IN THE SUPREME COURT OF FLORIDA

Case No. SC19-1182
Lower Court Case No. 3D18-2433

BRANDON THOURTMAN,
Appellant/Appellant,

vs.

DANIEL JUNIOR, ETC.,
Respondent/Appellee.

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

Brandon Thourtman ("Appellant") was arrested for armed robbery, a first-degree felony punishable by life imprisonment. He filed a petition for writ of habeas corpus in the Third District Court of Appeal ("Third District"), claiming that he had been illegally detained without bond following his first appearance at which no preliminary finding of proof of guilt evident or presumption great ("proof evident, presumption great") was made. (R. 1-17).

The Third District denied the petition holding that "Article I, section 14 of the Florida Constitution does not prohibit the trial court the discretion at first appearance, upon a finding of probable cause that the defendant committed a crime punishable by capital punishment or life imprisonment, to defer ruling on bail and to detain the defendant for a reasonable time to conduct a full *Arthur*[1] bond hearing." (R. 352).

It further held that "[t]o exercise such discretion, the trial court is not required by the Florida Constitution to make a preliminary finding of proof evident, presumption great, as that issue is reserved for the full *Arthur* bond hearing." (R. 352). The Third District certified conflict with *Gray v. State*, 257 So.

[1] *State v. Arthur*, 390 So. 2d 717 (Fla. 1980).

3d 477 (Fla. 4th DCA 2018), and *Ysaza v. State*, 222 So. 3d 3 (Fla. 4th DCA 2017). (R. 352).

STATEMENT OF THE CASE AND FACTS

On November 9, 2018, Brandon Thourtman was arrested for armed robbery, a first-degree felony punishable by life imprisonment. (R. 24-25, 329).[2] The following day, at the first appearance hearing,[3] the trial court reviewed the arrest affidavit. (R. 330). The affidavit stated that Appellant approached a security guard. (R. 24-25). He placed a firearm to the security guard's head. (R. 24). Appellant demanded she get on the ground. (R. 24). Appellant then took the security guard's bus pass and purse and fled on foot. (R. 24). During the investigation, the security guard identified Appellant from a photographic array as the armed robber. (R. 213-19).

On November 10, 2018, Appellant made his first appearance. Recognizing the charge was a felony punishable by life, the first appearance judge announced,

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[2] The symbol "R." will refer to the Record on Appeal before this Court. The parties shall be referred to as they stand in this Court.

[3] *See* November 10, 2018, first appearance DVD at 1:18:35, which is part of the record. Court Reporters are not present at first appearance proceedings in Miami-Dade County, which are instead video-recorded.

"no bond," and deferred the bond decision until a hearing could be held pursuant to *Arthur*. (R. 330). Neither Appellant nor his attorney spoke at the first appearance proceeding, which lasted approximately two minutes. (*See* note 2; R. 331).

On November 30, 2018, Appellant was arraigned. (R. 26-36, 331). The State filed an information charging him with robbery using a firearm or deadly weapon. (R. 28, 331). Appellant requested an *Arthur* hearing. (R. 28, 331). Appellant also objected to his detention without a preliminary finding of proof evident, presumption great. (R. 30-31, 331). The trial court overruled the objection. (R. 31, 331). The parties and the trial court agreed to set an *Arthur* hearing. (R. 31-35, 331).

On December 6, 2018, the trial court held the *Arthur* hearing. (R. 225-326). The investigating detective testified. (R. 239, 331). The court admitted the following into evidence: a statement by the victim, a surveillance video, a GPS record from the victim's mobile telephone, Appellant's confession, and a photographic lineup. (R. 207, 223, 239, 246-50, 251-54, 255-56, 264-72, 331-32). The trial court found proof evident, presumption great that Appellant robbed the victim. (R. 321, 332). However, it found that proof was not evident, and the presumption was not great that Appellant used a firearm. (R. 321, 332). Since

unarmed robbery is not a felony punishable by life, the trial court ordered pretrial release with house arrest and a $25,000 bond. (R. 322-24, 332).

In the meantime, on December 3, 2018, Appellant filed a petition for writ of habeas corpus in the Third District. (R. 331). He argued his detention beyond his first appearance was illegal as the judge had not made a proof evident, presumption great finding, as required by the Florida Constitution. (R. 1-17).

Although the petition was moot as the court had set bond, the Third District held that it presented a question capable of repetition but evading review and accepted jurisdiction. (R. 85, 333). At oral argument, Appellant conceded that: (1) most often, the State will be unable to offer evidence to show proof evident, presumption great at first appearance; (2) almost always, a defendant will be unable to exercise his constitutional right to present evidence at first appearance; and (3) under existing law, a full *Arthu*r hearing must be held within a reasonable time - not at first appearance. (R. 332).

The majority denied the petition. It held: "Article I, section 14 of the Florida Constitution does not prohibit the trial court the discretion at first appearance, upon a finding of probable cause that the defendant committed a crime punishable by capital punishment or life imprisonment, to defer ruling on bail and to detain the defendant for a reasonable time to conduct a full *Arthur* bond hearing." (R. 352).

The Court reasoned that because first appearance proceedings are brief in nature and held right after arrest, it would be impractical to hold an *Arthur* hearing so early in the case. (R. 343). Further, there is no requirement that the trial court hold both a bond hearing at first appearance and a second bond hearing at a subsequent *Arthur* hearing. (R. 338-41). Instead, the trial court should have the discretion to detain a defendant for a reasonable time before holding an *Arthur* hearing. (R. 339-40).

The Third District certified conflict with *Gray v. State*, 257 So. 3d 477 (Fla. 4th DCA 2018), and *Ysaza v. State*, 222 So. 3d 3 (Fla. 4th DCA 2017). (R. 352). One judge dissented. (R. 353-363). This Court accepted jurisdiction.

SUMMARY OF THE ARGUMENT

As a preliminary matter, the majority did not misunderstand Appellant's claim below, which was not that the State must meet its burden of proof before he could be held without bond under the first exception of Article I, Section 14. Instead, he framed his claim in the Third District as the trial court erred when it denied bail without making a preliminary finding at first appearance pursuant to Article I, Section 14 of the Florida Constitution and *Arthur* that the proof of guilt was evident or the presumption was great that he committed the capital or life offense.

Further, *Ysaza* and *Gray*'s departure from the general understanding of Article I, Section 14, as requiring a preliminary proof evident, presumption great finding at first appearance to detain an accused without bond pending an *Arthur* hearing, is not historically supported. Since early versions of the "capital or life offense" exception to Article I, Section 14 appeared in 1838, it was understood that the accused was the one who exercised his right to bail by filing an application and the accused bore the burden of proof evident, presumption great. This first changed in 1980, when this Court in *Arthur* placed the burden of proof borne historically by the accused onto the State by overruling prior precedent. Thus, this Court's *Arthur* decision changed who bore the burden of proof, but did not change the process whereby a hearing is triggered only by the accused's application for bond.

Moreover, *Ysaza* and *Grey*'s interpretation of Article I Section 14 is not supported by the text or *Arthur*'s interpretation of the provision. The majority correctly concluded that the textual construction of the provision requires that the State meets its burden, which "obviously presupposes a hearing on that issue." *Arthur* did not change anything as to when that burden would be asserted or determined. *Arthur* construed the provision as requiring a hearing, not when the hearing should be held. *Arthur* addressed and changed only who bore the burden of proof and the availability of discretion.

Lastly, the majority correctly found that "[g]iven the high level of evidence needed to establish 'proof evident, presumption great,' and the summary nature and early timing of first appearances, it is simply impractical to hold even a preliminary *Arthur* hearing at first appearance."

ARGUMENT

I. The majority correctly determined that the trial court, at first appearance, upon a probable cause determination that the accused committed a capital or life offense, retains discretion to defer ruling on bail and detain the accused for a reasonable time until a full *Arthur* bond hearing can be held.

A. The majority did not misunderstand the issue presented below.

As preliminary matter, Appellant argues that because the majority below misunderstood his claim, its reasoning for holding that the trial court retains the discretion to defer ruling on bail and detain an accused for a reasonable time to hold a full *Arthur* hearing, is incorrect. He asserts that his claim below was not that an *Arthur* hearing must be conducted at first appearance, or that subsequent *Arthur* hearings be held, or that he cannot be held under a separate pretrial detention scheme. (Br. 8). Instead, Appellant asserts that his claim was that the State must meet its burden of proof before a trial court may detain an accused charged with a capital or life offense without bond. (Br. 8-9).

The majority did not misunderstand his claim. His claim below was that the trial court erred in not making the required preliminary finding at first appearance pursuant to Article I, Section 14 of the Florida Constitution and *Arthur*. (R.10, R. 180-90.). Based on the facts of the case and Appellant's petition, the majority correctly understood Appellant's claim to present the following question: "Whether Article I, Section 14 of the Florida Constitution prohibits a trial court from detaining a defendant beyond first appearance for a reasonable time pending an *Arthur* bond hearing unless the trial court makes a preliminary finding of proof evident, presumption great." (R. 328).

To support his claim below, Appellant relied on *Gray v. State*, 257 So. 3d 477 (Fla. 4th DCA 2018) and *Ysaza v. State*, 222 So. 3d 3 (Fla. 4th DCA 2017). In *Ysaza*, the first appearance judge found probable cause for life felonies but did not make a proof evident, presumption great finding. 222 So. 3d at 4. The first appearance court ruled that it could hold the defendant without bond pursuant to *Brackett v. State*, 773 So. 2d 564 (Fla. 4th DCA 2000), pending an *Arthur* hearing. *Ysaza*, 222 So. 3d at 4-5.

The Fourth District found that the first appearance court erred when it ordered Ysaza be held without bond without first making a preliminary finding of proof evident, presumption great based on the probable cause affidavit. *Ysaza*, 222

So. 3d at 4-5. The court held that in order to hold Ysaza without bond pending an *Arthur* hearing, the first appearance court was required to find that the probable cause affidavit (or other materials before the court) established that proof of guilt was evident, or the presumption was great. *Id*. at 7.

In so holding, the Fourth District discussed the *Arthur* holding, which it noted stemmed from this Court's interpretation of Article I, Section 14 of the Florida Constitution. *Ysaza*, 222 So. 3d at 5-6. It then explained the degree of proof, which the State must present to carry its burden at first appearance:

> Because the State can carry its burden that proof of guilt is evident or the presumption is great by presenting the evidence relied upon by the State Attorney in charging the crime, *i.e.*, the probable cause affidavit, an *Arthur* hearing is not required at first appearance. In other words, if a defendant is charged with a capital offense or an offense punishable by life imprisonment, and the first appearance judge finds that the probable cause affidavit (or other materials presented by the State) establishes proof of guilt is evident or the presumption is great, then the defendant can be held without bond at first appearance. The defendant then may request the judge to whom the case is assigned for an *Arthur* hearing to set bond.

Ysaza, 222 So. 3d at 6.

The Fourth District discussed *Brackett* and the Second District's decision in *Preston v. Gee*, 133 So. 3d 1218 (Fla. 2d DCA 2014). *See Ysaza*, 222 So. 3d at 6-7. The court concluded that the procedure that it was announcing in *Ysaza* was consistent with *Brackett* and *Preston*, observing that in *Brackett*, "[b]ond was

denied at the first appearance, pending a full bond hearing before the judge to whom the case was assigned." *Ysaza*, 222 So. 3d at 6 (citing *Brackett*, 773 So. 2d at 565). Following a full bond hearing in *Brackett*, where the State relied on a probable cause affidavit to carry its burden, the trial court denied Brackett the opportunity to present evidentiary testimony. *Id*. The *Ysaza* Court noted that it had granted the petition in *Brackett*, because "*Arthur* contemplates a full hearing where 'the accused may still come forward with a showing addressed to the court's discretion to grant or deny bail,' ... and the trial court improperly declined to consider any testimony." *Ysaza*, 222 So. 3d at 6 (citing *Brackett*, 773 So. 2d at 565) (quoting *Arthur*, 390 So. 2d at 719)).

Lastly, the Fourth District noted that the Second District had disagreed with the Appellant's argument "that the first appearance judge erred in finding that proof of guilt was evident or the presumption was great without conducting an evidentiary hearing and taking testimony." *Ysaza*, 222 So. 3d at 6 (citing *Preston*, 133 So. 3d at 1325). It stated that the Second District had reasoned that "*Arthur* makes clear that the parties may make their respective showings by submitting affidavits or transcripts of sworn testimony." *Ysaza*, 222 So. 3d at 6 (quoting *Preston*, 133 So. 3d at 1225-26).

Subsequently in *Gray*, the Fourth District "reiterate[d] and stress[ed] that the first appearance judge must make [the proof evident, presumption great] determination in the first instance and not defer this responsibility to the assigned judge or to our court for *de novo* review." 257 So. 3d at 479. In so holding, the Court found that "bond cannot be denied at first appearance, without the first appearance court making the necessary findings pursuant to Article I, Section 14 of the Florida Constitution and *State v. Arthur*, 390 So. 2d 717 (Fla. 1980)." *Id.*

Thus, *Ysaza* and *Grey* stand for the proposition that first appearance judges are required to make a preliminary proof evident, presumption great finding as a basis for denying pretrial release, which cannot be defer until the *Arthur* hearing. Indeed, recognizing that Appellant relied on *Ysaza* and *Gray* to support his arguments and that its holding was contrary to those decisions, the majority in this case certified conflict. Clearly, the discretionary jurisdiction granted in this matter is based on decisional conflict.

However, this Court has held that it has "the authority to consider issues other than those upon which jurisdiction is based, but this authority is discretionary and should be exercised only when these other issues have been properly briefed and argued, and are dispositive of the case." *Savona v. Prudential Ins. Co. of Am.*, 648 So. 2d 705, 707 (Fla. 1995) (citing *Savoie v. State*, 422 So. 2d 308 (Fla.

1982)). Appellant's contention that his claim below was the State must meet its burden of proof before he could be held without bond was neither raised nor properly briefed and argued below as review of the record establishes. His focus below was on when the proof evident, presumption finding be made, which he vigorously argued was at first appearance.

Therefore, this Court should decline to address Appellant's new claim; and thus, limit its jurisdiction to the certified conflict. *See Savona* 648 So. 2d at 707. The certified conflict lies on whether Article I, Section 14 of the Florida Constitution requires a preliminary proof evident, presumption finding at first appearance or may that determination be deferred to a later adversarial hearing, which following this Court's *Arthur* decision, has been commonly referred to as an *Arthur* hearing.

B. *Ysaza* and *Gray*'s departure from the general understanding of Article I, Section 14 as requiring a preliminary finding of proof evident presumption great at first appearance to detain an accused without bond pending an *Arthur* hearing is not historically supported.

The constitutional right of the accused to be released on bail is set forth in Article I, Section 14 of the Florida Constitution:

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or

> county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Art. I, 14, Fla. Cont.

"[T]his provision guarantees every accused the right to pretrial release on reasonable conditions, with two exceptions." *Preston v. Gee*, 133 So. 3d 1218, 1221 (Fla. 2d DCA 2014); *State v. Perry*, 605 So. 2d 94, 97 (Fla. 3d DCA 1992) (recognizing that Article I, Section 14 is subject to two exceptions). Pertinent here, is the capital or life offense exception, which applies when a person is charged with a capital offense or an offense punishable by life imprisonment. *Preston*, 133 So. 3d at 1221.

As observed by the majority, "Versions of the 'capital or life offense' exception of Article I, Section 14 appeared as early as Florida's first constitution. Art. I, § 11, Fla. Const (1838)." (R. 336). Since those early times, it was understood that the accused was the one who exercised his or her right to bail by filing an application and the accused bore the burden of proof evident, presumption great. *See, e.g., Rigdon v. State*, 41 Fla. 308, 313, 26 So. 711, 712 (1899) ("It is also evident that under our decisions the burden of proof is on the accused on an application for bail."); *Ex parte Nathan*, 50 So. 38, 39 (Fla. 1908); *Russell v. State*,

71 Fla. 236, So. 27, 28 (1916); *State ex rel. Freeman v. Kelly*, 86 So. 2d 166, 166 (Fla. 1956); *Marthis v. Starr*, 152 So. 2d 161, 161 (Fla. 1963).

The burden of proof historically borne by the accused became the State's burden in 1980. (R. 337) (citing *Arthur*, 390 So. 2d at 717). To understand why the *Arthur* Court did so, it is critical to understand the emphasized portion of the following paragraph from *Arthur* – on which the *Ysaza* and *Gray* decisions heavily rely:

> Simply to present the indictment or information is not sufficient. The State's burden, in order to foreclose bail as a matter of right, is to present some further evidence which, viewed in the light most favorable to the State, would be legally sufficient to sustain a jury verdict of guilty. This is the predominant view among jurisdictions with similar constitutional provisions. **The State can probably carry this burden by presenting the evidence relied upon by the grand jury or the state attorney in charging the crime. This evidence may be presented in the form of transcripts or affidavits**. If, after considering the defendant's responsive showing, the court finds that the proof is evident or the presumption great, the court then has the discretion to grant or deny bail. On this issue, the burden is on the accused to demonstrate that release on bail is appropriate...

Arthur, 390 So. 2d at 720. (emphasis added).

The *Arthur* Court made a practical determination as to the burden of proof, finding that the evidence which could sustain the proof evident, presumption standard was evidence that the State could readily obtain and present - *i.e.*, affidavits, transcripts and other documentation. In the context of a hearing that has

been requested in advance and scheduled with reasonable notice, this linchpin of *Arthur* makes sense. In the context of a first appearance, as Appellant advocated below, within twenty-four (24) hours after an arrest, it does not.

Often, at the time of a first appearance, the types of documentation to which *Arthur* refers are not going to be readily available. In most cases, the State has not filed the information or indictment, obtained witness affidavits, or assigned a prosecutor to the case. Transcripts of any significance do not exist. Finally, the police often arrest defendants without a warrant. As such, the first appearance court has the benefit of simply the police-written summary contained in the arrest affidavit.

Indeed, under the rules in existence at the time of *Arthur*, in a capital case, when a preliminary hearing was held, it would be within seven days of the first appearance. Fla. R. Crim. P. 3.131(b) (1972 version). Cases where *Arthur* hearings followed a formal application for bail or at preliminary hearing include: *Primm v. State*, 293 So. 2d 725 (Fla. 2d DCA 1974); *Kinson v. Carson*, 409 So. 2d 1212 (Fla. 1st DCA 1982); *Perry*, 605 So. 2d at 94.

The 1972 version of Florida Rule of Criminal Procedure 3.130(b)(4), the operative version at the time of *Arthur*, addresses the Hearing at First Appearance, and does so in language that was not compatible with, or contemplative of, a court

making the determination of proof evident, presumption great. That subsection provided:

> (4) Hearing at First Appearance
>
> The purpose of bail is to insure the defendant's appearance. The judge shall, therefore, at the defendant's first appearance, consider all available relevant factors to determine whether bail is necessary to assure the defendant's appearance and, if so, the amount of bail. The judge may, in his [or her] discretion, release a defendant on his own recognizance.

Fla. R. Crim. P. 3.130(b)(4), (1972); *In re Fla. Rules of Criminal Procedure*, 272 So. 2d 65, 55 (Fla. 1972).

This language describing the first appearance hearing was consistent with non-capital cases. However, it was clearly not intended to apply to capital cases, as it made no reference to proof evident, presumption great and it contemplated releasing all defendants on their own recognizance, something that would be inconceivable in a capital case. Thus, Rule 3.130(b)(4), the operative version of the first appearance rule at the time of *Arthur*, did not contemplate either an *Arthur* hearing, or a pre-*Arthur* hearing determination, in cases punishable by life, where the proof was evident or the presumption was great.

That was especially so because Rule 3.131(b) (1972) provided an entitlement to a preliminary hearing within seven days of first appearance in all capital cases and cases charging offenses punishable by life. *See* Fla. R. Crim. P.

3.131(d) (1972); *In re Fla. Rules of Criminal Procedure*, 272 So. 2d 65, 55 (Fla. 1972). Additionally, the operative 1972 version of the Rule 3.131 made it clear that witnesses could be summoned, examined, and cross-examined. Thus, there was an entitlement to what amounted to a full evidentiary hearing fully compatible with a prompt proof evident, presumption great determination.

Remarkably, Appellant does not argue that the initial appearance is conducted any differently now than when *Arthur* was decided. The current version of Florida Rule of Criminal Procedure 3.130 can also be construed in a manner not indicative of an intent to make the proof evident, presumption great determination. Rule 3.130 addresses first appearances. Rule 3.130(d) provides that "the judicial officer shall proceed to determine conditions of release pursuant to Rule 3.131…" It is a given, under that language, that there will be "conditions of release." Yet, Rule 3.131 and all other provisions related to *Arthur* hearing cases, contemplate conditions of release only if there is a determination that the proof is not evident or the presumption is not great.

The current version of the first appearance rule does not discuss or contemplate any evidentiary proceedings. While the attendance of a prosecutor is mandated, the rule authorizes electronic attendance - hardly conducive with a prosecutor reviewing and responding to documentary exhibits that the first

appearance court may have at hand for its own review on a proof evident, presumption great determination. At a first appearance, a "judicial officer shall proceed to determine conditions of release pursuant to Rule 3.131." Fla. R. Crim. P. 3.130(d).

Rule 3.131(a) is directed at the pretrial release decision as a matter of right. Subsection (a) provides: "Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or presumptions great, every person charged with a crime… shall be entitled to pretrial release on reasonable conditions." Fla. R. Crim. P. 3.131(a) (emphasis added). While in bondable offenses cases the right to bail is absolute, it is not for capital/life offenses cases. *Id*.; *Arthur*, 390 So. 2d at 718-19.

In cases charging bondable offenses, the first appearance judge must make a probable cause determination in order to hold an accused in custody. The probable cause standard applied at first appearance hearings is a "standard of conclusiveness and probability [that] is less than that required to support a conviction." *Darnell v. State*, 193 So. 3d 88, 90-91 (Fla. 3d DCA 2016) (citing *Chavez v. State*, 832 So. 2d 730, 747 (Fla. 2002)). In contrast, the proof evident, presumption great standard requires a "greater degree of proof than that which is required to establish guilt [,]

merely [] the exclusion of a reasonable doubt." *Perry*, 605 So. 2d at 96. (citation omitted).

Accordingly, when *Arthur* is considered in the context of the rules of procedure then in effect, *Arthur* addressed and changed only the burden of proof and the availability of discretion. It did not change when the determination was to be made. It did not involve a first appearance hearing. Further, the rules of procedure governing first appearance then in effect contained language incompatible with a proof evident, presumption great determination. Finally, these rules provided for a prompt adversarial preliminary hearing within seven days of the first appearance that would provide the opportunity for such a determination.

Thus, the majority in this case properly concluded that although *Arthur* changed the burden of proof, it "did not change the process whereby the hearing was triggered by the defendant making an application for bond." (R. 337). "Nor did it change (at least expressly) the existing law that a defendant could be detained pending the bond hearing on the issue of proof evident, presumption great." (R. 337).

Indeed, as recognized by the majority, "after *Arthur*, the general understanding of Article I, Section 14 remained that there occurred only one *Arthur* bond hearing and that the defendant could be detained a reasonable time

past first appearance pending the hearing." (R. 337). This general understanding is corroborated by the criminal benchguides[4] issued after *Arthur* and distributed to Florida trial judges, which trial judges consistently follow. (R. 337-38). Indeed, prior to *Ysaza* and *Gray*, those courts that attempted to find proof evident, presumption great at first appearance, were routinely reversed with instructions to hold a full evidentiary hearing. (R. 338, n. 4, R. 344, n. 8).

Thus, if a principle has been practiced for numerous years, it is because of its longstanding and widely accepted practice. *See, e.g., Jackman v. Rosenbaum Co*., 260 U.S. 22, 31 (1922) ("If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it…''); *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 681 (1970) ("The more longstanding and widely accepted a practice, the greater its impact upon constitutional interpretation.). The process of not fully litigating the right of an accused to bail at first appearance, but at a subsequent adversarial hearing trigged by the accused's affirmative action of filing a motion seeking bail, has worked well prior to and after *Arthur*; and thus, it should continue as its supported

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[4] *See, e.g.*, Fla. Court Educ. Council, *Criminal Benchguide of Circuit Judges* at 7 (2016); Fla. Court Educ. Council, *Criminal Benchguide for Circuit Judges* at 7 (2010).

by historical practice even in light of *Ysaza* and *Gray*'s new interpretation of the first exception of Article I section 14 of the Florida Constitution.

C. The novel interpretation of Article I Section 14 of the Florida Constitution, embraced by the district court in *Ysaza* and *Grey,* is not supported by either the Article's text or by *Arthur*'s interpretation of the provision.

With the general historical understanding of Article, I, Section 14 of the Florida Constitution against him, Appellant argues that the flaw of the majority's analysis concerning the constitutional provision's text rests on its focus on the number of *Arthur* hearings. (Br. 11-12). He argues that the textual analysis should have rested on: "What the State must show as a precondition for the loss of the constitutional right of reasonable conditions of pretrial release." (Br. 12).

Appellant is incorrect. Much of Appellant's argument concerns what the majority should have asked, which is predicated upon his wrong assumption that the majority misunderstood the issue below. Once again, the issue presented below was whether an accused could be detained pending an *Arthur* hearing without a trial court making a preliminary proof evident, presumption great finding at first appearance, not what the State must prove as a precondition of detention.

However, Appellant argues that the use of the word "unless" in the text of the first exception of Article I, Section 14 of the Florida Constitution indicates that

the State meeting its burden is "the precondition" of an accused's loss of the right to pretrial release, regardless of how many hearings occur. (Br. 12). According to Appellant, this conclusion comes straight from the textual language of the constitutional provision. But the majority did not disagree with the textual construction of the provision requiring the State to meet its burden. To the contrary, it recognized that it did, but it concluded that it "obviously presupposes a hearing on that issue." (R. 338). Appellant's argument, however, ignores that for the State's burden to be triggered, the accused must affirmatively file a bond application and set the issue for an *Arthur* hearing. Appellant's argument further ignores that the majority did not address the issue he asserts should have been addressed.

Appellant maintains further that *Arthur*'s interpretation of Article I, Section 14 supports his conclusion that the State must meet its burden of proof as a precondition of detention. (Br. 12). He centers his argument on the following sentence from the *Arthur* opinion: "Under this provision, if the proof is evident or the presumption great that a person accused of a capital offense or an offense punishable by life imprisonment is guilty of the offense charged, then the accused is not entitled to release on reasonable bail as a matter of right." (Br. 12-13) (citing *Arthur*, 390 So. 2d at 718.).

Notably, Appellant currently relies on a different sentence from *Arthur* - which he characterizes as *Arthur*'s interpretation of Article I, Section 14 - to advance his argument. He advanced a similar argument below, which was centered on a different sentence from *Arthur*, in order to support his then claim. Below Appellant relied on the following sentence: "[B]efore release on bail pending trial can ever be denied, the State must come forward with a showing that the proof of guilt is evident or the presumption is great." (R. 47) (quoting *Arthur*, 390 So. 2d at 720). He then argued that since *Arthur* used the term "*before* release on bail pending trial can ever be denied," this was *Arthur*'s interpretation of Article I, Section 14, indicating that an accused could not be detained pending an *Arthur* hearing without a preliminary finding of proof evident, presumption great. (R. 47) (emphasized in the original).

Notwithstanding Appellant's reliance on a different sentence from *Arthur*, his present argument also fails. *Arthur* did not change anything as to when that burden would be asserted or determined. *Arthur* construed Section 14 to require a hearing, but not when the hearing should be held. *Arthur* addressed and changed only the burden of proof and the availability of discretion. As the majority below properly noted: "The issue of the detention of the defendant pending the *Arthur*

hearing was not related to either of the two certified questions [in *Arthur*]." (R. 349). The certified questions were:

> 1. Does a trial court have discretion to grant bail to a defendant who is charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident and the presumption great?
>
> 2. Does the accused or the State, in a capital case or a case involving life imprisonment where the accused is seeking to be admitted to bail, have the burden of proof on the issue of whether the proof of guilt is evident and the presumption great?

Arthur, 390 So. 2d at 717.

This Court answered them by holding:

> (1) [W]hen a person accused of a capital offense or an offense punishable by life imprisonment seeks release on bail, it is within the discretion of the court to grant or deny bail when the proof of guilt is evident or the presumption great; and (2) [B]efore the court can deny bail the State must have carried the burden of establishing that the proof of guilt is evident or the presumption great.

Arthur, 390 So. 2d at 717.

In answering the second question presented, the *Arthur* Court held that the indictment or information, standing alone, could not serve as proof of a presumption of guilt. *Arthur*, 390 So. 2d at 719. Rather, *Arthur* held that the State was required to come forward with an independent showing that the proof of guilt was evident or the presumption of guilt was great. *Id.* at 720. *Arthur* also identified that, as a matter of convenience, fairness, and practicality, it was preferable that the

State carry the burden of proof, as it was presumably in a better position to present to the court the evidence upon which it intended to rely. *Id.* at 720. Thus, the majority correctly concluded that *Arthur* neither discussed nor analyzed the issue of detention, when it rejected Appellant's inference from his then relied upon sentence from *Arthur.* (R. 349). Thus, "[n]o Florida appellate decision is authority on any question not raised and considered." (R. 349) (citing *Rey v. Philip Morris, Inc*., 75 So. 3d 378, 381 (Fla. 3d DCA 2011)).

Further, the majority did not err in concluding that the issue of an accused's detention at first appearance did not exist under *Arthur*'s procedural posture and facts. (R. 349). In *Arthur*, the defendant filed a motion to set bond and the trial court held a bail hearing.[5] At the hearing, the trial court denied bail. Once the State made a proof evident, presumption great showing, the trial court found that it lacked discretion to grant pretrial release. The trial court also determined that the

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[5] *See, e.g*., *Dufour v. State*, 69 So. 3d 235, 253 (Fla. 2011) (stating that "[i]n Florida, a court may take judicial notice of various matters including '[r]ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.'") (citing § 90.202(6), Fla. Stat. (2007)); *In re Scala*, 523 So. 2d 714, 718 (Fla. 4th DCA 1988) (taking judicial notice of "court's briefs in that case [because it] brings to light what is not specified in the opinion.") (citing *Arnold Lumber Cor. v. Harris*, 503 So. 2d 925, 927 (Fla. 1st DCA 1987) (concluding that it is proper to take judicial notice of the contents of a brief filed in another case when "the opinion is unclear.").

filing of the indictment shifted the burden of proof on the issue of "proof evident, presumption great" from the State to the defendant.

The district court reversed the trial court as to its first finding but upheld the trial court's second ruling. *Arthur*, 390 So. 2d at 717-19; *Arthur v. Happer*, 371 So. 2d 96, 97 (Fla. 4th DCA 1978). Thus, *Arthur* did not and could not require such a preliminary finding as claimed by Appellant, because "[a] court's holding can only go as far as its fact." *DePrince v. Starboard Cruise Servs., Inc.*, 271 So. 3d 11, 18 (Fla. 3d DCA 2018) (citing *Miccosukee Tribe of Indians v. Lewis Tein, P.L.*, 227 So. 3d 656, 661 (Fla. 3d DCA 2017) ("One of the basic principles of appellate law is that the holding of a decision cannot extend beyond the facts of the case.").

The majority correctly concluded further that Appellant's reliance on the then quoted sentence from *Arthur* was misplaced because:

> When placed in proper context, … [it] does not support the inferences that the defendant cannot be detained pending the *Arthu*r hearing and that the defendant is entitled to both a "preliminary" and "full" *Arthur* hearing. Such inferences were not related to the question before the Court. Instead, the sentence was intended to squarely place the burden of proving "proof evident, presumption great" on the State and ensure the burden never shifted to the defendant.

(R. 348-49).

The same is true of the now relied upon sentence from *Arthur*: *"*Under [Article I, Section 14], *if* the proof is evident or the presumption great that a person

accused of a capital offense or an offense punishable by life imprisonment is guilty of the offense charged, *then* the accused is not entitled to release on reasonable bail as a matter of right." (Br. 12-13) (quoting *Arthur*, 390 So. 2d at 718) (emphasis in original).

The sentence was intended to explain that under the constitutional provision if the proof is evident or the presumption great requirement is met, a person accused of a capital offense or an offense punishable is then not entitled to release. But the sentence was not intended to explain when such requirement should be asserted or determined, because the issue of detention was not at issue in *Arthur*. Thus, the now relied upon sentence from *Arthur* does not support Appellant's conclusion that the use of the word "unless" in the constitution provision creates a precondition for the State to meet it burden before pretrial release can ever be denied despite how many hearings occur. Once more, Appellant misreads another sentence from *Arthur*.

Appellant further takes issue with the reasonable accommodation reached by the majority that the trial judge has the discretion to detain an accused charged with a capital or life offense pending an *Arthur* hearing. (Br. at 13; R. 340). He claims that the reasonable accommodation rationale is erroneous because the

constitutional text specifies that an accused cannot be denied "pretrial release unless the State had submitted its proof of guilt." (Br. at 13).

But such a strict reading of the constitutional provision text by Appellant ignores that although an accused's right to liberty is important, it is not absolute when there are compelling governmental interests, which outweigh an accused's right to liberty. *See United States v. Salerno,* 481 U.S. 739, 748 (1987) (observing that the Supreme Court has "repeatedly held that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest.").

Article I, Section 14 places at stake those competing interests of an accused's right to liberty and the State's legitimate interest to prevent crime and ensure an accused's presence for trial. *See Salerno*, 481 U.S. 739 at 749 ("The government's interest in preventing crime by arrestees is both legitimate and compelling."). In such a case, as properly noted by the majority, a "practical, nontechnical [interpretation] affording the best compromise that [can be] found for accommodating these often opposing interests" is best. (R. 340) (quoting *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975)).

On balance, each of the compelling, competing interests at issue here is protected by allowing an accused to be held after an initial appearance for a

reasonable period of time, while both parties are given the opportunity to prepare for a full *Arthur* hearing, which *Gray* and *Ysaza* contrarily found, as properly concluded by the majority. (R. 340). Notably, as the majority recognized, Appellant conceded at oral argument that at an accused's first appearance:

> In many, many cases, the State at first appearance will be simply unable to offer evidence rising to the level of "proof evident, presumption great" because the only proof normally available at first appearance is the arrest affidavit which, as here, consists of several levels of hearsay and shows little more than probable cause. Second, virtually always, the defendants at first appearance will also be unable to exercise their constitutional right to present evidence.

(R. 332).

Thus, it is foreseeable, as conceded by Appellant, in those rare occasions that the State meets its burden at first appearance, a due process challenge will be raised for no other reasons than the accuseds were "unable to exercise their constitutional right to present evidence at first appearance." *See, e.g.*, *Segura v. Cunanan*, 196 P.3d 831, 838 (Ariz. Ct. App. 2008) ("Although a person charged with these offenses may be granted bail if the State cannot successfully satisfy its burden of proof, it is not feasible for the bail hearing to take place at the time of the initial hearing if for no other reason than that the accused 'must be given adequate notice to prepare for the hearing.'") (citing *Simpson v. Owens*, 85 P.3d 478, 485 (Ariz Ct. App. 2004) (quoting *State v. Kastanis*, 848 P.2d 673, 676 (Utah 1993)).

Indeed, Appellant said as much here: "And in those rare cases where the state surprises a defendant with such evidence at a first appearance hearing, it is due process, not Article I, Section 14, that requires a second hearing in which the defendant would have adequate notice and an opportunity to prepare." (Br. at 26).

Lastly, Appellant accuses the majority of exercising "judicial activism" by "pointing to this Court Promulgating Rule 3.132," which allows detention of an accused pending a hearing based on the State filing a motion. (Br. at 13). According to Appellant, the majority erred in concluding that both exceptions under Article I, Section 14 function the same when the second exception under the constitution provision lacks the "language requiring proof of guilt or proof of any as a precondition for detention," which the first exception expressly contains. *Id*.

First, one must disagree that the majority exercised "judicial activism." "Judicial activism cannot be synonymous with merely exercising judicial review." *Keenan D. Kmiec*, The Origin and Current Meanings of "Judicial Activism", 92 Cal. L. Rev. 1441, 1464 (2004). Second, Appellant's suggestion that there is no requirement of the State meeting its initial proof under the second exception of Article I, Section 14, as it is in the first exception, is unsustainable.

Under the second exception of Article I section 14, "a court is required to consider the requirements of Section 907.041 and Florida Rules of Criminal

Procedure 3.131 and 3.132 before denying a request for pretrial release." *Ginsberg v. Ryan*, 60 So. 3d 475, 477 (Fla. 3d DCA 2011).[6] If the State chooses to file a motion for pretrial detention, at the hearing on such motion, "it is the State Attorney's burden to establish a need for pretrial detention, beyond a reasonable doubt." *Ginsberg*, 60 So. 3d at 477 (citing Fla. R. Crim. P. 3.132(c)(1)); *Preston*, 133 So. 3d at 1223-25 (explaining the interrelation of *Arthur* and Fla. R. Crim. P. 3.131 and 3.132).

Thus, irrespective of no reference within the second exception of the constitutional provision to "proof of guilt, or proof of anything," the case law and this Court's authority to make and adopt rule[7] show otherwise. *See, e.g.*, *Preston*, 133 So. 3d at 25 ("Under rule 3.132, the burden never shifts away from the State; it must prove the need for pretrial detention beyond a reasonable doubt."); *Sewell v. Blackman*, 2020 WL 1161599, at *2 (Fla. 2d DCA Mar. 11, 2020) (noting that the second exception of Article I, Section 14 was not applicable in the case "because

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[6] Explaining the procedure to obtain pre-trial detention under section 907.041(4), (g), Florida Statutes, and Florida Rule of Criminal Procedure 3.132(a).

[7] *Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 78 (Fla. 2012) ("Article V, section 2(a), of the Florida Constitution grants this Court the exclusive authority to adopt rules of judicial practice and procedure for actions filed in this State ....").

the State ha[d] not affirmatively invoked it by filing a motion for pretrial detention and satisfying the burden of proof such a motion entails.") (citing *Preston*); *Martinez v. State*, 715 So. 2d 1024, 1024 (Fla. 4th DCA 1998) (noting that where, a "defendant is held without bond on an offense which is not designated a dangerous crime, the State must prove that there are no reasonable conditions of release that would secure the defendant's appearance at trial.").

Thus, as the majority correctly noted, "if this Court has interpreted the pretrial detention exception in Article I, Section 14, … to allow detention of the defendant for a reasonable time pending the evidentiary hearing by this exception … under its rule making authority, it could not have done so 'if Article I, Section 14 prohibited it.'" (R. 341).

Lastly, the majority did not equate the proof evident or presumption great standard to the probable cause standard by rejecting to impose on the trial court the burden of making an *Arthur* preliminary finding at first appearance. (R. 345). In contrast, the majority recognized that the probable cause standard requires a lesser degree of proof than the proof evident or presumption great standard. *See Darnell*, 193 So. 3d at 90-91; *Perry*, 605 So. 2d at 96 (citation omitted).

Under Appellant's proposition advanced below and here, the standards will be equated, as correctly concluded by the majority. (R. 345). Definitively, that it is

not what the first exception of Article I, Section 14 language requires, considering an accused's right to an adversarial hearing to fully litigate the issue of bail and the heavy burden of proof placed on the State by *Arthur* to justify holding an accused without bail. *See Arthur*; *Bleiweiss v. State*, 24 So. 3d 1215, 1216 (Fla. 4th DCA 2009) (noting that "[a]n *Arthur* hearing under Florida law and the Florida Constitution demands more than mere 'probable cause' before pretrial detention may be ordered.").

II. The majority correctly concluded that interpreting Article I, Section 14 of the Florida Constitution as requiring a preliminary finding of proof evident or presumption great at first appearance is impracticable.

Contrary to Appellant's contention, the majority did not override the text of Article I, Section 14, by finding it impractical to require preliminary *Arthur* findings at first appearance. The majority understood the competing interests at issue and the necessity to balance them. *See Gerstein*, 420 U.S. at 112; *see also, e.g., Bell v. Wolfish*, 441 U.S. 520, 534 (1979) ("[T]he Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, or that confinement of such persons pending trial is a legitimate means of furthering that interest"); *Youngberg v. Romeo*, 457 U.S. 307, 320 (1982) (noting that the Court had upheld those

restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment).

The majority further understood that the first exception of Article I, Section 14, mandates proof evident or presumption great, which it understood requires a higher degree of proof than the probable cause standard applied at first appearance. (R. 342). Based on these understandings, the majority described the nature and form of a first appearance hearing and an *Arthur* hearing. It then compared both of the hearings. (R. 341-343). In its discussion below, it properly noted that:

> First appearance occurs within 24 hours of arrest. First appearance serves to inform the defendant of the charges against him and his rights. Because most defendants arrested in Florida have the right to post standard bail and bond out of custody without seeing a judge, first appearance also serves to deal with other, relatively simple matters, such as imposing mandatory stay-away orders. It is also used to provide a non-adversarial, non-evidentiary review by a neutral magistrate of the probable cause to arrest and detain the defendant as required by *Gerstein*, 420 U.S. at 112, 95 S.Ct. 854.
>
> In urban settings, first appearances occur on congested, fast-paced dockets. The court typically has before it only the arrest affidavit and the defendant's prior criminal record. Often, the defendant appears by video from jail. Defendants, of course, have a right to be heard, but experienced criminal lawyers and judges steer substantive motions relating to pretrial release to later, less congested calendars. *Greenwood*, 51 So. 3d at 1281 (noting the "practical realities" stemming from "the significant number of defendants present at the typical first appearance hearing on any given day in a busy urban court"). Such substantive motions must be heard by the court "in person" and "promptly." Fla. R. Crim. P. 3.131(d)(1) & (2).

(R. 341-42) (footnote omitted).

It further observed:

> In contrast, an *Arthur* hearing focuses on a review of the State's evidence to determine if it rises to the level of "proof evident, presumption great" thereby justifying detention for the duration pending trial. This standard requires far more than probable cause: it requires proof "stronger than beyond a reasonable doubt." *State v. Perry*, 605 So. 2d 94, 96–97 (Fla. 3d DCA 1992). Under this standard, "[s]imply to present the indictment or information is not sufficient." *Arthur*, 390 So. 2d at 720. Instead, the State must present "further evidence" in the form of "transcripts or affidavits," such as "the evidence relied upon by the grand jury or the state attorney in charging the crime." *Id*. Moreover, at an *Arthur* hearing, the defendant is entitled to testify and call witnesses either to show the proof is not evident, nor presumption great or, even if the evidence rises to the level of "proof evident, presumption great," that other factors militate towards granting pretrial release. *Id.*

(R. 342-43).

Thus, the majority correctly concluded, "Given the high level of evidence needed to establish 'proof evident, presumption great,' and the summary nature and early timing of first appearances, it is simply impractical to hold even a preliminary *Arthur* hearing at first appearance." (R. 343).

Appellant argues otherwise. He first asserts that the majority's impracticably rationale misunderstands that the Article I, Section 14 exceptions "work together" by assuming that upon the court's finding that the State failed to meet its burden of proof evident or presumption great at first appearance, an accused will

automatically be released. (Br. 17). But the majority could not have made such an assumption. It was not deciding whether the exceptions "work together" or whether an accused charged with capital or felony offense is "automatically" entitled to pretrial release upon the court's finding that the State failed to meet its burden of proof evident or presumption great at first appearance. Instead, the Court addressed "whether Article I, Section 14 of the Florida Constitution prohibits a trial court from detaining a defendant beyond first appearance for a reasonable time pending an *Arthur* bond hearing unless the trial court makes a preliminary finding of 'proof evident, presumption great.'" (R. 327-28).

Appellant further argues that the majority did "not consider the interplay between the first and second exceptions in Article I, Section 14." (Br. 18). One might ask why the majority would have if the second exception was not at issue below. The majority only noted it to illustrate its discussion regarding the first exception:

> This case concerns the "capital or life offense" exception but, as will be seen, the Supreme Court's rule-based interpretation of the time that the Constitution allows a defendant to be detained pending the hearing required under the "pretrial detention" exception will inform our discussion.
>
> …
>
> Significantly, the Supreme Court has interpreted the text of the "pretrial detention" exception in Article I, Section 14, which is the

> companion provision to the "capital or life offense" exception, to allow detention of the defendant for a reasonable time pending the evidentiary hearing required by that exception. Fla. R. Crim. P. 3.132.6…. If the text of Article I, Section 14 does not prohibit detention for a reasonable time pending the hearing required by its "pretrial detention" exception, it follows that it also does not prohibit detention for a reasonable time pending the *Arthur* hearing required by the "capital or life offense" exception.

(R. 334, 340-41).

Further, there was no reason for the majority to be concerned with the requirements of section 907.041, because the statute is directed to the second exception, which was not at issue. *See Preston*, 133 So. 3d at 1223 ("It is apparent, then, that section 907.041 is directed to the second, general, exception to the right of pretrial release set forth in Article I, Section 14. It does not directly implement the first exception set forth therein and construed by the supreme court in *Arthur*.").

Nor did the majority ignore, as asserted by Appellant, that when the first exception is used in combination with the second exception, the State has an additional tool with which to seek pretrial detention. Simply, it did not have to because the State below did not choose to proceed under the second exception. As explained in *Preston*, which Appellant cites:

> For its part, when seeking to have the accused detained pretrial, the State *may* proceed under either of the exceptions to the constitutional right of pretrial release. It may attempt to show that under *Arthur* its

> case is sufficient to shift the burden on the appropriateness of pretrial release to the accused, or it may file a motion for pretrial detention under rule 3.132 and undertake the showings required by that rule.

133 So. 3d at 1225 (emphasis added).

Appellant further takes issue with the majority's conclusion that his proposition that under Article I, Section 14 the State must meet its burden of proof evident or presumption great at first appearance for an accused to be detained creates "a catch-22." (Br. 21). He claims that the majority's error lies in its "assumption that if the State does not meet its *Arthur* burden at first appearance it is foreclosed from doing is the future," *i.e.*, a full *Arthur* hearing. (Br. 22-23).

Appellant is incorrect. The majority did not assume that the State was foreclosed from meeting its burden in the future, but that it could normally do so through a change in circumstances. (R. 345). He asserts further that the basis of the majority's "impracticalities argument is that the State will not have its evidence available in time for a first appearance hearing." (Br. 23). But Appellant conceded such below. (R. 344). And as the majority properly noted:

> Within 24 hours of arrest, the State normally has not had time to marshal, document, and organize its evidence. Most often, the assistant State attorney who will prosecute has not been assigned. The information has not been drafted. Like the inchoate information itself, the "transcripts and affidavits" upon which the information will be based do not yet exist. The victim has not given a formal statement. Much of the physical evidence has not been collected, much less analyzed or tested. And the defendant, who was arrested only 24

> hours before first appearance, has not had the time to prepare to allow him to meaningfully exercise his constitutional right to present evidence.

(R. 343).

Lastly, the majority did not label the holding of *Arthur* as to the second certified question as *dicta* to reach its conclusion as Appellant claims here. It only labeled Appellant's reading of the holding as *dicta*. It noted that Appellant was reading it out of context. (R. 346). If interpreted or read in the manner proposed by Appellant, the sentence was "*obiter dicta*" because the issue of detention pending an *Arthur* hearing or at first appearance was not implicated by the facts of *Arthur*, the certified questions raised and was not discussed or analyzed in the opinion. (R. 346, 349, 351) (citing *Cirelli v. State*, 885 So. 2d 423, 427 (Fla. 5th DCA 2004) (deciding that the Supreme Court's inclusion of statutory ways of necessity in its holding was *dicta* because "the certified question concerned only common law ways of necessity" and "the facts and legal analysis discussed in the opinion concerned only common law ways of necessity")).

It reached this conclusion correctly because it understood first what *dicta* is. And second, it understood that the sentence relied upon by Appellant came from the same passage in *Arthur*, which included another sentence that had been held *dicta* for the same reasons it rejected Appellant's interpretation of *Arthur*'s second

holding. (R. 351). Thus, the majority did not "g[e]t tangled" by asking the wrong question as claimed by Appellant.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court affirm the decision of the lower court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief was e-mailed to Assistant Public Defender John Eddy Morrison Esquire, at appellatedefender@pdmiami.com, and e-mailed to JMorrison@pdmiami.com, this 12th day of May, 2020.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Answer Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a) (2).

/s/ Magaly Rodriguez
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