

FLORIDA CASE LAW UPDATE 24-02

Case: *State v. Penna*, 2024 WL 1918839

Date: May 14, 2024

Subject: *Miranda* requirements after suspect invokes and re-initiates

FACTS: Penna went on a violent crime spree which involved two murders, kidnapping, robbery, carjacking and attempted murder. When Penna was apprehended by law enforcement, he sustained four gunshot wounds. Penna was taken into custody and transported to a hospital for medical treatment. The next day Detective D'Angelo went to the hospital to speak with Penna. Penna was shackled to the bed and on medication, but was able to communicate with the detective. Detective D'Angelo asked if he had been advised of his *Miranda* rights, and Penna listed the rights noting the right to silence and an attorney. Despite this, the detective read Penna *Miranda* warnings as listed on his department-issued card. Penna answered a few questions, but when asked a specific question about a stolen SUV, Penna invoked his right to counsel. Detective D'Angelo stopped questioning Penna and left the room.

Penna remained in the hospital for roughly a month and a half, and at all times restrained to his bed, with at least one police officer assigned to constantly monitor him. About four weeks after the murders, Deputy Nettles was assigned to monitor Penna. Penna asked Deputy Nettles why he was in the hospital, and the deputy responded by asking "you don't know why you're here?" Penna volunteered to the deputy that he "stabbed a couple of people." In response to a clarifying question, he confessed to stabbing a police dog and confirmed that he had stabbed two men. Two days later, Deputy Nettles was monitoring Penna again. Without any prompting, Penna said he was in a bad mood and his life was messed up. Deputy Nettles followed up by asking why he had this dim outlook; Penna responded he had ruined his life, adding "I know what I did. I'm going to prison for my whole.... life." The next day Deputy Nettles was assigned to watch Penna. Penna asked "what do you think I will get?" and clarified that he meant for "killing the two men." Deputy Nettles asked what he thought his punishment should be. Penna then told Deputy Nettles he would share what happened. Deputy Nettles reminded Penna that he was a police officer and would write down his statements, and also cautioned Penna against talking unless he wanted to. Deputy Nettles did not read *Miranda*. Penna told Deputy Nettles additional details about his crime spree. About a week later, Penna again struck up a conversation with Deputy Nettles and spoke of his crimes and that he thought the murders would result in life sentences. Penna was charged with several crimes, including two counts of first-degree murder.

Penna moved to suppress the statements made to Deputy Nettles, arguing that the statements were obtained in violation of *Miranda*. The trial court denied the motion to suppress, stressing that Penna initiated all the conversations with Deputy Nettles; in the trial court's view, Penna failed to establish a *Miranda* violation. After being convicted, Penna appealed to the Fourth District Court of Appeal. The appellate court found that the first two conversations were not obtained in violation of *Miranda*; but for the remaining conversations, Deputy Nettles violated *Miranda* by failing to "specifically" give Penna his *Miranda* rights again prior to questioning him. The appellate court certified a question to the Florida Supreme Court - "Is *Miranda* automatically violated when an officer does not re-read a *Miranda* warning following a defendant's voluntary re-initiation of contact with law enforcement?"

RULING: *Miranda* is not automatically violated if an officer does not re-read *Miranda* following a defendant's voluntary re-initiation of contact with law enforcement.

DISCUSSION: In finding that Deputy Nettles violated *Miranda* in the later conversations with Penna, the appellate court relied on existing Florida case law (*Shelly v. State*, 262 So.3d 1 (Fla. 2018)). The Florida Supreme Court revisited the holding in *Shelly* and found that it was wrongly decided because the defendant in that case did not reinitiate contact with law enforcement after invoking his rights, thus the analysis should have ended there as a *Miranda* violation was established. Instead, the *Shelly* case set forth a per se rule, that if a defendant reinitiates contact with law enforcement, he must be reminded of his

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Miranda rights or given them again. The proper test, taken from US Supreme Court precedent (*Oregon v. Bradshaw*, 462 U.S. 1039 (1983)), is (1) did the suspect reinitiate contact with police and if so, (2) did he knowingly and voluntarily waive his earlier-invoked *Miranda* rights. The second prong is reviewed based on the totality of the circumstances, which include the background, experience, and conduct of the defendant.

COMMENT: While there is no bright line rule requiring *Miranda* to be re-read, it is certainly a factor that Courts will consider in an overall analysis of whether the defendant knowingly and voluntarily waived his *Miranda* rights. It should also be noted that in this particular case the evidence clearly shows that 1) Penna re-initiated contact, and 2) Penna was reminded that he was speaking to a police officer, that the statements he made would be written down, and that he did not have to talk unless he wanted to.

Heather Griffin Guarch
Regional Legal Advisor
Florida Department of Law Enforcement
Orlando Regional Operations Center

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