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IN THE SUPREME COURT OF FLORIDA

Case No. SC21-1421

ANDREW KING

Petitioner,

v.

STATE OF FLORIDA,

Respondent

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Petitioner, Andrew King, was the defendant in the court below. This brief will refer to Petitioner as such, defendant or by proper name. Respondent, the State of Florida, was the prosecution below; the brief will refer to Respondent as such, the prosecution, or the State.

"JB" will designate Petitioner's Jurisdictional Brief and will be followed by any appropriate page number.

STATEMENT OF THE ISSUES

Pursuant to Florida Rule of Appellate Procedure 9.210(f), if this Court grants review, the State does not intend to raise any affirmative issues on cross-review, which are independent of those on which jurisdiction is invoked and independent of those raised by Petitioner in his statement of the issues.

STATEMENT OF THE CASE AND FACTS

The State provides the following statement of the case and facts from the opinion of the First District in *State v. King*, 325 So. 3d 313 (Fla. 1st DCA 2021):

Petitioner was ultimately convicted of first-degree murder of an adult woman and her full-term, unborn quick child, and armed burglary. *Id.* at 314. The case was tried three times. In the first two trials, the State sought the death penalty, and the trials resulted in hung juries. To avoid a twelve-person jury, the State dropped the death penalty claim, and Petitioner was convicted. *Id.* at 315. Appellant filed a sixteen-claim postconviction motion alleging ineffective assistance of counsel. *Id.* at 314. The trial court granted the motion based on one claim of Petitioner's postconviction motion. *Id.* The claim included that Petitioner's trial counsel provided ineffective assistance of counsel for failing to introduce evidence of a temperature discrepancy between the inside and outside temperature where the murder occurred. *Id.* at 315.

After an appeal by the State, the First District determined that

the order of the trial court lacked competent, substantial evidence. *Id.* at 323-24. First, the court noted that the trial court's comparison of the third trial to the first two trials was not supported by the record evidence. *Id.* at 324. Second, the court determined that in addition to the trial court's misapprehension regarding what was argued or presented in the first two trials, the trial court improperly engaged in conjecture when it concluded that the thermostat evidence caused the first two trials to result in hung juries. *Id.* Third, the First District found that the evidence of the 70-degree inside temperature lacked a factual foundation and that, since the defense could not establish what the inside temperature was, there was no foundation for establishing a temperature discrepancy. *Id.* The court also noted that the remaining record evidence indicated it was hot inside the house. *Id.* at 325.

The First District determined that trial counsel was not deficient. *Id.* at 325. The court indicated that since the thermostat picture was introduced in the third trial, but it was inconclusive and there was no other competent evidence to establish a temperature

discrepancy, defense counsel could not have been deficient for failing to argue such a theory in opening or closing. *Id.* at 326. The court further indicated that there was no prejudice to Petitioner. *Id.* at 327. The court explained that in light of the evidence establishing Petitioner's guilt and the competent testimony indicating the residence was hot inside the house at the relevant time, it could not have concluded that there was a reasonable probability that arguing a temperature discrepancy would have resulted in an acquittal. *Id.*

ARGUMENT

WHETHER THIS COURT HAS JURISDICTION. (Restated)

Petitioner incorrectly suggests that this Court has jurisdiction. However, he has not established a basis for this Court to accept jurisdiction. Petitioner's arguments are more akin to a motion for rehearing that should have been filed in the First District.

The Florida Constitution indicates in relevant part:

> (b) Jurisdiction.--The supreme court:
>
> (1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.
>
> (2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.
>
> (3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.
>
> (4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

> (5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.
>
> (6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.
>
> (7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.
>
> (8) May issue writs of mandamus and quo warranto to state officers and state agencies.
>
> (9) May, or any justice may, 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.
>
> (10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

Art. V, § 3, Fla. Const.

In Petitioner's jurisdictional brief, he makes numerous arguments as to why this Court should accept jurisdiction of his case, but none of them meet the criteria discussed above. First, Petitioner argues that the First District erred by indicating that in the first two trials (which resulted in hung juries), the State sought the death penalty before dropping the death penalty prior to the final

trial. (JB. 5). Second, Petitioner argues that the First District overlooked that when the first two trials were ongoing, and the thermostat and temperature discrepancy were presented, the State never objected on the grounds that the evidence was inadequate. (JB. 6-7). Third, Petitioner argues that the First District erred by determining that the trial court's findings about what happened in the first two trials were incorrect or constituted conjecture. (JB. 8).

Fourth, Petitioner argues the First District was incorrect in its determination that the detective did not have personal knowledge as to whether the interior temperature was 70 degrees or the outside temperature was 78 degrees. (JB. 8). Fifth, Petitioner indicates the First District failed to properly consider "the circumstantial and interpretive nature of the evidence defense counsel used to point at Petitioner's girlfriend as the culprit." (JB. 9). Sixth, Petitioner complains that the First District considered that Petitioner washed his clothes on the morning of the murder when there was no evidence regarding when he actually washed his clothes. (JB. 10).

Finally, Petitioner argues that the First District considered that

a knife sheath was discovered at the scene of the crime containing Petitioner's DNA as evidence of his guilt. (JB. 11). Petitioner ultimately argued that the First District repeatedly relied on incorrect facts and that it misapplied principles. (JB. 12). None of these arguments constitute an appropriate basis for this Court to accept jurisdiction in this case.

CONCLUSION

WHEREFORE, this Court should decline jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Andrew King, DC# J51219, Santa Rosa Correctional Institution-Annex, 5850 East Milton Road, Milton, Florida, 32583 on this 21st day of January 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing contains 1,327 words, per the "word count" feature in Microsoft Word, and was printed in 14-point Bookman Old style. This satisfies the requirements of Florida Rules of Appellate Procedure 9.045 and 9.210(a)(2)(A).

/s/Virginia Chester Harris
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