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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MICHAEL LINDSEY McADAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D11-3158

Opinion filed February 26, 2014.

Appeal from the Circuit Court for Pasco County; Susan L. Gardner, Judge.

Howard L. Dimmig, II, Public Defender, and Jack W. Shaw, Jr., Special Assistant Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Danilo Cruz-Carino, Assistant Attorney General, Tampa, for Appellee.

KELLY, Judge.

Michael McAdams was convicted of murdering his wife, Lynda McAdams, and her coworker and boyfriend, Ryan Andrews. He was sentenced to two consecutive life sentences. In this appeal of his judgment and sentences, Mr. McAdams challenges

the trial court's denial of a motion to suppress his confession and evidence obtained as a result of the confession. He also challenges the trial court's denial of a motion to suppress evidence seized from his wife's residence. We conclude that the trial court did not err in denying the motions to suppress Mr. McAdams' confession and the evidence found in Lynda McAdams' home; however, we must reverse the judgment and sentences because the trial court erred in denying the motion to suppress certain evidence obtained after Mr. McAdams confessed.

Lynda McAdams and Ryan Andrews were reported missing by their families. During the course of the missing persons' investigation, a detective searching for Lynda McAdams entered her Pasco County home, and based on his observations, detectives from major crimes became involved in the investigation. The detectives contacted Mr. McAdams at his parents' home in Hernando County and obtained his written consent to search his wife's residence. Although Mr. McAdams no longer lived at the Pasco County home, detectives presumably sought his consent because he still co-owned the home with Mrs. McAdams.

Mr. McAdams moved to suppress the evidence seized during the search of his wife's residence. The trial court denied the motion finding that the initial entry was justified by exigent circumstances and that the subsequent search was done with Mr. McAdams' consent. Because we find no error in either the trial court's factual findings or in its application of the law, we affirm without further comment the denial of the motion to suppress the evidence seized from Mrs. McAdams' residence.

After the search of Mrs. McAdams' residence, Hernando County detectives visited Mr. McAdams at his home and asked him if he would be willing to

meet with the Pasco County detectives who were investigating his wife's disappearance. He agreed and accompanied them to the Hernando County Sheriff's Office to meet with the detectives from Pasco County. The entire interview, which lasted approximately two and a half hours, was videotaped. During this interview, Mr. McAdams confessed to killing his wife and Mr. Andrews. At that point the detectives advised Mr. McAdams of his Miranda[1] rights, which he waived. He then led detectives to where he had buried the bodies of Mrs. McAdams and Mr. Andrews. He also showed them where he had left Mr. Andrews' car, and he took them to where he had disposed of the gun he had used in the murders.

Unbeknownst to Mr. McAdams, while he was being interviewed an attorney hired by his parents had arrived at the sheriff's office. The attorney asked that the interview be terminated and that he be allowed to speak with Mr. McAdams. The detectives conducting the interview declined both requests and continued with the interview without telling Mr. McAdams about the attorney. It was not until after Mr. McAdams had taken the detectives to the place where he had buried the bodies of his victims that the detectives told him about the attorney.

Mr. McAdams moved to suppress his confession as well as the evidence collected after he confessed. He argued that throughout the time he was at the sheriff's office he had been in custody and that his confession was obtained in violation of Miranda. He also argued that the detectives' refusal to advise him of his attorney's presence and desire to speak with him violated the due process provisions of article 1, section 9 of the Florida Constitution. The trial court denied the motion after concluding

[1]Miranda v. Arizona, 384 U.S. 436 (1966).

that Mr. McAdams was not in custody at the time he confessed and that the detectives' delay in advising him about the attorney was not misconduct that would amount to a due process violation.

Under Miranda, statements made to the police during a "custodial interrogation" must be suppressed if the police have not informed the suspect of his constitutional rights before the interrogation. State v. Pitts, 936 So. 2d 1111, 1123 (Fla. 2d DCA 2006). As we explained in Pitts,

> [i]n determining "whether a suspect is 'in custody' for purposes of receiving of Miranda protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." Whether a suspect has been subjected to such a restraint on freedom of movement depends on "how a reasonable [person] in the suspect's position would have understood his situation."

Id. (second alteration in original) (citation omitted). "Miranda custody determinations present mixed questions of law and fact, under which the reviewing court defers to the competent factual determinations of the trial court but analyzes de novo the application of the law to those facts." Rigterink v. State, 2 So. 3d 221, 246 (Fla. 2009), vacated on other grounds, 559 U.S. 965 (2010). "In this context, precedent remains a persistent guide but often plays less of a role because each custody determination depends upon the highly unique facts of the given case." Id.

The trial court's order details the facts developed at the suppression hearing, and it analyzes those facts using the test adopted by the Florida Supreme Court in Ramirez v. State, 739 So. 2d 568 (Fla. 1999). In Ramirez, the court looked at four factors to determine

> whether a reasonable person in the suspect's position would consider himself in custody: (1) the manner in which the police summon the suspect for questioning; (2) the purpose, place, and manner of the interrogation; (3) the extent to which the suspect is confronted with evidence of his or her guilt; (4) whether the suspect is informed that he or she is free to leave the place of questioning.

Id. at 574. As we noted in Pitts, "the four-factor test must be understood as simply pointing to components in the totality of circumstances surrounding an interrogation." 936 So. 2d at 1124; see also Rigterink, 2 So. 3d at 246 (explaining that with respect to the objective reasonable person framework for analyzing custody, the test in Ramirez is a "subsidiary four-part channeling paradigm to organize and analyze the case-specific facts that are relevant to determining whether a reasonable person would have felt that he or she was not at liberty to terminate the interrogation and leave"). Pitts explains:

> No factor on the Ramirez list of factors can be considered in isolation. The whole context must be considered. A factor that would militate strongly toward the conclusion that a suspect was in custody in one context might be viewed differently in a materially different factual context. The focus of the inquiry must remain on whether a reasonable person in the suspect's position—given all the relevant circumstances—would have understood himself to be in custody.

936 So. 2d at 1124. The trial court went through each of the Ramirez factors and made the following findings:

> I did take multiple opportunities to go over a lot of the information provided to me prior to today's hearing. I've already mentioned on the record that I did see the entire audio and video portion of the interview. I read the files, transcripts of depositions, and the motion and memoranda and opposition and the case law, everything that was provided to me by both sides. After hearing everybody's testimony today, it was as clear to me at the end of the day as it was in the beginning that we've got a couple of major issues that both sides seem to focus in on, and that carried

the day for the question of the day. Obviously, the first issue was whether or not the defendant was in custody in accordance with the guidelines set out in RAMIREZ. Which I am always happy to have guidance of any sort, it makes my job a lot easier, and thank you both sides for providing the case law that you did, and I read everything thoroughly. Guidance turns my decisions basically into a mathematical formula in some cases, which is very helpful to me.

In the RAMIREZ case there's four prongs, as you all know, that help and guide a judge to decide whether or not someone was in custody. So in going through those prongs, let's start with the first prong, "The manner in which police summoned the suspect for questioning."

In this case, as we all heard and testimony bore out, Mr. McAdams was brought to the Hernando County Sheriff's Office via a marked deputy vehicle. For all intents and purposes, while obviously I'm sure we all read case law where there's no—it's clear that defendant was coming of his own free will in those instances where he drives, he or she drives himself in his own vehicle to the police station.

In this case, after testimony from the defendant and the transporting deputy and the detective, it appears that defendant willingly went and voluntarily went with the police, the deputy, in the transport vehicle, and was not concerned that—or there was no reason for him to believe, even by the reasonable person's standard, that he was not free to decline that ride. There was—particularly under the circumstances where the underlying initial investigation involves a missing person who happened to be married to the defendant, so by his own statements in both the interview, the taped interview and today's testimony he indicated he wanted to be helpful and go and be helpful in any manner he could.

So Prong One, I find, indicates that, according to Prong One of RAMIREZ, that according to that he was not in custody as to that prong. The next one, "Purpose, place and manner of the interrogation." Obviously the interview took place at the Sheriff's Office. But again as I already said, he went there voluntarily. It was in a small interview room. But it was clear from the video that the defendant was seated closest to the door, there was nothing barring his exit, the door was not locked, according to testimony. And there were two detectives present in the room with him who were both seated further away from the door than the defendant and not blocking his way. There was nothing, from what I could see in the tape, there was no one obviously standing

there blocking his way, nor was there any testimony as to that other than the defendant indicated that at some point he did see two uniformed officers standing near the door. But Mr. Halkitis on cross elicited some testimony that he was not watching the door, which the videotape bears out his back was to the door. So, I find for all purposes that Prong Number Two indicates that defendant was not in custody.

The third prong is, "The extent to which the suspect is confronted with his guilt." Now, this one there were clearly some issues raised, and I'm going to make a few finding as to that. The Defense went to considerable length and focused on showing that the Pasco detectives suspected the defendant, that the defendant killed his wife even before they began questioning him. And then on direct Detective Christensen, in her testimony, seemed to attempt to minimize her suspicions of defendant. And in this whole line of focus, everything seemed to me, that whole thing seemed somewhat incredible as to Detective Christensen's—like I said, she seemed to minimize her suspicions.

A seasoned Major Crimes detective dealing with a missing person, and she already knows many, many things from her own observations, and now she's sitting talking to the spouse of a missing woman, I find it very hard to believe that she did not consider Mr. McAdams a suspect. Because even lay people are subject to statistics that say, "Oh, 95 percent of homicides are all committed by someone you know." And so again I find it very hard to believe that Detective Christensen didn't have a pretty strong suspicion that Mr. McAdams was a suspect.

But I don't find that really to be relevant, in the fact that it doesn't really matter what she thought, it's what she did, how she behaved, and whether or not she violated the third prong of RAMIREZ by threatening or acting in some manner on her suspicions. For instance, if she suddenly treated Mr. McAdams like a criminal by hollering at him, threatening him, frightening him, acting, you know any type of aggression, or even more importantly to start confronting him, as the third prong says, with the knowledge that she already had.

The testimony clearly indicates—first of all there was a search warrant obtained based on the observations at both houses—that there were some significant concerns. There was blood found, there was something that appeared to be a bullet hole, you've got at least one known missing person, possibly two. There was a broken cell phone, glass, dog food scattered about, a well-known very reliable employee

> missing out of her home for—out of her work for a couple of days without excuse. There was the pending divorce. There was all it could have gone on and on. And I don't find that through the evidence presented that these—I find that those questions as to whether or not they threatened, the defendant was threatened, frightened or spoken to contemptuously, or whether or not he was confronted with any evidence that was going to be used against him, I find that those questions are all answered in the negative.
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> I watched, again, several hours—well, I watched the whole tape and hours of Detective Christensen and then Detective Arey alone, there was never any raised voices, never any threat. The only, the only incidents where anything was mentioned about evidence that had been already seen or was in hand or suspected of having was the blood and some of the clothing.
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> But in light of the whole circumstances and the tone of the whole interview, I don't find that he was in custody under prong three based on the totality of the circumstances.
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> And finally under prong four, "Whether the suspect is informed that he is free to leave."
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> The testimony was uncontroverted that he was informed that he was free to leave, at least once, possibly twice depending on whose [sic] testifying. But there was uncontroverted testimony that he was told at least once that he was free to leave.
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> So under the guidance of Ramirez, I find that the defendant was not in custody, at least to the point of when he's admittedly in custody. That happened when Detective Arey read Miranda and placed him under arrest, he was clearly in custody at that point.

As did the trial court, we have viewed the entire video of Mr. McAdams' interview with the detectives. We conclude that the trial court's factual findings are supported by the video and by the testimony at the suppression hearing, and we agree with the trial court's ultimate determination that Mr. McAdams was not in custody at the time he confessed to the murders.

The question remains, however, whether the detectives violated Mr. McAdams' right to due process under the Florida Constitution when they did not advise

him of the presence of his lawyer. In support of his argument, Mr. McAdams relies on Haliburton v. State, 514 So. 2d 1088 (Fla. 1987). In Haliburton, police refused to advise a defendant that a lawyer who had been hired to represent him was in the police station and wished to speak with him. Id. at 1089. The court held that the officers' actions violated the due process provisions of article 1, section 9 of the Florida Constitution. Id. at 1090.

We believe there is a critical distinction between this case and Haliburton. Unlike Mr. McAdams, the defendant in Haliburton was in custody and had been read his Miranda rights, which he had waived at the time his attorney was trying to see him. Id. at 1089. The court in Haliburton found the due process violation based on what it found to be misconduct by law enforcement in that it interfered with Haliburton's right to counsel during a custodial interrogation. Id. at 1090. Here, detectives were conducting a noncustodial interview with Mr. McAdams. Neither Haliburton nor any other case McAdams cites holds that it is misconduct for law enforcement officers to refuse to interrupt a noncustodial interview to permit an attorney access to a suspect who has voluntarily agreed to be interviewed, and we decline to do so here. However, we certify the following question to be of great public importance:

> DOES AN ADULT SUSPECT WHO IS NOT IN CUSTODY BUT VOLUNTARILY ENGAGES IN A LENGTHY INTERVIEW IN AN INTERROGATION ROOM AT A LAW ENFORCEMENT OFFICE HAVE A DUE PROCESS RIGHT TO BE INFORMED THAT A LAWYER HAS BEEN RETAINED BY HIS FAMILY AND IS IN THE PUBLIC SECTION OF THE LAW ENFORCEMENT OFFICE AND WISHES TO TALK TO HIM?

Our ability to distinguish Haliburton, however, extends only to the point at which Mr. McAdams confessed. After he confessed and received his Miranda rights he

was admittedly in custody. The State nevertheless attempts to distinguish Haliburton by pointing to the fact that the law enforcement officers in that case refused access to the attorney even in the face of a court order—only relenting after a second court order. While the violation of the court order was obviously pertinent to the outcome in Haliburton, as we read the supreme court's opinion it does not appear to us that the violation of the court order was determinative of the question of whether law enforcement's conduct rose to the level of a violation of due process. Accordingly, we conclude that under Haliburton, any evidence collected after detectives read Mr. McAdams his Miranda rights until they told him about the attorney was collected in violation of Mr. McAdams' right to due process under the Florida Constitution. Pursuant to Haliburton, that evidence should have been suppressed.

Accordingly, we reverse Mr. McAdams' judgment and sentences and remand for further proceedings consistent with this opinion.

ALTENBERND, J., Concurs.
DAVIS, C.J., Concurs in part and dissents in part with opinion.

DAVIS, Chief Judge, Concurring in part and dissenting in part.

I respectfully dissent from the majority's opinion to the extent that it finds no error in the trial court's denial of Mr. McAdams' motion to suppress the incriminating

statements he made to law enforcement prior to Miranda warnings being administered. However, I do concur with the majority's conclusion that Mr. McAdams' convictions and sentences must be reversed because the trial court erred in denying Mr. McAdams' motion to suppress evidence obtained by police after Miranda warnings were given but prior to detectives informing him that an attorney retained to represent him had come to the sheriff's office to speak with him. I also concur with the majority's conclusion that the trial court did not err in denying Mr. McAdams' motion to suppress physical evidence found in Mrs. McAdams' home. Finally, I concur with the certification of the question of great public importance regarding the applicability of Haliburton v. State, 514 So. 2d 1088 (Fla. 1987) (Halliburton II).

With respect to Mr. McAdams' pre-Miranda confession, I believe that the record is clear that Mr. McAdams was in custody when he made these statements and that, as such, the trial court should have suppressed those statements.

Mr. McAdams was tried for the premeditated murder of his estranged wife, Lynda McAdams, and her friend, Ryan Andrews. Mrs. McAdams and Mr. Andrews were first noticed to be missing when they failed to report to work on Monday, October 19, 2009. The Pasco County Sheriff's Office began its investigation of the missing persons on Wednesday, October 21, 2009, by visiting the McAdams' residence on Palimino Road in Dade City.[2] On the morning of Friday, October 23, 2009, upon the request of the Pasco County Sheriff's Office, deputies from the Hernando County Sheriff's Office encountered Mr. McAdams at his new residence on Glover Road in

[2]The residence was owned by Mr. and Mrs. McAdams as tenants by the entirety. Mr. McAdams had moved to Hernando County due to the marital difficulties the couple was experiencing. The property was in foreclosure, and Mrs. McAdams was to continue to reside there until the foreclosure sale was completed.

Hernando County. They advised Mr. McAdams that Pasco County detectives wanted to talk with him as a part of their investigation into the disappearance of his wife and her friend. Mr. McAdams voluntarily accompanied the detectives to the Hernando County Sheriff's Office, where he waited for the arrival of two detectives from Pasco County. Mr. McAdams' interview with the Pasco County detectives, one male and one female,[3] lasted nearly three hours, during which time he ultimately confessed to killing Mrs. McAdams and Mr. Andrews.

At trial, a video of Mr. McAdams' statement was played for the jury. A Florida Department of Law Enforcement expert also testified that a blood stain on Mr. McAdams' shirt contained human DNA that matched the DNA of Mrs. McAdams and that a blood stain on Mr. McAdams' shorts contained DNA that matched the DNA of Mr. Andrews. Further testimony showed that these two items of clothing were found in Mr. McAdams' Hernando County residence.

Prior to trial, Mr. McAdams sought to suppress his confession and the evidence discovered as a result of that confession, i.e., the victims' bodies. At the suppression hearing, Mr. McAdams first argued that suppression was warranted because during his interrogation an attorney hired by his parents to represent him had arrived at the sheriff's office requesting to see him. The attorney, Douglas Edenfield, was turned away, and Mr. McAdams was not informed of his presence until after Mr. McAdams had confessed and led detectives to the victims' bodies. Counsel for Mr. McAdams argued that pursuant to the Florida Supreme Court's decision in Haliburton II, 514 So. 2d 1088, the police conduct of concealing from Mr. McAdams the fact that an

[3]This is noted only as a means of differentiating one detective from the other.

attorney retained to represent him had been present and had requested to see him was a violation of the due process rights guaranteed Mr. McAdams under article 1, section 9 of the Florida Constitution.

The State acknowledged that Haliburton II was applicable if Mr. McAdams was in custody.[4] However, the State maintained that Mr. McAdams was not in custody.

Mr. McAdams' counsel disagreed that Haliburton II only applied to one who was in custody. Nevertheless, he maintained that Mr. McAdams was in fact in custody at the time or soon after Mr. Edenfield arrived at the station. Specifically, he argued that although the interview began as a voluntary conversation, once the detective began to confront Mr. McAdams with the evidence of his guilt, the interrogation turned from voluntary to custodial. Counsel argued that the detectives' failure to advise Mr. McAdams that Mr. Edenfield was attempting to communicate with him and their refusal to allow Mr. Edenfield access to Mr. McAdams was a violation of Mr. McAdams' constitutional rights requiring the suppression of the statement. Counsel further argued that pursuant to the "fruit of the poisonous tree" doctrine, any evidence discovered based on the illegally obtained statement must also be suppressed.

Additionally, Mr. McAdams' counsel argued that without even reaching a decision on the applicability of Haliburton II, suppression should be granted because Mr. McAdams was in custody when he gave his statement and was not given the warnings required by Miranda. I agree.

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[4]The prosecutor stated, "So we look at the proposition that Haliburton applies if the defendant is in custody. And I have no quarrel with that, I think that is an accurate statement of the law."

Mr. McAdams was in custody when he made his incriminating statements, and therefore the detectives violated his Miranda rights. Furthermore, by failing to inform Mr. McAdams that a lawyer retained to represent him had been present at the sheriff's office and had requested to speak to him, the police violated Mr. McAdams' due process rights under the Florida Constitution. Accordingly, I believe that the trial court erred in failing to suppress Mr. McAdams' confession.

Miranda Violation

> In determining whether a suspect is in custody, "the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." This inquiry is approached from the perspective of how a reasonable person would have perceived the situation.

Roman v. State, 475 So. 2d 1228, 1231 (Fla. 1985) (citation omitted) (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)) (some internal quotation marks omitted). In other words, the question is whether a reasonable person would believe that he was free to leave.

Roman provides several factors to consider in making such a determination, including whether a person was told he was free to leave or was under arrest. Id. Additionally, "the length of time of the interrogation, in some cases . . . might make a difference." Id. Likewise, the location of the interrogation may impact the custody determination, although "it does not have to be found that the environment in which [a suspect] was questioned was devoid of coercion" in order to make a finding that the suspect was not in custody. Id. at 1232.

In the instant case, Mr. McAdams was not told that he was under arrest, but he also was not told that he was free to leave. The interview lasted nearly three

hours, but this was not unreasonable considering the nature of the investigation, and Mr. McAdams was allowed to take a break. Finally, beyond the fact that the interrogation took place at the sheriff's office, there was nothing so coercive about the location that a reasonable person would have believed he was being detained. As such, the answers to the Roman questions seem inconclusive to the question of custody in this case.

However, subsequent to Roman, the Florida Supreme Court drew a clearer picture of how to determine when one is in custody in Ramirez, 739 So. 2d at 574. There, the court set forth a four-prong test that "provides guidance in making the determination whether a reasonable person in the suspect's position would consider himself in custody." Id. Under that test, the court should consider

> (1) the manner in which police summon the suspect for questioning; (2) the purpose, place, and manner of the interrogation; (3) the extent to which the suspect is confronted with evidence of his or her guilt; (4) whether the suspect is informed that he or she is free to leave the place of questioning.

Id. (citing State v. Countryman, 572 N.W.2d 553, 558 (Iowa 1997)).

Applying this test to the facts of the instant case indicates that Mr. McAdams' questioning did not begin as a custodial interrogation. With regard to the manner in which Mr. McAdams was summoned to questioning, he was asked to meet the deputies at the sheriff's office and agreed to do so. The deputies offered him a ride, which he accepted. He was not arrested or in custodial detention at that time. As to the purpose, place, and manner of the questioning, Mr. McAdams was questioned in an interrogation room at the Hernando County Sheriff's office. Nothing about the room itself suggested that Mr. McAdams was in custody, and Mr. McAdams was positioned

next to the door with the detectives beginning the interview seated at a reasonable distance for normal conversation. Initially, the questioning was conversational and factual, and during the first part of the interview, Mr. McAdams was not confronted with any evidence, nor was he told that he could or could not leave. In fact, at one point, the detectives took a break and Mr. McAdams was allowed to go down the hall to use the restroom.[5] Based on these facts, I would agree that during the first two hours of the interview, Mr. McAdams was not in custody.[6]

However, at roughly two hours and five minutes into the interview, the nature of the meeting changed dramatically. The video shows that the male detective left the interview room at 2:03 p.m. and returned at 2:04 p.m. He then asked the female detective to leave the room so that Mr. McAdams and he could be alone. Following the female detective's exit, the male detective moved in closer to Mr. McAdams and began to talk to him about the effect a long investigation would have on his parents. The male detective then stated that he had been to Mr. McAdams' home in Hernando County and to Mrs. McAdams' residence in Pasco County. He advised that "the evidence . . . is really, really strong" and that detectives found "tons of blood evidence and DNA evidence," including blood on shorts and a t-shirt belonging to Mr. McAdams. The male

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[5]Mr. McAdams argues on appeal that he was accompanied to the restroom by the two detectives and an additional deputy, thus showing that he was not free to leave. However, my review of the video of the interview supports the State's argument that the Pasco County detectives who were doing the questioning did not know where the restrooms were in the Hernando County Sheriff's Office and that the Hernando County deputy was showing Mr. McAdams and the two detectives where to find the restrooms.

[6]The video of Mr. McAdams' interview indicates that he sat alone in the interrogation room from 11:09 a.m. until the Pasco County detectives entered at 11:55 a.m. Actual questioning began just before noon.

detective stated, "I've already got a pretty dang good idea of what went down." When Mr. McAdams protested that the blood on his clothing was rat blood from feeding his snakes, the male detective retorted that the blood had been tested and was determined to be human blood with DNA. He told Mr. McAdams, "This isn't gonna go away." He urged Mr. McAdams to tell him what happened. When Mr. McAdams was not forthcoming, the male detective reiterated, "I was at your house until, I think, 3:30 this morning. It's all there, and it won't go away." Mr. McAdams responded that he needed a couple of days to think about things, but the male detective advised, "Regretfully, everything is already set in motion."

Mr. McAdams asked, "Am I gonna be able to leave here today?" The male detective responded, "I don't know, Mike. I don't know." Mr. McAdams then suggested that possibly his wife's friend could have killed her. He then began to open up, stating that "[w]hatever happened out there Sunday, I was drunk." When Mr. McAdams did not immediately continue with details, the male detective asked, "What are your intentions, Mike?" Mr. McAdams responded that he hoped his wife would come home, to which the male detective responded, "We both know that's not the case." Mr. McAdams asked, "How do you know that?" The male detective answered, "From all that evidence." Mr. McAdams asked for another drink, and the male detective left the room for two minutes. Once the male detective returned, Mr. McAdams asked him, "What happens now?" The male detective responded, "You and I, we talk it out." After a minute or two more, at 2:27 p.m., Mr. McAdams began to make his incriminating statement, detailing the shooting of the victims and ultimately drawing a map to show where he buried their bodies.

Viewing these facts with regard to the four-prong Ramirez test, I conclude that when the male detective returned to the room at 2:04 p.m., the nature of the questioning changed so that a reasonable person would have concluded that he was no longer free to leave and was now being held in custody. First, with regard to the third-prong of the test—"the extent to which the suspect is confronted with evidence of his or her guilt,"—the male detective told Mr. McAdams that the evidence against him was "really, really, strong," that detectives had gathered "tons of blood evidence and DNA evidence," that "[t]his isn't going away," and that he knew that Mrs. McAdams was not going to return home based on "all that evidence." With regard to the second-prong of Ramirez—"the purpose, place, and manner of the interrogation"—the male detective informed Mr. McAdams that he had a pretty good idea of what happened, and the purpose of the interrogation changed to "[y]ou and I, we talk it out." Additionally, the manner of the interrogation changed from an easy conversation to the male detective pulling his chair right up to Mr. McAdams so that they sat in close proximity to one another, necessarily intensifying the exchange. Finally, considering prong four of the Ramirez test—"whether the suspect is informed that he or she is free to leave the place of questioning"—when Mr. McAdams asked for a couple of days to think things out, the male detective indicated that "everything was already set in motion." Mr. McAdams then directly asked the male detective, "Am I gonna be able to leave here today?" The detective equivocated, answering, "I don't know, Mike." While this may not be a clear indication that Mr. McAdams was not free to leave, only a few minutes later Mr. McAdams asked, "What happens now?" The male detective responded, "You and I, we talk this out," indicating that Mr. McAdams was not free to leave but rather had to stay

there and talk to the detective. All of this occurred between 2:05 and 2:27 p.m.; however, Miranda warnings were not administered until 2:42 p.m.

Considering the totality of the circumstances that occurred after the female detective left the room, as Pitts, 936 So. 2d at 1124, directs, I must conclude that a reasonable person in Mr. McAdams' position would not have felt free to terminate the interrogation and leave but rather would have understood himself to be in custody. See also Rigterink, 2 So. 3d at 246; Kessler v. State, 991 So. 2d 1015, 1020 (Fla. 4th DCA 2008) ("Interrogation takes place for Miranda purposes 'when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.' " (quoting Traylor v. State, 596 So. 2d 957, 966 n.17 (Fla. 1992))).

Because Mr. McAdams was held in custody and interrogated without the benefit of being informed of his Miranda rights, I believe his confession should have been suppressed.

Due Process as Guaranteed by the Florida Constitution

Furthermore, pursuant to Haliburton II, the due process rights guaranteed to Mr. McAdams under the Florida Constitution were violated when his attorney was denied access to see him. The facts regarding Mr. Edenfield's presence at the Hernando County Sheriff's Office prior to Mr. McAdams making his incriminating statement are not in dispute. Mr. Edenfield arrived at the Hernando County Sheriff's Office at around 2:00 p.m. He advised the deputy at the front desk that he was an

attorney and had been retained by Mr. McAdams' parents to represent Mr. McAdams.[7] Mr. Edenfield testified that the deputy at the front desk walked back into an area behind a closed door and then returned and advised him that his client was in the major crimes area of the office and that he therefore could not see him. Mr. Edenfield then asked if he could get any communication to his client by telephone, email, or even a "note under the door," but the deputy advised him that such was not possible. Mr. Edenfield then presented his Florida Bar card and asked that his presence be registered and the time be noted, but the deputy refused the request. Mr. Edenfield then asked the deputy to advise the detectives that he was requesting that any and all questioning be terminated until he could speak with his client. He then returned to his office and prepared a letter making the same request and faxed it to the sheriff's office.

At the suppression hearing, both detectives acknowledged that they knew an attorney was present at the sheriff's office and that he was asking to see Mr. McAdams before Mr. McAdams made his incriminating statements. They also acknowledged that they made the conscious decision to deny the attorney access to his client and to delay advising Mr. McAdams that his attorney was trying to communicate with him. The female detective testified that it was her understanding that there was no need to advise Mr. McAdams of the attorney's presence because when she learned that the attorney was outside, Mr. McAdams was not in custody as he had not made any

[7]Mr. McAdams' parents contacted Mr. Edenfield's office and retained the firm to represent Mr. McAdams in conjunction with the investigation into the disappearances of Mrs. McAdams and Mr. Andrews. By this time, Mr. McAdams' father already had informed police that Mr. McAdams had been asking about obtaining a gun from his father and had appeared to the father to be depressed. Although Mr. McAdams' father did not give the police any information that directly implicated Mr. McAdams in the disappearance, it did raise concern as to his involvement.

incriminating statements.[8] The male detective testified that when he reentered the room and began confronting Mr. McAdams with the evidence of his guilt, it was his understanding that the attorney already had left and that therefore he need not advise Mr. McAdams of the attorney's attempt to see him.

Mr. Edenfield testified that he arrived at the station at 2:04 p.m.[9] The video timer indicates that the male detective—who candidly admitted he knew of the attorney's presence when he resumed his discussions with Mr. McAdams—reentered the room at 2:05 p.m., asked the female detective to leave him alone with Mr. McAdams, and then began to confront Mr. McAdams with the blood evidence. As such, the detective clearly began to seek the details of Mr. McAdams' involvement without advising Mr. McAdams that his attorney was attempting to communicate with him.

Although the detectives advised Mr. McAdams of his right to an attorney when they administered Miranda warnings at 2:42 p.m., they did not tell him that Mr. Edenfield attempted to contact him by coming to the sheriff's office. Following his statement, Mr. McAdams went with the detectives to Pasco County and showed them where the bodies were buried, following which the detectives and Mr. McAdams returned to Mr. McAdams' home in Hernando County. It was while they were at the

[8]At the suppression hearing, the female detective testified that at the time, she did not necessarily believe that Mr. McAdams was a suspect. The trial judge concluded that although she did not consider that testimony credible, the real issue was what a reasonable person in the suspect's position would have believed under these circumstances, not the state of mind of the detective.

[9]We note that there is a time discrepancy between Mr. Edenfield's testimony and the video timer. However, in light of the male detective's testimony, the discrepancy is without significance.

home that Mr. McAdams was first told that his attorney had tried to communicate with him.

Haliburton I

These facts are similar to the facts of the Haliburton cases. See Haliburton v. State, 476 So. 2d 192 (Fla. 1985) (Haliburton I). Mr. Haliburton was taken to the police station at 6:30 a.m. for questioning regarding a residential burglary and murder. He was advised of his Miranda rights and questioned until 9:30 a.m. He was later questioned again and submitted to a polygraph exam. His sister arranged for an attorney to represent him. The attorney called the police station and requested that the questioning be stopped. The attorney arrived at the station at about 4:00 p.m. and asked to speak with his client. Police officials denied this request. From 3:56 p.m. until about 4:20 p.m., Mr. Haliburton gave a statement admitting that he broke into the residence and saw the victim's body but denying that he killed the victim.

Upon being denied access to his client, the attorney contacted a judge, and at 4:18 p.m., police officials received a telephonic court order requiring the police to allow the attorney access to his client. However, it was not until a second telephonic court order was received that police officials allowed the attorney to see Mr. Haliburton. At the subsequent jury trial, the taped statement was played, and Mr. Haliburton was convicted of burglary and first-degree murder.

On review, the Florida Supreme Court concluded that the police officials' denial of the attorney's request to speak with Mr. Haliburton invalidated the voluntary nature of Mr. Haliburton's waiver of his Fifth Amendment rights. "In order for the right to counsel to be meaningful, a defendant must be told when an attorney who has been

retained on his behalf is trying to advise him." Id. at 194. The fact that the attorney had been retained by family without the suspect's knowledge did not invalidate the ruling. Id. "Our holding turns on the fact that the attorney retained by appellant's sister on his behalf was in the station requesting to speak with appellant. The failure of the police to convey this information to appellant violated his otherwise valid waiver." Id.

However, the State sought certiorari review by the United States Supreme Court, which vacated the Florida Supreme Court's opinion, remanding the case "for further reconsideration in light of Moran v. Burbine, 475 U.S. 412 (1986)." See Florida v. Haliburton, 475 U.S. 1078, 1078 (1986) (parallel citations omitted).

Moran v. Burbine

In Burbine, 475 U.S. 412, the defendant was suspected of committing a burglary in Cranston, Rhode Island. He was arrested and taken into custody. That same evening, without the defendant's knowledge, his sister contacted the public defender's office to obtain legal counsel for him for the burglary charge. After the defendant was taken into custody, officials determined that he might have information or involvement in a murder that had taken place in Providence, Rhode Island, earlier that year. The sister and the public defender were unaware of the murder case.

An assistant public defender telephoned the police department to advise that she would act as counsel for the defendant if the officials intended to question him that evening. She was informed by the police official that the defendant would not be questioned until the next morning. The attorney, however, was not informed that the defendant was also to be questioned concerning the murder case. Less than an hour after the telephone call, without informing the attorney of the change in plans and

without informing the defendant that the attorney had made inquiry, the police questioned the defendant in a series of interviews. At the outset of each interview, the defendant was advised of his Miranda rights, and each time, he waived the same verbally and in writing. During all of these interviews, the defendant was unaware of his sister's obtaining counsel for him, and at no time did he request the assistance of counsel. The statements the defendant gave during these interviews were used at trial, and Burbine was convicted of the murder charge in Providence, Rhode Island. The Rhode Island Supreme Court affirmed his conviction, rejecting his contention that the police had violated his Fifth and Fourteenth Amendment rights by failing to allow his attorney to have access to him. State v. Burbine, 451 A.2d 22, 31 (R.I. 1982).

The United States Supreme Court determined that the defendant validly waived his right to the presence of counsel. 475 U.S. at 421.[10] Furthermore, the Court observed that "[e]vents occurring outside the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right." Id. at 422. The Court then concluded:

> Once it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the State's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law.

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[10]Procedurally, the Burbine case came before the United States Supreme Court on review of a petition for writ of habeas corpus originally filed in the United States District Court, District of Rhode island. See Burbine v. Moran, 589 F. Supp. 1245 (D.C.R.I. 1984). After the First Circuit reversed the denial of the habeas petition, 753 F.2d 178 (1st Cir. 1985), the United States Supreme Court granted certiorari, 471 U.S. 1098 (1985).

Id. at 422-23. Accordingly, the Court determined that the failure to allow the attorney access to the individual did not render the statement involuntary or violate the individual's Miranda rights.

The Court went on to conclude that the denial of access also did not deprive the individual of the fundamental fairness guaranteed him by the Due Process Clause of the Fourteenth Amendment of the United States Constitution: "[O]n these facts, the challenged conduct falls short of the kind of misbehavior that so shocks the sensibilities of civilized society as to warrant federal intrusion into the criminal processes of the States." Id. at 433-34. However, the Court specifically stated that "[n]othing we say today disables the States from adopting different requirements for the conduct of its employees and officials as a matter of state law." Id. at 428.

Haliburton II

On remand, the Florida Supreme Court in Haliburton II, 514 So. 2d at 1090, noted this portion of the Burbine opinion and reaffirmed its original opinion reversing Mr. Haliburton's conviction because the police conduct violated the due process rights guaranteed him by article 1, section 9 of the Florida Constitution.

> [D]ue process requires fairness, integrity, and honor in the operation of the criminal justice system, and in its treatment of the citizen's cardinal constitutional protections . . . . [P]olice interference in the attorney-client relationship is the type of governmental misconduct on a matter of central importance to the administration of justice that the Due Process Clause prohibits . . . . Just as the government cannot conceal from a suspect material and exculpatory evidence, so too the government cannot conceal from a suspect the material fact of his attorney's communication.

Haliburton II, 514 So. 2d at 1090 (second alteration in original) (quoting Burbine, 106 S. Ct. at 1165-66 (Stevens, J., dissenting)).

The State attempts to distinguish the facts of Haliburton II by pointing out that in that case the police not only denied the attorney access to his client but continued to do so in the face of a telephonic court order to the contrary. See id. Although the Haliburton II court did note the police's refusal to comply with the court's telephonic order, it did so only after first stating the following:

> [T]he attorney in the instant case not only telephoned the police station as to the status of his client, but subsequently arrived at the station and requested access. . . . "[T]o pass up an abstract offer to call some unknown lawyer is very different from refusing to talk with an indentified attorney actually available to provide at least initial assistance and advice, whatever might be arranged in the long run."

Id. (quoting State v. Haynes, 602 P. 2d 272, 278 (Or. 1979)). As such, I conclude that the conduct found to be improper in Haliburton II was the failure to allow the attorney access, not the failure to obey the telephonic order. Accordingly, I would read Haliburton II to establish a bright line in Florida that the failure by law enforcement officials to advise a suspect that his attorney is attempting to contact him and to refuse an attorney who is present access to his client violates the guarantee of due process provided for in article I, section 9 of the Florida Constitution.

Smith v. State

The State here also relies on Smith v. State, 699 So. 2d 629 (Fla. 1997), for the proposition that the police were not required to inform Mr. McAdams of Mr. Edenfield's presence at the sheriff's office. Smith, however, is factually distinguishable from the instant case. In that case, Mr. Smith was under indictment for first-degree

murder and several other offenses. An arraignment was held for codefendants who were in custody at a time when Mr. Smith was not. Mr. Smith was not present at the hearing, but an assistant public defender who previously had represented Mr. Smith on an unrelated matter volunteered to appear on behalf of Mr. Smith. She noted the conflict her office had in providing representation for Mr. Smith in the murder charge, and the trial court appointed private counsel to represent Mr. Smith if and when he was taken into custody. This appointed attorney filed a written plea of not guilty and a demand for discovery prior to his having contact with Mr. Smith and prior to Mr. Smith being taken into custody.

It was almost a month later before Mr. Smith was arrested. At that time, he was given Miranda warnings, waived his rights, and submitted to questioning. The day after his arrest, he was again questioned and again waived his Miranda rights. During this questioning, he confessed. Mr. Smith later challenged the admissibility of the confession, arguing that the failure to advise him of the appointment of his attorney invalidated the waiver of his Miranda rights, violated his right to counsel as guaranteed by the Sixth Amendment, and violated the due process rights guaranteed him under the Florida Constitution. The Florida Supreme Court rejected these arguments. On the due process issue, the court made the specific finding that because there had been no prior finding of Mr. Smith's indigence, the trial court's appointment of counsel was an "unauthorized by section 27.52, Florida Statutes (1989), and was thus a nullity." Id. at 639. The court concluded that Haliburton II did not control the decision:

> We distinguish Haliburton on two bases. First, Haliburton did not confront the question of waiver under the Sixth Amendment. Second, we find the offensive police misconduct which compelled the decision in Haliburton was

> not present in this case. Rather, we find this case similar to Harvey v. State, 529 So. 2d 1083,1085 (Fla. 1988), in which we found no due process violation when police denied the public defender access to the defendant when the public defender voluntarily went to the jail after hearing about the defendant's arrest to see if the defendant needed a lawyer. Id.

Because Smith is factually distinguishable from Haliburton II on the basis that there was no valid attorney/client relationship, Smith is also distinguishable from the instant case. Here, Mr. Edenfield was retained by Mr. McAdams' family, and the attorney/client relationship was established even though Mr. McAdams was not aware of his family's actions. See Haliburton II, 514 So. 2d at 1090 (" '[T]here can be no constitutional distinction . . . between a deceptive misstatement and the concealment by the police of the critical fact that an attorney retained by the accused or his family has offered assistance, either by telephone or in person." (emphasis added) (quoting Burbine, 475 U.S. at 453 (Stevens, J. dissenting))).[11]

Accordingly, I conclude that based on Haliburton II, the trial court erred in denying the motion to suppress the statement in that the detectives' failure to advise Mr. McAdams of his attorney's efforts to contact him and to allow the attorney access to his client violated the due process rights guaranteed Mr. McAdams by article 1, section 9 of the Florida Constitution. See also State v. Allen, 548 So. 2d 762 (Fla. 1st DCA 1989). I also conclude that Mr. McAdams' interrogation became custodial for Miranda purposes when the detective began to confront him with the evidence as described above.

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[11]I would also note that the Smith court's description of the ruling in Haliburton II makes no reference to the telephonic court orders. As such, by the supreme court's own interpretation, Haliburton II was not premised on the disregarding of the telephonic court orders as the dispositive conduct that resulted in a finding of a state due process violation.

Therefore, I concur with the majority's reversal of Mr. McAdams' judgments and sentences based on the trial court's erroneous denial of his motion to suppress evidence obtained post-Miranda but prior to his being informed that his attorney had been present. I also concur that the trial court did not err in denying the motion to suppress evidence found at Mrs. McAdams' residence, and I concur with certifying the question of great public importance regarding the applicability of Haliburton II to the questioning of an accused who is not in custody. However, I dissent with regard to the majority's conclusion that the trial court did not err in denying Mr. McAdams' motion to suppress the incriminating statements he made prior to the detectives advising him of his rights under Miranda.