

IN THE FLORIDA SUPREME COURT

FILED  
STATE

JUL 6 1987

CARL PUIATTI, :  
Appellant, :  
vs. :  
STATE OF FLORIDA, :  
Appellee. :  
\_\_\_\_\_ :

CLERK OF SUPREME COURT  
Case No. 65,321

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

INITIAL BRIEF OF APPELLANT ON REMAND FROM  
THE SUPREME COURT OF THE UNITED STATES

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE

On October 13, 1983, a Pasco County grand jury indicted Appellant, CARL PUIATTI, and Robert D. Glock, II, for the kidnapping, robbery, and first-degree murder of Sharilyn Richie. (R 13-14)<sup>1/</sup> They were tried jointly by a jury, and found guilty as charged on March 23, 1984. (R 271-273,2184-2185)

After receiving additional evidence at a penalty phase, the jury recommended the death penalty for both Appellant and his codefendant by votes of eleven to one, on March 25, 1984. (R 286,2531)

On May 4, 1984 the court did impose a sentence of death upon each man for the murder, and consecutive life sentences for the kidnapping and robbery. (R 326,328,339,2568, 2695,2697)

On August 21, 1986 this Court affirmed Appellant's convictions and sentences, and those of his codefendant. (The Court's opinion is reported at 495 So.2d 128.) The Court denied Appellant's motion for rehearing on October 28, 1986, and issued its mandate on December 2, 1986.

Appellant filed a petition for writ of certiorari in the Supreme Court of the United States on December 24, 1986. On April 27, 1987 the Supreme Court vacated the judgment of this Court and remanded for reconsideration in light of Cruz v. New York, 481 U.S. \_\_\_, 109 S.Ct. \_\_\_, 95 L.Ed.2d 162 (1987).

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<sup>1/</sup> Page references herein are to the original record on appeal that was before this Court upon Appellant's direct appeal.

STATEMENT OF THE FACTS

Appellant, Carl Puiatti, will rely upon the Statement of the Facts contained in his initial brief on direct appeal.

Appellant would also note that the essential facts are contained in this Court's opinion issued on August 21, 1986 and reported at 495 So.2d 128.<sup>2/</sup>

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<sup>2/</sup> In his motion for rehearing Appellant noted several factual inaccuracies in the Court's opinion.

## SUMMARY OF ARGUMENT

Pursuant to Cruz v. New York, the fact that a defendant's and codefendant's confessions "interlock" does not eliminate a Bruton violation, but the error may be harmless. However, this Court has indicated that in Florida a Bruton violation may never be considered harmless. Furthermore, the error here was harmful precisely because, according to this Court, the statements of Appellant and his codefendant were interlocking to a great extent, as well as because the prosecution depended heavily upon the statements to prove its case.

The jury necessarily must have been confused by hearing the two individual statements as well as the joint statement. At penalty phase they may have been uncertain as to which man was more deserving of death because of the conflicting confessions, or may have used Glock's statement blaming Appellant for deciding to kill Richie and firing the fatal shots as a basis for recommending that Appellant should die.

The joint confession did not cure the error, as the jury was not bound to believe it.

ARGUMENT

WHAT IS THE IMPACT OF CRUZ V. NEW YORK UPON THE CASE OF APPELLANT, CARL PUIATTI?

Upon remand from the Supreme Court of the United States, the sole question presented herein is what effect that Court's decision in Cruz v. New York, 481 U.S. \_\_\_, 109 S.Ct. \_\_\_, 95 L.Ed.2d 162 (1987) has upon the case of Appellant, Carl Puiatti.

In Cruz the Court held that a codefendant's confession which implicates the defendant is inadmissible at their joint trial where the codefendant does not testify, even though the codefendant's confession may "interlock" with a confession made by the defendant.<sup>3/</sup> The Court thus abandoned the rationale of the plurality in Parker v. Randolph, 442 U.S. 62, 99 S.Ct. 2132, 60 L.Ed.2d 713 (1979), the case upon this Court relied in its opinion affirming Appellant's convictions and sentences, and adopted instead the concurring opinion of Justice Blackmun, which provides for a harmless error analysis to be conducted where a codefendant's confession is admitted in violation of the defendant's Confrontation Clause rights as explained in Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

Where, as here, there is a violation of the defendant's constitutional rights, it is incumbent upon the State, as the bene-

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<sup>3/</sup> The Court did leave the door open for a non-testifying codefendant's confession inculcating the defendant to be admitted at a joint trial where the statement bears sufficient indicia of reliability to be directly admissible against the defendant, but this determination is for the trial court to make, and Judge Cobb found each individual statement admissible only against the person who made it. (R 1914)

ficiary of the error, to prove beyond a reasonable doubt that the error did not contribute to the verdict; otherwise the defendant is entitled to a reversal of his improperly-obtained convictions. Chapman v. California, 386 U.S. 18, 87 S.Ct.824, 17 L.Ed.2d 705 (1967). This is a burden the State cannot meet in the instant case.

In McCray v. State, 416 So.2d 804 (Fla.1982) this Court noted that when codefendants are tried together, a fair determination as to each person's guilt or innocence may only be achieved

when all the relevant evidence regarding the criminal offense is presented in such a manner that the jury can distinguish the evidence relating to each defendant's acts, conduct, and statements, and can then apply the law intelligently and without confusion to determine the individual defendant's guilt or innocence.

416 So.2d at 806. Severance is appropriate

when the jury could be confused or improperly influenced by evidence which applies to only one of several defendants. A type of evidence that can cause confusion is the confession of a defendant which, by implication, affects a codefendant, but which the jury is supposed to consider only as to the confessing defendant and not as to the others. A severance is always required in this circumstance. Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

416 So.2d at 806 (emphasis supplied). See also Fla.R.Crim.P. 3.152(b)(2). By the requirement that severance must always be ordered in the circumstances outlined above, this Court has indicated that, in Florida, a Bruton violation such as occurred here can never constitute harmless error.

Furthermore, in Cruz the Supreme Court noted that the harmfulness is admitting the codefendant's statement depends to a

large degree upon the extent to which his statement interlocks with that of the defendant. 95 L.Ed.2d at 171. This Court found Appellant's confession and that of his codefendant to be substantially interlocking, containing only "slight inconsistencies." 495 So.2d at 130. Therefore, under the rationale of Cruz the harm rendered to Appellant's case by the admission of Glock's statement was great.

It must be remembered that the statements made by Glock and Appellant formed a major portion of the State's case. There were no eyewitnesses, and the other evidence linking the two men to the crimes was circumstantial.

The jurors who tried Glock and Appellant necessarily must have been confused by hearing three different versions of what happened (the individual statement of Glock, the individual statement of Puiatti, and the joint confession) and being instructed they could only consider each man's individual confession as it pertained to him.

The prejudice to Appellant which resulted from the introduction of Glock's confession and the resulting confusion may best be seen with reference to the penalty phase of the joint trial. In Glock's statement he blamed Appellant for formulating the idea to return to the victim and kill her, and said that it was Appellant who fired the final shots which actually killed Sharilyn Richie. (R 1809,2790-2792) These are matters which could have had a profound impact upon the jury's sentencing recommendation, as they directly related to which man was more responsible for Richie's actual death.

Or it may be that the identical eleven to one death recommendations for both men resulted from the jurors' inability to determine the degree of blameworthiness attributable to each because of the contradictions created by the introduction of Glock's individual confession.

Glock's individual confession was especially damaging to Appellant's effort to establish the statutory mitigating circumstance that he was under the substantial domination of Glock at the time of the crimes. §921.141(6)(e), Fla.Stat.(1983). If the jury believed Glock's statement that it was Appellant's idea to shoot Sharilyn Richie, this would have negated the expert testimony Appellant presented which supported the existence of this mitigating circumstance.

Glock's individual confession, coupled with the conflicting psychological testimony presented at penalty phase by Glock and Appellant, likewise led the court to reject as a mitigating circumstance that Appellant acted under extreme duress or under the substantial domination of Glock when the crimes were committed. (R 346)

The joint confession Appellant and Glock gave did not cure the problems created by the introduction of Glock's statement at the joint trial. Even in the joint statement the two men disagreed upon how many shots Glock fired at the victim. (R 1996,A 68) More importantly, the jury was free to believe either one of the individual confessions in lieu of the joint confession. All three were in evidence, and it was up to the jurors as the triers of fact to decide which confession to believe. (The court specifically instructed the jurors that they could "believe or disbelieve all or any part of the

evidence or the testimony of any witness.") (R 2166)

It should also be noted that Glock's individual confession may well have made more impact upon the jury than the joint statement because tape recordings of the individual confessions were played for the jury (R 1914,1920-1921), whereas the transcript of the joint confession was merely read by the court reporter. Thus, the jury could hear voice inflections, etc. on the individual confessions in order better to judge their credibility, but had no such assistance with regard to the joint confession.

For these reasons the improper introduction of Robert Glock's statement implicating Appellant at their joint trial cannot be deemed harmless error. Appellant must be granted a new trial or, at the very least, a new penalty trial.

CONCLUSION

Based upon the foregoing arguments, Appellant, Carl Puiatti, respectfully prays this Honorable Court to grant him a new trial. In the alternative, Appellant asks for a new penalty trial before a jury.

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 2nd day of July, 1987.

for *Douglas J. Connor*  
ROBERT F. MOELLER