

IN THE SUPREME COURT OF FLORIDA

JUAN FRANCISCO DESANTIAGO,

Petitioner,

v.

CASE NO.: SC01-1843

STATE OF FLORIDA,

DCA case no.: 5D01-331

Respondent.

ON REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #618550

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #773026
FIFTH FLOOR
444 SEABREEZE BLVD.
DAYTONA BEACH, FL 32118
(386) 238-4990/238-4997

COUNSEL FOR RESPONDENT

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STATEMENT OF CASE AND FACTS

Although not disputing the facts presented by the Petitioner,¹ the State will provide the following facts to support its argument. The trial court suppressed various statements made by the Defendant, and the State appealed. The Defendant in this case was charged by indictment with first degree murder and with aggravated child abuse. (R 4). The acts which led to these counts are set out in the charging affidavit. (R 1-3). The Defendant lived with Raquel Gomez. (R 2). An argument broke out between the Defendant and Ms. Gomez over the color of her fingernails during which the Defendant turned his attack onto Ms. Gomez's two-year-old daughter. His actions included punching her in the abdomen and throwing Ms. Gomez back when she tried to stop him. (R 2). The two-year-old died at the hospital from massive abdominal hemorrhaging due to a torn and ruptured intestine which the doctor stated came from blunt force trauma to the intestine. (R 3).

At the hospital the police talked to Ms. Gomez for several hours and, then, talked to the Defendant. (R 92-94). Both were advised of their Miranda rights, and both voluntarily talked to the police. (R 2-3).

The defense in this case filed a motion to suppress on September 17, 1999. (R 9-10). In this motion the defense wrote

¹ This is a criminal case, and for ease of reference the Petitioner will be referenced as the Defendant and the Respondent will be referenced as the State.

3.(d) At some point after the questioning commenced the Defendant requested that an attorney be present which request was ignored.

4. All statements made by the Defendant subsequent to the time he requested counsel were obtained in derogation of the Defendant's Fifth and Fourteenth Amendment rights as guaranteed by the Constitution of the United States.

WHEREFORE Defendant moves the Court for an Order suppressing the statements thus elicited.

(R 9-10).

A hearing was held on the motion on October 1, 1999. (R 88-111). At that hearing the defense reiterated the request made in the written motion which was to suppress statements made after the Defendant asked for an attorney. At the very start of the hearing, a written transcript of the interview was given to the judge by the defense attorney, and the defense attorney specifically referenced what was stated on page twenty-two where the Defendant made a statement concerning an attorney. (R 90). The defense's position was that the request on page twenty-two of the transcript was an unequivocal request for counsel, and everything after that page should be suppressed. Specifically, the defense attorney stated

It is our position, judge, that at that point Mr. DeSantiago clearly and

unequivocally invoked his right to counsel. And it would be our argument that everything subsequent to that should be suppressed.

(R 90).

The State's response was that the audio tape of the reference to an attorney would place the comment in a different context. (R 90). Therefore, the State called as a witness the officer who conducted the interview, and he set up the tape to play beginning at page twenty-two in order for the court to hear the "request." (R 90, 95).

The parties then argued the issue of custody and of the nature of the Defendant's request on page twenty-two. (R 101-109). The case law presented and argument made focused only on those issues. The trial court made no decision at the hearing; however, he did state that he would try to have a ruling in about a week. (R 109).

On June 21, 2000, the trial court entered an order granting the defense's motion to suppress. (R 13-17). The order addressed whether the Defendant was in custody and found that he was. (R 17). The order also addressed whether the Defendant's statement on page twenty-two was a request for counsel finding that it was and that the police's actions of continuing the interview prevented the Defendant from being able to exercise his right to have an attorney present. (R 17).

The conclusion of the order also included one sentence which

evidently led to the evolution of this case: "Further, from early in the interview, DeSantiago asked direct questions bearing on the potential exercise of his rights." (R 17). The order next found the request for counsel to be unequivocal and granted the Defendant's motion to suppress. (R 17).

Prompted by the above referenced sentence, the State filed a motion to clarify the court's order. Specifically, the motion asked the court to address whether the Defendant's statements were suppressed in their entirety or in part. (R 53). The trial court did not address the motion and summarily denied it. (R 55).

At trial in December of 2000, the State called as a witness the officer who interviewed the Defendant. Early in the direct examination, the State asked the officer if he had spoken to both Ms. Gomez and to the Defendant at the hospital. (R 114-115). The officer responded that he had. (R 115). When the State asked if they willingly spoke to him, the defense objected after the officer's answer. (R 115).

At the ensuing bench conference, the State pointed out that only part of the Defendant's statements had been suppressed. (R 115). The defense admitted that was all he had asked the court to suppress; however, he submitted that the court could and did elect to suppress the entire statement. (R 120). The trial court observed that since the order was entered in June he

needed to take a recess to review exactly what he had intended to suppress. (R 121). Upon returning, the judge stated that it appeared to him that his intention was to suppress the entire statement. (R 121). The court then granted the defense's motion for mistrial. (R 123). The State next filed a motion for rehearing or in the alternative a motion for supplemental or amended order of suppression.² (R 66). This motion was denied by the judge on January 4, 2001, and the State filed an appeal.

The Defendant next filed a motion to dismiss the appeal as being untimely filed. The State filed a response, and the Fifth District Court of Appeal denied the Defendant's motion. The appeal progressed with the appellate court eventually finding that the trial court had at trial "in effect, amended its initial order." State v. Desantiago, 791 So. 2d 1211, 1212 (Fla. 5th DCA 2001). The Fifth District Court of Appeal found that there was "nothing in this record and nothing in the court's order which supports suppressing these statements other than a violation of Miranda." Id. The only remaining issue was that of the propriety of the evolution of the appeal by the State, and the appellate court ruled that it did have jurisdiction to hear the matter; however, it did certify the

²Although the title of the motion starts as a motion for rehearing, the purpose is more properly indicated in the second portion of the title which sought a supplemental or amended order. The State simply was attempting to get the trial court to enter a written order recognizing the modification of its ruling; thus, giving the State the opportunity to appeal the correctness of the new ruling.

following question to this Court:

IF THE COURT AMENDS A PRE-TRIAL ORDER SUPPRESSING EVIDENCE DURING TRIAL AND THE EFFECT OF THE AMENDMENT CAUSES A MISTRIAL AT THE REQUEST OF THE DEFENDANT SO THAT A NEW TRIAL IS ORDERED, IS THE COURT'S AMENDED RULING SUBJECT TO APPEAL BY THE STATE UNDER FLORIDA RULE OF APPELLATE PROCEDURE 9.140(C)?

SUMMARY OF ARGUMENT

The instant case involves two issues: whether the trial court erred in suppressing voluntary statements made by the Defendant and whether the State is allowed to challenge the trial court's ruling. Clearly, the record shows an expanded suppression ruling by the trial court which has no support in the record either factually or legally. As to the propriety of the State's appeal, the current rules allow the State to challenge pre-trial suppression orders by the trial court. Given that a mistrial motion was granted in this case, it is in a pre-trial status under which the State is authorized to appeal the trial court's ruling.

ARGUMENT

POINT OF LAW

WHETHER THE TRIAL COURT ERRED IN
SUPPRESSING VOLUNTARY STATEMENTS MADE BY
THE DEFENDANT, AND WHETHER THE STATE
TIMELY APPEALED THAT SUPPRESSION.

There are two issues before this Court. First, whether the trial court's amended suppression order was in error, and, secondly, whether the State can appeal that new ruling. It is the position of the State that the record clearly shows that the Defendant's statements were voluntarily entered, were proper evidence, and should not have been suppressed. It is also the State's position that the resulting appeal was properly filed.

As to the first issue, appellate review of a motion to suppress can present mixed questions of law and fact. Lester v. State, 754 So. 2d 746 (Fla. 1st DCA 2000); see also, McMaster v. State, 26 Fla. L. Weekly D881 (Fla. 5th DCA March 30, 2001). The findings of fact made by the trial court are reviewed pursuant to the substantial competent evidence standard. State v. Glatzmayer, 26 Fla. L. Weekly S279 (Fla. May 3, 2001); Ikner v. State, 756 So. 2d 1116 (Fla. 1st DCA 2000). Also, the trial court's application of the law is reviewed pursuant to the de novo standard. Ikner; State v. Ramos, 755 So. 2d 836 (Fla. 5th

DCA 2000).

At issue is the suppression of statements made by the Defendant to law enforcement. The two-year-old victim was severely beaten and was taken to the hospital by her mother and the Defendant.³ (R 1-3). At the hospital law enforcement informed both the mother and the Defendant of their Miranda rights, and both agreed to talk. (R 1-3). None of these facts has ever been disputed.

The defense did submit that during the interview the Defendant made an unequivocal request for counsel, and based upon a violation of that request, any statements made **after** the request should be suppressed. (emphasis added) (see the defense's motion to suppress (R 9-10)). At the suppression hearing, the defense cited the recent case⁴ of Almeida v. State, 737 So. 2d 520 (Fla. 1999), to support its argument. In an order entered on June 21, 2000, the trial court granted the defense's motion, and this ruling was not contested by the State.

However, at the trial in December of 2000, the trial court expanded its ruling also to suppress statements made by the Defendant before he referenced an attorney. Clearly, there are no facts or law to support this ruling, and it is that complete

³As noted in the facts, the victim eventually died from the injuries she sustained. (R 3).

⁴Recent at that time since the hearing was held in October of 1999.

suppression that the State is contesting.

In the case Bradley v. State, 26 Fla. L. Weekly S136 (Fla. March 1, 2001), this Court recently reiterated the principle that the

[s]tandard rule for admission of evidence; that is, that any evidence relevant to prove a material fact at issue is admissible unless precluded by a specific rule of exclusion.

See also, §90.402, Fla. Stat. (1999). Therefore, the starting point is that all relevant evidence is presumed admissible unless some reason exists to exclude it. Not only was no reason offered below, but none exists for suppressing the statements made by the Defendant to law enforcement.

A transcript of the entire interview is in the record. (R 20-53). Review of that transcript shows that law enforcement immediately informed the Defendant of his Miranda rights, and the Defendant agreed to talk to law enforcement. (R 20). The officers simply asked the Defendant to detail the events leading to the injury of the victim and to her having to be brought to the hospital.

On page thirteen of the interview, the Defendant did ask if he was being "accused of something." (R 32). Law enforcement's response was that it was simply attempting to get another side to the story (having already talked to the mother). (R 32).

The Defendant, then, continued to talk and discuss the facts with the officers. This is not a reason to suppress relevant evidence, and the defense never asserted that it was.

Again, relevant evidence is presumed admissible. No evidence - competent or otherwise - exists, was offered, or was found to support the suppression of the entire interview. Additionally, no law supports the suppression in this case. The defense below never attempted to argue that the statements should be suppressed, and the only support of the trial court's expansion given by the defense when the trial court stated its ruling was that the court could grant more than was requested. While this is perhaps true, there should be some facts or law to support such suppression, and in this case there is neither.

It is the State's position that the record clearly shows that the ruling at trial was an improper expansion of the judge's earlier order. The Fifth District Court of Appeal agreed with this point in its opinion when it wrote that there "[i]s nothing in this record and nothing in the court's order which supports suppressing these statements other than a violation of Miranda." Desantiago, 791 So. 2d at 1212. Later in its opinion the appellate court wrote "An order striking the post-Miranda, pre-request statements would have been clearly erroneous and we would not have presumed that ruling." Id. at 1213.

This leads to the second issue which concerns the propriety

of the State's appeal. Florida Rule of Appellate Procedure 9.140(c)(1)(B) authorizes the State to appeal pre-trial orders suppressing evidence. During the trial below, the judge orally amended his prior ruling expanding it to suppress all statements made by the Defendant with no basis offered for the decision. The trial court also granted the defense's motion for mistrial; thus, forcing a retrial of this Defendant. This ruling placed the case into a pre-trial status after which the State obtained a written order and appealed. It is the position of the State that the facts of this case create a situation where the State can seek redress of the trial court's ruling under Rule 9.140(c).

The defense relies upon this Court's case of State v. Gaines, 770 So. 2d 1221 (Fla. 2000), submitting that it bars the instant appeal. The State disagrees that Gaines bars this appeal. Gaines involved facts where the trial court during trial dismissed the charges based upon insufficient evidence creating a double jeopardy bar to retrial. Obviously, the State could not appeal the suppression issue which occurred during trial given the fact that retrial was constitutionally barred. As this Court noted in a footnote, "[w]e recognize the State's right to appeal an adverse ruling is a limited one that is strictly governed by statute, rule and overriding constitutional principle, such as the constitution's protection against double

jeopardy." Id. at 1230, n. 8.

However, this case is quite different from Gaines factually and legally. Factually, the double jeopardy issue presented in Gaines does not exist in the instant case. The charges in the instant case were not dismissed. The court simply granted a mistrial motion with no argument as to any inappropriate action by the State. Legally, the instant case's lack of a double jeopardy issue removes the constitutional bar to an appeal and operates to authorize this appeal under Rule 9.140(c)(1)(B). The State can appeal orders entered prior to trial which suppress admissions made by a defendant. Given the granting of the Defendant's motion for mistrial in this case, this case is currently in a pre-trial status.

This exact difference was what was recognized in the case State v. Stevens, 563 So. 2d 188 (Fla. 1st DCA 1990)⁵, where the appellate court found the granting of a mistrial triggered the State's ability to appeal. See also, Savoie v. State, 422 So. 2d 308, 312 n. 1 (Fla. 1982). Given the granting of the mistrial motion by the defense, this case is pending trial, and the court's expansion of his earlier suppression order became, in effect, a pre-trial ruling specifically authorized by rule and not constitutionally barred.

As the Fifth District Court of Appeal recognized in State

⁵Stevens did certify the issue to be one of great public importance. (Although it appears that no further review was sought by the parties).

v. Saufley, 574 So. 2d 1207, 1210 (Fla. 5th DCA 1991):

The jurisdiction of a district court of appeal to review an order by appeal depends on the nature, character and legal effect of the appealed order and not the subjective intention of the lawyer drawing, or the judge signing, the order.

(Coward, J., concurring). As previously argued, the judge at trial expanded his suppression ruling much to the surprise of the prosecutor as well as the defense. Given the fact that this was a new ruling suppressing admissions made by the Defendant from being admitted at the pending trial, the State properly appealed the ruling with the Fifth District Court of Appeal finding that the trial court had indeed improperly expanded its ruling.

Admittedly, this Court did discuss in Gaines whether the rules needed to be amended to authorize the State's appeal in situations like in the instant case; however, the State would also note that this Court wrote that "this precise issue has not been addressed by the parties." Gaines, 770 So. 2d at 1228-1229. It is the position of the State that the rules do not need to be amended. As they are currently written, the rules clearly allow the State to seek review of pre-trial rulings.

As already pointed out, the granting of the motion for mistrial placed this case back into a pre-trial status. As recognized in Gaines, the defense can move for suppression even

during trial. Id. at 1226. Therefore, in the instant case there can be a new suppression order entered prior to retrial. It is the State's position that such is exactly what happened. For reasons found by the Fifth District Court of Appeal to be entirely unsupported by the record, the trial court expanded its earlier ruling to suppress all statements made by the Defendant. There is absolutely no support in the record for such a ruling. The case is in pre-trial status, and the State should be allowed to challenge that amended ruling.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court affirm the holding of the Fifth District Court of Appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #773026

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #618550
444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990/fax 238-4997

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Merits Brief has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to Nancy Ryan, counsel for the Petitioner, 112 Orange Ave. Ste. A., Daytona Beach, FL 32114, this _____ day of October 2001.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL