No. 24-6932

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL A. TANZI,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET APRIL 8, 2025 AT 6:00 P.M.

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April 7, 2025

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REPLY TO STATEMENT FACTS

Exhibiting a complete disregard for any constraint on its power to punish under the Sixth Amendment, Respondent's Brief in Opposition opens with the admission that Mr. Tanzi is facing "execution for the April 2000 kidnapping, *rape* and heinous, atrocious and cruel murder of Janet Acosta." Br. in Opp'n at ii. Respondent's insistence that Mr. Tanzi committed sexual battery—even suggesting he faces execution for murder, kidnapping, *and rape*—despite never having been found guilty, is egregious. Br. in Opp'n. at ii, 2, 4 n.2. If Respondent wants to punish Mr. Tanzi for sexual battery, the State must prove every element to a unanimous jury beyond a reasonable doubt. The State chose not to do so.

On May 16, 2000, a grand jury indicted Mr. Tanzi on one count of First-Degree Murder. Br. in Opp'n. at 13. The State entered a four-count information the same day, which was amended twice. As finally amended on January 31, 2003, the information charged five offenses: Carjacking With a Deadly Weapon, Kidnapping to Facilitate a Felony with a Deadly Weapon Armed Robbery with a Deadly Weapon and two counts of Sexual Battery with a Deadly Weapon. (R. 1235-37). Both charges of sexual battery were severed and the State chose not to prosecute either. (R. 1803).

Mr. Tanzi entered a written plea of guilty to the remaining offenses, noting "I am entering the plea(s) because . . . I believe it is in my own interest." (R. 1242-44). His plea did not admit the truth of the charges or of any additional facts. *See* (R. 1240, 1243). Mr. Tanzi never pleaded guilty to sexual battery.

Respondent is not free to whittle away at the presumption of innocence through extrapolation. Rather, the Respondent is limited to the facts that authorize its power

to punish that have been proven through the constitutionally prescribed channels: the elements of the offenses as charged.

REPLY TO ARGUMENT

1. Florida continues to deny capital defendants Sixth Amendment protections under the guise of inapposite Eighth Amendment holdings.

At the outset, Respondent cites to the wrong statutory sentencing scheme under which Mr. Tanzi was sentenced and that is at issue here. Mr. Tanzi was not sentenced under the 2021 version of Florida's sentencing scheme, (Br. in Opp'n. at 13), but rather under the identical statutory scheme this Court struck down as unconstitutional in *Hurst v. Florida,* 577 U.S. 92, 100 (2016).

Respondent accuses Tanzi of conflating the Sixth and Eighth Amendments, but it is the Respondent and the Florida Supreme Court that do so. Florida justifies its improper rejection of enumerated Sixth Amendment protections by pointing to inapposite Eighth Amendment cases. This Court in *Hurst* already held that the Sixth Amendment requires more than an advisory jury, 577 U.S. at 100, yet Florida continues to circumvent this Court's holding, asserting that the Eighth Amendment does not require a non-advisory jury, and does not require a jury recommendation at all. Br. in Opp'n. at 15. To adopt the Respondent's view would be to write *Hurst v. Florida* out of the books and render the entire premise of the Sixth Amendment enumerated in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny illusory.

Respondent's argument rests on the premise that this Court's opinion in *McKinney v. Arizona*, 589 U.S. 139 (2020), is proof in and of itself that *Spaziano v. Florida*, 468 U.S. 447 (1984), remains good law and that in order to meet the

requirements of the Sixth Amendment, a Florida jury is only required to find aggravation. Br. in. Opp'n. at 17. This leap of logic takes *McKinney* out of context. *McKinney* decided the explicitly narrow issue of whether an appellate court can reweigh aggravating and mitigating circumstances after determining that the jury was improperly denied the benefit of additional mitigation. 589 U.S. at 142 (emphasis added).

Beyond the fact that *McKinney* is irrelevant because it is about appellate reweighing, the key distinguishing fact is that Mr. McKinney was tried and convicted in 1992, and his case became final 6 years before *Ring*. Twenty years later, the Ninth Circuit Court of Appeals determined that the trial court failed to consider relevant mitigation. *Id.* at 141. Mr. McKinney argued that he was entitled to a new jury sentencing. *Id.* at 142. The court rejected the argument, reweighed the circumstances itself pursuant to *Clemons v. Mississippi*, 494 U.S. 738 (1990), and upheld Mr. McKinney's death sentence. 589 U.S. at 142.

This Court granted certiorari and held, "state appellate courts may conduct a *Clemons* reweighing of aggravating and mitigating circumstances, and may do so in collateral proceedings as appropriate and provided under state law." *Id.* at 147. In declining to overrule *Clemons*, the Court said, "in a capital 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.* at 145.

Unlike Mr. Tanzi, Mr. McKinney was not sentenced under a statute that

required jury findings as to aggravation and mitigation, and he was sentenced years before *Apprendi* and *Ring v. Arizona,* 536 U.S. 584 (2000). Thus, this Court did not address the required jury factfinding under the Sixth Amendment. In contrast, *Ring* and *Hurst* determined factfinding *is* necessary when the state legislature made the existence of a fact essential to the death penalty. *Hurst*, 577 U.S. at 99 (quoting *Ring*, 536 U.S. at 592) ("Under state law, '*Ring* could not be sentenced to death, the statutory maximum penalty for first-degree murder, unless further findings were made.'"); *Schriro v. Summerlin*, 542 U.S. 348, 354 (2004).

As Justice Scalia noted in *Summerlin*, the "Court's holding that, because Arizona has made a certain fact essential to the death penalty, that fact must be found by a jury, is not the same as this Court's making a certain fact essential to the death penalty." 542 U.S. at 354. It follows that neither *Ring* nor *Hurst* exceeded their scope by categorically mandating that a jury weigh aggravating and mitigating circumstances. Thus, the argument that *McKinney*'s holding, which concerns a completely different statute, somehow means *Spaziano v. Florida*, 468 U.S. 447 (1984), remains good law is wrong and cannot be used to blatantly disregard this Court's holdings in *Hurst v. Florida*. *See Andrew v. White*, 145 S. Ct. 75, 81 (2025) (defining scope of binding Supreme Court holdings to include any "legal rule or principle" relied on "to decide a case").

Notably, Respondent points to *Ring* for the proposition that only aggravators are recognized as elements of the offense required to be found by a jury, (Br. in Opp'n. at 18), yet fails to acknowledge that this Court recognized in *Hurst v. Florida* that

the Florida capital sentencing statute required additional findings of fact prerequisite to imposing death. *See Hurst* , 577 U.S. at 100.

Respondent ignores the very foundation of Mr. Tanzi's argument – the jury did not make a single finding of fact necessary to impose death. Florida cannot evade this Court's explicit holding that capital defendants in Florida are entitled to jury factfinding by pointing to inapposite and irrelevant case law.

2. The Florida Supreme Court's Procedural Ruling Does Not Rest On Adequate And Independent State Law Grounds.

Respondent avers that, in finding Mr. Tanzi's *Erlinger v. United States*, 602 U.S. 821 (2024), claim procedurally barred, the Florida Supreme Court was "interpreting Florida law which prohibits re-litigation of previously rejected claims." Thus, according to Respondent, "[t]here is no federal constitutional aspect to such determination" and, thus, "the [Florida Supreme Court's] procedural bar determination was not interwoven with federal constitutional law." Br. in Opp'n. at 8, 9 (citing *Enter. Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917); *Johnson v. Lee*, 578 U.S. 605, 609 (2016)). Respondent overlooks that the purported procedural bar is dependent on the Florida Supreme Court's antecedent interpretations of federal constitutional law.

This Court recently addressed a similar assertion of "independent and adequate" state law grounds in *Glossip v. Oklahoma*:

> A state ground of decision is independent only when it does not depend on a federal holding, *Foster v. Chatman*, 578 U.S. 488, 498, (2016), and also is not intertwined with questions of federal law, *Michigan v. Long*, 463 U.S. 1032, 1040–1041 (1983). "[W]hen the adequacy and independence of any possible state law ground is not clear

> from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Ibid.*

Glossip v. Oklahoma, 145 S. Ct. 612, 625 (2025) (internal parallel citations omitted).

Here, the Florida Supreme Court found Mr. Tanzi's *Erlinger* claim procedurally barred, considering it a "repackaged version[ ] of his *Apprendi*, *Ring*, and *Hurst* arguments." *Tanzi v. Sec'y, Fla. Dep't of Corr.*, SC2025-0372, 2025 WL 971568 (Fla. Apr. 1, 2025). The court stated: "we denied relief on the core argument he raises again here: that the trial judge instead of a jury made the factual findings necessary for his death sentence." *Id.*

This is not so. Mr. Tanzi does not repackage the claims he brought in the wake of *Hurst v. Florida* and the Florida Supreme Court misconstrued his "core argument." Mr. Tanzi's previous *Hurst* claims related to the requirement that a jury find facts necessary to sentence him to death. *Erlinger*, on which Mr. Tanzi's instant claim is premised, makes clear that juries must be able to check judicial and executive power—a principle that the Florida Supreme Court has flouted by persistently relying on advisory juries. In rejecting this premise, the court depended on its antecedent federal law decision as to what principles *Apprendi*, *Ring*, and *Hurst* stand for and whether *Erlinger* stands for precisely the same principles. Thus, the procedural bar's application was predicated on, and interwoven with, federal law. Indeed, the Florida Supreme Court's determination that *Erlinger* "does not apply to [Mr. Tanzi's] case" is itself a conclusion interwoven with federal law, much like its earlier determinations that *Ring* did not apply in Florida. *See Bottoson v. Moore*, 833

So. 2d 693, 695 (Fla. 2002), abrogated by *Hurst*, 577 U.S. 921. And its candid concession that if Mr. Tanzi is correct about the impact and application of *Erlinger* to his case, "then a unanimous, non-advisory jury would be necessary to impose a death sentence," *Tanzi*, 2025 WL 971568 at *6, unquestionably establishes the federal nature of Mr. Tanzi's claim.

The most reasonable explanation for why the Florida Supreme Court decided Mr. Tanzi's claim the way it did was because it believed that federal law, namely *Erlinger* and this Court's other *Apprendi* cases, required it to do so. *See Glossip*, 145 S. Ct. at 625. The Florida Supreme Court's opinion explicitly relies on its prior decisions interpreting this Court's *Apprendi* caselaw, including *Hurst v. Florida*, which the court has previously found retroactively applicable to, and violated by, Mr. Tanzi's death sentence. Each state court decision interpreted the holdings of this Court and, thus, federal law. Moreover, the Florida Supreme Court's opinion relies on this Court's decision in *Spaziano v. Florida*, 468 U.S. 447 (1984), to dismiss Mr. Tanzi's claims as barred. *Spaziano*, too, was a federal holding intertwined with the Florida Supreme Court's decision in Mr. Tanzi's case.

CONCLUSION

For the reasons set forth herein and those in his Petition, Mr. Tanzi urges this Court to grant a stay of execution, grant certiorari, and review the decision of the Florida Supreme Court.

Respectfully submitted,

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