

CASE NO. 15-6075
IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY W. FLETCHER,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW
A JUDGMENT OF THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW (RESTATED)

[Capital Case]

WHETHER PETITIONER'S SENTENCE OF DEATH WAS PROPERLY AFFIRMED BY THE FLORIDA SUPREME COURT WHEN NO EVIDENCE ADMITTED OR ARGUMENT MADE DURING THE PENALTY PHASE DEPRIVED PETITIONER OF A FAIR TRIAL; THERE WAS NO CONSTITUTIONAL VIOLATION IN SENTENCING HIS CO-DEFENDANT TO LIFE; AND HIS JURY'S 10-2 RECOMMENDATION FOR DEATH DOES NOT VIOLATE *RING*¹ BECAUSE PETITIONER HAD A PRIOR VIOLENT FELONY CONVICTION AND WAS A PRISON ESCAPEE AT THE TIME OF THE MURDER?

¹ *RING V. ARIZONA*, 536 U.S. 584 (2002).

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CITATION TO OPINION BELOW

The decision of which Petitioner seeks discretionary review is reported as *Fletcher v. State*, 168 So. 3d 186 (Fla. 2015). (Petitioner's Appendix A).

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1257. (Petitioner's Appendix B).

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

The Florida Supreme Court stated the facts as follows:

FACTS

On April 14 and 15, 2009, Timothy Fletcher was lawfully in custody at the Putnam County Jail. On the evening of April 14, 2009, and into the early morning hours of April 15, 2009, Fletcher and his cellmate, Doni Ray Brown, escaped their jail cell pursuant to a previously-discussed plan. Following their eventual re-arrest, Fletcher was interrogated by a detective with the Putnam County Sheriff's Office and an investigator with the State Attorney's Office. During the interrogation, Fletcher recounted the details of the escape and subsequent crimes.

Fletcher explained that on his return from a court hearing on April 2, 2009, he removed a car jack from the jail transportation vehicle, which he concealed in his pants. Nearly two weeks later, on April 14, 2009, after another trip to and from the courthouse, he appropriated the handle for the jack in the same manner. Fletcher explained they executed the escape because he had just been sentenced to ten years' incarceration.

That evening, Fletcher and Brown used the jack and jack handle to pry the toilet away from the wall of their cell, which created a hole through which they could escape. Just after the 2 a.m. cell check, Fletcher and Brown escaped through the hole. They then crawled under a fence, climbed over another fence, and through a gap in a third fence. This brought them to a field next to the jail, which they crossed to reach the highway.

They searched for a vehicle at various properties along the highway. First, they located a Z71 pickup truck. After breaking the window, he and Brown entered the vehicle, but Fletcher was unsuccessful as he attempted to start the engine. They searched for a second vehicle and located an unlocked van. However, they were also unable to start that vehicle, so they searched for a third vehicle. They discovered an unlocked Ford pickup truck with the keys in it in a fenced-in yard of a business. Brown struck the gate with the pickup and knocked it down.

As they had previously planned, Fletcher and Brown drove to the house of Helen Googe, the ex-wife of Fletcher's grandfather, because it was the closest place where he and Brown believed they could acquire money. Fletcher believed that Googe kept money in a safe at her house, and he had knowledge of her financial status.

At this point during his post-arrest statement, Fletcher provided varying accounts of subsequent events. In his initial account, Fletcher asserted that Googe voluntarily admitted him into the house, and Brown followed. Fletcher described altercations between Brown and Googe that ultimately led to Googe's death. He asserted that, other than one open-handed slap, he was either absent from the room during the altercations or nothing more than a passive bystander. However, Fletcher renounced this version of events after a detective informed him that fingernail scrapings had been collected from Googe to test for DNA evidence. The officer observed that Fletcher had scratch marks on his hands and arms, whereas Brown did not, and asked Fletcher if there was any reason why his DNA would be found under Googe's fingernails. Fletcher responded that it should not be, but also stated that he had held Googe down at one point. The detective asked when this occurred, and Fletcher responded, "I really don't even want to tell you everything that happened, to be honest with you." After some discussion, Fletcher admitted, "I'll be honest with you, I kind of lied to you a little bit," and then presented a different version of the events that transpired at Googe's home. This second description matched the description provided by Brown, except with the roles reversed—both Fletcher and Brown asserted that the other committed the actual strangulation of Googe.

Fletcher confessed that he and Brown entered the house through a firewood door that provided an opening to pass wood into the house from the outside. Fletcher was aware that Googe had firearms on the walls of her house; while in jail, he and Brown discussed using a

gun to scare and rob Googe. After they entered the house, Fletcher removed an unloaded revolver from the wall above the bathroom door and gave it to Brown. Upon retrieving the gun, Fletcher and Brown changed into clothes belonging to Fletcher's grandfather that they found at the house. Fletcher showed Brown the safe, which was located inside a closet.

Fletcher located Googe's purse, which contained a credit card, car keys, and \$37. Fletcher placed the purse in the closet with the discarded prison clothing. Fletcher and Brown then approached the bedroom where Googe slept, and Brown entered the room. Fletcher had tied a t-shirt around his face so that Googe would not recognize him, and Brown donned a blue and red baseball cap that he pulled down over his face. Fletcher intended to remain outside of the room until Brown indicated that Googe was restrained. Brown approached the bed, pointed the gun at Googe's face, and woke her up. Brown then said, "[t]his is a stickup, roll over and you'll be all right." Googe sat up and screamed that she was frightened at least four times. She asked, "why are you doing this?" Brown told her that nothing would happen to her as long as she complied with his instructions. Brown then signaled for Fletcher, who entered the room, pushed Googe onto the bed, and tied her hands with a phone cord.

Googe informed them that she did not have any money, except maybe \$40 in her purse. Brown asked what was in the safe, and she asserted that she did not have a safe. After Brown informed Googe that he knew she had a safe, she repeated that she had no money. During this interaction, Googe attempted to get out of the bed and her hands became untied. While describing these events during his post-arrest statement, Fletcher commented, "[s]he wasn't listening—she didn't want to listen."

After the cord became untied, Brown held the gun against Googe's head and pushed her back onto the bed. Fletcher then said, "you better fucking listen, we don't want to hurt you, just you better fucking listen." They continued to argue with Googe and demanded to know the personal identification number to her credit card, but she stated that she did not have one.

Googe jumped out of the bed, but Brown pushed her back down, put the gun on a dresser, and climbed on top of her. He held her down with one hand on her neck and the other on her chest and told her, "[b]itch, this ain't how it works." Googe was kicking her legs, and Fletcher picked up the gun, pressed it against her leg, and said,

“[y]ou better stop moving your fucking legs or else I'm going to shoot you.”

Googe then went with Fletcher and Brown to the safe. However, she said that she needed her glasses, so Brown led her back to the bedroom. Once there, Googe claimed she needed to use the restroom. She entered the restroom and tried to slam the door shut. Brown pushed the door open, and Googe hit him with a hairdryer. Brown yelled for Fletcher, who had remained by the safe. When Fletcher entered the bedroom, Brown had Googe pinned to the bed with a pillow over her face, and Googe was attempting to fight back. After Fletcher entered the bedroom, the three returned to the closet that contained the safe.

Googe opened the safe with her hands visibly shaking. Brown and Fletcher looked for money, but did not find any. Brown pointed the gun at Googe and asked where the money was. Googe repeated that she did not have any money, except for some money in her purse.

Googe then attempted to rise, but Brown pushed her down to the floor. With Googe in a fetal position, Brown wrapped his arm around her neck and mouthed to Fletcher that he was going to kill her. Fletcher stated that he watched, but otherwise did nothing. After several minutes, Brown said it was not working and released her. He mouthed to Fletcher that he would break Googe's neck, then grabbed her chin and head and attempted to do so, but failed.

Fletcher, Brown, and Googe then moved towards the den. Fletcher secured his arm around Googe's neck, and Brown attempted to pick Googe up by her feet. Brown lifted one of Googe's legs off the ground, but was unable to hold the other because she kicked at him. During the struggle, Googe scratched Fletcher, who called her a bitch and released her. When Googe attempted to rise from the ground, Fletcher struck her in the head three times—once on the cheek and twice high on the side of her head—with an open hand. Fletcher explained during his post-arrest statement that he struck her

[b]ecause she was—she was being ignorant.... If she wouldn't have been being like that, she wouldn't have never got hit or nothing. She was being—... She was—she was ready to fight. She wanted to fight. She didn't want to just—over \$37. All she had to do was just be quiet and give up the \$37 and tell—say what the PIN number is to her credit card and she would have just got tied up and left.

Fletcher stated that Brown positioned himself on top of Googe with his knees on her arms to hold her down, and choked her with both hands. Googe began kicking, so Fletcher held her legs down at the knees. Googe tried to speak, but could only make choking noises. When Googe stopped fighting, Fletcher let her go and entered another room, where he took a jewelry box. Fletcher claimed that when he returned to the den, Brown had released Googe, who was laying on her side making snoring noises. Fletcher watched her while Brown retrieved a plastic storage bag from the kitchen. Brown placed the bag over Googe's head and secured it by tying a phone cord around Googe's neck. The bag became foggy. Fletcher stated that he left the room, and when he returned, Brown informed him that Googe was dead.

Fletcher and Brown then departed from the house. Fletcher drove Googe's Lincoln Town Car, and Brown drove the stolen pickup truck. They discarded the pickup in the woods a short distance from Googe's house. The plastic bag, the telephone cord, the prison clothing, the purse, and the wallet were discarded in a retention pond.

Fletcher then described the remainder of their flight through Georgia and Tennessee, to his aunt and uncle's house in Kentucky, and then their return to Florida, where they were re-arrested.

The evidence presented during trial with respect to the discovery of the escape and Googe's murder corroborated the description of events given by Fletcher, with the exception of who strangled Googe. After the officers discovered that Fletcher and Brown were missing, a K-9 officer and his trained canine were dispatched to search for Fletcher's and Brown's scents. The canine detected a scent outside of the barbed-wire fence that separated the sheriff's office and the field. This scent led across the highway and terminated near a dance studio. The owner of the Z71 pickup truck—the first vehicle that Fletcher stated he and Brown attempted to steal—had left his truck outside of the studio to advertise that it was for sale. He received a phone call from the sheriff's office on April 15 that his vehicle had been broken into, and he travelled to the studio, where he discovered that the passenger window of the extended cab had been smashed. Additionally, the steering column and ignition had been tampered with, as though someone had tried to start the vehicle without a key.

On that same morning at approximately 9 a.m., the owner of a home and business across from the jail discovered that the ignition switch

to his blue GMC van was broken and locked into position, also as if someone had forcibly attempted to start the vehicle without a key. He walked over to the sheriff's office and told officers about his vehicle. A crime scene technician observed muddy footprints that led from the dance studio towards the van.

Additionally on that morning, the owner of a tire business located across from the jail discovered that the gates of the business were lying flat on the driveway as though they had been run over. He also noticed that his Ford F150 was missing. He reported this to the sheriff's office. The truck was later discovered in the woods near Googe's residence.

Meanwhile, at approximately 6:40 that morning, a deputy with the Clay County Sheriff's Office observed a four-door gold Lincoln with Putnam County license plates while he drove home from work. He became suspicious because nothing was open in the area, he rarely saw Putnam County plates there, and his office had received a "be on the lookout" for two escapees from the Putnam County Jail. He wrote down the tag number and accelerated to examine the individuals in the vehicle. He was able to see the passenger, who was wearing a blue baseball cap with a red bill. The officer continued home, and later ran the plate number through the National Crime Information Center database. He discovered that the vehicle was owned by Googe, who he knew had been married to Fletcher's grandfather. He recalled that Fletcher was one of the escaped prisoners, and contacted the Putnam County Sheriff's Office. Later that day, he saw a television broadcast with photographs of Fletcher and Brown, and he recognized Brown as the passenger in the Lincoln.

Because of the observation by the Clay County deputy, a warrants officer with the Putnam County Sheriff's Office was asked to make contact with Googe. When the officer arrived at the property, the Lincoln was not in the carport. The officer knocked on the door and, when nobody responded, walked around the house knocking on doors and windows. He travelled to a nearby grocery store to ask if anyone had seen Googe, her Lincoln, or a truck matching the one missing from the tire business. Nobody had seen Googe or the missing vehicles, and the officer returned to the property. When two other officers arrived, they entered the home and found Googe dead.

A crime lab analyst with the Florida Department of Law Enforcement (FDLE) located pliers above the firewood door that

created an entrance into the home. The lock on the door was still attached, but the hasp was broken. Inside the home, the analyst found an open jewelry box on the floor of the study. The interior walls of the family room were decorated with a sword, knives, and a revolver. The weaponry was supported by wooden pegs, but one set of pegs was unadorned. In the master bedroom, he found a phone set on the floor with the cord broken off, and a hairdryer in the bathroom. Near Google's body, he found part of a broken eyeglasses chain. The remainder of the chain, as well as the eyeglasses, were found near the safe.

A detective with the Putnam County Sheriff's Office contacted Google's credit card company and obtained a subpoena for records showing any transactions on April 15, 2009. Two transactions occurred on that date, one at a Florida gas station, and another at a Georgia gas station.

Law enforcement learned that after Brown and Fletcher left Google's home, they proceeded to the home of Brown's aunt. She allowed Brown into the house and he used her computer to look up directions, which he wrote down. Brown then departed, and his aunt testified that she saw him enter the passenger's seat of a vehicle resembling a tan Cadillac with a Caucasian driver. She did not observe any scratches or other physical injuries on Brown.

The FDLE crime lab analyst who processed the Lincoln found a piece of paper with handwritten directions. The paper had fingerprints and handprints that were identified as belonging to Brown. A soda bottle was also discovered, which had a fingerprint that was identified as belonging to Brown. Brown's fingerprints were also identified on a handbook and a plastic shopping bag found in the vehicle.

The FDLE also analyzed swabs taken from the Lincoln for DNA evidence. The analyst found a complete DNA profile on the swab taken from the headlight switch and an interior door handle that matched Fletcher's DNA profile. The probability that the DNA profile would match another individual is approximately one in 490 trillion Caucasians, one in 13 quadrillion African Americans, and one in 1.1 quadrillion Southeastern Hispanics. Two soda bottles found in the car were also analyzed for DNA evidence, and the analyst found mixed DNA profiles on each bottle. With respect to the first bottle, Brown was a possible contributor, but no determination could be made as to whether Fletcher was a possible

contributor. More than 99% of Caucasians, African Americans, and Southeastern Hispanics could be excluded as contributors to the mixed DNA profile. With respect to the second bottle, Brown and Fletcher were both possible contributors to the mixed profile, and again more than 99% of Caucasian, African American, and Southeastern Hispanic individuals could be excluded as contributors. With respect to the fingernail scrapings taken from Googe, the analyst found a partial DNA profile that matched the known profile of Fletcher. The probability that the partial DNA profile would match another individual is approximately one in 260 million Caucasians, one in 3.6 billion African Americans, and one in 580 million Southeastern Hispanics.

The medical examiner determined that the cause of Googe's death was asphyxia due to manual strangulation. He identified fingertip contusions under the chin, as well as hemorrhages in the neck area. The injuries were consistent with a person grabbing Googe around the neck and squeezing with his or her thumbs down onto her neck. Additionally, the cartilage of Googe's larynx was fractured and surrounded with contusions and hemorrhages, and the thyroid cartilage was fractured. The medical examiner found a contusion on Googe's left upper eyelid, which was the result of blunt trauma, as well as a contusion on the right side of her scalp. The scalp contusion was superficial, and there was no underlying skull fracture, bleeding into her brain, or subdural or subarachnoid hemorrhages. On her right arm, he found fingertip contusions, which indicated that she was restrained by someone. Because Googe was elderly, little force would be necessary to cause this kind of bruising. There was also a contusion and ligature marks on Googe's left wrist and a superficial laceration on her right forearm that most likely resulted from being held by the wrist. The medical examiner also found abrasions on her knees.

The medical examiner determined that all of Googe's injuries occurred pre-death and during the same time frame. Because there was no significant trauma to the head that would cause a loss of consciousness, he also concluded that the injuries occurred while Googe was conscious. Significantly, there was no hemorrhaging at the top of the brain, despite the fact that Googe was elderly and would bleed more easily.

On May 25, 2012, a jury found Fletcher guilty of the first-degree murder of Googe, two counts of grand theft of a motor vehicle, home-invasion robbery, two counts of burglary, and escape. During the

penalty phase, the State presented records of Fletcher's commitment to the Florida Department of Corrections (DOC) for a previous conviction. The State also presented the victim impact statement of Gooze's daughter, read by Gooze's brother.

The defense presented the testimony of Fletcher's brother, Jeffrey. Jeffrey testified that their parents separated when Jeffrey was between the ages of five and seven, and he lived with Fletcher and their father for approximately one year after the separation. During that year, their father drank almost every day. Additionally, he testified that their father would spank him if he did something wrong, but he never saw his father abuse Fletcher. After a year, Jeffrey moved in with his mother and would spend one or two weekends each month with Fletcher and their father until he was eleven or twelve, when he stopped visiting. Jeffrey testified that Fletcher and his mother spoke frequently on the phone before she died and they had a good relationship.

Fletcher also presented the testimony of his father, Ricky. Ricky testified that when Fletcher was approximately five or six years old, Ricky and Fletcher's mother began having violent domestic disputes that always involved alcohol. On one occasion, Ricky threatened the mother with a shotgun, but stopped when he saw Fletcher watching. Ricky was arrested six or seven times for violent acts, which were witnessed by the children. The mother obtained a restraining order against Ricky at one point. Ricky testified that he and Fletcher's mother separated when Fletcher was about eleven years old.

Fletcher presented mental health mitigation through the testimony of Dr. Harry Krop, a licensed psychologist. Dr. Krop's assistant, a licensed mental-health professional, met with Fletcher once to conduct psychological testing and a neuropsychological evaluation. The testing revealed that Fletcher had no brain damage, possessed an average IQ, and functioned in the top 40% of the population. Fletcher was an underachiever in school, which Dr. Krop concluded resulted from emotional, family, and environmental issues.

Dr. Krop conducted a Minnesota Multiphasic Personality Inventory (MMPI), the results of which were invalid because of inconsistent answers. Dr. Krop testified that there are several reasons for MMPI test results to be invalid, including that the person taking the test is in distress. Dr. Krop did not believe that Fletcher was malingering because other tests in the neuropsychological battery resulted in normal or average results.

Dr. Krop diagnosed Fletcher with polysubstance dependence, which he determined had been ongoing since Fletcher was eleven years old, the age that Fletcher asserted he began drinking and using marijuana. Since then, Fletcher has used other drugs, including methamphetamines, prescription drugs, powder cocaine, crack cocaine, acid, and mushrooms. Dr. Krop also diagnosed Fletcher with chronic insomnia, chronic depressive disorder, and antisocial personality disorder. Dr. Krop noted that Fletcher had been diagnosed in the past with post-traumatic stress disorder (PTSD), but no longer displayed any symptoms of the disorder. Although Fletcher's records reflected a diagnosis of bipolar disorder, Dr. Krop did not observe any symptoms of the disorder, and testified that the reference could have been a misdiagnosis.

Dr. Krop believed Fletcher abused drugs and alcohol to self-medicate for depression. He testified that Fletcher suffered from both situational depression from his incarceration and a lifetime of depression due in part to his family environment. Additionally, Fletcher's mother died of brain cancer when Fletcher was eighteen years old. The last six months of her life were very difficult, and Fletcher was incarcerated at the time of her funeral. Although he was allowed a private viewing, he was not permitted to attend the funeral. Further, Dr. Krop testified that Fletcher had a history of self-harm and cut himself when he was fifteen years old.

Dr. Krop additionally testified that Fletcher was raised in an extremely dysfunctional family environment, which included physical abuse, emotional abuse, domestic violence, and a tumultuous relationship between his parents. Both parents were unfaithful and would use Fletcher as an intermediary. Fletcher felt abandoned by his mother after his parents separated. Fletcher described to Dr. Krop physical abuse by his father, which included being struck with a belt, being instructed to make a paddle that the father would then use to strike him, being struck with his father's fist on one occasion, being choked on one occasion, and being threatened with a gun on one occasion.

Fletcher's aunt described to Dr. Krop severe domestic violence between Fletcher's parents, in which law enforcement was called. There was also a domestic violence incident between Fletcher's father and a subsequent girlfriend.

Dr. Krop testified that Fletcher resented Googe. Fletcher explained to Dr. Krop that his resentment was due to friction that arose between his grandfather and Googe because his grandfather continued to support Fletcher, despite the repeated instances of trouble.

The defense also presented the testimony of a mental health specialist who had counseled Fletcher during his incarceration at the Suwannee Correctional Institution. She testified that inmates were designated as level one, two, or three according to the amount of mental-health treatment they would receive, with level one being no treatment. Fletcher was assigned a level three, was prescribed psychotropic medications, and was diagnosed with depression.

In rebuttal, the State presented the testimony of Dr. Gregory Prichard, a licensed psychologist. Dr. Prichard testified that he found no evidence of neurological issues. He diagnosed Fletcher with antisocial personality disorder, polysubstance dependence, and depressive disorder not otherwise specified. He testified that Fletcher had been treated for depression during prior incarcerations and responded well to antidepressants. However, when released from incarceration, Fletcher returned to the use of drugs.

The jury recommended a death sentence for the murder of Helen Googe by a vote of eight to four. During the *Spencer* hearing, the State presented the victim impact statements of Googe's brother and nephew. The defense asked the trial court to review the presentence investigation report and to consider the mitigating circumstances contained in it, including Fletcher's history of drug and alcohol abuse and his dysfunctional family. Fletcher then read a statement he had prepared, in which he apologized to his and Googe's families and detailed his struggles through childhood and adolescence.

The trial court found the evidence established that Fletcher, not Brown, killed Googe. The trial court considered that Fletcher admitted he was the architect of the criminal episode; stole the jack and crank shaft; knew Googe, while Brown did not; had been to Googe's home, while Brown had not; knew about the firewood door and the safe, which Brown did not; knew Googe's financial status, while Brown did not; hated Googe, while Brown did not; and took the keys to Googe's car. Additionally, Fletcher had scratches on his arms, while Brown did not, and Fletcher's DNA was under Googe's nails, while Brown's was not.

The trial court found that the State had proven beyond a reasonable doubt the existence of three statutory aggravating circumstances: (1) the murder was committed by a person previously convicted of a felony and under a sentence of imprisonment (great weight); (2) the murder was committed while Fletcher was engaged, or was an accomplice, in the commission of a robbery (great weight), merged with the aggravating circumstance that the murder was committed for financial gain (no added weight); and (3) the murder was especially heinous, atrocious, or cruel (HAC) (great weight).

The trial court found one statutory mitigating circumstance—Fletcher's age of twenty-five at the time of the crime (minimal weight). The trial court additionally found the following nonstatutory mitigating circumstances: (1) Fletcher was physically abused by his alcoholic father in the past (little weight); (2) Fletcher suffered from chronic addiction to drugs in the past (moderate weight); (3) Fletcher has been treated for and suffers from depression (little weight); (4) Fletcher has been treated for PTSD in the past (slight weight); (5) as a child, Fletcher witnessed his mother being physically abused by his father (some weight); (6) Fletcher has attempted suicide (little weight); (7) Fletcher responded well to counseling while at the Suwannee Correctional Institute (little weight); (8) Fletcher reported that he was awake all night before the escape and consumed methamphetamines (very little weight); (9) Fletcher obtained his GED while incarcerated (some weight); (10) Fletcher comes from a dysfunctional family (some weight); (11) Fletcher's mother died when he was eighteen, and he had a close relationship with her (little weight); (12) Fletcher has artistic ability (slight weight); (13) Fletcher expressed remorse (some weight); (14) Fletcher displayed good behavior during the trial and all subsequent court proceedings (some weight); (15) Fletcher cooperated with police after his arrest by providing them with a lengthy videotaped statement (moderate weight); and (16) Brown, Fletcher's accomplice, pled guilty to the same offenses and received a life sentence (great weight). The trial court found the nonstatutory mitigating circumstance that Fletcher had been treated for bipolar disorder had not been established.

The trial court specifically found that

[d]espite the existence of a number of mitigating circumstances and the weight assigned to each by this Court, the nature and quality of those factors, including the disparate sentences, pale in comparison to the strength of the

aggravating circumstances established in this case. The Court now finds that the aggravating circumstances far outweigh the mitigating circumstances. The fact that the homicide was committed while the Defendant had previously been convicted of a felony and was under a sentence of imprisonment, the fact that the murder was committed for pecuniary gain during the course of a robbery, and the heinous, atrocious and cruel manner in which the murder was committed, greatly outweighs the statutory and non-statutory mitigating circumstances established by the record.

Accordingly, the trial court followed the jury's recommendation and sentenced Fletcher to death

Fletcher v. State, 168 So. 3d 186, 193-202 (Fla. 2015) (footnotes omitted).

Fletcher filed his Petition for Writ of Certiorari to this Court on September 11, 2015. This State's Brief in Opposition follows.

REASONS FOR DENYING THE WRIT

- I. PETITIONER'S SENTENCE OF DEATH WAS PROPERLY AFFIRMED BY THE FLORIDA SUPREME COURT BECAUSE NO EVIDENCE ADMITTED OR ARGUMENT MADE DURING THE PENALTY PHASE DEPRIVED PETITIONER OF A FAIR TRIAL; THERE WAS NO CONSTITUTIONAL VIOLATION IN SENTENCING HIS CO-DEFENDANT TO LIFE; AND HIS JURY'S 10-2 RECOMMENDATION FOR DEATH DOES NOT VIOLATE *RING* BECAUSE PETITIONER HAD A PRIOR VIOLENT FELONY CONVICTION AND WAS A PRISON ESCAPEE AT THE TIME OF THE MURDER?

On pages 26-40 of his petition, Petitioner asks this Court to grant *certiorari* review of his claim –under no fewer than fourteen sub-claims –that the Florida Supreme Court's affirmance of Petitioner's death sentence was “clearly erroneous.” Petitioner asserts that this Court should grant *certiorari* to review the Florida Supreme Court's affirmance of Fletcher's convictions and death sentence. There is, however, no basis to invoke this Court's *certiorari* review.

Rule 10 of the *Rules of the Supreme Court of the United States* sets out the considerations that factor into the decision to exercise this Court's *certiorari* jurisdiction. Petitioner satisfies none of them. Fletcher has not attempted to show, nor would he be able to demonstrate, that the decision of the Florida Supreme Court conflicts with an opinion from another state supreme court or from a United States court of appeals. Second, Fletcher cannot demonstrate that the Florida Supreme Court opinion below decided an important question of federal law in a manner that conflicts with a decision of this Court. Third, the Florida Supreme Court's rejection of Fletcher's claim is fully consistent with this Court's precedent and all applicable federal law. Under these circumstances, *certiorari* review should be denied.

Fletcher's attempt to re-litigate the findings of the Florida Supreme Court is not a proper basis for this court to review the denial of appellate relief on *certiorari*. A fact-intensive, case-specific "retrial" is what Petitioner would have this Court conduct and that is not the function of *certiorari* review. The law is well-settled that this Court does not grant *certiorari* "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984). This Court is "consistent in not granting the *certiorari* except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties." *Rice v. Sioux City Memorial Park Cemetery, Inc.* 349 U.S. 70 (1955). *See also Bartlett v. Stephenson*, 535 U.S. 1301, 1304 (2002) (issues with few, if any, ramifications

beyond the presenting case do not satisfy any of the criteria for exercise of *certiorari* jurisdiction). Fletcher has done no more than quarrel with the result reached by the state court. That mere disagreement has done nothing to show that the court below failed to recognize the controlling legal standard or that the court failed to correctly apply the facts as deduced at trial. The state court complied in all respects with this Court's precedent and reached the correct result. For this reason, Fletcher's petition raises no claim sufficient to justify the exercise of this Court's *certiorari* jurisdiction. *See*, Rule 10, *Rules of the Supreme Court of the United States*.

A. Evidence of Prior Crimes

On pages 26-28 of his Petition, Fletcher argues that the state court erred in affirming Fletcher's death sentence when Faulkner stated, "...Mr. Fletcher told me that he had just been sentenced for --." The video interview was played for the jury depicting Petitioner stating, "[a]nd I had just got sentenced to the ten years ... ten years is a long-ass time..."; and Word stating that Petitioner was housed in a felony area. The Florida court held, "... we conclude that these brief and fleeting statements were not so prejudicial as to vitiate the entire trial and deny this claim." *Fletcher*, 168 So. 3d at 208. Fletcher's arguments are completely unsupported and he cites to no authority that this ruling was contrary to the law of this Court.

Even though the court below found the witnesses' comments to be in error, that error was harmless. Fletcher has to demonstrate that the brief, fleeting

comments he complains of “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” This Court discusses this standard with regard to improper comments in *Donnelly*, stating:

This is not a case in which the State has denied a defendant the benefit of a specific provision of the Bill of Rights, such as the right to counsel, *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), or in which the prosecutor's remarks so prejudiced a specific right, such as the privilege against compulsory self-incrimination, as to amount to a denial of that right. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965). When specific guarantees of the Bill of Rights are involved, this Court has taken special care to assure that prosecutorial conduct in no way impermissibly infringes them. But here the claim is only that a prosecutor's remark about respondent's expectations at trial by itself so infected the trial with unfairness as to make the resulting conviction a denial of due process. We do not believe that examination of the entire proceedings in this case supports that contention.

Donnelly v. DeChristoforo, 416 U.S. 637, 643, (1974) (footnote omitted). This Court has also held, regarding improper comments, that a defendant is not entitled to a perfect trial, just one that was not fundamentally unfair. *Darden v. Wainwright*, 477 U.S. 168, 183 (1986). The state court was correct that these brief, non-inflammatory comments made by a witness did not deprive Fletcher of a fundamentally fair trial. *Certiorari* review should be denied.

B. “Improper” Evidence of Criminal Type

In sub-claim B, Fletcher again cites no authority and fails to make any cognizable claim for which a grant of *certiorari* would be appropriate. Fletcher's argument is essentially that the State introduced nonstatutory aggravating evidence. This is not a constitutional claim and is inappropriate for *certiorari* review. As this Court stated in *Wainwright v. Goode*, 464 U.S. 78, 83-84, 104 S.

Ct. 378 (1983), “[i]t is axiomatic that federal courts may intervene in the state judicial process only to correct wrongs of a constitutional dimension.” (citing *Engle v. Isaac*, 457 U.S. 1141 (1982); *Smith v. Phillips*, 455 U.S. 209 (1982)).

On pages 28-30 of his Petition, Fletcher claims that the state court erred in ruling that Prichard’s testimony concerning Petitioner’s mental health was proper rebuttal testimony. The state court held:

We hold that these statements did not constitute improper nonstatutory aggravation.

Fletcher, 168 So. 3d at 210.

Consideration of nonstatutory aggravation is not a question of federal constitutional law, but state law. The trial court properly adjudicated the claim according to state law and found it meritless. State courts are the final arbiters of state law and this Court does not intervene in such matters. *See Lewis v. Jeffers*, 497 U.S. 764, 780 (1990); *Barclay v. Florida*, 463 U.S. 939, 957-58 (1983) (“mere errors of state law are not the concern of this Court, *Gryger v. Burke*, 334 U.S. 728, 731 (1948), unless they rise for some other reason to the level of a denial of rights protected by the United States Constitution.”) Here, like in *Barclay*, the trial judge did not consider any constitutionally-protected behavior as an aggravating circumstance. *See Zant v. Stephens*, 462 U.S. 862, 888 (1983). *Certiorari* review should be denied.

C. “Improper” Closing Arguments

On page 30 of his Petition (titled as the second sub-claim “B”), Fletcher claims that he is entitled to resentencing based on the prosecutor’s “improper

penalty phase arguments.” Primarily, Fletcher’s argument is procedurally barred. As discussed, *supra*, this claim contemplates not a question of federal constitutional law, but state law. Moreover, this claim is meritless because the state court found that the prosecutor did not improperly argue lack of remorse. The trial court properly adjudicated the claim according to Florida state law and found Fletcher’s claim meritless. State courts are the final arbiters of state law and this Court does not intervene in such matters. *See Lewis*, 497 U.S. at 780; *Barclay*, 463 U.S. at 957-58. The state court held:

. . . [T]he prosecutor never asserted during his closing statement that Fletcher lacked remorse for his crime. The statement includes no references to remorse or any other term that alludes to remorse. The remark was made at the beginning of the statement, when the prosecutor had not yet begun to discuss aggravation or mitigation. The remark simply related to what an appropriate sentence would be in the context of the facts of the case. Accordingly, we deny this claim.

Fletcher, 168 So. 3d at 213-14.

As to Fletcher’s argument that the cumulative effect of the prosecutor’s comments deprived him of a fair trial, the state court also denied that claim on state law grounds, holding:

Fletcher asserts that several remarks made by the prosecutor during the penalty-phase closing statements entitle him to resentencing. No objections were made to the allegedly improper statements, and therefore they are reviewed for fundamental error. *Mosley*, 46 So. 3d at 519. Further, we note that attorneys are generally afforded wide latitude while presenting closing statements to the jury. *See Moore v. State*, 701 So. 2d 545, 551 (Fla. 1997) (citing *Breedlove v. State*, 413 So. 2d 1, 8 (Fla. 1982)).

Fletcher, 168 So. 3d at 213.

The issue presented in the petition is solely a matter of state law over which this Court lacks jurisdiction. If a state court's decision rests on state law that is independent of federal constitutional law, this Court will not review that decision. *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). The Florida Supreme Court invoked only its own precedent in its analysis of this issue in this case. This Court's jurisdiction is limited to only those federal constitutional issues which were presented and considered by the court below. *Illinois v. Gates*, 462 U.S. 213, 217-19 (1983); *Webb v. Webb*, 451 U.S. 493, 496-97 (1981). In this case, there was an independent and adequate state procedural basis for the denial of relief, which was identified and applied on appeal. Under such circumstances, this Court does not have jurisdiction over this petition. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983). Accordingly, this Court must dismiss this petition for want of jurisdiction.

As this Court has long recognized, jurisdiction does not lie with this Court to review decisions from state courts that rest on adequate and independent state law grounds. *Sochor v. Florida*, 504 U.S. 527, 533 (1992); *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945) ("This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds.")

Moreover, Fletcher's arguments are completely unsupported. Fletcher cites *Zant v. Stephens*, 462 U.S. 862 (1983), a factually dissimilar federal habeas case arising out of Georgia, for the premise that a prosecutor may not denigrate

mitigation for aggravation. (*Petition* at 32). However, that is not what happened here. In *Zant*, this Court ruled that a death sentence based on a subsequently-invalidated statutory aggravating circumstance did not have to be vacated when the jury had found two others that were still valid. Here, however, none of the three aggravating circumstances argued by the State, and found by the jury were invalidated and the prosecutor's argument was proper. The Florida Supreme Court decided this particular sub-claim in the following way:

However, almost immediately following the challenged remarks, the prosecutor explained that the judge would instruct the jury on how to make a decision regarding the advisory sentence, and that the jury would weigh aggravating factors and mitigating factors. Further, the prosecutor later explained that there were only three aggravating circumstances for the jury to consider. Accordingly, we deny relief on this claim.

Fletcher, 168 So. 3d at 214.

Despite Fletcher's conflated argument, it is important to distinguish the argument presented in *Zant*, where there was a preserved claim of a prosecutor denigrating mitigation, from the argument Fletcher makes here, that the prosecutor argued nonstatutory aggravation, which is not a constitutional claim. See *Barclay v. Florida*, 463 U.S. at 957-58. *Certiorari* should be denied.

Disparate Treatment

On page 33-34 of his Petition, Fletcher argues that the Florida Supreme Court erred in affirming his death sentence because he was, in fact, not more culpable than the co-defendant who received a life sentence. Fletcher argues that although Petitioner was the mastermind of the plan, had the personal relationship with Gooze and the motive to kill her, and committed the actual

murder as evidenced by DNA under the victim's fingernails, he should not have been found more culpable.

Primarily, this claim is not properly before this Court. This Court's jurisdiction is limited to only those federal constitutional issues which were presented and considered by the court below. *Illinois v. Gates*, 462 U.S. 213, 217-19 (1983); *Webb v. Webb*, 451 U.S. 493, 496-97 (1981). The state court discussed the co-defendant's sentence in its order, but only in the context of the proportionality of Fletcher's death sentence. The state court held that Fletcher's death sentence was proportionate – even though his co-defendant received a life sentence – based on other state law precedent from that court and not constitutional grounds, holding:

Further, we hold that the death sentence is not disproportionate, even though codefendant Brown received a life sentence. The trial court gave great weight to Brown's life sentence, but imposed the sentence of death because it found that Fletcher was the mastermind of the plan and committed the actual murder. Fletcher had a relationship with Googe, resented Googe, knew Googe's financial status, and knew how to enter Googe's house. Fletcher's DNA, and not Brown's, was found under Googe's fingernails. The death penalty is not disproportionate even where a codefendant received a life sentence if the defendant who received the death sentence is more culpable. *See Wright v. State*, 19 So. 3d 277, 305 (Fla. 2009) (holding the death sentence proportionate despite codefendant's sentence of life).

Fletcher v. State, 168 So. 3d at 221.

Moreover, the trial court was well-aware of co-defendant Brown's life sentence, and specifically found that:

[d]espite the existence of a number of mitigating circumstances and the weight assigned to each by this Court, the nature and quality of those factors, including the disparate sentences, pale in comparison

to the strength of the aggravating circumstances established in this case. The Court now finds that the aggravating circumstances far outweigh the mitigating circumstances.

Fletcher v. State, 168 So. 3d at 201-02.

Specifically, Fletcher argues, on page 34 of his Petition, that the jury was not instructed to make *Edmund/Tison*² findings regarding Fletcher's culpability as it relates to his co-defendant. Fletcher never raised an *Edmund/Tison* claim in his direct appeal so that argument is not properly before this Court. This Court's jurisdiction is limited to only those federal constitutional issues which were presented and considered by the court below. *Illinois v. Gates*, 462 U.S. at 217-19; *Webb v. Webb*, 451 U.S. at 496-97. This Court does not ordinarily review a claim not presented to the court below. *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212-13 (1998). This Court sits as a "court of final review and not first view." *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (internal quotation marks and citation omitted); *Clark v. Arizona*, 548 U.S. 735, 765 (2006) (declining to consider due process claim that was not "pressed or passed upon" by state court); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (It "was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions.") As this Court has explained:

With "very rare exceptions," *Yee v. Escondido*, 503 U.S. 519, 533, 112 S.Ct. 1522, 1531, 118 L. Ed. 2d 153 (1992), we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was

² *Edmund v. Florida*, 458 U.S. 782 (1982); *Tison v. Arizona*, 481 U.S. 137 (1987).

either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review. See *Heath v. Alabama*, 474 U.S. 82, 87, 106 S.Ct. 433, 436-437, 88 L. Ed. 2d 387 (1985); *Illinois v. Gates*, 462 U.S. 213, 217-219, 103 S.Ct. 2317, 2321-2322, 76 L. Ed. 2d 527 (1983); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434, 60 S.Ct. 670, 672, 84 L. Ed. 849 (1940).

* * *

When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented, *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S.Ct. 1940, 1948, 95 L. Ed. 2d 474 (1987), and the aggrieved party bears the burden of defeating this assumption, *ibid.*, by demonstrating that the state court had a “fair opportunity to address the federal question that is sought to be presented here,” *Webb v. Webb*, 451 U.S. 493, 501, 101 S.Ct. 1889, 1894, 68 L. Ed. 2d 392 (1981).

Adams v. Robertson, 520 U.S. 83, 86-87 (1997).

Petitioner merely quarrels with the decision of the court below. He fails to present any compelling reason for this Court to review claims of alleged error that he failed to present to the Florida Supreme Court.

Constitutionality of Florida’s Capital Sentencing Statute

Petitioner asks this Court to accept this matter to determine whether Florida’s capital sentencing scheme is constitutional under *Ring*. (*Petition* at 34-39). Fletcher asserts – in no fewer than ten sub-claims³ – that his death sentence

³ While approximately ten sub-claim arguments are presented in two long sentences on pages 37 and 38 of Fletcher’s *Petition* (appearing in different order and with slightly different titles), the only argument that is even arguably briefed under the “Constitutionality of Florida Death Penalty Statutory Scheme” is Petitioner’s *Ring* claim – the State responds to that claim, and submits that any other incorporated sub-claim is insufficiently briefed as well as meritless.

is unconstitutional. (*Petition* at 34-38). However, there is no basis to grant *certiorari* regarding this issue.

In deciding Fletcher's *Ring* claim below, the Florida Supreme Court held:

Fletcher alleges that Florida's capital sentencing scheme is unconstitutional under *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). **We have previously held that *Ring* does not apply when the aggravating circumstance that the defendant committed the murder while under a sentence of imprisonment is applicable.** See *Hodges v. State*, 55 So.3d 515, 540 (Fla.2010). We acknowledge that the United States Supreme Court has granted certiorari to review our decision in *Hurst v. State*, 147 So. 3d 435 (Fla.2014), *cert. granted*, *Hurst v. Florida*, — U.S. —, 135 S.Ct. 1531, 191 L.Ed.2d 558 (2015), and framed the issue to be decided in that case as follows: "Whether Florida's death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of this Court's decision in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002)." 135 S.Ct. at 1531. **Unlike this case, however, *Hurst* did not involve the under-sentence-of-imprisonment aggravator, which this Court's precedent clearly establishes does not implicate *Ring*.** Accordingly, until the Supreme Court issues a contrary decision, Fletcher's claim is without merit under established Florida precedent.

Fletcher raises several additional subclaims under this issue, which we have also repeatedly held to be without merit. See *Franklin v. State*, 965 So.2d 79, 97 (Fla. 2007) (rejecting the claim that victim impact evidence may not be presented to the jury); *Griffin v. State*, 866 So. 2d 1, 14 (Fla. 2003) (rejecting the claim that the standard jury instructions do not properly instruct the jury on consideration of mitigating and aggravating factors); *Porter v. Crosby*, 840 So. 2d 981, 986 (Fla. 2003) (rejecting the claim that aggravating circumstances must be charged in the indictment, and the claim that each aggravating circumstance must be individually found); *Card v. State*, 803 So. 2d 613, 628 (Fla. 2001) (rejecting the claim that the HAC aggravating circumstance is vague and overbroad); *Blanco*, 706 So. 2d at 11 (rejecting the claim that Florida's capital sentencing statute is unconstitutional because every person convicted of first-degree felony murder automatically qualifies for the circumstance of commission during an enumerated felony).

Fletcher v. State, 168 So. 3d at 219-20 (emphasis added).

The State recognizes that this Court has accepted *certiorari* to review the decision below in *Hurst v. State*, 147 So. 3d 435 (Fla. 2010), *cert granted*, *Hurst v. Florida*, 135 S. Ct 1531 (2015) and framed the issue to be decided as “[w]hether Florida’s death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of this Court’s decision in *Ring v. Arizona*, 536 U.S. 584 (2002);” but submits that, regardless of what happens in *Hurst*, Petitioner’s case is dissimilar and would not be directly affected by the outcome. Fletcher’s case falls outside the *Ring* analysis.

At the time of Googe’s murder, Fletcher was an escapee from prison with a prior felony conviction. The trial court’s findings, therefore, were not subject to the rule of *Apprendi* as made applicable to capital cases by *Ring*. However, even if *Apprendi* does apply, its requirements were satisfied by the verdict concerning the home-invasion robbery of Googe’s home. Moreover, Fletcher was under a sentence of imprisonment when he escaped from prison to commit murder, and had been convicted of a prior violent felony, including the contemporaneous conviction for home-invasion robbery. This separate aggravator – both secondarily and independently – removes this case from the application of *Apprendi/Ring*. The state court properly followed its own precedent in holding, “[w]e have previously held that *Ring* does not apply when the aggravating circumstance that the defendant committed the murder while under a sentence of imprisonment is applicable. *Fletcher v. State*, 168 So. 3d at 219 (citing *Hodges v. State*, 55 So. 3d 515, 540 (Fla. 2010) (“This Court has repeatedly held that *Ring*

does not apply to cases where the prior violent felony, the prior capital felony, or the under-sentence-of-imprisonment aggravating factor is applicable.”) Because this case is not within the scope of *Ring* and is dissimilar from *Hurst*, further analysis of this claim by this Court on *certiorari* review should be denied.

Fletcher’s jury recommended death by a vote of 10-2. *Fletcher*. Under Florida law, the jury necessarily found (by definition) at least one aggravator in order to make that recommendation. *Evans v. Sec’y, Florida Dep’t of Corr.*, 699 F.3d at 1258 *citing Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989) (*per curiam*), stated: “the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury.” *Id.* at 640–41, 109 S.Ct. at 2057. So, a jury that recommends death has necessarily found at least one aggravator. A jury’s recommendation of death means the jury found an aggravator – that is all that is required to satisfy *Ring*. There can be no violation of the Sixth Amendment right to a jury trial where the defendant had a jury and that jury necessarily found an aggravator.

Furthermore, if *Ring* requires that the jury find an aggravator, then *Ring* was satisfied in the guilt phase in this particular case. One of the aggravators found by the trial court was the previous violent felony aggravator, *Fletcher v. State*, 168 So. 3d at 216, based on the contemporaneous conviction for home invasion robbery. When Fletcher’s jury unanimously convicted him of home-invasion robbery, the prior violent felony aggravator was established at the guilt phase of his trial. Further, the “under sentence of imprisonment” aggravator was

established by Fletcher's stipulation to the fact he was lawful custody prior to the prison escape. Because this is so, *Ring* was doubly satisfied in this case. Considering that this Court has never invalidated Florida's capital sentence statute and has found that Florida's capital sentencing scheme satisfies the Sixth Amendment, Petitioner has offered no compelling reason for this Court to grant *certiorari* review in his case.

Instead, Petitioner's complaints appear to be nothing more than a complaint about the application of a properly-stated and well-settled precedent to the facts in this matter. As such, any decision that this Court might issue on this case would have no importance to anyone other than the parties to this litigation – *certiorari* should be denied. *See Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. at 74.

CONCLUSION

WHEREFORE, based upon the foregoing arguments, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished electronically furnished electronically by email to: J. Rafael Rodriguez, Esq., 6367 Bird Road, Miami, FL 33155, jrafrrod@bellsouth.net, on this 19th day of October, 2015.

A handwritten signature in cursive script that reads "Stacey E. Kircher".

STACEY E. KIRCHER
ASSISTANT ATTORNEY GENERAL

CASE NO. 15-6075
IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY W. FLETCHER,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the word count limitations as set forth in Supreme Court Rule 33(g)(ii). This brief in opposition contains 9,000 words.



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