

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2010

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D08-3677

HERVEY LEE OWENS,

Appellee.

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Opinion filed July 23, 2010

Appeal from the Circuit Court
for Orange County,
Jenifer Davis, Judge.

Bill McCollum, Attorney General,
Tallahassee, and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Appellant.

James S. Purdy, Public Defender, and
Dee Ball, Assistant Public Defender,
Daytona Beach, for Appellee.

COHEN, J.

The State appeals the trial court's order suppressing statements Appellee, Hervey Owens, made to law enforcement officers. We reverse.

Owens was charged with two counts of lewd and lascivious battery, one count of lewd or lascivious molestation, and one count of possession of a firearm by a convicted felon. Prior to his interview with law enforcement, Owens was read the following:

You have the right to remain silent; do you understand?

Anything you say may be used against you in court; do you understand?

You have a right to talk to a lawyer before and during questioning; do you understand?

If you cannot afford a lawyer and want one, one will be provided for you before questioning, without charge; do you understand?

Owens responded affirmatively to each question. He also acknowledged that no one had threatened him or promised him anything to induce a confession.

The trial court, relying upon State v. Powell, 998 So. 2d 531 (Fla. 2008), granted the motion to suppress. During the pendency of this appeal, that decision was reversed by the United States Supreme Court in Florida v. Powell, 130 S. Ct. 1195 (2010), which held that Miranda¹ is satisfied when a suspect is informed he has "the right to talk to a lawyer before answering any of [the law enforcement officers'] questions," and that he can invoke this right "at any time . . . during th[e] interview." The Court explained:

In determining whether police officers adequately conveyed the four warnings, we have said, reviewing courts are not required to examine the words employed "as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by Miranda.'" (citations omitted).

Id. at 1204.

In this case, the Miranda warning given to Owens sufficiently parallels the standard warnings given by the Federal Bureau of Investigation quoted, in pertinent part, and described as "exemplary" in Powell: "You have the right to talk to a lawyer for

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

advice before we ask you any questions. You have the right to have a lawyer with you during questioning." Id. at 1206.

Since Powell, the Florida Supreme Court specifically rejected the argument that a Miranda warning was deficient because it failed to advise of "the right to appointed counsel both before and *during* the interrogation." Miller v. State, 35 Fla. L. Weekly S323 (Fla. June 3, 2010).

The warnings given Owens satisfy Miranda.

REVERSED.

MONACO, C.J., and PALMER, J., concur.