130 S. Ct. 1195; 175 L. Ed. 2d 1009, *;
2010 U.S. LEXIS 1898, **; 22 Fla. L. Weekly Fed. S 124

FLORIDA, PETITIONER v. KEVIN DEWAYNE POWELL

No. 08-1175

SUPREME COURT OF THE UNITED STATES

130 S. Ct. 1195*; *175 L. Ed. 2d 1009*; *2010 U.S. LEXIS 1898*; *22 Fla. L. Weekly Fed. S 124

December 7, 2009, Argued
February 23, 2010, Decided

JUSTICE GINSBURG delivered the opinion of the Court.

In a pathmarking decision, *Miranda v. Arizona, 384 U.S. 436, 471, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)*, the Court held that an individual must be "clearly informed," prior to custodial questioning, that he has, among other rights, "the right to consult with a lawyer and to have the lawyer with him during interrogation." The question presented in this case is whether advice that a suspect has "the right to talk to a lawyer before answering any of [the law enforcement officers'] questions," and that he can invoke this right "at any time . . . during th[e] interview," satisfies *Miranda*. We hold that it does.

I

On August 10, 2004, law enforcement officers in Tampa, Florida, seeking to apprehend respondent Kevin Dewayne Powell in connection with a robbery investigation, entered an apartment rented by Powell's girlfriend. *969 So. 2d 1060, 1063 (Fla. App. 2007).* After spotting Powell coming from a bedroom, the officers searched the room and discovered a loaded nine-millimeter handgun under the bed. *Ibid.*

The officers arrested Powell and transported him to the Tampa Police headquarters. *Ibid.* Once there, and before asking Powell any questions, the officers read Powell the standard Tampa Police Department Consent and Release Form 310. *Id., at 1063-1064*. The form states:

> "You have the right to remainsilent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview." App. 3. See also *969 So. 2d, at 1064*.

Acknowledging that he had been informed of his rights, that he "underst[oo]d them," and that he was "willing to talk" to the officers, Powell signed the form. App. 3. He then admitted that he owned the handgun found in the apartment. Powell knew he was prohibited from possessing a gun because he had previously been convicted of a felony, but said he had nevertheless purchased and carried the firearm for his protection. See *969 So. 2d, at 1064*; App. 29.

Powell was charged in state court with possession of a weapon by a prohibited possessor, in violation of *Fla. Stat. Ann. § 790.23(1)* (West 2007). Contending that the *Miranda* warnings were deficient because they did not adequately convey his right to the presence of an attorney during questioning, he moved to suppress his inculpatory statements. The trial court denied the motion, concluding that the officers had properly notified Powell of his right to counsel. *969 So. 2d, at 1064*; App. 28. A jury convicted Powell of the gun-possession charge. *969 So. 2d, at 1064*.

1

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[The Florida Supreme Court held that *Miranda* and its progeny] "require that a suspect be clearly informed of the right to have a lawyer present **during** questioning." *Id., at 542*. The court found that the advice Powell received was misleading because it suggested that Powell could "only consult with an attorney before questioning" and did not convey Powell's entitlement to counsel's presence throughout the interrogation. *Id., at 541*. Nor, in the court's view, did the final catchall warning -- "[y]ou have the right to use any of these rights at any time you want during this interview" -- cure the defect the court perceived in the right-to-counsel advice: "The catch-all phrase did not supply the missing warning of the right to have counsel present during police questioning," the court stated, for "a right that has never been expressed cannot be reiterated." *Ibid*.

1 *[omitted]*

* * * *

We granted certiorari, *557 U.S. ___, 129 S. Ct. 2827, 174 L. Ed. 2d 551 (2009)*, and now reverse the judgment of the Florida Supreme Court.

II [omitted]

III

A

* * * *

Miranda's third warning -- the only one at issue here -- addresses our particular concern that "[t]he circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege [to remain silent] by his interrogators." *Id., at 469, 86 S. Ct. 1602, 16 L. Ed. 2d 694*. Responsive to that concern, we stated, as "an absolute prerequisite to interrogation," that an individual held for questioning "must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Id., at 471, 86 S. Ct. 1602, 16 L. Ed. 2d 694*. The question before us is whether the warnings Powell received satisfied this requirement.

The four warnings *Miranda* requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed. See *California v. Prysock, 453 U.S. 355, 359, 101 S. Ct. 2806, 69 L. Ed. 2d 696 (1981) (per curiam)* ("This Court has never indicated that the rigidity of *Miranda* extends to the precise formulation of the warnings given a criminal defendant." (internal quotation marks omitted)); *Rhode Island v. Innis, 446 U.S. 291, 297, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980)* (safeguards against self-incrimination include "*Miranda* warnings . . . or their equivalent"). In determining whether police officers adequately conveyed the four warnings, we have said, reviewing courts are not required to examine the words employed "as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.'" *Duckworth, 492 U.S., at 203, 109 S. Ct. 2875, 106 L. Ed. 2d 166* (quoting *Prysock, 453 U.S., at 361, 101 S. Ct. 2806, 69 L. Ed. 2d 696*).

B

Our decisions in *Prysock* and *Duckworth* inform our judgment here. Both concerned a suspect's entitlement to adequate notification of the right to appointed counsel. In *Prysock*, an officer informed the suspect of, *inter alia*, his right to a lawyer's presence during questioning and his right to counsel appointed at no cost. *453 U.S., at 356-357, 101 S. Ct. 2806, 69 L. Ed. 2d 696*. The Court of Appeals held the advice inadequate to comply with *Miranda* because it lacked an express statement that the appointment of an attorney would occur prior to the impending interrogation. See *453 U.S., at 358-359, 101 S. Ct. 2806, 69 L. Ed. 2d 696*. We reversed. *Id., at 362, 101 S. Ct. 2806, 69 L. Ed. 2d 696*. "[N]othing in the warnings," we observed, "suggested any limitation on the right to the presence of appointed counsel different from the clearly conveyed rights to a lawyer in general, including the right to a lawyer before [the suspect is] questioned, . . . while [he is] being questioned, and all during the questioning." *Id., at 360-361, 101 S. Ct. 2806, 69 L. Ed. 2d 696* (internal quotation marks omitted).

Similarly, in *Duckworth*, we upheld advice that, in relevant part, communicated the right to have an attorney present during the interrogation and the right to an appointed attorney, but also informed the suspect that the lawyer would be appointed "if and when [the suspect goes] to court." *492 U.S., at 198, 109 S. Ct. 2875, 106 L. Ed. 2d 166* (emphasis deleted; internal quotation marks omitted). "The Court of Appeals thought th[e] 'if and when you go to court' language suggested that only those accused who can afford an attorney have the right to have one present before answering any questions." *Id., at 203, 109 S. Ct. 2875, 106 L. Ed. 2d 166* (some internal quotation marks omitted). We thought otherwise. Under the relevant state law, we noted, "counsel is appointed at [a] defendant's initial appearance in court." *Id., at 204, 109 S. Ct. 2875, 106 L. Ed. 2d 166*. The "if and when you go to court" advice, we said, "simply anticipate[d]" a question the suspect might be expected to ask after receiving *Miranda* warnings, *i.e.*, "*when* [will he] obtain counsel." *492 U.S., at 204, 109 S. Ct. 2875, 106 L. Ed. 2d 166*. Reading the "if and when" language together with the other information conveyed, we held that the warnings, "in their totality, satisfied *Miranda*." *Id., at 205, 109 S. Ct. 2875, 106 L. Ed. 2d 166*.

We reach the same conclusion in this case. The Tampa officers did not "entirely omi[t]," *post*, at 9, any information *Miranda* required them to impart. They informed Powell that he had "the right to talk to a lawyer before answering any of [their] questions" and "the right to use any of [his] rights at any time [he] want[ed] during th[e] interview." App. 3. The first statement communicated that Powell could consult with a lawyer before answering any particular question, and the second statement confirmed that he could exercise that right while the interrogation was underway. In combination, the two warnings reasonably conveyed Powell's right to have an attorney present, not only at the outset of interrogation, but at all times. [5]

5 [omitted]

To reach the opposite conclusion, *i.e.*, that the attorney would not be present throughout the interrogation, the suspect would have to imagine an unlikely scenario: To consult counsel, he would be obliged to exit and reenter the interrogation room between each query. A reasonable suspect in a custodial setting who has just been read his rights, we believe, would not come to the counterintuitive conclusion that he is obligated, or allowed, to hop in and out of the holding area to seek his attorney's advice. [6] Instead, the suspect would likely assume that he must stay put in the interrogation room and that his lawyer would be there with him the entire time. [7]

6 It is equally unlikely that the suspect would anticipate a scenario of this order: His lawyer would be admitted into the interrogation room each time the police ask him a question, then ushered out each time the suspect responds.

7 Although it does not bear on our decision, Powell seems to have understood the warning this way. The following exchange between Powell and his attorney occurred when Powell testified at his trial:

"Q. You waived the right to have an attorney present during your questioning by detectives; is that what you're telling this jury?

"A. Yes." App. 80.

The Florida Supreme Court found the warning misleading because it believed the temporal language -- that Powell could "talk to a lawyer before answering any of [the officers'] questions" -- suggested Powell could consult with an attorney only before the interrogation started. *998 So. 2d, at 541*. See also Brief for Respondent 28-29. In context, however, the term "before" merely conveyed when Powell's right to an attorney became effective -- namely, before he answered any questions at all. Nothing in the words used indicated that counsel's presence would be restricted after the questioning commenced. Instead, the warning communicated that the right to counsel carried forward to and through the interrogation: Powell could seek his attorney's advice before responding to "*any* of [the officers'] questions" and "*at any time . . . during* th[e] interview." App. 3 (emphasis added). 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.

Pursuing a different line of argument, Powell points out that most jurisdictions in Florida and across the Nation expressly advise suspects of the right to have counsel present both before and during interrogation. Brief for Respondent 41-44. If we find the advice he received adequate, Powell suggests, law enforcement agencies, hoping to obtain uninformed waivers, will be tempted to end-run *Miranda* by amending their warnings to introduce ambiguity. Brief for Respondent 50-53. But as the United States explained as *amicus curiae* in support of the State of Florida, "law enforcement agencies have little reason to assume the litigation risk of experimenting with novel *Miranda* formulations," Brief for United States as *Amicus Curiae* 6; instead, it is "desirable police practice" and "in law enforcement's own interest" to state warnings with maximum clarity, *id.*, at 12. See also *id.*, at 11 ("By using a conventional and precise formulation of the warnings, police can significantly reduce the risk that a court will later suppress the suspect's statement on the ground that the advice was inadequate.").

For these reasons, "all . . . federal law enforcement agencies explicitly advise . . . suspect[s] of the full contours of each *[Miranda]* right, including the right to the presence of counsel during questioning." *Id.*, at 12. The standard warnings used by the Federal Bureau of Investigation are exemplary. They provide, in relevant part: "You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning." *Ibid.*, n. 3 (internal quotation marks omitted). This advice is admirably informative, but we decline to declare its precise formulation necessary to meet *Miranda*'s requirements. Different words were used in the advice Powell received, but they communicated the same essential message.

* * *

For the reasons stated, the judgment of the Supreme Court of Florida is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE BREYER joins as to Part II, dissenting.

Today, the Court decides a case in which the Florida Supreme Court held a local police practice violated the Florida Constitution. The Court's power to review that decision is doubtful at best; moreover, the Florida Supreme Court has the better view on the merits.

I

* * * *

In this case, the form regularly used by the Tampa police warned Powell that he had "the right to talk to a lawyer before answering any of our questions." App. 3. This informed him only of the right to consult with a lawyer before questioning, the very right the *Miranda* Court identified as insufficient to protect the *Fifth Amendment* privilege. The warning did not say anything about the right to have counsel present during interroga-

tion. Although we have never required "rigidity in the *form* of the required warnings," *California v. Prysock, 453 U.S. 355, 359, 101 S. Ct. 2806, 69 L. Ed. 2d 696 (1981) (per curiam)*, 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.

Despite the failure of the warning to mention it, in the Court's view the warning "reasonably conveyed" to Powell that he had the right to a lawyer's presence during the interrogation. *Ante*, at 10. The Court cobbles together this conclusion from two elements of the warning. First, the Court assumes the warning regarding Powell's right "to talk to a lawyer before answering any of [the officers'] questions," App. 3, conveyed that "Powell could consult with a lawyer before answering any *particular* question," *ante*, at 10 (emphasis added). [7] Second, in the Court's view, the addition of a catchall clause at the end of the recitation of rights "confirmed" that Powell could use his right to consult an attorney "while the interrogation was underway." *Ibid*.

> 7 This assumption makes it easier for the Court to conclude the warning conveyed a right to have a lawyer present. If a suspect is told he has the right to consult with an attorney before answering any particular question, the Court may be correct that he would reasonably conclude he has the right to a lawyer's presence because otherwise he would have to imagine he could consult his attorney in some unlikely fashion (*e.g.*, by leaving the interrogation room between every question).
> The more natural reading of the warning Powell was given, which (1) contained a temporal limit and (2) failed to mention his right to the presence of counsel in the interrogation room, is that Powell only had the right to consult with an attorney before the interrogation began, not that he had the right to have an attorney with him during questioning. Even those few Courts of Appeals that have approved warnings that did not expressly mention the right to an attorney's presence during interrogation [8] have found language of the sort used in Powell's warning to be misleading.

* * * *

When the relevant clause of the warning in this case is given its most natural reading, the catchall clause does not meaningfully clarify Powell's rights. It communicated that Powell could exercise the previously listed rights at any time. Yet the only previously listed right was the "right to talk to a lawyer *before* answering any of [the officers'] questions." App. 3 (emphasis added). Informing Powell that he could exercise, at any time during the interview, the right to talk to a lawyer *before* answering any questions did not reasonably convey the right to talk to a lawyer *after* answering some questions, much less implicitly inform Powell of his right to have a lawyer with him at all times during interrogation. An intelligent suspect could reasonably conclude that all he **[**45]** was provided was a one-time right to consult with an attorney, not a right to have an attorney present with him in the interrogation room at all times. [10]

> 10 The Court supports its analysis by taking note of Powell's testimony at trial, given after the trial judge had overruled his lawyer's objection that the warning he received was inadequate. In my view, the testimony in context is not probative of what Powell thought the warnings meant. It did not explore what Powell understood the warnings to mean, but simply established, as a prelude to Powell's testimony explaining his prior statement, that he had waived his rights. Regardless, the testimony is irrelevant, as the Court acknowledges. "No amount of circumstantial evidence that a person may have been aware of [the right to have a lawyer with him during interrogation] will suffice to stand" in the stead of an adequate warning. *Miranda v. Arizona, 384 U.S. 436, 471-472, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).*

The Court relies on *Duckworth v. Eagan, 492 U.S. 195, 109 S. Ct. 2875, 106 L. Ed. 2d 166 (1989)*, and *Prysock, 453 U.S. 355, 101 S. Ct. 2806, 69 L. Ed. 2d 696*, but in neither case did the warning at issue completely omit one of a suspect's rights. In *Prysock*, the warning regarding the right to an appointed attorney contained no temporal limitation, see *id., at 360-361, 101 S. Ct. 2806, 69 L. Ed. 2d 696*, which clearly distinguishes that case from Powell's. In *Duckworth*, the suspect was explicitly informed that he had the right "to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning," and that he had "this right to the advice and presence of a lawyer even if you cannot afford to hire one." *492 U.S., at 198, 109 S. Ct. 2875, 106 L. Ed. 2d 166* (emphasis deleted; internal quotation marks omitted). The warning thus conveyed in full the right to appointed counsel before and during the interrogation. Although the warning was arguably undercut by the addition of a statement that an attorney would be appointed "if and when you go to court," the Court found the suspect was informed of his full rights and the warning simply added additional, truthful information regarding when counsel would be appointed. *Ibid*. (emphasis deleted; internal quotation marks omitted). Unlike the *Duckworth* warning, Powell's warning did not convey his *Miranda* rights in full with the addition of some arguably misleading statement. Rather, the warning entirely failed to inform him of the separate and distinct right "to have

counsel present during any questioning." *Miranda, 384 U.S., at 470, 86 S. Ct. 1602, 16 L. Ed. 2d 694*.

In sum, the warning at issue in this case did not reasonably convey to Powell his right to have a lawyer with him during the interrogation. "The requirement of warnings . . . [is] fundamental with respect to the *Fifth Amendment* privilege and not simply a preliminary ritual to existing methods of interrogation." *Id., at 476, 86 S. Ct. 1602, 16 L. Ed. 2d 694*. In determining that the warning implied what it did not say, it is the Court "that is guilty of attaching greater importance to the form of the *Miranda* ritual than to the substance of the message it is intended to convey." *Prysock, 453 U.S., at 366, 101 S. Ct. 2806, 69 L. Ed. 2d 696* (STEVENS, J., dissenting).

III

Whether we focus on Powell's particular case, or the use of the warning form as the standard used in one jurisdiction, it is clear that the form is imperfect. See *ante*, at 12. As the majority's decision today demonstrates, reasonable judges may well differ over the question whether the deficiency is serious enough to violate the Federal Constitution. That difference of opinion, in my judgment, falls short of providing a justification for reviewing this case when the judges of the highest court of the State have decided the warning is insufficiently protective of the rights of the State's citizens. In my view, respect for the independence of state courts, and their authority to set the rules by which their citizens are protected, should result in a dismissal of this petition.

I respectfully dissent.