No. 21-5280

IN THE

Supreme Court of the United States

ROBERT CRAFT,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Petitioner Robert Craft pled guilty to and was convicted of first-degree murder. After he waived the right to a penalty-phase jury, the trial court found the existence of four aggravating circumstances beyond a reasonable doubt and concluded that those aggravators were sufficient to warrant the death penalty, outweighed the mitigating circumstances, and that death was the appropriate sentence.

On appeal, Petitioner argued for the first time that the trial court committed "fundamental error" in not applying the beyond-a-reasonable-doubt standard to its finding as to the sufficiency of the aggravating circumstances. The Florida Supreme Court rejected that claim. This Court's decisions in *McKinney v. Arizona*, 140 S. Ct. 702 (2020), and *Hurst v. Florida*, 577 U.S. 92 (2016), it explained, did not require that the finding at issue here—that "sufficient aggravating factors exist"—be made beyond a reasonable doubt. In *McKinney*, this Court explicitly stated that its decisions in *Ring v. Arizona*, 536 U.S. 584 (2002), and *Hurst* only require a jury to find the existence of an aggravating circumstance beyond a reasonable doubt. 140 S. Ct. at 707-08.

The question presented is:

Whether the Florida Supreme Court erred, as a matter of federal law, in rejecting Petitioner's unpreserved claim of fundamental error.

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STATEMENT

1. In *Hurst v. Florida*, 577 U.S. 92 (2016), this Court held that Florida's capital sentencing scheme violated the Sixth Amendment in light of *Ring v. Arizona*, 536 U.S. 584 (2002). Under Florida law, the maximum sentence a capital felon could receive based on a conviction alone was life imprisonment. *Hurst*, 577 U.S. at 95. Capital punishment was authorized "only if an additional sentencing proceeding 'result[ed] in findings by the court that such person shall be punished by death.'" *Id.* (quoting § 775.082(1), Fla. Stat. (2010)). At that additional sentencing proceeding, a jury would render an advisory verdict recommending for or against the death penalty, and in making that recommendation was instructed to consider whether sufficient aggravating factors exist, whether mitigating circumstances exist that outweigh the aggravators, and, based on those considerations, whether death is an appropriate sentence. § 921.141(2)(a)-(c), Fla. Stat. (2010).

This Court observed that it had previously declared invalid Arizona's capital sentencing scheme because the jury there did not make the "required finding of an aggravated circumstance"—which exposed a defendant to "a greater punishment than that authorized by the jury's guilty verdict"—the Court held that that criticism "applie[d] equally to Florida's." *Hurst*, 577 U.S. at 98 (quoting *Ring*, 536 U.S. at 604). "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, [was] therefore unconstitutional." *Id.* at 103.

In response to *Hurst* and the Florida Supreme Court's subsequent interpretation of that decision, the Florida Legislature repeatedly amended section 921.141 to

comply with those rulings. As relevant here, the amended law requires the jury, not the judge, to "determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor." § 921.141(2)(a) Fla. Stat. (2017). If the jury concludes that no aggravating factor has been proven, the defendant is "ineligible" for the death penalty. *Id.* § 921.141(2)(b)1. If on the other hand the jury unanimously finds at least one aggravator, the defendant is "eligible for a sentence of death." *Id.* § 921.141(2)(b)2. In that event, the jury must make a sentencing recommendation based on a weighing of three considerations: *first*, "[w]hether sufficient aggravating factors exist";[1] *second*, "[w]hether aggravating factors exist which outweigh the mitigating circumstances found to exist"; and *third*, based on the other two considerations, "whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death." § 921.141(2)(b)2.a.-c.

By assigning to the jury those latter three findings, the Florida Legislature granted capital defendants procedural protections beyond what *Hurst* required. *See Hurst*, 577 U.S. at 103 (requiring a jury to find "the existence of an aggravating circumstance"); *see also id.* at 105–06 (Alito, J., dissenting) ("[T]he Court's decision is

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[1] As construed by the Florida Supreme Court, "it has always been understood that . . . 'sufficient aggravating circumstances' means 'one or more.'" *State v. Poole*, 297 So. 3d 487, 502 (Fla. 2020) (citing cases). Any "suggestion that 'sufficient' implies a qualitative assessment of the aggravator–as opposed simply to finding that an aggravator exists–is unpersuasive and contrary to this decades-old precedent." *Id.* at 502–03 (disapproving prior case holding that "the existence of an aggravator and the sufficiency of an aggravator are two separate findings, each of which the jury must find unanimously," and explaining that, "[u]nder longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances").

based on a single perceived defect, *i.e.*, that the jury's determination that at least one aggravating factor was proved is not binding on the trial judge."). Neither section 921.141 nor the standard jury instructions require that the jury undertake those determinations by any particular standard of proof.

2. While an inmate in a Florida prison, Petitioner Robert Craft strangled and beat to death a fellow inmate, Darren W. Shira, in the cell they shared. *Craft v. State*, 312 So. 3d 45, 47 (Fla. 2020). Petitioner subsequently confessed multiple times, including in two recorded statements to the Florida Department of Law Enforcement and in letters to the state attorney's office and the trial court. *Id.*

Specifically, Petitioner confessed to planning the murder days in advance, after he discovered that the victim was a child molester. *Id.* at 47–48. Petitioner admitted that he intentionally "tortured" the victim and beat him for approximately thirty minutes before strangling him to death with his hands and tying part of his prison pants around the victim's neck. *Id.* Petitioner also told law enforcement that he wanted the murder to be "CCP" and asked if it would be considered a hate crime because the victim was Jewish, gay, a child molester, and ex-Navy. *Id.*

3. Petitioner proceeded pro se, pled guilty to first-degree murder, waived the right to a jury during the penalty phase, and attempted to waive the presentation of mitigating evidence. *Id.* at 48. His penalty phase was therefore conducted solely before a judge.

At that proceeding, Petitioner again attempted to waive the presentation of mitigating evidence. *Id.* at 48-49. However, Petitioner presented the testimony of four

relatives, all of whom testified about Craft's traumatic childhood, background, and their love for him. *Id.* at 50. Petitioner also testified on his own behalf, admitting he murdered the victim, explaining that he wanted the death sentence, and expressing love for his family. *Id.* at 51. The State then presented non-statutory mitigation based on a pre-sentence investigative report, mental health evaluations, and other facts present in the court file. *Id.*

Petitioner did not ask the trial court—in making its findings as to sufficiency—to apply the beyond-a-reasonable-doubt standard of proof.

In its sentencing order, the trial court concluded that death was the appropriate sentence. R. 156. It found the following four aggravating circumstances beyond a reasonable doubt: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment; (2) prior violent felony; (3) the capital felony was especially heinous, atrocious, or cruel (HAC); and (4) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP). R. 145–51. It assigned each of these aggravators either "great weight" or "very great weight." R. 155–56. And it found that "the aggravating factors clearly, convincingly, and beyond a reasonable doubt outweigh the mitigating factors." R. 156.

4. On appeal, Petitioner asked the Florida Supreme Court to reverse for a new penalty phase because the trial court failed to find the sufficiency of the aggravators beyond a reasonable doubt, which he alleged was a "fundamental error." Initial Br., *Craft v. State,* No. SC19-953, at *60–61 (Nov. 12, 2019). Under Florida law, the

fundamental error doctrine is a basis for reversing due to unpreserved but egregious trial court errors. The Florida Supreme Court rejected that claim. *Craft*, 312 So. 3d at 57. It explained that, under this Court's most recent pronouncements, and its own, that finding is not an element. *Id.* (citing *McKinney v. Arizona*, 140 S. Ct. 702 (2020), and *Rogers v. State*, 285 So. 3d 872, 886 (Fla. 2019)). Thus, this determination is "not subject to the beyond a reasonable doubt standard of proof." *Id.* (quoting *Newberry v. State*, 288 So. 3d 1040, 1047 (Fla. 2019)).

5. Several months before the Florida Supreme Court's decision, this Court decided *McKinney*. There, Court confirmed that, under *Ring* and *Hurst*, the Sixth Amendment only requires the jury to find the existence of an aggravating circumstance. *Id.* at 707–08. The sufficiency of the aggravating factors may instead constitutionally be made by a judge. In other words, the sufficiency of the aggravators is not an element of capital murder under *Apprendi* and its progeny. *See id.*

REASONS FOR DENYING THE PETITION

I. The Decision Below Is Correct.

In rejecting Petitioner's claim that the trial court fundamentally erred by sentencing him to death without finding that the aggravating factors were sufficient to impose death beyond a reasonable doubt, the Florida Supreme Court explained that Petitioner failed to show error. *Craft v. State*, 312 So. 3d 45, 57 (Fla. 2020). The court was right to hold the sufficiency determination is not an "element," *id.*, and its opinion correctly applied this Court's precedents to Florida's capital sentencing scheme.

1. As the Florida Supreme Court has explained, the penalty phase findings at issue here—whether the aggravators are sufficient—is "not [an] element[] of the capital felony of first-degree murder." *Rogers v. State*, 285 So. 3d 872, 885 (Fla. 2019), *cert. denied*, *Rogers v. Florida*, 141 S. Ct. 284 (Oct. 5, 2020); *see also State v. Poole*, 297 So. 3d 487, 503–13 (Fla. 2020), *cert. denied*, *Poole v. Florida*, No. 20-250 (Jan. 11, 2021). "Rather, [it is a] finding[] required of a jury: (1) *before* the court can impose the death penalty for first-degree murder, and (2) *only after* a conviction or adjudication of guilt for first-degree murder has occurred." *Rogers*, 285 So. 3d at 885 (emphases in original). That is, the sufficiency of the aggravators is a sentencing factor intended to make the imposition of capital punishment less arbitrary by guiding the exercise of the judge and jury's discretion within the applicable sentencing range.

The plain text of Florida's death-penalty statute supports this reading:

> If the jury . . . [u]nanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death.

§ 921.141(2)(b)2., Fla. Stat.

2. In light of this Court's recent decision in *McKinney v. Arizona*, 140 S. Ct. 702 (2020), Petitioner's contrary argument fails on its own terms. Petitioner frames the constitutional question as whether the sufficiency of the aggravators can be characterized as the functional equivalent of an element. *See* Pet. 8–17. But Petitioner does not cite—let alone address—*McKinney*, which rejected the theory that a jury must do more than find the existence of an aggravating factor beyond a

reasonable doubt, and thus made clear that a determination that aggravators are sufficient to impose the death penalty is not an "element" of capital murder for purposes of *Apprendi* and its progeny.

In *McKinney*, a capital defendant challenged his death sentence because the sentencing judge had failed to consider his posttraumatic stress disorder (PTSD) as a mitigating factor, thereby violating *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (holding that a capital sentencer may not refuse as a matter of law to consider relevant mitigating evidence). On remand from the Ninth Circuit, the Arizona Supreme Court performed its own *de novo* weighing of the aggravators and mitigators, including the defendant's PTSD, and upheld the sentence. *McKinney*, 140 S. Ct. at 706. In the state supreme court's independent judgment, the balance of the aggravators and mitigators warranted the death penalty. *Id.*

On certiorari review, the defendant argued that "a jury must resentence him" because a court "could not itself reweigh the aggravating and mitigating circumstances." *Id.* This Court rejected that claim because, "Under *Ring* and *Hurst*," "a jury must find the aggravating circumstance that makes the defendant death eligible." *Id.* at 707. "[I]mportantly," however, "in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range." *Id.*; *see also id.* at 708 (explaining that "*Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances").

Because the Sixth Amendment permits the "weigh[ing] [of] aggravating and mitigating" evidence by judges, *id.* at 707, the determination that aggravators outweigh mitigators, or the determination that the aggravators are sufficient to impose a death sentence, cannot be considered an "element" of the offense. And because those determinations are not elements, they are not subject to the beyond-a-reasonable-doubt standard. *See Alleyne v. United States*, 570 U.S. 99, 107 (2013) ("The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged offense."). In other words, *McKinney* rejects an essential premise of Petitioner's argument: that anything more than the finding of an aggravating factor is either an "element" or the "functional equivalent" of an element. *See* Pet. 8–17.

The outcome is not different simply because Florida has chosen to assign (in cases where the right to a penalty-phase jury has not been waived) the sufficiency of the aggravators determination to the jury, rather than the judge as it constitutionally could have. If the Sixth Amendment permits a judge to determine whether aggravators outweigh mitigators, or whether the aggravators are sufficient to impose the death penalty, and further permits the judge to make either determination by some lesser standard (or none at all), nothing prevents the state from re-allocating that task to the jury by the same standard of proof. Any contrary theory would punish states for being *more* generous in extending procedural protections to capital defendants by forcing them to extend *all* available procedural protections. But because the weight of the aggravators is not an element of a capital offense, that

determination need not be found by a jury and, correspondingly, need not be found beyond a reasonable doubt. *See McKinney*, 140 S. Ct. at 707–08.

Finally, the statutory requirement that the jury weigh, among other considerations, "[w]hether sufficient aggravating factors exist," § 921.141(2)(b)2.a., Fla. Stat., adds nothing to Petitioner's argument. As construed by the Florida Supreme Court, "it has always been understood that . . . 'sufficient aggravating circumstances' means 'one or more.'" *Poole*, 297 So. 3d at 502 (citing cases). Put differently, "[u]nder longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances." *Id.* at 502–03. And it is undisputed that, in this case, that requirement was satisfied when the judge found multiple aggravating circumstances beyond a reasonable doubt. *See* R. 145–55.

3. For reasons this Court has already explicated, it would make little sense to apply the beyond-a-reasonable-doubt standard to normative determinations of the kind at issue here. In *Kansas v. Carr*, this Court "doubt[ed]" that it is "even possible to apply a standard of proof to the mitigating-factor determination." 577 U.S. 108, 119 (2016). This Court reasoned that "[i]t is possible to do so for the aggravating-factor determination," on the one hand, because the existence of an aggravator "is a purely factual determination." *Id.* Whether mitigation exists, on the other hand, "is largely a judgment call"—or "perhaps a value call"—just as the "ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy." *Id.* Thus, "[i]t would mean nothing . . . to tell the jury that the

defendants must deserve mercy beyond a reasonable doubt; or must more-likely-than-not deserve it." *Id.*

The beyond-a-reasonable-doubt standard ensures that the prosecution must "persuad[e] the factfinder at the conclusion of the trial of [the defendant's] guilt beyond a reasonable doubt." *In re Winship*, 397 U.S. 358, 364 (1970). This safeguard preserves the "moral force of the criminal law" because it does not "leave[] people in doubt whether innocent men are being condemned." *Id.* But sufficiency and weighing do not go to whether the defendant is guilty of a capital offense—that question is answered when the jury finds the existence of an aggravated first-degree murder. *See McKinney*, 140 S. Ct. at 707; *Kansas v. Marsh*, 548 U.S. 163, 175–76 (2006). Sufficiency and weighing instead go to the appropriateness of the penalty. That is, they are normative judgments, not facts.

A fact is "something that has actual existence" or, perhaps more appropriately in this context, is "a piece of information presented as having objective reality." "Fact," Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/fact. Facts have their basis in observable truths about the world. A fact either is or isn't; although a person's perception of facts may be open to debate, facts are objectively discernable. By contrast, normative judgments are opinions. As such, they turn on the subjective views of individual decisionmakers. In short, they are questions involving discretion.

Consequently, a jury is not better situated to make normative determinations than a judge. Indeed, sufficiency and weighing no more need be conducted by a jury

than the traditional in-range sentencing discretion performed by judges throughout the nation countless times each day. As *McKinney* recognized, *Apprendi* expressly reserved for judges the power to exercise that type of discretion. *McKinney*, 140 S. Ct. at 707 ("[T]his Court carefully avoided any suggestion 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.'" (quoting *Apprendi v. United States*, 530 U.S. 466, 481 (2000))); *see also Proffitt v. Florida*, 428 U.S. 242, 252 (1976) (plurality opinion) ("[I]t would appear that judicial sentencing should lead, if anything, to even greater consistency in the imposition . . . of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences similar to those imposed in analogous cases.").

4. Petitioner's substantial expansion of the *Apprendi* doctrine would have significant and troubling practical implications, including for non-capital sentencing. The federal statute governing criminal sentences, for example, provides that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with" certain statutorily enumerated sentencing factors. 18 U.S.C. § 3553(a). Given that a federal sentence must, by statute, be supported by a normative judgment that the chosen sentence is "not greater than necessary" to effectuate "the purposes set forth in" the statutory sentencing factors, *see id.*, must that "finding" be made by a jury beyond a reasonable doubt? And if not, why is that normative judgment any different than the moral determination at issue here—i.e., that aggravating factors

outweigh mitigating circumstances? *See United States v. Gabrion*, 719 F.3d 511, 533 (6th Cir. 2013) (en banc).

Notably, Petitioner himself appears unwilling to accept the practical consequences of his own theory. Petitioner asks this Court to rule that a determination—sufficiency—must be made beyond a reasonable doubt. But the statute also provides that the trial court may not impose death unless the jury further determines, based on that factor and whether the aggravators outweigh the mitigators, that death is the appropriate sentence. *See* § 921.141(2)(b)2.c., (3)(a)2., Fla. Stat. (requiring the jury to determine, based on sufficiency and weighing, "whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death," and providing that the court may sentence the defendant to death if, and only if, "the jury has recommended a sentence of . . . [d]eath"). Petitioner nevertheless does not go so far as to say that the jury's ultimate recommendation that "the defendant should be sentenced to . . . death," § 921.141(2)(b)2.c., Fla. Stat., must be made beyond a reasonable doubt. And for good reason: "Any argument that the Constitution requires that a jury impose the sentence of death," this Court has explained, "has been soundly rejected by prior decisions of this Court." *Clemons v. Mississippi*, 494 U.S. 738, 745 (1990); *see also McKinney*, 140 S. Ct. at 707; *Proffitt*, 428 U.S. at 252 (plurality opinion).

Nor would Petitioner's proposed extension of the *Apprendi* doctrine necessarily redound to the benefit of criminal defendants. If state laws like the one Petitioner asks this Court to strike down—those that seek to *protect* criminal defendants by

reducing the risk of arbitrariness and guiding a sentencing authority's discretion to impose particularly harsh punishments—give rise to otherwise non-existent due process problems, lawmakers may well respond by repealing, rolling back, or declining to create such protections in the first place. That is one reason why this Court has "warned against wooden, unyielding insistence on expanding the *Apprendi* doctrine far beyond its necessary boundaries." *Oregon v. Ice*, 555 U.S. 160, 172 (2009) (citation omitted) (quotation marks omitted); *see Ring*, 536 U.S. at 613 (Kennedy, J., concurring).

5. All of this explains why this Court has denied certiorari in several cases presenting this identical issue, *see Rogers v. Florida*, No. 19-8473; *Bright v. Florida*, No. 20-6824; *Craven v. Florida*, No. 20-8403; *Santiago-Gonzalez v. Florida*, No. 20-7495, and in a case presenting the underlying question whether the Sixth and Eighth Amendments require that a jury find that the aggravators outweighed the mitigators, *see Poole v. Florida*, No. 20-250.

II. The Decision Below Does Not Conflict with This Court's Precedents.

Petitioner does not assert that his question presented implicates a division among the lower courts. *See* Pet. 8–17. Instead, he claims that the Florida Supreme Court's decision "conflicts with this Court's decisions in *Apprendi*, *Ring*, *Alleyne*, and *Hurst v. Florida*." *Id.* at 13. Petitioner is incorrect.

The cases he cites do not conclude that the beyond-a-reasonable-doubt standard applies to non-factual determinations intended to guide the jury's sentencing

recommendation. To the contrary, those cases evince this Court's understanding that that standard of proof is limited to *factual* findings. Due Process prescribes the beyond-a-reasonable-doubt standard only to "facts" found by "the factfinder." *In re Winship*, 397 U.S. at 363–64. The Due Process Clause, the Court there held, "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Id.* at 364; *see also Alleyne*, 570 U.S. at 103 ("Any fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt.").

Consistent with *Winship*, this Court in *Apprendi* expressly and repeatedly explained that the beyond-a-reasonable-doubt standard of proof applies to "facts." For example, the Court:

- required the states to "adhere to the basic principles undergirding the requirements of trying to a jury all facts necessary to constitute a statutory offense, and proving those facts beyond reasonable doubt," *Apprendi v. United States*, 530 U.S. 466, 483–84 (2000);
- referenced the jury's "assessment of facts," *id.* at 490 (citation omitted) (quotation marks omitted);
- described the "novelty of a legislative scheme that removes the jury from the determination of a fact that, if found, exposes the criminal defendant to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone," *id.* at 482–83 (emphasis omitted); and

- explained that "constitutional limits exist to States' authority to define away facts necessary to constitute a criminal offense" and "a state scheme that keeps from the jury facts that 'expos[e] [defendants] to greater or additional punishment' may raise serious constitutional concern." *Id.* at 486 (internal citation omitted).

Thus, *Apprendi* did not hold that the beyond-a-reasonable-doubt standard should be extended to non-factual normative judgments of the kind at issue here, and this Court's statements concerning that standard of proof undermine rather than support Petitioner's claim.

This Court's cases applying *Apprendi* to the capital sentencing context likewise did not hold that the Due Process Clause requires the jury to determine, beyond a reasonable doubt, that normative considerations support the imposition of the death penalty. In *Ring*, for example, this Court explained that "[c]apital defendants, no less than noncapital defendants, . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." 536 U.S. at 589. So too in *Hurst*, where this Court reiterated that the sentencing scheme in *Ring* violated the defendant's right to have "a jury find the facts behind his punishment." 577 U.S. at 98; *see also id.* at 94 ("The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.").

In sum, the decision below does not conflict with this Court's precedents. None of the cases Petitioner cites held that a jury (or here, a judge) must find beyond a reasonable doubt that aggravating factors are sufficient to warrant the imposition of

capital punishment; and still less did those cases hold that a trial court commits fundamental error under Florida law if it does not *sua sponte* provide itself some such instruction. What is more, the reasoning of those cases expressly ties the beyond-a-reasonable-doubt standard to factfinding of a kind not at issue here—and thus undermines rather than supports Petitioner's claim.

III. This Case Is a Poor Vehicle for Resolving Petitioner's Question Presented.

Petitioner's case presents a poor vehicle for this Court to resolve his Question Presented because even if the trial court erred by failing to find a normative determination beyond a reasonable doubt, there exists no possibility that Petitioner would receive relief.

Even if the state trial court erred in not *sua sponte* instructing itself in a manner Petitioner did not ask for—and that no court has ever deemed necessary—any such determination from this Court would not affect Petitioner's sentence. That is because a defendant who appeals an unpreserved claim of error at sentencing must meet the "high burden," under Florida law, of showing that "the [judge's] recommendation of death could not have been obtained without the assistance of the alleged error." *Smiley v. State*, 295 So. 3d 156, 172 (Fla. 2020); *see Williams v. State*, 209 So. 3d 543, 558 (Fla. 2017).

Of particular relevance, ample record evidence supports the trial court's determination that the aggravators were sufficient to impose the death penalty. Petitioner beat and strangled his cellmate for half an hour, admitting later to

investigators that the murder was premeditated. Petitioner attempted to waive the presentation of mitigation evidence and asked the trial court for the death penalty. And Petitioner was sentenced to death based on four aggravators: (1) murder committed while under sentence of imprisonment, (2) prior violent felony, (3) HAC, and (4) CCP. As the Florida Supreme Court explained, three of those factors—prior violent felony, HAC, and CCP—have repeatedly been identified "three of the most serious and weighty aggravators" in Florida's death penalty scheme. *Craft*, 312 So. 3d at 56.

Not only can Petitioner not demonstrate prejudice under his unique facts, the better view is that "[i]t would [have] mean[t] nothing" to say that certain "value call[s]"—like whether the aggravators were sufficient and whether the defendant deserves mercy—must be found "beyond a reasonable doubt." *Carr*, 577 U.S. at 119.

In short, Petitioner cannot show that any error in his case was harmful under state law, and therefore he would not be entitled to any relief even if his federal constitutional claim had merit. *See* Stephen M. Shapiro et al., Supreme Court Practice § 4.4(f) (10th ed. 2013) (observing that "certiorari may be denied" where the question presented is "irrelevant to the ultimate outcome of the case").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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