People v. Castille
(April 30, 2003) __ Cal.App.4th __

ISSUE

Was the joint statement of three murder suspects admissible against them at their trial?

FACTS

Castille, Shields, and Brown decided to rob Sharif's Market in Oakland. Armed with two sawed-off shotguns—a .12-gauge Mossberg and a .16-gauge Winchester—they went to the market in a car driven by Brown. While Brown waited outside in the car, Castille and Shields entered the market, both wearing ski masks. Castille walked up to the clerk while Shields stood guard at the door, just seven feet away. The plan, such as it was, then fell apart.

The clerk quickly grabbed the shotgun from Castille, and they began struggling. As they did so, Castille looked over at Shields and saw that he was aiming his shotgun directly at him and the clerk—and it looked like he was about to fire. So Castille ducked, at which point there were two shotgun blasts. The clerk was killed, shot in the head. Castille and Shields ran from the store and got into Brown's car. As Brown sped off, the owner of the market, who had heard the commotion from his apartment upstairs, fired four or five shots at the car.

For the first few weeks the investigation stalled. But then a man contacted officers and led them to the two shotguns, explaining that Castille and Brown had given him the guns to sell. Shortly after officers obtained the guns, they found Brown's car; it was parked on the street, the rear peppered with bullet holes. About a week later, Shields, Castille, and Brown were arrested for the murder and transported to OPD Homicide for questioning.

Two homicide investigators were assigned to each suspect. The investigators interrogated them separately after obtaining *Miranda* waivers. All three essentially confessed. Then they were put in a room together with the six investigators and Homicide Lt. Ralph Lacer.

Lacer testified that his purpose for putting everyone together was to try to obtain a joint statement that could be used against all three if they were tried together. The value of such a statement springs from two cases: *People* v. *Aranda*[1] and *Bruton* v. *United States*.[2] These cases established the general rule that if a defendant gives a statement that directly or indirectly incriminates a co-defendant, the statement is inadmissible if the defendants are tried together.

There are, however, exceptions to the rule. One of them, known as the "adoptive admission" exception, provides that such a statement is admissible if the co-defendant expressly or impliedly acknowledged the defendant's statement was true.[3] If so, the co-defendant essentially "adopts" the defendant's statement as his own.

With this in mind, Lacer figured that if all three suspects were interviewed together, the parts of the joint interview to which they agreed would constitute adoptive admissions and would, therefore, be admissible against all three if they were tried together.

The plan worked perfectly. The suspects agreed on all material details and, at their joint trial, the tape recording of the joint interview was played for the jury. Shields and

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[1] (1965) 63 Cal.2d 518

[2] (1968) 391 US 123.

[3] See *Lee* v. *Illinois* (1986) 476 US 530, 545 ["Obviously, when codefendants' confessions are identical in all material respects, the likelihood that they are accurate is significantly increased."].

Castille were convicted of first degree murder and sentenced to life without parole; Brown was found to be an accessory, and sentenced to four years.

DISCUSSION

Castille and Shields argued that their joint statement should have been suppressed under *Aranda-Bruton* because the things they said during the interview did not constitute adoptive admissions.[4] The court disagreed. (In the discussion that follows, we will refer to a defendant who makes a statement as the "declarant" or "defendant"; and the defendant who adopted the statement as the "adopter" or "co-defendant.")

At the outset, the court observed that a statement can be deemed an adoptive admission only if two requirements are met:

(1) **Knowledge of content:** The adopter must have heard what the declarant said.

(2) **Adoption:** The adopter must have—by words or conduct—acknowledged the statement was true.[5]

As for the first requirement, it was apparent that each defendant knew exactly what the others had said because they were all in the same room, talking amongst themselves. The question was whether they did, in fact, adopt the statements of the others.

Types of adoptive admissions

There are several ways in which an admission by one defendant may be adopted by a co-defendant.

EXPRESS ADOPTION: The most common type of adoptive admission is one in which the adopter expressly acknowledged the statement was true. An express acknowledgment may be solicited or unsolicited. An unsolicited acknowledgement occurs if the adopter spontaneously responded to the declarant's statement by saying something like, "That's right," "Yeah, that's what happened." An acknowledgment is solicited if it occurred after officers specifically asked the adopter whether the declarant's statement was true.

IMPLIED ADOPTIONS: An implied adoption occurs if the adopter said or did something from which it can be reasonably inferred he was acknowledging the truth of the declarant's statement.[6] This might occur, for example, if the adopter gave a false, evasive, equivocal, ambiguous, or contradictory statement in the face of an accusation directed at him.[7]

ADOPTION BY SILENCE: A statement may be adopted by silence if, (1) the adopter remained silent after hearing the declarant's statement implicating him, (2) the adopter had an opportunity to respond to the statement, and (3) he failed to respond.[8]

Were the incriminating statements "adopted?"

With these principles in mind, the court noted the following:

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[4] **NOTE:** Brown did not appeal.

[5] See Evidence Code §1221; *People* v. *Silva* (1988) 45 Cal.3d 604, 624 ["(B)y reason of the adoptive admissions rule, once the defendant has expressly or impliedly adopted the statements of another, the statements become *his own admissions*, and are admissible on that bases . . . ".].

[6] *People* v. *Silva* (1988) 45 Cal.3d 604, 623.

[7] See CALJIC 2.71.5; *People* v. *Preston* (1973) 9 Cal.3d 308, 314 ["Both the accusatory statement and equivocation may be offered as an implied or adoptive admission of guilt."]. **NOTE:** Under such circumstances, the statement may be admissible but the jury will decide whether the it was an adoptive admission. See CALJIC 2.71.5.

[8] CALJIC 2.71.5. **NOTE:** The court in *Castille* stated, "[Evidence Code §1221] contemplates either explicit acceptance of another's statement or acquiescence in its truth by silence or equivocal or evasive conduct."

EXPRESS ADOPTIONS: Many of the statements made by the defendants were expressly adopted by the others.[9] As the court explained, "The officers frequently began their questions on a particular topic by addressing one defendant and then continuing the account with the other. As one defendant gave information, the officers asked the others to confirm certain statements."

For example, at one point Lacer asked Shields to describe the gun he gave to Castille. When Shields said it was a .16 gauge, Lacer asked Castille, "And Mr. Castille, is that correct, is that the kind of gun you got?" Castille replied, "Yes," thereby adopting two of Shields' statements, (1) that Shields had given a gun to Castille, and (2) the gun was the .16 gauge Winchester. Significantly, Castille's admission was highly incriminating to Shields because the murder weapon was the Mossberg that he retained—not the .16-gauge Winchester he gave to Castille.

Furthermore, at the end of the interview, each defendant was essentially asked if he was adopting the statements of the others. As the court noted, "[E]ach defendant was asked directly whether he agreed with statements made by the others [they all did] and each had the further opportunity to clarify any statements to which he took exception."

IMPLIED ADOPTIONS: There were several implied adoptions. The most significant resulted from an equivocal response by Shields to Castille's explanation of the circumstances surrounding the shooting of the clerk:

> CASTILLE: The clerk dude had the gun and everything. Remon [Shields] was like come on, so I let the gun go. I look at Remon and I see the gun pointing right at me so I'm like dang, if he pull the trigger it's going to hit me in my head. So I ducked and ran out the store. As soon as I ducked, the shot went off."
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> SGT. BINGHAM: Okay Remon, you just heard what he said.
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> SHIELDS: Yes.
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> LT. LACER: Is what he said true? Remon, I know it's hard but you need to answer me son. is what Clemeth just said true?
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> SHIELDS: If he say it's true, it's true.
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> LT. LACER: If he says it's true, it's true. That's your answer?
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> SHIELDS: I know. You know, I don't know for a fact though, I probably did, but I know when I went to turn and walk out of the store the gun went off. I know that. I know that. I can remember that. I, I won't ever forget that.[10]

Although Shields did not expressly adopt Castille's statement, the court ruled that his equivocal response was such that it was properly presented to the jury to decide whether it was, in fact, an implied admission.[11] Said the court, "Shields did not deny Castille's account. He acknowledged it reluctantly, but maintained his version of the accidental shooting. At best, Shields' response is equivocal."

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[9] **NOTE:** The court stated, "Here, appellants' adoptions were not inferred from their silence. Rather, appellants specifically acknowledged the truth of the incriminating statements." **NOTE:** If a question pertained to something only one of the defendants would know, the others were not asked to conform his answer. For example, Shields was asked to describe what happened inside the store after Castille left, and Castille was asked to explain how he concealed the guns in his home.

[10] **NOTE:** Shields' contention that the shooting was accidental was disproved at trial. He actually fired *two* shots. This means that after he fired the first shot he had to eject the shell and load another. Furthermore, a witness testified the two shots were six or seven seconds apart.

[11] See CALJIC 271.5.

ADOPTIONS BY SILENCE: The court was not required to decide whether there were any adoptive admissions by silence because the officers succeeded in obtaining responses from all defendants.[12]

CONFLICTING STATEMENTS: There were certain things that Castille, Shields, and Brown did not agree on. For example, they couldn't agree on when they first discussed robbing the store or whose idea it was.

Citing these conflicts, the defendants contended the joint statement was inadmissible under *Aranda-Bruton*. The court explained, however, that a joint statement that is otherwise admissible against all defendants does not become inadmissible merely because there were conflicts over matters that, in light of the entire statement, were immaterial.[13] The court then ruled that "[n]one of these differences in recollection are material in light of appellants' admissions regarding the attempted robbery and murder."

Consequently, the court ruled the joint statement was properly admitted under the adoptive admission exception to *Aranda-Bruton*. As the court summed it up:

> Appellants participated in a joint interview after each had waived his right to remain silent. In the presence of each other, appellants responded to the questions of the interrogating officers. They confirmed the accuracy of the others' statements and, on occasion, corrected and clarified facts. Significantly, at the conclusion of the joint interview, each expressly adopted the truth of the joint statement. Convictions affirmed.

DA's COMMENT

Castille is an important decision. Until now, it was unclear whether such a joint statement would be admissible under *Aranda-Bruton*. Now that the issue seems to have been resolved, officers and prosecutors can develop strategies on how to obtain such statements.

It must be acknowledged, however, that it's not easy to obtain a joint statement. It takes time (often a lot of it) and it requires patience and attention to detail. Still, it's well worth the effort. Cases are almost always much stronger when co-defendants are tried together. Furthermore, the expense of separate trials is staggering.

Obviously, however, it will sometimes be impractical or impossible to obtain a joint statement. For various reasons it usually works only when the defendants were arrested at about the same time. But if circumstances permit, the attempt should be made.

Three other things should be noted. First, when questioning the defendants separately, officers should usually seek a full and complete statement from each in which they describe the roles of all perpetrators. Officers will then usually attempt to obtain a second statement from each defendant (the so-called *"Aranda* statement") in which the defendant describes only *his* role in planning or committing the crime; i.e., *I did this . . . . Then I did that*.[14] It is, however, notoriously difficult to obtain *Aranda* statements because defendants tend to revert to the "we did this" mode. In any event, after

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[12] **NOTE:** The court pointed out that if an adopter had been informed of his right to remain silent before the interview, it can be argued his silence represents not an adoption, but a decision to invoke his rights. See *People* v. *Pitts* (1990) 223 Cal.App.3d 606, 850-1.

[13] See *Lee* v. *Illinois* (1986) 476 US 530, 545 [Court indicates that "identical" statements by co-defendants need only be identical "in all *material* respects" to be deemed reliable. Italics added.

[14] See *People* v. *Mitcham* (1992) 1 Cal.4th 1027, 1047 ["(The officer) requested that [the declarant] provide another statement referring solely to his own involvement in the crimes and omitting any reference to (Mitcham)."]. **NOTE:** An *"Aranda* statement" will not be suppressed under *Aranda-Bruton* at a joint trial because it does not incriminate the accomplice. See *People* v. *Aranda* (1965) 63 Cal.2d 518, 530.

obtaining, or attempting to obtain, an *Aranda* statement, the attempt to obtain a joint statement should be made.

Second, the officers who interrogated the defendants separately should be present when the joint statement is taken. Because these officers will know the details and nuances of their interviewee's story, they will be able to detect and respond to any changes that are made in the presence of the other defendants.

Finally, although the court in *Castille* provided a detailed discussion of the manner in which the joint statement was taken, it noted, "By citing these factors, we do not suggest that any or all of these particular circumstances must, necessarily, be present to guarantee trustworthiness. Each case must be evaluated on its own facts."