

IN THE THIRD DISTRICT COURT OF APPEAL

STATE OF FLORIDA
v.
JABBAR WOODS



On Appeal from the Circuit Court of
Miami-Dade County, Florida

Florida v. Woods

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REFERENCES TO THE RECORD

References to the Record are in the following form: (T{rial transcript} v{olume} p{age}). The transcript of the suppression hearing consists of two volumes. Citation to the suppression

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STATEMENT OF THE CASE

On December 20, 1995, Jabbar Woods was indicted and charged with the capital murder of Donald Porter. The grand jury also returned three additional counts charging Woods with armed burglary and armed robbery. A timely motion was made to suppress Woods' statement was made. An evidentiary hearing was held on October 9th and 14th, 1997. The motion was denied without written findings. Trial commenced on all counts on December 8, 1997. Woods was found guilty by a jury and sentenced to life in prison without the possibility of parole. A timely motion was made for a new trial, which was denied. This appeal followed.

REQUEST FOR ORAL ARGUMENT

Oral argument is respectfully requested to assist the Court in framing the issues and to aid in the disposition of this appeal.

Statement of Facts

On March 7, 1995 Donald Porter arrived at his home in a residential area of Dade County, Florida. Four men had lain in wait for him in the bushes in front of his house. When Porter stepped out of the vehicle, the lochetit group left their redoubt and opened fire. Porter made it to the door of his home where his companion, Alicia Higgs, was about to open the door. The four men ran into the house, pushing down the door and stole both cash and drugs before fleeing in a stolen car. At some time while the robbery was in progress, Donald Porter died.

When the police arrived, Alicia Higgs told them that she recognized one of the robbers as Lacarvia Gamble, (T.v.V p.554) who had recently been dismissed from his employment by Donald Porter. (T.v.V p.558) The homicide investigation quickly focused on Gamble. Higgs identified Gamble as one of the men who had killed Donald Porter and who had come to her house. In another photographic line-up she identified Fred Wilson. (T.v. VI p.719-721) Police officers found Wilson near the residence of Donald and Jermaine Randolph. A search of the residence was conducted, and the murder weapon was recovered. (T.v.VI p.724) When shown a photographic line which contained Germaine Randolph's photograph, Alicia

Higgs stated that she was "100% sure" that Randolph was one of the killers. (T. v.VI p. 723) Jermaine Randolph was indicted for first degree murder by the grand jury.

Further police investigation developed information suggesting that Jabbar Woods might be involved in the commission of the crime. Having no other evidence, however, the police did not proceed against Woods, though he was on bond in a case and his address was known to them.

Woods appeared in court before the Honorable Leslie Rothenburg in an unrelated matter at 9:00 am on Monday morning, December 4, 1995. His next encounter with the legal system occurred when, in the early morning of December 5, Woods was assembling with other individuals at a street corner at some time between 11:00 pm on December 4 and 2:00 am on December 5th, 1995. The accounts of law enforcement's initial encounter with Woods vary wildly from Woods' own account. According to Officer Clayton, as a preemptive crime measure, identities of individuals are checked in an effort to alert those who might be disposed to commit an infraction of the law that the police are in the area and prepared to arrest anyone so inclined. At approximately 2:00 am, Clayton approached a street corner where those who might be disposed to commit violations of the law might assemble. (T.v.VI p.687-690)

Coming upon a group of men Woods was asked for his name (T.v.VI p.688) and provided the name Jerry Pitts,(T.v.VI p. 689) which is the name he was known by in the case in which he had earlier appeared that same day.

The officer claimed that he attempted to verify the existence of the name Jerry Pitts, but advised that there was no record of such a name in the comprehensive name system maintained by Dade County; a system so sophisticated that it contains the name of every known person, whether living or dead. (T.v.VI p.690) This remarkable collection of names, however, did not contain the name Jerry Pitts or the grand theft case for which Woods had made the court appearance earlier in the day. (T.v.VI p.690) Because of the deficiency of the remarkable computer system, Officer Clayton asked Woods to voluntarily accompany him to the police station in order to verify his identity. (T.v.VI p.690) Based on Clayton's promise to return Woods to the streetcorner assembly within a period no greater than twenty

minutes, Woods eagerly complied.

Woods' version of this initial encounter is quite different. He testified that while assembling with acquaintances for recreational purposes on a public street, at approximately 11:00 pm in the evening (S.v.II p.26); he was accosted by a jump-out squad and an African-American police corporal who aimed a firearm at him.(S.vII p.27) Woods testified that he provided the name Jerry Pitts because he had been admitted to bail under that name; and so was sure that when the police sought to verify his identity they would be successful as he had pending an active case in the system.

Woods claimed that after remaining in a police vehicle for approximately two hours (S.v.II p.27), he was advised by Officer Clayton that efforts to verify the name Jerry Pitts had not been successful and that it was required that Pitts be transported to the police station so that his identity could be verified. (S.v.II pp.27,28)

Woods testified that on the streets of Miami ignoring a police officer's request is fraught with peril since a request is a command and defiance is often accompanied by the application of force. (S.v.II p.29)

Here, both Woods and Officer Clayton's testimonies coincide as both report transportation from the recreational site to the downtown office of the Miami Police Department. There, unfortunately, the testimonies again diverge.

Clayton testified that after fingerprinting Woods, (T.v.6 p.692) who voluntarily complied in eagerness to return to the assembly street corner within twenty minutes it was learned that Pitt's real name was Jabbar Woods. The remarkable computer system contained an annotation requesting that any officer who might come into contact with Woods was to telephone or page Detective Goldston of the homicide bureau of the Metro-Dade police department. (T.v.6 p.696) Officer Clayton paged Detective Goldston who asked him to hold Woods until a homicide detective could respond to the scene to engage Woods in a voluntary chat. (T.v.6 p.696) Because of the difficulties suffered by Officer Clayton occasioned by Woods' use of a "false" name, Clayton advised Woods that he would be arrested for obstruction.(T.v.6 p.692) Clayton made an annotation requesting that Woods not be permitted release on bond until after an initial appearance before a judge that morning.

At approximately 4:45 in the morning, Woods was arrested on the obstruction charge, and his jail card contained the restriction prohibiting Woods' release until his bond hearing. (T.v.6 p. 70) Woods' arrest processing began at approximately 4:45 am. He was put in a holding cell with many other prisoners pending an appearance before a judicial officer that morning.

Before the scheduled bond hearing, a Miami-Dade homicide detective appeared at the Dade County jail (T.v.VI p. 660, 662) and asked Woods if he voluntarily wished to accompany the detectives to Miami-Dade police headquarters so that he could be asked questions about a homicide in which he was a witness. (T.v.VI p. 661) According to Officer McElroy, the decision to accompany was up to Woods. (T.v.VI p. 661) Woods then accompanied the officers. (T.v.VI p. 661)

According to Woods, he was told by Dade County Jail corrections officers that it was mandatory for him to accompany the homicide detectives.(S.v.2 p. 31) In any event, Woods was released from the Dade County jail in company of the homicide detectives. Not only did he not appear before a judicial officer that morning, but the misdemeanor obstruction case against him was not pursued.

Woods had no sleep on the evening of the December 5, 1995; (S.v.II p.29, 32, 33, 38)as he had been up all night since his encounter with Officer Clayton which occurred at some time between 11:00 pm and 2:00 am on December 5th.

Upon his arrival at the police station later that morning, (S.v.II p. 63) Woods was asked if he would help the officers provide information in a homicide other than the case which is the subject of this appeal. He was interrogated concerning this unrelated homicide. (S.v.II p.32, 69) Woods was given his **Miranda** warnings and agreed to help the officers. (S.v.II p.69) Both Woods and the officers agreed that Woods voluntarily provided information on the crime to which he had been a witness. (S.v.II p.70) Woods accompanied the officers on a field trip which involved visiting relevant locations and a meal at Burger King. (S.v.II p.71)

The meal and their tour at an end, Woods was returned by the detectives to a interrogation room and locked inside. McElroy testified that Woods was not handcuffed while in the room. Woods' testimony was to the contrary. (S.v.II p.33) McElroy did not testify about Woods' efforts to sleep in the interrogation room, but Woods testified that from time to time

a white officer with a mustache would open the door, (S.v.II p.34, 73) give him cigarets and beverages to help him stay awake, and stop Woods from sleeping by reminding him that he was not at police headquarters for somnolence. (S.v.II p.74) This testimony was unrebutted.

At approximately 8:45 pm on December 6th, (T.v.VI p.730) Detective Goldston met with Woods and told him that he was being investigated for the murder of Donald Porter. Woods denied involvement. (T.v.VI p.739) Goldston interrogated Woods for four hours. According to Woods, Goldston threatened him with federal organized crime prosecution and promised him a sentence of no more than seven years if he would admit his involvement. (T.v.VI p.813) According to Goldston, no such threats or promises were made. According to Goldston, after initial denials, Woods spontaneously admitted his involvement close to midnight or thereafter in the early morning hours of December 7, 1995. (T.v.VI p. 813) For the next six hours, Woods was kept alone in the interrogation room until a court reporter arrived.

At approximately 6:00 am, the stenographer finished transcribing Woods statement. At the time the statement was presented to him for signature, he had been awake for at least fifty hours.

Woods was indicted and charged with first degree murder. A timely motion to suppress his statement was made and denied. Trial commenced on December 8, 1997. Woods was found guilty by a jury and sentenced to life in prison without the possibility of parole. A timely motion was made for a new trial, which was denied. This appeal followed.

SUMMARY OF ARGUMENT

In 1940 the Supreme Court cautioned the courts of Florida that inquisitorial interrogation techniques violated the Fourteenth Amendment. A confession which is the product of sleep deprivation is coercive and offends the Constitution.

Woods' warrantless and illegal detention by Officer Clayton occurred during a police "pro-active" show of force so as to render the confession a result of the illegal detention and therefore illegally obtained.

Finally, assuming that the arrest of the Defendant was based on probable cause, his scheduled appearance before a magistrate was frustrated in order to facilitate a tag-team relay interrogation which eventually led to his confession. Because he was denied this basic due process right, his confession should be suppressed.

ARGUMENT

A CONFESSION OBTAINED THROUGH THE USE OF SLEEP DEPRIVATION IS CONSTITUTIONALLY INVALID

It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired. **Ashcraft v. Tennessee**, 322 U.S. 143 n. 6 (1944) Both the state and federal courts have applied the name of "inquisition" to prolonged examination of suspects. **Ashcraft** at n. 8, {citations omitted}. The analogy was the fact that old inquisition practices included questioning suspects in secret places, away from friends and counsel, with notaries waiting to take down "confessions" and with arrangements to have the suspect later confirm the truth of his confession in the presence of witnesses who took no part in the inquisition. **Ashcraft, supra**. That these practices are consigned to a history encompassing both the Venetian State inquisitors and the religious excesses is but wishful thinking. They were engaged in here and included a prosecutor who mocked the Defendant while making reference to the torture. This Court cannot countenance the practice; a practice which time and time again has been condemned by the Supreme Court.

The Constitution requires the sacrifice of neither security nor liberty. The Due Process Clause does not mandate that the police forgo all questioning, or that they be given carte blanche to extract what they can from a suspect. "The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." **Culombe v. Connecticut, supra**, at 602.

In **Schneckloth v. Bustamonte**, 412 U.S. 218 (1973) the Court held that in determining

whether a defendant's will was over-borne in a particular case, the Court has assessed the totality of all the surrounding circumstances -- both the characteristics of the accused and the details of the interrogation. One of the factors taken into account is sleep deprivation and the length of detention, e. g., **Chambers v. Florida**, 309 U.S. 227(1940); the repeated and prolonged nature of the questioning, e. g., **Ashcraft v. Tennessee**, 322 U.S. 143; and the use of physical punishment such as the deprivation of food or sleep, e. g., **Reck v. Pate**, 367 U.S. 433 (19xx). In all of these cases, the Court determined the factual circumstances surrounding the confession, assessed the psychological impact on the accused, and evaluated the legal significance of how the accused reacted. **Culombe v. Connecticut**, *supra*, at 603.

The State in this case claims that the confession was entirely voluntary and introduces a signed document as proof. However, as the Court said in **Haynes v. Washington**, -- U.S. -- (19xx), it is not surprising that a confession which is the subject of coercion would contain a self-validating claim that it was obtained with the willing and voluntary cooperation of the accused. It is exceedingly unlikely that the State would seek to introduce a document that did not contain such a claim.

The State claims here that the confession was free and voluntary. The State claims here that the defendant was well treated, that no promises were made to the Defendant, who, after initially refusing, simply confessed for no apparent reason. The Defendant claims that he was threatened with federal prosecution if he did not confess; he was mistreated by being denied sleep for fifty hours, and he was promised a sentence of no greater than seven years if he cooperated. The only evidence of the interrogation is the Defendant's confession itself. No video or audiotapes were made, and Officer Goldston's notes of the interview were destroyed by him. The Circuit Judge found the police officer credible and the Defendant untrustworthy, but the analysis does not end there. It must be remembered that it is the State who chose these secret, inquisitorial techniques, and having chose them, must live by them.

In 1944 the Supreme Court said of a similar interrogation that, "the testimony follows the usual pattern and is in hopeless conflict." **Ashcraft v. Tennessee**, *supra*. The Supreme Court noted in that case that the Defendant claimed that he was threatened and abused in several ways; the officers, on the other hand, swore that they were kind and considerate. The Court found specifically that such disputes "are an inescapable consequence of secret

inquisitorial practices." **Ashcroft, supra.** Worse,

"And always evidence concerning the inner details of secret inquisitions is weighted against an accused, particularly where here, as here, he is charged with a brutal crime, or where, as in many other cases, his supposed offense bears relation to an unpopular economic, political or religious cause."

Ashcroft, supra.

The Supreme Court held the confession in Ashcroft, the product of a mere thirty-six hours of sleep deprivation to be compelled and involuntary as a matter of law. In **Chambers**, the defendants were kept awake for only twenty-four hours, but that period followed five days of intensive interrogation. Counsel has been unable to find a reported case in which an interrogation was accompanied by sleep deprivation greater than thirty-six hours. **See, Leyra v. Denno**, 347 U.S. 556 (1954). It seems that Jabbar Woods and the Miami-Dade Police Department in 1997 share the dubious distinction of together producing a confession which was the product of fifty hours' relay interrogation; the highest number in recorded American legal history.

Despite the Court's warning, in fifty-five years, little has changed.

A defendant who is physically and mentally strained cannot willfully and voluntarily waive his Fifth Amendment rights. Art. I, Sec. 9 and 16, Fla. Const.; Amend. V and XIV, U.S. Const. ****Moran v. Burbine****, 475 U.S. 412 (1986); ****Miranda v. Arizona****, 384 U.S. 436 (19xx), ****Thompson v. State****, 548 So. 2d 198 (Fla. 1989). To determine this, a court must consider the totality of circumstances, ****Voorhees****, ****supra****; ****Taylor v. State****, 596 So2d 957 (Fla. 1992). Even if ****Miranda**** warnings are given before interrogation begins, evidence deemed to have been coerced from a defendant must be excluded. ****Colorado v. Connelly****, 479 U.S. 157, 163 (1986).

To determine whether testimonial evidence supplied by a defendant was voluntary, a court must ask whether, in the totality of the circumstances, law enforcement officials obtained the evidence by overbearing the will of the accused. **Haynes v. Washington**, 373 U.S. 503, 513-14 (1963); **Townsend v. Sain**, 372 U.S. 293, 307 (1963). Where a defendant alleges that his statement was the product of coercion, the voluntariness of the confession must be "determined by an examination of the totality of the circumstances." **Traylor v. State**, 596 So.2d 957, 964 (Fla.1992).

The factual inquiry centers upon (1) the conduct of law enforcement officials in creating pressure and (2) the suspect's capacity to resist that pressure. **Mincey v. Arizona**, 437 U.S. 385, 399-401 (1978); **Davis v. North Carolina**, 384 U.S. 737, 752 (1966). It is not necessary to blind ourselves to what experience unmistakably teaches: that even apart from the express threat, the basic techniques present here -- the secret and incommunicado detention and interrogation -- are devices adapted and used to extort confessions from suspects. Of course, detection and solution of crime is, at best, a difficult and arduous task requiring determination and persistence on the part of all responsible officers charged with the duty of law enforcement. And, certainly, not all interrogation of witnesses and suspects is impermissible. Such questioning is undoubtedly an essential tool in effective law enforcement.

What turns permissible interrogation into a violation of constitutional rights is a question of fact. Factors that contribute to this are extended interrogatories, refusal to allow the defendant to sleep, holding the defendant incommunicado, and rotating interrogation teams. **Spano v. New York**, 360 U.S. 315 (1959); **Chambers v. Florida**, 309 U.S. 227 (1940); **Breedlove v. State**, 364 So. 2d 495 (Fla. 4th DCA), *cert denied* 374 So. 2d 101 (Fla. 1978); **State v. Sawyer**, 562 So. 2d 278 (Fla. 2d DCA 1990). Under these circumstances, a defendant's statement is deemed involuntary and it must be suppressed, despite any written waivers. *See generally* **Schneckloth v. Bustamonte**, 412 U.S. 218 (1973). Specifically, denial of sleep is a factor. **Martin v. Wainwright**, 770 F.2d 918, 925-26 (11th Cir. 1985). Sleep deprivation is a form of torture, and testimonial evidence obtained by means of torture or other physical coercion violates the due process clause of the Fifth and 14th Amendments and cannot be used at trial. **Brown v. Mississippi**, 297 U.S. 278, 287-87 (1936).

The purpose of **Miranda** is to prevent "repeated rounds of questioning to undermine the will of the person being questioned." **Miranda** at 70 (quoting **Michigan v. Mosley**).

In the present case, the defendant was too physically and mentally drained to voluntarily waive his Fifth Amendment right against self-incrimination. At the time he gave a formal statement, he had been held in custody against his will for over forty-eight hours on highly questionable charges. He was awake for over two straight days, and he was never given proper quarters in which to rest. In fact, any time he tried to sleep, the police awakened

him. In addition, he was physically handled by the police. He was also not allowed access to his friends, his family or his attorney. Finally, he was passed around from officer to officer. Under these circumstances, there is no feasible way to conclude that the defendant willfully waived his rights. Instead, he caved in to the torments of the police and spoke only to avoid further abuse.

This case illustrates a particular facet of police utilization of improper methods. While history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence, the coercive devices used here were designed to obtain admissions which would incontrovertibly complete a case in which there had already been obtained, by proper investigative efforts, competent evidence sufficient to sustain a conviction. The procedures here are no less constitutionally impermissible, and perhaps more unwarranted because so unnecessary. There is no reasonable or rational basis for claiming that the oppressive and unfair methods utilized were in any way essential to the detection or solution of the crime or to the protection of the public. The claim, so often made in the context of coerced confession cases, that the devices employed by the authorities were requisite to solution of the crime and successful prosecution of the guilty party cannot here be made.

Official over-zealousness of the type which vitiates the petitioner's conviction below has only deleterious effects. But it is the deprivation of the protected rights themselves which is fundamental and the most regrettable, not only because of the effect on the individual defendant, but because of the effect on our system of law and justice. Whether there is involved the brutal "third degree," or the more subtle, but no less offensive, methods here obtaining, official misconduct cannot but breed disrespect for law, as well as for those charged with its enforcement.

As such, his confession must be suppressed.

THE CONFESSION WAS A RESULT OF AN ILLEGAL SEIZURE

The police in this case had not reasonable grounds to arrest the defendant solely because he supplied a false name.** *Voorhees v. State*, 699 So. 2d. 602 (1997); *Steele v. State*, 537 So.2d 711 (2nd D.C.A. 1989); *Leland v. State*, 386 So.2d 622 (3rd D.C.A. 1980). **Moreover, the police were unauthorized to hold the defendant to aid in their investigation.** *Voorhees*,

Wong Sun v. United States**, 371 U.S. 471, (1963).

A review of the facts in **Voorhees** is helpful. In that case, the defendant and codefendant committed a murder in Pasco County, Florida on January 3, 1992. Several days later, they arrived in Wayne County, Mississippi. On January 8, 1992, elderly residents of Wayne County called the police to report two drunken men wandering about. At 3:30, the police arrived at one residence, where the homeowner was serving the defendants coffee.

The police officer asked the codefendants if they would like to spend the evening in the local jail, where they could be fed, avoid the cold rain, and sleep. The codefendants agreed to join the officer and he drove them to the jail. When they arrived, although they were not under arrest, they filled out arrest cards. The defendants used false names and addresses. They then slept in the cell.

As the codefendants slept, the Mississippi officers checked the information but found nothing. When the defendant awoke at 7:00 am, he was told that he was not free to leave until he gave his proper name. The defendant then told the police that the fake name was accurate, and gave them the name of a friend in Jacksonville, Florida who could verify it. However, the friend told the Mississippi police that the name was fake and the Pasco County police were looking for the defendants in connection with a murder. At 2:00, the Mississippi police called Pasco County and verified the information. They then held the defendant so the Pasco police could question him. The defendant eventually gave two statements—one to the Pasco police, and one to a fellow inmate. At trial, the defendant sought to suppress those statements.

The Florida Supreme Court established that the initial confrontation was consensual. However, the court found that the period of detention from 7:00 am to 2:00 pm, during which the Mississippi police sought to determine the defendant's real name was illegal:

The defendants existed in a type of legal "limbo" in which they had no access to counsel or the judiciary, and, not having been formally arrested, had no ability to post bond.

Following this, when the Mississippi officers were told about the Pasco County investigation, the detention again became legal because the Pasco County police had probable cause to

arrest the defendants.

The Supreme Court then considered whether the two statements made after 2:00 should be suppressed following the previous illegal detention. First, the Court noted that the exclusionary rule should be exercised to deter police misconduct and to maintain the integrity of the judicial system. See also **Wong Sun v. United States** 371 U.S.471, 487-88 (“The more apt question in such a case is whether...[the evidence] has been come by at exploitation of that illegality” (quoting John MacArthur Maguire, *Evidence of Guilt* 221 (1959)).

The Court then emphasized that the Mississippi police did not hold the defendant in an effort to obtain more evidence about the Florida murder. Therefore, the rule of *Wong Sun* did not apply:

It is also important to keep in mind that the exclusionary rules theory of deference operates ‘only if an excludable piece of evidence is that target of police activity.’ **Collins v. Beto**, 348 F.2d 823 (5th Cir. 1965). In the instant case, the purpose of the admittedly illegal detention [was] not to further the investigative efforts of the Florida authorities.

The Supreme Court went on to explain that had the Mississippi police intended to elicit information regarding the homicide investigation, then the deterrent goals of *Wong Sun* would be triggered:

It is much more likely, however, that an officer would illegally arrest a suspect in the hopes that an interrogations officer of the same force, investigating the same crime and conveniently left unaware of the illegality, might obtain the suspect’s confession.

Id., quoting **People v. White**, 512 N.E. 2d 677 (Ill. 1987).

Accordingly, under these circumstances, the Supreme Court declined to reverse the trial court’s decision to deny the order to suppress.

This observation may have some application to the lack of day to day coordination between police departments in central Mississippi and central Florida, but has little application to the close working environment which obtains in South Florida; where those arrested by either the Miami-Dade Police Department or the City of Miami Police Department are taken to the

same facilities maintained by the Department of Corrections of the State of Florida and brought before circuit judges of the Eleventh Judicial Circuit.

In the present case the officer's motive in maintaining an illegal detention fall squarely within those reasons prohibited by **Voorhees**, **White** and **Wong Sun**. Here, the officer was fully aware of the pending investigation, and for this reason he detained the defendant under the pretext of obstruction by disguise.

As **Voorhees** explains, detention solely for the purpose of determining an individual's real name is illegal. The illegality continued when the police collectively detained the defendant in order to facilitate Detective Goldston's interrogation. This fact is further made manifest by the arresting officer's refusal to allow the defendant to appear before a magistrate and their refusal to permit the defendant to post bond.

It is not clear why Woods was detained at the police station. Officer Clayton claimed that Woods' was being arrested for obstruction in giving a false name. However, it is also clear that this decision was not made until Clayton read Detective Goldston's request to detain Woods in the computer. Though the State did not argue the point in the Motion to Suppress, the Circuit judge applied the "tipsy coachman" rule and held that Goldston had probable cause to arrest Woods, so that the validity of the initial detention was irrelevant.

Probable cause for arrest exists where an officer "has reasonable grounds to believe that the suspect has committed a felony. The standard of conclusiveness and probability is less than that required to support a conviction." **Blanco v. State**, 452 So.2d 520, 523 (Fla.1984). The question of probable cause is viewed from the perspective of a police officer with specialized training and takes into account the "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." **Schmitt v. State**, 563 So.2d 1095, 1098 (Fla. 4th DCA 1990); **Walker v. State**, 707 So.2d 300 (Fla. 1997). When reviewing a trial court's determination of a motion to suppress, an appellate court will look to all of the surrounding facts and circumstances in the light most favorable to sustaining the lower court's ruling. **Terry v. State**, 668 So.2d 954, 958 (Fla.1996).

The circuit judge's finding of probable cause for a Goldston, but not a Clayton arrest leads inexorable to a discussion of another principle with a less jocular name, the "fellow officer" rule. This rule was recently explained in the case of **Smith v. State**, 1998 WL 771419 (3 D.C.A.1998)

The "fellow officer" rule, first adopted in *Whiteley v. Warden*, 401 U.S. 560, (1971), allows an arresting officer to rely upon the strength of a directive or bulletin on a suspect and assume probable cause exists to arrest the particular person identified in the bulletin; thus, the arresting officer is not required to have sufficient firsthand knowledge to constitute probable cause. *See* *Carroll v. State*, 497 So.2d 253 (3d DCA 1985). It is enough that the police officer initiating the chain of communication either had first-hand knowledge or received his information from some person, usually the victim, official source, or eye witness, who it seems reasonable to believe is telling the truth. *See*, *Salas v. State*, 246 So.2d 621, 622 (3d DCA 1971). The "fellow officer" rule is applicable whether the communication is from a superior, a fellow officer with the same police department, between different agencies or agencies at different levels within a state, between officials in different states, and between federal and state or local authorities. See generally 3 Wayne R. LaFave, *Search and Seizure*, § 3.5(b), at 257-58 (1996). Thus, when a law enforcement officer with information amounting to probable cause directs an officer who lacks the knowledge to make the arrest, the directing officer's knowledge is imputed to the arresting officer. See *Illinois v. Andreas*, 463 U.S. 765, 771-72 n. 5, (1983) (explaining that the knowledge of one official is "presumed shared" by others cooperating in an investigation). The "fellow officer" rule has been applied in cases where only a reasonable suspicion, and not probable cause, was required. See *United States v. Hensely*, 469 U.S. 221 (1985); *United States v. Robinson*, 536 F.2d 1298, 1300 (9th Cir.1976) (noting that although *Whiteley* involved probable cause rather than founded suspicion, "we perceive no substantive difference between the two doctrines that would warrant a different result"). *Hensely* was an automobile stop case, not the detention of a citizen on the street. The question, as articulated by the Court in *United States v. Sharpe*, 470 U.S. 675 (1985) is:

"whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*, at 20.

Sharpe, *supra*.

The Fourth Amendment is not, of course, a guarantee against all searches and seizures, but only against unreasonable searches and seizures. It is the Defendant's position that he was not free to go when Officer Clayton "asked" him to come back to the police station in order to verify his identity. But under the analysis of the circuit judge, this is irrelevant, since Detective Goldston already had probable cause to arrest the defendant. This point was not

argued by the prosecutor, nor testified to by Goldston, at least in part because a decision was made, after consultation with the prosecuting attorney, not to seek an arrest warrant for Woods in the absence of more evidence.

In part for that reason, neither Detective Goldston nor any other Miami-Dade homicide detective “formally” arrested Woods at the time he came into Miami-Dade custody, instead, they waited until another twenty-four hours or so after the Defendant had been kept up and had undergone repeated interrogation.

If, on the other hand, the initial encounter must stand alone, i.e., without the imputation of Goldston’s knowledge to Clayton, then the question is whether a reasonable person would believe that Clayton’s invitation to the Defendant to accompany him to the police station was an arrest or not. Clayton, not suprisingly, maintains that it was a friendly invitation which could be declined. The Defendant, on the other hand, claims that a sweep of the neighborhood was conducted, that other officers were involved; that his encounter with the police lasted for some time, and finally he was a command which could only be ignored at his peril.

Given this disparity, it is useful to examine what Clayton was doing in the neighborhood at 2:00 in the morning, according to his testimony. He testified that because of a string of smash and grab robberies, the Miami Police Department had decided to become “pro-active” in the area in order to show force and demonstrate that crime would not be tolerated.

Yet this is a case in which the Defendant’s testimony is uncontradicted in its essential elements. Officer Clayton testified that the dice and card playing ne’er do wells of the street had become “blasé” about the police presence; the gist of his testimony is that the arrival of a police car was not enough to disturb them from dealing cards or rolling a die. Under these circumstances then, it is hard to see how Officer Clayton could be proactive in an effort to shake the community of delinquents up by simply arriving on the street and chatting with the card players and dice rollers about the time, weather and their identities. Instead, it would appear that a ‘sweep,’ was being conducted, and in a ‘sweep’ no one is free to go. See **Voorhees**, *supra*. While **Bostick v. Florida** provides that there is nothing improper about

an officer making an inquiry, the almost genteel environment of that case is belied here, where proactive officers are trying to make a show of force in a high crime area. Just as in **Hollinger v. State**, 681 So.2d 294 (5th D.C.A. 1996), a reasonable person in those circumstances would not have known he was free to leave, and thus an unlawful seizure had occurred. **State v. R.R.**, 697 So.2d 181 (3d D.C.A. 1997).

If, on the other hand, the fellow officer rule applies, we analyze the evidence available to Goldston to determine if probable cause existed.

Initially, this analysis was not shared by the prosecutor. (S.v II pp. 108, 109). Instead of Woods, Jermaine Randolph had been arrested-and indicted for first degree murder by the grand jury. Randolph had been identified by Alicia Higgs, who said that she was "100% sure." A search of Randolph's mother's residence was effected and the murder weapon was recovered. (S. v.II p. 103) A confession from Lacarvia Gamble, who participated in the homicide, said that "Jabbar" had also participated. There was no indication of Gamble's reliability as an informant. No effort was made to confirm any other information received from Gamble. (S.v.II p.104) Further, there was a statement from Fred Wilson's girlfriend that "Jabbar" was involved. Wilson had participated in the homicide, but there was no indication of his girlfriend's reliability as a witness, nor was any effort made to confirm any information received from her. An arrest warrant had been issued for Kenneth Butler, another participant in the homicide. At the time of Butler's arrest, a passenger in his car had been arrested and released on the scene. (S.v.II p.104) That passenger's name was Jabbar Woods, and that is the first time that the police became aware of Woods' last name.

All this information was taken to the prosecutor on the case, (S. v.II p.107), it was decided that there was insufficient evidence to arrest Woods, but that he should be brought in for questioning. (S. v.II p.109).

The circuit judge, applying the "fellow officer" rule, found that there was probable cause to arrest Woods at the time of his street encounter with Officer Clayton. This finding is clearly erroneous. While the judge correctly notes that hearsay may be used in order to establish probable cause, (S. v.II p. 128, 129)that hearsay must be accompanied by some indicia of reliability. **Draper v. United States**, 358 U.S. 307, 313 (1959) At the time Detective Goldston place the teletype request to hold Woods, there was no indicia or reliability of the information that had been received at all. In fact, that information had already lead to one first degree murder indictment which was dismissed. Neither the police nor the prosecutor acted on the basis that probable cause for Woods' arrest existed, and that is because it did not.

In the absence of probable cause, the detention and arrest of Woods was illegal. The present confession was a product of that illegal arrest, and so was obtained in direct violation of **Voorhees**, and **Wong Sun**, and it must be suppressed. This harm is not erased by the signing of a Miranda waiver form. **Voorhees, Brown v. Illinois**, 422 U.S. 590 (1975).

The Defendant was denied the right to post bail on a bondable defense and was not brought before a Magistrate within twenty-four hours.

A defendant is entitled to be released on bond any time until sentencing unless he is charged with a life or capital felony. Art.I, Sec. 14, Fla. Const., Amend VII, U.S. Const. See also Rule 3.1.1 Florida Rules of Criminal Procedure, **Kirkland v. Fortune**, 661 So.2d 395 (Fla. 1st D.C.A. 1995); **Cheatham v. Novell**, 382 So.2d 361 (4th D.C.A. 1980); **Elderbroom v. Knowles**, 621 So.2d 518 (4th D.C.A. 1993); **Swanson v. Allison**, 617 So.2d 1100 (5th D.C.A. 1993).

Furthermore, a defendant must be brought before a magistrate within 24 hours for a determination of probable cause and to inform the defendant of his rights. Rule 3.130, Florida Rules of Criminal Procedure; **Keen v. State**, 504 So. 2d 396 (Fla. 1987); **Johnson v. State**, 660 So. 2d 648 (Fla. 1995), *cert. denied* – U.S. -, 116 S.Ct. 1550, 134 L.Ed.2d 653 (1996). If this time period is extended and the extension contributes to a confession, then the confession must be suppressed. **Id.**

Moreover, refusal to allow the defendant to go before a magistrate violates the defendant's Sixth Amendment right to counsel. **Peoples v. State**, 612 So.2d 555 (Fla. 1992); **Traylor v. State**, 596 So. 2d 957 (Fla 1992). In **Traylor**, the Florida Supreme Court noted that the right to counsel can attach at three times, and that it should attach at the earliest point possible. One of these times is the first appearance. Therefore, when a trial court fails to bring a defendant before a magistrate within 24 hours, it unduly violates his right to counsel. **Id.**

In the present case, the defendant was scheduled to go before a magistrate on December 5, 1995, but Detectives McCully and Parmenter removed the defendant from the list and commenced their investigation—against the defendant's will. As such, pursuant to the acts of the police, the defendant was not brought before a magistrate within 24 hours.

This extension clearly contributed to the confession. If the defendant had been brought to court, he would almost certainly be offered "credit time served," in which case he would not be held for questioning by Detective Goldston. If he had not been release, he would have been brought to court, where a public defender would have been available to suggest that he not waive his Fifth Amendment rights. Therefore, this statement must be suppressed as a violation of his rule.

In the present case, the defendant was illegally arrested for a misdemeanor. As such, he clearly had a right to bond. There was no warrant out for the defendant, nor was there probable cause that he was responsible for the murder of Donald Porter. However, the police and the Department of Corrections ignored this right and held the defendant against his will because** **Detective Goldston left a note on the computer that he wanted to question him. This situation flies in the face of the Eighth Amendment, and the resulting confession must be suppressed.

CONCLUSION

The confession signed by Woods was obtained through unconstitutional methods. The confession is inadmissible, and the case should be remanded to the circuit court for trial without the tainted evidence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent to Robert Butterworth, Esq., Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131 this ___ day of March, 1999.

Respectfully Submitted,

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