

# Supreme Court of Florida

MONDAY, FEBRUARY 20, 2017

**CASE NO.: SC16-547**

Lower Tribunal No(s):

5D16-516; 492013CF000612XXXAXX

LARRY DARNELL PERRY

vs. STATE OF FLORIDA

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Petitioner(s)

Respondent(s)

Respondent's Motion for Clarification is hereby denied as moot. See Evans v. State, No. SC16-1946, Rosario v. State, No. SC16-2133.

LABARGA, C.J., and LEWIS, CANADY, and POLSTON, JJ., concur.  
PARIENTE, J., dissents with an opinion, in which QUINCE, J., concurs.  
LAWSON, J., did not participate.

PARIENTE, J., dissenting.

I would deny Respondent's Motion for Clarification based on the Court's explicit ruling in our original opinion in Perry v. State, 41 Fla. L. Weekly S449 (Fla. Oct. 14, 2016), which concluded:

Based on the reasoning of our opinion in Hurst [v. State, 202 So. 3d 40 (Fla. 2016)], we answer both certified questions in the negative. As to the second question, we construe the fact-finding provisions of the revised section 921.141, Florida Statutes, constitutionally in conformance with Hurst to require unanimous findings on all statutory elements required to impose death. The Act, however, is unconstitutional because it requires that only ten jurors recommend death as opposed to the constitutionally required unanimous, twelve-member jury. Accordingly, it cannot be applied to pending prosecutions.

Perry, 41 Fla. L. Weekly at S453 (emphasis added).

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However, in light of the Court’s opinion today in Evans and Rosario, determining that “the revised statutory scheme in chapter 2016-13, Laws of Florida, can be applied to pending prosecutions,” which explicitly contradicts our holding in Perry, I would grant Respondent’s Motion for Clarification in this case.

Evans v. State, No. SC16-1946, and Rosario v. State, No. SC16-2133 (consolidated) (slip op. issued Fla. Feb. 20, 2017), at 6 (emphasis added).

Respondent’s Motion for Clarification cannot now be “moot” following the majority’s opinion in Evans and Rosario, which is in direct conflict with our holding in Perry; therefore, issuing a revised opinion would be the appropriate procedure.

QUINCE, J., concurs.

A True Copy  
Test:

  
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John A. Tomasino  
Clerk, Supreme Court



sl  
Served:

PETER MILLS  
NANCY GBANA ABUDU

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