IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 07-00033-CFFA

STATE OF FLORIDA

VS.

CORNELIUS OZELL BAKER
DEFENDANT.
_____/

MOTION TO REINSTATE DEATH PENALTY

COMES NOW, R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and moves this Court to Reinstate Baker's death sentence. In support of this motion, the State would submit the following:

Facts

1. On January 7, 2007, Cornelius Baker and Patricia Roosa forcibly by gunpoint entered the residence of Elizabeth Uptagrafft in Daytona Beach. During the course of the entry into the residence, Cornelius Baker shot Elizabeth Uptagraff in the side of the head. Cornelius Baker and Patricia Roosa forcibly held Elizabeth Uptagrafft, Charlene Burns, and Joel Uptagrafft in the residence at gunpoint. During the course of the family being held at gunpoint, Cornelius Baker and Patricia Roosa ransacked the Uptagrafft home to try and locate items they wanted to steal. After being unable to find any money and remaining in the residence with the victims for almost two and half to three hours, Corenlius Baker and Patricia Roosa told Elizabeth Uptagrafft that she would need to come with them. They kidnapped Elizabeth and took her car for transportation. Baker and Roosa took Elizabeth to Flagler County to try and withdraw some money out of her account. Eventually they were able to withdraw $500 out of a SunTrust Bank in Flagler County. After that, Baker drove to a rural area outside of Bunnell and told Elizabeth Uptagrafft to exit the vehicle and start walking. Baker began to drive away, but then he stopped the vehicle and ran up to Elizabeth Uptagrafft and shot her two times killing her. Within a few hours, Baker was apprehended and arrested in Flagler County.

2. On January 19, 2007, Baker was indicted for the First Degree Murder, Kidnapping, and the Home Invasion Robbery of Elizabeth Uptagrafft. On August 25, 2008, Baker was convicted of First Degree Murder, Kidnapping, and the Home Invasion Robbery of Elizabeth Uptagrafft. On August 28, 2008, after a penalty phase in the trial, the jury recommended Death by a vote of 9 to 3. On March 4, 2009, the Honorable Kim Hammond sentenced Baker to Death on the First Degree Murder count. Judge Hammond found four aggravating factors. The Felony Murder Aggravator, HAC, CCP, and Pecuniary Gain.
3. Baker's case was affirmed on direct appeal by the Florida Supreme Court on July 7, 2011. Baker v. State, 71 So.3d 802 (Fla. 2011).
4. The Florida Supreme Court described the felony murder aggravating factor (which it affirmed) as follows:

> Moreover, we have previously explained that *Ring* is not implicated when the trial court has found as an aggravating circumstance that the crime was committed in the course of a felony. *See McGirth v. State,* 48 So.3d 777, 795 (Fla.2010) (citing *Robinson v. State,* 865 So.2d 1259 (Fla.2004)). In this case, Baker was convicted of both home invasion robbery and kidnapping by a unanimous jury during the guilt phase of his trial. Accordingly, *Ring* is not implicated. *See Cave v. State,* 899 So.2d 1042, 1052 (Fla.2005) (holding that the defendant was not entitled to relief under *Ring* where the jury unanimously found the defendant guilty of robbery and kidnapping during the guilt phase). Baker v. State, 71 So.3d 802, at 824 (Fla. 2011).

   The United States Supreme Court denied certiorari review on February 27, 2012. Baker v. Florida, 132 S.Ct. 1639 (2012).
5. Baker filed a 3.851 motion which was decided by the Florida Supreme Court on March 23, 2017. Baker v. State, 214 So.3d 530 (Fla. 2017). The Florida Supreme Court denied Baker's substantive allegations against his defense counsel.
6. However, the Florida Supreme Court vacated Baker's death sentence as unconstitutional under Hurst, 202 So.3d 40 (Fla. 2016) and remanded to the trial court for a new penalty phase.

Argument

In *Apprendi v. New Jersey*, 530 U.S. 466, (2000), the United States Supreme Court held that the Sixth Amendment's Due Process Clause, applicable to the states through the Fourteenth Amendment, required a jury to find beyond a reasonable doubt any fact that authorized an increase in the prison sentence permissible in the absence of such a factual finding. Apprendi had pleaded guilty to illegal possession of a firearm, punishable under New Jersey law by a maximum of ten years' imprisonment. In a separate sentencing proceeding, the trial court found by a preponderance of the evidence that Apprendi had also violated a New Jersey hate crime statute. That judicial finding resulted in Apprendi being sentenced to a term of imprisonment two years above the statutory maximum for the possession of firearm offense. The Supreme Court assuaged concerns about *Apprendi's* application to capital sentencing by rejecting the argument that "the principles guiding" its decision "render invalid state capital sentencing schemes requiring judges, after a jury verdict holding a defendant guilty of a capital crime, to find specific aggravating factors before imposing a sentence of death." *Id.* at 496. The Court distinguished capital cases because the offenses of conviction in those cases already subjected the defendant to a sentence of death. The finding of aggravating factors merely guided the judge's choice of life or death. *Id.*

Two years later, however, the Court decided *Ring v. Arizona*, 536 U.S. 584 (2002). In *Ring*, the Court held that the Sixth Amendment required a jury, not a judge, to find the presence of an aggravating circumstance that made a defendant eligible for the death penalty. Between 1973 and 2016, the sentencing phase of a Florida capital case consisted of a trial at which the judge and jury heard evidence relevant to the nature of the crime and the character of the defendant, including statutory aggravating and mitigating circumstances. *See, e.g.* Fla. Stat. § 921.141(1) (2011). After the conclusion of evidence the jury deliberated and rendered an advisory sentence to the court.

See, e.g., Fla. Stat. § 921.141(2). The trial judge was required to give great weight to the jury's recommendation, but had the responsibility of independently weighing the aggravating and mitigating circumstances before imposing the sentence. If the court imposed a sentence of death, it was required to issue written findings explaining that sufficient aggravating circumstances existed to warrant imposition of the death sentence, and that the mitigating circumstances were insufficient to outweigh the aggravating circumstances.

The United States Supreme Court rejected numerous challenges to Florida's capital sentencing scheme between 2002 and 2016. *See, e.g., Evans v. Sec'y,* 699 F.2d 1249 (11th Cir. 2012), cert. denied, *Evans v. Crews,* 569 U.S. 994 (2012). In *Hurst v. Florida*, 136 S.Ct. 616 (2016), the United States Supreme Court held for the first time "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." *Id.* at 624. The Court reiterated its decision in *Ring* that the Sixth Amendment did not allow a sentencing judge, acting alone, to find an aggravating circumstance necessary for the imposition of the death penalty. *Id.*

The Supreme Court left to Florida's high court to decide whether the *Ring* error in Hurst's case was harmless. In *Hurst v. State*, 202 So.3d 40 (Fla. 2016), the Florida Supreme Court answered that question in the negative, and went much further. The court found that:

> [B]efore the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating factors, and unanimously recommend a sentence of death.

Id. at 57. The Court's expansive holding threw capital litigation into chaos throughout the state, and led the Florida legislature to substantially alter Florida's capital sentencing statutes in 2017. Ch. 2017-1, Laws of Florida (2017). *Hurst v. State* was soon followed by *Mosley v. State*, where

the court held that its decision in *Hurst* retroactively applied to death sentences that were final on or after June 24, 2002, the date *Ring* issued.

On January 23 of this year, however, the Florida Supreme Court righted what it admitted was a wrongful interpretation of *Hurst* in *State v. Poole*, *supra*. In *Poole*, the court declared that "*Without legal justification*, this Court used *Hurst v. Florida*—a narrow and predictable ruling that should have had limited practical effect on the administration of the death penalty in our state as an occasion to disregard decades of settled Supreme Court and Florida precedent." *Poole*, 2020 WL 370302 at 14. (Emphasis added). In so ruling, this Court suggested that its prior decision in *Hurst v. State* violated article II, section 3 of the Florida Constitution by usurping law-making authority from the legislative branch. *See Poole*, at 15 ("We simply have restored discretion that *Hurst v. State* wrongly took from the political branches."). Elsewhere in the opinion, this Court suggested that *Hurst v. State* also violated article 1, section 17 by imposing Eighth Amendment protections beyond that required by the U.S. Supreme Court. S*ee Poole*, 2020 WL 370302 at 13 ("Last, lest there be any doubt, we hold that our state constitution's prohibition on cruel and unusual punishment, article I, section 17, does not require a unanimous jury recommendation—or any jury recommendation—before a death sentence can be imposed."). With regard to the additional capital sentencing requirements unconstitutionally imposed by the decision in *Hurst v. State*, the Court clarified that any aggravator is sufficient to impose a sentence of death; therefore, no additional sufficiency determination is required. *See Poole*, 2020 WL 370302 at 11:

> [O]ur Court was wrong in *Hurst v. State* when it held that the existence of an aggravator and the sufficiency of an aggravator are two separate findings, each of which the jury must find unanimously. Under longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances.

With regard to the additional *Hurst v. State* requirement of a unanimous jury recommendation, the Court held:

> [W]e 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 v. Florida*, 468 U.S. 447 (1984). *See Spaziano*, 468 U.S. at 465; *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.

Poole, 2020 WL 370302 at 12.

Poole makes clear that *Hurst* was wrongly decided in all but one aspect – that the jury must unanimously find at least one aggravating circumstance to render the defendant eligible for the death penalty. The Sixth Amendment does not require jury sentencing, or jury findings on the selection of any particular penalty, in a capital case. The United States Supreme Court reiterated this in *McKinney v. Arizona*, 589 U.S.--- (2020). In *McKinney*, decided on February 26, 2020, the Court held that an Arizona death row inmate was not entitled to the empanelment of a jury to decide whether to sentence him to death after a court determined that the trial court did not properly consider relevant mitigating circumstances. Instead, the Arizona Supreme Court properly weighed the aggravating and mitigating circumstances in deciding to re-impose a death sentence. The Court held that *Hurst v. Florida* did not require the empanelment of a new jury because "just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range." *Slip Op.* at 4-5. The Court rejected the argument that McKinney was entitled to a new jury decision because he had been granted relief on direct review in a post-conviction proceeding. *Slip Op.* at 7. The Court stated in a footnote that its holding did not suggest that a State, by use of a collateral label, was permitted to conduct a new trial proceeding in violation of current constitutional standards. *Id.*

With regard to the second and third additional requirements, weighing and recommendation, the Court expressly stated that "Neither *Hurst v. Florida*, nor the Sixth or Eighth

Amendment, nor the Florida Constitution mandates that the jury make the section 941.121(3)(b) [weighing] selection finding or that the jury recommend a sentence of death." *Poole*, 2020 WL 370302 at 11; *see also id.* at 13 ("There is no basis in state or federal law for treating as elements the additional unanimous jury findings and recommendation that we mandated in *Hurst v. State*."). Additionally, the Court clarified that weighing aggravating circumstances and mitigating factors "is not a 'fact' that exposes the defendant to a greater punishment than that authorized by the jury's guilty verdict." *Poole*, 2020 WL 370302 at 12. Accordingly, that determination need not be made by a jury because the Eighth Amendment does not require jury sentencing in capital cases. *Id.* (citing *Hurst v. Florida*, 136 S. Ct. at 621).

This Court's decision in *Poole* recognizing that weighing and selection are not required *Hurst/Ring* findings is not subject to fair debate and is supported by an almost unbroken wall of precedent. *See, e.g., Castillo v. State*, 135 Nev. 126, 129–30, 442 P.3d 558, 560–61 (2019) (rejecting weighing as a required factual finding, holding "[l]ike *Apprendi* and *Ring*, *Hurst* clearly limits its reach to facts that expose a defendant to a higher sentence."); *State v. Mason*, 153 Ohio St. 3d 476, 483, 108 N.E.3d 56, 64, *cert. denied*, 139 S. Ct. 456 (2018) ("Nearly every court that has considered the issue has held that the Sixth Amendment is applicable to only the fact-bound eligibility decision concerning an offender's guilt of the principle offense and any aggravating circumstances" and that "weighing is not a fact-finding process subject to the Sixth Amendment.") (string citation omitted); *Underwood v. Royal*, 894 F.3d 1154, 1184-86 (10th Cir. 2018) (holding that the Court's decision in *Hurst v. Florida* was limited to aggravating circumstances and did not extend to mitigating circumstances or weighing).

***Poole's* Application to Baker**

Baker's case is indistinguishable from *Poole*. In both cases, the jury unanimously found the defendant guilty of a contemporaneous felony (the commission of the murder during the course of a kidnapping and home invasion robbery), thereby satisfying any Sixth Amendment requirement for death sentence eligibility. *See Poole*, 2020 WL 370302 at 15. The Florida Supreme Court upheld that aggravator on direct appeal. Since the Eighth Amendment does not require jury sentencing, there is no Constitutional basis for a jury to perform any weighing or recommendation function. *See id.* at 13. For the reasons articulated by the Florida Supreme Court in *Poole*, those unanimous findings satisfy the requirement of *Hurst* that the "jury must unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt." *State v. Poole*, No. SC18-245, 2020 WL 370302, at *1 (Fla. Jan. 23, 2020).

The Florida Supreme Court has unequivocally receded from *Hurst* in *Poole* on the very issue applicable to this case. *Hurst* is no longer valid precedent in the State of Florida. In *Poole*, the court repudiated the expansive language in *Hurst v. State* requiring additional findings not required by the Supreme Court in *Hurst*. These additional findings, the ones relied upon by Baker to obtain reversal of his death sentence, were inconsistent with prior precedent from both the Florida Supreme Court and the Supreme Court. *See Poole*, No. SC18-245, 2020 WL 370302, at 14 ("Without legal justification, this Court used *Hurst v. Florida* -- a narrow and predictable ruling that should have had limited practical effect on the administration of the death penalty in our state as an occasion to disregard decades of settled Supreme Court and Florida precedent."). Because the jury convicted the Defendant of home invasion robbery and kidnapping, an aggravating factor was unanimously found by the jury to be proven beyond a reasonable doubt. The trial court should

follow the clear language of the *Poole* opinion and reinstate the Defendant's death sentence.[1] *See* generally *Marshall v. State*, 44 Fla. L. Weekly D2561 (Fla. 2d DCA Oct. 18, 2019) (Declining to enforce its previous decision ordering a resentencing, holding that "[b]ecause our reasoning in *Marshall* has been superseded by the supreme court in Franklin, we deny Marshall's motion to enforce mandate.)

WHEREFORE, the State respectfully requests that this Court enter an Order Reinstating Death Sentence consistent with the Poole Opinion.

R.J. LARIZZA
STATE ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to JUNIOR BARRETT, OFFICE OF CRIMINAL CONFLICT, 101 SUNNYTOWN ROAD, SUITE 310, CASSELBERRY, FL 32707, on January 24, 2020.

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[1] In addition to the incalculable emotional toll on victims' family members, it would be an enormous waste of both the bench and bars' time, as well as citizens' time who are called for jury duty to require new penalty phases based on a decision that the Florida Supreme Court in *State v. Poole* acknowledged was incorrectly decided on a myriad of levels. Those errors include mischaracterizing weighing as a fact; requiring a unanimous jury recommendation of death; and, ignoring the Florida Constitution's conformity clause regarding the Eighth Amendment when it held that all the jury's additional findings and final recommendation had to be made unanimously. *State v. Poole*, 2020 WL 370302 at *11-*13; *State v. Poole*, 2020 WL 370302 at *8 (noting the United States Supreme Court's decision in *Hurst v. Florida* "did not address Hurst's Eighth Amendment argument"). In light of the number and magnitude of the legal errors in *Hurst v. State*, this Court should not require the prosecutors and citizens of Florida to have to go through the empty formality and enormous waste of resources of a new penalty phase based on a decision that is no longer the law in Florida.