

No. 18-5434

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IN THE  
SUPREME COURT OF THE UNITED STATES

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TROY VICTORINO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

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**PETITIONER'S REPLY BRIEF**

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***THIS IS A CAPITAL CASE***

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## TABLE OF CONTENTS

Table of Authorities.....	2
Reply to Respondent's Point Number 4 Regarding the Prohibition against Double jeopardy.....	2
Reply to Respondent's Concluding Paragraph.....	2

## TABLE OF AUTHORITIES

<i>Bullington v. Missouri</i> 451 U.S. 430 (1981).....	3
<i>Hurst v. Florida</i> 136 S. Ct. 616 (2016).....	3
<i>Hurst v. State</i> 202 So. 3d 40 (Fla. 2016).....	3
<i>Mosley v. State</i> 208 So. 3d 1248 (Fla. 2016).....	3
<i>Ring v. Arizona</i> 536 U.S. 584 (June 24, 2002).....	3, 4

REPLY TO RESPONDENT’S POINT NUMBER 4 REGARDING  
THE PROHIBITION AGAINST DOUBLE JEOPARDY

Respondent’s discussion of the prohibition against double jeopardy (Opposition Brief page 18) fails to address this United States Supreme Court’s *Bullington v. Missouri* 451 U.S. 430 (1981) ruling --discussed at page 14 of the Petition—that the double jeopardy clause *does* apply to capital-sentencing proceedings which “have the hallmarks of the trial on guilt or innocence.”

REPLY TO RESPONDENT’S CONCLUDING PARAGRAPH

Respondent states in the concluding paragraph (at page 24) of its Opposition Brief, that “The Florida Supreme Court’s application of *Hurst* [*Hurst v. State*, 202 So. 3d 40 (Fla. 2016)] is in accord with the precedent of this Court.” However, in *Mosley v. State*, 208 So. 3d 1248 (Fla. 2016), the Florida Supreme Court stated, “Because Florida’s capital sentencing statute has essentially been unconstitutional since *Ring* in 2002, fairness strongly favors applying *Hurst*, retroactively to that time . . . We now know after *Hurst v. Florida* [*Hurst v. Florida*, 136 S. Ct. 616 (January 14, 2016)] that Florida’s capital sentencing statute was unconstitutional from the time that the United States Supreme Court decided *Ring* [*Ring v. Arizona*, 536 U.S. 584 (2002)]. From *Hurst*, it is undeniable that *Hurst v. Florida* changed the calculus of the constitutionality of capital sentencing in this State. Thus, this factor weighs in favor of granting retroactive relief to the point of the issuance of *Ring*.” It is now clear that that the non-unanimous jury death-sentence decisions Petitioner’s jurors reached in Defendant’s 2006 jury trial would support nothing but

a life sentence today. The Florida Supreme Court's acknowledgement that post-*Ring* capital-case defendants (like the present Petitioner) were put through an unconstitutional death-sentencing procedure highlights the unfairness of making the present Petitioner --who received no unanimous jury death-sentence recommendation-- run the life-or-death sentencing gauntlet a second time.

Respectfully submitted,

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