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CASE NO. 16-9448

IN THE SUPREME COURT OF THE UNITED STATES

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QUENTIN MARCUS TRUEHILL,  
*Petitioner,*

vs.

STATE OF FLORIDA,  
*Respondent.*

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

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

[Capital Case]

WHETHER PETITIONER'S DEATH SENTENCE VIOLATES THE SIXTH AND EIGHTH AMENDMENTS WHERE TWO OF THE AGGRAVATING FACTORS SUPPORTING THE SENTENCE WERE NECESSARILY FOUND BY THE JURY BEYOND A REASONABLE DOUBT, THE JURY RECOMMENDED A SENTENCE OF DEATH BY A VOTE OF 12-0, AND THIS COURT'S EIGHTH AMENDMENT JURISPRUDENCE HAS NEVER REQUIRED JURY SENTENCING?

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### CITATION TO OPINION BELOW

Quentin Marcus Truehill seeks a writ of certiorari from the February 23, 2017, opinion of the Florida Supreme Court affirming the convictions and sentence of death. The opinion of the Florida Supreme Court is reported at Truehill v. State, 211 So. 3d 930 (Fla. 2017).

### JURISDICTION

The Petition seeks review of a ruling from the Florida Supreme Court; therefore, any jurisdiction would be conferred by 28 U.S.C. § 1257. Nevertheless, Respondent submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

### STATEMENT OF CASE AND FACTS

The facts of Petitioner's case are recited in the opinion of the Florida Supreme Court:

Quentin Truehill, who was twenty-two years old at the time, was charged with the kidnapping and murder of Vincent Binder, who was twenty-nine years old. Truehill's crime spree began on the evening of March 30, 2010, at the Avoyelles Parish Sheriff's Office in Mansura, Louisiana, when Truehill and two other cellmates, Kentrell F. Johnson and Peter Hughes, held the holding-cell officer hostage. Truehill then attacked the booking officer with a shank, after which

the three cellmates fled the jail. Later that day, the men stole a black Chevy extended-cab truck, which contained tools, including saws and knives. The truck was eventually found in Miami, and a search of the truck led to the murder weapon and other relevant physical evidence.

Truehill, Johnson, and Hughes committed a series of crimes between Louisiana and Florida as they made their way to Miami, which were all linked to the actual murder. In Broussard, Louisiana, in the parking lot of a shopping center, the men stole a purse from LeAnn Williams as she exited her car. They then used Williams' credit cards from her purse to fund their journey until her credit card company listed the card as stolen. A video from the shopping center showed images of the black Chevy truck backing into a parking spot near the incident. Williams' identification card was later found in the stolen truck.

On the afternoon of April 1, 2010, in Pensacola, Florida, the three men attacked Brenda Brown at an apartment complex. One of the men had initially approached her, asking for some water, and the three men followed her into an apartment that she was cleaning. After Brown filled a blue plastic cup with water, two of the men brandished large knives and demanded her money. One man displayed a large filleting knife, while the other man's knife was twelve inches in length with a brown wooden handle and did not have a point at the end. Brown gave them her money, at which point they taped her mouth with electrical tape, taped her hands behind her back, and took her to a back bedroom, where they hit her on her head with the knives. Brown put her hands up to protect herself and then pretended to be dead. Based on the injuries she sustained in the attack, she had five of her fingers amputated; she also had a skull fracture and two lacerations on her head. Brown identified Truehill as the person who approached her with the knife. After Truehill was apprehended, police found a pair of jeans in the codefendants' motel room with both Binder's and Brown's DNA on it, establishing that the person who battered Brown was also involved in Binder's death.

The codefendants continued east, arriving in Tallahassee that same day. At 10:30 p.m. on April 1, Johnson approached Mario Rios, who was visiting a friend at an apartment complex in Tallahassee, to ask

Rios if the mall was still open. The question seemed odd since it was so late, and Rios began backing away from Johnson. Truehill, at that point, jumped out and grabbed Rios by his shirt with a twisting motion, demanding all of Rios's possessions as Truehill displayed a large knife. Rios identified the knife in evidence as being consistent with the knife that he saw. Rios pushed Truehill back and ran to his friend's apartment. He called the police immediately and gave law enforcement the shirt that Truehill grabbed. DNA testing on the portion of the shirt that Truehill grabbed was consistent with Truehill's DNA.

Later that same evening, around 11 p.m., Cris Pavlish and her friend were walking in a parking lot toward her car when a black four-door truck quickly approached and stopped in a manner that blocked them. The men in the truck asked them for directions, and Pavlish and her friend attempted to answer their questions. At that point, Truehill demanded her purse, swinging a machete with a wooden handle and a thin, gold band across it. Truehill attempted to grab Pavlish, but she was able to break free from his grip. During the scuffle, Pavlish's purse fell, so Truehill put the knife down to grab her purse. Pavlish used the opportunity to run away, and her friend followed shortly. Some of the personal items that Pavlish had in her purse were found in the stolen black truck.

That same evening, on April 1, Beth Frady, her husband David, and Rebecca Edwards met Vincent Binder for dinner in Tallahassee and then ended their evening at the Fradys' home, where Edwards and Beth Frady worked on a paper for school. Binder had his bankcard with him earlier that evening when he made a purchase at a gas station. Around midnight on April 2, Binder left the study group to walk home since he lived only about a mile away. The next day, Beth Frady texted Binder numerous times, attempted to call him, and stopped by his house, but he never responded to any of the attempts. On April 8, she reported Binder as missing to the police, and during their investigation, the police learned that Binder's bankcard was used for two transactions that occurred at 12:15 and 12:21 a.m. at the Halftime Keg store in Tallahassee on April 2—fifteen minutes after Binder had left his friends' home. A video was obtained from the store, which showed Truehill using the victim's bankcard without the victim's presence. Additional transactions occurred



with his bankcard in Madison County, Jacksonville, Fort Pierce, Daytona Beach, Opa Locka, and Miami, at which point the bankcard was blocked based on suspicious activity.

Shirley Marcus met Truehill, Johnson, and Hughes in Miami that month when the three men and her friend, Tony, picked her up in the four-door black truck. Marcus, who partied with the group at a hotel, recalled that the three men "had money." The next day, Marcus joined the codefendants to eat at Burger King and visit the beach. While at the beach, however, one of the men lost the keys to the truck. Marcus and Johnson left to retrieve Marcus's vehicle—a red Ford Sport Trac. When they returned to pick up Truehill and Hughes, Truehill and Hughes had Marcus's tennis shoes, even though she had left them in the locked, black truck. In addition, the men carried a large, black bag. Police eventually recovered the black truck at the beach in Miami with a shattered left rear window.

Shortly after this, the men had run out of money, so Marcus took the three men to her house. Marcus drove Truehill, Johnson, and Hughes to a local Wachovia bank, where they attempted to withdraw \$1,300 from Binder's bank account, using Binder's bankcard and driver's license that Truehill had with him. The bank teller became suspicious because, while the driver's license submitted belonged to a white male, the driver was a black female, and all of the passengers were black males. After the teller took a long time in processing the request, Johnson told Marcus to drive away. A bank security guard was able to write down Marcus's tag number before the vehicle disappeared, and a surveillance camera captured images of the vehicle.

Meanwhile, Peter Milian of the Miami-Dade Police Department noticed a black truck in a parking lot with a shattered left rear window and a missing license tag. After learning the vehicle was reported stolen from Louisiana and searching the vehicle, he found a bloody knife underneath the front passenger seat. Subsequent testing of the knife revealed that eight of the bloodstains contained a complete DNA profile that matched Binder, and Johnson was found to be a minor contributor. Additional items were later found in the truck, including Williams' Louisiana identification card, ATM receipts, Pavlish's documents, and a green washcloth with blood on it. DNA testing of the

washcloth revealed a blood stain that contained a complete profile that matched Binder, and a mixed DNA profile that was consistent with Binder and Johnson.

On April 12, 2010, Marcus, Truehill, and Hughes were arrested at a Budget Inn Motel, and Johnson was arrested a block away shortly after. In the motel room shared by Marcus, Truehill, Hughes, and Johnson, police found significant incriminating evidence, including Binder's wallet, a black, heavy-duty garbage bag containing clothing, a metal handsaw, a machete, and a pair of black Levi's jeans. DNA testing on the machete resulted in a partial DNA profile that matched Truehill. DNA testing on the black Levi's revealed mixed DNA profiles where Binder was the major contributor. A swab of the inside waistband revealed a mixed DNA profile that matched Truehill, Johnson, Hughes, and Marcus as possible contributors.

Police also conducted a search in Marcus's motel room, where Marcus had initially taken Truehill, Hughes, and Johnson after they ran out of money, and found a black sheath for a knife and a pair of Giovanni blue jeans on Marcus's bed, among other items. DNA testing on the Giovanni jeans revealed a complete DNA profile that matched Binder, a DNA profile that matched Brenda Brown, a mixed DNA profile with Brown as the major contributor and Johnson as a possible contributor, and a mixed DNA profile with Binder as the major contributor and Johnson as a possible minor contributor.

Law enforcement officers found Binder's decomposed body in an open field near I-95 in St. Augustine, Florida. Binder's hat was about twenty-five feet away from his body with a straight-line cut on the bill going toward the hat. Binder had four stab wounds to his back and blunt-force injuries to his left head area that penetrated into the cranium. Approximately ten chopping-type injuries to the back of Binder's head caused fractures and a four-inch hole in the back of head. In addition, Binder's ribs were fractured, his ulna bone in the left forearm was fractured, and the radius was dislocated—classic defensive injuries. Binder also sustained chopping injuries on his hands, causing fractures that also could be considered to be defensive injuries. Dr. Frederick Hobin, the medical examiner, opined that two knives were used to kill the victim, and that some of the wounds were consistent

with a machete, while the stab wounds were caused by a different knife. Michael Warren, the Assistant Director of the William R. Maples Center for Forensic Medicine, assisted in Binder's autopsy and opined that the knife in evidence could have caused the injuries to Binder's cranium.

The jury found Truehill guilty of both counts of murder and kidnapping.

Truehill, 211 So. 3d at 936-939 (footnotes omitted).

Following a penalty phase, "the jury recommended that Truehill be sentenced to death by a unanimous vote of twelve to zero." Id. at 940. After holding a hearing pursuant to Spencer v. State, 615 So. 2d 688 (Fla. 1993), the trial court followed the jury's unanimous vote and imposed a death sentence. The court found the existence of six aggravating factors, according each great weight: "(1) Truehill was under a sentence of imprisonment at the time of the crime; (2) Truehill had a prior violent felony; (3) Truehill committed the murder while engaged in the commission of a felony; (4) the murder was committed for the purpose of preventing a lawful arrest; (5) the murder was especially heinous, atrocious, or cruel (HAC); and (6) the capital felony was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP)." Truehill, 211 So. 3d at 940-41.

On appeal, Truehill claimed entitlement to relief pursuant to Hurst v. Florida, \_\_\_ U.S. \_\_\_, 136 S. Ct. 616 (2016). Id. at 941-42. The Florida Supreme Court resolved this claim as follows:

The next issue addressed is whether Truehill is entitled to relief under Hurst v. Florida (Hurst v. Florida), \_\_\_ U.S. \_\_\_, 136 S. Ct. 616, 193 L.Ed.2d 504 (2016), and Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016). New rules of law announced by this Court or the United States Supreme Court will apply to all cases that are pending on direct review or are otherwise not finalized. State v. Johnson, 122 So. 3d 856, 861 (Fla. 2013) (citing Griffith v. Kentucky, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L.Ed.2d 649 (1987); Smith v. State, 598 So. 2d 1063, 1066 (Fla. 1992)). Therefore Hurst v. Florida and Hurst apply to Truehill's case, which is before this Court on direct appeal.

Truehill contends that he is entitled to relief pursuant to Hurst v. Florida because the jury in his case was repeatedly instructed regarding the non-binding nature of its verdict, and, despite the unanimous jury recommendation, Hurst v. Florida error is structural and therefore not capable of harmless error review. In Hurst, on remand from the United States Supreme Court, we determined that these errors are not structural and are therefore subject to harmless error review. See Hurst, 202 So. 3d at 67. After this Court's holding in Hurst, requiring that the jury unanimously find all facts necessary to impose a sentence of death and unanimously recommend death, there is no question whether there was Hurst error in Truehill's penalty phase, where the jury issued only an advisory recommendation of death, without more specific findings. Accordingly, the issue before this Court is whether the Hurst error in Truehill's case was harmless beyond a reasonable doubt.

In Hurst, this Court explained the appropriate standard for harmless error review:

Where the error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence. See, e.g., Zack v. State, 753 So. 2d 9, 20 (Fla. 2000). Although the harmless error test applies to both constitutional errors and errors not based on constitutional grounds, "the harmless error test is to be rigorously applied," [State v.] Diguilio, 491 So. 2d [1129,] 1137 [Fla. 1986], and the State bears an extremely heavy burden in cases involving

constitutional error. Therefore, in the context of a Hurst v. Florida error, the burden is on the State, as the beneficiary of the error, to prove beyond a reasonable doubt that the jury's failure to unanimously find all the facts necessary for imposition of the death penalty did not contribute to Hurst's death sentence in this case. We reiterate:

The test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence. The focus is on the effect of the error on the trier-of-fact.

DiGuilio, 491 So. 2d at 1139. "The question is whether there is a reasonable possibility that the error affected the [sentence]." Id.

Hurst, 202 So. 3d at 68. As applied to the right to a jury trial with regard to the facts necessary to impose the death penalty, it must be clear beyond a reasonable doubt that a rational jury would have unanimously found all facts necessary to impose the death penalty and that the death penalty was the appropriate sentence. See Davis v. State, 207 So. 3d 142 (Fla. 2016).

Turning to Truehill's sentence, we emphasize the unanimous jury recommendation of death. The unanimous jury recommendation of death provides this Court with the evidence necessary to conclude beyond a reasonable doubt that a rational jury would have unanimously found that sufficient aggravating factors existed to impose the death penalty and that those aggravating factors outweighed the mitigating circumstances presented.

In its instructions, the jury was informed that it needed to determine whether sufficient aggravators existed and, if so, whether the aggravation outweighed the mitigation before the death penalty could be imposed. Fla. Std. Jury Instr. (Crim.) 7.11 ("If . . . you determine that no aggravating circumstances are

found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death."). The jury ultimately returned a unanimous verdict of death based on the conclusion of all twelve jurors that sufficient aggravating circumstances existed and such aggravating circumstances outweighed the mitigating circumstances.

Even though the jury was not informed that the finding that sufficient aggravating circumstances outweighed the mitigating circumstances must be unanimous, and even though it was instructed that it was not required to recommend death even if the aggravators outweighed the mitigators, the jury did in fact recommend death unanimously. See id. ("If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death."). From these instructions, we can conclude that the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendation. Further supporting that any Hurst error was harmless here, Truehill has not contested any of the aggravating factors as improper in the case at hand—Truehill's direct appeal.

Lastly, as to the mitigating circumstances, the jury was presented with evidence that include four statutory mitigating circumstances: (1) the defendant was under the influence of mental or emotional disturbance; (2) the defendant's capacity to appreciate the criminality of his conduct or conform to the requirements of law was substantially impaired; (3) the crime was committed by another person and Truehill had only a minor role; (4) Truehill acted under extreme duress or the substantial domination of another person. The jury was also presented with evidence of forty nonstatutory mitigating circumstances. Despite all of this evidence,



the jury unanimously recommended a sentence of death, indicating that all twelve jurors agreed that the mitigating evidence did not outweigh the six aggravating factors.

We conclude that the State can sustain its burden of demonstrating that any Hurst error was harmless beyond a reasonable doubt. Here, the jury unanimously found all of the necessary facts for the imposition of a death sentence by virtue of its unanimous recommendation. In fact, although the jury was informed that it was not required to recommend death unanimously, and despite the mitigation presented, the jury still unanimously recommended that Truehill be sentence to death for the murder of Binder. The unanimous recommendation here is precisely what we determined in Hurst to be constitutionally necessary to impose a sentence of death. Hurst, 202 So. 3d at 44. Therefore, Truehill is not entitled to relief.

Truehill, 211 So. 3d at 955-57 (alterations and emphasis in original).

### REASONS FOR DENYING THE WRIT

PETITIONER'S SENTENCE DOES NOT VIOLATE THE SIXTH OR EIGHTH AMENDMENT AND THE DECISION OF THE FLORIDA SUPREME COURT DOES NOT CONFLICT WITH ANY DECISION FROM THIS COURT, ANY FEDERAL COURT OF APPEAL, OR ANY STATE COURT OF LAST RESORT.

Petitioner requests this Court review the Florida Supreme Court's opinion affirming his death sentence, arguing that his death sentence violates the Sixth and Eighth Amendments. Specifically, Petitioner claims that his jury did not make the requisite findings under Hurst v. Florida, 136 S. Ct. 616 (2016), to subject him to the death penalty and that this alleged error could not be deemed harmless under Chapman v. California, 386 U.S. 18 (1967). Petitioner further contends that the Eighth Amendment was violated in his case because his jury was advised that its sentencing recommendation was non-binding on the trial judge.

#### I. Petitioner's Death Sentence Satisfies Hurst v. Florida.

Petitioner does not provide any "compelling" reason for this Court to review his case. U.S. Sup. Ct. R. 10. Indeed, Petitioner cannot cite to any decision from this or any appellate court that conflicts with the Florida Supreme Court's decision in Truehill v. State, 211 So. 3d 930 (Fla. 2017), in which the court determined that, under that court's decision in Hurst v. State, 202 So. 3d 40 (Fla. 2016), any sentencing proceeding error was harmless as evidenced by the jury's unanimous death



recommendation. Furthermore, this Court in Hurst v. Florida did not express any reason to disturb a capital sentence supported by recidivist aggravators.

Petitioner claims that his jury made "none" of the findings required by this Court's opinion in Hurst v. Florida. (Pet. at 16). Going so far as to argue that there was "no jury verdict within the meaning of the Sixth Amendment as to *any* individual aggravating circumstance," Petitioner asserts that a harmless error analysis would be inappropriate. (Pet. at 18) (emphasis added). Petitioner's assertion is patently false. His contemporaneous conviction for kidnapping alone established beyond a reasonable doubt the existence of the commission during the course of a felony aggravating circumstance, and his prior convictions for manslaughter and armed robbery established beyond a reasonable doubt the prior violent felony aggravating circumstance. See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) ("*Other than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.") (emphasis added); Alleyne v. United States, 133 S. Ct. 2151, 2160 n.1 (2013) (recognizing the "narrow exception . . . for the fact of a prior conviction" set forth in Almendarez-Torres v. United States, 523 U.S. 224 (1998)). See also Jenkins v. Hutton, \_\_\_ U.S. \_\_\_, 137 S. Ct. 1769, 1772

(2017) (noting that the jury's findings that defendant engaged in a course of conduct designed to kill multiple people and that he committed kidnapping in the course of aggravated murder rendered him eligible for the death penalty). This Court's ruling in Hurst v. Florida did not change the recidivism exception articulated in Apprendi and Ring v. Arizona, 536 U.S. 584, 609 (2002) (extending the holding in Apprendi to capital cases and holding that when "enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,' the Sixth Amendment requires that they be found by a jury") (internal citation omitted).

Hurst v. Florida applied Ring to Florida's capital sentencing scheme, reiterating that a jury, not a judge, must find the existence of an aggravating factor to make a defendant eligible for the death penalty. Hurst v. Florida, 136 S. Ct. at 624 (Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is . . . unconstitutional."). Hurst v. Florida did not address the process of weighing the aggravating and mitigating circumstances or suggest that the jury must conduct the weighing process to satisfy the Sixth Amendment. In Kansas v. Carr, 136 S. Ct. 633 (2016), decided eight days after this Court issued Hurst v. Florida, this Court emphasized:

Whether mitigation exists, however, is largely a judgment call (or perhaps a value call); what one juror might consider mitigating another might not. And of

course, the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy—the quality of which, as we know, is not strained. It would mean nothing, we think, to tell the jury that the defendants must deserve mercy beyond a reasonable doubt, or must more-likely-than-not deserve it. . . . In the last analysis, jurors will accord mercy if they deem it appropriate, and withhold mercy if they do not, which is what our case law is designed to achieve.

Carr, 136 S. Ct. at 642.

Nevertheless, Petitioner's argument that harmless error cannot apply in his case hinges on an interpretation of this Court's Hurst opinion that requires exactly the weighing process rejected in Carr. Petitioner conflates the requirement of proof beyond a reasonable doubt for evidentiary findings such as the existence of aggravating factors, with the moral, ethical, and philosophical questions posed by the decision to impose a capital sentence. He correctly points out that the Florida Supreme Court in Hurst v. State, 202 So. 3d 40 (Fla. 2016), held that "post-Hurst, the jury must find not only whether individual aggravating circumstances have been proved, but also whether those aggravating circumstances are sufficient to support a death sentence, and whether the aggravating factors outweigh the mitigating circumstances." (Pet. at 16-17). Hurst v. State, 202 So. 3d at 57. However, the only resemblance the Florida Supreme Court's holding in Hurst v. State bears to this Court's holding in Hurst v. Florida is its requirement that aggravating circumstances be found by a jury beyond a reasonable doubt. With

its added requirements—under the guise of state law—amounting to jury sentencing in death penalty cases, Hurst v. State provides no basis for this Court to grant review of Petitioner's case.

Petitioner's reliance on Sullivan v. Louisiana, 508 U.S. 275 (1993), is therefore misplaced. In Sullivan, this Court ruled that an erroneous jury instruction concerning the guilt beyond a reasonable doubt standard is not subject to a harmless error analysis. Where there is a reasonable likelihood that a jury does not believe that it must find proof beyond a reasonable doubt to find a defendant guilty, the erroneous jury instruction is a "structural error." Id. at 281-82. In other words, without the proper standard of proof, there was "no jury verdict of guilty-beyond-a-reasonable-doubt," making "the question whether the same verdict of guilty-beyond-a-reasonable-doubt would have been rendered absent the constitutional error . . . utterly meaningless." Id. at 280 (emphasis in original).

In Neder v. United States, 527 U.S. 1, 6 (1999), this Court considered a case in which the trial judge failed to submit the element of materiality to the jury in a prosecution for mail, wire, and tax fraud, after incorrectly concluding that the issue was one for the judge and not the jury to determine. On review, this Court held that "[i]t would be illogical to extend the reasoning of Sullivan from a defective 'reasonable doubt' instruction to a failure to instruct on an element of the crime."

Such a mistake, this Court concluded, does not require automatic reversal but would instead be subject to a harmless error analysis. Id. at 8. Indeed, Neder emphasized that structural errors are limited to a narrow class of cases that "infect the entire trial process," necessarily rendering a "trial fundamentally unfair." Id. See also Washington v. Recuenco, 548 U.S. 212, 222 (2006) ("Failure to submit a sentencing factor to the jury, like failure to submit an element to the jury, is not structural error."); Schriro v. Summerlin, 542 U.S. 348, 355-56 (2004) (rejecting a claim that Ring, which applied Apprendi to hold that a jury must find the existence of aggravating factors necessary to impose the death penalty, was a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding, in part because the Court could not "confidently say that judicial factfinding *seriously* diminishes accuracy") (emphasis in original).

Clearly, under this Court's Sixth Amendment jurisprudence, it is well established that the critical distinction between the errors considered in Neder and in Sullivan is that the error in Sullivan invalidated *all* the jury's findings, while the error in Neder impacted only the finding of a single element. See Mitchell v. Esparza, 540 U.S. 12, 16 (2003) (opining that when, as in Neder, a jury is "precluded from determining only one element of an offense, . . . harmless-error review is feasible"). Therefore,

any error in failing to submit the aggravating factors to the jury in this case was capable of harmless error analysis. Id. The Florida Supreme Court engaged in such an analysis and reasoned that the jury's unanimous "recommendation of death provides this Court with the evidence necessary to conclude beyond a reasonable doubt that a rational jury would have unanimously found that sufficient aggravating factors existed to impose the death penalty and that those aggravating factors outweighed the mitigating circumstances presented." Truehill, 211 So. 3d at 956. Contrary to Petitioner's contention, the Florida Supreme Court's analysis is consistent with this Court's holding in Chapman v. California, 386 U.S. 18, 24 (1967) (concluding "that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt").

Petitioner's jury unanimously found him guilty of murder and kidnapping. Additionally, Petitioner had previously been convicted for manslaughter and armed robbery. The manslaughter conviction was the result of a plea, and the contemporaneous kidnapping and prior armed robbery conviction arose from jury verdicts. Truehill, 211 So. 3d at 939. These convictions satisfied the prior violent felony and the contemporaneous felony aggravating circumstances. Id. at 941. Therefore, at least two aggravating factors were found beyond a reasonable doubt by a

jury, rendering him eligible for the death penalty. Accordingly, Petitioner's death sentence satisfies the requirements of Apprendi, Ring, and Hurst v. Florida. After Hurst, this Court has provided no express reason to disturb any capital sentence supported by prior or contemporaneous convictions.

II. Petitioner's Death Sentence Comports with the Eighth Amendment and Caldwell v. Mississippi.

Petitioner urges that the sentencing procedure used in his case violated the Eighth Amendment and this Court's ruling in Caldwell v. Mississippi, 472 U.S. 320 (1985), because the jury was given instructions that informed the jury its death recommendation was merely advisory. This matter does not merit this Court's review. In order to establish constitutional error under Caldwell, a defendant must show that the comments or instructions to the jury "improperly described the role assigned to the jury by local law." Romano v. Oklahoma, 512 U.S. 1, 9 (1994). Petitioner's jury was properly instructed on its role based on the law existing at the time of his trial. To the extent Petitioner suggests that jury sentencing is now required, this is not the case. See Ring, 536 U.S. at 612 (Scalia, J., concurring) ("[T]oday's judgment has nothing to do with jury sentencing. What today's decision says is that the jury must find the existence of the fact that an aggravating factor existed.") (emphasis in original). Therefore, Petitioner fails to present a constitutional question which would warrant certiorari review.

Additionally, as the Florida Supreme Court pointed out, "the jury was informed that it needed to determine whether sufficient aggravators existed and, if so, whether the aggravation outweighed the mitigation before the death penalty could be imposed." Truehill, 211 So. 3d at 956 (citing Fla. Std. Jury Instr. (Crim.) 7.11) (emphasis in original). The court noted that the jury "ultimately returned a unanimous verdict of death based on the conclusion of all twelve jurors that sufficient aggravating circumstances existed and such aggravating circumstances outweighed the mitigating circumstances." Id. (emphasis in original). The court concluded that, based on the instructions given and the jury's unanimous death recommendation, "we can conclude that the jury unanimously made the requisite factual findings to impose death before it issued the unanimous recommendation." Id. at 956-57. Furthermore, the court emphasized that "Truehill has not contested any of the aggravating factors as improper in the case at hand—Truehill's direct appeal." Id. at 957.

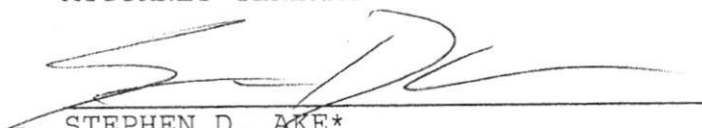
Because the Florida Supreme Court's decision does not conflict with any decision of this Court or involve an important, unsettled question of federal law, this Court should decline to exercise its certiorari jurisdiction in the instant case.



CONCLUSION

Based on the foregoing, 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 on this 3rd day of July, 2017, a true and correct copy of the foregoing Respondent's Brief in Opposition was furnished by U.S. mail to: Nancy Ryan, Assistant Public Defender, Seventh Judicial Circuit, State of Florida, 444 Seabreeze Boulevard, Suite 210, Daytona Beach, Florida 32118. I further certify that all parties required to be served have been served.

  
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