

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

STATE OF FLORIDA, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 DOMINICK LAVDEAH FLETCHER and )  
 RODNEY LEWIS LEE, )  
 )  
 Appellees. )  
 \_\_\_\_\_ )

Case No. 2D08-4646

Opinion filed September 9, 2009.

Appeal from the Circuit Court for  
Hillsborough County; Manuel A. Lopez,  
Judge.

Bill McCollum, Attorney General,  
Tallahassee, and Susan D. Dunlevy,  
Assistant Attorney General, Tampa, for  
Appellant.

James Marion Moorman, Public Defender,  
and Richard Sanders, Assistant Public  
Defender, Bartow, for Appellee Dominick  
Lavdeah Fletcher.

Daniel M. Hernandez of Daniel M.  
Hernandez, P.A., Tampa, for Appellee  
Rodney Lee Lewis.

CASANUEVA, Chief Judge.

The State appeals the trial court's order granting motions to suppress filed by defendants Dominick Lavdeah Fletcher and Rodney Lewis Lee. We reverse.

The defendants' motions raised two grounds for suppression of their custodial statements to police. First, they claimed they received faulty Miranda<sup>1</sup> warnings because officers did not adequately inform them of their right to the presence of an attorney both before and during questioning. Second, the defendants claimed that their statements "were a product of deceit, coercion and duress, therefore involuntary and illegal." The trial court declined to address the second ground, finding that the warning given to the defendants did not satisfy the requirements of Miranda as explained in this court's opinion of Powell v. State, 969 So. 2d 1060 (Fla. 2d DCA 2007).<sup>2</sup>

In Powell, Mr. Powell was given Miranda warnings that informed him only that he had the right to talk to a lawyer *before* answering any questions. State v. Powell, 998 So. 2d 531, 541 (Fla. 2008). This court and the Florida Supreme Court explained in their respective Powell decisions that such an instruction did not satisfy Miranda because it could mislead a suspect to believe that he did not have a right to the advice and counsel of an attorney *during* questioning. Id.

However, Mr. Fletcher and Mr. Lee signed "Warnings to Suspects" cards which state, "You have the right to the presence of an attorney." This unrestricted warning is distinguished from the one given in Powell and identical to language recently

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

<sup>2</sup>In State v. Powell, 998 So. 2d 531 (Fla. 2008), the Florida Supreme Court approved this court's opinion. The U.S. Supreme Court has since granted certiorari review and the case remains pending. See Florida v. Powell, No. 08-1175, 2009 WL 741877 (U.S. June 22, 2009).

approved by this court in State v. Smith, 6 So. 3d 652, 653 (Fla. 2d DCA 2009) (holding that the statement satisfied the constitutional requirements set forth in Miranda because it did not limit the time during which the defendant could exercise his right to counsel). See also Graham v. State, 974 So. 2d 440 (Fla. 2d DCA 2007), review denied, 984 So. 2d 1250 (Fla. 2008) (same).

Accordingly, we reverse the trial court's order. On remand, the trial court shall consider the other ground raised in the defendants' motions to suppress.

Reversed and remanded.

ALTENBERND and VILLANTI, JJ., Concur.