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IN THE SUPREME COURT OF FLORIDA

WADE STEVEN WILSON,

Appellant,

v. **CASE NO. SC2024-1345**
L.T. No. 2019-CF-568

STATE OF FLORIDA, **DEATH PENALTY CASE**

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows: The record on direct appeal will be referred to as "DAR:____" followed by the page number. References to the trial transcripts from the direct appeal will be referred to as "DAT:____" followed by the page number.

STATEMENT OF THE CASE AND FACTS

On November 19, 2019, Appellant was charged by indictment with two counts of first-degree murder for the deaths of Kristine Melton and Diane Ruiz, and one count each of burglary of a dwelling, grand theft of a motor vehicle, simple battery, and petit theft. (DAR:71-73).

GUILT PHASE

On October 6, 2019, the night before her murder, Kristine Melton and her friend since high school, Stephanie Johnson (now Stephanie Sailors), left Melton's apartment in Cape Coral around 10:00-10:30 p.m. for The Buddha, a bar in Fort Myers. Appellant and Melissa Montanez also went to The Buddha that night. Montanez drove them there in her Dodge Hellcat. Melton and Johnson met the Appellant, who showed an interest in Melton. He introduced himself, however, as "JR." Appellant introduced them to "Jayson," who Appellant was with at the bar. The women assumed Appellant and Jayson came to the bar together, but they met that night at The Buddha. At closing, Appellant told Montanez that he wanted to go to someone's home, but she did not want to go there and told him so. People were shuffled outside while Melton and Johnson were still

socializing with Appellant and Jayson. Melton and Appellant appeared interested in each other, and the two women followed Appellant and Jayson to a car because the group decided to "after-party." Although Appellant did not have Montanez's permission to take her car, he tossed Jayson the car keys because Appellant cannot drive a stick shift, and the Hellcat is a stick shift. The four of them then got into the Hellcat, and Jayson drove them to his house. (DAT:1516-30; 1566-77; 1683-89).

Although Jayson's mother was home, they headed to his bedroom where Appellant and Melton engaged in consensual sex while Jayson and Johnson hung out outside. After about two hours, Appellant informed Melton and Johnson that they all needed to leave because Jayson no longer wanted them there. They got back into the Dodge Hellcat, but Appellant could not drive its stick shift. They called an Uber, but were delayed while looking for Appellant's cellphone, which they could not locate. (Jayson Shepard located the cellphone a couple of days later and turned it over to the police). They then drove to Melton's apartment. (DAT:1530-35; 1563-64; 1566-77).

When they got there, Johnson informed Melton that Johnson had to leave to bring her son to school and be at work by 6:00 and

left. Appellant and Melton had sex with each other. Then, Appellant choked her to death. He wrapped up her body in clothes and sheets, left, and went to see Montanez. (DAT: 1536-38; 1970-73).

Appellant texted and called Montanez that day from a phone number she did not recognize. They got into an argument about him taking her car. Eventually, she agreed to meet him so that she could get back her car. They met at her business, Mila's Salon, but Appellant was not in her car. She did not recognize the car he was driving, but she identified State's Exhibit 5, Melton's car, as looking like it. When Montanez got out to speak with Appellant, he tried to force her into the car. She resisted, but Appellant then attacked her, punching her and choking her before fleeing. (DAT:1683-1708).

Appellant then began driving around and decided "I've already done it once, let's do it again." He picked up a female that he saw walking down the road, one block away from a school. He asked her if she knew where the school was at, and could she show him. She told him it was right down the road, but he said he could not find it. She got into the car, and they drove there. When they got there, he strangled her until she couldn't breathe anymore, but she did not die. While Appellant drove around seeking a place to dump her body,

she regained consciousness three or four times. He then pushed her out of the car and ran her over with it repeatedly. Patrick Power, who lives with his wife next door to the empty lot in Cape Coral, was home that morning. While eating breakfast in their lanai, he noticed a car back up and then drive forward before leaving. (DAT:1743-46; 1952-73).

Appellant then returned to Fort Myers to Joe's Crab Shack. From there, Appellant drove to see Joshua Lukitsch, who owns Matteo Graphics. He arrived in Melton's car. Appellant was wearing only sweatpants: no shoes, no shirt, and he was bloody. He was also frantic. He told Lukitsch he needed a plane ticket, and a bus ticket, or anything. He was in a rush to leave as quickly as he could and stated that he had just done something horrific and killed people. He said he rolled up someone in a carpet or bedding and needed to get out of town. Lukitsch questioned him about the fight with Mila in the parking lot, to which Appellant responded, "you don't understand, I killed people." Lukitsch lied and told Appellant he needed to go pick up an employee at a job down the road and that he would be right back. Instead, he drove to another building, called the police, and told them everything Appellant said. (DAT:1477-81; 1482-93; 1966).

Officer Chris Anzalone was dispatched to Matteo Graphics after Lukitsch's phone call. He searched for Appellant but was unable to find him. The vehicle Appellant drove there, appeared to have blood on the passenger door. They also saw blood on the inside near the belt buckle. They ran its license plate, which came back to Melton. They tried to reach her without any success. They then dispatched officers to her residence to try and locate her. (DAT:1498-1501).

When the police entered Melton's residence, there was a large bundle on the floor between the bedroom and the kitchen made up of bedsheets and clothing. After they spread the sheets apart, they spotted the lower portion of a leg with a unique tattoo. When Officer Caruso felt for a pulse, he realized that Melton's arm was already stiff. A forensic technician, Christina Potts, processed the crime scene, packaging the items separately. A curtain rod with red stains on one end and the clothing in which the body was bundled were sent to the Florida Department of Law Enforcement ("FDLE") for further testing. (DAT:1589-94; 1609-1625).

Detective Patricia Bell received a call from a detective investigating the incident at Matteo Graphics. She and other detectives were able to obtain an emergency contact for Melton, who

then put them in touch with Johnson. Johnson confirmed that the black Nissan Versa at Matteo Graphics was Melton's. Detective Bell later collected a cellphone from Jayson Shepard that belonged to Appellant. (DAT:1511-13).

When Melton's black Nissan Versa was processed, a cellphone was discovered in the glove compartment. Also, inside the car, there was some discoloration on the plastic and the seatbelt. It was tested with phenolphthalein, which resulted in a positive presumptive test for blood. An additional cellphone was found underneath the driver's seat. Melton's registration was also located in the vehicle. (State's 5K) (DAT:1769-77). Blood sample swabs from the passenger interior door of the Nissan Versa were collected and sent to FDLE for forensic examination. (DAT:1777-82; 1785-87).

Johnson had dropped off her son around 9:00 that morning and went to work, where she arrived at around 10:00-10:30 a.m. At one point, she texted Melton a message asking whether she was awake but never received a response. Johnson spoke with Melton's cousin, Samantha, and asked if she had heard from Melton, but she had not. A few minutes later, Johnson received a call from the Cape Coral Police Department asking her if she knew where Melton was and why

her car was found in Fort Myers. Concerned about what may have happened to Melton after Johnson left her, Johnson, Samantha, Samantha's husband, and another cousin of Samantha's went to Melton's apartment. When they arrived, the police caution tape was already up. Melton's car was not in the driveway where it had been the night before. They learned that Melton was dead. (DAT:1535-1544).

Appellant called his biological father, Steven Testasecca, on October 7, 2019, and asked him for help. Testasecca was 14 or 15 when he learned he was going to be a father, and Appellant's biological mother was younger than Testasecca. They put Appellant up for adoption, and Appellant was adopted by Candy and Steve Wilson, who went to church with Appellant's mother. Testasecca and Appellant connected when Appellant turned eighteen. After that, they began speaking to each other often on the phone, and one time, Testasecca went to visit Appellant in Tallahassee. Appellant asked often for money. When Appellant called on October 7th, Testasecca was at work, and was told by Appellant that he had done something that he couldn't take back. Appellant indicated that he and his girlfriend, who Testasecca knew as Mila, got into an argument.

Testasecca thought that Appellant was seeking help about that argument. He told Appellant to call him back at dinnertime. (DAT: 1871-76)

Meanwhile, Testasecca received a call from a detective who was looking for Appellant, but Testasecca did not know why. He informed his wife about the calls. Later, Appellant called back Testasecca and stated that Appellant did something and that two people were gone and would not be back. Appellant added “I’m a killer,” but Testasecca thought Appellant was making up a story because he tells stories. Nor did he show any remorse. Appellant called back a third time at 10:00. During that third call, Appellant went into more detail about what he did. Appellant told Testasecca that Appellant had met a girl at a bar the night before, they went back to her house, hung out for a little bit, and then she fell asleep. After she fell asleep, he said he got on top of her and "I choked that bitch." He said he stayed in the house for a little while, and then he rolled her up. He was going to try to put her in her car trunk, but he couldn't lift her because rigor mortis had started to set in. He then left her there and took her car. (DAT: 1876-79; 1885).

Appellant also told Testasecca about a second woman he saw walking down the street, who he stopped and asked for directions, and got in the car with him. Appellant said that while he was driving, he reached over and choked her. He found a place to dump her body, but when he pulled her out of the car, he realized that she was still breathing. He said he got back in the car and ran over her until "she looked like spaghetti." Testasecca testified that Appellant sounded excited when he told the story; he seemed proud of it and did not show any kind of remorse. (DAT: 1879-81).

The whole time that Appellant was telling Testasecca these details, the phone was on speaker phone, and his wife was listening. Testasecca did not know where Appellant was other than that he was in a house that he broke into when he was running from the police. Testasecca told Appellant that Testasecca was going to send him an Uber and needed the address of where he was. Appellant gave him the address, which his wife messaged to the officer. She also relayed details about what Appellant told him. They were still on the phone when law enforcement showed up at the house where Appellant was.

Testasecca encouraged Appellant to go outside and turn himself in. (DAT:1881-84).

Officer Tyler Whidden testified that he works for the Cape Coral Police Department. On October 7, 2019, while working at the Hector Cafferata Elementary School as a school resource officer, one of the fathers of one of the students gave him a purse that the parent found. When Officer Whidden looked inside to see whose purse it was, he discovered it belonged to someone named Diane Ruiz. He was unable to reach her despite calling several times and leaving a voicemail. He asked a patrol officer to go by her house, which he did and spoke with her son. He learned that she worked at the Moose Lodge, which was across the street from the school. He went there to check for Ruiz but was informed that she did not show up for work that day. (DAT:1713-18).

Sergeant Justin DeRosso testified that while searching with Officer Wilson for Ruiz, he spotted a vulture circling the area. When they drove to the area which it was circling, they spotted the dead body of Ruiz in the lot next to where the Powers lived. (DAT:1765-66).

Master Corporal Nicholas Jones is a detective in the major crimes unit. He and Detective Jayson Hicks met with Appellant at his request and recorded his statement. Post-Miranda, Appellant admitted to killing both victims. (State's exhibit 40; DAT: 1960-74).

Appellant stated that he had the first girl's phone and used it. He held her face up to the phone to unlock it, but it locked again after he used it. He wrapped her up because he was going to put her in the car, but she was too heavy. He added that the photo the officer showed Appellant yesterday of the second victim is the same girl he picked up walking and killed. He started choking her when she told him to drop her off at the school. (DAT: 1980-1984).

The autopsy of Melton was conducted by Dr. Noelia Hernandez, Lee County's associate medical examiner. According to Dr. Hernandez, there was a darker bruise on the right side of Melton's neck indicates that she had a blunt force injury or bruise on that side. The doctor observed some small bruises on Melton's neck, on the left side of her face near her neck, as well as some small abrasions, and bruises scattered on her torso and her extremities. Melton had artificial nails and some of the nails on her right hand

were broken so that the doctor could only see fragments of the artificial nail. (DAT:1633-41).

Melton had a hemorrhage on the subcutaneous tissues of her neck, and hemorrhage over the muscles on the neck. There was hemorrhage in most of those muscles on the anterior neck which went all the way to the deeper muscles as well as on the surface of the thyroid gland, which sits right over the thyroid cartilage. She testified that in order to make it go deep, there would have to be a stronger force used, or a harder object, or force. The more pressure, the deeper the damage or the deeper the injuries. There also were hemorrhages or contusions on both sides of the scalp and contusions on both lungs. Melton also had a small contusion on her transverse colon, which is part of the large bowel, and which is a blunt force injury. The damage to the interior of the scalp was also consistent with blunt force injuries. The lungs showed hemorrhage on the surface as well as extending slightly into the inside of the lung, which is also evidence of blunt force injuries. She also had a contusion to her liver and one to her bladder. She had a ruptured cyst in one of her ovaries, but the doctor could not say whether or not that was due

to the trauma. There was also hemorrhage to the surface of the bladder, that extended all the way to the mucosa, which is consistent with blunt force trauma. As was trauma to the liver. She also had petechiae on one of her eyelids and petechiae on her scalp, which, taken together, are consistent with death by asphyxia due to compression of the neck. The police collected a DNA blood stain card at Melton's autopsy. It was sent to FDLE for forensic testing. (1633-41; 1646-54; 1776-77).

Dr. Thomas Coyne performed an autopsy on Diane Ruiz on the 11th of October of 2019. Ruiz's external injuries included a broken nose, a laceration underneath her left breast, bruising or hemorrhaging in the skin on the left and right sides of the body, bruising on the back of her left forearm, bruising on the back of her left hand, a fracture of the fourth finger, and some bruising on her right arm. (DAT:1789-96).

She had internal injuries, including bruising or contusions on the bilateral upper back regions, or the trapezius muscles. There was hemorrhage on the right side of the neck within the fat tissue, as well as the sternocleidomastoid muscle on the right side of her neck. In

addition, the left side of the hyoid bone was fractured, and the two horns of the thyroid cartilage were fractured. She has two sets of rib fractures on one side, and two sets of fractures on the other side of her 1st through 11th ribs in both the lateral and posterior aspects of the torso. She also had some anterior rib fractures. Dr. Coyne opined that it would take "far greater" than 10 to 15 pounds of pressure to do that kind of damage because there were a corresponding fracture of the hyoid bone and the trachea cartilage. He also stated that "a significant compressive type of force" bearing down on her body was required to cause the multiple rib fractures. He agreed that an automobile driving over a body could cause that. Dr. Coyne also concluded that the damage to the thyroid cartilage and trachea are the types of injuries that they "classically see in strangulation," and it take "a tremendous amount of force" to cause those fractures. He noted that it takes about 10 pounds of pressure, to compress the carotid arteries that caused the hemorrhaging and prevented blood flowing to the brain. (DAT: 1808-16).

Dr. Coyne pointed out that the contusions and bruises on the backs of the hands and forearms would suggest that she was

defending herself. He added that it takes 15 to 20 seconds for someone to pass out while being strangled. If, however, one releases the pressure, a person will regain consciousness. On the other hand, if that pressure is maintained for around 30 seconds, the person being choked may not return to consciousness because the lack of blood flow was persistent. He also concluded that because there was actual hemorrhage around the membrane between the first and the second cervical vertebrae, she was still alive at the time the force was applied. The doctor did not know the order in which the injuries happened but testified that given the severity of the injuries to the neck, Ruiz could not have survived the injuries. A DNA blood stain card was provided to the police at Ruiz's autopsy. (DAT: 1816-19).

Dr. Coyne was also involved in the autopsy of Melton with Dr. Hernandez. Melton had a large number of bruises on her body: a swollen eye, contusions around the eye, contusions around the mouth, and bruising all over her torso and arms. There was a significant amount of hemorrhaging on the skeletal muscles of the neck. She had also had bruising all over her scalp, as well as in the sub-scalp muscles, indicating significant blunt force trauma. The

brain was swollen, which was consistent with the injuries to her scalp and around her head, which suggests that there was underlying concussive trauma. There were contusions of her internal organs, as well, so forces that were directed to the outside of the body also went inward. Melton had bruising of the lungs, the liver, the back of her bladder, and her colon. This also indicated that there was a significant force to the abdomen. Melton died of asphyxiated from strangulation, but the existence of her brain swell suggests that there was concussive trauma to her head prior to that. (DAT:1821-25; 1885-87).

Dr. Coyne also pointed out that any one of the multiple injuries could cause death, noting that the rib fractures alone would prevent normal chest excursion, limiting the ability to breathe normally, and certainly could cause death. (DAT:1821-25).

Blood sample swabs from the passenger interior door of the Nissan Versa were collected and sent to FDLE for forensic examination. (DAT: 1785-87).

Daniel Baker works at the Indian river Crime Laboratory. He screens items of evidence for the presence of biological fluid and

material, including blood, semen, saliva, and hairs, and attempts to develop DNA profiles from those items of evidence to perform DNA testing. He performed STR DNA analysis. STR is an acronym that stands for "short tandem repeat." In Melton's case, he initially received buccal swabs from Appellant. In addition to that, he obtained two tied shirts, a shirt, a pair of jeans, and a bathing suit top that were tied together along with an additional untied shirt, a curtain rod, and a bloodstain card from Kristine Melton for comparison purposes. He used Appellant's buccal swabs to obtain a complete DNA profile. He obtained a complete DNA profile on Melton from the bloodstain card. State exhibit 16 is the shirts; the wrapped bedding; and black, white, and gray tied shirts. He sought DNA on the knotted portions because he was informed that they were used to tie up some apparatus of the victim. He removed and packaged what appeared to be hairs that he found on the items. He obtained mixed DNA from the first knot. The mixture included Appellant as a possible contributor. It is greater than 700 billion times more likely that Appellant, rather than another individual, is the contributor. Baker was able to obtain DNA from the second knot that demonstrated the presence of a mixture consistent with two

individuals. Appellant and Melton are both included as possible contributors to that mixture, and the observed DNA profile is greater than 700 billion times more likely to occur from Appellant than another individual. Likewise with Melton. The DNA obtained from one knot in the bathing suit was 5.1 billion times more likely to have originated from Appellant. (DAT: 1897-1936).

The curtain rod tested presumptive positive for blood. Baker obtained DNA results and created a profile that matches DNA from Melton. From the handle, it demonstrated a profile which is greater than 700 billion times more likely to occur if it originated Appellant than another individual. (DAT: 1936-1941).

Baker also received a blood stain card from Diane Ruiz. He developed a profile for blood sample swabs from the passenger door that matched the DNA from Ruiz. (DAT: 1941-45).

After the State rested and the court denied a motion for directed verdict, the defense chose not to call any witnesses and rested. (DAT:1995-1999).

After closing arguments, the jury was instructed by the court and returned a verdict of guilty as charged as to all remaining counts. (DAT:2061-2106).

PENALTY PHASE

The State argued that four aggravating factors applied to both murders in this case: (1) Appellant was previously convicted of a felony and was under sentence of imprisonment or on community control or on felony probation at the time he committed the first-degree murder in this; (2) Appellant was previously or contemporaneously convicted of another capital felony or a felony involving the use or threat of violence to another person; (3) the first-degree murder was especially heinous, atrocious, or cruel; (4) the first-degree murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

To prove the first aggravator, the State introduced a certified copy of the September 18, 2019, judgment and sentence in case number 502019-CF-000466 containing an order of probation. Appellant then stipulated that he was lawfully placed on probation

prior to and was on probation at the time of the offenses that resulted in his convictions in this case. (DAT:2193-95). To prove the other three aggravators, the State relied upon the guilt phase record. The State then presented two victim impact witnesses before resting (DAT:2197-2212).

Appellant presented two expert witnesses, Dr. Hyman Eisenstein, and Dr. Mark Mills.

Dr. Eisenstein testified that he is a licensed clinical psychologist with a specialty in clinical neuropsychology and forensic neuropsychology. He reviewed criminal investigation reports and jail or other medical records. He also interviewed individuals in terms of their background and connection to this case, including the Appellant. He and Appellant met on three occasions, for a total of seven hours. He noted that the records going back over 10 years indicated that Appellant "presented with numerous psychiatric psychological symptomatology." He added that Appellant was on a variety of different psychotropic medications and is currently on lithium and Celexa, which are both psychotropic medications. According to his records, Appellant has been diagnosed bipolar, and

diagnosed with depression, anxiety, Schizoid affective, antisocial personality disorder, and adjustment disorder. He interviewed Appellant's adopted parents, Steve and Candy Wilson, and also spoke to his older sister, Dr. Wendy Wilson.

Dr. Eisenstein also conducted testing on Appellant. The tests on the first day included the TOMM, Test of Memory Malingering; the Delis-Kaplan Executive Function System, the Trail Making Test one through five, and the letter fluency test. On the second day he administered the word choice, another malingering test; the Rey-Osterrieth Complex Figure; the Wechsler Adult Intelligence Scale, Fourth Edition; the wide range achievement test, 5th edition; Wisconsin Card Sorting Test; and the Wechsler Memory Scale, Fourth Edition. (DAT:2216-2255, 2266).

Dr. Eisenstein also testified that Appellant has a "whole series of head injuries," and at age 20, he overdosed on drugs and had a grand mal seizure. He diagnosed Appellant with having neurocognitive brain impairments, most likely right hemispheric and, also, frontal lobe involvement. (DAT:2255-57).

Dr. Mills testified that he is a psychiatrist and forensic psychiatrist. He attempted to interview Appellant on three occasions, one of which was moderately successful, and two of which were largely unsuccessful. He reviewed the same records as Dr. Eisenstein but may have reviewed a few more witness statements. He also spoke to the adoptive parents, both mother and father, and Appellant's elder adopted sister. He also read a letter that was authored by her. (DAT:2304-07).

Dr. Mills administered the Minnesota Multiphasic Personality Inventory and the Personality Assessment Inventory to Appellant. But the scores indicated that he was noncompliant by exaggerating symptoms that most people do not have, or most people do not have to that same degree, which invalidated each test. He diagnosed Appellant with "some kind of psychotic disorder." But because Appellant was not particularly forthcoming with the doctor, he could not characterize it. He added that he thought it very significant. (DAT:2314-2324).

After Dr. Mills' testimony, the defense rested. (DAT:2379).

In rebuttal, the State called one expert witness, Dr. Michael Herkov. Dr. Herkov testified that he has a Ph.D. in psychology. In this case, he reviewed police statements, investigative reports, medical records from when Appellant was incarcerated, and interviewed Appellant for over an hour. He also reviewed statements by Johnson and Testasecca. He also watched the video of Appellant being interviewed by detectives. He viewed a timeline by Appellant's adoptive mother and the records regarding his admittance to the Lee County hospital. He reviewed e-mails that Appellant exchanged with Kaley Boboski (phonetic), Andrea Lopez, Erika Bonpastole, Anna Hall, Alexis Williams, Jessica Dahonica (phonetic), Copeland Gealy (phonetic), and Riley Texas. He also reviewed witness statements of the witnesses Melissa Montanez, Stephanie Johnson, Jayson Shepherd, Amy Slobodzian, Joshua Lukitch, Steven Testasecca, and Tyler Cruz. He also reviewed the defense evidence. (DAR:2379-2400). Dr. Herkov did not agree that Appellant suffers from any type of psychotic disorder or has frontal lobe brain damage. (DAT:2404; 2422).

Appellant called Dr. Eisenstein and Dr. Mills on surrebuttal to testify about the raw testing data and medications, respectively, and then rested. (DAT:2466-69).

After additional argument from the state and defendant, and instructions from the court, the jury recommended sentencing Appellant to death for the murders of both Melton and Ruiz. The jury found the following aggravators regarding Christine Melton's murder: (1) Appellant was convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation at the time of the murder, (2) Appellant was previously convicted of another capital felony or of a felony involving the use of threat of violence to the person, and (3) HAC. Regarding Diane Ruiz's murder, the jury found the following aggravators, (1) Appellant was convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation, (2) Appellant was previously convicted of another capital felony or of a felony involving the use of threat of violence to the person, (3) HAC, and (4) CCP. (DAT:2632-2638; DAR:1404-97).

The court found the following aggravators: with regard to Christine Melton: (1) Appellant was previously convicted of a felony and under a sentence of imprisonment or placed on community control or on felony probation, (2) Appellant was previously convicted of another capital felony or of a felony involving the use of threat of violence to the person, and (3) HAC. Regarding Diane Ruiz, the court found: (1) Appellant was previously convicted of a felony and under a sentence of imprisonment or placed on community control or on felony probation, (2) Appellant was previously convicted of another capital felony or of a felony involving the use of threat of violence to the person, (3) HAC, and (4) CCP. (DAR:1664-69).

The court found Appellant established the following mitigating circumstances and assigned them the following weight: (1) Wade Wilson experienced the following mental health disorders: schizophrenia, schizoaffective disorders, delusions, paranoia, suicidal adjustment disorders, major depressive disorder, hallucinations, and perseveration (little weight), (2) Wade Wilson confessed to law enforcement to do the right thing (little weight), (3) Wade Wilson wanted to put Ms. Ruiz back with her family (little

weight), (4) Wade Wilson is loved by his adoptive parents and sisters (some weight), (5) Wade Wilson 's mental illness started as a child (little weight), (6) Wade Wilson was involuntarily committed when he was a teenager (some weight), (7) Wade Wilson tried to reach out to his biological parents when he became an adult (little weight), (8) Wade Wilson's biological parents were young and did not try to reach out to establish a relationship (some weight), and (9) Wade Wilson was a loving son before mental health disorders (little weight). The court sentenced Appellant to death on both murders on August 27, 2024. (DAR:1672-78). On September 15, 2024, appellant filed his Notice of Appeal (DAR:1705) from which this appeal follows.

SUMMARY OF THE ARGUMENT

1. Appellant failed to properly preserve this issue. In any event, there is no *ex post facto* violation because the amended sentencing statute is purely procedural and does not change the substantive law. Also, the amended statute was not applied retroactively, but prospectively under Florida law because the sentencing hearing occurred after the legislation's effective date. However, Appellant waived the argument that it application violated Section 775.022, Florida Statutes, because he failed to raise it in the trial court.

2. There is no violation of *Ramos v. Louisiana* because the case only requires unanimous verdicts to *convict* a defendant and does not apply to sentencing at all, let alone require a unanimous jury to recommend a death sentence.
3. The aggravators and jury instructions provide sufficient guidance to avoid arbitrary and capricious sentencing.
4. This argument is waived because it is not properly briefed. Regardless, The HAC aggravator and instructions are not unconstitutional either on their face or as applied to Appellant. The jury instructions provide sufficient guidance to the sentencing jury to avoid applying the HAC aggravator in an arbitrary, capricious, and inconsistent manner.
5. This argument is waived because it is not properly briefed. Regardless, the CCP aggravator and instructions are neither unconstitutional in their face or as applied to Appellant because the jury instructions provide sufficient guidance to the sentencing jury to avoid applying the CCP aggravator in an arbitrary, capricious, and inconsistent manner.
6. This argument is waived because it is not properly briefed. Regardless, the victim impact evidence did not render the sentence

unconstitutional because Florida's statute only permits the type of testimony that the United States Supreme Court previously approved. In addition, because there was no contemporaneous objection to any of the testimony, Appellant cannot complain that any particular testimony failed to comply with Florida's statute.

STANDARD OF REVIEW

When the Court conducts a review of the constitutionality of a statute, the review is de novo. *Statler v. State*, 349 So. 3d 873, 878–79 (Fla. 2022). The Court has held that questions of constitutional infirmity may be waived, but that an appellant may still challenge the "facial validity" of a statute for the first time on appeal because "a conviction for the violation of a facially invalid statute would constitute fundamental error." *Trushin v. State*, 425 So. 2d 1126, 1129 (Fla. 1982) (although this Court warned in the opinion that "prudence dictates that it be presented at the trial court level to assure that it will not be considered waived." *Ibid*). The Court further noted that a challenge to the "constitutional *application* of a statute" *must occur at the trial level*," explaining however, that "[o]nce an appellate court has jurisdiction it may, *if it finds it necessary to do so*, consider any item that may affect the case. *Id.* at 1130 (emphasis

added). *See also, Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002) ("While the constitutional application of a statute to a particular set of facts must be raised at the trial level, a facial challenge to a statute's constitutional validity may be raised for the first time on appeal" because "a conviction for the violation of a facially invalid statute would constitute fundamental error.").

When this Court considers a facial challenge, its review is limited. *Abdool v. Bondi*, 141 So. 3d 529, 538 (Fla. 2014). The Court considers "only the text of the statute; not its specific application to a particular set of circumstances." *Id.* For an appellant to succeed on a facial challenge, he has a high burden-–he must demonstrate no set of circumstances exists in which the statute can be considered constitutionally valid. *Id. See also, Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1114 (11th Cir. 2025) *citing Moody v. NetChoice, LLC*, 603 U.S. 707, 727 (2024) ("A facial challenge requires a plaintiff to establish that no set of circumstances exists under which the law would be valid, or . . . show that the law lacks a plainly legitimate sweep.") (citation modified). "As a result, [a law] will not be invalidated as facially unconstitutional simply because it could operate

unconstitutionally under some hypothetical circumstances." *Abdool* at 538. Also, the Court has specified that "legislative acts are afforded a presumption of constitutionality and we will construe the challenged legislation to effect a constitutional outcome when possible." *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 243 So. 3d 894, 897 (Fla. 2018) *citing Fla. Dep't of Revenue v. Howard*, 916 So. 2d 640, 642 (Fla. 2005).

The Court also conducts de novo review of the interpretation of a statute but "must give the statutory language its plain and ordinary meaning, and is not at liberty to add words . . . that were not placed there by the Legislature." *Statler* at 878-79. (citation modified). "A court's determination of the meaning of a statute begins with the language of the statute. *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018) *citing Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). If the language is clear, the statute is given its plain meaning, and the court does not "look behind the statute's plain language for legislative intent or resort to rules of statutory construction." *City of Parker v. State*, 992 So. 2d 171, 176 (Fla. 2008) (quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)). *see also State v. Brake*, 796 So. 2d

522, 528 (Fla. 2001) ("[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense."). *Lieupo v. Simon's Trucking, Inc.*, 286 So. 3d 143, 146 (Fla. 2019).

"A statute is void for vagueness when persons of common intelligence must guess as to its meaning and differ as to its application . . . or if it lends itself to arbitrary enforcement at an officer's discretion." *Fraternal Order of Police, Miami Lodge 20* at 897. Yet, "[t]he legislature's failure to define a statutory term does not in and of itself render a provision unconstitutionally vague." *Id.* (quoting *State v. Hagan*, 387 So. 2d 943, 945 (Fla. 1980)). Also, a statute must not be unreasonable, arbitrary or capricious, and must have a reasonable and substantial relation to a legitimate government objective to survive review for compliance with substantive due process. *See State v. Robinson*, 873 So. 2d 1205, 1214 (Fla. 2004). *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 243 So. 3d 894, 898 (Fla. 2018). A statute is overbroad when legal, constitutionally protected activities are criminalized as well as illegal, unprotected activities, or when the Legislature sets a net large

enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free. *Coates v. Cincinnati*, 402 U.S. 611, (1971).

Finally, the complaining party bears the burden of demonstrating the trial court error and that it was preserved by proper objection. *See, e.g.*, *Castor v. State*, 365 So. 2d 701, 703 (Fla.1978); *Driver v. State,* 46 So. 2d 718, 720 (Fla.1950). Only when the defendant satisfies the burden of demonstrating the existence of preserved error does the appellate court engage in a *DiGuilio*[1] harmless error analysis. If the error is not properly preserved or is unpreserved, the conviction can be reversed only if the error is "fundamental." *See, e.g., Chandler v. State*, 702 So. 2d 186, 191 (Fla.1997), *cert. denied*, 523 U.S. 1083, (1998); *Whitfield v. State*, 706 So. 2d 1, 4 (Fla.1997), *cert. denied*, 525 U.S. 840, (1998); *Larkins v. State*, 655 So. 2d 95, 98 (Fla.1995).

[1] *State v. DiGuilio* 491 So. 2d 1129, 1139 (Fla. 1986).

ARGUMENT

ISSUE 1

THE TRIAL COURT DID NOT VIOLATE THE *EX POST FACTO* CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS OR THE TERMS OF FLORIDA STATUTE 775.022 WHEN IT APPLIED THE 2023 AMENDMENT TO FLORIDA STATUTE 921.141 TO APPELLANT'S 2024 PENALTY PHASE

Appellant contends that his death sentence violates (1) the *ex post facto* provisions of both the United States and Florida constitutions, and (2) Section 775.022, Florida Statutes. He argues that applying the April 2023 amendment to Section 921.141, Florida Statutes, that eliminated jury unanimity in death sentencing, in the penalty phase of his trial for murders he committed in 2019, violates both *ex post facto* principles and the expressed terms of § 921.141, Fla. Stats, prohibiting retroactive application of the amendment. But, because the amended statute does not criminalize an act that was previously innocent, does not increase the potential sentence of an existing crime, and does not alter the proof necessary to impose the death penalty, so, it is not an *ex post facto* law. Also, Appellant cannot demonstrate that applying the amended statute violates Section 775.022, Florida Statutes, because, contrary to his assertion that the amendment was applied retroactively, according to this Court's

precedents, it was applied *prospectively*. Finally, because Appellant failed to either raise in the trial court below an argument that applying the amended statute violates Section 775.022, Florida Statutes, or cite to where in the record he did, he must demonstrate the trial court committed fundamental error when it applied the amended statute, and he is unable to do so.

A. The trial court's ruling correctly determined that applying the amended 921.141 did not *violate ex post facto* principles.

Article I of the United States Constitution prevents both Congress and any State from passing any "ex post facto Law." Art. I, § 9, cl. 3, § 10, cl. 1, U.S. Const.; Amendment XIV, § 1, cl. 3, U.S. Const. The Florida Constitution contains a similar limitation. Art. I, § 10, Fla. Const. On January 11, 2024, Appellant filed a motion seeking that the trial court apply in his case the version of Florida Statute 921.141 in effect prior to its April 23, 2023, amendment. In the motion, he argued that the proper law to apply was the law in effect at the time the crime was committed and that applying the amended version of the statute violated the *ex post facto* provisions of both the United States and Florida constitutions. (DAR:1114-15).

The trial court denied the motion on March 14, 2024. The court, in its decision, relied on *Dobbert v. Florida*, 432 U.S. 282 (1977) and *Victorino v. State*, 241 So. 3d 48, 50 (Fla. 2018). The court concluded that because the amendment to Florida Statute 921.141 does not criminalize an act that was previously innocent, does not increase the potential sentence of an existing crime, and does not alter the proof necessary to impose the death penalty[2], "the recent change to Fla. Stat. § 921.141 is not *ex post facto*." (DAR:1210-13).

Although Appellant contends that the trial court's use of the newly amended statute, rather than the version that was in effect when he murdered Kristine Melton and Diane Ruiz in 2019, violates the *ex post facto* clauses of both the United States Constitution and the Florida Constitution (IB:37), the trial court properly relied upon *Dobbert*, in which the United States Supreme Court previously rejected a similar claim. (finding that that *ex post facto* principles

[2] "[A]s the jury is still required to unanimously find at least one aggravating factor; this is separate from the jury's consideration of mitigating circumstances and whether to recommend a death sentence. *See also State v. Poole*, 297 So. 3d 487, 503-04 (Fla. 2020) (jury's death recommendation does not involve the finding of any facts, but is a 'question of mercy' that falls outside the requirements of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016))." (DAR:1212).

were not violated when Florida applied an amended death penalty statute to a murder that occurred before the amendment).

In *Dobbert*, the defendant murdered his young daughter in December of 1971 and then his young son sometime in early 1972. *Id.* at 284-84, 288. At the time of the 1971 murder, Florida's death penalty statute provided that a person convicted of a capital felony was to be punished by death unless the verdict included a recommendation of mercy by a majority of the jury. *Id.* at 288. After the murder, the United States Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), struck down capital punishment as violating the Eighth Amendment. In response to *Furman*, many states, including Florida, enacted new death penalty statutes. Dobbert was convicted of the first-degree murder of his daughter and sentenced to death using the post-*Furman* amended death penalty statute enacted *after* he committed his crimes.

Among Dobbert's claims raised, were *ex post facto* challenges to Florida's amended death penalty statute. *Dobbert* at 287. His *ex post facto* challenge relevant to the Court's consideration of this case—modifications made to the function of judge and jury in imposing a death sentences–-was a similar challenge to the one Appellant poses

here. It addressed the constitutionality of applying the change made between the time he committed the crimes and the time he was sentenced for them.

The Supreme Court noted that even though a procedural change may work to the disadvantage of a defendant, a procedural change does not create *ex post facto* concerns. *Id.* at 293 The Court concluded that there were no *ex post facto* violations because the changes in the law were (1) procedural and (2) ameliorative (in the sense that the changes were a benefit to the defendant.) *Id.* at 292.[3] The Court found the amendments to Florida's death penalty statute were procedural because they merely "altered the methods employed in determining whether the death penalty was to be imposed; there was no change in the quantum of punishment attached to the crime."

[3] In a footnote, the majority explained that these holdings were "independent" and that, even if the changes to the statute were not ameliorative, there would still be no *ex post facto* violation from applying a new procedural statute to a murder that occurred before the amendment. *Ibid*, n.6. When a decision has alternative holdings, both holdings are binding. *Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949) (stating that when a decision rests on two or more grounds, none can be relegated to the category of dicta). In the words of the Eleventh Circuit, "alternative holdings are as binding as solitary holdings." *United States v. Files*, 63 F.4th 920, 926 (11th Cir. 2023).

Id. at 293-94. As the Court noted, the crime, the punishment, and the quantity or the degree of proof necessary to establish his guilt, "all remained unaffected by the amendments." *Id.* at 294.

This Court also addressed a similar claim concerning section 921.141 in *Victorino v. State*, 241 So. 3d 48, 50 (Fla. 2018). At the time the statute was challenged, it had been amended to provide for juror unanimity in determining what aggravating factor(s) existed, the sufficiency of the aggravating factor(s) for the imposition of death, a finding that the aggravating factor(s) outweigh the mitigating circumstances, and the recommendation of a sentence of death. The Court relied on criteria the Supreme Court enunciated in *Lynce v. Mathis*, 519 U.S. 433 (1997) to determine if a criminal law should be deemed *ex post facto.* The Court found that for a criminal law to be *ex post facto,* it must apply to events that occurred before it was enacted, "*and it must alter the definition of criminal conduct or increase the penalty by which a crime is punishable." Victorino v. State*, 241 So. 3d 48, 50 (Fla. 2018) (emphasis added) *citing Lynce v. Mathis*, 519 U.S. 433, 441 (1997) ("To fall within the ex post facto prohibition, a law must be retrospective . . . and it must disadvantage the [defendant] by altering the definition of criminal conduct or

increasing the punishment for the crime"). The Court denied that Victorino was entitled to any relief, holding that applying the amended statute did not implicate any *ex post facto* law because the amendment "neither alters the definition of criminal conduct nor increases the penalty by which the crime of first-degree murder is punishable." *Ibid*.

Additionally, the Florida district courts that have examined the merits of precisely the same claim Appellant raises here have all concluded that applying the newly amended version of 921.141 does not violate *ex post facto* principles. *State v. Victorino*, 372 So. 3d 772, 778 (Fla. 5th DCA 2023) (holding that failing to apply the amended statute departed from the essential requirements of law); *State v. Labato*, 394 So. 3d 1219 (Fla. 6th DCA 2024) (holding that failing to apply the amended statute departed from the essential requirements of law); *State v. Riley*, 391 So. 3d 981 (Fla. 6th DCA 2024) ("For the reasons stated in *State v. Lobato*, [394 So. 3d 1219 (Fla. 6th DCA 2024)], we grant the petition for writ of certiorari and quash the order under review."); *State v. Petit-Frere*, 391 So. 3d 981 (Fla. 6th DCA 2024) ("For the reasons outlined in *State v. Lobato*, [394 So. 3d 1219 (Fla. 6th DCA 2024]), we quash the order under review and remand

for further proceedings."); *See also State v. Lyons*, 392 So. 3d 281, 286, n.4 (Fla. 2d DCA 2024) ("Because *Victorino II*[4] had issued at the time the trial court in our case rendered its decision and we readily agree with its conclusion, as well as that of *Lobato*, we need not examine the contours of United States and Florida Constitutions' prohibitions against ex post facto laws.").

Yet, Appellant argues that the United States Supreme Court's decision in *Collins v. Youngblood*, 497 U.S. 37, 46 (1990) "calls into question any decisions predating *Collins* which may have relied on a distinction between procedural and substantive law" because the Court noted that "by simply labeling a law 'procedural,' a legislature does not thereby immunize it from scrutiny under the Ex Post Facto Clause."). (IB:41). Appellant's reliance on this comment to contend that the Court's decision in *Dobbert* is no longer valid, is erroneous. While the Supreme Court acknowledged in *Collins* that simply "labeling" a law procedural does not prevent it from being an *ex post facto* law, this comment is hardly inconsistent with the Court's holding in *Dobbert.* In *Dobbert* the Court did not find the law was

[4] *State v. Victorino*, 372 So. 3d 772 (Fla. 5th DCA 2023).

simply *labeled* procedural, but that the law in question was "clearly procedural" because it "simply *altered the methods employed in determining whether the death penalty was to be imposed*; there was no change in the quantum of punishment attached to the crime." *Dobbert* at 293–94. (emphasis added).

Also, this argument ignores the Supreme Court's decision in *Lynce v. Mathis.* There, the Court pointed out that the disadvantage to the defendant must be *by altering the definition of criminal conduct or increasing the punishment for the crime." Lynce v. Mathis, 519 U.S. at 441.* This Court should note that *Lynce v. Mathis* was decided 7 years after *Collins.*

Thus, the decision in *Dobbert* is consistent with the Court's decision in *Collins*, in which the Court acknowledged that, "[i]n *Beazell*[5] *[ ]* we said that the constitutional prohibition is addressed to laws, which make innocent acts criminal, alter the nature of the offense, or increase the punishment. *Collins* at 46, *citing Beazell* at 170. The Court concluded that "the prohibition which may not be evaded is the one defined by the *Calder*[6] categories." These include:

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[5] *Beazell v. Ohio*, 269 U.S. 167 (1925)
[6] *Calder v. Bull,* 3 U.S. 386 (1798)

laws that (1) make criminal an action which was innocent when done; (2) aggravate a crime, or make it greater than it was, when committed; (3) inflict a greater punishment than when the crime was committed; and (4) alter the legal rules of evidence to receive less or different testimony than the law required at the time of the offence was committed in order to convict the offender. *Id.* at 390. Because the law in *Dobbert* was *purely* procedural-–that is, it did not affect the *Calder* categories-–it was not an *ex post facto* violation. In both *Dobbert* and *Collins*, the Supreme Court focused on whether the law under attack affected the *Calder* categories. Because the changes in the laws that were the subject of the *ex post facto* claims in each case did not, they were held not to be *ex post facto* violations. Similarly, there is no *ex post facto* violation here because the law under attack did not affect the *Calder* categories.

Most importantly, the Supreme Court has never reversed *Dobbert*. Indeed, both *Collins* and *Peugh v. United States*, 569 U.S. 540 (2013), on which Appellant relies, cite *Dobbert* favorably. If, as Appellant contends, *Dobbert* can no longer be relied upon due to the decision in *Collins*, the Court, in *Collins*, would have reversed the decision, or at least that portion of the opinion that is allegedly

disfavored, as it expressly did in *Collins* with *Kring v. Missouri*, 107 U.S. 221(1883) and *Thompson v. Utah*, 170 U.S. 343 (1898) rather than citing it for *support* of what the Court has determined does not constitute an *ex post facto* violation. *See Collins* at 45, 51-52. ("Several of our cases have described as 'procedural' those changes which, even though they work to the disadvantage of the accused, do not violate the *Ex Post Facto* Clause.") Therefore, *Dobbert* remains good law. *See Hohn v. United States*, 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); *Bosse v. Oklahoma,* 580 U.S. 1, 3 (2016) ("[I]t is this Court's prerogative alone to overrule one of its precedents."); *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) ("Needless to say, only this Court may overrule one of its precedents."); *see also Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts.").

In addition, *Peugh* is distinguishable from Appellant's case. In *Peugh*, the Supreme Court reviewed whether a change to the federal

sentencing guidelines that increased Peugh's recommended sentence for the crime he committed before the guideline changes, was an *ex post facto* violation when applied to him. The Court determined that the changes violated the *Ex Post Facto* Clause and explained that the proper inquiry is whether the change in law presents a "sufficient risk of increasing the measure of punishment" attached to the covered crime(s). However, the Court cautioned that the question of when a change in law creates "sufficient risk" is a "matter of degree," and that the test cannot be reduced to a single formula. *Peugh* at 539.

In *Lobato* the Sixth District found that the risk analysis the Supreme Court applied in *Peugh* did not apply to capital sentencing. The Sixth District distinguished the cases concerning parole and sentencing under the federal guidelines as differ "in kind" from capital sentencing. The court found that *Peugh*'s test applied only to a different category of cases which examine *ex post facto* claims *related to federal sentencing guidelines and parole*[7]. *Lobato* at 1225-26. (emphasis added).

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[7] "[T]he Ex Post Facto Clause forbids the [government] to enhance the measure of punishment by altering the substantive 'formula'

Also, in *Labato*, the Sixth District held in the alternative, that even if it applied a *Peugh* risk analysis, there was insufficient risk of a greater sentence. *Lobato* at 1227. The court in *Lobato* observed that the Supreme Court in *Peugh* recognized that the federal sentencing guidelines, in practice, usually control the sentence imposed. *Lobato* at 1226. *See Peugh* at 544 ("The federal system adopts procedural measures intended to make the Guidelines the lodestone of sentencing."). Moreover, in *Peugh*, the Court observed that there was "considerable empirical evidence [in the record] indicating that the Sentencing Guidelines have the intended effect of influencing the sentences imposed by judges." *Peugh* at 543.

In contrast, Appellant presents no empirical evidence that the amendments to Florida's death penalty statutes have any effect of increasing his likelihood of receiving a death sentence. "[M]ere speculation or conjecture that a change in law will retrospectively increase the punishment for a crime will not suffice to establish a violation of the *Ex Post Facto* Clause." *Peugh* at 539; *see also Garner v. Jones*, 529 U.S. 244, 255 (2000) ("The standard announced in

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used to calculate the applicable sentencing range." *Peugh v. United States*, 569 U.S. 530, 550 (2013).

Morales requires a more rigorous analysis of the level of risk created by the change in law.").

Regardless of the nature, scope, or one's understanding of *Peugh*, *Dobbert* controls. The "state courts and the other federal courts have a constitutional obligation to follow a precedent of this Court unless and until it is overruled." *Ramos v. Louisiana*, 590 U.S. 83, 124, n.5 (2020) (Kavanaugh, J., concurring in part). If a Supreme Court case has direct application in a case yet appears to rest on reasons rejected in some later decisions from the Supreme Court, the lower courts "should follow the case which directly controls." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). So, when two lines of Supreme Court cases appear incompatible, a lower court should follow the case that is closest *factually* to the case at hand. *Jefferson Cnty. v. Acker*, 210 F.3d 1317, 1320- 21 (11th Cir. 2000) (discussing the phrase "directly controls" in *Rodriguez de Quijas* and noting the "directly" controlling case applies if the facts of the Supreme Court case "line up closely with the facts" of the case before the court). Appellant's case, like *Dobbert,* arises out of amendments to Florida's death penalty statute enacted after the murders, and the question presented is whether the new

death penalty statute could be applied to a capital defendant without violating *ex post facto* considerations. The facts in *Dobbert* are nearly indistinguishable from this case, unlike *Peugh,* which is about whether it was proper to calculate a federal sentence by applying sentencing guidelines passed after the commission of the crime.

In addition, as the Sixth District found, the capital sentencing rules remain largely intact. Juries still have to (1) unanimously determine beyond any reasonable doubt that at least one aggravating factor exists, (2) determine whether sufficient aggravating factors exist to sentence the defendant to death, (3) whether existing aggravating factors outweigh the mitigating circumstances found to exist, and (4) based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death. *Lobato* at 1227. Also, a supermajority is required to recommend a death sentence.

Appellant also ignores the fact that even if a jury recommends a death sentence, the judge is not required to follow the recommendation of the jury, nor do the Florida's rules *virtually* require the judge do so (as the Supreme Court found the federal sentencing guidelines do). Even in cases when the judge does follow

the jury's recommendation, the trial judge still must issue a written sentencing order, explaining what evidence he finds to support one or more aggravating factors (but may consider only an aggravating factor that was unanimously found to exist by the jury), what mitigating circumstances were reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. Also, the court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable. And, if the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court must impose a sentence of life imprisonment without the possibility of parole.

Finally, the sentencing order is subject to direct review by the Florida Supreme Court in every case resulting in a death sentence. §921.141, Fla. Stats. (2024). As a result, even if this Court finds that the *Peugh* risk analysis should apply to this case, Appellant is unable to establish that there exists a sufficient risk of increasing the measure of punishment resulting from the trial court applying the

amended rule, rather than the one existing at the time Appellant committed the murders.

As the Supreme Court stated in *Garner v. Jones*, 529 U.S. 244, 252 (2000), "the *Ex Post Facto* Clause should not be employed for the micromanagement of an endless array of legislative adjustments to parole and sentencing procedures." This Court should reject Appellant's attempt to use an *ex post facto* argument to do just that. Accordingly, this Court should follow *Dobbert*, not *Peugh*.

The changes to Florida's death penalty sentencing procedures are purely procedural. They do not make criminal an action which was innocent when done; aggravate a crime, or make it greater than it was, when committed; inflict a greater punishment than when the crime was committed; or alter the legal rules of evidence to receive less or different testimony than the law required at the time of the offence was committed in order to convict an offender. As a result, there was no *ex post facto* violation in sentencing Appellant to death.

B. Because Appellant failed to present to the trial court any argument that Florida Statute 775.022 was violated, he must demonstrate fundamental error in the court's application of the statute.

To preserve an issue for appellate review, "the *specific* legal argument or ground upon which it is based must be presented to the trial court." *Cole v. State*, 392 So. 3d 1054, 1063 (Fla. 2024) (emphasis in original), *cert. denied, Cole v. Florida*, 145 S. Ct. 109 (2024); *Figueroa-Sanabria v. State*, 366 So. 3d 1035, 1049 (Fla. 2023) (explaining that to preserve an issue for appeal, the presentation in the lower court must be "sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor."); *see also* § 924.051(1)(b), Fla. Stat. (2024). In addition, a party must obtain a ruling from the lower court to preserve the issue. *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)), *cert. denied, Ritchie v. Florida*, 143 S. Ct. 1005 (2023).

Except in cases of fundamental error, an appellate court will not consider an issue unless the appellant presents the issue to the lower court. Appellant fails to cite where in the record he presented to the trial court his argument that applying Section 921.141, Florida Statutes, as amended, violates Section 775.022, Florida Statutes (or for that matter, whether it was presented to the trial court). As a result, the only conclusion that the Court can reach based on the

parties' briefing is that Appellant did not present this argument below. *See Wilson v. State*, 2025 WL 1462567, at *9 (Fla. May 22, 2025) ("[J]udges are not like pigs, hunting for truffles buried [in the record]."). Because Appellant did not present this argument to the trial court, this Court should limit its consideration of his argument to whether he has demonstrated that the trial court committed fundamental error under Section 775.022, Florida Statutes, by applying Section 921.141, Florida Statutes, as amended, to his penalty phase.

C. The trial court did not commit fundamental error because it prospectively applied the 2023 amendment of Florida Statute 921.141 to Appellant's 2024 penalty phase as required.

Section 775.022, Florida Statutes (2024), provides:

> (1) It is the intent of the Legislature that:
> (a) This section preclude the application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
> (b) An act of the Legislature reenacting or amending a criminal statute not be considered a repeal or an implied repeal of such statute for purposes of s. 9, Art. X of the State Constitution.
>
> (2) As used in this section, the term "criminal statute" means a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.

(3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5), the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

(a) The prior operation of the statute or a prosecution or enforcement thereunder.

(b) A violation of the statute based on any act or omission occurring before the effective date of the act.

(c) A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

(4) If a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

(5) This section may not be construed to limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature in a criminal case that has not yet resulted in the imposition of a judgment or sentence by the trial court or an appellate decision affirming a judgment or sentence of the trial court.

(6) A reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference.

Appellant contends that applying the amended death penalty law to his case was a retroactive application of a criminal penalty, which section 775.022 prohibits. He argues that because Appellant was arrested on October 7, 2019, indicted on November 19, 2019,

the "Notice of Intent to Seek Death Penalty" was filed on December 3, 2019, and prosecution had already begun at the time of the law's effective date of April 20, 2023—although penalty phase proceedings had not—applying the amended law in this case is a retroactive application of the law. (IB:46-47).

Precedent, however, dictates that in this case section 921.141 was applied prospectively. It is a change in procedural law that was applied to a penalty phase that occurred after amendment's effective date. This Court recently reviewed the applicability of statutory amendments to pending litigation in *Love v. State*, 286 So. 3d 177, 186–89 (Fla. 2019). The Court instructed that the inquiry is twofold. A court first asks whether the new law is substantive or procedural. *Ibid.* If substantive, the law presumptively does not apply to a pending case. *Ibid.* But if procedural, the answer to whether the law applies "will generally turn on the posture of the case, *not the date of the events giving rise to the case*." *Id.* at 187. (emphasis added). A procedural law receives an "essentially . . . prospective application," the Court clarified, as applied "to those [] hearings, *including in pending cases*, that take place on or after the statute's effective date." *Id.* at 188. (emphasis added). In that circumstance, the law is not

retroactive because it does not "attach [] new legal consequences to events completed before its enactment." *Id.* at 187 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269–70 (1994)). Here, the "event" is the hearing at which the new procedure applies.

1. *Section 921.141, Florida Statutes, is a procedural law*

A determination by this Court that the statute change is procedural in nature would be consistent with the prior opinions of this Court *(see Love* and *State v. Garcia*, 229 So. 2d 236 (Fla. 1969)), this States' district courts that have addressed this specific issue as it applies to Section 921.141, and the United States Supreme Court. Although this Court recognized in *Love* that sometimes "[t]he distinction between substantive and procedural law is neither simple nor certain" *Love* at 183, (quoting *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000)), the Court also noted that in *Garcia*, the Court set out the general difference between procedural law and substantive law. It explained, "[a]s related to criminal law and procedure, substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while *procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished*." *Love* at 185 (emphasis added).

Just as the Court found in *Love* that under *Garcia* the amended "Stand Your Ground Law" was clearly a procedural law, the Court should find that section 921.141 is clearly a procedural law. The Court should recognize that Section 921.141, like Section 776.032(4):

> neither declares what acts are crimes nor prescribes the punishment therefor. [The statute] does not alter the elements of self-defense, justifiable force, or any crime, nor does it alter the punishment for any crime. Instead, it alters the law which provides or regulates the steps by which immunity determinations are made. The statute changed the procedure ... for deciding claims [].

Love at 185. The Court further observed that "[the statute] . . . did not . . . substantively impose any new obligation or duty with respect to any underlying conduct." *Love* at 186.

Because section 921.141 changes only the number of jurors required to recommend death from 12 to 8, the statute is procedural according to this Court's settled precedent. Like the statute in *Love*, Section 921.141, (1) does not declare what acts are crimes, nor prescribe the punishment for violating them, and (2) it does not alter the elements of self-defense, justifiable force, or any crime, or alter the punishment for any crime. Nor does it substantively impose any

new obligation or duty with respect to any underlying conduct." *Id.* Rather, "it alters the law which provides or regulates the steps by which" already convicted first degree murderers' sentence determinations are made. *Ibid.* In other words, the amendment merely changed the *procedure* for sentencing.

Two Florida district courts have issued written opinions ruling that Section 921.141 is procedural law, and that a trial court's failure to apply this law after the effective date of the statute is a "departure from the essential requirements of the law." *State v. Victorino*, 372 So. 3d 772, 777 (Fla. 5th DCA 2023); *State v. Lobato*, 394 So. 3d 1219 (Fla. 6th DCA 2024).

In *Victorino*, the Fifth District explained that "[a] law is procedural when it alters *how* a criminal case is adjudicated instead of addressing the substantive criminal law," (emphasis supplied) *citing Collins v. Youngblood*, 497 U.S. 37, 45, (1990) and *Procedural Law*, *Black's Law Dictionary* (11th ed. 2019) ("The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves."). *Victorino* at 778. As a result, the court concluded that the amendment to section 921.141 "is a quintessentially procedural

change that has no substantive effect" because "[t]he new statute simply alters the methods employed in determining whether the death penalty is] to be imposed; there is no change in the quantum of punishment attached to the crime." *Id. citing Dobbert*, 432 U.S. at 293–94. Similarly, in *State v. Lobato*, the Sixth District, in concluding that the amendments to Florida's death penalty statute did not violate *ex post facto* principles, agreed with its sister court in *Victorino* that the amendment was "quintessentially procedural in nature and has no substantive effect." *Id. at 1223*.

Similarly, the United States Supreme Court has concluded that an amendment involving the number of jurors is procedural. In *Edwards v. Vannoy*, 593 U.S. 255 (2021), the Supreme Court addressed whether its earlier decision in *Ramos*, holding that the Sixth Amendment requires unanimous verdicts of guilt, was substantive or procedural for purposes of retroactivity. The Supreme Court concluded that a rule regarding juror unanimity was procedural because if affected "only the manner of determining the defendant's culpability," not the conduct the law punishes. *Id.* at 264, n.3 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004)). Other Supreme Court cases are in accord. *See, e.g., Schriro v. Summerlin*,

542 U.S. 348, 353 (2004) (holding that the requirement that a jury, not a judge, find the aggravating factor required for death was procedural); *Dobbert*, 432 U.S. at 293 (holding that a Florida statute altering the role of judge and jury in capital cases was "clearly procedural").

Thus, the Court should find that Section 921.141, Florida Statutes, which does not determine what conduct the law punishes, is a procedural law.

2. *Due to the posture of Appellant's case, the commonsense application of Florida Statute 921.141 is to apply the statute to Appellant's penalty phase.*

In *Love* this Court stated that "whether a new procedural statute applies in a pending case will generally turn on the posture of the case, *not the date of the events giving rise to the case*. And if the new procedure does apply, that is not in and of itself a retrospective operation of the statute." *Love* at 187 (emphasis added). The Court further recognized in *Love* that "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment . . . Rather, the court must ask whether the new provision attaches new legal

consequences to events completed before its enactment." *Id.* (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269-70 (1994).

The Court has also recognized "that some of this Court's general pronouncements regarding the retroactivity of procedural law have been less than precise." *Love* at 183-84. Contrary to Appellant's assertion that the trial court retroactively applied the newly amended Section 921.141, Florida Statutes, to his case in violation of paragraph 3, the amendment was applied prospectively-–in his 2024 penalty phase–-after the April 2023 effective date of the statute. The penalty phase in Appellant's case had not yet commenced at the time the statute became effective. Thus, it was only applied to a future action. *See Love v. State*, 286 So. 3d 177, 188 (Fla. 2019) (A procedural law is applied prospectively when applied "to those [] hearings, including in pending cases, that take place *on or after the statute's effective date*.") (emphasis added). In such circumstances, the law is not retroactive because it does not "attach [] new legal consequences to events completed *before* its enactment." *Id.* at 187 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269–70 (1994)) (emphasis added). Thus, the trial court did not violate Florida Statute 775.022 when it applied the amended version of Florida Statute

921.141 to the penalty phase, which did not occur until *after* the enactment of the amended statute.

In *Love*, for example, this Court held that a law altering the burden of proof at a Stand Your Ground immunity hearing was procedural and properly applied to immunity hearings conducted after the law's effective date regardless of when the defendant's alleged offense occurred. Because the change to the burden of proof affected only the "means and methods" used "to apply and enforce" the substantive right to self-defense immunity, it applied at the upcoming hearing in a "commonsense" and "ordinar[y]" way. *Id.* at 183, 188. The Court found the application of the revised law was "prospective." *Id.* at 188.

Therefore, under *Love*, Florida Statute 921.141 is a procedural provision that was applied prospectively to Appellant's impending penalty phase. Consequently, he is incorrect that Section 775.022 forbade its application. That law provides that "the . . . amendment of a criminal statute operates prospectively" and does not "affect or abate . . . [a] violation of the statute based on any act or omission occurring before the effective date of the act." § 775.022(3)(b), Fla. Stat. The newly enacted section 921.141 did not "affect or abate" the

consequences of Appellant's criminal conduct; it altered only the procedures at a penalty phase held after the law's effective date. Appellant cites no case labeling a similar law as substantive.

The Court should conclude that the "commonsense application" of the amendment to Florida Statute 921.141 is to apply the statute once it became effective, including to Appellant's then upcoming penalty phase.

ISSUE 2

RAMOS V. LOUISIANA DOES NOT REQUIRE A UNANIMOUS JURY RECOMMENDATION OF DEATH

Appellant next argues that the Sixth and Eighth Amendments to the United States Constitution require a unanimous determination to sentence to death a convicted party. He erroneously relies on *Ramos v. Louisiana*, 590 U.S. 83 (2020) for this premise and urges this Court to reconsider its holding in *State v. Poole*, 297 So. 3d 487, 504 (Fla. 2020) in light of *Ramos*. (IB:48). But *Ramos* only considers the need for jury unanimity under the Sixth Amendment in reaching a *conviction,* and it does not even address the Eighth Amendment. *Ramos* at 93. ("So if the Sixth Amendment's right to a jury trial

requires a unanimous verdict to support a *conviction* in federal court, it requires no less in state court.") (emphasis added).

A. Because Appellant failed to present to the trial court any argument that a nonunanimous jury recommendation violated the Sixth and Eight Amendments, he must demonstrate the court committed fundamental error in sentencing Appellant to death without a unanimous jury recommendation.

To preserve an issue for appellate review, "the specific legal argument or ground upon which it is based must be presented to the trial court." *Cole v. State*, 392 So. 3d 1054, 1063 (Fla. 2024) (emphasis in original), *cert. denied, Cole v. Florida*, 145 S. Ct. 109 (2024); *Figueroa-Sanabria v. State*, 366 So. 3d 1035, 1049 (Fla. 2023) (explaining that to preserve an issue for appeal, the presentation in the lower court must be "sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor."); *see also* §924.051(1)(b), Fla. Stat. (2024). In addition, a party must obtain a ruling from the lower court to preserve the issue. *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)), *cert. denied, Ritchie v. Florida*, 143 S. Ct. 1005 (2023).

Although Appellant moved to declare Florida's amended death penalty statute unconstitutional on *ex post facto grounds*, as previously discussed, the motion never argued that the amended death penalty statute violated the Sixth Amendment, Eight Amendment, or *Ramos v. Louisiana*, 590 U.S. 83 (2020). In fact, *Ramos* was never even cited in his motion. The motion's argument and supporting caselaw were focused exclusively on arguing a violation of *ex post facto* principles. (DAR:1114-15).

Except in cases of fundamental error, an appellate court will not consider an issue unless the appellant presents the issue to the lower court. Appellant fails to cite where in the record he presented to the trial court his argument that a nonunanimous jury recommendation of a death sentence violates the Sixth and Eight Amendments (or for that matter, whether it was presented to the trial court). As a result, the only conclusion that the Court can reach based on the parties' briefing is that Appellant did not present this argument below. *See Wilson v. State*, 2025 WL 1462567, at *9 (Fla. May 22, 2025) ("[J]udges are not like pigs, hunting for truffles buried [in the record]."). Because Appellant did not present this argument to the trial court, this Court should limit its consideration of his argument

to whether he has demonstrated that the trial court committed fundamental error under the Sixth and Eighth Amendments by sentencing Appellant to death despite a nonunanimous jury recommendation to do so.

B. The trial court did not commit fundamental error because juror unanimity is not required to recommend a sentence of death.

Although the Sixth Amendment may require juror unanimity regarding a capital jury's finding of an aggravating factor, the Supreme Court has never held that a jury's sentencing recommendation requires unanimity, and this Court, in *State v. Poole*, 297 So. 3d 487 (Fla. 2020), correctly receded from its previous opinion in *Hurst v. State*, 202 So. 3d 40 (2016) holding differently. Contrary to Appellant's argument otherwise, nothing in *Ramos* suggests that this was an error. The Supreme Court in *Ramos* held that pursuant to the incorporation doctrine of the Fourteenth Amendment, the Sixth Amendment right to a jury trial requires a unanimous verdict to *convict* a defendant of a serious offense. *Ramos v. Louisiana*, 590 U.S. 83, 88 (2020). In Appellant's case, this requirement was met.

As the Supreme Court explained in *McKinney v. Arizona*, 589 U.S. 139 (2020), in *Ring v. Arizona*, 536 U.S. 584 (2002), it held that capital defendants "are entitled to a jury determination of any *fact* on which the legislature conditions an increase in their maximum punishment." *McKinney* at 144 (quoting *Ring* at 589) (emphasis added). The Court further noted in *McKinney*, that in *Hurst v. Florida*, 577 U.S. 92 (2016), the Court applied *Ring* and decided that Florida's capital sentencing scheme impermissibly allowed "a sentencing judge to find an aggravating circumstance, independent of a jury's *factfinding*, that is necessary for imposition of the death penalty." *McKinney* at 144 (quoting *Hurst* at 624) (emphasis added). But the Court pointed out, "the decision in *Ring* has nothing to do with jury sentencing." *McKinney* at 145 *citing Ring* at 612 (Thomas, J. concurring) (citation modified). The Court added, "as Justice Scalia explained, the States that leave the ultimate life-or-death decision to the judge may continue to do so." *McKinney* at 145 *citing Ring* at 612. If a judge, without any jury involvement, may sentence a person to death, then it defies logic to conclude that a jury's decision–-let alone its *recommendation*–-is constitutionally required by the Sixth Amendment to be unanimous.

Appellant's argument that the Eighth Amendment requires a unanimous jury recommendation of death, is a bit murky. It appears to rest on Appellant's characterization of the plurality's opinion in *Ramos*' as having "emphasized that unanimity enhance the quality of juror deliberations" and expressed "racial concerns of non-unanimity." (IB:51). But even if Appellant's characterization of the opinion is correct, the Court's plurality opinion in *Ramos* never addresses sentencing or the Eighth Amendment. Thus, Appellant's contention that *Ramos* requires a unanimous jury recommendation for a death sentence under the Eight Amendment is as unreasonable as his contention that *Ramos* requires it under the Sixth Amendment. Even under the Eighth Amendment jurisprudence requiring increased reliability in capital cases, unanimity is not required for a sentencing recommendation. Unanimity does not increase reliability or accuracy in capital sentencing. The dissent in *Ramos* pointed to rogue jurors as a good policy reason to allow nonunanimous verdicts. *Ramos* at 142 & n.3 (Alito, J., dissenting). Justice Alito observed that prominent scholars, some of whom relied on military court-marital verdicts, advocated nonunanimous verdicts in part due to their *increased* reliability. *Id.* at 143, n.7. Nor does the plurality in *Ramos*

support the assertion that unanimity increases reliability or accuracy. The "badly fractured" Supreme Court did not disagree about the problem posed by rogue jurors and such juror's ability to undermine reliability and accuracy.

More importantly, the plurality relied exclusively on the historical requirement of unanimity for conviction at common law and in the federal courts. *Id.* at 92. The plurality admitted that it was not any cost-benefit analysis or any determination regarding whether unanimity was "important enough," or any Eighth Amendment concern regarding reliability, that mandated its holding. *Id.* at 100. Rather, it was the common law, historical practice, and the incorporation doctrine that mandated the holding in *Ramos*.

And, contrary to Appellant's argument, the reasoning underlying the incorporation doctrine leads to the opposite result for capital sentencing. The jury had no role in capital sentencing at common law or historically in America. The jury's role was limited to convicting a defendant of a capital crime. A judge alone sentenced the defendant to death, and that death sentence was often mandatory. *Woodson v. North Carolina*, 428 U.S. 280, 289 (1976) (observing that "at common law, all homicides that were not

involuntary, provoked, justified, or excused constituted murder and were automatically punished by death"). Indeed, at "the time the Eighth Amendment was adopted in 1791, the States uniformly followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses." *Woodson*, 428 U.S. at 289. Based on common law and history, the argument that a jury must be involved in any way in capital sentencing necessarily fails.

To the extent that Appellant relies on the reasoning in this Court's opinion in *Hurst v. State,* this Court correctly dismissed that reasoning in *State v. Poole, 297 So. 3d 487 (Fla. 2020)*:

> As we have explained, the Supreme Court in *Spaziano* upheld the constitutionality under the Sixth Amendment of a Florida judge imposing a death sentence even in the face of a jury recommendation of life—a jury override. It necessarily follows that the Sixth Amendment, as interpreted in *Spaziano*, does not require any jury recommendation of death, much less a unanimous one. And as we have also explained, the Court in *Hurst v. Florida* overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance.
>
> Even without *Spaziano*, the *Apprendi* line of cases cannot be read to require a unanimous jury recommendation of death. Those cases are about what "facts"—those that are the equivalent of elements of a crime—the Sixth Amendment requires to be found by a jury. Sentencing

> recommendations are neither elements nor facts. As Justice Scalia said, the judgment in *Ring*—and by extension the judgment in *Hurst v. Florida*—"has nothing to do with jury sentencing." *Ring*, 536 U.S. at 612, 122 S. Ct. 2428 (Scalia, J., concurring).
>
> Finally, we further erred in *Hurst v. State* when we held that the Eighth Amendment requires a unanimous jury recommendation of death. The Supreme Court rejected that exact argument in *Spaziano*. *See Spaziano*, 468 U.S. at 465, 104 S. Ct. 3154; *see also Harris v. Alabama*, 513 U.S. 504, 515, (1995) ("The Constitution permits the trial judge, acting alone, to impose a capital sentence."). We are bound by Supreme Court precedents that construe the United States Constitution.

Id. at 504.

This reasoning is supported by the Supreme Court, as well. As the Court has explained, while aggravators are "purely factual determinations," mitigators are "largely a judgment call (or perhaps a value call)," and the ultimate question of whether mitigating circumstances outweigh aggravating circumstances "is mostly a question of mercy." *Kansas v. Carr*, 577 U.S. 108, 119 (2016) (rejecting Eighth Amendment claim that a capital jury had to be instructed that mitigating circumstances need not be proven beyond a reasonable doubt). Similarly, as this Court has explained about Florida's capital sentencing law, the jury's sentencing recommendation, is not a fact. Although it may involve factual

findings concerning the existence of aggravators, the recommendation consists largely of deciding the mitigation and then weighing the aggravation against the mitigation found. As a result, this Court correctly concluded that a sentencing recommendation is a "moral judgment." *Poole*, 297 So. 3d at 503.

Because a jury's sentencing recommendation is a moral judgment rather than a factual finding, a sentencing recommendation is not the equivalent of a guilty verdict. The Court should reject Appellant's claim that *Ramos* requires juror unanimity in recommending a sentence of death.

ISSUE 3

FLORIDA'S DEATH PENALTY SCHEME AVOIDS ARBITRARY OR CAPRICIOUS SENTENCING

Appellant claims that this Court's elimination of proportionality review in *Lawrence v. State*, 308 So. 3d 544(Fla. 2020), when combined with the elimination of the requirement for a unanimous death recommendation, and an expansion over time of the number and scope of aggravators, does not provide the "heightened reliability demanded by the Eighth Amendment in the determination whether

the death penalty is appropriate in a particular case." This, Appellant argues, has resulted in Florida's capital sentencing scheme failing to genuinely narrow the class of defendants who are eligible for the death penalty, violating the Eighth Amendment to the United States Constitution and the principles set forth in *Furman v. Georgia*, 408 U.S. 238 (1972), as well as Article I, Section 17 of the Florida Constitution. (IB:58).

A. Appellant failed to preserve this issue for appeal

Appellant fails to cite where in the record he has preserved this claim by objection, exception, or motion below. His failure to cite the location in the record where he preserved this argument would generally result in a waiver of the argument for failure to properly brief it. *See Wilson v. State*, 2025 WL 1462567 (Fla. May 22, 2025) (("[J]udges are not like pigs, hunting for truffles buried [in the record]."). But the Court has held that even when a party fails to preserve its objection, an appellate court will still conduct appellate review of an unpreserved claim provided the party can demonstrate fundamental error. *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982) (internal citations omitted); §924.051(1)(b), Fla. Stat. As a result, this Court, at most, should review this claim only to determine

if there is fundamental error. *See State v. Johnson,* 616 So. 2d 1, 3 (Fla. 1993) ("A facial challenge to a statute's constitutional validity may be raised for the first time on appeal only if the error is fundamental.").

B. There is no fundamental error because the claim is meritless.

"In capital cases, a fundamental error [in sentencing] is one that is so significant that the sentence of death could not have been obtained without the assistance of the alleged error." *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023), *reh'g denied*, No. SC2021-1001, 2023 WL 3938086 (Fla. June 12, 2023), *cert. denied Wells v. Florida*, 144 S. Ct. 385 (2023). Any contention that this claim demonstrates fundamental error contradicts this Court's precedents on this issue. The Court has addressed this claim numerous times in previous appeals and found it meritless, including as recently as May 2025 in *Wilson* when the Court stated:

> As Wilson acknowledges, this Court has repeatedly rejected the argument that Florida's death penalty scheme fails to sufficiently narrow the class of murderers eligible for the death penalty and thus violates the Eighth Amendment. *See Joseph v. State*, 336 So. 3d 218, 227 n.5 (Fla. 2022); *Cruz v. State*, 320 So. 3d 695, 730 (Fla. 2021); *Colley v. State*, 310 So. 3d 2, 15-16 (Fla. 2020); *Bush*, 295

> So. 3d at 214; *Wells*, 364 So. 3d at 1015; *Johnson v. State*, 969 So. 2d 938, 961 (Fla. 2007); *Miller v. State*, 926 So. 2d 1243, 1260 (Fla. 2006). Wilson presents no new or compelling argument that would require this Court to revisit its prior decisions.

Wilson at 14. *See also*, *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *5 (Fla. Apr. 25, 2025), *cert. denied Hutchinson v. Florida*, 145 S. Ct. 1980 (2025) (the U.S. Supreme Court's Eighth Amendment jurisprudence forbidding statutes that allow imposition of arbitrary death sentences is satisfied when the challenged statute sufficiently narrows the class of persons eligible for the death penalty [and the Court has] repeatedly held that Florida's death-penalty statute accomplishes this.); *Cox v. State*, 390 So. 3d 1189 (Fla. 2024), *cert denied, Cox v. Florida,* 145 S. Ct. 1084, 1200 (2025) (Cox's arguments on this point are well-worn, and this Court has repeatedly rejected them." "Likewise, we reject Cox's argument on this point."); *Sexton v. State*, 402 So. 3d 270, 283 (Fla. 2024), *reh'g denied*, 399 So. 3d 1102 (Fla. 2025) (In *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023) "the Court rejected the argument that the number of aggravating factors in Florida's death penalty statute, combined with the holding in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), violates the Eighth Amendment."); *Miller v. State*, 379 So. 3d 1109, 1127 (Fla.

2024), *cert. denied Miller v. Florida*, 145 S. Ct. 241 (2024) ("Miller fails to explain how eliminating a confusing and unwarranted standard of review creates a constitutional problem. We deny this claim."); *Loyd v. State*, 379 So. 3d 1080, 1097–98 (Fla. 2023), *reh'g denied, No. SC2022-0378, 2024 WL 472283* (Fla. Feb. 7, 2024), and *cert. denied Loyd v. Florida*, 2024 WL 4426763 (2024) (Holding that the elimination of proportionality review and the circumstantial evidence rule combined with "the sheer number of aggravating factors in the statute" did not violate the Eighth Amendment because it fails to sufficiently narrow the class of murderers eligible for the death penalty); *Gordon v. State*, 350 So. 3d 25, 36 (Fla. 2022) (reaffirming *Lawrence*).[8]

Appellant argues that under Florida's capital sentencing statute, as interpreted by this Court, there is "virtually no narrowing of death eligibility before the conclusion of a capital trial, as aggravating circumstances do not need to be alleged in an indictment." (IB:71). However, this argument ignores the explanation provided by the Court in *Proffit* about its opinion in *Furman*. In *Proffit*,

[8] Each of these case opinions was issued after the Court eliminated the requirement of juror unanimity in sentencing.

the Supreme Court focused on its concerns in *Furman* about *unguided* sentencing determinations. That is, *how* the narrowing occurs; not when it begins. The Court held Florida's death penalty scheme was constitutional because it satisfied *Furman's* requirements that the "sentencing authority's discretion is *guided and channeled by requiring examination of specific factors that argue in favor of or against imposition of the death penalty*, thus eliminating total arbitrariness and capriciousness in its imposition." *Proffitt v. Florida*, 428 U.S. 242, 258 (1976). In addition, as the Supreme Court noted in *Profitt* that after a defendant is convicted there is:

> 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.

Id. at 259–60.

Appellant's argument also ignores this critical role of judges in Florida's capital sentencing scheme. Many jurisdictions, in the wake of *Furman v. Georgia*, wanted judges, with their greater experience in criminal matters, to be the sentencer in capital cases in a belief that

a judge's involvement increased both reliability, accuracy and uniformity. Florida was among these states, adopting judicial involvement in capital sentencing to decrease arbitrariness in capital sentencing. Florida's death penalty statute provides for significant judicial involvement in capital sentencing, instead of relying only on the jury. The current Florida death penalty statute may only require eight jurors to recommend a death sentence, but the law also requires that the trial judge independently agree with the jury's recommendation of death for a death sentence to be imposed. § 921.141(3)(a)2.; Fla. Stat. (2024); § 921.141(4), Fla. Stat. (2024) (requiring a written order including the reasons for rejecting the jury's recommendation within 30 days).

The United States Supreme Court stated in *Proffitt v. Florida*, 428 U.S. 242, 252 (1976) that with regard to Florida's capital regime, "judicial sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences similar to those imposed in analogous cases". *See also Pulley v. Harris*, 465 U.S. 37, 46 (1984) (observing "vesting ultimate sentencing authority

in the judge rather than the jury," in capital cases, "was expected to yield more consistent sentencing at the trial court level"). This use of judges to impose the death penalty and automatically review all death penalty sentences imposed, provides additional assurances that the jury made its sentencing determination based on the guidelines implemented in the form of aggravating factors and mitigating circumstances that avoid arbitrary and capricious outcomes.

Because Appellant has failed to provide the Court with any new and compelling reason for it to revisit its prior decisions on this matter, the Court should deny this claim.

ISSUE 4

APPELLANT CANNOT DEMONSTRATE THAT THE HEINOUS, ATROCIOUS, OR CRUEL ("HAC") AGGRAVATOR, OR ITS CORRESPONDING JURY INSTRUCTION, IS UNCONSTITUTIONAL EITHER ON ITS FACE OR AS APPLIED TO HIM

In this claim, Appellant argues that the HAC aggravator is unconstitutional both on its face and as applied to him. His entire argument consists of quoting verbatim the first six paragraphs of his seven-paragraph motion filed in the trial court, and which argued that "§ 921.141(6)(h), Fla. Stat. (2017) and its accompanying jury instruction are unconstitutionally vague and overbroad, are not capable of a constitutionally narrowing instruction, and can only be

applied in an arbitrary and inconsistent manner." (IB:76). The motion concludes that the "vague statutory language of this aggravating factor and its corresponding jury instruction allows imposition of the death penalty for improper and unconstitutional reasons such as race, gender, ethnicity, religion and social status." (IB:77). Appellant, however, waived this argument by failing to properly brief this claim. But even if he had not waived it, the claim would fail because he has failed to demonstrate that the HAC aggravator and jury instruction are unconstitutional, either on their face or as applied to Appellant.

A. Appellant merely refers to his argument below without any of the "further elucidation" that is required to properly argue his claim.

Appellant's entire argument on this claim consists of a sentence stating he filed a motion in trial court contending that the HAC aggravator is unconstitutional, a copy of all but one of the paragraphs of the motion he filed in trial court asserting that the HAC aggravating factor is unconstitutional, and the following two sentences, "In the instant case, the jury found that the HAC aggravating factor applied to both murders. For the reasons articulated by defense counsel below, Appellant Wilson asserts that section 921.141(6)(h) is unconstitutional."

This Court has long held that simply referring to arguments presented in a motion filed in a lower court, "without further elucidation," waives a claim. *Duest v. Dugger*, 555 So. 2d 849 (Fla. 1990). As the Court explained in *Duest*:

> Duest also seeks to raise eleven other claims by simply referring to arguments presented in his motion for postconviction relief. The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived.

Id. at 851–52; *see also Coolen v. State,* 696 So. 2d 738, 742, n. 2 (Fla. 1997) ("In a footnote in his brief, Coolen notes two other statements that he contends should have been deleted from the tape. However, Coolen's failure to fully brief and argue these points constitutes a waiver of these claims.") *citing Duest v. Dugger*, 555 So. 2d 849, 852 (Fla.1990); *Barwick v. State*, 88 So. 3d 85, 101 (Fla. 2011) ("Barwick does not set forth any argument in claiming that trial counsel was ineffective for failing to challenge the penalty phase jury instructions as shifting the burden of proof to the defendant. Rather, as in other claims, he relies upon the argument made in his petition for writ of habeas corpus. This claim, therefore, is waived."). *See Kilgore v. State*, 55 So. 3d 487, 511 (Fla. 2010) ("In his initial brief to this Court for

this claim, Kilgore simply asserts conclusory statements that reiterate arguments made before the postconviction court. Accordingly, these issues are waived for appellate review."); *Floyd v. State*, 18 So. 3d 432, 459 (Fla. 2009) ("general references to other pleadings are not sufficient to preserve a challenge in a collateral proceeding."); *Rose v. State*, 985 So. 2d 500, 509 (Fla. 2008) ("Rose has merely stated a conclusion and referred to arguments made below. Thus, we consider the issue waived for appellate review.").

Here, Appellant's "argument" regarding this claim merely quotes the motion filed in the trial court (all but one paragraph of it), followed by an acknowledgment that the jury found that HAC existed, and a conclusory statement that the aggravator "is unconstitutional." This is the totality of Appellant's entire argument. It is nothing more than a conclusion preceded by "refer[ences] to arguments made below." *See Rose v. State* at 509. Appellant's brief on this claim contains no new argument regarding the constitutionality of HAC but instead relies solely on his arguments to the court below that are quoted in his brief. Indeed, not only does his briefing of this claim not provide "further elucidation" of his argument, but it also appears to contain less argument than offered below. For instance, it fails to

include one of the paragraphs from his motion. It also excludes any oral argument advanced during the motion hearing (no transcript citation is provided). As a result, this argument is waived.

B. The HAC aggravator and its corresponding jury instruction are constitutional both on their faces and as applied to Appellant.

The Court has stated that when a statute's constitutionality is challenged, the Court provides the legislation "a presumption of constitutionality and . . . construes it to effect a constitutional outcome whenever possible." *Statler v. State*, 349 So. 3d 873, 884 (Fla. 2022) *citing State v. Adkins*, 96 So. 3d 412, 416-17 (quoting *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005)). Concerning facial challenges, the Court explained that "[w]hen we say that a statute is facially unconstitutional, we mean "that no set of circumstances exists under which the statute would be valid." *Ibid.*

The Court has consistently rejected challenges that the HAC aggravator is overbroad, vague, and fails to narrow the class of persons eligible for the death penalty, as meritless. *Dillbeck v. State*, 357 So. 3d 94, 104–05 (Fla. 2023), *cert. denied Dillbeck v. Florida*, 143 S. Ct. 856 (2023) *citing Cruz v. State,* 320 So. 3d 695, 731 (Fla.

2021) (quoting *Gilliam v. State,* 582 So. 2d 610, 612 (Fla. 1991) ("declin[ing] to revisit" precedent "rejecting as meritless the argument that the jury instruction on HAC is unconstitutionally vague")); *Colley v. State*, 310 So. 3d 2, 16 (Fla. 2020) (quoting *Victorino v. State*, 23 So. 3d 87, 104 (Fla. 2009)) ("declin[ing] to revisit" precedent rejecting the argument that "the HAC aggravator [is] unconstitutionally vague and overbroad"); *Card v. State*, 803 So. 2d 613, 628 (Fla. 2001). Appellant provides no new argument to convince the Court otherwise.

In addition, the Supreme Court has previously denied a similar challenge in *Proffitt v. Florida*, 428 U.S. 242, (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). In *Proffit* the Supreme Court upheld the HAC aggravator based on the ground that this Court had restricted the circumstances to which it applied to include only "the conscienceless or pitiless crime which is unnecessarily torturous to the victim." *Id.* at 255. As the Supreme Court determined, "[w]e can not say that the provision, as so construed, provides inadequate guidance to those charged with the duty of recommending or imposing sentences in capital cases." *Id.* at 255–56 (1976)). *See also*, *Lewis v. Jeffers*, 497 U.S. 764, 775 (1990) (providing *Proffit* as an example of a case the Supreme Court found was not

unconstitutionally vague because courts have given it "a narrowing construction").

Recently, this Court reaffirmed its earlier holdings. *See Boatman v. State*, 402 So. 3d 900, 924–25 (Fla. 2024), *reh'g denied*, 401 So. 3d 330 (Fla. 2025) ("this Court has said the aggravator applies to murders that are both "conscienceless or pitiless and unnecessarily torturous to the victim."). In fact, the Court further explained that to support a jury's finding of HAC, "the evidence must show that the victim was conscious and aware of impending death." *Ibid.* Thus, Appellant's argument fails because the narrow construction provided by this Court avoids arbitrary or capricious results.

Nor is Appellant correct that the jury instruction on HAC is legally deficient. In *Hall v. State*, 614 So. 2d 473, 478 (Fla.1993), this Court upheld the HAC instruction specifically defining the terms "heinous," "atrocious" and "cruel," unlike the instruction invalidated in *Espinosa v. Florida*, 505 U.S. 1079, 1081–82 (1992). The Court explained that the definition in the instruction provided sufficient guidance so that both the jury instruction and the aggravator were shielded from a challenge for vagueness. *See Hall* at 478. Since *Hall*, the Court has consistently upheld the constitutionality of this

aggravator instruction. See, e.g., *Davis v. State*, 148 So. 3d 1261, 1280, (Fla. 2014); *Francis v. State*, 808 So. 2d 110, 134 (Fla. 2001); *Nelson v. State*, 748 So. 2d 237, 245 (Fla.1999); *Walker v. State*, 707 So. 2d 300, 316 (Fla.1997); *Hartley v. State*, 686 So. 2d 1316, 1323 (Fla. 1996); *Wyatt v. State*, 641 So. 2d 1336, 1341 (Fla. 1994) ("Wyatt further argues that the heinous, atrocious, or cruel and the cold, calculated, and premeditated aggravating factors are unconstitutional. This claim has no merit.").

Additionally, the HAC aggravator is constitutionally applied to Appellant individually, as well. Appellant was convicted of two murders that both involved him strangling his victims. Under this Court's express interpretation of the law, death by strangulation constitutes prima facie evidence of HAC. *See Boatman v. State*, 402 So. 3d 900, 924–25 (Fla. 2024), *reh'g denied*, 401 So. 3d 330 (Fla. 2025).

The sentencing order describes how victim Kristine Melton was severely beaten and battered *prior* to being suffocated to death. She was struck on both sides of her head, causing brain swelling that could only have occurred if she were still alive at the time she was beaten. She also had defensive wounds and blunt force injuries to

her face and parts of her body that were unrelated to being smothered, indicating that she struggled before she was murdered. The sentencing judge concluded that "[t]he totality of the evidence indicates that she was conscious and aware at the time she was both battered and strangled." (DAR:1665-66).

The sentencing order also describes that victim Diane Ruiz was conscious and aware she was being suffocated at the time of her death. Appellant *attempted* to suffocate her several times, but she kept regaining consciousness. Each time, she regained consciousness for what would have been for at least 15 seconds. Ruiz also attempted to fight off Appellant, as evidenced by the defensive injuries to her hands, arms, and her broken nose. And as to what the trial judge described as "most horrifyingly," when she actively attempted to flee from the attacks, Appellant ran her over with his first murder victim's car, breaking all but one of her ribs and inflicting life-ending injuries to her neck and cervical spine." The court concluded that the Appellant's killing of Ruiz showed "extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." (DAR:1666-67).

Undoubtably the crimes were committed by Appellant in a conscienceless or pitiless manner—when he later recounted his savage acts to his father, he was excited about what he had done and expressed no remorse. Even when victims die quickly, if they are conscious of their attacker and aware of their impending death, the HAC aggravator applies. *Jones v. State,* 695 So. 2d 1229 (Fla. 1997).

C. Harmless error.

Even if the Court concludes that the trial court's finding of HAC was made in error, such an error would be harmless. When the Court strikes an aggravating factor on appeal, "the harmless error test is applied to determine whether there is no reasonable possibility that the error affected the sentence." *Jennings v. State*, 782 So. 2d 853, 863 n. 9 (Fla.2001); *see also Douglas v. State*, 878 So. 2d 1246, 1268 (Fla.2004) ("Striking [an] aggravator necessitates a harmless error analysis.").

The trial court found four aggravating factors in the death of Ruiz, including HAC: (1) the capital felony was committed by a person previously convicted of a felony, was under sentence of community control or on felony probation at the time of the offense; (2) the defendant was previously or contemporaneously convicted of another

capital felony or of a felony involving the use or threat of violence to the person. (3) HAC; and (4) CCP. The trial court found three aggravating factors in the death of Melton—the same as Ruiz minus the CCP aggravator. The trial court gave "great weight" to each of these factors, and the CCP aggravator and the prior violent felony aggravator are two of the three of the weightiest aggravating circumstances." *Damas v. State*, 260 So. 3d 200, 216 (Fla. 2018). On the other hand, the court first found that no statutory mitigating circumstances were established, and that out of thirteen non-statutory mitigating factors argued by Appellant at sentencing, the Court found that ten were established, but six were given "little" weight and the other four, "some" weight. (DAR:1670-76).

Given that great weight was given to two of the weightiest aggravators (CCP and prior violent felony aggravators) in Ruiz's murder and the mitigation is minor (6 out of 10 given "little" weight; the others given "some" weight) there is no reasonable possibility that even if this Court finds the HAC aggravator should not have been counted, that Appellant would have received a life sentence in the charge of her murder. Any error present was harmless beyond a reasonable doubt considering the substantial aggravation and

negligible mitigation. Similarly, although the jury did not find the CCP aggravator applicable to Melton's death, due to the finding of prior violent felony and the felony probation aggravators, along with the absence of any serious mitigation, there exists no reasonable possibility of Appellant having received a life sentence in Melton's murder. *See, e.g., Woodbury v. State*, 320 So. 3d 631, 654 n. 11 (Fla. 2021) *cert. denied Woodbury v. Florida*, 142 S. Ct. 1135 (2022) ("[G]iven the other weighty aggravators found in this case, even if the CCP aggravator were invalid, there is no reasonable possibility that an absence of this one aggravator would have resulted in a different sentence."); *Hall v. State*, 246 So. 3d 210, 215 (Fla. 2018) *cert denied Hall v. Florida*, 571 U.S. 878 (2013) (an error in finding the existence of CCP was harmless because "Hall has significant and weighty aggravation beyond the invalidated CCP aggravator."); *Cozzie v. State*, 225 So. 3d 717, 729 (Fla. 2017), *cert. denied, Guardado v. Jones*, 584 U.S. 922 (2018) ("any possible error was harmless because there was not a reasonable possibility that [Cozzie] would have received a life sentence without the trial court finding of the [avoid arrest] aggravator.").

The Court should deny this claim.

ISSUE V

APPELLANT CANNOT DEMONSTRATE THAT THE COLD, CALCULATED, AND PREMEDIATATED ("CCP") AGGRAVATOR, OR ITS CORRESPONDING JURY INSTRUCTION, IS UNCONSTITUTIONAL EITHER ON ITS FACE OR AS APPLIED TO HIM

Appellant also argues that the CCP aggravator and its corresponding jury instructions are unconstitutional both on their face and as applied to him. His entire argument consists of quoting verbatim the four paragraphs of his memorandum of law submitted to the trial court with his motion, and which argued generally that: (1) "§ 921.141(6)(i), Fla. Stat. (2017) and its accompanying jury instruction violate the "constitutional principles of substantive due process and equal protection [that] require that a provision of law be rationally related to its purpose.", (2) is applied in such an inconsistent manner that it violates the Constitution, (3) that the "without any pretense of moral or legal justification" language is vague and incoherent, unrelated to the first part of the aggravating circumstance[9], incapable of a narrowing construction, and has not been consistently or narrowly construed, and (4) the standard

[9] Referring to the phrase "[t]he capital felony was a homicide and was committed in a cold, calculated and premeditated manner . . ."

instruction invites arbitrary and uneven application because it fails to provide the jury the guidance it requires. (IB:78-90). Appellant, however, waived this argument by failing to properly brief the claim. But even if he had not waived it, the claim would fail because he has failed to demonstrate that the CCP aggravator and its jury instruction are unconstitutional.

A. Appellant merely refers to his argument below without any of the "further elucidation" that is required to properly argue his claim.

After quoting, nearly verbatim, the motion he filed in the trial court, Appellant fails to provide a proper argument regarding this claim. In fact, the entire argument he makes consists of the following two sentences, "In the instant case, the jury found that the CCP aggravating factor applied to the murder of Diane Ruiz. For the reasons articulated by defense counsel below, Appellant Wilson asserts that section 921.141(6)(i) is unconstitutional." (IB at 90). This comment is the entirety of new "argument" Appellant makes in this claim.

The entire argument Appellant advances in favor of this claim is nothing more than a conclusion preceded by quotation of his written motion filed below. He does not provide to this Court the

benefit of any verbal argument made to the trial court, so that this Court may be provided even *less* "elucidation" of his argument than the trial court. *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without *further elucidation* does not suffice to preserve issues, and these claims are deemed to have been waived.") (emphasis added); *see also Barwick v. State*, 88 So. 3d 85, 101 (Fla. 2011) ("Barwick does not set forth any argument in claiming that trial counsel was ineffective for failing to challenge the penalty phase jury instructions as shifting the burden of proof to the defendant. Rather, as in other claims, he relies upon the argument made in his petition for a writ of habeas corpus. This claim, therefore, is waived."); *Kilgore v. State*, 55 So. 3d 487, 511 (Fla. 2010) ("In his initial brief to this Court for this claim, Kilgore simply asserts conclusory statements that reiterate arguments made before the [lower] court. Accordingly, these issues are waived for appellate review."); *Floyd v. State*, 18 So. 3d 432, 459 (Fla. 2009) ("general references to other pleadings are not sufficient to preserve a challenge in a collateral proceeding."); *Rose v. State*, 985 So. 2d 500, 509 (Fla. 2008) ("Rose has merely stated a conclusion

and referred to arguments made below. Thus, we consider the issue waived for appellate review."). Appellant's failure to properly brief this argument waives it.

B. Both the CCP aggravator and its corresponding jury instruction are constitutional on their faces and as applied to Appellant.

Even if Appellant had not waived this argument, he would not have prevailed. The Court has stated that when a statute's constitutionality is challenged, the Court provides the legislation "a presumption of constitutionality and . . . construes it to effect a constitutional outcome whenever possible." *Statler v. State*, 349 So. 3d 873, 884 (Fla. 2022) *citing State v. Adkins*, 96 So. 3d 412, 416-17 (quoting *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005)). Concerning facial challenges, the Court has explained that "[w]hen we say that a statute is facially unconstitutional, we mean "that no set of circumstances exists under which the statute would be valid." *Ibid.*

Appellant cites cases from primarily the 1980s, as well as several from 1990 to support his argument. This results in him failing to acknowledge the corrective measures approved by the Court to alleviate its earlier concerns. Since then, the Court has consistently

rejected as meritless constitutional challenges to the CCP aggravator, and specifically, that it is vague. *See Victorino v. State,* 23 So. 3d 87, 105 (Fla. 2009) ("[W]e reject Appellant's constitutional challenge as we have previously rejected this claim. *See Jackson v. State, 648 So. 2d 85, 90 (Fla.1994*) (holding the *previous* jury instruction on CCP aggravator unconstitutionally vague, but *upholding constitutionality of the statutory aggravator* against vagueness challenge); *see also Phillips v. State,* 705 So. 2d 1320, 1323 (Fla.1997)[10]; *Fotopoulos v. State,* 608 So. 2d 784, 794 (Fla.1992)[11]") (emphasis added); *Wyatt v. State*, 641 So. 2d 1336, 1341 (Fla. 1994) ("Wyatt further argues that . . . the cold, calculated, and premeditated aggravating factors are unconstitutional. This claim has no merit.").

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[10] ("In *Jackson*, we ruled that the jury should receive more expansive instructions defining the terms "cold," "calculated," and "premeditated," but we rejected a challenge to the statutory CCP aggravator itself. In this case, even though Phillips' resentencing occurred prior to this Court's decision in *Jackson*, the jury was given a proper narrowing instruction consistent with that decision.").

[11] ("We also reject Fotopoulos' claim that the cold, calculated, and premeditated aggravating factor is unconstitutionally vague and overbroad, as procedurally barred because it was not presented to the trial court below. Moreover, we repeatedly have rejected the claim").

The Court has enunciated a four-part test for the application of the CCP aggravator: (1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification. *Victorino v. State*, 23 So. 3d 87, 105–06 (Fla. 2009) *citing Lynch v. State*, 841 So. 2d 362, 371 (Fla.2003). Additionally, the Court has clarified that "[a] pretense of legal or moral justification is 'any colorable claim based at least partly on uncontroverted and believable factual evidence or testimony that, but for its incompleteness, would constitute an excuse, justification, or defense as to the homicide.'" *Joseph v. State*, 336 So. 3d 218, 240 (Fla. 2022) *citing Campbell v. State*, 159 So. 3d 814, 831 (Fla. 2015) (quoting *Nelson v. State*, 748 So. 2d 237, 245 (Fla. 1999)). Finally, the Court has explained that when the defendant had "ample opportunity" to leave but instead chooses to kill the victim, there is sufficient evidence of CCP. *Turner v. State*, 37 So. 3d 212, 226 (Fla. 2010) ("We have held that CCP exists where, as

here, a defendant has ample opportunity to leave, but instead decides to murder the victim."). *See, e.g.*, *Wright v. State*, 19 So. 3d 277 (Fla.2009); *Ibar v. State*, 938 So. 2d 451, 474 (Fla.2006); *Nelson v. State*, 850 So. 2d 514, 527 (Fla.2003); *Hertz v. State*, 803 So. 2d 629, 651 (Fla.2001).

The jury correctly found that this aggravating factor applies to Appellant in the murder of Diane Ruiz. According to the record Appellant returned to Cape Coral after killing Kristine Melton and attempting to murder Melissa Montanez, he drove around Cape Coral and decided that because he had already murdered one woman, he may as well murder another. He lured Diane Ruiz into his car by pretending to need directions, using the charm and his good looks he bragged to officers he used so well to manipulate women, knowing even then that he was not going to let her go and was going to kill her. He then attempted to strangle her to death in the car. When she regained consciousness several times, he repeatedly strangled her again. He then drove to a lot to dispose of her body only to discover that she was still alive. Finally, he killed her by pushing her out of the car and driving over her body at least one time, but according to him, multiple times. (DAR:1667-68).

Nor was there any evidence suggesting that Ruiz's murder was committed with any pretense of moral or legal justification. Rather, the trial court correctly concluded that the murder was committed "on a whim." *Id.* Appellant killed Diane Ruiz "coldly and methodically." *Ibid.* After first choking Melton, he then determined that he desired to engage in the same behavior against Ruiz. He had ample time to consider the second murder and consciously decided to continue, even after Ruiz "came back to life" several times.

C. Harmless error.

Even if the Court concludes that the trial court's finding of CCP was made in error, such an error would be harmless. When the Court strikes an aggravating factor on appeal, "the harmless error test is applied to determine whether there is no reasonable possibility that the error affected the sentence." *Jennings v. State*, 782 So. 2d 853, 863 n. 9 (Fla.2001); *see also Douglas v. State*, 878 So. 2d 1246, 1268 (Fla.2004) ("Striking [an] aggravator necessitates a harmless error analysis.").

The trial court found four aggravating factors in the death of Ruiz, including CCP: (1) the capital felony was committed by a person previously convicted of a felony and was under sentence of

community control or on felony probation at the time of the offense; (2) the defendant was previously or contemporaneously convicted of another capital felony or of a felony involving the use or threat of violence to the person. (3) HAC; and (4) CCP. The trial court gave "great weight" to each of these factors, and the HAC aggravator and the prior violent felony aggravator are two of the three of the weightiest aggravating circumstances." *Damas v. State*, 260 So. 3d 200, 216 (Fla. 2018). On the other hand, the court found that no statutory mitigating circumstances were established. Also, out of thirteen non-statutory mitigating factors argued by Appellant at sentencing, the Court found that ten were established, but six were given little weight and the others some weight. (DAR:1670-76). Given that great weight was given to two of the weightiest aggravators (HAC and the prior violent felony aggravators) and the mitigation is minor (6 out of 10 given "little" weight; the others given "some" weight) there is no reasonable possibility that even if this Court finds the CCP aggravator should not have been counted, that Appellant would have received a life sentence. Any error present was harmless beyond a reasonable doubt considering the substantial aggravation and negligible mitigation. *See, e.g., Woodbury v. State,* 320 So. 3d 631,

654 n.11 (Fla. 2021) *cert. denied Woodbury v. Florida*, 142 S. Ct. 1135 (2022) ("[G]iven the other weighty aggravators found in this case, even if the CCP aggravator were invalid, there is no reasonable possibility that an absence of this one aggravator would have resulted in a different sentence."); *Hall v. State,* 246 So. 3d 210, 215 (Fla. 2018) *cert denied Hall v. Florida*, 571 U.S. 878 (2013) (an error in finding the existence of CCP was harmless because "Hall has significant and weighty aggravation beyond the invalidated CCP aggravator."); *Cozzie v. State*, 225 So. 3d 717, 729 (Fla. 2017), *cert. denied, Guardado v. Jones*, 584 U.S. 922 (2018) ("any possible error was harmless because there was not a reasonable possibility that [Cozzie] would have received a life sentence without the trial court finding of the [avoid arrest] aggravator.").

The Court should deny this claim.

ISSUE VI

APPELLANT FAILED TO DEMONSTRATE THAT ADMITTING VICTIM IMPACT TESTIMONY RENDERED HIS DEATH SENTENCE UNCONSTITUTIONAL

In his final claim, Appellant contends that § 921.141(8) (2017), Florida Statutes, is unconstitutional on its face, and that any evidence admitted pursuant to this law renders his death sentence

unconstitutional under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. He acknowledges the Court's decisions in *Windom v. State*, 656 So. 2d 432 (Fla. 1995) and *Maxwell v. State*, 657 So. 2d 1157 (Fla. 1995), which found the use of victim impact evidence to be constitutional, but he argues that those cases were "wrongly decided" and that "evolving standards of decency warrant the re-visitation and reversal of those cases." (IB:91). Appellant, however, is mistaken in concluding that this evidence is inadmissible and waived this argument by failing to properly brief the issue.

A. Appellant waived this claim by merely referring to his argument below without further elucidation.

Appellant fails to provide a proper argument regarding this claim. His entire argument consists of quoting his motion filed in the trial court and adding the following two sentences, "[i]n the instant case, the State presented impact evidence during the penalty phase. For the reasons articulated by defense counsel below, Appellant Wilson asserts that section 921.141(8) is unconstitutional. (IB:91-93).

This comment is the entirety of new "argument" Appellant makes in his claim. It is nothing more than a conclusion preceded by quotation of his written motion filed below. He does not provide to this Court the benefit of any verbal argument made to the trial court, so that this Court may actually received *less* "elucidation" of this argument than the trial court. *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below *without further elucidation* does not suffice to preserve issues, and these claims are deemed to have been waived.") (emphasis added); see also *Kilgore v. State*, 55 So. 3d 487, 511 (Fla. 2010) ("In his initial brief to this Court for this claim, Kilgore simply asserts conclusory statements that reiterate arguments made before the [lower] court. Accordingly, these issues are waived for appellate review."); *Rose v. State*, 985 So. 2d 500, 509 (Fla. 2008) ("Rose has merely stated a conclusion and referred to arguments made below. Thus, we consider the issue waived for appellate review.").

Appellant's brief on this claim contains no new argument. It instead relies solely on his written arguments to the court below and merely quotes them in his brief. As a result, this argument is waived.

B. Florida's victim impact scheme is constitutional.

Even if Appellant had not waived this issue, he could not prevail in this argument. The trial court correctly denied the motion to declare § 921.141(8) unconstitutional.

The United States Supreme Court in *Payne v. Tennessee,* 501 U.S. 808 (1991), explained the basis for its decision permitting victim impact testimony. There, the Supreme Court stated:

> [T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too *the victim is an individual whose death represents a unique loss to society and in particular to his family.*

Id. at 825. (emphasis added). Consistent with the Supreme Court's decision in *Payne*, Florida Statute 921.141 states in pertinent part:

> Once the prosecution has provided evidence of the existence of one or more aggravating factors as described in subsection (6), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's

> death. *Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence*.

§ 921.141(8), Fla. Stat. (emphasis added). Clearly, the express language of the statute does not permit comment beyond the Supreme Court's language explaining its holding in *Payne*. Both focus on the individuality of the victim and the effect of the subsequent loss of that person due to his or her death. In fact, Florida's statute expressly limits "characterizations and opinions about the crime, the defendant, and the appropriate sentence" and expressly prohibits considering any of the victim impact evidence as aggravation. § 921.141(8), Fla. Stat.

In *Windom v. State*, 656 So. 2d 432, 438 (Fla. 1992) this Court approved the use of victim impact evidence "as long as it is limited to that which is relevant as specified in the statute." However, Appellant contends that the result of this decision allows capital jurors to consider impermissible sentencing factors. This is the identical issue raised and rejected in *Windom*. ("Defendant asserts, first, that this evidence was in essence nonstatutory aggravation."). *Windom*, 656 So. 2d at 438. Appellant, however, contends that this decision was wrongly decided and argues that victim impact testimony could lead

to sentencing based on non-aggravating factors and cites the need for a heightened standard of due process in capital cases. Yet, his argument is speculative, at best, and Appellant fails to explain how a jury would sentence based on non-aggravating factors when the jury instructions expressly tell the jury not to consider victim impact evidence for sentencing purposes.

In essence, Appellant seeks the per se bar that the Supreme Court expressly rejected in *Payne*. He ignores the explanation provided by the Supreme Court for allowing such evidence—that the victim is an individual whose death represents a unique loss to society and in particular to his family—and that it is appropriate for jurors to be reminded of this.

Appellant provides no compelling reason for this Court to reverse its ruling in *Windom* and his contention should be rejected.

B. Because Appellant failed to contemporaneously object to any individual statements, he is barred from claiming that a particular statement exceeded the limitations of § 921.141(8).

Appellant does not allege that he contemporaneously objected to any specific victim impact testimony as exceeding the limitation provided for in § 921.141(8). As a result of not properly preserving

any objection to a particular statement, he is barred from claiming that the specific contents of the statement exceeded what is legally permitted by § 921.141(8). *See Windom* at 438 ("Defendant did not object to this testimony specifically, and thus his objection on appeal is procedurally barred."). Consequently, the specific contents of the victim impact testimony can only be reviewed for fundamental error. *See Sexton v. State*, 775 So. 2d 923, 932 (Fla. 2000) ("The failure to contemporaneously object to a comment on the basis that it constitutes *improper* victim testimony renders the claim procedurally barred absent fundamental error.") (emphasis added).

And even if Appellant's general objection prior to the victim impact testimony is found to reach any specific testimony, error in admitting it is harmless based on the record in this case. *See Windom* at 439 ("Thus, with the aggravating circumstances which were before the jury . . . the [victim impact] testimony was harmless beyond a reasonable doubt."). "A trial court's decision to admit victim impact testimony is reviewed for an abuse of discretion." *Kalisz v. State*, 124 So. 3d 185, 211 (Fla. 2013)). Under this deferential standard, there is no abuse of discretion unless the trial court makes a ruling with which no reasonable judge would agree. *Wells v. State*, 364 So. 3d

1005, 1013 (Fla. 2023). The trial court's decision to admit victim impact evidence is hardly a decision with which no reasonable judge would agree.

Also, this was a highly aggravated case in which the jury concluded three of the weightiest aggravators applied. *See Damas* at 216 ("Moreover, qualitatively, HAC, CCP, and prior violent felony are three of the weightiest aggravating circumstances."). The trial court gave each of these aggravators great weight. At the same time, the court assessed the Appellant's mitigation as particularly weak. Even if Appellant preserved any objection to a particular statement made during the testimony, any error is harmless. *Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998) ("In addition, even if the objection had been properly preserved, it would be harmless error because the Capital Sentencing Order [] correctly determined that the aggravation in this case was strong and the mitigation was relatively weak."). As a result, there is no fundamental error, and there cannot be any due process violation. *See Braddy v. State*, 111 So. 3d 810, 858 (Fla. 2012) ("The analysis to determine if admission of victim impact evidence has violated a defendant's due process rights in the penalty phase of a

capital trial parallels the analysis for fundamental error." (quoting *Wheeler v. State*, 4 So. 3d 599, 607 (Fla. 2009)).

The Court should deny this claim.

STATEMENT ON SUFFICIENCY OF EVIDENCE

This Court has a mandatory obligation to independently review the evidence in every death sentence case to determine whether competent, substantial evidence supports the first-degree murder convictions. *Colley v. State*, 310 So. 3d 2, 19 (Fla. 2020) (competent, substantial evidence supported conviction of both premeditated and felony murder); *Johnson v. State*, 238 So. 3d 726. 742 (Fla. 2018); *Jordan v. State*, 176 So. 3d 920, 937 (Fla. 2015). Determining legal sufficiency of the evidence to support a criminal conviction requires this Court to view the evidence in the light most favorable to the State. It asks whether "a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Bush v. State*, 295 So. 3d 179, 200 (Fla. 2020).

In this case, resolving in favor of the verdict all reasonable inferences one can draw from the evidence, there is substantial, competent evidence from which a jury could properly conclude that Appellant committed the first-degree murders of both Kristine Melton

and Diane Ruiz. Appellant confessed to no less than three individuals that he murdered multiple people, including, specifically, admitting to law enforcement that he murdered both Melton and Ruiz. There exists strong circumstantial evidence corroborating his confessions, and DNA evidence to support this corroboration.

Melton's close friend, Johnson, testified that the night before the murders, she and Melton left around 10:00 p.m. to go to The Buddha, a bar in Fort Myers. There they met Appellant, who introduced himself as JR, and another man, Jayson Shepard. When the bar closed, Shepard, Melton, Johnson, and Appellant decided to go to Shepard's house. (DAR:1465-66). When Appellant, Melton, and Johnson left Shepard's home in the early morning hours, they called an Uber because Appellant was unable to drive a stick shift, and the car they took there, Montanez's car, is a stick shift (Shepard drove to his house). Melton, Johnson, and Appellant then headed to Melton's residence in Cape Coral. Later in the morning, Johnson left because she needed to drop off her child at school and then go to work. When Johnson left, Melton was left alone at her home with Appellant. (1466-1467). It was the last time she was seen alive.

Later that day, when Appellant arrived at Montanez's business, Mila's Spa, he was driving Melton's black Nissan Versa. After he beat Montanez and attempted to kill her, Appellant got back in the black Nissan Versa and fled. (DAR:1468-1469).

Appellant then headed back to Cape Coral. He drove into a neighborhood near Hector Cafferata Elementary School. There he encountered Ruiz, who worked as a bartender at the Moose Lodge. Because she did not live very far away from work, she always walked to work. According to law enforcement, Appellant informed them that Ruiz willingly got into Melton's Nissan Versa that he was driving.

When Ruiz's body was later recovered, she was found with a broken nose, a broken hyoid bone and thyroid cartilage. Also, she suffered multiple rib fractures, front and back, apparently from Appellant repeatedly driving over her. He confessed to law enforcement that he initially believed that he had choked her to death, but that she survived and regained consciousness, so he threw her out of the car and repeatedly drove back and forth over her and tried to make her "look like spaghetti." (DAR: 1462-63). According to the medical examiner, Ruiz had been strangled. She died from blunt force trauma resulting from the multiple rib

fractures. The medical examiner testified that multiple rib fractures are likely to occur when one drives over a body repeatedly.

There was a neighbor who lived behind where Ruiz's body was dumped. The morning of her murder, he was having breakfast with his wife and saw a car in a nearby lot repeatedly driving backwards and forwards before leaving that location. He did not think anything of it at the time, but when he saw the crime scene tape on the lot next door, he realized that it was the one and the same car. When the vehicle was later recovered, blood stains were found in the vehicle, and DNA testing of the blood determined it to be Ruiz's.

Jacob Lukitsch, from Mateo Graphics, testified that Appellant showed up at Lukitsch's office with no shoes, no shirt, blood on him, and frantically seeking Lukitsch's help getting out of town. Appellant informed him that Appellant killed "some people." (DAR:1463-64). Lukitsch secretly called the Cape Coral Police Department. They arrived at Mateo Graphics and searched the building and the exterior area around it, but Appellant was nowhere to be found. During their search, they came across Melton's Nissan Versa which Appellant drove there. Officer Anzalone testified that they looked inside and saw bloodstains. They also discovered two phones in that car, one which

they later discover belonged to Melton and one which they later discovered belonged to Ruiz. Phone records show that both Ruiz's number and Melton's number show up on Montanez's phone and its records. Appellant called Montanez several times the day of the murders even though he left his cellphone at Jayson Shepard's home the night before.

The police did a record check on the car's owner, and they discovered that the car belonged to Kristine Melton. At the time, they were unaware of her death. Later, when they entered her home, they discover her dead body. She was wrapped in sheets. Her face was black and blue, her fingernails were broken, and there were marks around her neck. The medical examiner testified that she was strangled to death. Also, her black Nissan Versa, an automatic, was gone. The DNA on the shirts, leggings, the curtain rod, and the ties used to bind up Melton, tested positive for Appellant's DNA.

Appellant's biological father, Steven Testasecca, testified that Appellant called him stating "I need to get out of town. I need your help. Send me an Uber." But when he started describing that he committed murder, he described it in such a way that his father felt Appellant was bragging about committing the murders, as if he

wanted his dad to feel the “excitement” he did. (DAT:1474). Eventually, his father obtained the address where Appellant was hiding—telling Appellant that he is going to send him an Uber—provided it to the police, who located him, and arrested him. Later, when Appellant was questioned by law enforcement why he killed Melton, he stated "I just wanted to do it." And when asked about Ruiz, he responded, "F it. Kill her. I got one down." (1474-1475). In his confession, Appellant not only admitted to having committed the killings, but also to the manner in which they were committed, which matches the medical examiner’s testimony regarding their manners of death.

The evidence establishes that competent, substantial proof of Appellant’s guilt exists and is sufficient to demonstrate that a rational jury could have found him guilty of both Melton’s and Ruiz’s murders, as charged.

CONCLUSION

Wherefore, the State respectfully requests that this Court affirm the judgment and sentence in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2025, I filed the foregoing with the Clerk of Court by using the E-Portal Filing System which will send a notice of electronic filing to the following: Michael Ufferman, Esquire, Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, Florida 32308, **ufferman@uffermanlaw.com**.

/s/ Rick A. Buchwalter
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CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND TYPE-STYLE REQUIREMENTS

I HEREBY CERTIFY that this document complies with the typeface requirements of Fla. R. App. P. 9.045(b) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14-point Bookman Old Style and has 22,847 words.

/s/ Rick A. Buchwalter