IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

MARTIN GROSSMAN, *

APPELLANT, *

VS. * CASE NO.: 68,096

STATE OF FLORIDA, *

APPELLEE. *

APPELLANT'S SUPPLEMENTAL BRIEF

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STATEMENT OF THE FACTS

At the sentencing hearing held December 13, 1985, the Trial Court permitted statements by several members of Officer Park's family to be admitted in evidence (R 2741). Officer Park's parents both appeared and made their statements in person. (R 2741-44, 2747-49). In eloquent and moving detail, Mr. & Mrs. Park described the delightful, warm, and loving personality of their daughter, the close, caring relationship she had with each member of the family, and the devastating loss and inconsolable grief experienced by her survivors (R 2741-44, 2747-49). In addition, the State read into the record a written statement prepared by Officer Park's brother, also describing her charming personality, her close relationship with him and the devastating emotional impact of her death on the entire family. (R 2744-47) These statements also expressed the opinion that Officer Park's murder was brutal and merciless and that Mr. Grossman deserved to die and would kill again (R 2743-44, 2746-47). After hearing these statements, the Trial Court entered sentence of death on Mr. Grossman. (R 2764).

ISSUE

WAS INTRODUCTION AT THE SENTENCING HEARING OF THE STATEMENTS OF OFFICER PARK'S FAMILY REGARDING HER CHARACTER AND PERSONALITY AND THE IMPACT OF HER DEATH ON HER FAMILY, PURSUANT TO SECTION 921.143, FLORIDA STATUTES, AN UNCONSTITUTIONAL VIOLATION OF MR. GROSSMAN'S EIGHTH AMENDMENT RIGHTS?

SUMMARY OF THE ARGUMENT

Section 921.143, Florida Statutes [1985] violates the Eighth Amendment because it requires consideration at a capital sentencing proceeding of factors such as the character of the victim and the effect on the victim's family. The Supreme Court has held that such factors are not relevant in deciding whether or not the Defendant deserves the death penalty, and a death sentence where such factors were presented in evidence must be reserved. In the instant case, the error was not harmless because it cannot be said beyond a reasonable doubt the Court would have imposed the death penalty in the absence of the statements of the victim's family.

ARGUMENT

INTRODUCTION AT THE SENTENCING HEARING OF STATEMENTS OF OFFICER PARK'S FAMILY MEMBERS REGARDING OFFICER PARK'S CHARACTER AND PERSONALITY AND THE IMPACT OF HER DEATH ON HER FAMILY PURSUANT TO FLORIDA STATUTE 921.143, WAS AN UNCONSTITUTIONAL VIOLATION OF MR. GROSSMAN'S EIGHTH AMENDMENT RIGHTS, REQUIRING REVERSAL OF HIS DEATH SENTENCE.

Section 921.143, Florida Statutes (1985), requires that the Trial Court permit the next of kin of a homicide victim to either testify or present a written statement to the Court regarding the "harm including social, psychological or physical harm . . . directly or indirectly resulting from the crime . . ." at the sentencing hearing. However, the United States Supreme Court has held that a similar Maryland Statute was unconstitutional. Booth v. Maryland, 55 U.S.L.W. 4836 (June 15, 1987).

The Maryland Statute, like the Florida Statute, permitted "victim's impact statements" describing the impact of the crime on the victim's family. In Booth, however, only a presentence report summarizing interviews with the victim's family was read to the Court and none of the family members testified in person. In the instant case, of course, Officer Park's mother and father each gave intensely moving, personal statements to the Court.

In Booth, the Supreme Court found that the Eighth Amendment prohibited consideration of victim impact evidence in a capital sentencing proceeding. Such information is irrelevant because the death penalty should be based only on "the character of the defendant and the circumstances of the crime and admission of such information creates an unacceptable risk that the death penalty may be imposed in an arbitrary and capricious manner." Id. The character and reputation of the victim and the effect on the victim's family generally have nothing to do with the blame worthiness of the defendant. Id. In the instant

case, for example, Mr. Grossman did not know Officer Park and his actions were not motivated by her character or reputation or by the potential impact on her family.

Furthermore, in some cases, family members may be articulate and persuasive in expressing their loss and grief, but in others, although the loss may be as great, the victim may have had no family or the family may be less articulate in describing their feelings. Id. Certainly, in the instant case, the statements of Officer Park's mother, father, and brother were dramatically moving. However, their eloquence should not help condemn Mr. grossman to death, any more than the inarticulateness of another victim's family should result in a life sentence.

The character of the victim is also irrelevant to deciding whether or not a defendant should be sentenced to death. Id. It is only the character of the defendant and the circumstances of the crime which should be considered. Id. Our system of justice rejects the view that defendants whose victims were assets to the community should be punished more severely than those whose victims were less worthy. Id. The decision to sentence Martin Grossman to death should not have been based, to even the slightest degree on a perception that Officer Park was a woman of sterling character.

Section 921.143, Florida Statutes (1985) is clearly unconstitutional in that it requires the Trial Court to admit victim impact statements at capital sentencing hearings. Although in Booth, the statements were heard by the jury while in the instant case, only the judge heard the statements, the Florida Statute nevertheless requires consideration of factors which the Court in Booth held were not relevant in a capital sentencing proceeding and therefore violates the Eight Amendment.

The error in the instant case was not harmless. An error is harmful unless the Appellate Court can say beyond a reasonable doubt that the error did not

affect the verdict. Chapman v. California, 386 U.S. 18 (1967). It is utterly impossible to read the statements of Officer Park's mother, father, and brother- even in the cold and expressionless print of the transcript - without being moved.

Furthermore, Section 921.143, Florida Statutes (1985) on its face requires the Trial Court to consider the crime's effect on the family in imposing sentence. In light of Booth, the only way to find the Statute constitutional would be to read it as providing that the trial judge shall listen to the victims impact statement but then must disregard those statements. Clearly, such a reading would be absurd and could not have been intended by the legislature. The grief of the victim's family and the character of the victim are simply not relevant considerations for either a judge or jury in a capital sentencing proceeding. It cannot be said beyond a reasonable doubt that the Trial Court would have imposed the death penalty on Martin Grossman if the Court had not had before it the eloquent and moving statements of Officer Park's family.

CONCLUSION

The death sentence imposed on Martin Grossman should be reversed and vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail on 17th day of July, 1987, to the Office of the Attorney General, 1313 Tampa Street, Suite 804, Tampa, Florida 33602.

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