POLICE

Police: Immunity

***Timoney v. City of Miami Civilian Investigative Panel*,**
990 So. 2d 614 (Fla. 3d Dist. App. 2008)

Statutory protection from internal investigation afforded to police chiefs does not apply when an investigation is external and conducted by a civilian investigative panel. When an official purposefully delays a panel's investigation for so long that the panel is time-barred from exercising its authority, that official will be equitably estopped from claiming the panel no longer has jurisdiction.

FACTS AND PROCEDURAL HISTORY

In September 2007, the Miami Civilian Investigative Panel (CIP) received a complaint alleging the City of Miami Police Chief John Timoney (Timoney) had accepted a free SUV from a local car dealership in violation of police regulations and state law. The CIP started an investigation in October 2007 and one month later served a subpoena on Timoney, which required him to testify before the CIP on December 7, 2007. The day before the hearing, Timoney asked to reschedule the hearing. The CIP agreed and served Timoney with a second subpoena on December 17. Timoney requested clarification and again rescheduled for December 21, on which date he appeared, but refused to testify or produce documents.

The CIP filed a petition in the Circuit Court of Miami-Dade County. The court directed Timoney to comply with the CIP subpoena and to appear on January 11, 2008. Instead of appearing, Timoney filed a motion to quash subpoena *duces tecum*. He argued that the CIP had no jurisdiction over him as the police chief, or the documents as they were not public records. Then on February 19, 2008, Timoney filed a motion to dismiss as the CIP's 120-day deadline for completing its investigation had passed on February 15. The trial court denied the motion and ordered Timoney to comply with the CIP's investigation. Timoney appealed to the Third District Court of Appeal.

ANALYSIS

On appeal, Timoney challenged the authority of the CIP to investigate the police chief. The CIP's Enabling Ordinance expressly permits the panel to investigate any sworn officer of the police department. However, the Enabling Ordinance calls for its provisions to be carried out in compliance with Section 112.532(1–6) of the Florida Statutes, which exempts police chiefs from investigation by members of their own agency. The court emphasized that this exemption protects police chiefs from an internal investigation but does not insulate police chiefs from independent, external investigations. Timoney argued that Section 112.532 prevents the panel from exercising its authority over him in an investigation. Although the CIP's Enabling Ordinance specifically calls for compliance with Section 112, in this case the CIP was not conducting an internal investigation. The court concluded that Section 112 "does not apply, as in this case, to an independent, external investigation, where the CIP's Enabling Ordinance provides that any sworn officer is subject to an independent investigation by the CIP." *Timoney*, 990 So. 2d at 619. The court also rejected Timoney's argument that the Enabling Ordinance meant to exclude him as the chief of police because the CIP must give the police chief a copy of its report. The court observed that superior city officials receive the report as well.

Further, the court declined to accept Timoney's argument that the CIP was time-barred from exercising its authority, even though it had not completed its investigation within the statutorily mandated window. Time had expired because Timoney purposefully evaded the panel's investigation and used dilatory litigation tactics. The court determined that to allow Timoney to benefit from his purposeful delay would be inequitable; therefore, he was estopped from asserting the time expiration as a basis for ignoring the subpoenas.

SIGNIFICANCE

Timoney makes clear that police chiefs are not afforded complete immunity from investigation under Section 112.532 of the Florida Statutes. However, the holding may be limited by the language of a city's investigative panel's enabling ordinance, especially considering the court's emphasis on the panel's express

power to investigate any sworn police officer, including the police chief.

RESEARCH REFERENCES

- 20 Fla. Jur. 2d *Estoppel and Waiver* § 41 (2005 & Supp. 2009).
- 40 Fla. Jur. 2d *Police, Sheriffs, and Other Law Enforcement Officers* § 42 (2005 & Supp. 2009).

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Police: Juvenile Waivers of *Miranda* Rights

***State v. Roman*,**
983 So. 2d 731 (Fla. 3d Dist. App. 2008)

In cases involving a juvenile defendant who is waiving his or her *Miranda* rights, the State has the burden of proving that the juvenile knowingly, intelligently, and voluntarily waved his or her *Miranda* rights.

FACTS AND PROCEDURAL HISTORY

Jesus Roman (Roman) was arrested with three other suspects for the assault, rape, and murder of a woman, as well as the attempted robbery and attempted murder of the woman's companion. When he was arrested, Roman was sixteen years old and had completed his first year of high school.

Shortly after Roman's arrival at the first police station, an officer determined that Roman was a juvenile, and the officer tried to contact Roman's parents. Roman's biological mother was too distraught to speak with police officers when she was first contacted. After Roman was moved to a second police station, an officer contacted Roman's mother again. She was told that her son had arrived safely and that, later in the day, a conference call would be set up between herself, an agent from the Florida Department of Law Enforcement (who would be at Roman's mother's home to help translate and serve as a witness), two police officers, and Roman. The goal of the conference call was to get Roman's mother's permission for the police to question Roman.

During the conference call, Roman's mother consented twice to her son being questioned. Roman agreed to be interviewed without an attorney being present and agreed that he understood his right to have an attorney present. Then one of the police officers discussed Roman's *Miranda* rights. Roman answered the questions and initialed a form that listed the *Miranda* rights in Spanish.

The only step that the police officer missed was reading the form out loud or asking Roman to read the form out loud in order to determine whether Roman actually understood his rights, namely his right to court-appointed counsel. The form was in Spanish, and though the officer never verified that Roman could read or understand Spanish, Roman also did not indicate that he could not read or understand Spanish.

When Roman was initialing the form, the officer asked Roman questions regarding his treatment and whether he was willing to speak with a police officer. At the end of the interview, Roman's mother consented again to her son being interviewed and listened while he answered some preliminary questions about his age and address. After the interview, Roman confessed to the crimes.

Roman's attorney filed a pretrial motion to suppress the statements that Roman had made to the police. The circuit court granted the motion, and the State appealed. Florida's Third District Court of Appeal reversed the lower court's ruling because Roman had freely executed the *Miranda* form and had knowingly, voluntarily, and sufficiently waived his rights.

ANALYSIS

As the Florida Supreme Court stated in *Ramirez v. State*, it is especially important when the police are about to interview a juvenile defendant that the juvenile knowingly, intelligently, and voluntarily waives his or her *Miranda* rights. 739 So. 2d 568, 576 (Fla. 1999). When a trial court is asked to determine whether a juvenile defendant's *Miranda* rights were properly waived, the court must look to the totality of the circumstances and consider the following five circumstances:

(1) the methodology employed to administer the *Miranda* rights;

(2) the age, experience, background, and intelligence of the child;

(3) whether the parents were contacted and whether the child had an opportunity to speak with them prior to giving the statement;

(4) whether the questioning occurred in the station house; and

(5) whether the child executed a written waiver of rights.

Roman, 983 So. 2d at 735 (citing *Ramirez*, 739 So. 2d at 576). The appellate court specifically examined the trial court's evaluation of the first, third, and fifth circumstances.

The police officers' administration of Roman's *Miranda* rights was not perfect, but the court explained that providing only an oral description of the written rights did not mean that Roman failed to waive his rights voluntarily. Conversely, the court noted that no case has held that a juvenile's written waiver alone would be adequate to waive his or her rights. The court provided instruction on the methodology that should take place when police officers are administering *Miranda* rights to a juvenile—"[a] better practice would be for the officers to read the entire form out loud, or have the defendant do it. Afterwards, the officers should make sure that the defendant can read and in fact understands his or her rights, and is willing to waive them." *Roman*, 983 So. 2d at 736. And if the police officer had read the form or asked Roman to read the form, verifying that Roman understood his rights, that would have factored into the analysis of the fifth circumstance—whether the juvenile executed a written waiver of rights.

Further, the court evaluated the police officers' attempts to contact Roman's parents. Contrary to the circuit judge's determination, the appellate court found that the police officers had contacted Roman's parents. The police officers had complied with their obligations under Florida Statutes Section 985.207(2). Further, the court explained that there is no constitutional requirement that police notify a juvenile suspect's parents before ques-

tioning the juvenile—failure to notify a juvenile's parents will not by itself invalidate the juvenile's waiver.

On the remaining circumstances—Roman's age, experience, background, and intelligence; and where the police officers questioned Roman—the appellate court conducted only a minor review of the facts. The court looked at Roman's age and education and noted that the transcript seemed to indicate that Roman was more comfortable speaking Spanish than English. All the appellate court could look at was the transcript; there was no indication as to Roman's proficiency at reading or writing Spanish. Thus, nothing in the facts before the Third District indicated that Roman's age, experience, background, or intelligence were sufficient to negate his voluntary waiver of rights. Finally, Roman's interview took place at the police station, and there was nothing to suggest that the officers abused Roman, implemented any psychological tricks, or used any interviewing ploys.

SIGNIFICANCE

When police officers are preparing to interview a juvenile defendant, they must go one step further than what they do with adult defendants. The best practice for administering the *Miranda* rights to a juvenile is for the police officer or the juvenile to read the *Miranda* form out loud, and after the form has been read, the police officer should verify that the juvenile understands all of the rights and is willing to waive his or her rights. The police officer should explain the juvenile's rights. However, given the court's totality-of-circumstances analysis, a juvenile's waiver is unlikely to be invalidated merely because a police officer does not explain all of the juvenile's rights.

RESEARCH REFERENCES

- Fla. Stat. § 985.101(3) (2008) (renumbering of Fla. Stat. § 985.207).
- *Ramirez v. State*, 739 So. 2d 568 (Fla. 1999).
- 14A Fla. Jur. 2d *Criminal Law* § 972 (2008).

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Police: Retirement Benefits

***Hames v. City of Miami Firefighters' and Police Officers' Trust*,**
980 So. 2d 1112 (Fla. 3d Dist. App. 2008)

A retirement trust fund for police officers may independently initiate a forfeiture proceeding pursuant to Section 112.3173 of the Florida Statutes. Such a proceeding is not subject to the four-year statute of limitations applicable to a "civil action or proceeding" or the five-year statute of limitations for filing a complaint with the Commission on Ethics.

FACTS AND PROCEDURAL HISTORY

William Hames (Hames) was a City of Miami police officer. In 1995, Hames was part of a team of officers that witnessed a robbery. The officers chased four suspects from the scene, shooting and killing two of them. The officers then planted weapons on the suspects' bodies to validate the shootings. Several days later, Hames helped to conceal these actions by giving a sworn statement to homicide investigators falsely claiming that the suspects had been carrying weapons before they were shot.

Hames retired from the police department in 1998 and began to receive full retirement benefits from the City of Miami Firefighters' and Police Officers' Trust (Trust).

In 2001, the FBI began an investigation into the actions of City of Miami police officers—including the 1995 incident. As a result of that investigation, Hames was charged with conspiracy to obstruct justice and deprive Miami's citizens of rights, privileges, and immunities, in violation of federal law. Hames cooperated with the federal government, pled guilty, and admitted to giving a false and misleading sworn statement regarding the shooting. He was adjudicated guilty and sentenced in November 2004.

In July 2006, the Trust scheduled a preliminary hearing to determine if Hames had forfeited his retirement benefits pursuant to Section 112.3173 of the Florida Statutes. Under this Section, a retired police officer forfeits the right to receive public retirement benefits if he or she "is convicted of a specified offense committed prior to retirement." Fla. Stat. § 112.3173(3) (2006).

The Trust held a preliminary hearing in September 2006 and found cause to proceed. A final hearing was held in December 2006, and the Trust issued a forfeiture order that discontinued Hames' benefits and ordered the return of $266,336.99 that Hames had already received. On appeal to the Third District Court of Appeal, the Trust's forfeiture order was upheld.

ANALYSIS

The Third District rejected the following four arguments put forth by Hames in support of his appeal: (1) that the Trust lacked statutory authority to commence forfeiture proceedings; (2) that the forfeiture proceedings should have been barred by one of two statutes of limitations; (3) that Hames' federal felony convictions did not constitute "specified offenses" under the forfeiture statute; and (4) that the Trust's administrative procedures violated Hames' due process rights.

First, the court addressed Hames' claim that the Trust lacked authority to commence a forfeiture proceeding independently. The procedural component of the forfeiture statute required the Trust to make a forfeiture determination when it "receive[d] notice [from the Commission on Ethics] pursuant to subsection (4) *or otherwise ha[d] reason to believe* that the rights and privileges of any person under such system are required to be forfeited under this section." Fla. Stat. § 112.3173(5)(a) (emphasis added). Hames argued that this provision required an investigation by the Commission on Ethics as a prerequisite to conducting a forfeiture proceeding. The court found this statute of limitations to be inapplicable because the Trust's administrative forfeiture proceeding was not within the jurisdiction of the Commission on Ethics.

Hames' second argument was that the Trust's forfeiture proceeding was barred by one of two statutes of limitations. The first of these, Section 112.3231(1) of the Florida Statutes (2001), was a five-year limitations period for filing a complaint alleging a breach of the public trust within the jurisdiction of the Commission on Ethics. The court held that this statute of limitations was inapplicable because the Trust's administrative forfeiture proceeding was not within the jurisdiction of the Commission on Ethics.

The second statute of limitations asserted by Hames, Section 95.011 of the Florida Statutes (2001), established a four-year

limitations period on a "civil action or proceeding." The court examined a number of decisions in which the limitations periods of Chapter 95 were successfully applied to administrative hearings and found that the common element in these cases was that the administrative hearing served as a direct substitute for a civil action. In contrast, when administrative proceedings were disciplinary in nature, Florida courts consistently refused to apply Chapter 95's limitations periods. Because the forfeiture proceeding in Hames' case resulted in the imposition of a significant penalty, the Third District concluded that the forfeiture proceeding was "just the type of disciplinary action to which Florida courts have been loath to apply the limitations periods found within [C]hapter 95." *Hames*, 980 So. 2d at 1116.

Hames' third argument was that the forfeiture statute was inapplicable because he did not commit a "specified offense" within the meaning of the statute. Specifically, Hames argued that the acts underlying his federal felony convictions were not punishable as felonies in Florida at the time of commission. However, under Section 839.25 of the Florida Statutes, "official misconduct" is a third-degree felony that occurs when "a public servant, with corrupt intent to obtain a benefit for himself or herself or another . . . knowingly falsif[ies] . . . any official record or official document." It was undisputed, the court remarked, that, while serving as a police officer, Hames gave a false, sworn statement to police investigators to shield other officers from prosecution. Because those actions were punishable as felonious official misconduct under Section 839.25 at the time of their commission, they constituted a "specified offense" under the forfeiture statute.

Finally, Hames argued that the Trust violated his due process rights by failing to execute "effective" subpoenas to compel the testimony of two FBI agents. The court opined that the absence of these agents was due to Hames' own failure to comply with federal regulations and could not be attributed to the Trust. Because the record did not contain evidence that the "fairness of the proceedings or the correctness of the action may have been impaired," the court held that the Trust's administrative procedures were sufficient for due process purposes. Fla. Stat. § 120.68(7)(c) (2006) (cited *id.* at 1118).

SIGNIFICANCE

Hames confirms that a retirement trust fund may initiate forfeiture proceedings without involving the Commission on Ethics. Additionally, *Hames* establishes that disciplinary administrative procedures are not barred by the four-year statute of limitations for a "civil action or proceeding" under Section 95.11(3)(n) of the Florida Statutes or the five-year statute of limitations for filing a complaint with the Commission on Ethics under Section 112.3231(1) of the Florida Statutes.

RESEARCH REFERENCES

- 9 Fla. Jur. 2d *Civil Servants* § 173 (Westlaw database updated Aug. 2008).
- 39 Fla. Jur. 2d *Pensions and Retirement Funds* § 18 (Westlaw database updated Aug. 2008).

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