2014 WL 980576 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-dade County

STATE of Florida, Plaintiff,
v.
Eric ELLINGTON, Dylan McFarlane, and Wayne Williams, Defendants.

No. F11-20364 A-C.
February 7, 2014.

***1** Section 15

Order on Eric Ellington's Motion to Suppress

Miguel M. De La O, Judge.

THIS CAUSE came before the Court on Defendant, Eric Ellington's ("Ellington") Motion to Suppress Confessions, Admissions, and/or Statements ("Motion"). The Court has reviewed the Motion, heard argument of counsel, reviewed cases cited by the State of Florida ("State") and Ellington, listened to the audio recording of the interrogation, and is fully advised in the premises. The Motion is granted in part, denied in part.

Ellington moves this Court to suppress all "confessions, admissions, and statements" he made to Detective Joseph Zellner ("Det. Zellner") and Sergeant Jose Granado ("Sgt. Granado") (collectively referred to as the "Officers") of the Miami Gardens Police Department ("MGPD") on August 2, 2011. Ellington raises five grounds for the Motion:

1. Ellington's mother, Ericka Love ("Love"), was not allowed to speak to Ellington as soon as she arrived at MGPD headquarters the morning of August 2, 2011.

2. The Officers did not allow Ellington to speak to his mother immediately after he requested to do so.

3. The Officers did not cease the interrogation when Ellington declared "I'm finished" and "I'm done talking."

4. The Officers continued questioning Ellington after Love stated she was getting a lawyer.

5. "[U]nder the totality of the circumstances, the police conduct in this case: interrogating a sixteen year old by leaving him alone for 90 minutes, attempting to befriend him, appealing to religion, and attempting to use his mother against him coupled with their refusal to honor his requests to terminate the interview, render any statements by the Defendant to be involuntary." Motion, ¶ 12.

I. BACKGROUND AND TESTIMONY.

The State has charged Ellington, and two co-Defendants, with two counts of First Degree Murder and Armed Carjacking, one count of Armed Burglary with Assault or Battery, and one count of Conspiracy to Commit Armed Robbery. Ellington has moved to suppress all "confessions, admissions, and statements" made to the Officers. The Court held a lengthy evidentiary

hearing on January 31, 2014 at which the Officers and Love testified. In addition, the State introduced a copy of a Waiver of Rights form signed by Ellington, and the audio and video recordings of Ellington's interview.

The Officers testified that Ellington was arrested by U.S. Marshalls the morning of August 2, 2011, before 10:15 a.m., and transported to MGPD headquarters. Det. Zellner was advised at approximately 10:15 to 10:20 a.m. about Ellington's arrest. Shortly thereafter, Det. Zellner began his hour-long commute to the MGPD headquarters. During his commute, he notified Love that her son was in custody and advised her to go to the MGPD headquarters.

Love testified that her father notified her that Det. Zellner had called their home and advised Ellington had been arrested and transported to MGPD headquarters. Love believes she arrived at the MGPD headquarters at approximately 10:00 to 11:00 a.m. and was informed that Ellington was not yet at the station. She testified she was unable to see her son for over an hour. The Officers testified that as soon as they were notified by the front desk that Love had arrived, Sgt. Granado met her in the lobby and brought her into his office, but not the interview room. Later, after Ellison demanded to see his mother, Sgt. Granado brought her into the interview room.

***2** Much of the witnesses' testimony concerned statements which are contained in the audio recording of Ellington's taped statement. [1] The Court has relied on the recording itself to determine what was said on August 2, 2011. The following statements are relevant to the determination of the Motion: [2]

(1:41:49 [3]) The interrogation of Ellington begins.

(1:54:02) Miranda warnings given to Ellington, and Ellington signs rights waiver form.

(2:14:10) Ellington to Det. Zellner: “I want you to call my mother.”

(2:29:38) Ellington to Det. Zellner: “Talk to my mother.”

(2:34:07) Ellington to Det. Zellner: “I'm finished. I want her [Love] here now, right now. Right now.”

(2:34:37) Ellington to Det. Zellner: “Go get my mom, go get my mom. Go get my mother. I'm, I'm done talking. Go get my mother.”

(2:57:25) Love enters the interview room.

(3:13:13) Love: “I'll get you a lawyer, I don't know what's going on. I'm clueless here. I'll get you a lawyer.”

(3:14:17) Love to Ellington: “Just be quiet, just listen, just listen.”

(3:18:03) Det. Zellner to Ellington and Love: “If you want I can leave you two alone. I can't offer privacy though, okay, do you understand?” Ellington: “Okay.”

(3:55:46) Love to Ellington (after he interrupts Det. Zellner): “Be quiet! Be quiet! Listen, son.”

II. APPLICABLE LAW.

Both the Florida and United States Constitutions provide a right against self-incrimination. “To safeguard the privilege against self-incrimination, a person questioned while in custody must be clearly informed as to his or her rights, including the ‘right to remain silent’ and that ‘any statement he does make may be used as evidence against him.’ A defendant may waive these

rights, but the waiver must be made voluntarily, knowingly, and intelligently." *Miles v. State*, 60 So. 3d 447, 451 (Fla. 1st DCA 2011) (citations omitted).

The State bears the burden of proving by a preponderance of the evidence that a confession is voluntary and thus admissible. *See Jorgenson v. State*, 714 So. 2d 423, 426 (Fla. 1998). "[A] determination of the issues of both the voluntariness of a confession and a knowing and intelligent waiver of *Miranda* rights requires an examination of the totality of the circumstances." *Lukehart v. State*, 776 So. 2d 906, 917 (Fla. 2000).

Davis v. State, 859 So. 2d 465, 482 (Fla. 2003).

A. STATEMENTS MADE PRIOR TO PARENT BEING NOTIFIED OF ARREST, OR INCLUDED IN INTERVIEWS, ARE NOT AUTOMATICALLY SUPPRESSED.

Ellington argues that the Court should suppress his "confessions, admissions, and statements" because his parents were not notified of his arrest. Ellington's reliance on *J.E.S. v.* State, 366 So. 2d 538 (Fla. 1st DCA 1979), is misplaced. The Florida Supreme Court has, subsequent to *J.E.S.*, addressed the meaning of Florida Statutes section 39.03(3)(a) (and its successors [4]) and concluded that even if parental notification is not provided as required by the statute, suppression is not automatic.

***3** The legislature has done nothing more than establish a procedure to be followed in the event the person taking a child into custody determines that he should be detained or placed in shelter care. Section 39.03(3)(a) clearly makes a distinction between taking the child into custody and subsequent determination that he should be detained or placed in shelter care. Notification of the child's parents or legal custodians is required only after it is determined that the child will be detained or placed in shelter care.... The purpose of notification is simply to advise the child's parents or custodians that the child has been detained or placed in shelter care.... It likewise does not prohibit interrogation after a decision to detain is made. Lack of notification of a child's parents is a factor which the court may consider in determining the voluntariness of any child's confession, but is not a statutory prerequisite to interrogation.

Doerr v. State, 383 So. 2d 905, 907-08 (Fla. 1980).

For example, in *Fields v. State*, the appellate court relied on *J. E. S* in reversing the defendant's conviction because "the trial judge should have granted the appellant's motion to suppress such confessions and admissions." 377 So. 2d 223, 224 (Fla. 1st DCA 1979). The appellate court found that the four hour interrogation of Fields was unlawful in light of the officer's failure to "immediately notify [his] parents" that he was detained. *Id.* The Florida Supreme Court reversed, however, in light of its decision in *Doerr*. *State v. Fields*, 394 So. 2d 1015 (Fla. 1981) (there is "express and direct conflict between the district court's decision below and our recent decision in *Doerr v. State*") (citations omitted).

Ellington also relies on *Sublette v. State*, 365 So. 2d 775 (Fla. 3d DCA 1979). In *Sublette*, the Third DCA held that "[w]here an officer who arrests a child fails to comply with th[e] procedure [of 39.03(3)(a)], particularly, as in this case, after being specifically requested to do so, and interrogates a child, any statements obtained from him are inadmissible." *Id.* at 777. On this point, *Sublette* is no longer controlling.

Because *Sublette* was decided in 1979, the Third DCA did not have benefit of the Florida Supreme Court's decision in *Doerr*. In fact, Judge Pearson notes in his dissent that in *Doerr v. State*, 348 So. 2d 938 (Fla. 2d DCA 1977), the Second DCA disagreed with the *Sublette* majority and that the Second DCA's decision in *Doerr* was then pending before the Florida Supreme Court. *See Sublette*, at 778 n.1. We now know, of course, that the Florida Supreme Court affirmed the Second DCA in *Doerr* — implicitly disapproving *Sublette*.

Subsequent to *Doerr*, Florida cases (including at least one from the Third DCA) have consistently held that notification under 39.03(3)(a) (and its successors) "is merely to advise the parents of a juvenile's whereabouts. Even if there [is] no notification,

this failure is not controlling. Admission of a juvenile's statements depends upon their voluntariness considered in the light of the totality of the circumstances." *Villar v. State*, 441 So. 2d 1181, 1182 (Fla. 4th DCA 1983). *Accord Neely v. State*, 126 So. 3d 342, 346-47 (Fla. 3d DCA 2013) ("the failure to comply with [985.101(3)] does not render a confession involuntary. While '[t]he fact that a juvenile's confession was given before he had the opportunity to talk with his parents or an attorney is certainly a factor militating against its admissibility[,] ... the existence of this fact does not preclude a finding of voluntariness depending upon all of the other circumstances surrounding the confession.' *Doerr v. State*, 383 So. 2d 905, 907 (Fla. 1980) (quoting *Doerr v. State*, 348 So. 2d 938, 940-41 (Fla. 2d DCA 1977))."); *State v. Paille*, 601 So. 2d 1321 (Fla. 2d DCA 1992) ("juvenile's confession, given after he is taken into custody, is not automatically rendered inadmissible just because it was given prior to notification of his parents. Section 39.037, Florida Statutes (formerly § 39.03), requires that a parent be immediately notified upon a decision to detain or place a child in shelter care. The purpose of this notification is simply to advise the parent of the child's whereabouts. ... The test of admissibility of a juvenile's confession is the totality of the circumstances under which it was taken."); *State v. Roman*, 983 So. 2d 731, 737 (Fla. 3d DCA 2008) ("The person taking a juvenile into custody is directed "to attempt to notify the parent, guardian or legal custodian of the child." § 985.207(2). The State undisputedly complied with that obligation. Furthermore, there is no constitutional requirement that the police notify a juvenile suspect's parents prior to questioning, and the failure to do so would not by itself vitiate the voluntariness or sufficiency of the juvenile's waiver."); *Frances v. State*, 857 So. 2d 1002, 1004 (Fla. 5th DCA 2003) ("Section 985.207(2), Florida Statutes, does require police to attempt to notify a juvenile's parents upon taking the juvenile into custody, though the failure to do so does *not per se* render a confession involuntary."); *Brookins v. State*, 704 So. 2d 576, 578 (Fla. 1st DCA 1997) ("As the supreme court explained in *Doerr*, the failure to notify a child's parent is relevant to the voluntariness of a statement made during police interrogation, but it does not require exclusion of the statement. Here the officers attempted to call the defendant's mother when they arrived at the police station.").

B. QUESTIONING MUST CEASE WHEN PARENT OR CHILD REQUEST TO SEE EACH OTHER.

***4** Although *Sublette* was implicitly overruled in *Doerr* on the issue of failure to notify a parent constituting a basis for excluding a child's statements, the other holding in *Sublette* remains valid:

... [Appellant's request for his father to be contacted constituted a continuous assertion of his privilege against self-incrimination and the statements given by him, prior to the arrival of his father at Youth Hall, were inadmissible.

Sublette, 365 So. 2d at 777. Subsequent to *Sublette* and *Doerr*, the Florida Supreme Court decided *Allen v. State*, 636 So. 2d 494 (Fla. 1994).

Second, Allen argues that statements police obtained from Allen were inadmissible. We agree with Allen that all police questioning should have stopped as soon as his mother asked to see her son.

Id. at 496. Later, in *Snipes v. State*, the Florida Supreme Court explained the difference between *Doerr* and *Allen* and concisely synthesized the state of Florida law in this area.

Snipes also argues that *Doerr* is inconsistent with our decision in *Allen v. State*, 636 So. 2d 494 (Fla. 1994). *In Allen*, this Court stated that all questioning should cease when parents ask to see their child. *In Allen*, we specifically distinguished *Doerr*, noting that the failure of police to notify parents of the questioning does not automatically invalidate the confession.

Snipes v. State, 733 So. 2d 1000, 1006 n.2 (Fla. 1999). As they must, Florida's District Courts of Appeal have followed *Allen. See, e.g., McIntosh v. State*, 37 So. 3d 914, 918 (Fla. 3d DC A 2010) (" 'if the juvenile indicates to police that he or she does not wish to speak to them until he or she has had an opportunity to speak with parents, the questioning must cease." ') (quoting *Frances v. State*, 857 So. 2d 1002, 1004 (Fla. 5th DCA 2003)); *State v. S V.*, 958 So. 2d 609, 611 (Fla. 4th DCA 2007) (quoting same language from *Frances)*.

C. INVOCATION OF RIGHT TO REMAIN SILENT MUST BE UNEQUIVOCAL AND UNAMBIGUOUS

"It is settled that once an individual is given *Miranda* warnings, and that person indicates in any manner prior to or during questioning that he wishes to remain silent, the interrogation must cease." *State v. Brown*, 592 So. 2d 308, 309 (Fla. 3d DCA 1991) *(citing Miranda v. Arizona*, 384 U.S. 436, 473-74 (1966). The invocation of the right to remain silent, however, must be unambiguous and unequivocal.

In Florida, law-enforcement officers have no duty to terminate questioning, or to limit themselves only to asking clarifying questions, when a suspect makes an equivocal invocation of a *Miranda* right. *See Owen v. State*, 862 So. 2d 687, 697 (Fla. 2003). Therefore, merely equivocal and ambiguous invocations of the right to remain silent require neither a cessation of the interview nor the resolution of the ambiguity.

Alvarez v. State, 890 So. 2d 389, 394 (Fla. 1st DCA 2004). *See, e.g., Cuervo v. State*, 967 So. 2d 155, 164 (Fla. 2007) (defendant clearly unequivocally and unambiguously asserted his right to remain silent when he told officers "I don't want to declare anything").

On the other hand, after a defendant waives his or her right to remain silent, subsequent equivocal or ambiguous requests to terminate an interrogation do not require police to cut off all questioning.

***5** To require the police to clarify whether an equivocal statement is an assertion of one's Miranda rights places too great an impediment upon society's interest in thwarting crime. As noted in *Traylor*: "We adhere to the principle that the state's authority to obtain freely given confessions is not an evil, but an unqualified good." 596 So. 2d at 965. Thus, we hold that police in Florida need not ask clarifying questions if a defendant who has received proper Miranda warnings makes only an equivocal or ambiguous request to terminate an interrogation after having validly waived his or her Miranda rights.

State v. Owen, 696 So. 2d 715, 719 (Fla. 1997). *See, e.g., Owen v. State*, 862 So. 2d 687, 696-98 (Fla. 2003) ("I don't want to talk about it" and "I'd rather not talk about it" are not unequivocal invocations of right to silence); *Ford v. State*, 801 So. 2d 318, 319-20 (Fla. 1st DC A 2001)(" Just take me to jail" is not unequivocal invocation of right to silence) (Fla.), *cert. denied*, 537 U.S. 1010 (2002); *Sotolongo v. State*, 787 So. 2d 915 (Fla. 3d DC A 2001) (act of tearing up waiver form is not unequivocal invocation of right to silence).

In determining whether Ellington unequivocally and unambiguously invoked his right to remain silent, certain principles are important.

First, the proper focus is on Ellington's whole statement, not just the words "I'm finished." *See Joe v. State*, 66 So. 3d 423, 426 (Fla. 4th DCA 2011) ("Contrary to Joe's characterization that this was an unequivocal or at least equivocal invocation of his right to silence - a characterization that focuses on only one sentence - the whole statement amounts to an unequivocal expression of Joe's willingness to talk.").

Second, the test of whether invocation was ambiguous or equivocal is an objective one; "that is, a suspect must articulate the desire to cut off questioning with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be an assertion of the right to remain silent." *Alvarez v. State*, 890 So. 2d 389, 394 (Fla. 1st DCA 2004); *see Alvarez v. State*, 15 So. 3d 738, 743 (Fla. 4th DCA 2009) ("A revocation of a waiver of the right to remain silent is unambiguous if a reasonable police officer under the circumstances would understand that the suspect is invoking the right.").

D. INVOCATION OF COUNSEL MUST BE UNEQUIVOCAL AND UNAMBIGUOUS.

The law regarding invocation of the right to counsel is identical to invoking the right to remain silent - invocation must be unambiguous and unequivocal.

We decline petitioner's invitation to ... require law enforcement officers to cease questioning immediately upon the making of an ambiguous or equivocal reference to an attorney.... [T]he police must respect a suspect's wishes regarding his right to have an attorney present during custodial interrogation. But when the officers conducting the questioning reasonably do not know whether or not the suspect wants a lawyer, a rule requiring the immediate cessation of questioning "would transform the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity," *Michigan v. Mosley*, 423 U.S. 96, 102 (1975), because it would needlessly prevent the police from questioning a suspect in the absence of counsel even if the suspect did not wish to have a lawyer present.... *In Miranda* itself, we expressly rejected the suggestion "that each police station must have a 'station house lawyer' present at all times to advise prisoners," 384 U.S. at 474, and held instead that a suspect must be told of his right to have an attorney present and that he may not be questioned after invoking his right to counsel. We also noted that if a suspect is "indecisive in his request for counsel," the officers need not always cease questioning.

***6** *Davis v. United States*, 512 U.S. 452, 459-60 (1994) (citations omitted).

Courts consistently hold that aspirational references to hiring counsel are not the unequivocal, unambiguous invocation of the right to counsel which requires police officers to cease all questioning. *See Davis v. United States*, 512 U.S. 452 (1994) ("Maybe I should talk to a lawyer"—was not a request for counsel); *Long v. State*, 517 So. 2d 664, 667 (Fla. 1987) ("I think I might need an attorney" was not unequivocal request for counsel), *overruled on other grounds*, *State v. Owen*, 696 So. 2d 715 (Fla. 1997); *Walker v. State*, 957 So. 2d 560, 574 (Fla. 2007) ("I think I might want to talk to an attorney" is an equivocal response and officers could continue their questioning "without violating Defendant's rights."); *Spivey v. State*, 45 So. 3d 51, 54-55 (Fla. 1st DCA 2010) ("Appellant's statement that 'I mean if I am being held and I'm being charged with something I need to be on the phone calling my lawyer' was not an unequivocal request for counsel. The statement did not clearly indicate that Appellant wanted counsel present at that time or that he would not answer any further questions without counsel."); *State v. Jennings*, 647 N.W.2d 142, 153 (Wis. 2002) (" 'I think maybe I need to talk to a lawyer,' was equivocal under *Davis* and therefore insufficient to invoke his right to counsel under *Edwards* and *Miranda*, the officers were not constitutionally required to stop questioning him, nor were they required to clarify his intentions regarding counsel.").

Similarly, a reference to friends or family members obtaining counsel does not constitute an unequivocal and unambiguous invocation of the right to counsel. *See E.C. v. State*, 623 So. 2d 364, 368 (Ala. Ct. App. 1992) (statement "[M]y mama got a lawyer" was not invocation of the right to counsel); *Dalton v. State*, 248 S.W.3d 866, 873 (Tex. Ct. App. 2008) ("We agree with the trial court that appellant's statement to the officer to ask or tell his friends to get him a lawyer was not an invocation of his right to an attorney. It was not the type of direct, unequivocal assertion required to halt any further questioning by the officers. At most, it was an equivocal and ambiguous statement that he might want the services of an attorney at some point.").

E. THE TOTALITY OF THE CIRCUMSTANCES.

The Third DCA recently addressed the factors the Court should consider in determining whether a juvenile's confession was voluntary.

The voluntariness of a juvenile's confession is determined by an examination of the totality of the circumstances surrounding the confession. *See Ramirez v. State*, 739 So. 2d 568 (Fla. 1999). The relevant *Ramirez* factors to be applied in analyzing the voluntariness of a juvenile's confession include: (1) the manner in which the *Miranda* rights were administered, including any cajoling or trickery; (2) the suspect's age, experience, background and intelligence; (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; (4) the fact that the questioning took place in the station house; and (5) the fact that the interrogators did not secure a written waiver *of Miranda* rights at the outset.

***7** *Neely v. State*, 126 So. 3d 342, 346 (Fla. 3d DCA 2013), *reh'g denied* (May 10, 2013) (citations omitted). *See Ross v. State*, 386 So. 2d 1191, 1195 (Fla. 1980) ("this Court has recognized that youthful age, although a factor to be considered in determining the voluntariness of a statement, will not render inadmissible a confession which is shown to have been made voluntarily.").

Police are not prohibited from making religious references during custodial interrogations, so long as they are not coercive, even when interrogating a juvenile.

On the issue of law enforcement's reference to the Bible, we find no improper conduct on the part of law enforcement. The detectives had noted clothing belonging to the [16 year old] defendant that related to a religious group with which the defendant was affiliated. The defendant's father encouraged his son to tell the truth. Then, during the Sunday interview, the detective read a short passage from the Bible, and told him, "the truth shall set you free." It was at this point the defendant stated, "I did it." "I killed two people." The record simply does not support that law enforcement's religious references improperly coerced the defendant's confession, rendering it inadmissible.

McNamee v. State, 906 So. 2d 1171, 1175 (Fla. 4th DCA 2005). *See Walker v. State, 707* So. 2d 300, 311 (Fla. 1997) (rejecting claim that confession was involuntary where police "knowing that Walker was a deacon in his church, police exploited his religious beliefs when they told him that God would not believe his 'abduction' story"); *Smithers v. State*, 826 So. 2d 916, 925 (Fla. 2002) (rejecting claim that confession was involuntary where officer told defendant that they were both Christians and it was officer's "belief based on the polygraph [defendant] wasn't telling the truth about this, that he might want to tell the truth about it, that that is probably the right thing to do."); *State v. Newell*, 132 P.3d 833, 844 (Ariz. 2006) (rejecting claim that confession was involuntary where police encouraged defendant to " 'get right with God,' confess[ ] sins, and ask[ ] for forgiveness."); *Welch v. Butler*, 835 F.2d 92, 95 (5th Cir. 1988) (rejecting claim that confession was involuntary where officer referred to defendant's "religious beliefs with respect to salvation, etc. employed by the police in setting up and bringing to pass the prayer session."); *State v. Welch*, 448 So. 2d 705, 711 (La. Ct. App. 1984), *writ denied*, 450 So. 2d 952 (La. 1984) (trial court properly denied motion to suppress defendant's "oral statement to Sgt. Easley during their prayer session before the taped confession").

Nor was it coercive that Love - whom Ellington insisted be present during the interview - encouraged Ellington to tell the truth. *See Smithers v. State*, 826 So. 2d 916, 927 (Fla. 2002) ("Importantly, it was Smithers, and not the detectives, who requested that his wife be present during the interrogation. Accordingly, it cannot be said that the detectives used Smithers' wife to coerce Smithers.").

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

A. LOVE'S REQUEST TO SEE ELLINGTON WHEN SHE ARRIVED AT MGPD HEADQUARTERS THE MORNING OF AUGUST 2, 2011.

1. Det. Zellner complied with Florida Statute 985.101 by notifying Love that Ellington had been arrested and transported to MGPD headquarters.

***8** 2. It is unknown when Love arrived at MGPD headquarters. She estimates it was sometime between 10 and 11 a.m. Det. Zellner testified he did not learn of Ellington's arrest until 10:15 to 10:20 a.m., and he is the one who notified Ellington's family of the arrest. Although Love's testimony about her time of arrival is uncontradicted, the Court has doubts about Love's credibility in light of her erroneous description of events which transpired on the recorded statement. Regardless, the exact time she arrived is not determinative of the Motion.

3. Love asked to see her son when she arrived at MGPD headquarters. This testimony was uncontradicted and is reasonable.

4. Sgt. Granado met Love in the lobby when he was advised she arrived.

5. The time Sgt. Granado was advised of Love's arrival could be the time she arrived, or it could be an hour later (as Love testified).

6. There was no testimony from any witness, other than Love, as to the time Love first requested to see her son.

7. The State has not met its burden of proving by a preponderance of the evidence that Love was taken to see Ellington as soon as she first made the request. [5]

8. Love should have immediately been taken to see her son when she first made the request.

9. All "confessions, admissions, and statements" made by Ellington from the beginning of the interrogation until Love was brought into the interview room are suppressed.

B. CONTINUED INTERROGATION OF ELLINGTON AFTER HE REQUESTS TO SPEAK TO HIS MOTHER.

1. Ellington asked the Officers to "call my mother" and "talk to my mother" at

2:14:10 and 2:29:38, respectively. Neither of these statements were requests to have his mother present at the interview. Rather, Ellington was asking the officers to confirm his whereabouts on Sunday with his mother.

2. Ellington unequivocally and unambiguously demanded to have his mother present during the interview at 2:34:07.

3. Florida law required the Officers to cease immediately their interrogation of Ellington (who was 16 years of age at the time).

4. Det. Zellner continued his interrogation of Ellington for 23 minutes and 18 seconds after Ellington first demanded that his mother be present.

5. All "confessions, admissions, and statements" made by Ellington during this 23 minute period are suppressed.

6. No other "confessions, admissions, and statements" are suppressed as a result of Det. Zellner continuing the interrogation of Ellington after he demanded to see his mother.

C. CONTINUED INTERROGATION OF ELLINGTON AFTER HE DECLARED "I'M FINISHED" AND "I'M DONE TALKING."

1. Ellington told Det. Zellner: "I'm finished. I want her [Love] here now, right now. Right now." Thrity seconds later he said: "Go get my mom, go get my mom. Go get my mother. I'm, I'm done talking. Go get my mother."

2. Det. Zellner understood Ellington's statement to be that he was done talking until he got to see his mother.

3. Det. Zellner's understanding of Ellington's statement was objectively reasonable.

4. Det. Zellner's understanding is vindicated by the fact that when Love entered the interview room, Ellington continued to voluntarily speak to the Officers.

5. Det. Zellner was not required under Florida law to cease the interrogation as a whole, although - as discussed *infra* - he was required to cease the interrogation until Love arrived in the interview room.

***9** 6. The Court will not suppress all of Ellington's "confessions, admissions, and statements" based on Ellington's statements of "I'm finished. I want her [Love] here now, right now. Right now" or "Go get my mom, go get my mom, I'm done talking." Those statements were not unambiguous, unequivocal invocations of the right to remain silent.

D. CONTINUED INTERROGATION OF ELLINGTON AFTER LOVE SAID SHE WAS GETTING A LAWYER.

1. Love's statement ("I'll get you a lawyer, I don't know what's going on. I'm clueless here. I'll get you a lawyer.") does not mean Ellington invoked his right to counsel in any manner.

2. Love's statement ("I'll get you a lawyer, I don't know what's going on. I'm clueless here. I'll get you a lawyer.") did not invoke Ellington's right to counsel unequivocally and unambiguously.

3. It appears that Love was attempting to assure Ellington that everything would turn out fine. This finding is strengthened by the fact that shortly after this statement Love tells Ellington to be quiet and listen to Det. Zellner.

4. The Court will not suppress Ellington's "confessions, admissions, and statements" after his mother stated "I'll get you a lawyer, I don't know what's going on. I'm clueless here. I'll get you a lawyer."

5. The State's designations provides, in part: "**3:17:40 Defendant's mother states that she wants to get a lawyer."** State's Designation at 1 (emphasis in original). Ellington did not designate this portion of the audio recording for review. The Court reviewed the audio at or about 3:17:40, and the remainder of the interview recording, and cannot make out any statement by Love that she wants to get a lawyer, other than the statement "I'll get you a lawyer, I don't know what's going on. I'm clueless here. I'll get you a lawyer."

E. TOTALITY OF THE CIRCUMSTANCES.

1. Although Det. Zellner begins the process of convincing Ellington to confess, in the end, Love plays the most critical role in convincing Ellington to admit his involvement in the charged crimes. Indeed, she becomes an interrogator herself, asking Ellington (beginning at 4:07:35): "How many people was in the car." "Who else was in the car?" "So, talk! What happened?" "Who was the other shooter?" "Who was there?" "Wayne was there, right?"

2. There was no evidence introduced that the Officers compelled Love in any way to assist them in convincing Ellington to make "confessions, admissions, or statements."

3. The religious discussion during the interrogation did not violate constitutional norms, did not coerce Ellington's "confessions, admissions, or statements," nor render Ellington's "confessions, admissions, and statements" involuntary.

4. The Officers' delay in allowing Ellington to meet with his mother, while contrary to decisional law, did not coerce Ellington's "confessions, admissions, and statements." It is obvious from the totality of circumstances, and from reviewing the entire interview, that Ellington decided to make "confessions, admissions, and statements" to Det. Zellner and Love based on (1) the evidence that law enforcement had already gathered, (2) Love's encouragement that Ellington tell the truth and her assurances that she would not forget about Ellington while he was in prison, (3) Ellington's hope that his "confessions, admissions, and statements" would be considered at sentencing, and (4) concern that his co-defendants might confess first and Ellington would miss his opportunity.

***10 DONE and ORDERED** in Miami-Dade County, Florida this 7th day of February, 2014.

<<signature>>

Miguel M. de la O

Circuit Judge

Footnotes

1 Due to a technological glitch, the video recording is virtually unwatchable and unusable because the audio and video are not synchronized. The Court and the parties have relied exclusively on the audio track of the video to ascertain exactly what transpired in the interview room and when.

2 The audio recording is difficult to understand at times. At the Court's request, the parties to submitted designations of the portions of the recording each believed were relevant to the determination of the Motion.

3 The times listed herein refer to the amount of time which elapsed from the moment Ellington was brought into the interview room, *not* the time of day.

4 39.03(3)(a) was repealed in 1990 and replaced by 39.037; 39.037 was repealed in 1997 and replaced by 985.207; 985.207 was repealed in 2007 and replaced by 985.101.

5 Sgt. Granado testified that Love did not ask to see Ellington when he met her in the lobby and escorted her to his office. Love testified she did ask to see Ellington at that time. The Court need not resolve this conflict because Love's uncontradicted testimony was that she had requested to see Ellington when she first arrived at the station.

End of Document