

IN THE SUPREME COURT OF FLORIDA

RICHARD WALLACE RHODES,

Appellant,

vs.

Case No. 67,842

STATE OF FLORIDA,

Appellee.

FILED

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By *SC*

Emily C. King

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

SUPPLEMENTAL BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

This supplemental brief addresses the applicability of Booth v. Maryland, 428 U.S. ___, 107 S.Ct. ___, 96 L.Ed.2d 440 (1987) both to an issue already briefed, Issue XII.A., and to a new issue, which is numbered XVI. herein.

STATEMENT OF THE CASE AND FACTS

Appellant, RICHARD WALLACE RHODES, will rely upon the Statement of the Case contained in his initial brief.

Appellant makes the following additions to the Statement of the Facts contained in his initial brief:

At the sentencing hearing of September 12, 1985, the prosecutor below read to Judge Helen Hansel written statements prepared by the aunt and the mother of the victim herein, Karen Nieradka, urging that Appellant be sentenced to die in the electric chair. (R 2950-2951)

ISSUE XII

THE PENALTY PHASE OF RICHARD RHODES' TRIAL WAS TAINTED BY EVIDENCE HE WAS UNABLE TO CONFRONT, IMPROPER CROSS-EXAMINATION OF A DEFENSE WITNESS, AND IMPROPER AND INFLAMMATORY ARGUMENT BY THE PROSECUTOR.

A. Inadmissible Evidence

At the penalty phase of Richard Rhodes' trial the State introduced into evidence a judgment and sentence from Nevada showing Rhodes' conviction for battery with a deadly weapon and attempted robbery. (R 396,2595-2596) After denial of a defense motion in limine which sought to exclude it, the State introduced into evidence and played for the jury a tape recording of an interview that Captain Jerry Rolette of the Mineral County, Nevada Sheriff's Office conducted with the 60-year old victim of the Nevada offenses, Jema Adduchio. (R 2600-2636, 2640, 2984, 2994-3011)

The tape recording contained, among other matters, the victim's description of how her assailant tried to cut her throat (R 3006-3007), and how she "got panic inside." (R 3009)

The prosecutor made vivid use of Adduchio's account of the incident in his argument to the jury, as follows (R 2719):

After hearing all the evidence in the guilt phase and hearing the tape recording, testimony of Captain Rolette, I think you get some idea what the defendant means when he says he's a vampire. A vampire is a person that attacks at night. In this case he attacked Karen Nieradka at night, Sunset Point Hotel. He attacked Mrs. Adduchio at night, 11:00 P.M. A vampire is someone who looks for blood. In this case he said hat [sic] Karen Nieradka was bleeding from the mouth, and the bra is in evidence, indicating the amount of blood on the bra itself.

[After a defense objection to the prosecutor's remarks was overruled, he continued as follows (R 2719)]:

He attacked Mrs. Adduchio and cut her about the face and hand and the throat, drawing that blood. A vampire is someone that goes for the throat. That's exactly what the defendant did in both of these crimes. He attacked [sic] Mrs. Adduchio and tried to stab her in the throat, put up her hand to try to protect herself and still got slashed in the throat. And attacked Karen Nieradka, by placing his hands around her throat and squeezing and squeezing until all the life was out of her body; truly is a vampire. As a vampire he deserves to be put to death.

In Booth v. Maryland, 428 U.S. ___, 107 S.Ct. ___, 96 L.Ed.2d 440 (1987) the Supreme Court of the United States held victim impact evidence pertaining to the suffering of the victim's family and the character of the victim to be irrelevant and inadmissible at the sentencing phase of a capital murder trial. The taped interview with Jema Adduchio essentially constituted a victim impact statement dealing with the crimes for which Appellant was convicted in Nevada. If, as the Court held in Booth, a victim impact statement relating to the very crime for which the defendant is being sentenced is irrelevant, then victim impact evidence dealing with a wholly unrelated crime must have even less relevance.

Pursuant to Booth, Appellant's rights under the Eighth Amendment to the Constitution of the United States were violated by the introduction of the taped interview with Jema Adduchio. His sentence must therefore be reduced to life in prison, or he must be afforded a new penalty phase before a new jury.

ISSUE XVI

APPELLANT'S CONSTITUTIONAL RIGHTS
WERE VIOLATED BY THE STATE'S USE OF
VICTIM IMPACT STATEMENTS PREPARED BY
THE AUNT AND MOTHER OF KAREN NIERADKA
AT APPELLANT'S SENTENCING HEARING.

At Appellant's sentencing hearing of September 12, 1985 before Judge Helen Hansel, the prosecutor read to the court two written statements prepared by members of the family of the victim herein, Karen Nieradka. (R 2950-2951) The first, from Nieradka's aunt, Evia Sage, read as follows (R 2950):

As the aunt of Karen Hieradka [sic] and the twin sister of her mother, Eva Jeter, I want to tell you that we miss her only daughter Karen very much. She was a sweet, loving young woman and was very much loved by her mother, brother and anyone who knew her.

Do not let Richard Wallace Rhodes go this time with a prison sentence. He heartlessly murdered my niece, Karen, and he should be sentenced to the electric chair.

The second, from Nieradka's mother, read as follows (R 2951):

My first time in court was a heartbreaker for me. I sat in court and listened to the way Richard Wallace Rhodes murdered my daughter Karen. I wondered why he was running around free when he had committed so many crimes. I decided he was a heartless person when he could smile or smirk during the trial. This is something I will never forget. When the dumpster goes by my home twice a week, try to imagine what this does to me. I have been very ill and have had to be treated by my doctor constantly, every month since this happened.

Richard Wallace Rhodes took the life of my daughter. Don't give him a life sentence or he will be paroled and live on to murder someone else's daughter. He should get the electric chair.

Her statement was signed, "A heartbroken mother, Eva Jeter." (R2951)

After reading the above statements to Judge Hansel and making additional arguments, the prosecutor urged the court "[o]n behalf of the family and on behalf of my client, the People of the State of Florida," to sentence Appellant to die. (R 2956-2957)

Victim impact statements of the type relied upon below were held to be inadmissible for consideration by the sentencer in a capital case in Booth v. Maryland, 428 U.S. ___, 107 S.Ct. ___, 96 L.Ed.2d 440 (1987). By injecting into the sentencing process the irrelevant factors of Nieradka's character and the suffering of her family, the information contained in the victim impact statements "create[d] an impermissible risk that the capital sentencing decision [in Appellant's case would] be made in an arbitrary manner," 96 L.Ed.2d at 450, in violation of the Eighth Amendment.

Defense counsel below did not lodge an objection to the use of the statements made by Sage and Jeter, but he may have felt any such objection would have been fruitless in light of section 921.143(1) of the Florida Statutes, which provides:

921.143 Appearance of victim or next of kin to make statement at sentencing hearing; submission of written statement.--

(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has been convicted of any felony or who has pleaded guilty or nolo contendere to any crime, the sentencing court shall permit the victim of the crime for which the defendant is being sentenced, or the next of kin of the victim if the victim has died from causes related to the crime, to:

(a) Appear before the sentencing court for the purpose of making a statement under oath for the record; or

(b) Submit a written statement under oath to the office of the state attorney, which statement shall be filed with the sentencing court.

In Booth the Court invalidated a provision of the Maryland code requiring the presentence report in all felony cases to contain a victim impact statement describing the effect of the crime on the victim and his family, insofar as the provision required consideration of this information at the sentencing phase of a capital murder trial.

Florida's statute suffers from the same constitutional infirmities as the Maryland statute, rendering section 921.143(1) violative of the Eighth Amendment insofar as it applies to capital sentencing proceedings.

Appellant's sentence must be reduced to life in prison or, in the alternative, he must be afforded a new sentencing hearing.

CONCLUSION

Appellant, Richard Wallace Rhodes, respectfully prays this Honorable Court to reduce his sentence of death to a sentence of life imprisonment. In the alternative, he asks for a new penalty phase before a new jury. If neither of these forms of relief is forthcoming, Appellant requests a new sentencing hearing before the court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Attorney General's Office, Park Trammell Building, 1313 Tampa Street, 8th Floor', Tampa, Florida, 33602, by mail on this 28th day of August, 1987.

Robert F. Moeller
ROBERT F. MOELLER