

IN THE SUPREME COURT OF FLORIDA

CARL PUIATTI,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 65,321

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APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY

**INITIAL BRIEF OF APPELLEE ON REMAND
FROM THE SUPREME COURT OF THE UNITED STATES**

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PRELIMINARY STATEMENT

CARL PUIATTI will be referred to as the "Appellant" in this brief and the STATE OF FLORIDA will be referred to as the "Appellee". The Record on Appeal will be referenced by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE FACTS

In his Statement of the Facts, appellant asserts that he will rely on the Statement of the Facts contained in his initial brief on direct appeal. Similarly, appellee will rely on the Statement of Facts contained in its initial brief on direct appeal.

To briefly summarize, as this Court acknowledged in its opinion,¹ Puiatti and co-defendant Glock individually confessed to the kidnapping, robbery and killing of Mrs. Ritchie. In their individual confessions, each indicated that the other had been the one to suggest the killing and each offered a different sequence of who fired in which order at the victim. Each admitted firing shots at the victim. Three days later, on August 24, Puiatti and Glock gave a joint statement concerning their involvement in the murder. In this joint confession the defendants resolved the inconsistencies in their prior statements: they agreed Glock initially suggested shooting the victim and that Puiatti fired the first shots and Glock fired the final shots. Puiatti v. State, 495 So.2d 128, at 129; (R.1994-1998).

Following this Court's affirmance of appellant's judgment and sentence the United States Supreme Court granted the petition for writ of certiorari and vacated and remanded to this Court for further consideration in light of Cruz v. New York, 481 U.S. ___, 95 L.Ed.2d 162 (1987).

¹/ Puiatti v. State, 495 So.2d 128 (Fla. 1986).

SUMMARY OF THE ARGUMENT

Despite the admission into evidence of appellant's co-defendant's individual confession, Cruz v. New York, 481 U.S. ___, 95 L.Ed.2d 162 (1987) does not require reversal. Both Cruz and earlier United States Supreme Court decisions recognize that violations of Bruton v. United States, 391 U.S. 123, 20 L.Ed.2d 476 (1968) may be harmless. See, Harrington v. California, 395 U.S. 250, 23 L.Ed.2d 284 (1969); Schneble v. Florida, 405 U.S. 427, 31 L.Ed.2d 340 (1972); Brown v. United States, 411 U.S. 223, 36 L.Ed.2d 208 (1973).

In the instant case, not only was the co-defendant's confession independently not severely damaging to appellant, but Puiatti also adopted and ratified his partner's statements in a joint confession (which is admissible against appellant) in which the discrepancies were involved. Since there is sufficient indicia of reliability in the joint confession, appellant's claim for reversal must fail.

POINT ON APPEAL

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

ARGUMENT

In Cruz v. New York, 481 U.S. ___, 95 L.Ed.2d 162 (1987), the Court held that where a nontestifying codefendant's confession incriminating the defendant is not directly admissible against the defendant, the confrontation clause bars its admission at their joint trial even if the jury is instructed not to consider it against the defendant and even if the defendant's own confession is admitted against him. 95 L.Ed.2d at 172.

In essence Cruz constitutes a departure from the earlier decision in Parker v. Randolph, 442 U.S. 62, 60 L.Ed.2d 713 (1979). In Parker, four Justices found no Sixth Amendment violation where the defendant had provided an interlocking confession, one reciting essentially the same facts as those of the nontestifying codefendant. But in Parker Justice Blackmun concurred, observing that introduction of the codefendant's confession constitutes error (a violation of Bruton v. United States) and that the Court should continue to decide in each particular case whether the error is harmless error.

In Cruz, the Court adopted the approach espoused by Justice Blackmun in Parker. The Supreme Court continues to adhere to the view that the courts examine the record to determine whether any confrontation clause violation was harmless. Cruz, 95 L.Ed.2d at 172; Harrington v. California, 395 U.S. 250, 23 L.Ed.2d 284

(1969); Schneble v. Florida, 405 U.S. 427, 31 L.Ed.2d 340 (1972); Brown v. United States, 411 U.S. 223, 36 L.Ed.2d 208 (1973).

There can be little serious argument that in the instant case the introduction of codefendant Glock's individual confession can be anything but harmless error. First of all, in Puiatti's own individual confession he admitted his willing participation in the kidnapping, robbery and murder of Mrs. Ritchie (R.2771-2784). Puiatti admitted firing the first shots at the victim (R.2777) and willingly turning the car around to drive back and finish the job (R.2778). Secondly, whatever may be said about any discrepancies between Puiatti's and Glock's individual confessions, appellant's subsequent admission and adoption of his partner's version in the August 24 joint confession clearly renders the admission of Glock's individual statement harmless error. In that joint confession Puiatti acknowledged that he agreed to Glock's suggestion that the victim should be shot, that he initially fired the weapon and agreed that Glock fired the later rounds (R.1994-1996). Quite apart from appellant's confession, Puiatti was implicated in the crimes by the discovery of his riding as a passenger in the victim's car when stopped by Trooper Moore in New Jersey (R.1848-1871) and the murder weapon found in that car as well as the wallet and pawn tickets. The victim's rings were recovered at the Ocala Pawn Shop (R.1837, 1844).

Appellant argues that in Florida a Bruton violation such as occurred here can never constitute harmless error. We

disagree. Indeed, in its prior decision on this appeal, this Court cited cases such as McCray v. State, 416 So.2d 804 (Fla. 1982) and O'Callaghan v. State, 429 So.2d 691 (Fla. 1983) to support the conclusion that appellant's guilt was clear and that no severance was required. 495 So.2d at 131.

Appellant also argues that under his interpretation of Cruz, that if there were only slight inconsistencies between the confessions of Glock and Puiatti "the harm rendered to appellant's case by the admission of Glock's statement was great." (Brief, p.6) Puiatti misreads Cruz as can be seen by examining the full statement in Justice Scalia's opinion:

"In fact, it seems to us that interlocking bears a positively inverse relationship to devastation. A codefendant's confession will be relatively harmless if the incriminating story it tells is different from that which the defendant himself is alleged to have told, but enormously damaging if it confirms, in all essential respects, the defendant's alleged confession. It might be otherwise if the defendant were standing by his confession in which case it could be said that the codefendant's confession does no more than support the defendant's very own case.

95 L.Ed.2d at 171.

This case presents the situation alluded to in this quote but not presented by the facts of Cruz, i.e., evidence of the defendant standing by his confession and standing by and adopting the codefendant's statement in the joint August 24 confession. The Cruz Court pointed out for example that the petitioner "sought to establish that Norberto had a motive for falsely reporting a confession that never in fact occurred." 95 L.Ed.2d at 171.

Puiatti obviously is not in Cruz' posture. With respect to the August 24 joint confession, not only is appellant's own statement admissible against him, but his affirmance, ratification and adoption of Glock's statement at that time renders the codefendant's statement admissible. Glock's open statement in the presence of and confirmation by Puiatti constitute the kind of sufficient indicia of reliability to be admissible against appellant despite the lack of opportunity of cross-examination which was recognized at the end of the Cruz opinion and in Lee v. Illinois, 476 U.S. ___, 90 L.Ed.2d 514 (1986).

Appellant contends that the prejudice may have been more acute in the penalty phase. He argues that in Glock's statement he blamed appellant for formulating the idea to return to the victim and kill her and that appellant fired the final shots. Suffice it to say that in the joint statement, which is admissible against Puiatti, appellant agreed with his partner:

"Okay. We left her and started to take off. And as we were taking off we started talking back and forth and Robert said to me that he thought that we should shoot her. And after going back and forth a little bit, I agreed and turned the car around."

(emphasis supplied) (R.1994)

Moreover, in the joint confession the two defendants agreed that appellant shot twice, Glock shot twice one shot missed and the victim fell after Glock's last shot (R.1996-1997).

The jury's recommendation of death did not result from confession about the facts, but obviously a rational conclusion that each merited a similar punishment for equally culpable conduct.

Appellant also argues that Glock's individual confession damaged Puiatti's effort to establish the mitigating factor that he allegedly was under the substantial domination of Glock. The problem with this argument is that there is nothing in Glock's individual confession (R.2785-2800) to diminish any claim by appellant that he was under the domination of Glock. Glock acknowledged "we had to shoot her because she could identify us" (R.2790). Glock's individual confession does not assert that he was under the influence of Puiatti and the joint confession revealed that it was Glock who suggested the killing (R.1994). Thus, appellant could argue what he wanted to the jury.

Appellant's attempt to relitigate the question of whether a severance was required at penalty phase must fail. This Court previously rejected the claim, and the Cruz decision does not preclude joint trials. Indeed, the United States Supreme Court in Richardson v. Marsh, ___ U.S. ___, 95 L.Ed.2d 176 (1987), decided the same day as Cruz, reiterated that joint trials play a vital role in the criminal justice system.

"Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessments of relative culpability advantages which sometimes operate to the defendant's benefit. Even apart from these tactical considerations, joint trials generally serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts."

95 L.Ed.2d at 187.

Appellant argues that the co-defendant's joint confession did not cure the problems because there was a disagreement about

how many shots Glock fired at the victim (R.1996). Puiatti and Glock agreed that appellant shot the victim twice and a third shot missed (R.1996). Glock fired twice. According to Puiatti five shots were fired and one missed (R.1997). It is difficult to discern what prejudice appellant has suffered.

Finally, appellant contends that Glock's individual confession may have carried greater weight than the joint confession because the former was made by tape recording and the latter only read by a court reporter. Appellant did not urge this argument on appeal previously and it must be deemed waived. Additionally, the Cruz decision does not suggest that the court reporter's reading of a joint confession can constitute error and therefore the brief on remand departs from this Court's order of June 8, 1987 setting a briefing schedule on reconsideration in light of Cruz. Finally, to the extent that appellant may be urging that the joint confession may be lacking in reliability because the jury could not hear the voice inflections of each defendant, the state answers that the absence of voice inflection does not render the joint confession lacking in reliability. Again, and at the risk of undue repetition, appellant's concurrence, adoption and ratification of Glock's statements in the August 24

joint confession renders the admission of the earlier single confession of Glock harmless error.²

^{2/} We reemphasize Justice Blackmun's notation concurring in Parker v. Randolph, 442 U.S. 62, at 79, 60 L.Ed.2d 713, at 727 that:


". . . in most interlocking confession cases, any error in admitting the confession of a nontestifying codefendant will be harmless beyond a reasonable doubt."

CONCLUSION

Based on the foregoing reasons, arguments and citations of authority, the judgment and sentence of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert F. Moeller, Assistant Public Defender, Hall of Justice Building, Post Office Box 1640, Bartow, Florida 33830, this 23rd day of July, 1987.



OF COUNSEL FOR APPELLEE