

SUPREME COURT COPY

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

DONTE LAMONT McDANIEL,

Defendant and Appellant.

CAPITAL CASE

Case No. S171393

**SUPREME COURT
FILED**

JUN 12 2017

Jorge Navarrete Clerk

Los Angeles County Superior Court Case No. TA074274
The Honorable Robert J. Perry, Judge

Deputy

SUPPLEMENTAL RESPONDENT'S BRIEF

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DEATH PENALTY

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XI. APPELLANT'S DEATH SENTENCE DOES NOT VIOLATE THE SIXTH AMENDMENT

Appellant contends that because California designates the right to a unanimous verdict on aggravating factors, and the right to proof beyond a reasonable doubt as to the penalty to be imposed as “issues of fact,” the jury protections of the Sixth Amendment apply to the penalty phase. (Supp. AOB 2-23.) Appellant further argues that it is “an appropriate time for this Court to reconsider its prior holdings regarding the application of the Sixth Amendment to the penalty phase of a capital trial” because the United States Supreme Court’s recent decision in *Hurst v. Florida* (2016) 136 S.Ct. 616 overruled *Hildwin v. Florida* (1989) 490 U.S. 638, and *Spaziano v. Florida* (1984) 468 U.S. 447. (Supp. AOB 3.)

This claim is meritless because it has previously been rejected by this Court. (See *People v. Elliot* (2005) 37 Cal.4th 453, 487; *People v. Panah* (2005) 35 Cal.4th 395, 499.) And the Supreme Court’s overruling of *Hildwin*¹ and *Spaziano*² in *Hurst* does not change the analysis. As will be discussed in more detail in Argument XII, the holding in *Hurst* does not affect California’s death penalty law because the “California sentencing scheme is materially different from that in Florida.” (*People v. Rangel* (2016) 62 Cal.4th 1192, 1235, fn. 16; accord, *People v. Becerrada* (2017) 2 Cal.5th 1009, 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

¹ In *Hildwin*, the United States Supreme Court held that the Sixth Amendment of the United States Constitution 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.)

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 find an aggravating circumstance, *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, in a case decided after *Hurst* was decided, 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.]”

(*People v. Salazar* (2016) 63 Cal.4th 214, 255, quoting *People v. Linton* (2013) 56 Cal.4th 1146, 1215, original italics.)

Nor have the Supreme Court's decisions in *Blakely v. Washington* (2004) 542 U.S. 296, *Ring v. Arizona* (2002) 536 U.S. 584, and *Apprendi v. New Jersey* (2000) 530 U.S. 466, changed this Court's analysis on this issue. (See, e.g., *People v. Elliot, supra*, 37 Cal.4th at p. 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 [“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; *People v. Prieto* (2003) 30 Cal.4th 226, 262-263, 275.)

Furthermore, this Court has repeatedly held there is no federal constitutional requirement that a jury's determination of penalty be based

on proof beyond a reasonable doubt. 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, in *Rangel*, this Court recently 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],[□] *Cunningham v. California* (2007) 549 U.S. 270 [166 L.Ed.2d 856, 127 S.Ct. 856], *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403, 124 S.Ct. 2531], *Ring v. Arizona*, *supra*, 536 U.S. 584, or *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435, 120 S.Ct. 2348], affects our conclusions in this regard. [Citation.]

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

Accordingly, appellant’s claim attacking the constitutionality of the death penalty in California fails.

XII. *HURST V. FLORIDA* DOES NOT RENDER CALIFORNIA'S DEATH PENALTY STATUTE UNCONSTITUTIONAL

Next, appellant contends that California's death penalty statute violates the federal Constitution in light of *Hurst*, a recent United States Supreme Court decision invalidating Florida's capital sentencing scheme. (SAOB 23-39.) *Hurst* does not assist appellant because the "California sentencing scheme is materially different from that in Florida." (*Rangel, supra*, 62 Cal.4th at p. 1235, fn. 16; accord, *Becerrada, supra*, 2 Cal.5th at p. 1038.)

Under Florida's capital sentencing scheme, 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. (*Hurst, supra*, 136 S.Ct. at pp. 621-622.) *Hurst* merely reiterates that juries, not judges, must "find each fact necessary to impose a sentence of death." (*Id.* at p. 619.)

In contrast, there are no judicial factfindings in California's death penalty scheme that could increase a defendant's sentence from life imprisonment to death. In *Rangel*, this Court discussed *Hurst* and distinguished California's capital case sentencing scheme from Florida's now-invalidated scheme:

[A] [California] jury weighs the aggravating and mitigating circumstances and reaches a unanimous penalty verdict that "impose[s] a sentence of death" or life imprisonment without the possibility of parole. (Pen. Code, §§ 190.3, 190.4.) Unlike Florida, this verdict is not merely "advisory." (*Hurst* at p. 622.) If the jury reaches 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.” (Pen. Code, § 190.4, *italics added*.) The trial court simply determines “whether the jury’s findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented.” (Pen. Code, § 190.4.)

(*Rangel, supra*, 62 Cal.4th at p. 1235, fn. 16; accord, *People v. Jackson* (2016) 1 Cal.5th 269, 374.)

So unlike *Hurst*, appellant’s death sentence was based on a jury’s factual findings, and the jury’s verdict was not merely “advisory.” (*Hurst, supra*, 136 S.Ct. at p. 622; *Rangel, supra*, 62 Cal.4th at p. 1235, fn. 16.) The holdings of *Apprendi* and *Ring* are thus inapplicable to California’s capital sentencing scheme. (*Rangel, supra*, at p. 1235.) Because judges play *no* factfinding role in California’s capital punishment scheme, *Hurst* does not render California’s death penalty statute unconstitutional. (*Ibid.*)

Moreover, as noted in Argument XI, *ante*, nothing in *Ring* or *Hurst* requires California to implement any standard of proof as to any penalty determination by the jury. (*Rangel, supra*, 62 Cal.4th at p. 1235.) In fact, as appellant aptly concedes (Supp. AOB 29), *Hurst* did not decide, or even address, the standard of proof issue. Accordingly, this 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: June 9, 2017

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 1,410 words.

Dated: June 9, 2017

XAVIER BECERRA
Attorney General of California

A handwritten signature in black ink, appearing to read 'Kathy S. Pomerantz', written in a cursive style.

KATHY S. POMERANTZ
Deputy Attorney General
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DECLARATION OF SERVICE

Case Name: **People v. Donte Lamont McDaniel**

Case No.: **S171393**

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 collection and processing of correspondence for mailing with the United States Postal Service. 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.

On **June 9, 2017**, I served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**The Honorable Robert J. Perry, Judge
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On **June 9, 2017**, I caused **one** original and **eight** copies of the **SUPPLEMENTAL RESPONDENT'S BRIEF** in this case to be delivered to the California Supreme Court at 350 McAllister Street, Room 1295, San Francisco, CA 94102-4797 by Federal Express Carrier, Tracking No. 8099-9401-7882.

On **June 9, 2017**, I caused one electronic copy of the **SUPPLEMENTAL RESPONDENT'S BRIEF** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

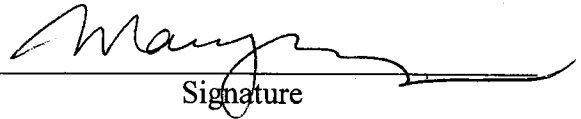
On **June 9, 2017**, I served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by transmitting a true copy via electronic mail using the email addresses as follows:

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David Barkurst
Deputy District Attorney
Via Email: Courtesy Copy

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 **June 9, 2017**, at Los Angeles, California.

M. Hunglau
Declarant



Signature