IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-_____

TRINITY CHANEY,

Petitioner,

v.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW OF DECISION OF THE DISTRICT COURT OF APPEAL THIRD DISTRICT

JURISDICTIONAL BRIEF OF PETITIONER

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INTRODUCTION

Suspect interrogation is one of the most important facets of criminal investigation. It provides a crucial opportunity to gather information that might otherwise never come to light. It constitutes a critical source of evidence for criminal prosecutions. It also is a defining moment for the rights guaranteed citizens by the United States and Florida Constitutions.

The fifth amendment and article I, section 9, attempt to balance these competing interests. They demand that before any custodial interrogation, Miranda warnings must be given. This court also has held that, in response to a suspect's bonafide inquiry regarding his rights during the course of Miranda warnings, an interrogating officer must give an honest, straight-forward answer. Even small errors in the application of these rules can result in the loss of critical evidence and the ability to prosecute guilty criminals, and a loss of basic freedoms.

The decision below blurs these clear lines. It dishonors both the letter and spirit of this court's interpretation of the Florida Constitution. If left unclarified, the decision places at risk information and evidence crucial to Florida's law enforcement and prosecution efforts and weakens basic protections for Florida citizens. To rectify the Third District's misinterpretation of this court's caselaw and provide better guidance to law enforcement in this important arena, review should be granted.

GROUNDS FOR INVOKING DISCRETIONARY JURISDICTION

The opinion below (App. A) expressly and directly, and by direct implication, *see* ***Hardee v. State***, 534 So.2d 706, 708 (Fla. 1988), construes the Fifth Amendment and article I, section 9. It also expressly and directly conflicts with the following decisions: ***Almeida v. State***, 737 So.2d 520 (Fla. 1999); ***State v. Glatzmayer***, 789 So.2d 297 (Fla. 2001); ***Traylor v. State***, 596 So.2d 957 (Fla. 1992); and ***Thompson v. State***, 595 So.2d 16 (Fla. 1992). *See* Fla. R. App. P. 9.030(a)(2)(A)(ii, iv).

STATEMENT OF THE CASE AND FACTS

Chaney was convicted of second degree murder with a firearm and sentenced to life in prison. (A. 1). On appeal, he urged reversible error in the trial court's failure to suppress two separate damaging post-arrest statements.

On March 17, 2001, around 10:35 p.m., Chaney entered the Cutler Ridge Police Station covered with blood. (A. 2). He exclaimed that he had just shot someone in self-defense. Chaney was taken into custody. Several hours later, preceding a tape-recorded interrogation, Chaney, in the midst of receiving Miranda warnings, asked the homicide detective if the detective thought he needed a lawyer. The detective responded, "Do you think you need a lawyer?" Without further explanation, Chaney was interrogated for several hours and gave a formal, tape-recorded statement that was introduced against him at trial.

After initially releasing Chaney, approximately one month later, police orchestrated a traffic stop to arrest Chaney on a murder warrant. Chaney was agitated and angry. Police subdued him with pepper spray. (A. 2).

At the police station, Chaney was still agitated and jittery. The homicide detective showed him a Miranda warnings form and told him they "had to go over this again." Chaney refused stating that his dad was a cop and he knew his rights. The detective then proceeded with a second interrogation of Chaney. (A. 2-3).

The Third District rejected Chaney's claims and affirmed. It held that the detective's question, "Do you think you need a lawyer," preceding the first interrogation, "in effect correctly informed Chaney that it was up to Chaney to decide whether or not he needed a lawyer." (A. 3). It further held that because, prior to the second interrogation 30 days later, "Chaney refused to listen to or sign the Miranda form which was offered to him," (A. 3-4), the police were excused from conveying Miranda rights to him. Judge Ramirez dissented with an opinion. Upon denial of rehearing *en banc*, (App. B), he substituted another dissenting opinion. (App. C).

STATEMENT OF THE ISSUES

I. Whether an interrogating officer's response, "Do you think you need an attorney," to a suspect's bonafide, mid-Miranda warning question, "Do you think I need an attorney," satisfies the "simple and straightforward answer" test of ***Almeida v. State***, 737 So.2d 520 (1999), so as to allow interrogation?

II. Whether, prior to interrogation, an officer must advise even a recalcitrant suspect of each of the Miranda rights, at least by stating them aloud in the suspect's presence, to secure a valid waiver and proceed with interrogation?

SUMMARY OF THE ARGUMENT

This case raises crucial issues of state-wide importance. It addresses the responsibility of police giving Miranda warnings to respond to bonafide questions of suspects regarding their rights. It also addresses their responsibility to provide Miranda warnings to recalcitrant suspects in their custody who they seek to interrogate. The court below held that, when a suspect asks a bonafide question, "Do you think I need a lawyer," the interrogating detective's retort, "Do you think you need a lawyer," complies with ***Almeida's*** requirement of a good-faith effort to give a simple and straightforward answer. The court also carved out an exception from the bright-line, constitutional mandate that all suspects, recalcitrant or otherwise, must be apprised of their Miranda rights before custodial interrogation. The decision below conflicts with this court's caselaw. It injects ambiguity into an area of the law and aspect of police procedure in which clarity is essential.

REASONS FOR EXERCISING DISCRETIONARY JURISDICTION

Review is necessary because the decision below, which erroneously construes article I, section 9, conflicts with *Almeida* and *Glatzmayer.*

In ***Traylor v. State***, 596 So.2d 957 (Fla. 1992), one of this court's most important criminal procedure cases, this court asserted its authority under federalist principles to provide greater rights under Florida's Declaration of Rights than are provided under the federal Bill of Rights. Respecting Florida's unique geography, cultural diversity, and history, this court held under article I, section 9, that if a "suspect indicates *in any manner* that he or she does not want to be interrogated, interrogation must not begin or, if it has already begun, must immediately stop. If the suspect indicates in any manner that he or she wants the help of a lawyer, interrogation must not begin until a lawyer has been appointed and is present or, if it

has already begun, must immediately stop until a lawyer is present." *Id*. at 966.

In ***Almeida v. State***, 737 So.2d 520 (Fla. 1999), *cert. denied*, 528 U.S. 1182 (2000), this court established a bright-line test to apply the protections of article I, section 9, in a specific recurring and significant context - when a suspect asks a clear question about his or her rights during custodial interrogation. This court held: "[I]f, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer." *Id*. at 525. This court observed that to do otherwise, "*i.e.*, [t]o give an evasive answer, or to skip over the question, or to override or 'steam roll' the suspect," would be to promote the very coercion it intended to dispel in ***Traylor***. This court declared: "[T]he ultimate bright line in the interrogation room is honesty and common sense." *Id*. at 526.

In ***Almeida***, at the beginning of the defendant's interrogation, when officers were advising him of his right to counsel, the defendant asked, "Well, what good is an attorney going to do?" *Id*. at 522. Without answering the question, one officer responded: "Okay, well, you already spoke to me and you want to speak to me again on tape?" A second detective responded: "We are, we are just going to talk to you as we talked to you before, that is all." *Id*. This court held that these responses failed the "good faith effort to give a simple, straightforward answer" test. Consequently, this court directed that the defendant's inculpatory statements be suppressed.

In ***State v. Glatzmayer***, 789 So.2d 297 (Fla. 2001), this court clarified the duty of law enforcement to respond to questions asked by suspects about their rights. During a break in custodial interrogation, the defendant asked if the interrogators thought he should have an attorney. *Id*. at 304. One of them responded that it was not their decision to make but the suspect's, and it was up to him. *Id*. The court held that the officers' response was "simple, reasonable, and true." *Id*. at 305. It noted that unlike ***Almeida***, the officers did not engage in "gamesmanship" or give an evasive answer or one intended to override or "steam roll" the suspect. *Id*.

Chaney conflicts with ***Almeida*** and ***Glatzmayer***. Detective Capote's tactic of answering Chaney's bonafide question with a question failed to provide the requisite "simple and straightforward answer." Indeed, Capote's retort most reasonably conveyed that an invocation of rights would telegraph guilt and that Chaney did not need a lawyer if he were truly innocent. Capote's question was nothing like the simple, direct statement approved in ***Glatzmayer***. It was the height of gamesmanship. Capote, with every motive to get Chaney to talk, failed to give a straight answer.

Judge Ramirez emphasized in dissent that Capote's response failed to comply with ***Almeida's*** mandate. (C. 3). He observed that the majority mistakenly read ***Almeida*** to require a defendant to show that the response was "intended to steam roll the suspect" and did not give a fair reading to the disjunctively separated prohibitions:

"To do otherwise - - *i.e.*, to give an evasive answer or to skip over the question, or to override or 'steam roll' the suspect - - is to actively promote [] coercion . . .." (C. 3-4). A violation of any one of these prohibitions would violate article I, section 9. Certainly Capote's evasive question constituted a violation.

Judge Ramirez also pointed out the fallacy in the majority's reliance upon ***Glatzmayer***. There, in response to the defendant's question whether the interrogators thought he should get a lawyer, they advised "that it was his choice." *Id.*, 789 So.2d at 299. Plainly, answering Chaney with the question, "Do you think you need a lawyer?" was not the same as telling him that it was his decision. As Ramirez highlighted, not a single one of the eight extra-jurisdictional cases the court cited in support of its ruling approved answering a question with a question. (C. 5-6 n.1).

The decision below ignores the language of ***Almeida*** demanding straightforward answers and prohibiting evasive responses. It blurs the bright line that this court sought to draw in the interrogation room of "honesty and common sense." ***Almeida***, 737 So.2d at 526. It condones the very "gamesmanship" ***Almeida*** sought to prevent.

A strict interpretation of ***Almeida*** is essential to honor the broad interpretation of article I, section 9's Self-Incrimination Clause mandated by ***Traylor***. Because the decision below conflicts with ***Almeida*** and ***Glatzmayer*** upon this issue of state-wide importance, review should be granted.

Review is necessary because the decision below, which erroneously construes the Fifth Amendment and article I, section 9, conflicts with *Traylor* and *Thompson v. State*, 595 So.2d 16 (Fla. 1992).

In ***Traylor***, this court made clear that the imperative of advising a suspect of his right to silence and an attorney prior to custodial interrogation is mandated by article I, section 9. *Cf.* ***Dickerson v. United States***, 530 U.S. 428 (2000) (Miranda rights not merely prophylactic rule but mandated by Fifth Amendment). This rule, universally known as "Miranda Rights," is perhaps the most important rule of criminal procedure in the United States. In ***Thompson***, this court noted that while no "talismanic incantation" of rights is necessary, *id.*, 595 So.2d at 17, "the police must somehow communicate to the accused the basic idea of the right[s] . . . before being questioned." *Id*. Even a partial omission from this advisement may invalidate the interrogation and require suppression of any confession. *See, e.g.*, ***Thompson***; ***Canete v. State***, No. 4D03-2915, WL 1278809 (Fla. 4th DCA June 1, 2005); ***United States v. Tillman***, 693 F.2d 137, 140-1 (6th Cir. 1992).

The rule of ***Traylor*** and ***Thompson*** is inflexible and draws a clear line. The rights advisement must be given whether the suspect is a vulnerable teenager or an experienced police officer or criminal defense attorney. *Cf.* ***Dickerson***, 570 U.S. at 444 (absent Miranda warnings, even confession "made by a defendant who is aware of his 'rights' may nonetheless be excluded and a guilty defendant go free as a

result"). It does not allow an exception for suspects who are recalcitrant or uncooperative. To create such an exception would deny an entire class of suspects, including those who are perhaps most in need of the warnings, of the protections which this court has declared are essential to guard against coercive interrogation and mandated directly by the Florida Constitution.

The court below conceded that Chaney was not apprised of his Miranda rights before his April 19, 2001, interrogation. (A. 3). The court summarized:

> At the police department, Chaney was still agitated and jittery. Detective Capote stated that he showed Chaney a Miranda warnings form and told him that they "had to go over this again." Chaney refused to sign the form, stating that his dad was a cop and that he knew his rights. Detective Capote then proceeded with his second interrogation of Chaney.

Id. at 2-3. The panel justified the failure to provide Miranda rights: "A careful review of the transcript of the suppression hearing leads to the conclusion that Chaney refused to listen to or sign the Miranda form which was offered to him. Therefore, the trial court did not err in refusing to suppress the statements." (*Id*. 3-4).

By its decision, the panel has carved out a broad and dangerous exception to the otherwise bright-line rule of ***Traylor*** and ***Thompson***. If a suspect does not cooperate in the interrogator's efforts to apprise him of his rights, then the interrogator is excused from conveying those rights. Applying this rule, the court condoned allowing an experienced homicide detective to interrogate a nervous, jittery teenage

homicide arrestee without advising him of his right to silence and an attorney at that moment. This rule strips the protections of article I, section 9, from an entire class of persons that perhaps is in greatest need of them - persons who are scared, nervous, boisterous, or otherwise disagreeable with authority.

Contrary to ***Chaney***, the imperative of ***Traylor*** and ***Thompson*** applies even to recalcitrant and uncooperative suspects who would rather not listen to their rights. At the very least, these cases demand that before custodial interrogation commences, if a suspect will not acknowledge reading (and understanding) his rights, a police officer must advise the suspect of each of his Miranda rights by stating them aloud in the suspect's presence. Failing this, interrogation is prohibited and any resulting statement must be suppressed. Because ***Chaney*** conflicts with this caselaw on this issue of state-wide importance, review should be granted.

CONCLUSION

The Petitioner respectfully requests this court to review the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by United States mail this ____ day of July, 2005, to: Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, FL 33131.

By:_____
BENJAMIN S. WAXMAN

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

By:_____
BENJAMIN S. WAXMAN