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CLERK SUPREME COURT

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ON APPEAL TO THE SUPREME COURT OF APPEAL OF FLORIDA

ROBERT D. GLOCK, II,

Appellant,

vs.

Appeal No. 65,380

STATE OF FLORIDA,

Appellee.

SUPPLEMENTAL BRIEF OF APPELLANT

Appeal from a Death Sentence imposed by the Circuit Court,
Sixth Circuit.

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For purposes of this supplemental brief, Appellant, Robert Glock, will be referred to as "Appellant". His co-defendant below, Carl Puiatti, will be referred to as "Mr. Puiatti".

References to the record on appeal will be in parenthesis with the letter "R" followed by the appropriate page number or numbers. References to the Appendix to Appellant's initial brief will also be in parenthesis with the letter "A" followed by the appropriate page number.

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SUPPLEMENTAL QUESTIONS PRESENTED

- III. WHETHER EXCLUSION, AT THE TRIAL STAGE, OF PROSPECTIVE JURORS OPPOSED TO THE DEATH PENALTY WAS ERROR? ✓
- IV. WHETHER THE TRIAL COURT ERRED IN FINDING AS AN AGGRAVATING CIRCUMSTANCE THAT THE HOMICIDE WAS COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER?
- V. WHETHER THE TRIAL COURT ERRED IN NOT REGARDING THE DEFENDANT'S CONFESSIONS AND THEIR POTENTIAL FOR REHABILITATION AS MITIGATING CIRCUMSTANCES?

QUESTION: WHETHER EXCLUSION, AT THE TRIAL STAGE, OF PROSPECTIVE JURORS OPPOSED TO THE DEATH PENALTY WAS ERROR?

ARGUMENT

Prior to trial below, the defense moved to empanel two separate juries--one to determine guilt or innocence and the other to determine for the appropriate penalty (R172). The motion contended that exclusion from the trial phase of prospective jurors who were opposed to the death penalty would violate the accused's right to be tried by a jury drawn from a fair cross-section of the community (R172-173). The motion was denied (R216).

Appellant argues that the exclusion of such jurors, particularly when a motion to empanel separate juries had been denied, constituted a reversible error. The Federal Court of Appeals (8th Circuit) appears to have recently held that the exclusion of jurors opposed to the death penalty from a capital trial results in a jury that is conviction-prone and violates the defendant's Sixth Amendment right to a jury drawn from a fair cross-section of the community. Grigsby vs. Mabry, F.2d, 36 Cr.L. 2345. Appellant contends that this proposition is good logic as well as good law and the Court below should accordingly be reversed.

QUESTION: WHETHER THE TRIAL COURT ERRED IN FINDING AS AN AGGRAVATING CIRCUMSTANCE THAT THE HOMICIDE WAS COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER?

ARGUMENT

In Preston vs. State (Fla 1984) 444 So2d 939, this Court held that the aggravating circumstance of a homicide committed in a "cold, calculated, and premeditated" manner requires a "heightened" degree of premeditation. In the case here considered, the evidence established that Appellant and Mr. Puiatti abducted the victim, robbed her, and then released her in an isolated orange grove. It was not until a few minutes later, after they had driven away, that a decision was made to shoot her. The two men immediately returned and, driving past the woman three times, fired the series of shots which killed her.

Appellant contends that these facts fall far short of the standard applied by this Court in determining what constitutes a cold, calculated, and premeditated murder under Section 921.141(5)(i). In Jent vs. State (Fla. 1984) 408 So2d 1024 there was testimony describing lengthy series of events which included a beating and a rape and culminated with setting victim on fire. In Bolender vs. State (Fla. 1982), 422 So2d 833 the victims were held at gunpoint for hours and were humiliated and tortured before they died. In Witt vs. State (Fla. 1977) 342 So2d 497 the victim was a child, for whom the defendants lay in wait and who was molested and mutilated after being suffocated in defendants' car

trunk. In Washington vs. State (Fla. 1978) 362 So2d 658, the victim was tied spread eagle on a bed awaiting the fatal stabbing.

Here, the murder resulted from a decision made on the spur of the moment. There was no evidence of intent to murder the victim at the time of her abduction. Indeed, the fatal decision was not made until after the woman had been released. Appellant contends that, under these circumstances, it was not established beyond a reasonable doubt that the murder was committed in a "cold, calculated, and premeditated" manner and the death sentence imposed in this cause was consequently founded upon an error.

QUESTION: WHETHER THE TRIAL COURT ERRED IN NOT REGARDING THE DEFENDANT'S CONFESSIONS AND THEIR POTENTIAL FOR REHABILITATION AS MITIGATING CIRCUMSTANCES?

ARGUMENT

In considering mitigating circumstances in relation to the question of imposing the death penalty, trial courts are not limited to those mitigating circumstances enumerated in Chapter 921.141, Florida Statutes. Songer vs. State (Fla. 1978) 365 So2d 696. Lockett vs. Ohio (1978) 38US 586, 98 S.Ct. 2954, 57 L.Ed 2d 973.

The Court below, in its findings in Support of Sentences (R301-308) (A1-11), noted that it had weighed and considered Appellant's confessions and his potential for rehabilitation but did not regard those factors as sufficiently significant to be regarded as mitigating circumstances (R308) (A10-11). Appellant contends that the trial court erred in not according these factors the full weight of non-statutory mitigating circumstances. As this Court held in Songer (supra)

"...our construction of Section 921.141(6) has been that all relevant circumstances may be considered in mitigation, and that the factors listed in statute merely indicated the principal factors to be considered."

This Court has regarded potential for rehabilitation as a valid mitigating circumstance McCampbell vs. State (Fla. 1982) 421 So2d 1072. In the case here considered, however, the trial court recognized the fact of Appellant's potential for rehabilitation but specifically declined to accord that fact the status of

a mitigating circumstance.

It is clear from the record that Appellant's confessions were of considerable value to the prosecution. Had both Appellant and Mr. Puiatti stood mute rather than cooperate with investigating officers, the State's case would have been founded upon the circumstances of the two men's possession of the murder weapon and the victim's car and other property. A reasonable doubt could well have been raised that Appellant and Mr. Puiatti merely acquired the car and its contents from the murderer. The Court below recognized that the confessions facilitated prosecution, but refused to accord those confessions the full weight of mitigating circumstances.

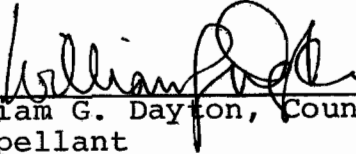
In Washington vs. State (Fla. 1978) 362 So2d 658 this Court recognized that, in an appropriate case, a defendant's confession might constitute a mitigating circumstance. Appellant contends that this was such an appropriate case.

The Court below refused to specifically instruct the jury as to these non-statutory mitigating circumstances, although it did tell them they could consider "any other aspect of defendant's character or record" (R2524). By refusing to consider Appellant's confessions and his potential for rehabilitation and by declining to instruct the jury as to these two specific factors in mitigation, the Court below fell short of the standard set in Lockett vs. Ohio (supra) and the death sentence imposed upon Appellant should accordingly be reversed.

CONCLUSION

The Court below erred in excluding from the guilt phase of Appellant's trial prospective jurors who were opposed to imposition of the death penalty, as this exclusion deprived Appellant of his right to be tried by a jury drawn from a fair cross section of the community. The trial court erred in finding that the murder was committed in a cold, premeditated manner when the evidence fell short of the standard required for such finding. The trial court also erred in its refusal to consider Appellant's free and voluntary confessions and his potential for rehabilitation as non-statutory mitigating factors and instruct the jury accordingly. The judgment and sentence of the Court below should accordingly be reversed.

Respectfully submitted this 4th day of April, 1985.



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