

IN THE SUPREME COURT OF FLORIDA

BRANDON LEE BRADLEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC14-1412

**ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

SUPPLEMENTAL ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

The State of Florida files this Supplemental Answer Brief in response to this Court's order of November 2, 2016.

STATEMENT OF CASE AND FACTS

The State reiterates and incorporates its Statement of the Case and Facts as recounted in its *Answer Brief*.

On January 12, 2016, the Supreme Court ruled in *Hurst v. Florida*, 136 S. Ct. 616 (2016), that Florida's death penalty sentencing scheme, which required the Judge alone to find the existence of an aggravating circumstance, is unconstitutional.

On February 15, 2015, Appellant filed his *Reply Brief*, which raised issues not previously raised in his *Initial Brief*. On April 24, 2016, Appellee filed a motion for leave to file a Brief in Surrebuttal simultaneously with Appellee's *Brief in Surrebuttal*. On May 2, 2016, this Court granted Appellant's motion for leave to file and accepted the *Surrebuttal Brief*. Oral argument was held May 4, 2016. On October 27, 2016, Bradley filed a motion for additional briefing based on *Hurst v. State*, __ So. 3d __, 2016 WL 6649941 (Fla. Oct. 14, 2016) which this Court granted on November 2, 2016. Bradley's *Supplemental Initial Brief* was filed on November 17, 2016. This *Supplemental Answer* brief follows.

ARGUMENT

ANY SENTENCING ERROR UNDER HURST COULD ONLY BE HARMLESS UNDER THESE FACTS WHERE ONLY CCP WAS NOT SPECIFICALLY PROVEN OR FOUND BY THE JURY AND THE EVIDENCE OF CCP IS SO CLEAR AS TO BE INCONTROVERTABLE (RESTATED).

Appellant argues that Bradley's case should be remanded for a new sentencing phase because he was sentenced to death in noncompliance with *Hurst v. Florida*, in that the jury did not make all of the findings necessary to allow imposition of the death penalty. He further argues that the record does not support the conclusion that the sentencing error was harmless beyond a reasonable doubt. Specifically, Appellant asserts that the State cannot show that no reasonable jury could find the State failed to prove that Bradley murdered Deputy Pill in a cold, calculated, and premeditated manner. These arguments are without merit.¹

Where the alleged error concerns sentencing, the error is harmless only if there is no reasonable possibility that the error contributed to the sentence. *Hurst v. State*, 2016 WL 6649941, at *23 (citing *Zack v. State*, 753 So. 2d 9, 20 (Fla. 2000)). "As applied to the right to a jury trial with regard to the facts necessary to impose the death penalty, it must be clear beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravating factors

¹ Notably, Appellant did not raise the issue in his *Initial Brief* that the trial court erroneously applied the CCP aggravator.

that outweighed the mitigating circumstances.” *Davis v. State*, __ So. 3d __, 2016 WL 6649941, *29 (Fla. Nov. 10, 2016).

Here, it is clear the jury would have unanimously found that the aggravating factors outweighed the mitigating circumstances. The trial court found that the following five (number four was merged) aggravating circumstances had all been proven beyond all reasonable doubt and each was accorded great weight: (1) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation; (2) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person; (3) The capital felony was committed while the defendant was engaged, or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit any robbery; (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody and the victim of the capital felony was a law enforcement officer engaged in the performance of her official duties (merged); and (5) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. (V9, R1665-76). Like in *Davis*, the evidence in support of the aggravating circumstances found was significant and

essentially uncontroverted. The only aggravator not admitted or specifically found by the jury is CCP.

However, based on the record before this Court, it is clear beyond a reasonable doubt that any reasonable jury would have also unanimously found that Bradley murdered Deputy Pill in a cold, calculated, and premeditated manner. This Court has established a four-part test to determine whether the CCP aggravating factor is justified: (1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification. *Evans v. State*, 800 So. 2d 182, 192 (Fla. 2001) (quoting *Jackson v. State*, 648 So.2d 85, 89 (Fla.1994)). Further, this Court has noted that “[t]he facts supporting CCP must focus on the manner in which the crime was executed, e.g., advance procurement of weapon, lack of provocation, killing carried out as a matter of course.” *Salazar v. State*, 991 So. 2d 364, 374–75 (Fla. 2008) (citing *Looney v. State*, 803 So. 2d 656, 678 (Fla. 2001); *Rodriguez v. State*, 753 So. 2d 29, 48 (Fla. 2000)). The facts of this case, as recounted throughout this sentencing order, clearly show that Defendant had a

premeditated design to kill the victim. The evidence leaves no doubt that the heightened premeditation required for CCP was also established.

For example, Andrea Kerchner testified that Bradley did not want to go back to prison and said “he was going to do whatever he had to do not to have to go back to prison including ... shooting these crackers.” (V26, R683, 745). Bradley said again when he saw Deputy Pill that “if we were going to get pulled over he was not going back to prison and that he would shoot these ... crackers.” That meant “anything in uniform.” (V26, R684, 745).

Jeffrey Dieguez testified that through the phone he heard Bradley have a conversation with Kerchner wherein he told her to, “give him the gun so that he can shoot the police officer that was pulling him over because he said that the bitch had his tag number and saw his face and he had to kill this bitch.” (V25, R580). Dieguez indicated that Kerchner was pleading with Bradley not to shoot Deputy Pill but that he continued to yell at her “give me the fucking gun, give me the fucking gun, I'm going to kill this bitch because she had saw my face and has my tag number and I'm not going to prison.” (V25, R580-82).

Bradley's voice was played for the jury, arguing with Deputy Pill and refusing her lawful commands while securing his loaded handgun from Kerchner. His hand is shown in the in-camera video pointing and firing on Deputy Pill from the driver's side of the SUV before leaving her to die in the street.

Trista Lowman testified that she heard Deputy Pill's voice getting louder as she repeatedly told Bradley to get out of the SUV. (V26, R651). She then saw the black male driving the vehicle take a turn as if trying to "get out of the neighborhood" but Pill followed, walking alongside the SUV. She kept telling Bradley to get out of the car. (V26, R652, 654). Lowman testified she then heard gunshots. "I just kept hearing shot after shot." (V26, R655).

Deputy Pill did not unholster her weapon or threaten Defendant in any way. She repeatedly asked him to stop the car and get out of the vehicle. Andrea Kerchner pleaded with Bradley not to shoot the officer, and yet handed him the gun. He had ample time to reflect on his actions, or to flee the scene, instead he chose to execute Deputy Pill in accordance with what had been his plan all along, to "shoot any crackers" that tried to take him back to jail.

Appellant's mitigation was so tenuous in comparison to the aggravating factors; any rational factfinder would have determined that the aggravating factors outweighed the mitigating factors. The trial court only found one statutory mitigator: (1) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired, and accorded this factor "some weight." (V9, R1679-80). The trial court next considered nineteen (19) non-statutory mitigating circumstances presented under, "Existence of Any Other Factors." While Appellant presented evidence of

drug abuse, domestic abuse in his family, and possible mental disorders for which he was prescribed medication in his penalty phase, the evidence presented at trial showed that Bradley made a conscious decision to murder Deputy Pill to prevent her from arresting him.

It is clear beyond a reasonable doubt that a rational jury would have unanimously found that there were sufficient aggravating factors to outweigh the minimal mitigating circumstances. Although the jury's recommendation for death was not unanimous, the ten to two (10-2) recommendation for death was far from the bare majority seven to five (7-5) presented in *Hurst*. The State presented ample evidence of Appellant's prior violent felony conviction, the fact that Bradley was on felony probation at the time he murdered Deputy Pill, a law enforcement officer in the performance of her lawful duties, that the murder was committed to avoid arrest, and that the murder was cold, calculated, and premeditated. As a result, a rational jury would have unanimously determined that the aggravating factors were sufficient and outweighed the mitigating circumstances. Any *Hurst v. Florida* error was harmless. There is no reasonable possibility that the error affected the sentence recommendation.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm Appellant's convictions and sentence of death.


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Answer Brief has been electronically served via the E-Portal to: Nancy Ryan, Assistant Public Defender, ryan.nancy@pd7.org, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118 on November 22, 2016.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Timers New Roman 14 point font.

Respectfully submitted and certified,
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