No. 17-7171

IN THE

Supreme Court of the United States

JESSE GUARDADO,

Petitioner,

v.

JULIE L. JONES, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Florida

BRIEF OF *AMICI CURIAE* FLORIDA CENTER FOR CAPITAL REPRESENTATION AT FIU COLLEGE OF LAW AND FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES

INTERESTS OF *AMICI CURIAE*[1]

The Florida Center for Capital Representation at Florida International University College of Law (FCCR) is a non-profit organization founded in 2014 to support defense attorneys representing Florida defendants facing, or sentenced to, the death penalty. To that end, FCCR offers case consultations and litigation-support services, as well as capital-litigation training programs, to defense attorneys and mitigation specialists across Florida.

The Florida Association of Criminal Defense Lawyers (FACDL) is a statewide organization with more than 1,700 members across Florida, including private attorneys, assistant public defenders, and judges. FACDL's mission is, *inter alia*, to "be the unified voice of an inclusive criminal defense community" and to "promote the proper administration of criminal justice."

The issue before the Court concerns the ramifications of this Court's decision in *Hurst v. Florida*. *Amici*, comprised of academics, judges, and attorneys who devote much of their time and efforts to safeguarding the constitutional rights of capital defendants, believe that they have a particular interest and expertise in the harmless-error issue that devolves from *Hurst* and that this brief may be of assistance to the Court.

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[1] Pursuant to Supreme Court Rules 37.3(a) and 37.6, *Amici Curiae* certify that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and that the parties have been provided at least 10 days' notice of *amici*'s intent to file, and have consented to the filing of, this brief.

SUMMARY OF ARGUMENT

The Court should grant review of this Florida capital case as it represents a pattern of fundamental violations of this Court's established harmless-error precedent. In the aftermath of this Court's decision in *Hurst v. Florida*, the state court continually and consistently disregards the effect of the constitutional error in the context of the individual death penalty case. Instead, the Court has devised three categories of capital defendants who are automatically denied resentencing relief: those whose cases were final on direct review on June 24, 2002, when *Ring v. Arizona* was decided; those who waived the then advisory jury's sentencing recommendation; and those for whom the jury recommended a death sentence upon a 12-0 vote.

Petitioner is one of 35 capital defendants systematically denied resentencing relief under this last category – because of the 12-0 recommendation. His case provides the Court the opportunity to realign the state court's appellate obligation with the requisites of harmless-error review.

Proper analysis of the prejudice from a constitutional violation requires conscientious consideration of the effect of the error in the context of the individual case. A 12-0 jury recommendation in no way guarantees that a jury, actually charged with the responsibility of making the findings that make possible a death sentence, would have resolved those findings in favor of a death sentence. Indeed, a unanimous death recommendation might simply be the jury's way of "sending a message" while "passing the buck" to the judge who bears the real sentencing responsibility.

The state court previously condoned repeated references to both the jury's advisory role and the limited

significance of its majority-vote recommendation. The court previously required an essentially meaningless general verdict form, condemning the use of special verdict forms that would have revealed the jury's aggravating and mitigating findings. Yet the court now attempts to give automatic deference to the jury's recommendation without any means of verifying what the jury actually found. Proper harmless-error review requires more than referencing the numerical vote reflected on this general advisory verdict form.

Proper harmless-error review requires assessing, in the context of the specific record, the likely impact from minimizing the jury's responsibility for a death sentence. Petitioner's record is replete with comments and instructions that relegated the jury to an unconstitutionally diminished sentencing role. Petitioner's record also reflects powerful mitigation, demonstrating that this is not the type of case for which a death sentence was preordained. Florida's current experience with egregious capital cases and juries charged with the responsibility of returning aggravating and mitigating findings only underscores the fallacy in ignoring this specific record. Jurors lean toward mercy when the sentencing burden is squarely theirs.

Hurst error cannot be reliably dismissed as harmless based only on a past unanimous death recommendation. Because the state court's mechanistic reliance on the numerical vote is irreconcilable with this Court's requirement of contextual review for harmless error, *amici* urge the Court to grant the Petition for Writ of Certiorari.

ARGUMENT

THE COURT SHOULD GRANT REVIEW OF THIS CAPITAL CASE INDISPUTABLY TAINTED BY CONSTITUTIONAL ERROR BECAUSE THE FLORIDA SUPREME COURT HAS CONSISTENTLY AND MECHANISTICALLY DENIED RELIEF, IN THIS AND LIKE CASES, WITHOUT CONSIDERING THE EFFECT OF THE ERROR IN THE CONTEXT OF THE SPECIFIC RECORD, THUS EVADING THE PRESCRIBED HARMLESS-ERROR STANDARDS SET BY THIS COURT.

A. The Florida Supreme Court has abdicated its responsibility to perform meaningful harmless-error review by adopting a per se harmless-error approach.

When first considering the constitutionality of the Florida death-penalty scheme, this Court emphasized the Florida Supreme Court's role in minimizing the risk that the death penalty will be "imposed in an arbitrary or capricious manner," noting that trial judges' decisions "are reviewed to ensure that they are consistent with other sentences imposed in similar circumstances." *Proffitt v. Florida*, 428 U.S. 242, 252–53 (1976). Although it now takes on some irony, the Court noted that "[w]hile it may be true that that court has not chosen to formulate a rigid objective test as its standard of review for all cases," *id.* at 258–59, there was no argument that the state court "engages in only cursory or rubber-stamp review of death sentences." *Id.*

Seven years later, this Court directly considered Florida's appellate review process in the context of harmless-error scrutiny. In *Barclay v. Florida*, 463 U.S. 939, 958 (1983), the Court observed that "the

Florida Supreme Court does not apply its harmless error analysis in an automatic or mechanical fashion." Rather, the Court explained, death sentences are upheld and errors deemed harmless "only when [the court] *actually* finds that the error is harmless." *Id.* (emphasis supplied). The Court continued to commend the state supreme court's appellate review one year later in *Spaziano v. Florida*, 468 U.S. 447 (1984), noting that "there is no evidence that the Florida Supreme Court has failed in its responsibility to perform meaningful appellate review of each death sentence."

Petitioner's case cannot be reconciled with this precedent. He has raised a Sixth and Eighth Amendment claim predicated on *Hurst v. Florida*, 136 S. Ct. 616 (2016), and his right to jury findings on the "elements" of capital homicide. The Florida Supreme Court, instead of examining the error in the context of his trial, has systematically denied relief in his case and in every case in which the advisory jury recommended a death sentence by a 12-0 vote. By rejecting out of hand any possibility of relief, the state court abdicates its responsibility to perform meaningful appellate review.

B. The Florida Supreme Court has devised three artificial and categorical harmless-error classifications that consign capital defendants to execution despite the absence of constitutionally required jury findings.

The state court's per se harmless-error ruling in every 12-0 case determines the fate of 35 death-row inmates. Amicus App. A. (listing of the 35 inmates whose advisory jury returned a 12-0 death recommendation). But the 12-0 rule is only one of a number of categorical rules that the Florida Supreme Court

has mechanistically applied in order to avoid coming to grips with the full range of kinds and degrees of unreliability that marred capital-sentencing determinations under the Florida capital-sentencing procedure invalidated by *Hurst*.

Because 166 capital cases were final on direct review prior to the decision in *Ring v. Arizona*, 536 U.S. 584 (2002), those 166 death-row inmates are automatically denied relief, without any consideration of the record beyond the finality date. Amicus App. B (listing of the 166 inmates whose cases were final prior to *Ring*). Nineteen inmates are invariably denied the constitutionally guaranteed jury fact finding because they previously waived the then-extant advisory jury. Amicus App. C (listing of the 19 inmates denied relief because of the waiver).

Without any more consideration than this, 219 defendants are dispatched to the death chamber. This case presents the opportunity for the Court to undo one of these indefensible rules.

C. The Florida Supreme Court's harmless-error review fails to respect *Hurst* requisites by treating the jury's 12-0 general verdict for a death sentence as automatically sufficient to satisfy the Sixth Amendment.

Under the Florida Supreme Court's ruling, if a jury, denominated "advisory," returned a unanimous "recommendation" for a death sentence under the former statute, no more analysis is necessary. Harmless error is the ineluctable result. There is no need to consider the facts of the case, the aggravating and mitigating circumstances, the argument of counsel and instructions to the jury; in fact, no need to consider anything

else in the record at all. The jury's recommendation, despite the absence of any findings, satisfies the Sixth Amendment, no questions asked.

This purported "harmless error" scrutiny disregards the "central and singular role the judge plays under [prior] Florida law." *Hurst v. Florida*, 136 S. Ct. 616, 622 (2016). As this Court explicated, under that law, it is the judge who actually determines the sentence and "[t]he sentencing order must 'reflect the trial judge's independent judgment about the existence of aggravating and mitigating factors.'" *Id.* at 620 (quoting *Blackwelder v. State*, 851 So. 2d 650, 653 (Fla. 2003) (*per curiam*)). The State's assertion in *Hurst* that the Court could conclude from the jury's recommendation – a generalized form reflecting only a life or a death sentence – that the jury made the necessary findings if the recommendation was for death, was flatly rejected. *Hurst*, 136 S. Ct. at 622. Because "the jury's function under the Florida death penalty statute is advisory only," the Court reasoned, "the State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires." *Id.*

Amici submit that this is exactly what the Florida Supreme Court has done in Petitioner's case and in every other case in which a 12-0 advisory recommendation for death was returned. By simply deferring to an unspecific 12-0 recommendation, Florida has in effect denied Petitioner and similar defendants of their right to jury fact finding as vouchsafed by the Sixth Amendment.

D. Because an advisory jury's 12-0 death recommendation does not establish what, if any, factual findings the jury made, the recommendation fails to provide the basis for an immutable harmless-error conclusion.

It is a given that under prior law both the sentencing judge and the Florida Supreme Court had no way of knowing any of the jury's factual findings. One experienced trial judge complained about exactly this, noting that without special jury verdicts he was left "fishing in the dark." *Aguirre-Jarquin v. State*, 9 So. 3d 593, 611 (Fla. 2009) (Pariente, J., concurring). Another experienced trial judge, agreeing that specific interrogatories were essential, described the jury's general verdict as "essentially meaningless." *Id.* In articulating why the jury's general advisory format was useless, the judge lamented:

> The jury makes no findings of fact as to the existence of aggravating or mitigating circumstances, nor what weight should be given to them, when making its sentencing recommendation. The jury is not required to unanimously find a particular aggravating circumstance exists beyond a reasonable doubt. It makes the recommendation by majority vote, and it is possible that none of the jurors agreed that a particular aggravating circumstance submitted to them was proven beyond a reasonable doubt. The jury recommendation does not contain any interrogatories setting forth which aggravating factors were found, and by what vote; how the jury weighed the various aggravating and mitigating circumstances, and, of course, no one will

> ever know if one, more than one, any, or all of the jurors agreed on any of the aggravating and mitigating circumstances.

Id. (quoting trial court order).

But the Florida Supreme Court nonetheless precluded specific jury findings for years, in fact holding that a trial judge's use of interrogatories "departs from the essential requirements of law." *State v. Steele*, 921 So. 538, 547–48 (Fla. 2006). The state court elaborated on why only a general verdict form could be used for the advisory recommendation this way: "[o]ur current system fosters independence because the trial court alone must make detailed findings; it has no jury findings on which to rely." *Id.* at 546. Because specific jury findings "could unduly influence the trial court's own determination of how to sentence the defendant," they were simply banned. *Id.* The only findings provided, the only findings reviewed, then, were those of the sentencing judge. The 12-0 general jury verdict does not change that fact, and review now of only the sentencing recommendation does not reliably prove that the Sixth Amendment violation was harmless error.

E. The Florida Supreme Court's failure to consider the record in Petitioner's case in performing its truncated harmless-error review conflicts with established Supreme Court precedent.

As this Court has made clear, a defective instruction to the jury – and the Sixth and Eighth Amendment errors here extend beyond mere instructional error – "'may not be judged in artificial isolation,' but must be considered in the context of the instructions as a whole and the trial record." *Estelle v. McGuire*, 502 U.S. 62,

72 (1991) (quotation omitted). Review of the entire record is particularly essential when assessing, based only on a sentencer's undisclosed findings, the impact of capital sentencing error. *See Parker v. Dugger*, 498 U.S. 308, 320, 321, 323 (1991) (ordering the state court to reconsider a death sentence "in light of the entire record" where trial judge did not specify the non-statutory mitigation found although much was presented, and the Florida Supreme Court, in striking two aggravators, did not independently reweigh the aggravating and mitigating factors, but affirmed "in reliance on some other nonexistent findings.").

Petitioner's case presents the Florida Supreme Court once again refusing to consider the full record in conducting harmless-error review. Instead, here, and in every other 12-0 case, the court relies on the "essentially meaningless" jury recommendation as conclusive evidence that the error did not contribute to the death sentence. *See Aguirre-Jarquin*, 9 So. 3d at 611.

It is simply impossible to reconcile the Florida Supreme Court's two-page decision – issued without ordering a state response – with the standards articulated in either *Chapman v. California*, 386 U.S. 18, 24 (1967) or *Brecht v. Abrahamson*, 507 U.S. 619 (1993).[2] Assuming that the error which devolves from a jury recommendation devoid of findings can be reviewed for harmlessness, the error cannot be deemed "harmless-beyond-a reasonable-doubt" under *Chapman* or as not having had a "substantial and injurious effect or

[2] Petitioner has primarily relied upon *Chapman*'s test, but *amici* address the *Brecht* standard as well because the constitutional violation cannot be dismissed as mere harmless error under either analysis.

influence in determining the jury's verdict" under *Brecht* without an individualized consideration of the record.[3] Only if the State could establish that Petitioner's case was one of the most aggravated and least mitigated of Florida's capital cases, the "worst of the worst," and that the repeated minimization of the advisory jury's role did not contribute to the unanimous death recommendation, could the error reliably be dismissed as harmless. This, the State cannot do.

F. The Florida Supreme Court's failure to consider the constitutional error in the context of the record resulted in the court overlooking compelling evidence that would have obstructed any attempt by the State to prove the error harmless.

Had the Florida Supreme Court reviewed the actual record in Petitioner's case, including the trial judge's findings – the only findings that we have – the court would have found that the five aggravating factors were countered by nineteen factors in mitigation. Pet'r App. 85a–96a. While the aggravating nature of the offense is undeniable and the killing of a

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[3] Because capital juries were relegated to an advisory role, returning only a general recommendation and not a "verdict," the error, properly analyzed, is structural. *See Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993). There simply is no way to determine reliably "the basis on which the jury actually rested its verdict," *id.* at 279 (quotation omitted), or to dismiss the substantial likelihood that the jury was "passing the buck" while "sending a message" of its opprobrium. *See Caldwell v. Mississippi*, 472 U.S. 320, 332–33, 336 (1985). Ultimately, the irrefutable truth is that the jury instructions "depicted the jury's role in a way fundamentally at odds with the role that a capital sentencer must perform," *id.* at 336, inexorably leading to baseless speculation on what findings would have been made had the jury's Sixth Amendment role been properly explained.

benefactor inexcusable, the fact that the act was done out of desperation when Petitioner, an addict, was in a crack-cocaine haze, was recognized for its mitigating role. Pet'r App. 93a-95a. Also cited by the trial judge was the Petitioner's traumatic childhood as well as his significant remorse. Pet'r App. 92a, 94a. The judge further noted that Petitioner had cooperated with law enforcement by assisting them with a search for evidence and providing a full confession, and had entered a guilty plea without asking for any favor or plea bargain. Pet'r App. 91a-93a. And the judge specifically acknowledged that Petitioner posed no danger to other inmates or corrections officers if sentenced to life imprisonment and could contribute to an open prison population. Pet'r App. 92a-96a.

The court, upon examining the record, would have learned that, although the jurors were given some instructions on the necessary findings and told that the trial judge would give their sentencing recommendation great weight, Penalty Tr. at 6, they were told again and again by the judge that their responsibility was only to make an advisory recommendation. Voir Dire Tr. at 6, 7; Penalty Tr. at 5, 6, 350, 353, 358, 359, 360, 362. Because Petitioner had entered a guilty plea, voir dire commenced immediately before the start of the penalty phase, and during that voir dire, the trial judge explicitly informed the jury that its verdict was "advisory." Voir Dire Tr. at 6. Although defense counsel never referred to the jury's recommendation as "advisory" during voir dire, the prosecutor repeatedly did. Voir Dire Tr. at 41, 194. During the commencement of the actual penalty phase hearing, the trial judge again advised the jury over and over that its verdict was advisory. Penalty Tr. at 5,350, 353, 359, 360. The prosecutor did as well in his closing argument. Penalty Tr. at 341.

The jury was additionally informed by the trial judge and both counsel numerous times during voir dire that its "verdict" was actually a "recommendation." Voir Dire Tr. at 6, 7, 70, 74, 80, 93, 94, 95, 114, 142, 186, 204, 229, 263, 351. And the use of "recommendation" to refer to the jury's verdict was repeated throughout the penalty phase. Penalty Tr. at 5, 6, 19, 341, 342, 349, 358, 359, 360. Indeed, immediately before the jury retired to deliberate, the trial judge instructed the jury that he, not the jury, was responsible for the decision on what sentence should be imposed: "The final decision as to what punishment shall be imposed rests solely with the Judge of this court." Penalty Tr. at 350.[4] The jurors' advisory verdict form perforce reflected no jury findings; only that they "advise and recommend" a death sentence. Pet'r App. 98a.

What is most important, for purposes of this amicus brief, is that the Florida Supreme Court took none of these facts into consideration when deciding that the jury's advisory verdict would not have changed if it understood its constitutionally required task.[5] As the state court has consistently ruled in every 12-0 death-recommendation case, the "essentially meaningless" unanimous recommendation was deemed conclusive

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[4] The repeated and extensive admonitions that the jury recommendation was advisory only and that the responsibility for sentencing was the court's, are readily contrasted with those cases finding harmless error because the State's references "were infrequent." *See*, *e.g.*, *Brecht v. Abrahamson*, 507 U.S. 619, 639 (1993).

[5] The state court did footnote the aggravating and mitigating circumstances *found* by the judge, but then failed to consider whether a properly instructed jury might have *found* differently, and might have concluded that the mitigation outweighed the aggravation. Pet'r App. 2a-3a, nn.1-2.

evidence that the Sixth and Eighth Amendment errors were harmless, without the Court imposing on the State any burden to prove that to be so. *See Aguirre-Jarquin*, 9 So. 3d at 611.

G. Minimizing a juror's sense of responsibility in the death penalty scheme undermines the reliability of its sentencing recommendation and is an essential consideration in the harmless-error calculus.

The Florida death-row prisoner whose jury unanimously recommended a death sentence no more had a jury that appreciated its sentencing responsibility than the defendant whose jury returned a split vote. In both instances, the jury was led to believe that it was not its job to make the critical findings required for a valid death sentence. In both instances, the jury was told that, unlike the unanimity required for a guilty verdict, a death recommendation merely required a majority vote. Minimizing "a sentencer's sense of responsibility for the consequences of his or her decision indeed does affect both the decision-making process and the outcome." Michael A. Mello, *Taking Caldwell v. Mississippi Seriously: The Unconstitutionality of Capital Statutes That Divide Sentencing Responsibility between Judge and Jury*, 30 B.C.L. Rev. 283, 318 (1989); *see also* Steven Semeraro, *Responsibility in Capital Sentencing*, 39 San Diego L. Rev. 79, 129-30 (2002) (arguing that because "individuals may seek ways to avoid responsibility for grave decisions," capital sentencing instructions should go even beyond prohibiting responsibility-lessening instructions).

Recent commentary post *Hurst* has retrospectively analyzed the prior Florida death penalty scheme and pointed out the significant tension with *Caldwell v. Mississippi*, 472 U.S. 320 (Fla. 1980):

> *Hurst* makes clear that by encouraging jurors to place responsibility for the finding and consideration of sentencing facts on legal officials rather than themselves, encouraging jurors to be less concerned about making an error because any error would be corrected, encouraging jurors to find facts to support a death recommendation in order to transfer responsibility for the sentence to the trial judge, and encouraging jurors to pressure each other into going along with finding facts in favor of death because the finding would not go to support any death sentence ultimately imposed anyway, Florida violated *Caldwell*.

Trocino & Meyer, *Hurst v. Florida's Ha'pporth of Tar: the Need to Revisit Caldwell, Clemons, and Proffitt*, 70 U. Miami L. Rev.118, 1143 (2016); *see also*, Joseph L. Hoffmann, *Where's the Buck? – Juror Misperception of Sentencing Responsibility in Death Penalty Cases*, 70 Ind. L.J. 1137, 1147 (1995) ("Given the extreme discomfort that most jurors expressed over their role in capital sentencing, most jurors tended to remember vividly the portion of the judge's instructions that indicated the jury's decision was only a 'recommendation'").

Prior to *Hurst*, the Florida Supreme Court openly acknowledged and approved the shifting of responsibility from the advisory jury:

> It would be unreasonable to prohibit the trial court or the state from attempting to relieve some of the anxiety felt by jurors impaneled in a first-degree murder trial. We perceive no eighth amendment requirement that a jury whose role is to advise the trial court on the

> appropriate sentence should be made to feel it bears the same degree of responsibility as that borne by a "true sentencing jury."

Pope v. Wainwright, 496 So. 2d 798, 805 (Fla. 1986).

Because every capital jury was relieved of "some of the anxiety" in every capital case tried under Florida's former statute, it is impossible now magically to transform the advisory recommendation, whether unanimous or not, into the necessary fact finding that the Constitution requires.[6] In Petitioner's case, because of the strength of the mitigation and relative weakness of the aggravating evidence, it is undeniable that the State, if put to its burden, would have had much to overcome to establish that a properly instructed jury would have made the findings necessary to support a death sentence.[7] Rather, in light of the excessive minimizing of the jury's sentencing responsibility, it is more than likely that Petitioner's jury believed it was merely "sending a message" with the knowledge that "[t]he final decision

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[6] The state court here performed that exact makeover, quoting from a previous 12-0 decision: "[T]he jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations." Pet'r App. 4a (original brackets and citation omitted).

[7] There is an additional reason why the jury would have made findings supporting a life, instead of death, sentence. Although trial counsel presented evidence to the judge that Petitioner had been sexually molested as a child, Sentencing Tr. at 27, counsel did not provide the jury with that mitigation. Had the Florida death penalty scheme not minimized the jury's role, counsel may well have presented that evidence to the jury. Certainly, the fact that at a separate sentencing proceeding, different evidence could be presented to the judge than was presented to the jury provides an additional reason why the unwavering 12-0 rule fails. *See Spencer v. State*, 615 So. 2d 688, 690–91 (Fla. 1993).

as to what sentence shall be imposed rests solely with the Judge of this court." Penalty Tr. at 350.[8]

H. The Florida Supreme Court's reliance on a 12-0 general death recommendation as conclusive proof that *Hurst* error is always harmless not only conflicts with Supreme Court precedent requiring record review, but also wrongly overlooks that Florida juries lean toward mercy when confronted with binding sentencing responsibility.

If *Hurst* error is not deemed structural, at minimum its prejudicial impact can only be reliably assessed with case-specific scrutiny that takes into account the jury's past understanding of its limited sentencing role. Florida's experience thus far with the new death penalty process offers convincing evidence that a different jury verdict obtains when the jury is instructed on its determinative fact-finding role, and demonstrates why the state court must provide individualized review in Petitioner's case and for the

[8] The prejudice from the Sixth Amendment violation is compounded by the trial judge's obligation to give "great weight as is required by Florida Law," *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975), an obligation specifically noted by this trial judge: "The court has given the jury's advisory sentence and recommendation great weight." Sentencing Tr. At 32. The Florida Supreme Court, in turn, relied on the jury recommendation, despite its lack of any specific factual findings, in conducting its proportionality review of the death sentence: "[f]or purposes of proportionality review, this Court accepts the jury's recommendation . . ." *Guardado v. State*, 965 So. 2d 108, 119 (Fla. 2007). But because the essential findings were never made by the proper fact finder, reliance and review by the respective courts were forever tainted.

34 other capital defendants whose juries returned a 12-0 death recommendation.

The capital jury now must make the three findings without which a death sentence is precluded: "the jury must find the existence of the aggravating factors proven beyond a reasonable doubt, that the aggravating factors are sufficient to impose death, and that the aggravating factors outweigh the mitigating circumstances." *Hurst v. State*, 202 So. 3d 40, 53 (Fla. 2016). Charged with this responsibility, Florida juries have repeatedly rejected verdicts for death sentences, even in egregious cases, and at times, even after finding the three requisites proven beyond a reasonable doubt.

For example, turning to the recent case of James Bannister, a man convicted of four homicides, his jury nonetheless returned a verdict for a life sentence. His victims were his then-girlfriend, her mother, and two children ages 6 and 8 who were unrelated to Mr. Bannister or his girlfriend. After murdering the four, Mr. Bannister set fire to the house, leaving the bodies inside. http://www.ocala.com/news/20170426/quadruple-murder-trial-set-to-start-in-august. At the jury sentencing proceeding, evidence of 44 statutory and non-statutory mitigating circumstances was presented, including evidence of a chaotic and abusive childhood spent largely in foster homes. The jury also found that he had suffered multiple traumatic brain injuries and was under extreme mental or emotional disturbance at the time of the offense. After making the three required findings against the defendant and specifically concluding that the aggravators outweighed the mitigators, the jury voted 4 to 8 for a life sentence. Amicus App. D.

Derrick Ray Thompson suffered from a severe opioid addiction that led to his killing of a couple over

oxycodone pills. Mr. Thompson was doing electrical work for the husband and wife, and claimed that they were paying him with painkillers. When they shorted him on his payment, he shot and killed both the husband and wife. http://www.pnj.com/story/news/crime/2017/12/07/guilty-verdict-reached-gruesome-murder-milton-couple/931654001/. The jury found that aggravating factors had been proven beyond a reasonable doubt as to both victims, but, as to the second essential finding, concluded that the aggravating factors were insufficient to warrant a death sentence, and Mr. Thompson was sentenced to life imprisonment. Amicus App. E.

Joshua Gaskey murdered a couple who were ministry workers and had tried to help him by providing him with housing and support. When they one day denied him money and prescription pills, he shot both of them. http://www.chipleypaper.com/news/20170701/gaskey-gets-life-without-parole-in-ponce-de-leon-murders. The jury found Mr. Gaskey guilty of two counts of first-degree murder, armed burglary, and armed robbery, and at the sentencing phase, found that aggravating factors had been proven beyond a reasonable doubt and that those aggravating factors outweighed the mitigation. Nonetheless, he received a life sentence because, although the exact vote was not provided, "one or more" of the jurors found life imprisonment without the possibility of parole to be the appropriate sentence. Amicus App. F.

Rodney Clark was convicted of a murder and rape that had occurred 30 years ago. Extensive mitigation showed that he had suffered a severely abusive childhood, and from multiple health ailments at the time of trial. He also was of borderline intelligence and had been poisoned with mercury when he was a

child. http://www.palmbeachpost.com/news/crime--law/jury-votes-for-life-prison-for-man-convicted-1987-murder/1XA264655ZOhrMc7CSlveM/. Although the jury found that the aggravating circumstances had been proven and that they outweighed the mitigation, they voted 9-3 in favor of a life sentence. Amicus App. G.

William Thomason was convicted of killing his 8-week-old daughter, who suffered multiple injuries after she was left alone with him. Prosecutors proved that he had been researching the effects of shaking a baby and how to get away with the crime. http://www.nwfdailynews.com/news/20170611/jury-gives-thomason-life-sentence. The jury was presented with evidence of 62 non-statutory mitigating circumstances, and found many of them. In particular, the jury noted his dysfunctional family and difficult childhood, found that he was under the influence of a mental or emotional disturbance at the time of the offense, and that he suffers from fetal alcohol spectrum disorder. After finding that the State had proven aggravating factors beyond a reasonable doubt, that the aggravators were sufficient to warrant a death sentence, and finding that the mitigation did not outweigh the aggravating factors but nor did the aggravation outweigh the mitigation, the jury unanimously voted for a sentence of life imprisonment. Amicus App. H.

The special verdicts in these cases elucidate that the jury, when charged with the sentencing responsibility that the Sixth and Eighth Amendments require, in cases certainly more aggravated and often less mitigated than Petitioner's, do return life verdicts. The requirement that the jury not only make the essential findings, but disclose to the court those findings, does much to prevent the jury from passing the buck to the more experienced sentencing judge. Such a jury is

likely to perceive differently the graveness of its responsibility in deciding whether the facts sufficiently call for a sentence of death, and respond to the call for mercy.

One thing in particular these special verdicts make clear, a court cannot consider *Hurst* error harmless per se based solely on an "essentially meaningless" advisory recommendation that makes no mention of any of the required findings, from a jury that is told that the sentencing responsibility lies elsewhere. This Court's standards for assessing the harmfulness of constitutional error demand more. They demand a conscientious consideration of the constitutional error in the context of the actual and individual record in the case.

CONCLUSION

Amici urge the Court to grant the Petition for Writ of Certiorari and direct the state court to apply the Court's controlling harmless-error standards.

Respectfully submitted,

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APPENDIX

APPENDIX A

Persons Denied Hurst Relief on the basis of Harmless Error:
12-0 Jury Vote

Item	Name	Circuit	County
1	Allen, Margaret	18	Brevard
2	Anderson, Fred	5	Lake
3	Boyd, Lucious	17	Broward
4	Conahan, Daniel	20	Charlotte
5	Cozzie, Steven	1	Walton
6	Crain, Willie	13	Hillsborough
7	Davis, Leon	10	Polk
8	Everett, Paul	14	Bay
9	Floyd, Franklin	6	Pinellas
10	Franklin, Quawn	5	Lake
11	Grim, Norman	1	Santa Rosa
12	Guardado, Jesse	1	Walton
13	Hall, Enoch	7	Volusia
14	Hilton, Gary	2	Leon
15	Johnson, Kentrell	7	St. Johns
16	Johnston, Ray	13	Hillsborough
17	Jones, Henry	18	Brevard
18	Kaczmar, Leo	4	Clay
19	Kelley, William	10	Highlands
20	King, Michael	12	Sarasota

21	Knight, Richard	17	Broward
22	Looney, Jason	2	Wakulla
23	Mccray, Gary	4	Clay
24	Middleton, Dale	19	Okeechobee
25	Morris, Dontae	13	Hillsborough
26	Oliver, Terence Tobias	18	Brevard
27	Philmore, Lenard	19	Martin
28	Reynolds, Michael	18	Seminole
29	Smith, Delmer	4	Duval
30	Smithers, Samuel	13	Hillsborough
31	Sparre, David	4	Duval
32	Tanzi, Michael	16	Monroe
33	Taylor, William	13	Hillsborough
34	Truehill, Quentin	7	St. Johns
35	Tundidor, Randy	17	Broward

APPENDIX B

Item	Name	Finality Date	Jury Vote	Circuit	County
1	Anderson, Richard	10/7/1991	11-1	13	Hillsborough
2	Arbelaez, Guillermo	5/23/1994	11-1	11	Miami-dade
3	Archer, Robin	10/7/1996	7-5	1	Escambia
4	Armstrong, Lancelot	4/24/1995	9-3	17	Broward
5	Asay, Mark	10/7/1991	9-3	4	Duval
6	Atwater, Jeffrey	4/18/1994	11-1	6	Pinellas
7	Barwick, Darryl	1/22/1996	12-0	14	Bay
8	Bates, Kayle	10/5/1987	9-3	14	Bay
9	Beasley, Curtis	12/21/2000	10-2	10	Polk
10	Bell, Michael	2/23/1998	12-0	4	Duval
11	Blanco, Omar	5/12/1997	10-2	17	Broward
12	Bogle, Brett	3/30/1998	10-2	13	Hillsborough
13	Bowles, Gary	1/22/2001	12-0	4	Duval
14	Bradley, Donald	1/16/1998	10-2	4	Clay
15	Branch, Eric Scott	5/12/1997	10-2	1	Escambia
16	Brown, Paul Alfred	10/9/2001	7-5	13	Hillsborough

17	Brown, Paul Anthony	9/17/1999	12-0	7	Volusia
18	Burns, Daniel	10/24/2000	12-0	12	Manatee
19	Byrd, Milford	1/11/1984	12-0	13	Hillsborough
20	Cave, Alphonso	4/24/2001	11-1	6	Pinellas
21	Cherry, Roger	8/16/1985	9-3	7	Volusia
22	Clark, Ronald	9/13/1982	11-1	4	Duval
23	Cole, Loran	3/30/1998	12-0	5	Marion
24	Consalvo, Robert	10/11/2000	11-1	17	Broward
25	Cumming-el, F	10/10/1996	8-4	11	Miami-dade
26	Dailey, James	1/22/1996	12-0	6	Pinellas
27	Damren, Floyd	1/12/1998	12-0	4	Clay
28	Davis, Mark	9/4/1992	8-4	6	Pinellas
29	Davis, Toney	6/15/1998	11-1	4	Duval
30	Derrick, Samuel	1/23/1995	7-5	6	Pasco
31	Dillbeck, Donald	3/20/1995	8-4	2	Leon
32	Downs, Ernest	11/3/1980	8-4	4	Duval
33	Doyle, Daniel	1/3/1985	8-4	17	Broward

34	Duckett, James	12/10/2001	8-4	5	Lake
35	Evans, Paul	1/22/2001	9-3	19	Indian river
36	Evans, Steven	12/10/2001	11-1	9	Orange
37	Fennie, Alfred	2/21/1995	12-0	5	Hernando
38	Finney, Charles	1/22/1996	9-3	13	Hillsborough
39	Ford, James	5/28/2002	11-1	20	Charlotte
40	Foster, Charles	10/1/1979	8-4	14	Bay
41	Foster, Jermaine	3/17/1997	12-0	9	Orange
42	Foster, Kevin	1/22/2001	9-3	20	Lee
43	Fotopoulos, Konstantin	5/17/1993	8-4	7	Volusia
44	Franqui, Leonardo	3/23/1998 1/8/2002	9-3, 10-2	11	Miami-dade
45	Freeman, John	6/28/1991	9-3	4	Duval
46	Gamble, Guy	2/20/1996	10-2	5	Lake
47	Gaskin, Louis	9/4/1992	8-4	7	Flagler
48	Geralds, Mark	10/7/1996	12-0	1.4	Bay
49	Gonzalez, Ricardo	4/6/1998	8-4	11	Miami-dade
50	Gordon, Robert	1/16/1998	9-3	6	Pinellas

51	Griffin, Michael	5/30/2002	10-2	11	Miami-dade
52	Gudinas, Thomas	10/20/1997	10-2	20	Collier
53	Haliburton, Jerry	6/28/1991	9-3	15	Palm beach
54	Hamilton, Richard	6/26/1998	10-2	3	Hamilton
55	Hannon, Patrick	2/21/1995	12-0	13	Hillsborough
56	Hardwick, John	10/3/1988	7-5	4	Duval
57	Hartley, Kenneth	10/6/1997	9-3	4	Duval
58	Harvey, Harold	2/21/1989	11-1	19	Indian river
59	Heath, Ronald	6/26/1995	10-2	8	Alachua
60	Herring, Ted	11/5/1984	8-4	7	Volusia
61	Hitchcock, James	12/4/2000	10-2	9	Orange
62	Hodges, George	11/29/1993	10-2	13	Hillsborough
63	Holland, Albert	10/1/2001	8-4	17	Broward
64	Hunter, James	2/20/1996	9-3	7	Volusia
65	Jackson, Etheria	1/23/1989	7-5	4	Duval
66	James, Edward	12/1/1997	11-1	18	Seminole

67	Jeffries, Sonny	10/9/2001	11-1	9	Orange
68	Jennings, Brandy	6/24/1999	10-2	20	Collier
69	Jennings, Bryan	2/22/1988	11-1	18	Brevard
70	Jimenez, Jose	5/18/1998	12-0	11	Miami lade
71	Johnson, Emanuel	4/22/1996	8-4 2	10-12	Sarasota
72	Johnson, Ronnie	1/26/1998	7-5 9-3	11	Miami-dade
73	Jones, Harry	6/19/1995	9-3	2	Leon
74	Jones, Marvin	10/6/1997	10-2	4	Duval
75	Jones, Randall	10/4/1993	9-3	7	Putnam
76	Jones, Victor	10/2/1995	10-2	11	Miami-dade
77	Kearse, Billy	3/26/2001	12-0	19	St. Lucie
78	Kilgore, Dean	10/6/1997	8-4	10	Polk
79	Knight, Ronald	4/30/2001	9-3	15	Palm beach
80	Kokal, Gregory	10/17/1986	Waived	4	Duval
81	Krawczuk, Anton	10/3/1994	12-0	20	Lee
82	Lamarca, Anthony	10/1/2001	12-0	6	Pinellas

83	Lambrix, Michael	5/12/1997	11-1	20	Glades
84	Lawrence, Gary	1/20/1998	10-2	1	Santa Rosa
85	Lightbourn, Ian	2/21/1984	7-5	5	Marion
86	Long, Robert	5/16/1988	12-0	13	Hillsborough
87	Lott, Ken	11/17/1997	10-2	9	Orange
88	Lowe, Rodney	10/2/1995	12-0	19	Indian river
89	Lucas, Harold	10/4/1993	9-3	20	Lee
90	Lukehart, Andrew	6/25/2001	11-1	4	Duval
91	Mansfield, Scott	4/23/2001	12-0	9	Osceola
92	Marquard, John	1/23/1995	12-0	7	St. Johns
93	Marshall, Matthew	5/17/1993	Override	19	Martin
94	Mcdonald, Meryl	9/17/1999	9-3	6	Pinellas
95	Melton, Antonio	10/31/1994	8-4	1	Escambia
96	Mendoza, Marbel	10/5/1998	7-5	11	Miami-dade
97	Miller, David	10/24/2000	7-5	4	Duval
98	Moore, Thomas	4/20/1998	9-3	4	Duval

99	Morris, Robert	2/21/2002	8-4	10	Polk
100	Morton, Alvin	9/28/2001	11-1	6	Pasco
101	Muehleman, Jeffrey	10/5/1987	10-2	6	Pinellas
102	Mungin, Anthony	10/6/1997	7-5	4	Duval
103	Nelson, Joshua	1/18/2000	12-0	20	Lee
104	Nixon, Joe	10/7/1991	10-2	2	Leon
105	Oats, Sonny	10/7/1985	12-0	5	Marion
106	Occhicone, Dominick	5/20/1991	7-5	6	Pasco
107	Overton, Thomas	5/13/2002	8-4	16	Monroe
108	Owen, Duane	10/13/1992	10-2	15	Palm beach
109	Pace, Bruce	10/5/1992	7-5	1	Santa Rosa
110	Peede, Robert	6/23/1986	11-1	9	Orange
111	Peterka, Daniel	1/23/1995	8-4	1	Okaloosa
112	Phillips, Harry	1/28/1985	7-5	11	Miami-dade
113	Pietri, Noberto	6/19/1995	8-4	15	Palm beach
114	Pittman, David	5/15/1995	9-3	10	Polk
115	Ponticelli, Anthony	10/19/1993	9-3	5	Marion

116	Pooler, Leroy	10/5/1998	9-3	15	Palm beach
117	Pope, Thomas	1/11/1984	9-3	17	Broward
118	Puiatti, Carl	10/3/1988	11-1	6	Pasco
119	Quince, Kenneth	10/4/1982	Waived	7	Volusia
120	Raleigh, Bobby	10/5/1998	12-0	7	Volusia
121	Randolph, Richard	11/16/1990	8-4	7	Putnam
122	Reaves, William	11/7/1994	10-2	19	Indian river
123	Reed, Grover	10/1/1990	11-1	4	Duval
124	Reese, John	3/5/2001	8-4	4	Duval
125	Rhodes, Richard	12/5/1994	10-2	6	Pinellas
126	Rivera, Michael	6/22/1990	12-0	17	Broward
127	Robinson, Michael	4/3/2000	Waived	9	Orange
128	Rodriguez, Juan	10/4/1993	12-0	11	Miami-dade
129	Rodriguez, Manolo	10/2/2000	12-0	11	Miami-dade
130	Rogers, Glen	4/24/2001	12-0	13	Hillsborough
131	Rose, James	4/25/1983	9-3	13	Hillsborough
132	Rose, Milo	8/16/1985	9-3	6	Pinellas
133	San martin, Pablo	10/5/1998	9-3	11	Miami-dade

134	Scott, Paul	9/13/1982	7-5	15	Palm beach
135	Shere, Richard	4/4/1991	7-5	5	Hernando
136	Sireci, Henry	11/4/1991	11-1	9	Orange
137	Sliney, Jack	2/23/1998	7-5	20	Charlotte
138	Smith, Derrick	2/21/1995	8-4	6	Pinellas
139	Sochor, Dennis	2/22/1994	10-2	17	Broward
140	Spencer, Dusty Ray	10/6/1997	7-5	9	Orange
141	Stein, Steven	10/3/1994	10-2	4	Duval
142	Stephens, Jason	11/13/2001	9-3	4	Duval
143	Stewart, Kenneth	4/6/1992	10-2	13	Hillsborough
144	Suggs, Ernest	4/24/1995	7-5	1	Walton
145	Sweet, William	2/28/1994	10-2	4	Duval
146	Taylor, Perry	11/14/1994	8-4	13	Hillsborough
147	Taylor, Steven	10/3/1994	10-2	4	Duval
148	Thomas, William	11/17/1997	11-1	4	Duval
149	Thompson, William	3/1/1988	7-5	11	Miami-dade
150	Trease, Robert	10/11/2000	11-1	12	Sarasota

151	Trepal, George	1/18/1994	9-3	10	Polk
152	Trotter, Melvin	10/6/1997	11-1	12	Manatee
153	Valentine, Terance	10/6/1997	Waived	13	Hillsborough
154	Wainwright, Anthony	5/18/1998	12-0	3	Hamilton
155	Walls, Frank	1/23/1995	12-0	1	Okaloosa
156	Walton, Jason	1/8/1990	9-3	10	Pinellas
157	Watts, Tony	6/22/1992	7-5	4	Duval
158	Whitfield, Ernest	10/5/1998	7-5	12	Sarasota
159	Whitton, Gary	10/2/1995	12-0	1	Walton
160	Willacy, Chadwick	11/10/1997	11-1	18	Brevard
161	Williamson, Dana	4/28/1997	11-1	17	Broward
162	Windom, Curtis	12/4/1995	12-0	9	Orange
163	Wright, Joel	1/21/1986	9-3	7	Putnam
164	Zack, Michael	10/2/2000	11-1	1	Escambia
165	Zakrzewski, Edward	1/25/1999	7-5 Override	1	Okaloosa
166	Zeigler, William	3/22/1982	Override	4	Duval

APPENDIX C

Item	Name	Circuit	County
1	Allred, Andrew	18	Seminole
2	Barnes, James	18	Brevard
3	Covington, Edward	13	Hillsborough
4	Davis, Leon	10	Polk
5	Dessaure, Kenneth	6	Pinellas
6	Gill, Ricardo	8	Union
7	Hutchinson, Jeffrey	1	Okaloosa
8	Kokal, Gregory	4	Duval
9	Lynch, Richard	18	Seminole
10	Marquardt, Bill	5	Sumter
11	Mullens, Khadafy	6	Pinellas
12	Robertson, James	20	Charlotte
13	Rodgers, Jeremiah	1	Santa rosy
14	Russ, David	18	Seminole
15	Sanchez-torrez, Hector	4	Clay
16	Spann, Anthony	19	Martin
17	Twilegar, Mark	20	Lee
18	Wall, Craig	6	Pinellas
19	Wright, Tavares	10	Polk

APPENDIX D

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY FLORIDA

CASE NO: 2011-CF-3085

STATE OF FLORIDA,

Plaintiff,

v.

JAMES BANNISTER,

Defendant.

VERDICT AS TO SENTENCE
COUNT 1

We the jury find as follows as to the Defendant, James Bannister, in this case:

A. Aggravating Factors as to Count One:

We the jury unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor: The Defendant was previously convicted of a capital felony or a felony involving the use or threat of violence to a person.

YES ✓

NO _____

We the jury unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor: The capital felony was a homicide and was committed in a cold, calculated, and

premeditated manner without any pretense of moral or legal justification.

YES ✓

NO _____

If you answer YES to at least one of the aggravating factors listed, please proceed to Section B. If you answered NO to every aggravating factor listed, do not proceed to Section B; the Defendant, James Bannister, is not eligible for the death sentence and will be sentenced to life in prison without the possibility of parole. Please sign and date the verdict form.

B. Sufficiency of the Aggravating Factors as to Count One:

Reviewing the aggravating factors that we unanimously found to be established beyond a reasonable doubt in Section A, above, we the jury unanimously find that the aggravating factors are sufficient to warrant a possible sentence of death.

YES ✓

* * *

44. Any other factors in James Bannister's character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.

YES ✓

NO _____

If you answered YES above, please provide the jury vote as to the existence of this mitigating circumstance.

VOTE OF 5 Yes TO 1 No

Please proceed to Section D, regardless of your findings in Section C.

D. Eligibility for the Death Penalty.

We the jury unanimously find that the aggravating factors that were proven beyond a reasonable doubt in Section A above outweigh the mitigating circumstances established in Section C above as to First Degree Murder.

YES ✓

NO _____

If you answered YES to Section D, please proceed to Section E. If you answered NO to Section D, do not proceed; the Defendant, James Bannister will be sentenced to life in prison without the possibility of parole. Please sign and date the verdict form.

E. Jury Verdict as to Death Penalty

Having unanimously found that at least one aggravating factor has been established beyond a reasonable doubt in Section A above, and having unanimously found that the aggravating factors are sufficient to warrant a sentence of death in Section B above, and having unanimously found the aggravating factors outweigh the mitigating circumstances in Section D above, additionally, we the jury unanimously find that the Defendant, James Bannister, should be sentenced to death:

YES ✓

NO _____

If NO, our vote to impose a sentence of life imprisonment without the possibility of parole is:

_4_ life

_8_ death

If your vote to impose death is less than unanimous, the trial court shall impose a sentence of life without the possibility of parole.

APPENDIX E

IN THE CIRCUIT COURT FOR
SANTA ROSA COUNTY, FLORIDA

CLERK NO.: 5714CF001124A
DIVISION: B

STATE OF FLORIDA,

Plaintiff,

v.

DERRICK RAY THOMPSON,

Defendant.

3.12(e) JURY VERDICT FORM - DEATH PENALTY

We the jury find as follows as to the Defendant in this case:

AS TO COUNT 1, STEVEN ZACKOWSKI, ONLY

A. Aggravating Factors as to Count 1:

1. We the jury unanimously find that the State has established beyond a reasonable doubt that the Defendant was previously convicted of another capital crime or felony involving the use of violence to another person.

   YES ✓

   NO _____

2. We the jury unanimously find that the State has established beyond a reasonable doubt that the First Degree Murder was committed for financial gain.

YES _____

NO ✓

If you answer YES to at least one of the aggravating factors listed, please proceed to Section B. If you answered NO to every aggravating factor listed, do not proceed to Section B; Defendant is not eligible for the death sentence and will be sentenced to life in prison without the possibility of parole.

B. Sufficiency of the Aggravating Factors as to Count 1:

Reviewing the aggravating factors that we unanimously found to be established beyond a reasonable doubt (Section A), we the jury unanimously find that the aggravating factors are sufficient to warrant a possible sentence of death.

YES _____

NO ✓

If you answer YES to Section B, please proceed to Section C. If you answer NO to Section B, do not proceed to Section C; Defendant will be sentenced to life in prison without the possibility of parole.

C. Mitigating Circumstances:

Any, some, or all of the jury find that the following mitigating circumstances have been proven by the greater weight of the evidence, as to the defendant, DERRICK R. THOMPSON:

1. The defendant has no significant history of prior criminal activity.

   YES _____

   NO _____

   If you answered YES above, please provide the jury vote as to the existence of this mitigating circumstance.

   VOTE OF ____ Yes TO ___ No.

* * *

APPENDIX F

IN THE CIRCUIT COURT,
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA,
IN AND FOR HOLMES COUNTY

CASE NUMBER: 15-160CF

STATE OF FLORIDA,

Plaintiff,

vs.

JOSHUA BRANDYN GASKEY,

Defendant.

VERDICT FORM 3
AS TO COUNT 1
CONCERNING THE MURDER OF
JACQULYN THORN BROOKS

We, the jury, find as follows, as to the weighing of aggravating factor(s) and mitigating circumstances:

___✓___ The State proved beyond a reasonable doubt that the aggravating factor(s) outweigh the mitigating circumstances.

_____ The State did not prove beyond a reasonable doubt that the aggravating factor(s) outweigh the mitigating circumstances.

AS TO COUNT 2
CONCERNING THE MURDER OF
SHELEY GLENN BROOKS

We, the jury, find as follows, as to the weighing of aggravating factor(s) and mitigating &cm stances:

✓ The State proved beyond a reasonable doubt that the aggravating factor(s) outweigh the mitigating circumstances.

_____ The State did not prove beyond a reasonable doubt that the aggravating factor(s) outweigh the mitigating circumstances.

Dated this 1 day of July, 2017, in Holmes County, Florida.

/s/ Arthur W. Little
(Signature of foreperson)

/s/ Arthur W. Little
(Print name of foreperson)

IN THE CIRCUIT COURT,
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA,
IN AND FOR HOLMES COUNTY

CASE NUMBER: 15-160CF

STATE OF FLORIDA,

Plaintiff,

vs.

JOSHUA BRANDYN GASKEY,

Defendant.

SENTENCING VERDICT FORM

AS TO COUNT I
CONCERNING THE MURDER OF
JACQULYN THORN BROOKS

___✓___ One or more jurors find the appropriate sentence is life imprisonment without the possibility of parole.

_____ We the jury unanimously find the State proved beyond a reasonable doubt that the appropriate sentence is death.

AS TO COUNT 2
CONCERNING THE MURDER OF
SHELEY GLENN BROOKS

___✓___ One or more jurors find the appropriate sentence is life imprisonment without the possibility of parole.

_____ We the jury unanimously find the State proved beyond a reasonable doubt that the appropriate sentence is death.

Dated this 1 day of July , 2017, in Holmes County, Florida.

/s/ Arthur W. Little
(Signature of foreperson)

/s/ Arthur W. Little
(Print name of foreperson)

APPENDIX G

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 2012CF013686AXX
DIV: "S"

STATE OF FLORIDA,

v.

RODNEY CLARK

Defendant.

VERDICT AS TO SENTENCE

As to the sentence of Rodney Clark, having been found guilty of First Degree Murder, we the jury find as follows:

A. Aggravating Factors:

We the jury unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor: The Defendant was previously convicted of a felony involving the use or threat of violence to a person.

YES ✓

NO _____

We the jury unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor: The capital felony was especially heinous, atrocious, or cruel.

YES ✓

NO _____

We the jury unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor: The capital felony was committed while the defendant was engaged, or was an accomplice, in the

* * *

Rodney Clark will be sentenced to life in prison. Please sign and date the verdict form.

D. Jury Verdict

Having unanimously found that at least one aggravating factor has been established beyond a reasonable doubt in Section A above, and that the aggravating factors are sufficient to warrant a sentence of death in Section B above, and the aggravating factors outweigh the mitigating circumstances in Section C. Additionally, we the jury unanimously find that the Defendant, Rodney Clark, should be sentenced to death.

YES _____

NO ✓

If NO, our vote to impose a sentence of Life is 9 to 3.

If your vote to impose death is less than unanimous, the trial court shall impose a sentence of life.

So say we all, this 19th day of September 19, 2017.

/s/ James M. Contino
Foreperson

/s/ James M. Contino
Print Name

APPENDIX H

IN THE CIRCUIT COURT IN AND FOR
OKALOOSA COUNTY, FLORIDA

Clerk Number 2013 CF 2271

STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM ALAN THOMASON,

Defendant.

3.12(e) JURY VERDICT FORM—DEATH PENALTY

We the jury find as follows as to William Alan Thomason in this case:

A. Aggravating Factors:

We, the jury, unanimously find that the State has established beyond a reasonable doubt: The first degree felony murder was committed while Mr. Thomason was engaged in the commission of aggravated child abuse:

YES ✓

NO _____

We, the jury, unanimously find that the State has established beyond a reasonable doubt: The first degree felony murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification:

YES _____

NO ✓

We, the jury, unanimously find that the State has established beyond a reasonable doubt: Braelyn Thomason was a person less than 12 years of age:

YES ✓

NO _____

We, the jury, unanimously find that the State has established beyond a reasonable doubt: Braelyn Thomason was particularly vulnerable because William Alan Thomason stood in a position of familial or custodial authority over Braelyn Thomason:

YES ✓

NO _____

* * *

61. We, the jury, find by the greater weight of the evidence, William Alan Thomason has brain damage as a result of trauma and/or his mother's use of alcohol and drugs during the pregnancy

YES ✓

NO _____

If you answered yes above, please provide the jury vote as to the existence of the mitigating circumstance: vote of 9 to 3.

62. We, the jury, find by the greater weight of the evidence, the impact of execution on family members.

YES ✓

NO _____

If you answered yes above, please provide the jury vote as to the existence of the mitigating circumstance: vote of 7 to 5.

D. Eligibility for the Death Penalty

We, the jury, unanimously find that the aggravating factors that were proven beyond a reasonable doubt (Section A) outweigh the mitigating circumstances established, if any found in Section C above.

YES ✓

NO _____

If you answered YES to Section D, please proceed to Section E. If you answered NO to Section D, do not proceed; William Alan Thomason will be sentenced to life in prison without the possibility of parole, and you should proceed to the bottom of this verdict form and date, sign, and print the foreperson's name.

E. Eligibility for the Death Penalty

We the jury unanimously find that the mitigating circumstances that were proven by a preponderance of the evidence (Section C) outweigh the aggravating factors established (Section A above).

YES _____

NO ✓

If you answered YES to Section E, it is a vote for life in prison without possibility of parole. Please proceed to the bottom of this verdict form and date, sign, and print the foreperson's name.

F. Jury Verdict as to Death Penalty

We, the jury, having unanimously found that at least one aggravating factor has been established

beyond a reasonable doubt (Section A), that the aggravating factors are sufficient to warrant a sentence of death (Section I3), and the aggravating factors outweigh the mitigating circumstances (Section D).

YES _____

NO ✓

We, the jury, unanimously find that William Alan Thomason should be sentenced to death.

YES _____

NO ✓

If NO, our vote to impose a sentence of life without possibility of parole is 12 to 0.

If your vote to impose death is less than unanimous, the trial court shall impose a sentence of life without the possibility of parole.

Dated this 10th day of June, 2017, in Okaloosa County, Florida.

/s/ Anthony R. McKinney
(Signature of foreperson)

/s/ Anthony R. McKinney
(Print name of foreperson)