

No: ____

**IN THE
SUPREME COURT OF THE UNITED STATES**

PATRICK RENE MCDOWELL,

Petitioner,

v.

FLORIDA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

1. Whether Florida's capital sentencing system – which does not narrow death eligibility to a small sub-class of persons convicted of first-degree murder, which does not require death unanimity of the jury's recommendation of death, which does not review death sentences on appeal for their proportionality or relative culpability amongst co-defendants, and in which appellate review has become all but a rubber stamp – passes constitutional muster.
2. Whether the Ex Post Facto Clause forbids applying Florida's nonunanimity rule retroactively to individuals whose crimes were committed when state law required such jury determinations to be unanimous.

LIST OF PARTIES

All parties to the proceedings in the court whose judgement is the subject of this petition is provided below.

State of Florida

Patrick Rene McDowell

RELATED CASES

The undersigned is aware of no pending cases directly related to this case.

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ON PETITION FOR CERTIORARI TO THE FLORIDA SUPREME COURT

Petitioner, PATRICK RENE MCDOWELL, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida rendered on July 16, 2026.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Florida, McDowell v. State, No. SC2024-1148, 2026 WL 2053053 (Fla. July 16, 2026), is attached. (Appendix A)

JURISDICTION

The decision of the Florida Supreme Court, affirming Petitioner's conviction and death sentence with a written opinion, was issued July 16, 2026. Petitioner asserts herein, as he asserted below, a deprivation of his constitutional rights to a fair trial, due process, and equal protection of the law, and the prohibition of cruel and unusual punishment, as guaranteed by the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI to the Constitution of the United States, which says:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VIII to the Constitution of the United States:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV to the United States Constitution, which provides, in part, that “[n]o State shall...deprive any person of life, liberty, or property without due process of law.”

Section 921.141, Florida Statutes (2023), which contains Florida’s capital sentencing scheme.

INTRODUCTION

In Pulley v. Harris, 465 U.S. 37 (1984), this Court acknowledged that “there could be a capital sentencing system so lacking in other checks on arbitrariness that it would not pass constitutional muster without comparative proportionality review.” Pulley at 879-80. Florida now has such a system.

Florida has systematically stripped the safeguards on which its prior approval was based and no longer resembles the system this Court lauded in Proffitt v. Florida, 428 U.S. 242 95 (1976). After 50 years, Florida now boasts – *by far* – the fewest and weakest protections against arbitrary infliction of the death penalty of any jurisdiction, state or federal, which still allows capital punishment. The combination of (1) the lack of any genuine narrowing of the class of first-degree murder defendants who are eligible to receive the death penalty, (2) Florida’s 2020 abandonment of proportionality review, and (3) Florida’s 2023 elimination of the unanimous jury requirement to determine that death is the appropriate sentence, results in a capital sentencing scheme which violates the Eighth Amendment and the principles of Furman v. Georgia, 408 U.S. 238 (1972).

Whether the Ex Post Facto Clause forbids applying the new statute to persons whose crimes were committed during the six years while Florida required such jury determinations to be unanimous is a worthy question for this Court’s consideration. The Florida Supreme Court’s decision holding that the Ex Post Facto Clause permits a state to move from unanimity to a nonunanimity rule and apply the new rule retroactively is unprecedented. It also conflicts with decisions from other state high

courts. On top of that, the decision is wrong. The Ex Post Facto Clause forbids applying new laws governing criminal punishment retroactively when they create a significant risk of more severe sentences. Florida's new nonunanimity rule, by design and actual operation, meets that test. Finally, this case is an excellent vehicle for resolving this important question. It is procedurally clean and at the leading edge of other capital cases raising the issue in Florida's system. Granting certiorari here would thus enable this Court to bring certainty to this matter before other cases start becoming final and the State relies on its new statute to procure additional, constitutionally dubious death sentences.

STATEMENT OF THE CASE

I. Factual Background.

Appellant, Patrick McDowell, was charged by indictment in this capital case with (Count 1) First Degree Murder, (Count 2) Injuring or Killing a Police Dog, and (Counts 3-10) Aggravated Assault on a Law Enforcement Officer. (Appendix A) The charges stemmed from an incident which occurred in September of 2021, in Nassau County, Florida. (Appendix A)

In March of 2023, Appellant entered a plea of guilty to all charges. (Appendix A) In April of 2023, Governor DeSantis signed into law an amendment to Florida Statute 921.141(2)(c), which had the effect of permitting the imposition of a death sentence without a unanimous recommendation from the jury “if at least eight jurors determine that the defendant should be sentenced to death.”

In April of 2024, the penalty phase commenced. (Appendix A) At its conclusion, the jury recommended a sentence of death by a nonunanimous vote of 11-1. (Appendix A) The jury did so after unanimously finding the presence of the five aggravating factors presented to them, to wit:

- (1) that Appellant was on felony probation at the time he committed the capital offense in this case;
- (2) that Appellant had previously or contemporaneously been convicted of a felony involving the use of violence;
- (3) that the murder was committed for the purpose of avoiding or preventing a lawful arrest;
- (4) that the murder was committed in a cold, calculated, and premeditated manner; and,

(5) that the victim was a law enforcement officer engaged in the performance of his legal duties.

(Appendix A)

The victim-impact testimony. Prior to the commencement of the penalty phase in April of 2024, Appellant filed a motion in limine to exclude victim impact statements. (Appendix A)

The State was ultimately permitted to present victim impact testimony from five persons: (1) Sergeant Nicholas Carter, a friend and colleague in the Nassau County Sheriff's office; (2) a statement of Deputy Moyers' fiancée, which was read by the Victim Advocate for the State Attorney's office; (3) the father of Deputy Moyers; (4) the brother of Deputy Moyers; and (5) the mother of Deputy Moyers. (Appendix A)

Following the presentation of this evidence, defense counsel noted on the record that members of the audience were crying and reiterated a prior motion in limine to exclude victim impact statements because of the emotional response, but the trial court did not make a ruling. (Appendix A)

Ex Post Facto Challenge.

Appellant also challenged the application of the amended version of Florida's capital sentencing scheme to his case, in relevant part, on grounds that such an application was prohibited by the Florida and Federal constitutional prohibitions on ex post facto legislation. (Appendix A); *See* Point I, *Infra*.

Other relevant challenges. Appellant also raised several other challenges relevant to the issues raised herein, each of which were ultimately denied. Appellant challenged the constitutionality of the amended version of Florida's capital

sentencing scheme on grounds that it did not require the jury's ultimate sentencing decision to be unanimous, and on grounds that, as a whole, it lacks adequate safeguards to prevent arbitrary and capricious death sentences. (Appendix A)

II. Legal Background.

The Florida Supreme Court affirmed the conviction. (Appendix A) In their opinion, the court stated:

First, McDowell argues that application of section 921.141, Florida Statutes, as amended in 2023, violates the ex post facto clauses of the United States and Florida Constitutions. But we recently rejected this argument in Hunt v. State, 428 So. 3d 43, 58 (Fla. 2025), and we do so again here for the same reasons. We likewise reject McDowell's claim that section 775.022(3), Florida Statutes, prevents the application of SB 450 to his penalty phase. We addressed and rejected an identical argument in Jackson v. State, 430 So. 3d 64, 76-77 (Fla. 2025). As in Jackson, the statutory change does not affect McDowell's sentence. See Love v. State, 286 So. 3d 177, 186 (Fla. 2019) (holding that an amended statute that involves a procedural change applies to proceedings that take place on or after the statute's effective date). Because McDowell's penalty phase had not begun, the trial court properly and prospectively applied the statutory amendment to his case. So there is no violation of section 775.022.

(Appendix A).

In Hunt v. State, 428 So. 3d 43 (Fla. 2025), the Florida Supreme Court recognized that "to determine whether there is an ex post facto violation" when the prosecution seeks to apply a new law governing criminal punishment, "the relevant inquiry is 'whether [the] given change in law presents a "sufficient risk of increasing the measure of punishment attached to the covered crimes."'” Hunt at 58 (quoting Peugh v. United States, 569 U.S. 530, 539 (2013) (quoting Garner v. Jones, 529 U.S. 244, 250 (2000))). The Florida Supreme Court then observed that, "in Peugh, the 'detrimental change [in law] virtually guarantee[d] an increase in the measure of

punishment.” Id. (citation omitted). The court then declared that “[t]he change to the statute here does not have a similar guarantee.” Id. Having purported to distinguish this Court’s “risk analysis” jurisprudence, the Florida Supreme Court concluded that Dobbert v. Florida, 432 U.S. 282 (1977), “guid[ed its] analysis.” Hunt at 56. In Dobbert, this Court held that various changes to Florida’s death penalty system did not trigger the Ex Post Facto Clause because they “merely altered the methods used to determine the applicability of a death sentence rather than the ‘quantum of punishment’ attached to the crime.” Id. (quoting Dobbert, 432 U.S. at 293-94). The Florida Supreme Court asserted that the same is true here: “The penalty remains death regardless of how many jurors are required to make the recommendation.” Hunt at 57.

REASONS FOR GRANTING THE WRIT

I. This Court should resolve whether Florida’s capital sentencing scheme violates the Eighth Amendment and the principles of Furman v. Georgia, 408 U.S. 238 (1972).

Florida’s capital sentencing scheme has abandoned or dismantled nearly every safeguard on which its constitutionality has previously relied. What remains is a system in which death eligibility is not narrowed to a small sub-class of persons convicted of first-degree murder, in which death selection does not require the jury’s recommendation be unanimous, in which the state appellate court no longer reviews death sentences for their proportionality or relative culpability, and in which appellate review has become all but a rubber stamp. This system no longer passes constitutional muster.

Since reinstating the death penalty in Gregg v. Georgia, 428 U.S. 153 (1976) (plurality opinion), this Court has barred “sentencing procedures that create [] a substantial risk that [a death sentence] would be inflicted in an arbitrary and capricious manner.”¹ As this Court explained, where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of arbitrary and capricious action. Gregg v. Georgia, 428 U.S. 153, 189 (1976) (plurality opinion).

¹ 428 U.S.153, 188 (1976) (plurality opinion); *See also* Gardner v. Florida, 430 U.S. 349, 358 (1977) (plurality opinion) (“It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.”); Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (plurality opinion) (recognizing the heightened “need for reliability in the determination that death is the appropriate punishment in a specific case”).

In Gregg, “[t]he approval of Georgia's capital sentencing procedure rested primarily on two features of the scheme: that the jury was required to find at least one valid statutory aggravating circumstance and to identify it in writing, and that the state supreme court reviewed the record of every death penalty proceeding to determine whether the sentence was arbitrary or disproportionate. These elements, the opinion concluded, adequately protected against the wanton and freakish imposition of the death penalty.” Zant v. Stephens, 462 U.S. 862, 876 (1983).

In Proffitt v. Florida, 428 U.S. 242 (1976), this Court approved Florida’s post-Furman capital sentencing scheme, which the Florida Supreme Court had approved three years prior in State v. Dixon, 283 So.2d 1 (Fla. 2010). Both the Florida Supreme Court in Dixon and this Court in Proffitt presumed – in analyzing whether Florida’s capital sentencing scheme violated the Eighth Amendment – that the comparative proportionality review pronounced in Dixon would be conducted in every death penalty case. Indeed, both decisions lauded this protection as a guarantee that Florida’s system would sufficiently protect against the arbitrary and capricious imposition of the death penalty.

Review by this Court guarantees that the reasons present in one case will reach a similar result to that reached under similar circumstances in another case. No longer will one man die and another live on the basis of race, or a woman live and a man die on the basis of sex. **If a defendant is sentenced to die, this Court can review that case in light of the other decisions and determine whether or not the punishment is too great.** Thus, the discretion charged in Furman v. Georgia, *Supra*, can be controlled and channeled until the sentencing process becomes a matter of reasoned judgment rather than an exercise in discretion at all.

State v. Dixon, 283 So.2d 1, 10 (Fla. 1973) (emphasis added).

Finally, the Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. **The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases.**

Proffitt at 258 (citing State v. Dixon, 283 So.2d 1, 10 (Fla. 1973) (emphasis added)).

Florida, like Georgia, has responded to Furman by enacting legislation that passes constitutional muster. That legislation provides that after a person is convicted of first-degree murder, there shall be an informed, focused, guided, and objective inquiry into the question whether he should be sentenced to death. **If a death sentence is imposed, the sentencing authority articulates in writing the statutory reasons that led to its decision. Those reasons, and the evidence supporting them, are conscientiously reviewed by a court which, because of its statewide jurisdiction, can assure consistency, fairness, and rationality in the evenhanded operation of the state law.** As in Georgia, this system serves to assure that sentences of death will not be “wantonly” or “freakishly” imposed. See Furman v. Georgia, 408 U.S., at 310, 92 S.Ct., at 2762 (Stewart, J., concurring). Accordingly, the judgment before us is affirmed.

Proffitt at 259 (emphasis added).

The approval in Proffitt also relied on the demonstrated effectiveness of proportionality review which, at the time of the decision, had led this Court to vacate 8 of the 21 death sentences that had come before it.

The Florida capital-sentencing procedures thus seek to assure that the death penalty will not be imposed in an arbitrary or capricious manner. Moreover, **to the extent that any risk to the contrary exists, it is minimized by Florida's appellate review system, under which the evidence of the aggravating and mitigating circumstances is reviewed and reweighed by the Supreme Court of Florida “to determine independently whether the imposition of the ultimate penalty is warranted.”** Songer v. State, 322 So.2d 481, 484 (1975). See also Sullivan v. State, 303 So.2d 632, 637 (1974). The Supreme Court of **Florida**, like that of Georgia, **has not hesitated to vacate a death sentence when it has determined that the sentence should not have been imposed.** Indeed, it has vacated 8 of the 21 death sentences that it has reviewed to date. See Taylor

v. State, 294 So.2d 648 (1974); Lamadline v. State, 303 So.2d 17 (1974); Slater v. State, 316 So.2d 539 (1975); Swan v. State, 322 So.2d 485 (1975); Tedder v. State, 322 So.2d 908 (1975); Halliwell v. State, 323 So.2d 557 (1975); Thompson v. State, 328 So.2d 1 (1976); Messer v. State, 330 So.2d 137 (1976).

Proffitt at 252-253 (emphasis added).

Much has changed. Fifty years later, Florida's capital system bears no resemblance to the version approved in Proffitt.

A. In the 50 years since Proffit was decided, Florida has expanded its aggravating factors in both scope and number so significantly that death-eligibility a foregone conclusion in every conceivable first-degree murder.

A capital sentencing scheme, either through legislatively enumerated aggravating factors or through legislatively mandated guilt-phase findings, must genuinely narrow the class of persons eligible for the death penalty. Lowenfield v. Phelps, 484 U.S. 231, 244 (1988) (quoting Zant v. Stephens, 462 U.S. 862, 877 (1983)). Each aggravating factor, taken singly, must also narrow the eligible class. Zant at 877. Florida's current scheme, however, fails to accomplish the former, and many of Florida's individual aggravators fail to accomplish the latter.

Both failures are due to Florida's "aggravator creep" problem.² Since this Court's approval of Florida's system in Proffitt, the scope of Florida's original eight

² In Hidalgo v. Arizona, 138 S. Ct. 1054 (2018), four Justices commented on the Court's denial of certiorari. The state court had held that Arizona's capital scheme is sufficiently narrowly drawn even if it assumed that 98% of Arizona's first-degree murder cases are automatically eligible for death-penalty proceedings. The four Justices recognized "a possible constitutional problem" which "warrants careful attention and evaluation." 138 S. Ct. at 1057. In Florida, the reported cases and the relevant statutes on their face establish that an "aggravator creep" problem exists.

aggravators have broadened significantly, and the number of aggravating factors in Florida has doubled from eight to sixteen.^{3 4}

This doubling of the number of aggravators, in conjunction with the fact that many aggravators are not tightly drawn – and, consequently, have significantly broadened in scope over time – has resulted in a system under which, as of 2024, virtually all conceivable murders fit at least one of the sixteen categories of eligibility.

For instance, Florida's scheme treats as an aggravator the fact that a defendant was found guilty of felony-murder – Section 921.141(6)(d) – rather than premeditated murder. As Tennessee, North Carolina, and Wyoming have held, doing so necessarily fails to narrow the death-eligible class.⁵ The conduct underlying common predicate felonies has also broadened over the years⁶, and the statute has been expanded to cover significantly more participants.⁷

Section 921.141(6)(b) – which renders a defendant's prior conviction for a prior violent felony an aggravating circumstance – has also, in practice, failed to narrow the eligible class. The Florida Supreme Court has construed “prior” broadly, to include violent crimes on other victims committed in connection with the murder⁸, as

³ Chapters 2010-120 '1, 2005-28 '7, 96-290 '5, 95-159 '1, 91-270 '1, 88- 381 '10, 87-368 '1, Laws of Florida.

⁴ Of these 16, the majority – specifically: a, b, d, j, l, m, n, o, & p – relate solely to the status of either the victim or the defendant.

⁵ State v. Middlebrooks, 840 S.W. 2d 317, 346-47 (Tenn. 1992); State v. Cherry, 257 S.E. 2d 551 (N.C. 1979); Engberg v. Meyer, 820 P.2d 70 (Wyo. 1991).

⁶ See Sparre v. State, 164 So.3d 1183, 1200-01 (Fla. 2015) (burglary can occur after invitation is effectively rescinded); Rockmore v. State, 140 So.3d 979, 982 (Fla. 2014) (robbery includes force used after taking).

⁷ See State v. Dene, 533 So.2d 265, 266-69 (Fla. 1988).

⁸ See, e.g., Stephens v. State, 787 So.2d 747, 761 (Fla. 2001).

well as to include offenses which occurred years *after* the offense for which the defendant faces the death penalty.⁹

Section 921.141(6)(i) – the cold, calculating and premeditated ("CCP") aggravator – has similarly outgrown its ability to narrow the eligible class. In its early years, CCP was applied in cases involving contract killings and execution-style killings.¹⁰ In recent years, however, a CCP finding has been upheld so long as the murder was not committed impulsively or on the spur of the moment, and was not committed in a state of rage or loss of control¹¹, “even where there is evidence that the final decision to kill was not made until shortly before the murder itself.”¹²

Section 921.141(6)(a) – the “under sentence of imprisonment” aggravator – has also broadened significantly. At the time of Proffitt, this aggravator¹³ was limited to murders committed “while under sentence of imprisonment” – See Proffitt v. Florida, 428 U.S. 242, n. 6 (1976) (quoting Section 921.141(5) (Supp. 1976-1977) of the Florida Statutes) – but it has since been expanded by the legislature to include murders committed by anyone on probation or community control. See Section 921.141(6)(a), Fla. Stat. (2023) (“The capital felony was committed by a person previously convicted

⁹ Brown v. State, 473 So.2d 1260, 1266 (Fla. 1985) (“Appellant's argument that his aggravated battery conviction could not be considered in support of the section 921.141(5)(b) aggravating circumstance because the offense occurred after the capital felony is without merit. The aggravated battery conviction was entered previous to the sentencing for the capital felony. Lucas v. State, 376 So.2d 1149 (Fla.1979).”).

¹⁰ See Floyd v. State, 497 So.2d 1211, 1214 (Fla. 1986) and Garron v. State, 528 So.2d 353, 360-61 (Fla. 1988).

¹¹ Campbell v. State, 159 So.3d 814, 830-31 (Fla. 2015).

¹² Gosciminski v. State, 132 So.2d 678, 712 (Fla. 2013).

¹³ Then, §921.141(5)(a).

of a felony and under sentence of imprisonment or placed on community control or on felony probation”).

Section 921.141(6)(e) – the “avoid arrest” aggravator – has also been expanded beyond its original application. As this Court explained in Urbín v. State, 714 So.2d 411, 415 (Fla. 1998), this aggravator originally applied to murders of law enforcement personnel, but was later expanded in Riley v. State, 366 So.2d 19 (Fla.1978) “beyond those involving law enforcement personnel, to include other capital murders specifically involving witness elimination.” Urbín v. State, 714 So.2d 411, 415 (Fla. 1998) (citing Riley v. State, 366 So.2d 19 (Fla.1978)).

While each of the changes to Florida’s aggravators over the last half-century may appear small when considered in a vacuum, the aggregate effect of their doubling in number and their expansion in scope is a system which fails to genuinely narrow the class of persons eligible for the death penalty.

B. As of 2020, the Florida Supreme Court no longer conducts any form of proportionality review or relative culpability review in capital cases.

As this Court held in Pulley v. Harris, 465 U.S. 37 (1984), the Eighth Amendment does not require “comparative proportionality review by an appellate court [. . .] in every case in which the death penalty is imposed.” Id. at 50. Instead, “[p]roportionality review was considered to be an additional safeguard against arbitrarily imposed death sentences,” “each distinct system must be examined on an individual basis.” Id. at 50, 45 (quoting Gregg, 428 U.S., at 195). Nevertheless, the Florida Supreme Court continued to conduct its proportionality review for nearly 40 years following this Court’s decision in Pulley. In State v. Henry, 456 So. 2d 466, 469

(Fla. 1984), the Court acknowledged “that proportionality review is not a requirement of the federal constitution, Pulley v. Harris, 465 U.S. 37 (1984), but rather a feature of state law, Proffitt v. Florida, 428 U.S. 242 (1976). Thus, the parameters of that duty are set forth in our cases interpreting that duty.” Henry, 456 So. 2d at 469.

This practice ended in 2020. In Lawrence v. State, 308 So.3d 544 (Fla. 2020), the Florida Supreme Court announced¹⁴ that it would no longer perform its comparative proportionality review in death cases. In 2023, the Florida Supreme Court went further, announcing that it would also no longer perform any “relative culpability review” – in which the sentences of capital co-defendants were reviewed to apply “the principle that equally culpable co-defendants should be treated alike in capital sentencing and receive equal punishment” – in death cases. Cruz v. State, 372 So. 3d 1237, 1241 (Fla. 2023) quoting Shere v. Moore, 830 So.2d 56, 60-61 (Fla. 2002). *See also* Jennings v. State, 718 So.2d 144, 153 (Fla.1998) (“While the death penalty is disproportionate where a less culpable defendant receives death and a more culpable defendant receives life, disparate treatment of codefendants is permissible in situations where a particular defendant is more culpable.”) (citation omitted).

C. In 2023, Florida eliminated its jury unanimity requirement.

In 2017, Florida amended §921.141 to comport with this Court’s decision in Hurst v. Florida, 577 U.S. 92 (2016). As expected, the amendment addressed the central issue in Hurst; specifically, it required a unanimous jury finding (as opposed

¹⁴ This decision relied on the dubious rationale that this Court’s interpretation of the Eighth Amendment in Pulley, if applied to the Eighth Amendment’s near-verbatim provision in the Florida Constitution, somehow *prohibited* it from conducting proportionality review in capital cases.

to a judge's finding) of at least one specific aggravating factor before a defendant would be deemed eligible for the death penalty. Crucially, the amendment *also* added another requirement that was not expressly required by Hurst. Specifically, it required that the jury's *recommendation* of death also be unanimous. See §921.141(2)(c), Fla. Stat. (2017).

The addition of the jury unanimity requirement appears to be the only instance in nearly 50 years of Florida voluntarily *adding* a safeguard to its capital sentencing scheme that it was not *expressly forced* to add by this Court.

It lasted 6 years. In 2023, Florida's legislature amended §921.141 to remove it. In place of unanimity, Florida's legislature lowered the death recommendation threshold to a mere 2/3rds (8-4) vote. See §921.141(2)(c), Fla. Stat. (2024) ("If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death"). This version of the statute – which remains in effect today – was applied, over objection, to the penalty phase in the instant case.

As the Florida Supreme Court itself has previously acknowledged, "[m]any courts and scholars have recognized the value of unanimous verdicts." State v. Steele, 921 So.2d 538, 549 (Fla. 2005). In the context of death penalty determinations, the Steele Court quoted the following from the Connecticut Supreme Court:

[W]e perceive a special need for jury unanimity in capital sentencing. Under ordinary circumstances, the requirement of unanimity induces a jury to deliberate thoroughly and helps to assure the reliability of the ultimate verdict. The "heightened reliability demanded by the Eighth Amendment in the determination whether the death penalty is appropriate", Sumner v. Shuman, 483 U.S. 66, 72 (1987), convinces us

that jury unanimity is an especially important safeguard at a capital sentencing hearing. In its death penalty decisions since the mid-1970s, the United States Supreme Court has emphasized the importance of ensuring reliable and informed judgments. These cases stand for the general proposition that the “reliability” of death sentences depends on adhering to guided procedures that promote a reasoned judgment by the trier of fact. The requirement of a unanimous verdict can only assist the capital sentencing jury in reaching such a reasoned decision.

Id. (quoting State v. Daniels, 542 A.2d 306, 315 (Conn. 1988)). *See also* McKoy v. North Carolina, 494 U.S. 433, 452 (1990) (Kennedy, J., concurring)(“Jury unanimity, it is true, is an accepted, vital mechanism to ensure that real and full deliberation occurs in the jury room, and that the jury’s ultimate decision will reflect the conscience of the community”); United States v. Scalzitti, 578 F.2d 507, 512 (3rd Cir.1978)(“Unlike the ‘historical accident’ of jury size, unanimity relates directly [to] the deliberative function of the jury. Unanimity serves to effectuate the purpose of the jury system by promoting the full expression of the views of all members of the jury and by ensuring that those views are taken into account as fully and fairly as possible in reaching a verdict”).

To be clear, the argument here is *in no way* dependent on the separate question of whether the Sixth and/or Eighth Amendments always require unanimity under any capital sentencing scheme. Instead, the argument is simply that since jury unanimity is known to provide a significant safeguard in capital cases against the arbitrary and capricious imposition of the death penalty, the abandonment of the unanimity requirement for jury’s ultimate recommendation is yet another deficiency within Florida’s system.

D. Florida’s system expressly prohibits the jury from considering victim-impact evidence in making any of their findings or recommendations, then presents it to them anyway.

Although Payne v. Tennessee, 501 U.S. 808 (1991) rejected the categorical prohibition of victim impact evidence, Florida has deliberately elected to exclude victim impact evidence from the list of statutory aggravators in section 921.141(6), and Florida juries are expressly prohibited – both by statute and via standard jury instructions – from considering victim-impact evidence in making their any of their findings or recommendations.

Paradoxically, Florida’s statute still permits the presentation of this evidence during the sentencing phase, relying on the polite fiction that this evidence will not influence the jury if the jury is instructed not to consider it. *See* § 921.141(6-8). This evidence – which “can of course be so inflammatory as to risk a verdict impermissibly based on passion, not deliberation.” Payne v. Tennessee, 501 U.S. 808, 836 (1991) (Souter, J., concurring); *cf.* Penry v. Lynaugh, 492 U.S. 302, 319-328 (1989)(capital sentencing should be imposed as a reasoned moral response) – is presented to the jury in nearly every capital case in Florida. This evidence is often, as it was in this case, a dramatic focal point of the proceedings, presented to the jury immediately before they retire to deliberate.

In practice, this system all but guarantees that the jury’s recommendation will be influenced by factors they are expressly prohibited from considering. It is yet another feature of Florida’s system that increases the risk that “the jury may impose

the death penalty in an arbitrary and capricious manner.” *Booth v. Maryland*, 482 U.S. 496, 503 (1987) (*receded from in Payne*, 501 U.S. 808).

E. Since 2020, the Florida Supreme Court has abandoned several key safeguards which, taken together, account for the vast majority of reversals on direct appeal in capital cases over the last 26 years. Stated differently, if they were decided today, most of the Florida Supreme Court’s reversals over the past 26 years would be affirmed.

Half a century ago, this Court lauded Florida for “not hesitat[ing] to vacate a death sentence when it has determined that the sentence should not have been imposed” – noting that in the roughly three-year span between Furman and Proffitt – “it has vacated 8 of the 21 death sentences that it has reviewed to date”. Proffitt, at 252-53.

Today, Florida hesitates. It has been over three years since the Florida Supreme Court has reversed *any* capital case on direct appeal. The most recent being in June of 2023.¹⁵ Of the 25 capital cases on direct appeal the Court has reviewed since January of 2023, 24 have been affirmed. Only one out of 25 received a remedy of any kind, and it did so on “right to counsel” grounds, which are not unique to capital cases.

Over the last 10 years, specifically since its post-remand decision in Hurst a decade ago, the Florida Supreme Court has reviewed some 107 capital cases. Of those 107, only nine have been reversed on non-Hurst grounds. Worse still, four of those

¹⁵ See Figueroa-Sanabria v. State, 366 So. 3d 1035 (Fla. 2023) (remanded for new penalty phase based on right to counsel).

nine *would not be reversed* if they were decided today, as the Florida Supreme Court has receded from their respective underlying precedents.¹⁶

The steep decline in reversals over the last 10 years, and the literal absence of any over the last 3 years, demonstrates the impact of abandoning multiple load-bearing safeguards against the arbitrary and capricious imposition of the death penalty. It also demonstrates the dire state of Florida’s appellate review of capital cases generally and, at a minimum, indicates that Florida’s appellate review can no longer be presumed to act as a meaningful safeguard.

F. Florida’s scheme now fails to sufficiently reduce the risk of arbitrary infliction of death sentences.

In Pulley, this Court acknowledged that “there could be a capital sentencing system so lacking in other checks on arbitrariness that it would not pass constitutional muster without comparative proportionality review.” Pulley at 879-80. Appellant respectfully submits that Florida’s system has become such a system since it was last approved by this Court in Proffitt v. Florida, 428 U.S. 242 95 (1976).

¹⁶ Two were reversed based on proportionality review, which was abandoned in 2020, one was based on relative culpability review, which was abandoned in 2023, and one was based on Florida’s then-heightened standard of review applied circumstantial evidence cases, which was abandoned in 2020. Wright v. State, 221 So. 3d 512 (Fla. 2017) (reversed based on heightened circumstantial evidence standard); Wood v. State, 209 So. 3d 1217 (Fla. 2017) (reduced to life based on proportionality review); McCloud v. State, 208 So. 3d 668 (Fla. 2016) (reduced to life based on relative culpability review); Phillips v. State, 207 So. 3d 212 (Fla. 2016) (reduced to life based on proportionality review); *but see* Figueroa-Sanabria v. State, 366 So. 3d 1035 (Fla. 2023) (remanded for new penalty phase based on right to counsel); Mosley v. State, 349 So. 3d 861 (Fla. 2022) (remanded for new Spencer hearing based on Faretta v. California, 422 U.S. 806 (1975)); Avsenew v. State, 334 So. 3d 590 (Fla. 2022) (reversed for new trial based on error in format of perpetuated testimony); Cruz v. State, 320 So. 3d 695 (Fla. 2021) (reversed and remanded for limited purpose of requiring trial court to perform a new sentencing evaluation and provide new sentencing order); Johnson v. State, 238 So. 3d 726 (Fla. 2018) (reversed to enforce agreement with the State not to seek death penalty).

Whatever safeguards this state may have once had have been systematically stripped away, and Florida now has – by far – the fewest and weakest protections against arbitrary infliction of the death penalty of any jurisdiction, state or federal, which still allows capital punishment. Not even Alabama comes close.¹⁷

In sum, the net result of the changes to Florida’s system – among them, the expansion of the number and scope of aggravators, the elimination of proportionality review, and the elimination of jury unanimity at the selection stage, the abandonment of proportionality review and other precedents, and the resultant collapse of meaningful appellate review – is a capital sentencing scheme which, unlike that of any other state or the federal system, fails to provide a sufficient safeguard at any stage of a capital case. It has neither a genuine narrowing at the eligibility stage, nor a jury unanimity requirement at the selection stage, nor a proportionality review requirement at the appeal stage.

In its zeal to expand the infliction of its death penalty, Florida now has a system unlike any other jurisdiction; one in which practically everyone charged with first-degree murder qualifies for a death sentence, where everyone convicted of first-degree murder might receive a death sentence, and where the appropriateness of that sentence is not subject to meaningful review.

¹⁷ Alabama is the only other jurisdiction, state or federal, which permits a death sentence to be imposed on the basis of a non-unanimous jury verdict. Alabama not only requires a significantly higher percentage of the jury make this recommendation – 10-2, as opposed to 8-4 – it also retained the safeguard of proportionality review on appeal. See Ala. Code §13A-5-53(b)(3); Petric v. State, 157 So.3d 176, 250 (Ala.Crim.App. 2013).

II. This Court should resolve whether applying Florida’s new rule to individuals whose crimes were committed while unanimity was required violates the Ex Post Facto Clause.

Even if Florida’s nonunanimity rule comported with the Sixth and Eighth Amendments, it would still raise a serious ex post facto question as applied to individuals whose crimes were committed between 2017 and 2023, when Florida precluded the death penalty unless the jury voted unanimously that the defendant should be sentenced to death. State courts of last resort are divided over whether changes in the percentage of votes required to enable heightened criminal punishment violate the Ex Post Facto Clause. Furthermore, the Florida Supreme Court’s holding that there is no ex post facto problem under these circumstances is incorrect. And this case is an ideal vehicle for resolving the issue.

A. State courts of last resort are divided over whether changing the percentage of votes needed to impose criminal punishment triggers the Ex Post Facto Clause.

On two levels, the Florida Supreme Court’s holding that retroactively applying the State’s new nonunanimity rule does not violate the Ex Post Facto Clause conflicts with precedent from other states.

1. Florida is only the third state in American history to have gone from requiring unanimous jury verdicts in criminal cases to a system in which nonunanimity suffices. As this Court will recall from Ramos v. Louisiana, 590 U.S. 83 (2020), Louisiana abandoned its requirement of unanimity to convict in noncapital cases in 1898, while Oregon did the same in 1934. Id. at 87-88. The Louisiana Supreme Court held that the Ex Post Facto Clause prohibited applying its new nonunanimity rule “to offenses committed prior to [the rule’s] adoption.”

State v. Ardoin, 24 So. 802, 803 (La. 1899). Oregon proactively made its nonunanimity rule inapplicable in “prosecutions for crimes committed before [the rule took] effect.” Or. Const. art. I, § 11 (1934).

The Florida Supreme Court’s decision here breaks from both of those antecedents. Granted, the Louisiana Supreme Court applied a “substantial right” approach to the Ex Post Facto Clause that this Court has since abandoned. Compare Ardoin, 24 So. at 803, with Carmell v. Texas, 529 U.S. 513, 539 (2000). And the Oregon antecedent is legislative rather than judicial. But the fact remains that in the only two other instances in which a state abandoned a unanimity requirement for criminal punishment, the state did not allow that change to apply retroactively. The Florida Supreme Court’s holding here conflicts with that judgment.¹⁸

2. Florida’s 2023 nonunanimity rule increased the percentage of votes required to avoid a harsher punishment. When the crime in Mr. McDowell’s case occurred in 2021, a capital defendant needed to convince only one of twelve jurors to vote for a life sentence to avoid a sentence of death. But under the 2023 law, a minimum of five votes are needed—making a death sentence much more likely. The Florida Supreme Court nonetheless held that the new statute did not trigger the Ex Post Facto Clause. (Appendix A) And the Florida Supreme Court stuck to this

¹⁸ Alabama also currently allows courts to impose the death penalty based on nonunanimous jury determinations that the defendant should be sentenced to death. See Ex parte Bohannon, 222 So. 3d 525, 532 (Ala. 2016) (upholding this law). Unlike Florida, however, Alabama did not previously require unanimous jury determinations to impose such sentences. So the ex post facto question here does not arise in that State.

reasoning even though in Mr. McDowell’s own case, the change in state law was unquestionably outcome-determinative: Before the new enactment, the 11-1 jury vote here could not have exposed him to a death sentence.

The Florida Supreme Court’s analysis turns on whether changes in the percentage of votes required to enable heightened punishment create a “sufficient risk” of such punishment under Peugh and prior cases—and, more generally, on whether the touchstone for that inquiry is a “significant risk” or a “virtual guarantee” of increased punishment. Only this Court can resolve that disagreement.

B. The Florida Supreme Court’s decision is incorrect.

Certiorari is also warranted because the Florida Supreme Court’s decision contravenes this Court’s precedent.

1. The Ex Post Facto Clause, U.S. Const. art. I, § 10, cl. 1, guarantees “perhaps greater securities to liberty and republicanism than any [the Constitution] contains.” The Federalist No. 84, at 511 (Hamilton) (Clinton Rossiter ed., 1961). Specifically, the Clause guards against applying penal statutes enacted after a crime occurred that “disadvantage the offender affected by them.” Collins v. Youngblood, 497 U.S. 37, 41 (1990). This prohibition ensures that individuals have fair notice of criminal law and that the government cannot change the rules after the fact to “make it easier” to convict or impose punishment. Carmell v. Texas, 529 U.S. 513, 546 (2000).

Applying these general principles, this Court has held that a new rule governing criminal punishment triggers the Ex Post Facto Clause when the change in law “presents a sufficient risk of increasing the measure of punishment.” Peugh v. United States, 569 U.S. 530, 539 (2013) (internal quotation marks omitted). To meet this standard, the defendant must show that the change creates more than a “speculative and attenuated possibility of producing the prohibited effect of increasing the measure of punishment.” Cal. Dep’t of Corr. v. Morales, 514 U.S. 499, 509 (1995); see Garner v. Jones, 529 U.S. 244, 250-51 (2000). The new law must instead “creat[e] a ‘significant risk’ of a higher sentence.” Peugh, 569 U.S. at 550 (quoting Garner, 529 U.S. at 251); id. at 541 n.4.

The Court has held that increases in the recommended or presumptive levels of punishment under sentencing guidelines created a significant risk of heightened punishment. See Peugh, 569 U.S. at 550; see also id. at 541; id. at 541 n.4 (discussing Miller v. Florida, 482 U.S. 423 (1987)). To determine whether a new law poses a significant risk of increased punishment, this Court looks to its “purpose” and “effect.” Lynce v. Mathis, 519 U.S. 433, 444 (1997).

The effect of the law can be gleaned from its “own terms” or “evidence drawn from the rule’s practical implementation.” Garner, 529 U.S. at 255. And the law’s practical implementation can be shown through general “empirical evidence,” see Peugh, 569 U.S. at 543, or “the actual course of events” in the defendant’s particular case, Lynce v. Mathis, 519 U.S. at 446.

2. Florida’s new nonunanimity rule has both the purpose and effect of creating a significant risk of greater punishment.

As to purpose, the Florida Supreme Court did not dispute that the goal of the State’s nonunanimity rule is to make it easier to sentence people to death. Nor could it. The bill’s sponsor explained that the rule is designed to “hinder the practice of activist jurors”— meaning jurors who vote for life instead of death when others believe a death sentence was appropriate. Tr. of Senate Floor Debate on SB 450, 2023 Leg., Reg. Sess. 2 (Fla. Mar. 29, 2023) (statement of Sen. Blaise Ingoglia). Other supporters likewise argued that removing the State’s unanimity requirement was necessary to prevent “a small handful of jurors [from] derail[ing] the true administration of justice” by declining to impose death. Hearing on HB 555 Before the H. Crim. Just. Subcomm., 2023 Leg., Reg. Sess. 16 (Fla. 2023) (statement of Rep. Berny Jacques, Member, H. Crim. Just. Subcomm.). Some legislators even singled out particular capital defendants that they believed deserved the death penalty and urged colleagues to vote for the amendment to make that more likely. See id.

It thus comes as no surprise that Florida’s 2023 shift to a nonunanimity system, in fact, increased the likelihood that capital defendants receive death sentences. On the new statute’s own terms, it is much easier for the prosecution to obtain death sentences. That is because a Florida court may impose the death penalty only if the jury determines that the defendant should be sentenced to death. And it is much easier to persuade eight of twelve jurors to vote for death than all

twelve. Statistics confirm that reality. Records of sentences imposed on over one hundred capital defendants before and after the 2023 law's implementation show that individuals sentenced under Florida's new nonunanimity rule are twice as likely as before to receive a death sentence. Death Penalty Information Center, *Marking a Decade Since Hurst v. Florida*, <https://perma.cc/B2YY-93RH>. Making heightened punishment twice as likely plainly poses a "significant risk" of that punishment.

Finally, "the actual course of events" in this very case, Lynce v. Mathis, 519 U.S. at 446, demonstrates that Florida's nonunanimity rule increased Mr. McDowell's punishment. His jury voted 11-1 in favor of death. Under the old regime, that vote would have required a sentence of life imprisonment. But under the new law, that nonunanimous vote enabled a death sentence, which is what the court imposed. The 2023 amendment thus increased Mr. McDowell's actual punishment. See id.; Clay v. Mass. Parole Bd., 56 N.E. 3d 145, 152 (Mass. 2016).

3. The Florida Supreme Court advanced three reasons for rejecting this straightforward analysis. None has merit.

a. The Florida Supreme Court asserted that the "sufficient risk" test this Court applied most recently in Peugh is not met unless the change in law "virtually guarantee[s]" increased punishment. Hunt v. State, 428 So. 3d 43, 57 (Fla. 2025), (quoting State v. Lobato, 394 So. 3d 1219, 1226 (Fla. 6th DCA 2024)). Those words, however, appear nowhere in Peugh, and that is not the applicable standard. The constitutional question, as this Court reiterated over and over in Peugh, is whether

the new law “create[s] a ‘significant risk’ of a higher sentence.” Peugh, 569 U.S. at 550 (citation omitted); see also id. (“significant risk”); id. at 541 n.4 (“The relevant question is whether the change in law creates a ‘sufficient’ or ‘significant’ risk of increasing the punishment for a given crime.”) (citation omitted); id. at 541 (“significant risk”).

To be sure, some of the Court’s analysis in Peugh suggested that the particular change to the guidelines system at issue there might have created even more than a significant risk of higher punishment. But that just meant that the change met the governing standard by a considerable margin. The Court did not modify the constitutional standard itself.

Nor did Peugh circumscribe prior precedent finding ex post facto violations in other cases where there was no virtual guarantee of increased punishment. For example, in Weaver v. Graham, 450 U.S. 24 (1981), there was nothing close to a guarantee that defendants’ punishments would increase under the changes at issue to rules for calculating good time credits. Id. at 37-38 (Rehnquist, J., concurring in the judgment). But this Court still found that the changes triggered the Ex Post Facto Clause because they “constrict[ed] [an] inmate’s *opportunity* to earn early release.” Id. at 35-36 (emphasis added). Lindsey v. Washington, 301 U.S. 397 (1937) is similar. The new law there made a sentence mandatory that was already permissible—and thus presumably regularly given. Lindsey, 301 U.S. at 401. But

retroactively applying the new rule still violated the Ex Post Facto Clause because it removed “the possibility” of a shorter sentence. Id.¹⁹

b. The Florida Supreme Court also maintained that Dobbert v. Florida, 432 U.S. 282 (1977), insulates the State’s new nonunanimity rule from ex post facto infirmity. Hunt v. State, 428 So. 3d 43, 56 (Fla. 2025). But Dobbert offers no refuge.

In Dobbert, the Court held that various changes to Florida’s capital sentencing procedures did not trigger the Ex Post Facto Clause. The Court stressed that the totality of the changes were “ameliorative,” making it less likely than before that defendants would be sentenced to death. Id. at 294; see also Miller, 482 U.S. at 431-32.

No aspect of the new law here is ameliorative. Instead, it creates a significant risk that defendants who would otherwise have received life sentences will now be sentenced to death. See supra at 28.

The Dobbert opinion also noted the changes at issue there were “clearly procedural.” That is, they “altered the methods” used to determine the defendant’s sentence, not the “quantum of punishment” allowed for the crime itself. Dobbert, 432 U.S. at 293-94. But since Dobbert, the Court has made clear that “a law can run afoul of the [Ex Post Facto] Clause even if it does not alter the statutory maximum punishment attached to a crime.” Peugh, 569 U.S. at 546; see Miller, 482 U.S. at

¹⁹ The dissenters in Peugh would have held that changes to the federal sentencing guidelines do not satisfy the “sufficient risk” test because they have “no legal effect on a defendant’s sentence.” 569 U.S. at 551 (Thomas, J., dissenting). Even if such an effect were required to trigger the Ex Post Facto Clause, the Florida Supreme Court’s decision would still be wrong. A jury determination in Florida that the defendant should be sentenced to death *has* a legal effect (indeed, a very important one): It makes an otherwise off-limits sentence permissible. See Fla. Stat. § 921.141(2)(c), (3)(a)(1).

432 (“[O]ne is not barred from challenging a change in the penal code on *ex post facto* grounds simply because the sentence he received under the new law was not more onerous than that which he might have received under the old.”) (citation omitted). Consequently, the question is not whether the new rule is “procedural”; it is whether the new law “creates a ‘significant risk’ of a higher sentence” that the defendant otherwise would have received. Peugh, 569 U.S. at 550. And that test is met here.

This Court’s decision in Carmell underscores the Florida Supreme Court’s error in relying on Dobbert. In Carmell, the Court confirmed that it has “eliminated [the] doctrinal hitch that had developed in [Dobbert and other] cases, which purported to define the scope of the Clause along an axis distinguishing between laws involving ‘substantial protections’ and those that are merely ‘procedural.’” Carmell, 529 U.S. at 539 (discussing Collins, 497 U.S. 37). Procedural changes that increase the risk of punishment can violate the Ex Post Facto Clause just as laws directly requiring higher sentences can.

Carmell also makes clear that, even when a new law does not increase the defendant’s punishment, it triggers the Ex Post Facto Clause if it “lower[s] the burden of proof.” 529 U.S. at 532. Unlike procedural changes that might sometimes help the prosecution and other times help defendants, laws that “mak[e] it easier to meet” the burden of proof implicate ex post facto concerns because they “always run in the prosecution’s favor.” Id. at 532, 546.

Florida’s new nonunanimity rule is just like a law lessening the prosecution’s burden of proof. The prosecution no longer needs to convince all of the jurors to vote for death; it is now sufficient to persuade eight of the twelve to do so. As such, the new rule reduces the prosecution’s degree of persuasion necessary to obtain death sentences—and accordingly violates the Ex Post Facto Clause when applied retroactively.

c. Lastly, the Florida Supreme Court in this case relied on Hunt v. State, 428 So. 3d 43 (Fla. 2025), which relied on a passage from this Court’s opinion in Collins v. Youngblood explaining that a law reducing the number of jurors from twelve to eight did not implicate the Ex Post Facto Clause. Hunt at 57. (discussing Collins, 497 U.S. at 51). The Florida Supreme Court reasoned that if “reducing the number of jurors needed to *convict* a defendant does not violate the Ex Post Facto Clause,” then “surely reducing the number of votes needed to provide a ‘recommendation’ of death” does not. Id. That protestation goes nowhere either.

Under the new law this Court referenced in Collins, the eight-member jury still had to be unanimous. That being so, the new law did not necessarily make it easier for the prosecution to carry its burden. See Williams v. Florida, 399 U.S. 78, 100 n.46 (1970). Seven jurors, for example, might sometimes have a harder time convincing a single holdout to vote to convict than a supermajority of eleven jurors typically does. See id. at 101 n.49. By contrast, jury unanimity “insur[es] that the Government bear the heavier burden of proof.” Id. at 100 n.46; see also Hibdon v. United States, 204 F.2d 834, 839 (6th Cir. 1953) (describing the “far lighter burden

of persuasion in convincing a majority of the jury than in persuading all of its members”). Florida’s change to its nonunanimity rule therefore decreased the prosecution’s burden and created a significant risk of higher punishment.²⁰

Insofar as the Florida Supreme Court also meant to suggest by its comparison to Collins that the Ex Post Facto Clause should not apply to mere jury recommendations, that also provides no reason for rejecting Mr. McDowell’s ex post facto claim. The determination at issue here is not simply a recommendation; it has the legal consequence of enabling the death penalty to be imposed. Fla. Stat. §§ 921.141(2)(c), (3)(a)(1).

Granted, even when the jury determines that the defendant should be sentenced to death, the trial judge can still “opt for a life sentence.” Hunt at 57. But this Court has “ma[d]e clear that the presence of [sentencing] discretion does not displace the protections of the *Ex Post Facto* Clause.” Peugh, 569 U.S. at 546 (internal quotation marks omitted). In Peugh itself, judges could still impose lesser sentences under the new laws if they offered certain explanations. Id. at 543-44. So too in Miller. 482 U.S. at 432-33. But the Ex Post Facto Clause prohibited the changes in both cases from applying retroactively. The same is true here. See Fla. Stat. § 921.141(4).

C. The Court should resolve this important question here and now.

²⁰ In its brief in opposition in Kian v. Florida, No. 25-6623, cert. granted (June 15, 2026), the State itself distinguished laws reducing jury size from those dispensing with unanimity, emphasizing that “the requirement of unanimity” is “a device for ensuring that the Government bear the heavier burden of proof.” Br. at 11 (citation omitted); see also id. at 14-17.

For three reasons, this Court should use this case to resolve the ex post facto question presented.

1. The prohibition against ex post facto laws is among the most important constitutional protections against governmental overreach. That is because the prohibition ensures that the “government abide[s] by the rules of law it establishes to govern the circumstances under which it can deprive a person of his or her liberty or life.” Carmell v. Texas, 529 U.S. 513, 533 (2000). Indeed, the prohibition against ex post facto laws is especially critical where, as here, the new law in question is being used to make it easier to deprive someone of their life.

2. The legality of numerous current and potentially future death sentences in Florida depends on the question presented. The ex post facto question here applies to every defendant on death row in Florida who (i) committed the charged offense between 2017 and the 2023 enactment of the nonunanimity law at issue; and (ii) whose jury determined by a nonunanimous vote of between 8-4 and 11-1 that he should be sentenced to death. So far, that set includes several defendants. Moreover, unless this Court weighs in soon, that number will continue to grow. Capital charges are currently pending against dozens of other defendants who allegedly committed their crimes between 2017 and 2023. And since Florida has no statute of limitations on capital murder, future charges could also be brought against still others for committing crimes during this window of time. If the State’s new nonunanimity rule remains in effect, these future prosecutions will almost

certainly produce more death sentences raising the same ex post facto issue that Mr. McDowell is asking the Court to resolve here.

3. This case is an excellent vehicle for resolving the question presented. Mr. McDowell raised, and the Florida Supreme Court squarely resolved, the issue. See Appendix A. This case is on direct review, so the Court can address the question presented free from legal complications that sometimes arise on collateral review. And unlike many capital cases, this case is not coming to the Court on an expedited emergency application to stop a pending execution. Cf. Crawford v. Mississippi, 146 S. Ct. 33, 39 (2025) (Sotomayor, J., dissenting from the denial of application for stay and denial of certiorari). This Court can accordingly decide the weighty issue here with the benefit of full briefing and oral argument.

Finally, this case tees up the ex post facto question presented alongside the Eighth Amendment questions presented here. When new legislation raises several difficult legal issues, this Court has often granted multiple petitions to enable it to consider the constellation of issues together. Recently, for instance, the Court granted two petitions to review distinct legal questions raised by a provision of the First Step Act. See Fernandez v. United States, 146 S. Ct. 1292 (2026); Rutherford v. United States, 146 S. Ct. 1320 (2026). Similarly, in Birchfield v. North Dakota, 579 U.S. 438 (2016), this Court granted three petitions to consider distinct Fourth Amendment issues raised by state laws involving blood and breath tests.

Mr. McDowell respectfully suggests that this Court should grant certiorari in this case to best enable it to consider all of the serious constitutional issues that

Florida's new nonunanimity rule raises. But even if this Court does not wish for some reason to consider whether Florida's capital sentencing scheme violates the Eighth Amendment, certiorari is still warranted—for all of the reasons described above—to consider the ex post facto question presented here.

CONCLUSION

The petition for a writ of certiorari should be granted, Petitioner's sentence should be vacated, and the case should be remanded for a new penalty phase.

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**IN THE
SUPREME COURT OF THE UNITED STATES**

PATRICK RENE MCDOWELL,

Petitioner,

v.

FLORIDA,

Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

Supreme Court of Florida

No. SC2024-1148

PATRICK R. MCDOWELL,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

July 16, 2026

PER CURIAM.

Patrick Rene McDowell appeals his first-degree murder conviction and death sentence, raising five issues for review.¹ We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons below, we affirm.

1. McDowell does not challenge his convictions and sentences on eight counts of aggravated assault on law enforcement officers and one count of injuring a police canine.

I

A

In September 2021, McDowell picked up a friend, Noelle Gale, in a stolen van at her house in Jacksonville. Earlier that day, McDowell and Gale had exchanged messages over Facebook and arranged to “hang out.” Gale knew McDowell through her ex-boyfriend and befriended him because she knew he could get drugs.

After picking up Gale, McDowell drove with her to a Big Lots parking lot to meet a drug dealer. There, they bought thirty dollars’ worth of methamphetamine, smoked some of it in the parking lot, and then headed north to go trail riding and shoot guns. McDowell and Gale made their way to the Florida-Georgia state line in Nassau County, eventually stopping at a gas station near Callahan, Florida, where they smoked more meth. To achieve a stronger high, McDowell inhaled the meth through his nose, otherwise known as “hot railing.”

As McDowell and Gale were exiting the gas station, Joshua Moyers, an on-duty Nassau County Sheriff’s Deputy, pulled up in his marked patrol car. McDowell noticed and nodded to Deputy Moyers on his way back to the van. After leaving the gas station,

McDowell noticed that Deputy Moyers was following them and told Gale that he thought Deputy Moyers would stop them and call for backup. McDowell said that he did not want to go back to jail.

Deputy Moyers ultimately initiated a traffic stop and approached the stolen van McDowell was driving. As Deputy Moyers was questioning McDowell, McDowell positioned a semiautomatic handgun that had been concealed by the center console next to his right knee. Deputy Moyers eventually asked McDowell to step out of the van. As Deputy Moyers opened the door, McDowell shoved his pistol out of the window and shot Deputy Moyers at close range in the face. Deputy Moyers fell to the ground, and McDowell reached out of the window again, firing two shots into Deputy Moyers' back as he laid on his side in the road. McDowell then sped away with Gale across the railroad crossing as the railroad crossing gates came down for an approaching train. McDowell told Gale he shot Deputy Moyers because "it was either him or the cop."

After grabbing a rifle out of the back, McDowell ditched the van in the woods and told Gale to turn her phone off so the police would not track them. The two hid under a trailer until McDowell

told Gale to turn her phone back on and give him a five-minute head start before calling 911. Gale left McDowell under the trailer to find her way back to the van. While walking back, she called 911. The 911 call ended when the police officers took Gale into custody. Gale cooperated with the investigation and helped police identify McDowell as the killer.

A manhunt followed. Jacksonville Sheriff's Officer Dan Cullen, along with his canine, Chaos, responded to aid in the manhunt. While searching the woods, Chaos alerted to a person in thick brush, at which point Officer Cullen let go of Chaos' leash. Two gunshots rang out, and Chaos yelped. Officer Cullen knew McDowell shot Chaos,² and the other participating officers returned a barrage of fire. Police later found a rifle in the woods where the firefight happened, but McDowell escaped.

The manhunt continued for five days, until law enforcement found McDowell at a baseball field hiding in the bathroom not far from where he gunned Deputy Moyers down. McDowell ultimately surrendered, and law enforcement took him into custody. Later,

2. Chaos fully recovered and returned to service.

law enforcement found a semiautomatic handgun in McDowell's hideout in some palmetto bushes. At the time of the murder, McDowell was on probation with a pending violation report.

B

McDowell was indicted for Deputy Moyers' murder and nine other charges,³ and the State filed a notice of intent to seek the death penalty.⁴ McDowell initially pleaded not guilty but later pleaded guilty to all counts. The State proffered the factual basis for the plea,⁵ for which there was no objection or exception.

3. One count of Injuring or Killing a Police Dog; and eight counts of Aggravated Assault on a Law Enforcement Officer (one for each member of the search party McDowell fired upon after the murder).

4. In the notice, the State advised that the applicable aggravating factors were as follows: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or felony probation; (2) the defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to a person; (3) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; (4) the capital felony was a homicide committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification; and (5) the victim of the capital felony was a law enforcement officer engaged in the performance of his official duties.

5. The factual proffer noted that Deputy Moyers conducted a

During the plea colloquy, the court informed McDowell of the maximum penalty for his charges and that the only possible sentences for the capital offense were death or life in prison. McDowell confirmed that he thoroughly discussed everything with his attorney and received satisfactory counsel. The court then explained the penalty phase, including the potential legislative changes to the jury unanimity requirement for a death sentence. McDowell still wanted to plead guilty. McDowell affirmed that he obtained no promises in exchange for pleading guilty, he was not under the influence of drugs or alcohol, and he could read and write. At the end of the hearing, the trial court accepted McDowell's guilty pleas after finding that they were entered freely and voluntarily with a full understanding of the consequences.

C

Before the penalty phase, the Governor signed into law Senate

traffic stop on a stolen maroon minivan; McDowell was the driver; Deputy Moyers asked McDowell to exit the vehicle when McDowell grabbed the firearm and shot Deputy Moyers at close range in the face; McDowell then shot Deputy Moyers' back two times; Deputy Moyers died from his injuries. On Counts II through X: McDowell concealed himself in the woods and shot Chaos and placed eight law enforcement officers in fear for their lives.

Bill 450, which amended Florida’s death penalty statute. *See* ch. 2023-23, Laws of Fla. (effective Apr. 20, 2023) (codified at § 921.141, Fla. Stat. (2023)). SB 450 became effective upon enactment, removing the requirement for a unanimous jury recommendation for a death sentence. *See id.* Under the new sentencing scheme, a jury may recommend a sentence of death to the court if at least eight jurors agree. *Id.* If fewer than eight jurors make that determination, the jury’s recommendation must be a life sentence. *Id.* SB 450 maintained the other requirements of Florida’s capital sentencing scheme.⁶

The State presented its case-in-chief for the penalty phase, presenting testimony from twenty-four witnesses. At the close of the State’s case, it presented victim impact testimony from five

6. The remaining procedural safeguards include a unanimity requirement for finding at least one aggravating factor beyond a reasonable doubt before recommending a death sentence. § 921.141(2)(a), Fla. Stat. Aggravation, mitigation, and the ultimate jury recommendation are based on evidence presented at the penalty phase of trial. *Id.* Before making a recommendation, the jury weighs the aggravating factors with the mitigating circumstances. § 921.141(2)(b)2.a.-c., Fla. Stat. The trial court must impose a life sentence if the jury recommends one. § 921.141(3)(a)1., Fla. Stat. But if the jury recommends death, the trial court may opt for a life sentence or a death sentence. § 921.141(3)(a)2., Fla. Stat.

people. Before doing so, the trial court instructed the jury that the victim impact evidence was not an aggravating factor and was only to show the victim's uniqueness as an individual and the loss to the community by the victim's death.

Nicholas Carter worked for the Nassau County Sheriff's Office. Carter detailed his relationship with Deputy Moyers and what a loss Moyers' murder was for him and the community. Carter recounted Deputy Moyers' willingness to help others and his impeccable character. Deputy Moyers' fiancée provided a written statement about her relationship with Deputy Moyers and their engagement. Moyers' father described the type of man that McDowell killed. He spoke of his grief, his faith, and all of Deputy Moyers' positive attributes. Deputy Moyers' brother also spoke about finding out his brother died. He recounted how his brother's death destroyed his life and affected his family members' lives. Deputy Moyers' mother spoke about the loss of her son and having to plan a funeral for her child.

Defense counsel noted on the record that members of the audience were crying and reiterated a prior motion in limine to exclude victim impact statements because of the emotional

response, but the trial court did not make a ruling. The State rested.

The defense presented mitigation evidence from forty witnesses about McDowell's upbringing, life, work experience, and military service. Overall, the defense argued and presented twenty-four mitigating circumstances relating to McDowell's background, life, military service, and character.

Next, McDowell took the stand. He used his direct examination to express remorse. Cross-examination highlighted McDowell's pattern of criminal behavior. McDowell admitted the killing was cold, calculated, and premeditated. He then detailed his thought process as he murdered Deputy Moyers and effectuated his escape.

At the close of the case, McDowell asked the court to reopen the evidence to allow him to provide a sworn statement to the jury. The court thoroughly questioned McDowell about his decision to provide a statement. The trial court emphasized to McDowell the "high probability" that his statement would support the "aggravating factors in this case and may negatively impact the mitigating evidence," as well as increase the likelihood of a death

sentence. McDowell acknowledged his attorneys were very much against it, but he said it was what he needed to do. McDowell indicated he was making the statement in accord with his own moral beliefs and that he was more concerned with doing what he believed was right than the penalty itself.

The court reopened the testimony. McDowell said he did not think it was right for other people to try to excuse what he did and minimize it. He was unable to blame the murder on anything but his own selfish disregard for Deputy Moyers' life. McDowell said that he deserved the same sentence that he gave Deputy Moyers. McDowell admitted that months before the murder, he decided that he would kill whoever tried to arrest him. He lured Deputy Moyers to a dark secluded area after the police lights flashed. He kept driving until he found a good spot and kept the van in drive with his foot on the brake. He checked his pistol before situating it in a concealed spot with quick access. He killed Deputy Moyers to escape. McDowell claimed his remorse was not enough to outweigh the aggravators and that he did not want or deserve mercy.

After closing arguments and deliberations, the jury found five aggravating factors proven beyond a reasonable doubt and

recommended a sentence of death by an 11-1 vote. Because McDowell opposed a death sentence, the trial court next held a *Spencer*⁷ hearing where the State presented argument in support of a death sentence, and McDowell presented argument for a life sentence—supplemented with written reports from the defense experts. The trial court then considered the case for imposition of the sentence. The trial court found all the proposed aggravators proven beyond a reasonable doubt.⁸

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

8. The court assigned the following weight to each aggravator:

1. The capital felony was committed by a person previously convicted of a felony and on felony probation. Moderate weight.
2. McDowell was previously or contemporaneously convicted of a felony involving the use or threat of violence to the person. Very great weight.
3. The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; and the victim of the capital felony was a law enforcement officer engaged in the performance of his duties. Very great weight.
4. The capital felony was a homicide and committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Very great weight. “[T]he aggravating factors of ‘avoid arrest/hinder enforcement of laws’ and ‘murder of a law enforcement officer’ are duplicative because both factors are based on a single aspect of the offense, that

The defense proposed and established the existence of twenty-four other factors in McDowell's background that would mitigate against imposition of the death penalty under section 921.141(7)(h), Florida Statutes.

The court found no other supported statutory mitigating circumstances. After weighing the aggravating and mitigating factors, the court found, "without hesitation," that the aggravating factors outweighed the mitigating circumstances. The court agreed with the jury that the penalty of death was the appropriate sentence for the premeditated murder of Deputy Moyers. The court adjudicated McDowell guilty on all counts and sentenced him to death.

II

McDowell raises five issues related to his penalty phase, each

the victim was a law enforcement officer." *Kearse v. State*, 662 So. 2d 677, 685-86 (Fla. 1995) (citing *Armstrong v. State*, 642 So. 2d 730, 738-39 (Fla. 1994)). These aggravating factors, therefore, merge into one and were properly considered as a single aggravating factor by the court.

of which is foreclosed by precedent.⁹ Finding no reason to recede from those precedents, we reject each of McDowell’s arguments.

A

First, McDowell argues that application of section 921.141, Florida Statutes, as amended in 2023, violates the ex post facto clauses of the United States and Florida Constitutions. But we recently rejected this argument in *Hunt v. State*, 428 So. 3d 43, 58 (Fla. 2025), and we do so again here for the same reasons. We likewise reject McDowell’s claim that section 775.022(3), Florida Statutes, prevents the application of SB 450 to his penalty phase. We addressed and rejected an identical argument in *Jackson v. State*, 430 So. 3d 64, 76-77 (Fla. 2025). As in *Jackson*, the statutory change does not affect McDowell’s sentence. *See Love v. State*, 286 So. 3d 177, 186 (Fla. 2019) (holding that an amended statute that involves a procedural change applies to proceedings that take place on or after the statute’s effective date). Because

9. All five issues McDowell raises involve questions of law relating to the constitutionality of statutes, so we review the issues de novo. *Jackson v. State*, 191 So. 3d 423, 426 (Fla. 2016) (citing *Crist v. Ervin*, 56 So. 3d 745, 747 (Fla. 2010)).

McDowell's penalty phase had not begun, the trial court properly and prospectively applied the statutory amendment to his case. So there is no violation of section 775.022.

B

Second, McDowell argues the nonunanimity of a death sentence recommendation violates the Sixth and Eighth Amendments of the U.S. Constitution and article I, section 22 of the Florida Constitution. To the extent this argument is unpreserved, our precedent says McDowell may raise a facial challenge to section 921.141(2)(c), Florida Statutes, under the Eighth Amendment, for the first time on appeal. *Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002); *Fletcher v. State*, 415 So. 3d 147, 162 (Fla. 2025). This claim though is also foreclosed by precedent. *Jackson*, 430 So. 3d at 75-76. Indeed, McDowell recognizes we previously decided this issue adversely to his position, but he urges us to reconsider, particularly in light of *Ramos v. Louisiana*, 590 U.S. 83 (2020). See *State v. Poole*, 297 So. 3d 487, 501-08 (Fla. 2020) (holding that neither the Sixth or Eighth Amendment to the U.S. Constitution, nor article I, section 22 of the Florida Constitution, requires a unanimous jury recommendation for death). We declined a similar

invitation in *Jackson* and do so again. *See also Hunt*, 428 So. 3d at 54-55.

C

Next, McDowell argues that this Court's holding in *Windom v. State*, 656 So. 2d 432, 438 (Fla. 1995), allowing victim impact evidence to be presented to the jury during the penalty phase, was wrongly decided. He argues that introduction of evidence or argument about the impact of the victim's death, even as limited by the holding in *Windom*, is unconstitutional under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, as well as article I, sections 2, 9, 16, and 17 of the Florida Constitution.¹⁰

As McDowell recognizes, the United States Supreme Court has held that the Eighth Amendment "erects no per se bar" to victim impact evidence. *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (emphasis omitted). Indeed, the United States Supreme Court

10. McDowell cites these provisions without providing any independent analysis for each provision. Likewise, McDowell does not argue specific testimony was impermissible under the statute governing victim impact statements. § 921.141(8), Fla. Stat.

characterized victim impact evidence as “simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question.” *Id.* at 825. The Court acknowledged the state’s legitimate interest in reminding the sentencer that just as the defendant should be considered as an individual, so too should the victim whose death represents a unique loss to society and in particular to his family. Likewise, we have recognized that victim impact evidence is permissible if it is “limited to that which is relevant as specified” in the statute. *Windom*, 656 So. 2d at 438.

McDowell claims that Florida’s capital sentencing scheme prohibits the jury from considering as aggravation anything other than the proven aggravating circumstances. *See* § 921.141(2)(b), Fla. Stat. The introduction of victim impact evidence, McDowell argues, therefore undermines the fairness of the proceedings and risks wholly arbitrary and capricious action from jury to jury, in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments.

Essentially, McDowell argues that victim impact evidence is unauthorized nonstatutory aggravation evidence. But we previously rejected this argument, finding that “the procedure for addressing

victim impact evidence, as set forth in the statute, [does not] impermissibly affect[] the weighing of the aggravators and mitigators . . . or otherwise interfere[] with the constitutional rights of the defendant.” *Windom*, 656 So. 2d at 438; *see also Johnson v. State*, 397 So. 3d 626, 642 (Fla. 2024). We likewise reject McDowell’s argument. Victim impact evidence is categorically different from aggravating factors in that it, “as set forth [by statute], allows the jury to consider ‘the victim’s uniqueness as an individual human being and the resultant loss to the community’s members by the victim’s death.’ ” *Windom*, 656 So. 2d at 438 (quoting § 921.141(7) Fla. Stat. (1993)). This remains a constitutionally permissible method of informing the sentencing authority about the specific harm caused by the crime.

D

McDowell’s final argument is that Florida’s death penalty and statutory scheme is in violation of the Eighth and Fourteenth Amendments. He makes two distinct arguments in support of his position.

McDowell first argues that the elimination of comparative proportionality review, the expansion in scope and number of

Florida’s aggravating factors, and the removal of the unanimity requirement for recommending a death sentence fail to narrow the class of persons eligible for the death penalty. McDowell cites *Lowenfield v. Phelps*, 484 U.S. 231, 244 (1988), in support of his argument.

McDowell concedes that we have already rejected similar challenges but asks us to reconsider now that the Legislature has removed the unanimity requirement for death sentence recommendations. *Cox v. State*, 390 So. 3d 1189, 1200 (Fla. 2024) (“[A]rguments on this point are well-worn, and this Court has repeatedly rejected them.”), *cert. denied*, 145 S. Ct. 1084 (2025); *see also Boatman v. State*, 402 So. 3d 900, 923 (Fla. 2024); *Bevel v. State*, 376 So. 3d 587, 597-98 (Fla. 2023); *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023); *Joseph v. State*, 336 So. 3d 218, 227 n.5 (Fla. 2022) (declining to address claim that Florida’s death penalty statute is unconstitutional because this Court has repeatedly rejected the same argument).

We recently summarily rejected similar arguments in *Hunt*, 428 So. 3d at 54-55. There we held that Florida’s death penalty provisions meet the constitutionally required safeguards to ensure

that there are no “arbitrary, capricious, or freakish” death sentences. *Id.* at 55 (quoting *Pulley v. Harris*, 465 U.S. 37, 45 (1984)). We also reject McDowell’s argument here.

McDowell next argues the death penalty violates the Eighth Amendment of the U.S. Constitution for three reasons: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty’s penological purpose. He argues these three reasons make the death penalty usurp evolving standards of decency. McDowell acknowledges in his initial brief that this Court has decided the issue and asks us to reconsider our holding in *Loyd v. State*, 379 So. 3d 1080 (Fla. 2023). Finding no reason to recede from our prior decisions on this issue, we affirm. *See Poole*, 297 So. 3d at 504-05.

III

Finally, we turn to our independent obligation to review the sufficiency of the evidence. In capital cases involving a guilty plea to first-degree murder, we review the record to determine whether the plea was “knowing, intelligent, and voluntary.” *Noetzel v. State*, 328 So. 3d 933, 952 (Fla. 2021) (quoting *Doty v. State*, 170 So. 3d 731, 738 (Fla. 2015)); Fla. R. App. P. 9.142(a)(5). The Court also

reviews the factual basis for the plea to decide whether “competent, substantial evidence” supports the conviction. *Noetzel*, 328 So. 3d at 952 (quoting *Doty*, 170 So. 3d at 739).

McDowell knowingly, intelligently, and voluntarily entered his guilty plea. The trial court thoroughly explained the rights McDowell waived by entering a guilty plea. The court also told McDowell the maximum sentence. McDowell affirmatively answered that he was not under the influence or coerced and that he entered the plea because he was guilty.

To prove first-degree premeditated murder, the State must prove three elements: (1) death of the victim; (2) the defendant caused the death by criminal act; and (3) the victim’s death was premeditated. *Miller v. State*, 379 So. 3d 1109, 1129 (Fla. 2024). The State offered a sufficient factual basis for each element of first-degree murder and produced evidence during the penalty phase showing all three elements. The proffered facts discussed the traffic stop that preceded Deputy Moyers’ murder and the ensuing manhunt; how Deputy Moyers died at McDowell’s hand; and how McDowell also admitted that he contemplated before the traffic stop that he was not going back to jail and would kill whoever got in his

way. This evidence supports the conviction.

Competent, substantial evidence also supports McDowell's plea, and he entered the plea freely, knowingly, and voluntarily.

IV

For the reasons above, we affirm McDowell's first-degree murder conviction and death sentence.

It is so ordered.

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

LABARGA, J., concurs in result with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

LABARGA, J., concurring in result.

With respect to McDowell's arguments regarding jury unanimity in capital sentencing, I acknowledge that this Court's conclusions are consistent with what this Court has held in *Poole*, *Hunt*, and *Jackson*.¹¹ For this reason, I concur in the result affirming McDowell's death sentence.

11. *State v. Poole*, 297 So. 3d 487 (Fla. 2020); *Hunt v. State*, 428 So. 3d 43 (Fla. 2025); *Jackson v. State*, 430 So. 3d 64 (Fla. 2025).

Nonetheless, consistent with my dissent in *Poole* and my concurring in result opinions in *Hunt* and *Jackson*, I continue to emphasize Florida's outlier status among states that impose the death penalty.

I also continue to adhere to my dissenting opinion in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), which receded from decades of proportionality review in cases involving a direct appeal of a sentence of death.

An Appeal from the Circuit Court in and for Nassau County,
James H. Daniel, Judge
Case No. 452021CF000725CFAXYX

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