SUPREME COURT OF THE STATE OF FLORIDA

– –	x	
J.B. PARKER,	:	
Plaintiff(s),	:	CASE NO. SC01-172
- against -	:	
STATE OF FLORIDA,	:	
Defendant(s).	:	
– –	x	

SUPPLEMENTAL BRIEF OF APPELLANT

On Appeal from the Nineteenth Judicial Circuit of Florida, in and for Martin County, Florida.

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TABLE OF CONTENTS

Preliminary Statement 1

STATEMENT OF FACTS 2

SUMMARY OF ARGUMENT 10

ARGUMENT 11

THE MAY 7 STATEMENT IS INADMISSIBLE AND SHOULD HAVE BEEN SUPPRESSED 11

A. Standard of Review 11

B. The May 7 Statement Was Taken In Violation of Mr. Parker's Fifth and Sixth Amendment Rights 11

. The Failure to Exclude the May 7 Statement Was Not Harmless Error 17

CONCLUSION 19

TABLE OF AUTHORITIES

CASES

Brewer v. Williams,
430 U.S. 387 (1977) 12

Butler v. State,
706 So. 2d 100 (Fla. 1st DCA 1988) 11

Chapman v. California,
386 U.S. 18 (1967) 18

Cribbs v. State,
378 So. 2d 316 (Fla. 1st DCA 1980) 17

Edwards v. Arizona,
451 U.S. 477 (1981) 1, 12, 13, 14, 15, 16

Fleming v. Kemp,
837 F.2d 940 (11th Cir. 1988),
cert. denied, 490 U.S. 1028 (1989) 12

Goodwin v. State,
751 So. 2d 537 (Fla. 1999) 18

Jones v. State,
748 So. 2d 1012 (Fla. 1999),
cert. denied, 530 U.S. 1232 (2000) 15

Michigan v. Jackson,
475 U.S. 625 (1986) . . . . 1, 12, ,13, 14,15,16

Owen v. State, 596 So. 2d 985 (Fla.),
cert. denied, 506 U.S. 921 (1992) 14

Parker v. Singletary,
974 F.2d 1562 (11th Cir. 1992) . . . . passim

Phillips v. Florida,
612 So. 2d 557 (Fla. 1992) 16

Sliney v. Florida,
699 So. 2d 662 (Fla. 1997),

cert. denied, 522 U.S. 1129 (1998) 12

State v. Diguilio,
491 So. 2d 1129 (Fla. 1986) 18

United States v. Massey,
437 F. Supp. 843(M.D. Fla. 1977) 12

Preliminary Statement

By order dated October 17, 2002, this Court temporarily relinquished jurisdiction to the trial court to conduct an evidentiary hearing on defendant J.B. Parker's October 1, 1999 pre-trial motion to suppress testimony concerning statements he made to Detective Powers on May 7, 1982 (the "May 7 Statement"). The parties filed with the trial court a stipulated evidentiary record consisting of deposition testimony, affidavits and documentary evidence. By order dated February 12, 2003, the trial court denied the motion to suppress. SR5-709-14.[1]

In this Supplemental Brief Mr. Parker demonstrates that the trial court's finding that Mr. Parker "initiated contact with Detective Powers" is wholly unsupported by the evidentiary record. In fact, there is no admissible evidence sufficient to meet the State's burden of proving that Mr. Parker initiated the May 7 contact with Detective Powers. Therefore, the statements he made, and all evidence derived therefrom, are inadmissible under the Fifth and Sixth Amendments. Edwards v. Arizona, 451 U.S. 477 (1981) (Fifth Amendment); Michigan v. Jackson, 475 U.S. 625 (1986) (Sixth Amendment). Accordingly, Mr. Parker's motion to suppress the May 7 Statement should have been granted. Because this failure to suppress material inculpatory evidence was not harmless beyond a reasonable doubt, this Court should reverse the order sentencing Mr. Parker to death.

STATEMENT OF FACTS

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[1] Citations to "SR___" are to the Supplemental Record on Appeal.

Many of the facts critical to the assessment of Mr. Parker's suppression motion are found in the Eleventh Circuit's 1992 opinion in Parker v. Singletary, 974 F.2d 1562 (11th Cir. 1992) ("Parker IV"). Those factual determinations, although not disputed by the State,[2] were ignored by the trial court. The Eleventh Circuit's factual and legal determinations establish that when on May 5 Mr. Parker asserted his right to counsel, and instead was provided an intern who was unable to serve as counsel by reason of an undisclosed conflict of interest, the State was precluded from continuing its interview of Mr. Parker until conflict-free counsel was present. Rather than comply with this constitutional mandate, Detective Powers impermissibly continued the May 7 interrogation of Mr. Parker. The State can only establish the admissibility of the May 7 Statement, therefore, if it can prove that Mr. Parker initiated the May 7 contact with Detective Powers. The facts found by the Eleventh Circuit, and supplemented by the evidentiary record now established in the trial court, unequivocally demonstrate that there is no competent substantial evidence establishing such an initiation by Mr. Parker.

Parker's May 5 Arrest

After Mr. Parker's arrest, on May 5, 1982, a Magistrate met with Mr. Parker and appointed the Public Defender to represent him. The Magistrate also noted that Mr. Parker intended to hire his own attorney. SR5-656. On May 5, Assistant Public Defender Robin W. Frierson delivered letters requesting that the Sheriff of Martin

[2] Indeed, the State conceded in the trial court, as it must, that the Eleventh Circuit's determination is "law of the case and is binding on this Court." R3-561.

County (James Holt) and others in law enforcement contact his office before any contact was made with Mr. Parker. SR5-657-63.

The May 5 Statement

Later that day, Mr. Parker spoke with representatives of the Sheriff's Office, including Sheriff Holt. Before taking a statement, Sheriff Holt contacted Elton Schwarz, the Public Defender of the Nineteenth Judicial Circuit. Mr. Schwarz had already determined that there was a conflict of interest and his office would not be able to represent Mr. Parker. SR2-71; see Parker IV, 974 F.2d at 1566. Mr. Schwarz therefore told Sheriff Holt:

> "Look, I don't want to have an attorney going over and going into the facts of the case with [Mr. Parker] because I know there is going to be a conflict and as soon as we do that and establish an attorney-client relationship with Mr. Parker, then, that would create a conflict between all four of them and we could not represent any of them." "And I explained to him that if there was any way to put this off until we can get the appointment of counsel straightened out that it would be in everybody's best interest. And he said "Well, he wants to talk to me."

SR2-72.

In response to Sheriff Holt's May 5 request that he send over a representative of the Public Defender's Office, Mr. Schwarz sent Stephen Greene, an intern in his office who was not yet admitted to practice law, to meet with Mr. Parker. As the Eleventh Circuit found: "Schwarz . . . instructed Greene not to discuss the details of any possible statement with him but only to tell Parker not to confess if that was what Parker planned to do." Parker IV, 974 F.2d at 1566; see also SR2-72, 85; SR3-221, 232-33.

As a result of the directive he had received from Mr. Schwarz, Mr. Greene did not review with Mr. Parker the facts underlying the crimes with which Mr. Parker was charged and did not review with Mr. Parker what Mr. Parker proposed to say to Sheriff Holt. SR2-85; SR3-223, 232-33. As the Eleventh Circuit found: "Instead of Greene, the Public Defender's Office might as well have sent a tape-recording of a voice saying 'Do not talk' to Parker, and the recording would no more have satisfied Parker's right to be counseled by an attorney." Parker IV, 974 F.2d at 1571. As the Eleventh Circuit also found, Mr. Greene never disclosed to Mr. Parker that, as a result of a conflict, the Public Defender's Office could not represent him. Parker IV, 974 F.2d at 1571; SR2-85-86; SR3-316-17; SR4-473.

After his meeting with Mr. Greene, Mr. Parker made a statement that was tape recorded (the "May 5 Statement"). SR4-475-94. During the May 5 Statement, Sheriff Holt asked Mr. Parker: "Would you be willing to take us and show us where the knife went?" Mr. Parker responded "Yes, sir." SR4-486. Later during the May 5 Statement, Sheriff Holt again asked Mr. Parker: "You are willing to go show us where you think this knife was thrown?" To which Mr. Parker responded: "Yes, Sir." SR4-493.

During the May 5 Statement, Mr. Parker on five separate occasions requested that other counsel be provided. Parker IV, 974 F.2d at 1572; see also SR4-475-80. In response, Mr. Greene told Mr. Parker that he was Mr. Parker's lawyer. Parker IV, 974 F.2d at 1572; SR4-478-79. Mr. Parker's requests for other counsel were not recognized and the subsequent statements by Sheriff Holt were not limited to attempts to clarify Mr. Parker's requests. Parker IV, 974 F.2d at 1572.

The Eleventh Circuit concluded that "Holt should have stopped the questioning to allow Parker to contact other, conflict-free counsel prior to continuing with the taking of the statement." Id. at 1573. The Eleventh Circuit also concluded:

> Parker did not know of Greene's status or the limitations on his representation. Indeed, Sheriff Holt and Greene misrepresented Greene's true status to Parker. Under these circumstances, Parker could not have knowingly and intelligently waived his Fifth Amendment right "to talk only with counsel present."

Id. at 1574. The Eleventh Circuit therefore held:

> Because Greene's presence did not satisfy Parker's right to counsel, because Parker clearly did request other counsel, and because Parker did not knowingly and intelligently waive his right to conflict-free counsel, the resulting statement was inadmissible.

Id.

The Events of May 6, 1982

On May 6 the Public Defender moved for the appointment of other counsel for Mr. Parker because of a conflict with his representation of other defendants. SR2-73; SR5-650-52. Although the court on May 6 initially appointed new counsel for Mr. Parker, later that day, the court rescinded the appointment and referred the matter to the Chief Judge. SR5-653-54.

On May 6 Detectives Robert Miller and John Forte approached Mr. Parker in the County Jail and asked if he would accompany them on a tour of the crime scenes. Mr. Parker refused. SR5-560-61, 590-91. In approaching Mr. Parker, Detective Miller was following up on the request, made during the May 5 Statement, that Mr. Parker accompany investigators in a search for the knife used during the crime. SR5-560-61. As Detective Miller's testimony makes clear, there was no

new effort on May 6 by Mr. Parker to communicate with law enforcement. Rather, they were simply following up on the request made during the May 5 Statement.

<u>The Initiation of the May 7 Interview</u>

As of May 7 the Public Defender no longer represented Mr. Parker and the Court had not yet appointed new counsel. SR2-74. Thus, as of May 7, Mr. Parker had yet to meet with and be counseled by the conflict free counsel to which the Eleventh Circuit found he was entitled before the State could proceed with any interrogation. <u>Parker IV</u>, 974 F.2d at 1572-73.

On May 7, Detective Powers met with Mr. Parker. Detective Powers has no recollection of who contacted him to request that he speak with Mr. Parker and can only speculate that it was Sheriff Holt. SR5-672. This speculation is not supported by any evidence in the record: i) in his initial testimony in July 1982 Detective Powers could not recall who contacted him and did not suggest that it was Sheriff Holt, SR5-625; ii) in September 1982 Detective Powers testified that Captain Robert Crowder, not Sheriff Holt, contacted him, SR2-50; iii) Detective Powers has now sworn in his 2003 affidavit that it could not have been Captain Crowder who contacted him because Captain Crowder denies it, SR5-672; and iv) Sheriff Holt testified in 1982 to his belief that after May 5 he did not have any further contact with Mr. Parker. SR4-532.

Detective Powers, in any event, cannot provide any evidentiary support for the conclusion that Mr. Parker in fact initiated the May 7 contact:

> As I previously testified in my 1982 deposition . . . I do not recall who it was that told me that Parker had contacted someone at the Sheriff's department and indicated that he wished to cooperate in the investigation. I have no personal knowledge as to the basis for that person's belief that Parker wished to cooperate. Other than seeing Mr. Parker upon his initial arrest, I had no contact with him prior to arriving at Martin County jail on May 7, 1982 to interview him, as detailed in my report.

SR5-672.

In his declaration, Mr. Parker, the only witness on the record before this Court with personal knowledge on the issue of whether he initiated the May 7 contact, flatly denies that he did so. As Mr. Parker states, after the May 5 Statement he "did not initiate or encourage any further contacts with law enforcement officials and did not ask to see or speak to anyone from the Sheriff's office." SR5-669.

Without acknowledging Mr. Parker's denial, or the lack of any competent testimony supporting the State's contention that Mr. Parker initiated the May 7 interview, the trial court concluded that "Defendant initiated contact with Detective Powers." SR5-714. The only basis for this conclusion mentioned in the trial court's order is the statement that Detective Powers "received a call from Sheriff Holt who advised him that Parker had now contacted someone at the Sheriff's Department and indicated that he wished to speak with detectives and cooperate with the investigation." SR5-712-13.[3]

The May 7 Rights Waiver Form

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[3] The word "now," designed to support the trial court's inference that this was a new contact initiated by Mr. Parker on May 7, is not contained in Detective Powers' affidavit. In his affidavit, Mr. Powers states instead that he had been told that "Parker had contacted someone at the Sheriff's department and indicated that he wished to cooperate in the investigation." SR5-672.

In connection with the May 7 Statement, Detective Powers presented a Rights Waiver form to Mr. Parker. Detective Powers added the following in writing to the form before asking Mr. Parker to sign the form:

> I have been advised by Lt. Powers that my court appointed attorney, the Public Defender has advised me not to speak with members of the Sheriff's Dept ref my case. I wish to do so of my own volition and I wish to show Lt. Powers where I believe the knife which was used in the robbery/homicide may be located. This is done of my own free will and is voluntary.

SR5-655. These are Detective Powers own words and were not stated by Mr. Parker. SR5-646.

At the time Mr. Parker signed the rights waiver form no one had informed him that the Public Defender's office no longer represented him:

> When Detective Powers asked me to sign a rights waiver form on May 7, 1982, he did not inform me that the Public Defender, as a result of a conflict of interest, had sought the appointment of other counsel to represent me. At the time I signed that form I had not been informed by anyone that the Public Defender, as a result of a conflict of interest, had determined that his office could not provide representation to me and had asked the Court to appoint other counsel.

SR5-669-70. The trial court nevertheless took comfort in the fact that in the rights waiver form Mr. Parker "acknowledged that the Public Defender had advised him not to speak with any member of the Sheriff's Department." SR5-714.

The May 7 Statement

Detective Powers testified that on the morning of May 7, Mr. Parker directed him on the route taken on the night of the kidnaping. When Mr. Parker pointed out the spot where the body was found, Detective Powers testified that Mr. Parker stated that was the location "where they let her out of the car," "that she had been killed there," and that "Bush had both stabbed and shot her." R28-1982-95.

Detective Powers also testified that Mr. Parker stated that, when the car had been stopped by a police officer on the night of the crimes, the defendants had discussed killing the officer. According to Detective Powers, Mr. Parker stated that the only reason the police officer was not killed was because the defendants knew that he would already have run their tag and would have known that the car belonged to Bush. R28-1987. Detective Powers also testified that Mr. Parker admitted that he had received his share of the robbery proceeds. R28-1989.

SUMMARY OF THE ARGUMENT

The trial court erred in finding that Parker initiated the May 7th Statement. Thee is NO evidence, let alone competent substantial evidence, to support the trial courts finding. The same infirmities recognized by the 11th Circuit requiring suppression of Parker's May 5th, 1982 Statement continued unabated in Parker's second May 7th Statement. Admission of the May 7th statement was not harmless as the jury requested a readback of that statement before returning its death recommendation.

ARGUMENT

THE MAY 7 STATEMENT IS INADMISSIBLE AND SHOULD HAVE BEEN SUPPRESSED

A. Standard of Review

"The standard of review for the trial judge's factual findings is whether competent substantial evidence supports the judge's ruling. The standard of review

for the trial judge's application of the law to the factual findings is de novo." Butler v. State, 706 So. 2d 100, 101 (Fla. 1st DCA 1988).

B. The May 7 Statement Was Taken In Violation of Mr. Parker's Fifth and Sixth Amendment Rights

Mr. Parker's Sixth Amendment right to counsel attached and was invoked at the time of the May 5 first appearance before a magistrate at which time he was read the charges and informed of his rights. SR5-656; Parker IV, 974 F.2d at 1571 n. 41 (11th Cir. 1992) ("The state does not argue that Parker's Sixth Amendment right had not attached, and the evidence seems fairly clear that the right had attached, because Parker had apparently appeared before a magistrate prior to giving the [May 5] statement."); see also Brewer v. Williams, 430 U.S. 387, 397-401 (1977); Fleming v. Kemp, 837 F.2d 940, 948 (11th Cir. 1988), cert. denied, 490 U.S. 1028 (1989). During the May 5 Statement, Mr. Parker again invoked his right to counsel on five separate occasions. Parker IV, 974 F.2d at 1572; SR4-475-81.

Assessment of the admissibility of Mr. Parker's May 7 Statement thus is governed by the Sixth Amendment, as well as the Fifth Amendment. As the Eleventh Circuit held, Mr. Parker's rights to counsel under Miranda and the Fifth Amendment, indisputably apply. Parker IV, 974 F.2d at 1570-71. It is now undisputedly clear that under both the Fifth Amendment and Sixth Amendment the State could constitutionally obtain statements from Mr. Parker outside the presence of counsel concerning the crimes with which he was charged only if Mr. Parker initiated the interview. Edwards v. Arizona, 451 U.S. 477 (1981); Michigan v. Jackson, 475 U.S. 625 (1986). The State, and not the defendant, has the burden of proving that an alleged waiver of the right to counsel is valid by a "preponderance of the evidence."

Sliney v. Florida, 699 So. 2d 662, 668 (Fla. 1997), cert. denied, 532 U.S. 1129 (1998). See also United States v. Massey, 437 F. Supp. 843, 849 (M.D. Fla. 1977)

There is no evidentiary basis on which to conclude that the interview on May 7 was anything other than a State initiated follow-up on Sheriff Holt's May 5 suggestion of a further interview with Mr. Parker for the purpose of locating the knife used in the crimes charged. SR4-486-93. There is simply no competent evidence, much less the competent substantial evidence required to sustain the trial court's finding, of an independent initiation by Mr. Parker of the May 7 interview.

That Mr. Parker agreed during the May 5 Statement to a further interview does not, as the State contended in the trial court, legitimize the State initiated May 7 contact with Mr. Parker. This contention ignores the undisputable fact that, as found by the Eleventh Circuit, although Mr. Parker initiated the May 5 contact, he thereafter validly asserted his right to counsel, requiring that the interview terminate, and was not provided the conflict-free counsel to which he was constitutionally entitled. As the Eleventh Circuit held:

> It is clear that Holt should have stopped the questioning to allow Parker to contact other, conflict-free counsel prior to continuing with the taking of the statement. This is because Miranda requires that, once the right to counsel has been exercised, "the interrogation must cease until an attorney is present." Once an impartial attorney is present, we might add.

Parker IV, 974 F.2d at 1573 (citation omitted). Detective Powers's May 7 interview was itself such an unconstitutional continuation of the May 5 interview because, Mr. Parker still had not been provided the conflict-free counsel to which he was entitled. The fact that two days elapsed between the two interviews is simply irrelevant.

As Edwards, 451 U.S. at 485-86, and Jackson, 475 U.S. at 636, establish, this prohibition on any continuing interrogation of Mr. Parker until an impartial attorney is present precluded the State from itself initiating a further interview. As stated in Edwards:

> We reconfirm these views and . . . emphasize that it is inconsistent with Miranda and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel.

451 U.S. at 485. In Jackson the Supreme Court established that these principles apply equally, or possibly with "even greater force" once the Sixth Amendment right to counsel has attached. 475 U.S. at 636. Accordingly, in Jackson the Supreme Court held:

> if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceeding, of his right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid.

Id. That Mr. Parker signed a rights waiver form on May 7 (a fact on which the trial court erroneously relied) is therefore irrelevant to the suppression issue unless Mr. Parker, not the State, initiated the May 7 interview. See Owen v. State, 596 So. 2d 985 (Fla.) (when Sixth Amendment right to counsel has attached and been invoked, subsequent waiver of the presence of counsel during police initiated interrogation is invalid), cert. denied, 506 U.S. 921 (1992).

The trial court's determination that "Defendant initiated contact with Lieutenant Powers," SR5-714, is not supported by competent substantial evidence. If the trial court drew this conclusion based on the fact that Detective Powers speculated that Sheriff Holt is the person who told him that Mr. Parker "indicated that he wished to

speak with the detectives and cooperate with the investigation," SR5-712-13, that does not change the facts that: i) Detective Powers lacks any personal knowledge that Mr. Parker in fact initiated a contact on May 7 SR5-672; and ii) Sheriff Holt has never testified that Mr. Parker in fact initiated a contact with investigators on May 7 and could have no knowledge of such an initiation by Mr. Parker because, as he previously testified, he did not believe that he had any contact with Mr. Parker after the May 5 Statement. SR4-532. It is thus clear that what Detective Powers has testified to on this subject is at best hearsay, that he is therefore not competent to testify that Mr. Parker initiated the May 7 contact, and that Sheriff Holt has never so testified and, even if he were alive today, could not so testify based on personal knowledge. The State introduced no other evidence to support its contention, necessary to establish the admissibility of the May 7 Statement, that Mr. Parker was the initiator of the May 7 contact. The only competent evidence on this issue comes from Mr. Parker who denies that he initiated the May 7 interview. SR5-669.

Under Edwards and Jackson, when a defendant's right to counsel has attached and been invoked the State must show that the defendant voluntarily initiated the communication with the police before a statement is admissible. Jones v. State 748 So. 2d 1012, 1018 (Fla. 1999), cert. denied, 530 U.S. 1232 (2000). "This rule is the same whether the right to counsel is invoked under either the Fifth or Sixth Amendment." Id. at 1018 n.4. This is because, once a defendant invokes his right to counsel, any subsequent waiver of that right attained in a government-initiated contact is presumed invalid, even if the waiver is knowing and voluntary. Jackson, 475 U.S. at 629-32.

The circumstances surrounding the taking of Mr. Parker's May 7 Statement are analogous to those that gave rise to the statements suppressed in Phillips v. Florida, 612 So. 2d 557 (Fla. 1992). In Phillips, "Several hours after a public defender *was appointed at a first appearance*, police initiated an interview . . . in the absence of counsel." Id. at 558 (emphasis added). *"After signing Miranda waivers*, [defendant] made inculpatory statements during that and a subsequent interrogation session." Id. (emphasis added). In reversing the trial court's denial of the motion to suppress, this Court held that, because the Sixth Amendment right to counsel had attached and been invoked and, because the State could not prove that the defendant's inculpatory statements made outside the presence of counsel were not initiated by the police, the statements were inadmissible. Id. at 559 n.3.

Contrary to the trial court's conclusion, the rights waiver form Mr. Parker signed does not establish a knowing and intelligent waiver of his right to counsel. The rights waiver form itself shows Detective Powers perpetuated Mr. Parker's mistaken belief that he had received impartial counsel through the Public Defender's Office. SR5-655. Contrary to Detective Powers's statements to Mr. Parker, plainly made in an effort to obtain his consent to the interview without counsel present, the Public Defender's Office could not provide the constitutionally required impartial counsel. Parker IV, 974 F.2d at 1570-72. As of May 6, however, the Public Defender's Office had been relieved as counsel for Mr. Parker and had sought the appointment of private counsel. SR5-650-54. None had been assigned as of the time of the May 7 Statement and no one had ever informed Mr. Parker that the

counsel that he had repeatedly been told represented him in fact could not do so. SR5-670.

Thus, what Detective Powers told Mr. Parker on May 7 in an effort to obtain his signature on the rights waiver form improperly perpetuated the fiction that the Public Defender did and could represent Mr. Parker. His signature on that form therefore does not establish a knowing and intelligent waiver of his right to counsel. See Parker IV, 974 F.2d at 1574; see also Cribbs v. State, 378 So. 2d 316 (Fla. 1st DCA 1980). SR5-670. As the Eleventh Circuit held, until Mr. Parker was provided counsel other than the Public Defender, any police-initiated interrogation was impermissible. See Parker IV, 974 F.2d at 1570-74.

C. The Failure to Exclude the May 7 Statement Was Not Harmless Error

In order to establish that the introduction of the May 7 Statement at his resentencing was harmless, the State must "prove beyond a reasonable doubt that the [admission of the Statement] did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the [admission of the Statement] contributed to the conviction." State v. Diguilio, 491 So. 2d 1129, 1135 (Fla. 1986); see also Chapman v. California, 386 U.S. 18, 24 (1967). In explaining the harmless error analysis, this Court has repeatedly warned "the reviewing court must resist the temptation to make its own determination of whether a guilty verdict could be sustained by excluding the impermissible evidence and examining only the permissible evidence." Goodwin v. State, 751 So. 2d 537, 542 (Fla. 1999); see also Diguilio, 491 So. 2d at 1136.

> [Even] overwhelming evidence of guilt does not negate the fact that an error that constituted a substantial part of the prosecution's case may have played a substantial part in the jury's deliberation and thus contributed to the actual verdict reached, for the jury may have reached its verdict because of the error without considering other reasons untainted by error that would have supported the same result.

Goodwin, 751 So. 2d at 542; Diguilio, 491 So. 2d at 1136.

The record here clearly shows that the State, the jury, and the trial court all relied on the May 7 Statement, thereby establishing that this inadmissible evidence contributed to Mr. Parker's sentence. For example, the State used the Detective Powers testimony to prove Mr. Parker's participation in the crimes, to establish witness elimination as a motive, and to counter Mr. Parker's claim that Cave was the shooter by comparing it with Mr. Parker's inconsistent alleged statement that Bush shot the victim. R33-2685-88. Additionally, the jury, during deliberations, specifically requested that the Powers testimony be re-read, R34-2832, establishing the importance of this evidence to the jury's recommendation. Finally, the trial court, in its sentencing order, accepted each of the State's arguments concerning the significance of the May 7 Statement in establishing aggravation when it found—in reliance on Detective Powers's testimony alone—in support of the witness elimination and pecuniary gain aggravators that: 1)"Parker advised Bush regarding disposing of the knife used to stab the victim"; 2) "There was a discussion in the car regarding killing Deputy Bargo who stopped them after the murder of the victim"; and 3) the murder was committed to gain $134 (Detective Powers testified that in the May 7 Statement, Mr. Parker admitted to sharing in the proceeds of the robbery). R7-1329-30. This extensive reliance on the May 7 Statement, at the very least, plainly

shows the State cannot prove beyond a reasonable doubt that the admission of the Statement did not contribute to Mr. Parker's sentence.

CONCLUSION

For the foregoing reasons, as well as those set forth in Mr. Parker's other briefs in this appeal, Mr. Parker's death sentence should be vacated.

Dated: June 9, 2003

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by U.S. Mail to the Office of the Attorney General, 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33402-3432, this 9th day of June, 2003.

____

David M. Lamos
Attorney for Appellant

CERTIFICATION OF FONT

I hereby certify that Appellant's Initial Brief is typed in Times New Roman 14 point type.

____

David M. Lamos
Attorney for Appellant