

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT, IN
AND FOR LAKE COUNTY, FLORIDA

CASE NO. 87-1347-CF-A-01 and
88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

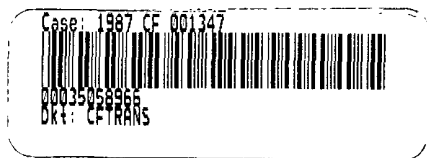
Defendant.

SENTENCING

THIS CAUSE came on for Sentencing, before the Honorable
Jerry T. Lockett, Circuit Judge, at Lake County Courthouse,
Tavares, Florida 32778, on June 30, 1988, at 9:30 A. M.

APPEARANCES: Mr. Jack T. Edmund, Esquire
423 Pool Branch Road
Fort Meade, Florida 33841
Attorney for Defendant

Mr. Stephen D. Hurm, Esquire
and
Mr. Thomas Hogan, Esquire
Office of the State Attorney
Lake County Courthouse
Tavares, Florida 32778



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AUG 11 2 49 PM '88
CLERK OF CIRCUIT
AND COUNTY COURTS
LAKE COUNTY
TAVARES, FLORIDA

135.66

1 (WHEREUPON, COURT CONVENES AT 9:38 A. M.)

2 THE COURT: Good morning, ladies and gentlemen. This is
3 Circuit Court, Criminal Division. We are here for the
4 purpose of the case of State of Florida versus James Aren
5 Duckett. Mr. Bailiff, if you would, please.

6 (WHEREUPON, DEFENDANT IS BROUGHT INTO COURTROOM AT
7 9:40 A. M.)

8 THE COURT: Madam court reporter, let the record reflect
9 the Defendant is present in the courtroom at this time.

10 Mr. Edmund, I believe you have several pending motions.
11 I will hear you on those at this time.

12 MR. EDMUND: If it please the Court, may I refer to
13 our chambers conference?

14 THE COURT: Yes, sir.

15 MR. EDMUND: In light of our discussion in chambers
16 conference with the State Attorneys present, of course,
17 I understand the contact visit order. I do not argue that
18 to any degree at this point in time.

19 As relates to our Motion for New Trial, I will ask that
20 Your Honor consider my arguments on each occasion for the
21 Motion for Directed Judgment of Acquittal. I think the
22 grounds for that set forth in my Motion for New Trial are
23 identical with those that I argued at the time of my
24 argument on the Motion for Judgment of Acquittal.

25 As far as the sentencing phase of this trial is

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1 concerned, again, I request that Your Honor consider the
2 argument that I made during the course of the sentencing
3 phase of the trial. You have what tangible exhibits that I
4 was going to present to the Court in the form of letters and
5 otherwise. I have nothing to say in that regard. My client
6 may or may not, when it comes to that portion or that phase
7 of the trial, if it please the Court, and I do not have
8 evidence to present to the Court at this time.

9 THE COURT: Alright, Mr. Hogan, what say you on the
10 Motion for New Trial?

11 MR. HOGAN: Judge, in the Motion for New Trial, I would
12 adopt the same argument as well, and the Court can consider
13 all the evidence that the Court heard during the course of
14 the trial. I would like to add one more thing.

15 During the conference in chambers mentioned by the
16 Defense Counsel, that was merely a procedural conference in
17 which you instructed us what time to be in court and what
18 procedures would take place. We didn't make no arguments or
19 any motions.

20 THE COURT: Yes, sir, I agree with that. It is the
21 Court's specific ruling the Defendant had no right to be
22 present at that conference.

23 Mr. Edmund, I have carefully considered your Motion
24 for a New Trial, as I did your arguments on your Judgment
25 for Acquittal at both appropriate times and all the evidence

1 in the case, and I deny your Motion for a New Trial.

2 Mr. Hogan, I will ask your office to prepare an Order
3 circulated to Mr. Edmund, with a copy to myself, so we can
4 review that.

5 Gentlemen, next let's address the Pre-Sentence Investi-
6 gation. There was conducted a Pre-Sentence Investigation by
7 the Office of Probation and Parole. Have both of you received
8 a copy? Mr. Hogan?

9 MR. HOGAN: Yes, sir.

10 THE COURT: Mr. Edmund?

11 MR. EDMUND: Yes, Your Honor.

12 THE COURT: The Court has reviewed the Pre-Sentence
13 Investigation, madam clerk, in a moment I am going to file
14 this with the Clerk of the Court. I am going to ask that
15 it be sealed, pursuant to Florida Rule of Criminal Procedure,
16 3.712. As to the Pre-Sentence Investigation, I draw your
17 attention to page four C. I have yellow interlineated
18 two and one-half lines on that page and as to page five,
19 I have likewise yellow interlineated five and one-half lines.
20 Those interlineated matters, it is the Court's position, are
21 not appropriate to be included in the Pre-Sentence Investi-
22 gation. They are stricken from the Pre-Sentence
23 Investigation. They are in no way considered by the Court
24 in its decision this morning.

25 Gentlemen, do either of you have any other objections to

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1 matters contained in the Pre-Sentence Investigation,
2 Mr. Hogan?

3 MR. HOGAN: No, Your Honor.

4 THE COURT: Mr. Edmund?

5 MR. EDMUND: No, Your Honor.

6 THE COURT: We will now conduct the sentencing hearing
7 pursuant to Florida Rule of Criminal Procedure 3.720.

8 Mr. Edmund, does the Defendant or do you, and I know you
9 previously indicated, but nevertheless, wish to be heard
10 prior to judgment and imposition of sentence?

11 MR. EDMUND: My client does, if it please Your Honor.

12 THE COURT: Yes, sir.

13 MR. DUCKETT: Your Honor, I would like to tell you how
14 I feel personally about this case.

15 Judge Lockett, I watched you all through the trial. I
16 know from your actions and expressions that you felt very
17 uncomfortable with the evidence in the case in general.
18 You mentioned several times during the trial your feelings,
19 which are recorded in transcript. I know that my appeal
20 will prove my innocence and also that the way the trial was
21 held was not in accordance with the law.

22 I do not understand why you allowed the State to put
23 unproved testimony on the stand in regards to the Gurley,
24 Fowler, Dow, and Upshaw. The State had no one to back their
25 story. We were not allowed to discredit the girls in any way.

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1 In a trial of this great importance, where the life is
2 on the line, any evidence introduced should be true and proven.
3 If the State was so positive about their case, why didn't they
4 bring forth people to verify these little statements.
5 Nowhere in discovery testimony that I had, was there anybody
6 that told the same story as the four females. Noone.

7 The two people Gurley stated was with her made no
8 statement like hers. The Upshaw girl stated she told people
9 at the Jiffy Store. No statement was from them.
10 The Dow girl had noone but a sister-in-law, which did not say
11 much, and the Fowler girl had a friend who told nothing.
12 Again, noone but the four females and their stories.

13 Don't it seem funny to you that not one made a report
14 to the police or Sheriff's Office until Lake County went
15 hunting, even after being assaulted by a police officer in
16 uniform?

17 I am asking you not to complicate this case more by
18 imposing the death penalty.

19 One more idea I would like to bring up. The Jury took
20 an oath to follow your instructions, which we all know they
21 did not. All six were so positive, in two hours and forty-
22 five minutes, of my guilt, and then to take over three hours
23 for a sentence recommendation and end up with an eight to
24 four vote. It seems like someone had second thoughts.

25 I ask you again to spare my life. I did not do this.

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1 But keep in mind, when the person who did this repeats it,
2 I want to see the face of the person telling the victim's
3 mother, father, sister or brother, "I am sorry. We thought
4 we had the right one before."

5 Thank you, Your Honor.

6 THE COURT: Anything else, Mr. Edmund?

7 MR. EDMUND: No, Your Honor.

8 THE COURT: Do you have any rebuttal, Mr. Hogan?

9 MR. HOGAN: No, Your Honor.

10 THE COURT: Mr. Duckett, at this time, you, having been
11 found guilty by a Jury of your peers of Capital Sex Battery
12 in Case No. 88-262, consolidated for trial with Case 87-1347,
13 the Court adjudicates you guilty of that offense.

14 Having been found guilty unanimously by a Jury of your
15 peers in Case 87-1347, of First Degree Premeditated Murder,
16 the Court adjudicates you guilty of that offense.

17 Mr. Edmund, do you have any legal cause you may show
18 why sentence should not now be pronounced?

19 MR. EDMUND: No, Your Honor.

20 THE COURT: Do you have anything further before I
21 pronounce sentence?

22 MR. EDMUND: No, Your Honor.

23 THE COURT: Mr. Hogan, anything further?

24 MR. HOGAN: No.

25 THE COURT: Mr. Bailiff, if you will ask the Defendant

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1 to rise and bring him before the Court. Mr. Edmund, feel
2 free to join him.

3 (WHEREUPON, DEFENDANT AND MR. EDMUND RISE AND GO
4 BEFORE THE COURT)

5 THE COURT: This is in the Circuit Court of the Fifth
6 Judicial Circuit, in and for Lake County, Florida, Case No.
7 87-1347-CF, Murder in the First Degree and consolidated Case
8 No. 88-262-CF, Capital Sexual Battery. State of Florida
9 versus James Aren Duckett, Defendant.

10 These are the Court's written findings:

11 I.

12 FINDINGS OF FACT

13 The Court makes the following findings of fact as proven
14 during the guilt and penalty phase of the trial, beyond a
15 reasonable doubt:

16 1. The Defendant, James Aren Duckett, a police officer
17 at the time of the offense, in uniform, enticed the victim,
18 Teresa Mae McAbee, an eleven year old child, into his marked
19 patrol car. Thereafter, the Defendant drove the victim to a
20 remote location, whereupon the Defendant raped, strangled,
21 and drowned the victim.

22 2. The victim in this case was sexually battered
23 immediately prior to her death. This finding was supported
24 by the testimony of Dr. William Shutze, Medical Examiner,
25 who stated that the victim's hymen, painfully ruptured

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1 immediately prior to death. Further evidence presented
2 proved that the victim's clothing was stained with semen.

3 3. The victim died as a result of strangulation and
4 subsequent drowning. However, death was not immediate. The
5 evidence shows that the victim died after tremendous pressure
6 was exerted upon her throat for several minutes. During that
7 time, the victim was conscious for one or two minutes and
8 undoubtedly terrified at the realization that she was going
9 to die. Thereafter, the victim was thrown into a nearby
10 lake, where she died after ingesting a quantity of water.

11 4. The defendant is an adult male and weighed
12 approximately two hundred twenty-five pounds at the time of
13 the offense. He stands approximately six feet tall. The
14 victim was four feet eleven inches tall and weighed eighty-
15 three pounds at the time of her death.

16 And further, that the following was proven:

17 The defendant herein, has no significant history of
18 prior criminal activity; has supportive family and friends;
19 and has a strong family background and has engaged in efforts
20 to better his educational level.

21 II.

22 FINDINGS OF LAW

23 Tompkins versus State, 502 So2d 415, Florida Supreme
24 Court decision of 1986, in which the defendant was convicted
25 of Murder while trying to commit Sexual Battery upon a

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1 fifteen year old victim. The Supreme Court of Florida held
2 that the commission of a Murder while attempting to commit
3 a Sexual Battery, was an aggravating circumstance within the
4 purview of Section 921.141(5)(d), Florida Statute.

5 Further, the Court held that the Murder by Strangulation
6 of a conscious victim not resulting in an instantaneous
7 death is a crime which is heinous, atrocious, and cruel.

8 2. The Florida Supreme Court has also ruled in Adams
9 versus State, 412 So2d 850, Florida Supreme Court decision,
10 1982, that strangulation of a frightened child by an adult
11 is a heinous, atrocious, and cruel act. In Adams, the
12 victim, an eight year old girl, was strangled by the defendant,
13 a former neighbor, after he got off work as a prison guard.
14 The defendant picked the child up in his car and drove to a
15 remote location prior to killing the victim.

16 III.

17 CONCLUSION

18 Based upon the foregoing Findings of Fact and Law, and
19 having considered the recommendation of the Jury, the
20 Pre-Sentence Investigation, all aspects of the defendant's
21 character of record, the circumstances of the crime, and all
22 statutory and non-statutory circumstances of mitigation,
23 presented by the defendant, it is the conclusion of the Court
24 that:

25 1. The victim in this case was murdered during the

1 commission of or immediately after a Sexual Battery, thus
2 establishing an aggravating circumstance under Section
3 921.141(5)(d), Florida Statutes.

4 2. The child victim in this case was strangled by an
5 adult, during which she was conscious and subsequent to which
6 she was thrown into a lake, where she ingested water and died.
7 Thus establishing the aggravating circumstance under Section
8 921.141(5)(h), Florida Statutes, that the crime was
9 especially heinous, atrocious, and cruel.

10 3. The defendant has no significant history of prior
11 criminal activity, thus giving rise to a mitigating circum-
12 stance under Section 921.141(6)(a), Florida Statutes.

13 4. The defendant's family background and educational
14 efforts give rise to non-statutory mitigating circumstances.

15 5. The aggravating circumstances legally outweigh the
16 mitigating circumstances herein.

17 SENTENCING ORDER

18 The defendant, being personally before this Court,
19 accompanied by his attorney, Jack T. Edmund, and having been
20 adjudicated guilty herein of the offenses charged in the
21 above referenced Indictment and Information respectively,
22 and the Court having given the defendant an opportunity to
23 be heard and offer matters in mitigation of sentence, and to
24 show cause why he should not be sentenced as provided by law,
25 and no cause being shown, and the Court having given written

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1 findings upon which this sentence is based, which have been
2 attached hereto and incorporated herein by reference, it is
3 the sentence of the Court that:

4 1. As to Case No. 87-1347-CF, James Aren Duckett be
5 sentenced to death by electrocution.

6 The Sheriff of Lake County, Florida, is hereby ordered
7 and directed to deliver the defendant forthwith, to the
8 Department of Corrections, together with a copy of this
9 Judgment of Sentence, to await the execution of the sentence.

10 2. As to Case No. 88-262, consolidated for trial by
11 stipulation of counsel, with Case No. 87-1347, James Aren
12 Duckett be sentenced to life imprisonment with twenty-five
13 years minimum mandatory incarceration. The defendant is
14 given credit for all time served. This sentence is to run
15 consecutive and not concurrent to that imposed in Case No.
16 87-1347-CF.

17 The Clerk of the Circuit Court is hereby directed to
18 prepare a certified copy of the record of the Conviction of
19 Sentence in this cause and deliver said record to the Sheriff,
20 who is hereby ordered to send the record to the Governor of
21 Florida.

22 Certified copies of the record will also be provided to
23 the Office of the State Attorney, and counsel for the
24 defendant.

25 Mr. Duckett, you are advised in open court of your right

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1 to appeal from this sentence, by filing a Notice of Appeal
2 within thirty days from this date with the Clerk of the Court.
3 Florida Supreme Court will conduct an automatic review of
4 such sentence, pursuant to the Florida Rules of Appellate
5 Procedure.

6 You are advised of your right to assistance of counsel
7 in the taking of said appeal or automatic review, at the
8 expense of the State, upon a showing of indigency.

9 Stand to your left and be fingerprinted by the bailiff.

10 (WHEREUPON, DEFENDANT IS FINGERPRINTED IN OPEN COURT)

11 THE COURT: Do we have anything more before the Court
12 at this time, Mr. Hogan?

13 MR. HOGAN: No, Your Honor.

14 THE COURT: Mr. Edmund?

15 MR. EDMUND: No, Your Honor.

16 (WHEREUPON, DEFENDANT LEAVES COURTROOM)

17 THE COURT: Court will be adjourned.

18 (WHEREUPON, COURT IS IN RECESS AT 9:55 A. M.)

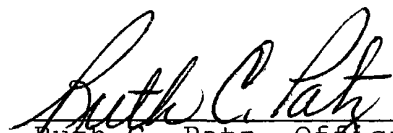
19
20 ***** END OF PROCEEDINGS *****
21
22
23
24
25

C E R T I F I C A T E

STATE OF FLORIDA)
)
COUNTY OF LAKE)

I, Ruth C. Patz, Official Court Reporter, do hereby
certify that I was authorized and did duly report the
proceedings in the case of STATE OF FLORIDA VERSUS
JAMES AREN DUCKETT, Case Nos. 87-1347-CF-A-01 and 88-262-
CF-A-01, and the above and foregoing pages one through
fourteen inclusive, are a true and accurate transcript of the
said testimony and proceedings.

IN WITNESS WHEREOF, I set my hand this 30th day of
June, A. D., 1988.



Ruth C. Patz, Official Court
Reporter, Fifth Judicial
Circuit