SUPREME COURT OF FLORIDA

CASE NO. 70,145

RIGOBERTO CASO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR REVIEW FROM THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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ARGUMENT

THE PETITIONER'S CONFESSION WAS OBTAINED IN VIOLATION OF THE DICTATES OF MIRANDA v. ARIZONA AND THEREFORE, THE TRIAL COURT ERRED IN ADMITTING THE CONFESSION INTO EVIDENCE IN THE STATE'S CASE IN CHIEF.

The State has responded to the instant petition by urging this Court not to address the question that the Third District has certified as having a great affect on the proper administration of justice. Instead, Respondent again adopts the posture it took before the Third District and urges reversal of the trial court's finding of custody. However, Respondent once again, as it did before the Third District, neglects to analyze the issue that it has raised in accordance with the governing standard of review. Once the proper standard is applied to the attendant facts of the Petitioner's interrogation, it is evident, as the Third District ruled, that the trial court's finding that the Petitioner was in custody was supported by substantial competent evidence. See Caso v. State, 501 So.2d 646, n.1. (Fla. 3d DCA 1986).

1. Trial Court's Finding

On the issue of whether the Petitioner was in custody and thus the Miranda warnings were required, the record reveals the following discussion between counsel and the court:

THE COURT:	It's a very poor warning form. The Hialeah Police Department should be told.
MS. JOHNSON: [prosecutor]	This was just a custodial interrogation. The man was not in custody. They didn't even have to Mirandize him.
THE COURT:	That's not so. Any time you are going to formally interrogate somebody that's a suspect--

MR. MENDEZ: [defense counsel] With a homicide.

THE COURT: --I think you have to be in custody.

MS. JOHNSON: No. You do not have to be in custody. If I understand Miranda, it must be a custodial interrogation. He was not in custody.

THE COURT: Okay. Let's [sic] me tell you, the form could be better. I do believe the warnings are required. It probably would be sufficient to tell him he got a right to remain silent, et. cetera. It should tell him he has a right to a lawyer at the government's expense. I'm going to find the confession voluntarily made with full knowledge of his rights.

MR. MENDEZ: I think it's a little premature for that. (TR. 222-224) (emphasis added)

Thus, despite a somewhat confused exposition by the prosecutor, the trial court correctly observed that the Miranda warnings are not required unless a defendant is in custody and that the circumstances of the Petitioner's interrogation warranted advisement of his rights.

The Respondent argues that the trial court's observation that "anytime you're going to formally interrogate somebody that's a suspect -- I think you have to be in custody" was an erroneous legal conclusion. (Brief of the Respondent at p. 11). Respondent's contention results from an interpretation of the trial court's observations as being tantamount to concluding that Miranda is operative whenever a suspect is questioned in the station-house. This, however, is not what the trial court observed.

Initially, it bears emphasis that the trial court's remarks are ambiguous, particularly since the court's analysis was interrupted by counsel's remarks. Secondly, the court's equating a

"formal interrogation of somebody that's a suspect" with a custodial interrogation for purposes of Miranda is not necessarily an erroneous equation, depending upon the trial court's definition of a "formal interrogation". Although the trial court did not fully elaborate upon what it deemed a "formal interrogation", what is clear is that Respondent's argument is not supported by the record. The trial court did not conclude that merely because one is a suspect or because the questioning takes place at the police station Miranda warnings are required. Indeed, the import of the words "formal interrogation" could well be interpreted as equivalent to "custodial interrogation".

Moreover, assuming arguendo that the trial court had observed, as the Respondent suggests, that Miranda warnings are required merely because one is a suspect or questioned in the station-house, the court's ultimate ruling that the interrogation of the Petitioner warranted Miranda warnings can nonetheless be sustained, irrespective of the reasons assigned. Where a trial court reaches the right result, albeit for the wrong reason, its judgment will be upheld. See Combs v. State, 436 So. 2d 93, 96 (Fla. 1983); Postell v. State, 383 So. 2d 1159, 1162 (Fla. 3d DCA 1980); Leavestrom v. Muston, 119 So. 2d 315, 317 (Fla. 3d DCA 1960) cf., Sommer v. State, 465 So. 2d 1339, 1343 (Fla. 5th DCA 1985) (an appellate court should not disturb a denial of suppression of evidence where any legal basis to sustain trial court exists). Thus, where there is substantial competent evidence of custody, as was found by the Third District in the instant case, the trial court's ruling should be upheld regardless of the basis upon which the trial court reached its conclusion.

2. Standard of Review

The general principles of law that govern the Respondent's contentions are well-established. A ruling of a trial court arrives at an appellate court with the same presumption of correctness that attaches to jury verdicts and final judgments. DeConingh v. State, 433 So. 2d 501, 504 (Fla. 1983); Gerrard v. State, 345 So. 2d 849, 850 (Fla. 3rd DCA 1977). The findings of a trial court made pursuant to a motion to suppress must be accepted on appeal if the record reveals evidence to support them. State v. Navarro, 464 So. 2d 137, 138 (Fla. 3d DCA 1984) (rev'd on other grounds). A reviewing court should defer to the fact-finding authority of the trial court and should not substitute its judgment for that of the court below. DeConingh, 433 So. 2d at 504; Stone v. State, 378 So. 2d 765, 769-770 (Fla. 1979). In testing the accuracy of a trial court's conclusions, an appellate court should interpret the evidence and draw all reasonable inferences therefrom in the light most susceptible to sustaining those conclusions. Gerrard, 345 So. 2d at 850.

Despite the general standards that govern appellate review of a trial court's ruling on a motion to suppress, Florida courts have not as yet propounded a specific standard of review applicable to trial court rulings on the issue of custody. The only federal appeals court that has addressed this issue, the Ninth Circuit, has consistently held that a trial court's ruling in this regard must be shown to be clearly erroneous in order to warrant reversal. See e.g., United States v. Combs, 762 F. 2d 1343,1348 (9th Cir. 1985); United States v. Crisco, 725 F.2d 1230-1231 (9th Cir. 1984). Many of the Ninth Circuit cases that address the custody issue reveal that that court employs the same objective

test as that adopted by this Court in Drake v. State, 441 So. 2d 1079 (Fla. 1983) for determining custody. See id. at 1081, n. 2. and United States v. Crisco, 725 F. 2d at 1228. (test for determining custody is whether a reasonable man would feel free to leave the interrogation). Thus, in the Ninth Circuit, a trial court's ruling determining whether a reasonable man would feel free to leave an interrogation is reviewed on appeal according to the clearly erroneous standard.

Moreover, other courts likewise require an appellant to show that a trial court was clearly erroneous when arriving at a conclusion under an objective standard. Thus, for example in United States v. Black, 675 F. 2d 129 (7th Cir. 1982) the court adopted a "reasonable man" test for determining whether a suspect was "seized" for purposes of the Fourth Amendment. Id. at 134. The Court in Black observed that this was a highly factual question and heavily dependent upon the circumstances. Id. Accordingly, the Seventh Circuit limited its inquiry to whether the trial court's ruling was clearly erroneous[1]. The Seventh Circuit's rationale should apply to the inquiry of which standard of review applies to a trial court's finding of custody, a finding that likewise is highly factual and dependent upon the totality of the circumstances. See United States v. McConney, 728 F. 2d 1195, 1204 (9th Cir. 1984) (trial court's determination of whether an individual acted unreasonably and thus facts constitute negligence subject to clearly erroneous rule); cf., Pullman-Standard v.

1./ As the Fifth Circuit has observed, whether one is free to walk away from an encounter with the police and thus not "seized" and whether one is free to leave an interrogation and thus not in custody are very similar inquiries. See United States v. Brunson, 549 F. 2d 348, 358-357 n. 9 and 12.

Swint, 456 U.S. 273, 288, 102 S. Ct. 1781, 1790, (1982) (issues of intent are factual matters subject to clearly erroneous rule); United States v. Flishman, 684 F.2d 1329 (9th Cir. 1982) (whether one who free to leave during search thus has voluntarily consented to search is reviewed under clearly erroneous standard).

An additional rationale for deferring to a trial court's conclusion on the issue of custody is derived from the case law concerning appellate review of whether a confession is voluntary. In Stone v. State, 378 So. 2d 765 (Fla. 1979), this Court ruled that a trial court's conclusion that a confession was voluntary arrives at the Supreme Court with the same presumption of correctness that attends jury verdicts and final judgments. Id. at 769-770; see also Ascensio v. State, 497 So. 2d 640, 642 (Fla. 1986); Jones v. State, 440 So. 2d 570, 573 (Fla. 1983); Williams v. State, 441 So. 2d 653, 656 (Fla. 3d DCA 1983); Puccio v. State, 440 So. 2d 419, 421 (Fla. 1st DCA 1983). Further, an appellate court should not disturb a ruling determining voluntariness unless clear error is shown. See Moffett v. State, 179 So. 2d 409, 414 (Fla. 2nd DCA 1965); see also Reynolds v. State, 222 So. 2d 246 (Fla. 3d DCA 1969) (resolution of whether confession is voluntary is the province of trial court); see also Wolcott v. State, 460 So. 2d 915, 916 (Fla. 5th DCA 1984) (appellate court should not disturb trial court's ruling that confession is voluntary where record reveals substantial competent evidence to support trial court); Rubasky v. State, 401 So. 2d 894 (Fla. 5th DCA 1981) (substantial competent evidence supports trial court's finding of vountariness). The trial court's finding below,

that the Petitioner was in custody, merits the same deference as that accorded to a trial court ruling on the voluntariness of a confession. Accordingly, the standards above should be applied at bar.

3. Facts

The record evidence found by the Third District to constitute substantial competent evidence in support of the trial court's ruling is summarized as follows:

At some point during the investigation into the homicides, the Petitioner became the focus of the State's investigation [2]. In October of 1983, the Petitioner, a Cuban refugee, was approached at his work site by two plainclothes detectives. (TR. 213) The officers identified themselves as detectives and requested that the Petitioner "voluntarily" accompany them to the police station for questioning. (TR. 213) At this point, the Petitioner was neither advised that he was under arrest nor was he assured that he was not under arrest. (TR. 256) When he asked one of the detectives how he would get back, he was informed that they would bring him back. (TR. 256) No handcuffs were used, nor were the officers' weapons displayed. (TR. 215)

Once at the station-house, the circumstances surrounding the Petitioner's interrogation acquired further attributes of a

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2./ The State conceded below, in its brief before the Third District, that the Petitioner was the focus of the investigation.

custodial interrogation. The Petitioner was placed in an interrogation room. (TR. 215) He was advised seriatum of his various rights, except the right to appointed counsel. (TR. 228-29)

After advising the Petitioner of his rights, the detectives confronted him with the evidence that directly implicated him in a double homicide. (TR. 215) Thus, although it may be speculated that when the Petitioner was first approached by the detectives at his job site and asked to accompany them to the police station his belief would have been that he was free to come and go, this belief must have quickly evaporated at the station-house when the detectives began their interrogation. The most reasonable inference to draw from the evidence is that one who has been confronted with detailed information directly implicating him in a serious crime would not believe himself to be at liberty to leave the station-house.

It must be noted that the interrogation was not brief. In fact, there is conflicting testimony as to its length. The interrogating detectives' supervisor, Lieutenant Fauk, testified that the interrogation seemed to last a "long time", at least an hour and a half according to him. (TR. 308-309) One of the detectives, however, estimated that it lasted only one hour. (TR. 257)

At no point, from the moment he was first approached until the conclusion of the interrogation, was the Petitioner ever informed that he was not under arrest.

4. Applicable Law

In Drake v. State 441 So. 2d 1079 (Fla. 1983), this Court adopted an objective test for use in determining whether a suspect is in custody. Id. at 1081, n.2. The Drake approach analyzes

whether, under all of the circumstances, a reasonable person would have believed he was in custody. Clearly, under all of the circumstances surrounding the Petitioner's interrogation, a reasonable person would have believed himself in custody. The Drake opinion bears closer examination since it is factually similar to the case at bar.

In Drake, the defendant became a suspect in a homicide. Two officers went to his work site and requested that he come to the sheriff's office for questioning. Id. at 1080. Once at the station-house, he was told that he was a suspect in a homicide investigation. In distinguishing the facts before it from those present in Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711 (1977), this Court found in Drake that the defendant was in custody. In so finding, this Court made several observations that apply with equal force to the instant case.

At the onset of the interrogation in Drake, the defendant, a parolee, admitted to having smoked marijuana with the victim. The Court in Drake found this to be a factor bearing upon the defendant's state of mind. Id. at 1080. Similarly, the Petitioner was confronted with detailed information implicating him in a double homicide; this confrontation and the implications therefrom would weigh heavily on his mind especially since he was surrounded by detectives and interrogated in a police station. Surely, a reasonable person when confronted in this setting with incriminating information linking him to a double murder, would not believe that he was free to leave.

An additional factor that contributed to the Petitioner's reasonable belief that he was in custody, was the advisement of his rights, deficient as this advisement was. For, although the

Petitioner was not advised of his right to an appointed attorney if he could not afford one, he was warned that anything he said to the detectives could be used against him in a tribunal or court of law. (TR. 228) Clearly, this warning when combined with the station-house interrogation in an interrogation room with detectives, would contribute to the reasonable belief that one's freedom to leave at will was restricted.

Further, the Drake Court emphasized that the defendant, like the Petitioner at bar, was asked to leave work in the middle of the day to accompany the officers to the station-house. Id. On this point it was observed:

> The station-house setting of an interrogation does not automatically transform an otherwise noncustodial interrogation into a custodial interrogation. Yet, an interrogation at a station-house at the request of the police is inherently more coercive than an interrogation in another less suggestive setting, and it is a factor that should be considered in evaluating the totality of the circumstances of a given case. 441 So. 2d 1081. (citations omitted).

The Respondent, in its brief, relies upon this Court's opinion in Roman v. State, 475 So. 2d 1228 (Fla. 1985), in its effort to claim that the trial court's finding of custody was in error. However, the facts in the Roman case are sufficiently distinguishable from those at bar. In Roman, the interrogating officers did not have probable cause at the time that the defendant confessed[3]. Id. at 1230. Moreover, the defendant in

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3./ Although the detectives testified that they did not believe that there was sufficient probable cause to arrest the Petitioner at the time he confessed (TR. 256, 267), their

Roman, unlike the Petitioner, was not confronted at the station-house with information that directly implicated him in the crime. Rather, in that case the interrogators used the so-called "Christian Burial" technique. Id. at 1230.

The Respondent further maintains that the United States Supreme Court decisions in Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711 (1977) and California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517 (1983) support its position that the trial court below erred in its conclusion on the custody issue. Contrary to the case at bar, in both Beheler and Mathiason, the trial courts had concluded that the defendants were not in custody for purposes of Miranda. These conclusions were based in part upon the trial court's findings in each case that the interviews of the defendants lasted less than one-half hour.

Further, in Beheler, it was the defendant who initially contacted the police to report the crime. Beheler, 463 U.S. 1122, 103 S.Ct. 3518. In Mathiason, the police officer left his card at the defendant's apartment requesting that the defendant

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con't. note 3./ subjective intent on this issue is irrelevant. Substantial competent evidence was adduced at trial from which the trial court could have concluded to the contrary, that the officers did have probable cause at the time. According to the detectives' testimony, the Petitioner's confession supplied no information additional to that that they already had obtained (TR. 256-257), and at the conclusion of the Petitioner's interrogation they did have probable cause. In addition, the officers did attempt to advise the Petitioner of his Miranda rights, an action that is only required if the suspect is in custody. This conduct on their part is indicative of their subjective belief that he was in custody. From these facts, the trial court logically could conclude that probable cause existed

contact him to "discuss something" and the next day the defendant complied. When the officer asked where the defendant would like to meet with him the defendant did not express any preference. The defendant in Mathiason came on his own accord to the police station. He and the officer met, shook hands and went into an office. Mathiason, 429 U.S. 493, 97 S.Ct. 713. These are obviously quite different and less coercive factual circumstances than those surrounding the Petitioner's interrogation.

Moreover, in both Beheler and Mathiason, what the United States Supreme Court found objectionable was not the trial courts' factual findings, but the appellate courts' criteria for upsetting those findings. In Mathiason, the Oregon Supreme Court had reversed the trial court because it found the questioning to have taken place in a "coercive environment". Id. It was this interpretation of Miranda that the United States Supreme Court found to be overly broad. Id. at 495, 714. In Beheler, a California appellate court had reversed the trial court's finding of no custody because the appeals court emphasized the station-house setting of the interview and that the defendant was the chief suspect. Beheler, supra, at 1125, 3520. It was the undue reliance by the state appellate courts solely upon these two insufficient criteria that the United States Supreme Court found objectionable. As discussed supra at p. 2-4, the trial court's observation in the case at bar that a formal interrogation of a suspect triggers Miranda does not rise to the level of reversible error, unlike the insufficient grounds relied upon by the appellate courts in Beheler and Mahiason.

The Petitioner at bar, like the defendants in Beheler and

Mathiason, was allowed to return to his job after his lengthy interrogation while the detectives procured an arrest warrant. However, this one fact, which the case at bar has in common with the fact patterns of Beheler and Mathiason, is not a sufficient basis to upset the trial court's ruling below. Moreover, the fact that the Petitioner was allowed to return to his job after the interrogation has no bearing upon what a reasonable person in his situation would have believed when he was being interrogated, which is the question posed by the Drake test. See Drake v. State, 441 So. 2d 1079, 1081 n.2 (Fla. 1983).

As this exposition reveals, the issue of whether a suspect is in custody for purposes of receiving the Miranda protections is one best resolved by a trial court on a case-by-case basis. Whereas resort to precedent is necessary to locate the guideposts in this analysis, reliance upon precedent may be limited in its utility for ultimately resolving the issue of whether a given suspect under certain circumstances should have received the Miranda warnings. In some cases a certain combination of factors may be present that tend to indicate a custodial setting, while in others some of the same factors in addition to different circumstances may exist without a finding of custody. For these reasons, the Respondent's conclusion that "it is abundantly clear that Beheler, Mathiason and Roman demonstrate that this Petitioner was not subjected to custodial interrogation", is an over-simplification since the fact patterns in those three cases are not identical to the one at bar and the distinguishing circumstances, as discussed supra, are significant ones.

What is abundantly clear is that an application of the Drake objective standard supports the trial court's conclusion that

Miranda applied to the Petitioner's interrogation. Based upon the foregoing analysis, in light of this standard, it cannot be said that the trial court clearly erred in finding that the Petitioner was subjected to a custodial interrogation. Rather, as the Third District ruled, the trial court's finding of custody was supported by substantial competent evidence. Accordingly, Petitioner urges this Court to reach the question certified to it by the Third District as a question having a great affect on the proper administration of justice.[4].

4./ The Respondent has suggested that should this Court choose to reach the question that the Third District has certified, that it resolve the question as an "advisory opinion". The Respondent does not cite any authority for this Court's jurisdiction to issue such an "advisory opinion" in the case at bar. Moreover, neither Rule 9.030 Fla. R. App. P. nor Article 5, Section 4 of the Florida Constitution provide for the issuance of an advisory opinion under the present circumstances. Instead, the question that has been certified to this Court properly falls within this Court's discretionary jurisdiction. See Rule 9.030(2)(B)(iii) Fla. R. App. P. Thus, the Respondent's suggestion that this Court affirm the Petitioner's conviction and treat the certified question as an advisory opinion is not viable.

CONCLUSION

Based upon the preceding analysis and legal authority, the Petitioner respectfully requests that this Court uphold the trial court's finding of fact and address the certified question from the Third District Court of Appeal. Further, the Petitioner requests that the affirmance of his conviction be quashed and this cause remanded with directions that the conviction be reversed.

Respectfully submitted,

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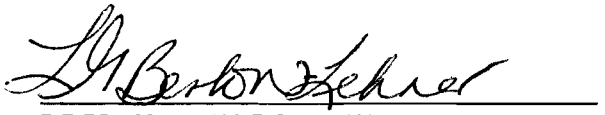
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Reply Brief on the Merits was mailed this 10th day of June, 1987, to: Assistant Attorney General, Michael Neimand, Office of the Attorney General for the State of Florida, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128.



LISA M. BERLOW-LEHNER