

FLORIDA CASE LAW UPDATE 15-07

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**Case:** State v. Pullen, 40 FLW D2804b (Fla. 5th DCA)

**Date:** December 18, 2015

**Subject:** Even though the suspect informed officers that he had retained counsel, his subsequent statement to them did not constitute a Miranda violation because he was not both in custody and subject to official interrogation at the time the statement was made

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**FACTS:** Detectives approached Pullen at his workplace and asked him about unlawful sexual contact with a minor. Pullen admitted to "hanging out" with the victim, but denied any sexual contact. He agreed to meet with the detectives at the police station the following morning. When he failed to appear for the meeting, they returned to his workplace, where Pullen informed them that he had retained counsel. When they turned to leave, Pullen reengaged them in a general discussion regarding the investigation. Pullen ultimately volunteered that while he never raped the victim, they did engage in sex on one occasion. Pullen then provided a written statement admitting to the sexual contact. At trial, Pullen argued that even though he was not in custody at the time he made his statement, the detectives still had an obligation to obtain a valid Miranda waiver from him once they were informed that he was represented by counsel. The trial court agreed and suppressed the statements.

**RULING:** The Fifth District Court of Appeal reversed the trial court, holding that the police are not required to give Miranda warnings to persons who are not both in custody and subjected to interrogation.

**DISCUSSION:** The appellate court noted that since this case clearly did not implicate Pullen's 6th Amendment right to counsel, the analysis should rely on 5th Amendment precedent. The court related, relying on *McNeil v. Wisconsin*, 501 U.S. 171 (1991), that the U. S. Supreme Court has never extended the Miranda right to counsel outside of the context of custodial interrogation, nor can this right be invoked in anticipation of later custodial questioning. Citing *Sapp v. State*, 690 So.2d 581 (Fla. 1997), the court reiterated that "Miranda's safeguards were intended to protect...by countering the compulsion that inheres in custodial interrogation. The presence of both a custodial setting and official interrogation is required to trigger the Miranda right to counsel...absent one or the other, Miranda is not implicated." In this case, since Pullen was not in custody, and since he could not prospectively invoke his Miranda rights simply by stating that he had retained counsel, no Miranda violation occurred, and his statement was admissible.

**COMMENTS:** Remember that different rules apply once a suspect who is in custody invokes his 5th Amendment right to counsel post-Miranda. Pursuant to case law, that suspect may not be re-approached by law enforcement to discuss any crime until there has been a 14 day break in custody, or unless the suspect initiates the contact. See *Maryland v. Shatzer*, 559 U.S. 98 (2010); *Edwards v. Arizona*, 451 U.S. 477 (1981); *Minnick v. Mississippi*, 498 U.S. 146 (1990); *Traylor v. State*, 596 So.2d 957 (Fla. 1992). Also, once a suspect's 6th Amendment right to counsel has attached (through the initiation of court proceedings), any contact should be made through the appointed counsel.

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**Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.**