

FLORIDA CASE LAW UPDATE 16-01

Case: Ferguson v. State, 41 Fla. L. Weekly D62a (Fla. 5th DCA)

Date: December 31, 2015

Subject: **Incriminating statements should have been suppressed when police did not directly answer a suspect's inquiry about his right to have counsel present during a custodial interrogation**

FACTS: David A. Ferguson was arrested on a Florida warrant in the State of Virginia. While he was in jail, two Florida detectives travelled to Virginia to conduct a custodial interrogation regarding sexual allegations made by his now-adult daughters. Upon meeting Ferguson at the Virginia jail, the detectives introduced themselves and Ferguson asked them, "Is this the time I'm supposed to have a lawyer, of course, I'm not in Florida?" One detective responded, "Oh, um, I'll kind of go over everything with you, okay[?]" The detectives talked with Ferguson for several more minutes, trying to put him at ease before more questioning. They then advised him of his constitutional rights and questioned him for an hour and a half, during which time Ferguson made incriminating statements. Ferguson filed a motion to suppress his statements on the basis that his post-arrest statements to the detectives violated his constitutional rights, citing a particular ruling from the Florida Supreme Court. (Almeida v. State, 737 So. 2d 520 (Fla. 1999)). In the Almeida case, The Florida Supreme Court provided a three-step analysis about whether a suspect's prefatory statements invoked his/her rights in a custodial interrogation: "(1) was the defendant referring to a constitutionally guaranteed right; (2) was the utterance a clear, bona fide question calling for an answer, not a rumination or a rhetorical question; and (3) did the officer make a good-faith effort to give a simple and straightforward answer." The trial court denied Ferguson's motion to suppress. Ferguson was convicted at trial of three counts of sexual battery on a child under twelve years of age.

RULING: Reversed and remanded for a new trial. The Fifth District Court of Appeal ruled that the trial court should have suppressed Ferguson's statements to the detectives. The appellate court found that Ferguson's question was an unequivocal inquiry about his right to counsel, which the detectives understood, but did not answer appropriately. The appellate court stated that the detective who responded to Ferguson's question did not give an immediate, simple, and straightforward response that communicated to Ferguson that he had a right to counsel and that requesting counsel was his choice.

DISCUSSION: In this case, Ferguson asked the detective a question about his right to an attorney at the beginning of the custodial interrogation. The pivotal issue was the fact that the detective avoided answering Ferguson's question about his right to counsel directly when she had the opportunity. In the opinion, the court cited other cases in which a suspect asked officers whether the officers thought he/she should get a lawyer. In those cases, the officers answered along the lines that it was the suspect's decision whether he/she needed a lawyer. The appellate court here pointed out that courts favor police's responses to those questions in a way that clearly communicates that it's up to the suspect whether he/she needs a lawyer. They referred to that type of response as "a good-faith effort to give a simple and straightforward answer" that was not evasive did not involve steamrolling or gamesmanship. The court here also stated in a footnote that it had no issue with the routine interview techniques that were used by the detectives, such as building rapport and "minimization tactics" (where the interviewer minimizes the acts the defendant is accused of to deal with smaller pieces of what happened), but it did not approve of the detective not answering the question about his right to counsel *directly*.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.