A MESSAGE FROM
BILL CERVONE STATE ATTORNEY

As I write this the legislature is ending its 2014 session. And as we do every year in the Fall, the September issue of the Legal Bulletin will focus on new and amended legislation that affects criminal justice issues. To my knowledge there is nothing significant that will have a July effective date; most criminal legislation is given an October effective date. Should something be signed by the Governor that does go into effect sooner than October 1st that information will be circulated.

In general, and as frequently seems to be the case, what did not get passed is as important as what did pass. Efforts to increase the size of criminal juries from six to twelve for life felonies, for example, were defeated. The cost and logistics of such a move far outweighed any benefit that might have resulted, and it is highly debatable that there would have been even an illusory benefit. Other changes fall more in the realm of tweeks than anything else. The Governor will no doubt sign changes to Stand Your Ground and self-defense laws that allow warning shots in legitimate self-defense and that allows anyone to carry a concealed weapon during a state of declared emergency. Both of these measures were opposed by many sections of the law enforcement community but they illustrate a continuing trend that will no doubt be back in the future with other proposals.

Florida is not alone in this trend. Other states are also dealing with similar issues. Georgia, for example, apparently passed a law this year that allows the carrying of concealed weapons in bars and clubs.

Procedurally, the rules of evidence regarding otherwise hearsay statements may be modified to make it easier for prosecutors to use statements made such as in a 911 call when the purpose is to get emergency assistance. While the courts may have to decide the validity of that, the proposed changes are consistent with existing United States Supreme Court decisions. All officers should be aware of the need to document the detailed...
Continued: Message From State Attorney

contents and circumstances of such emergency aid statements in order to give prosecutors the information they need to properly advance those matters in court. Remember, there is no such thing as too much detail! Also, efforts to require a unanimous 12-0 vote for a death recommendation failed.

CONGRATULATIONS TO...

ASA Chris Elsey and his wife Amanda, who became first time parents with the birth of daughter Emma Ray on February 1st.

ASA Brian Rodgers and ASA Angela Vaughn, who were married on April 23rd.

SAO Deputy Chief Investigator Darry Lloyd, who was presented with the University of Florida Institute of Black Culture's Unsung Hero award for his many and varied community efforts on April 10th.

IN MEMORIUM

Dan Graves, Sr., long time dispatcher for FHP and since 2009 for the Williston Police Department, passed away unexpectedly in early January. Dan was WPD's Dispatcher of the Year in 2012 and will be missed.

Capt. Tony Cruse of the Gilchrist County Sheriff's Office died in late January after battling cancer for many months. Tony was well known for his good cheer and willingness to help anyone and he will also be missed.
**2013 FDLE Crime Stats Released**

FDLE recently released 2013 crime data and the results show a continuing decrease in crime and crime rates, both statewide and in the 8th Circuit.

On a circuit-wide basis, serious or index crime was down by 13.9% during 2013. This is the largest reduction reported among the state’s 20 judicial circuits, and is far above the statewide drop of 4.7%. Especially impressive was a 63.1% drop in the crime rate in Levy County, by far the largest reduction among the state’s 67 counties.

All of us understand that the reasons for this are many and that especially in our smaller counties it doesn’t take much to change the numbers. One ambitious burglar, for example, can be accountable for many crimes and disproportionately skew the figures. Still, when the overall trend continues to show strong reductions across the board it’s clear that what we are collectively and individually doing is working.

While everyone can take pride in these numbers, we must all continue to be vigilant and work towards protecting our communities. This is not a process that ever ends. While Florida’s citizens and visitors haven’t been safer, at least statistically, in decades that is of little comfort to those who are still victimized, and our goal should always remain putting ourselves out of business.

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**Law Enforcement Memorial**

Baker County will hold its Law Enforcement Memorial at 7pm on Thursday, May 1st, at the Baker County Sheriff’s Office.

The Bradford/Union County combined memorial service will also be on May 1st at 6:30pm. It will be held at the new law enforcement memorial located in downtown Starke.

Alachua County’s Law Enforcement Memorial will be on Wednesday, May 7th, at 7:30pm at the Veterans Memorial Park in Gainesville.

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**Newberry High School Academy Of Criminal Justice**

The Newberry High School Academy of Criminal Justice, a magnet program supported by several of our 8th Circuit agencies, recently participated in the Florida Public Service Association State Conference, where it earned a 3rd place overall rating in the statewide competition.

Individual winners included the Brain Bowl team of John Deen, Ryan Dolbiere, DJ Pabst, and Marcos Fernandez, who placed 2nd; David Vesconti, who placed 2nd in the Traffic Stops competition; Jordan Nein and Brandon Ranslow, who placed 2nd in Criminal Case Analysis; John Deen and Riley Chatfield, who placed 2nd in Criminal Incident Investigation; Holly Cormack, who placed 5th in Incident Report Writing; Riley Chatfield, who was 1st in Fingerprinting; Courtney Evans, who was 1st in Extemporaneous Speaking; Alayna Jackson, who was 4th in the Miss Public Service competition; Alex Wilkins, who was 3rd in the Obstacle Course and DJ Pabst, who was 5th in the same event; and Jessica Irvine, who was 2nd in Prepared Speaking. The Academy’s teams also took 1st and 2nd place in Advanced Firearms, 3rd place in Community Service Projects, and 2nd place in Scrapbooks. Courtney Evans received a $1000 FPASA Senior Scholarship.

Congratulations to all of these aspiring law enforcement personnel and to Academy Director and High Springs Police department Officer Patrick Treece!
Altered License Tags

While having a leisurely drive around the Sarasota area one day, Tyrone Jenkins was stopped because he was playing loud music, had a tinted plastic cover over his license tag, and didn’t make a complete stop at a red light. Officers promptly arrested Jenkins for the misdemeanor offense of altering a license tag. They then searched his car incident to that arrest and, of course, found cocaine and scales.

Jenkins apparently posted bond on these charges because about a month later officers spotted him again, still with the tinted plastic cover obscuring his tag. Another stop and another search later, he was arrested for possessing 700 counterfeit music and video CDs and DVDs. Being unpersuaded by his motions to suppress, prison followed when the judge denied all of Jenkins's complaints that the searches were illegal.

The central issue on appeal was whether FS 320.061 is a misdemeanor that must be committed in the officer's presence to allow for an arrest. The 2nd District Court of Appeal answered with an emphatic yes and reversed the convictions.

Section 320.061 provides in pertinent part that "No person shall apply or attach any substance, reflective matter, illuminated device, spray, coating, covering, or other material onto or around any license plate that interferes with the legibility" of a license plate, and makes that act a misdemeanor. That crime is not one of the few misdemeanor offenses that are specifically enumerated as allowing arrest upon probable cause regardless of whether or not the officer is present to see the commission of the offense. Therefore, the Court reasoned, since Jenkins had done nothing other than drive with the obscured tag, and had not taken any act towards obscuring it in the presence of the officers, he was not subject to arrest. Everything that followed from the resulting searches was suppressed.

The bottom line is that this was simply a case of a misdemeanor not committed in the presence of the officer, and that an arrest and search subsequent to that arrest were improper. The price of that in this case was the evidence of other more serious crimes and the convictions that followed. As a footnote, the case is silent as to whether or not Jenkins was ever asked to consent to a search. Had he done so, the issue might never have arisen. Consent, as always, cures many an evil that otherwise can derail a case.

The case, Jenkins v State, can be found at 102 So3d 739 (2DCA '12) for anyone who is interested.
The SAO Is Now On Twitter

The SAO has established a Twitter feed to better disseminate information to the media and others such as law enforcement agencies. Like us at #STHCIRCUITSAO. For more information contact Deputy Chief Investigator Darry Lloyd at 352-374-3670.

RENTAL CAR SEARCHES

Here's a twist on an old problem: searching rental vehicles that get passed back and forth between multiple people who are not on the rental contract.

Benjamin Cooper was pulled over for traffic violations. The officer could tell that the car he was driving was a rental, and when he looked at the rental agreement he saw that not only was Cooper not the renter but also the contract said that no one other than the renter was permitted to drive the car. The rental company told the officer to tow the car and in the process of that the officer conducted an inventory search that, of course, turned up assorted narcotics and paraphernalia.

Cooper complained that the search was illegal. The renter, Cooper's cousin, testified that he gave Cooper permission to drive the car. In the end, that didn't matter. The trial court ruled that Cooper had no standing to object to or contest any part of the search because as an unauthorized user of the vehicle he lacked any reasonable expectation of privacy. The 1st DCA agreed, stating that the mere fact the driver had permission from the renter was insufficient to overcome this.

This is a case of first impression in Florida, meaning that no other appellate court has ruled on it. Other states and federal courts have reached various conclusions on the same question. Unless the Florida Supreme Court overturns the DCA, this is now the law in Florida.

Interestingly, this is a local case initiated by a Gainesville Police Department arrest. Assistance State Attorney Rich Chang handled and won the suppression hearing at the trial court level. Good job, Rich! Also interestingly, Cooper was placed on drug offender probation and is now pending a violation hearing after having recently been caught with cannabis again.
Recent Case Law

Knock and Announce – For How Long?
The defendants were observed walking around their property in the morning. At approximately 12 p.m. that same day, several deputies went to defendant's home to execute a search warrant. Upon arriving at the home, the deputies approached the house as the SWAT vehicle's public address system announced over a loud speaker: "Sheriff's Office, search warrant." Once at the front door, one of the deputies, Deputy Galarza, knocked loudly and yelled, "Policia, Policía." After waiting five to ten seconds, he again knocked and announced law enforcement's presence. When no one answered, the deputies used a battering ram to enter. At least twenty seconds elapsed from the initial loud speaker announcement to entry into the house. Deputy Galarza was aware that the house was used as a grow house for cannabis, and he admitted that he was not concerned about the destruction of evidence or any other exigency.

Issue:
Was the amount of time the deputies waited between their initial knock and announcement and the forced entry reasonable? Based on the totality of the circumstances, Yes.

Knock and Announce:
The Florida Legislature codified the common law knock-and-announce rule in section 933.09 F.S., which provides: "The officer may break open any outer door, inner door or window of the house, or any part of the house or anything therein, to execute a search warrant, if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein."

Section 933.09 thus requires law enforcement officers to give due notice of their authority and purpose and to be "refused admittance" before they are authorized to forcibly enter a home. The refusal can be either express or implied by a lack of response. "Where officers knock, announce their authority and purpose, and enter with such haste that the occupant does not have a reasonable opportunity to respond, the search violates section 933.09."


The legislature has left to the officers on the scene to determine, under the totality of the circumstances, what is a reasonable time to wait for the occupant to respond to their presence. In determining the reasonableness of the wait time, the courts have consistently avoided a bright-line rule, instead they have taken a totality of the circumstances approach that focuses on the fact-specific nature of the reasonableness inquiry. See, State v. Pruitt, (CIRCA 2007) ("There is no bright line answer; the only answer found in our case law is that the occupant must have a 'reasonable opportunity' to respond. Time periods less than five seconds are rarely deemed adequate, and periods in excess of fifteen seconds are often adequate.").

"Thus, the question is whether, given the information known to law enforcement at the time of the warrant's execution, the officer can reasonably infer that he has been refused admittance by the occupants." United States v. Banks, (S.Ct.2003).

In determining the reasonableness of the wait time, some factors the courts have considered include the nature of the underlying offense, the time of day the warrant is executed, the size of the home, whether any activity or movement is observed within the home at the time of execution, and whether any exigencies exist. In the face of exigent circumstances, such as the imminent destruction of evidence, "the amount of time preceding entry is less imperative." Needless to say, the fact-specific nature of the reasonableness inquiry has resulted in different outcomes for similar time frames. The most compelling criteria remain, however, the time of day or night of the entry, known exigencies, presence of weapons on the search scene, violent criminal records of the occupants, and the ease to which the evidence can be destroyed.

Court's Ruling:
The 5th D.C.A. found that under the totality of the circumstances the P.A. announcement of the police presi-
ence, and the two knocks at the door stating their purpose and authority, given the time of day, and the occupants having been seen on site earlier, the 20 second wait was lawful. “It is undisputed that the instant case did not involve exigent circumstances. Thus, this Court must consider whether twenty seconds was a reasonable amount of time from which the officers could infer that they were being refused admittance. We conclude that the deputies’ twenty-second wait time was reasonable. The warrant was executed during the middle of the day, after defendants had been observed walking around the property. Moreover, law enforcement’s presence had been announced over a loud speaker as the officers approached the door. Under these circumstances, when defendants did not answer the door after twenty seconds, it was reasonable for law enforcement to believe that defendants were denying them entry.”

“Defendants’ reliance on Spradley v. State, (2DCA 2000) is misplaced. There, the Second District held that a fifteen-second delay before forcing entry into a two-story home was unreasonable where law enforcement officers executed a warrant at 9:41 p.m., when the occupants could reasonably be expected to be preparing for bed. And, most importantly, during that fifteen-second time frame, law enforcement had detonated an explosive distraction device outside the house, and the officers were yelling at people in the backyard and detaining others in the side yard. The Spradley court concluded that, under the totality of the circumstances, the actions of the officers ‘succeeded in eliminating any chance that the occupants may have had to permit a peaceable entry.’ Here, in contrast, the warrant was executed midday, no such distraction device was used, and, as found by the trial court, ‘the entire focus of the announcement of the deputies’ presence and purpose at [defendants’] residence was directed on the front of the house and would have reasonably alerted anyone with an inclination to answer the front door to do so.’” The trial court’s denial of the defendants’ motion to suppress was affirmed.

Lessons Learned:
While the 5th D.C.A. focused on the officers announcing their presence, the Florida Supreme Court has emphasized the statutory requirement that officers announce their purpose for banging on the door, not just their authority.

In State v. Cable, ( Fla. 2010), the officer knocked and announced his authority but never stated he was executing an arrest warrant, he merely said, “Sheriff’s Office” and “come to the door.” The Florida Supreme Court stated: “In this case, although Deputy Lawrence acted pursuant to a valid arrest warrant, he never announced his purpose before entering the motel room. This is not simply a technical omission. A citizen’s obligation to respond to a request to allow a law enforcement officer into his or her home depends on the purpose of the law enforcement officer’s request. While a citizen has every right to refuse entry to an officer who may be merely seeking information or conducting an investigation, the citizen has no right to refuse entry by an officer whose purpose in seeking entry is to execute an arrest warrant or search warrant. Before law enforcement officials may properly enter a private building to effect an arrest and ‘use all necessary and reasonable force to enter any building or property,’ they are required to announce their purpose. Accordingly, because in this case the State concedes that the deputy never announced his purpose, the Second District properly applied our precedent to suppress the evidence seized as a result of the unlawful entry.”

“When an officer is authorized to make an arrest in any building, he should first approach the entrance to the building. He should then knock on the door and announce his name and authority, sheriff, deputy sheriff, policeman or other legal authority and what his purpose is in being there. If he is admitted and has a warrant, he may proceed to serve it. He is not authorized to be there to make an arrest unless he has a warrant or is authorized to arrest for a felony without a warrant. If he is refused admission and is armed with a warrant or has authority to arrest for a felony without a warrant, he may then break open a door or window to gain admission to the building and make the arrest. If the building happens to be one’s home, these requirements should be strictly observed.”

Mendez-Jorge v. State
5th D.C.A. (March 21, 2014)
“Step Out of the Car!”

At 2:00 a.m. police received an anonymous phone call about a car parked at the end of a dead end street with its headlights periodically flashing on and off. When officers arrived at the location, they found Robert Santiago and a female passenger inside the vehicle. The keys were in the ignition so music could play, but the engine was not running. One officer detected the odor of alcohol on Santiago’s breath. He stated that he had consumed a couple beers, but he was not driving. When asked about his presence at that location, he gave the officers a vague explanation. Defendant was then ordered to step out of the car, and when he did, a small plastic bag containing cocaine dropped from his lap onto the ground. The officers then searched the car and located a short plastic straw that they deemed to be drug paraphernalia. The female passenger, who owned the vehicle, told the officers that both the cocaine and paraphernalia belonged to the defendant. Santiago was arrested for possession of cocaine and drug paraphernalia. The defendant filed a motion to suppress the drug and paraphernalia evidence arguing the officer lacked founded suspicion.

**Issue:**

Did the information in the radio dispatch coupled with the officer’s observations at the scene support an investigatory seizure? No.

**Consensual Encounter or Seizure?**

The Supreme Court has ruled that a police officer may approach a citizen to ask questions without a founded suspicion of criminal activity. Thus, the interaction between the defendant and the officers on the dead end street at 2:00 a.m. began as a consensual encounter. *Popple v. State*, (Fla. 1993). However, in distinguishing between different levels of police-citizen encounters, the Florida Supreme Court in *Popple* characterized an order to exit a vehicle as a “seizure,” thus converting the consensual encounter into a detention that does require a well-founded articulable suspicion of criminal activity.

In making reasonable-suspicion evaluations reviewing courts will look at the “totality of the circumstances” in each case to determine whether the detaining officer has a “particularized and objective basis” for suspecting criminal activity. In the instant case, the trial court pointed to three factors which it believed established the officer’s reasonable suspicion of criminal activity: the vague suspiciousness of Defendant’s explanation for being at that location, officer safety, and “perhaps” the alcohol and driving. The 4th D.C.A. found that the underlying facts did not support the trial court’s conclusion that those factors created reasonable suspicion to justify an investigatory stop of Santiago.

**Court’s Ruling:**

First, the trial court noted that the defendant’s explanation that he and the female passenger were just “hanging out” seemed “a little suspicious.” But, the D.C.A. noted that, “a mere suspicion or hunch is not enough to justify temporary detention. As Florida courts have explained, ‘the officer must be able to articulate the supporting facts, and the suspicion must be well-founded’ to support an investigatory stop. …In the instant case, in addition to his statement to the officers that he was simply ‘hanging out,’ Defendant also told them that he lived nearby and pointed to his residence ‘somewhere towards the middle of the street.’ The testimony also showed that the Defendant was observed listening to music in his car along with the female passenger when the officers arrived on scene. No other facts were presented at the hearing to support a well-founded suspicion that Defendant was not ‘just hanging out,’ nor did the trial court elaborate on why it found Defendant’s explanation suspicious. Viewed in their entirety, these facts are insufficient to form a particularized and objective basis for reasonable suspicion of criminal activity.”

“Second, the officer testified that he ordered the Defendant out of the car for ‘officer safety purposes.’ …According to the officer’s testimony, ‘when I interact with people that are in a vehicle … I always ask them to step out of the vehicle most of the time.’ Absent a reasonable suspicion that a crime has occurred, is occurring, or is about to occur, an officer may not convert a consensual encounter into an investigatory stop by ordering a citizen out of a parked car. See, *Popple*, (defendant’s presence in a car parked in a desolate area, even though making furtive
movements, did not provide the reasonable suspicion necessary to order the defendant out of the car.

"Here, there was no indication that Defendant was involved in any criminal activity, nor was there any objective basis for the officer to conclude that his safety or that of the public was endangered. The area was not described as high in crime, and the officer did not describe seeing any furtive movements or illegal activity. Other than a comment on the lateness of the hour, the officer never testified about a specific concern for his own safety, to the contrary, the testimony suggested he had no specific reason to believe his safety was at risk and ordered him from the car based in part on his own standard practice. See, e.g., Ippolito v. State, 4DCA 2001 (officer lacked a well-founded suspicion of criminal activity to justify ordering the defendant out of his legally parked vehicle merely because it was late at night, the defendant was parked at a gas station in an area of past criminal activity, and the officer believed the defendant was untruthful about his purpose for being there); Curress v. State, 4DCA 1978 (officer did not have sufficient reason for ordering the defendant to leave his car, where the officer observed the defendant at 1:30 a.m. in a sports car, legally parked, with the windows closed and engine off, and after seeing no unusual activity). Therefore, the court’s finding that ‘officer safety’ was the reason for the instruction to Defendant to exit the vehicle was not supported by competent, substantial evidence."

"Third, the officer testified that he also ordered Defendant out of the car because he smelled alcohol on Defendant’s breath while he was sitting in the driver’s seat. However, the officer testified that the odor of alcohol, coupled with Defendant’s admission that he had consumed a couple of beers, did not lead him to conclude that Defendant might be under the influence."

"Therefore, viewing the circumstances in their totality, the officer did not possess the requisite reasonable suspicion of criminal activity to order Defendant out of his parked car to conduct an investigatory stop. Because the detention of Defendant was improper, all the evidence resulting from this seizure should have been suppressed."

_Santiago v. State_

4th D.C.A. (Feb. 26, 2014)

**Attorney Access**

Lynda McAdams was reported missing by her family. During the course of the missing persons’ investigation, a detective searching for Lynda McAdams entered her home, and based on his observations, detectives from major crimes became involved in the investigation. The detectives contacted Michael McAdams at his parents’ home and obtained his written consent to search his estranged wife’s residence. Although McAdams no longer lived there detectives sought his consent because he still co-owned the home with Lynda.

After the search of the McAdams’ residence, detectives visited Michael at his home and asked him if he would be willing to meet with the detectives who were investigating his wife’s disappearance. He agreed and accompanied them to the Sheriff’s Office to meet with the investigating detectives. The entire interview, which lasted approximately two and a half hours, was videotaped. During
this interview, Michael McAdams confessed to killing his wife. At that point the detectives advised him of his Miranda rights which he waived. He then led detectives to where he had buried his wife. He also showed them where he had disposed of the gun he had used in the murder. A slam-dunk for the detectives.

Unfortunately, unbeknownst to McAdams, while he was being interviewed an attorney hired by his parents had arrived at the sheriff’s office. The attorney asked that the interview be terminated and that he be allowed to speak with McAdams. The detectives conducting the interview declined both requests and continued with the interview without telling McAdams about the attorney. It was not until after McAdams had taken the detectives to the place where he had buried the body of his victim that the detectives told him about the attorney.

The defendant filed a motion to suppress his statements and the recovered evidence. He argued that throughout the time he was at the sheriff’s office he had been in custody and that his confession was obtained in violation of Miranda. He also argued that the detectives’ refusal to advise him of his attorney’s presence and desire to speak with him violated the due process provisions of the Florida Constitution. The trial court denied his motions. The 2nd D.C.A. agreed in part.

**Issue:**

Was the defendant’s statement obtained in violation of Miranda ruling? No. Did the failure to advise the defendant that an attorney was in the police department post-Miranda asking to consult with him violate his constitutional rights? Yes.

**Custodial Interrogation:**

Under Miranda, statements made to the police during a “custodial interrogation” must be suppressed if the police did not inform the suspect of his constitutional rights before the interview. In Ramirez v. State (Fla. 1999), the Florida Supreme Court looked at four factors to determine whether a reasonable person in the suspect’s position would consider himself in custody:

1. the manner in which the police summon the suspect for questioning;
2. the purpose, place, and manner of the interrogation;
3. the extent to which the suspect is confronted with evidence of his or her guilt;
4. whether the suspect is informed that he or she is free to leave the place of questioning.

The trial court reviewed each element set out in Ramirez and compared it to the suppression hearing testimony. As to the first prong, “The manner in which police summoned the suspect for questioning,” the court found that the “defendant willingly went and voluntarily went with the police, the deputy, in the transport vehicle, and was not concerned that—or there was no reason for him to believe, even by the reasonable person’s standard, that he was not free to decline that ride.”

As to the second prong, “Purpose, place and manner of the interrogation,” the trial court found that the defendant’s presence was voluntary, and the manner the interview was conducted was not intimidating. “It was in a small interview room. But it was clear from the video that the defendant was seated closest to the door, there was nothing barring his exit, the door was not locked, according to testimony. And there were two detectives present in the room with him who were both seated further away from the door than the defendant and not blocking his way. There was nothing, from what I could see in the tape, there was no one obviously standing there blocking his way, ....”

The third prong is, “The extent to which the suspect is confronted with his guilt.” The trial court again found that the detectives’ actions did not create a custodial interrogation. “I don’t find that through the evidence presented that these—I find that those questions as to whether or not they threatened, the defendant was threatened, frightened or spoken to contemptuously, or whether or not he was confronted with any evidence that was going to be used against him, I find that those questions are all answered in the negative.”

Finally, under prong four, “Whether the suspect is informed that he is free to leave,” the trial court found that he was so advised. “The testimony was uncontested that he was informed that he was free to leave, at least once, possibly twice depending on who’s testifying. But there was uncontested testimony that he was told at least once that he was free to leave.” “So under the
guidance of Ramirez, I find that the defendant was not in custody, at least to the point of when he’s admitted in custody. That happened when the Detective read Miranda and placed him under arrest, he was clearly in custody at that point.”

**Court’s Ruling:**
The 2nd D.C.A., after viewing the video recording of the defendant’s statement, reached the same conclusion. “We conclude that the trial court’s factual findings are supported by the video and by the testimony at the suppression hearing, and we agree with the trial court’s ultimate determination that Mr. McAdams was not in custody at the time he confessed to the murders.”

However, whether the detectives violated McAdams’ right to due process under the Florida Constitution when they did not advise him, post-Miranda, of the presence of a lawyer, the D.C.A. ruled they had. “In support of his argument, Mr. McAdams relies on Haliburton v. State, (Fla.1987). In Haliburton, police refused to advise a defendant that a lawyer who had been hired to represent him was in the police station and wished to speak with him. The [Florida Supreme] court held that the officers’ actions violated the due process provisions of the Florida Constitution.”

“We believe there is a critical distinction between this case and Haliburton. Unlike Mr. McAdams, the defendant in Haliburton was in custody and had been read his Miranda rights, which he had waived at the time his attorney was trying to see him. The court in Haliburton found the due process violation based on what it found to be misconduct by law enforcement in that it interfered with Haliburton’s right to counsel during a custodial interrogation. Here, detectives were conducting a noncustodial interview with Mr. McAdams. Neither Haliburton nor any other case McAdams cites holds that it is misconduct for law enforcement officers to refuse to interrupt a noncustodial interview to permit an attorney access to a suspect who has voluntarily agreed to be interviewed, and we decline to do so here. Our ability to distinguish Haliburton, however, extends only to the point at which Mr. McAdams confessed. After he confessed and received his Miranda rights he was admittedly in custody... Accordingly, we conclude that under Haliburton, any evidence collected after detectives read Mr. McAdams his Miranda rights until they told him about the attorney was collected in violation of Mr. McAdams’ right to due process under the Florida Constitution. Pursuant to Haliburton, that evidence should have been suppressed. Reversed.”

The court certified the underlying question to be of great public importance: “Does an adult suspect who is not in custody but voluntarily engages in a lengthy interview in an interrogation room at a law enforcement office have a due process right to be informed that a lawyer has been retained by his family and is in the public section of the law enforcement office and wishes to talk to him?”

**Lessons Learned:**
Despite the ultimate outcome this case effectively describes how to behave during a non-Mirandized interview to avoid a finding that it was a custodial interrogation. Clearly, allowing the suspect to get to the police department on his own will go a long way to demonstrate that he was not in custody.

Repeatedly advising the suspect that he is free to leave, and allowing him a seat closest to the door, or even leaving the interview room door open, will address whether a reasonable person would believe that he was free to terminate the interview and leave.

Encouraging the suspect to describe the events in his own way without confronting him with the evidence against him, at least in the early onset of the conversation, will ensure that the court views that interview as non-custodial.

Lastly, until the certified legal issue is resolved by the Florida Supreme Court extreme care should be exercised in denying a suspect access to a lawyer on site who has been retained to represent him. Consult with your legal advisor or a State Attorney Homicide prosecutor.

**McAdams v. State**

2nd D.C.A. (Feb. 26, 2014)