IN THE SUPREME COURT OF FLORIDA

JOHN F. MOSLEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case Nos. SC14-436; SC14-2108

SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

The State of Florida files this Supplemental Answer Brief in response to this Court's order of April 7, 2016.

ARGUMENTS

ISSUE I

HURST SHOULD BE CONSTRUED MORE NARROWLY

In *Hurst v. Florida*, 136 S.Ct.616 (2016), the United States Supreme Court held that Florida's death penalty scheme is unconstitutional under the Sixth Amendment to the extent that it "require[s] the judge alone to find the existence of an aggravating circumstance." *Hurst*, 136 S. Ct. at 624.

Petitioner submits that the *Hurst* Court found three aspects of Florida's capital sentencing scheme unconstitutional: "(1) that the jury was not required to make **specific** findings as to the aggravators and mitigators, (2) that the judge rather than the jury had to make the critical findings that the mitigators were not **sufficient** to outweigh the aggravators, and (3) that the jury's decision was not **binding** upon the trial court." (Supp. IB at 7-8) *Hurst* only invalidated Florida's procedures for implementation of a death sentence, finding that they facially could result in a Sixth Amendment violation if the judge makes factual findings, which are not supported by a jury verdict. *Hurst* is not the "wholesale repudiation of Florida's statutory scheme" Petitioner purports it to be (Supp. IB at 8);

rather, it is an extension of *Ring v. Arizona*, 536 U.S. 584 (2002) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

A proper harmless error analysis only requires that a court determine that a rational jury would have found one aggravating circumstance. While Justice Alito's opinion in *Hurst* was a dissent regarding the issue of whether Florida's death penalty statute violated the Sixth Amendment right-to-a-jury-trial, it was a concurrence regarding harmless error. While the majority of the United States Supreme Court Justices remanded the Hurst case bac*k to* this Court to conduct a harmless error analysis, Justice Alito performed a harmless error analysis, giving guidance to lower courts regarding the proper analysis to conduct when performing a harmless error analysis of a *Hurst* error. His opinion only requires that a rational jury would have found one aggravator. *Hurst*, 136 S.Ct. at 636-37. (Alito, J., dissenting). Unlike *Hurst* who had no prior violent felony convictions, Mosley came to the penalty phase with a prior violent felony conviction – the contemporaneous murder of Lynda Wilkes. Thus, there is no Sixth Amendment error.

ISSUE II

HURST CANNOT BE APPLIED RETROACTIVELY

Even if Hurst was retroactive, there is no error because Petitioner was convicted of the contemporaneous murder of Lynda Wilkes. *Hurst* was satisfied at the guilt phase.

Petitioner submits that *Hurst* should be applied retroactively to his case, however this contention fails because *Hurst* does not apply retroactively to cases already final on direct review. *Schriro v. Summerlin*, 542 U.S. 348 (2004). Mosley's case became final on October 4, 2010, when the United States Supreme Court denied certiorari review. *Mosley v. Florida*, 131 S.Ct. 219, 178 L.Ed.2d 132, 79 USLW 3200 (2010) (No. 09-11555). *Summerlin* controls because the *Hurst* decision resulted in a new **rule of procedure**, which altered only who decides whether any aggravators exist, thus altering only the fact-finding procedure (as opposed to a new substantive rule).

> *Ring's* holding is properly classified as procedural. *Ring* held that 'a sentencing judge, sitting without a jury, [may not] find an aggravating circumstance necessary for imposition of the death penalty.' This holding did not alter the range of conduct Arizona law subjected to the death penalty. It could not have; it rested entirely on the Sixth Amendment's jury-trial guarantee, a provision that has nothing to do with the range of conduct a State may criminalize. Instead, *Ring* altered the range of permissible methods for determining whether a defendant's conduct is punishable by death, requiring that a jury rather than a judge find the essential facts bearing on punishment. Rules that allocate decision-making authority in this fashion are prototypical procedural rules, a conclusion we have reached in numerous other contexts.

Summerlin, 542 U.S. at 353 (internal citations omitted). *See Turner v. Crosby*, 339 F.3d 1247, 1283 (11th Cir. 2003) (concluding that retroactivity analysis of *Apprendi* applies equally to *Ring*, and that, under the *Teague* doctrine, *Ring* does not apply retroactively to Turner's death sentence); *see also*

Welch v. United States, 136 S.Ct. 1257 (2016) (holding that new constitutional rules of criminal procedure generally do not apply retroactively to cases on collateral review). *Ring* was an extension of *Apprendi*. Because *Apprendi* was a procedural rule, it axiomatically follows that *Ring*, and now *Hurst*, is also a procedural rule.

Likewise, *Hurst* is not retroactive under Florida's *Witt v. State*, 387 So.2d 922 (1980) analysis. While the first two prongs of Witt are satisfied; that is, *Hurst* is a decision, which emanates from the United States Supreme Court; and (2) is constitutional in nature, the third prong cannot be met. *Hurst* does not constitute a development of fundamental significance. *Hurst* does not prohibit the government from criminalizing certain conduct or imposing certain penalties. It is procedural in nature – it does not alter the range of conduct or class of persons the law punishes; it does not change the elements of the offense of murder punishable by death, and does not greatly enhance the fairness or accuracy of death penalty proceedings. Further, this Court conducted a full-blown *Witt* analysis that consisted of twenty-four paragraphs in *Johnson v. State*, 904 So.2d 400 (Fla. 2005) and concluded that *Ring* is not retroactive.

Petitioner argues that this Court can no longer rely on its decision in *Johnson* because this Court "misunderstood the

fundamental constitutional significance of *Ring* in its decision in *Bottoson . . .* which necessarily sabotaged its *Witt* analysis in *Johnson.”* (Supp. IB at 11) This Court correctly understood *Ring* at the time it decided *Johnson*. This is clear by the fact that the *Hurst* Court had to overrule two cases to reach its opinion. To accept Petitioner’s argument, one would have to believe that the United State Supreme Court has been ignoring the fact that Florida has been violating the Sixth Amendment for several years; this is a difficult proposition to accept.

Finally, Petitioner’s attempt at having *Hurst* declared retroactive under *James v. State*, 615 So.2d 668 (Fla. 1993) also fails. At trial, James objected to the HAC jury instruction and requested an expanded instruction; later, on appeal, he argued against the constitutionality of the instruction given to his jury. *Id*. at 669. While James’ appeal was pending before this Court, the United States Supreme Court declared Florida’s former HAC instruction inadequate. *See Espinosa v. Florida*, 505 U.S. 1079, 112 S.Ct. 2926 (1992). Because he had objected at trial and pursued it on appeal, the *James* Court opined that “it would not be fair to deprive him of the *Espinosa* ruling.” *Id*. The Court acted more equitably than legally and avoided addressing retroactivity. Indeed the term “retroactive” is nowhere to be found in the majority’s opinion. Justice Grimes’ dissent, however, is instructive; he opined that, under *Witt*, *Espinosa*,

should not be given retroactive effect, and described it as an "evolutionary refinement" as opposed to a "jurisdictional upheaval[]" or a "change of law of significant magnitude to require retroactive application." *Id*. at 670. He concluded by reminding the majority that "[i]t was deemed inappropriate to give retroactive effect to even such a dramatic and far-reaching change in the law as the requirement to give *Miranda* warnings. The change in Florida law which refined the instruction on heinous, atrocious, and cruel hardly warrants such unsettling treatment." *Id*. at 671.

In short, *Hurst* is not retroactive and for the reasons argued above, Mosley should not get the benefit of the *Hurst* opinion.

ISSUE III

ANY ERROR IN MOSLEY'S SENTENCE IS HARMLESS (RESTATED)

Petitioner claims that Sixth Amendment error occurred in his case and alleges that such error was necessarily "structural," and not amenable to a harmless error analysis. This argument must be rejected. The United States Supreme Court remanded *Hurst* itself to this Court for determination of harmlessness, noting that "[t]his Court normally leaves it to state courts to consider whether an error is harmless, and we see no reason to depart from that pattern here." *Hurst*, 136 S. Ct. at 624. Surely, if the United States Supreme Court was of the opinion that the error in *Hurst* constituted structural error, it would

not have remanded the matter to this Court for a harmless error analysis.

Additionally, this Court has been consistent in finding that deficient jury factfinding, in violation of the Sixth Amendment, can be, and often is, harmless beyond any reasonable doubt. *Johnson v. State,* 994 So.2d 960, 964-65 (Fla. 2008); *Galindez v. State*, 955 So.2d 517, 521-23 (Fla. 2007); *see also Pena v. State*, 901 So.2d 781, 783 (Fla. 2005)(failure to instruct jury on age requirement was not fundamental error).

Petitioner's claim of structural error is refuted by *Neder v. United States*, 527 U.S. 1 (1999), where the Court found no structural error although the jury convicted the defendant after one element of the offense was mistakenly not submitted for the jury's consideration.

The determination that deficient factfinding under the Sixth Amendment can be harmless is cemented by *Washington v. Recuenco*, 548 U.S. 212 (2006), where the United States Supreme Court reversed a Washington state court holding that error under *Blakely v. Washington*, 542 U.S. 296 (2004), was structural in nature and could never be harmless. *Blakely* is an *Apprendi v. New Jersey*, 120 S.Ct. 2348 (2000)*/Ring v. Arizona*, 536 U.S. 584 (2002) decision which requires jury factfinding where a sentence is to be enhanced due to the defendant's use of a firearm. *See*

also Galindez v. State, 955 So.2d 517, 524 (Fla. 2007) (holding harmless error analysis applies to *Apprendi* and *Blakely* error).

Furthermore, opposing counsel's logic applies to every other type of error and would be the end of the harmless error doctrine. *Goodwin v. State*, 751 So.2d 537, 539-41 (Fla. 1999) (detailing the history of the harmless error doctrine and explaining that before the doctrine, appellate courts routinely reversed convictions for almost every error committed during trial resulting in appellate courts being described as "impregnable citadels of technicality" and resulting in harmless error statutes being enacted). The harmless error doctrine, by its very nature, requires an appellate court to "guess" what the jury would have done. Roger J. Traynor, THE RIDDLE OF HARMLESS ERROR (1970). Florida has a harmless error statute that requires appellate courts to affirm, if possible. § 924.33, Fla. Stat. (2015) (providing that no judgment shall be reversed unless the appellate court is of the opinion, "that error was committed that injuriously affected the substantial rights of the Petitioner" and that it "shall not be presumed that error injuriously affected the substantial rights of the Petitioner"). This Court can, and should, conduct a harmless error analysis in this case, as it has done for numerous other errors in the penalty phase in hundreds of capital cases, including for the improper finding of an aggravator.

Petitioner argues that because there are no jury findings on the requisite aggravating circumstances, it is not possible to review whether such findings would have occurred absent the *Hurst* error. This is incorrect. The trial court found the following four aggravators at the penalty phase as to Jay-Quan's murder, each of which was given great weight: (1) the victim of the capital felony was under twelve years of age; (2) the murder was cold, calculated, and premeditated (CCP); (3) the murder was committed for pecuniary gain; and (4) the defendant had been previously convicted of a capital felony (the contemporaneous murder of Wilkes). *Mosley v. State*, 46 So.2d 510, 517 (Fla. 2009).

Victim Was Under the Age of Twelve Aggravator

There is uncontested evidence supporting the aggravator that the victim was under the age of twelve. Specifically, the State presented the birth certificate of Jay-Quan Mosley, reflecting that his date of birth was June 27, 2003. (R/VI 979) Additionally, court records from the paternity and child support case were admitted into evidence, also showing his date of birth. (R/V 863) And, Petitioner conceded this aggravator was found by the jury. (Supp. IB at 15)

CCP Aggravator and Pecuniary Gain

The evidence presented at trial demonstrated that Mosley "coldly and carefully planned how to kill his girlfriend and the

baby born out of their relationship in order to avoid paying child support payments." *Mosley v. State*, 46 So.3d 510, 528 (Fla. 2009) Indeed, the trial court found the murders had been planned for several days if not a few weeks. (R/VI 980-981). A rational jury would have found this aggravator also proven beyond a reasonable doubt.

Petitioner argues that "it was entirely possible that the jury found that neither the pecuniary gain or CCP aggravator had been proven beyond a reasonable doubt, as the facts, supporting both of those aggravators rested solely" on his co-defendant's testimony. (Supp. IB at 16) The State does not concede this point, but if it were correct, it would not merit a conclusion other than that of harmless error because Petitioner came to the penalty phase with a contemporaneous felony conviction, a finding his jury made during the guilt phase (discussed further below).

Contemporaneous Murders

During the guilt phase, the jury found Mosley guilty of two counts of First Degree Murder for the deaths of Lynda Wilkes and Jay-Quan Mosley. (R/IV 606-07) As a result, he could not even legally challenge the application of the contemporaneous murder aggravator at the penalty phase because the jury necessarily found this aggravator by virtue of its guilty verdicts. This Court has repeatedly rejected *Ring* claims where the prior

violent felony aggravator is present. *Hall v. State*, 107 So.3d 262, 280 (Fla. 2012) ("This Court has held that *Ring* does not apply to cases where the prior violent felony, the prior capital felony, or the under-sentence-of-imprisonment aggravating factor is applicable" citing *Victorino v. State*, 23 So.3d 87, 107-08 (Fla. 2009)); *Evans v. State*, 975 So.2d 1035, 1052-53 (Fla. 2007) (rejecting a *Ring* claim where the prior violent felony aggravator was present citing *Duest v. State*, 855 So.2d 33, 49 (Fla. 2003)); *Johnson v. State*, 104 So.3d 1010, 1028 (Fla. 2012) (stating that the Florida Supreme Court has repeatedly rejected *Ring* claims where the prior violent felony aggravator has been found; *Hodges v. State*, 55 So.2d 515, 540 (Fla. 2010) ("This Court has repeatedly held that *Ring* does not apply to cases where the prior violent felony, the prior capital felony, or the under-sentence-of-imprisonment aggravating factor is applicable."). Furthermore, the United States Supreme Court denied certiorari review in two pipeline cases after *Hurst*, both of which involved recidivist aggravators (*Smith v. Florida*, 170 So.3d 745 (Fla. 2015) cert. denied, (U.S. Jan. 25, 2016) (No. 15-6430) (prior violent felony aggravator); *Fletcher v. Florida*, 168 So.3d 186 (Fla. 2015), cert. denied, (U.S. Jan. 25, 2016) (No. 15-6075) (under-the-sentence-of-imprisonment aggravator)), substantiating the State's position that such a conviction necessarily removes a capital defendant from the proscriptions

of *Ring*. Since the jury determined that Mosley was eligible for a death sentence, any error in the fact that the judge wrote the sentencing order is harmless. Moreover, since the eligibility determination was made by a guilt phase verdict, Mosley's suggestion that it was tainted by the jury being informed at the penalty phase that its sentencing recommendation was merely a recommendation to the court does not change that result. Petitioner also conceded that the jury, by necessity, concluded that this aggravator was proven. (Supp. IB at 15)

In short, the evidence supporting the aggravators is overwhelming. *Neder* provides that "where a reviewing court concludes beyond a reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence, such that the jury verdict would have been the same absent the error, the erroneous instruction is properly found to be harmless." *Neder*, 527 U.S. at 17. Applying the harmless error test addressed above, it is apparent that, based on the evidence presented to support the aggravation, a rational jury would have reached the same sentencing recommendation.

Mitigation and Weighing

Petitioner misreads *Hurst*, in arguing that it requires that the jury find all aggravating factors, and, also make specific findings as to the mitigation and weighing. A proper harmless error analysis only requires that a court determine that a

rational jury would have found one aggravating circumstance. While Justice Alito's opinion in *Hurst* was a dissent regarding the issue of whether Florida's death penalty statute violated the Sixth Amendment right-to-a-jury trial, it was a concurrence regarding harmless error. While the majority of the United States Supreme Court Justices remanded *Hurst* back to this Court to conduct the harmless error analysis, Justice Alito *perfor*med that analysis, providing guidance to lower courts regarding the proper analysis to conduct when performing a harmless error analysis of a *Hurst* error. His opinion only required that a rational jury would have found one aggravator and then found the evidence supported either of the two aggravators. *Hurst*, 136 S.Ct. at 636-37. (Alito, J., dissenting).

Mosley argues *Caldwell v. Mississippi*, 472 U.S. 320, 341 (1985) error because the jury was instructed that its recommendation was advisory. A *Caldwell* claim is not properly raised for the first time in postconviction. *Lukehart v. State*, 70 So.3d 503, 521-22 (Fla. 2011) Any *Caldwell* claim should have been raised in the direct appeal and was not.

Proceeding to the merits, in *Caldwell*, the "prosecutor urged the jury not to view itself as determining whether the defendant would die, because a death sentence would be reviewed for correctness by the State Supreme Court." Caldwell, 472 U.S. at 323. Here, the jury was instructed that the judge "must give

[the jury's] recommendation great weight in determining what sentence to impose." He continued with, "[i]t is only under rare circumstances that I would impose a sentence other than the sentence you recommend."(R/V 781) Later, he instructed the jury, "[b]efore you ballot you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment in reaching your advisory sentence." (R/V 788) This hardly rises to the facts in *Caldwell* and certainly does not reflect that the jury was led to believe that the responsibility for determining the appropriateness of a death sentence rests elsewhere.

This Court should conduct a harmless error analysis and, based on the evidence presented at the penalty phase, determine that any Sixth Amendment error as to the finding of any one of the aggravators was harmless.

ISSUE IV

FLORIDA STATUTE § 775.082(2) DOES NOT REQUIRE A REMAND FOR IMPOSITION OF A LIFE SENTENCE AND MOSLEY IS NOT ENTITLED TO FILE A SUCCESSIVE RULE 3.851 MOTION (RESTATED)

Petitioner asserts that this Court need not consider retroactivity or harmless error if it follows § 775.082(2), Fla. Stat. The statute on which he relies, however, does not apply. Because *Hurst* did not find that the death penalty was constitutionally prohibited, § 775.082(2) does not mandate a blanket commutation of death sentences as Petitioner requests.

Should this Court determine that any error was not harmless, the appropriate remedy would be a remand for a new penalty phase, not the automatic imposition of a life sentence, or as Mosley seeks, a finding that *Hurst* is retroactive and a relinquishment of jurisdiction to the trial court for filing of a successive Rule 3.851 motion.

Florida Statute § 775.082(2)

In *Hurst*, the United States Supreme Court held that Florida's death penalty scheme is unconstitutional under the Sixth Amendment to the extent that it "require[s] the judge alone to find the existence of an aggravating circumstance." *Hurst*, 136 S. Ct. at 624. Petitioner asserts that because *Hurst* concluded that the statute is facially invalid, he is entitled to be resentenced to life in accordance with § 775.082(2), Fla. Stat.

Clearly, *Hurst* did not determine capital sentencing to be unconstitutional; *Hurst* only invalidated Florida's procedures for implementation of a death sentence, finding that they facially could result in a Sixth Amendment violation if the judge makes factual findings which are not supported by a jury verdict. Therefore, § 775.082(2) does not apply by its own terms. That section provides that life sentences without parole are mandated "[i]n the event the death penalty in a capital felony is held to be unconstitutional," and was enacted following *Furman v. Georgia*, 408 U.S. 238 (1972). In the event

that capital punishment as a whole for capital felonies were to be deemed unconstitutional, such as what occurred thereafter in *Coker v. Georgia*, 433 U.S. 584 (1977), where the United States Supreme Court held that capital punishment was not available for the capital felony of raping an adult woman, life is warranted.

Although Petitioner suggests that this Court used similar language to require the commutation of all death sentences to life following *Furman* in *Donaldson v. Sack*, 265 So.2d 499 (Fla. 1972), Petitioner is misreading and oversimplifying the *Donaldson* decision. *Donaldson* is not a case of statutory construction, but one of jurisdiction. Based on our state constitution in 1972, which vested jurisdiction of capital cases in circuit courts rather than the criminal courts of record, *Donaldson* held that circuit courts no longer maintained jurisdiction over capital cases since there was no longer a valid capital sentencing statute to apply; no "capital" cases existed, since the definition of capital referred to those cases where capital punishment was an optional penalty. *Donaldson* observes the new statute (§ 775.082(2)) was conditioned on the invalidation of the death penalty, but clarifies, "[t]his provision is not before us for review and we touch on it only because of its materiality in considering the entire matter." *Donaldson*, 265 So.2d at 505. The focus and primary impact of the *Donaldson* decision was on those cases, which were pending for

prosecution at the time *Furman* was released. *Donaldson* does not purport to resolve issues with regard to pipeline cases pending before the Court on direct appeal, or to cases that were already final at the time *Furman* was decided.

This Court's determination to remand all pending death penalty cases for imposition of life sentences in light of *Furman* is discussed in *Anderson v. State*, 267 So.2d 8 (Fla. 1972), a case which explains that, following *Furman*, the Attorney General filed a motion requesting that this Court relinquish jurisdiction to the respective circuit courts for resentencing to life, taking the position that the death sentences that were imposed were illegal sentences. There is no legal reasoning or analysis to explain why commutation of 40 sentences was required, but it is interesting to observe that this occurred before the time that either this Court or the United States Supreme Court had determined the current rules for retroactivity, as *Witt v. State*, 387 So. 2d 922 (1980) and *Teague v. Lane*, 489 U.S. 288 (1989), were both decided later.

There are several logical reasons for this Court to reject the blanket approach of commuting all capital sentences currently pending before this Court on direct appeal such as those which followed the *Furman* decision. *Furman* was a decision that invalidated all death penalty statutes in the country, with the United States Supreme Court offering nine separate opinions

that left many courts "not yet certain what rule of law, if any, was announced." *Donaldson*, 265 So.2d at 506 (Roberts, C.J., concurring specially). The Court held that the death penalty as imposed for murder and for rape constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. The various separate opinions provided little guidance on what procedures might be necessary in order to satisfy the constitutional issues, and whether a constitutional scheme would be possible.

By equating *Hurst* with *Furman*, Petitioner reads *Hurst* far too broadly. Hurst did not invalidate all Florida death sentences. After *Furman*, there were no existing capital cases left intact.

In Arizona, the Arizona Supreme Court rejected blanket commutation, finding that the unconstitutional portion of the statute could be severed to preserve pending death cases. *State v. Pandeli*, 161 P.3d 557 (Ariz. 2007). This is the approach this Court should take. This Court has repeatedly recognized its obligation to uphold any portion of the statute, to the extent there is a reasonable basis for doing so, based on the rule favoring validity. *Donaldson*, 265 So.2d at 501, 502-03; *Driver v. Van Cott,* 257 So.2d 541 (Fla. 1972); *Davis v. State*, 146 So.2d 892 (Fla. 1962).

There is no reading of *Hurst,* which suggests that a Sixth Amendment violation necessarily occurs in every case when the

statute is followed. In considering whether a new sentencing proceeding may be required by *Hurst* in a pending pipeline case, this Court needs to determine whether Sixth Amendment error occurred on the facts of that particular case; that is, whether a jury factfinding as to an aggravating circumstance, such as a contemporaneous felony, is apparent on the record. If there was a Sixth Amendment violation, the question shifts to the harmful impact of that error, and whether any prejudice to the defendant may have occurred. With this approach, this Court is respecting those death sentences, which can be salvaged upon finding that any potential constitutional error was harmless, while protecting the Sixth Amendment rights of defendants.

Since it is clear that § 775.082(2) only applies when the entire death penalty is stricken and not just when the procedures for implementation of the death penalty are stricken, it has no applicability here. Consequently, any argument that Petitioner's case should be remanded for imposition of a life sentence is erroneous. This Court should proceed to a harmlessness determination.

Relinquishment of Jurisdiction for Purposes of 3.851 Proceedings

For the reasons argued above, *Hurst* should not be applied retroactively to Petitioner's case. Since *Hurst* is not retroactive under existing Florida Supreme Court precedent, Petitioner would have no basis to file a successive rule 3.851

motion. Fla. R. Crim. P. 3.851(d)(2)(B) (providing: "No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges: (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and **has been held** to apply retroactively…"). Further, *Hurst* does not apply to recidivist aggravators and one of the four aggravators is a recidivist aggravator. And, finally, even if *Hurst* applied, it was satisfied in the guilt phase when the jury convicted Petitioner of the contemporaneous murder.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm Petitioner's death sentence.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Rick Sicta, Esquire via the eportal on the 2nd day of May, 2016.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted,

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