

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FLEMING AUSTIN PAYTON,

Defendant-Appellant.

UNPUBLISHED
December 1, 2000

No. 213258
Genesee Circuit Court
LC No. 97-001035-FH

Before: Jansen, P.J., and Doctoroff and O’Connell, JJ.

O’CONNELL, J. (concurring).

For the reasons stated by the trial court, I concur with its determination that under “the totality of the circumstances” test, the evidence showed that the defendant voluntarily and knowingly waived his right to have an attorney present during questioning after the polygraph examination was concluded. The police were not required to obtain a second waiver of the *Miranda*¹ warnings under the facts of this case. I concur with the balance of the majority opinion.

/s/ Peter D. O’Connell

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).