

# LEGAL BULLETIN

PROVIDING HIGHWAY SAFETY AND SECURITY THROUGH EXCELLENCE IN SERVICE, EDUCATION, AND ENFORCEMENT

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## UNITED STATES SUPREME COURT

### Review of police officer's pager texts did not violate the Fourth Amendment.

The City contracted with Arch Wireless to provide pagers to its police officers. The contract capped the number of messages that could be sent and received. The City incurred extra charges for extra messages that were transmitted beyond the cap. When some of the officers exceeded their monthly limit, the police chief sought to determine whether the cap should be raised. He collected the text messages from Arch Wireless, the provider, and ultimately discovered that Officer Quon was sending not only personal texts but sexually explicit ones. Eventually Officer Quon was disciplined. He sued the City for violation of his Fourth Amendment rights and for violating the Federal Stored Communications Act.

The Ninth Circuit determined that Quon had a reasonable expectation of privacy in his text messages and that the search of the texts was not reasonable. The Court suggested that there would have been less obtrusive means to determine whether the contract needed to be modified.

The United States Supreme Court reversed the Ninth Circuit. "Because the search of Quon's text messages was reasonable, petitioners did not violate respondents' Fourth Amendment rights...."

[*City of Ontario v. Quon*, 06/17/10]



### Thompkins' silence during an interrogation did not invoke his right to counsel. A suspect's Miranda right to counsel must be invoked "unambiguously."

By a 5-4 vote, the Court for the first time made two things clear about *Miranda* rights: first, if a suspect does not want to talk to police — that is, to invoke a right to silence — he must say so, with a clear statement because it is not enough to sit silently or to remain uncooperative, even through a long session.

Second, if the suspect finally answers a suggestive question with a one-word response that amounts to a confession, that, by itself, will be understood as a waiver of the right to silence and the statement can be used as evidence. Even after a three hour interrogation there was

no evidence that the statement was coerced.

Police need not obtain an explicit waiver of that right. The net practical effect is likely to be that police, in the face of a suspect's continued silence after being given *Miranda* warnings, can continue to question him, even for a couple of hours, in hopes eventually of getting him to confess.

[*Berghuis v. Thompkins*, 06/01/10]

OPINION:



## FLORIDA SUPREME COURT

### ***Miranda* warnings were sufficient and adequate under both the Florida and United States Constitutions.**

Miller was convicted and sentenced to death for the first-degree murder of Jerry Smith. Miller was also convicted of the attempted first-degree murder of Larry Haydon, burglary of a dwelling with a battery therein, and attempted robbery with a deadly weapon. Miller appealed his convictions and sentences.

In one issue, Miller contended “the trial court erred in denying his motion to suppress his confession because the *Miranda* warnings failed to advise him that he had the right to free appointment counsel during questioning.” Miller asserted that “under *Powell*, he was given a

narrower and less functional warning than that required by *Miranda* because he was not advised of the right to appointed counsel both before and during the interrogation.” The Court determined that “*Powell* does not dictate the result desired by Miller.”

Once a suspect is properly advised of his right to the presence of counsel before and during the interrogation, there is no requirement that the suspect again be additionally advised that he has the right to have counsel appointed during questioning.

The Court held Miller's suppression motion was properly denied because “Miller was fully informed of his right to have counsel appointed,” and the warnings Miller received “were sufficient and adequate under the Florida and United States constitutions.” The Court found Miller's death sentence “proportionate when compared with other capital cases” and affirmed Miller's convictions and sentences.

[*Miller v. State*, 06/03/10]

Opinion:



## ATTORNEY GENERAL OPINION

The Attorney General opined that pursuant to section 401.465(2)(a), Florida Statutes (2010), any public agency employee whose duties and responsibilities include answering, receiving, transferring, and

dispatching functions related to 911 calls or supervising or serving as the command officer to a person or persons having these duties and responsibilities at a public safety answering point is required to be certified by the Department of Health by October 1, 2012.

Training requirements are dependent upon personnel's length of employment as a 911 public safety telecommunicator

## 2010 LEGISLATIVE SUMMARIES

### FDLE CRIMINAL LAWS UPDATE



FDLE - 2010  
Legislative Summary.]

### DHSMV TRAFFIC LAWS UPDATE



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