NO. 20-8403

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL JACOB CRAVEN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI

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Capital Case

QUESTION PRESENTED

Whether Petitioner's death sentence violates the Due Process Clause of the Fourteenth Amendment because the weighing of aggravators and mitigators is not considered an element of a higher offense under Florida law.

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OPINION BELOW

Petitioner challenges the decision by the Supreme Court of Florida affirming his sentence of death; that decision appears as *Craven v. State*, 310 So. 3d 891 (Fla. 2020).

JURISDICTION

This Court's jurisdiction to review the final judgment of the Supreme Court of Florida is permissible under 28 U.S.C. § 1257. However, this Court should decline to exercise jurisdiction in this case because the Florida Supreme Court's decision does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a court of appeal of the United States, and does not conflict with relevant decisions of this Court. Sup. Ct. R. 10. In short, no compelling reasons exist to grant a writ of certiorari in this case. Sup. Ct. R. 10.

STATEMENT OF THE CASE AND FACTS

"While serving a sentence of life [imprisonment] without the possibility of parole" for a murder he previously committed, Petitioner killed his prison cellmate during the early morning hours of June 29, 2015. *Craven*, 310 So. 3d at 895. Sometime after lockdown and while his cellmate was asleep, Petitioner removed a shank from his shorts and started the "assassination" of the victim. T-167-68, 218, 228. With the first blow, Petitioner pierced the victim's throat. *See* T-169. Immediately, the victim "started screaming and kicking and clawing." T-228. Petitioner stabbed the victim approximately 12 times in the head, throat, collarbone, and chest, with the shank penetrating deep into the skin. T-42, 169-70, 218, 228, 271. All of the blows were "intentional aims placed with a purpose"; none were "accidental or in self-defense or wild." T-228. The shank penetrated deep into the fat and into the muscle of the victim's body. T-272. The victim sustained another 18

incise wounds, where the shank cut but did not penetrate all the way through the skin. T-271. Wounds on the victim's hands were "consistent with defensive type wounds." T-276. These injuries suggest that the victim was alert and awake during the attack. T-280. All total, Petitioner inflicted about 30 wounds on the victim with the shank. T-271. The victim did not sustain any direct injuries to the heart, brain, or lungs. T-278. Consequently, he did not die immediately. T-278, 280. Rather, he died from breathing blood into his lungs and from losing blood through his jugular vein. T-278-79. Although he was covered in blood, Petitioner did not sustain any injuries during the attack. T-170. Blood stains on Petitioner's clothing contained DNA that matched the victim's profile. *Craven*, 310 So. 3d at 896.

Prior to trial, Petitioner "confessed, multiple times, to planning and following through on his plan to assassinate [the victim], both verbally and in writing, including identifying his desires to start a race riot and to get on death row as motivations for the murder." *Craven*, 310 So. 3d at 907-08.

Conceding guilt as to second-degree murder, Petitioner argued at trial that the evidence did not support the mental state necessary for a conviction as to first-degree premeditated murder. *See* T-19-20, 313. Nevertheless, the jury found, and the court adjudicated, Appellant guilty of first-degree murder. T-337, 529.

During the penalty phase, the jury unanimously found each of the following aggravating factors beyond a reasonable doubt:

1. Previous conviction of a felony under a sentence of imprisonment;
2. Previous conviction of another capital felony or of a felony involving the use of violence to another person;

3. The first-degree murder was especially heinous, atrocious, and cruel; and
4. The first-degree murder was cold, calculated, and premeditated without any pretense of moral or legal justification.

T-530-31. The jury unanimously determined that the aggravating factors were sufficient to warrant a sentence of death. T-531. Additionally, one or more jurors determined that one or more mitigating circumstances was established by the greater weight of the evidence.[1] T-531. Next, the jury unanimously determined that the aggravating factors proven beyond a reasonable doubt outweighed the mitigating circumstances established by the greater weight of the evidence. T-531. Finally, the jury unanimously recommended that Appellant should be sentenced to death. T-532.

The trial court found the same aggravating factors as the jury; and the court found five mitigating circumstances:

1. Chaotic and dysfunctional upbringing (significant weight).
2. No evidence of biological father present in Craven's life (some weight).
3. Craven is able to maintain meaningful relationships (slight weight).
4. Craven has mental health issues (significant weight).
5. Craven maintained appropriate courtroom behavior (little weight).

Craven, 310 So. 3d at 897-98. After assigning weight to the aggravation and mitigation, the trial court sentenced Petitioner to death. *Id.* at 898.

On direct appeal, Petitioner raised seven claims, only one of which is relevant here: "the trial court fundamentally erred by not instructing the penalty phase jury

[1] "The penalty phase verdict form includes the jury's finding that one or more individual jurors found that one or more mitigating circumstances was established by the greater weight of the evidence." *Craven*, 310 So. 3d at 897 n.2.

to determine beyond a reasonable doubt whether the aggravating factors were sufficient and outweighed the mitigating circumstances." *Craven*, 310 So. 3d at 898. The Supreme Court of Florida denied relief as to that claim and affirmed Petitioner's conviction and sentence. *Id.* at 902, 908.

REASON FOR DENYING THE WRIT

Petitioner's Death Sentence Does Not Violate Due Process[2]

I. Summary

Petitioner asks this Court to address whether, for death sentence eligibility, the Due Process Clause of the Fourteenth Amendment requires Florida juries in capital cases to find beyond a reasonable doubt that: the aggravating factors are sufficient to warrant the death penalty; and, the aggravating factors outweigh the mitigating circumstances. *See* Petition, p. i ("Whether a defendant's right to due process as guaranteed by the Fourteenth Amendment through requiring that every element of any offense to be proven beyond a reasonable doubt...."); *see also id.* at 17 ("By ruling the determinations as to the sufficiency and weight of the aggravating factors necessary for the imposition of the death penalty were not elements to be proven beyond a reasonable doubt, the lower court's decision deprived Craven his right to due process under the Fourteenth Amendment."). Petitioner presents no

[2] Although Petitioner lists three reasons why this Court should grant the petition, he only presents one question. Additionally, many of the arguments included within each of the three sections overlap. Consequently, the State of Florida addresses the overall question.

unsettled question of constitutional law on the issue presented. Nor does the decision below present a conflict among either state or federal court. Accordingly, review should be denied.

Under Florida law, a capital defendant is eligible to receive a sentence of death once the jury objectively finds the existence of at least one aggravating factor beyond a reasonable doubt. *See* Fla. Stat. § 921.141(2)(b)2; *see also State v. Poole*, 297 So. 3d 487, 502-03 (Fla. 2020), *cert. denied sub nom. Poole v. Florida*, 141 S. Ct. 1051 (2021). That finding by the jury: increases the maximum authorized sentence from life imprisonment without the possibility parole to death; concludes the eligibility phase of the capital sentencing process; and signals the beginning of the selection phase — where the judge and jury share a role in the determination of an appropriate sentence. Because the subjective weighing of the aggravating factors and mitigating circumstances involves the exercise of mercy, not the finding of a fact required for death sentence eligibility, the jury's participation in the selection phase does not transform the consideration of those factors into the functional equivalents of elements that must be found beyond a reasonable doubt. Whether considered by the judge, the jury, or both (as in Florida), the subjective weighing of aggravating factors and mitigating circumstances remains part of the selection phase. Put simply, what happens in the selection phase stays in the selection phase. Ultimately, the capital sentencing process that produced a death sentence in Petitioner's case does not violate the Fourteenth Amendment nor conflict with any precedent from this Court; therefore, this Court need not address the question presented.

II. Florida Law

Eligibility Phase

Under Florida law, a capital defendant is eligible to receive the death penalty once the jury unanimously finds at least one aggravating factor beyond a reasonable doubt. *See* Fla. Stat. § 921.141(2)(b)2 ("If the jury ... [u]nanimously finds at least one aggravating factor, [then] the defendant is eligible for a sentence of death...."); *see also Poole*, 297 So. 3d at 502-03 ("Under longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances."); *see generally McKinney v. Arizona*, 140 S. Ct. 702, 707 (2020) ("Under [*Ring v. Arizona*, 536 U.S. 584 (2002),] and [*Hurst v. Florida*, 577 U.S. 92 (2016)], a jury must find the aggravating circumstance that makes the defendant death eligible.").

By finding the existence of an aggravating factor beyond a reasonable doubt, the jury necessarily determines that each aggravating factor found is "sufficient" to warrant a death sentence. *See* § 921.141(2)(b)2.a ("Whether sufficient aggravating factors exist."); *see also Poole*, 297 So. 3d at 502 ("[O]ur Court was wrong in [*Hurst v. State*, 202 So. 3d 40 (Fla. 2016),] when it held that the existence of an aggravator and the sufficiency of an aggravator are two separate findings, each of which the jury must find unanimously."). For the purposes of the § 921.141(2)(b)2.a determination, "sufficient" simply means "one or more." *Poole*, 297 So. 3d at 502, quoting *Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) ("sufficient aggravating circumstances" means "one or more such circumstances").

Selection Phase

The finding of at least one aggravating factor concludes the jury's role in the sentence eligibility phase — but not its role in the overall sentencing process; if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt, then the jury proceeds to the sentence selection phase where it must evaluate the weight of the aggravating factors and mitigating circumstances. *See Poole*, 297 So. 3d at 502 (identifying the weighing of aggravating factors and mitigating circumstances as the "selection finding"); *see generally Tuilaepa v. California*, 512 U.S. 967, 971 (1994) ("Our capital punishment cases under the Eighth Amendment address two different aspects of the capital decisionmaking process: the eligibility decision and the selection decision.").

In performing its role during the selection phase, the jury must weigh two considerations: (1) "[w]hether aggravating factors exist which outweigh the mitigating circumstances found to exist"; and (2) "whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death." Fla. Stat. § 921.141(2)(b)2.b-c.; *see generally Tuilaepa*, 512 U.S. at 972, quoting *Zant v. Stephens*, 462 U.S. 862, 879 (1983) (In order for a defendant to receive the death penalty at the conclusion of the selection phase, the sentencer must make an "individualized determination," with that determination based upon a consideration of "relevant mitigating evidence of the character and record of the defendant and the circumstances of the crime.") (emphasis omitted).

After weighing those considerations, the jury must recommend to the trial court either "a sentence of death" or "a sentence of life imprisonment without the possibility of parole." Fla. Stat. § 921.141(2)(c). If the jury recommends death, then the trial court may impose either a death sentence or a sentence of life imprisonment without the possibility of parole. Fla. Stat. § 921.141(3)(a)2. If, however, the jury recommends a sentence of life without the possibility of parole, then the trial court can only impose a life sentence. Fla. Stat. § 921.141(3)(a)1.

III. Petitioner's Claim

Petitioner essentially argues that the Florida Legislature unknowingly created additional "elements" for death sentence eligibility beyond that required by the Eighth Amendment. *See generally Tuilaepa*, 512 U.S. at 971-72 ("To render a defendant eligible for the death penalty in a homicide case, we have indicated that the trier of fact must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase.").

Even though the Florida Legislature expressly stated that the finding of one aggravating factor is all that is required for death sentence eligibility, *see* Fla. Stat. § 921.141(2)(b)2, Petitioner nevertheless claims that a defendant convicted of first-degree murder in Florida is ineligible to receive a death sentence unless the jury: (1) unanimously finds beyond a reasonable doubt the existence of at least one aggravating factor; (2) unanimously finds beyond a reasonable doubt that any established aggravating factors are sufficient to justify the death penalty; (3) unanimously finds beyond a reasonable doubt that the aggravating factors outweigh

the mitigating circumstances; and (4) unanimously recommends death.[3] *See* Petition, p. 1:

> In 2017, Florida amended its death penalty statute to require a unanimous verdict as to three determinations by the jury for the defendant to become eligible for the death penalty which were: [(1)] the presence of at least once aggravating factor beyond a reasonable doubt; [(2)] whether the aggravating factor(s) are sufficient for the imposition of the death penalty; and [(3)] whether the aggravating factors outweigh any mitigating factors.

See also Hurst v. State, 202 So. 3d at 57:

> [B]efore the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death.

Receded from in *Poole*, 297 So. 3d at 491 ("As for the sentencing issue, we agree with the State that we must recede from *Hurst v. State* except to the extent that it held that a jury must unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt.").

By arguing that a jury's role in determining sentence eligibility extends beyond factfinding and continues into the subjective consideration of aggravating factors and mitigating circumstances, Petitioner claims that the jury's consideration of those factors takes place during the eligibility phase, not the selection phase of Florida's capital sentencing process. Under Petitioner's view, the jury subjectively considers a

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[3] Although Petitioner only argues the first three, the fourth represents the culmination of those three. *See* Petition, pp. 9-10, quoting § 921.141(2) (entitled "FINDINGS AND RECOMMENDED SENTENCE BY THE JURY").

set of aggravating factors and mitigating circumstances during the eligibility phase, but the trial court subjectively considers those same factors and considerations (and potentially even more mitigation) during the selection phase.

Ultimately, Petitioner argues that the jury's § 921.141(2) recommendation — which represents the culmination of the jury's weighing of aggravating factors and mitigating circumstances — determines the maximum authorized sentence under Florida law for a first-degree murder conviction. *See* Petition, p. 10 ("Thus, determinations made pursuant to § 921.141 subject a defendant to the imposition of the sentence of death which exceeds the statutory maximum of life without parole for first-degree murder....").

The following table illustrates where the Florida Legislature and Supreme Court of Florida place the various § 921.141(2) considerations as well as where Petitioner seeks to place them:

Statutory Section	Consideration	Where Florida places the consideration	Where Petitioner seeks to place the consideration
§ 921.141(2)(b)2	"at least one aggravating factor"	Eligibility phase	Eligibility phase
§ 921.141(2)(b)2.a	"whether sufficient aggravating factors exist"	Eligibility phase	Eligibility phase
§ 921.141(2)(b)2.b	"whether aggravating factors exist which outweigh the mitigating circumstances found to exist"	Selection phase	Eligibility phase
§ 921.141(2)(b).c	"whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death"	Selection phase	Eligibility phase

IV. Question of State Law

Petitioner does not argue that the Constitution necessarily requires that a jury weigh aggravating factors and mitigating circumstances during the eligibility phase of the capital sentencing process or that the Constitution requires that a jury find such weighing beyond a reasonable doubt. Rather, Petitioner argues that the Florida Legislature placed the weighing of aggravating factors and mitigating circumstances in the eligibility phase instead of the selection phase, thereby transforming the consideration of those factors into elements of the offense that must be found unanimously by the jury beyond a reasonable doubt. *See* Petition, p. i ("all of the determinations required by a state statute for the imposition of a sentence beyond

the statutory maximum for that offense"); *see also id.* at 15 ("any determinations required to raise the penalty beyond the statutory maximum must be found unanimously by a jury beyond a reasonable doubt").

Fatal to Petitioner's argument, however, the Florida Legislature and the Supreme Court of Florida have stated unequivocally that the eligibility phase ends once the jury finds at least one aggravating factor. *See* Fla. Stat. § 921.141(2)(b)2; *see also Poole*, 297 So. 3d at 502-03. And with its decision in *Poole*, the Supreme Court of Florida expressly rejected any claim that the weighing of aggravating factors and mitigating circumstances takes place during the eligibility phase. *See Poole*, 297 So. 3d at 502-04 (interpreting a previous version of the statute and rejecting defendant's "suggestion" that sufficiency and weighing are elements of the offense). Therefore, to the extent Petitioner raises a question of state law regarding the elements of an offense, this Court must defer to the state court. See *Johnson v. United States*, 559 U.S. 133, 138 (2010) (noting this Court is bound by a state supreme court's interpretation of state law, including its determination of what are the elements of a criminal statute citing *Johnson v. Fankell*, 520 U.S. 911, 916 (1997)).

V. No Conflict with this Court's Decisions

Petitioner appears to rely on 28 U.S.C. § 1257 as a basis for invoking this Court's jurisdiction, arguing that the decision by the Supreme Court of Florida below conflicts with this Court's decisions in *Alleyne v. United States*, 570 U.S. 99 (2013), *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Hurst v. Florida*, and *Ring*. *See* Petition, p. 12 ("Clearly, by continuing to hold the determinations required to expose capital

defendants to the death penalty are not elements requiring a jury verdict upon proof beyond a reasonable doubt, the Florida Supreme Court opinion in this case expressly and directly conflicts with this Court's opinions in *Apprendi*, *Ring*, *Alleyne*, and *Hurst*."); *see also id.* at 13 ("Those [Supreme Court of Florida decisions] are in express and direct conflict with this Court's decisions in *Apprendi*, *Ring*, *Alleyne*, and *Hurst*, which specifically hold that any fact which exposes a criminal defendant to a penalty beyond the statutory maximum of the offense the jury found her or him guilty of is regarded as an element to be found by the jury beyond a reasonable doubt.").

However, no such conflict exists. *Apprendi*, *Ring*, and *Alleyne* all deal with facts that increase the maximum authorized sentence — not subjective determinations involving questions of mercy. *See Apprendi*, 530 U.S. at 490 ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."); *see also Ring*, 536 U.S. at 589 ("Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment."); *Alleyne*, 570 U.S. at 103 ("[A]ny fact that increases the mandatory minimum is an 'element' that must be submitted to the jury.").

To the extent Petitioner argues that *Hurst* categorizes the weighing of aggravating factors and mitigating circumstances as factfinding under Florida's capital sentencing statute, *see Hurst*, 577 U.S. at 99-100, this Court's subsequent decisions in *Kansas v. Carr*, 577 U.S. 108 (2016), and *McKinney* eliminated any

possible confusion regarding the factfinding required for death penalty eligibility: a capital defendant becomes eligible to receive a death sentence when the trier of fact makes an objective, factual determination that at least one aggravating factor exists beyond a reasonable doubt. *See Carr*, 577 U.S. at 119 (identifying the aggravating-factor determination as the so-called "eligibility phase," which involves a purely factual determination); *see also McKinney*, 140 S. Ct. at 707 ("[A] jury must find the aggravating circumstance that makes the defendant death eligible.").

Quite clearly, *Carr* and *McKinney* confirmed the continued viability of decisions from this Court holding that the finding of at least one aggravating factor beyond a reasonable doubt is all that is required for a defendant convicted of murder to be eligible for a sentence of death. *See, e.g.*, *Sattazahn v. Pennsylvania*, 537 U.S. 101, 111 (2003):

> [F]or purposes of the Sixth Amendment's jury-trial guarantee, the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances": Whereas the former exposes a defendant to a maximum penalty of life imprisonment, the latter increases the maximum permissible sentence to death.

In doing so, *Carr* and *McKinney* also confirmed the continued viability of both § 921.141(2)(b)2 and *Poole*. *Compare Tuilaepa*, 512 U.S. at 971-72 ("To render a defendant eligible for the death penalty in a homicide case, we have indicated that the trier of fact must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase."), *with* § 921.141(2)(b)2 ("If the jury ... [u]nanimously finds at least one aggravating factor, [then] the defendant is eligible for a sentence of death...."), *and with Poole*, 297 So.

3d at 502-03 ("Under longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances.").

Furthermore, *McKinney* clearly holds that the jury is not constitutionally required to weigh the aggravating factors and mitigating circumstances during any phase of the capital sentencing process; the judge alone can conduct that subjective analysis. *See McKinney*, 140 S. Ct. at 707 ("[I]n a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weight the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range.").

If *McKinney* recognizes that the jury need not participate in the selection phase, then it stands to follow that the trier of fact's participation in the selection phase does not automatically transform subjective considerations of aggravating factors and mitigating circumstances into the functional equivalents of elements. *Cf. Apprendi*, 530 U.S. at 481 ("We should be clear that nothing in this history suggests that it is impermissible for judges to exercise discretion — taking into consideration various factors relating both to offense and offender — in imposing a judgment *within the range* prescribed by statute.") (emphasis in original); *cf. also Alleyne*, 570 U.S. at 116 ("Our ruling today does not mean that any fact that influences judicial discretion must be found by a jury. We have long recognized that broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment.").

Regardless of whether the capital sentencer is the judge, the jury, or a combination of both, the weighing of aggravating factors and mitigating

circumstances involves a subjective question of mercy that by definition takes place during the selection phase. *See generally Carr*, 577 U.S. at 119 ("And of course the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy — the quality of which, as we know, is not strained."); *see also Caldwell v. Mississippi*, 472 U.S. 320, 340 n.7 (1985), quoting *Zant v. Stephens*, 462 U.S. at 900 (Rehnquist, J., concurring in judgment) ("[I]n one crucial sphere of a system of capital punishment, the capital sentencer comes very near to being 'solely responsible for [the defendant's] sentence,' and that is when it makes the often highly subjective, 'unique, individualized judgment regarding the punishment that a particular person deserves.'") (emphasis and citation omitted). Put simply, what happens in the selection phase stays in the selection phase.

As the foregoing demonstrates, the decision by the Supreme Court of Florida did not conflict with this Court's decision in *Alleyene*, *Apprendi*, *Hurst*, or *Ring*. In Petitioner's case, the lower court correctly held that the jury's weighing of aggravating factors and mitigating circumstances is not an element subject to the beyond a reasonable doubt standard of proof. *See Craven*, 310 So. 3d at 902, citing *McKinney*, 140 S. Ct. at 707. Because Florida law clearly and correctly indicates that the eligibility phase ends once the jury finds the existence of at least one aggravating factor beyond a reasonable doubt, there is no conflict with this Court's precedent.

VI. No Unsettled Question or Conflict Among the Lower Courts

There is also no meaningful conflict with any other state or federal appellate court.[4] Even before *McKinney*, "[n]early every court that [had] considered the issue [had] held that the Sixth Amendment is applicable to only the fact-bound eligibility decision concerning an offender's guilt of the principal offense and any aggravating circumstances." *State v. Mason*, 108 N.E.3d 56, 64 (Ohio 2018) (citing cases).[5] Similarly, "[e]very [federal] circuit" that had addressed the argument that *Apprendi* requires jury weighing of aggravators and mitigators had "rejected" that claim. *United States v. Gabrion*, 719 F.3d 511, 532-33 (6th Cir. 2013) (en banc) (joining six other federal courts of appeals).

In light of *McKinney*, it is now "crystal clear [that] *Hurst* addressed only the finding of aggravating facts and had nothing to do with the weighing process." *United States v. Tsarnaev*, 968 F.3d 24, 89 (1st Cir. 2020) (explaining that "*McKinney* helps sink Dzhokhar's claim that *Hurst* requires the jury to make the weighing

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[4] The lone outlier on this question is *Rauf v. Delaware*, 145 A.3d 430 (Del. 2016), which was decided four years before this Court's decision in *McKinney*. Quite clearly, *McKinney* illustrates that *Rauf* misapprehended the requirements of the Constitution. *See McKinney*, 140 S. Ct. at 708 ("In short, *Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances, and *Ring* and *Hurst* did not overrule [*Clemons v. Mississippi*, 494 U.S. 738 (1990),] so as to prohibit appellate reweighing of aggravating and mitigating circumstances.").

[5] *See State v. Wood*, 580 S.W.3d 566, 582-88 (Mo. 2019) (correcting *State v. Whitfield*, 107 S.W.3d 253 (Mo. 2003)); *Evans v. State*, 226 So. 3d 1, 38-39 (Miss. 2017); *Ex parte Alabama*, 223 So. 3d 954, 966 (Ala. Crim. App. 2016); *State v. Belton*, 74 N.E.3d 319, 337 (Ohio 2016); *Nunnery v. State*, 263 P.3d 235, 250-51 (Nev. 2011); *State v. Fry*, 126 P.3d 516, 534 (N.M. 2005); *Commonwealth v. Roney*, 866 A.2d 351, 361 (Pa. 2005); *Ritchie v. State*, 809 N.E.2d 258, 268 (Ind. 2004); *Oken v. State*, 835 A.2d 1105, 1147 (Md. Ct. App. 2003); *State v. Gales*, 658 N.W.2d 604, 626 (Neb. 2003).

determination beyond a reasonable doubt"); *see also People v. Suarez*, 471 P.3d 509, 565 (Cal. 2020) (quoting *McKinney* for the proposition that *Hurst* "did not require jury weighing of aggravating and mitigating circumstances"). Accordingly, it does not appear that any court has held, post-*McKinney*, that the Sixth Amendment requires jury weighing of aggravators and mitigators, even if the pertinent sentencing statute provides that a sentence of death may not be imposed unless the sentencing authority determines that aggravators outweigh mitigators.

The decision below presents no unsettled question of constitutional law or meaningful conflict with that of any federal or state appellate court. Accordingly, certiorari should be denied.

CONCLUSION

This case presents no constitutional question or controversy worthy of this Court's review. Therefore, Respondent respectfully submits that this Court should deny the petition.

Respectfully submitted,
ASHLEY MOODY
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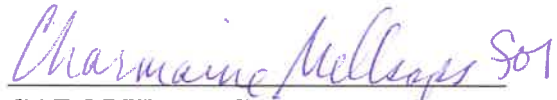

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