

FILED
CITRUS COUNTY FLORIDA
IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR CITRUS COUNTY
BETTY STRIFLER CLERK

2006 JUN 30 A 9:25

STATE OF FLORIDA

v.

CASE NO.: 2005-CF-298

JOHN EVANDER COUEY,
Defendant.

ORDER ON MOTION TO SUPPRESS

THIS CAUSE having come on to be heard upon the 23rd day of June, 2006, and the Court having before it the following persons: Chief Assistant State Attorney Richard Ridgway, Major Case Assistant Peter Magrino, Public Defender County Division Supervisors Daniel Lewan (Citrus) and Alan Fanter (Hernando), as well as the defendant, John Evander Couey, and the Court having taken sworn testimony from a total of fourteen (14) witnesses, issues this, its Order:

The issues raised in the defense's Motion to Suppress, dated May 12, 2006:

(A) Whether the invocation by the Defendant on March 17, 2005, in Augusta, Georgia, found at pages 42 and 43 of the transcript, was an equivocal and qualified request for counsel.

(B) Whether, based upon the foregoing question, if the Defendant's request is determined to be unequivocal and unqualified and his confession suppressed, is the body of the decedent and all of the physical evidence attendant to it, likewise suppressible as fruits of the unlawful police interrogation.

(C) Whether inculpatory comments made by the Defendant to detectives and correctional personnel at the Citrus County Detention Facility after his arrest and extradition from Georgia are suppressible.

FACTS

At the hearing conducted before this Court on June 23, 2006, the State chose to present its first five (5) witnesses in response to that part of the defense motion seeking to suppress the

victim's body, the second issue. The first witness, Brian Spiddle, a detective with the Citrus County Sheriff's Office, was one of the first detectives at the scene of the abduction as well as at the suspect's residence. He testified that he examined the surrounding soil for evidence of digging and potential burial sites.

The second witness, the Defendant's sister, Dorothy Dixon, testified that the Defendant was staying in her home with her, as well as with several other occupants. She further testified that the Defendant was staying in the middle bedroom. On cross examination she testified that she gave consent to the detectives to both search the middle bedroom as well as remove the mattress therein.

The third witness was Martin Cannaday, a detective with the Citrus County Sheriff's Office, who testified that he recovered clothing items from the middle bedroom as well as the mattress. He further testified that the mattress appeared to him to have a 4 x 1 ½ inch reddish brown stain approximately which tested positive for blood. He testified that he transported the mattress to the Florida Department of Law Enforcement (FDLE) lab the next day for serology testing as well as microscopic examination.

The fourth witness was David Strickland, the supervisor of the crime scene section of the Citrus County Sheriff's Office, who testified that the case was viewed as a child abduction and that law enforcement officers were already concentrating on searching the immediate area of the suspect's home for recent digging and disturbed soil. He testified that the Defendant's home was approximately one hundred yards from the victim's home; that he had previously secured known DNA standards from the victim's clothes before the victim's body was found; and that he had received information from Georgia about the location of the victim's body. As the recovery efforts were commencing, he received further information from analyst Lance Newman of the

FDLE confirming that the DNA found on the mattress from the middle bedroom matched the known samples from the victim's clothing.

Detective Strickland further testified that, prior to receiving the information from Georgia, he had participated in the ground search and had noticed a small pile of disturbed soil and leaves by the rear entrance to the suspect's home. The fresh dirt on top of oak leaves indicated to him that the dirt had been deposited on the leaves after the leaves had fallen from the surrounding trees. He testified that, based upon the DNA match from the victim's clothing and the Defendant's mattress, as well as the recent digging behind the suspect's home, he would have applied for a search warrant. The detective's sworn testimony was that the victim's body would have been found even without the statement from the Defendant.

The fifth witness was Tim Martin, a detective with the Citrus County Sheriff's Office with twenty-five (25) years experience in law enforcement, who testified that he examined the exterior of the Defendant's home for possible burial sites. He also saw the fresh dirt on top of oak leaves, as well as a shovel with fresh dirt on the blade under the rear steps of the Defendant's home, indicating recent digging. Additionally, he used a rake to gauge the relative compaction of the older, undisturbed leaves from those covering a small, raised area. He also testified that, based upon the intensive searching of the area around the Defendant's home, the victim's body would have been found.

Following the five (5) witnesses called by the State for the issues involving the Doctrine of Inevitable Discovery, this Court heard from the following persons dealing with the remaining two (2) issues, namely the Defendant's confession in Georgia and comments made by the Defendant at the Citrus County Detention Facility: Corporal Michael Love, Savannah, Georgia Police Department; Detective Ronald Sylvester and Captain William Johnson, Richmond County

Sheriff's Office in Augusta, Georgia; Detective Gary Atchison and former Detective Scott Grace, Citrus County Sheriff's Office; Angel Conty, formerly with the Kissimmee, Florida Police Department; FBI Special Agent Terry Wetmore; Russell Brown, former Chief of Security at the Citrus County Detention Facility and currently with the Citrus County Sheriff's Office; and Corrections Officer Kenneth Slanker with the Citrus County Detention Facility. These witnesses were presented to testify concerning the remaining two (2) issues, namely the validity of the Defendant's confession in Georgia and certain inculpatory statements made much later in the Citrus County Detention Facility. Several of these witnesses were questioned about their reactions to a suspect's invocation such as, "I want a lawyer". They opined that they would have ceased questioning until an attorney could be provided. This issue is further discussed in the analysis section of this Order.

Corporal Love and Detective Sylvester both testified that they had each advised the Defendant of his Miranda rights prior to the arrival of Detectives Atchison and Grace in Georgia. Former Officer Conty testified that in 1991 in Kissimmee, he had advised the Defendant of his rights and that the Defendant had admitted to certain sex offenses at that time. Special Agent Wetmore testified that he also had advised the Defendant of his rights prior to administering a polygraph examination to the Defendant.

In each of the advisements by the officers, the Defendant was told that he could invoke his rights at any time and stop answering any questions or making any statements. Detective Atchison recorded the interrogation of the Defendant on March 17, 2005, in the Richmond County, Georgia Jail and read the Miranda warnings to the Defendant, just as every other officer had done. Detective Atchison read the warnings to the Defendant in the presence of Detective Grace. The exact phrase used by the detective at the beginning of the interview with the

Defendant on March 17, 2005, was “[y]ou can decide at any time to exercise these rights and not answer any questions or make any statements.” (Mot. Hr’g Tr., vol. 1, 114:3-5, June 23, 2006.)

Detective Atchison testified that the Defendant was clearly in custody in the Richmond County Jail on March 17, 2005, having been arrested on a Florida warrant. The entire interview with the Defendant by Detectives Atchison and Grace was approximately 2 ½ hours in length. Attached hereto are pages 42 and 43 of State’s Exhibit N. State’s Exhibit M is the actual recording of the interview. This Court is charged with the responsibility of making factual determinations based upon the applicable law. Review of the actual conversation between the detectives and the Defendant in State’s Exhibit M (the recording) and State’s Exhibit N (the transcript), from the first advisement until the Defendant’s comments on pages 42 and 43, shows that the interview was neither coercive nor unduly confrontational. This Court would characterize the interrogation techniques employed by the detectives as standard police questioning. At the end of page 42, Detective Grace asked the Defendant to take a lie detector test, and reiterated the requests just moments later. The transcript of the exchange is as follows:

Couey: I said I would. I just want to talk to a lawyer.

Grace: Okay.

Couey: I want a lawyer here present. I want to talk to a lawyer cause I mean . . . if people trying to accuse something I didn’t do. I didn’t do it. I ain’t, you know . . .

Grace: Okay. So if we do . . . so if we do . . .

Couey: I don’t know. I just said I want to talk to a lawyer to get this thing straight.

Grace: Okay. Hang on, hang on, hang on, hang on . . . so if we were to do a lie detector test, you’d want to get a lawyer for that?

Couey: I want to talk to a lawyer first.

Grace: You want to talk to a lawyer first?

Couey: Yes sir.

The transcript is the best evidence of the written words from the recording, but the audio medium, State’s Exhibit M, provides the actual voices, intonations and verbal color of the

participants. Detective Grace's voice is heard mixing with the Defendant's. There is no confusion in the audio portion of the Exhibit of any discrepancy with the transcript; the transcript is accurate. Only once during this exchange does Detective Grace attempt to qualify the Defendant's invocation by mentioning the polygraph and the Defendant's response is clear that he wants to talk to a lawyer.

Thereafter, neither detective made any attempt to either limit or qualify the Defendant's demand for an attorney. Rather, the questioning was immediately redirected by the detectives to address his past transgressions in 1991 and thereafter never again discussed. The March 17, 2005 interview continued for another 1 ½ hours with no reference as to whether the Defendant had made a qualified or non-qualified request. The next day, when confronted with the results of the polygraph examination, the Defendant finally confessed, in detail, to the murder of [REDACTED]. [REDACTED] Of particular interest is the fact that Detective Atchison re-advised the Defendant of his constitutional rights on March 18, 2005, but made no effort to limit, qualify or explain the Defendant's earlier request for an attorney; it was simply ignored.

Detective Atchison testified that his state of mind was "very confused" and "I didn't know exactly what—I was sitting back listening to this and it was totally unclear exactly what he was wanting." See Detective Atchison's testimony, transcript page 126, lines 1-6. Detective Grace testified that he was not sure if the Defendant was asking for a lawyer in reference to a lie detector examination. See Detective Grace's testimony, transcript page 162, lines 14-19. Detective Grace testified that, at the conclusion of the March 17, 2005 interview, there was a non-recorded conversation about having the Defendant take the polygraph the next day and that it was clear to him that the Defendant had an understanding that "we would like him to take the polygraph examination". (Mot. Hr'g Tr., vol. 1, 164:4-8, June 23, 2006.)

The third issue presented by the Defendant's Motion to Suppress relates to conversations between the Defendant and representatives of law enforcement at the Citrus County Detention Center. The State presented two (2) witnesses to address this issue. Detective Atchison testified that he met with the Defendant on April 20, 2005 to obtain court ordered handwriting exemplars.

The Defendant was in custody and he had an attorney from the Office of the Public Defender also present. Without any interrogation the Defendant made some comments about his sister Dorothy Dixon and, when asked to write something said, "I know what this is." The Public Defender whispered something to the Defendant which was not heard by the detective.

On October 11, 2005, Detective Atchison and Detective Dan Holder met with the Defendant to obtain court ordered hair samples from him. Prior to this meeting, lead counsel for the Defendant, Daniel Lewan, had sent an e-mail to Assistant State Attorney Peter Magrino waiving Lewan's presence at the jail. Detective Atchison testified that there was no questioning of the Defendant. As Detective Holder was combing and otherwise recovering hair samples from the Defendant's head and body, the Defendant would speak. The detectives did not respond but did in fact cease their efforts until he finished speaking. The Defendant made certain inculpatory admissions such as, his claim that Matt Dietrich knew that [REDACTED] was in the home in the Defendant's closet; apologizing and said he wanted the real truth to come out; getting upset and said he didn't know why he'd killed her, that he was not violent, and mentioned that [REDACTED] and [REDACTED] would see each other again. The only discussion between Detective Atchison and the Defendant was the detective's request that the Defendant acknowledge to Detective Holder in each other's presence that there had been no interrogation. Later there was an aborted effort by the Defendant to speak with Detective Atchison through an inter-jail memo. The Defendant said to the detective that [the Defendant] wanted to talk with him [detective] but

without his lawyer's knowledge. When the detective told the Defendant that the interview would have to be recorded, the Defendant declined further comment.

The last witness was Corrections Officer Kenneth Slanker who testified that he was assigned to the segregation unit housing the Defendant and that the Defendant's cell was approximately twelve (12) feet from the witness's desk. Officer Slanker was discussing child care with Sherry Johnson, another corrections officer, within the Defendant's hearing. She indicated to Officer Slanker that she disapproved of non-family child care and nodded in the direction of the Defendant's cell, saying that she didn't want what happened to [REDACTED] to happen to her daughter. The conversation lasted for approximately three (3) minutes. The Defendant called Officer Slanker over to his cell and complained that he didn't like people talking about him. The Defendant made inculpatory admissions to Officer Slanker, without prompting by the officer, saying that he didn't mean to kill the girl and that his biggest regret was that he'd lost everything.

ANALYSIS

(A) Defendant's Confession in Georgia

The critical question that this Court must answer is whether the Defendant make an unequivocal and unambiguous request for an attorney. To begin, the basics of Miranda warnings as recently explained by the Fifth District Court of Appeals are provided as follows:

The manifest purpose of the Miranda warnings is to prevent the inherent pressures of custodial interrogation from impinging on the accused's constitutional right to be free from self incrimination. See Everett v. State, 893 So.2d 1278 (Fla. 2004), cert. denied, --- U.S. ----, (2005). . . . In order to comply with the dictates of Miranda, the accused must be advised before custodial interrogation commences that: (1) the accused has the right to remain silent, (2) that anything the accused says may be used in court, (3) that the accused has the right to have an attorney present during questioning, and (4) that an attorney will be appointed for the accused before questioning if he or she cannot afford one. Dickerson v. United States, 530 U.S. 428, 435, (2000); Miranda v. Arizona, 384 U.S. 436, 479, (1966);

Everett, 893 So.2d at 1284; Ramirez v. State, 739 So.2d 568, 573 (Fla. 1999) (“Suspects must also be informed that they have a right to an attorney during questioning, and that if they cannot afford an attorney, one will be appointed for them without cost.”) (other citations omitted).

Maxwell v. State, 917 So.2d 404, 407 (Fla. 5th DCA 2006).

It is custodial interrogation that entitles a defendant to the procedural safeguards of the Miranda warnings. Fitzpatrick v. State, 900 So.2d 495, 510 (Fla. 2005); see also Pardon v. State, No. 4D04-4231, WL 1083979, *2-3 (Fla. 4th DCA, April 26, 2006) (explaining that the Fifth Amendment Miranda protections are in “one respect narrower than the interest protected by the Sixth Amendment guarantee because Miranda relates only to custodial interrogation, and in another respect broader because Miranda relates to interrogation regarding any suspected crime and attaches whether or not the “adversarial relationship” produced by a pending prosecution has yet arisen).

Recently, the Supreme Court of Florida has reiterated the meaning of “custody” as follows:

A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest. “The proper inquiry is not the unarticulated plan of the police, but rather how a reasonable person in the suspect's position would have perceived the situation.” Id. at 573 (citations omitted) (quoting Davis v. State, 698 So.2d 1182, 1188 (Fla. 1997)). We set out in Ramirez the following four factors for a trial court to consider in determining if a suspect is 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; and (4) whether the suspect is informed that he or she is free to leave the place of questioning. See id. at 574.

Schoenwetter v. State, No. SC04-53, 2006 WL 1096646, *6 (Fla. April 27, 2006) (citing Ramirez, 739 So.2d at 573).

Also, recent Florida case law has addressed the meaning of “interrogation” as follows:

[T]he term “interrogation” under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation.

Origi v. State, 912 So.2d 69, 72-73 (Fla. 4th DCA 2005) (citing Rhode Island v. Innis, 446 U.S. 291, 298-302 (1980)).

In this case, the Motion states that the Defendant was arrested on an unrelated Florida warrant and in custody at an Augusta Georgia jail when questioned by the Citrus County detectives. The Motion also admits that “the Defendant was given his Miranda warnings which were acknowledged by the Defendant.” In sum, it is clear the Defendant was subjected to custodial interrogation and was entitled to and properly made aware of his rights pursuant to the Miranda warnings. Thus, the issue narrows to whether the Defendant invoked his right to have an attorney present during questioning.

The determination of whether statements obtained during custodial interrogation are admissible against the accused was recently explained by the Fifth DCA as follows:

With respect to the suppression issue, both the Fifth Amendment to the United States Constitution and Article 1, Section 9 of the Florida Constitution provide that no person “shall be compelled in any criminal case to be a witness against himself.” This privilege against self-incrimination is applicable during a custodial interrogation. E.g., Miranda v. Arizona, 384 U.S. 436, 460-61, (1966); Caso v. State, 524 So.2d 422, 423 (Fla.), cert. denied, 488 U.S. 870 (1988). A statement is not “compelled” within the meaning of state or federal law if an individual “voluntarily, knowingly and intelligently” waives his constitutional privilege. Miranda, 384 U.S. at 444. The state must prove by a preponderance of the evidence that a defendant's Miranda rights were waived. E.g., Balthazar v. State, 549 So.2d 661, 662 (Fla. 1989). To constitute a voluntary waiver, the state must show: 1) that the waiver was the result of a free choice on the part of the

defendant and not the product of intimidation, coercion, or deception; and 2) the waiver was made with a full awareness of the nature of the right being abandoned and the consequences of the abandonment. See Moran v. Burbine, 475 U.S. 412 (1986). Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that Miranda rights have been waived. E.g., Globe v. State, 877 So.2d 663 (Fla. 2004).

Barger v. State, 923 So.2d 597, 601 (Fla. 5th DCA 2006).

In sum, only a specific request for counsel invokes a defendant's constitutional right to counsel *per se* and all other requests become part of the totality of the circumstances to which the court refers when determining whether the right to counsel has been invoked. See Fare v. Michael C., 442 U.S. 707, 724-25 (1979). Thus, we begin an analysis of the transcript to determine under the totality of the circumstances whether the Defendant invoked his Fifth Amendment and Article 1, Section 9 Constitutional right to counsel.

The Court has considered the responses from law enforcement officers from other agencies and states who were questioned by Defendant's counsel during the hearing about their reactions to the Defendant's invocation. Their responses were informative only to the limited extent that the Miranda warnings are uniformly understood by law enforcement officers across the United States. The fact that each one of them testified that he would have stopped the interrogation upon hearing the Defendant say "I want a lawyer" lends great weight and credibility to the defense's contention that the Defendant's request for an attorney was unequivocal.

If Detectives Atchison and Grace were confused or unsure about the Defendant's request for an attorney, it was incumbent upon them, not the Defendant, to clarify the demand. The detectives simply made no effort to allay their concerns. Over the two days following the March 17, 2005 interrogation, the detectives went to great pains to re-advise the Defendant of his rights

but assiduously avoided his earlier request for an attorney. Even under the most tortured extension of the detectives' logic, they did not provide the Defendant with an attorney prior to Special Agent Wetmore's polygraph examination on March 18, 2005. In fact, Agent Wetmore testified that he had not been told by the detectives that the Defendant had requested an attorney on March 17. Why was the agent who was to administer the polygraph that the detectives themselves arranged, offered and scheduled not told of the Defendant's request? The only conclusion must be that the detectives did not want Agent Wetmore to know that the Defendant had already invoked his right to talk to an attorney. Since there was no attempt by the detectives to qualify or otherwise limit the invocation of his rights by the Defendant, there can be no doubt that the plain reading of his words and the sound of his voice conveyed to any reasonable listener that the demand was neither equivocal or qualified.

Miranda and its progeny contemplate situations like this and permits limited, post-invocation questioning. However, it is limited to only those issues that define the extent of the request. In this case, it simply was not done. The fact that the Defendant was re-advised at least two (2) more times after the March 17, 2005 interview does not render those statements admissible. In Edwards v. Arizona, the United States Supreme Court held that when an accused has invoked his right to have counsel during a custodial interrogation, a valid waiver cannot be established by showing that he responded to further police questioning. 451 U.S. 477 (1981). The waiver standards outlined by the Supreme Court in Edwards are that once an accused expresses "his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication, exchanges, or conversations with the police.*" (emphasis added).

The Defendant clearly invoked his Fifth Amendment right to counsel. Further, the State's characterization of this exchange as ambiguous or equivocal is simply not reasonable. Having already determined that the Defendant clearly and unambiguously invoked his Fifth Amendment right to counsel, the State's claim that his invocation was limited to assistance of counsel in taking a polygraph is without merit. It is for those reasons and based upon the testimony and this Court's findings of fact that the Defendant was subject to custodial interrogation, had properly invoked his right to an attorney pursuant to Miranda and that the invocation was neither equivocal, limited nor qualified, the statements made to Detectives Atchison and Grace and Special Agent Wetmore on March 18, 2005 are suppressed. The State may not present them in its case in chief.

(B) The Doctrine of Inevitable Discovery

The next issues is whether, based upon the foregoing question, if the Defendant's request is determined to be unequivocal and unqualified and his confession suppressed, is the body of the decedent and all of the physical evidence attendant to it, likewise suppressible as fruits of the unlawful police interrogation.

Regarding the potential future issue of "inevitable discovery doctrine" as an exception to the "fruit of the poisonous tree" doctrine, recent Florida law is explained by the Fifth DCA as follows:

The inevitable discovery doctrine was adopted by the United States Supreme Court in Nix v. Williams, 467 U.S. 431 (1984), as an exception to the fruit of the poisonous tree doctrine. Maulden v. State, 617 So.2d 298 (Fla. 1993). The inevitable discovery doctrine allows evidence obtained as the result of unconstitutional police procedure to be admitted if the evidence would ultimately have been discovered by legal means.^{FN5} The Court reasoned that "[e]xclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Nix, 467 U.S. at 446. The Florida Supreme Court and this court have embraced the doctrine. Jeffries v. State, 797 So.2d 573 (Fla.2001); (internal citations omitted)

FN5. “The inevitable discovery doctrine is properly applied regardless of whether the ground of suppression of the statement is violation of the fourth amendment, fifth amendment, or sixth amendment.” Craig v. State, 510 So.2d 857, 863 (Fla. 1987) (citing Nix).

The inevitable discovery doctrine requires the state to establish by a preponderance of the evidence that the police ultimately would have discovered the evidence independently of the improper police conduct by “means of normal investigative measures that inevitably would have been set in motion as a matter of routine police procedure.” Craig, 510 So.2d at 863 (citations omitted). “In order to apply this doctrine, there does not have to be an absolute certainty of discovery, but rather, just a reasonable probability.” State v. Ruiz, 502 So.2d 87, 87 (Fla. 4th DCA 1987) (citing United States v. Brookins, 614 F.2d 1037 (5th Cir. 1980)); see also Jeffries, 797 So.2d at 578 (quoting Ruiz).

Hatcher v. State, 834 So.2d 314 (2003), 317-18 (Fla. 5th DCA 2003); see also Fitzpatrick v. State, 900 So.2d 495, 512 (Fla. 2005) (stating the State must demonstrate “that at the time of the constitutional violation an investigation was already under way” and “the case must be in such a posture that the facts already in the possession of the police would have led to this evidence notwithstanding the police misconduct.”).

In this case, the Defendant was already a person of interest based on his criminal history, relative location of his residence to the victim, and his flight to Georgia. The Detectives also had the statements of the Defendants sister, had already seized the mattress with the blood stain from the Defendants bedroom, already suspected that some of the areas in the back yard of the Defendant’s residence were potential burial sites, and had verbal confirmation for the FDLE that the DNA analysis from the mattress matched the victims. Thus it is clear, based upon the preponderance of the evidence, that the detectives would have inevitably discovered the body of the victim buried in the back yard of the Defendant’s residence.

In allowing the State to use the physical evidence recovered at the Defendant’s home, this Court’s ruling is consistent with the holding by the United States Supreme Court in Hudson v.

Michigan, 126 S.Ct. 2159, decided June 15, 2006, in which the Court held, “[s]uppression of evidence, however, has always been our last resort, not our first impulse...[t]he exclusionary rule generates substantial social costs...[w]e have therefore been cautious against expanding it”. Accordingly, this Court will allow the State to present the body of the victim other physical evidence in its case in chief.

(C) Comments Made by the Defendant at the Citrus County Detention Facility

The next issues is whether inculpatory comments made by the Defendant to detectives and correctional personnel at the Citrus County Detention Facility after his arrest and extradition from Georgia are suppressible. The State cites Rhode Island v. Innis for the proposition that statements made by a defendant who is in custody, but which are not the result of interrogation, are not subject to the rule of Miranda and are not subject to exclusion. 446 U.S. 291 (1980). “Interrogation” means “words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.” Id. at 302.

A review of the facts and circumstances surrounding the statements made by the Defendant shows that the statements were clearly not the result of “interrogation” or a desire to elicit an incriminating response. For example, the incriminating statements implicating Couey’s other family members made to the Detective on October 11, 2005, were the result of an innocuous conversation about the Detective having seen Couey’s sister since Couey had asked about her on a previous occasion. The statement on March 5, 2006, was initiated by Couey after he overheard a prison guard saying to another guard that she didn’t want “something like that” to happen to her newborn child. Couey then called the other guard over to his cell and said “I don’t appreciate people saying things about me, I didn’t mean to do what I did, I didn’t mean to kill her.”

In each of the above instances dealing with law enforcement contact with the Defendant subsequent to his transfer from Georgia to the Citrus County Detention Center, there is no support for the defense's contention that there was any police misconduct during the meetings for either the recovery of writing exemplars or hair samples. To the contrary, Detectives Atchison and Holder made considerable efforts to safeguard the Defendant's rights. They did not question him. The Defendant chose to make in-custody, inculpatory statements.

The Defendant's statements to the detectives at the Citrus County Detention Center after his return from Georgia, and his statements to Corrections Officer Slanker, were not the result of interrogation and as such are admissible. It is for the reasons above that the Defendant's motion to suppress statements made to the detectives at the Citrus County Detention Center after his return from Georgia and his statements to Corrections Officer Slanker is denied.

Based upon the foregoing, it is thereupon:

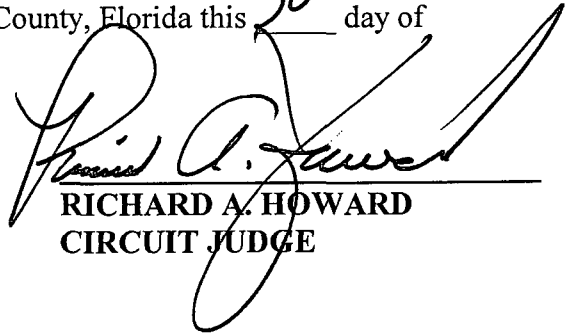
ORDERED AND ADJUDGED:

1. The Defendant's Motion to Suppress is **GRANTED** in part and **DENIED** in part.
2. The statements made by the Defendant to Detectives Atchison and Grace and Special Agent Wetmore on March 18, 2005 are suppressed. The State may not present them in its case in chief.
3. The body of the victim other physical evidence are admitted. The State may present them its case in chief.
4. The statements made by the Defendant to Detectives Atchison and Holder at the Citrus County Detention Center after his return from Georgia, and his statements to

Corrections Officer Slanker, are admitted.

DONE AND ORDERED in Inverness, Citrus County, Florida this ^{30th} day of

June, 2006.



RICHARD A. HOWARD
CIRCUIT JUDGE

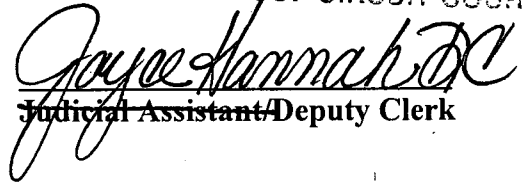
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by United States Mail, first class postage pre-paid, in hand delivery, or by courthouse mailbox to the following this 30th day of June, 2006:

Richard Ridgway and Peter Magrino, Office of the State Attorney

Daniel Lewan and Alan Fanter, Office of the Public Defender

BETTY STRIFLER
CLERK OF CIRCUIT COURT


Judicial Assistant/Deputy Clerk

Couey: No sir. Well, what I do was on the news. That's what I'm trying to say.

Grace: Well, you.. you personally don't know. I mean, I'm not talking about the news.

Couey: Personally I don't know. I didn't know the girl. I didn't touch the girl and personally, I don't know. The only thing I know is what I seen on the news, and that's (inaudible).

Atchison: Something you should keep in your mind too.

Couey: Yes sir.

Atchison: Something that you keep in your mind too, all these fucking news cameras and everything, you did this to yourself by fucking running.

Couey: Yeah, I understand that.

Atchison: Okay?

Couey: I ain't blaming ya. I can say I understand that.

Atchison: Well, you know, you can blame yourself when you're damn picture's blasted all over the TV cause all you had to do was come to me instead of walking out the fucking back door and sneaking around like some God damn yard rat and come to me.. "Hey Gary".. and I'd of understood, cause I'm not some fucking asshole. I'm a human being just like you, so you're.. you're getting everything you fucking deserve.

Grace: Johnny, we ain't here to try to try to fuckin. This ain't NYPD Blue. We aren't going to snatch your arm up behind your back, push you up against the wall, shit like that and throw stuff around. That ain't the kind of bullshit we play, alright? We ain't been assholes to you, have we? We've been straight forward with you, haven't we?

Couey: Yes sir.

Grace: And we ain't fucking done.. nobody ain't laid a finger on you but to shake your hand when we first met you. But goddamit John.

Couey: But I'm was saying I don't nothing about [REDACTED] except what I know on the news. You told me y'all got me.. I don't know. I don't have nothing to do with it anyway. I didn't have nothing to do with it. I don't know nothing. I just know what I know on the news.

Grace: You take a lie detector test for us?

Couey: If I did.. if I did.. if I did, why would, ah, I mean if you came to the house, there'd been something in the house. That's what I'm trying to say.

Grace: Well, not.. not necessarily John.

Couey: Well, where else would she be at.. I mean..

Atchison: That's what we're here asking. We don't know.

Grace: John, would you take a lie detector test for us?

Couey: I guess. I'm just.. I want a lawyer, you know,

Grace: Hang on, hang on John. Alright. Hang on.. I'm just asking.

Couey: If that's what you want to do, but I mean, you know....

Grace: I'm just asking, would you... I'm not saying do it now. I'm saying would you

Couey: I said I would. I just want to talk to a lawyer.

Grace: Okay.

Couey: I want a lawyer here present. I want to talk to a lawyer cause I mean.. if people trying to accuse something I didn't do. I didn't do it. I ain't, you know..

Grace: Okay. So if we do.. so if we do..

Couey: I don't know. I just said I want to talk to a lawyer to get this thing straight.

Grace: Okay. Hang on, hang on, hang on, hang on.. so if we were to do a lie detector test, you'd want to get a lawyer for that?

Couey: I want to talk to a lawyer first.

Grace: You want to talk to a lawyer first?

Couey: Yes sir.

Grace: Are you okay with talking to us still right now about stuff?

Couey: Certain things I'll talk to a lawyer. I'm just saying, I mean, you know, I don't mind talking to you. I try to be honest with you. I'm trying to tell you what, you know.. you asked me about.. I told you what happened in my past..

Grace: Um-hum.

Couey: I tried.. I tried to tell you I don't have nothing to do with this and y'all.. y'all think that I do..

Atchison: Let me ask you something John.

Couey: .. and I don't.

Atchison: If you.. if you did make a mistake, would you tell us?

Couey: Yes. I make plenty of mistakes. I mean, I'll.. I'll kill myself.. like I tried to kill myself. I tried it to, you know..

Atchison: Did you.. when you made the mistake in '91 or so, did you admit to that to the police?

Couey: What was that?

Atchison: When you ejaculated...

1 will be appointed to represent you before any
2 questioning, if you wish.

3 You can decide at any time to exercise these
4 rights and not answer any questions or make any
5 statements.

6 Do you understand this, what this says, John?

7 MR. COUEY: They read it to me earlier.

8 DETECTIVE GRACE: They already read you your
9 Miranda warning earlier, didn't they?

10 MR. COUEY: Yes.

11 DETECTIVE GRACE: Okay.

12 DETECTIVE ATCHISON: Now what I want you to do
13 is raise your right hand. For the record, John's
14 hand is raised. Do you solemnly swear to tell the
15 truth, nothing but the truth, so help you God?

16 MR. COUEY: Yes, sir.

17 (Whereupon the recording was stopped.)

18 BY MR. RIDGWAY:

19 Q Detective, after that portion where you
20 advised the defendant of his Miranda warnings and he
21 agreed to speak to you, did you, in fact, take a
22 statement from him?

23 A Yes.

24 Q What was the entire length of this recorded
25 statement?

1 statement about him taking the polygraph?

2 A He just kind of nodded his head in an
3 up-and-down motion.

4 Q At that point, was it clear to you that he was
5 or was not prepared to take the polygraph?

6 A At that point, it was clear to me that he had
7 an understanding that we would like him to take the
8 polygraph examination.

9 Q Okay. Thank you, sir.

10 MR. RIDGWAY: I don't have any other
11 questions, your Honor.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. LEWAN:

15 Q Mr. Grace, I guess you have left the sheriff's
16 office since this case, correct?

17 A Correct.

18 Q You work for Halliburton?

19 MR. RIDGWAY: Your Honor, may we approach?

20 THE COURT: Attorneys approach, please.

21

22 (Whereupon, the following proceedings were had
23 at the Bench by the Court and counsel while the
24 defendant listened via a receiver:)

25 THE COURT: Let's make sure that John can