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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

CECIL SKYLES,

Respondent.

Case No. 87,640

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

INITIAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the appellee in the Fourth District Court of Appeal, and will be referred to herein as "Petitioner" or "the State." Respondent, Cecil Skyles, was the appellant in the Fourth District Court of Appeal, and will be referred to herein as "Respondent.".

STATEMENT OF THE CASE AND FACTS

Respondent was charged by indictment with two counts of sexual battery on a person younger than twelve years of age (R. 1-2). Respondent filed a motion to suppress his taped statement, alleging that it was unlawfully obtained due to the fact that his right to remain silent and to terminate further questioning had not been scrupulously honored (R. 48-54, 67-69). The trial court denied Respondent's motion (R. 70). Respondent renewed his motion before the taped statement was introduced at trial (T. 294, 317). The jury thereafter returned guilty verdicts on each count, and Respondent was adjudged guilty and sentenced to concurrent terms of 8 years' imprisonment to be followed by 5 years' probation (R. 110-125).

On appeal to the Fourth District Court of Appeal, Respondent argued, inter alia, that the trial court erred in denying his motion to suppress and in admitting his confession. In reversing on that issue, the Fourth District explained and held as follows:

> Skyles, who was 14, was accused of molesting two boys who were 7 at the time. After Skyles became a suspect, he agreed to come to the police station with his mother, and, after receiving his Miranda rights, was questioned. He repeatedly denied any wrongdoing, and at one point said "I'm through man, that's all I'm saying." The officer interrogated him further, during which Skyles continued to deny the allegations and concluded by stating "That's all I have to say is (sic) cause that's all I know."
>
> The tape recorder was then turned off for a period of time after which, back on the tape, Skyles confessed on the tape to having anally assaulted both of the boys after they had pulled their pants down.
>
> In Owen v. State, 560 So. 2d 207, 211 (Fla. 1990), the Florida Supreme Court concluded that a confession was erroneously admitted because the defendant said things like "I don't want to talk about it" in response to questions about the crime, stating:
>
> > The responses were, at the least, an equivocal invocation of the Miranda right to terminate questioning, which could only be clarified. It was

> error for the police to urge appellant to continue his questioning.

After Owen the United States Supreme Court clarified Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), and held that officers are not obligated to stop questioning a suspect unless the suspect makes "an unambiguous or unequivocal request for counsel." Davis v. U.S., ____U.S.____, 114 S. Ct. 2350, 2356, 129 L. Ed. 2d 362 (1994). Davis was decided before the defendant in Owen was retried, and the state sought certiorari in this court, arguing that under Davis Owen's confession would now be admissible. Although we are bound by the supreme court's decision in Owen and thus denied certiorari, we certified the following question as one of great public importance:

> DO THE PRINCIPLES ANNOUNCED BY THE UNITED STATES SUPREME COURT IN DAVIS APPLY TO THE ADMISSIBILITY OF CONFESSIONS IN FLORIDA, IN LIGHT OF TRAYLOR[]?

State v. Owen, 654 So. 2d 200, 202 (Fla. 4th DCA), rev. granted, 662 So. 2d 933 (1995).

We conclude that under Owen I this confession should not have been admitted, and therefore reverse for a new trial, but certify the same question of great public importance as we did in Owen II. We reject the state's argument that Owen I is inapplicable because Skyles was not in custody. See Martin v. State, 557 So. 2d 622 (Fla. 4th DCA 1990), and cases cited therein (the fact that there has not been a formal arrest does not necessarily mean suspect is not in custody).

(footnote omitted). Skyles v. State, Case No. 95-0249 (Fla. 4th DCA March 20, 1996). In the instant brief, Owen v. State, 560 So. 2d 207 (Fla. 1990), will be referred to as "Owen I," and State v. Owen, 654 So. 2d 200 (Fla. 4th DCA), rev. granted, 662 So. 2d 933 (Fla. 1995), will be referred to as "Owen II."

SUMMARY OF ARGUMENT

This Court should answer the certified question in the affirmative. United States v. Davis, 512 U.S. ____, 129 L.Ed.2d 362, 114 S.Ct. ____ (1994), should be applied in the instant case and in Florida generally. This Court's opinion in Owen I (and thus the Fourth District's opinion in the instant case, which relied solely upon Owen I) was predicated solely on an interpretation of a federal rule. Reversal was not predicated upon a violation of either the state or federal constitutions. Davis illustrates that this Court's interpretation of that federal rule in Owen I (and thus the Fourth District's interpretation of said rule in the instant case) was erroneous. Consequently this Court should apply United States Supreme Court's interpretation/limitation of its own rules.

ARGUMENT

ISSUE ON APPEAL

WHETHER THE PRINCIPLES ANNOUNCED IN DAVIS APPLY TO THE ADMISSIBILITY OF CONFESSIONS IN FLORIDA, IN LIGHT OF TRAYLOR; THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE AFFIRMATIVE.

In Owen I, Owen argued that his confession was inadmissible because (1) it was the result of psychological coercion, and (2) it violated the technical requirements of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Owen v. State, 560 So.2d 207, 210 (Fla. 1990). This Court flatly rejected Owen's first argument, finding that the confession was voluntarily made. Owen, 560 So.2d at 210. On the second point, this Court agreed, finding a technical violation of Miranda. Id. at 211. Since this Court could not conclude that suppression of his confession was harmless error, Owen's conviction was vacated. Id.

During the pendency of Owen's retrial, the United States Supreme Court issued its opinion in United States v. Davis, 512 U.S. ____, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994). In Davis, the Court determined that an equivocal request for an attorney in reference to Miranda warnings does not require the cessation of an iterrogation. Ambiguous statements from a defendant do not require the police to limit all further questioning to an inquiry regarding the meaning of the equivocal response. The Court refused to expand the rule of Edwards v. Arizona, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981).

On July 25, 1994, in light of Davis, the State of Florida filed a motion in the trial court to admit Owen's statement at the retrial. Relief was denied on September 27, 1994. The State sought certiorari review in the Fourth District Court of Appeal. The district court determined as follows:

> If we were certain that Davis was the law in Florida, and if this specific confession had not already been held inadmissible by the Florida Supreme Court, we would grant certiorari, because the pretrial refusal to admit this confession would be a departure from the essential requirements of the law for which the state would have no adequate remedy by review. State v. Pettis, 520 So. 2d 250 (Fla. 1988).

State v. Owen, 654 So. 2d 200, 201 (Fla. 4th DCA 1995). Given the district's court's uncertainty regarding the application of Davis in Florida in light of Traylor v. State, 596 So. 2d (Fla. 1992), the court certified the following question:

> DO THE PRINCIPLES ANNOUNCED IN DAVIS APPLY TO THE ADMISSIBILITY OF CONFESSIONS IN FLORIDA, IN LIGHT OF TRAYLOR?

Owen, 654 So. 2d at 202. Likewise, in the instant case, the Fourth District certified the same question to this Court. For the following reasons, the State submits that the certified question should be answered in the affirmative.

A. Whether United States v. Davis should apply in Florida does not involve a consideration of Traylor v. State.

Before the Fourth District in Owen II, Owen relied on Haliburton v. State, 514 So. 2d 1088 (Fla. 1987) (hereinafter Haliburton II), and Traylor v. State, 596 So. 2d 957 (Fla. 1992), to support his contention that Davis should not be applied in his case or in Florida law in general. In Haliburton v. State, 476 So. 2d 194 (Fla. 1985), (hereinafter Haliburton I), this Court ruled that the confession was involuntary, as it was not the result of a knowing and intelligent waiver. On remand from the United States Supreme Court, this Court again found the confession to be involuntary, based on state

law. Haliburton II.[1] In Traylor, after analyzing the voluntariness of Traylor's confession, this Court affirmed its admissibility. There is a fundamental distinction between Owen's case (and thus the instant Petitioner's case) and Haliburton/Traylor. In Haliburton II and Traylor, this Court analyzed the voluntariness of the confession under the state constitution. In Owen I, on the other hand, this Court found Owen's confession voluntary but found the confession inadmissible because of a technical violation of Miranda:

> It is clear that from these tapes that the sessions were initiated by Owen, who was repeatedly advised of his rights to counsel and to remain silent. Moreover, he acknowledged on the tapes that he was completely familiar with his Miranda rights and knew them as well as the police officers. It is also clear that the sessions, which encompassed six days, were not individually lengthy and that Owen was given refreshments, food, and breaks during the sessions. The tapes show that the confession was entirely voluntary under the fifth amendment and that no improper coercion was employed.
>
> Owen next argues that even if the confession was voluntary under the fifth amendment, it was nevertheless obtained in violation of the procedural rules of Miranda. On this point, we agree.

Owen, 560 So. 2d at 210. (emphasis added; citations omitted).

Miranda, of course, established a federal procedural rule based on federal law. Miranda warnings themselves are not constitutionally mandated, but are prophylactic measures to ensure against compulsory incrimination. Thus, a violation of Miranda is not a constitutional violation. Brown v. State, 565 So. 2d 304, 306 (Fla. 1990) (citing Duckworth v. Eagan, 492 U.S. 195, 109 S. Ct. 2875, 106 L. Ed. 2d 166 (1989), and Michigan v. Tucker, 417 U.S. 433, 444, 94 S. Ct. 2357, 41

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[1]This court was clearly troubled by the officer's initial refusal to obey then Judge Barkett's telephone order. Both Haliburton I and II cite to Jamason v. State, 455 So. 2d 380 (Fla. 1984) (willful refusal by police to obey telephonic court order constitutes criminal contempt).

L. Ed. 2d 182 (1974) (Miranda warnings designed to deter police coercion and are not protected by the Constitution)). Consequently, any analysis of the admissibility of Petitioner's confession should not entail a discussion of either state or federal constitutional law. Since Traylor and Haliburton II concern only the violation of a constitutional right against self incrimination, neither of those cases should be included in any analysis regarding the continuing validity of this Court's holding in Owen I, in light of Davis.

This Court has recognized and applied that same distinction. In Haliburton I, the state relied upon State v. Craig, 237 So. 2d 737 (Fla. 1970), which had come before this Court for review on conflict certiorari from the Fourth District Court of Appeal. In Craig, the district court ruled the defendant's confession inadmissible because the pre-interrogation warnings did not inform the defendant that he had the right to have an attorney present during the interrogation. Craig v. State, 216 So. 2d 19, 20 (Fla. 4th DCA 1968). The district court also concluded that the defendant's statements during the interrogation were sufficient to invoke his right to an attorney. Id. The facts also indicate that the defendant's family had secured for him the services of an attorney. Craig, 237 So. 2d at 739. Regardless, this Court found that the district court's suppression of the confession was in error. In reversing Haliburton's conviction, however, this Court distinguished Craig:

> The state argues that we should find appellant's waiver valid under our decision in State v. Craig, (citation omitted from the original). We are unpersuaded, however, as the issues before us in Craig were the adequacy of the preinterrogation warnings to inform the defendant of his right to consult with an attorney and have the attorney with him during interrogation and the manner in which the defendant expressed his desire to waive counsel.

Haliburton I, 476 So. 2d at 194 (emphasis added).

The issue in the instant case is thus akin to the issue in Craig, i.e., the manner in which a

defendant invokes his right to remain silent. As recognized by this Court in Owen I, as well as in Craig, the issue of voluntariness is separate from the issue regarding the propriety of Miranda warnings and the sufficiency of any subsequent invocation or waiver of a right to remain silent. Owen, 560 So. 2d at 210. Therefore, the instant issue must likewise be considered and analyzed the same way.

As previously noted, Haliburton II and Traylor are premised on constitutional law, whereas Owen I and the instant case are premised on a federal rule of procedure. To further illustrate this point, one need only to review the cases relied upon by this Court in ruling Owen's confession inadmissible in Owen I. This Court relied primarily upon Long v. State, 517 So. 2d 664 (Fla. 1987), cert. denied, 486 U.S. 1017 (1988), and cases cited therein. In those referenced cases,[2] this Court determined, relying solely on federal authority, that equivocal responses required limited questioning designed to clarify the statements. Thus, in analyzing the admissibility of Owen's confession, this Court relied upon previous interpretations of a federal rule, namely Edwards. Because of its previous interpretation of Edwards, this Court felt compelled to apply Long to find Owen's confession inadmissible even though it believed Owen's confession was voluntary.

In Long, this Court determined that Edwards mandated the cessation of all questioning after an equivocal statement is made by a defendant. Any further communication must be limited to clarifying the meaning of the equivocal response:

> The record is clear, however, that the investigating officer did not attempt to clarify the equivocal request for counsel, but continued to interrogate Long to obtain the eventual confession. **We are bound by the United States Supreme Court decisions**

[2]Cannady v. State, 427 So. 2d 723, 728 (Fla. 1983); Valle v. State, 474 So. 2d 796 (Fla. 1985), vacated on other grounds, 476 U.S. 1102, 106 S. Ct. 1943, 90 L. Ed. 2d 353 (1986); Waterhouse v. State, 429 So. 2d 301, 305 (Fla. 1983).

> **in Miranda, Edwards, and Rhode Island v. Innis, 446 U.S. 291 (1990), which we conclude mandate suppression of Long's confession. Without this equivocal request for counsel we would find this confession voluntary and admissible.** Miranda and Edwards, however, establish a bright line test that controls this case and requires suppression of the confession.

Long, 517 So. 2d at 667 (emphasis added). See also Martin v. Wainwright, 770 F. 2d 918, 923 (11th Cir. 1985) (voluntary confession held inadmissible based on defendant's equivocal response, "can't we wait until tomorrow"). Now that Davis has settled the conflict involving the interpretation of Edwards, this Court should adopt the Davis analysis.

The Fourth District in Owen II expressed concern about application of Davis because of the emphasis in Traylor on the primacy doctrine. Traylor, however, did not establish the concept of primacy of the state constitution; it merely reaffirmed it. In fact in Haliburton II, the United States Supreme Court remanded for reconsideration in light of Moran v. Burbine, 475 U.S. 412, 106 S.Ct. 1135, 89 L. Ed. 2d 410 (1984). This Court decided to affirm its holding based on the state's constitution. However, this Court's refusal to apply federal law on the question of voluntariness in Haliburton II was consistent with precedent long before Traylor and long before Owen I. See, e.g., Simon v. State, 5 Fla. 285, 296 (1853); Nickles v. State, 90 Fla. 659, 667, 106 So. 479, 483 (1925). Whether new or old is of no moment, as the primacy doctrine is inapplicable to the instant case. The issue in Haliburton I and II, and Traylor, are distinguishable from Owen I and from the instant case.[3] Because Haliburton II and Traylor are premised on constitutional law, as opposed to a federal rule of procedure, they do not apply to the admissibility of the confession in the instant case.

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[3]The issue of voluntariness as expressed by this Court in Haliburton I and II is not the concern in the instant case. Compare Walls v. State, 580 So. 2d 131, 133 (Fla. 1991) (subterfuge and deception by government agents violated Haliburton and Art. I, Sec. 9 of the Florida Constitution).

B. United States v. Davis should apply in Florida and in the instant case.

As noted above, this Court felt compelled in Long to hold that equivocal responses required that any further questioning be limited to a clarification of the response. See also Thompson v. State, 548 So. 2d 193, 203 (Fla. 1989) (when a defendant makes an equivocal request, Miranda and Edwards require that police continue questioning for the sole purpose of clarifying the request and nothing more). On June 24, 1994, the United States Supreme Court rendered its decision in Davis. The Court determined that an equivocal request in reference to Miranda warnings does not render a confession inadmissible:

> [W]e decline to adopt a rule requiring officers to ask clarifying questions. If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.
>
> To recapitulate: We held in Miranda that a suspect is entitled to the assistance of counsel during custodial interrogation even though the Constitution does not provide for such assistance. We held in Edwards that if a suspect invokes the right to counsel at anytime, the police must immediately cease questioning him until an attorney is present. But we are unwilling to create a third layer of prophylaxis to prevent police questioning when a suspect might want a lawyer. Unless the suspect actually requests an attorney, questioning may continue.

Davis, 129 L. Ed. 2d at 373. The Court noted that lower courts have developed conflicting standards for determining consequences of equivocal requests. Smith v. Illinois, 469 U.S. 91, 95 n.3, 83 L. Ed. 2d 488, 105 S.t. 490 (1984). In light of Davis, those conflicts no longer exist. Davis, 129 L. Ed. 2d at 369.

A review and comparison of Florida and federal law generated in the area of "confession law" demonstrates that the policy considerations articulated in the caselaw are identical. This Court

has recognized the tension and the competing interests between the value of confessions in fighting crime and the concern that such confessions will be obtained through coercion. Traylor, 596 So. 2d at 964. Those identical concerns exist in the federal arena as well. Moran, 475 U.S. at 426.

To protect against coercion, the United States Supreme Court crafted the following requirements:

> Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him.

Miranda, 384 U.S. at 444-445. The United States Supreme Court decision in Edwards was designed to give force to the Miranda warnings. Minnick v. Mississippi, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489 (1990). Once an accused as invoked his right to counsel, questioning must cease until counsel has been made available. Reinterrogation is forbidden unless it is initiated by the accused. Edwards, 451 U.S. at 484. The rule of Edwards has been described by the Court as follows:

> The rule ensures that any statement made in a subsequent interrogation is not the result of coercive pressures. Edwards conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness, and implements the protections of Miranda in practical and straightforward terms.
>
> The merit of the Edwards decision lies in the clarity of its command and the certainty in its application. We have confirmed that the Edwards rule provides 'clear and unequivocal'

guidelines to the law enforcement profession.

Minnick, 498 U.S. at 151.

This Court has chosen to adopt the identical rules without any modification:

> Based on the foregoing analysis of our Florida law and the experience under Miranda and its progeny, we hold that to ensure the voluntariness of confessions, the Self-Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court, that they have a right to a lawyer's help, and that if they cannot pay for a lawyer one will be appointed to help them.
>
> Under Section 9, if the suspect indicates in any manner that he or she does not want to be interrogated, interrogation must not begin or, if it has already begun, must immediately stop. If the suspect indicates in any manner that he or she wants the help of a lawyer, interrogation must not begin until a lawyer has been appointed and is present or, if it has already begun, must immediately stop until a lawyer is present. Once a suspect has requested the help of a lawyer, no state agent can reinitiate interrogation on any offense throughout the period of custody unless the lawyer is present, although the suspect is free to volunteer a statement to police on his or her own initiative at any time on any subject in the absence of counsel.

Traylor, 596 So. 2d at 966. Consistent with the United States Supreme Court's desire for clarity, this Court has described the purpose of the above stated safeguards as necessary to maintain a bright-line standard for police interrogation. Id, at 966.

As noted above, this Court determined that Miranda and Edwards require questioning of a suspect to stop once an equivocal response is made. Long. The United States Supreme Court has now made it clear, however, that such an expansion of Edwards is not required:

> We decline petitioner's invitation to extend Edwards and require law enforcement officers to cease questioning immediately upon the making of an ambiguous or equivocal reference to an attorney. See Arizona v. Roberson, supra, at 688, 100 L. Ed. 2d 704, 108 S.Ct. 2093(Kennedy, J.,dissenting)(the "rule of Edwards is our rule, not a constitutional command; and it is our obligation to justify its expansion"). The rationale underlying Edwards is that the police must respect a suspect's wishes regarding his right to have an attorney present during custodial interrogation. But when the officers conducting the questioning reasonably do not know whether or not the suspect wants a lawyer, a rule requiring the immediate cessation of questioning "would transform the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity," Michigan v. Mosely, 423 U.S. 96, 102, 46 L. Ed. 2d 313, 96 S.Ct. 321 (1975), because it would needlessly prevent the police from questioning a suspect in the absence of counsel even if the suspect did not wish to have a lawyer present.

Davis, 129 L. Ed. 2d at 372.

Further expansion of Edwards resulting in yet more restrictions on law enforcement would do little to enhance the safeguards of Miranda and Edwards or maintain the bright-line guidelines for police. Miranda was designed to ensure that an accused was completely apprised of his rights under the constitution, in order that he may either exercise them or waive them. Miranda was designed to give an accused the power to exercise control over the course of an interrogation. Moran. Edwards was formulated to guarantee that once a decision is made to invoke those rights, that invocation remains in effect unless or until the accused decides otherwise. The rules are straightforward. There is nothing constitutionally offensive in simply requiring a defendant to affirmatively and clearly invoke those rights. This Court adheres to the principle noted in McNeil v. Wisconsin, __ U.S. __, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991), that freely given confessions are an unqualified good. Traylor, 596 So. 2d at 965. To further expand Miranda and Edwards would unduly hamper the gathering of such information. Davis, 129 L. Ed. 2d at 372.

An example of the high cost exacted by such a rule is illustrated in this Court's decision in Long. The expansion of Miranda and Edwards in that case resulted in the suppression of a voluntary and otherwise admissible confession, Id. at 667, a ruling that this Court grudgingly dispensed. In other words, the state was sanctioned (via exclusion of probative and valuable evidence) amid the absence of any impermissible coercion or wrongdoing by police. Continued application of such a costly and ineffective practice would thwart criminal investigations, offer little in the way of any added due process protection to our citizens, and severely undermine society's confidence in the justice system. Miranda and Edwards are federal judicially created rules. Subsequent decisions from the United States Supreme Court which limit those rules, along with the rationale behind any limitation, are logically entitled to be applied by this Court. In light of the fact that Florida and federal courts have been guided by identical policy considerations, this Court should adopt the rationale and rule of Davis. In other words, this Court should apply its pre-Edwards analysis of Craig.[4]

The application of Davis to Florida confession law would be consistent with this Court's and other Florida courts' long history of adopting other federal limitations on Miranda.[5] Christmas v.

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[4]In Craig v. State, 216 So. 2d 19 (Fla. 4th DCA 1968), the district court suppressed a suspect's confession because of the equivocal responses given during interrogation. During the giving of Miranda warnings, the defendant stated that "in a way" he would like to have an attorney, but concluded that he did not "see how it can help me." The district court held that the suspect should have been given the opportunity to consult with a lawyer, or a clear and unequivocal waiver should have been obtained. Craig, 216 So. 2d at 20. The state appealed, and this Court rejected the logic employed by the district court. State v. Craig, 237 So. 2d 737 (Fla. 1970). This Court stated that the defendant's comment that an attorney could not help him did not require the police to convince him otherwise. A waiver of Miranda does not require recitation of any magical words. Clear and unambiguous conduct indicating a willingness to answer questions by a person who has been sufficiently advised is sufficient. Craig, 237 So. 2d at 741.

[5]The Fifth District Court of Appeal has recently rejected the argument that, in light of
(continued...)

State, 632 So. 2d 1368, 1370-1371 (Fla. 1994) (based on Illinois v. Perkins, 496 U.S. 292, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (1990); Miranda warnings are not required in custodial situations when defendant initiates conversation with police); Brown, supra (based on Duckworth v. Eagan, 492 U.S. 195, 106 L.Ed. 2d 166, 109 S. Ct. 2875 (1989); right to cut off questioning is implicit in Miranda warnings; consequently, there is no requirement that such a statement be specifically communicated); Bonifay v. State, 626 So. 2d 1310, 1312 (Fla. 1993) (based on Colorado v. Connely, 479 U.S. 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986); police allaying fears of defendant about safety of family is not psychological coercion); Herring v. Dugger, 528 So. 2d 1176, 1178 (Fla. 1988) (based on Colorado v. Spring, 479 U.S. 564, 107 S. Ct. 851, 93 L. Ed. 2d 954 (1987); valid Miranda warnings do not require that suspect be aware of all possible subjects of questioning); Henry v. State, 613 So. 2d 429 (Fla. 1992) (based on Oregon v. Elstad, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985); inadmissibility of statements made without the benefit of Miranda warnings does not preclude admission of subsequent statements that are made pursuant to such warnings); State v. Manning, 506 So. 2d 1094, 1096 (Fla. 3rd DCA 1987) (based on New York v. Quarles, 467 U.S. 649, 104 S. Ct. 2626, 81 L. Ed. 2d 550 (1984); necessity of Miranda warnings rests with determination of whether suspect is constructively under arrest or in custody); Henry v. State, 574 So. 2d 66, 69-70 (Fla. 1991) (based on Michigan v. Mosely, 423 U.S. 96, 96 S. Ct. 321, 46 L. Ed. 2d 313 (1975); suspect's assertion of his right to remain silent does not create any per se bar to subsequent interrogation); Caso v. State, 524 So. 2d 422 (Fla. 1988) (based on Michigan v.

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[5](...continued)
Traylor v. State, 596 So. 2d 957 (Fla. 1992), the definition of custody articulated in Berkmer v. McCarty, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984), and historically relied upon in Florida, is no longer applicable. The district court concluded that Florida has not chosen to extend the definition of custody more broadly than the federal courts. State v. Burns, 20 Fla. L. Weekly D807, 808 (Fla. 5th DCA March 31, 1995).

Tucker, 417 U.S. 433, 94 S. Ct. 2357, 41 L. Ed. 2d 182 (1974); exclusionary rule of Wong Sun not applicable to testimony of a witness whose identity was discovered through the unwarned statement of defendant); Parker v. State, 611 So. 2d 1224, 1227 (Fla. 1992) (based on Harris v. New York, 401 U.S. 222, 91 S. Ct. 643, 28 L. Ed. 2d 1 (1971); defendant's otherwise inadmissible statements are admissible during cross-examination of a defendant for impeachment purposes); Washington v. State, 20 Fla. L. Weekly S197 (Fla. April 27, 1995) (based on Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966); taking of blood samples does not violate Article I, Section 9, of Florida Constitution); Rodriguez v. State, 619 So. 2d 1031, 1032 (Fla. 3rd DCA 1993) (based on Jenkins v. Anderson, 447 U.S. 231, 100 S.C t. 2124, 65 L. Ed.2 d 86 (1980); use of pre-arrest silence to impeach a defendant's credibility does not violate the Constitution); Allerd v. State, 622 So. 2d 984, 987 n. 10 (Fla. 1993) (based on Pennsylvania v. Muniz, 496 U.S. 582, 110 S. Ct. 2638, 110 L. Ed. 2d 528 (1990); routine booking questions do not violate the constitutional protection against self-incrimination); Thompson v. State, 595 So. 2d 16, 17 (Fla. 1992) (based on California v. Prysock, 453 U.S. 355, 101 S. Ct. 2806, 69 L. Ed. 2d 696 (1981); no requirement of a 'tailsmanic incantation' of Miranda warnings); Gore v. State, 599 So. 2d 978, 981 n. 2 (Fla. 1992) (based on North Carolina v. Butler, 441 U.S. 369, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979); refusal to sign a written waiver is not dispositive to a finding of a valid waiver); Arbelaez v. State, 626 So. 2d 169, 175 (Fla. 1993) (based on Roberts v. United States, 445 U.S. 552, 100 S. Ct. 1358, 63 L.Ed.2d 622 (1980), Miranda does not apply "outside the context of the inherently coercive custodial interrogations for which it was designed"); Arbelaez, supra, (based on California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517, 77 L. Ed. 2d 1275 (1983); in determining whether a suspect is in custody for Miranda purposes, the inquiry is simply whether there is a formal arrest or restraint on freedom).

Moreover numerous other states have adopted Davis. e.g., State v. Panetti, 891 S.W. 2d 281,

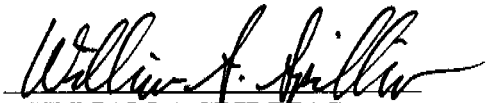
284 (Tex. App. 1994) (United States v. Davis removed federal foundation for rule that ambiguous request for counsel bars further questioning except for clarifying the statement; irrespective of primacy doctrine, no reason to mandate rule as a matter of state law and create greater rights for criminal defendants); State v. Long, 526 N.W. 2d 826, 830 (Wis. App. 1994); People v. Crittenden, 885 P. 2d 887, 912-913 (Cal. 1994); State v. Arizona, 883 P. 2d 999, 1006-1107 (Arz. 1994); Higgins v. State, 879 S.W. 2d 424, 427 (Ark. 1994); State v. Morris, 880 P. 2d 1244, 1252 (Kan. 1994); State v. Parker, 886 S.W. 908, 918 (Mo.banc 1994); State v. Farley, 452 S.E. 2d 50, 58 (W.Va. 1994); State v. Bacon, 658 A. 2d 54 (Ver. 1994). But see State v. Hoey, 881 P.2d 504 (Hawaii 1994).

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited therein, the State respectfully requests that this Honorable Court answer the certified question in the affirmative, vacate the Fourth District's decision reversing Respondent's conviction and remanding for a new trial, and affirm Respondent's conviction.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



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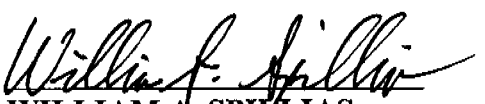
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Initial Brief of Petitioner" has been furnished by courier to: **CHERRY GRANT,** Assistant Public Defender, Counsel for Respondent, at Criminal Justice Building, 421 3rd Street, 6th Floor, West Palm Beach, Florida 33401, this 23rd day of May, 1996.



WILLIAM A. SPILLIAS
Assistant Attorney General