IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 12-647

WAYNE TREACY,

Petitioner,

vs.

AL LAMBERTI, as Sheriff of Broward County, Florida, and STATE OF FLORIDA,

Respondents.

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

The Respondent was the Prosecution and Petitioner was the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may also be referred to as the State.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's Statement of the Case and Facts set forth in his Initial Brief.

SUMMARY OF THE ARGUMENT

The State urges this Court to uphold the decision of the Fourth District in Treacy v. Lamberti, 80 So. 3d 1053 (Fla. 4th DCA 2012) wherein the Fourth District held that Graham v. Florida, 130 S. Ct. 2011 (2010) does not impact Petitioner's bond because the language of Article I, Section 14 of the Florida Constitution which focuses on the classification of the offense to determine entitlement to pretrial release, and not the potential severity of punishment. Graham's restriction that there must be some mechanism whereby a juvenile has the opportunity for release does not change the classification of the offense charged as a life felony.

Petitioner's suggestion that the holding of Graham is applicable to bail for juveniles in non-homicide offenses is unavailing and beyond it's intent. The purpose of bail is to insure a defendant's appearance at trial. That is the clear intent of the Florida Constitution and statutes. Graham's holding has no import on that purpose and does not impact the classification of offenses for purposes of bail. Accordingly, the offense of Attempted Murder in the First Degree (Premeditated) with the use of a deadly weapon remains an "offense punishable by life imprisonment" within the

meaning of Article I, section 14 of the Florida Constitution.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL'S OPINION BELOW PROPERLY CONCLUDED THAT THE GRAHAM OPINION HAS NO EFFECT ON FLORIDA'S EXPRESSED INTENT THAT BOND BE DENIED FOR JUVENILES WHO STAND ACCUSED OF COMMITTING LIFE FELONIES (RESTATED)

Petitioner contends this Court should utilize *a punishment as opposed to classification approach* as to the parameters of Art. 1, Sec. 14 of the Florida Constitution regarding juvenile non-homicide offenders in light of Graham v. Florida, 130 S.Ct. 2011 (2010). He contends the Fourth District erred holding in Treacy v. Lamberti, 80 So. 3d 1053 (Fla. 4th DCA 2012) that bail for a juvenile charged with an offense classified as a life felony is not a matter of right, in light of the decision in Graham.

Article I, section 14, of the Florida Constitution reads: Pretrial release and detention.-

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Florida Rule of Criminal Procedure 3.131(a) is to the same effect.[1]

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1 Right to Pretrial Release. Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every

This provision has been construed to mean that one charged with a capital offense or an offense punishable by life imprisonment is "entitled to release on reasonable bail as a matter of right" unless "the proof is evident or the presumption great that [the accused] is guilty of the offense charged." State v. Arthur, 390 So.2d 717,718 (Fla.1980). Moreover, because the provision "embodies the principle that the presumption of innocence abides in the accused for all purposes while awaiting trial," the burden rests on the state to establish that "the proof of guilt is evident or the presumption is great." Id. at 719-20 (footnote omitted).

Respondents note Petitioner's entire argument is based on the faulty premise that the United States Supreme Court's opinion in Graham, which addresses only the sentencing consequences for juveniles convicted of certain crimes, somehow altered the classification of those crimes as determined by the Florida Legislature.

As the Fourth District Court of Appeal reasoned, there is no need to resort to legislative intent when determining that pretrial release may be denied to those charged with "an offense punishable by life imprisonment." The Fourth District opinion in Treacy states as follows:

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person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

> Here, the defendant is charged with Attempted Murder in the First Degree (Premeditated) with the use of a deadly weapon. Under Florida Statutes, Sections 782.04(1)(a), 777.04(b), and 775.087(1)(a), the offense charged is a "life felony."
>
> Graham ... does not change the statute with respect to the defendant's right to bond in the present case. The specific holding in Graham is as follows:
>
> The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term. The judgment of the First District Court of Appeal of Florida affirming Graham's conviction is reversed, and the case is remanded for further proceedings not inconsistent with this opinion. Graham, 130 S.Ct. at 2034 (emphasis added)
>
> Even though [the circuit court] could not impose a life sentence without the possibility of parole in the present case, based upon the Graham opinion and the Eight [sic] Amendment, this restriction does not change the classification of the offense charged as a life felony. Therefore, the offense of Attempted Murder in the FirstDegree (Premeditated) with the use of a deadly weapon remains an "offense punishable by life imprisonment" [within the meaning of Article I, section 14 of the Florida Constitution].

Treacy, 80 So. 3d at 1054.

While Graham requires that a juvenile sentenced to life imprisonment be given a "realistic opportunity to obtain release," the Fourth District noted for purposes of this discussion that

Graham does not prohibit the imposition of a life sentence on a juvenile who commits a non-homicide crime. Treacy, 80 So. 3d at 1055. Moreover, even if the Graham decision is read as prohibiting imposition of a life sentence in Florida, because parole is not available, this ruling affects only the sentencing consequences for an individual ultimately convicted of attempted first degree murder, not the pretrial release consequences faced by that individual. Graham did not act to alter the seriousness of any crime. Graham did not change the seriousness of Attempted First Degree Murder (Premeditated) With a Deadly Weapon.

The categorical rule of Graham is that a juvenile offender who commits a non-homicide offense must be given a meaningful opportunity for parole at some point during his or her incarceration. The Court explicitly recognized that in any given case, a juvenile may never be fit to re-enter society, and therefore it is permissible to allow a juvenile to serve a life sentence. That specific determination cannot be made at the outset of a juvenile's sentence. Rather, at some point during incarceration, parole/release must be considered, and only considered, rather than forever foreclosed from consideration. Petitioner erroneously attempts to broaden Graham's holding to the pre-trial issue of bail beyond Graham's clear intent and scope.

Expounding upon holdings in Roper[2] and Graham, in Miller v

2 Roper v. Simmons, 543 U.S. 551 (2005) (wherein the Supreme

Alabama, 123 S.Ct. 2455 (2012) the Supreme Court held that mandatory life imprisonment without parole for juveniles at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishment. Miller is instructive as to the issue before this Court. In Miller, referring to juvenile transfer statutes to adult court, the state argued against requiring individualized consideration, as opposed to mandatory, before sentencing to life imprisonment without parole because "individual circumstances come into play in deciding whether to try a juvenile offender as an adult". Id., at 2470. The Supreme Court found this argument unavailing. The Court noted that many states use mandatory transfer systems. Id., at 2474. The Court further noted that these decisions are sometimes in the hands of judges who while having pre-trial transfer-stage discretion where a decision is made as to a light sentence as a juvenile or a standard harsher sentence as an adult, it cannot substitute for discretion at post-trial sentencing. Id., at 2474-75. Waiver or transfer statutes, like bail, are procedures before trial and sentencing. They do not substitute for the judge's discretion at post-trial sentencing where he can consider a juveniles possibility of rehabilitation at some point in the future, the basis of the Graham decision. The Supreme Court clearly recognized this distinction in Miller in dismissing the state's argument. Id.,at 2475.

Court held the Eighth Amendment prohibits imposition of the death

The legislative intent behind Florida's statute regarding pretrial release and detention, Sec. 907.041, Fla. Stat. is clear as to the classification of offenses:

> Legislative intent.--It is the policy of this state that persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest. However, persons found to meet specified criteria shall be released under certain conditions until proceedings are concluded and adjudication has been determined. The Legislature finds that this policy of pretrial detention and release will assure the detention of those persons posing a threat to society while reducing the costs for incarceration by releasing, until trial, those persons not considered a danger to the community who meet certain criteria. It is the intent of the Legislature that the primary consideration be the protection of the community from risk of physical harm to persons.

Further, Petitioner's interpretation that the intent of Article I, section 14 of the Florida Constitution was punishment as opposed to classification because the word "classification" was not used is unavailing. In emphasizing the phrase "punishable by life imprisonment" he neglects to emphasize it's precursor "[u]nless charged with a capital offense or an offense" (IB 16). A constitutional provision should be "construed as a whole in order to ascertain the general purpose and meaning of each part; each subsection, sentence, and clause must be read in light of the others to form a congruous whole so as not to render any language

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penalty on juvenile offenders under eighteen).

superfluous.". Pro Dep't of Envtl t. v. Millender, 666 So.2d 882, 886 (Fla.1996).

The language of Art. I, section 14 is not ambiguous. To the contrary, like Sec. 907.041 and Rule 3.131 it is clear and undeniable in it's import.

The Graham decision, and its mandate regarding a meaningful opportunity for a juvenile convicted of a non-homicide offense punishable by life imprisonment to be considered for parole/release at some point in the incarceration period, has no relevance whatsoever to the question of whether the standards of State v. Arthur, 390 So. 2d 717 (Fla. 1980) should apply to a juvenile charged with one of the most serious of offenses. Attempted premeditated murder committed with a deadly weapon is a life felony. The crime itself is not converted to a non-life felony because of the age of the person who commits it. The United States Supreme Court in Graham did not change the classification of that life felony under Florida law.

The Florida Constitution and Florida Legislature use the language "capital offense or offense punishable by life imprisonment" to indicate the seriousness of the crimes for which pretrial release will not be available. Recognizing that the more serious the crime, the less likely a defendant will show up for trial, bond may be denied to those charged with the most serious of crimes, among them the life felony of attempted first degree murder

with a deadly weapon. The fact that an individual of a certain age who is ultimately convicted of attempted first degree murder with a deadly weapon may no longer be sentenced to life imprisonment without the possibility for parole, does not alter the seriousness of the crime. Thus, consistent with the plain meaning of the law, an individual charged with one of the most serious of crimes may be denied pretrial release.

Graham's determination that a sentence of life without the possibility of parole for a juvenile who commits a non-homicide offense is prohibited by the constitutional prohibition against cruel and unusual punishment has no bearing on the interpretation of the legislatively enacted pretrial consequences for that same crime. The right to bond is based on article I, section 14 of Florida's Constitution, not on Federal Constitutional principles.

As the Fourth District recognized in Treacy, in Batie v. State, 534 So. 2d 694 (Fla. 1988) this Court held that although a sentencing consequence attached to an offense becomes unavailable, remaining consequences of that offense, including bond, remain intact. Treacy, 80 So. 3d at 154. This Courts holding in Batie reflects long and established precedent by this Court and other Florida courts regarding the classification of felonies in light of release from detention and incarceration.

In State v. Hogan, 451 So.2d 844 (Fla.1984), cited by the Fourth District, "[t]he degree of the crime is what the legislature

says it is, and, just because a portion of a crime designated 'capital' cannot be carried out, the degree is not lessened," for purposes of determining the penalty for attempted capital offenses. Id. at 845. See also Rusaw v. State, 451 So.2d 469 (Fla.1984)(held degree of crime is what the legislature says it is, and, just because a portion of a crime designated "capital" cannot be carried out, degree is not lessened, at least not for purposes of setting penalties for "attempt" crimes); Florida Parole Com'n v. Criner, 642 So.2d 51, 52 (Fla. 1st DCA)(held that parole commission properly treated Criner's crime as a "capital felony," in accordance with its legislative classification at the time of commission, citing Hogan and Batie); Wise v. State, 528 So. 2d 507 (Fla. 2nd DCA 1988), decision approved, 537 So. 2d 994 (Fla. 1989); (held bond pending appeal was properly denied defendant convicted of sexual battery upon child 12 years of age or under pursuant to rule that persons convicted of capital crimes are ineligible for post trial release, even though it had been determined that defendants convicted of offense could not be sentenced to death, where statute still described offense as capital in nature); Selph v. State, 553 So. 2d 344 (Fla. 4th DCA 1989) (affirming denial of bail pending appeal as it is intent of legislature to deny bond to defendant convicted of sexual battery of child regardless of fact that sentence of death is not an option).

In light of the United States Supreme Court ruling Furman v.

Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), in Donaldson v. Sack, 265 So. 2d 499 (Fla. 1972), this Court held:

> The constitutional and statutory provisions for bail do not change by the elimination of 'capital offense' because the constitutional provision in art. I, s 14, for bail, limits the right to bail not only as to those 'charged with a capital offense' but continues 'or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great.' And of course this condition continues in the former 'capital cases' since they now become punishable by life imprisonment.[footnotes omitted].

Donaldson, 265 So. 2d at 504.

The underlying conceit of Petitioner's argument based on the Graham decision is that a juvenile no longer faces, in a practical and viable sense, a life sentence for a non-homicide crime and therefore, the crime is no longer subject to a life sentence. However, as opposed to Petitioner's argument, the holding in Donaldson is instructive and analogous as in Donaldson the "death penalty" had been abolished. A defendant facing capital punishment, like a juvenile here facing life imprisonment in light of Petitioner's argument, could not receive that punishment. Yet, in Donaldson where the punishment of death could no longer be carried out, this Court held that the constitutional and statutory requirements for bail do not change.

As in Donaldson, other jurisdiction did not change entitlement to bail in light of Furman. See Jones v. Sheriff, Washoe County, 509 P.2d 824 (Nevada 1973) (held defendants charged

with murder, robbery, and burglary were not entitled to bail as a matter of right on theory that only capital offenses were non-bailable and because of proscription of death penalty capital offenses no longer exist); In re Kennedy, 512 P.2d 201 (Okla. Crim. App. 1973)(held though death penalty may not be imposed, gravity of an offense previously categorized as capital remains the same for purposes of granting or denying bail, thus bail could be denied in case involving offense previously classified as capital where proof of guilt was evident or presumption thereof great); e.g., State v. Sparks,255 S.E.2d 373 (N.C. 1979) (held whether or not a particular defendant depending upon the date his crime was committed faces the death penalty the crime of first degree murder is a "Capital offense " within the meaning of North Carolina statute is so notwithstanding that the trial itself may not be a "capital case" within the meaning of the jury selection statute).

Petitioner attempts to dissuade this Court from applying the very plain reasoning of the above-cited Florida Supreme Court cases, suggesting instead that this Court look to the reasoning of cases where he contends punishment as opposed to classification was the appropriate analysis. Cases cited by Petitioner as to his argument that this Court consider a punishment approach as opposed to classification of crimes for purposes of bail only concern the procedural aspects of a defendant's trial, i.e. right to trial by twelve person jury, and all involve the application of crimes no

longer punishable by death, not just life imprisonment. This Court has consistently reiterated that "death is different". Crump v. State, 654 So.2d 545, 547 (Fla.1995); State v. Dixon, 283 So.2d 1, 17 (Fla.1973) ("Death is a unique punishment in its finality and in its total rejection of the possibility of rehabilitation."), cert. denied, 416 U.S. 943, 94 S.Ct. 1950, 40 L.Ed.2d 295 (1974). Respondent suggests that the purpose of pre-trial and post-trial release has a different legislative intent, which is why the classification approach so often confirmed by this and other Florida courts is proper. Bail is substantively different as it does not involve procedural due process in the conduct of the trial. To the contrary, the ultimate purpose of bond is to insure an accused appears for that trial and, further, to protect the community at large prior to trial and after conviction for crimes which the legislature has classified as serious enough to be considered life felonies. Accordingly, the purpose of bond is distinguishable from the issue of punishment solely considered in Graham. For instance, even if a juvenile were to receive a sentence for a life felony less than life, it would not change the impact of the crime classified as a life felony by the legislature.

Petitioner cites Huffman v. State, 813 So. 2d 10 (Fla. 2000) suggesting this Court held the punishment approach appropriate in determining whether capital sexual battery was a non-capital case in terms of the statute of limitations regarding post conviction

motions. However, as in other cases cited by Petitioner, this case does not involve pre-trial or post trial release.

In Jones v. State, 861 So. 2d 1261, 1263 (Fla. 4th DCA 2003) the Fourth District, interpreting Huffman, held:

> Here, there is no reason not to treat the statutory "capital" offense as "non-capital" for the purpose of applying section 775.082(9)(a). The legislative intent of the Act is to deter prison releasees from committing further serious crimes. It is inconceivable that the legislature did not intend capital sexual battery, as a "felony punishable by life," to fall within the scope of the Act. Therefore, the trial court validly imposed sentence under section 775.082(9)(a).

Respondents contend that prison releasees are more akin to bail as it involves release from custody and protection of the community at large, as the Fourth District noted in Jones. The legislative intent behind the PRR Act is to prevent persons released from prison from committing further serious crimes. See Ch. 97-239, Preamble, at 4398, Laws of Fla. This Court reiterated the following in Grant v. State, 770 So.2d 655, 661 (Fla.2000) (quoting Rollinson v. State, 743 So.2d 585, 589 (Fla. 4th DCA 1999), approved, 778 So.2d 971 (Fla.2001)):

> The Act's classification and increased punishment for prison releasee reoffenders is rationally related to the legitimate state interests of punishing recidivists more severely than first time offenders and protecting the public from repeat criminal offenders. Limiting the Act's application to releasees who commit one of the enumerated felonies within three years of prison release is not irrational.

The Illinois' First District Court of Appeal considered a challenge to it's automatic transfer statute for juveniles in People v. Salas, 961 N.E. 2d 831 (Ill. 2011). Illinois' automatic transfer statute requires a juvenile to be transferred to adult criminal court without a hearing or any consideration of his youth or culpability or amenability to rehabilitation and subjected to a minimum 45-year prison term. The defendant argued "the automatic transfer statute violates the eighth amendment, in light of Graham and Roper, by mandating that all 15 and 16-year-old defendants who have been charged with certain predicate offenses, including first-degree murder, must be transferred to adult court without consideration of their youthfulness or culpability." Id., at 846. In finding the defendant's argument lacked merit the Illinois court held:

> The eighth amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." (Emphasis added.) U.S. Const., amend. VIII. The statutes at issue in Roper and Graham imposed the death penalty (Roper) and natural life in prison without parole (Graham) on juveniles and clearly constituted punishments that were subject to constitutional analysis under the eighth amendment. By contrast, the automatic transfer statute at issue here does not impose any punishment on the juvenile defendant, but rather it only provides a mechanism for determining where defendant's case is to be tried, i.e., it provides for the forum in which his guilt may be adjudicated. The punishment imposed on defendant here, specifically, his 50-year sentence of

> imprisonment, was made pursuant to the Unified Code of Corrections and not pursuant to the automatic transfer statute. As the automatic transfer statute does not impose any punishment, it is not subject to the eighth amendment.
>
> The holding in Roper was that the eighth amendment forbids imposition of the death penalty on offenders who were under the age of 18 when they committed their crimes; the holding in Graham was that the eighth amendment forbids imposition of natural life imprisonment without parole on juvenile offenders who did not commit homicide. Neither Roper nor Graham addressed the constitutionality of an automatic transfer statute similar to the one at issue here. The eighth amendment principles and analysis utilized in Roper and Graham have no application where the statute at issue imposes no punishment and is not subject to the eighth amendment.

Salas, 961 N.E. 2d at 846. See also People v. Jackson, 965 N.E.2d 623, 632 (2012) (held automatic transfer "is not a penalty provision in even the broadest sense. It merely dictates for a small class of older juvenile defendants who are charged with the commission of certain heinous crimes where their cases are to be tried. Guilt has not been determined at this stage, let alone what punishment, if any, should be imposed").

The pre-trial issue in Salas is similar to that in the case at bar. Here, as in Salas, Respondent suggests that Graham's holding goes far beyond punishment. However, like the Illinois automatic transfer statute, the issue of bail is not one of punishment. The purpose of bail is to insure a defendant's appearance in court and

to protect the community. See Fla. R. Crim. P. 3.131 (b)(3).

Petitioner urges this Court to follow the concurring opinion in Edmonds v. State, 955 So.2d 787, 808-811 (Miss. 2007). However, Petitioner misinterprets the holding of the concurring opinions of Justices Diaz and Graves. In Edmunds, the defendant was charged with a capital crime as a juvenile which had been abrogated by Roper.

However, as Justice Diaz noted, Appellant also fell under the category "punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment". Id., at 810. In light of that provision Justice Diaz observed:

> In the case of offenses punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment, a county or circuit judge may deny bail for such offenses when the proof is evident or the presumption great upon making a determination that the release of the person or persons arrested for such offense would constitute a special danger to any other person or to the community or that no condition or combination of conditions will reasonably assure the appearance of the person as required. Miss. Const. art. 3 § 29(3) (emphasis supplied). Accordingly, the State was required to prove that Tyler constituted a danger to the community or another person or that there was a substantial risk of flight. At no point did the State produce a scintilla of evidence of either. On the other hand, numerous teachers, members of the community, and even the Sheriff of Oktibbeha County testified that Tyler was not a danger to the community or even a violent person. He had never even been disciplined at school. Additionally, it is difficult to imagine a thirteen-year-old having the ability to flee when his entire

family resides in Mississippi.

Edmunds, 955 So. 2d at 811.

Ultimately, as regards the consideration of the future issue of bond, the concurrence in Edmonds was factually premised that the trial court had abused it's discretion in not setting bond.

Further, in Hudson v. McAdory, 268 So.2d 916 (Miss. 1972) the Mississippi Supreme Court citing this Court's decision in Donaldson, held that the Furman decision did not nullify exception to statutory right to bail in cases of capital offenses when proof is evident or presumption great. As Hudson observed:

> All statutory procedural safeguards that are now part of laws enacted by legislature involving capital crimes or offenses or crimes of serious nature still are in full force and effect even though death penalty has been removed from some of those offenses, including but not limited to armed robbery, forcible rape and kidnapping; legislature intended to retain those safeguards in all cases where maximum sentence is life imprisonment.

Finally, Petitioner suggests that the rule of lenity be applied. However, as he notes his particular case is now moot. This Court has recognized that the rule of lenity is a canon of last resort, Kasischke v. State, 991 So.2d 803, 814 (Fla. 2008), citing United States v. Shabani, 513 U.S. 10, 17, 115 S.Ct. 382, 130 L.Ed.2d 225 (1994) ("The rule of lenity, however, applies only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute."). Moreover, as Petitioner also concedes, the rules of lenity apply to penal

statutes. State v. Winters, 346 So.2d 991, 993 (Fla. 1977) ("Penal statutes must be strictly construed in favor of the accused where there is doubt as to their meaning and must be sufficiently explicit so that men of common intelligence may ascertain whether a contemplated act is within or without the law, and so that the ordinary man may determine what conduct is proscribed by the statute.").

Still, the rule of lenity need not be considered because the Florida Constitution and Florida Statutes are clear on this point. In State v. Sousa, 903 So. 2d 923, 928 (Fla. 2005), this Court stated:

> The fundamental rule of construction in determining legislative intent is to first give effect to the plain and ordinary meaning of the language used by the Legislature. Courts are not to change the plain meaning of a statute by turning to legislative history if the meaning of the statute can be discerned from the language in the statute. See Rollins v. Pizzarelli, 761 So. 2d 294, 299 (Fla. 2000); see also Taylor Woodrow Constr. Corp. v. Burke Co., 606 So. 2d 1154, 1156 (Fla. 1992) ("Where the statutory provision is clear and not unreasonable or illogical in its operation, the court may not go outside the statute to give it a different meaning."). We have previously stated that the legislative history of a statute is irrelevant where the wording of a statute is clear , see Aetna Cas. & Sur. Co. v. Huntington Nat'l Bank , 609 So. 2d 1315, 1317 (Fla. 1992), and that courts "are not at liberty to add words to statutes that were not placed there by the." Hayes v. State, 750 So. 2d 1, 4 (Fla. 1999).

As to Art. 1, Sec. 14 of the Florida Constitution, this Court

has held that in construing a constitutional provision, the goal is to ascertain and effectuate the intent of the framers and voters. See Caribbean Conservation Corp. v. Florida Fish & Wildlife Conservation Comm'n, 838 So.2d 492, 501 (Fla.2003). If the language used by the framers is clear, there is no need to resort to other tools of statutory construction.

This Courts analysis in Lawnwood Medical Center, Inc. v. Seeger, M.D., 990 So. 2d 503 (Fla. 2008) cited by Petitioner, is distinguished from this case as in Lawnwood the analysis turned on whether a special law was constitutional. Id., at 586. Such is not the case here. See Bautista v. State, 863 So.2d 1180, 1185 n. 4 (Fla.2003) (recognizing that the rule of lenity does not apply where legislative intent to the contrary is clear).

Respondents urge this Court to uphold the Fourth District opinion below as it is consistent with the reasoning of Batie, Hogan, and other Florida cases cited herein and, that a change to the sentencing consequences of the crime of First Degree Murder (Premeditated) With a Deadly Weapon has no impact on the pretrial release consequences facing a juvenile charged with that crime.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, the State of Florida respectfully requests the decision of the Fourth District Court of Appeal should be upheld.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Mitchell A. Egber, certify that a true and correct copy of the foregoing has been furnished by U.S. Mail and e-mail to: Jason T. Foreman,P.A., 633 South Andrews Avenue, Suite 201, Fort Lauderdale, Florida at attorneyforman@yahoo.com and Law Offices of Russell J. Williams, 633 SE 3rd Avenue, Suite 4F, Fort Lauderdale, Florida 33301 at rjwesquire@aol.com this 5th day of February, 2013.

Mitchell A. Egber

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

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