

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1002

VICTOR GUZMAN,

Appellant,

-vs-

STATE OF FLORIDA,

Appellee.

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MIAMI-DADE COUNTY

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit of Florida
1320 NW 14th Street
Miami, Florida 33125
(305) 545-1961

ANDREW STANTON
Assistant Public Defender
Florida Bar No. 0046779

Counsel for Appellant

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
I. THE DEATH SENTENCE IN THIS CASE, BASED ON JUDICIAL FACTFINDING SUPPORTED ONLY BY AN UNELABORATED 7-5 JURY RECOMMENDATION, VIOLATES THE SIXTH AMENDMENT UNDER <i>Hurst v. Florida</i>	4
II. THE EIGHTH AMENDMENT REQUIRES THAT DEATH SENTENCES BE IMPOSED ONLY PURSUANT TO A UNANIMOUS JURY VERDICT.	7
III. ON REMAND THE TRIAL COURT MUST RESENTENCE MR. GUZMAN TO LIFE IMPRISONMENT BECAUSE THERE IS NO CONSTITUTIONAL DEATH PENALTY STATUTE THAT CAN BE APPLIED TO HIM AND HE IS ENTITLED TO THE BENEFIT OF THE ORIGINAL 7-5 RECOMMENDATION.	8
A. Chapter 2016-13 Alters The Degree Of Proof Necessary To Impose The Death Penalty.	8
B. If He Is Resentenced Under Chapter 2016-13, Mr. Guzman Is Entitled To The Benefit Of The Jury’s 7-5 Recommendation.	9
IV. CHAPTER 775.082 DIRECTS THAT MR. GUZMAN BE SENTENCED TO LIFE WITHOUT PAROLE.	10
CERTIFICATE OF SERVICE	11
CERTIFICATE OF FONT	11

TABLE OF CITATIONS

CASES

<i>Anderson v. State</i> , 267 So. 2d 8 (Fla. 1972)	10
<i>Barclay v. Florida</i> , 463 U.S. 939 (1983)	4
<i>Craig v. State</i> , 620 So. 2d 174 (Fla. 1993)	9
<i>Dobbert v. Florida</i> , 432 U.S. 282 (1977)	8
<i>Donaldson v. Sack</i> , 265 So. 2d 499 (Fla. 1972)	10
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972)	3, 10
<i>Heiney v. State</i> , 620 So. 2d 171 (Fla. 1993)	9
<i>Hurst v. Florida</i> , 136 S.Ct. 616 (2016)	<i>passim</i>
<i>In re Baker</i> , 267 So. 2d 331 (Fla. 1972)	10
<i>Kansas v. Carr</i> , 133 S.Ct. 633 (2016)	6
<i>King v. Dugger</i> , 555 So. 2d 355 (Fla. 1992)	9
<i>Neder v. United States</i> , 527 U.S. 1 (1999)	6
<i>Porter v. State</i> , 723 723 So. 2d 191 (Fla. 1998)	9

<i>Preston v. State</i> , 607 So. 2d 404 (Fla. 1992)	9
<i>Smiley v. State</i> , 966 So. 2d 330 (Fla. 2007)	8
<i>Spaziano v. State</i> , 433 So. 2d 508 (Fla. 1983)	5
<i>State v. Steele</i> , 921 So.2d 538	5
<i>Stevens v. State</i> , 552 So. 2d 1082 (Fla. 1989)	9
<i>Sullivan v. Louisiana</i> , 508 U.S. 275 (1993)	6
<i>Torres–Arboleda v. Dugger</i> , 636 So. 2d 1321 (Fla. 1994)	9
<i>Walton v. Arizona</i> , 497 U.S. 639 (1990)	8
<i>Washington v. Recuenco</i> , 548 U.S. 212 (2006)	6

STATUTES

§ 775.082, Fla. Stat.	3, 10
§ 921.141, Fla. Stat.	2, 4, 5, 7, 8

LAWS

Ch. 72-118, Laws of Fla.	10
Ch. 2016-13, Laws of Fla.	8, 9

CONSTITUTIONS

Art. X, § 9, Fla. Const.....3, 8
U.S. Const. amend. VI.....2, 4, 6, 7, 8
U.S. Const. amend. VIII2, 3, 6, 7

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1002

VICTOR GUZMAN,

Appellant,

-vs-

STATE OF FLORIDA,

Appellee.

SUPPLEMENTAL INITIAL BRIEF OF APPELLANT

INTRODUCTION

This is a direct appeal from judgments of conviction and sentence of death, imposed by the Honorable Dennis Murphy, Judge of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. In this brief, the clerk's record on appeal is cited as "R." All emphasis is supplied unless the contrary is indicated.

SUMMARY OF THE ARGUMENT

I. On its face, and as interpreted by the Supreme Court in *Hurst*, section 921.141 requires the judge alone to find the facts necessary to impose the death penalty, including the existence of aggravators, the sufficiency of those aggravators to impose the death penalty, and whether mitigating circumstances outweigh the aggravating circumstances. The State's response only a single aggravating circumstance is necessary is one the Supreme Court responded to and rejected in *Hurst* itself.

The State's harmless error argument proceeds from the assumption there was no error at all. The denial of a jury verdict on *all* the facts necessary to impose the death penalty is structural error. Even if the harmless error standard applied, the Court would have to determine beyond a reasonable doubt that no juror could have found against the State on *all* the necessary elements. In light of the seven-five recommendation, it cannot be said that the *Hurst* error in this case was harmless.

II. A death sentence imposed on anything less than a unanimous jury verdict violates the Eighth Amendment. The State maintains that this issue is unpreserved because counsel did not raise it in the context of a *Ring* argument. To the contrary, in its "Motion to Declare Section 921.141, Florida Statutes

Unconstitutional in Violation of *Ring v. Arizona* and of Sixth Amendment Right to Jury Trial,” the defense argued that as a consequence of the *Ring* violation: “the Florida jury's diminished role during sentencing violates the evolving standards of decency doctrine under the Eighth Amendment.”

III. On remand, Mr. Guzman must be resentenced to life imprisonment. The State argues that the amended statute benefits defendants, an argument that would not overcome Article X, Section 9’s prohibition on giving retrospective effect to criminal statutes.

Mr. Guzman is entitled to the benefit of the original 7-5 recommendation at any resentencing under the newly-adopted statute, requiring a sentence of life in prison. The jurors’ decisions were “ultimate facts.” The State’s argument to the contrary would contradict the Court’s cases holding that defendant is entitled to the benefit of a previous life recommendation.

IV. Section 775.082 independantly requires that Mr. Guzman be resentenced to life in prison. *Hurst* is just as much a “procedural” decision as *Furman*, and the result should be the same.

ARGUMENT

I. THE DEATH SENTENCE IN THIS CASE, BASED ON JUDICIAL FACTFINDING SUPPORTED ONLY BY AN UNELABORATED 7-5 JURY RECOMMENDATION, VIOLATES THE SIXTH AMENDMENT UNDER *Hurst v. Florida*.

Hurst requires that all factfinding necessary to impose death be done by a jury. *Hurst v. Florida*, 136 S.Ct. 616 (2016). The trial court sentenced Mr. Guzman to die under a statute that *Hurst* found unconstitutional because: “Florida does not require the jury to make the critical findings necessary to impose the death penalty. Rather, Florida requires a judge to find these facts. Fla. Stat. §921.141(3).” *Id.* at 622. Notably, the Court supported this by a citation to 921.141(3). That subsection requires two factual findings: “... the facts (a) That sufficient aggravating circumstances exist ... and (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.” Florida’s death penalty is unconstitutional because a defendant is deemed eligible if a *judge* finds these facts. *Id.*¹

The State nevertheless argues that *Hurst* only applies to the existence of a single aggravating circumstance, and that Mr. Guzman is unaffected by *Hurst*

¹ *Hurst* merely spells out what should already be clear: The existence of a single aggravating factor does not by itself authorize death. *See, e.g., Barclay v. Florida*, 463 U.S. 939, 954 (1983) (“any single statutory aggravating circumstance may not be adequate to meet this standard ...”); *Proffitt v. State*, 510 So. 2d 896, 898 (Fla. 1987) (“To hold, as argued by the state, that these circumstances justify the death penalty would mean that every murder during the course of a burglary justifies the imposition of the death penalty.”)

because one of the aggravating circumstances the jury could have considered was the existence of a prior violent felony conviction.² The United States Supreme Court has already rejected this argument:

Florida concedes that *Ring* required a jury to find every fact necessary to render Hurst eligible for the death penalty. But Florida argues that when Hurst's sentencing jury recommended a death sentence, it “necessarily included a finding of an aggravating circumstance.” Brief for Respondent 44. The State contends that this finding qualified Hurst for the death penalty under Florida law, thus satisfying *Ring*. “[T]he additional requirement that a judge also find an aggravator,” Florida concludes, “only provides the defendant additional protection.” Brief for Respondent 22.

The State fails to appreciate the central and singular role the judge plays under Florida law. As described above and by the Florida Supreme Court, the 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) (emphasis added). 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.” § 921.141(3); see *Steele*, 921 So.2d, at 546. “[T]he jury's function under the Florida death penalty statute is advisory only.” *Spaziano v. State*, 433 So.2d 508, 512 (Fla.1983). The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires.

Id. at 622. The State’s argument here is simply a refusal to believe that the Supreme Court meant what it said.³

² As argued in the Initial Brief, the prior convictions were invalid as they were obtained in violation of the statute of limitations.

³ The State’s relies on *Kansas v. Carr*, 133 S.Ct. 633 (2016), to argue that the *Hurst* court really didn’t mean what it said afterall. *Carr* was an Eighth-Amendment decision regarding jury instructions. Nowhere does it discuss issues

The rest of the State’s argument merely doubles down on the same rejection of what *Hurst* actually says. “Even if further findings were required for sentencing,” the State argues, any rational jury would have found at least one aggravating circumstance. Answer Brief, 8-10. If further findings are necessary, then if harmless error were to even apply, the question would be whether the Court can say beyond a reasonable doubt that the jury would have found the aggravating circumstances sufficient to warrant the death penalty, and the mitigating circumstances insufficient to outweigh the aggravators. If the Court were to apply *Neder v. United States*, 527 U.S. 1 (1999), and *Washington v. Recuenco*, 548 U.S. 212 (2006), they must be applied to all the missing elements and the ultimate conclusion. The Court must say that, beyond a reasonable doubt, that the jury would have found the aggravation sufficient to warrant the death penalty, and the mitigation insufficient to outweigh it, and would have found Mr. Guzman “guilty” of the death penalty.

In light of the jury’s bare seven-five recommendation, it is impossible to say so. This is why the proper test is found in *Sullivan v. Louisiana*, 508 U.S. 275 (1993). The application of the harmless error test to the “missing” elements in this case can result in nothing more than speculation. If one were to insist on

under the Sixth Amendment. The defense submits that the decision discussing the Sixth-Amendment failings of Florida’s death penalty control here.

speculating, one could only conclude that the jurors would not have recommended death.

II. THE EIGHTH AMENDMENT REQUIRES THAT DEATH SENTENCES BE IMPOSED ONLY PURSUANT TO A UNANIMOUS JURY VERDICT.

First, this issue was preserved. The State claims that Mr. Guzman did not make an Eighth Amendment argument in conjunction with a *Ring* claim. Supplemental Answer Brief at 13 n.6. In its “Motion to Declare Section 921.141, Florida Statutes Unconstitutional in Violation of *Ring v. Arizona* and of Sixth Amendment Right to Jury Trial,” the defense argued:

The "hybrid" nature of Florida's death penalty procedure does not satisfy the Sixth Amendment jury-trial requirement. In essence, a Florida jury's recommendation is not a verdict for Sixth Amendment purposes: the jury's recommendation is not binding; the advisory jury does not make findings of fact; the jury's recommendation need not be unanimous; and the jury's recommendation need not be made beyond a reasonable doubt. Moreover, the Florida jury's diminished role during sentencing violates the evolving standards of decency doctrine under the Eighth Amendment.

(R. 301-02).

The State argues that unanimity is not properly discussed in the context of *Hurst*, noting that *Hurst* does not address the subject. Answer Brief, 14-15. *Hurst* clarifies the scope of the Sixth Amendment right to a jury trial in capital cases, and is integral to the right to a jury verdict. The growing recognition the Sixth

Amendment right to (unanimous) jury verdicts in capital sentencing builds upon – or is built upon by – our society’s growing consensus against the imposition of death upon something less than the unanimous agreement of jurors.

III. ON REMAND THE TRIAL COURT MUST RESENTENCE MR. GUZMAN TO LIFE IMPRISONMENT BECAUSE THERE IS NO CONSTITUTIONAL DEATH PENALTY STATUTE THAT CAN BE APPLIED TO HIM AND HE IS ENTITLED TO THE BENEFIT OF THE ORIGINAL 7-5 RECOMMENDATION.

A. Chapter 2016-13 Alters The Degree Of Proof Necessary To Impose The Death Penalty.

The State argues that Chapter 2016-13 works only defense-favorable changes and is merely a procedural change permissible under *Dobbert v. Florida*, 432 U.S. 282 (1977). Whether the change is favorable or unfavorable to the defendant is irrelevant, at least under Article X section 9 of the Florida Constitution. *See Smiley v. State*, 966 So. 2d 330, 334 (Fla. 2007).

The State’s claim that 2016-13 is merely procedural and benefits the defendant is, in any event, conclusory. It does not address the fact that the statute expressly purports to create a scheme where any defendant is eligible for death upon the finding of a single aggravator. § 921.141(2)(b)(2), Fla. Stat. (2016).

B. If He Is Resentenced Under Chapter 2016-13, Mr. Guzman Is Entitled To The Benefit Of The Jury's 7-5 Recommendation.

Five jurors found that Mr. Guzman was ineligible for the death penalty.

Under chapter 2016-13, this recommendation would require a life sentence. The State argues that this has no preclusive effect, citing *Preston v. State*, 607 So. 2d 404 (Fla. 1992), and *King v. Dugger*, 555 So. 2d 355 (Fla. 1992), the cases already discussed in the Initial Supplemental Brief. Because Florida has insisted on eschewing unanimity, each individual juror's vote is the ultimate fact established.

If anything, the State's argument proves too much. Under its reasoning, *Torres–Arboleda v. Dugger*, 636 So. 2d 1321, 1326 (Fla. 1994); *Heiney v. State*, 620 So. 2d 171, 174 (Fla. 1993); *Stevens v. State*, 552 So. 2d 1082, 1088 (Fla. 1989); *Porter v. State*, 723 So. 2d 191, 198 (Fla. 1998); *Wright v. State*, 586 So. 2d 1024, 1032 (Fla. 1991); *Craig v. State*, 620 So. 2d 174, 176 (Fla. 1993); and *Buford v. State*, 570 So. 2d 923 (Fla. 1990), would all be wrongly decided. If the State is right, the life recommendation in those cases was not an “ultimate fact.” They were mere recommendations and no acquittal of the death penalty. This Court nevertheless held that the defendants were entitled to those recommendations.

IV. CHAPTER 775.082 DIRECTS THAT MR. GUZMAN BE SENTENCED TO LIFE WITHOUT PAROLE.

The State assumes away the premise of Mr. Guzman's argument. *Hurst* is exactly as "procedural" as *Furman* was. See *Furman v. Georgia*, 408 U.S. 238 (1972); *State v. Dixon*, 283, So. 2d 1 (Fla. 1973). The result of *Furman* was that all prisoners on death row were resentenced to life. See *Anderson v. State*, 267 So. 2d 8 (Fla. 1972); *In re Baker*, 267 So. 2d 331 (Fla. 1972). The Court concluded that chapter 72-118 required the same result. *Donaldson v. Sack*, 265 So. 2d 499 (Fla. 1972). The effect of *Hurst* and *Furman* were the same. Nothing has changed about the statute and the required outcome.

CONCLUSION

For the foregoing reasons, the sentence of death must be vacated, and this cause must be remanded with directions to resentence Mr. Guzman to life in prison.

Respectfully submitted,

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit
of Florida
1320 NW 14th Street
Miami, Florida 33125

BY: /s/Andrew Stanton
ANDREW STANTON

Assistant Public Defender
Fla. Bar No. 0446779

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served to counsel for the appellee, Blair Dickert, Assistant Attorney General, Dept. of Legal affairs, 444 Brickell Ave, Suite #650, Miami, FL 33131 via the Court's e-filing portal on April 7, 2016.

/s/ Andrew Stanton
ANDREW STANTON
Assistant Public Defender

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

/s/ Andrew Stanton
ANDREW STANTON
Assistant Public Defender