

IN THE SUPREME COURT OF FLORIDA

CASE NO. ⁷¹⁶⁴⁶~~737648~~

FILED

SID J. WHITE

SEP 24 1990

CLERK, SUPREME COURT

By [Signature]
Deputy Clerk

KRISHNA MAHARAJ,

Appellant

vs.

THE STATE OF FLORIDA,

Appellee.

AN APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
CRIMINAL DIVISION

BRIEF OF APPELLEE

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INTRODUCTION

The Appellant, Krishna Maharaj, was the defendant below. The Appellee, the State of Florida, was the prosecution below. The parties will be referred to as they stood below. The symbol "R" will designate the record on appeal.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

The State relies on its statement of the case and facts as established in its answer brief. However, the following facts are supplemental thereto as it concerns the issue raised in the supplemental brief.

Pursuant to the agreement of the parties, an independent polygraph examination was performed on Neville Butler. (R.187). Thereafter, the State filed a Motion in Limine to prevent any testimony concerning the polygraph examination. (R.1558-1559). On the hearing thereon, the Defendant specifically stated that he had no objection to the State's Motion in Limine. (R.1920-1921). During, Butler's trial testimony, the State asked for a cautionary instruction to remind Butler not to mention the fact that he took a polygraph. The trial court gave the cautionary instruction and once again the Defendant failed to object to the instruction or take any affirmative action to advise the court that it was necessary to his effective cross examination to bring up the polygraph. (R.2830-2839).

Butler then testified that he was not promised anything for his testimony; that he was not granted immunity and that he still could be charged as a coconspirator or accessory to the crimes. (R.2839-2840).

SUMMARY OF THE ARGUMENT

The Defendant complains that his cross examination of Butler was improperly limited when the trial court prohibited him from cross examining Butler on the polygraph. The Defendant never objected to the motion in limine or the cautionary instruction and therefore the point is not preserved for appeal.

Even if properly preserved, no error occurred since the polygraph was taken after Butler told the truth and was only given to insure that the new statement was in fact truthful. Finally, no error occurred since Defendant effectively showed the jury that Butler had a motive for cooperating with the State, to wit: not to be charged herein.

SUPPLEMENTAL POINT ON APPEAL

WHETHER THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE THAT BUTLER TOOK A POLYGRAPH WHERE DEFENDANT FAILED TO OBJECT THERETO AND WHERE THE POLYGRAPH WAS GIVEN AFTER BUTLER CHANGED HIS TESTIMONY AND WHICH RESULTS CONFIRMED THAT THE NEW STATEMENT WAS TRUTHFUL.

SUPPLEMENTAL ARGUMENT

THE TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE THAT BUTLER TOOK A POLYGRAPH WHERE DEFENDANT FAILED TO OBJECT THERETO AND WHERE THE POLYGRAPH WAS GIVEN AFTER BUTLER CHANGED HIS TESTIMONY AND WHICH RESULTS CONFIRMED THAT THE NEW STATEMENT WAS TRUTHFUL.

The Defendant contends that the trial court erred in granting the State's motion in limine to prohibit testimony concerning the fact that Butler took a polygraph test. Since Defendant failed to object to the Motion in Limine or when the cautionary instruction was given, the point is not preserved for review. Phillips v. State, 476 So.2d 197 (Fla. 1985).

Even if the point was preserved error still did not occur since the record reflects that Butler first decided to tell the truth and the polygraph was given to determine if his second statement was the truth. At no time did Butler fail a polygraph and then tell the truth. Therefore, for Defendant to have explored this area would have only buttressed Butler's testimony.

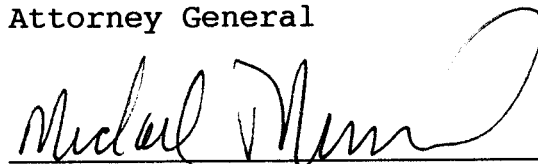
Finally, if error occurred, it was harmless since the jury was informed that Butler's motive for testifying was to save his own neck. Since his bias was brought before the jury no reversible error occurred. Marr v. State, 470 So.2d 703 (Fla. 1 DCA 1985), pet. for review dismiss, 475 So.2d 696 (Fla. 1985).

CONCLUSION

Based on the foregoing points and authorities, the State respectfully prays that the judgments and sentences, including the death sentence, of the lower court should clearly be affirmed.

Respectfully submitted,

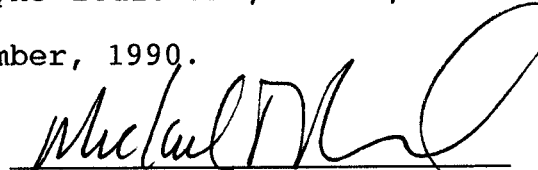
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing SUPPLEMENTAL BRIEF OF APPELLEE was furnished by mail to KENNETH E. COHEN, Attorney for Appellant, Miami Center - Suite 1330, 201 South Biscayne Boulevard, Miami, Florida 33131 on this 19 day of September, 1990.



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Assistant Attorney General

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