

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD KNIGHT,
Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

DEATH WARRANT SIGNED
Execution Set: May 21, 2026, at 6:00 p.m.

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May 18, 2026

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APPENDIX A

Supreme Court of Florida

MONDAY, APRIL 27, 2026

Richard Knight,
Petitioner(s)

v.

Secretary, Department of
Corrections,
Respondent(s)

CORRECTED ORDER¹
SC2025-0872

Lower Tribunal No(s):
062001CF014055A88810

Richard Knight petitions this Court for habeas relief, arguing that his death sentences are unconstitutional under the Sixth and Fourteenth Amendments to the United States Constitution. We have jurisdiction. *See* art. V, § 3(b)(9). As we explain below, we deny Knight’s habeas petition.

Knight, who is now subject to an active death warrant, was convicted of and sentenced to death for the first-degree murders of Odessia Stephens and Stephens’ four-year-old daughter, Hanessia Mullings. Knight’s convictions and sentences were affirmed on direct appeal. *See Knight v. State*, 76 So. 3d 879 (Fla. 2011). We affirmed the denial of initial postconviction relief and denied habeas relief in *Knight v. State*, 225 So. 3d 661 (Fla. 2017).

Knight maintains that his jury made no findings of fact as to the existence or sufficiency of specific aggravating or mitigating

1. Corrected April 27, 2026, to correctly reflect panel.

circumstances and thus violated his constitutional rights in light of *Erlinger v. United States*, 602 U.S. 821 (2024).

As an initial matter, we have previously distinguished *Erlinger* from cases similar to Knight's. In *Ford v. State*, 402 So. 3d 973, 980-81 (Fla. 2025), we observed:

Erlinger does not apply to this case. It involved the federal Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1), which imposes enhanced, lengthy, mandatory minimum prison terms on certain defendants who have committed three violent felonies or serious drug offenses on separate occasions. *Erlinger*, 602 U.S. at 825. The question presented in *Erlinger* was “whether a judge may decide that a defendant’s past offenses were committed on separate occasions under a preponderance-of-the-evidence standard, or whether the Fifth and Sixth Amendments require a unanimous jury to make that determination beyond a reasonable doubt.” *Id.* The Court concluded that a jury must resolve the “ACCA’s occasions inquiry unanimously and beyond a reasonable doubt.” *Id.* at 835. But *Erlinger* was a direct-appeal case—not a [collateral] case like Ford’s—and it involved required jury findings regarding an element. Based on these fundamental distinctions, it is clear that *Erlinger* provides no support for vacating Ford’s death sentences.

What is more, this Court has held that *Erlinger* does not apply retroactively. See *Wainwright v. State*, 411 So. 3d 392, 401 (Fla. 2025) (“And even if *Erlinger* announced a new rule that might serve as a vehicle for Wainwright to overcome this procedural bar, *Erlinger* does not apply retroactively.”).

Further, despite Knight’s argument to the contrary, his

Erlinger claim is a repackaged version of *Ring*² and *Hurst*³ arguments that he has previously raised and that we have previously rejected. *See Knight v. State*, 76 So. 3d 879, 885, 889 (Fla. 2011) (rejecting Knight’s argument that “the Florida death sentencing statute violates the Sixth Amendment and ignores *Ring*”); *Knight*, 225 So. 3d 682 (declining to vacate Knight’s death sentence in light of *Hurst v. Florida*). As such, Knight’s claim is procedurally barred. “[H]abeas corpus is not to be used ‘for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have . . . or have been, raised in’ prior postconviction filings.” *Baker v. State*, 878 So. 2d 1236, 1241 (Fla. 2004) (quoting *Mills v. Dugger*, 574 So. 2d 63, 65 (Fla. 1990)).

Moreover, Knight’s claim also fails on the merits. Knight’s jury contemporaneously convicted him of the first-degree murders of the victims. In doing so, as to each murder, the jury found beyond a reasonable doubt that Knight “was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.” § 921.141(5)(b), Fla. Stat. (2000). The jury’s finding beyond a reasonable doubt of the existence of a statutory aggravating circumstance as to each murder is precisely what the Sixth Amendment requires. *See State v. Poole*, 297 So. 3d 487, 502-03 (Fla. 2020) (“Under longstanding Florida law, there is only

2. *Ring v. Arizona*, 536 U.S. 584 (2002).

3. *Hurst v. Florida*, 577 U.S. 92 (2016).

one eligibility finding required: the existence of one or more statutory aggravating circumstances.”).

Finally, to the extent Knight argues that a jury was required to find that sufficient aggravating factors existed to impose the death penalty and mitigating circumstances were insufficient to outweigh the aggravating factors, we have stated:

Under the principles established in *Apprendi*, *Ring*, and *Hurst v. Florida*, only one of the findings we identified in *Hurst v. State*—the finding of the existence of an aggravating circumstance—qualifies as an element, including for purposes of our state constitution. There is no basis in state or federal law for treating as elements the additional unanimous jury findings and recommendation that we mandated in *Hurst v. State*.

Id. at 505. This further distinguishes *Erlinger*, which involved required jury findings regarding an element.

For these reasons, we deny Knight’s habeas petition. No motion for rehearing will be considered.

MUÑIZ, C.J., and LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

TANENBAUM, J., concurs in result only.

A True Copy

Test:

SC2025-0872 4/27/2026

John A. Tomasino

Clerk, Supreme Court

SC2025-0872 4/27/2026



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KC

Served:

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APPENDIX B

225 So.3d 661
Supreme Court of Florida.

Richard KNIGHT, Appellant,

v.

STATE of Florida, Appellee.

Richard Knight, Petitioner,

v.

Julie L. Jones, etc., Respondent.

No. SC14–1775, No. SC15–1233

|

[January 31, 2017]

Synopsis

Background: Defendant moved to vacate his death sentence, after his convictions for two counts of first-degree murder were affirmed on appeal, 76 So.3d 879. The Seventeenth Judicial Circuit Court, Broward County, Eileen M. O'Connor, J., denied his motion. Defendant appealed and petitioned for a writ of habeas corpus.

Holdings: The Supreme Court held that:

counsel's decision not to call DNA analyst as witness did not amount to ineffective assistance;

counsel's failure to request *Frye* hearing did not amount to ineffective assistance;

counsel's alleged failures regarding mitigating evidence did not amount to ineffective assistance;

State's alleged failures to disclose documents did not amount to *Brady* violations;

defendant's right to remain silent was not violated; and

unconstitutional imposition of death sentence was harmless.

Affirmed; petition denied.

Canady and Polston, JJ., concurred in result.

Quince, J., concurred in part, dissented in part, and filed opinion in which Perry, Senior Justice, joined.

Perry, Senior Justice, concurred in part, dissented in part, and filed opinion.

***667** An Appeal from the Circuit Court in and for Broward County, Eileen M. O'Connor, Judge—Case No. 062001CF014055A88810 And an Original Proceeding—Habeas Corpus

Attorneys and Law Firms

Neal Andre Dupree, Capital Collateral Regional Counsel, Southern Region, Todd Gerald Scher, Assistant Capital Collateral Regional Counsel, Southern Region, and ***668** Jessica Leigh Houston, Staff Attorney, Fort Lauderdale, Florida, for Appellant/Petitioner

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Lisa–Marie Krause Lerner, Assistant Attorney General, West Palm Beach, Florida, for Appellee/Respondent

Opinion

PER CURIAM.

Richard Knight appeals an order of the Seventeenth Judicial Circuit Court in and for Broward County denying his motion to vacate his sentence of death filed under Florida Rule of Criminal Procedure 3.851. Knight also petitions this Court for a writ of habeas corpus. See art. V, § 3(b)(1), (9), Fla. Const. For the reasons discussed below, we affirm the circuit court's denial of Knight's rule 3.851 motion and deny his petition for a writ of habeas corpus.

I. STATEMENT OF THE CASE & FACTS

On April 26, 2006, a jury found Richard Knight guilty of two counts of first-degree murder for the deaths of Odessia Stephens and her four-year-old child, Hanessia Mullings. The jury unanimously recommended a death sentence for each murder. Knight v. State, 76 So.3d 879, 884 (Fla. 2011).

A. Trial & Direct Appeal Proceedings

On direct appeal, we set forth the following relevant factual and procedural background:

The evidence presented at trial established that Knight lived in an apartment with his cousin, Hans Mullings, Mullings' girlfriend, Odessia Stephens, and their daughter, Hanessia Mullings. Mullings and Odessia had asked Knight to move out numerous times.

On the night of the murder, June 27, 2000, Mullings was at work. At approximately 9 p.m., Mullings spoke to Odessia, who said she was going to bed, and then Mullings left his office to run errands. Knight was at the apartment with Odessia and Hanessia.

Around midnight, an upstairs neighbor heard multiple thumping sounds on the apartment walls and two female voices, one of which was a child crying. The neighbor called 911 at 12:21 a.m. on June 28, 2000. The cries continued after the police arrived.

Officer Vincent Sachs was the first to respond. He arrived at 12:29 a.m. and noted that the lights were on in the master bedroom and hall area, and that a second bedroom's window was slightly ajar. After knocking and receiving no response, he walked around the unit and noticed that the lights had been turned off and that the previously ajar window was now completely open and blinds were hanging out of it. Sachs shined his flashlight through the dining room window. He saw blood in the dining room and master bedroom. Further, he noticed Hanessia curled in the fetal position against the closet door. Once inside, he observed Odessia's body in the living room. All of the doors were locked and there had been no ransacking of the apartment.

Officer Natalie Mocny arrived next and walked around the unit. She also saw the open window and noticed Knight on the other side of some hedges approximately 100 yards from the building. She beckoned him over for questioning. Officer Sachs joined Mocny. According to the officers, Knight had a scratch on his chest, a scrape on his shoulder, and fresh cuts on his hands. Although it was not raining, Knight was visibly wet. Knight was wearing dress clothes and shoes, yet told Mocny that he had been jogging, and that he lived in the apartment, but did not have a key to get inside. There was blood on the shirt he was wearing and on a ten-dollar bill in his possession.

***669** The crime scene investigation recovered two wet towels in Knight's bedroom, a shirt, boxers, and a pair of jean shorts under the sink in the bathroom near Knight's bedroom, all of which belonged to Knight and had numerous bloodstains. Two knife blades were also

recovered, one from under the mattress in the master bedroom, and another from under Odessia's body.

Odessia's blood was found in the master bedroom between the bed and the wall, on the master bedroom blinds, on the living room carpet, on the knives' handles and blades, and on the knife holder in the kitchen. Odessia's blood was also discovered on Knight's boxers, shirt, jean shorts, the clothing Knight had been wearing when arrested, and his hand. Fingernail scrapings taken from Odessia contained Knight's DNA profile.

Hanessia's blood was found on one of the knives, on Knight's boxers, jean shorts, and on the shower curtain. The shower curtain also contained the blood of Knight's acquaintance, Victoria Martino.

Dr. Lance Davis, the medical examiner, observed the bodies at the scene. Odessia was found on the living room floor near the entrance with several broken knife pieces around her. She had twenty-one stab wounds: fourteen in the neck, one on the chin, and the rest on her back and chest. Additionally, she had twenty-four puncture or scratch wounds and bruising and ligature marks on her neck. The bruises appeared to have been made by a belt or similar object. She also had defensive wounds on both hands and wounds on her leg, chest, back and neck. Several of the knife wounds were fatal but none would have resulted in an instantaneous death. She had bruises from being punched on her scalp and mouth. Davis opined that Knight began his attack in the bedroom with Odessia fleeing to the living room. He estimated that Odessia was conscious for ten to fifteen minutes after the attack.

Davis discovered Hanessia on the floor next to the closet door. There were broken knife pieces around her. She had a total of four stab wounds in her upper chest and neck. Her hand had one additional stab wound and numerous defensive wounds. Hanessia's arms and upper body had numerous bruises and scratches. There were bruises on her neck that were consistent with manual strangulation and bruises on her arms consistent with being grabbed.

Stephen Whitsett and Knight were housed together from June 29, 2000, to July 22, 2000, at the Broward County Jail. Knight confessed to Whitsett about the murders as follows: The night of the murders Knight and Odessia argued. She told him that she did not want to support him and that he would have to move. He asked for some more time because he had just gotten a job, but Odessia refused and told him to leave in the morning. Knight left the house to go for a

walk and he became increasingly angry. He returned that night, confronted Odessia in her room, and they argued.

Knight went to the kitchen and got a knife. When he went back to the master bedroom, Odessia was on one side of the bed and Hanessia was on the other. He began by stabbing Odessia multiple times. Odessia eventually stopped defending herself and balled up into a fetal position. Knight then turned to four-year-old Hanessia. The knife broke while he was stabbing Hanessia, so he returned to the kitchen for another. Upon returning, Knight saw Hanessia had crawled to the closet door and was drowning in her own blood.

***670** Again, Knight returned to the kitchen and accidentally cut his hand on one of the broken knives that he had used to stab Odessia and Hanessia. He grabbed another knife. Odessia had crawled from the master bedroom to the living room and was lying in her own blood. He rolled her over and continued his attack. Odessia's blood covered Knight's hands, so he wiped them on the carpet.

Knight further confessed that, after he finished with Odessia, he went to the bathroom, took off the blood soaked shorts and T-shirt, and tossed them under the sink. He showered and put on blue polo pants. He wiped down the knives in the living room. At that time, Knight heard a knock on the door and saw the police outside through the peep hole. He ran to his room and out the window. In an attempt to deflect suspicion away from himself, Knight returned to his bedroom window where he saw a female police officer.

Knight was charged by indictment on August 15, 2001, for the murders of Odessia Stephens and Hanessia Mullings. The jury found Knight guilty of both counts of first-degree murder.

At the penalty phase, Knight called six witnesses, several of whom testified about his childhood and upbringing in Jamaica. His teacher, Joscelyn Walker, told the jury that Knight was a respectful and loving boy raised in a very respected family. He said that Knight did have a temper when provoked and would become extremely frustrated at times. Walker had to restrain him from time to time when Knight wanted to fight another child. Knight's high school art teacher, Joscelyn Gopie, described Knight as a pleasant, eager boy who was quite talented at art. Gopie explained that Knight was adopted as a toddler by his family. Knight left high school before he graduated.

Barbara Weatherly is the mother of Knight's former fiancée. She described him as a decent, honorable guy who respected her rules regarding her daughter. He always helped her younger children with their drawing. He was a quiet and peaceful person who spent a lot of time alone. One night at her house he got sick; his eyes rolled back in his head and he frothed at the mouth before passing out. They took him to the hospital where the doctor said that he needed to see a psychiatrist. She last saw him in 1998 when he left to go to the United States.

A former boss and coworker of Knight's, Stanley Davis, also testified. Davis explained that Knight had been adopted into a well respected family and had a close loving relationship with his family members. Knight took over many of his father's duties when his father lost a leg. Knight worked with him at a construction company and was a good worker. On one occasion Knight fell and blacked out, after which he had difficulty concentrating and became timid.

Valerie River, the defense investigator, and Knight's attorney journeyed to Jamaica to interview Knight's family and friends. Knight was abandoned by his mother and the Knight family found him at a hospital and took him home. He was a good brother and son. Knight's close friends and family said that he was a nice and good person. Knight's sister-in-law used to have Knight babysit her children but eventually stopped because he was careless around the house. Knight blacked out on one occasion. Knight's former boss Stedman Stevenson said he was a hard worker and a quick learner. He took Knight to Florida, and Knight decided to stay.

Knight also presented expert Dr. Jon Kotler who practices nuclear medicine and specializes in PET scans of the ***671** brain. He explained that Knight's physical symptoms indicated that he might have a brain injury. The MRI done on him was normal. Dr. Kotler did a PET scan which he interpreted as showing asymmetrical brain activity indicating possible pathology of the brain, perhaps a seizure disorder. He could not say exactly what the pathology might be or how it might manifest itself in Knight's behavior. Dr. Sfakianakis, another nuclear medicine doctor, read the PET results as showing only a mild difference between the brain hemispheres which was within the normal fluctuations of the brain.

Following the presentation of penalty-phase testimony, the jury unanimously recommended the death penalty for both murders.

The trial court subsequently conducted a [Spencer v. State, 615 So.2d 688 (Fla. 1993),] hearing on August 18, 2006. At the hearing, the defense submitted the report and deposition of neuropsychologist Dr. Mittenberg who examined Knight but refused to testify at trial. The State submitted the report and deposition of Dr. Lopickalo, another neuropsychologist. Mullings and Eunice Belan also gave victim impact statements.

Subsequent to the Spencer hearing, the trial court followed the jury's [unanimous] recommendation and sentenced Knight to death. In pronouncing Knight's sentence, the trial court determined that the State had proven beyond a reasonable doubt two statutory aggravating circumstances for the murder of Odessia Stephens: (1) a previous conviction of another violent capital felony, and (2) that the murder was especially heinous, atrocious, or cruel (HAC). The court also found three statutory aggravating circumstances for the murder of Hanessia Mullings: (1) a previous conviction of another violent capital felony, (2) HAC, and (3) the victim was under twelve years of age. The court found no statutory mitigating circumstances but found eight nonstatutory mitigators, which are set forth in our proportionality discussion.

Knight, 76 So.3d at 881–84 (footnote and headings omitted). On direct appeal, Knight raised five claims: (1) the trial court abused its discretion by denying Knight's motion for a mistrial based on Hans Mullings' comment that he knew Knight to have a violent background; (2) the trial court abused its discretion in denying Knight's motion for a mistrial based on the allegation that jurors saw him wearing shackles; (3) the trial court erred in ruling that no discovery violation occurred and in denying Knight's motion for a mistrial based on the State's expert's testimony regarding DNA evidence; (4) the trial court erred in denying Knight's motion to seat a new jury based on Mullings' testimony; and (5) Florida's death sentencing statute violates the Sixth Amendment and ignores Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Knight, 76 So.3d at 885, n.3.

We affirmed Knight's convictions and sentence of death. Id. at 885. Knight's sentence became final on May 14, 2012, when the United States Supreme Court denied certiorari. Knight v. Florida, — U.S. —, 132 S.Ct. 2398, 182 L.Ed.2d 1038 (2012) (Mem).

B. Postconviction Relief Proceedings

On May 10, 2013, Knight filed his “Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend,” pursuant to Florida Rule of Criminal Procedure 3.851. He raised the following claims: (1) he was improperly denied access to public records; (2) the one-year deadline in Florida Rule of Criminal Procedure 3.851 was unconstitutionally applied to him; (3) he was denied adversarial testing at the guilt phase; (4) he was *672 denied adversarial testing at the penalty phase; (5) the rule prohibiting juror interviews is unconstitutional; and (6) Florida's lethal injection protocol and procedures are unconstitutional. The circuit court granted an evidentiary hearing on Knight's claims. The evidentiary hearing took place on March 27 and 28, 2014, when the circuit court heard testimony on Knight's claims of ineffective assistance of counsel. On July 30, 2014, the circuit court denied all of Knight's claims for postconviction relief.

II. POSTCONVICTION RELIEF CLAIMS

A. Ineffective Assistance of Counsel During Guilt Phase

Knight argues that he is entitled to a new trial because trial counsel rendered ineffective assistance. First, Knight argues that trial counsel was ineffective for failing to call as a witness Dr. Nora Rudin, a DNA analyst who worked for the defense prior to trial. Second, Knight argues that trial counsel was ineffective for failing to request a Frye¹ hearing to examine the reliability of the DNA testing procedures employed by the State. Third, Knight argues that trial counsel failed to discover and introduce a memorandum from one of the State's experts requesting a voluntary demotion. For the reasons below, we conclude that the postconviction court did not err in denying Knight's claims of ineffective assistance of counsel.

¹ Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)

In accordance with Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), to obtain relief on a claim of ineffective assistance of counsel, a defendant must establish

deficient performance and prejudice, as set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). See Rutherford v. State, 727 So.2d

216, 218 (Fla. 1998). As to the first prong, deficient performance, a defendant must establish conduct on the part of counsel that is outside the broad range of competent performance under prevailing professional standards. See Strickland, 466 U.S. at 688, 104 S.Ct. 2052. Second, as to the prejudice prong, the deficient performance must be shown to have so affected the fairness and reliability of the proceedings that confidence in the outcome is undermined. See id. at 694, 104 S.Ct. 2052; Rutherford, 727 So.2d at 220.

Gore v. State, 846 So.2d 461, 467 (Fla. 2003) (parallel citations omitted).

“[W]hen a defendant fails to make a showing as to one prong, it is not necessary to delve into whether he has made a showing as to the other prong.” Waterhouse v. State, 792 So.2d 1176, 1182 (Fla. 2001). Further, as the United States Supreme Court explained in Strickland,

[j]udicial scrutiny of counsel's performance must be highly deferential.... A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance....

466 U.S. at 689, 104 S.Ct. 2052.

Mungin v. State, 932 So.2d 986, 996 (Fla. 2006). “In reviewing a trial court's ruling after an evidentiary hearing on an ineffective assistance of counsel claim, this Court defers to the factual findings of the trial *673 court to the extent that they are supported by competent, substantial evidence, but reviews de novo the application of the law to those facts.” Id. at 998 (citing Stephens v. State, 748 So.2d 1028, 1031–32 (Fla. 1999)).” With this standard of review in mind, we turn to Knight's arguments of ineffective assistance of counsel.

1. Failure to Call Dr. Rudin

At trial, the State's DNA evidence was presented through the testimony of Kevin Noppinger of the Broward County Sheriff's Office, who conducted the actual DNA testing, and Kevin McElfresh of Bode Technology Group, who analyzed

Noppinger's results. Dr. Rudin worked for Knight's defense team. She employed Noppinger's analysis to develop a report and aid the defense.

Originally, McElfresh opined that Knight's DNA could be excluded from the DNA samples obtained from the clothing found below the sink at the crime scene. Knight, 76 So.3d at 887. However, at trial McElfresh testified that Knight's DNA could not be excluded from the shorts and boxers found in the bathroom at the crime scene. Id. McElfresh explained that Knight's DNA could no longer be excluded because an additional sample, that of Victoria Martino, Knight's girlfriend, was tested, and it changed the outcome of the initial analysis. Defense counsel objected to the testimony as a discovery violation, but the objection was denied. Id. Defense counsel called Dr. Rudin and relayed McElfresh's testimony. He then sent her a transcript of the testimony of the State's expert. She explained to Knight's counsel that even with the new sample, she agreed with Noppinger's DNA analysis. Later, while the trial was ongoing, Dr. Rudin produced a second report, dated April 28, 2006. The report stated that the DNA procedures may have had some errors and that McElfresh's testimony was not scientifically sound. Notably, Dr. Rudin's second report ultimately supported the State's DNA findings.

At the postconviction evidentiary hearing, trial counsel explained that he did not call Dr. Rudin as a witness because her conclusions ultimately bolstered the State's arguments. Trial counsel also stated that because the rule at the time allowed the defense to have the last word, he did not want to lose that opportunity.

Dr. Rudin also testified at the evidentiary hearing. She testified that her second report addressed her concerns with Noppinger's DNA testing procedures and with McElfresh's analysis of that testing as it pertained to the clothes found in the bathroom. Dr. Rudin found McElfresh's trial testimony problematic, explaining that his conclusions were questionable because he arrived at them through an unreliable testing method. However, even with the possibly flawed procedures, Dr. Rudin stated that she would have testified consistent with Noppinger's report.

Knight now argues that trial counsel was ineffective for failing to call Dr. Rudin as a witness. He posits that had she testified at trial, the jury would have doubted the State's DNA evidence and ultimately would have found him innocent. While it is possible that Dr. Rudin's testimony may have cast

doubt on the State's DNA evidence, we conclude that Knight fails to meet either prong of Strickland.

This Court has stated that “[a]s long as the trial court's findings are supported by competent substantial evidence, ‘this Court will not substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court.’ ” Blanco v. State, 702 So.2d 1250, 1252 (Fla. 1997) (quoting Demps v. State, 462 So.2d 1074, 1075 (Fla. 1984)); see also Cox v. State, 966 So.2d 337, 357–58 (Fla. 2007) (noting that the *674 trial court is frequently in a superior position to evaluate the testimony based upon its observation of the bearing, demeanor, and credibility of the witnesses) (quoting Stephens v. State, 748 So.2d 1028, 1034 (Fla. 1999)).

The record reveals competent, substantial evidence to support the postconviction court's finding that defense counsel's decision not to present Dr. Rudin during the guilt phase was a reasonable trial strategy. At Knight's evidentiary hearing, trial counsel testified that he made a strategic decision before trial not to call Dr. Rudin as a witness because her original report supported the State's conclusions. Trial counsel also stated that prior to trial, he asked Dr. Rudin whether she would call herself as a witness, and she said that she would not because she could not help Knight's case. Moreover, her report ultimately concluded that her findings were consistent with Noppinger's conclusions and that McElfresh's unreliable testimony was “inconsequential.”

Knight also cannot establish that trial counsel's actions or omissions were prejudicial to him. To establish prejudice, Knight must establish that “but for counsel's unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694, 104 S.Ct. 2052. In reviewing the prejudice prong, the postconviction court concluded that even if Dr. Rudin had testified, there was no reasonable probability that the outcome of the trial would have been different in light of the other evidence presented by the State. We agree.

At trial, the State presented evidence that Knight lived with the victims, he had ongoing disagreements with one of the victims, and he was at the apartment on the night of the murders. Knight, 76 So.3d at 881. The State also showed that on the night of the murders, Knight told a detective that he had been out for a run, yet Knight was wearing a dress shirt,

slacks, and dress shoes. Id. at 882. Accordingly, trial counsel's actions did not prejudice Knight.

2. Failure to Request a Frye Hearing Regarding DNA Evidence

Knight asserts that trial counsel was ineffective for failing to request a hearing pursuant to Frye v. United States, 293 F. 1013 (D.C. Cir. 1923). Knight argues that a Frye hearing would have shown that the State's DNA expert employed unreliable testing procedures and, thus, exponentially weakened the State's case. We disagree.

As a general rule, a Frye hearing is “utilized in Florida only when the science at issue is new or novel.” Overton v. State, 976 So.2d 536, 550 (Fla. 2007) (quoting Branch v. State, 952 So.2d 470, 483 (Fla. 2006)). The Frye test places the burden of proof “on the proponent of the evidence to prove the general acceptance of both the underlying scientific principle and the testing procedures used to apply that principle to the facts of the case at hand.” Id. (quoting Ramirez v. State, 651 So.2d 1164, 1168 (Fla. 1995)). Where the testing procedures are at issue, “DNA test results are generally accepted as reliable in the scientific community, provided that the laboratory has followed accepted as reliable testing procedures” to prevent false readings and contamination. Id.

To show deficiency, Knight must specifically identify acts or omissions of counsel that were manifestly outside the wide range of reasonable, competent performance under prevailing norms. Bolin v. State, 41 So.3d 151, 155 (Fla. 2010). Knight argues that counsel was aware of the deficiencies of the DNA testing by Noppinger and, as such, should have requested a Frye hearing. We reject Knight's argument because there is competent, substantial evidence *675 supporting the postconviction court's denial of Knight's claim.

Noppinger and trial counsel both testified at the evidentiary hearing that the “Preliminary Chain Reaction and Short Tandem Repeats” techniques employed in this case were generally accepted by the community at the time of Knight's trial. Second, even though Dr. Rudin pointed out the possible flaws in Noppinger's labeling procedures, her report and testimony at the evidentiary hearing supported Noppinger's scientific conclusions. It seems that although the labeling procedures were different, Dr. Rudin was unable to actually find any errors, and counsel would not have had a reason to challenge the DNA methodology to exclude the evidence.

Counsel cannot be deficient for failing to make an ultimately fruitless request. Likewise, because a Frye hearing would not have resulted in the exclusion of the State's DNA evidence, the absence of a Frye hearing did not prejudice Knight.

3. Failure to Locate Evidence

Third, Knight alleges that trial counsel was ineffective for failing to locate a memorandum prepared by Kevin Noppinger, in which Noppinger requested a voluntary demotion. The entirety of Knight's argument in his initial brief is comprised of two sentences that do not cite any case law or refer to any facts that could have supported his argument that trial counsel was ineffective for failing to locate Noppinger's memorandum. Accordingly, we conclude that this claim is insufficiently pled. See Bryant v. State, 901 So.2d 810, 827 (Fla. 2005) (holding a claim is insufficiently pled when the entire argument is contained in a phrase, and stating that “[s]uch a cursory argument is insufficient to preserve the issue for consideration”).

B. Ineffective Assistance of Counsel During Penalty Phase

Knight also asserts that trial counsel was deficient during the penalty phase of trial. First, Knight argues that trial counsel was ineffective for failing to properly investigate and introduce mitigating evidence regarding child abuse that Knight allegedly endured. Second, Knight argues that counsel was ineffective for failing to ensure that he was examined by a competent mental health expert. We disagree with both arguments.

The postconviction court found that Knight was unsuccessful on both claims because he did not present any evidence during the hearing regarding a history of abuse or his alleged brain injury. Further, the court reasoned that counsel had presented all social and personal history known to him in the form of several witnesses who knew Knight as a child, a witness who knew of his seizures and blackouts, and testimony from the defense investigator who interviewed many members of Knight's adoptive family. For the reasons below, we conclude that there is competent, substantial evidence supporting the postconviction court's order denying Knight's claims.

With respect to the investigation and presentation of mitigation evidence, the Supreme Court of the United

States observed that Strickland does not require “counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing. Nor does Strickland require defense counsel to present [mitigating] evidence at sentencing in every case.” Wiggins v. Smith, 539 U.S. 510, 512, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). Rather, in deciding whether trial counsel exercised reasonable professional judgment with regard to the investigation and presentation of mitigation evidence, a *676 reviewing court must focus on whether the investigation resulting in counsel's decision not to introduce certain mitigation evidence was itself reasonable. “When making this assessment, ‘a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.’ ” Taylor v. State, 62 So.3d 1101, 1110 (Fla. 2011) (quoting Wiggins, 539 U.S. at 527, 123 S.Ct. 2527) (citations omitted); see also Lebron v. State, 135 So.3d 1040, 1062 (Fla. 2014) (“One of our principle concerns in deciding whether counsel exercised reasonable professional judgment during a penalty phase proceeding is whether counsel should have presented a mitigation case. We also focus on whether the investigation supporting counsel's decision to not introduce certain mitigating evidence was itself reasonable.”).

1. Sexual Abuse

The State argues that Knight did not pursue this claim at the evidentiary hearing, but the record reflects that Knight did argue this claim and introduced the investigator's report as evidence. Thus, we conclude that Knight did not waive his argument that counsel was ineffective for failing to investigate his background and possible sexual abuse.

This Court has repeatedly considered claims of ineffective assistance of counsel during the penalty phase of a trial. See Brooks v. State, 175 So.3d 204 (Fla. 2015); Diaz v. State, 132 So.3d 93, 114 (Fla. 2013). In Diaz, this Court reiterated that “trial counsel was not ineffective for failing to discover that the defendant was sexually abused when the defendant and his family were not forthcoming with the information, even though trial counsel was aware of the defendant's rough childhood.” Id. at 114. In Diaz, trial counsel testified at the evidentiary hearing that Diaz and Diaz's family were not forthcoming with information about Diaz's alleged sexual abuse. Id.

Here, we conclude that the postconviction court's denial of Knight's claim is supported by competent, substantial evidence. At trial, counsel presented testimony from Knight's teachers, who testified regarding Knight's family, Knight's personality, and his bad temper when provoked. Knight, 76 So.3d at 883–84. During the evidentiary hearing, counsel testified that while investigating Knight's background, counsel traveled to Jamaica, where Knight grew up. Trial counsel also stated that he “spent a great deal of time” getting to know Knight's family and teachers. Trial counsel testified that Knight's family was “very cooperative” and that at no time during the many conversations with family and friends, did Knight's alleged sexual abuse come up. Further, counsel testified that he did not recall ever being notified by Knight or others that Knight had been sexually abused as a child. Counsel was shown an investigative report in which Knight's sister said that an aunt once told that her that Knight may have been abused as a child. The report also stated that the same sister said she was reassured by another family member that this was not true and no such claims had been made. To this, counsel testified that he had never once heard from a family member or Knight that there had been sexual abuse. Because we uphold the postconviction court's finding that Knight's trial counsel was not deficient for failing to discover this childhood abuse, we decline to address whether this failure prejudiced Knight.

2. Mental Health Mitigation

Dr. Mittenberg was the defense's mental health expert. He performed tests on Knight and determined that Knight suffered from a brain abnormality. This determination was further supported by Knight's PET scans. Knight's trial counsel *677 testified at the evidentiary hearing that he was relying on Dr. Mittenberg's testimony to show that Knight's brain abnormality impacted his behavior and to prove the mitigator that on the night of the crime, Knight was unable to control his behavior. However, during trial but before Dr. Mittenberg was scheduled to testify, he notified trial counsel that he would not be testifying due to emotional distress. Counsel later discovered from Dr. Mittenberg's attorney that the emotional distress was caused by his excessive drinking, which began because he believed that he had committed a federal crime by inappropriately scoring Knight's Minnesota Multiphasic Personality Inventory (MMPI). A hearing was held, during which Dr. Mittenberg asserted his Fifth Amendment privilege, and trial counsel moved for a mistrial. Trial counsel's motion was denied, but the court granted a

two-month recess to find another mental health expert. Trial counsel then hired Dr. Arias, who was unable to replicate Dr. Mittenberg's results and was unable to confirm that Knight had a brain abnormality. During the penalty phase of trial, trial counsel could have introduced Dr. Mittenberg's pretrial deposition as well as the report of his findings. However, at the evidentiary hearing, trial counsel testified that he did not introduce either the deposition or the report due to the flaws in Dr. Mittenberg's analysis.

Knight asserts that trial counsel failed to ensure that Knight had the assistance of a competent mental health expert. Consequently, he argues that had the jury been offered mitigating evidence that Knight suffered from a mental health problem, Knight's sentence would have been different. For the reasons below, we conclude that there is competent, substantial evidence to support the postconviction court's finding that Knight failed to show that counsel's performance was deficient and prejudicial.

In Hoskins v. State, 75 So.3d 250, 255 (Fla. 2011), this Court reiterated the rule that “counsel's entire investigation and presentation will not be rendered deficient simply because a defendant has now found a more favorable expert.” Hoskins also failed to show prejudice because “his experts in both the penalty phase and postconviction hearing testified that Hoskins suffered from brain damage.... The jury in the penalty phase, however, did not find such evidence sufficient to overcome aggravation in this case.” Id. at 255 (quoting Card v. State, 992 So.2d 810, 818 (Fla. 2008); see also Pham v. State, 177 So.3d 955, 962 (Fla. 2015) (“As we have repeatedly stated, trial counsel is not deficient simply because postconviction counsel can find a more favorable expert.”).

The postconviction court did not err in finding that Knight failed to prove either prong of Strickland. Trial counsel was not deficient, as he provided Knight with a mental health expert, Dr. Mittenberg, and when that expert was unable to testify, trial counsel sought to find another expert to replicate Dr. Mittenberg's findings. Trial counsel reached out to another doctor, Dr. Arias, to perform the same tests on Knight. Trial counsel testified at the evidentiary hearing that Dr. Arias could not replicate Dr. Mittenberg's results and, in fact, found the opposite. Trial counsel was unable to find another doctor to administer more testing within the two-month period. It is likely that Dr. Arias was unable to replicate Dr. Mittenberg's results because Dr. Mittenberg used an illegal method of scoring Knight's MMPI exam. Furthermore, Knight is unable

to show prejudice. Accordingly, we affirm the postconviction court's findings.

Knight's next argument is that trial counsel was deficient because he failed to introduce at trial Dr. Mittenberg's deposition, which would have shown that *678 Knight suffered from a brain abnormality. Trial counsel testified that he did not introduce Dr. Mittenberg's report to the jury because the deposition weakened Dr. Mittenberg's reliability, since he stated in the deposition that he may have a conflict of interest, lied about the reliability of the scoring of Knight's MMPI test, and confessed that he had used an unlicensed scoring system. Additionally, even if counsel was deficient, counsel's actions were not prejudicial. Trial counsel introduced evidence of Knight's brain abnormality through Dr. Kotler's testimony. Even with some evidence of Knight's brain abnormalities, the jury still recommended that Knight be sentenced to death.

Last, Knight argues that trial counsel was deficient because he did not present Dr. Mittenberg's report to the jury. Knight argues that if the jury had heard Dr. Mittenberg's results and opinions, the jury would have recommended a different sentence. At the evidentiary hearing, trial counsel explained that he did not want to introduce Dr. Mittenberg's report because it would have prompted the State to introduce its expert and call into question Dr. Mittenberg's reliability. He further explained that had Dr. Mittenberg been available to testify, he would have called him as a witness, despite the fact that the State would have called its own expert, because trial counsel believed that Dr. Mittenberg's analysis would seem sounder if he were on the stand. Without him, trial counsel felt that using the report would do more harm than good. We conclude that trial counsel employed a reasonable strategy that does not constitute deficient performance under Strickland. Further, Knight was not prejudiced because the jury still heard evidence of Knight's alleged brain abnormality in the form of witness testimony.

C. Brady Violations

Next, Knight asserts that the State withheld (1) evidence regarding a memorandum by Kevin Noppinger requesting a voluntary demotion, (2) information regarding proof that newspapers existed in the cell area shared by Knight and Steven Whitsett, who testified against Knight; and (3) information regarding a false confession by Knight to another

inmate, George Greaves. For the reasons below, we conclude that none of Knight's claims require relief.

To successfully raise a Brady violation claim, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), Knight must show that (1) the evidence was favorable to him, either because it was exculpatory or impeaching; (2) the evidence was suppressed by the State; and (3) the suppression of material evidence resulted in prejudice. Conahan v. State, 118 So.3d 718, 729 (Fla. 2013) (citing Strickler v. Greene, 527 U.S. 263, 281–82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). “To establish the materiality element of Brady, the defendant must demonstrate ‘a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’ ” Id. at 730 (quoting Guzman v. State, 868 So.2d 498, 506 (Fla. 2003)). A “reasonable probability” is defined as “sufficient to undermine confidence in the outcome.” Johnson v. State, 135 So.3d 1002, 1028 (Fla. 2014). This Court reviews a postconviction court's denial of this claim under a mixed standard: we defer to the lower court's factual findings that are supported by competent, substantial evidence and review the application of law de novo. Id.

1. Noppinger Memorandum

Kevin Noppinger worked at the Broward County Sheriff's Office and conducted *679 the DNA testing in Knight's case. On July 29, 2002, before he testified at Knight's trial, Noppinger wrote a memorandum to his superior requesting a voluntary demotion. As the reason for his decision to request a demotion, Noppinger's memorandum cited to conflict with upper management related to his request to improve testing to search the National DNA Index System (NDIS). This memorandum was never discovered by trial counsel or turned over by the State.

Knight argues that this memorandum should have been turned over to the defense because it would have been useful to impeach Noppinger and ultimately would have lessened the confidence the jury had in the DNA testing procedures. Conversely, the State argues that because Knight's case was not an unsolved case requiring use of the NDIS, Noppinger's memorandum was not useful to Knight, let alone prejudicial to the outcome at trial. We affirm the postconviction court's denial of this claim because there is competent, substantial evidence supporting the conclusion that a Brady violation did not occur.

Knight is unable to prove the first prong of Brady. The Noppinger memorandum would not have been useful to Knight because it was unrelated to Knight's case. Although the memorandum was produced prior to Noppinger's testimony at trial, the memorandum cites to management disagreements as the cause for his request to be demoted. Notably, the State points out that Knight's case is not a cold case that requires the use of the national DNA database, and as such, Noppinger's memorandum is entirely unrelated to Knight's case.

Next, Knight has to demonstrate that the postconviction court erred in finding that the State did not willfully or inadvertently withhold evidence. "To comply with Brady, the individual prosecutor has a duty to learn of any favorable evidence and to disclose that evidence to the defense." Mordenti v. State, 894 So.2d 161, 170 (Fla. 2004) (citing Allen v. State, 854 So.2d 1255, 1259 (Fla. 2003)). Knight argues that because the crime lab was working on behalf of the State, the prosecutor should have known about the memorandum. Conversely, the State argues that the prosecutor was never made aware of the memorandum. The record is dispositive on this point.

However, even if Knight satisfied prongs one and two of Brady, he is unable to show prejudice. The test for prejudice or materiality under Brady, is whether, had the evidence been disclosed to the defense, there is a reasonable probability of a different result. Guzman, 868 So.2d at 508. We conclude that there is competent, substantial evidence that the postconviction court did not err in denying relief on this claim. Knight is unable to show how the memorandum specifically reduces the credibility of the State's DNA expert or how that impeachment evidence would have produced a different result. Even if the memorandum had been introduced for the limited purpose of impeaching Noppinger, the State introduced other evidence showing Knight's guilt that would have overcome the little weight the memorandum might have had.

2. Stephen Whitsett

Stephen Whitsett and Knight were housed together from June 29 to July 22, 2000, at the Broward County Jail. Knight, 76 So.3d at 883. Whitsett testified that Knight confessed to murdering the victims. Knight argues that the State improperly withheld favorable impeachment evidence in the form of a jail log showing that Knight was reprimanded

for having newspapers in his cell. Knight argues that if he had access to the media, so did Whitsett, and the media reports may have tainted his testimony against Knight. The State argues that the log does not indicate *680 that Whitsett fabricated his testimony because the log showed that Knight had the newspapers in his cell, which he did not share with Whitsett. Since Knight fails to show that the log was favorable to him, that the State suppressed it, or that suppression prejudiced him at trial, we conclude that a Brady violation did not occur.

3. George Greaves' False Statements

After Knight's trial, Knight made a supplemental request for a police report made by Detective Doug Williams. Knight's request was granted, and the Coral Springs Police Department turned over the report of Detective Williams' interview of George Greaves, an inmate at Broward County Jail who contacted crime stoppers stating that he had information regarding Knight's case. Ultimately, it became apparent that Greaves was gleaned information from media reports. Knight asserts that the State's withholding of the report was a Brady violation, and he should have been granted a new trial. Knight argues that if defense counsel had known about the false statements made on the basis of accessible media reports, counsel could have discredited Whitsett's testimony. After the evidentiary hearing, the postconviction court found that Knight failed to meet the Brady standards. We conclude that there is competent, substantial evidence that the postconviction court did not err in its findings.

Knight asserts that the police report would have been favorable to him because it would have helped to discredit Whitsett's testimony against Knight. However, Knight fails to show how the fact that Greaves had access to media reports that led to false statements would have discredited the detail-intensive testimony that Whitsett provided. Further, from the record it is unclear whether the prosecutor knew or should have known that the police report existed, and Knight fails to discuss this point.

Moreover, Knight is unable to show prejudice because the State introduced other evidence of Knight's guilt, including the victim's blood on the clothes Knight was wearing the night of the crime and that Knight was in the apartment that evening.

D. Constitutionality of Rule Regulating the Florida Bar 4–3.5(d)(4)

Knight challenges the constitutionality of rule 4–3.5(d)(4) of the Rules Regulating the Florida Bar. We reject this claim because it is procedurally barred.

The Court has held that claims challenging the constitutionality of rule 4–3.5(d)(4) must be raised on direct appeal. See Deparvine v. State, 146 So.3d 1071, 1106 (Fla. 2014) (“Deparvine’s claim is both procedurally barred because it was not raised on direct appeal and meritless.”); Troy v. State, 57 So.3d 828, 841 (Fla. 2011) (“First, this claim is procedurally barred because it should have been raised on direct appeal.”).

E. Constitutionality of Lethal Injection Protocol

Knight argues that Florida’s administration of the death penalty by lethal injection constitutes cruel and unusual punishment, in violation of the Eight Amendment. We conclude that Knight’s claim is unsuccessful because this Court has repeatedly denied such claims. See, e.g., Banks v. State, 150 So.3d 797, 800–01 (Fla. 2014); Chavez v. State, 132 So.3d 826, 831 (Fla. 2014).

III. HABEAS CORPUS CLAIMS

A. Ineffective Assistance of Counsel

Claims of ineffective assistance of appellate counsel are appropriately raised in a petition of writ of habeas corpus. See Jackson v. State, 127 So.3d 447, 476 (Fla. 2013). This Court has stated the following standard of review:

***681** The alleged error must first be of “such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance” and, second, the deficiency in performance must have “compromised the appellate process to such a degree as to undermine confidence in the correctness of the result.” Id. (quoting Pope v. Wainwright, 496 So.2d 798, 800 (Fla. 1986)). Further, “appellate counsel will not be deemed ineffective for failing to raise a claim that is without merit.” Id. (citing Freeman v. State, 761 So.2d 1055, 1070 (Fla. 2000)).

Hayward v. State, 183 So.3d 286, 327 (Fla. 2015).

1. Admission of Photograph at Trial

At trial, Knight’s trial counsel challenged the admission of a photograph as duplicative of other photographs depicting similar images. We have held that a challenge to a photograph is not preserved for appeal when trial counsel does not state specific grounds for an objection. In Doorbal v. State, 983 So.2d 464 (Fla. 2008), we concluded that trial counsel did not properly preserve a similar issue for appeal because trial counsel objected to the admission of a picture on the basis that it was “duplicative.” Id. at 498–99. We stated that trial counsel failed to preserve the issue because trial counsel did not challenge the photograph for being “gruesome,” as he did in his postconviction case. Id. at 499. Similarly, Knight’s trial counsel did not preserve the issue for appeal. As such, Knight’s appellate counsel was not ineffective for failing to present a claim that was not properly preserved.

2. Denial of Motion for Mistrial

Knight argues that appellate counsel was ineffective for failing to appeal the trial court’s denial of a mistrial following Officer Mocny’s testimony concerning Knight’s prearrest statements. When reviewing claims of ineffective assistance of appellate counsel,

“[t]he criteria for proving ineffective assistance of appellate counsel parallel the Strickland standard for ineffective trial counsel.” Wilson v. Wainwright, 474 So.2d 1162, 1163 (Fla. 1985). Thus, the Court must consider

first, whether the alleged omissions are of such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance and, second, whether the deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result.

Teffeteller v. Dugger, 734 So.2d 1009, 1027 (Fla. 1999) (quoting Suarez v. Dugger, 527 So.2d 190, 192–93 (Fla. 1988)).

Mungin, 932 So.2d at 1003.

Knight asserts that Officer Mocny testified on the topic of Knight's right to remain silent, thus violating Knight's constitutional rights. We reject Knight's argument because Officer Mocny's testimony of her conversation with Knight did not violate Knight's constitutional rights. Accordingly, appellate counsel was not ineffective for raising a meritless claim.

This Court has repeatedly recognized the concept that courts must prohibit all evidence or argument that may be interpreted by the jury as a comment on the defendant's right to remain silent. Brown v. State, 197 So.3d 569 (Fla. 3d DCA 2015) (citing State v. Smith, 573 So.2d 306 (Fla. 1990)).

Based on its interpretation of article I, section 9 of the Florida Constitution, the court in Hoggins held that a prosecutor may not comment upon or attempt to impeach a defendant with his or her *682 post-arrest, pre-Miranda^[2] or post-Miranda silence. This prohibition is premised upon the generally accepted principle that a defendant does not waive his or her right to remain silent at the time of arrest by testifying in his or her own defense at trial. The same test applies regardless of whether the evidence of post-arrest silence is admitted in the state's case in chief or during impeachment of the defendant: "If the comment is fairly susceptible of being construed by the jury as a comment on the defendant's exercise of his or her right to remain silent, it violates the defendant's right to silence." [State v.] Hoggins, 718 So.2d [761] at 769 [(Fla. 1998)].

Robbins v. State, 891 So.2d 1102, 1106 (Fla. 5th DCA 2004); see also Chamblin v. State, 994 So.2d 1165, 1168 (Fla. 1st DCA 2008) (concluding that "[t]he Florida Constitution prohibits prosecutorial comment on a defendant's silence at the time of his arrest, prior to the administration of his Miranda warnings, as well as attempts to impeach the defendant therewith.").

² Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

The record shows that Mocny's testimony referenced Knight's statements before he was arrested regarding his whereabouts on the night of the crime and whether he had a key to Stephens' apartment. Mocny's testimony did not comment on Knight's silence. Because this claim would have been meritless on direct appeal, we conclude that Knight's appellate counsel was not ineffective.

3. Hurst v. Florida

In two rounds of supplemental briefs, Knight argues that he was unconstitutionally sentenced to death because his penalty phase jury did not find all of the facts necessary to impose the death penalty. We agree. See Hurst v. Florida, — U.S. —, 136 S.Ct. 616, 624, 193 L.Ed.2d 504 (2016). Because Knight's death sentence became final in 2012, Hurst v. Florida applies retroactively to him. See Mosley v. State, No. SC14-436, 209 So.3d 1248, 1283-84, 2016 WL 7406506, at *25 (Fla. Dec. 22, 2016).

Knight also asks that we vacate his death sentence and sentence him to life imprisonment pursuant to section 775.082(2), Florida Statutes, or alternatively, that we remand for a new penalty phase proceeding. We decline to do either. First, we recently held that section 775.082(2), Florida Statutes, does not mandate the imposition of a life sentence in the event of a Hurst v. Florida violation. See Hurst v. State, 202 So.3d 40, 63-66 (Fla. 2016). We also decline to vacate Knight's death sentence because we find that this is one of the rare cases in which the Hurst v. Florida violation is harmless beyond a reasonable doubt. See Davis v. State, 207 So.3d 142, 175, 2016 WL 6649941 (Fla. Nov. 18, 2016).

In Davis, this Court held that the Hurst v. Florida error was harmless: "With regard to Davis's sentences, we emphasize the unanimous jury recommendations of death. These recommendations allow us to conclude beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." Id. at 174 (emphasis omitted). Knight's jury likewise recommended a death sentence by a unanimous twelve-to-zero vote. Knight's jury received substantially the same standard jury instruction as we cited in Davis, ensuring that the jury "determine[d] whether sufficient aggravators existed and whether the aggravation outweighed the mitigation before it ... recommend[ed] a sentence of death." Id. (citing Fla. Std. Jury Instr. (Crim.) 7.11). As with the jury in Davis, *683 Knight's "jury was presented with evidence of mitigating circumstances and was properly informed that it may consider mitigating circumstances that are proven by the greater weight of the evidence." Id. (citing Fla. Std. Jury Instr. (Crim.) 7.11). As in Davis, Knight's "jury was not informed that the finding that sufficient aggravating circumstances outweighed the mitigating circumstances must be unanimous, and ... the jury did, in fact, unanimously recommend death." Id. (citing Fla. Std. Jury Instr. (Crim.) 7.11).

To be sure, Knight's jury and the Davis jury were not identically instructed. For instance, the Davis jury "was instructed that it was not required to recommend death even if the aggravators outweighed the mitigators," while Knight's jury was not. Id. (citing Fla. Std. Jury Instr. (Crim.) 7.11). Nonetheless, we believe that Knight's jury received substantially the same critical instructions as Davis's jury, allowing us to conclude beyond a reasonable doubt that here, as in Davis, "the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendations." Id.

Finally, as in Davis, "the egregious facts of this case" provide "[f]urther support[] [for] our conclusion that any Hurst v. Florida error here was harmless." Id. at 175. In a violent and bloody struggle, Knight murdered a mother and her four-year-old daughter in an argument about whether Knight had to move out of the mother's apartment. Knight strangled and repeatedly stabbed the mother with multiple knives in her bedroom in the middle of the night while the daughter was present. The mother could not yell for help because Knight's attack had destroyed her larynx. The mother suffered, still conscious, through the attack for at least ten minutes following the fatal wounds. She tried and failed to escape. Knight also attempted to strangle and repeatedly stabbed the daughter. Knight's stabbings caused the daughter's lungs to fill with blood, and she essentially drowned in her own blood. Both victims died gruesome, painful deaths.

The trial court found two statutory aggravating circumstances for the murder of [the mother]: (1) a previous conviction of another violent capital felony, and (2) HAC. The court also found three statutory aggravating circumstances for the murder of [the daughter]: (1) a previous conviction of another violent capital felony, (2) HAC, and (3) the victim was under twelve years of age.

Knight, 76 So.3d at 890. As we have repeatedly noted, "[t]he HAC and prior violent felony aggravators have been described as especially weighty or serious aggravators set out in the sentencing scheme." Hildwin v. State, 84 So.3d 180, 190 (Fla. 2011).

What we said in Davis is equally true here:

Here, the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that [the defendant] be sentenced to death The unanimous recommendations here are precisely what we determined in Hurst[v. State] to be constitutionally necessary to impose a sentence of death.

Davis, 207 So.3d at 175. Accordingly, we hold that the Hurst v. Florida violation in Knight's case was harmless beyond a reasonable doubt. See id. As in Davis, the Hurst v. Florida violation here does not entitle Knight to a new penalty phase.

*684 IV. CONCLUSION

Based on the foregoing analysis, we affirm the circuit court's denial of postconviction relief. We also deny Knight's petition for a writ of habeas corpus.

It is so ordered.

LABARGA, C.J., and PARIENTE, and LEWIS, JJ., concur.

CANADY and POLSTON, JJ., concur in result.

QUINCE, J., concurs in part and dissents in part with an opinion, in which PERRY, Senior Justice, concurs.

PERRY, Senior Justice, concurs in part and dissents in part with an opinion.

QUINCE, J., concurring in part and dissenting in part.

I concur with my colleagues that Knight is not entitled to relief on the majority of his claims, however, I cannot agree with

the majority's conclusion that the Hurst error in this case is harmless beyond a reasonable doubt. Because I would find that the Hurst error in this case requires a new penalty phase, I dissent.

I agree with Senior Justice Perry's statement that "[t]he majority's reweighing of the evidence ... to support its conclusion" contravenes our decision in Hurst v. State, 202 So.3d at 49, and is the conduct the United States Supreme Court reproached in Hurst v. Florida, 136 S.Ct. at 622.

Here, although the jury unanimously recommended a death sentence, we cannot know that the jury found each aggravating factor unanimously. Because one of the aggravators found by the trial court for each murder in this case—that the murder was especially heinous, atrocious or cruel—requires specific factual findings, Hurst requires that the jury, not the trial judge, make that determination. The jury made no such determination in Knight's case. Accordingly, I would vacate Knight's death sentence and remand for resentencing. See Hurst, 202 So.3d at 69.

PERRY, Senior Justice, concurs.

PERRY, Senior Justice, concurring in part and dissenting in part.

While I concur in most respects with the majority's decision, I cannot agree with the majority's analysis that the Hurst v. Florida, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), error was harmless beyond a reasonable doubt. To the extent that I would not find the error harmless beyond a reasonable doubt, I dissent. I likewise dissent from the majority's determination that section 775.082(2), Florida Statutes, is inapplicable to this case: I would follow the Legislature's command to impose a sentence of life imprisonment.

In Hurst v. State, 202 So.3d 40, 69 (Fla. 2016), we declined to speculate why the jurors voted the way they did; yet, here, the majority "conclude[s] beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravators to outweigh the mitigating factors." Majority op. at 682 (quoting Davis v. State, 207 So.3d 147, 174, 2016 WL 6649941 (Fla. Nov. 18, 2016)). Even though the jury unanimously recommended the death penalty, whether the jury unanimously found each aggravating factor remains unknown.

The majority's reweighing of the evidence—particularly the gruesome facts of the victims' deaths—to support its conclusion is not an appropriate harmless error review. The harmless error review is not a sufficiency of the evidence test, and the majority's analysis should instead focus on the effect of the error on the trier of fact. State v. DiGuilio, 491 So.2d 1129, 1139 (Fla. 1986). By ignoring the record and concluding that all aggravators were unanimously *685 found by the jury, the majority is engaging in the exact type of conduct the United States Supreme Court cautioned against. See Hurst v. Florida, 136 S.Ct. at 622.

Because the harmless error review is neither a sufficiency of the evidence review nor "a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence," DiGuilio, 491 So.2d at 1139, I cannot conclude beyond a reasonable doubt that the error here was harmless, and I would vacate Knight's unconstitutional death sentence. Rather than remand for resentencing, however, I would apply the remedy that the Legislature explicitly provided: a sentence of life imprisonment. See § 775.082(2), Fla. Stat. (2016).

As I have previously explained, the Legislature has decided that the appropriate remedy "[i]n the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court" is for "the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment." § 775.082(2), Fla. Stat.; see also Hurst v. State, 202 So.3d at 75–76 (Perry, J., concurring in part and dissenting in part). The death penalty in Knight's capital felony has been held unconstitutional by this Court. See majority op. at 681–82. Accordingly, Knight is entitled to the clear and unambiguous statutory remedy that the Legislature has specified: a sentence of life imprisonment.

The majority disagrees. See majority op. at 682 (citing Hurst v. State, 202 So.3d at 63–66). But the plain language of the statute does not rely on a specific amendment to the United States Constitution, nor does it refer to a specific decision by this Court or the United States Supreme Court. Further, it does not contemplate that all forms of the death penalty in all cases must be found unconstitutional. Instead, the statute uses singular articles to describe the circumstances by which the statute is to be triggered. Indeed, the statute repeatedly references a singular defendant being brought before a court for sentencing to life imprisonment.

I consequently cannot agree that the statute was intended as a fail-safe mechanism for when this Court or the United States Supreme Court declared that the death penalty was categorically unconstitutional. Cf. Hurst v. State, 202 So.3d at 66.

Knight's death sentence is unconstitutional. That constitutional violation is not harmless beyond a reasonable

doubt. The remedy for that violation is a sentence of life imprisonment. To the extent that the majority finds harmless error and declines to order a sentence of life imprisonment, I respectfully dissent.

All Citations

225 So.3d 661, 42 Fla. L. Weekly S133

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APPENDIX C

76 So.3d 879
Supreme Court of Florida.

Richard KNIGHT, Appellant,
v.
STATE of Florida, Appellee.

No. SC07–841.
|
Sept. 28, 2011.
|
Rehearing Denied Dec. 15, 2011.

Synopsis

Background: Defendant was convicted following jury trial in the Circuit Court, Broward County, Eileen M. O'Connor, J., of two counts of murder in the first degree for the murder of his cousin's girlfriend and four year old who was the daughter of his cousin and his cousin's girlfriend, and he was sentenced to death. Defendant appealed.

Holdings: The Supreme Court held that:

trial court did not abuse its discretion by denying defendant's motion for a mistrial on basis of witness's statement;

trial court did not abuse its discretion by denying motion for mistrial on the basis that jury might have seen him wearing handcuffs and shackles;

trial court did not err in finding that no discovery violation occurred;

trial court did not abuse its discretion in refusing to dismiss the venire;

evidence was sufficient for conviction; and

sentence was proportionate.

Affirmed.

Attorneys and Law Firms

*881 Melodee A. Smith of Law Offices of Melodee A. Smith, Fort Lauderdale, FL, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, FL, and Lisa-Marie Lerner, Assistant Attorney General, West Palm Beach, FL, for Appellee.

Opinion

PER CURIAM.

Richard Knight was convicted of two counts of first-degree murder for the deaths of Odessia Stephens and four-year-old Hanessia Mullings, which occurred on June 28, 2000. Knight appeals his first-degree murder convictions and sentence of death. We have mandatory jurisdiction. *See* art. V, § 3(b) (1), Fla. Const. For the reasons explained below, we affirm Knight's convictions and sentences of death.

FACTS AND PROCEDURAL HISTORY

The Guilt Phase

The evidence presented at trial established that Knight lived in an apartment with his cousin, Hans Mullings, Mullings' girlfriend, Odessia Stephens, and their daughter, Hanessia Mullings. Mullings and Odessia had asked Knight to move out numerous times.

On the night of the murder, June 27, 2000, Mullings was at work. At approximately 9 p.m., Mullings spoke to Odessia, who said she was going to bed, and then Mullings left his office to run errands. Knight was at the apartment with Odessia and Hanessia.

Around midnight, an upstairs neighbor heard multiple thumping sounds on the apartment walls and two female voices, one of which was a child crying. The neighbor called 911 at 12:21 a.m. on June 28, 2000. The cries continued after the police arrived.

Officer Vincent Sachs was the first to respond. He arrived at 12:29 a.m. and noted that the lights were on in the master bedroom and hall area, and that a second *882 bedroom's window was slightly ajar. After knocking and receiving no response, he walked around the unit and noticed that the lights had been turned off and that the previously ajar window was now completely open and blinds were hanging out of it. Sachs shined his flashlight through the dining room window. He saw blood in the dining room and master bedroom. Further, he noticed Hanessia curled in the fetal position against the closet

door. Once inside, he observed Odessia's body in the living room. All of the doors were locked and there had been no ransacking of the apartment.

Officer Natalie Mocny arrived next and walked around the unit.¹ She also saw the open window and noticed Knight on the other side of some hedges approximately 100 yards from the building. She beckoned him over for questioning. Officer Sachs joined Mocny. According to the officers, Knight had a scratch on his chest, a scrape on his shoulder, and fresh cuts on his hands. Although it was not raining, Knight was visibly wet. Knight was wearing dress clothes and shoes, yet told Mocny that he had been jogging, and that he lived in the apartment, but did not have a key to get inside. There was blood on the shirt he was wearing and on a ten-dollar bill in his possession.

¹ Officer Amy Allen also testified that she had climbed through the open window to open the apartment door and observed a deceased black female.

The crime scene investigation recovered two wet towels in Knight's bedroom, a shirt, boxers, and a pair of jean shorts under the sink in the bathroom near Knight's bedroom, all of which belonged to Knight and had numerous bloodstains. Two knife blades were also recovered, one from under the mattress in the master bedroom, and another from under Odessia's body.

Odessia's blood was found in the master bedroom between the bed and the wall, on the master bedroom blinds, on the living room carpet, on the knives' handles and blades, and on the knife holder in the kitchen. Odessia's blood was also discovered on Knight's boxers, shirt, jean shorts, the clothing Knight had been wearing when arrested, and his hand. Fingernail scrapings taken from Odessia contained Knight's DNA profile.

Hanessia's blood was found on one of the knives, on Knight's boxers, jean shorts, and on the shower curtain. The shower curtain also contained the blood of Knight's acquaintance, Victoria Martino.

Dr. Lance Davis, the medical examiner, observed the bodies at the scene. Odessia was found on the living room floor near the entrance with several broken knife pieces around her. She had twenty-one stab wounds: fourteen in the neck, one on the chin, and the rest on her back and chest. Additionally,

she had twenty-four puncture or scratch wounds and bruising and ligature marks on her neck. The bruises appeared to have been made by a belt or similar object. She also had defensive wounds on both hands and wounds on her leg, chest, back and neck. Several of the knife wounds were fatal but none would have resulted in an instantaneous death. She had bruises from being punched on her scalp and mouth. Davis opined that Knight began his attack in the bedroom with Odessia fleeing to the living room. He estimated that Odessia was conscious for ten to fifteen minutes after the attack.

Davis discovered Hanessia on the floor next to the closet door. There were broken knife pieces around her. She had a total of four stab wounds in her upper chest and neck. Her hand had one additional stab wound and numerous defensive *883 wounds. Hanessia's arms and upper body had numerous bruises and scratches. There were bruises on her neck that were consistent with manual strangulation and bruises on her arms consistent with being grabbed.

Stephen Whitsett and Knight were housed together from June 29, 2000, to July 22, 2000, at the Broward County Jail. Knight confessed to Whitsett about the murders as follows: The night of the murders Knight and Odessia argued. She told him that she did not want to support him and that he would have to move. He asked for some more time because he had just gotten a job, but Odessia refused and told him to leave in the morning. Knight left the house to go for a walk and he became increasingly angry. He returned that night, confronted Odessia in her room, and they argued.

Knight went to the kitchen and got a knife. When he went back to the master bedroom, Odessia was on one side of the bed and Hanessia was on the other. He began by stabbing Odessia multiple times. Odessia eventually stopped defending herself and balled up into a fetal position. Knight then turned to four-year-old Hanessia. The knife broke while he was stabbing Hanessia, so he returned to the kitchen for another. Upon returning, Knight saw Hanessia had crawled to the closet door and was drowning in her own blood.

Again, Knight returned to the kitchen and accidentally cut his hand on one of the broken knives that he had used to stab Odessia and Hanessia. He grabbed another knife. Odessia had crawled from the master bedroom to the living room and was lying in her own blood. He rolled her over and continued his attack. Odessia's blood covered Knight's hands, so he wiped them on the carpet.

Knight further confessed that, after he finished with Odessia, he went to the bathroom, took off the blood soaked shorts and T-shirt, and tossed them under the sink. He showered and put on blue polo pants. He wiped down the knives in the living room. At that time, Knight heard a knock on the door and saw the police outside through the peep hole. He ran to his room and out the window. In an attempt to deflect suspicion away from himself, Knight returned to his bedroom window where he saw a female police officer.

Knight was charged by indictment on August 15, 2001, for the murders of Odessia Stephens and Hanessia Mullings. The jury found Knight guilty of both counts of first-degree murder.

The Penalty Phase

At the penalty phase, Knight called six witnesses, several of whom testified about his childhood and upbringing in Jamaica. His teacher, Joscelyn Walker, told the jury that Knight was a respectful and loving boy raised in a very respected family. He said that Knight did have a temper when provoked and would become extremely frustrated at times. Walker had to restrain him from time to time when Knight wanted to fight another child. Knight's high school art teacher, Joscelyn Gopie, described Knight as a pleasant, eager boy who was quite talented at art. Gopie explained that Knight was adopted as a toddler by his family. Knight left high school before he graduated.

Barbara Weatherly is the mother of Knight's former fiancée. She described him as a decent, honorable guy who respected her rules regarding her daughter. He always helped her younger children with their drawing. He was a quiet and peaceful person who spent a lot of time alone. One night at her house he got sick; his eyes rolled back in his head and he frothed at the mouth before passing out. *884 They took him to the hospital where the doctor said that he needed to see a psychiatrist. She last saw him in 1998 when he left to go to the United States.

A former boss and coworker of Knight's, Stanley Davis, also testified. Davis explained that Knight had been adopted into a well respected family and had a close loving relationship with his family members. Knight took over many of his father's duties when his father lost a leg. Knight worked with him at a construction company and was a good worker. On one occasion Knight fell and blacked out, after which he had difficulty concentrating and became timid.

Valerie River, the defense investigator, and Knight's attorney journeyed to Jamaica to interview Knight's family and friends. Knight was abandoned by his mother and the Knight family found him at a hospital and took him home. He was a good brother and son. Knight's close friends and family said that he was a nice and good person. Knight's sister-in-law used to have Knight babysit her children but eventually stopped because he was careless around the house. Knight blacked out on one occasion. Knight's former boss Stedman Stevenson said he was a hard worker and a quick learner. He took Knight to Florida, and Knight decided to stay.

Knight also presented expert Dr. Jon Kotler who practices nuclear medicine and specializes in PET scans of the brain. He explained that Knight's physical symptoms indicated that he might have a brain injury. The MRI done on him was normal. Dr. Kotler did a PET scan which he interpreted as showing asymmetrical brain activity indicating possible pathology of the brain, perhaps a seizure disorder. He could not say exactly what the pathology might be or how it might manifest itself in Knight's behavior. Dr. Sfakianakis, another nuclear medicine doctor, read the PET results as showing only a mild difference between the brain hemispheres which was within the normal fluctuations of the brain.

Following the presentation of penalty-phase testimony, the jury unanimously recommended the death penalty for both murders.

The *Spencer*² Hearing

² *Spencer v. State*, 615 So.2d 688 (Fla.1993).

The trial court subsequently conducted a *Spencer* hearing on August 18, 2006. At the hearing, the defense submitted the report and deposition of neuropsychologist Dr. Mittenberg who examined Knight but refused to testify at trial. The State submitted the report and deposition of Dr. Lopickalo, another neuropsychologist. Mullings and Eunice Belan also gave victim impact statements.

The Sentencing Order

Subsequent to the *Spencer* hearing, the trial court followed the jury's recommendation and sentenced Knight to death. In pronouncing Knight's sentence, the trial court determined

that the State had proven beyond a reasonable doubt two statutory aggravating circumstances for the murder of Odessia Stephens: (1) a previous conviction of another violent capital felony, and (2) that the murder was especially heinous, atrocious, or cruel (HAC). The court also found three statutory aggravating circumstances for the murder of Hanessia Mullings: (1) a previous conviction of another violent capital felony, (2) HAC, and (3) the victim was under twelve years of age. The court found no statutory mitigating circumstances but found eight nonstatutory mitigators, which are set forth in our proportionality discussion.

*885 On direct appeal, Knight raises five claims.³ We conclude that each issue is without merit. We also find the evidence sufficient to support Knight's convictions, and that the death sentences are proportionate.

³ Knight asserts the following: (1) the trial court abused its discretion by denying Knight's motion for mistrial based on Hans Mullings' comment that he knew Knight to have a violent background; (2) the trial court abused its discretion in denying Knight's motion for mistrial based on the allegation that jurors saw him wearing shackles; (3) the trial court erred in ruling that no discovery violation occurred and in denying Knight's motion for mistrial based on the State's expert's testimony regarding DNA evidence; (4) the trial court erred in denying Knight's motion to seat a new jury based on Mullings' testimony; and (5) the Florida death sentencing statute violates the Sixth Amendment and ignores *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).

ANALYSIS

Hans Mullings' Testimony

Knight first claims the trial court erred in denying his motion for mistrial following the State's redirect examination of Hans Mullings, during which Mullings stated that Knight had a "violent background." Specifically, Knight contends that Mullings' testimony had a negative impact on his character and resulted in undue prejudice. While we agree with Knight that Mullings' statement was improper, we disagree that the trial court erred by not granting a mistrial under these circumstances.

The facts underlying this claim are as follows. During redirect examination by the State, Mullings testified that when he arrived at his residence and saw the police, "I was just assuming that, truthfully, probably Odessia and Richard got into an argument or something because I know Richard's violent background." The defense objected to this testimony and moved for a mistrial. The trial court sustained defense counsel's objection and instructed the jury to disregard the comment.

A trial court's denial of a motion for mistrial is reviewed by an abuse of discretion standard. *Cole v. State*, 701 So.2d 845, 852 (Fla.1997). The granting of a motion for mistrial is not based on whether the error is "prejudicial." Rather, the standard requires that a mistrial be granted only "when an error is so prejudicial as to vitiate the entire trial," *England v. State*, 940 So.2d 389, 401–02 (Fla.2006), such that a mistrial is "necessary to ensure that the defendant receives a fair trial." *McGirth v. State*, 48 So.3d 777, 790 (Fla.2010), *cert. denied*, — U.S. —, 131 S.Ct. 2100, 179 L.Ed.2d 898 (2011). "It has been long established and continuously adhered to that the power to declare a mistrial and discharge the jury should be exercised with great care and caution and should be done only in cases of absolute necessity." *England*, 940 So.2d at 402 (quoting *Thomas v. State*, 748 So.2d 970, 980 (Fla.1999)). Therefore, "[i]n order for [Mullings' statement] to merit a new trial, the comments must either deprive the defendant of a fair and impartial trial, materially contribute to the conviction, be so harmful or fundamentally tainted as to require a new trial, or be so inflammatory that they might have influenced the jury to reach a more severe verdict than that it would have otherwise." *Salazar v. State*, 991 So.2d 364, 372 (Fla.2008) (quoting *Spencer v. State*, 645 So.2d 377, 383 (Fla.1994)).

It has been established that the State cannot introduce evidence attacking the character of the accused unless the accused first puts his good character in issue. *See Wadsworth v. State*, 201 So.2d 836 (Fla. 4th DCA 1967), *quashed on other* *886 *grounds*, 210 So.2d 4 (Fla.1968), § 90.404(1)(a), Fla. Stat. (2006).

In the instant case, Mullings, the victims' surviving boyfriend and father and the defendant's cousin, testified that he rushed back to the apartment because he knew Knight had a violent background. However, as noted above, the defense objected, the objection was sustained, and the jury was instructed to disregard the remark. The statement was not so prejudicial as to prevent Knight from receiving a fair trial. *See, e.g., Roman v. State*, 475 So.2d 1228, 1234 (Fla.1985) (concluding

that the trial court did not err in denying motion for mistrial when prosecutor's question implied that the defendant had a prior criminal record because although the question was improper, there was other overwhelming evidence against the defendant). Accordingly, we conclude the trial court did not abuse its discretion in denying Knight's motion for mistrial.

Allegation That Jurors Saw Knight in Shackles

Next, Knight claims that the trial court improperly denied his motion for mistrial for being shackled in the presence of the jury during the guilt phase. On the final day of jury selection and after the jury had been impaneled, two custody deputies escorted Knight past the jury room. At the same time, the bailiff briefly opened the jury room door. Knight was wearing handcuffs and shackles. Knight filed a motion for mistrial and a motion to disqualify the jury. During an evidentiary hearing on the motions, the deputies reenacted the scenario. The trial court found that no juror could have seen Knight and denied the motion for mistrial.

This Court reviews a trial court's ruling on a motion for mistrial under an abuse of discretion standard. *England v. State*, 940 So.2d 389, 402 (Fla.2006). If reasonable people could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and therefore is not an abuse of discretion. *Bryant v. State*, 901 So.2d 810, 817 (Fla.2005) (citing *Canakarlis v. Canakarlis*, 382 So.2d 1197, 1203 (1980)). A motion for mistrial should be granted only when it is necessary to ensure that the defendant receives a fair trial. *Seibert v. State*, 923 So.2d 460, 471–72 (Fla.2006).

First, it is well accepted that shackling a defendant during a criminal trial is “inherently prejudicial.” *Deck v. Missouri*, 544 U.S. 622, 635, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2005) (quoting *Holbrook v. Flynn*, 475 U.S. 560, 568, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986)); see also *Bryant v. State*, 785 So.2d 422, 429 (Fla.2001) (quoting *Bello v. State*, 547 So.2d 914, 918 (Fla.1989)). Visible shackling interferes with the accused's presumption of innocence and the fairness of the fact-finding process. *Deck*, 544 U.S. at 630, 125 S.Ct. 2007; *Bryant*, 785 So.2d at 428; see also *Diaz v. State*, 513 So.2d 1045, 1047 (Fla.1987). For that reason, visible shackles must only be used when “justified by an essential state interest” specific to the defendant on trial. *Deck*, 544 U.S. at 624, 125 S.Ct. 2007; see *Bello*, 547 So.2d at 918.

Here, Knight was not forced to stand trial while wearing shackles, but was merely shackled during transport when, according to his allegation, he was inadvertently viewed by several jurors. The record indicates that it is unlikely any juror saw Knight in shackles. However, even if we assumed Knight's allegation to be true,

[w]e have long held that a juror's or prospective juror's brief, inadvertent view of a defendant in shackles is not so prejudicial as to warrant a mistrial. See, e.g., *887 *Singleton v. State*, 783 So.2d 970, 976 (Fla.2001) (explaining that the jurors' brief glances of the defendant while he was being transported in prison garb and shackles, standing alone, were not so prejudicial as to require a mistrial); *Stewart v. State*, 549 So.2d 171, 174 (Fla.1989) (finding that a new trial was not warranted where the defendant's shackles were ruled unobtrusive and necessary by the trial court and were only barely visible beneath the table); *Heiney v. State*, 447 So.2d 210, 214 (Fla.1984) (holding that the jurors' possible inadvertent and brief sight of the defendant being transported into the courtroom in chains did not justify a mistrial); *Neary v. State*, 384 So.2d 881, 885 (Fla.1980) (concluding that the jurors' inadvertent sight of the defendant being brought into the courtroom in handcuffs was not so prejudicial as to require a mistrial). Thus, the mere fact that a prospective juror saw the shackled ankles of a person whom he believed to be [the defendant] underneath a chalkboard set up in the hallway outside the courtroom is not sufficient, standing alone, to warrant a mistrial or dismissal of the venire.

Hernandez v. State, 4 So.3d 642, 658 (Fla.), cert. denied, — U.S. —, 130 S.Ct. 160, 175 L.Ed.2d 101 (2009).

Applying that reasoning to the facts of this case, we conclude that even if there was an inadvertent sighting of Knight in shackles, it was not so prejudicial as to warrant a mistrial. Thus, the court's decision to deny Knight's motion for mistrial was not an abuse of discretion.

Discovery Violations

Knight also challenges the trial court's ruling that no discovery violation occurred and alleges the trial court erred in denying Knight's motion for mistrial based on the State's experts' testimony regarding DNA evidence. Knight argues that the State provided defense counsel with what appeared to be a complete DNA comparison, but then ordered further DNA comparisons without any notice to the defense. Based on the State's discovery produced prior to trial, defense counsel relied on serologist Kevin Noppinger's DNA analysis that Knight's jean shorts and boxers, recovered from the apartment bathroom, contained Odessia and Hanessia's DNA, and excluded the DNA of Knight.

At trial, however, the prosecutor presented testimony from Dr. Kevin McElfresh of Bode Technology Group establishing that Knight's DNA could not be excluded from the jean shorts and boxers. Because the defense was under the impression that the jean shorts and boxers would exclude Knight, Knight argues that the State "ambushed" the defense at trial by failing to disclose the additional DNA analysis that failed to exclude Knight's DNA from the jean shorts and boxers. Knight asserts the State violated discovery rules and that the trial court erred by failing to conduct a *Richardson*⁴ hearing on the alleged violation. This claim is without merit.

⁴ *Richardson v. State*, 246 So.2d 771 (Fla.1971).

As articulated by this Court in *Sinclair v. State*, 657 So.2d 1138, 1140 (Fla.1995):

[W]hen the State violates a discovery rule, the trial court has discretion to determine whether the violation resulted in harm or prejudice to the defendant, but this discretion can be properly exercised only after adequate inquiry into all the surrounding circumstances. *State v. Hall*, 509 So.2d 1093 (Fla.1987). In making such an

inquiry, the trial judge must first determine whether a discovery *888 violation occurred. If a violation is found, the court must assess whether the State's discovery violation was inadvertent or willful, whether the violation was trivial or substantial, and most importantly, what affect it had on the defendant's ability to prepare for trial.

See also Taylor v. State, 62 So.3d 1101, 1112 (Fla.2011). Under this precedent, it is only after the trial court finds a discovery violation that it must make an inquiry into whether the State's discovery violation was inadvertent or willful, whether the violation was trivial or substantial, and most importantly, what affect it had on the defendant's ability to prepare for trial. *See Richardson v. State*, 246 So.2d 771, 775 (Fla.1971) (requiring court to determine if violation of rule relating to exchange of witness lists was inadvertent or willful, whether violation was trivial or substantial, and what effect, if any, it had upon ability of other party to properly prepare for trial).

In this case, contrary to Knight's argument, the trial court determined that the State provided Knight with all the evidence presented at trial and that no discovery violation occurred, which is supported by the record. The record demonstrates that the questioned evidence was produced and the trial court found no discovery violation occurred after two inquiries. In fact, the trial court found that the defense was actually in receipt of all evidence, but complained of having the evidence interpreted differently by two experts and having relied on the information from the first expert. *See State v. Evans*, 770 So.2d 1174, 1177–78 (Fla.2000) ("When testimonial discrepancies appear, the witness' trial and deposition testimony can be laid side-by-side for the jury to consider. This would serve to discredit the witness and should be favorable to the defense. Therefore, unlike failure to name a witness, changed testimony does not rise to the level of a discovery violation and will not support a motion for a *Richardson* inquiry." (quoting *Bush v. State*, 461 So.2d 936, 938 (Fla.1984))). Therefore, because the trial court found that no discovery violation occurred, and that finding is supported by the record, we conclude that no *Richardson* hearing was required in this case.

Based on a review of the record, we hold that the trial court did not err in finding that no discovery violation occurred. Thus, a *Richardson* hearing was not required and the trial court properly denied Knight's motion for mistrial. Furthermore, although a *Richardson* hearing was not required, the trial court nevertheless complied with this Court's precedent in holding such a hearing.

Knight's Motion to Seat a New Jury

Knight contends Mullings' testimony during the guilt phase proceedings that Knight had a "violent background" required the trial court to seat a new jury for purposes of the penalty phase of the trial. Knight argues that Mullings' testimony was so prejudicial that this Court should reverse and remand for a new penalty phase proceeding. Knight's argument is without merit.

A trial court's decision on whether to dismiss a venire is reviewed for an abuse of discretion. See *Richardson v. State*, 706 So.2d 1349, 1357 (Fla.1998); *Valderrama v. State*, 816 So.2d 1143, 1144 (Fla. 4th DCA 2002); *Bauta v. State*, 698 So.2d 860, 861–62 (Fla. 3d DCA 1997).

We have previously considered this issue as a guilt-phase claim and concluded that the trial court did not abuse its discretion in failing to grant a mistrial after Mullings made this statement. We likewise conclude that the trial court did not abuse its discretion in refusing to dismiss *889 the venire prior to the penalty phase based on the impact of this same statement. We have held that defendants subject to the death penalty are not entitled to separate guilt and penalty phase juries. See *Melton v. State*, 638 So.2d 927, 929 (Fla.1994); *Riley v. State*, 366 So.2d 19, 21 (Fla.1978) (concluding that there is "no compulsion in law or logic" to bifurcate juries in capital case trials). Here, the jury is presumed to have followed the trial judge's admonition to disregard Mullings' testimony during the guilt phase. Accordingly, there is no basis that would disqualify this jury from rendering a penalty recommendation. Accordingly, the trial court did not err, and we deny relief on this claim.

Florida's Death Sentence Statute

Knight's final claim challenges the constitutionality of Florida's death sentencing scheme as set forth in section 921.141, Florida Statutes (2000). This argument is without

merit. We have repeatedly rejected requests to revisit this issue. See *Abdool v. State*, 53 So.3d 208, 228 (Fla.2010) ("This Court has also rejected [the] argument that this Court should revisit its opinions in *Bottoson v. Moore*, 833 So.2d 693 (Fla.2002), and *King v. Moore*, 831 So.2d 143 (Fla.2002), and find Florida's sentencing scheme unconstitutional.") (citing *Guardado v. State*, 965 So.2d 108, 118 (Fla.2007)), *petition for cert. filed*, No. 10–10531 (U.S. Apr. 25, 2011).

Sufficiency of the Evidence

Additionally, we must review the record for competent, substantial evidence to sustain Knight's convictions for the murders of Odessia and Hanessia. See *Miller v. State*, 42 So.3d 204, 227 (Fla.2010). A review of the record shows there is sufficient evidence to support the murder convictions.

As outlined above, the evidence presented at trial showed that Odessia and Hanessia died after being stabbed numerous times and strangled. There were three knives used in the attacks, all of them broken. There were a combined twenty-six stab wounds between the victims, plus additional puncture and scratch wounds. Hanessia had bruises consistent with Knight having repositioned his hands to strangle her, and Odessia had ligature marks on her neck that appeared to have been made by a belt or similar object. Odessia had bruises consistent with Knight having struck her on her head and punched her in the mouth. Both victims' blood was found on Knight's clothing. There was evidence of a struggle and that Knight had pursued Odessia to continue his attack on her. Both victims showed evidence of defense. Neither victim died instantly. Knight was found at the crime scene wet, although it was not raining, and claiming to have been jogging despite the fact he was wearing dress shoes. Further, Knight confessed to a fellow inmate while he was in jail awaiting trial. Accordingly, the record demonstrates that there is competent, substantial evidence to sustain Knight's convictions for the first-degree murders of Odessia and Hanessia.

Proportionality

Finally, "[t]his Court must review the proportionality of a death sentence, even if the issue has not been raised by the defendant." *Bolin v. State*, 869 So.2d 1196, 1204 (Fla.2004). Proportionality review "is not a comparison between the number of aggravating and mitigating circumstances." *Crook v. State*, 908 So.2d 350, 356 (Fla.2005) (quoting *Porter v.*

State, 564 So.2d 1060, 1064 (Fla.1990)). Instead, the Court considers the totality of the circumstances to determine if death is warranted in comparison to other cases where the death sentence has been upheld. *890 *Davis v. State*, 859 So.2d 465, 480 (Fla.2003). In addition, the heinous, atrocious, or cruel aggravator is one of the “most serious aggravators set out in the statutory sentencing scheme.” *Larkins v. State*, 739 So.2d 90, 95 (Fla.1999).

The trial court found two statutory aggravating circumstances for the murder of Odessia Stephens: (1) a previous conviction of another violent capital felony, and (2) HAC. The court also found three statutory aggravating circumstances for the murder of Hanessia Mullings: (1) a previous conviction of another violent capital felony, (2) HAC, and (3) the victim was under twelve years of age. The aggravators in this case were weighed against eight nonstatutory mitigators: (1) Knight had a good upbringing (slight weight), (2) Knight loves his family (moderate weight), (3) Knight went to high school and excelled in art (little weight), (4) Knight was admired by the children in his neighborhood as a youth and was well regarded by the adults (little weight), (5) Knight was a valuable employee in Jamaica (little weight), (6) Knight had part-time employment at the time of the crime (little weight), (7) Knight behaved well in court (little weight), and (8) Knight is capable of forming loving relationships (moderate weight).

Based on the evidence set forth earlier, the aggravators the trial court found, and the totality of the circumstances, Knight's death sentences are proportionate compared to other death sentences this Court has upheld. *See, e.g., Aguirre–Jarquin v. State*, 9 So.3d 593, 610 (Fla.2009) (finding the death sentence proportionate in a double murder where three aggravators were found for one murder, five for the other, including prior capital felony, commission during a burglary, and HAC for both and eight mitigating circumstances were

found, three statutory); *Smithers v. State*, 826 So.2d 916, 931 (Fla.2002) (finding the death sentence proportionate in a double murder where three aggravators were found for one murder and two for the other, including HAC and prior violent felony for both, and two statutory and seven nonstatutory mitigating factors were found); *Francis v. State*, 808 So.2d 110 (Fla.2001) (finding the death sentence proportionate in the double stabbing murders of elderly sisters where the trial court found four aggravators for each murder, including HAC, the victims vulnerability due to age, prior violent felony based on the contemporaneous murder, that the murders were committed during the course of a robbery, two statutory mitigators, and six nonstatutory mitigators); *Morton v. State*, 789 So.2d 324 (Fla.2001) (finding the death sentence proportionate in a double murder by gunshot and stabbing where trial court found three aggravators with respect to one murder and five with respect to the other, including prior violent felony based on the contemporaneous murder and cold, calculated and premeditated for both and two statutory mitigators and five nonstatutory mitigators).

CONCLUSION

In accordance with our analysis above, we affirm Knight's convictions for first-degree murder and sentences of death.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

All Citations

76 So.3d 879, 36 Fla. L. Weekly S537

APPENDIX D

West's F.S.A. § 921.141

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 or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which 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) Advisory sentence by the jury. After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) Findings in support of sentence of death. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If

the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(4) Review of judgment and sentence. The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) Aggravating circumstances. Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal street gang member, as defined in s. 874.03.

(6) Mitigating circumstances. Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

(7) Victim impact evidence. Once the prosecution has provided evidence of the existence of one or more aggravating circumstances as described in subsection (5), the prosecution may introduce, and subsequently argue, victim impact evidence. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

(8) Applicability. This section does not apply to a person convicted or adjudicated guilty of a capital drug trafficking felony under s. 893.135.

Credits

Amended by Laws 1996, c. 96-290, § 5, eff. May 30, 1996; Laws 1996, c. 96-302, § 1, eff. Oct. 1, 1996.

APPENDIX E

IN THE SUPREME COURT OF FLORIDA

Case No. _____

Richard Knight,
Petitioner,

v.

Ricky D. Dixon,
Secretary,
Florida Department of Corrections,
Defendant.

Petition For Writ of Habeas Corpus

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June 20, 2025

Preliminary Statement

This petition asserts substantial claims of error under the Sixth, and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of Florida. The petitioner, Richard Knight, demonstrates that his convictions and sentences of death were obtained and affirmed in violation of fundamental rights and liberties secured by these provisions.

Record Citations

Citations to the record will appear as follows:

Record on direct appeal: “(R. ____)”

Trial transcripts reviewed on direct appeal: “(Vol. #, pg. #)”

Jurisdiction

The Florida Constitution guarantees that “[t]he writ of habeas corpus shall be grantable of right, freely and without cost . . . returnable without delay, and shall never be suspended” except in cases of rebellion or invasion. Art. I, § 13, Fla. Const. This petition invokes the original jurisdiction of this Court to “issue writs of habeas corpus returnable before the supreme court or any justice, a district

court of appeal or any judge thereof, or any circuit judge.” Art. V, § 3(b)(9), Fla. Const; Fla. R. App. P. 9.030(a)(3).

This Court has jurisdiction over this action because it asserts errors that arose in a capital case affirmed by this Court on direct appeal. *See Smith v. State*, 400 So. 2d 956, 960 (Fla. 1981). Respectfully, these errors warrant this Court’s exercise of jurisdiction over this action to grant the relief requested herein.

Request for Oral Argument

A full opportunity to air the issues raised in this petition is necessary. Through counsel, Knight urges this Court to grant oral argument.

Introduction

Florida’s capital sentencing statute conditioned Knight’s death eligibility on the existence of certain statutorily defined facts in addition to the elements of First Degree Murder. § 775.082(1), Fla. Stat. (2000); § 921.141, Fla. Stat. (1996). At the time of Knight’s sentencing in 2006, Florida law prevented the jury from finding these facts, relegating it to an advisory role during the penalty phase. Instead, the trial judge found every fact necessary to impose Knight’s

death sentences. Notwithstanding a series of Supreme Court decisions undermining this scheme's continued constitutionality, Florida continued to sentence defendants, including Knight, to death based on independent judicial factfinding. *See e.g., Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Ring v. Arizona*, 536 U.S. 584 (2002).

But, in 2016, the Supreme Court of the United States struck down Florida's capital sentencing scheme as violative of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. *Hurst v. Florida*, 577 U.S. 92, 136 S.Ct. 616 (2016). Relying on a straightforward reading of *Apprendi* and its progeny, *Hurst* held that, because Florida conditioned capital defendants' death eligibility on the existence of "sufficient aggravating circumstances" and "insufficient mitigating circumstances," *both* facts belonged within the jury's purview. 577 U.S. at 100. The "jury's mere recommendation [was] not enough." *Id.* at 94.

When *Hurst* was decided, Knight's appeal from the denial of his initial motion for postconviction relief was pending before this court. *Knight v. State*, 225 So. 3d 661 (Fla. 2017). In its opinion on that appeal, this Court wrote: "Knight argues that he was

unconstitutionally sentenced to death because his penalty phase jury did not find all of the facts necessary to impose the death penalty. We agree.” *Id.* at 682. However, this error was harmless, the Court concluded, because “the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations.” *Id.* at 683 (quoting *Davis v. State*, 207 So. 3d 142, 175 (Fla. 2016)). Resultantly, this Court denied penalty phase relief notwithstanding Knight’s demonstrably unconstitutional sentences.

In *Erlinger v. United States*, 602 U.S. 821 (June 21, 2024), the Supreme Court delivered its strongest reaffirmation of *Apprendi*’s role in preserving the jury’s authority to date. In doing so, *Erlinger* washed away any remnant of support for this Court’s harmless error analysis in *Davis*. This conclusion follows from two propositions established in *Erlinger*. First, *Apprendi* secures the jury’s factfinding authority against erosion, not because the jury is a superior factfinder, but because the jury’s ability to check governmental power hinges on its ability to control the verdict. And second, *Apprendi*’s operative rule cannot bend to allow judicial factfinding on even “seemingly

straightforward factual questions,” which are often less “straightforward” and more consequential than they appear.

Statement of the Case

Procedural History

The Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (“Circuit Court”) entered the final judgements of conviction and sentences of death challenged here.

On August 15, 2001, a grand jury in Broward County indicted Knight on two counts of First Degree Murder. (R. 4). Count I pertained to Knight’s cousin, Odessia Stephens, and Count II pertained to Hanessia Mullings, Stephens’s daughter. (R. 4). In both counts, the State alleged that Knight did “unlawfully and feloniously and from a premeditated design to effect the death of a human being, [Victim], kill and murder the said [Victim], by stabbing her, against the form of the statute in such case pursuant to Section 782.04(1) of the Florida Statutes.” (R. 4). Knight pleaded not guilty on August 23, 2001. (R. 6). The State gave notice of its intent to seek the death penalty on October 5, 2001. (R. 10).

On June 24, 2002, the Supreme Court decided *Ring*, holding “[b]ecause Arizona’s enumerated aggravating factors operate as ‘the functional equivalent of an element of a greater offense’ . . . the Sixth Amendment requires that they be found by a jury.” 536 U.S. at 609. 17 days later, Knight filed a “Motion to Declare the Florida Death Penalty Statute Unconstitutional Based Upon The Clear Mandate of the United States Supreme Court Decision of *Ring v. Arizona*.” (R. 802-24).

In his *Ring* motion, Knight argued that Florida’s diminution of the jury’s authority in capital sentencing violated the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. *Id.* Surveying the history of capital sentencing in Florida after *Furman*,¹ Knight noted:

The very essence of the Florida process was the *relegation of the jury to a subordinate, advisory, non-factfinding role* in death sentencing, together with *reliance on written findings of fact by the trial judge* to establish (and to make reviewable [by] the Florida Supreme Court) the factual bases on which a death sentence is

¹ *Furman v. Georgia*, 408 U.S. 128 (1972).

authorized and appropriate for each capital defendant's crime.

(R. 815).

This advisory role, Knight argued, violated “the jury fact-finding requirement of *Apprendi*, *Ring*, and the Sixth and Fourteenth Amendments,” which “is based on recognition of the importance of interposing independent jurors between a criminal defendant and punishment at the hands of a ‘compliant, biased, or eccentric judge.’”

(R. 819) (quoting *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968)).

After denying Knight's *Ring* motion and many others, the Circuit Court began jury selection on March 13, 2006. It swore a jury in on March 22, 2006, and began the guilt phase on April 3, 2006. (T. 2137, 2151). On April 26, 2006, the jury returned verdicts as to both counts, finding “[t]he Defendant is guilty of First Degree Murder, as charged in the Indictment.” (R. 354-55). Accordingly, Knight's trial proceeded to the penalty phase on May 22, 2006, with a recess from May 23 until July 24.

At the penalty phase's conclusion, the Circuit Court told the jury that “the final decision as to what punishment shall be imposed is the responsibility of the judge.” (R. 1100); (Vol. 55, p. 154). It then

instructed the jury to “render to the court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist.” (R. 1100); (Vol. 55, p. 155).

As to Odessia Stephens, the Circuit Court instructed the jury on two aggravating circumstances:

1. The Defendant has been previously or contemporaneously convicted of another capital offense or of a felony involving the threat of violence to some person.

- a. The Defendant’s contemporaneous conviction for the crime of First Degree Murder of HANESSIA MULLINGS is a capital offense.

2. The crime for which the Defendant is to be sentenced was especially heinous, atrocious or cruel. “Heinous” means extremely wicked or shockingly evil. “Atrocious” means outrageously wicked and vile. “Cruel” means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. The kind of crime intended to be included as heinous, atrocious or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily tortuous to the victim.

(R. 1101); (V. 55, p.156).

As to Hanessia Mullings, the Circuit Court instructed the jury on four aggravating circumstances as follows:

1. The Defendant has been previously or contemporaneously convicted of another capital offense or of a felony involving the threat of violence to some person.

a. The Defendant's contemporaneous conviction for the crime of First Degree Murder of ODESSIA STEPHENS is a capital offense.

2. The crime for which the Defendant is to be sentenced was committed for the purpose of avoiding or preventing a lawful arrest;

To prove the aggravating circumstance of avoiding lawful arrest by elimination of a witness, when the witness is not a law enforcement officer, it must be clearly shown that the dominant or only motive for the murder was the elimination of the witness.

3. The crime for which the Defendant is to be sentenced was especially heinous, atrocious or cruel . . .

4. The victim of the capital felony was a person less than 12 years of age.

(R. 1102); (Vol. 55, p. 156-57).

As to mitigation, the Circuit Court instructed the jury that it could consider:

1. The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance;
2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;
3. The age of the defendant at the time of the crime;
4. Any of the following circumstances that would mitigate against the imposition of the death penalty.
 - a. Any [other] aspect of the defendant's character, record, or background.
 - b. Any other circumstance of the offense.

(R. 1104) (alteration in original); (Vol. 55, p. 159).

After deliberating for less than one hour, the jury recommended by a vote of 12-0 that the Circuit Court should sentence Knight to death on both counts. (Vol. 55, p. 167, 172, 173-74). The jury's advisory recommendation reflected no findings of fact as to the existence or sufficiency of specific aggravating or mitigating circumstances. (R. 491-92). Rather, as to both Stephens and

Mullings, the jury delivered only the following statement: “[A] majority of the jury, by a vote of 12 to 0, advise and recommend to the court that it impose the death penalty upon RICHARD KNIGHT.” (R. 491-92). Thereafter, the Circuit Court issued a sentencing order in which it “[gave] individual consideration to each aggravating and mitigating factor presented by the parties” and found the facts necessary to sentence Knight to death. (R. 631-43).

On September 28, 2011, this Court affirmed Knight’s convictions and sentences of death. *Knight v. State*, 76 So. 3d 879 (Fla. 2011), *cert. denied*, 566 U.S. 998 (2012).

While Knight’s state postconviction case was pending on appeal, the Supreme Court decided *Hurst*. In response, the parties filed supplemental briefing and this Court found that Knight’s death sentences violated *Hurst*. 225 So. 3d at 682. However, this Court found the error “harmless beyond a reasonable doubt,” inferring that “the jury unanimously found all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendations.” *Knight*, 225 So. 3d at 683 (quoting *Davis*, 207 So. 3d at 175).

Justice Quince and Senior Justice Perry dissented. 225 So. 3d at 684-85. Justice Perry wrote: “By ignoring the record and concluding that all aggravators were unanimously found by the jury, the majority is engaging in the exact type of conduct the United States Supreme Court cautioned against.” *Id.* at 684-85 (citing *Hurst v. Florida*, 136 S.Ct. at 622)). Justice Quince agreed “that ‘the majority’s reweighing of the evidence . . . to support its conclusion’ contravenes our decision in *Hurst v. State*, 202 So. 3d [40, 49 (Fla. 2016)], and is the conduct the United States Supreme Court reproached in *Hurst v. Florida*, 136 S.Ct at 622.” 225 So. 3d at 684.

Argument

Mr. Knight’s Death Sentences Were Obtained In Violation Of The Sixth Amendment And The Due Process Clause Of The Fourteenth Amendment and Must Be Vacated In Light Of *Erlinger v. United States*.

“In all criminal prosecutions the accused shall enjoy the right of a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation.” Amend. VI, U.S. Const. Trial by jury “is a fundamental right and hence must be recognized by the States as part of their obligation to extend due

process of law to all persons within their jurisdiction.” *Duncan*, 391 U.S. at 154. As an incorporated provision of the Bill of Rights, the Sixth Amendment right to jury trial “bear[s] the same content when asserted against States as [it does] when asserted against the federal government.” *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) (plurality);² *Malloy v. Hogan*, 378 U.S. 1, 10 (1964).

The procedural safeguards secured by the Due Process Clause and the Sixth Amendment are axiomatic. The State must “prove its charges.” *Erlinger*, 602 U.S. at 832; *Sullivan v. Louisiana*, 508 U.S. 275, 277-78 (1993) (noting “[t]he prosecution bears the burden of proving all elements of the offense charged”). It must do so “beyond a reasonable doubt.” 602 U.S. at 832; *In re Winship*, 397 U.S. 358, 364 (1970). And the State’s proof must convince “a unanimous jury.” *Erlinger*, 602 U.S. at 832; *Ramos*, 590 U.S. at 93.

² Although *Ramos* was a plurality opinion, every citation to *Ramos* in this petition refers to the parts of Justice Gorsuch’s opinion joined by Justices Ginsburg, Breyer, Sotomayor, and Kavanaugh. See 590 U.S. at 85 (noting Justice Gorsuch delivered the opinion of the Court with respect to Parts I, II-A, III, and IV-B-1).

The Framers’ enshrined these fundamental safeguards in the Constitution to constrain governmental authority at every level. Together, “[b]y requiring the Executive Branch to prove its charges to a unanimous jury beyond a reasonable doubt,” the Sixth Amendment and the Due Process Clause “seek to mitigate the risk of prosecutorial overreach and misconduct.” *Erlinger*, 602 U.S. at 832 (citing *The Federalist* No. 83, p. 499 (C. Rossiter ed. 1961)). Correspondingly, the Sixth Amendment and Due Process Clause limit judicial authority “[b]y requiring a unanimous jury to find every fact essential to an offender’s punishment.” 602 U.S. at 832. This “ensur[es] that the punishments courts issue are . . . premised on laws adopted by the people’s elected representatives and facts found by members of the community.” 602 U.S. at 832 (quoting *Blakely v. Washington*, 542 U.S. 296, 307 (2004)).

None of these safeguards can function if the government simply places critical facts beyond the jury’s control. See 602 U.S. at 833-34 (surveying “sentencing innovations” that unconstitutionally removed facts from the jury’s purview). To prevent the state and federal governments from doing so, *Apprendi* drew a clear line in the

sand: Under the Due Process Clause of the Fourteenth Amendment “and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.” 530 U.S. at 476 (quoting *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999)).

Recognizing that any ambiguity in this rule would invite creeping and flagrant violations alike, *Apprendi*’s progeny have weeded out any remaining uncertainty in the years since. *Blakely*, 542 U.S. at 308 (rejecting “the claim that the Framers would have left the definition of the scope of jury power up to judges’ intuitive sense of how far is too far”); see e.g., *Ring*, 536 U.S. 584 (2002) (holding aggravating factors in capital sentencing are elements of heightened offense that must be found by the jury); *United States v. Booker*, 543 U.S. 220 (2005) (applying *Apprendi* to prohibit judicial factfinding under Federal Sentencing Guidelines as to amount of cocaine involved in offense and circumstances surrounding arrest); *Southern Union Co. v. United States*, 567 U.S. 343 (2012) (holding imposition of criminal fine calculated based on judicial factfinding as to duration

of offense violated *Apprendi*); *Alleyne v. United States*, 570 U.S. 92 (2013) (requiring jury to find facts that increase a defendant’s mandatory minimum sentence); *Hurst*, 577 U.S. 92 (holding Florida’s capital sentencing scheme violated *Apprendi* notwithstanding presence of advisory jury); *United States v. Haymond*, 588 U.S. 634 (2019) (plurality) (requiring jury to find facts that trigger new mandatory minimum prison terms at parole revocation hearings); *Erlinger*, 602 U.S. 821 (2024) (requiring jury to find whether prior offenses were committed on separate occasions).

Resultantly, “[t]he principles *Apprendi* and *Alleyne* discussed are so firmly entrenched that [the Supreme Court has] now overruled several decisions inconsistent with them.” *Erlinger*, 602 U.S. at 833-34 (recognizing overruling of *Hildwin v. Florida*, 490 U.S. 638 (1989), and *Spaziano v. Florida*, 468 U.S. 447 (1984)).

a. *Erlinger* Redefined the Scope and Prejudicial Effect of the Sixth Amendment and Due Process Clause Violations at the Core of Mr. Knight’s Death Sentences.

Erlinger delivered the Supreme Court’s strongest reaffirmation of *Apprendi*’s role in preserving the jury’s authority yet. “Virtually ‘any fact’ that ‘increases the prescribed range of penalties to which a

criminal defendant is exposed’ must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea).” 602 U.S. at 834 (quoting *Apprendi*, 530 U.S. at 490). The qualifier “virtually” refers to this rule’s sole exception. See *Erlinger*, 602 U.S. at 837. This exception “permit[s] a judge to undertake the job of finding the fact of a prior conviction—and that job alone.” *Erlinger*, 602 U.S. at 837 (citing *Almendarez-Torres*, 523 U.S. 224, 246-47 (1998)). This “job” is limited to determining “what crime, with what elements, the defendant was convicted of.” *Erlinger*, 602 U.S. at 838 (quoting *Mathis v. United States*, 579 U.S. 500, 511-12 (2016)). The Supreme Court “ha[s] reiterated this limit on the scope of *Almendarez-Torres* ‘over and over,’ to the point ‘downright tedium’” *Erlinger*, 602 U.S. at 838 (quoting *Mathis*, 579 U.S. at 510)).

In addition to precluding any expansion of *Almendarez-Torres*, *Erlinger* sharpened *Apprendi*’s operative rule to ensure jury factfinding on “even seemingly straightforward factual questions.” 608 U.S. at 827-28, 849. *Erlinger*’s primary holding addressed the question: “[W]hether a judge may decide that a defendant’s past offenses were committed on separate occasions under a

preponderance-of-the-evidence standard, or whether the Fifth and Sixth Amendments require a unanimous jury to make that determination beyond a reasonable doubt.” 602 U.S. at 825.

Under the Armed Career Criminal Act, this inquiry, known as the “occasions inquiry,” exposed “certain defendants who ha[d] previously committed three violent felonies or serious drug offenses on separate occasions” to “lengthy mandatory prison terms.” *Id.* at 825, 828. Holding that the Sixth Amendment and Due Process Clause required a “defendant’s peers to resolve unanimously even seemingly straightforward factual questions under a daunting reasonable doubt standard,” *Erlinger* held that a jury must resolve the “occasions inquiry.” *Id.* at 849. The operative word was “seemingly.” *See id.*

Although straightforward at first glance, *Erlinger* found the occasions inquiry to be “intensely factual” or “fact-laden.” *Id.* at 828, 834 (citing *Wooden v. United States*, 595 U.S. 365, 369 (2022)). It “can require an examination of a ‘range’ of facts, including whether the defendant’s past offenses were ‘committed close in time,’ whether they were committed near to or far from one another, and whether

the offenses were ‘similar or intertwined’ in purpose and character.” 602 U.S. at 828 (quoting *Wooden*, 595 U.S. at 369). In other words, even this banal element depended on a slew of implicit, potentially outcome-determinative factual determinations.

The factual findings implicit in the occasions inquiry, which *Erlinger* found too “intensely factual” and consequential to remove from the jury’s purview, pale in comparison to the findings necessary to sustain Knight’s death sentence. Under the applicable capital sentencing scheme, Knight’s death eligibility depended on the existence of “sufficient aggravating circumstances” and “insufficient mitigating circumstances to outweigh the aggravating circumstances.” § 775.082(1), Fla. Stat.; § 921.141, Fla. Stat.

§ 775.082(1) provided:

A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in *findings by the court* that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

§ 775.082(1) (emphasis added).

In turn, § 921.141(3) set out the factual “findings by the court” referenced in § 775.082(1) as follows:

Notwithstanding the recommendation of a majority of the jury . . . if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6).

§ 921.141(3).

Under the plain text of these provisions, the Circuit Court could not sentence Knight to death based solely on the jury’s verdict. *Hurst*, 577 U.S. at 620 (citing § 775.082(1)) (finding “the maximum sentence a capital felon may receive on the basis of the conviction alone is life imprisonment”). To the contrary, § 775.082(1) required the Court to enter life sentences without the opportunity for parole unless it “*alone* . . . [found] ‘the facts . . . [t]hat sufficient aggravating

circumstances exist’ and ‘[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances.’” *Hurst*, 577 U.S. at 100 (emphasis in original) (first ellipsis and first alteration added).

Because these findings were necessary to Knight’s heightened sentence, each “operate[d] as ‘the functional equivalent of an element of a greater offense.’” *Ring*, 536 U.S. at 584 (quoting *Apprendi*, 530 U.S. at 494 n.19).³ As such, judicial factfinding was precluded. Nevertheless, the Circuit Court looked beyond the facts inhering in the jury’s verdict—death, causation, and premeditation—to make every necessary factual determination.

³ In the years following *Hurst*, this Court has sought to limit the impact of its holding by, *inter alia*, reinterpreting § 921.141(3)(b). See *State v. Poole*, 297 So. 3d 487 (Fla. 2020). However, *Poole*’s construction of § 921.141(3)(b) did not govern Knight’s sentence and, thus, had no bearing on whether § 921.141(3)(b) was an element under *Apprendi*’s strictly functional analysis. See *Ring*, 536 U.S. at 604 (quoting *Apprendi*, 530 U.S. at 494). “[T]he relevant inquiry is one not of form, but of *effect*.” 530 U.S. at 94 (emphasis added). Because *Poole*’s reinterpretation of § 921.141(3) came 14 years after Knight’s sentencing, it *ipso facto* had no effect at Knight’s sentencing. Accordingly, *Poole* is irrelevant to whether § 921.141(3)(b) was “the functional equivalent of an element of a greater offense.” See *Apprendi*, 530 U.S. at 494 n.19.

To illustrate, the Circuit Court found that both offenses were “especially heinous, atrocious, or cruel.” (HAC) (R. 632); § 921.141(5)(h), Fla. Stat. (1996). To make these findings, it evaluated “the means and manner in which death [was] inflicted and the immediate circumstances surrounding the death” to determine whether it was “*conscienceless or pitiless and unnecessarily tortuous to the victim.*” (R. 632) (emphasis added) (citing *Nelson v. State*, 748 So. 2d 237 (Fla. 1999)). This, in turn, led the Circuit Court to make additional findings as to both *actus reus* and *mens rea*. To establish the former, the Circuit Court evaluated whether the deaths were “unnecessarily tortuous.” *Id.* In contrast, only causation by a criminal act was necessary to sustain the jury’s guilty verdict. Likewise, as to *mens rea*, HAC required the Circuit Court to find the deaths “conscienceless or pitiless.” *Id.* Neither inhered in the jury’s finding as to premeditation.

The Circuit Court made these findings in clear violation of the Sixth Amendment and Due Process Clause. This deprivation of jury factfinding was harmful error in and of itself. But further, the Circuit Court’s graphic descriptions laid the factual foundation for Knight’s

sentence, appeal, and postconviction proceedings. *See e.g., Knight*, 225 So. 3d at 683 (describing the “egregious facts of this case” to support finding of harmless error). This foundation was built without any of the constitutionally prescribed safeguards. The Circuit Court relied on facts neither charged in the indictment nor inhering in the verdict. (R. 633). For instance, it evaluated the scene and testimony to conclude *inter alia* that Stephens sustained defensive wounds, remained conscious for 10 minutes, and tried to yell. (R. 633). There was no indication that the jury accepted any of these facts as true but each was used justify Knight’s heightened punishment.

With the exception of the “evading arrest” aggravator, the remaining aggravators were essentially automatic. However, the Circuit Court still needed to make additional findings as to whether these aggravators were “sufficient” to warrant Knight’s death sentences. Again, the jury’s verdict required no such findings. Likewise, even if these aggravators were sufficient, § 921.141(3)(b) still required the Circuit Court to affirmatively find that there were “insufficient mitigating circumstances to outweigh the aggravating

circumstances.” This, too, could not be done without judicial factfinding beyond the jury’s verdict.

The Circuit Court ran afoul of the Sixth Amendment and the Due Process Clause at every step. This usurpation of the jury’s authority rendered Knight’s penalty phase fundamentally unfair and, likewise, undermined every subsequent proceedings by injecting the Circuit Court’s untested and unconstitutional factual findings into each.

At bottom, the jury made the findings necessary to sustain Knight’s death sentence only in fiction. The Circuit Court made these findings in proven violation of the Sixth Amendment and Due Process Clause. *Erlinger* requires this Court to treat trial by jury as a “fundamental reservation[] of power’ to the American people,” not as a “procedural formalit[y].” 602 U.S. at 832 (quoting *Blakely*, 542 U.S. at 305-306). The harmless error analysis sustaining Mr. Knight’s death sentences cannot be reconciled with this command. See *Sullivan*, 508 U.S. at 279 (finding harmless error analysis must be grounded in “guilty verdict actually rendered” because “to hypothesize a guilty verdict that was never in fact rendered—no

matter how inescapable the findings to support that verdict might be—would violate the jury-trial guarantee”). Thus, *Knight* and *Davis* were wrongly decided.

Conclusion and Relief Sought

For the foregoing reasons and in the interest of justice, Mr. Knight respectfully urges this Court to grant the writ. The errors described herein entitle Mr. Knight to relief. This Court should order Mr. Knight resentenced or grant him a new penalty phase trial.

Respectfully Submitted,

/s/Todd Scher

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CERTIFICATE OF COMPLIANCE AND FONT

Counsel certifies that this Petition is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rule of Appellate Procedure 9.210. Counsel further certifies that this brief contains 4600 words.

/s/Todd Scher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 20, 2025, a true copy of the foregoing has been furnished by electronic service to opposing counsel using the State of Florida E-Filing Portal.

/s/Todd Scher

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APPENDIX F

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC2025-0872

RICHARD KNIGHT,

Petitioner,

VS.

**RICKY DIXON, Secretary,
Florida Department of Corrections,**

Respondent.

.....
RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
.....

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STATEMENT OF THE CASE AND FACTS¹

On August 15, 2001, Petitioner, Richard Knight (Knight) was indicted on two counts of first-degree murder for the June 28, 2000 deaths of Odessa Stephens (Odessa) and her four-year-old daughter, Hanessia Mullings (Hanessia). On October 8, 2001, the State gave notice it intended to seek the death penalty pursuant to Rule 3.202, Fla. R. Crime. P. (ROA-R 4-6, 10) The case eventually came to trial on March 13, 2006 (ROA-T 2137) and on April 26, 2006, Knight was found guilty of two counts of first-degree murder for the deaths of Odessia and Hanessia Mullings as charged in the indictment. (ROA-R 354-55) Following the penalty phase, the jury unanimously recommended a death sentence for each murder. (ROA-R 491-92; ROA-T 1164-68) *Knight v. State*, 76 So.3d 879, 884 (Fla. 2011).

A *Spencer*² hearing was conducted on August 18, 2006 (ROA-T

¹ Reference to the appellate records will be: Direct Appeal - “ROA-R” for record citations and “ROA-T” transcript citations followed by page numbers in case no. SC2007-0841; in *Knight v. State*, 76 So. 3d 879 (Fla. 2011); Postconviction Relief Appeal “PCR” followed by volume and page numbers in case number SC2014-1775 and state habeas SC2015-1233 in *Knight v. State*, 225 So. 3d 661 (Fla. 2017); Supplemental records will be identified with an “S.” Knight’s Petition will be notated as “P”

31) after which, on March 28, 2007, the trial court followed the jury's unanimous recommendation and sentenced Knight to death. In its written order the court found the State had proven beyond a reasonable doubt two statutory aggravating circumstances for the murder of Odessia: (1) a previous conviction of another violent capital felony (contemporaneous murder of Hanessia) and (2) especially heinous, atrocious, or cruel (HAC). The court also found three statutory aggravating circumstances for the murder of Hanessia: (1) a previous conviction of another violent capital felony (contemporaneous murder of Odessia);, (2) HAC; and (3) victim under twelve years of age. The court found no statutory mitigating circumstances but found eight nonstatutory mitigators of: (1) good upbringing (slight weight); (2) loves his family (moderate weight); (3) went to high school and excelled in art (little weight); (4) was admired by neighborhood children as a youth and was well regarded by the adults (little weight); (5) was a valuable employee in Jamaica (little weight); (6) had part-time employment at the time of the crime (little weight); (7) behaved well in court (little weight); and

² *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

(8) is capable of forming loving relationships (moderate weight). (ROA 619-43) *Knight*, 76 So. 3d at 884.

The record established that Knight challenged the constitutionality of the death penalty based on *Ring v. Arizona*, 536 U.S. 584 (2002). The trial court denied that motion. (ROA-R 165)

As this Court found on direct appeal, Knight lived with his cousin, Hans Mullings (Mullings), his girlfriend, Odessia, and their child, Hanessia. *Id.* at 882. Mullings and Odessia had asked Knight to move out of their apartment numerous times. *Id.*

At approximately 9:00 p.m. on June 27, 2000, shortly before leaving his office to run errands, Mullings spoke to Odessia who said she was going to bed. At that time, Knight was at the apartment with Odessia and Hanessia. *Id.* Near midnight that evening, an “upstairs neighbor heard multiple thumping sounds on the apartment walls and two female voices, one of which was a child crying” which prompted her to called 911 at 12:21 a.m. on June 28, 2000” with the crying continuing after the police arrived. *Id.*

Officer Sachs arrived at 12:29 a.m. and noted lights were on in the master bedroom and hall, and a second bedroom's window was slightly ajar. *Id.* at 882-83. “After knocking and receiving no

response,” the officer walked around the property again and saw “that the lights had been turned off and that the previously ajar window was now completely open” with the blinds hanging out the window. *Id.* Shining his flashlight through the dining room window, Sachs saw blood in the dining room and master bedroom and “Hanessia curled in the fetal position against the closet door.” *Id.* Once inside the apartment, the officer found Odessia's body in the living room. *Id.* He also found the apartment doors locked and no sign of ransacking. *Id.*

Upon Officer Mocny's arrival, she too saw the open window and noted Knight standing near some hedges about 100 yards from the apartment. *Id.* When Sachs joined Mocny in questioning Knight, the officers observed that Knight was “visibly wet,” and although claiming he had been out jogging, he was wearing dress clothes and shoes and had a “scratch on his chest, a scrape on his shoulder, and fresh cuts on his hands.” *Id.* Knight admitted “he lived in the apartment, but did not have a key to get inside.” *Id.* Blood was visible on his shirt and on a ten-dollar bill in his possession. *Id.*

From the bathroom near Knight's room, the forensic team “recovered two wet towels, a shirt, boxers, and a pair of jean shorts”

all belonging to Knight. *Id.* Those items contained “numerous bloodstains.” *Id.* Also seized were two knives, “one from under the mattress in the master bedroom, and another from under Odessia's body.” *Id.* Odessia's blood was found in various places in the master bedroom, on the living room carpet, on the “knives' handles and blades, and on the knife holder in the kitchen” as well as on Knight’s “boxers, shirt, jean shorts, the clothing Knight had been wearing when arrested, and his hand.” *Id.* “Fingernail scrapings taken from Odessia contained Knight's DNA profile.” *Id.* “Hanessia's blood was found on one of the knives, on Knight's boxers, jean shorts, and on the shower curtain.” *Id.*

Dr. Lance Davis, the medical examiner, determined Odessia suffered twenty-one stab wounds to her neck, chin, and back in addition to “twenty-four puncture or scratch wounds and bruising and ligature marks on her neck.” *Id.* “The bruises appeared to have been made by a belt or similar object” and Odessia “had defensive wounds on both hands and wounds on her leg, chest, back and neck.” *Id.* Although “[s]everal of the knife wounds were fatal, ... none would have resulted in an instantaneous death.” *Id.* Also, Odessia had bruises “from being punched on her scalp and mouth.”

Id. The doctor testified that Knight's attack upon Odessia started in the master bedroom and ending in the living room where Odessia had fled. *Id.* It was estimated that "Odessia was conscious for ten to fifteen minutes after the attack." *Id.*

The medical examiner saw "Hanessia on the floor next to the closet door" with "broken knife pieces around her." *Id.* Hanessia had "four stab wounds in her upper chest and neck" and "[h]er hand had one additional stab wound and numerous defensive wounds." *Id.* at 882-83 Numerous bruises and scratches were visible on Hanessia's arms and upper body; the "bruises on her neck that were consistent with manual strangulation and bruises on her arms consistent with being grabbed." *Id.* 883.

According to Stephen Whitsett, he and "Knight were housed together from June 29, 2000, to July 22, 2000, at the Broward County Jail" where Knight confessed to the murders. *Id.* Knight told Whitsett that on the night of the murders he and Odessia argued and that she no longer wanted to support him and wanted him to move from the apartment the next morning. *Id.* "Knight left the house to go for a walk and he became increasingly angry" only to return and again argue with Odessia. *Id.* Next, Knight retrieved a

knife from the kitchen “and began stabbing Odessia” in front of Hanessia. *Id.* After Odessia stopped defending herself and “balled up into a fetal position” Knight started to stab Hanessia only to have the knife break, thus, requiring him to retrieve another kitchen knife to stab Hanessia as she lay near the closet door drowning in her own blood. *Id.* After cutting himself on one of the broken knives, Knight obtained another kitchen knife and stabbed Odessia in the living room where she had crawled. *Id.* Knight wiped the blood from his hands on the living room carpet. *Id.*

Per Knight’s confession to Whitsett, “after he finished with Odessia, he went to the bathroom, took off the blood soaked shorts and T-shirt, and tossed them under the sink” and showered and dressed in blue polo pants. *Id.* He also admitted that while wiping down the knives he “heard a knock on the door and saw the police outside through the peep hole” prompting him to flee out his bedroom window.” *Id.* “In an attempt to deflect suspicion away from himself, Knight returned to his bedroom window where he saw a female police officer.” *Id.* Upon this evidence, the jury found Knight guilty of both counts of first-degree murder. *Id.*

During the penalty phase, Knight called six witnesses who

reported on his childhood, family history, employment, and mental health. *Id.* at 883-84. Based on the guilt and penalty phase presentations, the jury unanimously recommended death for each count of first-degree murder. *Id.* at 884.

At the August 18, 2006, *Spencer* hearing, additional witnesses and evidence was presented. (R314-316) The court sentenced Knight to death on March 28, 2007. At the sentencing hearing Mullings and Eunice Belan gave victim impact statements. As noted above, the court found two aggravating factors for Odessia's murder and three aggravators for Hanessia's murder. The court found no statutory mitigating circumstances but found eight non-statutory ones and gave those slight to moderate weight. (-R 631-643; ROA-T 3700-30).

Knight appealed, raising five claims³ with this Court which

³ Knight asserted: (1) error to deny motion for mistrial based on Hans Mullings' comment that he knew Knight to have a violent background; (2) error to deny mistrial based on the allegation that jurors saw him wearing shackles; (3) error in finding no no discovery violation occurred and in denying motion for mistrial based on the State's expert's testimony regarding DNA evidence; (4) error to deny motion to seat a new jury based on Mullings' testimony; and (5) Florida death sentencing statute violates the Sixth Amendment and ignores *Ring v. Arizona*, 536 U.S. 584 (2002). *Knight v. State*, 76 So. 3d 879, 885 (Fla. 2011)

concluded that none had any merit.

Following the affirmance of his conviction and sentences, Knight petitioned the United States Supreme Court. On May 14, 2012, certiorari was denied. *Knight v. Florida*, 566 U.S. 998 (2012).

Next, Knight sought postconviction relief. On May 10, 2013, Knight filed his Rule 3.851, Fla. R. Crim. P. motion and the court granted an evidentiary hearing on the ineffective assistance of counsel claims. On March 11, 2014, Knight filed an amended motion. The evidentiary hearing was held on March 27 & 28, 2014, where Knight called three witnesses: attorneys Evan Barone and Sam Halpern and a DNA expert Nora Rudin. The State called criminologist Kevin Noppinger. After hearing the evidence and considering the written arguments from both sides, the postconviction court denied relief in a written order (PCR 7:1283-1329)

Knight appealed raising six claims.⁴ In the related state

⁴ Knight asserted: (1) “he was improperly denied access to public records; (2) the one-year deadline in Florida Rule of Criminal Procedure 3.851 was unconstitutionally applied to him; (3) he was denied adversarial testing at the guilt phase; (4) he was denied adversarial testing at the penalty phase; (5) the rule prohibiting juror interviews is unconstitutional; and (6) Florida's lethal injection

habeas petition, Knight raised claims of ineffective assistance of appellate counsel and *Hurst v. Florida*, 577 U.S. 92 (2016) error. This Court affirmed the denial of postconviction relief and rejected the habeas claims. *Knight v. State*, 225 So. 3d 661, 684 (Fla. 2017). Specific to the *Hurst* issue, this Court reviewed the instructions Knight’s jury received and the jury’s unanimous recommendations of a death. This Court relied on its analysis in *Davis v. State*, 207 So. 3d 142, 175 (Fla. 2016) in determining the alleged *Hurst* error was harmless beyond a reasonable doubt, finding that the unanimous death recommendations established that the Knight jury determined that sufficient aggravation existed and that aggravation outweighed the mitigation offered before it found unanimously that death was the proper sentence. *Knight*, 225 So. 3d 682-83.

On June 20, 2025, Knight filed the instant petition alleging that his capital sentence is unconstitutional under *Erlinger v. United States*, 602 U.S. 821 (2024), This Court ordered the State to respond.

protocol and procedures are unconstitutional” *Knight v. State*, 225 So. 3d 661, 671–72 (Fla. 2017).

ARGUMENT

Knight's constitutional challenge to his death sentence based on *Erlinger v. United States* should be denied as the claim is procedurally barred and this Court has found *Erlinger* is not retroactive to cases on collateral review.

This Court should deny the petition as it is untimely under Rule 3.851(d)(3), Fla. R. Crim. P. in that this is Knight's second petition, the first having been filed with his 2015 original postconviction/state habeas litigation in case number SC2014-1775 and SC2015-1233. *See Knight*, 225 So. 3d at 661. Further, the issue, the constitutionality of the jury's fact finding in Knight's sentencing, is procedurally barred having been raised and rejected previously. Also, under *Wainwright v. State*, --- So. 3d ---, case no. SC2025-0708 (Fla. June 3, 2025), *Tanzi v. State*, 407 So. 3d 385 (Fla. 2025), and *Ford v. State*, 402 So. 3d 973 (Fla. 2025), *Erlinger* does not allow Knight to overcome the time bar because it is not retroactive to postconviction litigation. Finally, the unanimous jury recommendation established beyond a reasonable doubt that Knight's jury made all of the necessary findings to establish he was death eligible. *See Knight*, 225 So. 3d 682-83.

Knight asserts that under *Erlinger* his death sentences violate

the Sixth Amendment and Due Process Clause of the Fourteenth Amendment as the trial court made factual findings in its sentencing order which were not inherent in the jury's guilt phase verdict and were not specifically found by his penalty phase jury. (P at 19-23) In making his constitutional claim, Knight draws a straight line from *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002) through *Hurst v. Florida*, 577 U.S. 92 (2016) and culminating with *Erlinger* to assert *Erlinger* is the latest United States Supreme Court case reaffirming the requirement for jury fact finding which he did not receive here. Prior to *State v. Poole*, 297 So. 3d 487 (Fla. 2020), this Court determined that any *Hurst* error in Knight's case was harmless beyond a reasonable doubt given the unanimity of his jury's death recommendations. Knight's *Erlinger* claim is nothing more than a re-worked *Hurst* claim and does not call this Court's prior determination into question. Relief should be denied as the instant claim is untimely, procedurally barred, *Erlinger* is not retroactive in this postconviction litigation, and the claim is meritless as the jury made all the findings necessary to make Knight death eligible in this double homicide case.

In this case, the jury not only convicted Knight of two counts of first-degree murder, but based on the jury instructions,⁵ unanimously found: death was the appropriate sentence for each murder as “sufficient aggravating circumstances exist to justify the imposition of the death penalty;” that the mitigating circumstances did not outweigh the aggravators; and the aggravators were established “beyond a reasonable doubt.” (ROA-T v55 1146-54) See *Knight*, 225 So. 3d 682-83.

A. The petition is untimely.

Pursuant to Rule 3.851(d)(3), a habeas petition “shall” be filed at the same time as the appeal from a denial of postconviction relief. Knight filed his habeas petition in 2015 in case number SC2015-1233 where he challenged appellate counsel’s effectiveness and, through supplemental briefing, challenged his death sentences under *Hurst v. Florida* and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). There are no provisions in the rules authorizing successive habeas petitions. Accordingly, the instant Petition should be dismissed as untimely and impermissibly successive.

⁵ See *Sutton v. State*, 718 So.2d 215, 216 n. 1 (Fla.1998) (the jury is presumed to follow its instructions absent evidence to the contrary).

B. The claim is procedurally barred.

While Knight points to Erlinger for support in his constitutional challenge, that challenge essentially is a re-working of his previously denied *Hurst* claim as he merely cites to *Erlinger* to reassert his claim that his jury did not make the constitutionally required unanimous findings to support his death sentences. It is well settled that a state habeas petition is not grounds to argue claims that either could have been or were raised earlier. See *Breedlove v. Singletary*, 595 So. 2d 8, 10 (Fla. 1992) (“Habeas corpus is not a second appeal and cannot be used to litigate or relitigate issues which could have been, should have been, or were raised on direct appeal.”); *Lambrix v. State*, 217 So. 3d 977, 989 (Fla. 2017); *Porter v. Dugger*, 559 So. 2d 201 (Fla. 1990). Moreover, “Habeas proceedings simply do not afford an opportunity to relitigate [prior] claims.” *Diaz v. State*, 132 So. 3d 93, 123 (Fla. 2013). In *Ford v. State*, 402 So. 3d 973, 980-81 (Fla. 2025), this Court found the constitutional challenge based on *Erlinger* procedurally barred since the defendant was merely re-presenting his *Hurst* claim by citing to *Erlinger* for additional support. See *Wainwright*, case no. SC2025-0708 *3 n. 12; *Tanzi*, 407 So. 3d at

395. Knight, like the defendants in *Ford*, *Tanzi*, and *Wainwright*, uses *Erlinger* to re-litigate his prior *Hurst* challenges. This Court should similarly find a procedural bar and reject Knight's latest attempt for relief based on *Erlinger*.

Also, as noted above, this Court rejected Knight's *Hurst* challenge raised in the original state habeas. There, this Court reviewed the jury instructions given and the jury's unanimous recommendation to conclude "the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendations." *Knight*, 225 So. 3d at 683 citing *Davis v. State*, 207 So. 3d 142, 174 (Fla. 2016). *Erlinger* does not undermine this Court's determination of harmless error beyond a reasonable doubt made in *Knight*, 225 So. 3d 682-83.

Moreover, even if Knight is able to revisit this claim, it would fail on the merits. In *State v. Poole*, 297 So. 3d 487, 507-08 (Fla. 2020), this Court receded from *Hurst v. State* "except to the extent it requires a jury unanimously to find the existence of a statutory aggravating circumstance beyond a reasonable doubt." This Court upheld Poole's death sentences, despite his jury's 11-to-1 recommendation in favor of death, because the same jury during

the guilt phase had found Poole guilty of other crimes which satisfied the contemporaneous violent felony aggravator. *Id.* at 493, 508. This Court explained that the United States Supreme Court never receded from its holding in *Spaziano v. Florida*, 468 U.S. 447, 465 (1984), where it opined that “the Sixth Amendment . . . does not require any jury recommendation of death, much less a unanimous one.” *Poole*, 297 So. 3d at 504. Rather, the Supreme Court in *Hurst v. Florida* “overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance.” *Id.* The fact that Knight’s jury convicted him of the first-degree murder of Odessia and her Hanessia rendered him death eligible and satisfied *Hurst*. The unanimous determination that death was appropriate in conjunction with the jury instructions shows there is no *Hurst* error after *Poole*.⁶

⁶ In *Ford*, 402 So. 3d at 982-83, this Court reaffirmed that *Poole* was correctly decided especially in light of in *McKinney v. Arizona*, 589 U.S. 139, 144 (2020), where the Supreme Court stated: “Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible. But importantly, 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.”

C. *Erlinger* is not retroactive on collateral review.

Furthermore, in *Ford*, 402 So. 3d at 980-81, this Court found that *Erlinger* “does not apply” to Ford’s capital postconviction litigation as it was a direct appeal case answering the question of “whether a judge may decide that a defendant’s past offenses were committed on separate occasions under a preponderance-of-the-evidence standard or whether the Fifth and Sixth Amendments require a unanimous jury to make that determination beyond a reasonable doubt.” *Ford*, 402 So. 3d at 981. This Court not only reiterated that neither *Hurst v. Florida* nor *Hurst v. State* apply retroactively, but then found that even if retroactive, “by convicting Ford of the contemporaneous murder and sexual battery with a firearm ... at the guilt phase, the jury found beyond a reasonable doubt the aggravator” of the prior capital felony or a prior violent which “satisfy[] the constitutional requirements.” *Ford*, 402 So. 3d at 981.

In *Tanzi*, this Court again addressed whether *Erlinger* renders death sentences unconstitutional. There, this Court stated that *Erlinger* “did not overrule *Davis* [*v. State*, 207 So. 3d 142 (Fla. 2016)] .. [which] held that when a jury ‘unanimously f[inds] all of

the necessary facts for the imposition of death sentences by virtue of its unanimous recommendation,’ that ‘is ‘precisely what we determined in *Hurst* to be constitutionally necessary to impose a death sentence’ ” *Tanzi*, 407 So. 3d at 394.

Finally, in *Wainwright* this Court addressed whether *Erlinger* rendered the defendant’s death sentence unconstitutional under the Sixth Amendment and addressed whether *Erlinger* provided an exception to the procedural bar as a new rule of law that should apply retroactively on collateral review. *Wainwright*, case no. SC2025-0708 *4 n. 13. This Court rejected that claim for relief “because even if *Erlinger* constitutes a change in the law, it does not apply retroactively” under either a state or federal analysis. Given that *Erlinger* is not retroactive, Knight has offered no basis for state habeas relief.

D. Knight’s challenge is without merit.

As provided above, this Court rejected Knight’s prior constitutional challenge to his death sentences. *Knight*, 225 So. 3d at 682-83. Knight was convicted of two counts of first-degree murder for the contemporaneous killings of Odessia and Hanessia. The same jury unanimously found that sufficient aggravation

existed to render Knight death eligible. Consequently, as this Court found previously, the jury made all of the necessary findings to permit the imposition of the death sentences in this case. *Knight*, 225 So. 3d at 682-83. This determination is supported by *Wainwright*, *Tanzi*, and *Ford*. Relief should be denied.

CONCLUSION

Based upon the foregoing, the State requests respectfully this Court deny the Petition for Writ of Habeas Corpus.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to: Todd Scher, Assistant Capital Collateral Regional Counsel-South at tscher@msn.com and Michael T. Cookson, Staff Attorney, Capital Collateral Regionals Counsel-South at cooksonm@ccsr.state.fl.us this 8th day of July, 2025.

CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE

I HEREBY CERTIFY that the foregoing Response to Petition

for Writ of Habeas Corpus has been produced in 14-point Bookman Old Style and that according to the Word program on which this petition was written the petition contains 3,782 words in compliance with Rules 9.100(g) and 9.210, Fla. R. App. P..

Respectfully submitted,

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APPENDIX G

IN THE SUPREME COURT OF FLORIDA

Case No. SC2025-0872

Richard Knight,
Petitioner,

v.

Ricky D. Dixon,
Secretary,
Florida Department of Corrections,
Respondent.

Reply to Response to Petition for Writ of Habeas Corpus

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July 31, 2025

Argument In Reply

1. Knight's Claim of Sixth and Fourteenth Amendment Error Under *Erlinger* is Properly Raised in a Habeas Corpus Petition

“A basic guarantee of Florida law is that the right to relief through the writ of habeas corpus must be ‘grantable of right, freely and without cost.’” *Allen v. Butterworth*, 756 So. 2d 52, 61 (Fla. 2000) (quoting *Haag v. State*, 591 So. 2d 614, 616 (Fla. 1992)); Art. I § 13, Fla. Const. Although this right “is subject to certain reasonable limitations consistent with [its] full and fair exercise,” habeas relief “should be available to all through simple and direct means, without needless complication or impediment, and should be fairly administered in favor of justice and not bound by technicality.” *Allen*, 756 So. 2d at 61. This procedural flexibility is imperative, given the importance of the liberty interests at stake and the historic treatment of habeas corpus as “a high prerogative writ.” *Anglin v. Mayo*, 88 So. 2d 918, 919 (Fla. 1956) (noting that courts should “brush aside formal technicalities and issue such appropriate orders as will do justice”).

Nevertheless, the State relies on blunt procedural impediments to avoid grappling with the substance of Knight's claim. First, the

State suggests that Fla. R. Crim. P. 3.851(d)(3), by implication, imposes a blanket prohibition on successive habeas petitions. Second, the State argues that any claim addressing “the constitutionality of the jury’s fact finding in Knight’s sentencing, is procedurally barred having been raised and rejected previously.” *Response*, 11. Third, the State argues that *Erlinger*¹ does apply retroactively to Knight’s case. And fourth, the State reiterates that error, if any, is harmless. Knight addresses these contentions below.

a. Fla. R. Crim. P. 3.851(d)(3) does not bar successive habeas petitions

The State argues that Knight’s habeas petition is “impermissibly successive” because “[t]here are no provisions in the rules [of criminal procedure] authorizing successive habeas petitions.” *Response*, 13. The plain language of the Florida Rules of Appellate procedure, which govern proceedings in this Court, shows that the State is just wrong; history and constitutional origins of habeas practice in Florida show that the State also has it backwards.

First, Fla. R. App. P. 9.142(b)(2)(D) unquestionably permits the filing of successive habeas corpus petitions in this Court. *Id.*

¹ *Erlinger v. United States*, 602 U.S. 821 (2024).

(contents of successive petition must include, “*if a previous petition was filed*, the reason the claim in the present petition was not raised previously”) (emphasis added). The State’s present position wholly ignores the dozens of successive habeas corpus petitions this Court has decided on the merits, filed well beyond the initial postconviction stage.²

² See, e.g. *Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987); *Martin v. Dugger*, 515 So. 2d 185 (Fla. 1987); *Riley v. Wainwright*, 517 So. 2d 656 (Fla. 1987); *Darden v. Dugger*, 521 So. 2d 1103 (Fla. 1988); *Eutzy v. State*, 541 So. 2d 1143 (Fla. 1989); *O’Callaghan v. State*, 542 So. 2d 1324 (Fla. 1989); *Martin v. Singletary*, 599 So. 2d 121 (Fla. 1992); *Kennedy v. Singletary*, 602 So. 2d 1285 (Fla. 1992); *Mills v. Singletary*, 606 So. 2d 623 (Fla. 1992); *Johnson v. Singletary*, 612 So. 2d 575 (Fla. 1993); *Henderson v. Singletary*, 617 So. 2d 313 (Fla. 1993); *Mills v. Singletary*, 622 So. 2d 943 (Fla. 1993); *Atkins v. Singletary*, 622 So. 2d 951 (Fla. 1993); *Marek v. Singletary*, 626 So. 2d 160 (Fla. 1993); *Roberts v. Singletary*, 626 So. 2d 168 (Fla. 1993); *Lambrix v. Singletary*, 641 So. 2d 847 (Fla. 1994); *Porter v. State*, 653 So. 2d 374 (Fla. 1995); *Doyle v. Singletary*, 655 So. 2d 1120 (Fla. 1995); *White v. Singletary*, 663 So. 2d 1324 (Fla. 1995); *Jones v. Butterworth*, 691 So. 2d 481 (Fla. 1997); *McCray v. State*, 699 So. 2d 1366 (Fla. 1997); *Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999); *Glock v. Moore*, 776 So. 2d 243 (Fla. 2001); *Mills v. Moore*, 786 So. 2d 532 (Fla. 2001); *Johnston v. Moore*, 789 So. 2d 262 (Fla. 2001); *Downs v. Moore*, 801 So. 2d 906 (Fla. 2001); *King v. State*, 808 So. 2d 1237 (Fla. 2002); *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002); *King v. Moore*, 831 So.2d 143 (Fla. 2002); *Diaz v. Crosby*, 869 So. 2d 538 (Fla. 2003); *Haliburton v. Crosby*, 865 So. 2d 480 (Fla. 2003); *Valle v. Crosby*, 859 So. 2d 516 (Fla. 2003); *Hertz v. Jones*, 218 So. 3d 428 (Fla. 2017); *Card v. Jones*, 219 2 So. 3d 47 (Fla. 2017); *Bailey v. Jones*, 225 So. 3d 776 (Fla. 2017); *Nelson v. Jones*, No. SC17-2034, 2018 WL 798255 (Fla. Feb. 9, 2018).

Aside from ignoring the plain wording of Fla. R. App. P. 9.142(b), the State’s position disregards the fact that the writ of habeas corpus antedates the Florida Rules of Criminal Procedure substantially. “Historically, habeas corpus and coram nobis proceedings were the only means available to challenge the validity of a conviction and sentence.” *Allen v. Butterworth*, 756 So. 2d 52, 60 (Fla. 2000) (quoting *State ex rel. Butterworth v. Kenny*, 714 So. 2d 404 (Fla. 1998)). However, in response to the perceived “impending postconviction crisis” sparked by *Gideon*,³ this Court “promulgat[ed] the first rule of criminal procedure, rule 1, the predecessor of our current rule 3.850” and, in turn, Rule 3.851. *Baker v. State*, 878 So. 2d 1236, 1239 (Fla. 2004) (citing *Roy v. Wainwright*, 151 So. 2d 825, 826-28 (Fla. 1963)). Born of an “attempt[] to provide a mechanism for meeting the demands for postconviction relief in Florida,” 878 So. 2d at 1239, “the relief provided by the rule was *coextensive* with that available under habeas corpus or coram nobis.” *Allen*, 756 So. 2d at 61 (emphasis added).

³ *Gideon v. Wainwright*, 372 U.S. 335 (1963) (holding right to assistance of counsel in criminal cases applies against states).

Rules 3.850 and 3.851 cannot impose substantive limitations on the scope of relief available in habeas. They can only impose reasonable procedural limitations, operating as the “procedural vehicle[s] for the collateral remedy otherwise available by writ of habeas corpus.” *Allen*, 756 So. 2d at 61 (quoting *State v. Bolyea*, 520 So. 2d 562, 563 (Fla. 1988)). Because the remedy available under Rule 3.851 is inadequate, habeas corpus is the proper vehicle for raising “error that prejudicially denies fundamental constitutional rights” and urging “this Court [to] revisit a matter previously settled by the affirmance of a conviction or sentence.” *Kennedy v. Wainwright*, 483 So. 2d 424, 426 (Fla. 1986).

b. Knight’s Claim of Sixth and Fourteenth Amendment Error Under *Erlinger* Is Not Procedurally Barred

The State argues that Knight’s claim of Sixth and Fourteenth Amendment Error under *Erlinger* is procedurally barred for a laundry list of reasons. Among these is the argument that a procedural bar should apply because “it is well settled that a state habeas petition is not grounds to argue claims that either could have been or were raised earlier.” *Response*, 14. To support the application of a procedural bar, the State cites *Breedlove v. Singletary*, 595 So. 2d 8,

10 (Fla. 1992); *Lambrix v. State*, 217 So. 3d 977, 989 (Fla. 2017); and, *Porter v. Dugger*, 559 So. 2d 201 (Fla. 1990).

Breedlove is inapposite. There, this Court applied procedural bars to four claims raised in a habeas petition because each claim “could have been, should have been, or were raised *on direct appeal*.” 595 So. 2d at 10 (emphasis added). In relevant part, *Breedlove* did not address claims predicated on decisions that the Supreme Court issued *after* direct appeal.

Similarly, the State cites *Lambrix* in support of a procedural bar. There, this Court found procedurally barred a challenge as to “whether this Court erred in denying a claim in prior proceedings that alleged his postconviction judge was biased.” *Id.* at 989. This Court noted that, during a prior appeal from the denial of postconviction relief, it had remanded *Lambrix*’s case to the circuit court for an evidentiary hearing on this claim and, thereafter, “fully considered *Lambrix*’s position and rejected it in that proceeding.” *Id.* at 989. Accordingly, *Lambrix*’s biased judge claim was procedurally barred because it was “already raised and rejected by this Court.” *Id.* at 989. *Lambrix* makes no mention of procedural bars applicable to claims predicated on Supreme Court opinions issued after prior postconviction proceedings concluded.

Finally, *Porter*, does not support a procedural bar. There, this Court found four claims procedurally barred because they were, variably, unpreserved, waived, or previously raised and rejected. *Porter*, 559 So. 2d at 203-204.

c. Knight's claim is not a repackaged *Hurst* claim

More fundamentally, the State's procedural argument rests on the assertion that Knight's *Erlinger* claim is "a re-working of his previously denied *Hurst* claim." *Response*, 14. Not so.

The State's response reveals its misunderstanding of the issue presented in Knight's petition. Knight's *Erlinger*-based petition is not grounded merely in a grievance about his entitlement to "jury fact finding which he did not receive". *Response*, 12. This Court has already determined that, because a judge and not a jury made the findings necessary to sentence Knight to death, his death sentences violated the Sixth Amendment under the reasoning of *Hurst v. Florida*, 577 U.S. 92 (2016). *Knight v. State*, 225 So. 3d 661, 682-83 (Fla. 2016). However, (a majority of) the Court determined that the constitutional error was harmless because Knight's jury recommended the death penalty unanimously. *Id.* (citing *Davis v. State*, 207 So. 3d 142 (Fla. 2016)).

But, as Knight has argued in his petition, *Erlinger* establishes that this Court’s harmless error determination was itself error. See *Petition* at 24-25 (“*Erlinger* requires this Court to treat trial by jury as a ‘fundamental reservation [] of power’ to the American people, not as a ‘procedural formalit[y].”) (citing *Erlinger*, 602 U.S. at 832). Hence, Knight argued, “[t]he harmless error analysis sustaining [his] death sentences cannot be reconciled with this command.” *Petition* at 24 (citing *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) (harmless error analysis must be grounded in the “guilty verdict actually rendered” because “to hypothesize a guilty verdict that was never in fact rendered—no matter how inescapable to findings to support that verdict might be—would violate the jury-trial guarantee”). Accordingly, he contended that *Erlinger* establishes that this Court’s decisions in “*Knight* and *Davis* were wrongly decided” with respect to those decisions’ application of a harmless-error analysis to the unquestionable Sixth Amendment violation that occurred in his case. This Court has the jurisdiction, authority, and indeed the obligation to correct that constitutional error and remand Knight’s case for a proceeding that comports with the Sixth Amendment.

The State seems to be contending that this Court’s ruling in *Knight*—finding *Hurst* error—is somehow been rendered obsolete by

the decision it issued some 4 years later in *State v Poole*, 297 So. 3d 487 (Fla. 2020). *Response*, 16 (“The unanimous determination that death was appropriate in conjunction with the jury instructions shows there is no *Hurst* error after *Poole*”). This Hail Mary contention, which Knight speculated the State may make, is addressed in Knight’s petition. *Petition*, 21 n.3. It is Knight’s position that *Poole* is not only irrelevant to Knight’s case but also that *Erlinger* establishes that *Poole* was wrongly decided. *But see Tanzi v. State*, 407 So. 3d 385 (Fla. 2025) (noting that if Tanzi’s reading of *Erlinger* is correct, “then a unanimous, non-advisory jury would be necessary to impose a death sentence,” but rejecting the claim in light of *Poole*).⁴

⁴ Emboldened by this Court’s regrettable statement that the United States Supreme Court’s decision in *McKinney v. Arizona*, 589 U.S. 139 (2020), “confirms that [its] decision in *Poole* was correct,” *Ford v. State*, 402 So. 3d 973, 982-83 (Fla. 2005), the State seemingly suggests that Knight’s challenge to *Poole* has been somehow foreclosed by *McKinney*. *Response*, 16 & n.6. *McKinney*, however, made no mention of *Poole*, and decided only 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. *McKinney*, 589 U.S. at 142. *See also id.* at 147 (“state appellate courts may conduct a *Clemons* [*v. Mississippi*, 494 U.S. 738 (1990)] reweighing of aggravating and mitigating circumstances, and may do so in collateral proceedings as appropriate and provided under state law”). *McKinney* is irrelevant because it is about appellate reweighing and not the Sixth Amendment jury trial right.

d. Knight's claim, raised in habeas, must be addressed on the merits under this Court's precedent

In *Tanzi, supra*, the defendant raised his *Erlinger*-based claim in a successive state habeas corpus petition, just as Knight does here. This Court did not impose any procedural bar to *Tanzi's* claim but rather addressed it squarely on the merits; nor did this Court express any concern that *Erlinger* did or did not constitute a retroactive ruling. The merits ruling on *Tanzi's Erlinger* claim raised in a state habeas proceeding not only binds this Court's resolution (at least procedurally) of Knight's claim but also reveals that this Court (correctly) views the issue in habeas differently than it views *Erlinger*-type claims raised in successive Rule 3.851 motions.

For example, the Court did impose a procedural bar to an *Erlinger*-based claim in *Wainwright v. State*, ___ So. 3d ___, 2025 WL 1561151 (Fla. June 3, 2025), and in *Ford v. State*, 402 So. 3d 973 (Fla. 2025), where *Erlinger* claims were raised in successive Rule 3.851 motions under an active death warrant. Such a difference in this Court's procedural treatment of the habeas claim in *Tanzi* (merits ruling) as opposed to in *Wainwright* (procedural bar and non-retroactivity) and in *Ford* (procedural bar) is consistent with the fact that, in order to raise the impact of a newly-decided Supreme Court

case in a successive postconviction motion, the defendant must establish, *inter alia*, that “the fundamental constitutional right asserted was not established within [one-year from direct appeal finality] and has held to apply retroactively.” Fla. R. Crim. P. 3.851 (d)(2)(B). That the Court addressed the issue of non-retroactivity in *Wainwright* is not surprising given that the issue of retroactivity is one of the factors that would have allowed *Wainwright* to seek and be entitled to relief in a successive Rule 3.851 motion.

The bottom line as for Knight’s *Erlinger*-based claim, raised in habeas, is that the Court’s precedent in *Tanzi* and *Mills v. Moore*, 786 So. 2d 532 (Fla. 2001),⁵ dictates that Knight’s claim is neither procedurally barred nor due to be rejected on a ruling of non-retroactivity of *Erlinger*; to find otherwise would be to subject Knight to the haphazard and whimsical application of procedural obstacles not applied to similarly-situated defendants.

⁵ In *Mills*, this Court rejected, on the merits, a capital defendant’s claim, raised in a successive state habeas petition, of entitlement to relief in light of then-recently decided case of *Apprendi v. New Jersey*, 530 U.S. 466 (2000)). There was no issue of procedural bar and no issue of non-retroactivity of *Apprendi* discussed in the Court’s opinion.

Conclusion and Relief Sought

For the foregoing reasons, those set forth in his Petition, and in the interest of justice, Mr. Knight respectfully urges this Court to grant the writ. The errors described herein entitle Mr. Knight to relief. This Court should order Mr. Knight resentenced or grant him a new penalty phase trial.

Respectfully Submitted,

/s/Todd Scher

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CERTIFICATE OF COMPLIANCE AND FONT

Counsel certifies that this Petition is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rule of Appellate Procedure 9.210. Counsel further certifies that this brief contains 2400 words.

/s/Todd Scher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 31, 2025, a true copy of the foregoing has been furnished by electronic service to opposing counsel using the State of Florida E-Filing Portal.

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