepting this supplement, the State submits the following:

For reasons unknown to the undersigned, the State's *Answer Brief* omitted discussion of Claim 5 in Heyne's *Initial Brief*. That claim is a claim based on *Ring v. Arizona*, 536 U.S. 584 (2009). This Court has repeatedly rejected such claims, as Heyne acknowledges. *See, Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002). Most recently, this Court has re-emphasized that when, as here, the prior violent felony aggravator applies, there is no *Ring* issue:

As his last issue, Baker argues that Florida's death penalty scheme is unconstitutional based on *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). In *Ring*, the United States Supreme Court held that, when an aggravating circumstance operates in capital sentencing as the functional equivalent of an element of a greater offense, the Sixth Amendment requires that the aggravator must be found by a jury. As Baker acknowledges, "This Court has repeatedly and consistently rejected claims that Florida's capital sentencing scheme is unconstitutional under *Ring*...." *Darling v. State*, 966 So. 2d 366, 387 (Fla. 2007).

Moreover, we have previously explained that *Ring* is not implicated when the trial court has found as an aggravating circumstance that the crime was committed in the course of a felony. *See McGirth v. State*, 48 So. 3d 777, 795 (Fla. 2010) (*citing Robinson v. State*, 865 So. 2d 1259 (Fla. 2004)). In this case, Baker was convicted of both home invasion robbery and kidnapping by a unanimous jury during the guilt phase of his trial. Accordingly, *Ring* is not implicated. *See Cave v. State*, 899 So. 2d 1042, 1052 (Fla.2005) (holding

that the defendant was not entitled to relief under *Ring* where the jury unanimously found the defendant guilty of robbery and kidnapping during the guilt phase).

Baker v. State, 2011 WL 2637418, 16 (Fla., July 7, 2011).

The *Ring* claim has no merit, and is not a basis for relief.

Finally, the combination "*Ring/Caldwell*" claim found on page 55 of Heyne's brief was not raised in the trial court. (Vol. VI, R. 796-827). Florida law is settled that claims cannot be raised for the first time on appeal. See, *Dailey v. State*, 965 So. 2d 38, 47 (Fla. 2007); *McDonald v. State*, 952 So. 2d 484, 489 (Fla. 2006); *Perez v. State*, 919 So. 2d 347, 359 (Fla. 2005); *Archer v. State*, 613 So. 2d 446, 448 (Fla. 1993).

CONCLUSION

Heyne's conviction and sentence of death should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to: **George D.E. Burden,**

Assistant Public Defender, 444 Seabreeze Blvd., Suite 210,
Daytona Beach, Florida 32118, on this _____ day of August,
2011.

Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

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