

**ADMINISTRATIVE DIRECTIVE
OF THE
PRESIDENT JUDGE OF THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

NO. 2016-2

**TEMPORARY STAY OF PENDING TRIALS,
PENALTY HEARINGS, AND CERTAIN APPLICATIONS
IN CAPITAL FIRST-DEGREE MURDER CASES**

This 1st day of February, 2016,

It Appearing That:

(1) On January 12, 2016, in *Hurst v. Florida*, the United States Supreme Court held that the Florida capital sentencing scheme was unconstitutional because “[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”¹ In light of the *Hurst* decision, this Court certified five questions of law to the Supreme Court of the State of Delaware in a pending capital murder case.

(2) On January 28, 2016, the Supreme Court of Delaware accepted the five questions certified by this Court in the case of *Benjamin Rauf v. State of Delaware*.² In accepting the certified questions the Supreme Court stated that “there are important and urgent reasons for an immediate determination [by that Court] of the questions certified as they relate to the United States Constitution” and the Delaware death penalty statute.

(3) The five questions accepted by the Supreme Court for determination are:

1. Under the Sixth Amendment to the United States Constitution, may a sentencing judge in a capital jury proceeding, independent of the jury, find the existence of “any aggravating circumstance,” statutory

¹ ___ U.S. ___, 2016 WL 112683, at *3 (Jan. 12, 2016).

² Del. Supr. No. 39, 2016.

or non-statutory, that has been alleged by the State for weighing in the selection phase of a capital sentencing proceeding?

2. If the finding of the existence of “any aggravating circumstance,” statutory or non-statutory, that has been alleged by the State for weighing in the selection phase of a capital sentencing proceeding must be made by a jury, must the jury make that finding unanimously and beyond a reasonable doubt to comport with federal constitutional standards?
3. Does the Sixth Amendment to the United States Constitution require a jury, not a sentencing judge, to find that the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist because, under 11 *Del. C.* § 4209, this is the critical finding upon which the sentencing judge “shall impose a sentence of death”?
4. If the finding that the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist must be made by a jury, must the jury make that finding unanimously and beyond a reasonable doubt to comport with federal constitutional standards?
5. If any procedure in 11 *Del. C.* § 4209’s capital sentencing scheme does not comport with federal constitutional standards, can the provision for such be severed from the remainder of 11 *Del. C.* § 4209, and the Court proceed with instructions to the jury that comport with federal constitutional standards?

(4) The determination of the certified questions is directly relevant to each capital first-degree murder case pending and scheduled for trial and/or penalty hearing before this Court. Specifically, the determination will control the procedure to be applied in all such cases. Briefing before the Supreme Court is scheduled for completion by April 14, 2016. A temporary stay of the pending trials, penalty hearings, and any applications asking this Court to declare Delaware’s capital sentencing scheme unconstitutional is warranted to ensure the application of the law consistent with the Supreme Court’s determination of the

certified questions. Such temporary stays have been previously entered by this Court when certified questions addressing the validity of 11 *Del. C.* § 4209's capital sentencing procedures have been accepted by the Supreme Court of Delaware.³

NOW, THEREFORE, IT IS DIRECTED, with the concurrence of the Judges of the Superior Court, that all trials, penalty hearings, and applications asking this Court to declare Delaware's capital sentencing scheme unconstitutional are temporarily stayed until the determination by the Supreme Court of Delaware of the questions of law certified in *Rauf v. State of Delaware*. All other aspects of the scheduling orders in such cases remain in effect unless expressly modified by the trial judge.

/s/Jan R. Jurden

President Judge

³ See, e.g., Del. Super. Ct. Admin. Dir. No. 2002-1 (Sept. 10, 2002) (temporary stay entered while Delaware Supreme Court considered certified questions in *Brice v. State*, 815 A.2d 314 (Del. 2003)); *State v. Cohen*, 604 A.2d 846, 849 (Del. 1992) ("Pending these proceedings [on certification of questions regarding the construction and constitutionality of Delaware's then-recently amended capital sentencing statute] . . . the President Judge of the Superior Court has stayed all capital murder trials.").