IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

RHONDA CHARMANE JEWELL,

Appellant,

CASE NO. 1D2024-3279
L.T. No. 02-2023-CF-333-A

vs.

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
FOR THE EIGHTH JUDICIAL CIRCUIT,
BAKER COUNTY, FLORIDA

OPENING BRIEF OF APPELLANT RHONDA JEWELL

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PRELIMINARY STATEMENT

This is a direct criminal appeal from the judgment and sentence of Appellant Rhonda Jewell on December 19, 2024. The record consists of two volumes: a "Record on Appeal" containing written filings and hearing transcripts, and a "Transcript on Appeal" containing the trial transcripts. Appellant refers to these volumes as "R." or "T." followed by the corresponding page number(s).

INTRODUCTION

Rhonda Jewell—a law-abiding, churchgoing forty-seven-year-old mother of three and an active and valued member of her community—was sentenced to seventeen years in prison for a tragic, unintended accident. Her mistake: she unknowingly left a beloved child—A.P., the ten-month-old granddaughter of her best friend—in a parked car, having forgotten the baby was quietly sleeping in a rear-facing back car seat. In a cooler state, in a winter month, such an unintentional memory lapse might have been frightening but harmless. But in Florida, in July, it had catastrophic consequences; precious A.P., whom Ms. Jewell "loved" as "her own," R.850; T.940, died of heatstroke hours before Ms. Jewell even realized her error.

This heartbreaking phenomenon—of parents or other caregivers accidentally forgetting a child in a vehicle—has become alarmingly familiar since the early 1990s, when the advent of airbags required moving children to the backseat, out of view. *See* R.290, 318, 325-26, 363, 568. Over 900 children have perished in hot cars nationwide over the last three decades, averaging thirty-eight per year. R.363, 365. In the majority of incidents, the child was left unintentionally and unknowingly by a loving and devoted caregiver. *See* R.290, 315,

318; *see also* Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car Is a Horrifying Mistake. Is It a Crime?*, WASH. POST MAGAZINE (Mar. 8, 2009) (collecting stories) (cited at R.296-97, 313-14). The problem is significant enough that, in 2021, Congress mandated that all new automobiles be equipped with technology to alert the operator to check the backseat for a child after the motor is deactivated. R.569-70, 639 (referencing Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 24222, 135 Stat. 835, 407 (2021) (codified at 49 U.S.C. § 32304B (2021))); *see also* R.351-52.

In Ms. Jewell's case, the evidence overwhelmingly showed that her mistake in leaving A.P. in the car was entirely unwitting and accidental—the product of a tragic memory lapse due to a "perfect storm" of circumstances, T.1039, not a knowing or conscious act. Indeed, the jury acquitted her of every offense involving "culpable negligence" precisely because the State presented no evidence she consciously engaged in any act likely to cause harm.

How, then, is she facing seventeen years' incarceration? Because the trial court ruled that the offense of "Leaving a Child Unattended in a Motor Vehicle," Fla. Stat. § 316.6135(4)—a third-degree felony and the basis for her felony-murder charge—did not

require the State to prove any *mens rea* at all. Thus, the jury was instructed that Ms. Jewell was guilty of that offense—and, consequently, of the felony murder predicated on it—regardless of whether she knew she had left A.P. in the car. As explained herein, the trial court's construction of the statute was wrong and resulted in unconstitutional convictions. Reversal is required.

STATEMENT OF THE CASE AND FACTS

The events giving rise to this case occurred on July 19, 2023. On August 11, 2023, the State charged Ms. Jewell with a single count of aggravated manslaughter of a child, Fla. Stat. §§ 782.07(1), (3). R.58, 126. That offense, and all its lesser-included offenses, required the State to prove that Ms. Jewell's "culpable negligence" caused A.P.'s death, meaning that she "consciously" acted in a manner likely to cause death. R.767-73.

Over a year later, the State filed an amended information adding two additional counts: leaving a child unattended in a motor vehicle causing great bodily harm, Fla. Stat. § 316.6135(4) (Count III), and third-degree felony murder predicated on that charge, *id.* § 782.04(4) (Count II). R.201-02. As discussed below, the trial court ruled, over

defense objection, that neither count required the State to prove Ms. Jewell's conduct was conscious or knowing.

I. The Evidence at Trial

The basic facts were largely undisputed, including that Ms. Jewell did not knowingly or consciously leave A.P. in the car. The main disagreement presented to the jury centered on how the legal standard for culpable negligence applied to these facts.

A. The State's Case

The State's evidence showed that Ms. Jewell was a close family friend of A.P.'s parents, Brooke and Justis.[1] T.603-04, 648-49. Indeed, she was "best friends" with Brooke's mother—A.P.'s grandmother, T.686, 702—and "very close friends" with Brooke and Justis, T.648; *see* T.674-75. She attended their family functions, including their wedding; their families ate meals together regularly and even vacationed together; and she was "involved in" the birth of their first child, A.P. T.647-49, 673-74, 687.

In May of 2023, Brooke asked Ms. Jewell if she could care for A.P., then eight months old, several days per week. T.605, 649-50.

[1] To ensure privacy, this brief refers to A.P.'s parents by their first names.

Ms. Jewell—who was "amazing with children" and a "highly recommended" caregiver in the community, T.709-10—was already caring for three other children, Stacy Paschal's nine-year-old daughter and twin three-year-old boys.[2] T.610, 649-50, 699. Ms. Paschal agreed, however, to allow Ms. Jewell to bring A.P. to her home and care for her at the same time. T.650. Initially, Ms. Jewell watched A.P. Monday through Thursday, but that later shifted to just Mondays and Wednesdays, and by July the routine—of which children she was caring for and where—could fluctuate week to week depending on the families' needs. T.650-52, 713, 733, 863.

On July 19, 2023—a day Ms. Jewell was scheduled to watch both A.P. and the Paschal children—Ms. Paschal asked her to arrive earlier than usual because she had a work meeting. T.719. Thus, Ms.

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[2] Ms. Paschal depicted Ms. Jewell's caregiving abilities in glowing terms, stating that she was an "engaged" caregiver who was "wonderful for" their family and that her children, who "called her Ra-Ra," "love her." T.714, 725. She explained that, before hiring Ms. Jewell, she "asked very in-depth" about her around town and "received a lot of great reviews," recounting that she queried an office full of local women "and every single one of them said, if you could pick one person in Baker County to keep your children, it would be her." T.710-11; *see also* T.936-37 (Ms. Jewell testifying that she had been nannying in Baker County since she was seventeen years old and cares for children "[l]ike they're [her] own").

Jewell went to pick up A.P. early—around 8 a.m. instead of 8:30—and Brooke loaded A.P., already strapped in her car seat, into the back of Ms. Jewell's car. T.611-12, 863. Brooke placed A.P.'s diaper bag "on the floorboard behind the passenger seat," T.613, and Ms. Jewell left a few minutes later, T.614, 870. She considered stopping at Burger King but saw that the line was too long, so she continued on to Ms. Paschal's house, arriving around 8:15. T.850-53, 863-64.

Once there, Ms. Jewell grabbed her lunch, water bottle, and cell phone and went inside. T.700. In her rush to get inside, she forgot A.P. in the car. T.702, 864. As she explained to the police in a tearful video statement played for the jury, A.P. "was asleep" and "quiet," and because Ms. Jewell did not "keep her every day," she had "forgot[ten] she was there." T.864. Ms. Paschal was "in a hurry to leave," T.719, so they chatted briefly, and Ms. Paschal left, T.701, 719. Ms. Paschal did not know Ms. Jewell was bringing A.P. that day, T.865, so they did not speak about A.P. before she left, T.702-03. Ms. Jewell immediately "got busy with the other kids," and told police it "just didn't click that the baby was out there" until Brooke arrived to pick her up several hours later. T.864.

Around 1:15 p.m., Brooke called Ms. Jewell to say she was at the front door. T.622-24. Ms. Jewell opened the door, and as soon as Brooke stepped inside, Ms. Jewell "shoved" past her and ran out to her car in the driveway, "screaming" Brooke's name "over and over." T.625, 660. Brooke ran after her and saw that A.P. was still strapped into her car seat, not breathing. T.626. Brooke called 911, and Ms. Jewell pulled A.P. out of the car and stood holding her, crying. T.662. Brooke told Ms. Jewell to move A.P. to a golf cart in the garage, where Brooke attempted to perform CPR on her. T.627.

Paramedics arrived and attempted life-saving methods before transporting A.P. to the hospital, but it was too late; A.P. was pronounced dead from heatstroke at the hospital. T.738, 760-764, 777-79. The State's medical evidence suggested she had likely been dead for several hours, given the extreme temperature inside the car. *See* T.767 (EMT testifying it was "very possible" A.P. had been "deceased for two or three hours"); T.843 (temperature inside the car was 133 degrees); T.830 (medical examiner testifying that even on a mild day a car can reach fatal temperatures within thirty minutes).

Around this time, Ms. Paschal received a "distraught" phone call from Ms. Jewell. T.720. Ms. Paschal testified that Ms. Jewell was

"screaming and crying" that Ms. Paschal "needed to come home right now," T.705, and exclaimed, "I left the baby in the car. How could I be so stupid? How could this happen?" T.721. Ms. Paschal rushed home and found Ms. Jewell on the porch, "frantic," "crying very hard," and "gasping for air." T.706-08, 722. Ms. Paschal stated that it "was very difficult to understand her, but she just kept saying that she forgot the baby in the car." T.706-07, 722.

Ms. Paschal went inside to check on her own children, then returned to ask Ms. Jewell what had happened. T.708, 722-23. She testified that Ms. Jewell was still "extremely distraught"—"crying," "throwing up," "dry heaving," and "just . . . repeating the same things over and over again, that she forgot the baby." T.723-24; *see* T.708-09. Ms. Paschal also observed that Ms. Jewell had urinated on herself; she gave Ms. Jewell a clean pair of shorts to change into, which she was still wearing during her police interview. T.724, 876.

Ms. Jewell agreed to speak with the police voluntarily, and the State played her emotional seven-minute videotaped interview during its case-in-chief. T.849, 874-76. The detective who conducted it testified that Ms. Jewell was still "crying" and "very upset" when he encountered her, nearly two hours after A.P. was discovered. T.875.

As noted above, Ms. Jewell told the detective she had forgotten A.P. was in the car and did not remember she had her until Brooke arrived to pick her up. T.864. The detective asked if anything was on her mind that might have distracted her; Ms. Jewell responded that her daughter was heading to college and her family was planning a trip to London but emphasized that this was "not an excuse." T.868. The detective clarified that he was "not asking [her] to make excuses" but acknowledged "it is possible to forget things and even a child," and that "it's even more possible if you got some type of stress in your life at the time that you're going through." T.868.

The State also introduced two screenshots of electronic communications Ms. Jewell made that day. The first showed that, at 8:17 a.m., Ms. Jewell texted Brooke, "Just left, Shocker," referring to Ms. Paschal. Brooke responded at 8:32 a.m., "Very surprised," to which Ms. Jewell responded, "Yes." T.615-21; R.718. The second showed that, at 11:25 a.m., Ms. Jewell replied to a Snapchat photo

posted by Brooke's younger sister, Nevaeh Carter, with the comment, "Hey cuties, Rhonda loves y'all."[3] T.681; R.721.

Although the State suggested in closing that it was "strange" that these communications did not "ring a bell" in Ms. Jewell's mind that "A.P.'s in the car," T.1111-12, its theory was not, ultimately, that Ms. Jewell remembered A.P. was in the car and knowingly left her there. Rather, the State's argument was simply that she "failed in her duty" to care for A.P. and thus had to be "held responsible and accountable" for her death. T.1125-26. As the State argued in closing, "Just because you forget to do something doesn't mean that you can't and shouldn't be held responsible for it." T.1125.

B. The Defense Case

Ms. Jewell testified in her own defense, providing the same account she gave police in more devastating detail. She described some of the stressors in her life at the time: her daughter was moving to college, and they were preparing for a trip abroad for a baton-twirling competition, their first time ever out of the country. T.946.

[3] Ms. Carter testified that her "whole family" was close with the Jewells, that she was "very close friends" with Ms. Jewell's daughter, and that she and Ms. Jewell texted each other daily. T.686-87.

She also described the erratic schedule changes that had occurred with the children's care leading up to July 19. T.943-48.

Ms. Jewell explained that, on the morning of July 19, Brooke brought A.P. out to the car, buckled her rear-facing car seat in on the back passenger side, and placed the diaper bag underneath the seat. T.949, 954-55. After "chit-chatting" briefly, Ms. Jewell left. T.955. She stated that she considered stopping at Burger King to pick up breakfast for the Paschal children but the line was too long and she was concerned about being late, as Ms. Paschal had asked her to be early "so she could leave by 8:15 before the boys got up." T.955.

Ms. Jewell explained that, when she arrived at Ms. Paschal's house, she grabbed her things and rushed "to get . . . inside before 8:15 so [Ms. Paschal] could leave" while the kids were still asleep. T.957; *id.* ("[T]hat's what . . . I was thinking, is get there and get there on time before they got up."). She testified, consistent with her police statement, that she did not bring A.P. inside because she forgot she had her and that A.P., who was asleep, was not making any noise. T.957, 976, 986. Ms. Jewell stated that she spoke briefly with Ms. Paschal—who told her one of the boys had fallen and asked her to send a photo of him when he awoke—and then Ms. Paschal left, at

which point Ms. Jewell texted Brooke, "Just left, Shocker." T.957-60. Ms. Jewell explained that she had complained to Brooke before—including just the day prior—about how Ms. Paschal would ask her to arrive by a certain time but then leave late, so "that's what [the text] was about." T.960; *see* T.978-79. She stated that this exchange with Brooke did not trigger a recollection that A.P. was in the car because it "was normal for [them] to text every day." T.978-79.

Ms. Jewell testified that, within minutes of texting Brooke, the boys woke up, and she immediately began "engaging with them," rubbing their backs, making them breakfast, and playing with them. T.961-62. Around 1 p.m., she was in the kitchen with the kids, singing with them and preparing them lunch, when she received a phone call from Brooke saying she was there. T.963. Ms. Jewell stated that she "didn't know why [Brooke] was there" and asked which door she was at, to which Brooke responded the front door. T.963-64. Ms. Jewell testified that she opened the door and was "still in shock" as to "why [Brooke] was there" until she saw the money in her hands; that was when, she stated, she "realized [she] didn't get the baby out of the car." T.964.

Ms. Jewell testified that she ran to the car, screaming "Oh, my God. Oh, my God, Brooke," and found A.P. still inside. T.963-64. While Brooke called 911, Ms. Jewell pulled A.P. out of the car seat, "held her," and "prayed," begging God "to give her breath and just take me, instead of her." T.965. Ms. Jewell only "[v]aguely" recalled Ms. Paschal coming home but remembered that she had urinated on herself when she went to the car and later threw up. T.967. Ms. Jewell stated that she did not intentionally leave A.P. in the car, T.986, and that she "loved [A.P.] like she was [her] own," T.940.

The defense also presented expert testimony from a cognitive psychologist, Dr. Brian Cahill, concerning prospective memory failures. Dr. Cahill explained that "prospective memory"—or "remembering to do something in the future"—is a "hard process for people to do" because it is "cognitively demanding" to simultaneously "process the environment you're in" and "remember to do this task." T.1019, 1023-24. This is why, he testified, people use tools like "checklists" and "reminders"; yet, he stated, prospective memory errors are "impossible" to avoid entirely "no matter how diligent you are." T.1029-30, 1042. And while some lapses, like forgetting to stop at the store for milk, are "minor," he said, others can have

"catastrophic results." T.1027-28. One study, for example, attributed 74 of 75 airplane crashes to a prospective memory failure—the pilot "forgot to do something" on their safety checklist because they were "distracted doing something else." T.1029.

Dr. Cahill explained that researchers have identified six factors that increase the likelihood of a prospective memory error because they "draw upon resources in your brain." T.1027. They are: (1) lack of sleep; (2) stress; (3) lack of retrieval cues; (4) multitasking; (5) divided attention; and (6) violating one's routine. T.1027-28. Dr. Cahill testified that, while sleep issues did not appear to be present in Ms. Jewell's case, T.1033, all the other factors were.

First, Dr. Cahill testified, Ms. Jewell was "multitasking throughout the day," with her attention divided between many tasks: on driving itself, on worrying about arriving on time, and then on caring for and engaging with the three Paschal children. T.1033-34, 1062-63. Second, the frequent schedule changes and earlier start time threw off her routine, a factor Dr. Cahill described as "a big one." T.1034-35. Third, she was under significant stress, with "some trips planned" and "one of her children . . . moving away to college." T.1057. And finally, there were no retrieval cues to remind her A.P.

was in the car, which, Dr. Cahill stated, are "the most important thing to trigger memory," T.1037-38: A.P.'s diaper bag was under the seat, out of view; A.P. herself was out of view and not making a sound; and Ms. Paschal and her children "didn't ask" about A.P. when Ms. Jewell arrived. T.1037; *see* T.1057-58, 1066. Ms. Jewell's text messages with Brooke and Ms. Carter were not good retrieval cues for A.P., Dr. Cahill testified, because she communicated with them regularly, about many topics unrelated to caregiving, and "A.P. was not mentioned in" the messages. T.1036-37; T.1055.

Dr. Cahill testified that, while each of these factors increased the likelihood that a prospective memory error occurred, combining them "exacerbate[d]" the chances, creating "a perfect storm for something like this to happen." T.1039. And while he could not state with certainty that a prospective memory error occurred here, he opined that the factors present in this case supported Ms. Jewell's statements that she had forgotten A.P. was in the car. T.1043, 1052.

II. Defense Motion for Judgment of Acquittal

The defense moved for judgment of acquittal (JOA) on all counts at the end of the State's case-in-chief. T.883. As to Count I, the defense noted that "culpable negligence"—an essential element of

aggravated manslaughter—requires the State to prove Ms. Jewell "consciously follow[ed] a course of conduct that she knew or should have known would likely result in death or serious bodily injury," and that the State had "not presented evidence that this was a conscious act by Ms. Jewell to leave the child in the car." T.883.

Indeed, the defense noted, the State had "presented significant evidence that . . . this was *not* a conscious choice." T.884 (emphasis added). Stacy Paschal, a key State witness, testified that Ms. Jewell told her she "forgot the child was even with her," and Ms. Jewell herself told the police the same. T.884. There was also considerable circumstantial evidence demonstrating that Ms. Jewell did not knowingly leave A.P. in the car: she was "extremely close" with A.P.'s family; she "was an exceptional babysitter" and always "took exceptional care" of A.P.; A.P.'s diaper bag was placed out of Ms. Jewell's sight; and when she realized A.P. was still in the car, she "rushed" to get her out and was still "extremely distraught" and "crying uncontrollably" when police arrived. T.885-87. Given this evidence, the defense argued, no reasonable jury could find the conscious act necessary to convict Ms. Jewell of any offense requiring culpable negligence. T.887-88.

As to Count II, the defense argued that under *Mahaun v. State*, 377 So. 2d 1158 (Fla. 1979), the constitutionality of the third-degree felony-murder statute hinges on the intent of the underlying felony being transferred to the murder, but here the underlying felony has no "intent to transfer," making it constitutionally "problematic." T.888. Additionally, the defense argued, under the merger doctrine recognized in *State v. Sturdivant*, 94 So. 3d 434 (Fla. 2012), the court must presume the legislature did not want to predicate third-degree felony murder on a felony that is coextensive with the death and "not . . . a collateral consequence of it," because doing so would "bootstrap" every act of unintentionally leaving a child in a car causing death into a felony murder. T.888-89.

Finally, as to Count III, the defense noted that it had filed a pending motion arguing that, "based on the plain language of the statute and the jurisprudence," the State must prove that Ms. Jewell "knowingly" left A.P. in the car to convict her under Florida Statute § 316.6135(4). T.890; *see infra* Section III (discussing motion). Because "there has been no evidence presented" that Ms. Jewell knowingly left A.P. in the vehicle, the defense argued, she was entitled to a JOA on Count III. T.890.

In response, the State did not dispute that it had presented no evidence that Ms. Jewell knowingly or consciously left A.P. in the car. Instead, the State argued that knowledge was *not required* for any of the offenses charged: "Culpable negligence," the State argued, "is an objective standard" and does not require "conscious knowing." T.891-92. And Count III required only that it prove Ms. Jewell left A.P. in the vehicle for over fifteen minutes and harm resulted. T.893. As to the defense's merger argument, the State responded that the third-degree murder statute says "any other felony" and does not on its face exclude felonies that are coextensive with the death. T.892.

The trial court summarily denied the defense's JOA motion, ruling that each count "present[s] a question for the jury." T.894. The defense renewed its JOA motion at the conclusion of the defense case, noting again that "there has been no evidence that this was a conscious act whatsoever" and that "the State's argument" did not contend otherwise. T.1098; *see* T.1093-98. The trial court again denied the motion. T.1098.

III. Defense Motion for Special Jury Instruction on *Mens Rea*

The defense also moved for a special jury instruction that would require the jury to find that Ms. Jewell left A.P. in the car knowingly

to convict her under § 316.6135(4), the basis for Count III and the predicate for the felony-murder charge. R.705-11. Specifically, the defense argued that, because the Florida Legislature did not state clearly that it intended to dispense with *mens rea* in § 316.6135(4), the court must presume it meant to retain a *mens rea*, and that interpreting the statute to exclude a knowledge element would "likely violate[] an accused's due process rights." R.706-07; *see also* T.995-96. Thus, the defense argued, the jury should be instructed that, to meet its burden on § 316.6135(4), the State must "prove Ms. Jewell knowingly left the child in the car." R.708.

The court denied the motion, concluding that "if [the] legislature had intended that there be an element of mens rea," it "would have so stated." T.1001. The court further reasoned that § 316.6135 had not been amended to include a *mens rea* since its original adoption, and that the Florida Supreme Court had approved the standard jury instruction for § 316.6135 and did not include any *mens rea* requirement. T.1001-02.

In light of this ruling, the court instructed the jury that, to convict Ms. Jewell under § 316.6135(4), it need find only that she was responsible for A.P., that A.P. was younger than six, that she left

A.P. unattended in the vehicle for over fifteen minutes, and that great bodily harm resulted. R.777; T.1184. The State emphasized in closing that Ms. Jewell's mental state was irrelevant to this count, arguing: "Count III is very clear. I don't need to prove intent . . . . If you leave a child in a car . . . unsupervised over 15 minutes and something bad happens, you're guilty." T.1171; *see also* T.1105-06.

IV. Verdict and Sentencing

The jury acquitted Ms. Jewell of aggravated manslaughter of a child and all lesser-included offenses involving culpable negligence—in other words, all offenses requiring the State to prove her conduct was knowing or conscious. R.761; T.1206. The jury convicted her of violating § 316.6135(4)—which it was instructed did not require knowledge—as well as the third-degree felony-murder count predicated on that offense. R.762; T.1206.

At sentencing, the defense renewed its argument that § 316.6135(4) was "not an appropriate predicate" for third-degree felony murder under the merger doctrine recognized in *Sturdivant* and this Court's decision in *Lewis v. State*, 34 So. 3d 183 (Fla. 1st

DCA 2010).[4] R.1029. Specifically, counsel explained, unlike in the typical felony-murder case, the death here was not a "collateral death" arising from an "independent" felony; rather, death was "fully contemplated" within the "felony version" of the statute itself—indeed, A.P.'s death is what made the offense a felony as opposed to a misdemeanor, *see* Fla. Stat. §§ 316.6135(2), (4). R.1029-30. Thus, counsel argued, it was "not appropriate" to predicate an unenumerated felony-murder conviction on that offense because felony murder requires "a harm independent of the" death itself. R.1030. Counsel also noted that the merger doctrine recognized in *Sturdivant* is distinct from the double-jeopardy principle in *Blockburger v. United States*, 284 U.S. 299 (1932), and warranted vacating Ms. Jewell's felony-murder conviction as not properly charged. R.1033; *see* R.1031-33 (State citing *Blockburger* and related double-jeopardy cases in response to defense's merger argument).

[4] The defense also filed a Motion for Arrest of the Judgment, arguing that the felony-murder conviction must be set aside under both the merger doctrine and the reasoning of *Mahaun*. R.966-69; *see supra* p.18. The court denied the motion as untimely and outside the scope of Florida Rule of Criminal Procedure 3.610. R.989-990.

The court denied the defense's request and, over objection, proceeded to sentence Ms. Jewell on both counts. R.1034. After taking evidence and testimony—which included "78 mitigation letters" in support of Ms. Jewell,[5] R.1034—the court concluded there was a "legal basis" for a downward departure because "Ms. Jewell has certainly shown remorse" and "no doubt she's a good person." R.1111. Nevertheless, the court declined to depart downward, remarking that "no amount of remorse" or "good deeds" can "bring that child back." R.1111. The court sentenced Ms. Jewell to the maximum of fifteen years' incarceration for the felony murder and two years' incarceration for the underlying felony, to run consecutive for a total of seventeen years. R.807-09, 1112-13.[6]

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[5] The seventy-eight letters are in the record at R.833-933. Submitted by a wide range of supporters—including church pastors, community leaders, parents of children she nannied, family members, and decades-long friends—the letters describe Ms. Jewell's care and compassion for others, her numerous volunteer activities, and her deep faith and Christian values. They also depict a woman wracked with grief and guilt over A.P.'s death and the pain it has caused A.P.'s family, who has "become a shell of who she once was," R.910, and "relives the accident every day," R.922, from the moment she wakes until she closes her eyes at night, R.899.

[6] On February 11, 2025, the trial court granted Ms. Jewell a supersedeas bond pending the outcome of her appeal. ROA.1012-20.

SUMMARY OF ARGUMENT

I. The trial court erred in ruling that Florida Statute § 316.6135(4)—Count III of the indictment and the predicate for Ms. Jewell's felony-murder charge—contains no *mens rea*. Contrary to the trial court's ruling, Florida courts, like the U.S. Supreme Court, recognize a longstanding presumption that criminal statutes retain a *mens rea* unless the legislature expresses a clear intent to dispense with one. The Florida Legislature has expressed no such clear intent with respect to § 316.6135(4), so this Court must presume it intended that felony statute to contain a baseline knowledge requirement—*i.e.*, to secure a conviction, the State must prove, and the jury must find, that the accused *knowingly* left the child unattended in the vehicle. Because the State introduced insufficient evidence of such knowledge here—indeed, its evidence overwhelmingly showed that Ms. Jewell did *not* knowingly leave A.P. in the car, which is why the jury acquitted her of all offenses involving culpable negligence—this Court must reverse her convictions, vacate her sentence, and direct the trial court to enter a judgment of acquittal on both counts.

II. Should the Court conclude it cannot construe § 316.6135(4) to require knowledge as an essential element, then Ms. Jewell's

convictions must be reversed and vacated because the statute is unconstitutional as applied to her. Without a showing that the accused knew she was leaving a child in the vehicle, § 316.6135(4) punishes purely innocent—or at most merely negligent—conduct, both of which Florida courts have recognized as violating due process. Because Ms. Jewell was acquitted of all offenses involving culpable negligence, the jury necessarily found that her failure to remember A.P. in the car amounted, at most, to simple negligence, if not a wholly innocent memory lapse. Because it is unconstitutional to criminally punish someone in either event, her convictions and seventeen-year prison sentence must be vacated.

Ms. Jewell's felony-murder conviction must be reversed and vacated for an additional reason: because it is unconstitutional to predicate a felony murder on a strict-liability offense. The Florida Supreme Court recognized as much in *Mahaun v. State*, 377 So. 2d 1158 (Fla. 1979), when it upheld the constitutionality of Florida's third-degree felony murder statute against a claim that the State could secure a conviction "without establishing any intent" based solely on the fact that "the intent requirement of the underlying felony must . . . be proven." *Id.* at 1160. It follows that if the underlying

felony contains *no* "intent requirement," it cannot constitutionally serve as a predicate, as doing so would permit the State to convict someone of murder "without establishing any intent" whatsoever. *Id.*

III. Ms. Jewell's felony-murder conviction must also be reversed and vacated under the merger doctrine. The merger doctrine is a well-established principle of statutory construction courts apply to felony-murder statutes that do not enumerate specific underlying offenses. The doctrine excludes as predicates those felonies that are integral to the homicide, rather than collateral to or independent of it, on the presumption that the legislature would not want to elevate all acts causing death into murder without any additional showing by the State. Because Florida's third-degree felony-murder statute does not specifically enumerate predicates but is a catch-all statute, the merger doctrine applies to it. And that doctrine precludes predicating a felony-murder conviction on a § 316.6135(4) violation because the act causing the injury—leaving A.P. unattended in a hot vehicle for an extended period—was the same act that caused her death. Indeed, A.P.'s death was the sole fact that made the offense a felony. This Court must presume the legislature did not intend to elevate all accidental hot car fatalities into murder, without any additional

showing by the State, when it defined that exact same conduct as a third-degree felony. The legislature's explicit mandate that lenity be applied to criminal statutes, Fla. Stat. § 775.021(1), further counsels in favor of applying merger here.

IV. Finally, if the Court does not grant the relief requested above, Ms. Jewell is entitled to a new trial because her trial by a six-person jury violated her jury-trial right as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution. Ms. Jewell acknowledges this claim is foreclosed under current law but preserves it in the event that that law, which at least one member of the U.S. Supreme Court has called into question, is overturned.

ARGUMENT

I. Ms. Jewell's Convictions Must Be Reversed, And Judgment Of Acquittal Entered, Because The State Introduced Insufficient Evidence That She Knowingly Left A.P. In The Vehicle, Which Is An Essential Element Of Florida Statute § 316.6135(4) As Properly Construed.

A. Standard of Review

The proper construction of a statute is a question of law reviewed *de novo. Polite v. State*, 973 So. 2d 1107, 1111 (Fla. 2007). This Court also reviews the sufficiency of evidence supporting a conviction *de novo. Jones v. State*, 4 So. 3d 687, 688 (Fla. 1st DCA

2009). The evidence is sufficient only if, viewing it in "the light most favorable to the State," a "rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt." *Delgado v. State*, 71 So. 3d 54, 65-66 (Fla. 2011) (cleaned up).

B. Florida Statute § 316.6135(4), properly construed, requires the State to prove the accused left the child in the vehicle knowingly.

Over defense objection, the trial court ruled that Florida Statute § 316.6135(4)—the basis for Count III and the predicate for the felony-murder charge—contains no *mens rea* requirement whatsoever. That is, the State was not required to prove, and the jury was not required to find, that Ms. Jewell knowingly left A.P. in the vehicle to convict her of either § 316.6135(4) or the felony murder predicated on it. As a result, she was convicted of two serious felonies without a jury finding that she was even aware of the conduct giving rise to them, much less that she intended it. That was error.

1. Although § 316.6135 "does not specify any required mental state," that "does not mean that none exists." *Elonis v. United States*, 575 U.S. 723, 734 (2015). To the contrary, Florida courts—like the United States Supreme Court—have long recognized a presumption that the legislature intends criminal statutes to contain a *mens rea*

requirement "absent an express indication to the contrary." *State v. Giorgetti*, 868 So. 2d 512, 515 (Fla. 2004). "This rule of construction reflects the basic principle that wrongdoing must be conscious to be criminal." *Elonis*, 575 U.S. at 734 (internal citations omitted). Thus, the "traditional rule" is that crimes without a *mens rea* "generally are disfavored" and that "some indication of [legislative] intent, express or implied, is required to dispense with *mens rea* as an element of a crime." *Staples v. United States*, 511 U.S. 600, 606 (1994).

This "longstanding presumption" in favor of *mens rea*, *Rehaif v. United States*, 588 U.S. 225, 229 (2019), is grounded in two principal rationales. First, courts recognize that "the requirement of some *mens rea* for a crime is firmly embedded" in the "background rules of the common law." *Staples*, 511 U.S. at 605. Indeed, "[a]t common law, all crimes consisted of both an act or omission coupled with a requisite guilty knowledge or *mens rea*." *Giorgetti*, 868 So. 2d at 515. Thus, "the existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American jurisprudence." *Chicone v. State*, 684 So. 2d 736, 743 (Fla. 1996) (quoting *Dennis v. United States*, 341 U.S. 494, 500 (1951)) (cleaned up).

Second, "[b]ecause scienter is often necessary to comport with due process requirements," courts "ascribe the Legislature with having intended to include" a *mens rea* "to avoid any potential constitutional quandaries." *Giorgetti*, 868 So. 2d at 518. Courts are particularly apt to apply this constitutional-avoidance canon when the absence of a *mens rea* element would allow convictions for "purely innocent," or at most simply negligent, conduct, both of which Florida courts have recognized would violate substantive due process. *See, e.g.*, *Siplin v. State*, 972 So. 2d 982, 989 n.8 (Fla. 5th DCA 2007); *Waites v. State*, 702 So. 2d 1373, 1374 (Fla. 4th DCA 1997). Thus, "a general requirement that a defendant *act* knowingly" is considered a necessary "safeguard" to "separate wrongful conduct from otherwise innocent conduct." *Elonis*, 575 U.S. at 736 (cleaned up); *see Giorgetti*, 868 So. 2d at 519 ("knowledge is required . . . to define the wrongful conduct").

2. Applying this presumption, the Florida Supreme Court, this Court, and other Florida district courts have construed a wide range of criminal statutes that are facially silent as to *mens rea* to require the State to prove that the accused acted knowingly. In *Chicone*, for example, the Florida Supreme Court held that "guilty knowledge"—

both of the presence of the substance, and of its illicit nature—is an element of Florida's drug possession statutes. 684 So. 2d at 737, 743-44. Although those statutes did not on their face specify any *mens rea*, the Court concluded that "the background rules of the common law," which "presume a scienter requirement in the absence of express contrary intent," along with principles of lenity and "good sense," required interpreting the statutes to prohibit only the "knowing possession of illicit items." *Id.* at 741-42, 743-44.[7]

Relying on "the reasoning of *Chicone* and the relevant U.S. Supreme Court decisions," the Florida Supreme Court in *Giorgetti* construed Florida's sex-offender registration statutes to require the State to prove "the alleged offender knows of the obligation to register." 868 So. 2d at 519-20. The Court rejected the State's contention that the legislature's silence as to *mens rea* evinced an intent to create a strict-liability crime, observing that *Chicone* and

[7] Although the Florida Legislature subsequently overruled by statute *Chicone*'s holding related to knowledge of the illicit *nature* of the substance, Fla. Stat. § 893.101, it did not overrule *Chicone*'s holding that the State must show the drug was knowingly possessed. *See State v. Adkins*, 96 So. 3d 412, 416 (Fla. 2012); *see also Chicone*, 684 So. 2d at 744 (noting that State itself did not dispute that knowledge of drug's presence was an essential element).

Staples demand a "clear statement" from the legislature "that *mens rea* is not required," particularly "where harsh penalties apply." *Id.* at 518-19. Notably, the offense at issue in *Giorgetti*, like § 316.6135(4), was "a third-degree felony," a penalty the Court deemed "a serious consequence." *Id.* at 519; *see also Chicone*, 684 So. 2d at 743 (observing that the penalties for a third-degree felony, including five years' imprisonment, are "incongruous with crimes that require no mens rea"). The Court also deemed a knowledge element necessary to avoid "potential constitutional quandaries," as without knowledge, the statute would criminalize "otherwise innocent conduct," *i.e.*, simply moving one's residence. *Giorgetti*, 868 So. 2d at 518-19.

Similarly, in *Delgado*, the Florida Supreme Court construed Florida's kidnapping statute, which criminalizes "confining, abducting, or imprisoning another person against her or his will" with intent to commit a felony, Fla. Stat. § 787.01(1)(a), to require the State to prove the accused had "knowledge of the victim's presence before or during the execution of that underlying felony." 71 So. 3d at 59, 61. Although the statute did not include an express knowledge requirement, the Court held that "clearly a defendant must first have knowledge of an intended victim in order to" kidnap her, citing

Giorgetti's and *Staples*'s recognition that the "traditional rule" presumes a *mens rea* absent indication to the contrary. *Id.* at 61.[8]

This Court has likewise applied this longstanding presumption to construe a knowledge requirement into criminal statutes that are facially silent as to *mens rea*. In *Brown v. State*, 150 So. 3d 281 (Fla. 1st DCA 2014), for example, this Court held that a statute making it a crime to introduce contraband into a detention facility requires proof that the introduction was knowing. *Id.* at 282. Citing *Chicone*'s recognition that "*mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence" and that "some indication of legislative intent . . . is required to dispense with mens rea as an element of a crime," *id.* (quoting *Chicone*, 684 So. 2d at 743) (cleaned up), this Court rejected a construction of the statute

[8] Delgado had stolen a truck not knowing a two-year-old was sleeping in the backseat. He was convicted of kidnapping the child with intent to commit auto theft. 71 So. 3d at 56-57. Because the State presented insufficient evidence that Delgado had the requisite knowledge at the time he stole the truck, the Court remanded with instructions to vacate his kidnapping conviction. *Id.* at 67-68. It also rejected the State's request that judgment be entered on the lesser-included "general intent crime" of false imprisonment because he, again, had no "knowledge of the intended victim." *Id.* at 68 n.9.

that would permit convictions for entirely unknowing possession or introduction of contraband, *id.* at 283.[9]

Similarly, in *Shearer v. State*, 754 So. 2d 192 (Fla. 1st DCA 2000), this Court construed a statute proscribing the excavation of archaeological sites on state-owned land to require proof the accused "knew that she was excavating on" state property. *Id.* at 195. Again citing *Staples* and *Chicone* for the principle that, because "offenses requiring no mens rea generally are not favored, some indicia of legislative intent" is "necessary to eliminate mens rea as an element," *id.* at 194-95, this Court concluded that knowledge was "a fundamental and necessary element of the crime charged" because "a careful reading of the statute . . . discloses no express or implied legislative intent" to "omit the requirement of mens rea," *id.* at 195; *see also Enoch v. State*, 95 So. 3d 344, 352-53 (Fla. 1st DCA 2012) (applying principles from *Staples* and *Giorgetti* to construe gang-

[9] Brown testified that he did not know his pants pocket contained the contraband—others had access to the clothing he wore, and he did not check his pockets before entering the facility. 150 So. 3d at 282-83. This Court reversed his conviction even absent a defense objection, concluding that the failure to instruct the jury as to knowledge constituted fundamental error. *Id.* at 283-85.

recruitment statute to require "knowledge that membership . . . is conditioned on the imminent commission of a crime").

Other Florida district courts have reached similar conclusions, applying the presumption favoring *mens rea* to a variety of criminal statutes. In *Siplin v. State*, 972 So. 2d 982 (Fla. 5th DCA 2007), for example, the Fifth District concluded that it "must read" a statute prohibiting candidates for public office from using a state employee's services to further their candidacy during work hours to require the State to prove the candidate knew the employee was so engaged, *id.* at 984, because not doing so would "criminally punish a candidate whenever a state employee worked on his or her campaign on state time, *even without the candidate's knowledge or approval*"—a circumstance the Court concluded would violate substantive due process. *Id.* at 988 & n.8 (citing *Giorgetti*).

Likewise, in *Ramirez v. State*, 113 So. 3d 28 (Fla. 2d DCA 2012), the Second District read a knowledge element into a statute prohibiting felons from working for bail bond agencies. Although recognizing that the statute "does not explicitly require any mens rea or guilty knowledge on the part of the person who accepts employment with the bail bond agency," the Court presumed the

legislature intended one, citing "the traditional rule" articulated in *Staples* and *Giorgetti*. *Id.* at 29. The Court rejected the State's contention that the legislature intended to create a "strict liability statute," concluding that omitting the knowledge element would "criminalize[] what is otherwise innocent conduct, i.e., working at a clerical job"—a reading that would render the statute unconstitutional, which the Court was obligated to avoid. *Id.* at 30.[10]

3. Given these well-established, governing statutory construction principles, the trial court's interpretation—that Florida Statute § 316.6135(4) contains no *mens rea* at all, permitting conviction without any proof the accused knowingly left the child unattended in the vehicle—was unquestionably erroneous.

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[10] *See also State v. Carrier*, 240 So. 3d 852, 857, 861 (Fla. 2d DCA 2018) (construing statute proscribing alteration of veterinary inspection certificate to require that the alteration was "done knowingly" and "results in a false or deceptive document"); *Mathis v. State*, 208 So. 3d 158, 163-64 (Fla. 5th DCA 2016) (construing *mens rea* into Florida racketeering statute); *Krampert v. State*, 13 So. 3d 170, 172-73 (Fla. 2d DCA 2009) (construing sex offender re-registration statute to require knowledge of duty to re-register); *Wegner v. State*, 928 So. 2d 436, 439 (Fla. 2d DCA 2006) (construing statute punishing receiving electronic communications for purpose of facilitating sex with minor to require knowledge that the person is a minor); *Waites*, 702 So. 2d at 1375 (construing statute making it a crime to negligently kill another while driving without a valid license to require proof "that the accused know of his license's invalidity").

As with all the statutes discussed above, § 316.6135(4) contains no "express indication" that the legislature intended to dispense with a *mens rea* requirement and criminalize entirely unknowing acts. *Giorgetti*, 868 So. 2d at 516. Accordingly, applying the "longstanding presumption, traceable to the common law," *Rehaif*, 588 U.S. at 229, that the legislature intends a *mens rea* unless it says otherwise, the Court must presume the Florida Legislature intended to allow convictions for § 316.6135(4) only where the accused's act of leaving the child unattended in the motor vehicle was *knowing*. *See Staples*, 511 U.S. at 605 (a "conventional *mens rea* element" would "require that the defendant know the facts that make his conduct illegal").

Indeed, construing the statute without such a knowledge element would permit criminal punishment for entirely unknowing—and thus, entirely innocent, or at most simply negligent—acts, rendering it unconstitutional as applied here. *See infra* Part II. As the Supreme Court has recognized, the basic requirement that the accused "*act* knowingly" is generally what separates "wrongful conduct from otherwise innocent conduct." *Elonis*, 575 U.S. at 736 (cleaned up). That is precisely why this and other Florida courts have read knowledge elements into criminal statutes—to avoid

constructions that would permit conviction for entirely unknowing conduct. *See, e.g.*, *Brown*, 150 So. 3d at 283; *Siplin*, 972 So. 2d at 988-90; *Ramirez*, 113 So. 3d at 30. This Court is "obligated to construe" § 316.6135 "in a manner that avoids a holding that [it] may be unconstitutional." *Giorgetti*, 868 So. 2d at 518. Presuming that the legislature intended to punish only those who *knowingly* "leave [a] child unattended . . . in a motor vehicle," § 316.6135(1), would do so.

That § 316.6135(4) prescribes serious criminal penalties—it is a third-degree felony, punishable by up to five years in prison—is further reason to presume the legislature did not intend to allow convictions for wholly unknowing conduct. Indeed, Florida courts, including this one, have adjudged this same penalty as "harsh," *Enoch*, 95 So. 3d at 353, and a "serious consequence," *Giorgetti*, 868 So. 2d at 519, that is 'incongruous with crimes that require no mens rea," *Chicone*, 684 So. 2d at 742-43; *see also Waites*, 702 So. 2d at 1375 (the "harsh sanction" of five years' imprisonment "militates against" treating a third-degree felony as a "strict liability crime").

Finally, as the Supreme Court has explained, it is "unnecessary to rely on the rule of lenity" because "the background rule of the common law favoring *mens rea* and the substantial body of precedent

. . . construing statutes that do not specify a mental element provide considerable interpretive tools" such that "statutes silent with respect to *mens rea*" cannot be deemed "ambiguous." *Staples*, 511 U.S. at 619 n.17. But in all events, the Florida Legislature's express codification of lenity as a principle of statutory construction further supports applying the "longstanding presumption" in favor of *mens rea* to § 316.6135(4). *Rehaif*, 588 U.S. at 229; *see Chicone*, 684 So. 2d at 741; Fla. Stat. § 775.021(1) (requiring that criminal statutes "be strictly construed" and that language "susceptible of differing constructions" be construed "most favorably to the accused").

4. In concluding otherwise, the trial court fundamentally misunderstood the governing statutory construction principles. The trial court's primary rationale—that "if [the] legislature had intended that there be an element of *mens rea*," it "would have so stated," T. 1001—was entirely backward. As discussed above, courts presume the legislature's silence as to *mens rea* evinces an intent to include one, not an intent to dispense with it. *See Giorgetti*, 868 So. 2d at 520 ("[I]t must be clear that a legislative body intended to dispense with [*mens rea*] before courts will assume it is not required.").

Thus, the fact that the legislature has not amended § 316.6135 to expressly specify a *mens rea* since its enactment—the trial court's second rationale, *see* T.1001—is also beside the point. If the legislature's original silence as to *mens rea* signifies an intent to include one, its continued silence must mean the same. Indeed, that is the whole premise of the presumption: *mens rea* is "so inherent in the idea of" criminal offenses that it "require[s] no statutory affirmation." *Morissette v. United States*, 342 U.S. 246, 252 (1952).

The trial court's third rationale—that the standard jury instruction for § 316.6135 specifies no *mens rea*, T.1001-02—is likewise irrelevant. The standard jury instructions are "intended only as a guide" and do not "relieve the trial court of its responsibility to charge the jury correctly in each case." *Steele v. State*, 561 So. 2d 638, 645 (Fla. 1st DCA 1990). Indeed, the Florida Supreme Court, in approving § 316.6135's instruction, stated explicitly that it "express[ed] no opinion on the correctness of" it and that its "authorization foreclose[d] neither requesting additional or alternative instructions nor contesting the [instruction's] legal correctness." *In re Standard Jury Instructions In Crim. Cases—Rep. No. 2008-07*, 3 So. 3d 1172, 1172 (Fla. 2009); *see also In re Standard*

Jury Instructions In Crim. Cases—Rep. No. 2012-05, 131 So. 3d 755 (Fla. 2013) (same). The trial court had a duty to charge the jury correctly on the essential elements of § 316.6135(4), and its failure to do so was error. *See, e.g.*, *Cooper v. State*, 742 So. 2d 855, 858 (Fla. 1st DCA 1999) (trial court committed reversible error in failing to instruct on essential knowledge element, despite following standard jury instruction, which did not include that element).

* * *

In sum, the trial court erred in concluding that § 316.6135(4), a third-degree felony punishable by five years' imprisonment, contains no *mens rea* element. Because the legislature evinced no intent, express or implied, to dispense with *mens rea*, this Court must presume it intended § 316.6135(4) to contain a baseline knowledge requirement: to face criminal liability, the State must prove the accused left the child unattended in the vehicle *knowingly*.

C. The State introduced insufficient evidence that Ms. Jewell knowingly left A.P. in the vehicle.

Construing § 316.6135(4) correctly, this Court must reverse Ms. Jewell's convictions, vacate her sentence, and instruct the trial court to enter a judgment of acquittal, as the State introduced

insufficient—indeed, *zero*—evidence that she knowingly left A.P. unattended in the vehicle. To the contrary, the State's own evidence showed overwhelmingly that Ms. Jewell had forgotten A.P. was in the car when she exited it and did not realize her tragic mistake until hours later. *See Delgado*, 71 So. 3d at 59 (vacating conviction after construing statute to require knowledge and concluding State presented insufficient evidence of knowledge); *Waites*, 702 So. 2d at 1376 (construing statute to require knowledge and reversing with directions that appellant "be discharged" of offense where "the unrebutted evidence" showed he lacked the requisite knowledge).

The State's key witnesses testified that Ms. Jewell expressed repeatedly, on the scene and at the police station, that she had forgotten A.P. and that leaving her in the car was accidental. Stacy Paschal testified that, when Ms. Jewell phoned her to tell her to come home, Ms. Jewell was "distraught," "screaming" and "crying" that she had forgotten the baby in the car. T.720-21; *see also* T.705. Ms. Paschal stated that Ms. Jewell was still "frantic," "crying very hard," and "gasping for air" when she arrived home. T.708. She asked what had happened and Ms. Jewell reiterated, "I forgot the baby in the car." T.722; *see also* T.707-08. When Ms. Paschal later sat down to

speak again with her, Ms. Jewell was still "extremely distraught," "throwing up and dry heaving," and repeating, "I forgot the baby, I forgot the baby, I forgot the baby." T.723-24; *see also* T.708-09.

Ms. Jewell gave the same explanation in her recorded police statement, which the State introduced in its case-in-chief. She explained that A.P. was "asleep" and "quiet" in the back of the car, and that, because she did not watch her daily, she "forgot she was there" when she arrived at Ms. Paschal's house and went inside and "got busy with the other kids." T.864. Ms. Jewell told the police "[i]t just didn't click that the baby was out there" and that she did not realize she had left A.P. in the car until Brooke arrived to pick A.P. up. T.864. Ms. Jewell's own, heart wrenching trial testimony was consistent with this account. T.957, 964-69, 975-76, 985-86.

The State's circumstantial evidence also overwhelmingly supported a conclusion that Ms. Jewell's leaving A.P. in the car was a tragic accident, not a conscious or knowing act. The State's evidence showed Ms. Jewell was extremely close with A.P.'s family, making it extraordinarily unlikely she would knowingly endanger her. T.603-04, 648-49, 653, 674-75, 686-87, 702; *see also* T.940 (Ms. Jewell testifying that she "loved [A.P.] like she was [her] own"). The

State's evidence also showed that Ms. Jewell was a sought-after caregiver who was "wonderful" and "amazing with children"—not someone who would knowingly leave a baby in danger, particularly one she loved dearly. T.710-11, 714; *see also* T.654, 675. And her actions and demeanor upon realizing A.P. was still in the car—running and pulling her out, screaming, crying, dry heaving, and so "frantic" and "distraught" that she vomited and urinated on herself, T.660-62, 708-09, 719, 723-24, 754, 876—confirm she did not knowingly leave A.P. to die. As defense counsel argued in closing, "[Y]ou can't fake those kinds of responses. She had forgotten A.P. She had forgotten that she had her." T.1139.

In short, nothing the State presented even remotely suggested that Ms. Jewell knowingly left A.P. in the car. Indeed, the State did not even dispute that below. The defense moved for JOA on Counts I and III on the ground that the State had "not presented evidence" that leaving A.P. in the car "was a conscious act." T.883; *see* T.890 (Count III); T.1094-95 (renewed JOA). In response, the State did not contend its evidence was sufficient for the jury to find beyond a reasonable doubt that Ms. Jewell left A.P. in the car consciously. Instead, the State argued (wrongly) that it was "*not required*" to prove

"conscious knowing" for either count. T.891 (emphasis added); *see* T.893 (Count III); T.1098 (defense noting that "there has been no evidence that this was a conscious act whatsoever" and "the State's argument didn't highlight any of that").

And, of course, the jury ultimately acquitted Ms. Jewell of all counts involving culpable negligence precisely *because* the State presented no evidence that she knowingly left A.P. in the vehicle. *See* R.767; T.1175 (jury instructions defining culpable negligence as "consciously doing an act" that the accused "must have known or reasonably should have known was likely to cause death or great bodily injury"); T.1129 (defense arguing in closing that "[t]his case comes down to whether Rhonda Jewell consciously did an act that led to the death of A.P."); Black's Law Dictionary (12th ed. 2024) (defining "knowing" as synonymous with "deliberate" or "conscious").

This Court has recognized that, "in a circumstantial case, the State's evidence must be not only consistent with guilt but inconsistent with any reasonable hypothesis of innocence" to be sufficient. *Beazley v. State*, 148 So. 3d 552, 555 (Fla. 1st DCA 2014) (cleaned up). Here, the State's evidence was utterly *inconsistent* with guilt and pointed in only one direction: that Ms. Jewell's leaving A.P.

in the car was not knowing or conscious but a tragic, unwitting accident. Because the State failed to prove knowledge—an essential element of § 316.6135(4) and thus the felony murder predicated on it—this Court must reverse Ms. Jewell's convictions, vacate her sentence, and remand with directions that the trial court enter a judgment of acquittal on Counts II and III. *See Johnson v. State*, 287 So. 3d 673, 678 (Fla. 1st DCA 2019) (proper remedy for insufficient evidence is reversal of convictions, vacating of sentence, and remand with direction that trial court enter a judgment of acquittal).[11]

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[11] Even if this Court were to conclude that the State's evidence of knowledge was somehow legally sufficient to go to the jury—which it should not—Ms. Jewell would still be entitled to have her convictions vacated. Typically, the remedy for an instructional error where the State's evidence of knowledge was sufficient to survive JOA is reversal and remand for a retrial in which the jury is properly instructed on the *mens rea* element. *See, e.g.*, *Brown*, 150 So. 3d at 284-85; *Siplin*, 972 So. 2d at 987, 990. Here, however, the jury has already acquitted Ms. Jewell of all charges involving culpable negligence, which means it necessarily did not find beyond a reasonable doubt that she knowingly left A.P. in the vehicle. *See supra* pp. 21, 45. Accordingly, the State is collaterally estopped, under the Fifth Amendment's Double Jeopardy Clause, from relitigating that factual issue in a future prosecution. *See Ashe v. Swenson*, 397 U.S. 436, 443-45 (1970) (holding that, "when an issue of ultimate fact" has been "determined by a valid and final judgment," *i.e.* an acquittal, double jeopardy bars relitigation of that issue in a future prosecution). As such, even if this Court were to conclude that

II. If This Court Declines To Construe Florida Statute § 316.6135(4) To Require The State To Prove Scienter, Then Ms. Jewell's Convictions Must Be Reversed And Vacated As Unconstitutional.

A. Standard of Review

The constitutionality of a statute is a question of law reviewed *de novo*. *State v. Adkins*, 96 So. 3d 412, 416 (Fla. 2012).

B. If Florida Statute § 316.6135(4) is not construed to require the State to prove knowledge, then it is unconstitutional as applied to Ms. Jewell's conduct.

In the alternative, should this Court conclude that § 316.6135(4) does not contain any knowledge requirement notwithstanding the presumption of *mens rea*, then it must hold the statute unconstitutional as applied to Ms. Jewell and reverse her convictions for that reason. Without a requirement that the State prove the accused knew she was leaving a child in the car, § 316.6135(4) permits felony convictions for conduct that is either wholly innocent or at most amounts to simple negligence, circumstances that the Florida Supreme Court has long recognized

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the State presented evidence of knowledge sufficient to survive JOA—which, again, it has no basis to do—it should still vacate her convictions because double jeopardy precludes the State from retrying her for § 316.6135(4) or felony murder predicated on it.

violate the federal and state rights to substantive due process. *See* U.S. Const. Am. V; Fla. Const. art. I § 9.

Although the legislature has broad authority to define what conduct constitutes a crime, such authority is not unlimited. The Due Process Clauses of the federal and Florida constitutions impose important constraints, and "scienter"—or guilty knowledge—"is often necessary to comport with due process requirements." *Giorgetti*, 868 So. 2d at 518. While the legislature can constitutionally dispense with certain *mens rea* requirements, such as specific intent, *see, e.g.*, *Reynolds v. State*, 842 So. 2d 46, 51 (Fla. 2002), or knowledge of the illicit nature of one's conduct, *see Adkins*, 96 So. 3d at 416-23, Florida courts have long recognized that statutes that eliminate scienter altogether—punishing wholly unknowing acts—violate substantive due process because they criminalize activities that are either simply (but not criminally) negligent, *Waites*, 702 So. 2d at 1374-75, or even "purely innocent," *Siplin*, 972 So. 2d at 989 n.8.

Indeed, this is precisely the reason courts read a knowledge requirement into statutes—to avoid unconstitutionally criminalizing wholly unknowing, and thus innocent or merely negligent, conduct. *See, e.g., Giorgetti*, 868 So. 2d at 518; *Brown*, 150 So. 3d at 283;

Siplin, 972 So. 2d at 988-90; *Ramirez*, 113 So. 3d at 30; *Waites*, 702 So. 2d at 1374-75. Thus, Florida courts recognize, for example, that while the legislature can constitutionally criminalize knowingly possessing drugs without knowledge of their illegality, *Adkins*, 96 So. 3d at 420-23, it cannot constitutionally criminalize the *unknowing possession* of them because doing so would punish purely innocent conduct. *See id.* at 424 (Pariente, J., concurring in result) ("The Act is facially constitutional only because it . . . continues to require the State to prove that a defendant had knowledge of the *presence* of the controlled substance."); *State v. Oxx*, 417 So. 2d 287, 290-91 (Fla. 5th DCA 1982) (recognizing that criminalizing unknowing possession would be unconstitutional but reading statute to require State to prove intent to possess drugs).

Here, without "a general requirement" that the accused "*act* knowingly," Florida Statute § 316.6135(4) fails to distinguish "wrongful conduct from otherwise innocent conduct." *Elonis*, 575 U.S. at 736 (cleaned up). Under the trial court's construction, for example, a person would be guilty of violating § 316.6135(4) if, unbeknownst to him, a neighbor's child crawled into his unlocked car parked in his driveway during a game of hide-and-seek, and then

the person entered the car, drove to work, parked it, and left, never knowing the child had been hiding quietly in the back. If the child were to die—a sadly imaginable outcome given Florida temperatures—the driver could face not only five years in prison under § 316.6135(4) but a consecutive fifteen-year sentence for third-degree felony murder predicated on that offense. And yet, his conduct would have been wholly innocent: without knowledge one is leaving a child in the vehicle, the statute is, in effect, punishing the mere act of getting out of one's car. *See, e.g.*, *Giorgetti*, 868 So. 2d at 520 (without knowledge element, sex-offender registration statute would punish merely "moving one's residence"); *Ramirez*, 113 So. 3d at 30 (without knowledge element, statute barring felons from working at bail bond agencies would "criminalize[] what is otherwise innocent conduct, i.e., working at a clerical job").

Even if the person's conduct could be deemed negligent—for example, because he had left the car unlocked and accessible to children—the statute would still be unconstitutional as applied because the Florida Supreme Court has repeatedly held "statutes criminalizing simple negligence to be unconstitutional." *State v. Smith*, 638 So. 2d 509, 510 (Fla. 1994); *see State v. Hamilton*, 388

So. 2d 561, 563-64 (Fla. 1980) (unconstitutional to punish "mere negligent conduct," *i.e.*, "unintentional conduct which was not generated by culpable negligence"); *State v. Winters*, 346 So. 2d 991, 993-94 (Fla. 1977) (same). While simple negligence may "enhance the penalty for a willful criminal act," there must be a knowing or willful act to begin with to constitutionally give rise to criminal punishment. *Smith*, 638 So. 2d at 510; *see also Waites*, 702 So. 2d at 1374-75 (construing statute making it a felony to negligently kill another while driving without a valid license to require proof "that the accused know of his license's invalidity" because criminalizing "simple negligence that results in death" without a knowing or willful act would be unconstitutional); *State v. Welborn*, 676 So. 2d 56, 56 (Fla. 4th DCA 1996) (holding statute making jailer criminally liable for negligently allowing escape of prisoner unconstitutional because it did not require a showing of willfulness or culpable negligence).

In this case, the jury acquitted Ms. Jewell of all crimes involving culpable negligence, meaning her act of forgetting A.P. in the car at most amounted to simple negligence. Yet, under the trial court's construction, that was irrelevant to § 316.6135(4)—conviction was required solely by virtue of her leaving A.P. in the car, even if the jury

thought her memory lapse constituted mere negligence or even was a wholly innocent mistake resulting from a prospective memory failure. Because such a conviction is unconstitutional, this Court must reverse and vacate Ms. Jewell's § 316.6135(4) conviction and the felony-murder conviction predicated on it.

C. Irrespective of the constitutionality of § 316.6135(4), third-degree felony murder cannot constitutionally be predicated on a strict-liability offense.

If this Court declines to construe § 316.6135(4) to contain a knowledge requirement, then Ms. Jewell's felony-murder conviction must be reversed and vacated for another, independent reason: because it is unconstitutional to convict someone of third-degree murder—one of the most serious crimes, carrying severe consequences—without requiring the State to prove any *mens rea*.

The Florida Supreme Court recognized this principle in *Mahaun,* 377 So. 2d 1158. In *Mahaun*, the appellants challenged the constitutionality of Florida's third-degree felony murder statute on the ground that it "contains no intent requirement" and thus the State "could secure a third-degree felony murder conviction without establishing any intent." *Id.* at 1160. The Court rejected that argument on the ground that "[a]ny felony murder charge must be

based upon an underlying felony" and "the intent requirement of the underlying felony must . . . be proven." *Id.* (citing *Adams v. State*, 341 So. 2d 765, 767-68 (Fla. 1976) (approving Florida's felony-murder doctrine as "a constructive malice device" wherein the intent for the murder "is supplied by the felony")).

It follows that if the underlying felony contains *no* "intent requirement," it cannot constitutionally serve as the predicate offense for third-degree felony murder, as doing so would permit the State to convict someone of murder—and sentence them to fifteen years in prison for it—"without establishing any intent" whatsoever. *Id.*; *see also Smith*, 638 So. 2d at 510-11 (explaining that the felony-murder statute is constitutional because, "[a]lthough the homicide may have been unintentionally committed through negligence, it is the *willful act of committing the underlying felony*" that permits the State to punish the accused for the unintentional death) (emphasis added). Indeed, such a result would amount to a pure strict-liability *murder*, a concept anathema to our legal system. *See Morissette*, 342 U.S. at 255-56 (strict liability permissible only for "public welfare offenses" that have small penalties and do not damage reputation); *Giorgetti*, 868 So. 2d at 519 (third-degree sex-offender registration felony not a

public welfare offense); *Chicone*, 684 So. 2d at 743 (third-degree drug possession felonies "incongruous" with strict liability).

III. This Court Must Reverse And Vacate Ms. Jewell's Felony-Murder Conviction Because, Under The Merger Doctrine, Third-Degree Felony Murder Cannot Be Predicated On A Felony That Is Coextensive With The Act Causing Death.

A. Standard of Review

Whether the merger doctrine precludes a particular offense from serving as a predicate for felony murder is a "purely legal" issue of statutory interpretation reviewed *de novo*. *State v. Sturdivant*, 94 So. 3d 434, 439 (Fla. 2012).

B. Under the merger doctrine, third-degree felony murder cannot be predicated on leaving a child unattended in a motor vehicle causing great bodily injury because that offense is wholly coextensive with the homicide.

If this Court does not reverse Ms. Jewell's convictions on the grounds asserted above, then it must reverse and vacate her felony-murder conviction under the well-established merger doctrine.

i. *The merger doctrine applies to Florida's third-degree felony-murder statute.*

The merger doctrine is a longstanding "principle of statutory construction" specific to the felony-murder rule that dates back to the nineteenth century. *Sturdivant*, 94 So. 3d at 437. The doctrine limits the application of the felony-murder rule to predicate felonies

that are "separate and distinct from the conduct that caused the homicide itself." *Commonwealth v. Fredette*, 101 N.E.3d 277, 284 (Mass. 2018); *see also, e.g.*, *State v. Jones*, 155 A.3d 492, 500-01 (Md. 2017) (if the "act causing the injury is the same act that causes the victim's death," it "is merged into the murder and therefore cannot serve as the predicate felony for felony-murder purposes").[12]

The idea is that, because the felony-murder rule elevates into murder unintentional deaths that occur during or result from the commission of a felony, courts presume the legislature intends to include only those felonies that are "independent of the conduct necessary to cause the victim's death." *Fredette*, 101 N.E.3d at 280.

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[12] Although double-jeopardy cases sometimes also use the term "merger," the merger doctrine recognized in *Sturdivant* "is distinct from double jeopardy." 94 So. 3d at 437 n.3; *see* R.1031-33 (State conflating the two doctrines at trial). As explained above, the merger doctrine at issue here "is a principle of statutory construction" concerning the scope of the felony-murder statute. *Sturdivant*, 94 So. 3d at 437. Double-jeopardy merger, by contrast, is "a constitutional principle," *id.* at 437 n.3, that concerns whether two crimes are considered the "same criminal offense," thereby precluding double punishment. *State v. Maisonet-Maldonado*, 308 So. 3d 63, 66 (Fla. 2020) (cleaned up). The recent case law recognizing the Florida Legislature's statutory abrogation of the court-made "single homicide rule" concerned double-jeopardy merger. *See id.* at 66-70; *Stephens v. State*, 331 So. 3d 1241, 1253-54 (Fla. 1st DCA 2022). It did not implicate, much less undermine, the well-established statutory construction merger principles *Sturdivant* recognized.

Otherwise, every felony that "resulted in death" would be "bootstrapped up" to murder and swallowed by the felony-murder rule, without any additional factual showing by the State. *Lewis v. State*, 34 So. 3d 183, 184-85 (Fla. 1st DCA 2010). Thus, if the underlying felony is "not separate and independent" from the homicide, *Sturdivant*, 94 So. 3d at 438, but instead is an "integral part of" it, *Lewis*, 34 So. 3d at 184, it cannot be used to predicate a felony-murder charge.

Importantly, as the Florida Supreme Court recognized in *Sturdivant*, because the merger doctrine is a principle for discerning statutory intent, it does not apply "where the underlying felony has been explicitly enumerated by the Legislature as one upon which a felony-murder conviction can be based." 94 So. 3d at 437; *see also State v. Lopez*, 847 P.2d 1078, 1089 (Ariz. 1992) ("If the legislature explicitly states that a particular felony is a predicate felony for felony-murder, no 'merger' occurs."). That makes sense: if the predicate felonies are enumerated, there is no question the legislature intended them to support a felony-murder conviction. The *Sturdivant* Court held, consequently, that the merger doctrine does not apply to Florida's first-degree felony-murder statute because it

"specifically lists the underlying offenses that can justify a conviction for first-degree felony murder." *Sturdivant*, 94 So. 3d at 439 (citing Fla. Stat. § 782.04(1)(a)); *see also Lewis*, 34 So. 3d at 186-87 (same).

Florida's *third-degree* felony-murder statute, however, does not specifically enumerate the felonies that can justify a conviction. Rather, unlike Florida's first-degree felony-murder statute, Florida's third-degree felony-murder provision is a "general catch-all felony-murder statute," *Sturdivant*, 94 So. 3d at 438; it applies to unintentional deaths that occur during the perpetration of "*any* felony." Fla. Stat. § 782.04(4) (emphasis added). Accordingly, under the reasoning of *Sturdivant* and *Lewis*, the well-established merger doctrine applies to Florida's third-degree felony-murder statute.

ii. *Under the merger doctrine, a third-degree felony murder cannot be predicated on § 316.6135(4).*

The merger doctrine precludes predicating a third-degree felony murder on the offense of Leaving a Child Unattended in a Motor Vehicle Causing Great Bodily Harm, Fla. Stat. § 316.6135(4), because that felony is not "separate and independent" from the act causing death, *Sturdivant*, 94 So. 3d at 438, but is instead entirely coextensive with it. Indeed, A.P.'s death was the sole fact that made

the offense even chargeable as a felony; leaving a child unattended in a motor vehicle for over fifteen minutes *without* causing great bodily harm is only a misdemeanor. *See* Fla. Stat. § 316.6135(2).

The Florida Legislature has determined that a person who leaves a child unattended in a vehicle for more than fifteen minutes causing the child to suffer great bodily injury has committed a third-degree felony punishable by up to five years' incarceration. Fla. Stat. § 316.6135(4); *id.* § 775.082(3)(e). Yet, if § 316.6135(4) were allowed to serve as a predicate for felony murder, then any such incidents that "resulted in death" would automatically be elevated to third-degree felony murder—effectively "bootstrapped up" to a *second-degree* felony punishable by *three times* as long a sentence—on the exact same set of facts. *Lewis*, 34 So. 3d at 184-85; *see* Fla. Stat. §§ 782.04(4), 775.082(3)(d).[13] Under the merger doctrine, the Court must presume the legislature did not intend to elevate every unintentional hot car death of a child into murder when it already

[13] As a practical matter, this would likely comprise most, if not all, violations of § 316.6135(4). The State's medical examiner testified that, even on "mild" days when the outside temperature falls between 72 and 96 degrees, the interior of a car will reach temperatures that would be fatal to a child within twenty to thirty minutes. T.830-33.

defined the exact same conduct as a lesser felony. Because the "act causing the injury"—leaving A.P. in a parked motor vehicle for an extended period—was "the same act that cause[d] [her] death," that act "is merged into the murder" and "cannot serve as the predicate felony for felony-murder purposes." *Jones*, 155 A.3d at 501.

Indeed, numerous state courts, applying the merger doctrine, have concluded that statutes similarly criminalizing the causing of "great bodily harm," in a variety of contexts, cannot serve as a predicate to felony murder under similar reasoning. *See, e.g.*, *People v. Bush*, 234 N.E.3d 754, 767-68 (Ill. 2023) (aggravated battery resulting in great bodily harm is an "improper predicate felony" when the charged conduct "contemplates death" because that conduct is "inherent in the act of murder itself" (cleaned up)); *State v. Marquez*, 376 P.3d 815, 820, 822-23 (N.M. 2016) (shooting from a vehicle causing great bodily harm could not serve as a felony-murder predicate because it was not "independent of" or "collateral to" the homicide); *People v. Benway*, 164 Cal. App. 3d 505, 513 (Cal. Ct. App. 1985) (felony child abuse, which requires abuse "willfully committed under circumstances likely to produce great bodily harm or death," merges into homicide when death results because "there is no

independent felonious design" beyond the act causing death). Applying merger to preclude use of § 316.6135(4) as a predicate felony would be consistent with the approaches of other states that have applied the merger doctrine to felony-murder statutes that do not specifically enumerate predicate offenses.

Finally, the Florida Legislature has expressly stated its intent that criminal statutes be construed strictly in favor of the accused. *See* Fla. Stat. § 775.021(1). The legislature's explicit enshrining of lenity as a statutory-construction principle further supports applying the merger doctrine here. Unless and until the legislature states unambiguously that it intends § 316.6135(4) to serve as a predicate for felony murder, this Court should not presume that it intended that every act of leaving a child unattended in a vehicle that "resulted in death"—conduct it defined as a third-degree felony punishable by only five years—could be "bootstrapped up" to murder, and subject to three times the penalty, without any additional factual showing by the State. *Lewis*, 34 So. 3d at 184-85. Ms. Jewell's felony-murder conviction must be reversed and vacated for this reason as well.

IV. Ms. Jewell's Convictions By A Six-Person Jury Violated The Sixth And Fourteenth Amendments, Which Entitled Her To A Trial By A Twelve-Person Jury.

If this Court does not grant the relief requested above, then Ms. Jewell is entitled to a retrial because her trial by a six-person jury violated her federal jury-trial right.[14] U.S. Const. Am. VI, XIV. Ms. Jewell acknowledges this claim is foreclosed under current law, *see Williams v. Florida*, 399 U.S. 78, 103 (1970), but preserves it in the event *Williams* is overturned. *See Cunningham v. Florida*, 144 S. Ct. 1287, 1287-88 (2024) (Gorsuch, J., dissenting from denial of certiorari) (arguing *Williams* is inconsistent with the Constitution and should be overturned); *Khorrami v. Arizona*, 143 S. Ct. 22, 23-27 (2022) (Gorsuch, J., dissenting from denial of certiorari) (same).

[14] Ms. Jewell preserved this claim below. *See* R.690 (Motion for 12-Member Jury); T.16 (trial court denying motion).

CONCLUSION

This Court should reverse Ms. Jewell's convictions, vacate her sentence, and remand with directions that the trial court enter a judgment of acquittal on both remaining counts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing brief was filed electronically and sent via email from the Florida Courts' E-Filing Portal system on all counsel of record listed below, this 27th day of May, 2025:

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I certify that this brief is in conformity with all font and word count provisions pursuant to Fla. R. App. P. 9.045, and complies with Fla. R. App. P. 9.100.

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