

No.

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In the  
**Supreme Court of the United States**

\_\_\_\_\_  
RAYMOND CURTIS BRIGHT,  
*Petitioner,*  
v.

STATE OF FLORIDA,  
*Respondent.*

\_\_\_\_\_  
**On Petition for a Writ of Certiorari  
to the Supreme Court of Florida**  
\_\_\_\_\_

**PETITION FOR A WRIT OF CERTIORARI**

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**January 4, 2021**

## **CAPITAL CASE**

### **QUESTION PRESENTED**

Whether a defendant's right to due process as guaranteed by the Fourteenth Amendment through requiring that every element of any offense to be proven beyond a reasonable doubt are violated when the jury instructions do not require all of the determinations required by a state statute for the imposition of a sentence beyond the statutory maximum for that offense, deemed by this Court as "functional equivalents" of elements of that same offense, to be found proven beyond a reasonable doubt by a unanimous verdict from the jury.

## STATEMENT OF RELATED PROCEEDINGS

*Bright v. State*, No. SC17-2244 (Fla. opinion and judgment rendered on April 2, 2020; order denying rehearing on August 13, 2020 and mandate issued on August 31, 2020).

*Bright v. State*, No. SC14-1701 (Fla. opinion and judgment rendered on June 16, 2016 and mandate issued on October 4, 2016).

*Bright v. State*, No. SC09-2164 (Fla. opinion and judgment rendered on January 1, 2016 and mandate issued June 21, 2012).

*State v. Bright*, No. 162008CF2887 (Fla. 4<sup>th</sup> Cir. Ct. judgment entered on August 26, 2009 and November 19, 2009).

**TABLE OF CONTENTS**

QUESTION PRESENTED ..... i

STATEMENT OF RELATED PROCEEDINGS ..... ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES ..... v

PETITION FOR WRIT OF CERTIORARI ..... 1

INTRODUCTION ..... 1

OPINION BELOW..... 2

JURISDICTION..... 2

CONSTITUTIONAL PROVISIONS INVOLVED..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE PETITION..... 7

I. In holding the determinations of sufficiency and weight of the aggravating factors are not the functional equivalent of the elements of capital murder by exposing a defendant to a sentence beyond the statutory maximum, the Florida Supreme Court’s decision expressly and directly conflicts with the decisions of this Court, specifically *Aprendi v. New Jersey*, *Ring v. Arizona*, *Alleyne v. United States*, and *Hurst v. Florida*. ..... 7

II. A binding decision from this Court is imperative to resolve the continual conflict between this Court and the Florida Supreme Court as to whether determinations exposing all defendants, especially capital defendants, to increased penalties beyond the statutory maximums are elements to be found by a

jury to be proven beyond a reasonable doubt, ensuring the rights of such defendants to due process under the Fourteenth Amendment. ....	10
III. The lower court’s decision in this case is wrongly decided because it deprived Petitioner of his right to due process.....	14
CONCLUSION.....	16
APPENDICES	
APPENDIX A Opinion of the Florida Supreme Court	1-32
APPENDIX B Order Denying Motion For Rehearing	33

## TABLE OF AUTHORITIES

	<u>PAGES</u>
<u>CASES</u>	
<i>Alleyne v. United States</i> , 133 S.Ct. 2151 (2013) .....	9
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000), .....	8, 9
<i>Bright v. Florida</i> , 568 U.S. 897 (2012).....	3
<i>Bright v. State</i> , 299 So. 3d 985 (Fla. 2020) .....	5,11,15
<i>Bright v. State</i> , 90 So. 3d 249 (Fla. 2012). .....	3
<i>Foster v. State</i> , 258 So. 3d 1248 (Fla. 2018).....	11
<i>Hurst v. Florida</i> , 136 S. Ct. 616 (2016).....	3,10, 13
<i>Hurst v. State</i> , 202 So. 3d 40 (2016).....	10
<i>In re Winship</i> , 397 U.S. 358 (1970) .....	13
<i>Perry v. State</i> , 210 So. 3d 630, 633 (Fla. 2016) .....	6, 10
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002).....	9, 13
<i>Rogers v. State</i> , 285 So. 3d 872 (Fla. 2019).....	10, 11
<i>State v. Bright</i> , 41 So. 3d 710 (Fla. 2016). .....	3
<i>State v. Poole</i> , 297 So. 3d 487 (Fla. 2020) .....	6, 10
<i>Sullivan v. Louisiana</i> , 508 U.S. 275, 278 (1993). .....	12

**STATUTES**

§ 775.082(1)(a), Fla. Stat. (2020)..... 5  
§ 782.04(1)(a), Fla. Stat. (2020)..... 4  
§ 921.141, Fla. Stat. (2020)..... 2,5

# PETITION FOR WRIT OF CERTIORARI

## INTRODUCTION

In 2016, this Court found Florida's death penalty statute to be unconstitutional because it required the judge rather than the jury to make the determinations necessary to impose the death penalty, a sentence which exceeded the statutory maximum for capital murder of life without parole. In 2017, Florida amended its death penalty statute to require a unanimous verdict as to three determinations by the jury for the defendant to become eligible for the death penalty which were the presence of at least one aggravating factor beyond a reasonable doubt, whether the aggravating factor(s) are sufficient for the imposition of the death penalty, and whether the aggravating factors outweigh any mitigating factors.

The imposition of the death penalty is a penalty beyond the statutory maximum of life without parole for capital murder, and is not legally possible without the determinations of the sufficiency of aggravating factors and that the aggravating factors outweigh mitigating factors. Since the death penalty cannot be imposed without these determinations, the question before this Court is whether such determinations are functional equivalents to elements of capital murder because they are required for the imposition of the death penalty which should be found by a unanimous jury beyond a reasonable doubt to ensure a fair trial and due process required by the Sixth and Fourteenth Amendments.



## **OPINION BELOW**

*Bright v. State*, 299 So. 3d 985 (Fla. 2020). App. 1-32.

## **JURISDICTION**

The Florida Supreme Court issued its judgment on April 2, 2020, and denied Petitioner’s motion for rehearing on August 13, 2020. This Court has extended the time for filing petitions for certiorari to 150 days for petitions due on or after March 19, 2020. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1257(a).

## **CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution provides in relevant part: “[N]or shall any state deprive any person of life, liberty, or property without due process of law.”

## STATEMENT OF THE CASE

Petitioner was indicted on two counts of first degree murder of Derrick King and Randall Brown in April of 2008. He was convicted on August 26, 2009, and sentenced to death on November 19, 2009. His judgment and sentence were affirmed on direct appeal. *Bright v. State*, 90 So. 3d 249 (Fla. 2012). Petitioner filed a petition for writ of certiorari in this Court which was denied. *Bright v. Florida*, 568 U.S. 897 (2012). He filed a motion for post-conviction relief alleging ineffective assistance of counsel for failing to investigate and present mitigating evidence. The trial court granted his motion, and ordered a new penalty phase. The Florida Supreme Court affirmed the order granting the resentencing. *State v. Bright*, 41 So. 3d 710 (Fla. 2016).

In that same year, this Court found Florida's death penalty statute to be unconstitutional because the statute allowed the judge, rather than the jury, to make the determinations based upon the recommendations from the jury required for the imposition of the death penalty. *Hurst v. Florida*, 136 S. Ct. 616 (2016). In 2017, Florida amended its death penalty statute, § 921.141, Florida Statutes, to adhere to *Hurst*. § 921.141 of Florida Statutes (2017) provides:

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

Petitioner received a resentencing in September of 2017. The State presented evidence of the aggravating factors of a prior violent felony conviction as to both murders and the heinous, atrocious, and cruel aggravator as to the murder of Derrick King. *Bright*, 299 So. 3d at 993-994. App. at 6-7. Petitioner presented mitigation evidence through his sister, Janice Jones; his childhood friend, Isidore Knight; and the expert testimony of psychologists, Dr. Stephen Gold, Dr. Ouaou and Dr. Harry Krop. The evidence was that Petitioner suffered an impoverished childhood with substantial physical abuse and emotional abuse from his father who was an alcoholic, and sexual abuse from an older brother. There was evidence that Petitioner witnessed his father beat his mother. Dr. Gold testified Petitioner had

all ten of the risk factors of the Adverse Childhood Experiences. *Bright*, 299 So. 3d at 994-995. App. at 7-8. Dr. Gold found that PTSD played a role in this case because when the victims entered Petitioner's home, refused to leave, and threatened Petitioner in his own home, these acts were reminiscent to him, and the danger he constantly faced in his childhood home where no one responded to protect him and keep him safe. Dr. Gold explained Petitioner's mounting fear that these two men were going to kill him in his own home escalated the threat to cause him extreme emotional distress and to act out under duress; thus, Dr. Gold opined Petitioner's ability to appreciate the criminality of his action or to conform them to the requirements of the law was substantially impaired because his perception was that he was acting in self-defense. *Id.* App. at 8.

The jury was instructed it had to find beyond a reasonable doubt the existence of an aggravating factor, but was not instructed to find beyond a reasonable doubt that the aggravating factors were sufficient to warrant the imposition of the death penalty or that they outweighed the mitigating factors. Petitioner did not object to the jury instructions. The jury rendered a unanimous verdict recommending the death penalty on September 25, 2017. The trial court sentenced Petitioner to death on both counts of first-degree murder on December 8, 2017. *Id.* at 996-997. App. at 9-10.

On appeal, Petitioner argued the failure of the trial court to instruct the jury to find the aggravating factors to be sufficient to warrant the death penalty and that they outweighed the mitigating factors beyond a reasonable doubt constituted

fundamental error because those determinations rose to the level of the functional equivalent of elements of capital murder since they were essential to the imposition of the death penalty which exceeded the statutory maximum of life in prison for first-degree murder. The Florida Supreme Court rejected this argument citing to its prior decision in *Rogers v. State*, 285 So. 3d 872 (Fla. 2019) where it receded from its holding in *Perry v. State*, 210 So. 3d 630 (Fla. 2016) that the findings as to the sufficiency and weight of aggravating factors were elements of capital murder requiring to be proven beyond a reasonable doubt. *Id.* at 998. App. at 11.

## REASONS FOR GRANTING THE PETITION

- I. In holding the determinations of sufficiency and weight of the aggravating factors are not the functional equivalent of the elements of capital murder by exposing a defendant to a sentence beyond the statutory maximum, the Florida Supreme Court’s decision expressly and directly conflicts with the decisions of this Court, specifically *Aprendi v. New Jersey*, *Ring v. Arizona*, *Alleyne v. United States*, and *Hurst v. Florida*.**

First-degree murder is a capital felony in Florida. § 782.04(1)(a), Fla. Stat. (2020). This statute specifically states that a defendant convicted of a capital felony shall only be punished by death if “the proceeding held to determine sentence according to the procedure set forth in [section] 921.141 results in a determination that such person shall be punished by death.” Otherwise, the defendant will be punished by life without parole. § 775.082(1)(a), Fla. Stat. (2020). § 921.141 of Florida Statutes states:

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

Thus, determinations made pursuant to § 921.141 subject a defendant to the imposition of the sentence of death which exceeds the statutory maximum of life without parole for first-degree murder as authorized by § 775.82(1)(a).

In *Apprendi v. New Jersey*, 530 U.S. 466, 494 (2000), this Court held that any fact that “expose[s] the defendant to a greater punishment than that authorized by the jury’s guilty verdict” is an “element” that must be submitted to a jury. Two years later, this Court found that the finding of aggravating circumstances to be the “functional equivalent” of elements of capital murder requiring them to be found by a jury rather than a judge because the finding of the aggravating circumstances exposed defendants to the sentence of death which exceeded the statutory maximum of life under Arizona law. *Ring v. Arizona*, 536 U.S. 584 (2002). In *Ring*, this Court emphasized that whether the fact was labeled an “element” or a “sentencing factor” under a state statute was immaterial to whether it was subject to the burden of beyond a reasonable doubt; the proper inquiry was whether that

fact or determination served to increase the penalty beyond the statutory maximum:

We held that Apprendi's sentence violated his right to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." [*Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000)]. That right attached not only to Apprendi's weapons offense but also to the "hate crime" aggravating circumstance. New Jersey, the Court observed, "threatened Apprendi with certain pains if he unlawfully possessed a weapon and with additional pains if he selected his victims with a purpose to intimidate them because of their race." *Apprendi*, 530 U.S. at 476. "Merely using the label 'sentencing enhancement' to describe the [second act] surely does not provide a principled basis for treating [the two acts] differently." *Id.*

The dispositive question, we said, "is not one of form, but of effect. If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact- no matter how the State labels it- must be found by a jury beyond a reasonable doubt." *Id.* at 482-483.

*Ring v. Arizona*, 536 U.S. at 602.

In *Alleyne v. United States*, 133 S.Ct. 2151 (2013), this Court found sentencing factors which exposed defendants to mandatory minimums to be the functional equivalents of elements of the offense to be found by a jury because those findings increased the minimum sentence and heightens the loss of liberty. Then, in 2016, this Court in *Hurst v. Florida*, 136 S. Ct. 616 (2016) found that the aggravating factors required to imposed the death penalty were elements to be found by a jury rather than a judge because those findings exposed the defendant to a greater sentence than the statutory maximum of life without parole.



Citing *Hurst v. Florida*, the Florida Supreme Court rendered decisions in *Hurst v. State*, 202 So. 3d 40 (2016) and in *Perry v. State*, 210 So. 3d 630 (Fla. 2016) holding the jury must find unanimously beyond a reasonable doubt the existence of aggravators, the sufficiency of the aggravators, and whether the aggravators outweigh the mitigators. However, in 2019, the Florida Supreme Court receded from its 2016 decisions in *Hurst* and *Perry* to the extent of holding the finding of aggravating circumstances that made the defendant eligible for the death penalty were not elements which required a unanimous finding by a jury beyond a reasonable doubt in *Rogers v. State*, 285 So. 3d 872, 885-886 (Fla. 2019)**Error!**  
**Bookmark not defined..** The Florida Supreme Court quoted from *Rogers* in its opinion rendered in Petitioner's case as support for holding that the determinations required by § 921.141 to render him eligible for the death penalty are not elements. App. at 11.

Clearly, by continuing to hold the determinations required to expose defendants to the death penalty are not elements requiring a jury verdict upon proof beyond a reasonable doubt, the Florida Supreme Court opinion in this case expressly and directly conflicts with this Court's opinions in *Apprendi*, *Ring*, *Alleyne*, and *Hurst*.

**II. A binding decision from this Court is imperative to resolve the continual conflict between this Court and the Florida Supreme Court as to whether determinations exposing all defendants, especially capital defendants, to increased penalties beyond the statutory maximums are elements to be found by a jury to be**

**proven beyond a reasonable doubt, ensuring the rights of such defendants to due process under the Fourteenth Amendment.**

As discussed in the previous section, the Florida Supreme Court has repeatedly held the determinations of the sufficiency of aggravating factors and the weight of aggravating factors not to be elements of the offense requiring a jury to find them proving beyond a reasonable doubt. *Foster v. State*, 258 So. 3d 1248 (Fla. 2018); *Rogers v. State*, 285 So. 3d 872, 885-886 (Fla. 2019); *State v. Poole*, 297 So. 3d 487 (Fla. 2020); *Bright v. State*, 299 So. 3d 985 (Fla. 2020). App. at 11-12. These decisions are in express and direct conflict with this Court's decision in *Apprendi*, *Ring*, *Alleyne*, and *Hurst* which specifically hold that any fact which exposes a criminal defendant to a penalty beyond the statutory maximum of the offense the jury found her or him guilty of is regarded as an element to be found by the jury beyond a reasonable doubt. The reason for writing out the citations of the recent Florida Supreme Court opinions is to demonstrate the repetition in recent decisions which expressly and directly conflict with this Court on this issue. Thus, this Court must rule on this issue to prevent further conflicting decisions from the Florida Supreme Court to ensure that all defendants prosecuted in Florida are afforded their rights to due process under the Fourteenth Amendment. Should this Court remain silent on this issue, inequality and confusion will remain regarding the imposition of enhanced penalties in Florida due to conflicting decisions as to who makes the determinations required for enhanced penalties and to what burden of proof.

This Court has elaborated on the relationship between the Due Process Clause and the Sixth Amendment regarding the burden of proof of beyond a reasonable doubt, stating:

It is self-evident [that the] requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is probably guilty, and then leave it up to a judge to determine... whether he is guilty beyond a reasonable doubt. In other words, the jury verdict required by the Sixth Amendment is a jury verdict of guilt beyond a reasonable doubt.

*Sullivan v. Louisiana*, 508 U.S. 275, 278 (1993). Thus, the Sixth Amendment requirement to a jury trial entitles the defendant to a jury finding of every element of the crime which includes any facts relied upon to increase the penalty. *Hurst v. Florida*, 136 S.Ct. at 621-622, citing *Ring v. Arizona*, 536 U.S. 584, 597 (2002). This Court's concern that defendants be guaranteed a jury verdict of guilt only when all of the facts affecting their loss of liberty have been proven beyond a reasonable doubt has long standing precedent. The Court in *In re Winship*, 397 U.S. 358, 363-364 (1970), explained the certitude provided by the standard of reasonable doubt protects the extraordinary interests at stake for criminal defendants by requiring the factfinder to reach a subjective state of certitude as to the elementary determinations at issue:

The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction... "Where one party has at stake an

interest of transcending value-as a criminal defendant his liberty- th[e] margin of error is reduced as to him by the process of placing on the other party the burden of... persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt...” To this end, the reasonable doubt standard is indispensable, for it “impresses on the trier of fact the necessity of reaching a subjective state of certitude.”

*Id.* (internal citations omitted). This explains the Court’s decisions in *Apprendi*, *Ring*, *Alleyne*, and *Hurst* that any determinations required to raise the penalty beyond the statutory maximum must be found unanimously by a jury beyond a reasonable doubt. This Court recognizes these determinations as functional equivalents of substantive elements of the offense because they are required to be made for the imposition of the enhanced penalty.

By holding the facts of sufficiency and weight of aggravating factors do not require a jury to find they have been proven to a reasonable doubt, the Florida Supreme Court does not treat these determinations as the functional equivalents of the substantive elements of capital murder, and thus, could also hold that any determinations required to enhance a penalty, including mandatory minimums and reclassifications, are not functional equivalents of substantive elements and do not require a jury verdict of proof beyond a reasonable doubt. This conflict causes inequality in not only the imposition of the death penalty, but also the imposition of any enhanced penalty beyond the statutory maximum based on determinations beyond the substantive elements of the offense. Therefore, to provide clarity and equality in the imposition of any enhanced penalty beyond the statutory maximum

requiring determinations beyond the substantive elements, this Court should grant this petition.

**III. The lower court’s decision in this case is wrongly decided because it deprived Petitioner of his right to due process.**

The lower court’s decision relied on its holding in *Rogers*:

Bright argues that the trial court erred by failing to instruct the jury that it must determine beyond a reasonable doubt whether the aggravating factors were sufficient to impose a sentence of death and whether those factors outweighed the mitigating circumstances. Bright’s argument has no merit.

“[S]ubsequent to our decision in *Hurst v. State* [202 So.3d 40 (Fla. 2016) ], we already have receded from the holding that the additional *Hurst v. State* findings are elements.” *State v. Poole*, 292 So.3d 694 (Fla. Jan. 23, 2020). In *Rogers v. State*, 285 So. 3d 872, 885-86 (Fla. 2019), we clarified:

To the extent that in *Perry v. State*, 210 So. 3d 630, 633 (Fla. 2016), we suggested that *Hurst v. State* held that the sufficiency and weight of the aggravating factors and the final recommendation of death are elements that must be determined by the jury beyond a reasonable doubt, we mischaracterized *Hurst v. State*, which did not require that these determinations be made beyond a reasonable doubt. Since *Perry*, in *In re Standard Criminal Jury Instructions in Capital Cases*, [244 So. 3d 172 (Fla. 2018)] and *Foster [v. State]*, 258 So. 3d 1248 (Fla. 2018)], we have implicitly receded from its mischaracterization of *Hurst v. State*. We now do so explicitly. Thus, these determinations are not subject to the beyond a reasonable doubt standard of proof, and the trial court did not err in instructing the jury.

*Bright*, 299 So. 3d at 998. App. at 11.

*Rogers* was wrongly decided because it explicitly conflicts with this Court's decision, as outlined, in the previous section, which hold that any determinations which are required for the imposition of a penalty beyond the statutory maximum are the functional equivalents of elements which require proof beyond a reasonable doubt by a jury. In this case, Petitioner presented substantial amount of evidence of how the mitigation circumstances from his abusive childhood were directly related to his actions in committing the offense; specifically, how the victims' threatening acts in Petitioner's home triggered his PTSD which led him to believe he was in danger with no one else to protect him. Had the jury been required to find the sufficiency and weight of the aggravating circumstances beyond a reasonable doubt, it is quite possible the verdict would have been different. By ruling the determinations as to the sufficiency and weight of the aggravating factors necessary for the imposition of the death penalty were not elements to be proven beyond a reasonable doubt to a jury, the lower court's decision deprived Petitioner his right to due process under the Fourteenth Amendment.

This Court should grant this petition for writ of certiorari.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 4, 2021