ORIGINAL

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA

Petitioner,

vs.

BRIAN L. GLATZMAYER

Respondent.

CASE NO. 00-~~062~~ 602 3
4th DCA # 99-576

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Petitioner, STATE OF FLORIDA, was the prosecution in the trial court below, and Respondent, BRIAN GLATZMAYER, was the Defendant below. The parties will be referred to as the "State" and "Glatzmayer", respectively.

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for the Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

Respondent, Glatzmayer, accepts the State's rather verbose and repetitive version of the case and facts.

SUMMARY OF THE ARGUMENT

After a thorough analysis of both federal and state case law, this Court held in Almeida that "if, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer." Almeida held that giving an evasive answer, or failing to answer at all, is tantamount to "steamrolling" a suspect and actively promotes the coercive atmosphere inherent in custodial interrogation. This Court found that Almeida's confession had to be suppressed because the police officers evaded the defendant's question about his right to counsel. In the instant case, Glatzmayer also asked a clear, unequivocal question concerning whether or not he should have an attorney present before making a taped statement to the police. Here, the officers did not give Glatzmayer a simple and straightforward answer, but only told him that the decision was up to him. Glatzmayer's question, like Almeida's, was also "prefatory to -- and possibly determinative of -- the invoking of a right." The police officers' "answer" to Glatzmayer was not an answer at all, but merely an evasion. The Fourth District, following this Court's analysis and holding in Almeida, held that the officers' response failed to comply with

the requirements set out in Almeida and found that Glatzmayer's taped statement should have been suppressed.

Glatzmayer urges this Court to affirm the Fourth District's decision because the appellate court's analysis of the facts found in Glatzmayer was sound, and it correctly determined that Almeida controlled.

ARGUMENT

WHETHER THE FOURTH DISTRICT COURT OF APPEAL PROPERLY REVERSED THE TRIAL COURT WHEN IT DENIED RESPONDENT'S MOTION TO SUPPRESS BECAUSE THE OFFICERS DID NOT MAKE A GOOD FAITH EFFORT TO ANSWER RESPONDENT'S QUESTION ABOUT WHETHER HE NEEDED AN ATTORNEY.

Although the State cleverly defined the issue as being one of whether or not the police officers should have offered "legal advice" to Glatzmayer, this definition is a disingenuous mischaracterization. Neither Almeida nor the case, sub justice, (which relied on Almeida) suggested or even implied that law enforcement should now engage in legal counseling. Almeida v. State, 737 So. 2d 520 (Fla. 1999); Glatzmaver v. State, 754 So. 2d 71 (Fla. 4th DCA 2000). Nor does the decision in Almeida or Glatzmaver constitutionally mandate law enforcement officers to dissuade suspects from providing voluntary confessions, as the State also accuses. No possible reading of either of those cases could or would lead a reasonable person to such a conclusion. Quite the contrary, as Almeida's focus was on preserving the integrity, thus the admissibility, of voluntary confessions.

In Almeida, this Court was presented with "a custodial utterance that was prefatory to -- and possibly determinative of -- the invoking of a right." Almeida, 737 So. 2d at 523. Almeida was brought to the police station for questioning regarding a shooting death outside the Days Inn in Fort Lauderdale. Id. at

521-22. Almeida was read his Miranda rights, after which he signed a waiver form and made the inculpatory statement, "I fucking killed him Id. at 522. The officers then decided to conduct a formal, taped interrogation where the following discussion took place:

> Q. All right. Prior to us going on this tape here, I read your Miranda rights to you, that is the form that I have here in front of you, is that correct? Did you understand all of these rights that I read to you?
> A. Yes.
> Q. Do you wish to speak to me now without an attorney present?
> A. Well, what good is an attorney going to do?
> Q. Okay, well you already spoke to me and you want to speak to me again on tape?
> Q. [by another officer] We are, we are just going to talk to you as we talked to you before, that is all.
> A. Oh, sure.

Id. This Court found that Almeida's "utterance was a bona fide question which -- under normal circumstances -- would call for an answer." Id. at 524, It found that the officers, however, ignored his question and never even attempted to give Almeida an answer. Id. This Court held that there was nothing unclear or equivocal about Almeida's question and that he was plainly asking the officer for "fundamental information concerning his right to counsel." Id.

In considering Almeida, this Court examined its previous holdings in Owen and Travlor. State v. Owen, 696 So. 2d 715 (Fla. 1997) ; Traylor v. State, 596 So. 2d 957 (Fla. 1992). Owen

involved two equivocal statements, made during interrogation, about whether or not Owen wanted to answer certain questions. Owen, 696 So. 2d at 716 n.4. This Court considered whether police officers were required to stop and try to clarify equivocal statements made in passing during an interrogation, It held that the police did not need to ask clarifying questions if a "defendant who has received proper Miranda warnings makes only an equivocal or ambiguous request to terminate an interrogation after having validly waived his or her Miranda rights," Almeida, 737 So. 2d at 523. This Court went on to state that the issue in Owen was quite different than the one in Almeida, where the defendant asked a question about his right to counsel. Id.

This Court then quoted Travlor:

> Under [article I, section 9, Florida Constitution], 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.

Almeida, 737 So. 2d at 525 (quoting Travlor, 596 So. 2d at 966). It asserted that the Travlor proscription embraced the situation found in Almeida because the defendant was seeking "basic information on which to make an informed decision concerning his

right to counsel." Almeida, 737 So. 2d at 525. This Court went on to explain:

> **No valid societal interest is served by withholding such information. Indeed, both sides can only benefit from disclosure: Disclosure ensures that any subsequent waiver will be knowing and intelligent, and it reaffirms those qualities in a prior waiver. Nondisclosure, on the other hand, is doubly harmful: It exacerbates the inherently coercive atmosphere of the interrogation session, and it places in doubt the knowing and intelligent nature of any waiver -- whether prior or subsequent.**

Id. Finally, the Almeida court concluded in strong, clear language:

> Accordingly, we hold that if, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer. To do otherwise -- i.e., to give an evasive answer, or to skip over the question, or to override or "steamroll" the suspect -- is to actively promote the very coercion that Traylor was intended to dispel. . . . Any statement obtained in violation of this proscription violates the Florida Constitution and cannot be used by the State.

Id. Obviously, there is nothing in Almeida's language that implies that law enforcement officers should give legal advice or that prevents them from obtaining voluntary confessions. In the interest of obtaining statements which can withstand constitutional scrutiny, however, Almeida demands that officers not be evasive, but address a suspect's questions about his or her right to counsel in an open and straightforward manner.

Glatzmaver relied on Almeida in deciding that the police officers' response to Glatzmayer's question (about whether or not he needed an attorney) was not a "'simple and straightforward answer,' nor was it 'an honest effort to answer [Glatzmayer's] question concerning his right to counsel."' Glatzmayer, 754 so. 2d 71 (quoting Almeida, 737 So. 2d at 525). When police officers asked Glatzmayer to give a taped statement, Glatzmayer asked them if they thought he needed an attorney. Id. The officers' response to Glatzmayer's question was to throw it back in his lap by telling him they could not answer that question; that it was Glatzmayer's decision. The Fourth District correctly found that this non-answer was not a straightforward, good-faith effort to honestly answer Glatzmayer's question. Glatzmaver, 754 so. 2d 71. Noting that "[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have," the Fourth District held that the officers' response to Glatzmayer's question did not comply with Almeida, and his taped confession should have been suppressed. Id. (quoting United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039 (1984).

Once again, there is nothing in the language of Glatzmaver, that instructs law enforcement officers to give legal advice or discourages those officers from obtaining voluntary statements

from suspects. Answering a suspect's questions about his right to counsel is hardly giving legal advice.

Thompson v. Wainwright, 601 F. 2d 768 (5th Cir. 1979), a case which the State quotes at length in its brief, is a good example of comments made by law enforcement officers which amount to improperly giving legal advice. There, police officers had read Thompson his Miranda rights and Thompson had signed a waiver. Id. at 769. The defendant indicated that he wanted to confess but said that he first wanted to tell his story to an attorney. Id. At this, one of the officers told Thompson that an attorney could not tell Thompson's story to the police and that the attorney would advise Thompson to not say anything. Id. at 770. The officers led Thompson to believe that if he spoke with an attorney, he would never be able to tell his side of the story. Id. The circuit court found that the officers essentially engaged in an argument with the suspect about whether or not having counsel would be in the suspect's best interests. Id. at 772. Worse, the officers presumed what advice the attorney would give the defendant. The federal court concluded that, "[i]t follows from the above that Thompson's incriminating statement, taken under the circumstances described and after he was misled into abandoning his equivocal request for counsel, was gotten in violation of Miranda." Id, The court held that the error was not

harmless and reversed. Id. It is clear that instructing officers to give straightforward answers to a suspect's questions about his right to counsel does not in any manner require law enforcement officers to give the kind of advice condemned in Thompson.

When Glatzmayer asked the officers the direct question about whether or not he should get an attorney, the only direct, non-evasive answer from the officers would have been either "yes" or "are you asking for an attorney?" Telling Glatzmayer that it was up to him, then moving on, did not answer his question and inhibited him from exercising his right to counsel. The fact that Glatzmayer was allowed to speak with his mother in no way changes this conclusion. The Fourth District was absolutely correct in finding that Almeida was controlling and that the officers' evasive response did not comply with Almeida.

The State argues that requiring police to advise suspects against talking to them without counsel present would completely undermine law enforcement, but police have been required to give exactly this warning, pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), for over thirty years without catastrophic results. Suspects have not stopped making inculpatory statements to the police, in spite of Miranda's specific warnings that anything they say can be used against them and that they are entitled to an attorney. In any event, neither Almeida nor Glatzmayer mandates

that officers dissuade suspects from giving statements without an attorney present. Accordingly, the State's hysterical prediction of doom and destruction at the hands of Almeida is patently absurd.

The State then erroneously argues that the distinction between Almeida and Glatzmaver was that Almeida's question about an attorney came *before* signing a waiver of his rights, while Glatzmayer's question came *after* he had signed a waiver. (State's Brief p. 23) Unfortunately, the State has its facts wrong here. According to this Court's written opinion, Almeida had already been read his Miranda rights, had signed the waiver, and had given an inculpatory statement prior to asking about an attorney. Almeida, 737 So. 2d at 522. Almeida only asked his question about what good a lawyer would do when the officer prepared to conduct a taped statement. Id. This was almost the exact situation in Glatzmaver. Glatzmayer gave an informal statement, but then asked about an attorney when the officers asked him to make a taped statement. Glatzmaver, 754 So. 2d 71. Consequently, the distinction between the facts in Almeida and Glatzmaver, claimed by the State, simply does not exist.

However, even if the State was correct and there *was* a difference between Almeida and Glatzmaver regarding when the suspects asked about an attorney, it would be of no legal

consequence. Both Almeida and Travlor were very clear that it did not matter whether the questions about legal counsel came prior to or after the suspect had signed a waiver. Traylor, 596 So. 2d at 966. "[I]f, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights. . . " Almeida, 737 So. 2d at 525

Virtually all of the cases the State cites in support of its various arguments are inapposite because: (1) They were decided prior to Almeida and would probably call for a different result if decided today (e.g., Slawson v. State, 619 So. 2d 255 (Fla. 1993); State v. Craig, 237 So. 2d 737 (Fla. 1970); Z.F.B. v. State, 573 So. 2d 1031 (Fla. 3d DCA 1991)); (2) They did not involve a question about having an attorney present; (e.g., Moran v. Burbine, 475 U.S. 412, 106 S. Ct. 1135 (1985); State v. Owen, 696 So. 2d 715 (Fla. 1997); Sapp v. State, 690 So. 2d 581 (Fla. 1997); State v. Mova, 684 So. 2d 279 (Fla. 5th DCA 1996)); or (3) They were decided in jurisdictions completely without authority in this court (e. g., United States v. Posada-Rios, 158 F.3d 832 (5th Cir. 1998) ; Matthews v. State, 106 Md. App. 725, 666 A.2d 912 (Md. 1995)) Additionally, virtually all of these out-of-state cases were decided *prior* to Almeida.

In conclusion, neither Almeida or Glatzmaver require law enforcement to dissuade suspects from providing voluntary

confessions. Quite the opposite. The decision simply requires that a suspect's question about his or her fundamental right to counsel be answered in a straightforward manner. This requirement can only help ensure that a suspect's waiver was truly knowing and intelligently given and, thus, enhances the validity of voluntary confessions. As this Court noted, there is no valid societal interest served by law enforcement playing games or otherwise withholding basic information about a suspect's right to counsel.

Glatzmayer did not make an equivocal request about an attorney, he asked an unequivocal, straightforward question about whether the officers thought he should have one; a question to which he never received a straightforward answer. The Fourth District correctly concluded that Glatzmayer's taped confession should have been suppressed. Consequently, Glatzmayer asks that this Court affirm the Fourth District's decision. Furthermore, this Court definitely should not limit Almeida to situations where the suspect has not yet signed a waiver, because the timing of a waiver is irrelevant to a suspect's having his or her questions about the fundamental right to counsel answered in an open, straightforward manner.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, Respondent Glatzmayer respectfully requests this Honorable Court affirm the Fourth District Court of Appeal's reversal of Glatzmayer's conviction and sentence.

Respectfully submitted,

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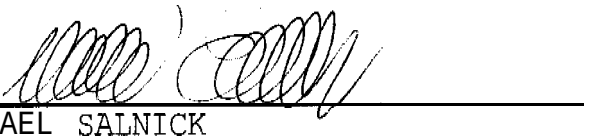
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to Celia A. Terenzio, Esq., Assistant Attorney General, 1655 Palm Beach Lakes Blvd., Suite 300, West Palm Beach, FL, this 5th day of June, 2000.



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