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DEC 17 1991
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

MICHAEL ALAN DUROCHER,

Appellant,

v. CASE NO. 77,745

STATE OF FLORIDA,

Appellee.

_______________________________/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR CLAY COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellee generally accepts Appellant's Statement of the Case and Facts, subject to the following additions and/or clarifications:

At the time of his arrest on another murder case on August 24, 1988, Appellant told Detective Bradley of the Jacksonville Sheriff's Office that his girlfriend, her daughter, and their son, Joshua, had been killed in an automobile accident in Paulsboro, New Jersey (R 2169). Bradley contacted the authorities in such location, and was advised that there was no report of such accident or of the death of these individuals (R 2170). Bradley stated that Durocher contacted him on January 18, 1989, and advised him that he had in fact murdered Grace Reed and the children (R 2171). Appellant likewise contacted the Clay County authorities in July of 1989 concerning these murders, and spoke with Detective James Redmond; on July 17, 1989, Appellant repeated his admission that he had murdered these three persons (R 2186). Appellant again contacted the authorities on October 11, 1990, sending a note to Redmond to the effect that he wished "to give up the bodies" (R 2188). Durocher then lead the authorities to the murder site, which was along route 17 outside of Green Cove Springs. At such time, Durocher indicated that he had picked the location of the murder as he was driving along, because it had looked like "a good place to do it" (R 2196). In order to reach the actual spot, Durocher had cut a piece of barbed wire with wire clippers, and have driven down a grass or dirt path (R 2196).

Appellant stated that, on the night of the murders, he and Grace Reed had consumed some Jack Daniels and discussed a murder/suicide pact (R 2205). Durocher then had Reed tell her five year old daughter, Candy, that they were going to have a picnic (R 2205). Accordingly, the little girl began walking down the path, and Appellant came up behind her with a shotgun, and shot her; he then dug a grave for the child (R 2205). The shot awoke the baby, and Grace Reed put him back to sleep (R 2206). Appellant then took Joshua out of the car, placed him on the ground, stood over him and shot him, burying the body near Candy (R 2206-7). Durocher then told Grace Reed that it was her turn, and dug a grave for her (R 2207). Reed got into the grave on her hands and knees, and Appellant stood over her with the shotgun pointed at the back of her head (R 2207). Appellant stated that he thought about "all the shit he had been through and how tired he was of it" and then pulled the trigger (R 2207). He the buried the body, and drove to a motel where he requested a double room and registered not only under his name, but also under that of Grace Reed and the children (R 2208).

Appellant later called his brother to come and pick him up, at which time advising him that he had had a fight with Grace Reed and that she had driven off with the children (R 2125). Appellant told his brother, however, a couple of months later, that he had killed the victims as part of a murder/suicide pact (R 2128). Appellant also admitted to his brother that Joshua was in fact his child (R 2124). Appellant had, however, told Detective Redmond that he had felt that Joshua was not his child,

and that after the New Jersey welfare authorities had sought to obtain child support for him, he had decided to murder Grace Reed and the children upon their return to Florida (R 2203).

SUMMARY OF ARGUMENT

Appellant raises two claims of error in regard to his three sentences of death; no claim has been presented in regard to his three convictions of first degree murder, which, in any event, followed the entry of a plea of guilty. Of the claims presented, Durocher's initial argument - that special counsel should have been appointed to present evidence in mitigation, following Durocher's personal waiver of such - has largely been foreclosed by this court's precedents. Contrary to opposing counsel's fervent hope, this court has not receded from any of these cases, and this case presents no good opportunity or reason for such action. Also, contrary to the allegations in the Initial Brief, the sentencer in this case did fully consider all evidence in mitigation properly before him and, despite Appellant's formal waiver of the presentation of mitigation, found and weighed Appellant's alcohol abuse, his stuttering problem and the fact that he had been diagnosed with a personality disorder as nonstatutory mitigation; these facts were set forth in the report of a defense expert, which was introduced into the record.

The death sentences in this case are proportionally correct. Durocher has murdered at least five persons. In this case, he cold bloodedly executed his girlfriend, her child and their baby. Despite any claim of intoxication or the existence of a murder/suicide pact, Durocher planned these murders in advance and carried them out with chilling exactitude. The best evidence of Durocher's presence of mind during these crimes is the fact that, over seven years later, he was not only able to provide

detailed confessions, but also to lead the authorities to the exact spot where the bodies were buried, despite the fact that such site had been cleared for development. The evidence in mitigation apparent from the record in this case is simply insufficient to merit a life sentence, and, under this court's precedents, death is the appropriate sentence. The instant sentences of death should be affirmed in all respects.

ARGUMENT: POINT I

THE CIRCUIT COURT'S FAILURE TO SUA SPONTE APPOINT COUNSEL TO PRESENT MITIGATION ON APPELLANT'S BEHALF WAS NOT ERROR UNDER THIS COURT'S PRECEDENCTS.

Appellant contends that his sentences of death must be reversed, because the circuit court did not sua sponte appoint counsel to present evidence in mitigation on his behalf. The record in this case indicates, however, that Appellant never formally requested the appointment of such counsel and that, indeed, Michael Durocher, after full advisement of his rights, affirmatively waived the presentation of mitigation. Appellee respectfully submits that the sentencing proceeding in this case in all respects complies with the precedents of this court involving similar situations. See Hamblen v. State, 527 So.2d 800 (Fla.1988); Anderson v. State, 574 So.2d 87 (Fla.1991); Henry v. State, 586 So.2d 1033 (Fla.1991); Klokoc v. State, 16 F.L.W. S756 (Fla. Nov. 27, 1991). Accordingly, the instant sentences of death should be affirmed in all respects.

The record in this case clearly indicates that Michael Durocher has always been aware that he could receive the death penalty for these murders. Indeed, while incarcerated on other crimes, he specifically contacted the authorities so that he could admit his culpability for these murders. He not only described how and why he had murdered the victims, but he literally lead the police to the bodies over seven years after the crime. Although originally pleading not guilty, Durocher changed his plea, in the midst of trial, to one of guilty (R

2243). At this time, defense counsel represented that Durocher likewise wished to waive the presentation of any mitigation at the penalty phase (R 2243). The judge arranged for Durocher to be examined by a mental health expert, Dr. Miller, who stated in his report that Appellant was mentally competent; the doctor also indicated that Durocher had been contemplating this course of action for over a year, and that, in doing so, he was seeking to maintain some mastery over his own destiny. The doctor specifically found that Durocher's actions were "not a product of a psychotic dimension of thought or other loss of reality." (R 1155). Judge Wilkins engaged in a lengthy colloquy with Appellant as to the rights which he would be giving up by pleading guilty and also by waiving the presentation of mitigation (R 2254-2271). Following the presentation of a factual basis, the pleas of guilty were accepted (R 2271-2283). Durocher then reaffirmed his desire to waive the presentation of mitigation at the penalty phase (R 2284-9). Following the presentation of the state's evidence in aggravation, defense counsel proffered to the judge the substance of the evidence which he would have presented in mitigation (R 2342-2348). Durocher again confirmed that he did not wish any of this evidence to be presented (R 2348). The jury subsequently returned unanimous advisory verdicts of death, and the judge imposed three death sentences.

On appeal, Appellant does not contend that the judge did not conduct sufficient inquiry into his waiver of mitigation; indeed, the record below would support no such contention. Appellant

also does not contend on appeal that such waiver of mitigation is per se error or improper under Florida or federal law; indeed, in light of Hamblen, Anderson and Henry, such argument would obviously be unavailing. Instead, Appellant argues that this court's decision in Klokoc has "altered" the situation (Initial Brief at 18). Appellee must respectfully disagree. As Appellant notes, the circuit court in Klokoc did in fact appoint special counsel to present mitigation, despite the defendant's opposition. The state, however, did not contest such appointment and did not present any point on appeal or cross-appeal in this regard. Accordingly, the propriety of the appointment in Klokoc was not before this court and this court's reversal of the death sentence in Klokoc was in no way premised upon the appointment of special counsel. The fact that one circuit court in this state has chosen to adopt this practice does not mean that such is now constitutionally mandated in every other case, especially giving the contrary holdings of Hamblen, Anderson and Henry. No basis for reversal has been demonstrated sub judice.

Appellee would respectfully suggest that this case presents no good cause for this court to recede from many of the above precedents. When Michael Durocher entered his plea in the midst of trial, such decision was not one made in haste; he stated that he had been considering such step for about a year (R 2269). Durocher was no stranger to the judicial process or to capital sentencing. He has two prior convictions for first degree murder and was already under one sentence of death at the point that he

waived the right to present mitigation in this case.[1] It is clear that Durocher was mentally competent to make this decision, and that such decision was his to make. Further, defense counsel in this case made a much more substantial proffer than that in Anderson, and, as in Hamblen, Anderson and Henry, the record is sufficiently developed such that this court can perform its constitutionally mandated review function, and determine, inter alia, whether the death sentences in this case are proportionally correct. Accordingly, the instant sentences of death should be affirmed in all respects.

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[1] Such case, Durocher v. State, F.S.C. Case No. 74,442, is also presently pending before this court on direct appeal.

ARGUMENT: POINT II

APPELLANT HAS FAILED TO DEMONSTRATE REVERSIBLE ERROR IN REGARD TO THE SENTENCER'S HANDLING OF MITIGATION.

As his remaining point on appeal, Appellant contends that his sentences of death must be reversed, because the sentencing judge made three errors in regard to the sentencing order. Durocher initially claims that the sentencing order lacks "unmistakable clarity," and that Judge Wilkins further erred in "dismissing the mitigation" and in "failing to consider all the mitigation presented." Appellee disagrees, and would initially maintain that the first contention does not merit extended discussion. As an example of the order's alleged lack of clarity (indeed the only example cited by Durocher), Appellant points to the fact that the sentencing order recites that the judge "weighed and considered all the information contained in the report of Dr. Barnard" (Initial Brief at 21). While Appellant finds the statement somewhat ambiguous, Appellee would simply suggest that it must be taken at face value. The report of Dr. Barnard is in the record (R 1156-1162). Without reciting every item contained therein, the sentencer simply clearly indicated that he had considered and weighed its contents. No basis exist for reversal. Cf. Holmes v. State, 374 So.2d 944, 950 (Fla.1979) (no prescribed form for sentencing order as to findings in aggravation and mitigation).

In sentencing Michael Durocher to three sentences of death, Judge Wilkins found the existence of two (2) aggravating circumstances - prior conviction of crimes of violence, §

921.141(5)(b), Fla. Stat. (1983), and commission of the capital felonies in a cold, calculated and premeditated manner, § 921.141(5)(i), Fla. Stat. (1983); in support of the former finding, Judge Wilkins noted that Durocher had not only murdered three persons in this case, but that he also had two prior convictions for first degree murder, in regard to the killings of Edward Childers and Thomas Underwood (R 1251-2). On appeal, Appellant presents no attack upon the finding of these aggravating circumstances. In his order, the judge noted that Appellant had refused to allow counsel to present any mitigating circumstances; the judge, however, indicated that he had nevertheless considered each mitigating circumstance set forth in the statute, and had further considered all evidence presented during all the pretrial hearings, all testimony and evidence presented during the trial and the presentence investigation report, in regard to nonstatutory mitigation (R 1253, 1255-6). In light of Appellant's failure to formally present mitigation, and his attorney's consequent failure to formally argue or identify such for the court, it would appear that the circuit judge may have done more than he had to do in this regard. Cf. Lucas v. State, 568 So.2d 18, 23-4 (Fla.1990) (court could not be faulted for failing to discuss nonstatutory mitigation in sentencing order, where defense counsel never identified such for the court; such obligation was appropriate, in that "nonstatutory mitigation is so individualized"). Nevertheless, the sentencing judge having set out to perform such function, Appellee respectfully suggests that error has not been demonstrated.

In the sentencing order, Judge Wilkins expressly found that, in regard to the murder of Grace Reed, he had considered and weighed the mitigating factor relating to the victim having been a participant in the defendant's crime or having consented to the act, § 921.141(6)(c), Fla. Stat. (1983), in light of Durocher's claim that a suicide pact had existed; the judge, however, noted that this factor could not relate to the murder of the children (R 1255). The judge also considered and weighed Durocher's age of twenty-three in mitigation (R 1255). The court rejected both statutory mitigating circumstances relating to Durocher's mental condition, §§ 921.141(6)(b)&(f), Fla. Stat. (1983), but considered and weighed, as nonstatutory mitigation, Durocher's problems with alcohol abuse, his stuttering and his diagnosis of having a borderline personality disorder (R 1254-7). Judge Wilkins expressly stated that he considered and weighed these factors, as well as the fact that Durocher's parents had divorced when he was young and that he had suffered from depression and had made suicide attempts (R 1256). The judge concluded, however, that there were no mitigating circumstances which could outweigh the "sufficient and great" aggravating circumstances, justifying imposition of the death penalty (R 1257). Appellee respectfully suggests that, when the sentencing order is read in totality, it is clear that Judge Wilkins neither "dismissed" any mitigation or failed to consider any evidence in mitigation properly before him.

Appellant's contention that Judge Wilkins erroneously rejected "uncontroverted mitigation" is simply incorrect (Initial

Brief at 27). It would appear that Durocher is specifically attacking the judge's failure to find that Appellant committed these crimes while under the influence of extreme mental or emotional disturbance, § 921.141(6)(b), or when his capacity to conform his conduct to the requirements of the law had been substantially impaired, § 921.141(6)(f). Yet, there is no evidence in the record which would have supported the finding of either of these statutory mitigating circumstances. Aside from the testimony concerning Durocher's consumption of alcohol on the night of the murders, which will be discussed infra, the only evidence which could have supported these findings would be that of the mental experts in this case. Defense counsel presented the testimony of two experts at the suppression hearing, Drs. Miller and Legum (R 1467-1509). While both doctors stated that Durocher suffered from a personality disorder, the primary thrust of their testimony was that he was capable of giving a false confession; there was no discussion of mitigation per se. The doctors' depositions were likewise introduced into evidence, and are largely in conformity with their testimony (R 893-931). In Dr. Legum's deposition, however, he stated that Appellant had low/average intellectual capacity and that he had detected no evidence of any gross neurological impairment (R 899). In his deposition, Dr. Miller stated that he had first examined Durocher when the latter was sixteen, and had originally suspected that Appellant might have a brain lesion; a subsequent examination by a neurologist, however, eliminated this possibility (R 913-15). Dr. Miller's report of March 6, 1991, was also part of the

record, but primarily relates to Durocher's competence to plead guilty (R 1154-5).

Dr. Barnard was specifically appointed as a defense expert, under Fla.R.Crim.P. 3.216 (R 507), his report is the only one to mention mitigation (R 1156-1162). In this report, Dr. Barnard indicated that he had twice examined Durocher, once on October 4, 1990, and once on December 4, 1990. At the first interview, Durocher had denied committing these murders, whereas at the second, he had acknowledged his guilt. In recounting his version of events, Appellant had stated that he and Grace Reed, on the night of the murders, had consumed approximately three quarters (3/4) of a bottle of Jack Daniels between them, with Durocher having consumed a greater part (R 1157); this, apparently, was the only alcohol consumed, and Appellant stated that he had had no street drugs or medicine on that day (R 1156). Appellant had also told Dr. Barnard that he had lied when he told the police that he had shot the baby, Joshua. Instead, Appellant stated that he had tried to smother the child, but that when the baby kept breathing, he had stabbed him in the lung and hit him in the neck with the gun until the child became quiet (R 1157). Appellant also told Dr. Barnard that after killing Grace Reed, he had taken eight hundred dollars ($800) from her (R 1158).

In recounting Appellant's life history, Barnard stated that while Appellant had been hurt and depressed by his parents' divorce, he had never personally suffered any abuse by either parent (R 1158). Durocher had also told the doctor that he had received A's and B's in school, but had dropped out in the tenth

grade, because he had felt that he was not learning anything new and because his speech problem was getting worse (R 1159). He also told Barnard that he had never suffered from fits, convulsions or seizures and that he had never suffered serious injury or been unconscious (R 1159). As to psychiatric history, Durocher told Dr. Barnard that he had never received any prior psychiatric treatment, although he had been depressed at times and suicidal (R 1159-1160). He denied any hallucinations (R 1160). Appellant stated that he had begun drinking as a teenager and had suffered from some blackouts; he likewise noted that he had used pot, THC and quaaludes (R 1160). As to mental status, Dr. Barnard found Appellant competent and also to have been sane at the time of the offense (R 1160-1); specifically, the doctor found that Appellant had known the nature and quality of his acts as well as their wrongfulness (R 1161). The report also contains the following:

> If he is found guilty of these charges, there are life events which should be considered as mitigating factors at the sentencing phase of the trial. Specifically, he has had a severe stuttering problem since childhood and as a result of this and other life events he has felt chronically depressed and has made a number of suicide attempts as a result of his depression. He has also had significant problems with alcohol abuse and claims to have been drinking heavily on the day of the alleged crimes. Previous psychological testing has indicated that he most likely has a borderline personality disorder with histrionic and narcissistic features which may in part account for him first admitting to a murder, then denying it, and still admitting to it again (R 1161-2).

Thus, even the defense expert in this case never specifically stated that the statutory mitigating circumstances

relating to mental state applied in this case.[2] Further, Judge Wilkins not only considered Dr. Barnard's report, but he considered and weighed, as nonstatutory mitigation, those factors identified by the expert - Durocher's problems with alcohol abuse, his severe stuttering problem, the fact that he had been depressed and suicidal at times, as well as the fact that he had been diagnosed as having a borderline personality disorder (R 1256). The judge's conclusion that this evidence did not rise to the level of statutory mitigation should be approved, especially in the absence of any contrary testimony or representation in the record. See e.g., Sireci v. State, 578 So.2d 450 (Fla.1991); Sochor v. State, 580 So.2d 595 (Fla.1991); Jones v. State, 580 So.2d 143 (Fla.1991); Carter v. State, 576 So.2d 1291 (Fla.1989); Bruno v. State, 574 So.2d 76 (Fla.1991). Given the fact that Judge Wilkins was essentially writing on a clean slate, i.e., he was not addressing any specific claim by defense counsel as to the existence of mitigation, it was not inappropriate for him to refer to all the evidence presented in regard to Durocher's mental state, including the experts' findings of competency and sanity (R 1254-6). This court has recognized that such matters may be considered when the sentencer is determining the applicability of §§ 921.141(6)(b)&(f), see Ponticelli v. State, 16 F.L.W. S669 (Fla. Oct. 10, 1991), and there is no evidence that the judge impermissibly restricted his consideration of the

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[2] It should also be noted that, when defense counsel proffered the testimony which he allegedly would have presented, had Durocher allowed it, he never stated that Dr. Barnard would offer such testimony (R 2345).

evidence presented in mitigation sub judice. See e.g., Sochor, supra (judge's reference to defendant's competency, in rejecting application of § 921.141(6)(b)&(f), not error); Doyle v. State, 460 So.2d 353, 357 (Fla.1984) (same). Indeed, given the fact that the matters identified by the defense expert were in fact found as nonstatutory mitigation, Appellee respectfully suggests that, even if the judge had applied the wrong legal standard in determining the existence of statutory mitigation, any error would be harmless, given the fact that the evidence was a part of the weighing process, resulting in Durocher's ultimate sentence. Surely, the label utilized, i.e., statutory v. nonstatutory, cannot be of constitutional significance. Cf. Cheshire v. State, 568 So.2d 908, 912 (Fla.1990).

Appellee also respectfully suggests that Judge Wilkins did not err in finding that Durocher's consumption of alcohol on the night of the murders did not rise to the level of statutory mitigation; it would appear that the judge did in fact consider this fact as nonstatutory mitigation, however (R 1256). It was certainly appropriate for the court to note that, despite any claim of intoxication, Durocher had been able to give a detailed account of these murders (R 1256). These crimes were well planned and cold-bloodedly executed. Despite the alleged existence of a murder/suicide pact, Durocher had made up his mind to murder the victims before they had even gotten to Florida (R 2203). On the night of the murders, he had not only purchased some Jack Daniels, but also a shovel with which to bury the bodies. He looked for a suitable place to commit the act and cut

through a barbed wire fence in order to get there, driving down into a deserted field. His killings of the victims were essentially executions, and all of his actions - before, during and after - militate against any finding of impairment. Further, he not only recalled these crimes, over seven years later, but was able to locate the bodies, despite the fact that the site had been cleared for development (R 2145, 2180, 2222). Under this court's precedents, Judge Wilkins' handling of Durocher's alleged intoxication, as a mitigating factor, was not error. See e.g. Kokal v. State, 492 So.2d 1317, 1319 (Fla.1986) (mitigating circumstance relating to defendant's capacity to conform his conduct to the requirements of the law properly rejected, where, despite defendant's consumption of alcohol, claim of intoxication inconsistent with testimony as to defendant's actions and his ability to give detailed account of crime); Cooper v. State, 492 So.2d 1059 (Fla.1986) (same); Koon v. State, 513 So.2d 1253 (Fla.1987); Cook v. State, 542 So.2d 964 (Fla.1989).

The final matter remaining relates to the sentencer's handling of nonstatutory mitigation. As noted, Judge Wilkins did find, as nonstatutory mitigation, those factors identified by Dr. Barnard - Durocher's problems with alcohol use, his severe stuttering problems, the divorce of his parents, his depression and suicide attempts and his having been diagnosed with a borderline personality disorder (R 1256). Appellant contends, however, that the judge violated Campbell v. State, 471 So.2d 415 (Fla.1990), in not also finding certain matters discussed by defense counsel during his proffer (R 2343-2348). There are a

number of problems with this argument. Initially, it is questionable whether Campbell applies to this case. This court held in Gilliam v. State, 582 So.2d 610, 612 (Fla.1991) that Campbell was not a fundamental change in law, entitled to retroactive application. The sentencing order in this case was rendered on December 13, 1990, and Campbell did not become final until such date, upon the denial of rehearing and the issuance of a revised opinion. Accordingly, it is clear that the sentencer in this case did not have the benefit of Campbell at the time that sentence was imposed. Further, the matters which appellate counsel now identifies are matters which would have been presented, if Durocher had allowed for such presentation. Durocher, of course, did not consent to the presentation of mitigation, and, accordingly, no such presentation was made. It is well established that a factor alleged in mitigation must be supported by at least some evidence. See e.g. Rogers v. State, 511 So.2d 526 (Fla.1987); Campbell, supra (mitigating factors must be established by greater weight of the evidence).

In addition, Judge Wilkins did actually find in mitigation most of the factors now cited by appellate counsel - i.e. the fact that Durocher's parents were divorced, the fact that he had a severe stuttering problem, the fact that he suffered from alcohol abuse and the fact that he had been diagnosed with a personality disorder (R 1256) (Initial Brief at 30). To the extent that the judge failed to discuss in his sentencing order and/or to consider and weigh any further allegedly established nonstatutory factors supported by the evidence, i.e., the fact

that Durocher had dropped out of school, the fact the he loved his mother and retarded brother and the fact that he felt remorse, any such error would be harmless beyond a reasonable doubt. See e.g., Sochor, supra (not error for sentencer to conclude that defendant's family history did not establish mitigation); Valle v. State, 581 So.2d 40 (Fla.1991); Cook v. State, 581 So.2d 141, 144 (Fla.1991) (sentencer's failure to address such nonstatutory factors as defendant's non-violence, religious conversion and good work and family history harmless error, in light of double murder); Wickham v. State, ___ So.2d ___ (Fla. Dec. 12, 1991) (sentencer's failure to find and weigh all mitigating evidence presented harmless error, in light of, inter alia, the strong case for aggravation).

Finally, Appellee would contend that the instant sentences of death are proportionally correct. Durocher has murdered at least five persons.[3] Despite any claim of intoxication and/or the existence of a murder/suicide pact, the murders in this case were well planned and cold-bloodedly executed. While Dr. Barnard's report did indicate the existence of mitigation, which was weighed and considered by the sentencer, these factors were simply insufficient to reduce the enormity of Durocher's crimes. Given the multiple murders in this case, death is the appropriate sentence, and Durocher's three sentences of death should be affirmed in all respects. See e.g., Daugherty v. State, 419

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[3] In his deposition, Detective Redmond stated that Durocher had also admitted to two additional murders in Clay County, involving two men whom he shot and buried. Appellant stated that he would clear these murders "when the time is right" (R 826).

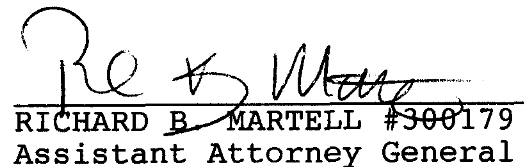
So.2d 1067 (Fla.1982) (defendant had murdered five persons); Henderson v. State, 463 So.2d 196 (Fla.1985) (same); Correll v. State, 523 So.2d 562 (Fla.1988) (defendant murdered four persons, including ex-wife and child); Zeigler v. State, 587 So.2d 127 (Fla.1991) (defendant murdered four persons, including wife and in-laws).

CONCLUSION

WHEREFORE, for the aforementioned reasons, Appellee respectfully moves this Honorable Court to affirm Appellant's convictions and sentences of death in all respects.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Nancy Daniels, Public Defender, Second Judicial Circuit, and David A. Davis, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 17 day of December, 1991

RICHARD B. MARTELL
Assistant Attorney General