

No. 17-6735

IN THE SUPREME COURT OF THE UNITED STATES

RANDY W. TUNDIDOR, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA*

REPLY BRIEF FOR THE PETITIONER

CAROL STAFFORD HAUGHWOUT
Public Defender

GARY LEE CALDWELL
*Assistant Public Defender
Counsel of Record*

*Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, Florida 33401
(561)355-7600; (561) 624-6560
appeals@pd15.state.fl.us
gcaldwel@pd15.state.fl.us*

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1. Respondent says (AB 16) that the claim under *Caldwell v. Mississippi*, 472 U.S. 320, 341 (1985), “was not presented properly” in the state supreme court. In fact, it was squarely raised at pages 92-94 of the initial brief and pages 10-11 of the motion for rehearing. See the appendix to this brief.

2. Respondent contends (AB 20-21) that the Sixth Amendment requires only the finding of a single aggravating circumstance because, it argues, that is all that is needed to make one eligible for a death sentence. But under Florida law, a death sentence cannot be imposed without a finding that “sufficient aggravating circumstances exist,” and

that “there are insufficient mitigating circumstances to outweigh the aggravating circumstances.” § 921.141(2) and (3), Fla. Stat. (2009).

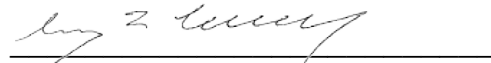
Although Respondent argues that the statutorily-required determination of the sufficiency of the aggravating circumstances is not a finding of fact and hence is not committed to the jury under the Sixth Amendment, the state supreme court has repeatedly and consistently ruled that “[T]he determination of mitigating and aggravating circumstances and the respective weight assigned to each is within the trial court’s discretion.” *Covington v. State*, 228 So. 3d 49, 65 (Fla. 2017) (quoting and following *Griffin v. State*, 820 So.2d 906, 913 (Fla. 2002). *See also, e.g., Oyola v. State*, 158 So. 3d 504, 509 (Fla. 2015) (“Although the aggravating factors that may be considered are limited by statute, the weight assigned to established factors falls within the discretion of the trial court. *See* § 921.141(5), Fla. Stat.; *Globe v. State*, 877 So.2d 663, 674 (Fla.2004).”).

* * *

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

CAROL STAFFORD HAUGHWOUT
Public Defender



GARY LEE CALDWELL
Assistant Public Defender
Counsel of Record

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