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CLERK, SUPREME COURT

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IN THE  
SUPREME COURT OF FLORIDA

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CARL PUIATTI, :

Petitioner, :

v. :

RICHARD L. DUGGER, et al., :

Respondent. :

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CASE NO. 74,865

SUPPLEMENTAL BRIEF OF PETITIONER

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SUPPLEMENTAL BRIEF OF PETITIONER

I. INTRODUCTION

After Petitioner Carl Puiatti filed his Amended Petition for a Writ of Habeas Corpus on February 26, 1990 (the "Amended Petition") on February 26, 1990, the Florida Supreme Court decided two cases, Reilly v. Florida, No. 73,571 (March 8, 1990) and Owen v. Florida, No. 68,550 (March 1, 1990), which bear directly on Claims I.A. and I.F. of the Amended Petition. In light of these two recent decisions, Mr. Puiatti respectfully supplements his Amended Petition as follows.

II. The Florida Supreme Court's Recent Decision in *Reilly v. Florida* Bears Directly On Claim I.A. of Mr. Puiatti's Amended Petition for a Writ of Habeas Corpus and Requires the Reversal of Mr. Puiatti's Conviction.

*Reilly v. Florida* addresses the circumstances in which a trial court's refusal to excuse a venire person for cause requires that a conviction be reversed. In *Reilly*, a venire person had read in the newspapers, prior to the trial, that the defendant had given a confession after he was arrested. Although the venire person stated that he could not remember the details of the confession and would not let what he read influence him during the trial, this Court held that it was unrealistic to believe that during the course of deliberation he would entirely disregard his knowledge of the confession. Consequently, this Court found that it was an error for the trial court not to exclude the juror for cause; and that defense counsel should not have had to use a peremptory challenge to remove this potential juror. This Court held that this error with respect to a single juror required reversal of the defendant's conviction.

Mr. Puiatti's trial counsel were placed in a far worse predicament during voir dire. Nearly half the jury panel had read about Mr. Puiatti's arrest following his confession to the crimes charged in this action. Mr.

Puiatti was required to use four of his ten peremptory challenges to remove jurors who should have been excused for cause -- not merely one as in Reilly. Two of these challenges were used to remove jurors who had read about Mr. Puiatti's arrest and the details of the crime in the newspapers. The trial court's failure to grant proper challenges for cause resulted in a final jury tainted by adverse publicity: two jurors had read relevant newspaper articles the very day they were seated. (See Amended Petition at 24-25). Reilly requires that Mr. Puiatti's conviction be reversed.

III. The Florida Supreme Court's Recent Decision in Owen v. State Bears Directly on the Issues Raised in Claim I.F. of Mr. Puiatti's Amended Petition for a Writ of Habeas Corpus and Requires that Mr. Puiatti's "Joint Confession" be Suppressed and His Conviction Reversed.

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Owen v. State bears on Mr. Puiatti's claim that his "joint confession" given in Florida should have been suppressed because (a) it was involuntary due to Mr. Puiatti's physical and mental exhaustion; (b) Mr. Puiatti was misled into waiving his right to counsel; and (c) the confession was obtained in violation of Mr. Puiatti's Miranda rights because, prior to confessing, he indicated he wished to stop the interrogation. (See Amended Petition at 79-93).

The confession in Owen was entirely voluntary under the Fifth Amendment; no improper coercion was employed. However, this Court found that the confession was obtained in violation of the procedural rules of Miranda and therefore should have been suppressed. (Slip op. at 5). As a result, this Court reversed Owen's conviction.

Owen and the police alternately initiated a series of interrogations during which Owen confessed to a number of crimes. At one point, when the police inquired about a relatively insignificant detail, Owen responded "I'd rather not talk about it." The police nevertheless pressed him to talk. This Court reversed Owen's conviction because the interrogations and resulting statements fell within the well-established rule that even a suspect's equivocal assertion of his Miranda rights must terminate any further questioning except that which is designed to clarify the suspect's wishes. (Slip op. at 6).

The Miranda violation that required suppression of Owen's confession is precisely the Miranda violation at issue here. Like Owen, Mr. Puiatti indicated to the police that he did not wish to be questioned further. He told the police that he was too tired to see his attorney that night and would see him in the morning. (R. 723-33). At a minimum this constituted an equivocal request to cut off

questioning, at least until the morning. Yet the police subjected Mr. Puiatti -- who at that point had not slept for 20 hours -- to another four hours of questioning, during which they secured his joint confession.

Indeed, Mr. Puiatti's claim for suppression is stronger than Owen's. Owen himself initiated some of his discussion with the police. Mr. Puiatti did not. Moreover, there was nothing to indicate that Owen's confession was otherwise involuntary. By contrast, Mr. Puiatti gave his joint confession at a time when he had not slept for over 20 hours, having been transported from New Jersey to Florida, and at a time when he told the police that he was too tired to see his attorney. Owen requires that Mr. Puiatti's joint confession be suppressed and that his conviction be reversed.

#### CONCLUSION

In conclusion, Mr. Puiatti respectfully relies upon Reilly and Owen to supplement his Amended Petition for a Writ of Habeas Corpus, Claims I.A. and I.F.

Respectfully submitted,



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Dated: April 13, 1990

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of each of the foregoing documents, Notice of Supplemental Authority, Motion for Leave to Present Supplemental Brief and Supplemental Brief of Petitioner, have been furnished by Steven A. Reiss and the law firm of Weil, Gotshal & Manges by regular United States mail to Robert Landry, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33602 this 13th day of April 1990.

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