In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

WILLIAM LEE WRIGHT, JR.,

Defendant and Appellant.

CAPITAL CASE

Case No. S107900

Los Angeles County Superior Court Case No. KA048285
The Honorable Norman P. Tarle, Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

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XII. THE REASONABLE DOUBT STANDARD DOES NOT APPLY TO PENALTY-PHASE AGGRAVATING FACTORS

Appellant cites to *Hurst v. Florida* (2016) 577 U.S. ___ [136 S.Ct. 616], *Ring v. Arizona* (2002) 536 U.S. 584, 589, and *Apprendi v. New Jersey* (2000) 530 U.S. 466, 494, for the proposition that the jury must be required to find the existence of aggravating factors at the penalty phase beyond a reasonable doubt as "factual findings." (Supp. AOB 19-23.) As further discussed below, this Court has repeatedly rejected this claim, and appellant provides no compelling reasons for this Court to revisit its holdings.

A. *Hurst* does not impose the reasonable-doubt standard as to each penalty-phase aggravating circumstance

Appellant first contends that the United States Supreme Court's decision in *Hurst, supra*, 136 S.Ct. at pp. 619-622, requires the jury to make findings beyond a reasonable doubt as to each penalty-phase aggravating circumstance. (Supp. AOB 20-23.) This claim has been repeatedly rejected by this Court, and appellant provides no compelling reason for this Court to revisit its previous holdings.

In *Hurst*, the Supreme Court found that Florida's capital sentencing scheme violated *Ring* because the judge, rather than the jury, made the ultimate factual determinations necessary to impose the death penalty. (*Hurst, supra*, 136 S.Ct. at pp. 621-622.) Under Florida's capital sentencing scheme at that time, the maximum sentence a capital defendant could receive on the basis of a murder conviction alone was life imprisonment. A Florida trial court, however, had the authority to impose a death sentence if the jury rendered an "advisory sentence" of death and the court found sufficient aggravating circumstances existed. The United States Supreme Court held that this sentencing scheme violated *Ring* because the jury made an advisory verdict while the judge made the ultimate factual determinations necessary to sentence a defendant to death. (*Ibid.*) Thus, *Hurst* reiterated that juries, not judges, must "find each fact necessary to impose a sentence of death." (*Id.* at p. 619.)

As this Court has recognized, "California's sentencing scheme is materially different from that in Florida." (*People v. Rangel* (2016) 62 Cal.4th 1192, 1235, fn. 16; accord, *People v. Becerrada* (2009) 2 Cal.5th 1009, 1038.) Unlike *Hurst*, there was no penalty-phase judicial factfinding in this case. Appellant's death sentence is based on the jury's findings, and the jury's verdict here was not merely "advisory" as in *Hurst* (8CT 2002-2024, 2110-2111, 2152). (See *Hurst, supra*, 136 S.Ct. at p. 622; *Rangel, supra*, 62 Cal.4th at p. 1235, fn. 16.)

Moreover, nothing in *Hurst* requires California to implement any standard of proof as to any penalty determination by a jury. (*Rangel, supra*, 62 Cal.4th at p. 1235.) In fact, as appellant concedes, *Hurst* did not decide, or even address, the standard of proof issue. (Supp. AOB 24.) Moreover, this Court has repeatedly rejected appellant's claim. In *People v. Salazar* (2016) 63 Cal.4th 214, this Court found:

> "Neither the federal nor the state Constitution requires that the penalty phase jury make *unanimous* findings concerning the particular aggravating circumstances, [or] find all aggravating factors *beyond a reasonable doubt* . . . . The United States Supreme Court's recent decisions interpreting the Sixth Amendment's jury-trial guarantee [citations] do not alter these conclusions. [Citations.]"

(*Id.* at p. 255, quoting *People v. Linton* (2013) 56 Cal.4th 1146, 1215, original italics.) In *People v. Simon* (2016) 1 Cal.5th 98, a case decided after *Hurst*, this Court held:

> Nor is the death penalty unconstitutional "for failing to require proof beyond a reasonable doubt that aggravating factors exist, outweigh the mitigating factors, and render death the appropriate punishment." [Citation.] This conclusion is not altered by the United States Supreme Court's decisions in *Apprendi* [] and *Ring* []. [Citation.]

(*Id.* at p. 149; accord *People v. Garcia* (2011) 52 Cal.4th 706, 764 ["There is no constitutional requirement to instruct [] on any burden of persuasion regarding the penalty determination"].) And more recently, in *Rangel*, this Court held:

> The death penalty statute does not lack safeguards to avoid arbitrary and capricious sentencing, deprive defendant of the right to a jury trial, or constitute cruel and unusual punishment on the ground that it does not require either unanimity as to the truth of aggravating circumstances or findings beyond a reasonable doubt that an aggravating circumstance (other than Pen. Code, § 190.3, factor (b) or factor (c) evidence) has been proved, that the aggravating factors outweighed the mitigating factors, or that death is the appropriate sentence. [Citations.] Nothing in *Hurst v. Florida* (2016) 577 U.S. ___ [193 L.Ed.2d 504, 136 S.Ct. 616],[fn. Omitted] *Cunningham v. California* (2007) 549 U.S. 270, *Blakely v. Washington* (2004) 542 U.S. 296, *Ring v. Arizona*, *supra*, 536 U.S. 584, or *Apprendi v. New Jersey* (2000) 530 U.S. 466, affects our conclusions in this regard. [Citation.]

(*Rangel*, *supra*, 62 Cal.4th at p. 1235.)

Nor have the United States Supreme Court's decisions in *Ring*, *supra*, 536 U.S. 584, and *Apprendi*, *supra*, 530 U.S. 466, changed this Court's analysis on this issue (see Supp. AOB 23-24). (See, e.g., *People v. Elliot* (2005) 37 Cal.4th 453, 487; *People v. Ward* (2005) 36 Cal.4th 186, 221-222; *People v. Stitely* (2005) 35 Cal.4th 514, 573; *People v. Morrison* (2004) 34 Cal.4th 698, 730-731; *People v. Danks* (2004) 32 Cal.4th 269, 316 ["Nor should the jury have been instructed that the reasonable doubt standard governed its penalty determination" and "[n]othing in *Ring* . . . or *Apprendi* . . . mandates a different conclusion."]; *People v. Prieto* (2003) 30 Cal.4th 226, 263, 275.) Accordingly, nothing in *Hurst* imposes the reasonable doubt standard on aggravating circumstances at the penalty phase.

B. California's weighing determination is not a factual finding requiring proof beyond a reasonable doubt

Appellant argues that California's penalty-phase weighing determination is a "factual finding" that violates the *Ring*/*Apprendi* rule because it does not require any standard of proof. (Supp. AOB 23-25.) This claim is also without merit.

The Sixth Amendment does not require that the jury determine beyond a reasonable doubt that the aggravating factors outweigh those in mitigation because "[d]etermining the balance of evidence of aggravation and mitigation and the appropriate penalty do not entail the finding of facts but rather, 'a single

fundamentally normative assessment [citations] that is outside the scope of *Ring* and *Apprendi*.”’ (*People v. Merriman* (2014) 60 Cal.4th 1, 106, quoting *People v. Griffin* (2004) 33 Cal.4th 536, 595.) “[S]entencing is an inherently moral and normative function, and not a factual one amenable to burden of proof calculations.” (*People v. Winbush* (2017) 2 Cal.5th 402, 489.)

The United States Supreme Court acknowledged the moral and normative nature of the weighing determination in *Kansas v. Carr* (2016) 577 U.S. ___ [136 S.Ct. 633]. In *Carr*, the Court expressed doubt that it was even possible to apply a standard of proof to the mitigating-factor determination or the weighing determination:

> Whether mitigation exists, however, is largely a judgment call (or perhaps a value call); what one juror might consider mitigating another might not. And of course the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy—the quality of which, as we know, is not strained. It would mean nothing, we think, to tell the jury that the defendants must deserve mercy beyond a reasonable doubt; or must more-likely-than-not deserve it.

(*Id.* at p. 642.)

In *Prieto, supra,* 30 Cal.4th 226, this Court further explained:

> No single factor . . . determines which penalty—death or life without the possibility of parole—is appropriate. [¶] While each juror must believe that the aggravating circumstances substantially outweigh the mitigating circumstances, he or she need not agree on the existence of any one aggravating factor. This is true even though the jury must make certain factual findings in order to consider certain circumstances as aggravating factors. As such, the penalty phase determination “is inherently moral and normative, not factual . . . .” [Citations.] Because any finding of aggravating factors during the penalty phase does not “increase[ ] the penalty for a crime beyond the prescribed statutory maximum” (*Apprendi, supra,* 530 U.S. at p. 490, 120 S.Ct. 2348), *Ring* imposes no new constitutional requirements on California’s penalty phase proceedings.

(*Id.* at p. 263.)

Appellant nevertheless claims this Court has impermissibly "collaps[ed] the weighing finding and the sentence-selection decision into one determination and label[ed] it 'normative' rather than factfinding." (Supp. AOB 24-25.) This Court rejected this assertion in *People v. Capers* (2019) 7 Cal.5th 989, as follows:

> [D]efendant claims that *Hurst* makes it clear that our sentencing determination violates the Sixth Amendment because it collapses "the weighing finding and the sentence-selection decision into one determination and labeling it 'normative' rather than factfinding" by a jury beyond a reasonable doubt. It does not. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1235 & fn. 16, 200 Cal.Rptr.3d 265, 367 P.3d 649.) Our cases have consistently rejected similar arguments. (*Ibid.*) . . . . Once the jury renders a verdict of death, "our system provides for an automatic motion to modify or reduce this verdict to that of life imprisonment without the possibility of parole. (Pen. Code, § 190.4.) At the point the court rules on this motion, the jury 'has returned a *verdict or finding* imposing the death penalty.'" (*Rangel, supra*, 62 Cal.4th at p. 1235, fn. 16, 200 Cal.Rptr.3d 265, 367 P.3d 649.) We do not find that *Hurst* in any way undermines our previous rulings upholding the constitutionality of our death penalty scheme. [Citations.]

(*Id.* at p. 1014.) Thus, this claim also lacks merit.

C. *Brown* does not suggest that California's weighing determination is a factual finding

Appellant reliance on *People v. Brown* (1985) 40 Cal.3d 512 (rev'd. on other grounds in *California v. Brown* (1987) 479 U.S. 538) for the proposition that California's weighing determination is a factual finding must also be rejected. (Supp. AOB 26-30.) *Brown* addressed the question of whether California's death penalty statute "forced" the jury to impose the death penalty upon a finding that aggravating circumstances outweighed mitigating circumstances. (*Brown, supra*, 50 Cal.3d at p. 540.) *Brown* held that the statute did not require "a death verdict on the basis of some arithmetical formula" (*id.* at p. 540), but rather, "to return a death judgment, the jury must be persuaded that the 'bad' evidence is so substantial in comparison with the 'good' that it warrants death . . . ." (*id.* at p. 541, fn. 13). In reaching this conclusion, *Brown* observed that the "Florida courts

have imposed a similar construction on that state's somewhat analogous 'weighing' statute," explaining, "the procedure to be followed by the trial judges and juries [in Florida] is not a mere counting process of X number of aggravating circumstances and Y number of mitigating circumstances, but rather a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of the circumstances present . . . . [Citations.]" (*Id.* at pp. 542-543, quoting *Barclay v. Florida* (1983) 463 U.S. 939, 963.) *Brown* acknowledged that Florida's sentencing scheme is different from California's noting that Florida required the trial court rather than the jury to decide the actual sentence to be imposed. (*Id.* at p. 542.)

Appellant relies on *Brown* to assert that *Hurst*'s invalidation of Florida's capital sentencing scheme is, by implication, an invalidation of California's capital scheme because the *Brown* decision found the two schemes to be analogous. (Supp. AOB 28-30.) However, *Brown* did not address the same issue as in *Hurst*—whether *judicial* factfinding is permissible. (*Hurst, supra*, 136 S.Ct. at p. 619.) To the extent that *Brown* analogizes California's weighing determination to Florida's weighing determination, it merely stated that the weighing determination is a prerequisite to the final step of deciding whether the death penalty is the proper punishment. (*Brown*, 40 Cal.3d at pp. 542-543.) As discussed in Argument XII.B above, this process is not a factual determination that requires a burden of proof under *Ring* and *Apprendi*, and *Brown* does not counsel otherwise.

D. The additional cases cited by appellant provide no compelling reason for this Court to revisit its holdings

Last, appellant relies on a few state supreme court decisions holding that the weighing determination is a finding of fact that falls within the *Apprendi*/*Ring* rule. (Supp. AOB 33-33.) However, these cases are contrary to *Carr*. In addition, the sentencing schemes at issue in those cases are much different than California's. (*Rauf v. State* (Del. 2016) 145 A.3d 430, 457 [under Delaware law, a jury's choice between a life and death sentence was completely advisory, and the

judge could impose a sentence of death as long as the jury had unanimously found the existence of a single aggravating factor]; *State v. Whitfield* (Mo. 2003) 107 S.W.3d 253, 261-262 [under Missouri statute, if jurors could not agree on punishment, a judge could impose the death penalty]; *Woldt v. People* (Colo. 2003) 64 P.3d 256, 259-262 [under Colorado law, capital sentencing determinations were made by a three-judge panel after the jury's verdicts on first degree murder].) As such, these cases offer no reason for this Court to revisit its prior rulings.

XIII. THERE IS NO REQUIREMENT OF JUROR UNANIMITY AS TO AGGRAVATING FACTORS

Appellant contends that, because a death verdict must be unanimous in California based on "issues of fact," the Sixth Amendment jury protections afforded at the guilt phase also apply to the penalty phase. Thus, he reasons that aggravating factors must be proven beyond a reasonable doubt by a unanimous jury. (Supp. AOB 34-72.) Again, appellant provides no compelling reason for this Court to revisit its previous holdings rejecting this claim.

A. The United States Supreme Court's overruling of *Hildwin* and *Spaziano* is of no consequence to California's capital sentencing scheme

Appellant argues that it is "an appropriate time for this Court to reconsider its prior holdings regarding the application of Sixth Amendment guilt phase protections to the penalty phase of a capital trial" because the United States Supreme Court's decision in *Hurst, supra*, 136 S.Ct. at p. 624, overruled *Hildwin v. Florida* (1989) 490 U.S. 638,[1] and *Spaziano v. Florida* (1984) 468 U.S. 447.[2]

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[1] In *Hildwin*, the United States Supreme Court held that the Sixth Amendment permitted the trial court to find an aggravating circumstance. (*Hildwin, supra*, 490 U.S. at pp. 640-641.)

[2] In *Spaziano*, the United States Supreme Court held that a trial court's imposition of a death sentence after the jury recommended a life sentence did not violate the Sixth and Eighth Amendments, or the double jeopardy clause. (*Spaziano, supra*, 468 U.S. at p. 465.)

(Supp. AOB 37.) Based on the overruling of *Spaziano*, he further claims that California's weighing determination and ultimate penalty-phase determinations are issues of fact. (Supp. AOB 40-45, 49-53.)

These claims have been repeatedly defeated. (See *Elliot, supra*, 37 Cal.4th at p. 487; *People v. Panah* (2005) 35 Cal.4th 395, 499.) As stated above, California's weighing determination is not a factual finding within the ambit of *Ring* and *Apprendi*. (*Prieto, supra*, 30 Cal.4th at p. 263 ["even though the jury must make certain factual findings in order to consider certain circumstances as aggravating factors . . ., the penalty phase determination 'is inherently moral and normative, not factual' [Citations.]"]; see also *Carr*, *supra*, 577 U.S. at p. 642 ["the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy"].) The United States Supreme Court's overruling of *Hildwin* and *Spaziano* in *Hurst* does not change this analysis.

As previously discussed, the holding in *Hurst* does not affect California's death penalty law. (*Rangel, supra*. 62 Cal.4th at p. 1235, fn. 16; accord, *Becerrada, supra*, 2 Cal.5th at p. 1038.) In overruling *Hildwin* and *Spaziano*, the *Hurst* court stated:

> Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*. The decisions are overruled to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty.

(*Hurst, supra*, 136 S.Ct. at p. 624.) Because California does not permit a sentencing judge to make findings as to aggravating circumstances, *Hurst*'s overruling of *Hildwin* and *Spaziano* does not change anything with respect to this Court's previous holding that unanimity is not required with respect to the aggravating factors. Indeed, as previously discussed, in *Salazar* (a case decided after *Hurst*), this Court found:

> Neither the federal nor the state Constitution requires that the penalty phase jury make *unanimous* findings concerning the particular aggravating circumstances . . . . The United States Supreme Court's recent decisions interpreting the Sixth Amendment's jury-trial guarantee [citations] do not alter these conclusions. [Citations.]

(*Salazar, supra*, 63 Cal.4th at p. 255, quoting *Linton, supra*, 56 Cal.4th at p. 1215, original italics; see also *Danks, supra*, 32 Cal.4th at p. 316 ["trial court did not err in failing to require the jury to make unanimous separate findings of the truth of specific aggravating evidence" and "[n]othing in *Ring* . . . or *Apprendi* affects our conclusions in this regard"]; *People v. Crew* (2003) 31 Cal.4th 822, 860; *Prieto, supra*, 30 Cal.4th at pp. 262-263, 275.) As such, this claim must be rejected.

B. The decisions in *Hall* and *Andres* provide no compelling reason for this Court to revisit its holdings

The decisions in *People v. Hall* (1926) 199 Cal. 451, and *Andres v. United States* (1948) 333 U.S. 740, also do not assist appellant. (Supp. AOB 45-49.) Appellant relies on *Hall* for the premise that a death sentence in the absence of a unanimous penalty finding by the jury violates the California Constitution. (Supp. AOB 45-46.) However, the instant case is not at all like *Hall*. There, the verdict showed on its face that the jury had not come to a unanimous agreement as to the penalty, after which the judge "usurped the function of the jury" and imposed the death penalty. (*Hall, supra*, at p. 457.) Here, jurors were instructed that they must unanimously agree as to a judgment of death, and the verdict shows that the jury came to a unanimous agreement as to this penalty. (8CT 2110-2111, 2086, 2099.)

Appellant's reliance on *Andres, supra*, 333 U.S. at pp. 747-749, is also unavailing. He cites *Andres* for the proposition that, where a jury is given the responsibility of determining the sentence, the unanimity requirement applies just as it does when the jury decides guilt. (Supp. AOB 45-49.) *Andres*, however, does not stand for this proposition.

The issue in *Andres* was whether jury instructions regarding unanimity were proper—instructions lifted from 18 U.S.C. § 567. Therefore, the issue addressed by the Court was "[t]he proper construction of 18 U.S.C. § 567." (*Andres, supra,* 333 U.S. at p. 748.) The federal statute in *Andres* provided:

> In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto "without capital punishment"; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life.

(*Id.* at p. 742, fn. 1, quoting 18 U.S.C. § 567.) The Court interpreted this language to require that a "jury's decision upon both guilt and whether the punishment of death should be imposed must be unanimous." (*Id.* at p. 749.) Thus, the Court's holding turns on the interpretation of the statute in federal prosecutions. It does not extend to state criminal cases, and there is nothing in *Andres* to suggest that it applies to aggravating factors in the jury's weighing determination. Moreover, the Supreme Court has "never held jury unanimity to be a requisite of due process of law." (*Johnson v. Louisiana* (1972) 406 U.S. 356, 359.) On the contrary, the Court has emphasized:

> Indeed, the Court has more than once expressly said that "[i]n criminal cases due process of law is not denied by a state law . . . which dispenses with the necessity of a jury of twelve, or unanimity in the verdict." [Citations.]

(*Ibid.*) Thus, there is no federal constitutional requirement that a jury's determination of penalty be unanimous. Accordingly, appellant's claim fails.

CONCLUSION

For the foregoing reasons, and those previously discussed in the respondent's brief, respondent respectfully requests that this Court affirm the judgment and the sentence of death.

Dated: March 27, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** uses a 13 point Times New Roman font and contains **3,562** words.

Dated: March 27, 2020

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. William Lee Wright, Jr.** Case No.: **S107900**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 27, 2020, at Los Angeles, California.

Vanida S. Sutthiphong
Declarant

Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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