Administrative Office of the Courts

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Supreme Court rejects challenges to *Miranda* warnings of defendants in two counties

SANTA FE – Law enforcement *Miranda* warnings adequately informed two defendants of their constitutional right to have an attorney for police questioning although the notices did not explicitly state the right applies both before and during an interrogation, the state Supreme Court ruled today.

In a unanimous opinion, the Court concluded that the wording of the notifications given to Howard Atencio by the San Juan County Sheriff's Office and Zaenan Chiaramonte by the Bernalillo County Sheriff's Office met the requirements of the U.S. Supreme Court's precedential decision in the case of *Miranda v. Arizona.*

Atencio was advised, "you have a right to a lawyer" and Chiaramonte was told, "You have the right to an attorney and have him/her present while you are being questioned." The justices reversed decisions of the state Court of Appeals that found the men were not adequately notified of their *Miranda* rights. Both men affirmed to police that they understood their rights and during police questioning they admitted to sexually abusing children.

The Court of Appeals ordered a retrial for Atencio, concluding that his statements to police should not have been admitted as evidence because of the faulty *Miranda* warning. The Supreme Court affirmed his convictions. In Chiaramonte's case, the district court in Bernalillo County granted a defense motion to suppress his statements to police on grounds that his *Miranda* warning was inadequate. Prosecutors appealed and the Court of Appeals upheld the district judge's ruling. Chiaramonte's criminal case is pending. The state appealed decisions about the *Miranda* warnings in both cases to the Supreme Court.

In an opinion by Justice Julie J. Vargas, the Court explained that "*Miranda* requires a person 'subjected to questioning' to be advised simply 'that he has a right to the presence of an attorney,'" which includes the right to consult with a lawyer before and during police questioning.

But "under Miranda, the right to have counsel present prior to as well as during questioning is adequately conveyed simply by informing a suspect of the right to counsel," the Court wrote.

The men's challenges to the adequacy of their *Miranda* warnings presented the Court with a legal issue it had not addressed previously.

Attencio contended that his *Miranda* warning was too general and failed to explicitly inform him that he could speak to an attorney before and during police questioning. Chiaramonte argued that his warning was inadequate because it suggested the right to counsel did not apply before questioning by law enforcement.

The Court disagreed with both defendants and explained that federal court precedents allow for flexibility in the wording of warnings as long as they reasonably convey a defendant's right to have an attorney present.

In addressing Atencio's arguments, the Court wrote that the warning he received "was adequate because 'one can reasonably infer' from an advisement referring to the 'right to a lawyer' the same as 'one can reasonably infer from an advisement referring to *the right to the presence of counsel* that the right applies both before and during interrogation.'''

"Therefore, the advisement of the right to an attorney, like the advisement of 'the right to remain silent' – which Defendant Atencio does not argue is misleading or that it was inadequate even though it did not explicitly inform him of his right to remain silent before as well as during questioning – confirms that Atencio received adequate warnings under *Miranda,*" the Court stated.

The justices also concluded that there was sufficient evidence to support Atencio's convictions.

Concerning Chiaramonte's warning, the Court wrote: "In *Miranda*, the United States Supreme Court took no issue with a warning informing a defendant of 'the right to consult with a lawyer and to have the lawyer with him during interrogation.' Therefore, we do not take issue under federal law with the warning given to Chiaramonte, that he had 'the right to an attorney and have him/her present while you are being questioned.'''

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To read the decision in *State v. Atencio*, No. S-1-SC-38869, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/530459/index.do