

U.S. Supreme Court okays Miranda warning used by Tampa police

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TAMPA — Overturning a lower court ruling, the U.S. Supreme Court said Tuesday that Tampa police adequately informed a suspect of his right to consult an attorney during questioning.

The Florida Attorney General's Office, which had asked the nation's highest court to intervene, called the 7-2 decision "a significant win for law enforcement and public safety."

The ruling means Kevin Dewayne Powell will likely remain in prison for the rest of his 10-year sentence for illegally possessing a firearm.

It should also bring clarity to a number of pending and potential cases nationwide, including one in which Hillsborough prosecutors have considered charging a man with murder.

In keeping with their past decisions, justices did not dictate the precise language police must use when reading suspects their Miranda rights. But Michael Sinacore, felony bureau chief for the Hillsborough State Attorney's Office, said the majority sent a clear message about how to interpret the warnings.

"If there is a lesson to be learned," he said, "it's to look at the entirety of the warning and apply commonsense meaning to it."

Tampa police arrested Powell, a felon, in August 2004 after officers found a loaded pistol during a search of his girlfriend's apartment. After his arrest but before questioning him, police read him their standard Miranda warning.

Powell signed the form that stated in part: "You have the right to talk to a lawyer before answering any of our questions. ... You have the right to use any of these rights at any time you want during this interview."

He then admitted that the handgun was his.

Hillsborough Circuit Judge Daniel Perry denied Powell's motion to suppress his incriminating statements. The 2nd District Court of Appeal and later the state Supreme Court cited that ruling as grounds to reverse Powell's conviction.

The Florida Supreme Court found that the warning Tampa police read to Powell was misleading. The court said it suggested he could consult with an attorney only before the interrogation and not throughout it.

The U.S. Supreme Court disagreed.

The majority said the warning reasonably conveyed Powell's right to have an attorney present at all times.

"Nothing in the words used indicated that counsel's presence would be restricted after the questioning commenced," wrote Justice Ruth Bader Ginsburg, who authored the majority opinion.

"Although the warnings were not the *clearest possible* formulation of Miranda's right-to-counsel advisement, they were sufficiently comprehensive and comprehensible when given a commonsense reading," Ginsburg said.

Justices John Paul Stevens and Stephen Breyer dissented.

Stevens questioned whether the court even had the right to review the Florida Supreme Court's decision. He sided with Powell's argument that the warning form was deficient.

"This is, I believe, the first time the court has approved a warning which, if given its natural reading, entirely omitted an essential element of a suspect's rights," Stevens wrote.

Powell's attorney did not return a call for comment Tuesday.

The Tampa Police Department and other local law enforcement agencies no longer use the disputed Miranda form. After it took hits at the appellate level, prosecutors issued a revised form that makes clear the right to an attorney before and during questioning.

Tuesday's decision is not automatically binding on Florida courts. The state Supreme Court must now reconsider its ruling in light of the new opinion and decide whether to uphold Powell's conviction, Sinacore said.

He expects only a handful of other Hillsborough cases to be affected.

Prosecutors had previously delayed filing a murder charge against Scott Schweickert, convicted in federal court of helping to drug and rape a Tampa man, because they wanted to see how the Powell case would affect the use of his incriminating statements at trial. Sinacore said they will now consider the decision as part of weighing the evidence in the Schweickert case.

In response to earlier appellate decisions in the Powell case that didn't go the state's way, prosecutors already made some compromises they can't undo.

One woman accused of second-degree murder got 10 years trimmed off her prison term after the old Tampa police warning form caused her conviction to get reversed, Sinacore said. In another case, prosecutors had to drop a manslaughter charge when judges ruled the inadequate warning made the defendant's statements inadmissible.