IN THE SUPREME COURT OF FLORIDA

EDWARD J. ZAKRZEWSKI,

Petitioner,

v.

JULIE L. JONES,

Respondent.

Case No. SC16-729

RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

PAMELA JO BONDI
ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI
ASSISTANT DEPUTY ATTORNEY GENERAL
Florida Bar No. 158541
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Fl 32399-1050
Primary E-Mail:
capapp@myfloridalegal.com
Secondary E-Mail:
carolyn.snurkowski@myfloridalegal.com
(850) 414-3300 Ext. 3566
(850) 487-0997 (FAX)

PRELIMINARY STATEMENT

Petitioner, EDWARD J. ZAKRZEWSKI, the defendant in the trial court, will be referred to as petitioner, the defendant, or by his proper name. Respondent, the State of Florida, will be referred to as the State. Pursuant to Rule 9.210(b), Fla. R. App. P. (2014), this brief will refer to a volume according to its respective designation within the Index to the Record of Appeal. A citation to a volume will be followed by any appropriate page number within the volume. The symbol "IB" will refer to petitioner's initial brief and will be followed by any appropriate page number.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history of this case are recited in this Court's decision affirming the denial of post-conviction relief:

> Zakrzewski pled guilty to the first-degree murders of his wife, Sylvia, and his two children, Edward and Anna. A penalty phase before a jury was held that established the following facts:
>
> Zakrzewski and his wife had been experiencing marital problems for some time prior to the murders. Zakrzewski twice told a neighbor that he would kill his family rather than let them go through a divorce. On June 9, 1994, the morning of the murders, Edward called Zakrzewski at work and stated that Sylvia wanted a divorce. During his lunch break, Zakrzewski purchased a machete. He returned to work and completed his daily routine. That

evening, Zakrzewski arrived home before his wife and children. He hid the machete in the bathroom.

After his family arrived home, Zakrzewski approached Sylvia, who was sitting alone in the living room. He hit her at least twice over the head with a crowbar. The testimony established that Sylvia may have been rendered unconscious as a result of these blows, although not dead. Zakrzewski then dragged Sylvia into the bedroom, where he hit her again and strangled her with rope.

Zakrzewski then called Edward into the bathroom to come brush his teeth. As Edward entered the room, Zakrzewski struck the boy with the machete. Edward realized what his father was doing and tried to block the blow with his arm, causing a wound to his wrist. Further blows caused severe head, neck, and back injuries, and resulted in death.

Zakrzewski then called Anna into the bathroom to brush her teeth. Zakrzewski testified that he hit the girl with the machete as soon as she entered the bathroom. The State's expert testified that the blood spatters from Anna show that the girl was kneeling over the bathtub when she was struck by the machete. Cuts were found on Anna's right hand and elbow, consistent with defensive wounds. The blows from the machete resulted in Anna's death. The evidence was in conflict as to whether Anna was aware of her impending death.

Finally, Zakrzewski dragged his wife from the bedroom to the bathroom. He still was not sure if she was dead, so he hit her with the machete. Sylvia died from blunt force injuries as well as sharp force injuries.

Following the murders, Zakrzewski drove to Orlando and boarded a plane bound for Hawaii. While in Hawaii, Zakrzewski changed his name and lived with a family who ran a religious commune. After he had been there four months, the family happened to watch the television show "Unsolved Mysteries," which aired Zakrzewski's picture.

Zakrzewski turned himself in to the local police the next day.

Zakrzewski, 717 So.2d at 490–91.

At the conclusion of the penalty phase, the jury recommended the death penalty by a vote of seven to five for the murders of Sylvia and Edward, and recommended a sentence of life imprisonment for the murder of Anna. See id. at 491. The trial court found the same three aggravating factors with respect to each of the murders: (1) the defendant was previously convicted of other capital offenses (the contemporaneous murders); (2) the murders were committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification (CCP); and (3) the murders were committed in an especially heinous, atrocious, or cruel manner (HAC). See id. The trial court found two statutory mitigators: (1) no significant prior criminal history; and (2) the murders were committed while the defendant was under the influence of extreme mental or emotional disturbance. The trial court also found and weighed twenty-four nonstatutory mitigators. See id.2 Finding that the aggravating circumstances outweighed the mitigating circumstances for each of the three murders, the trial court imposed three death sentences, following the jury's recommendation for the murders of Sylvia and Edward and overriding the jury's recommendation of a life sentence for the murder of Anna. See id.

On direct appeal, Zakrzewski raised nine issues. See id. at 492.3 This Court concluded that the trial court erroneously found HAC with respect to Sylvia's murder but further concluded that the error was harmless beyond a reasonable doubt. See id. at 492–93. The Court rejected the remainder of Zakrzewski's arguments and affirmed the three death sentences. See id. at 495. The United States Supreme Court denied certiorari. *See Zakrzewski v. Florida*, 525 U.S. 1126, 119 S. Ct. 911, 142 L.Ed.2d 909 (1999).

> Zakrzewski then filed a motion for postconviction relief under Florida Rules of Criminal Procedure 3.850 and 3.851, in which he raised the following claims: (1) trial counsel were ineffective for failing to move to suppress evidence seized from his home; (2) his guilty pleas were involuntary; (3) he was denied a fair penalty phase before a panel of impartial, indifferent jurors; and (4) trial counsel were ineffective for failing to object to the State's improper and prejudicial closing argument. Subsequently, Zakrzewski filed an amendment to his postconviction motion, adding a claim that Florida's death penalty statute is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000).

Zakrzewski v. State, 866 So. 2d 688, 690–92 (Fla. 2003).

This Court affirmed the trial court's order denying the Petitioner's motion for post-conviction relief. *Id.* at 697. This Court also denied petitioner's *Ring* claim, added to his *Apprendi* claim in his appeal:

> In his last issue on appeal, Zakrzewski argues that Florida's death penalty statute, section 921.141, Florida Statutes (2002), is unconstitutional pursuant to *Apprendi v. New Jersey* 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). In *Bottoson v. Moore*, 833 So.2d 693 (Fla.), *cert. denied*, 537 U.S. 1070, 123 S.Ct. 662, 154 L.Ed.2d 564 (2002), and *King v. Moore*, 831 So.2d 143 (Fla.), *cert. denied*, 537 U.S. 1067, 123 S.Ct. 657, 154 L.Ed.2d 556 (2002), this Court denied relief under *Ring*. Subsequently, this Court has rejected postconviction challenges to section 921.141 based on *Apprendi* and *Ring*. *See, e.g., Wright v. State*, 857 So.2d 861, 867 (Fla. 2003); *Jones v. State*, 855 So.2d 611, 616 (Fla.2003); *Chandler v. State*, 848 So.2d 1031, 1034 n. 4 (Fla.2003).

> In addition, Zakrzewski's guilty pleas in this case are equivalent to convictions on three counts of first-degree murder. *See Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) ("A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment."). Thus, the prior violent felony or capital felony conviction aggravator exempts this case from the requirement of jury findings on any fact necessary to render a defendant eligible for the death penalty. *See Duest v. State*, 855 So.2d 33, 52 (Fla.2003); *see also Doorbal v. State*, 837 So.2d 940, 963 (Fla.) (stating that prior violent felony aggravator based on contemporaneous crimes charged by indictment and on which defendant was found guilty by unanimous jury "clearly satisfies the mandates of the United States and Florida Constitutions"), *cert denied*, 539 U.S. 962, 123 S.Ct. 2647 (2003).

Id., 696–97.

On May 2, 2016—seventeen years after his convictions became final—petitioner filed this habeas petition in this Court and argued he is entitled to relief from his death sentences under the United States Supreme Court's ruling striking down Florida's death penalty scheme in *Hurst v. Florida*, 136 S. Ct. 616 (2016). On January 18, 2017, petitioner filed this amended petition.

ARGUMENTS IN OPPOSITION TO THE PETITION

In *Hurst v. Florida*, the United States Supreme Court overruled *Hildwin v. Florida*, 490 U.S. 638 (1989), and *Spaziano v. Florida*, 468 U.S. 477 (1984), to the extent that-Florida's capital sentencing scheme required the judge, rather than a jury, to find each fact necessary to impose a sentence of death unconstitutional in light of *Ring v. Arizona,* 536 U.S. 583 (2002). 136 S. Ct. 616. This Court subsequently held that any case in which the death sentence was final before *Ring* was decided would not receive relief based on *Hurst*. *Asay v. State*, No. SC16-102, 2016 WL 7406538, 13 (Fla. Dec. 22, 2016); *see also Mosley*, No. SC14-2108, 2016 WL 7406506 at18. ("[W]e have now held in *Asay v. State* that *Hurst* does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in *Ring*."). This Court has reiterated that pre-*Ring* cases are not entitled to *Hurst v. Florida* relief in subsequent cases. *See Gaskin v. State*, No. SC15-1884, 2017 WL 224772, at 2 (Fla. Jan. 19, 2017). Petitioner's convictions and sentences became final before *Ring* was decided; therefore, *Hurst v. Florida* and *Hurst v. State* should not be retroactively applied to this case.

Petitioner nevertheless argues that he should receive the benefit of the change in Florida law, that occurred when the United States Supreme Court overruled *Spaziano* and *Hildwin* based on the "fundamental fairness approach" described in this Court's opinion in *Mosley v. State*. No. SC14-2108, 2016 WL 7406506. The

petitioner also argues that it would be fundamentally unfair to prevent him from challenging his death sentence where he was prevented from raising his claim on direct appeal because of "binding US Supreme Court" precedent—*Hildwin* and *Spaziano*—in light of *Jones v. United States*[1] not issuing until after his direct appeal became final. Petitioner further alleges that because of this Court's mistakes and the denial of his *Ring* post-conviction motion on the merits in 2002, fundamental fairness requires the application of *Hurst* to his case. These arguments are without merit and should be denied.

Fundamental Fairness

Petitioner cannot establish that his sentencing procedure was less accurate than future sentencing procedures employing the new standards announced in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). Just like *Ring* did not enhance the fairness or efficiency of death penalty procedures, neither does *Hurst*. *Johnson v. State*, 904 So. 2d 400, 409 (Fla. 2005). As the United States Supreme Court has explained, "for every argument why juries are more accurate factfinders, there is another why they are less accurate." *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004). Because the accuracy of Petitioner's death sentence is not at issue, fairness does not demand retroactive application of *Hurst v. State*.

[1] 526 U.S. 227 (1999).

Petitioner appears to suggest that any new development in the law should be applied to all cases. Inherent in the concept of non-retroactivity is that some defendants will get the benefit of a new development, while other defendants will not. Drawing a line between newer cases that will receive a benefit and older, final cases that will not receive a benefit is part of the landscape of retroactivity analysis. If it were not this way, cases would never get resolved. With every new development in the law, capital defendants would get a new trial or a new penalty phase. Given that litigation in capital cases can span decades, there would never be finality.

Petitioner points to other cases in which laws have been held wholly retroactive in support of his case against partial retroactivity. Fairness and uniformity do not require that Hurst be retroactively applied to all cases. While the State continues to maintain that *Hurst* should not apply retroactively to any case, this Court's decision to limit the retroactive application does not mandate relief for pre-*Ring* cases. Just because some cases have been held completely retroactive does not mean that all cases should be so. Florida is a clear outlier for giving any retroactive effect to an *Apprendi/Ring* based error.[2] Neither the United States Constitution

[2] As recently explained by the Eighth Circuit in *Walker v. United States*, 810 F.3d 568, 575 (8th Cir. 2016), the consensus of judicial opinion flies squarely in the face of giving any retroactive effect to an *Apprendi* based error. *Apprendi*'s rule "recharacterizing certain facts as offense elements that were previously thought to be sentencing factors" does not lay "anywhere near that central core of fundamental rules that are absolutely necessary to insure a fair trial."

[*Teague*] nor the Florida constitution mandate retroactive application of *Hurst*. The decision in *Hurst* is based on an entire line of jurisprudence which courts have almost universally held to not have retroactive application . *See DeStefano v. Woods*, 392 U.S. 631 (1968) (per curiam) (holding the Court's decision in *Duncan v. Louisiana*, which guaranteed the right to a jury trial to the States was not retroactive); *McCoy v. United States*, 266 F.3d 1245, 1255, 1259 (11th Cir. 2001) (holding *Apprendi* not retroactive under *Teague*, and acknowledging that every federal circuit to consider the issue reached the same conclusion); *Varela v. United States*, 400 F.3d 864, 866-67 (11th Cir. 2005) (explaining that Supreme Court decisions, such as *Ring*, *Blakely*, and *Booker*, applying *Apprendi's* "prototypical procedural rule" in various contexts are not retroactive); *State v. Johnson*, 122 So. 3d 856, 865-66 (Fla. 2013) (holding *Blakely* not retroactive in Florida).[3] *See also State v. Towery*, 204 Ariz. 386, 393-94, 64 P.3d 828, 835-36 (Az. 2003) ("Conducting new sentencing hearings, many requiring witnesses no longer available, would impose a substantial and unjustified

[3] The Eleventh Circuit Court of Appeals has determined that if a lead case is not retroactive, neither is its progeny. In *Jeanty v. Warden, FCI-Miami*, 757 F.3d 1283, 1285 (11th Cir. 2014), the court reiterated its view that *Apprendi*'s rule does not apply retroactively on collateral review, and if the rule is not retroactive on collateral review then neither is a decision applying its rules. This has also been the prior practice of the Florida Supreme Court which has determined that *Apprendi* and its progeny were not to be applied retroactively in Florida. *See Hughes v. State*, 901 So. 2d 837, 844 (Fla. 2005) (holding that *Apprendi* is not retroactive and noting that "neither the accuracy of convictions nor of sentences imposed and final before *Apprendi* issued is seriously impugned.").

burden on Arizona's administration of justice" and would be inconsistent with the Court's duty to protect victims' rights under the Arizona Constitution); *Rhoades v. State*, 149 Idaho 130, 139-40, 233 P.3d 61, 70-71 (Id. 2010) (holding that *Ring* is not retroactive after conducting its own independent *Teague* analysis and observing, as the Supreme Court did in *Summerlin*, that there is debate as to whether juries or judges are the better fact-finders and that it could not say "confidently" that judicial factfinding "seriously diminishes accuracy."). Petitioner's fairness argument pales against the interests of the State. The State prosecuted Petitioner in good faith under the law existing at the time of his trial. He received a fair trial. Fairness requires finality in cases; fairness requires the interests of the victims' family members be considered; fairness requires Petitioner's motion be denied. However, even aside from fairness, this Court has made it very clear that *Hurst* is not retroactive to defendants like Petitioner, whose sentence was final when *Ring* was announced. *See Gaskin*, 2017 WL 224772 (January 19, 2017).

Petitioner also seems to suggest that because he raised this claim at the first opportunity that fairness dictates he be given the benefit of the claim. However, retroactivity does not depend upon preservation. This Court has never held that *Hurst* is retroactive to any defendant who specifically preserved the *Ring* issue, as Petitioner suggests. As previously noted, the Court has outright denied retroactive application of *Hurst* to all cases that were final before *Ring* was decided. *Asay*, 2016

WL 7406538 at *4. In *Asay*, the Court explained that the factors of the *Stovall/Linkletter*[4] test together, "weigh against applying *Hurst* retroactively to all death case litigation in Florida." *Id*. This Court drew a very clear distinction between cases that are retroactive and cases that are not, by using the June 24, 2002, date in which *Ring* was issued. In *Mosley*, the Court explained that it has "now held in *Asay v. State* that Hurst does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in *Ring*.". *Mosley*, 2016 WL 7406506, *18. *See also*, Gas*kin v. State*, SC15-1884, 2017 WL 224772 (Fla. Jan. 19, 2017) (denying relief in a *Hurst* claim where sentence became final in 1993. *Id*. at *2.); *Bogle v. State*, Nos. SC11-2403, SC12-2465, 2017 WL 526507 (Fla. Feb. 9, 2017). Whether or not Petitioner previously raised a *Ring* claim makes no difference in whether he is entitled to relief because his sentence was final prior to *Ring*. *Asay*, 2016 WL 7406538 at *13; *Mosley*, 2016 WL 7406506, *18; *Gaskin*, 2017 WL 224772 at *2 and *Bogle*, 2017 WL 526507 at *16. This Court has set a clear boundary for the retroactive application of H*urst*. Petitioner is beyond that boundary.

Petitioner also argues that fundamental fairness absolutely demands that *Hurst v. Florida* be applied retroactively to his case because one of his sentences was the

[4] *Stovall v. Denno*, 388 U.S. 293 (1967), and *Linkletter v. Walker*, 381 U.S. 618 (1965).

result of an override. As Petitioner observes, this Court has already considered the judicial override in this very case when deciding *Asay*. As this Court aptly concluded, in light of the two remaining death sentences, "Zakrezewski is not subject to execution purely by virtue of the actions of a judge." *Asay*, 2016 WL 7406538 at *20 n. 19 (Labarga, C.J., concurring). Thus, even if some members of this Court would consider the application of *Hurst* in this pre-*Ring* case, it is clear that no relief would be warranted. Notably, the United States Supreme Court did not overrule *Spaziano* entirely, but only to the extent it permitted "a sentencing judge to find an aggravating circumstances, independent of the jury's factfinding, that is necessary for imposition of the death penalty." *Hurst*, 136 S. Ct. at 622. And the United States Supreme Court has denied certiorari review of judicial override in Alabama, leaving intact the trial judge's authority to determine the ultimate question of sentencing in a capital case. *Ronald Smith v. Alabama*, 137 S.Ct. 588 (stay denied) (Men. December 8, 2016).

Accordingly, the single judicial override present in this case provides no basis for *Hurst* relief, and the petition must be denied.

Any Hurst Error is Harmless

Beyond the fact that *Hurst* is not applicable to this case and there is no *Hurst* error in this case, but if there were, this Court should hold any error harmless. In

Hurst v. Florida, the United States Supreme Court did not "reach the State's assertion that any error was harmless" because the "Court normally leaves it to state courts to consider whether an error is harmless." 136 S. Ct. at 624. However, the United States Supreme Court, in *Ring* and in *Hurst*, 136 S. Ct. at 624, cite to *Neder v. United States*[5]. *Hurst*, 136 S. Ct. at 624; *Ring*, 536 U.S. at 609, n. 7; *Neder v. United States*, 527 U.S. 1, 18–19 (1999). *Neder* explains a proper harmless error analysis occurs when "a court, in typical appellate-court fashion, asks whether the record contains evidence that could rationally lead to a contrary finding with respect to the omitted element." 527 U.S. at 18–19. Florida law takes a similar view of harmless error analysis. The Florida Supreme Court has already held that other constitutional errors are "by definition harmful" error "[i]f the appellate court cannot say beyond a reasonable doubt the error did not affect the verdict." *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Moreover, the Florida Supreme Court has emphasized the importance of an appellate court's role in harmless error analysis:

> The solemn obligation of the Court to perform an independent harmless error review and establish the analysis to be applied in performing that review is so critical to the appellate function that this Court has satisfied its obligation to review for harmless error, even when the State has not argued that the complained of error was harmless.

[5] 527 U.S. 1 (1999).

Goodwin v. State, 751 So. 2d 537, 545 (Fla. 1999).

This Court has also held that any *Hurst* error is harmless if there is no reasonable possibility that the error contributed to defendant's death sentence. *Davis v. State*, No. SC11-1122, 2016 WL 6649941, at 28 (Fla. Nov. 10, 2016), *reh'g denied*, No. SC11-1122, 2017 WL 56089 (Fla. Jan. 5, 2017); *see also Hurst v. State*, 202 So. 3d at 68 (analyzing whether the jury's failure to unanimously find all the facts necessary for imposition of the death penalty contributed to Hurst's death sentence); *and Galindez v. State*, 955 So. 2d 517, 523 (Fla. 2007) (explaining that the harmless error analysis for a violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000)).

This Court has only found a *Hurst* error is harmless where the jury recommendation was unanimous. *See e.g. Kaczmar v. State*, No. SC13-2247, 2017 WL 410214, at 4 (Fla. Jan. 31, 2017); *Knight v. State*, No. SC14-1775, 2017 WL 411329, at 15 (Fla. Jan. 31, 2017); *King v. State*, No. SC14-1949, 2017 WL 372081, at 19 (Fla. Jan. 26, 2017); and *Davis v. State*, No. SC11-1122, 2016 WL 6649941, at 29 (Fla. Nov. 10, 2016). The State recognizes that petitioner's jury was not unanimous but urges that this Court should revisit the method it performs a harmless error analysis in this case and not reject a harmless error analysis because of the advisory verdict. This Court in *DiGuilio* provided guidance for lower courts applying harmless error analysis by adopting the views of former Chief Justice

Roger Traynor of the California Supreme Court, including "his perceptive essay, *The Riddle of Harmless Error*" which cautioned that, of all the pitfalls an appellate court can make when applying harmless error, "*the worst is to abdicate judicial responsibility by falling into one of the extremes of all too easy affirmance or all too easy reversal*…neither course is acceptable." *DiGuilio*, 491 So. 2d at 1139; *Goodwin*, 751 So. 2d at 541 (emphasis in the original). Instead, "each appellate judge must independently review the complete criminal trial record" because "[w]hile the standard of review for harmless error is properly established by [the Florida Supreme Court], the manner by which each judge makes the determination of this issue must necessarily be decided by that judge." *Goodwin*, 751 So. 2d at 545. Therefore, the results of this Court's harmless error analyses in previous cases do not automatically command a certain result from this Court's independent harmless error review in this case—and to merely adopt the results of the harmless error analysis in another case would be an abdication of judicial responsibility.

In *Diguilio*, the Court reiterated that a court evaluating harmless error should consider that an error "may have played a substantial part in the jury's deliberation and thus contributed to the actual verdict reached…" 491 So. 2d at 1136. The Florida Supreme Court, in *Hurst v. State,* followed the reasoning and methodology of the Arizona Supreme Court after *Ring*, and explained that the "Arizona [Supreme] court concluded that the review must extend to the mitigation and to the weighing

decision, and that it would affirm a capital sentence on harmless error review only if it found 'beyond a reasonable doubt, that no rational trier of fact would determine that the mitigating circumstances were sufficiently substantial to call for leniency.'" 202 So. 3d at 69. However, in Arizona at the time, the sentencing scheme did not have a penalty phase jury, instead, after the guilty verdict, the judge sat without a jury and heard more evidence at a sentencing hearing (often referred to as "the penalty phase"). *See State v. Ring*, 200 Ariz. 267, 273 (Az. 2001) (en banc); *see also State v. Ring*, 204 Ariz. 534, 543–46 (Az. 2003) (en banc). The sentencing hearing was nearly identical in form and effect to a *Spencer* hearing in Florida after the penalty phase, only it contained *all* of the penalty phase evidence. In other words, in deciding harmless error, the Arizona Supreme Court reviewed the evidence heard by the judge sitting alone to determine the effect on the trier of fact. 204 Ariz. At 565. Therefore, this court "must independently review the complete criminal trial record"—including the *Spencer* hearing, to see "the effect of the error on the trier of fact." *Hurst*, 2002 So. 3d at 68; *Goodwin*, 751 So. 2d at 545.

The state submits that the entire record proves any conceivable error harmless beyond a reasonable doubt for all three death sentences.

Conclusion

This court should deny this petition because *Hurst* cannot be applied to any of petitioner's death sentences, but even if there was a *Hurst* error, any error is harmless beyond a reasonable doubt.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by electronic service to Martin McClain counsel for the defendant, on this 21st day of March, 2017.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ *Carolyn M. Snurkowski*

CAROLYN M. SNURKOWSKI
ASSISTANT DEPUTYATTORNEY GENERAL
Florida Bar No.: 158541
PL-01, The Capitol
Tallahassee, FL 32399-1050
carolyn.snurkowski@myfloridalegal.com
capapp@myfloridalegal.com
Phone: (850) 414-3300
Co-Counsel for the State