

IN THE FLORIDA SUPREME COURT

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

Case No. 65,891

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

REPLY BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

Appellant, CARL PUIATTI, will rely upon his initial brief to reply to the arguments presented in the State's answer brief, except for the following additions regarding Issues III., IV., V., and VI.A.

ARGUMENT

ISSUE III

CARL PUIATTI WAS DENIED HIS RIGHT TO A FAIR TRIAL BY THE PROSECUTOR'S INFLAMMATORY AND PREJUDICIAL STATEMENTS TO THE JURY.

Appellee cites Darden v. State, 329 So.2d 287 (Fla.1976) in support of its contention that it was proper for the prosecutor below to liken Carl Puiatti and his co-defendant to animals. In Darden, however, unlike the instant case, it was defense counsel who first referred to the perpetrator of the criminal acts involved therein as an "animal."

ISSUE IV

THE TRIAL COURT ERRED BY OVERRULING A DEFENSE OBJECTION TO THE PROSECUTOR'S CLOSING ARGUMENT WHICH ADVISED THE JURY THAT THEY COULD PRESUME PREMEDITATION FROM MR. PUIATTI'S INVOLVEMENT IN A FELONY MURDER.

The State relies heavily upon Justice Adkins' dissenting opinion in State v. Jones, 377 So.2d 1163 (Fla.1979) to bolster its argument that the assistant state attorney accurately stated the law when he told the jury that premeditation is presumed when a felony murder is committed. However, Justice Adkins' dissent actually seems to support Carl Puiatti's position. For example, in the portion quoted by Appellee at page 24 of its brief, Justice Adkins stated that it would be more accurate to say that the requisite intent required for first degree murder is presumed from proof of felony murder, instead of saying that premeditation is presumed. The entire thrust of his dissent is that premeditated murder is a separate species of first degree murder for

which a defendant may be prosecuted, and the State does not prove premeditation by proving felony murder.

ISSUE V

THE TRIAL COURT ERRED BY REFUSING
TO INSTRUCT THE ADVISORY JURY CON-
CERNING SPECIFIC NON-STATUTORY MITI-
GATING CIRCUMSTANCES.

Carl Puiatti takes vigorous exception to Appellee's claim that he was permitted by the trial court to argue to the jury an irrelevant factor in mitigation, to-wit: that he had a supportive family, and that a "beneficial tactic" thus "was made available" to him (Brief of Appellee, p.28)^{1/} This element was not irrelevant under Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 793 (1978), as Appellee asserts. The fact that Puiatti had a supportive family is the "flip side" of the situation in Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), in which the Supreme Court held evidence of the defendant's troubled family background to be relevant to the sentencing decision. Puiatti's evidence showed that there were people in the community who cared for him, and that would aid in his rehabilitation should his life be spared. See Cofield v. State, 274 S.E. 2d 530 (Ga.1981). Thus, contrary to Appellee's contention, the non-statutory mitigating circumstance for which Puiatti argued was highly relevant; he was not given any special benefit by the court below to which he was not legally entitled.

^{1/} Puiatti would point out that the State lodged no relevancy objection to his argument in the court below. (R2501-2520)

ISSUE VI

THE TRIAL COURT ERRED BY SENTENCING CARL PUIATTI TO DEATH BECAUSE THE PENALTY WEIGHING PROCESS INCLUDED INAPPLICABLE AGGRAVATING CIRCUMSTANCES AND EXCLUDED APPLICABLE MITIGATING CIRCUMSTANCES THEREBY RENDERING MR. PUIATTI'S DEATH SENTENCE UNCONSTITUTIONAL UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

A.

The Trial Court Erred In Finding As An Aggravating Circumstance That The Homicide Was Committed In A Cold, Calculated, and Premeditated Manner.

Many of the cases Appellee cites at pages 30 and 31 of its brief are distinguishable from the case presently before the Court. In Davis v. State, 461 So.2d 67 (Fla.1984), Clark v. State, 443 So.2d 973 (Fla.1983) and Thomas v. State, 456 So.2d 454 (Fla. 1984) the appellants did not even challenge the applicability of the cold, calculated, and premeditated aggravating circumstance on appeal. In Smith v. State, 424 So.2d 726 (Fla.1982) the appellant claimed that this aggravating circumstance was vague, not that it was inapplicable to the facts of his case. Middleton v. State, 426 So.2d 548 (Fla.1982) involved a lengthy period of cold reflection (an hour) not present in this case. Carl Puiatti and Robert Glock did not stalk the victim as in Mills v. State, 462 So.2d 1075 (Fla.1985). Nor did they employ the high level of planning before and after the crime exhibited by the defendant in Card v. State, 453 So.2d 17 (Fla.1984). And in Kennedy v. State, 455 So.2d 351 (Fla.1984) this Court specifically rejected the trial court's finding that one of the murders was committed in a cold, calculated and premeditated manner. (Kennedy involved

two homicides, but the trial court only found this aggravating circumstance applicable to one of them.)

CONCLUSION

Appellant CARL PUIATTI, renews his prayer for the relief requested in his initial brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, FL 33602, by mail on this 22nd day of May, 1985.

Robert F. Moeller

ROBERT F. MOELLER