

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

JANUARY TERM 2005

**NEAL BROSS,**

Appellant,

v.

**STATE OF FLORIDA,**

Appellee.

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CASE NO. 4D03-1871

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Opinion filed March 9, 2005

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner, Judge; L.T. Case No. 01-3609 CF 10 D.

Carey Haughwout, Public Defender, and Joseph R. Chloupek, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Neil Bross appeals his conviction and fifteen-year sentence for the lesser-included offense of third degree murder. Bross contends that his post-arrest statement to the police should have been suppressed because the *Miranda*<sup>1</sup> warning he received failed to inform him that he had a right to have an attorney present during questioning. We agree and reverse. See *Dendy v. State*, 30 Fla.L.Weekly D392 (Fla. 4th DCA, Feb 09, 2005)(reversing on the same grounds on appeal by co-defendant); *Franklin v. State*, 876 So. 2d 607 (Fla. 4th DCA 2004)(noting that

*Miranda* form used by Broward County Sheriff's Office was only one of ninety rights forms obtained from federal and state law enforcement agencies introduced in evidence that failed to indicate that the suspect could consult with a lawyer during questioning), *cert. denied*, 125 S. Ct. 890 (U.S. Jan. 10, 2005) (No. 04-568); *President v. State*, 884 So. 2d 126 (Fla. 4th DCA 2004), *review denied*, No. SC04-1550 (Fla. Jan. 5, 2005); *West v. State*, 876 So. 2d 614 (Fla. 4th DCA 2004), *review denied*, No. SC04-1543 (Fla. Jan. 5, 2005); *Roberts v. State*, 874 So. 2d 1225 (Fla. 4th DCA 2004), *review denied*, No. SC04-1552 (Fla. Jan. 5, 2005).<sup>2</sup>

Based on our review of the record, we are unable to conclude that this error was harmless beyond a reasonable doubt, given that the bulk of the evidence against Bross was his own confession and a corroborative statement and trial testimony of a co-defendant. See *State v. DiGiulio*, 491 So. 2d 1129, 1135 (Fla. 1986)(holding that harmless error exists where the state establishes beyond a reasonable doubt that the error did not contribute to the verdict).

Accordingly, we reverse Bross' conviction and sentence and remand this cause for a new trial. We affirm without discussion Bross' second point on appeal that the trial court erred in allowing the state access to grand jury testimony.

REVERSED in part, AFFIRMED in part and REMANDED.

POLEN, TAYLOR and MAY, JJ., concur.

**NOT FINAL UNTIL DISPOSITION OF ANY  
TIMELY FILED MOTION FOR REHEARING.**

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<sup>1</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

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<sup>2</sup>As the foregoing citations indicate, both the Florida Supreme Court and United States Supreme Court have declined to review cases ruling on the constitutionality of the Broward County Sheriff's Office's *Miranda* rights card.