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IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,145

RIGOBERTO CASO,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

* *

ON PETITION FOR DISCRETIONARY REVIEW
CERTIFIED QUESTION

* *

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner, Rigoberto Caso, was the Appellant in the District Court and the Defendant in the trial court. The Respondent, The State of Florida, was the Appellee in the District Court and the Prosecution below. The parties will be referred to as they stand before this Court. The symbol "A" will be used to designate the Appendix to this brief. All emphasis has been supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's Statement of the Case and Facts as a substantially accurate account of the proceedings below.

QUESTION PRESENTED

WHETHER THE DECISION IN ALVORD v. STATE, 322 So.2d 533 (Fla. 1975), HOLDING ADMISSIBLE IN THE STATE'S CASE-IN-CHIEF THE DEFENDANT'S CONFESSION OBTAINED IN A POST-MIRANDA CUSTODIAL INTERROGATION AND IN THE ABSENCE OF ADVICE REGARDING THE DEFENDANT'S RIGHT TO APPOINTED COUNSEL IF HE COULD NOT AFFORD AN ATTORNEY, SHOULD BE REEXAMINED IN LIGHT OF OREGON v. ELSTAD, 470 U.S. 298 (1985).

SUMMARY OF THE ARGUMENT

The Third District's certified question concerning whether technical violations of Miranda requires suppression of the statement need not be reached. This Court's jurisdiction based on a certified question encompasses the entire case, and this case can be resolved without reaching the certified question. The case can be resolved on custody and the evidence, based on United States constitutional law, clearly establishes that Petitioner was not in custody when the challenged statement was given. Since Petitioner was not in custody, Miranda did not apply and therefore it is immaterial to the issue whether incomplete warning requires suppression.

ARGUMENT

THIS COURT SHOULD NOT ANSWER THE CERTIFIED QUESTION SINCE IT IS NOT GERMANE TO THE DISPOSITION OF THIS CAUSE.

In the Third District, Petitioner contended that his statement should have been suppressed since it was secured without full Miranda warnings. Respondent argued that the statement was given during a non-custodial period and therefore warnings were not required. The Third District affirmed, but certified the following question.

> Whether the decision in Alvord v. State, 322 So.2d 533 (Fla. 1975), holding admissible in the State's case-in-chief the defendant's confession obtained in a post-Miranda custodial interrogation and in the absence of advice regarding the defendant's right to appointed counsel if he could not afford an attorney, should be reexamined in light of Oregon v. Elstad, 470 U.S. 298 (1985).

In addressing the custody issue the Third District, in a footnote, merely stated that "[t]he trial court's finding that the defendant was in custody is supported by substantial competent evidence." Caso v. State, 501 So.2d 646, N. 1, (Fla. 3d DCA 1986).

After the foregoing question was certified, Petitioner sought this Court's discretionary review and the jurisdiction was accepted. When this Court accepted jurisdiction this Court's scope of review extended to the decision of the District Court rather than the question on which it passed. Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace, 332 So.2d 610 (Fla. 1976). Since the decision is now subject to review, the Respondent submits that the certified question is not germane to the cause and should not be answered inasmuch as this cause requires affirmance on the ground that Petitioner was not in custody when he gave the statement. Cleveland v. City of Miami, 263 So.2d 573 (Fla. 1972).

The Petitioner maintains that his conviction should be reversed where the trial court allowed the State to introduce inculpatory statements made by the defendant without the benefit of proper Miranda warnings. See, Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 11 L.Ed.2d 694 (1966). The Petitioner's statements were properly introduced at trial, since the statements were not the result of a "custodial" interrogation.

The Miranda case established a procedural safeguard to protect an individual's Fifth Amendment priviledge against compelled self-incrimination from the coercive pressures of custodial interrogation. Miranda v. Arizona, supra. It is well established, however, that the procedural safeguard does not apply "outside the context of the inherently custodial interrogations for which it was designed." Roberts v. United States, 445 U.S. 552, 560, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980); Minnesota v. Murphy, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). As such, Miranda warnings need not be administered if the individual is not "in custody" for Miranda purposes.

In California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983), the United States Supreme Court stated that the circumstances in each case must be examined to determine if a suspect is "in custody" but "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." California v. Beheler, supra at 1125 (quoting Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977).

In California v. Beheler, supra, it was determined that the defendant was not "in custody" for Miranda purposes

where Beheler, a suspect in the case, agreed to accompany the police to the station, was questioned with regard to the case for approximately 30 minutes, and was permitted to return to his home thereafter. The Court held that the facts of the case demonstrated "beyond doubt that Beheler was neither taken into custody nor significantly deprived of his freedom of action." California v. Beheler, supra at 1123. Accordingly, statements of the defendant were admissible notwithstanding that the police did not advise Beheler of his Miranda rights.

Statements were likewise held admissible in Oregon v. Mathiason, supra, a case factually similar to California v. Beheler, supra. In Mathiason, the defendant was pointed out as a possible suspect in a crime. He was asked if he would meet with an officer to discuss something and he agreed. The defendant was questioned without being advised of his Miranda rights. The statements were determined to have been improperly suppressed, however, where there was "no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way." Oregon v. Mathiason, supra at 495.

As these cases make clear, the question posed in California v. Beheler, supra at 1121, to wit: "[W]hether

Miranda warnings are required if the suspect is not placed under arrest, voluntarily comes to the police station, and is allowed to leave unhindered by police after a brief interview", is answered in the negative.

The Supreme Court of Florida recently applied the standards enunciated in Beheler and Mathiason. In Roman v. State, 475 So.2d 1228 (Fla. 1985), a suspect was asked if he would accompany the officers to the jail for questioning; he agreed. The defendant was not handcuffed. The defendant arrived at the station at 4:51 p.m. and was questioned from 6:32 p.m. until he made a confession sometime after 10:00 p.m. There was testimony from the sheriff that he would not have allowed the defendant to leave. Following the confession, the defendant was placed under arrest. The Supreme Court held that the defendant in that case was not subjected to "custodial" interrogation because they failed to find that a reasonable person "having voluntarily accompanied the officers to the station house, would have perceived a restraint on his freedom of movement of the degree associated with a formal arrest." Roman v. State, supra at 1232. In so holding, the Court stated:

In Beheler and Mathiason the Supreme Court found a station house interrogation not to constitute custody for purposes of requiring Miranda warnings. Those cases differ from the present case in three respects: the defendants in Beheler and Mathiason were specifically informed that they were not under arrest, the questioning in those cases lasted less than thirty minutes, and the defendants were allowed to leave after making their statements, although they were ultimately charged with the crimes being investigated. We agree that a reasonable person might be more likely to think he is not in custody if specifically told he is not under arrest. Conversely, some reasonable persons might assume they are not in custody unless told otherwise. We therefore find that this factor is one to be considered as a circumstance that has bearing on a suspect's perception of his situation, but that it, like the station house location, is not dispositive. As for the length of time of the interrogation, in some cases it might make a difference. We find that the time factor was not unreasonable in the present case and would not have contributed to a perception of custody. [Approximately 3 1/2 hours].

The facts the Supreme Court had before it in Beheler and Mathiason happened to involve situations where suspects were not immediately arrested after making inculpatory statements. We find, however, that the controlling principles of those cases can be applied to a situation involving an arrest following the statement. Indeed, occasions would be rare when a suspect would confess to committing a murder and then be allowed to leave. Certainly the noncustodial atmosphere leading up to a confession and probable cause would thereby be expect to be converted to a custodial one. But we do not find that arresting a suspect following a confession converts what theretofore had been a noncustodial situation into a custodial one. In determining that a suspect was not in custody, it does not have to be found that the environment in which he was questioned was devoid of coercion.

Roman v. State, supra at 1231-1232.

In the instant case, the Petitioner voluntarily accompanied the officers to the police station. (T. 218-219, 271). Before leaving, the Petitioner asked how he would get back to work, indicating that he was aware that his freedom of movement was not restrained. (T. 261). The Petitioner was not placed under arrest nor was he handcuffed. (T. 219, 200, 234, 272). He was interviewed at the station for approximately one hour and then he was taken back to his place of employment. (T. 250, 262). There was absolutely no indicia that the Petitioner would have perceived a restraint on his freedom of movement of the degree associated with a formal arrest.

Indeed, the facts in the instant case demonstrate less restraint on the Petitioner than those in Roman v. State, supra, where the Supreme Court found no custodial interrogation. Specifically, the defendant in Roman was questioned for approximately 3 1/2 hours, whereas the Petitioner sub judice was questioned for only one hour. In addition, the defendant in Roman was immediately placed under arrest whereas the Petitioner in the instant case was allowed to leave after making his statements.

It is abundantly clear that Beheler, Mathiason, and Roman demonstrate that the Petitioner was not subjected to custodial interrogation. The Petitioner, therefore, need

not have been advised of any rights pursuant to Miranda. The trial court was in error when it concluded that "[a]ny time you are going to formally interrogate somebody that's a suspect -- ... I think you have to be in custody." (T. 229). In Mathiason, supra at 495, the United States Supreme Court explicitly recognized that Miranda warnings are not required "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect."

Based on the erroneous conclusion of the trial court that since Petitioner was a suspect, he was in custody, the Third District found substantial competent evidence to support the Court's custody finding. This was done in a footnote without any analysis. Since the trial court's finding of custody did not contain the proper analysis it is incongruous to accept the District Court's finding that it was supported by substantial competent evidence. Therefore, it is incumbent on this Court to reverse the factual finding that Petitioner was in custody and affirm the trial court on the ground that Petitioner was not in custody and therefore Miranda warnings were not required.

Based on the foregoing, it is clear that the certified question is not germane to the disposition of the cause and should not be answered. If this Court decides to answer the question it should do so as an advisory opinion only after this cause is affirmed.

CONCLUSION

Based upon the point and authorities contained herein, the State respectfully requests this Court to abstain from answering the certified question and affirm the trial court's judgment and conviction on the ground the Petitioner was not in custody when the challenged statement was given.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was furnished by mail to LISA M. BERLOW-LEHNER, Attorney for Petitioner, 321 N.E. 26 Street, Miami, Florida 33137, on this 20 day of May, 1987.

MICHEAL J. NEIMAND
Assistant Attorney General

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