IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,454

THE STATE OF FLORIDA,

Petitioner,

vs.

G.D.P., a Juvenile,

Respondent.

* *

ON CONFLICT JURISDICTION FROM THE DISTRICT COURT OF APPEAL

* *

REPLY BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The Petitioner, the State of Florida, was the prosecution in the trial court. The Respondent, G.D.P., was the Respondent in the trial court. In this brief the parties will be referred to as they stood at trial. The symbol "T" will be used to designate the transcript; the symbol "R" will be used to designate the record on appeal.

STATEMENT OF THE CASE

The Respondent was charged by petition for delinquency filed in the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida, Juvenile and Family Division, with burglary. (R.3). He filed a motion to suppress statements. (R.5). After hearing testimony and argument the trial court granted the motion. (R.118). The State of Florida appealed this ruling but its appeal was dismissed upon authority of State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983) en banc, approved (Fla. Case No. 64,354). This Court accepted this case on conflict review and subsequently ordered a reply brief on the merits.

STATEMENT OF THE FACTS

Officer Jimenez testified that a thirteen-year old witness to a burglary referred to the Respondent by his nickname and stated that she could identify him as being one of the people who entered the dwelling. (T.25). The witness subsequently saw the Respondent on the street and identified him as one of the perpetrators of the burglary. (T.28).

The Respondent was arrested and read his Miranda rights. (T.28). Detective Sylvia initially interrogated the Respondent at the police station. (T.31, 32). The Respondent affirmatively waived his Miranda rights, (T.49), and initially gave an exculpatory statement. (T.52). Respondent appeared to be alert, attentive, and not under the influence of drugs at the time he made his statement. (T.53).

Officer Jimenez had substantial knowledge of another suspect. (T.33). After Detective Sylvia had interrogated the Respondent, and while the Respondent was being processed at the police station (T.31-33), Jimenez told the Respondent that another suspected individual had been questioned and

had implicated the Respondent in the burglary. Jimenez went so far as to describe the other suspect to the Respondent. (T.34). In fact, the officer had never spoken with the suspected co-defendant. (T.38).

About two or three minutes after this exchange the Respondent got mad and screamed, "I'll kill him, I'll kill him." (T.35,58). The Respondent then admitted that he was involved and had placed the other suspect through the window. (T.58).

ISSUE PRESENTED

WHETHER THE TRIAL COURT'S APPLICATION OF A PER SE RULE OF INVOLUNTARINESS TO A CONFESSION GIVEN IN A SITUATION WHEREIN A POLICE OFFICER HAS LIED TO OR MISLEAD THE ACCUSED WITH FABRICATED STATEMENTS OF CO-DEFENDANTS WHICH IMPLICATE THE ACCUSED CONSTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF THE LAW ON THE PROCEDURE FOR DETERMINING THE ADMISSIBILITY OF IN-CUSTODY STATEMENTS PROVIDED BY AN ACCUSED.

SUMMARY OF ARGUMENT

The trial court's sweeping generalization that a police officer's lie to suspect is a per se violation of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct.1602, 16 L.Ed.2d (1966) constitutes a departure from the essential procedural requirements for determining whether a statement is voluntary or coerced. The Federal and Florida Courts have long abided by a procedure for making this determination which goes well beyond the summary treatment afforded the issue below.

The Petitioner requests an order quashing the order of dismissal filed by the District Court and an instruction that the District Court grant the writ.

ARGUMENT

THE TRIAL COURT'S APPLICATION OF A PER SE RULE OF EXCLUSION TO A CONFESSION GIVEN IN A SITUATION WHEREIN A POLICE OFFICER HAS LIED TO OR MISLEAD THE ACCUSED WITH FABRICATED STATEMENTS OF CO-DEFENDANTS WHICH IMPLICATE THE ACCUSED CONSTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF THE LAW ON THE PROCEDURE FOR DETERMINING THE ADMISSIBILITY OF IN-CUSTODY STATEMENTS PROVIDED BY THE ACCUSED SUBSEQUENT TO THE LIES OR MISREPRESENTATIONS OF THE POLICE.

A confession of guilt freely and voluntarily made is not rendered inadmissible because it appears to be induced by deception practiced by police officers. Paramore v. State, 229 So.2d 855 (Fla. 1969); Halliwell v. State, 323 So.2d 557 (Fla. 1975). In Halliwell, the defendant was twice given Miranda warnings and then told by policemen that Sandra Tresch, the widow of the victim, and the defendant's lover, had confessed that she killed her husband. Mr. Halliwell then confessed that he alone was the killer.

The defendant later attempted to renounce his confession. He claimed that the police officers tricked him by saying that Sandra had confessed. On direct appeal this Court held that there was no basis to reject his confession because of her purported statements of guilt.

In the instant case the defendant was given his Miranda warnings when arrested and was readvised upon arrival at the police station. (T.28, 31, 32, 49). The defendant affirmatively waived his rights and gave an exculpatory statement. (T.49, 52).

Subsequently, a police officer intentionally mislead the defendant by making the defendant believe that a co-perpetrator of the crime had implicated the defendant. (T.33, 34, 38). About two or three minutes later the defendant got mad, gave incriminating statements, and threatened to kill the co-perpetrator. (T.35, 58).

The proper standard for a trial court's review of the preliminary issue of the voluntariness of a statement or confession made by an in-custody defendant appears in this Court's opinion, Brewer v. State, 386 So.2d 232, 235-36 (Fla. 1980):

> "In a state prosecution, the standard by which the voluntariness of a confession is to be determined is the same as that which applies to federal prosecutions under the fifth amendment privilege against self-incrimination. Malloy v. Hogan, 378 U.S.1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).
>
> [4,5] Under that standard, when a question arises as to the voluntariness of a confession, the inquiry is whether

> the confession was "free and voluntary; that is [it] must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. . . ." Bram v. United States, 168 U.S.532, 542-43, 18 S.Ct. 183, 187, 42 L.Ed.568 (1897). For a confession to be admissible as voluntary, it is required that at the time of the making the confession the mind of the defendant be free to act uninfluenced by either hope or fear. The confession should be excluded if the attending circumstances, or the declarations of those present at the making of the confession, are calculated to delude the prisoner as to his true position, or to exert improper and undue influence over his mind.
>
> Frazier v. State, 107 So.2d 16, 21 (Fla.1958); Harrison v. State, 152 Fla. 86, 12 So.2d 307 (Fla. 1943)."
>
> * * *
>
> "The burden of showing that the appellant's written statement was voluntarily made was on the state. Lawton v. State, 152 Fla. 821, 13 So.2d 211 (Fla. 1943). The state was required to establish voluntariness by a preponderance of the evidence.
>
> Wilson v. State, 304 So.2d 119 (Fla. 1974); McDole v. State, 283 So.2d 553 (Fla. 1973)."
>
> (Emphasis added)

Accord, Bush v. State, 461 So.2d 938, 939 (Fla. 1984) (totality of circumstances showed statements made by police did not overcome the will of the accused or produce a tainted confession); and Puccio v. State, 440 So.2d 419, 421-22 (Fla. 1983) (a confession must be excluded from evidence if the totality of

circumstances surrounding the questioning were calculated to delude the accused or exert undue influence over his free will). The United States Court of Appeals, Fifth Circuit, has held that encouraging a suspect to confess because "his cohorts might leave him 'holding the bag' does not, as a matter of law, overcome a confessor's will. . ." United States v. Ballard, 586 F.2d 1060, 1063 (5th Cir. 1978) (Emphasis added).[1]

Despite the existence of the above-cited cases and their precedents [2], the trial court judge held the existence of a misrepresentation by Officer Jimenez created a per se atmosphere of fear, coercion or duress which mandated a ruling of exclusion. Although the record does not contain a written basis for the order of suppression, the transcript contains a clear and undisputable oral pronouncement on the matter:

> "THE COURT: Yes. Okay. Thank you.
> I am satisfied that this false inducement to make a confession, when there's a myriad of case law holding that confessions are under any circumstances to be treated with caution by the courts -- was a -- going beyond the bounds of what is appropriate on the part of the police officer. And I, at this point, am going to grant the motion to suppress."
>
> (TR.87).

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[1] This Court cited Ballard in Puccio v. State, supra on page 421.

[2] See e.g. Jackson v. Denno, 378 U.S. 368 (1964).

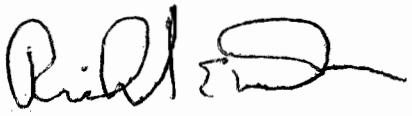
It is this willingness to forego the procedural requirement of an inquiry into the totality of circumstance and rule solely on the propriety of a police officer's conduct which constitutes, in the Petitioner's view, a departure from the essential requirements of law. This ruling effectively ended the prosecution of the child and is accordingly an appropriate recipient of writ of certiorari. A ruling from this Court directing the District Court to grant a writ would be in keeping with prior rulings by this Court in similar situations. State v. Smith, 260 So.2d 489 (Fla. 1972).

CONCLUSION

Based upon the above-cited legal authority the Petitioner urges a reversal of the District Court's order dismissing this case with instruction to grant a writ of certiorari directed to the trial court in this cause.

Respectfully submitted,

JIM SMITH
Attorney General



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER ON THE MERITS was furnished by mail to ELLIOT H. SCHERKER, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 14th day of November, 1985.

RICHARD E. DORAN
Assistant Attorney General

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