IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR HILLSBOROUGH COUNTY
JUVENILE JUSTICE DIVISION

IN THE INTEREST OF:

UCN NUMBER: 2007-CJ-006544
FAMILY NUMBER: 00134144-A

MICHAEL ANTHONY PEREZ

A CHILD

DIVISION: F

_____/

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

The Defendant, MICHAEL PEREZ, moves this Court pursuant to the United States Constitution, the Florida Constitution and Rule 8.085 (a)(3), Florida Rules of Juvenile Procedure, for the entry of an Order Suppressing Confessions or Admissions illegally obtained from the Defendant, and which the State intends to introduce at any trial in the above cause. And as grounds therefore, the Defendant would show as follows:

1. The Defendant is a 14 year old juvenile charged in the above-styled petition with Arson First Degree (Dwelling) and Burglary of a Dwelling.
2. On 07/26/07 the Defendant is alleged to have participated in the above referenced crimes by entering an apartment illegally and participating in setting a small fire within the apartment. The CRA provided in discovery states that the "Defendant admitted by sworn statement that he was in apartment listed at time of fire. Defendant admitted that he entered apartment through window."
3. On the day of the incident the Defendant was confronted by Tampa Fire Investigator R. Alcover and interrogated early in the morning. Alcover arrived at the Defendant's second floor apartment door in uniform with a badge insignia on his person and accompanied by

at least three other law enforcement officers who had badges and guns. It was at this time that Alcover demanded to speak with the Defendant and took him downstairs away from the presence of his mother. Alcover then proceeded to tell the Defendant that he had evidence that indicated the Defendant was involved in the crimes for which he was ultimately charged.

4. The Defendant subsequently made admissions to Investigator Alcover and allegedly filled out a sworn statement at 0600 A.M. The sworn statement (See Defense Exhibit A) whereby my client is alleged to have waived his *Miranda* rights is legally deficient and the conduct of the investigator in obtaining the admissions and confession violated the Defendant's Fifth Amendment rights against self incrimination and as such should be suppressed as fruit of the poisonous tree. Furthermore, the Defendant was not even advised of his *Miranda* warnings, only given the statement form to read for himself.

5. The so-called sworn statement is not even signed by the Defendant. Furthermore, it is abundantly clear from looking at the sworn statement that the almost illegible handwriting in the blank paragraph portion attributed to the Defendant is drastically different from the handwriting filled in the blanks of the typed paragraph at the top of the page that is supposed to apprise the Defendant of his core *Miranda* rights. Investigator Alcover's signature appears at the bottom of the page, but not the Defendant's. No witnesses signed the sworn statement despite several other law enforcement officers available to do so on the scene.

6. The Defendant has no prior criminal history or contact with law enforcement. He has never been advised of his *Miranda* rights before and did not appreciate the important constitutional principles contained therein nor the serious effect of their waiver.

7. The Defendant was arrested on July 31, 2007 for the above offenses and is now charged by petition in juvenile court.

MEMORANDA OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS

I. STANDARDS OF REVIEW IN MIRANDA ANALYSIS

In *Miranda v. Arizona*, 384 U.S. 436, 471-472 (1966), the Supreme Court stated:

"We hold that an individual held for interrogation must be clearly informed that he has a right to consult with a lawyer and to have a lawyer present with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead."

In *Miranda* the Supreme Court held that in order to protect an accused's Fifth Amendment privilege against self-incrimination during the inherently coercive custodial interrogation setting, certain procedural safeguards must be employed. The Supreme Court expressly recognized the importance of informing a suspect of his right to have an attorney present during questioning, calling it "indispensable to the protection of the Fifth Amendment privilege." id.

A plethora of state court and federal cases have been decided since *Miranda* which give insight and direction for Courts to follow in assessing whether a confession or admission was obtained illegally.

Miranda itself provides that a suspect may waive his *Miranda* rights, but must do so "voluntarily, knowingly and intelligently." *Miranda*, 384 U.S. at 475, 86 S.Ct. 1602. A court

considering a waiver of *Miranda* rights conducts a two-pronged inquiry under a totality of the circumstances standard. *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). The standard for a waiver of a constitutional right was first articulated in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), where the Court explained that waiver is "an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Id.* at 464, 58 S.Ct. 1019.

Whether the rights were validly waived must be ascertained from two separate inquiries: First, the relinquishment of the right must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. *Ramirez v. State*, 739 So.2d 568, 575 (Fla. 1999).

II. JUVENILE CONFESSIONS GENERALLY

The Supreme Court has explained that the "totality of the circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved." *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979). This approach includes evaluation of the juvenile's age, experience, education, background, and intelligence, and allows courts "to take into account those special concerns that are present when

young persons, often with limited experience and education and with immature judgment, are involved." *Id.* In addition, a suspect's limited intellectual ability factors significantly into the determination of whether there is a valid waiver. *See, e.g.,* *Cooper v. Griffin*, 455 F.2d 1142, 1145 (5th Cir.1972)

Whether the waiver of the *Miranda* rights is in writing is one more factor to consider in evaluating the totality of the circumstances. *Ramirez v. State*, 739 So.2d 568, 578 (Fla. 1999) Where a confession is obtained after the administration of *Miranda* warnings, the State bears a "heavy burden" to demonstrate that the defendant knowingly and intelligently waived his or her privilege against self-incrimination and the right to counsel, especially where the suspect is a juvenile. *Ramirez* at 575 (Fla. 1999).

The "totality of the circumstances" to be considered in determining whether a waiver of *Miranda* warnings is valid based on the two-pronged approach of *Moran* may include factors that are also considered in determining whether the confession itself is voluntary. *See* *Sliney*, 699 So.2d at 669; *see also* *State v. Sawyer*, 561 So.2d 278, 284-85 (Fla. 2nd DCA 1990). The factors that we consider relevant here include: (1) the manner in which the *Miranda* rights were administered, including any cajoling or trickery; *see* *Miranda*, 384 U.S. at 476, 86 S.Ct. 1602; *Brewer v. State*, 386 So.2d 232, 237 (Fla.1980); (2) the suspect's age, experience, background and intelligence, *see* *State v. S.L.W.*, 465 So.2d 1231, 1232 (Fla.1985) (quoting *Fare*, 442 U.S. at 724-25, 99 S.Ct. 2560); *Doerr v. State*, 383 So.2d 905, 907 (Fla.1980); (3) the fact that the suspect's parents were not contacted and the juvenile was not given an opportunity to consult with his parents before questioning, *see* *Doerr*, 383 So.2d at 907; (4) the fact that the questioning took place in the station house, *see* *Drake*, 441 So.2d at 1081; and (5) the fact that the

interrogators did not secure a written waiver of the *Miranda* rights at the outset, *see* Sliney, 699 So.2d at 669 n. 10; *Traylor*, 596 So.2d at 966.

In *Brancaccio v. State*, 773 So.2d 582, 583-584 (Fla 4th DCA 2001) the appellate court stated that, "For a juvenile's confession, the relevant circumstances include: (a) the manner in which the police administered *Miranda* rights, (b) the juvenile's age, experience, education, background and intelligence, (c) whether the juvenile had an opportunity to speak with his/her parents before confessing, and (d) whether the juvenile executed a written waiver of the *Miranda* rights prior to making the confession. *See also J.P. v. State*, 895 So.2d 1202, 1204 (Fla. 5th DCA 2005).

The *Brancaccio* Court quoted the Florida Supreme Court in *Ramirez v. State*, 739 So.2d 568, 575 (Fla. 1999) and stated that, "It is simply inappropriate for the police to make a representation intended to lull a young defendant into a false sense of security and calculated to delude him as to his true position at the very moment the *Miranda* warnings are about to be administered."

In *Brown v. Crosby*, 249 F. Supp. 2d 1285, (U.S. District Court, SD Fla. 2003), the Southern District Court, upon an amended petition for writ of habeas corpus, conducted a thorough analysis of confessions and admissions of a juvenile in a criminal case and stated, "The requirement of "knowing and intelligent" waiver implies a rational choice based upon some appreciation of the consequences of the decision."

"It must be noted that Brown's "mental capacity," while relevant, is not the pertinent constitutional standard for reviewing a *Miranda* waiver, as the ultimate question the Court must answer is not one of Brown's mere capacity to understand, but whether Brown actually

understood the nature of his rights, and the consequences of waiving those rights, on July 16, 1991." *Brown* at 1299.

"Moreover, even if presumed correct, the finding that Brown had the "mental capacity to understand the *Miranda* warnings given him" cannot be accorded significant weight for purposes of determining the validity of Brown's waiver, as it was not accompanied by any findings concerning whether the warnings actually given to Brown were themselves adequate, or were given in a manner which would allow for the requisite understanding." *Brown* at 1300.

The *Brown* Court went on to state that, "Several courts have held that the fact that a juvenile suspect has a subnormal IQ, and that the rights are merely read to the suspect verbatim, without the concepts being carefully or fully explained, or the suspect's answers being explored, weighs very strongly against a finding of waiver."

III. THE REQUIREMENT TO GIVE CORE MIRANDA WARNINGS

An individual held for interrogation must be clearly informed that he has a right to consult with a lawyer and to have a lawyer present with him during interrogation. This warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. *Miranda v. Arizona*, 384 U.S. 436, 471-472 (1966).

The Supreme Court has never indicated that Miranda requires any precise formulation of the warnings given criminal defendants. However, while no "talismanic" language with regard to the precise wording of the warnings is required, several decisions of the Supreme Court have specifically recognized the importance of informing suspects of their right to the presence of counsel during custodial interrogation. *See California v. Prysock*, 453 U.S. 355 (1981) (holding,

among other things, that warnings were adequate since the defendant was told of his right to have a lawyer present prior to and during interrogation); *Fare v. Michael C.*, 442 U.S. 707, 717 (1979) (reaffirming principle that "to use statements obtained during custodial interrogation of the accused, the State must warn the accused prior to such questioning of his right ... to have counsel, retained or appointed, present during interrogation.").

Recently, during the 2001 Supreme Court term, Justices Breyer, Stevens, and Souter wrote separately in *Bridgers v. Texas* to explain that their denial of certiorari in that case should not be viewed as approval of warnings which did not inform a suspect of the right to the presence of counsel *during* questioning. *Bridgers*, 532 U.S. 1034, 121 S.Ct. 1995.

Specifically, Justice Breyer expressed concern that "the warnings given here say nothing about the lawyer's presence during interrogation. For that reason, they apparently leave out an *essential* Miranda element." *Id.* (emphasis added).

In addition, it must be noted that many of the federal court of appeals, including the Eleventh Circuit Court of Appeals, have recognized the importance of informing suspects that they have the right to have a lawyer present prior to and during interrogation. *See United States v. Contreras*, 667 F.2d 976, 979 (11th Cir.) (warnings adequate where they advised of "right to consult with an attorney prior to questioning, to have an attorney present during questioning, and to have counsel appointed"), *cert. den.*, 459 U.S. 849, 103 S.Ct. 109, 74 L.Ed.2d 97 (1982); *Caparrosa v. Gov't of Canal Zone*, 411 F.2d 956 (5th Cir.1969) (warnings inadequate where they failed to inform of right to counsel present during his interrogation); *Atwell v. United States*, 398 F.2d 507 (5th Cir.1968) (warning inadequate where it "does not comply with Miranda's directive that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation"); *Chambers v. United States*,

391 F.2d 455, 456 (5th Cir.1968) (warning did not comply with *Miranda* where it failed to inform defendant that "he was entitled to the presence of an attorney, retained or appointed, during interrogations"); *Windsor v. United States*, 389 F.2d 530, 533 (5th Cir.1968) ("Merely telling him that he could speak with an attorney or anyone else before he said anything at all is not the same as informing him that he is entitled to the presence of an attorney during interrogation and that one will be appointed if he cannot afford one"). *See also* *United States v. Bland*, 908 F.2d 471, 474 (9th Cir.1990) (warnings inadequate since they did not advise of right to have an attorney present during questioning); *United States v. Anthon*, 648 F.2d 669, 673 (10th Cir.) (warnings inadequate since they did not advise of right to have counsel present during questioning and of right to have attorney appointed), *cert. den.*, 454 U.S. 1164, 102 S.Ct. 1039, 71 L.Ed.2d 320 (1982).

In *B.M.B v State*, 927 So.2d 219, 223 (Fla. 2nd DCA 2006), the 2nd DCA commented in a case where a juvenile was presented a waiver of rights form that:

"Although the actual wording of the written form may seem relatively simple and straightforward, the language embodies sophisticated 'concepts of American criminal jurisprudence', specifically, 'the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime.' Nothing in the record suggests that, at that stage of the proceedings, before the questioning began, any 'intimidation, coercion, or deception' was used to induce Appellant to waive his rights. However, whether the record established that Appellant was fully aware of 'both the nature of the right being abandoned and the consequences of the decision to abandon it' is another matter altogether."

The 2nd DCA in *B.M.B* further noted that, "What is striking about the present record,

however, is the absence of any specific factual findings addressing the threshold issue of whether Appellant elected to waive each of his rights 'with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."

IV. THE VOLUNTARINESS OF THE WAIVER AND THE CUSTODY REQUIREMENT

In *Caso v. State*, 524 So. 2d 422, 423 (Fla. 1988) the Florida Supreme Court outlined the Federal precedent regarding the "custody" requirement in *Miranda* analysis. The Court stated that, "The procedural safeguard (of Miranda) does not, however, apply outside the context of the inherently coercive custodial interrogations for which it was designed. The police are required to give *Miranda* warnings only when the person is in custody. In determining whether a suspect is in custody , the ultimate question is simply whether there is a formal arrest or restraint of freedom of movement of the degree associated with formal arrest. As this Court and the United States Supreme Court have previously recognized, the only relevant inquiry is how a reasonable man in the suspects's position would have understood his situation."

The State has the burden of showing by a preponderance of the evidence that the confession was voluntary. *Roman v. State*, 475 So. 2d 1228, 1232 (Fla. 1985).

"Because *Miranda* rights are not required to be read to suspects unless they are undergoing custodial interrogation, it follows that a person who has been read his *Miranda* rights would reasonably assume that he is not free to leave." *Raysor v. State*, 796 So.2d 1071, (Fla. 4th DCA 2001).

Additionally, the *Raysor* Court analyzed *United Sates v. Mendenhall*, 446 U.S. 544, 100 (1980) and noted that, "The *Mendenhall* Court recognized that a seizure could occur where the use of language or tone of voice indicating that compliance with the officer's request might be

compelled. In the present case, the officer's language, i.e., the giving of Miranda warnings, gave the unmistakable message that the appellant was in custody. The only way appellant could have felt free to leave would have been for him to have assumed that the officer was wrong in advising him that he was entitled to court appointed counsel if he could not afford counsel right there and then." *Raysor* at 1072.

"Although the encounter between Poitier and the agents began as a consensual one, we conclude that when the agents stated that they suspected Poitier of carrying drugs and read her *Miranda* rights, at that point a reasonable person would not have felt free to leave. The accusation, coupled with *Miranda* warnings, created a sufficient show of authority to effectively restrain Poitier's freedom of movement." *United States v. Poitier,* 818 F. 2d 679, 683 (8th Cir. 1987).

CONCLUSION

The Defendant juvenile Michael Perez was in custody for *Miranda* purposes. The *Miranda* warnings given were legally deficient. Law enforcement did not adhere to the required prerequisite obligations when interrogating the juvenile defendant. In the instant case, the State cannot meet their heavy burden in establishing the Defendant's admissions were knowingly, voluntarily and intelligently made.

WHEREFORE the Defendant, Michael Perez, respectfully requests this Court to enter an Order suppressing any statements made by Defendant in violation of his Constitutional rights and for any other relief as this Court deems just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the OFFICE OF THE STATE ATTORNEY, Hillsborough County Courthouse Annex, Tampa, Florida 33602, by hand delivery, this ____th day of October, 2007.

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