

**IN THE SUPREME COURT OF FLORIDA  
CASE NOS. SC13-820, SC14-567**

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**RONALD KNIGHT, Appellant**

**v.**

**STATE OF FLORIDA, Appellee**

**AND**

**RONALD KNIGHT, Petitioner**

**v.**

**JULIE L. JONES, ETC. Respondents.**

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**ON APPEAL FROM THE CIRCUIT COURT  
OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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**SUPPLEMENTAL REPLY BRIEF OF APPELLANT/PETITIONER**

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**NEAL A. DUPREE  
Capital Collateral Regional Counsel—  
Southern Region**

**WILLIAM M. HENNIS III  
Litigation Director**

**NICOLE M. NOËL  
Assistant CCRC  
Capital Collateral Regional Counsel-  
South  
1 East Broward Boulevard, Suite 444  
Fort Lauderdale, FL 33301  
COUNSEL FOR KNIGHT**

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## ARGUMENT

The State claims that *Hurst* “did not find ‘capital punishment’ unconstitutional” (AB at 12). Quibbling over semantics reveals the weakness of the State’s position. The U.S. Supreme Court did not leave any room for doubt or interpretation about exactly what it held when after describing Florida’s death penalty scheme it wrote, “[w]e hold this sentencing scheme unconstitutional.” *Hurst v. Florida*, 136 S. Ct. 616, 619 (2016). Instead of acknowledging the actual holding of *Hurst* or the plain language of the statute under which Knight was sentenced to death, Florida Statutes § 921.141 (amended March 7, 2016), the State obfuscates, relies on overruled caselaw, and attempts to minimize *Hurst’s* impact by characterizing it as a procedural rule.

The State notes that Knight “did not raise challenges under *Apprendi v. New Jersey*, 530 U.S. 466 (2000) or *Ring v. Arizona*, 536 U.S. 584 (2002)” in his postconviction litigation (AB at 1). Later, the State asserts that “[b]efore this Court, Knight did raise a *Ring* claim, hence, the instant matter should be found untimely” (AB at 5, n.4). These facts do not defeat his *Hurst* claim, because preservation is irrelevant. Until January 12, 2016, no court in the country had held that Florida’s capital sentencing scheme violated the Sixth Amendment for failing to require jurors to find the facts necessary to impose death. *Hurst* created a new claim by rejecting prior Florida law. *Ring* applied the Sixth Amendment to Arizona’s capital sentencing

scheme. But no court had applied the Sixth Amendment to Florida's scheme until *Hurst*.

The State then argues that that Knight “has the prior violent felony and during the course of a felony aggravators which rendered him death eligible and his sentencing proper” (AB at 2). The State's notion that certain aggravators automatically make one eligible for death arises from the fact that the Arizona statute at issue in *Ring* only required one aggravator, a fact which has been sloppily imported into the *Hurst* discussion, and which the State keeps repeating even though Florida's statute is different from Arizona's.<sup>1</sup> Contrary to the State's insistence, there is no such thing as automatic death eligibility under Florida law.

In *Ring*, the U.S. Supreme Court held that “[c]apital defendants . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.” *Ring*, 536 U.S. at 589. This holding ties the Sixth Amendment right to a jury trial to the legislatively defined facts that authorize an increase in the maximum punishment, whatever those may be in a particular jurisdiction. This connection between the Sixth Amendment jury trial right and the state-specific, legislatively defined facts is at the core of *Ring*.

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<sup>1</sup> Florida's new statute, which provides that future defendants may be eligible for death upon the finding of one aggravator, is irrelevant. Knight was sentenced under the unconstitutional statute, and that is the sentence he is appealing. Substantive changes in statutory law cannot be applied retroactively in criminal cases. U.S. CONST. art. I, § 9.

The dispositive question . . . is one not of form, but of effect. If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how a State labels it—must be found by a jury beyond a reasonable doubt.

*Ring*, 536 U.S. at 602 (citation omitted).

Thus, *Ring* held that the Sixth Amendment right to a jury trial was tied to the legislatively defined facts that must be present to authorize the imposition of a death sentence, and that those facts are elements which must be submitted to a jury and proved beyond a reasonable doubt. But in Knight's case and in the other cases in which supplemental briefing has been submitted, the State has steadfastly refused to acknowledge that the effect of the Sixth Amendment jury trial right varies from state to state because its application is bound to the specific language of each statute's definition of the facts necessary to authorize an increase in punishment.

Rather than acknowledge that *Ring* links the jury trial right to the legislatively defined facts that authorize the imposition of a death sentence, the State chooses to see only the conclusion in *Ring* that in Arizona, the jury trial right was tethered to the Arizona statute, which allowed for death eligibility upon the finding of one aggravator. But Arizona's statute has nothing to do with the Florida law under which Knight was sentenced. Nowhere in Florida's former statute was it written that the mere presence of a single aggravating circumstance was sufficient to justify the imposition of a death sentence. In fact, the U. S. Supreme Court has recognized that

under Florida law, one aggravator is not necessarily enough, meaning that it cannot serve as an eligibility finding.

The language of the statute, which provides that the sentencer must determine whether “sufficient aggravating circumstances exist,” § 921.141(3)(a), indicates that any single statutory aggravating circumstance **may not be adequate to meet this standard** if, in the circumstances of a particular case, it is not sufficiently weighty to justify the death penalty.

*Barclay v. Florida*, 463 U.S. 939, 954 n.12 (1983) (emphasis added).

Similarly, the Eleventh Circuit has made clear that in Florida, eligibility and the weighing of sentencing factors are “collapsed into a single step.” *See Jennings v. McDonough*, 490 F.3d 1230, 1257 (11th Cir. 2007). The Florida Legislature combining the weighing with the eligibility determination is the source of the confusion about *Hurst*’s application of the Sixth Amendment to Florida’s statute.

After *Hurst*, because Florida’s statute did not allow for death eligibility based on only one aggravator, prosecutors lobbied the Florida Legislature to insert that language into the new statute. The new law now provides that “[i]f the jury does not unanimously find at least one aggravator, the defendant is ineligible for a sentence of death.” Fla. Stat. § 921.141 (2)(b)(1) (effective March 7, 2016). The former statute did not contain any such language. Under the former statute, the requisite finding was that “sufficient aggravating circumstances exist” and “that there are insufficient mitigating circumstances to outweigh the aggravating circumstances.”

Fla. Stat. § 921.141(3). Subsection 3 is the single, collapsed step. It is what the Sixth Amendment applies to, and there is no part of it that can be parsed out and identified as an isolated eligibility determination.

Under *Hurst*, that factual finding of sufficiency—the finding that increases the penalty from life in prison to death—must be made by a jury, not a judge. That is the constitutional principle at the heart of *Hurst*.

[T]he Florida sentencing statute does not make a defendant eligible for death until “findings **by the court** that such person shall be punished by death. Fla. Stat. § 775.082(1). The trial court **alone** must find “the facts . . . [t]hat sufficient aggravating circumstances exist” and “[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances. . . . The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires.”

*Hurst*, 136 S. Ct. at 622 (emphasis in original). Both *Ring* and *Hurst* require courts to look to the governing statute to see what facts are necessary before death may be imposed, but the State refuses to acknowledge the statute, as if ignoring it will make it go away.

Instead, the State simply parrots the line that “[i]n Florida, a defendant is death eligible if at least one aggravating factor applies” (AB at 14), without citing any statutory authority. Because the State cannot cite the former statute (since the statute did not say that), the only support it can offer for its argument are decisions where this Court misconstrued *Ring*. The State cites to dicta in *Steele v. State*, 921 So. 2d

538, 543 (Fla. 2005), one of the cases abrogated by *Hurst*. In *Steele*, the Court struggled with the implications of *Ring*, lamenting that “the effect of that decision on Florida’s capital sentencing scheme remains unclear” and that this “uncertainty has left trial judges groping for answers.” *Id.* at 540.

Contrary to the State’s representation, *Steele* did not hold that the presence of one aggravator automatically qualified one for death. Instead, what the Court actually held was that under Arizona’s statute, the finding of one aggravator was necessary for death eligibility. The Court’s consideration of *Ring*’s applicability to Florida was inconclusive (“[e]ven if *Ring* did apply in Florida—an issue we have yet to conclusively decide— . . .”), and the most the Court would say about it was that its interpretation of *Ring* was consistent with precedent including *Hildwin v. Florida*, 390 U.S. 638 (1989) and *Spaziano v. Florida*, 468 U.S. 447 (1984), cases which were explicitly overturned by *Hurst*. See *Steele*, 921 So. 2d at 546-47.

Ironically, it was in *Steele* that this Court pleaded with the Florida Legislature to take action to ensure the continued viability of Florida’s death penalty scheme. Specifically, the Court implored the Legislature to “revisit the statute to require some unanimity in the jury’s recommendations.” *Steele*, 921 So. 2d at 548. At the end of the section entitled “The Need for Legislative Action,” the Court observed:

The bottom line is that Florida is now the *only* state in the country that allows the death penalty to be imposed even though the penalty-phase jury may determine by a mere majority vote *both* whether aggravators exist and whether

to recommend the death penalty. Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.

*Id.* at 550 (emphasis in original). Unfortunately, the Legislature has indeed decided that it wants Florida to remain an outlier, and whether the new statute will withstand constitutional scrutiny remains to be seen.

The State next cites *Jones v. State*, 855 So. 2d 611, 619 (Fla. 2003)—another case where this Court misconstrued *Ring*—to argue that “[t]his Court has upheld death sentences where a prior or contemporaneous felony exists” (AB at 15). However, the *Jones* Court rejected Jones’s *Ring* claim based on *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), another case abrogated by *Hurst* which now has zero precedential value.<sup>2</sup>

Incredibly, the State then goes so far as to assert that “[t]he suggestion that *Hurst* requires juries to find there are insufficient mitigators to outweigh aggravators . . . is meritless” (AB at 6). This argument is astounding considering the plain language of the former statute. Florida Statutes § 921.141(3), relevantly entitled “[f]indings in support of sentence of death,” provided that, before imposing a death

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<sup>2</sup> The State also relies on the fact that post-*Hurst*, the U.S. Supreme Court recently denied certiorari in two cases involving recidivist aggravators (AB at 13). To cite denials of certiorari as precedent is ludicrous. The denial of a petition for writ of certiorari by the U.S. Supreme Court “imports no expression of opinion upon the merits of the case, as the bar has been told many times.” *United States v. Carver*, 260 U.S. 482, 490 (1923).

sentence, it must be found that “sufficient aggravating circumstances exist,” and then there must be a finding that there are “insufficient mitigating circumstances to outweigh the aggravating circumstances.” The findings of fact in subsection (3) are the operable findings for the Sixth Amendment analysis under *Hurst*. They are precisely the critical findings that the Sixth Amendment requires juries to make.

The State argues that *Hurst* is just a little procedural blip and as such, it is not retroactive. This assertion is belied by the maelstrom of activity *Hurst* inspired, both in the Florida Legislature and in this Court. In the wake of *Hurst*, the Legislature scrambled to quickly pass a new law, because it recognized that *Hurst* meant that there was no valid death penalty statute in Florida. This Court, in addition to the 35+ cases in which it has ordered supplemental briefing, issued two stays of execution and recalled a final mandate in a capital case to allow supplemental briefing.<sup>3</sup> By doing so, this Court has acknowledged that the constitutional problem identified in *Hurst* is significant enough to justify disturbing finality. This would not be the case if *Hurst* were, as the State keeps repeating, just a minor procedural rule.

The State trots out *Teague v. Lane*, 498 U.S. 288 (1989) and *Schriro v. Summerlin*, 542 U.S. 348 (2004) yet again to support its argument that *Hurst* is not retroactive, yet fails to meaningfully address Knight’s argument that *Witt v. State*,

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<sup>3</sup> *Lambrix v. State*, Nos. SC16-8, SC16-56; *Asay v. State*, Nos. SC16-223, SC16-02; *Hojan v. State*, Nos. SC13-2422, SC13-5.

387 So. 2d 922 (1980) controls, not *Teague* or *Summerlin*. The State cites *Johnson v. State*, 904 So. 2d 400 (2005) to argue that *Ring* is not retroactive in Florida under *Witt*, ignoring the fact that in *Johnson*, this Court misconstrued *Ring* and failed to recognize its true scope. *Johnson* rested on a rotten foundation which collapsed when *Hurst* overruled *Hildwin* and *Spaziano*. There is nothing left of *Johnson* for the State to rely on, and the argument that *Hurst* is not retroactive because this Court held in *Johnson* that *Ring* was not retroactive is specious.

Knight argued in his supplemental initial brief that the *Hurst* error was structural and could never be harmless. He continues to rely on that argument, as well as his argument that he is entitled to a life sentence under Fla. Stat. § 775.082. However, to the extent that this Court decides a harmless error analysis is appropriate (which the *Hurst* Court specifically declined to address), Knight must address the State's assertion that "Knight's death eligibility arose from his prior murder and contemporaneous robbery" (AB at 14-15).

The State's reliance on *Alleyne v. United States*, 133 S. Ct. 2151 (2013) to support its argument that "[h]ad Knight opted for a jury, his prior murder rendered him death eligible" (AB at 15) is misplaced. *Alleyne* applied *Apprendi* to a Virginia non-capital statute and held that a sentencing enhancement was an element that had to be submitted to a jury. *Id.* at 2155. *Alleyne* had nothing to do with the question of whether recidivist aggravators equal automatic death eligibility under Florida law,

or harmless error.

Knight relies on his arguments that his waiver was not knowing, intelligent, and voluntary for the reasons stated in his initial brief and habeas petition, and because the judge’s colloquy was based on an unconstitutional sentencing scheme. We have no idea whether Knight would have opted for a jury if he had known that their verdict would have to be unanimous, and that the court would have been bound by it. Because we do not—and cannot—know what a jury would have found, the State could never prove that the *Hurst* error was harmless beyond a reasonable doubt. “To hypothesize a guilty verdict that was never in fact rendered—no matter how inescapable the findings to support that verdict might be—would violate the jury trial guarantee.” *Sullivan v. Louisiana*, 508 U.S. 275, 280 (1993). It would lead to the sort of “frail conjecture” that precludes meaningful appellate review. *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

Finally, the State argues that *Hurst*’s retroactivity had already been determined two months before it was issued because the Supreme Court denied a stay in *Correll v. Florida*, 2015 WL 6111411 (Oct. 29, 2015). The State asserts that “[i]t may be assumed the Court would have granted a stay if it had intended a retroactive application of *Hurst*” (AB at 10, n.13). Not only is this argument nonsensical, but more disturbing is that the State would have this Court continue to make the mistakes of the past. Knight urges this Court not to do so.

Respectfully submitted,

/s/ William M. Hennis III

WILLIAM M. HENNIS III

Litigation Director

Florida Bar No. 0066850

hennisw@ccsr.state.fl.us

NICOLE M. NOËL

Assistant CCRC-South

Florida Bar No. 41744

noeln@ccsr.state.fl.us

Capital Collateral Regional Counsel-South

1 East Broward Boulevard, Suite 444

Fort Lauderdale, FL 33301

(954) 713-1284

(954) 713-1299 (fax)

COUNSEL FOR KNIGHT

**CERTIFICATES OF SERVICE AND FONT**

I certify that a true copy of the foregoing was electronically served to Leslie Campbell, Esq. at leslie.campbell@myfloridalegal.com on March 18, 2016. I further certify that this brief was typed in Times New Roman 14 point font.

/s/ William M. Hennis III

WILLIAM M. HENNIS III

Litigation Director