

IN THE SUPREME COURT OF FLORIDA

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DAN PATRICK HAUSER,

Appellant, :

v. :

CASE NO. 87,580

STATE OF FLORIDA, :

Appellee. :

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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IN THE SUPREME COURT OF FLORIDA

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CASE NO. 87,580

STATE OF FLORIDA,
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_____ /

REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant relies on the Initial Brief to respond to the State's arguments with the following additions:

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT IMPROPERLY SENTENCED HAUSER TO DEATH AFTER ALLOWING HIM TO WAIVE THE PRESENTATION OF MITIGATING EVIDENCE IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTIONS 9, 16, AND 17 OF THE CONSTITUTION OF FLORIDA.

A.

The Trial Court Failed to Properly Evaluate, Consider and Weigh Evidence of Mitigating Circumstances Available in the Record.

This Court recently reaffirmed that the trial judge has the responsibility to carefully consider, find and weigh any mitigating evidence found in the record in cases such as this one. Robinson v. State, Case No. 85,605 (Fla. Nov. 21, 1996). In Robinson, this Court reversed for resentencing specifically on the ground that the trial judge failed to consider mitigation available in the PSI. Slip. op. at 9-13. The same error occurred in this case. This Court should, as it did in Robinson, reverse for a new sentencing proceeding.

B.

The Trial Court Considered In Aggravation Of Sentence A Statement Obtained From Hauser In Violation Of The United States And Florida Constitutions.

The State argues that Miranda does not apply in this case because Hauser initiated the contact with the investigator, volunteered the information, and no custodial interrogation occurred. In support of this position, the State relies on Christmas v. State, 632 So.2d 1368 (Fla. 1994), Christopher v. State, 583 So.2d 642 (Fla. 1991), and Baxter v. Thomas, 45 F.3d

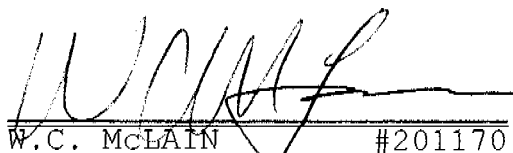
1501 (11th Cir. 1995). While Hauser initiated the contact and volunteered the handwritten statement, the investigator's subsequent interview with a tape recorder was custodial interrogation warranting the application of Miranda. The trial judge relied on Christmas to rule that **the** handwritten statement was admissible. (Tr 111 32) However, regarding the subsequent tape recorded interview, the court did not conclude Christmas applied and based its ruling primarily on the ground that Miranda did not apply to questioning after a plea. (Tr III 33-34) In neither Christmas nor Christopher was the defendant's voluntary statement followed with a formal tape recorded questioning as occurred in this case. In Christmas, the trial court found that the defendant was not interrogated even though the bailiff did ask one question during Christmas's voluntary account, 632 So.2d at 1370. In Christopher, this Court conclude no interrogation occurred because the officer only answered Christopher's question about his daughter before Christopher made incriminating statements. 583 So.2d 644-645. In Baxter, the defendant initiated contact with officers to talk about an offense unrelated to the charges on which he was incarcerated. In this case, when Investigator Griggs turned on a tape recorder and began to question Hauser about the offense with which he was charged and **represented** by counsel, a custodial interrogation began and Miranda warnings were required.

CONCLUSION

For the reasons presented in the Initial Brief and this Reply Brier, Dan Patrick Hauser's death sentence should be reduced to life imprisonment, or alternatively, remanded for a new sentencing proceeding,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing Reply Brief of Appellant has been furnished by delivery to Richard B. Martell, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301; and a copy has been mailed to appellant, Mr. Dan Patrick Hauser, on this 11th day of December, 1996.


W.C. McLain