

**IN THE SUPREME COURT OF FLORIDA**

BLANCHARD ST. VAL, )

Petitioner, )

vs. )

STATE OF FLORIDA, )

Respondent. )

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CASE NO. SC07-1402

**PETITIONER'S REPLY BRIEF**

CAREY HAUGHWOUT  
Public Defender  
15<sup>th</sup> Judicial Circuit

PATRICK B. BURKE  
Assistant Public Defender  
Appellate Division  
Florida Bar No. 0007841

Criminal Justice Building  
421 3<sup>RD</sup> Street/6<sup>TH</sup> Floor  
West Palm Beach, Florida 33401  
(561) 355-7600  
[appeals@pd15.state.fl.us](mailto:appeals@pd15.state.fl.us)

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## **PRELIMINARY STATEMENT**

Petitioner was the defendant in the Circuit Court of the Fifteenth Judicial Circuit, In and For Palm Beach County, and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and appellee in the lower courts. In this brief the parties will be referred to as they appear before this Court.

The symbol “R” will denote the one-volume record on appeal, which consists of the relevant documents filed below.

The symbol “SR” will denote the Auto-Supplemental record on appeal.

The symbol “T” will denote the six-volume transcript of the trial proceedings.

The symbol “ST” will denote the one-volume sentencing transcript.

The symbol “IB” will denote Petitioner’s Initial Brief.

The symbol “RB” will denote Respondent’s Brief on the Merits.

## ARGUMENT

### **IN DETERMINING PETITIONER'S SENTENCE THE TRIAL COURT ERRONEOUSLY CONSIDERED WHETHER PETITIONER WAS TAKING RESPONSIBILITY OR SHOWING REMORSE FOR THE CRIME. THIS ERROR REQUIRES A NEW SENTENCING HEARING BEFORE A DIFFERENT JUDGE.**

In Petitioner's initial brief, he argued that it was improper for the trial court to consider his lack of remorse when imposing sentence. Determining the presence or absence of remorse is completely subjective. And factors such as a defendant's culture, education, intelligence, development, and ability to communicate with the court make such determinations unreliable.

Respondent does not address these arguments. Instead, Respondent argues that Petitioner admitted his guilt but claimed the shooting was unintentional, accidental, careless, or negligent (RB 7-13). Respondent does not base this argument on what the Petitioner said at sentencing, but instead on what Petitioner's counsel said at sentencing—the same basis for the trial court's finding (RB 9).

This case is a perfect example of why it is improper to consider lack of remorse in sentencing. Both Respondent and the trial court have mischaracterized what occurred during sentencing. First, from what Petitioner said it is obvious that he was having difficulty expressing himself to the trial court (RB 1). Even so it is clear that Petitioner did not admit to the crime (RB 1). Second, Petitioner's attorney did not admit Petitioner's guilt to the intent crimes, but instead maintained his innocence to those crimes

by arguing that this was a careless, negligent, and unintentional act (RB 2-3). Third, the trial court relied on testimony from a witness at trial, “I’m going to blast you” as proof that Appellant did act intentionally (RB 4). While the trial court may accept that testimony as true, and the act intentional, the fact is that the statement was made during the crime, not during the sentencing. Thus, it has no bearing upon whether Petitioner was, or was not, remorseful after the act. It is, however, evidence that the trial court punished Petitioner for his attorney maintaining his innocence. Finally, since Petitioner did not admit his guilt, and his attorney argued he was innocent of the crimes charged, Petitioner’s due process rights were violated. As pointed out by Respondent, “A trial court violates due process by using a protestation of innocence against a defendant. This applies to the penalty phase as well as to the guilt phase under article I, section 9 of the Florida Constitution.” *Holton v. State*, 573 So. 2d 284, 292 (Fla. 1990) (RB 10).

## CONCLUSION

Petitioner respectfully requests this Court to quash the Fourth District Court of Appeal's decision and remand with instructions that Petitioner be resentenced before a different judge.

Respectfully submitted,

CAREY HAUGHWOUT  
Public Defender  
15<sup>th</sup> Judicial Circuit of Florida

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PATRICK B. BURKE  
Assistant Public Defender  
Florida Bar No. 0007841  
421 3<sup>RD</sup> Street/6<sup>TH</sup> Floor  
West Palm Beach, Florida 33401  
(561) 355-7600

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Reply Brief has been furnished to: HEIDI L. BETTENDORF, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this \_\_\_\_\_ day of December, 2007.

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Counsel for Petitioner

## CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that Petitioner's Initial Brief has been prepared with 14 point Times New Roman type, in compliance with a *Fla. R. App. P.* 9.210(a)(2), this \_\_\_\_\_ day of December, 2007.

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PATRICK B. BURKE  
Assistant Public Defender