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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner/
Cross-Respondent,

v.

MICHAEL McADAMS,

Respondent/
Cross-Petitioner.

Case Nos. SC14-788; SC14-826
CONSOLIDATED

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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

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STATEMENT OF THE CASE AND FACTS

The State relies on the Statement of the Case and Facts as set forth in its initial brief. The State submits the following additions to its statement, as set forth in the Second District's McAdams opinion:

> The trial court's order details the facts developed at the suppression hearing, and it analyzes those facts using the test adopted by the Florida Supreme Court in Ramirez v. State, 739 So. 2d 568 (Fla. 1999). In Ramirez, the court looked at four factors to determine whether a reasonable person in the suspect's position would consider himself in custody: (1) the manner in which the police summon the suspect for questioning; (2) the purpose, place, and manner of the interrogation; (3) the extent to which the suspect is confronted with evidence of his or her guilt; (4) whether the suspect is informed that he or she is free to leave the place of questioning. Id. at 574. As we noted in Pitts, [infra], "the four-factor test must be understood as simply pointing to components in the totality of circumstances surrounding an interrogation." 936 So. 2d at 1124; see also Rigterink, 2 So. 3d at 246[1] (explaining that with respect to the objective reasonable person framework for analyzing custody, the test in Ramirez is a "subsidiary four-part channeling paradigm to organize and analyze the case-specific facts that are relevant to determining whether a reasonable person would have felt that he or she was not at liberty to terminate the interrogation and leave"). Pitts explains:
>
> > No factor on the Ramirez list of factors can be considered in isolation. The whole context must be considered. A factor that would militate strongly toward the conclusion that a suspect was in custody in one context might be viewed differently in a materially different factual context. The

[1] Rigterink v. State, 2 So. 3d 221, 246 (Fla. 2009), vacated on other grounds, 559 U.S. 965 (2010).

> focus of the inquiry must remain on whether a reasonable person in the suspect's position — given all the relevant circumstances — would have understood himself to be in custody.

936 So. 2d at 1124. The trial court went through each of the Ramirez factors and made the following findings:

> I did take multiple opportunities to go over a lot of the information provided to me prior to today's hearing. I've already mentioned on the record that I did see the entire audio and video portion of the interview. I read the files, transcripts of depositions, and the motion and memoranda and opposition and the case law, everything that was provided to me by both sides. After hearing everybody's testimony today, it was as clear to me at the end of the day as it was in the beginning that we've got a couple of major issues that both sides seem to focus in on, and that carried the day for the question of the day. Obviously, the first issue was whether or not the defendant was in custody in accordance with the guidelines set out in RAMIREZ. Which I am always happy to have guidance of any sort, it makes my job a lot easier, and thank you both sides for providing the case law that you did, and I read everything thoroughly. Guidance turns my decisions basically into a mathematical formula in some cases, which is very helpful to me.
>
> In the RAMIREZ case there's four prongs, as you all know, that help and guide a judge to decide whether or not someone was in custody. So in going through those prongs, let's start with the first prong, "The manner in which police summoned the suspect for questioning."
>
> In this case, as we all heard and testimony bore out, Mr. McAdams was brought to the Hernando County Sheriff's Office via a

marked deputy vehicle. For all intents and purposes, while obviously I'm sure we all read case law where there's no—it's clear that defendant was coming of his own free will in those instances where he drives, he or she drives himself in his own vehicle to the police station.

In this case, after testimony from the defendant and the transporting deputy and the detective, it appears that defendant willingly went and voluntarily went with the police, the deputy, in the transport vehicle, and was not concerned that — or there was no reason for him to believe, even by the reasonable person's standard, that he was not free to decline that ride. There was — particularly under the circumstances where the underlying initial investigation involves a missing person who happened to be married to the defendant, so by his own statements in both the interview, the taped interview and today's testimony he indicated he wanted to be helpful and go and be helpful in any manner he could.

So Prong One, I find, indicates that, according to Prong One of RAMIREZ, that according to that he was not in custody as to that prong. The next one, "Purpose, place and manner of the interrogation." Obviously the interview took place at the Sheriff's Office. But again as I already said, he went there voluntarily. It was in a small interview room. But it was clear from the video that the defendant was seated closest to the door, there was nothing barring his exit, the door was not locked, according to testimony. And there were two detectives present in the room with him who were both seated further away from the door than the defendant and not blocking his way. There was nothing, from what I could see in the tape, there was no one obviously standing there blocking his way, nor was there any testimony as to that other than the defendant indicated that at some point he

did see two uniformed officers standing near the door. But Mr. Halkitis on cross elicited some testimony that he was not watching the door, which the videotape bears out his back was to the door. So, I find for all purposes that Prong Number Two indicates that defendant was not in custody.

The third prong is, "The extent to which the suspect is confronted with his guilt." Now, this one there were clearly some issues raised, and I'm going to make a few finding as to that. The Defense went to considerable length and focused on showing that the Pasco detectives suspected the defendant, that the defendant killed his wife even before they began questioning him. And then on direct Detective Christensen, in her testimony, seemed to attempt to minimize her suspicions of defendant. And in this whole line of focus, everything seemed to me, that whole thing seemed somewhat incredible as to Detective Christensen's — like I said, she seemed to minimize her suspicions.

A seasoned Major Crimes detective dealing with a missing person, and she already knows many, many things from her own observations, and now she's sitting talking to the spouse of a missing woman, I find it very hard to believe that she did not consider Mr. McAdams a suspect. Because even lay people are subject to statistics that say, "Oh, 95 percent of homicides are all committed by someone you know." And so again I find it very hard to believe that Detective Christensen didn't have a pretty strong suspicion that Mr. McAdams was a suspect.

But I don't find that really to be relevant, in the fact that it doesn't really matter what she thought, it's what she did, how she behaved, and whether or not she violated the third prong of RAMIREZ by threatening or acting in some manner on her suspicions. For instance, if she suddenly treated Mr. McAdams like a criminal by hollering at him,

threatening him, frightening him, acting, you know any type of aggression, or even more importantly to start confronting him, as the third prong says, with the knowledge that she already had.

The testimony clearly indicates — first of all there was a search warrant obtained based on the observations at both houses — that there were some significant concerns. There was blood found, there was something that appeared to be a bullet hole, you've got at least one known missing person, possibly two. There was a broken cell phone, glass, dog food scattered about, a well-known very reliable employee missing out of her home for — out of her work for a couple of days without excuse. There was the pending divorce. There was all it could have gone on and on. And I don't find that through the evidence presented that these — I find that those questions as to whether or not they threatened, the defendant was threatened, frightened or spoken to contemptuously, or whether or not he was confronted with any evidence that was going to be used against him, I find that those questions are all answered in the negative.

I watched, again, several hours — well, I watched the whole tape and hours of Detective Christensen and then Detective Arey alone, there was never any raised voices, never any threat. The only, the only incidents where anything was mentioned about evidence that had been already seen or was in hand or suspected of having was the blood and some of the clothing.

But in light of the whole circumstances and the tone of the whole interview, I don't find that he was in custody under prong three based on the totality of the circumstances.

And finally under prong four, "Whether the suspect is informed that he is free to

> leave." The testimony was uncontroverted that he was informed that he was free to leave, at least once, possibly twice depending on whose [sic] testifying. But there was uncontroverted testimony that he was told at least once that he was free to leave.
>
> So under the guidance of RAMIREZ, I find that the defendant was not in custody, at least to the point of when he's admittedly in custody. That happened when Detective Arey read Miranda and placed him under arrest, he was clearly in custody at that point.

As did the trial court, we have viewed the entire video of Mr. McAdams' interview with the detectives. We conclude that the trial court's factual findings are supported by the video and by the testimony at the suppression hearing, and we agree with the trial court's ultimate determination that Mr. McAdams was not in custody at the time he confessed to the murders.

McAdams v. State, 137 So. 3d 401, 404-407 (Fla. 2d DCA 2014).

SUMMARY OF THE ARGUMENT

No due process violation had occurred when McAdams initially confessed to the crimes because he was not in custody or under any police restraint. Moreover, no attorney-client relationship was established since McAdams was not in custody. The State further submits that since the police conduct was not outrageous when McAdams was read Miranda and in custody, no due process violation occurred. Any error in admitting the post-Miranda evidence was harmless since McAdams admitted pre-Miranda that he shot the victims, cleaned up the bodies, dumped them and buried them. And the confession made after Miranda was given was almost identical to the confession made pre-Miranda. The only difference between the pre-Miranda and post-Miranda statements was the information leading to the location of the victims' bodies, and this evidence did not affect the verdict.

The Second District properly concluded that McAdams was not in custody at the time of his initial confession to police and thus his pre-Miranda statements properly were admitted. A review of the videotaped interview and the facts of this case according to the four prong test set forth in Ramirez clearly show that McAdams was not in custody when he first confessed to the murders. McAdams was told he was not under arrest and the interview was not highly accusatory or coercive.

ARGUMENT

REPLY

ISSUE I

DOES AN ADULT SUSPECT WHO IS NOT IN CUSTODY BUT VOLUNTARILY ENGAGES IN A LENGTHY INTERVIEW IN AN INTERROGATION ROOM AT A LAW ENFORCEMENT OFFICE HAVE A DUE PROCESS RIGHT TO BE INFORMED THAT A LAWYER HAS BEEN RETAINED BY HIS FAMILY AND IS IN THE PUBLIC SECTION OF THE LAW ENFORCEMENT OFFICE AND WISHES TO TALK TO HIM?

McAdams argues that there is little difference between the facts of Haliburton v. State, 514 So. 2d 1088 (Fla. 1987) and this case. However, there is a major difference, which is that Haliburton was in custody and McAdams was not in custody when he initially confessed to the murders. As stated in its initial brief, the State reiterates that McAdams does not have a due process right to an attorney prior to custodial interrogation and the reading of his Miranda rights. Blaylock v. State, 537 So. 2d 1103, 1108 (Fla. 3d DCA 1988)("Miranda does not apply outside the context of inherently coercive custodial interrogation…There is no authority or logical reason for an extension of the Miranda rule to statements made voluntarily before a suspect is taken into police custody.")

As previously stated in the initial brief, Haliburton concerned itself with law enforcement not allowing a **custodial** defendant to have access to his attorney, as well as law

enforcement disregarding a court order compelling access. This same rule does not apply to non-custodial defendants. Compare Blaylock, 537 So. 2d at 1108.

> …the reason the prosecutor may not comment on a defendant's post-Miranda silence is because the Miranda warnings contain an implicit assurance that silence, which includes the statement of a desire to remain silent until an attorney has been consulted, will carry no penalty, and breaching that assurance is an affront to the fundamental fairness that the due process clause requires. But where, as here, the defendant was not in police custody and was not induced by the government into any communication that would have been otherwise protected, Miranda is not applicable. Moreover, it is not unfair to permit the State to use the defendant's non-custodial request for counsel, made at the scene of the crime, as evidence that he, at the time of the offense and contrary to his own assertion, was capable of distinguishing right from wrong. Where sanity is at issue, a defendant's request for an attorney, unlike silence, may have probative evidentiary value.

Id.

The State further reiterates that the admission of the second confession did not affect the verdict in this case. The State applied the correct standard in its initial brief which is that the focus of a harmless error analysis is on the effect of the error on the jury. State v. DiGuilio, 491 So. 2d 1129, 1138 (Fla. 1986). The standard is whether there is a reasonable possibility that the constitutional error affected the verdict.

Ventura v. State, 29 So. 3d 1086 (Fla. 2010). The State set forth the substantial evidence presented at trial in its harmless error analysis to establish that the impermissible evidence, namely, the location of the bodies, did not constitute a substantial part of the prosecution's case. Thus, the error in the admission of the evidence had no affect on the verdict in this case.

CROSS-APPEAL

ISSUE II

WHETHER THE TRIAL COURT PROPERLY FOUND THAT MCADAMS WAS NOT IN CUSTODY PRIOR TO RECEIVING MIRANDA WARNINGS? [RESTATED]

The Second District properly concluded that McAdams was not in custody at the time of his initial confession to police. "The question of whether a suspect is in custody is a mixed question of law and fact." Ramirez v. State, 739 So. 2d 568, 574 (Fla. 1999). "The 'in custody' requirement under Miranda is subject to de novo review, accepting the court's factual findings if supported by competent, substantial evidence." Bowen v. State, 79 So. 3d 241 (Fla. 4th DCA 2012).

However, "[r]eviewing courts must exercise care when examining such issues, for while the issues themselves may be posed in broad legal terms (e.g., whether a suspect was 'in custody,' whether conduct by police constituted 'interrogation'), the actual ruling is often discrete and factual (e.g., whether police did in fact tell a suspect he was free to go, whether police did in fact ask a suspect if he committed the crime). Appellate courts cannot use their review powers in such cases as a mechanism for reevaluating conflicting testimony and exerting covert control over the factual findings. As with all trial court rulings, a suppression ruling comes to the reviewing court clad in a presumption of correctness as to

all fact-based issues, and the proper standard of review depends on the nature of the ruling in each case." State v. Glatzmayer, 789 So. 2d 297 (Fla. 2001).

Here, the Second District set forth the trial court's findings within the McAdams opinion. McAdams v. State, 137 So. 401, 405-407 (Fla. 2d DCA 2014). The trial court specifically stated that it reviewed the videotaped interview and reviewed the facts of this case according to the four prong test set forth in Ramirez. The trial court went through each of the prongs and made factual findings as to each prong. The Second District also reviewed the videotape and upheld the trial court's findings:

> As did the trial court, we have viewed the entire video of Mr. McAdams' interview with the detectives. We conclude that the trial court's factual findings are supported by the video and by the testimony at the suppression hearing, and we agree with the trial court's ultimate determination that Mr. McAdams was not in custody at the time he confessed to the murders.

McAdams, 137 So. 3d at 407. Looking at the totality of the circumstances, the Second District properly upheld the trial court's findings since they were supported by competent, substantial evidence.

A review of the videotape reveals that McAdams was not in custody prior to being read Miranda. Under the Ramirez four prong test the court should consider:

> 1) The manner in which police summon the suspect for questioning; 2) the purpose, place, and manner of the interrorgation; 3) the extent to which the suspect is confronted with evidence of his or her guilt; 4) whether the suspect is informed that he or she is free to leave the place of questioning.

Ramirez, 739 So. 2d at 574.

McAdams acknowledges that he was not in custody during the majority of the interview. The testimony shows that McAdams was told he was not under arrest at least once, possibly twice. McAdams, 137 So. 3d at 406-407. (R. 470, 478, 513, 529). The detectives never raised their voices during the interview, and the interview was conducted in a casual and conversational tone. However, McAdams argues that the nature of the questioning changed "dramatically" two hours into the questioning and transformed into a custodial interrogation. McAdams' argument focuses on the third and fourth prongs; however the State will address each prong. Since he specifically attacks the conversation between Detective Arey and himself after Detective Christensen was asked to leave, the State will focus on this portion of the interview. McAdams' argument is not supported by competent, substantial evidence.

As to the manner in which McAdams was summoned for questioning, he was asked to meet the detectives at the sheriff's office and the detectives offered McAdams a ride. He

accepted. It was clear he was not under arrest or in custodial detention. As to the purpose, place and manner of the questioning, McAdams was being questioned in one of the interview rooms of the sheriff's office. McAdams was sitting near the door and was not blocked by the detectives. "[T]he fact that the interview took place in a small office with the door closed does not compel the conclusion that Appellant was in custody." Anthony v. State, 108 So. 3d 1111, 1118 (Fla. 5th DCA 2013).

McAdams asserts that at approximately two hours and five minutes into the interview, the nature of the meeting drastically changed. To support his argument, McAdams asserts Detective Arey's act of moving physically closer and confronting him with blood evidence found at the victim's home and at his own residence would make a reasonable person under these circumstances believe he was a suspect. The State strongly disagrees with McAdams' position. The videotape shows Detective Arey moving from his seat into Detective Christensen's seat, which is closer to McAdams, but Detective Arey was not actually physically closer to McAdams than the other detective had been. The detective never blocked McAdams. McAdams always had direct access to the door from where he was seated.

With regard to the extent to which McAdams is confronted with evidence of his guilt, the videotape shows that Detective

Arey's demeanor was quiet and compassionate. See State v. Perez, 58 So. 3d 309 (Fla. 5th DCA 2011)(the interview was conducted in a non-threatening manner and the tone was conversational, not confrontational). Furthermore, the detective did not "confront" McAdams with the blood evidence, McAdams himself asked Detective Arey about this evidence: "What is she [Detective Christensen] talking about with the blood in the sink, can you fill me in on that." (State Exhibit #1 - DVD, R. 1002, approximate time stamp 2:07:10 – 2:07:18).

McAdams asked about the blood evidence and the detective answered his question. Elliott v. State, 49 So. 3d 795 (Fla. 1st DCA 2010)(Defendant rather than law enforcement initiated the questioning); State v. Edenfield, 27 So. 3d 222 (Fla. 2d DCA 2010)(Defendant initiated a conversation with law enforcement about his allegedly stolen property and the identities of people involved in drug activity). Moreover, statements such as "the evidence is really, really strong," they had gathered "tons of blood evidence and DNA evidence," "this isn't going away" and "I have a pretty good idea what happened" were made in response to McAdams' question about the blood evidence and would not lead a reasonable person to believe he was a prime suspect and was in custody. State v. Figueroa, 139 So. 3d 365, 368 (Fla. 5th DCA 2014)("A]lthough the defendant was confronted with the allegations of his sexual abuse, the defendant was not

confronted with evidence so indicative of guilt that a suspect in the defendant's position would feel that he was going to be arrested.").

The State respectfully submits that the McAdams concurring and dissenting opinion incorrectly states that "the male detective told Mr. McAdams that the evidence **against him** was really, really strong." (emphasis added) McAdams, 137 So. 3d at 412. The detective never stated to McAdams that they found evidence "against him." When answering McAdams' question about the blood evidence, the detective said, "**the** evidence they got is really, really strong." (emphasis added) (State Exhibit #1 - DVD, R. 1002, approximate time stamp 2:07). It may be apparent to a reasonable person that the victims met with foul play, but not necessarily that he was responsible.

"Confronting a suspect with only some evidence of guilt does not turn a consensual encounter into a custodial interrogation." Figueroa, 139 So. 3d at 368-369; See Schoenwetter v. State, 931 So. 2d 857, 867 (Fla. 2006)(holding that confronting a suspect with some evidence of guilt does not necessarily mean that the defendant was in custody). Moreover, questioning a defendant about criminal conduct or activity alone or confronting a defendant with evidence strongly inferring a defendant's guilt does not establish that a custodial interrogation was conducted. Figueroa, 139 So. 3d at 369; See

State v. Scott, 786 So. 2d 606, 610-11 (Fla. 5th DCA 2001).

In Anthony, the defendant was repeatedly confronted with her prior lies, although the primary focus of the interview was to obtain information to help locate the missing child. Id. at 1116. "[A] reasonable person in Appellant's position would not believe "that his or her freedom was curtailed to a degree associated with actual arrest." Id. at 1118-1119. In Duddles v. State, 845 So. 2d 939 (Fla. 5th DCA 2003), the officer informed the defendant that the victim made allegations against him and asked for his side of the story. The court held that defendant was not in custody when he gave his confession to police.

In Hunter v. State, 8 So. 3d 1052 (Fla. 2008), Hunter was interviewed by investigators for one hour and forty-three minutes prior to being read his Miranda rights. Specifically, the investigator told Hunter he had caught him in some lies and that Hunter put himself with Victorino the night of the murders.

> The investigators questioned whether Hunter was involved and to what extent. In response to Seymour's statement "If you had any level of involvement here, let's just clear it now. Jump—jump on our side of the fence, man," Hunter said, "That's it." In response to "You got to talk to me. You got to tell me what really happened," Hunter stated, "I don't have anything else to say." Next, in response to "What's Troy been telling you?," Hunter said, "That's it. That's it." Hunter denied knowing anything about what happened when asked and denied that Victorino had told him anything. In response to continued questioning, Hunter maintained that he did

> not have anything to do with the murders. When told that he needed to talk to Investigator Horzepa, Hunter replied, "That's it." Shortly thereafter, Hunter was read his Miranda rights.

Id. at 1062-1063. This Court held that Hunter failed to demonstrate that he was in custody prior to being read his Miranda rights or that he had sought to terminate the interview.

McAdams relies on this Court's opinion in Ross v. State, 43 So. 3d 403 (Fla. 2010), to support his argument; however Ross is distinguishable from the instant case. In Ross, the defendant was pressured to admit his involvement. The detectives were highly confrontational when they questioned him on the inconsistencies in his story. Here, the detectives were friendly and calm when speaking to McAdams. Specifically, when Detective Arey was alone with McAdams, he never raised his voice nor threatened McAdams. McAdams asked specific questions and the detective answered his questions. When looking at the detective's statements in proper context under the totality of the circumstances, a reasonable person would not believe he was in custody.

McAdams argues that State v. Pitts, 936 So. 2d 1111 (Fla. 2d DCA 2006) is distinguishable from the instant case, but Pitts is directly on point. McAdams attempts to distinguish Pitts by arguing that the Second District found that Pitts was only confronted with a "bare uncorroborated accusation" and he was

never specifically told that the interrogator believed the accusation was true. The facts in Pitts show that Pitts was confronted with evidence that the police knew he pawned the victims' property and the police told Pitts that they believed he knew the victims' whereabouts. The pertinent pre-Miranda facts as set forth in the Pitts opinion are as follows:

> During the interview, Pitts was confronted with the fact that the officers knew he had pawned property that was owned by one of the missing young men. The officers also told Pitts that they believed that he knew the whereabouts of the missing young men and that he needed to tell the officers where the young men were. The officers were focused on the need to find the missing men.

Id. at 1118.

Like the instant case, in Pitts, the officers did not raise their voices, and the tone of the conversation was monotone. McAdams like Pitts never said that he wanted to leave or that he did not want to talk to the officers. The officers told Pitts they believed he pawned property belonging to one of the missing men. Pitts admitted that he pawned items given to him by T.J. Wright and then started to cry. One of the interrogating officers then said to Pitts, "Sammy, when you stand up, I know you're going to take us to those kids, I know that's when you're going to take us to them." Subsequently, Pitts "stood up and said we need to go to I-4 and 33." They searched for awhile but Pitts said he did not know exactly where they were located.

The officers then went to a substation in the area and took Pitts to an interview room. Pitts agreed to give a sworn taped statement. In the taped interview, Pitts admitted that he had been with T.J. in the car and further admitted that T.J. gave him a black bag with some tools, which Pitts then pawned. Pitts denied any involvement in the disappearance of the missing young men.

> After Pitts had given the taped statement, the interrogating officers left the interview room. Captain W.J. Martin, the supervising officer, then conducted a further interview, which was not taped. Martin testified that he decided he "would go in and sit down and talk to him and see what I thought about what he had to say." Martin observed that Pitts "was fairly well alert" and "attentive" to what Martin said. Martin said that he did not raise his voice to Pitts and that he used a "normal tone of voice." Martin told Pitts that the objective of the police "was to try to find these boys, that they had been missing for some time now." Pitts responded that "all he knew was they were in a grove somewhere in Polk City off to the right," as he had been told by T.J. Pitts added that he did not "know much about the area," that "TJ did," and that "it was dark." **Martin's suspicions being further aroused by this comment, he then said to Pitts, "Sammy, I have been doing this a long time now, I think you know more than what you're telling us. I actually believe that you were there."**
>
> Pitts maintained his story that all he knew was what he had been told by T.J. **Martin then wrote down on a pad he was using the statement that "TJ says Sammy killed these guys." In fact, T.J. had not made such an accusation against Pitts.** After telling

> Pitts that he wanted to give Pitts some time to think about their discussion, **Martin stepped out of the interview room, leaving "the notepad there intentionally for him to see it."** When Martin returned to the interview room five minutes later, Pitts pointed at the pad, made reference to the statement on the pad that "TJ said I killed them," and said, "[M]an, that ain't right, I wasn't even there." **Martin then said to Pitts that "you and I both know that ain't true, you were there, and you know where these guys' bodies are, don't you."** In response to that comment by Martin, Pitts—with his head hanging down—"almost immediately began to tear up and cry." Although crying, with tears welling up in his eyes, Pitts did not become "uncontrollable" or "hysterical." Pitts "once again denie[d] having been there."
>
> **After that denial, Martin said, "Sammy, you know this thing is eating you up inside, and you probably see those boys laying there every time you close your eyes and you know you want to talk about it.... [T]he truth will set you free ... don't bottle this thing up inside of you." Martin also said that the missing young men "deserved a proper burial" and that their families "deserve[d] to know what had happened."**

Pitts, 936 So. 2d at 1118-1120 (emphasis added).

Pitts actually was confronted with some evidence of his guilt and the Second District properly held that a reasonable person would not believe he was in custody. Here, McAdams was never actually confronted with any evidence of **his** guilt. McAdams asked about the blood evidence and the detective told him what evidence they had. The detectives in Pitts took far greater liberties during the interviews than Detective Arey did

in the interview at issue here. The detective never confronted McAdams with anything more than vague statements regarding the evidence found.

McAdams was told that the evidence was very strong. He was told human blood was found at both homes as well as on his shorts and t-shirt. He was told a warrant would be issued for both homes. He was told that it was not going away. And although the detective stated, I have a pretty good idea of what happened, the detective never stated that he knew McAdams was involved in any way with the disappearance of the victims. The detective repeatedly said to McAdams that he can't tell him anything until the detective knows what happened. (State Exhibit #1 - DVD, R. 1002, approximate time stamp 2:09 – 2:22).

A reasonable person under these circumstances would believe that the police were still conducting an investigation as to the disappearance of the victims. The fact that the detective indicated that he believed the victims met with foul play does not change the non-custodial nature of the interview. It is clear McAdams did not believe he was a suspect because after he confessed to the detective, he said, "Sorry buddy." (State Exhibit #1 - DVD, R. 1002, approximate time stamp 2:40). McAdams did not believe the detective suspected him until he said, "Sorry buddy" as if he was letting the officer down.

As to the fourth prong, which is whether the suspect is

informed that he or she is free to leave the place of questioning, McAdams relies on Mansfield v. State, 758 So. 2d 636 (Fla. 2000) to support his position; however, Mansfield is distinguishable from the instant case. In Mansfield, the defendant knew he was a prime suspect and the officer told him during the interrogation, "We're not going to leave here until we get to the bottom of this." No reasonable person would feel free to leave at that point.

In the instant case, the detectives never told McAdams he could not leave. Rather, McAdams was told he was not under arrest or not in custody. McAdams believed he was free to leave. McAdams also was not told he was a prime suspect or that he was an actual suspect in the victims' disappearance. At this point, it may have been obvious that the detectives believed the victims met with foul play, but it was unclear what actually happened to the victims and what McAdams' possible involvement was in the victims' disappearance up until the time he confessed.

More importantly, it is well settled that a police officer's subjective view that the individual under questioning is a suspect, if undisclosed, does not bear upon the question whether the individual is in custody for purposes of Miranda. Stansbury v. California, 511 U.S. 318, 324 (1994).

Even a clear statement from an officer that

> the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest. The weight and pertinence of any communications regarding the officer's degree of suspicion will depend upon the facts and circumstances of the particular case.

Stansbury, 511 U.S. at 325.

With regard to prong four, McAdams points to when he asked Detective Arey if he would be able to leave today and the detective said, "I don't know." McAdams argues that a reasonable person would not have felt free to leave. However, this identical scenario occurred in Pitts and the Second District held that Pitts was not in custody:

> With tears welling up in his eyes, Pitts said, **"I got a kid, can I go home if I tell you what happened or will I go to jail[?]" Martin responded that he could not tell him "one way or the other" because he did not know what Pitts would tell him.** According to Martin, "I was telling him I'm not going to make a deal with him."

Id. at 1118-1120 (emphasis added). Here, the detective's responses were the same. When McAdams asked what he would be looking at, the detective responded: "I can't answer that…from nothing to a lot…until we know what actually happened." And when McAdams made statements such as "If you can just give me 5-10 years" - - the detective responded: "I cannot guarantee that until everyone knows what happened." (State Exhibit #1 - DVD, R.

1002, approximate time stamp 2:22).

As stated in Pitts, no factor on the Ramirez list of factors can be considered in isolation. The whole context must be considered. At this point, the detectives are still gathering information and trying to determine what happened to the victims. The detective repeatedly said to McAdams that he needed to know what happened which clearly implies law enforcement did not know what happened to the victims. Thus, a reasonable person in his position would not believe he was a prime suspect and not free to leave. A reasonable person in McAdams' position – given all the relevant circumstances – would not have understood himself to be in custody. Pitts, 936 So. 2d at 1124.

CONCLUSION

This Court is respectfully requested to answer the certified question in the negative, find any error in the admission of the post-Miranda statements and evidence was harmless and affirm, in part, the opinion of the Second District Court of Appeal with regard to the pre-Miranda statements.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to William Sharwell, Assistant Public Defender, appealfilings@pd10.state.fl.us, RSharwell@pd10.state.fl.us, P.O. Box 9000-Drawer PD, Bartow, Florida 33831, this 9th day of October, 2014.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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