

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

JULY TERM 2011

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D07-2010

JOSEPH MODESTE,

Appellee.

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Opinion filed July 29, 2011

Appeal from the Circuit Court
for Orange County,
Bob Wattles, Judge.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Appellant.

Frank J. Bankowitz of Frank J. Bankowitz,
P.A., Orlando, for Appellee.

PER CURIAM.

ON REMAND

In August, 2008, this court reversed a trial court order suppressing certain statements made by Modeste during custodial interrogation. *See State v. Modeste*, 987 So. 2d 787 (Fla. 5th DCA 2008) (*Miranda* warning provided to defendant was not inadequate because it did not expressly advise suspect that right to counsel included the right to have counsel present during interrogation). Our decision was quashed by

the Florida Supreme Court in light of its decision in *State v. Powell*, 998 So. 2d 531 (Fla. 2008). See *Modeste v. State*, 4 So. 3d 1217 (Fla. 2009). When the United States Supreme Court accepted review of the Florida Supreme Court's decision in *Powell*, this court entered an order holding the instant case in abeyance pending disposition of *Florida v. Powell* in the United States Supreme Court.

The United States Supreme Court subsequently reversed the Florida Supreme Court, determining that the warnings given to Powell did not violate the principles espoused in *Miranda*.¹ *Florida v. Powell*, 130 S.Ct. 1195 (2010). On remand, the Florida Supreme Court additionally determined that the warnings given to Powell did not violate the right against self-incrimination clause set forth in Article I, section 9 of the Florida Constitution. *State v. Powell*, 36 Fla. L. Weekly S264 (Fla. June 16, 2011).

Accordingly, we reverse the trial court's order granting Modeste's motion to suppress and direct the trial court to reconsider its decision in light of *Florida v. Powell*, 130 S.Ct. 1195 (2010) and *State v. Powell*, 36 Fla. L. Weekly S264 (Fla. June 16, 2011). The trial court may, in its discretion, afford the parties an opportunity to present additional evidence on the motion to suppress.

REVERSED and REMANDED.

ORFINGER, CJ., GRIFFIN and EVANDER, JJ., concur.

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