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IN THE SUPREME COURT OF FLORIDA
CASE NO. SC13-1826
Lower Court No. 74-4139

STATE OF FLORIDA,)
)
Appellant/Cross-Appellee)
)
v.)
)
)
JACOB JOHN DOUGAN, JR.,)
)
Appellee/Cross-Appellant)
)

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ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

SUPPLEMENTAL BRIEF OF APPELLEE/CROSS-APPELLANT ADDRESSING THE APPLICATION OF *HURST V. FLORIDA* TO THIS CASE

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I. INTRODUCTION

A. It is unlikely this Court will address *Hurst* in this case

On January 19, 2016, this Court ordered the parties to file supplemental briefs addressing the application, if any, of the United States Supreme Court decision, *Hurst v. Florida*. In *Hurst*, by a vote of 8-1, the Court unflinchingly held Florida's capital "sentencing scheme unconstitutional. The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." 2016 WL 112683 *3. Appellee/Cross-Appellant's case is on all fours with *Hurst*.

It is very unlikely this Court will need to address *Hurst* in this case. The lower court granted a new trial at which Mr. Dougan, if convicted, and if the state seeks death,[1] would have a *Hurst*-required sentencing. Given the substantial, competent, evidence to support the trial court's multiple grants of relief on guilt/innocence, *Hurst* is likely beside the point.

B. This Court "cannot predict all the consequences" of *Hurst*. *State v. Steele*, 921 So.2d 538, 546 (Fla. 2005)

But if *Hurst* is to be addressed, it deserves more that a few days of panicked

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[1]As the record on appeal from resentencing shows, the State offered a life sentence in 1987 if the victim's family would agree. The family did not. They did agree during the 3.850 proceedings below, but other obstacles stood in the way. Prosecutors have been satisfied with a life sentence for almost 20 years.

pondering via supplemental briefs. There are questions we know that are in need of answers–from "does Florida even have a death penalty?" to "how can the record produced under an unconstitutional system be relied upon for any purpose?"

Imponderables abound. For example, the State will argue that this Court can divine that the jurors would have found a particular aggravating circumstance had they been asked whether it had been proven beyond a reasonable doubt. But such jury deliberations about aggravators

> would **have to be** accompanied by clear directions about their effect, if any, on the trial court's own findings in determining sentence. Such directions are more appropriately crafted in a rules proceeding than in an individual case.

Id. This Court knows "[w]e cannot predict all the consequences" of a process that requires jury findings on aggravation, but, at a minimum, this change in procedure

> *would have to be accompanied by* clear instructions on how these changes affect the jury's role in rendering its advisory sentence and the trial court's role in determining whether to impose a sentence of death.

Id. at 548 (emphasis added). Appellee/Cross-Appellant's jurors were not provided such instructions. This Court cannot imagine what the instructions will say and conclude what the jurors would have done in light of them. Conjecture atop imagination.

If jurors will require "clear," not yet written, instructions and directions

about a single matter we *can* predict, what about those matters we "cannot predict?" Under these circumstances, "any changes should be made systematically," not "in an[y] individual case," and with the due deliberation for which this Court is well-respected.

II. RELEVANT PROCEDURAL POSTURE

Appellee/Cross-Appellant raised what is now a *Hurst* claim in his first Rule 3.850 proceeding below less than three months after *Ring v. Arizona*, 536 U.S. 584 (2002), was decided. Vol. VII, 1193-1217. The State answered: "It is the State's position that, until we hear otherwise from the Florida Supreme Court, our death penalty procedures are unaffected by *Apprendi* or *Ring*, and Dougan's claim is foreclosed by Florida precedent." Vol. VIII 1362. The lower court denied the claim on the merits and also on procedural default grounds. Vol. 13, 2333-34.[2]

Appellee/Cross-Appellant raised this claim in his brief before this Court, noting the grant of certiorari in *Hurst*.[3] In its brief, the state abandoned the

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[2]The resentencing in this case was in 1987. Judge Olliff "*alone*," *Hurst*, 2016 WL 112683 *6 (italics in original), "found that three aggravators had been established–committed during a kidnaping; heinous, atrocious or cruel; and committed in a cold, calculated, and premeditated manner." *Dougan v. State,* 595 So.2d 1 (Fla. 1992).

[3]*See* Answer Brief Of Appellee And Initial Brief Of Cross-Appellant at 149-50.

procedural default argument and as to the merits wrote:

> Dougan has not presented any new or novel information which would require the Court to reconsider its position....
>
> Until a contrary holding from the United States Supreme Court, Florida's capital sentencing structure remains constitutional.[4]

Appellee/Cross-Appellant agrees.

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[4] *See* Reply/Cross-Answer Brief Of Appellant at 79, 82.

III. ARGUMENT[5]

I. THIS CASE IS ON ALL FOURS WITH *HURST* AND THIS COURT SHOULD GRANT RELIEF IN APPELLEE/CROSS-APPELLANT'S CASE OR REMAND TO THE TRIAL COURT FOR FURTHER PROCEEDINGS

A. No prior offenses, no contemporaneous conviction, and a 9-3 jury recommendation

Mr. Dougan's death sentence is undeniably unconstitutional. Pursuant to the Sixth and Fourteenth Amendments, "each element of a crime must be proved to a jury beyond a reasonable doubt." *Hurst* *5. In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Court held "that any fact that 'exposes the defendant to a greater punishment than that authorized by the jury's verdict is an 'element' that must be submitted to the jury." *Hurst *5*. In *Ring,* the Court applied *Apprendi* to

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[5]This Court has asked the parties only whether *Hurst* applies to this case. In the Court's order in *Lambrix v. State/Lambrix v. Jones*, Case Nos. SC16-8 & SC16-56), the Court sought additional briefing beyond *Hurst* being applicable. Counsel, and amici, for Mr. Lambrix have hurriedly addressed additional issues in the limited time allowed. *See generally Lambrix v. State/Lambrix v. Jones*, Case Nos. SC16-8 & SC16-56), and the briefs of various amici submitted on Mr. Lambrix's behalf--Amicus Brief of Capital Habeas Unit (CHU); Amicus Brief of the American Civil Liberties Union of Florida (ACLU); and Amicus Brief of the Florida Association of Criminal Defense Lawyers (FACDL).

Appellee/Cross-Appellant submits this brief because of this Court's Order, and not because counsel has been able to put the necessary thought and research into it. Because this Court has provided no notice of the process that will be used by the Court to evaluate the *Hurst* violation in this and other cases, when notice is provided further briefing will be requested.

a state statute that allowed a person convicted of first-degree murder to be sentenced to death only if a judge found an aggravating circumstance. "Ring's death sentence therefore violated his right to have a jury find the facts behind his judgment." *Id*. In *Hurst*, the Court wrote "[i]n light of *Ring*, we hold that Hurst's sentence violates the Sixth Amendment." *Id*.* 6[6]

In Mr. Hurst's case:

> he had no prior convictions;
>
> he was not convicted of anything other than murder at his guilt-innocence proceedings;
>
> the jury that recommended death did so by a non-unanimous 7-5 vote;
>
> his jurors were told that their decision was only a recommendation;
>
> and a judge alone made all the findings upon which his death sentence was based.

In Mr. Dougan's case:

> he had no prior convictions;[7]

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[6]Appellee/Cross-Appellant contends the Florida sentencing scheme also violates the Eighth Amendment. *Hurst* at *9 (Breyer, J., concurring)

[7]"Within the black community he was respected. He taught karate and counseled black youths. When blacks were refused service at a lunch counter, he participated in a sit-down strike in defiance of a court order and was held in contempt of court therefor. This was the only blemish, if it can be called one, on his police record until this homicide." *Dougan v. State*, 595 So.2d 1, 6 (Fla. 1992)(McDonald, J., joined by Shaw, J., and Barkett, J., dissenting as to sentence).

he was not convicted of anything other than murder at his guilt-innocence proceedings;

the jury that recommended death did so by a non-unanimous 9-3 vote;

his jurors were told that their decision was only a recommendation;[8]

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[8]Throughout the sentencing proceedings, both the prosecutor and the trial court told the jurors that there recommendation was merely advisory. *See Hurst*, *6 ("The State cannot now treat the advisory recommendation by the jury as the necessary finding that *Ring* requires."). At the outset of the proceedings Judge Olliff informed the jury:

> Your duty is to see and hear evidence and testimony and hear aggravating and mitigating circumstances and then recommend to me an advisory sentence. Your advisory sentence will either recommend life imprisonment without the possibility of parole for 25 years or death by electrocution.
>
> Now this advisory sentence may be by the majority vote of the jury, and thereafter the judge will sentence the defendant either to life imprisonment or death, and *the judge is not required to follow the advisory sentence of the jury*. However, the judge is required to give great weight to the jury's recommendation.
>
> The imposition of punishment is the function of the judge of this court and not the function of the jury.

STR. 216-18. The prosecutor followed the trial court's lead, forcefully reminding the jury in his closing argument that the real sentencing responsibility lies with the judge:

> Now, the Judge no doubt in this case is going to impose a sentence. Judge Olliff is the one with the burden on his shoulders to impose the sentence and he'll do it, and he'll do it properly. And your function, ladies and gentlemen, is to make a recommendation and it's an important recommendation. The judge doesn't have to agree about

> and a judge alone made all the findings upon which his death sentence was based.

There is no difference between Mr. Hurst's and Mr. Dougan's cases and sentences. Like Mr. Hurst, Mr. Dougan is entitled to relief:

The Sixth Amendment protects a defendant's right to an impartial

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your recommendation, but it doesn't mean its not important.

STR. 1660. No curative instruction was issued by the trial court, which also repeatedly referred to the jury verdict as "advisory" and a "recommendation." throughout its charge to the jury. STR. 1748, 1749, 1752. This process of reminding the jury that it was not responsible for any factual finding was repeated over and over throughout the proceedings. (*See* STR. 188-190, 197, 204-06, 216-18, 1660, 1713-715, 1748-49, 1752).

Following arguments by counsel, the judge instructed the jury. In accordance with Fla. Stat. § 921.141(2) and (3), the judge began by telling the jury that:

> "It is now your duty to advise the Court as to what punishment should be imposed upon the Defendant for his crime of murder in the first degree. As you have been told, *the final decision as to what punishment shall be imposed is the responsibility of the Judge*; however, it is your duty to follow the law which will now be given you by the Court and render to the Court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty, and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist.

STR. 1748 (emphasis added).

These circumstances make it impossible to place any weight in the jury's recommendation. *Hurst*, *4.

> jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's factfinding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional.

Id. *9.

B. What is the Relief?

If this Court does not reverse the several bases for a new trial found below, then the *Hurst* issue is moot. If the Court reverses, then the Court should at least order resentencing per *Hurst*.[9]

Appellee/Cross-Appellant also believes that, if the grant of a new trial is reversed, and if this Court is not inclined automatically to grant a new sentencing proceeding per *Hurst*, then this case should be remanded so that Appellee/Cross-Appellant can demonstrate through non-record evidence how the trial and the

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[9]As argued *infra,* the Sixth Amendment violation in this case is structural error requiring resentencing. However, this Court imposed life sentences in all the cases in which death sentences had been imposed under the capital sentencing scheme determined to be unconstitutional in *Furman v. Georgia*, 408 U.S. 238 (1972). *Anderson v. State*, 267 So. 2d 8, 9-10 (Fla. 1972). The same result is proper here.

Appellee/Cross-Appellant also agrees with amicus that the plain language of § 775.082(2), Fla. Stat., dictates that this Court vacate Mr. Dougan's death sentence, remand his case, and order that he be resentenced to life without parole, in the event this Court reverses the grant of guilt/innocence relief. *See* Amicus Brief of the Florida Association of Criminal Defense Lawyers (FACDL) in *Lambrix v. State/Lambrix v. Jones*, Case Nos. SC16-8 & SC16-56).

sentencing would have been conducted entirely differently under a constitutional sentencing scheme. This is what the Court did in *Hitchcock* cases.

When the Supreme Court held in *Hitchcock v. Dugger*, 481 U.S. 393 (1987), that instructing sentencers that there were only a limited number of statutory mitigating circumstances they could consider violated the Eighth amendment, this Court ruled that *Hitchcock* constituted a change in law of fundamental significance. *Riley v. Wainwright*, 517 So.2d 656, 660 (Fla. 1987). At first the Court determined that *Hitchcock* claims could be addressed in state habeas petitions. *Hall v. State*, 541 So. 2d 1125, 1128 n.4 (Fla. 1989). But it quickly became apparent that the statute limiting mitigation to a finite statutory list had operated on defense attorneys in a way that shaped their investigation, strategy, and presentation of evidence and argument. In order to assess the constraints on counsel inflicted by the unconstitutional restriction on mitigation, this Court remanded cases to the trial courts to take evidence. *Hall*, 541 So. 2d at 1126 (Florida's pre-*Hitchcock* law "precluded Hall's counsel from investigating, developing, and presenting possible nonstatutory mitigating circumstance"); *Meeks v. Dugger*, 576 So. 2d 713, 716 (Fla. 1991) ("according to the affidavits filed with this motion, Meeks' counsel did not seek to develop nonstatutory mitigating evidence because he was constrained by the then-prevailing statutory

construction.").

One can imagine many ways the trial and sentencing would have been different in this case had defense counsel known that the jurors had to find aggravation and report it. Rebutting aggravating factors would have been the focus of proceedings before the jurors, not mitigation. Jury selection, evidence, and argument would all change. Evidence about how the unconstitutional sentencing statute constrained counsel must be submitted to a trial court.

II. *HURST* IS RETROACTIVE AND APPLIES TO THIS CASE

A. The Sixth Amendment Right is Transcendent

Hurst should apply to Appellant's case under the retroactive criteria of *Witt v. State*, 387 So.2d 922 (1980). Under *Witt*, a change in law supports postconviction relief in a capital case when "the change: (a) emanates from th[e] Florida Supreme] Court or the United States Supreme Court, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance." 387 So.2d at 931. The first two criteria are obviously met here. In elaborating what "constitutes a development of fundamental significance," the *Witt* opinion includes in that category "changes of law which are of sufficient magnitude to necessitate retroactive application as ascertained by the three-fold test of *Stovall* [*v. Denno*, 388 U.S. 293 (1967)] and *Linkletter* [*v. Walker*, 381 U.S. 618 (1965)]."

387 So.2d at 929.

The three-fold *Stovall-Linkletter* test considers: "(a) the purpose to be served by the new rule; (b) the extent of reliance on the old rule; and (c) the effect on the administration of justice of a retroactive application of the new rule." 387 So.2d at 926. The first prong of the *Stovall-Linkletter* test – the purpose to be served by the new rule – is of overarching concern here. *Hurst* presents a "fundamental and constitutional law change[ ] which cast[s] serious doubt on the veracity or integrity of the original trial proceeding." 387 So.2d at 929. *Cf.* *Thompson v. Dugger*, 515 So.2d 173, 175 (Fla. 1987).

Two considerations call for recognizing that *Hurst* is such a fundamental constitutional change:

First, the purpose of the rule is to change the very *identity* of the decision maker with respect to critical issues of fact that are decisive of life or death. In the most basic sense, this change remedies a "'structural defect[ ] in the constitution of the trial mechanism,'" *Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993): it vindicates "the jury guarantee . . . [as] a 'basic protectio[n]' whose precise effects are unmeasurable, but without which a criminal trial cannot reliably serve its function" *Id*. In *Johnson v. Zerbst*, 304 U.S. 458 (1938) – which was the taproot of *Gideon v. Wainwright*, this Court's model of the case for retroactive application

of constitutional change identified in *Witt*– the Supreme Court held that a denial of the right to counsel could be vindicated in postconviction proceedings because the Sixth Amendment required a lawyer's participation in a criminal trial to "complete the court" (304 U.S. 468); and a judgment rendered by an incomplete court was subject to collateral attack.

What was a mere imaginative metaphor in *Johnson* is ***literally*** true of a capital sentencing proceeding in which the jury has not participated in the life-or-death factfinding role that the Sixth Amendment reserves to a jury under *Hurst*: the constitutionally requisite tribunal was simply ***not all there***; and such a radical defect necessarily "cast[s] serious doubt on the veracity or integrity of the . . . trial proceeding." *Witt*, 387 So.2d at 929.

Second, "the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power – *a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge* or to a group of judges. Fear of unchecked power . . . found expression . . . in this insistence upon community participation in the determination of guilt or innocence," *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968)(emphasis added) – including, under *Hurst*, guilt or innocence of the factual accusations necessary for imposition of the death penalty. The right to a jury determination of factual

accusations of this sort has long been the central bastion of the Anglo-American legal system's defenses against injustice and oppression.[10] As former Justice Lewis F. Powell, Jr. wrote: "jury trial has been a principal element in maintaining individual freedom among English speaking peoples for the longest span in the history of man."[11]

Justice Powell also quotes de Tocqueville as observing

> "that the jury 'places the real direction of society in the hands of the governed. . . . and not in . . . the government. . . He who punishes the criminal . . . is the real master of society. All the sovereigns who have chosen to govern by their own authority, and to direct society, instead of obeying its direction, have destroyed or enfeebled the institution of the jury.'"[12]

The *Hurst* Court restored a right to jury trial in Florida that is neither trivial

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[10] *See* Blackstone's Commentaries, §§ 349-350 (Lewis ed. 1897): "[T]he founders of the English law have with excellent forecast contrived . . . that the truth of every accusation . . . should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors. . . . So that the liberties of England cannot but subsist, so long as this *palladium* remains sacred and inviolate; not only from all open attacks, (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it. . . ." *See also Rex v. Poole*, Cases Tempore Hardwicke 23, 27 (1734), quoted in *Sparf v. United States*, 156 U.S. 51, 94 (1895): "[I]t is of the greatest consequence to the law of England, and to the subject, that these powers of the judge and the jury are kept distinct; that the judge determines the law, and the jury the fact; and, if ever they come to be confounded, it will prove the confusion and destruction of the law of England."

[11] Powell, *Jury Trial of Crimes*, 23 Washington & Lee L. Rev. 1, 11 (1966).

[12] *Id*. at 5, quoting 1 de Tocqueville, Democracy in America 282 (Reeve trans. 1948).

nor transitory but "the most transcendent privilege which any subject can enjoy."[13] It is a right that must be given retroactive effect.

B. This Court's Precedent Requires Retroactivity

This Court has been down this road before. When the Supreme Court held in *Hitchcock* that instructing sentencers that there were only a limited number of statutory mitigating circumstances they could consider violated the Eighth amendment, this Court, applying *Witt*, ruled it a change in law of fundamental significance. *Riley v. Wainwright*, 517 So.2d 656, 660 (Fla. 1987); *Thompson v. Dugger*, 515 So.2d 173, 175 (Fla. 1987); *Downs v. Dugger*, 514 So. 2d 1069, 1070 (Fla. 1987). This Court also recognized that it had been previously misapplying *Lockett v. Ohio*, 438 U.S. 586, 604 (1978), and that *Hitchcock* "represents a substantial change in the law" such that it was "constrained to readdress . . . *Lockett* claim[s] on [their] merits." *Delap*, 513 So. 2d at 660 (citing, *inter alia*, *Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987)).[14]

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[13] Blackstone's Commentaries, quoted in Powell, *supra* note 11 at 3 n.7. *See also, e.g.*, *United States v. Battiste*, 24 Fed Cas. 1042, 1043 (C.C.D. Mass. 1835) (No. 14,545) (Justice Story): "I hold it the most sacred constitutional right of every party accused of a crime, that the jury should respond as to the facts, and the court as to the law." 2 Sumner 240, 243 (1835).

[14]In *Hurst*, the Court expressly overruled *Spaziano v. Florida*, 468 U.S. 638 (1984), and *Hildwin v. Florida*, 490 U.S. 638 (1989), because "[t]ime and subsequent cases have washed away the[ir] logic." *8. *Hurst* has washed away the

Hitchcock did not invalidate the Florida sentencing scheme. *Hurst* did. If restricting mitigation is unconstitutional and its fix retroactive, *per force* having the jury completely uninvolved in finding an "element" that is the difference between life and death must be retroactively applied.

III. THE SIXTH AMENDMENT VIOLATION IN THIS CASE CANNOT BE HARMLESS

The answer to the Court's question is "yes," *Hurst* applies. The Court did not ask the parties to address harmless error. Counsel, and amici, for Mr. Lambrix have hurriedly addressed harmless error. *See* note 5, *supra.* Anticipating that the State will address harmless error, Appellee/Cross-Appellant has a few observations.

As shown in Argument II, the Sixth Amendment violation in this case is structural error–a necessary component of the trial process was missing, absent, in Appellee/Cross-Appellant's case. It is not possible to add it back in, or imagine: what if? Justice Scalia calls this fool's errand the "illogic of harmless-error

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logic and support for this Court's *Ring* cases bottomed on *Hildwin* and *Spaziano. See, e.g., King v. Moore*, 831 So.2d 143 (Fla. 2002); *Bottoson v. Moore*, 833 So.2d 693 (Fla. 2002); *State v. Steele*, 921 So.2d 538 (Fla. 2005); *Marshall v. Crosby*, 911 So.2d 1129, 1134-35, & n. 5 (Fla. 2005); *Frances v. State*, 970 So.2d 806, 822 (Fla. 2007); *Duest v. State*, 855 So.2d 33, 50 (Fla. 2003) (Well, concurring) ("What we are directed to follow are *Lambrix v. Singletary*, 520 U.S. 518 (1997); *Hildwin v. Florida*, 490 U.S. 638 (1989); *Spaniazo v. Florida*, 468 U.S. 447 (1984); and *Proffitt v. Florida*, 428 U.S. 242, 251-60 (1976)).

review" when "the entire premise of [harmless error] review is simply absent." *Sullivan*, 508 U.S. at 280.

> There is no object, so to speak, upon which harmless-error scrutiny can operate. The most an appellate court can conclude is that a jury *would surely have found* petitioner guilty [of the aggravating circumstances] beyond a reasonable doubt—not that the jury's actual finding of guilty [of the aggravators] beyond a reasonable doubt *would surely not have been different* absent the constitutional error. That is not enough. **The Sixth Amendment requires more than appellate speculation about a hypothetical jury's action, or else directed verdicts for the State would be sustainable on appeal** . . .

Id. (emphasis added). For this Court "to hypothesize a [jury's finding of aggravating circumstances] that was never in fact rendered—no matter how inescapable the findings to support the verdict might be—would violate the jury-trial guarantee." *Id.*

Another reason harmless error is inapplicable in this context is that the Florida statute requires the fact-finder to find "sufficient aggravating circumstances" to qualify the defendant for death, and "insufficient mitigating circumstances to outweigh the aggravating circumstances." Thus, the "element" at issue in Florida can only be determined by the individual and collective assessment, by twelve jurors, of what constitutes "sufficiency" in the death-penalty context. It is not possible to determine what the jurors would have done had they been told that their decisions, not the judge's, were the most important

ones. And if speculation is constitutionally acceptable, then it bends toward life. We know that three jurors, multiple prosecutors, and three former Justices of this Court believe life is the appropriate sentence in this case.

Finally, how harmless error would work depends on what statute this Court imagines. First, imagine the jurors were instructed using the "clear" instructions and directions *Steele, supra,* says will be required. Whatever those are. And imagine they find one, two, or three aggravating circumstances. Then what? Do they make a recommendation? Is it entitled to great weight? This Court cannot imagine a statute and analyze the record in this case in light of it. Only the legislature can enact it.

VI. CONCLUSION

Appellee/Cross-Appellant requests that this Court affirm the lower court's grant of relief and reverse any denial or relief. With respect to the *Hurst* question asked by the Court, this Court should hold that *Hurst* applies to this case.

CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that a copy hereof has been furnished to Patrick Delaney at Patrick.Delaney@ myfloridalegal.com and that Patrick Delaney at Patrick.Delaney@ myfloridalegal.com. is the e-mail address on record with The Florida Bar as of this date for Mr. Delaney pursuant to Rule 2.516(b)(1)(A).

I also certify that this Brief of Appellant was computer generated using Times New Roman 14 font.

Respectfully submitted and certified:

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