

## FLORIDA CASE LAW UPDATE 16-07

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**Case:** State v. McAdams, 41 Fla. L. Weekly S167a (Fla.)

**Date:** April 21, 2016

**Subject:** **Law Enforcement Must Notify Suspects of the Presence of Their Attorney during Questioning, Regardless of Whether the Suspect is in Custody**

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FACTS: McAdams was being questioned by detectives at the sheriff's office regarding the suspicious disappearance of McAdams' estranged wife and her boyfriend. McAdams agreed to come to the station for the interview and had the opportunity to travel there on his own, but accepted the offer from a deputy to get a ride to the sheriff's office. Initially McAdams denied any involvement, but after a couple of hours he confessed that he fatally shot his wife and her boyfriend, buried the bodies, and discarded the gun. Police then advised McAdams of his *Miranda* warnings, after which he continued to speak to police and eventually directed them to the bodies. While McAdams was being questioned, but before he confessed, McAdams' attorney (retained by his parents) arrived at the sheriff's office. The attorney was told that it would be impossible to convey any information to McAdams, although the attorney informed police that, "I want all questioning to stop. I don't want anymore [sic] questioning to go on without my presence." After being denied any type of access to McAdams, the attorney left the sheriff's office, which occurred ten minutes before McAdams confessed. McAdams was not informed about the attorney until after he directed police to the burial site. Eventually McAdams was indicted for two counts of first-degree murder. He moved to suppress the statements made to law enforcement, as well as the audio and video evidence obtained as a result of those statements on the basis that (1) he was essentially in custody during questioning and therefore the police improperly failed to advise him of his *Miranda* warnings, and (2) he was improperly denied access to his attorney who was present at the sheriff's office during his questioning. The trial court denied the motion to suppress on both grounds. McAdams was convicted as charged at a jury trial. On appeal, the Second District Court of Appeal reversed the judgements and sentences, and certified a question of great public importance to the Florida Supreme Court. The Florida Supreme Court agreed to answer the following (rephrased) question as follows:

UNDER THE DUE PROCESS CLAUSE OF THE FLORIDA CONSTITUTION, WHEN MUST A PERSON WHO IS BEING QUESTIONED BY LAW ENFORCEMENT IN A NON-PUBLIC LOCATION BE NOTIFIED THAT AN ATTORNEY RETAINED ON HIS OR HER BEHALF IS AT THE LOCATION AND AVAILABLE TO SPEAK WITH HIM OR HER?

RULING: The Florida Supreme Court answered the above question as follows: "[W]e hold that when a person is questioned in a location that is not open to the public, and an attorney retained on his or her behalf appears at the location, the Due Process Clause of the Florida Constitution requires that law enforcement notify the person with regard to the presence and purpose of the attorney, regardless of whether he or she is in custody."

DISCUSSION: The Florida Supreme Court in Haliburton v. State, 514 So. 2d 1088 (Fla. 1987) (Haliburton II) reversed a defendant's murder and burglary convictions and ordered a new trial where a suspect in custody was being questioned while his attorney was at the police station trying to speak with him, but the attorney was denied access to his client. The Court considered the police conduct in that case to violate the due process provision of article I, section 9 of the Florida Constitution. The important factual difference between Haliburton II and McAdams was that Haliburton was undisputedly in police custody during his entire interview, whereas McAdams came to the interview willingly and at the time of the attorney's arrival was not considered to be in custody by the officers who were questioning him. In the McAdams opinion, the Florida Supreme Court stated its intention to declare a bright line rule about when law enforcement must inform a suspect undergoing police questioning that his/her attorney is present. Accordingly, in McAdams, the Court extended the Haliburton II holding to situations where a suspect is *not* in custody, stating, "[A] person can no longer be deprived of the critical information that an attorney is present and available to provide legal advice based on pure police conjecture that the individual is not in

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custody.... [I]t is the individual, rather than law enforcement, who is given the knowledge and power to decide whether to take advantage of the attorney's services.”

While the Supreme Court specifically held that even non-custodial suspects being interviewed are entitled to be told by police that their attorney is present, the Court further held that McAdams was actually *in custody* before he gave his confession, and therefore *Miranda* warnings should have been given to him prior to that time. The Court bases its conclusion, in large part, on the facts that the police questioning of McAdams became increasingly accusatory, and McAdams' freedom to move around the station became limited (e.g., McAdams was confronted with blood evidence before his confession and he was escorted into the restroom by multiple officers). The Court stated that because an interrogation can gradually convert from being voluntary to being custodial, as it concluded McAdams' interview did, “it is unworkable for the due process right of an individual to be advised of a retained attorney's presence at a law enforcement office to be contingent upon only custodial status.”

COMMENT: Note that the Florida Supreme Court specifically based this holding on the Due Process clause of the Florida Constitution. Accordingly, future opinions from the federal appellate courts or the U.S. Supreme Court, considering identical issues, but interpreting the United States Constitution, may not have any impact on the application of this case in Florida state court cases.

Laura B. Coln  
Regional Legal Advisor  
Florida Department of Law Enforcement  
Orlando Regional Operations Center

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