IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

MICHAEL VINCENT PARKER,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D13-5755

Opinion filed August 22, 2014.

An appeal from the Circuit Court for Alachua County.
Ysleta W. McDonald, Judge.

Pamela Jo Bondi, Attorney General, and Wesley Paxson III, Assistant Attorney General, Tallahassee, for Appellant.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellee.

LEWIS, C. J.

The State appeals the trial court's order granting Michael Vincent Parker's motion to suppress. For the reasons that follow, we conclude that the trial court erred by granting the motion to suppress and, therefore, reverse the order.

Parker was charged with burglary with battery, attempted sexual battery on a physically incapacitated or physically helpless victim, sexual battery without physical force, and battery based on acts he allegedly committed on or about July 31, 2011. Parker filed a motion to suppress his recorded interview with the police and any statements he made therein and argued in part that the detective failed to give a good-faith answer to his prefatory question of "[c]an you just tell me if I need to get a lawyer or something" and "steamrolled" him. At the hearing on Parker's motion, the State conceded that Parker posed a prefatory question during the interview; the parties stipulated that Deputy Buckley made contact with Parker at his apartment and read him his Miranda rights; and Deputy Buckley testified that Parker indicated he understood his rights. Parker voluntarily accompanied the officers to the police station for an interview.

The transcript of the interview showed that Parker was informed that he was not under arrest and he acknowledged that he had been read his rights. Detective Jones proceeded to read Parker his Miranda rights again, and Parker indicated that he understood them and wished to talk. Parker described his version of the events and answered the detective's questions by providing a series of exculpatory statements. The detective's subsequent insistence on Parker's guilt prompted the following conversation:

> PARKER: Can you just tell me if I need to get a lawyer or something? I'll tell you but I just don't -- I don't want to like --

> DETECTIVE JONES: Listen, that's your right. But what I'm interested in is the truth, --
>
> PARKER: I know.

Parker then made numerous incriminating statements. In response to Parker's questions about potential sentences, the detective said that was "beyond the scope of what [he was] allowed to give advice about, okay, so [Parker was] going to end up talking to a lawyer." Parker repeatedly expressed a desire to write a letter of apology to the victims, but was uncertain as to whether it was a good idea. Detective Jones told Parker several times that he did not have to write a letter and it was his choice. The following conversation subsequently occurred:

> PARKER: I want to say I'm sorry. I don't know what to do right now. Is there -- is there a lawyer in the building or am I going to have to f****** sit in there and wait?
>
> DETECTIVE JONES: No, you would have to call one. Listen, man, if you don't want to do it --
>
> PARKER: Or a call to my parents. I mean, I just want -- I just need some advice, man. I just -- I want to say I'm sorry really bad, I just don't want to --
>
> DETECTIVE JONES: What are you sorry for?

Parker ultimately called his father and was visited by his grandfather. At the end of the interview, Parker was arrested.

Following the hearing, the trial court entered an order granting Parker's motion to suppress. The trial court found in pertinent part that the interview

became an interrogation when Detective Jones confronted Parker with the allegations and that "[t]he audio of the interview reflects that there was no space between the words 'right' and 'but' in Detective Jones' response to [Parker's] question. It would more accurately be described as 'Listen, that's your right but what I'm interested in is the truth.'" The trial court further concluded that Parker made at least two attempts to request an attorney; that "[w]henever he asked if he could make a call to get advice, Detective Jones prevented him from doing so"; that Detective Jones failed to answer in good-faith Parker's question of whether a lawyer was available; and that throughout the interrogation, Detective Jones engaged in gamesmanship and either overrode or steamrolled Parker as he attempted to invoke his right to counsel. Accordingly, the trial court granted Parker's motion "as to the statements that he made as a result of custodial interrogation after he initially invoked his right to counsel ('Can you just tell me if I need to get a lawyer or something?')." This appeal followed.

A trial court's ruling on a motion to suppress carries a presumption of correctness. Spivey v. State, 45 So. 3d 51, 54 (Fla. 1st DCA 2010). This Court defers to the trial court's findings of fact if they are supported by competent, substantial evidence, but reviews its findings of law *de novo*. Id. During custodial questioning, a suspect has the right to consult with an attorney and to have an attorney present. Id. (citing Miranda v. Arizona, 384 U.S. 436, 469-73 (1966)).

"If a suspect clearly and unequivocally requests counsel at any time during a custodial interview, the interrogation must immediately stop until a lawyer is present or the suspect reinitiates conversation." Id. (explaining that a "suspect must 'articulate his desire to cut off questioning with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be an assertion of the right to remain silent'"). If, on the other hand, a suspect who has knowingly and voluntarily waived his rights makes an equivocal or ambiguous request for counsel, police officers are not required to stop the interrogation or ask clarifying questions. Id. (holding that the appellant's statement, "I mean if I am being held and I'm being charged with something I need to be on the phone calling my lawyer," was not an unequivocal request for counsel because it "did not clearly indicate that [he] wanted counsel present at that time or that he would not answer any further questions without counsel"); see also Walker v. State, 957 So. 2d 560, 571, 574 (Fla. 2007) (finding that the appellant did not make an unequivocal request for counsel where he said, "I think I might want to talk to an attorney" and later asked the agent if he needed an attorney); Jones v. State, 748 So. 2d 1012, 1020 (Fla. 1999) (finding that the appellant's statement that he wanted to speak "to his mother, his attorney, and Detective Parker" was not an unequivocal request for counsel).

In Almeida v. State, 737 So. 2d 520, 523-24 (Fla. 1999), the Florida Supreme Court distinguished an equivocal statement that requires no clarification from a question that is "prefatory to—and possibly determinative of—the invoking of a right." The Court held:

> if, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer. To do otherwise—i.e., to give an evasive answer, or to skip over the question, or to override or "steamroll" the suspect—is to actively promote the very coercion that *Traylor* was intended to dispel. A suspect who has been ignored or overridden concerning a right will be reluctant to exercise that right freely. Once the officer properly answers the question, the officer may then resume the interview (provided of course that the defendant in the meantime has not invoked his or her rights). Any statement obtained in violation of this proscription violates the Florida Constitution and cannot be used by the State.

Id. at 525-26 ("whenever constitutional rights are in issue, the ultimate bright line in the interrogation room is honesty and common sense"). A prefatory utterance must be subject to the following three-step analysis: (1) whether the defendant was in fact referring to his right to counsel; (2) whether the utterance was a clear, bona fide question calling for an answer, not a rumination or a rhetorical question; and (3) whether the officer made a good-faith effort to give a simple and straightforward answer. Id. at 523-25. Accordingly, the Court reversed the appellant's conviction upon concluding that the detective steamrolled him by

ignoring his question of "[w]ell, what good is an attorney going to do?" and continuing the interrogation. Id.

In State v. Glatzmayer, 789 So. 2d 297, 300, 304-05 (Fla. 2001), the Florida Supreme Court held that where the appellee "asked the officers if 'they thought he should get a lawyer?,'" the officers' response that it was the appellee's decision was a good-faith effort to give a simple and straightforward answer because "[t]heir response was simple, reasonable, and *true*." "Unlike the situation in *Almeida*, the officers did not engage in 'gamesmanship'; they did not try 'to give an evasive answer, or to skip over the question, or to override or steamroll' the suspect." Id. at 305 (concluding that "[a]ll that is required of interrogating officers under *Almeida* and *Owen* is that they be honest and fair when addressing a suspect's constitutional rights"); see also Chaney v. State, 903 So. 2d 951, 951-52 (Fla. 3d DCA 2005) (rejecting the appellant's arguments that the detective failed to make a good-faith effort to give a simple and straightforward answer and was evasive and intended to steamroll him where the appellant asked the detective if he thought the appellant needed a lawyer and the detective responded, "Do you think you need a lawyer?," because the detective's "question in effect correctly informed [the appellant] that it was up to [him] to decide whether or not he needed a lawyer").

In the present case, the issue turns on the third step of the Almeida analysis:

whether Detective Jones gave a good-faith answer to Parker's prefatory question of "[c]an you just tell me if I need to get a lawyer or something?," or tried to override or steamroll him. We conclude that Detective Jones's response of "[l]isten, that's your right. But what I'm interested in is the truth, --" complied with Almeida because the response was simple, straightforward, and true and in effect communicated to Parker that he had the right to counsel and whether to ask for one was his choice. We further find with regard to Parker's prefatory question of "[i]s there -- is there a lawyer in the building," that Detective Jones's response of "[n]o, you would have to call one" satisfied Almeida because it, too, was simple, straightforward, and honest.

Contrary to the dissent's characterization of the majority opinion, we are not controverting the trial court's findings of fact; rather, we disagree with the trial court's application of the law to those facts. Aside from the above-discussed prefatory utterances, Parker made no other reference to counsel. The dissent contends that the trial judge was entitled to conclude that when Parker asked whether there was a lawyer in the building, he was requesting legal assistance. However, the trial court did not find, and Parker does not argue, that he made an unequivocal request for counsel. Instead, the parties and the trial court properly recognized that the Almeida analysis applies. We agree that Parker was in fact referring to his right to counsel when he posed that prefatory question and that his

utterance called for an answer. However, we conclude that the detective made a good-faith effort to give a simple and honest answer.

For these reasons, the trial court erred by granting Parker's motion to suppress his statements. Accordingly, we REVERSE the trial court's order.

MARSTILLER, J., CONCURS; BENTON, J., DISSENTS WITH OPINION.

BENTON, J., dissenting.

"A trial court's ruling on a motion to suppress comes to this Court clothed with a presumption of correct[ness] and, as the reviewing court, we must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling." San Martin v. State, 717 So. 2d 462, 469 (Fla. 1998). Given the trial court's findings and the record on which they are based, the trial court's ruling should be affirmed.

After a scholarly discussion of the pertinent cases, the trial court summarized its findings of fact in the following paragraph:

> Here, the record reflects that, Defendant made at least two, if not more, attempts to request access to an attorney. Though Detective Jones did tell Defendant that it was his right to speak to an attorney, he continued on with the interrogation without any pause. It is clear from Detective Jones' responses to Defendant, on at least the two occasions when that word, lawyer, is used, that Detective Jones understood that Defendant wanted to speak to an attorney. Furthermore, Defendant repeatedly requested to use the phone after asking if he needed an attorney. Whenever he asked if he could make a call to get advice, Detective Jones prevented him from doing so. Even when he explicitly asked if a lawyer was available to speak with him, Detective Jones still did not make a good-faith effort to answer his question. Even when answering the question initially, Detective Jones stated to Defendant that he had a right to an attorney, but he (Detective Jones) just wanted the truth. Throughout the interrogation, Detective Jones engaged in "gamesmanship" with Defendant; and, either overrode or "steamrolled" Defendant as he attempted to invoke his right to counsel. See State v. Glatzmayer, 789 So. 2d

> 297, 305 (Fla. 2001). For this reason, Defendant's statements to law enforcement after invocation of his right to counsel are suppressed.

On this basis, the trial court understandably ordered "Defendant's statements to law enforcement after his invocation of his right to counsel . . . suppressed."

The majority opinion's claim that the appellant never sought to invoke his right to counsel and that his interlocutor never rebuffed or "overrode" these efforts —and thus that the trial court erred as a matter of fact—cannot be squared with the detailed findings the trial court made on the circumstances surrounding the statements and the evidence underlying the findings:

> On July 31, 2011, Detective Jones went to Defendant's apartment with deputies from the Alachua County Sheriff's Office to investigate an alleged burglary and sexual batteries. The deputies indicate on an audio recording at the scene that Defendant has been given his Miranda warning. Subsequent to that statement, Detective Jones begins to question Defendant about the events of the previous night and that morning. Ultimately, Defendant agrees to go to the Sheriff's Office with Detective Jones. Prior to being taken to the Sheriff's Office, and while Detective Jones was collecting Defendant's clothes for evidence, Defendant asks him, "Do I need to call somebody else?" Detective Jones responds, "No, we're going to get this resolved." Later, while still preparing to go to the Sheriff s Office, Defendant asks Detective Jones, "Can you bring my phone?" Detective Jones agrees to bring the phone, but states "All right. Just power it off and we'll bring it with us. We're not talking to anybody else right now but you're going to have it." They then proceed to the Sheriff's Office.

Upon arrival at the Sheriff's Office, Detective Jones repeatedly advised Defendant that he was not under arrest. Then, the following colloquy occurred:

> [Detective Jones:] I'm going to read you your rights. It's really simple. It just clarifies it, it makes it I'm the one who did it, I can stand up and say, "I'm the one who told him his rights."
>
> . . .
>
> You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask any questions and have him with you during questioning if you wish. If you can't afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time. You have the right to stop answering at any time until you talk to a lawyer. Do you understand each of these rights that I've explained to you?
>
> [Defendant:] Yes, sir.
>
> [Detective Jones:] Okay. With these rights in mind, do you wish to talk to me?
>
> [Defendant:] Yes, sir.

At this point, Defendant begins to tell Detective Jones what occurred the previous evening and that morning. When Defendant finished with his description of the events, Detective Jones confronted him with the allegation that he returned to the victims' apartment and sexually battered them. Several minutes into what had now become an interrogation, the following occurs:

> [Defendant:] Can you just tell me if I need to get a lawyer or something? I'll tell you but I just don't—I don't want to like--
>
> [Detective Jones:] Listen, that's your right. But what I'm interested in is the truth,--
>
> [Defendant:] I know.
>
> [Detective Jones:] -- okay?

The audio of the interview reflects that there was no space between the words "right" and "but" in Detective Jones' response to Defendant's question. It would more accurately be described as "Listen, that's your right but what I'm interested in is the truth." The ongoing desire of Defendant to either make a call or talk to an attorney continues:

> [Defendant:] I don't know. Just — can I — can I call my dad?
> [Detective Jones:] You can, but we need to get through this first. I promise that, no matter what, when we're done with this I'm going to let you use the phone.
>
> [Defendant:] Don't I get my one call?
>
> [Detective Jones:] That's not true.
>
> [Detective Long:] You're not in jail, man.
>
> [Detective Jones:] You're not in jail.
>
> . . .
>
> [Defendant:] Can I —

[Detective Jones:] But you are stuck –

[Defendant:] May I make a call first?

[Detective Jones:] You are stuck dwelling on that.

[Defendant:] What else is there, man?
. . .

[Defendant:] Dude, am I suppose - should I be saying this stuff?

[Detective Jones:] I'm just after the truth.

[Defendant:] I know. But is it going to go different for me --- do I need - I just don't know if I need to do something else.

[Detective Jones:] It's always your choice. And like we told you, you don't have to talk to us.
. . .

[Defendant:] I need to --- am I supposed to be writing something or do I need to --- I don't want to fuck myself more than ---

[Detective Jones:] If you want to ---

[Defendant:] I want to say ---

[Detective Jones:] I can't let you communicate with them directly, but I will, you know, give that to them if that's what you want to do. You don't have to.

[Defendant:] I know, but I don't want to fuck myself more than I already am, dude. I mean ---

> [Detective Jones:] That's your choice.
>
> [Defendant:] I want to say that I'm sorry. I don't know what to do right now. Is there --- is there a lawyer in the building or am I going to have to fucking sit in there and wait?
>
> [Detective Jones:] No, you would have to call one. Listen, man, if you don't want to do it ---
>
> [Defendant:] Or a call to my parents. I mean, I just want --- I just need some advice, man. I just --- I want to say that I'm sorry really bad, I just don't want to---
>
> The interrogation continues on from there until Defendant is ultimately arrested and taken to jail.

(Boldface emphasis in the original omitted.) The trial judge was entitled, inter alia, to conclude that, as a matter of fact, when the defendant asked whether there was a lawyer in the building, he was requesting legal assistance, just as somebody asking whether there is a doctor in the house can be understood to be seeking medical assistance.

"'Aspects or components of the trial court's decision resolving legal questions are subject to de novo review, while factual decisions by the trial court are entitled to deference commensurate with the trial judge's superior vantage point for resolving factual disputes.' State v. Setzler, 667 So. 2d 343, 344–45 (Fla. 1st DCA 1995). See Ornelas v. United States, 517 U.S. 690, 699, 116 S.Ct. 1657,

134 L.Ed.2d 911 (1996); Connor v. State, 803 So. 2d 598, 605 (Fla. 2001); State v. Eldridge, 814 So. 2d 1138, 1140 (Fla. 1st DCA 2002) ('The standard of review of an order granting a motion to suppress evidence depends on the issue adjudicated by the trial court.')." Green v. State, 824 So. 2d 311, 314 (Fla. 1st DCA 2002). We are bound by the trial court's findings of fact on orders granting suppression just as we are bound on orders denying suppression.

"'An appellate court is bound by the trial court's findings of historical fact if those findings are supported by competent, substantial evidence.'" Peraza v. State, 69 So. 3d 338, 340 (Fla. 4th DCA 2011) (quoting Ferguson v. State, 58 So. 3d 360, 363 (Fla. 4th DCA 2011)). See M.J. v. State, 776 So. 2d 341, 342 (Fla. 1st DCA 2001) ("[T]he reviewing court is bound by the trial court's findings of fact on this matter, made after the suppression hearing, unless the findings are clearly erroneous."); Warren v. State, 701 So. 2d 404, 405 (Fla. 1st DCA 1997) (same); Kennedy v. State, 641 So. 2d 135, 136 (Fla. 5th DCA 1994) (same). While giving this principle lip service, the majority opinion honors it only in the breach. I respectfully dissent from today's unwarranted reversal. The suppression order should be affirmed.