

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

CRIMINAL DIVISION "X"

vs.

CASE NO: 05-3771CF C02

Defendants.

_____ /

DEFENDANT'S MOTION TO SUPPRESS
A CONFESSION OR ADMISSION ILLEGALLY OBTAINED

Pursuant to Fla. R. Crim. P. 3.190(i), article I, sections 9 and 12 of the Florida Constitution, and the fifth and fourteenth amendments to the United States Constitution, Mr. *****, through undersigned counsel, requests that this Court grant this motion and in support hereof states the following:

1. Mr. ***** is charged by information with one count of second degree murder with a firearm and one count of aggravated battery with a firearm.
2. Mr. ***** is requesting that the following evidence be suppressed:
 - a. All pre-*Miranda* statements allegedly made by Mr. ***** when he was arrested at Carver Estates in Delray Beach, Florida on March 22, 2005.
 - b. Statements allegedly made by Mr. ***** to Investigator Caudell and Investigator Llopis at the Boynton Beach Police Department in a transcribed, tape-recorded interrogation taken on March 22, 2005. Said statements begin on page 22, line 19 and extend through page 48, line 15 of Mr. *****'s first statement.

FACTS OF CASE

On March 19, 2005, police received a 911 call from a man identified as Albert Hollis who reported that there had been a shooting at a Boynton Beach address. Mr. Hollis reported that he and Mr. Deangelo Gibbs were confronted by four armed subjects and that an altercation ensued. Shots were fired and Mr. Gibbs sustained gunshot wounds. Mr. Gibbs was transported to a hospital where he succumbed to his injuries, and Mr. Hollis received treatment for his injuries.

The police interviewed Mr. Hollis who was able to identify two of the four assailants by their street names and who further identified one of these two, Ron Council, by his legal name from police photographs. Mr. Hollis stated that two of the other assailants stood behind the two he identified and, although he alleged that they were armed, he did not identify them. Mr. Hollis did not identify Mr. ***** as an assailant at that time.

On March 21, 2005, Ron Council arrived at Boynton Beach Police Department where he gave a statement implicating himself and others involved in the shooting incident on March 19, 2005. Among others, Mr. Council named Mr. ***** as being involved in the shooting.

On March 22, 2005, Mr. ***** was arrested at Carver Estates in Delray Beach, Florida by the Delray Beach Police Department and was transported to the Boynton Beach Police Department. While in custody, Mr. ***** made some statements before being advised of his Miranda rights prior to interrogation. ******'s First Statement (HFS), Page 2, lines 14-17.*

Mr. ***** was interrogated by Investigators Caudell and Llopis in two separate sessions that have both been transcribed. *See HFS, March 22, 2005, 18:39 hours through*

20:13 hours and *****'s *Second Statement (HSS)*, March 22, 2005, 21:29 hours through 22:50 hours.

While in custody and during the first interrogation session, Mr. ***** unequivocally invoked his Miranda and Fifth Amendment rights to remain silent and have questioning cease. However, despite Mr. *****'s right to have questioning cease and to remain silent, Investigators Caudell and Llopis failed to honor Mr. *****'s unequivocal initial request as well as repeated, subsequent requests as follows:

Please see, *HFS*, pages 42-48.

Investigator Caudell: So what do you think Chris?

Mr. *****: **I think y'all's just gonna have to take me to jail and end this interview 'cause I ain't saying nothing staring (sic) from right now. (*HFS*, Page 42, lines 8 and 9).**

Investigator Caudell: Alright we'll see I can see well Investigator Llopis here kind of proved that there's no harm amongst thieves your home boys aren't backing you up Chris your two home boys that were with you that night didn't back you up either.

Mr. *****: I weren't with those dudes man.

Investigator Caudell: Yeah you were with 'em Chris. We know you were with them and they know it.

Mr. *****: Ha.

Investigator Caudell: They all spelled it out. They even told us what you were wearing and everything. Chris I'm giving you an open door here man I think you know what I'm talking about I don't think this was a cold-blooded homicide I think it was a mistake it happened alright it was an accident and you're gonna be different than the other guys and say no it wasn't a mistake and I wasn't even there. You see how that's gonna look? You're gonna be standing up there all by yourself Chris. You talk to his mom?

Investigator Llopis: Yeah.

Investigator Caudell: Did she want to know why he's down here?

Investigator Llopis: She had heard the same thing that he had told us.

Investigator Caudell: Okay. Did you tell her he was down here on another homicide charge?

Investigator Caudell (sic): I just told her that you were investigating one and you were talking to him (inaudible).

Mr. *****: **Man can I say bye to a few people before you all take me? (HFS, Page 43, line 5)**

Investigator Caudell: Bye to who?

Mr. *****: **Just say bye to my mom and to my sister. (HFS, Page 43, line 7).**

Investigator Caudell: You mean call them up on the phone?

Mr. *****: **You can call them on the phone or some type of way shackle me up or whatever and just let me say bye I just want to say bye to my family to a few people that I love. (HFS, Page 43, lines 9 and 10).**

Investigator Caudell: They got phones in jail man.

Mr. *****: **Well I'll wait till I get there then it don't matter this interview over with. (HFS, Page 43, line 12).**

Investigator Caudell: All these photo line-ups

Mr. *****: Man I don't care about a photo line up guns, none of that shit.

Investigator Caudell: All these pictures?

Mr. *****: That don't say nothin' that don't say nothin' man that don't say nothin' you keep showin' me that picture like that's supposed to make me feel sorry and make me break

Investigator Caudell: How does it make you feel looking at that?

Mr. *****: It makes me sorry it doesn't make me feel sorry you know what I'm sayin'? I'm sorry about what happened that's all it is you know what I'm sayin'? That's all I'm sayin'

Investigator Caudell: Sorry about what happened?

Mr. *****: About what happened to him.

Investigator Caudell: What do you think is going to happen to you Chris?

Mr. *****: Man I don't know man if don't nobody believe me then I don't care what happens because there ain't nothing that I could do to make whatever I want happen.

Investigator Caudell: What would you like to see happen?

Mr. *****: Justice I want to prove my innocence and I want the people who lying on me and I want them all them mother fuckers rot in hell and go to jail also! All those people all those pointing those fingers, they know and more than likely it's gonna be one of Ron or Jamell's family members because other than that it can't be you know what I'm sayin'? They confessed to that bullshit or whatever you know what I'm sayin' they try to put other people in it. They don't wanna see they don't wanna see nobody they don't wanna give if they can't be on the street they don't wanna see nobody else on the street that's just how the game go.

Investigator Caudell: Yeah but you never said that you had any animosity for Jamell or vice versa right? He didn't have no problems with you.

Mr. *****: I don't but then again him and Ron are family members they're cousins you think they care about me? You think they care about anybody else who name they said has something to do with this? They don't care! They don't care and if they confess to that you know what I'm sayin' they know that they fucked up and they know that they wanna take other people with them.

Investigator Caudell: What about the other people though? What, did they all get in cahoots together and they're all sitting there sayin'g (sic)

Mr. *****: It got to be family man it can't be nobody but family members helping those two those two . . . if they said it was me

Investigator Caudell: How would they all end up in the same cars together and they'd all see you in a car and exactly where you're sitting and you at the house I mean how would they do that?

Mr. *****: No that's bull

Investigator Caudell: How would they do that Chris?

Mr. *****: That's bull man

Investigator Caudell: They're all lying?

Mr. *****: Show me how

Investigator Caudell: Everyone of them are lying right Chris?

Mr. *****: Get all that evidence at trial man fuck that

Investigator Caudell: Oh it'll be there.

Mr. *****: Get all that evidence in trial and it's gonna be speedy so y'all have to start working on that as soon as y'all drop me off to the jail or whatever you know what I'm sayin'g because I know I'm innocent and I know that I don't have to sit and take it an y'all criticize me and let me know what the hell going on you steady flashing a picture in my face where that's not gonna change nothing the truth is the truth and it's gonna set me free I know it's gonna set me free!

Investigator Caudell: The truth is the truth you're right.

Mr. *****: That's why I ain't gonna worry about nothing the truth will set me free and that's why this the truth and that's why this is gonna be the same thing stated in court and I ain't even worried about it that's all **so can we please just just close this interview because I'm not answering any more questions and that's it (HFS, Page 46, lines 4 and 5).**

Investigator Caudell: Okay you don't have to

Mr. *****: **I'm not answering any more questions (HFS, Page 46, line 7)**

Investigator Caudell: Okay see we don't Detective Llopis, we don't have any other contact so we could validate his stories right? We don't have any other we've called every single phone number in person he called

Mr. *****: Nope no I just asked him if he could get my phone and get the numbers of all the people there's more names and I don't remember all the phone numbers but I can show you I can scroll the names and I could show you every name and every person that was there at that time and that could verify that right now, the only reason that they might not be sayin'g anything because they know that they just got me and they know that the police might call them or whatever and they probably that's the only reason why they ain't sayin'g nothing right now.

Investigator Caudell: One guy, the one guy that you said you were with all night .

Mr. *****: Yeah Thomas

Investigator Caudell: He didn't back you up.

Mr. *****: **I ain't answering no more questions** (HFS, Page 47, line 4).

Mr. *****: **Can y'all take me to the county jail please?** (HFS, Page 47, line 9).

Mr. *****: **Or all y'all gonna have me here eleven hours like y'all had Roy?** (HFS, Page 47, line 11).

Mr. *****: **Like y'all had Roy for eleven hours . . .** (HFS, Page 47, line 13).

Mr. *****: That's Thomas the police called his phone right now you know what I'm sayin' **take me to jail then.** (HFS, Page 48, line 1).

Investigator Caudell: We gotcha.

Mr. *****: Okay.

Investigator Caudell: This ain't fifteen years this is life man.

Mr. *****: Okay.

Investigator Caudell: Okay?

Mr. *****: We'll see at trial when it all boils down.

Investigator Caudell: We'll be there no doubt and you'll be there too.

Mr. *****: I will yep **okay it's closed.** (HFS, Page 48, line 9).

Investigator Caudell: I'd like to talk to his mom alright, do you got anything else to say on tape right now?

Mr. *****: **Nope.** (HFS, Page 48, line 11).

Approximately one hour and 16 minutes after the first interrogation ended, Mr. ***** allegedly requested to make a second statement to Investigators Caudell and Llopis, which interrogation took place at 21:29 hours and concluded at 22:50 hours. At the beginning of the second interrogation, Mr. ***** was only asked if he remembered his Miranda rights and he allegedly declined to have his Miranda rights read to him and stated that he remembered them. *HSS, page 1, lines 15-20.*

LAW

I. BURDEN OF PROOF

In *Jorgenson v. State*, 714 So. 2d 423, 426 (Fla. 1998), the Florida Supreme Court stated that "the burden of showing that a defendant's statement was voluntarily made is on the State. *Brewer v. State*, 386 So. 2d 232, 236 (Fla. 1980). The State must establish voluntariness by a preponderance of the evidence. *Id.* See also *Thompson v. State*, 548 So. 2d 198, 204 (Fla. 1989)("the burden is on the state to show by a preponderance of the evidence that [a] confession was freely and voluntarily given and that the rights of the accused were knowingly and intelligently waived").

II. MR. *****'S INVOCATION OF HIS RIGHT TO SILENCE

During the first March 22, 2005 interrogation session, Mr. ***** told his interrogators : "I think y'all's just gonna have to take me to jail and end this interview 'cause I ain't saying nothing staring (sic) from right now." See *HFS Page 42, line 8*. Nevertheless, in spite of Mr. *****'s unequivocal request that the interrogation cease at that point, the interrogation continued uninterrupted despite Mr. *****'s repeated requests that the questioning end as evidenced in the transcript.

Mr. *****'s invocation of his right to silence and all subsequent statements made to his interrogators should be suppressed since such statements were obtained in violation of his right to silence guaranteed to him by both the Florida and federal constitutions.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the U.S. Supreme Court held:

[t]hat the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney; either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he has answered some questions or volunteered some statements of his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

Describing the procedure to be followed when a defendant wishes to remain silent, the *Miranda* Court further stated:

If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has clearly shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. Miranda at 473 and 474 (italics added).

Although established in *Miranda*, it was in a 1975 case in which the U.S. Supreme Court delineated the scope of "the right to cut off questioning." In *Michigan v. Mosley*, 423 U.S. 96, 96 S. Ct. 321, 46 L.Ed.2d 313 (1975), the U.S. Supreme Court held that the admissibility of statements obtained after a suspect has cut off questioning depends on whether the suspect's "right to cut off questioning" was "scrupulously

honored." *Id.* at 104, 96 S.Ct. at 326, 46 L.Ed.2d at 321. The critical factors in a determination whether a suspect's rights were scrupulously honored include: (1) whether the police ceased the interrogation immediately upon defendant's request; (2) whether the questioning was resumed only after a significant amount of time had passed; (3) whether fresh *Miranda* warnings were provided; and (4) whether the later questioning was restricted to a crime that had not been the subject of the initial interrogation for which the right to silence had been invoked. *Mosley*.

In Mr. *****'s case, Investigators Caudell and Llopis failed to cease interrogation immediately upon his unequivocal request to stop the questioning. There is nothing equivocal about Mr. *****'s statement invoking his right to remain silent during the first interrogation:

I think y'all's just gonna have to take me to jail and end this interview 'cause I ain't saying nothing staring (sic) from right now.
HFS, page 42, lines 8 and 9.

If Investigators Caudell and Llopis had any doubt about Mr. *****'s request to stop the interrogation, they failed to ask any clarifying questions about his request. Instead, Investigator Caudell persisted in questioning Mr. ***** about the shooting incident, ignored Mr. *****'s request, and immediately followed up with a question about "home boys" failing to back up Mr. *****'s story.

Mr. *****'s request to cut off questioning is just as unequivocal as that request considered in *State v. Sawyer*, 561 So. 2d 278 (Fla. 2d DCA 1990) where the defendant stated "I'm done talking." *Sawyer* at 295. In *Sawyer*, when the detective continued to

question him, the defendant succumbed and resumed answering the interrogators' questions on the same alleged crime. *Id.* The *Sawyer* court stated:

We have here an act of avoidance of legal responsibility. Detective Fire persisted in his repeated efforts to wear down Sawyer's resistance and to keep him talking. Sawyer got the same consideration for wanting to stop the interrogation that he got when he asked for a lawyer. The Court finds this is a clear, unmistakable violation of *Miranda*.

Sawyer at 295.

Mr. *****'s request to cut off questioning was even more unequivocal than the words, "I want to go home. Can I?" that was found to be an indication in some manner that a defendant did not want to answer further questions in *State v. Wininger*, 427 So. 2d 1114, 1115 and 1116. The *Wininger* court held that all statements made by the defendant following his request to go home were properly suppressed. *Id.*

Here, the actions of Investigator Caudell in continuing to question Mr. ***** were egregious in the face of Mr. *****'s clear invocation of the right to remain silent. As shown in the excerpt from Mr. *****'s first interrogation transcript, Mr. ***** followed his initial request to cut off questioning with at least nine (9) more statements (shown in bold type) indicating that he wanted questioning to end or that he considered the interrogation at an end. Throughout, Investigators Caudell and Llopis continued to detain Mr. ***** in the interrogation room and persisted in interrogating him about the same crime. In violation of *Miranda* and *Mosley*, the investigators in Mr. *****'s case failed to scrupulously honor Mr. *****'s right to cut off questioning because they did not cease interrogation immediately upon his request. Thus, Mr. *****'s statements from his first request to cut off questioning and thereafter should be suppressed.

III. INVOLUNTARINESS OF MR. *****'S CONFESSION

The violation of Mr. *****'s *Miranda* right to cut off the questioning of his interrogators is not only relevant as a separate independent ground for suppression, but also as part of "the totality of the circumstances" which a court must consider in determining voluntariness of a confession or admission. *See State v. Sawyer*, 561 So. 2d 278, 284 (Fla. 2d DCA 1990).

In order to find that a confession is involuntary within the meaning of the Fourteenth Amendment, there must first be a finding that there was coercive police conduct. *State v. Sawyer*, 561 So. 2d 278, 281 (Fla. 2d DCA 1990). Police coercion can be not only physical, but psychological. *Id.* The test of determining whether there was police coercion is determined by reviewing the totality of the circumstances under which the confession was obtained. *Id.*

As part of the totality of the circumstances analysis, many factors have been considered by the courts, including whether the confession was given in the coercive atmosphere of a station-house setting, whether the police suggested the details of the crime to the suspect, whether the suspect was subjected to a barrage of questions during predawn hours and not given an opportunity to sleep or eat, whether psychological coercion was applied, whether the police made threats, promises of leniency, or made statements calculated to delude the suspect as to his or her true position, whether the police made threats of harm, whether the police exerted undue influence or made direct or implied promises of benefits. *Sawyer at 281.*

As part of the totality of the circumstances analysis in Mr. *****'s case to determine whether his statements were involuntary several of these factors apply.

Mr. *****'s statements to Investigators Caudell and Llopis were given in the coercive atmosphere of the Boynton Beach Police Station. *Please see *****'s First Statement and *****'s Second Statement, March 22, 2005.* During Mr. *****'s first statement, Inspector Caudell compared the size of the interview room in which they were sitting to a prison cell:

" I could not fathom I just couldn't imagine sitting behind them bars in a room this size it's a little bit bigger than this not much I just couldn't imagine man " *HFS, Page 37, lines 5-7.*

Both factors of psychological coercion and threats calculated to delude Mr. ***** as to his true position were present and should be considered as part of the totality of circumstances analysis of the voluntariness of Mr. *****'s admissions. The psychological coercion and threats were persistent and pervasive and undermined the voluntariness of Mr. *****'s statements.

During Mr. *****'s first statement, Investigator Caudell indirectly coerces and threatens Mr. ***** by painting a description of two men (allegedly in another case) where one man confesses to firing a gun by accident and received 10% of the time (sentencing) whereas another man says "I don't know what the fuck you're talking about . . . it didn't happen to me I wasn't there", witnesses come forward, and then that man gets thirty years (sentencing). *Please see HFS, Page 22, lines 19-24.*

Continuing with that psychological coercion and indirect threat, Investigator Caudell states: "I said just don't lie about it man 'cause you got all these other people pointing at you the jury is gonna believe them we can hang pictures up and everything else all this evidence and the jury's gonna listen to 'em the man got thirty years he got two (unintelligible) I said you're kids will never see you

man ". See *****'s First Statement, Page 23, lines 14-17. Subsequently in his monologue, Investigator Caudell asks Mr. *****: " you got any kids? " HFS, Page 24, line 25. Apparently, already aware that Mr. ***** had a child, Investigator Caudell asked: "How old are your kids?" HFS, Page 29, line 8. This is quickly followed by Investigator Caudell's irrelevant and improper speculation that it's going to be "a big show when this [case] goes to court" (HFS, Page 29, line 17) and "you know it's gonna be a lot of people up there on the stand and you just try to remember that" (HFS, Page 29, lines 17 and 18).

Persistently and pervasively, Mr. ***** is threatened directly or indirectly, with the spectre of having to serve a lengthy term of imprisonment for the charged crimes despite the fact that Investigator Caudell states that he thinks the whole thing was really an accident. See, HFS, Page 22, line 8.

These direct and indirect threats regarding a long term of imprisonment are as follows:

" the other guy who says man I don't know what the fuck you're talking about it didn't happen to me I wasn't there you know . . . blah, blah, blah witnesses came forward and he gets thirty years man" (*Investigator Caudell, HFS, Page 22, lines 21-24*).

" 'cause you got all these other people pointing at you the jury is going to believe them we can hang pictures up and everything else all this evidence and the jury's gonna listen to 'em the man got thirty years he got two (unintelligible) I said you're kids will never see you man" (*Investigator Caudell, HFS, Page 23, lines 14-17*).

" the one guy he got thirty years Chris he almost he started crying man he was just like my life's done and it was and I looked at him I was trying to look at him like man I tried to tell you man you know and that's the way it comes end to Chris that's where we're at right here." (*Investigator Caudell, HFS, Page 24, lines 9-12*).

" I want you to think about it man . . . okay about your life because the guys that were there that night at the party spelled out 100% everything they said is matching. They give me a location of the firearms, we got them, they gave me the location of the bullet, the box of bullets, cars that were used and everything okay? Them guys are gonna look right in front of the jury because they are right they are right . . . they told me every corner of every building, every step that was made 'cause they don't want to screw their lives and that's exactly what they told me. I don't want my life in prison forever and ever and ever. I got a mama you got any kids? You know a mama and brothers and sisters and stuff and I wanna see them man I want to go on with my life people make mistakes but why should one guy pay fifty times more than the other guy. . . . " (*Investigator Caudell, HFS, Page 24, lines 18-27 and Page 25, line 1*)

" I just can't give people that much time my last homicide the trail (sic) was for (unintelligible) he got twenty-five years I'm goin' man, that dude's gonna be sixty-years old man don't even think about letting him out" (*Investigator Caudell, HFS, Page 25, lines 4-6*).

" when people do their ten or fifteen years you're looking at twenty-five and they want to get probation at fifteen that's what the Probation Officers look at Parole Officers I guess it is they look for people with remorse and people that I'm sorry for what I did yeah I screwed up if a guy gets up there and says hey I didn't do it I've been here fifteen years and I still didn't do it they send him back." (*Investigator Caudell, HFS, Page 29, line 21 and Page 30, lines 1-5*).

" Would you save thirty years of your life if you could?" (*Investigator Caudell, HFS, Page 36, line 1*).

"It's kind of hard to imagine that far out it's kind of hard to imagine seven or eight or ten years or whatever of your life and then after than I'm gonna say this it's hard to imagine, it really is but I'm trying to realize or get you to realize Chris where this is all coming from and everything that's gonna happen in the months to come okay Chris I'll probably never see you again I'll see you in court but you'll never see me and I'll never see you again okay?" (*Investigator Caudell, HFS, Page 36, lines 7-12*).

" he [Ron Council] said you know, I don't wanna look at life in prison I don't wanna do that and he's right I've been in those walls, I've been on death row man I've been right there with death row and had to go through all the fifteen gates to get there and go through all the checkpoints and get back there where them guys live . . . let me tell you man I could not fathom I just couldn't imagine

sitting behind them bars in a room this size it's a little bit bigger than this not much I just couldn't imagine man and I told him I said you know if you get some time out of this I said after a couple of years you're gonna say thank God that I listened to Scott at the Boynton P.D. because he's right I don't want to spend the rest of my life here this is enough that's what's gonna happen" (*Investigator Caudell, Page 37, lines 1-10*).

" This ain't fifteen years this is life man. " (*Investigator Caudell, Page 48, line 4*).

Mr. *****'s first interview statement ended at approximately 20:13 hours (8:13 p.m.) according to the transcript and Mr. ***** was placed in a cell. *HFS, March 22, 2005*. Just over one hour and 16 minutes later (9:29 p.m.), Mr. ***** allegedly requested to make his second statement in which he made inculpatory statements. *HSS, March 22, 2005*.

The ten (10) references to lengthy prison time in Mr. *****'s first interview suffice to establish a causal nexus between these direct and indirect threats and psychological coercion (the improper questioning) and the subsequent admissions. *See, Edwards v. State, 793 So. 2d 1044, 1047 (Fla. 4th DCA 2001)*.

Although a confession is not involuntary if officers merely inform a suspect of realistic penalties and encourage or request that person to tell the truth (*Edwards v. State, 793 So. 2d 1044, 1047 (Fla. 4th DCA 2001)*), the investigator in Mr. *****'s case presented penalties varying from thirty years to life in prison despite the fact that the investigator represented that he believed that the shooting was an accident.

To exclude a confession or an inculpatory statement, it is not necessary that any direct promises or threats be made to the accused. *Walker v. State, 771 So. 2d 573, 575 (Fla. 1st DCA 2000)*. It is sufficient if the circumstances or declarations of those present

are calculated to delude the prisoner as to his true position and exert an improper influence over his mind. *Id.*

The case of *Martinez v. State*, 545 So. 2d 466 (Fla. 4th DCA 1989) is instructive. In *Martinez*, the defendant was an illegal alien with an extremely limited education who was in custody on an unrelated charge when the police initiated an interrogation of him regarding the "Orange Grove Murder." *Martinez* at 467. Although Martinez agreed to speak with police when he was requested to do so, he denied any involvement in the murder. *Id.* The police further pursued the matter, however, by asking him to take a polygraph test and by telling him that "if he tells [the police] what happened, he wouldn't be in any more trouble than he already was" up to now. *Id.* During the polygraph examination, Martinez continued to deny any involvement in the "Orange Grove Murder." *Id.* Finally, even after the examination was completed and the polygraphist accused Martinez of having lied during the examination, Martinez held fast to his position and would not confess to the crime. *Id.*

Nevertheless, the police ultimately elicited a confession from Martinez after telling him, among other things, that he "could wind up" in the electric chair if he was not truthful with the police. *Martinez v. State*, 545 So. 2d 466, 467 (Fla. 4th DCA 1989). Although the polygraphist claimed he mentioned the electric chair to advise Martinez of an option which was available to the state, he failed to mention any other option available to the state. *Id.* Thus, raising the spectre of the electric chair was not simply intended to be informative, but to unduly emphasize this particular option, and psychologically coerce Martinez into confessing to the crime. *Id.*

Moreover, after having examined the polygraph results, the polygraphist told Martinez that it was "impossible" that he was being truthful. *Martinez v. State*, 545 So. 2d 466, 467 (Fla. 4th DCA 1989). He also told Martinez that the state had many witnesses against him, and that "everybody has already said what they had to say and you're going to wind up in a problem and you will be the only one that's going to wind up in problems." *Id.* Thus, the polygraphist exerted improper influence over Martinez by emphasizing that both the polygraph results and the state's witnesses would contradict his story, and by telling him that he was going to wind up in a problem. *Id.*

In viewing the circumstances surrounding the interrogation, the *Martinez* court concluded that the confession that was ultimately elicited from Martinez was not "the product of an essentially free and unconstrained choice." *Martinez v. State*, 545 So. 2d 466, 467 (Fla. 4th DCA 1989). The Court reversed Martinez' conviction and sentence and remanded for a new trial absent the confession. *Id.*

Although Mr. ***** concedes that he was not threatened with the spectre of the electric chair, he was threatened with the spectre of both life imprisonment as well as the possibility of thirty years imprisonment for a shooting incident described by the investigator as probably an accident. Investigator Caudell's story of the two men in another alleged case appears to have been presented to Mr. ***** to show that he could wind up with a lengthy prison term if he was not truthful.

Just as in *Martinez*, Mr. ***** was repeatedly told by investigators that he was not being truthful [HFS, page 25, lines 22-24; HFS, page 29, line 2; HFS page 33, lines 10-13; HFS, page 36, line 1; HFS, page 42, lines 10-12; HFS, page 42, lines 16 and 17; HFS, page 45, lines 1 and 2; HFS, page 45, line 10 and 12; HFS, page 46, lines 18 and

20] that there was all this evidence and witnesses against him [HFS, page 19, lines 16 and 17; HFS, page 20, lines 1 and 2; HFS, page 24, lines 13 and 14; HFS, page 24, lines 19-25; HFS, page 26, lines 3 and 5; HFS, page 28, line 14; HFS, page 29, lines 16-19; HFS, page 33, lines 10-12; HFS, page 36, lines 23 –25; HFS, page 37, lines 10-14; HFS, page 43, line 13, HFS, page 43, line 15; HFS, page 45, lines 5 and 6] , and that he would be alone with his story and that the jury would not believe him [HFS, page 34, lines 15 and 16; and HFS, page 42, lines 20 and 21].

Although particular statements or actions considered on an individual basis might not vitiate a confession, when two or more statements or courses of conduct are employed against a suspect, courts have more readily found the confession to be involuntary. *State v. Sawyer*, 561 So. 2d 278, 281 and 282 (Fla. 2d DCA 1990).

In Mr. *****'s case, there is strong evidence of coercion and involuntariness of his first statement as follows: (1) the coercive police station environment where Mr. *****'s interview room was compared in size to a prison cell; (2) direct and indirect threats of lengthy prison time; (3) psychological coercion of being repeatedly told he was not truthful, that there was substantial evidence and witnesses against him, and that he would be alone with his story and that the jury would not believe him; and (4) violation of his *Miranda* rights to remain silent when his request to cut off questioning was not scrupulously honored as discussed in Section II above.

The first three of these factors commenced with Investigator Caudell's monologue beginning at HFS, page 22, line 19 and continues during the interrogation where it is ultimately joined by the fourth factor, the violation of Mr. *****'s *Miranda* rights which were first invoked by Mr. ***** at HFS, page 42, lines 8 and 9. Thus, Mr. *****

requests that his statements in his first statement be ruled involuntary and, therefore inadmissible at trial, from HFS, page 22, line 19 through page 48, line 15.

WHEREFORE, Mr. *****, through undersigned counsel, requests that this Court grant Defendant Christopher *****'s Motion To Suppress A Confession Or Admission Illegally Obtained.

Ronald S. Chapman
Counsel for Christopher *****

CERTIFICATE OF SERVICE

I do certify that a copy hereof has been furnished by mail or delivery this 7th day of November, 2005 to Assistant State Attorney Kirk Volker.

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