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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner/Cross-Respondent,	:	
vs.	:	Case No. SC14-788 SC14-826
MICHAEL LINDSEY MCADAMS,	:	Consolidated
Respondent/Cross-Petitioner.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RESPONDENT/CROSS-PETITIONER'S AMENDED CROSS-REPLY BRIEF ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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ISSUE II

WHETHER THE TRIAL COURT ERRED IN FINDING THAT RESPONDENT WAS NOT IN CUSTODY WHEN CONFRONTED WITH EVIDENCE AGAINST HIM, QUESTIONNED IN A MANNER SUGGESTING THAT HE WAS A SUSPECT, AND WAS TOLD "I DON'T KNOW" WHEN HE ASKED IF HE WOULD BE ALLOWED TO GO HOME THAT NIGHT?

This Court should find that Mr. McAdams was in custody at the time of his confession such that he should have been told of the lawyer hired by his parents and read Miranda rights. It is undisputed that Mr. McAdams was not in custody at start of the interrogation. However, the interrogation transformed to a custodial interrogation when Mr. McAdams was confronted with physical evidence, told that his explanation of the evidence that was wrong, and questioned in a way that made it clear that he was the prime suspect. No reasonable person would have felt free to leave given the change from knowing they would be allowed to go home at the start of the interrogation to being told "I don't know" when asking if they would be allowed to go home. The nature of the interrogation started to change when both detectives had been questioning Mr. McAdams for just under two hours. The questioning shifted from attempts to establish a time line and ascertain facts to accusatorial confrontation which made it clear to Mr. McAdams that he was the prime suspect in the disappearance of his wife and her new boyfriend.

Detective Arey made it clear to that he thought Mr. McAdams knew exactly what had taken place and that it was time to tell

the rest of the story. (R1002, approximate time stamp 1:47:35-1:48:32) Detective Arey told Mr. McAdams that "I think there is quite a bit more you can tell me, and I'm asking you from man to man with no disrespect to you, you know, I'd really appreciate it if you'd tell me the rest of what I can see you want to tell me." (R1002, approximate time stamp 1:48:43-1:49:02)

Detective Christensen almost immediately asked, "What happened on Sunday and Monday? Something obviously went down on Sunday between Monday, either between you, your wife or the boyfriend. Something went on at your house--." (R1002, approximate time stamp 1:49:14-1:49:29)

Mr. McAdams was asked if he had hurt himself or bled at either house. He was asked about cuts on his hand. Mr. McAdams explained small cuts on his hand when asked as being snake bites. He told police when asked if he had been cut at either house that "I bleed all over the place." (R1002, approximate time stamp 1:51:11-1:51:32)

Detective Christensen reminded that McAdams that they had been at his house looking for information. (R1002, approximate time stamp 1:51:54-1:52:08) Detective Christensen stated, "Something happened—something happened either between you, the boyfriend and her, something happened 'cause this is - this is not just your—you know you guys live out in the woods." (R1002, approximate time stamp 1:53:50-1:54:02) Christiansen stated, "You understand what I am saying? So something happened. This so odd for both of then to be missing. So we need—we need to figure out

what happened 'cause we're talking about your house and your new house and there's things that just don't look right." (R1002, approximate time stamp 1:54:47-1:55:09)

Mr. McAdams was not the first person to bring up the blood evidence. Detective Christiansen, shortly before being asked to leave the room, asked Mr. McAdams about blood on the floor at the residence of his wife as well as in the sink. Christiansen then asked about the blood found on clothing at the home occupied by Mr. McAdams (R1002, approximate time stamp 2:04:56-2:05:12) Seconds later, Christiansen is asked to leave the room. (R1002, approximate time stamp 2:05:15-2:05:16)

Detective Arey, alone with Mr. McAdams, again tells him it is time to tell what actually happened. (R1002, approximate time stamp 2:06:23-2:07:09) Mr. McAdams asked Arey about the blood in the sink. Arey explained said he had been in both houses. Arey explained that they were not CSI with answers in sixty minutes but that they had most of the same equipment. (R1002, approximate time stamp 2:07:14-207:39) Detective Arey made clear his view of the evidence to Mr. McAdams:

> The evidence that they've got is really strong. We got tons of blood evidence, tons of DNA. I was at your Glover house last night. Your dad and I spent a lot of time together. The shorts that were there with blood on them, T-shirt, all of it, that's what they're talking about with the evidence, you know. What you know about the knowledge with your snakes and things like that I can't begin to touch. (R1002, approximate time stamp 2:07:40-2:08:21)

Mr. McAdams' explanation that a lot of the blood on a T-

shirt was rat blood was interrupted by Detective Arey saying it was not. Arey said it had been tested and was human blood with DNA. (R1002, approximate time stamp 2:07:40-2:08:21)

Detective Arey responded that it would be a media zoo involving McAdams' family when McAdams asked what would happen if he did not lay things out as they exactly happened. (R1002, approximate time stamp 2:09:47-2:10:54) Mr. McAdams asked for a few days to think things over. (R1002, approximate time stamp 2:11:14-2:11:18) Detective Arey said things were already set in motion and were not going away. (R1002, approximate time stamp 2:11:20-2:11:42)

Mr. McAdams asked, "Well, what am I—what I'm saying is am I gonna be—going to be able to leave here today or not?" Detective Arey responded that he did not know. (R1002, approximate time stamp 2:11:50-2:12:08)

Mr. McAdams stated that "Hopefully, my wife's gonna show up. Detective Arey responded, "We both know that's not the case." Detective Arey told Mr. McAdams he knew so from all of the evidence. He told Mr. McAdams the case would not go away. (R1002, approximate time stamp 2:17:53-2:18:25)

Mr. McAdams twice asked what he was looking at as a possible sentence. (R1002, approximate time stamp 2:19:50-2:20:13) Mr. McAdams again asked what he was looking as a possible sentence and asked Arey to find out from the prosecutor. Detective Arey responded that a prosecutor would need to know what happened before answering. (R1002, approximate time stamp 2:20:49-2:21:05)

Detective Arey asked what had gone wrong. Mr. McAdams asked if he could get five or ten years possibly as part of an insanity defense Detective Arey he did not know without knowing what happened. (R1002, approximate time stamp 2:21:36-2:21:53)

Detective Arey said he had a pretty good idea of what went on but that further details might make the situation better for Mr. McAdams. (R1001, approximate time stamp 2:25:35-2:25:51) Mr. McAdams stated "Yeah, but your not gonna have to go where I gotta go. Arey responded, "Well you're not there yet, and keep the faith. What went wrong? Mr. McAdams stated, You guys know what happened. It's right there in black and white" (R1002, approximate time stamp 2:26:26-2:26:52) Thereafter, Mr. McAdams gave a detailed confession.

The State is correct that the test for determination of custody is an objective standard. In the plurality opinion in Rigterink v. State, 2 So. 3d 221 (Fla. 2009)[1], reversed on other grounds, Florida v. Rigterink, 559 U.S. 965(2010), this Court, citing Stansbury v. California, 511 U.S. 318 (1994) and Berkemer v. McCarty, 468 U.S. 420 (1984), reiterated that the determination of whether an interrogation is custodial depends on the objective circumstances of the interrogation, not on the subjective views of either the interrogating officers or the person being questioned.

[1] Rigterink is a 4-2 decision, with Justices Quince, Pariente, and Lewis joining in the plurality opinion, Justice Anstead concurring in result only, Justices Wells and Canady dissenting, and Justice Polston not participating. The plurality opinion therefore does not constitute binding precedent, but it can be persuasive authority. See Allen v. State, 636 So.2d 494,498 n.7 (Fla. 1994).

However, the perception or intent of the interrogating officer becomes relevant for purposes of the objective test when the officer's views are disclosed or articulated by word or deed to be suspect during the course of the interrogation. The Court in Rigterink wrote:

> Similar to the traffic-stop situation at issue in Berkemer, at some point the words and conduct of the interrogating officers may transform that which once was a noncustodial, "voluntary" event into a custodial interrogation, which then triggers Miranda, See, e.g., Mansfield v. State, 758 So.2d 636,644 (Fla. 2000)(the interrogating detectives converted a "voluntary" interview into a custodial interrogation where: [1] [the defendant] was interrogated by three detectives at the police station, [2] he was never told he was free to leave, [3] he was confronted with evidence strongly suggesting his guilt, and [4] he was asked questions that made it readily apparent that the detectives considered him the prime, if not the only, suspect"); Caso v. State, 524 So.2d 422,424 (Fla. 1988)(finding the defendant "in custody" and stating, "Contrary to the defendants in Beheler and Mathiason, Caso did not initiate the contact with police. Moreover, Caso was interrogated at the police station and was not specifically informed that he was not under arrest, despite being confronted with evidence which implicated him in the crime....").(emphasis supplied)

Rigterink, 2 So. 3d at 244.

In applying the objective test, it doesn't matter how strongly the interrogating officer believes in his mind that the person he is questioning is guilty, but it becomes highly relevant to the custody determination if he communicates that belief to the interviewee. It is irrelevant whether the officer has focused on the interviewee as his prime or only suspect, but it is highly relevant if he tells the interviewee he is the prime or only suspect. And it doesn't matter how much evidence the police may

have pointing to the interviewee's guilt, but it matters very much if the interrogating officer confronts the suspect with evidence (either real or fabricated) strongly suggesting his guilt. Rigterink; Mansfield v. State, 758 So.2d 636,643-44 (Fla. 2000); Caso v. State, 524 So.2d 422,424 (Fla. 1988).

Any reasonable person would not have felt free to leave given the clear message sent by the questioning of police. No reasonable person would have felt free to leave after having been told "I don't know" when asked if they would be allowed to go home.

The opinion in Ross v. State, 45 So. 3d 403 (Fla. 2010), restates the four Ramirez[2] factors to be used as a "channeling mechanism" for determining, under the objective test and under the totality of the circumstances, whether a reasonable person in the defendant's shoes would have felt free to terminate the interview and leave. Ross, 45 So. 3d at 244. In the instant case, as in Rigterink and Ross, only the first of these four factors weighs in favor of the state's position. But as in Rigterink and Ross, an interrogation which is noncustodial at its inception may become custodial as it progresses, and as its tone and content change from investigatory to accusatory.

Courts in other states have noted how an interrogation may be transformed from noncustodial to custodial due to changed circumstances. In Haas v. State, 897 P. 2d 1333 (Alaska Ct. App. 1995), the defendant volunteered to go to the police station in

[2] Ramirez v. State, 739 So.2d 568 (Fla. 1999).

his own truck. Haas was told he was free to leave at any time. Haas admitted to buying cocaine from one of the victims. Haas began talking with the officers about what might hypothetically happen if admitted involvement in the shootings. Haas asked if he would be taken to jail that same day. The officer responded he might be arrested at some point but would not be arrested that day. Haas hypothetically indicated his involvement in the homicides. He asked if would be taken to jail but did not get a direct answer. Haas eventually admitted to the shooting and asked if he would be allowed to leave. Haas was allowed to leave and was later arrested. Haas, at 1334-1335.

The appellate court found that Haas was not in custody at the start of the interview but that it later tuned custodial:

> However, during the course of the interview, Haas began to broadly hint that he was the one who had committed the homicides. While he did not at first explicitly confess to the killings, he posed "hypothetical" situations which strongly suggested his guilt. After Haas had made several inculpatory statements, he asked the office r, "[A]re you gonna take me to jail right now ... arrest me?" Officer Reeder refused to answer Haas directly. A few minutes later, Haas repeated his question. This time, Reeder replied, "I really don't know. I'd have to check ... with my sergeant [and] with the district attorney."
>
> We believe that the superior court erred in determining that a reasonable person in Haas' position would have felt free to leave at this point. Haas was therefore in custody for Miranda purposes. Although the police ultimately told Haas that he was free to go, there was a substantial period of time when Haas was subjected to custodial interrogation without being advised of (and waiving) his Miranda rights. That portion of the interview was obtained illegally. Judge Souter should have suppressed all of Haas' statements from the point when Haas asked the question, "[A]re you gonna take me to jail right now ... arrest me," and all fruit of these illegally obtained statements.

Haas, 987 P. 2d at 1336.

In Muntean v. State, 12 A. 2d 518 (Vt. 2010), the defendant went to the police station to be interview in connection with a charge of aggravated sexual assault. The Vermont Supreme Court listed facts found by the trial court:

> (1) the detective at no point told defendant that he was free to leave at any time; (2) defendant was immediately confronted with evidence of guilt of a serious crime; (3) the detective indicated to defendant that he was certain of defendant's guilt; and (4) the interview took place in a small, windowless polygraph room located in the secured part of the police barracks. The trial court also considered a number of factors weighing against a custody determination, most importantly the fact that defendant arrived at the police barracks voluntarily, that the detective acknowledged that defendant was there voluntarily, and that defendant's freedom to move about the room was not restricted, nor was he "directly" denied access to contact any other person or to leave the room.

Muntean, 12 A. 2d at 524.

The Vermont Supreme Court agreed with the trial court conclusion that the interview was custodial:

> We would agree that here, under Pontbriand, the fact that the detective told defendant that the detective believed the daughters and grandsons—and not defendant—would not alone establish custody. Here, however, it is only one factor pointing to the presence of custodial interrogation, and the totality of the objective circumstances surrounding the interview indicates that defendant was in police custody for the entire interview. Specifically, the physical setting of the interview, when combined with the fact that defendant was not told that he could choose to leave whenever he so desired, was immediately confronted with evidence implicating him in a serious crime, and was told repeatedly that the detective "knew" that he was guilty of the crime, strongly suggests that a reasonable person in defendant's shoes would not have felt free to terminate the interview and walk away.

Muntean, 12 A. 3d at 529. See also Motta v. State, 911 P.2d 34,39 (Alaska 1996); State v. Payne, 149 S.W.3d 20,33 (Tenn. 2004); State v. Snyder, 860 P.2d 351,357 (Utah App. 1993).

Like the courts in Haas and Muntean, this Court should find that the interrogation in this case became custodial prior to the confession. The defendant in Haas was found to be in custody from the point where he asked if he would be taken to jail and was not given a direct answer. Mr. McAdams was similarly not told that he was free to leave when asked if he would be allowed to go home. In Muntean, the defendant was interviewed at a police station, confronted with evidence of guilt, and questioned in a manner that made it clear he was a suspect. The facts of Muntean are similar to those of this case.

The remaining three Ramirez factors strongly indicate that Mr. McAdams was in custody prior to his confession. Michael McAdams was questioned in a police station by police who confronted him with evidence and made it clear that he was a prime suspect. Police told Mr. McAdams that they had strong evidence of blood at both houses. Police made it clear that they knew Mr. McAdams knew what went on and that they wanted to know what happened. Detective Arey directly told Mr. McAdams that his explanation of certain blood as being rat blood was human blood with DNA was wrong. While Mr. McAdams was free to leave at the start of the interrogation he was told I don't know when he later asked if he would be allowed to go home.

Would any reasonable person in McAdams' situation, in a small

interview room being confronted with physical evidence and a clear message that he was the prime suspect in the disappearance of his wife and her new boyfriend, have felt free to terminate the interview and leave? In State v. Pitts, 936 So.2d 1111,1128 (Fla. 2d DCA 2006), quoted with approval in Rigterink, 2 So. 3d at 252, the appellate court observed:

> A reasonable person understands that the police ordinarily will not set free a suspect when there is evidence "strongly suggesting" that the person is guilty of a serious crime. That does not mean that whenever a suspect is confronted with some incriminating evidence, the suspect is in custody for purposes of Miranda. The significance of this factor turns on the strength of the evidence as understood by a reasonable person in the suspect's position as well as the nature of the offense.

Pitts, 936 So. 2d at 1128 & n. 8.

The significance of this factor would be dramatically reduced if Mr. McAdams had been told that he was free to leave after the nature of the interview changed. Instead, when Mr. McAdams asked whether he would be allowed to go home that evening, Detective Arey responded that he did not know. The change in circumstances from earlier is such that any objective reasonable person would not have felt free to leave.

The case of Anthony v. State, 108 So. 3d 1111 (Fla. 5th DCA 2013), is distinguishable. A previous interview had taken place at the Anthony residence after police responded to a 911 call. Anthony agreed to meet police at Universal Studios where she claimed to have employment. Anthony and eventually admitted she did not. A detective indicated he wanted to question her further

and they went to a small room at Universal Studios. Anthony was confronted with prior lies although the focus of the interview was to get information to locate her missing child. Anthony admitted to lying about her employment at Universal as well as the address of a babysitter, but insisted she had left her daughter with the babysitter and then spoken to her daughter a few days later. Anthony acknowledged during the interview that she was there voluntarily to help officers find her daughter. The second interview was found to be noncustodial:

> The trial court found that while the officers were frustrated with Appellant for leading them on a "wild goose chase," the overall tone of the conversation was not accusatorial and the officers did not speak to Appellant in an intimidating manner. Significantly, Appellant confirmed on more than one occasion during the interview that she was there voluntarily for the purpose of helping the officers locate her missing daughter. After consideration of the Ramirez factors, we conclude that a reasonable person in Appellant's position would not believe "that his or her freedom was curtailed to a degree associated with actual arrest."

Anthony, 108 So. 3d at 1118-1119.

The questioning in this case was more than confrontation with prior lies. The questioning in this case was accusatorial in contrast to the questioning in Anthony which was described as "not accusatorial." Mr. McAdams was questioned in a manner where he was confronted with physical evidence of blood at his own house and the house occupied by his wife. The nature and manner of questioning made it clear that police considered Mr. McAdams to be the person responsible for the disappearance of his wife and her new boyfriend given the totality of the evidence possessed by

police. While Ms. Anthony confirmed on more than one occasion that she was in the room at Universal voluntarily to help find her daughter, Mr. McAdams was in a police station and was told I don't know when asked if he would be allowed to go home.

There is a significant difference between the evidence that the defendant in Hunter v. State, 8 So. 3d 1052(Fla. 2008), was confronted with and the evidence in this case. The defendant in Hunter was confronted with lies and that he had put himself with a codefendant named Victorino. Mr. McAdams was confronted with evidence of blood in two houses, told that he was wrong about an explanation, and questioned in a way that made it clear that he was a suspect. The interrogation in Hunter was described by the trial court did not focus on the defendant as a suspect:

> [I]t is clear to the court that the defendant was asked to voluntarily come to the police station to answer some questions. He voluntarily went and further testified to his lawyer [']s question that he would have gone with his own transportation had that been available. It is apparent it was intended to be a voluntary statement. It is apparent from the review of the tapes and the transcript as well as the information presented that the purpose of the interview was to learn about Mr. Victorino and not necessarily about Mr. Hunter.

Hunter, 8 So. 3d at 1063.

The case of State v. Pitts, 936 So. 2d 1111 (Fla. 2d DCA 2006), is contrary to the assertions of Petitioner, readily distinguishable from the present case. In Pitts, the defendant was confronted with an accusation by T.J. Wright that he had committed two murders as well as with the suspicions of police that he was at the scene. The Second District Court of Appeal

noted that the interrogation and comments of police were not such that "made it readily apparent" that Pitts was thought to be a prime suspect. Pitts, 936 So. 2d at 1128. Pitts was also confronted with evidence that he had pawned a bag of tools belonging to a victim and with suspicion that he fled from police. The Second District explained why this did not indicate custody:

> The same is also true of the confrontation of Pitts with his participation in the pawning of the victims' property and his involvement in the police chase. Pitts offered an innocent explanation of those matters, and he was confronted with nothing to refute that explanation. In such circumstances, a reasonable person in his position would not understand himself to be in custody.

Pitts, 936 So. 2d at 1128, FN9.

The questioning in this case starkly contrasts with the above description of the questioning in Pitts. The questioning and comments made it clear that Mr. McAdams was the prime suspect in the disappearance of his wife and her new boyfriend. Mr. McAdams was confronted with blood evidence from the house he lived in as well was the house occupied by his wife. Moreover, in contrast to the police in Pitts who accepted Pitts' explanations as to the items pawned and the police chase, the police in this case did not accept Mr. McAdams's explanations, told him he was wrong as to certain facts, and refused to accept his answers.

Petitioner is correct that in Pitts, the defendant asked a question that was remarkably similar to what Mr. McAdams asked about whether he would be allowed to go home. However, the factual circumstances of each case are so different that Pitts does not

support Petitioner's argument. Pitts was never told at any point of his interrogation that he was free to leave or was otherwise not in custody. Pitts, 936 So. 2d at 1124. In contrast, Mr. McAdams was clearly free to leave at the beginning of the interview. The change in circumstances from being able to leave to being told "I don't know" when coupled with the other circumstances of the interrogation were such that any reasonable person would not have felt free to leave.

Undersigned counsel is not relying on Mr. McAdams' subjective feeling that he was not free to leave. McAdams' sense of being in custody was based on the objective circumstances which had unfolded during the previous accusatory interrogation, coupled with the fact that when he displayed doubt as whether he was free to leave police did nothing to dispel the doubt. Any reasonable person would not have felt free to leave given what took place at the police station.

CONCLUSION

Based upon the foregoing argument, authorities, and reasoning, this Court is respectfully asked to hold that Mr. McAdams' confession be fully suppressed and inadmissible at a new trial.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com and Helene.Parnes@myfloridalegal.com, on this 7th day of November, 2014.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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