IN THE SUPREME COURT OF FLORIDA

ROBERT DALE HENDERSON,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NO. 63,094

APPEAL FROM THE CIRCUIT COURT
IN AND FOR HERNANDO COUNTY

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BRYNN NEWTON
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ATTORNEY FOR APPELLANT

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POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED BY DENYING IN PART APPELLANT'S MOTION IN LIMINE TO EXCLUDE REFERENCES TO OTHER CRIMES IN OTHER JURISDICTIONS, AND BY DENYING APPELLANT'S MOTIONS FOR A MISTRIAL WHEN SUCH EVIDENCE WAS PRESENTED.

Appellee argues that the two instances of deputies' testifying that Appellant was wanted for crimes outside Florida did not constitute error. In the one instance, argues the State, the statement was admissible because it was made by Appellant. It was still, however, irrelevant. In the second instance, the State seeks to excuse the remark by a deputy that a teletype told him Appellant was wanted in other states for murder, because the trial court vainly instructed the jury to ignore the remark and because the comment was "inadvertent." Again, Appellant would point out that the prosecutor told the court that he had instructed his witnesses on the point, and the only conclusion which can be drawn is that the deputy made the prohibited remark quite deliberately. Appellee questions whether it can be seriously alleged that Appellant was prejudiced by the remarks, "given the overwhelming evidence" against him. Whatever the charge, and whatever the evidence against an accused, in Florida he is entitled to a fair trial. Deputy Lucas' gratuitous remark deprived Appellant of that right.

POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED BY ADMITTING INTO EVIDENCE PARTICULARLY GRUESOME PHOTOGRAPHS OF THE DECEASED WHICH WERE IRRELEVANT AND REPETITIVE

The three photographs objected to by Appellant's counsel at his trial speak for themselves, and speak strongly against any attempts to justify their admission into evidence. In a footnote, Appellee has pointed out that Appellant "does not define 'obscene,' although no 'prurient interests' were allegedly aroused." Merriam-Webster, however, does define "obscene" as "deeply offensive to morality or decency," which appropriately describes the photographer's style of composition utilized in photographing Frances Belle Dickey's maggot-eaten vagina for the claimed purpose of showing the adhesive tape on her ankle.

Contrary to the implication of Appellee's answer, Appellant has never referred to the photographs as "gory." Indeed, the amount of blood caused by the small-calibre gunshots would never have produced the shock and disgust which pictures of decomposition effect.

Pictures of the victim's dismembered body were found to be admissible in Halliwell v. State, 323 So. 2d 557 (Fla. 1975), but the Supreme Court noted that it was Halliwell's acts which directly produced the scenes depicted. The decomposition of the deceased's bodies in this case was the natural result of death but it was not the product of criminal acts. As the Court found in Halliwell, the crime of murder was complete when the

victim died. As Appellant has already pointed out, all of the purposes for which the pictures were allegedly offered into evidence were otherwise served by other testimony and exhibits; the excruciating details depicted by the State's eight-by-ten closeups illustrated acts of nature and not of Appellant. The pictures served no objective but to deprive Appellant of a fair trial.

POINT VI

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT WAS IMPROPERLY SENTENCED TO DEATH.

The trial court stated, in its sentencing order, that "the nonstatutory circumstances that the defense presented and argued are of little if any weight." (R 2160) This language is no more informative than the trial judge's finding in Foster v. Strickland, ___ F.2d ___ (11th Circ. 1983) (Case No. 81-5734, June 27, 1983), that there were "insufficient mitigating circumstances . . . to outweigh the aggravating circumstances." This language does not make clear whether the judge found no mitigating circumstances, or if he found certain mitigating circumstances, which he failed to specify, which did not outweigh the aggravating circumstances. Full disclosure of the basis for the death sentence is constitutionally required. Gardner v. Florida, 430 U.S. 349, 51 L.Ed.2d 393, 97 S.Ct. 1197 (1977). Since this was not done in Appellant's case, this cause must be remanded for a new sentencing trial.

CONCLUSION

For the reasons expressed herein and in his initial brief, Appellant respectfully requests that this Honorable Court reverse his convictions and remand this cause to the trial court for a new trial. In the alternative, Appellant respectfully requests that this Honorable Court vacate his sentences and remand this cause to the trial court for resentencing to life imprisonment or for a new sentencing trial.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

Brynn Newton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, Florida 32014, and Mr. Robert Dale Henderson, P. O. Box 747, Starke, Florida 32091, this 28th day of October, 1983.

Brynn Newton

ATTORNEY