No. 21-8187

**In The**
**Supreme Court of the United States**

JESSE BELL,
*Petitioner*,
v.

STATE OF FLORIDA,
*Respondent*.

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

# BRIEF IN OPPOSITION TO CERTIORARI

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**Capital Case**

## QUESTION PRESENTED

Jesse Bell was sentenced to death after pleading guilty to the first-degree murder of Donald Eastwood while both were in prison. He seeks certiorari review of the Florida Supreme Court's rejection of his argument that the weighing and sufficiency selection criteria in Florida's capital system are subject to the beyond a reasonable doubt standard. Under Florida's system, the finding of a single aggravator renders a defendant eligible for a capital sentence. When—as Bell did below—a defendant waives his penalty phase jury, the sentencing court is only required to consider the aggravation and mitigation and find an aggravator before imposing death. Florida's system does not require the sentencing judge to determine either sufficiency of the aggravators or weigh them against the mitigation when a penalty-phase jury is waived. More fundamentally, the sentencing court made both findings Bell argues are constitutionally required at a beyond a reasonable doubt standard. His question is therefore purely academic and he lacks Article III standing to have it answered by this Court.

This Court should accordingly decline to exercise certiorari jurisdiction over the following question presented:

I. Does the Fourteenth Amendment's due process clause require a judge under Florida's capital system to weigh the sufficiency of the aggravators and determine whether they outweigh the mitigation under a beyond a reasonable doubt standard when a defendant waives his right to a penalty phase jury?

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## OPINION BELOW

The Florida Supreme Court's decision petitioned for review appears as *Bell v. State*, 336 So. 3d 211, 213 (Fla. 2022), *reh'g denied*, No. SC20-472, 2022 WL 819738 (Fla. Mar. 18, 2022).

## JURISDICTION

This Court has statutory jurisdiction over the Florida Supreme Court's determination that the federal due process clause does not require a determination that the aggravators are sufficient and outweigh the mitigators beyond a reasonable doubt. *See* 28 U.S.C. § 1257(a); 28 U.S.C. § 2101(d). But (as explained below) since the question Bell presents will not affect him in any way, this Court lacks Article III jurisdiction to grant certiorari under the doctrine of standing.

## CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution, section one:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## EXCERPT FROM FLORIDA'S CAPITAL SENTENCING STATUTE

### 921.141. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence

**(1) Separate proceedings on issue of penalty.**--Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating factors enumerated in subsection (6) and for which notice has been provided pursuant to s. 782.04(1)(b) or mitigating circumstances enumerated in subsection (7). Any such evidence that the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

**(2) Findings and recommended sentence by the jury.**--*This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.*

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously 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. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

**(3) Imposition of sentence of life imprisonment or death.--**

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.

2. Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

*(b) If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist beyond a reasonable doubt.*

**(4) Order of the court in support of sentence of death.**--In each case in which the court imposes a sentence of death, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (6) found to exist, the mitigating circumstances in subsection (7) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

§ 921.141(1)–(5), Fla. Stat. (effective October 1, 2019 to the present) (emphasis added).

## STATEMENT OF THE CASE

This certiorari petition arises from the Florida Supreme Court's affirmance of Petitioner's conviction and capital sentence for the first-degree murder of Donald Eastwood.

### *Facts*

The underlying facts are set forth in the opinion below. *Bell*, 336 So. 3d at 212–16. Jesse Bell and his prison cellmate planned to murder a correctional officer. *Id.* at 212–13 & n.1. They developed an elaborate plan that included a rehearsal

murder target (Eastwood) who they picked because they believed he was a child molester and a homosexual. *Id.* Over about a month, Bell and his cellmate executed their plan and fashioned sharp objects "resembling ice picks." *Id.*

> Bell and Noetzel selected a date for carrying out the murders and, consistent with their plan, invited Eastwood to their cell for a cup of coffee. Once Eastwood arrived, Noetzel—who was sitting on the toilet pretending to play a game on his tablet—invited him to look at his tablet screen. When Eastwood leaned over to look at the screen, Bell placed him in a chokehold while Noetzel retrieved a makeshift knife and stabbed Eastwood in the left eye.
>
> Eastwood passed out from the attack. Leaving the knife in Eastwood's eye, Noetzel hung up a curtain to prevent others from seeing into the cell. Eastwood regained consciousness, attempted to stand, and asked Bell and Noetzel what he had done to provoke the attack. Bell choked Eastwood again, causing him to again lose consciousness. At that point, either Bell or Noetzel pulled the knife out of Eastwood's left eye and stabbed him in his right eye.
>
> Eastwood attempted to sit up. However, Bell "cranked down" on Eastwood's neck and held him down. When Bell heard Eastwood make another noise, he choked him a third time until Eastwood's face turned purple. Finally, Bell pushed Eastwood's face into a pool of his own blood to ensure he was dead.

*Id.* at 213. Bell and his cellmate then went to the prison cafeteria and repeatedly stabbed the correctional officer. *Id.* The correctional officer ultimately survived. *Id.*

Bell confessed to murdering Eastwood in multiple recorded interviews, and the State indicted him with first-degree murder and sought the death penalty. *Id.* Bell asserted his right to represent himself pro se, pled no contest, and waived his right to a penalty phase jury. *Id.* at 213–14. The trial court accepted his waivers and pleas

after several colloquies. *Id.*

The state court held a bench penalty phase and permitted Bell to make all the arguments and introduce all the mitigation he desired. *Id.* at 214–15.

> In its detailed sentencing order, the court found that the State proved the existence of the following aggravators beyond a reasonable doubt, with the noted weight: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment (great weight); (2) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person (great weight); (3) the capital felony was especially heinous, atrocious, or cruel (HAC) (very great weight); and (4) the capital felony was committed in a cold, calculated, and premeditated manner (CCP) without any pretense of moral or legal justification (very great weight). However, the court found that the State failed to prove beyond a reasonable doubt that the capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws, and accordingly assigned that aggravator no weight.

*Id.* at 215–16.

For mitigation, the trial court noted Bell:

> admitted his Competency Evaluation and stated that he suffered from depression. He also indicated that he had come forward, pled guilty, exhibited good courtroom behavior, had satisfactory prison behavior since the murder and attack, and that his family loves him. He also explained that he has never been "a good person" but that he is an "honest person" and believes in taking responsibility for his action.

*Id.*

The trial court also weighed and evaluated the following mitigation in Bell's case:

> (1) Bell took responsibility for his conduct and cooperated during the investigation of and prosecution for the killing of Eastwood (little

> weight); (2) Bell exhibited appropriate courtroom behavior (little weight); (3) Bell had never assaulted any corrections officers until the attack on Officer Newman (no weight); (4) Bell's family loves him (slight weight); and (5) Bell had been previously diagnosed with and treated for depression (little weight).

*Id.*

The state court then sentenced Bell to death after weighing the aggravators and mitigators and determining the aggravating factors outweighed the mitigating factors "beyond a reasonable doubt." *Id.* at 216.

## ***Decision Below***

> Bell raised two arguments—both for the first time on appeal—in the Florida Supreme Court: (1) the trial court erred by sua sponte failing to seek out more mitigation beyond what Bell introduced and the state-court record contained and (2) the trial court erred by failing to find beyond a reasonable doubt that sufficient aggravating factors existed to warrant the death penalty, and that those facts outweighed the mitigation, before imposing a capital sentence. *Id.* at 216–218. The Florida Supreme Court found there was no error and rejected both arguments. *Id.*

Bell timely filed his petition for certiorari seeking review of the Florida Supreme Court's decision on June 16, 2022. This is the State's Brief in Opposition.

## REASONS FOR DENYING THE WRIT

Jesse Bell (Petitioner) seeks certiorari review of the Florida Supreme Court's decision rejecting his claim that the Fourteenth Amendment's due process clause requires a sentencer to find the aggravators are sufficient and outweigh the mitigation presented beyond a reasonable doubt. He argues that the sufficiency and

weighing selection criteria under section 921.141(2)(b)2.a.–b., Florida Statutes, are the functional equivalent of elements and must be found beyond a reasonable doubt.

This Court should deny review for two independent reasons. First, the section 921.141(2)(b)2.a.–b. provisions that Petitioner argues are elements do not apply to his case because he waived his penalty phase jury. Second, the findings he claims were constitutionally required were made in his case.

### A. Florida's Statutory Selection Criteria for Sufficiency and Weighing Do Not Apply to Petitioner's Case.

This Court should deny review because the section 921.141(2)(b)2.a.–b., Florida Statutes, provisions that Petitioner argues are the functional equivalent of elements do not apply to his case. A decision from this Court would therefore afford him no relief and be purely advisory.

By way of background, the Florida Legislature has adopted a comprehensive statutory system applicable when the State seeks a capital sentence. *See* § 921.141, Fla. Stat. This system gives the defendant a right to a penalty phase before a jury (unless waived) and requires that jury to determine whether the "the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor." § 921.141(2)(a), Fla. Stat. If the jury finds one aggravating circumstance beyond a reasonable doubt, "the defendant is eligible for a sentence of death." § 921.141(2)(b)2., Fla. Stat.

Florida's system then requires the jury to make a recommendation on what the appropriate sentence is. § 921.141(2)(b)2., Fla. Stat. In relevant part, the jury's recommendation must be "based on a weighing" of: "a. Whether sufficient aggravating factors exist" and "b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist." § 921.141(2)(b)2.a.–b., Fla. Stat. Petitioner argues that these provisions governing a jury's recommendation are the functional equivalent of elements and therefore must be proven beyond a reasonable doubt.

Notably, however, "subsection [(2)] applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury." § 921.141(2), Fla. Stat. This makes sense, of course, because the rest of subsection (2) gives instructions that are exclusively applicable to the *jury*, not the sentencing judge.

> **(2) Findings and recommended sentence by *the jury*.**--This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a *jury*.
>
> (a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).
>
> (b) *The jury shall return findings* identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. *If the jury*:
>
> 1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously 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. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If *a unanimous jury* determines that the defendant should be sentenced to death, the *jury's recommendation* to the court shall be a sentence of death. *If a unanimous jury* does not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

§ 921.141(2), Fla. Stat. (emphases added).

If a defendant waives a penalty phase jury (as Petitioner did in this case), then Florida employs a much simpler process:

If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist beyond a reasonable doubt.

§ 921.141(3)(b), Fla. Stat. The statutory sufficiency and weighing provisions are omitted from this process; the sentencing court must simply find an aggravator and *consider* the aggravation and mitigation before imposing a capital sentence. § 921.141(3)(b), Fla. Stat.

Petitioner's argument is thus predicated on a clear misreading of the statutory provisions applicable when a defendant in Florida waives a penalty phase jury. Florida law is clear that, when a defendant waives a penalty phase jury, the sentencing court must only find an aggravator and consider the aggravation and mitigation before imposing a capital sentence. § 921.141(3)(b), Fla. Stat. Even if the subsection (2) determinations were the functional equivalent of elements, they did not apply to Petitioner and none of his constitutional rights were infringed. Put another way, since he waived his right to a jury, he had no right to have a jury evaluate the sufficiency of the aggravators beyond a reasonable doubt or determine they outweighed the mitigation beyond a reasonable doubt.

Since Petitioner waived his penalty phase jury, he was subject exclusively to the framework found in section 921.141(3)(b), rather than the jury recommendation provisions found in section 921.141(2)(b). This framework only required the trial court to "consider" the aggravation and mitigation and find an aggravator before imposing death. § 921.141(3)(b), Fla. Stat. The sufficiency and weighing statutory language—on which Petitioner relies—is exclusively found in the inapplicable jury

recommendation provisions that Petitioner waived when he waived his right to a penalty phase jury.

As a result of his waiver—regardless of the answer to the question Petitioner has presented to this Court—his sentence will remain unaffected. This Court should deny review on that basis alone.

### B. Alternatively, the Sentencing Judge Made the Findings Petitioner States Were Constitutionally required.

Petitioner's arguments are much ado about nothing in this case for an even more basic reason than the fact the provisions he invokes do not apply to him. To recap, Petitioner claims that a legion of this Court's precedent required the sentencing court to find the aggravators were (1) sufficient to impose a capital sentence and (2) outweighed the mitigators. Both findings, according to Petitioner, must be made beyond a reasonable doubt. The most fundamental problem with Petitioner's argument is that both findings he argues were constitutionally required were made in his case at the beyond a reasonable doubt standard.

Regarding the sufficiency of aggravators, the Florida Supreme Court has determined as a matter of Florida law that this criterion is satisfied when an aggravator is proven beyond a reasonable doubt. *State v. Poole*, 297 So. 3d 487, 502

(Fla. 2020), *cert. denied*, 141 S. Ct. 1051 (2021);[1] *Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010); *State v. Dixon*, 283 So. 2d 1, 9 (Fla. 1973). This requirement was therefore automatically satisfied below when the court found the existence of an aggravating circumstance beyond a reasonable doubt. *See Bell v. State*, 336 So. 3d 211, 215 (Fla. 2022) (noting the trial court found four aggravators proven beyond a reasonable doubt). Of course, the Florida Supreme Court's interpretation of a Florida statute is binding on this Court, which decides federal rather than state law. Since this Court cannot reinterpret Florida's statute, any review would proceed under the assumption that the sufficiency aggravators criterion was satisfied beyond a reasonable doubt.

Regarding mitigation weighing, the trial court determined the aggravators outweighed Petitioner's proffered mitigation beyond a reasonable doubt. *See Bell v. State*, 336 So. 3d 211, 216 (Fla. 2022) ("The court then weighed the aggravating factors against the mitigating circumstances, concluding that 'the aggravating factors clearly, convincingly, and beyond a reasonable doubt outweighed the mitigating factors.'") (cleaned up). The trial court imposed Petitioner's capital sentence only

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[1] Poole was sentenced under the 2011 version of Florida's capital sentencing statute rather than the one applicable to Bell. *Poole*, 297 So. 3d at 495 & n.3. That version of the statute did require a court to consider the sufficiency of the aggravators and weigh them against the mitigators. *Id.* But the present version of the statute applicable to Bell (who pled guilty) has no such requirement.

after making both of these determinations (sufficiency and weighing) beyond a reasonable doubt. Petitioner is asking this Court to take jurisdiction over this case and hold that the constitution requires findings that were actually made in his case and had no effect on his sentence. Therefore, this Court should deny certiorari.

Two postscripts. First, the State's arguments on why this Court should refuse jurisdiction over this case are more than simply prudential. They go to the heart of whether Petitioner has Article III standing to invoke this Court's jurisdiction to answer the question he presents. *See Fed. Election Commn. v. Cruz*, 142 S. Ct. 1638, 1646 (2022) (explaining the elements of Article III standing are an injury in fact, fairly traceable to the defendant, that is likely to be redressed by the requested relief); *Hollingsworth v. Perry*, 570 U.S. 693 (2013) (explaining individuals who did not suffer an injury in a personal and individual way may not appeal). This threshold standing question would preclude this Court from deciding the question Petitioner presents if it granted certiorari on this case. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) (explaining this Court's independent obligation to assure its jurisdiction, including Article III's standing).

While Petitioner has suffered an injury (a capital conviction), it is not traceable to the conduct he claims is unconstitutional. The provisions he relies on do not apply to his case and were not, therefore, a but-for cause of his capital sentence. The findings he believes were constitutionally required were actually made in his

case at the standard he requests. His capital sentence injury is in no way traceable to the question he asks this Court to answer and therefore he has no Article III standing to have it answered.

Second, the State of Florida adheres to its position, raised in several other Briefs in Opposition,[2] that the sufficiency and weighing criteria in Florida's capital system are not the functional equivalent of elements that must be proven beyond a reasonable doubt. The absence of a more complete argument should not be taken as a concession by the State the Petitioner's arguments are constitutionally correct. They are not. *See State v. Poole*, 297 So. 3d 487, 501–04 (Fla. 2020) (thoroughly reviewing this Court's caselaw and determining the weighing and sufficiency criteria are not the functional equivalent of elements). But since the question Petitioner requests this Court answer is so far removed from his case, the State believes it is unnecessary to repeat its position in more thorough detail here.

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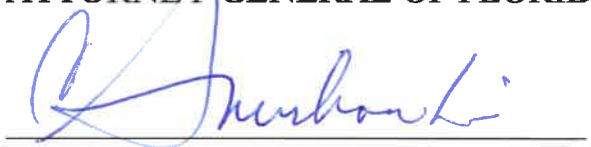
[2] The State has continually made this argument, and this Court has denied certiorari in four recent Florida cases presenting an identical issue. *See Davidson v. Florida*, 142 S. Ct. 1152 (Feb. 22, 2022) (No. 21-6654); *Santiago-Gonzalez v. Florida*, 141 S. Ct. 2828 (June 21, 2021) (No. 20-7495); *Bright v. Florida*, 141 S. Ct 1697 (Mar. 22, 2021) (No. 20-6824); *Rogers v. Florida*, 141 S. Ct. 284 (Oct. 5, 2020) (No. 19-8473). This Court has also denied certiorari review in a case presenting the underlying question of whether the Sixth and Eighth Amendments require that a jury find that the aggravators outweighed the mitigators. *See Poole v. Florida*, 141 S. Ct. 1051 (Jan. 11, 2021) (No. 20-250).

## CONCLUSION

The Florida Supreme Court's decision below does not present any conflict with any decision of this Court. Nor is any unsettled question of federal law involved. The statutory provisions Petitioner argues are elements are inapplicable to his sentence, and the findings he claims are constitutionally required were made in his case. Therefore, the Respondent respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA



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