

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

THIRD DISTRICT

RYAN DECKER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case. No. 3D13-4221

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL

CIRCUIT IN AND FOR MIAMI DADE COUNTY,

FLORIDA CRIMINAL DIVISION

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

Appellant Ryan Decker was the defendant in the trial court and Appellee the State of Florida was the prosecution. The parties will be referred to in this brief as “Mr. Decker” and “the State.” The symbol “R” will constitute a reference to the record on appeal.

STATEMENT OF THE CASE

On December 19, 2013, a criminal complaint was filed in the Eleventh Judicial Circuit of Florida, charging that on December 17, 2013, Appellant committed the offense of Grand theft in the taking of property, with intent to deprive permanently or temporarily the owner or custodian thereof. (R. at 13). On February 9, 2014, Appellant filed a motion to suppress physical evidence of the stolen property and motion to suppress statements made while in custody. (R. at 21). On February 26, 2014, both motions to suppress were denied by the Court. (R. at 88). Appellant was found guilty on April 11, 2014 and sentenced to serve nine months in the county jail with a term of three months probation upon completion of the sentence. (R. at 13, 14). This appeal is taken from that judgment and sentence. (R. at 15).

STATEMENT OF THE FACTS

Mick Sheffield (Officer Sheffield) is an officer in the Miami-Dade Police Department who has been employed from December of 2004 to the present and was an employee in the capacity of an officer on December 17, 2013. (R. at 22:15-26). At 5:04 p.m., Sheffield saw a Pontiac sedan speeding on U.S. 1, going south about 5 miles over the speed limit. Sheffield turned on his lights, and chased the vehicle down. He caught up with the vehicle and the driver of the vehicle pulled over to the side of the road. (R. at 23:4-8; 14-18). Sheffield approached the driver's

side of the vehicle, he had a gun but did not draw it. As he reached the driver's door, he could see that the defendant was opening the door to his glove compartment and a ziplock bag containing white powder fell out of the glove compartment, the driver's window was open. (R. at 23:20-24, 24:11-15). The defendant, Ryan Decker (Mr. Decker) turned to Sheffield and said that the powder was laundry detergent. He said that he was on his way to visit his parents in Key West. He also said, "You should see the duffel bag of dirty laundry I've got in my trunk to take home. My mom won't believe it." (R. at 24:17-20).

Sheffield checked his license and registration, saw he was 20 years old, and he wasn't one of the really dangerous speeders on the stretch; he informed the defendant that he was not going to burden him with a ticket at this time, just a warning, but he did have to check out the white powder, so he ordered the defendant out of the car and patted him down for his own protection. After he determined that he was unarmed, he asked him to stand in front of the car where he could see him, so he could search the glove compartment and the interior of the vehicle. (R. at 24:22-26; 25:1-2). Sheffield performed a field test on the powder, which tested negative for the presence of any controlled substance. Sheffield told the defendant he could relax and left the car door open so he could get in the car. Sheffield interpreted the Defendant's comment , "you should see the duffel bag of dirty laundry I've got in the trunk to take home. My mom wont believe it," as

meaning it was okay to search his trunk since he never indicated otherwise and never told him that he couldn't search the trunk, even when he went to the rear of the car. (R. at 33:5-8, 33:12-13). Assuming this Officer Sheffield said to him-in a joking manner- that he had to see that dirty laundry in order to see if it was like the pile his son brings home when he visits from U.C.F. (R. at 25:9-23).

Mr. Decker had the keys and opened the trunk because Sheffield had previously removed them from the ignition, since such is a matter of routine when there is suspicion of a controlled substance. (R. at 30:25-27; at 31:5-12).Mr. Decker didn't say anything, he just got out of the front seat and opened the trunk to the vehicle. Sheffield saw the computer with a label that said "Property of" as soon as the trunk was opened even though the duffel bag was up against one side and the other side of the computer was up against the side wall of the trunk of the car. He simply had to crane his neck into the trunk to see the rest of the label, but either way as a natural reflex, Sheffield did turn the computer a bit to make sure he read the label correctly.(R. at 39:2-9, 41:1-2, 41:13-16). Officer Sheffield was not aware of any stolen computers at the time he stopped Mr. Decker, but since the computer had a label that read "Property of Miami-Dade College Library," and Mr. Decker did not indicate that he had permission to borrow it, and it seemed unusual for a student to take such an expensive computer home on winter break, he proceeded to

arrest Mr. Decker and then made phone calls to verify that it was stolen. (R. at 39:24-27; at 40:3-24).

Upon the arrest, Officer Sheffield read him his Miranda rights. (R. at 26:1-14). Mr. Decker said, "I sure need a lawyer now. Yes, I'd like an attorney." (R. at 27:16). He never indicated that he wanted one immediately, or that he did not want the officer speaking to him at all; exercising one's right to remain silent and exercising one's right to an attorney are two different things. Mr. Decker did not remain silent, even at the scene. (R. at 45:5-11). He asked if he could get the cell phone from the car so that he could try to call his roommate. Sheffield allowed him to get the phone but he had to come right back to make his call. (R. at 27:19-26).

Sheffield impounded the computer, placed it in his trunk, and transported the defendant to the police station where he sat with him as Sheffield did some preliminary paperwork. After about 50 minutes, he was taken to the fingerprinting room.

Mr. Decker was fingerprinted by Officer Murphy. Officer Murphy called Mr. Decker into his office and noticing how anxious he was, he offered him water or soda to which he said no. He then went on to ask Mr. Decker if he had contacted his attorney, Mr. Decker said no and Officer Murphy offered him the phone in his office. (R. at 55: 17-27; 56:2-4). Assuming that Mr. Decker did not get the hint that it would be a good idea for him to call an attorney, Officer Murphy went on to

state, “Son, you look like a nice kid. I hope this won’t ruin your life,” (R. at 56: 7), at which point Mr. Decker began to mutter that it was just a “stupid prank” and it was all “Lionel’s fault.” (R. at 56:9-14).

Officer Murphy told Sheffield what Mr. Decker said. Sheffield did not know that Lionel was Mr. Decker’s roommate until later on. (R. at 47: 6-10; 47:17-18)

Officer Sheffield then asked Mr. Decker some routine booking questions. Mr. Decker answered each question. Once Sheffield got to the bottom of the form, he asked himself, “Now, let’s see. What happened?” at which point Mr. Decker, without hesitation, said, “I was a jerk for jumping to conclusions when you stopped me, and I was an even bigger jerk for taking that chunk of hardware from the library basement because my roommate says, ‘I dare you.’” (R. at 28:7-27; 29:1-3). Officer Sheffield did not interrupt Mr. Decker nor stop him from going on with his statement because it was spontaneous and he didn’t have any real way to stop him since they were out before he realized what he was saying. (R. at 53:5-11).

QUESTIONS PRESENTED

Whether the trial court properly denied Mr. Decker's motion to suppress the evidence pursuant to a search that occurred when the police officer stopped him.

Whether the trial court properly denied Mr. Decker's motion to suppress his statements to the police because they were not obtained through an unlawful interrogation and were therefore voluntary.

STANDARD OF REVIEW

The certified question on review deals with an issue of fact and is therefore reviewed under the presumption of correctness. Based on the facts, the court's decision to deny the motion to suppress the evidence was proper. As stated in *Fitzpatrick v. State*, this Court should, "accord a presumption of correctness to the trial court's rulings on motions to suppress with regard to the trial court's determination of historical facts." *Fitzpatrick v. State*, 900 So. 2d 495, 510 (Fla. Sup. Ct. 2005).

SUMMARY OF THE ARGUMENT

The trial court did not err in holding Appellant lacked standing to challenge the search of Mr. Decker's car and that probable cause existed to stop and search Mr. Decker's car. The officer had probable cause to stop Mr. Decker's car due to excessive speed, and the officer's investigatory stop was performed according to Mr. Decker's Fourth Amendment rights and subsequent suspicion of drug possession in Mr. Decker's automobile. The officer's warrantless search complied with Mr. Decker's Fourth Amendment rights when Mr. Decker expressly and voluntarily consented to the search. The officer's discovery of Mr. Decker's possession of stolen property was valid according to the Plain View Doctrine.

The trial court did not err in denying Appellant's motion to suppress the incriminating statements. Both of the statements the Appellant is attempting to suppress were produced voluntarily, neither of the officers interrogated the Appellant nor coerced him to speak. There was no evidence present to show that Appellant's statement was obtained unwillingly or by force. The Appellant was an educated individual who had knowledge of his constitutional rights and was not repeatedly question nor physically punished.

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED MR. DECKER'S MOTION TO SUPPRESS THE EVIDENCE PERSUANT TO A SEARCH THAT OCCURRED WHEN THE POLICE STOPPED HIM.

The judgment below should be affirmed because the trial court properly denied the Appellant's Motion to suppress evidence discovered as a result of Officer Sheffield's search of the Appellant's vehicle. The evidence discovered during Officer Sheffield's search of the Appellant's vehicle was lawfully admitted into evidence because the warrantless search required to discover this evidence was valid.

The United States Constitution states the following:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amend. IV, U.S. Const.

In addition to this, Section 12, Article I of the Florida Constitution states that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated." FL Const. art. I, § 12

It goes on to say the following:

No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

Ibid.

A. The officer's investigatory stop and frisk was performed in accordance with Mr. Decker's Fourth Amendment rights because it originally took place as a result of Mr. Decker's traffic violation and subsequent suspicion of drug possession.

The facts make it clear that Officer Sheffield's initial stop and frisk was valid as it occurred as a result of a traffic violation. "The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects." *Ill. v. Rodriguez*, 497 U.S. 177, 181, 110 S.Ct. 2793, 2797 (1990). "An officer may stop and detain a person for investigation only if they have a reasonable suspicion that the person has committed, is committing, or is about to commit a crime." *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993). This is supported in *Terry v. Ohio*, in that "police may stop a suspect so long as there is reasonable suspicion of a criminal act. *Terry v. Ohio*, 392 U.S. 1 (1968). A traffic violation, for all intents and purposes, is a crime

punishable by a citation, or in extreme cases, arrest and imprisonment. In this instance, Officer Sheffield observed Mr. Decker in a Pontiac sedan speeding on U.S. 1, going south about 5 miles over the speed limit. (R. at 23:4-12). From that point, Officer Sheffield pulled the Appellant over to the side of the road to perform a traffic stop. In *Arizona v. Johnson*, the court said that “once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.” *Arizona v. Johnson*, 555 U.S. 323, 331, 129 S.Ct. 781, 786 (2009). *Carroll v. United States* also states that that a warrant is not required to search a vehicle if the police have probable cause to believe the vehicle contains evidence of a crime, contraband, or the fruits of a crime, applicable to any vehicle, which includes boats. *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925). In this instance, the facts state that upon stopping the Appellant and requesting his license and registration, Officer Sheffield observed a ziplock bag containing a white powder falling out of the glove compartment, which Mr. Decker claimed was laundry detergent. (R. at 24:11-18). Given the current state of affairs with drug trade in South Florida, it would be reasonable for a law enforcement officer to suspect that a ziplock bag with white powder inside it could potentially be cocaine or some other illicit substance. Since

possession of illicit drugs is illegal and punishable by law, Officer Sheffield behaved appropriately.

Caldwell v. State says that a seizure takes place “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Caldwell v. State*, 41 So. 3d 188 (Fla. 2010). “There are three levels of police-citizen encounters...the second level is an "investigatory stop," during which an officer ‘may reasonably detain a citizen temporarily if the officer has reasonable suspicion that a person has committed, is committing, or is about to commit a crime.’” *Id.* at 196. “While mere suspicion is insufficient to support an investigatory stop, a stop will not violate a citizen's rights where it is based on "a well-founded, articulable suspicion of criminal activity." *Id.* at 196, 197 (Fla. Sup. Ct. 2010). *Popple* also states that precautionary measures by police officers to ensure “An officer may take steps as reasonably necessary to protect their personal safety.” *Terry*, 392 U.S. 1, 27 (1968). Officer Sheffield stopped and frisked Mr. Decker as a precautionary measure to ensure his safety according to the protocol relating to possible drug possession. With the presence of a ziplock bag containing white powder in Officer Sheffield’s sight, it is reasonable to reach the conclusion that Officer Sheffield’s suspicion of a crime on Mr. Decker’s part is justified, thus making his further actions involving the searching of Mr. Decker’s automobile after the stop valid.

B. Officer Sheffield's warrantless search of Mr. Decker's trunk complied with the Mr. Decker's Fourth Amendment rights when the Mr. Decker voluntarily consented to Officer Sheffield's search.

The facts state that Mr. Decker voluntarily consented to Officer Sheffield's search of the Mr. Decker's trunk in accordance with his Fourth Amendment rights. In *Schneckloth v. Bustamonte*, the Court stated that a prosecutor relying on consent to justify the lawfulness of a search is burdened with the duty to prove that consent was freely and voluntarily given and not a result of either express or implied duress or coercion. *Schneckloth v. Bustamonte*, 412 U.S. 248 (1973). In this instance, the facts show that Mr. Decker voluntarily consented to Officer Sheffield's warrantless vehicle search. Though Officer Sheffield was already allowed to search the vehicle as a result of the reasonable suspicion of drug possession, the facts state that Mr. Decker told Officer Sheffield that he "should see the duffel bag of dirty laundry [he's] got in [his] trunk to take home," to which Officer Sheffield understood as consent. This would be reinforced with Mr. Decker voluntarily getting "out of the front seat and open[ing] the trunk to the vehicle." (R. at 24:18-22; 25:21-23; and 26:1-1-2)

On the matter of coercion, the facts state that Mr. Decker did not consent to Officer Sheffield's request to look in the trunk of Mr. Decker's vehicle as a result of either express or implied duress or coercion. In fact, it was a voluntary action on the part of Mr. Decker. Throughout the entire stop, Mr. Decker was cooperative

with Officer Sheffield and did not resist, nor was there a refusal of consent. (R. at 37, 38). Mr. Decker will likely argue that due to Officer Sheffield's presence, the Appellant felt nervous and was coerced into opening up his trunk. (R. at 66:1-22). The facts show that Mr. Decker was not seized by a show of authority by Officer Sheffield. In *Caldwell*, the Court defined seizure as the use of physical use of force or by the show of authority by an officer to restrain the liberty of a citizen. *Caldwell*, 41 So. 3d at 196. The only show of authority demonstrated by Officer Sheffield in this case was as a result of the search arising from the suspicion of a crime, which was a result of Officer Sheffield observing the ziplock bag with white powder falling out of Mr. Decker's glove compartment.

Mr. Decker may attempt to argue that Officer Sheffield's alleged act of standing before Mr. Decker for about 50-60 seconds constituted the imposing of duress. However, Mr. Decker could have easily refused Officer Sheffield's request upon the completion of the original search. According to Officer Sheffield's testimony, the Appellant "didn't seem like the kind of guy who was scared of things...[and] was perfectly capable of saying 'no,' if he wanted." (R. at 38:15-17). Officer Sheffield testified that he addressed Mr. Decker in a "friendly, kidding manner" when discussing the trunk where the duffel bag was located, electing to use the less formal "gotta" instead of "got to" or "have to" in similar circumstances. (R. at 37:9-23 and 52:15-21). Since it is clear that Mr. Decker

voluntarily consented to the search of his trunk, the Appellant's Fourth Amendment rights were not violated and the warrantless search was valid.

C. Officer Sheffield's discovery of the Appellant's possession of stolen property was valid according to the Plain View Doctrine.

"It is well established that under certain circumstances the police may seize evidence in plain view without a warrant." *Coolidge v. N.H.*, 403 U.S. 443, 465, 91 S.Ct. 2022, 2037 (1971). "If police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. *Minn. v. Dickerson*, 508 U.S. 366, 375, 113 S.Ct. 2130, 2136-37 (1993). "The "plain view" doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object." *Id.*, at 466. According to *Dickerson*, if contraband is left in open view and a police officer observes it from a lawful vantage point, no invasion of a legitimate expectation of privacy has occurred and no search has taken place in that respect. *Id.*, at 375.

With Mr. Decker's voluntary consent to search the trunk established, Mr. Decker will attempt to argue that upon opening the trunk, Officer Sheffield started looking at the computer right away, basically ignored the duffel bag, leaned into the trunk, put a hand on the side of the computer, twisted it, and inspected it, after which Officer Sheffield placed Mr. Decker under arrest. (R. at 66, 67). On these

facts alone, it would seem as though the stolen laptop did not fall under the warrantless plain view exception and thus the result of an invalid search. However, as stated in Officer Sheffield's testimony, Officer Sheffield became aware of the label on the computer stating "Property of Miami-Dade College Library" after leaning into the trunk. (R. at 38, 41). Officer Sheffield testified that he was not aware of any computers already stolen at the time of the discovery, but that it "looked very unusual" for a student to take such an expensive looking computer like that over winter break. (R. at 39). Though the argument could be made (and was) that Mr. Decker could have actually had permission to take the computer, Officer Sheffield's decision to detain someone "in possession of something that [gave] every appearance of being stolen, [he had] to keep that person from walking away." Officer Sheffield testified that Mr. Decker made no indication that he had permission to borrow the computer, which further added to Officer Sheffield's determination of the stolen property. (R. at 40:19-24). Officer Sheffield was able to make this determination from a lawful position, the criminal nature of the situation was apparent, and as a result of Mr. Decker's established consent, Officer Sheffield had a lawful right of access to the stolen property. Therefore, the warrantless plain sight discovery of Mr. Decker's possession of stolen property is valid.

II. THE TRIAL COURT PROPERLY DENIED MR. DECKER'S MOTION TO SUPPRESS HIS STATEMENTS TO THE POLICE BECAUSE THEY WERE NOT OBTAINED THROUGH AN UNLAWFUL INTERROGATION AND WERE THEREFORE VOLUNTARY

The judgment below should be affirmed because the trial court properly denied the Appellant's Motion to suppress. The statements obtained at the time the Appellant was detained were lawfully admitted into evidence; such statements were voluntarily stated during the booking process and the fingerprinting.

The United States Constitution states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury,... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

Amend. V, U.S. Const.

In addition, the Florida Constitution states, "No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself." Art. I § 9, Fla. Const.

Such Constitutional right is further enforced by *Miranda v. Arizona*:

The court established prophylactic procedures intended to protect that right, which included requiring authorities to articulate, before custodial interrogation commences, four warnings now thoroughly ingrained in police procedure: (1) that the individual has the right to remain silent, (2) that anything the person says may be used in court, (3) that the

individual has the right to have an attorney present during questioning, and (4) that if the individual cannot afford an attorney, one will be appointed for him before questioning.

384 U.S. 436, 479 (1966).

“Once the warnings are given, the procedure is clear: If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.... “If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.”

Everett v. State, 893 So. 2d 1278, 1284 (Fla. 2004). However, “The suspect is free to volunteer a statement to police on his or her own initiative at any time on any subject in the absence of counsel.” *Traylor v. State*, 596 So. 2d 957, 966 (Fla. 1992).

A. The trial court’s finding that the statements produced by Mr. Decker did not invoke the Fifth Amendment protection was based on substantial evidence that they were not produced during an interrogation.

“The protections of Miranda apply only to an interrogation when the suspect is in custody. Miranda defines custodial interrogation as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *United States v. De La Cruz*, 2011 U.S. Dist. LEXIS 25608, at *16 (D. Neb. Mar. 11, 2011). However, in *R.I v. Innis*, it was held that “the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can

extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.” 446 U.S. 291, 302 (1980); *see also*. *State v. Brown*, 592 So. 2d 308, 309 (Fla. 3d DCA 1991) (defining interrogation as “a practice that the police should know is reasonably likely to evoke an incriminating response from a suspect.”).

In *Ramirez v. State*, it was stated that an "Interrogation takes place . . . when a person is subjected to express questions, or other words or actions, by a state agent, that a reasonable person would conclude are designed to lead to an incriminating response.” (739 So. 2d 568, 573 (Fla. 1999), (citing *Traylor v. State*, 596 So. 2d 957, 966 (Fla. 1992))).

1. Officer Sheffield’s evidence

Upon discovering the stolen computer in Mr. Decker’s trunk, Officer Sheffield advised him that he was under arrest and read him his Miranda rights, to which Mr. Decker consented that he understood. (R. at 26:5-27; 27:1-6). After reading him his rights, Officer Sheffield asked: “Knowing these rights, are you now willing to answer my questions without having a lawyer present?” and Mr. Decker responded, “I sure need a lawyer now, Yes, I’d like an attorney.” (R. at 27:11-16). Upon such request, Officer Sheffield went on to call for back up and impounded the vehicle and the computer. However, Mr. Decker never initiated his right to remain silent. At the scene, he asked for permission to get his phone and he

discussed possible options for the impounding of his vehicle. (R. at 45:8-11). In *Berghuis v. Thompkins*, it was held that “where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.” 560 U.S. 370, 384 (2010). Mr. Decker’s conversation with Officer Sheffield prior to the arrival to the police station constitutes a waiver of the right to remain silent. Mr. Decker was clearly read his rights, his understanding was affirmed by his responding “yes” to each right, and yet he decided to initiate a conversation with the Officer after being given the right to remain silent.

Acknowledging Mr. Decker’s willingness to speak, Officer Sheffield took Mr. Decker to the station where he began to ask him the usual booking questions; Mr. Decker complied and responded to each question. While Mr. Decker was still sitting next to him, Officer Sheffield said to himself in a low voice, “Now, let’s see. What happened?”, and Mr. Decker quickly replied, “I [was] a jerk for taking the computer just because Lionel dared me to.” (R. at 72:4-5). Although the question wasn’t directed to Mr. Decker, his response can still be admitted. It has been stated that if a question is asked for record-keeping purposes only and it appears to be reasonably related to the police’s administrative concern, then it is considered a part of the routine booking questions. *See Pa. v. Muniz*, 496 U.S. 582, 602 (1990). “Generally, asking a routine booking question is not interrogation

under *Miranda*.” *United States v. De La Cruz*, 2011 U.S. Dist. LEXIS 25608, at *19 (D. Neb. Mar. 11, 2011).

Officer Sheffield asked himself “What happened?” in reference to what occurred from the point of the stop up to the arrest, such a question “falls within a ‘routine booking question’ exception which [is] exempt from Miranda's coverage questions to secure the “biographical data necessary to complete booking or pretrial services.”” *Pa. v. Muniz*, 496 U.S. 582, 601 (1990).

Officer Sheffield’s question was a mere pause to himself to recollect what had previously occurred. Such a statement is so broad and commonly used that one cannot consider it to be one used by officers to elicit a self-incriminating statement. A reasonable person in Mr. Decker’s shoes would assume that Officer Sheffield was recalling what occurred from the point of the arrest up to the present time. Therefore, Officer Sheffield cannot be held accountable for the fact that Mr. Decker decided to confess to the stealing of the computer, such a confession was an unforeseeable result of his question and thus not a part of an interrogation.

2. Officer Murphy’s evidence

On the night of the arrest, Officer Murphy was on duty taking the fingerprints of those who had been arrested. Officer Murphy called Mr. Decker into his office and noticing how anxious he was, he offered him water or soda to which he said no. He then went on to ask Mr. Decker if he had contacted his

attorney, Mr. Decker said no and Officer Murphy offered him the phone in his office. (R. at 55: 17-27; 56:2-4). Assuming that Mr. Decker did not get the hint that it would be a good idea for him to call an attorney, Officer Murphy went on to state, “Son, you look like a nice kid. I hope this won’t ruin your life,” (R. at 56: 7), at which point Mr. Decker began to mutter that it was just a “stupid prank” and it was all “Lionel’s fault.” (R. at 56:9-14).

The statement was in response to the Officers words, but such words are not the type that a reasonable person would conclude are designed to lead to an incriminating response. Officer Murphy’s words were simply a compliment, meant to ease Mr. Decker’s anxiety and nervousness. However, if such words were to be considered “reasonably likely to evoke an incriminating response from a suspect,” resulting in an interrogation, the statement would still be admitted into evidence because Mr. Decker had already waived his right to remain silent and the statement was obtained through a permissible interrogation standard. *State v. Brown*, 592 So. 2d 308, 309 (Fla. 3d DCA 1991). In *Miller v. Fenton* it was held that “the ‘good guy’ approach is recognized as a permissible interrogation tactic... the Supreme Court has indicated that a sympathetic attitude on the part of the interrogator is not in itself enough to render a confession involuntary.” 796 F.2d 598, 607 (3d Cir. 1986).

B. The trial court's finding that the statements produced by Mr. Decker did not invoke the Fifth Amendment protection was based on substantial evidence that they were voluntarily stated

In *Miranda v. Arizona*, the court stated:

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statements given freely and voluntarily without any compelling influences is, of course, admissible in evidence.... Volunteered statements of any kind are not barred by the Fifth Amendment.

384 U.S. 436, 478 (1996).

“The ultimate issue of voluntariness is a legal rather than factual question.” *Ross v. State*, 45 So. 3d 403, 418 (Fla. 2010) (quoting *Ramirez v. State*, 739 So. 2d 568, 575 (Fla. 1999)). “Where a confession is obtained after the administration of Miranda warnings, ‘the State bears a “heavy burden” to demonstrate that the defendant knowingly and intelligently waived his or her privilege against self-incrimination and the right to counsel.’” *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

“It is well established that an involuntary confession may result from psychological, as well as physical, coercion....To determine the voluntariness of a confession, the court must consider the effect that the totality of the circumstances had upon the will of the defendant.” *Miller v. Fenton*, 796 F.2d 598, 603 (3d Cir.

1986). Such is accomplished by the Court assessing the totality of all the surrounding circumstances, including the characteristics of the accused and the details of the interrogation. Some of the factors taken into account include:

(1) the youth of the accused, (2) his lack of education, (3) the lack of any advice to the accused of his constitutional rights, (4) the length of detention, (5) the repeated and prolonged nature of the questioning, and (6) the use of physical punishment such as the deprivation of food or sleep.

See Schneckloth, 412 U.S. 218, 226 (1973).

Mr. Decker is a twenty year old who should have sufficient knowledge of the legal system since he was a college student at the time of the conviction. Prior to attending college, a high school student has to pass several social studies classes which deal with the Constitution and the Bill of Rights. In addition, upon entering college, one has to take an additional federal government course, which once again covers the rights an American citizen has. Even if Mr. Decker argues that he lacks knowledge of his rights, at the time of the arrest, Officer Sheffield informed him of his Miranda rights, which Mr. Decker acknowledged by responding “yes” and further requesting an attorney. (R. at 26:5-27; 27:1-6; 27:11-16).

Upon arrival at the police station, Mr. Decker was detained for fifty minutes prior to being asked the booking questions and being fingerprinted. (R. at 44:23-25). During that period, Mr. Decker was simply sitting waiting to be told what to do, he was neither forced to stay sitting down nor constantly questioned by any officers. (R. at 45:1-2). Officer Sheffield’s questioning was not one so prolonged

as to accomplish extortion of an involuntary confession, his questions were those of a routine booking. Officer Murphy's conversation did not involve a questioning until Mr. Decker confessed, but even then, his conversation was not one that would be considered lengthy since it was held during the time Mr. Decker was being fingerprinted.

Mr. Decker's arrest was not long enough to consist of a deprivation of food or sleep. Either way, Officer Murphy offered Mr. Decker water and soda prior to conducting the fingerprinting, demonstrating that at no point were the officers trying to extort a confession by depriving him of fluids.

Taking all of these factors into consideration, it can be reasonably concluded that Mr. Decker's confession was uncoerced and therefore voluntary. The fact that he misunderstood Officer Sheffield's question and confessed to taking the computer cannot be considered compelled. Mr. Decker could have remained silent or simply stated what occurred from the time of the stop up to the arrest. Instead, he voluntarily stated that he took the computer because he was dared to. (R. at 72:1-10).

Officer Murphy's conversation did not involve any questioning or psychological manipulation, he simply felt bad for Mr. Decker. The fact that Mr. Decker considered Officer Murphy a considerate person and wanted him to like him does mean that his confession should be suppressed.

“[T]he Fifth Amendment privilege is not concerned 'with moral and psychological pressures to confess emanating from sources other than official coercion.’” *Berghuis v. Thompson*, 560 U.S. 370, 387 (2010). From Mr. Decker’s testimony, it would seem that he pressured himself into voluntarily speaking to Officer Murphy and blaming Lionel for the taking of the computer. (R. at 70:23-26)

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited herein, the State respectfully requests that the trial court's judgment be AFFIRMED.

June 20, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-service to Brandon Russell, 123 Elwood Blvd., Miami, FL 33333, this 24th day of June, 2014.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a).

/s/ MILAGROS CANALS

/s/ RIOCARD JAMIL MARC