NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

GOLGA KELILA III, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12389 Trial Court No. 4AK-13-095 CR MEMORANDUM OPINION No. 6635 — May 23, 2018

Appeal from the Superior Court, Fourth Judicial District, Bethel, Charles W. Ray Jr., Judge.

Appearances: Justin A. Tapp, Denali Law Group, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Donald Soderstrom, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Wollenberg, Judges.

Judge MANNHEIMER.

Golga Kelila III appeals his conviction for first- and second-degree sexual abuse of a minor. Kelila raises one claim on appeal: he asserts that the state troopers obtained a statement from him in violation of *Miranda v. Arizona*.[1]

[1] 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Kelila's trial attorney never raised a *Miranda* issue in the superior court. As a consequence, no evidentiary hearing was held on any *Miranda* claim, and the superior court never made findings of fact or any ruling on a *Miranda* suppression motion.

On the first day of his trial, Kelila personally complained to the judge that the trooper who interviewed him never gave him *Miranda* warnings. But Kelila then started talking about other issues, and the discussion never returned to *Miranda*.

Months later, at Kelila's sentencing, the judge took the opportunity to speak to Kelila about Kelila's *Miranda* concerns:

> *The Court*: Mr. Kelila, [some people think] that [whenever] you have contact with the police, they're supposed to give you a *Miranda* warning. [But] if the police sit down with you and [ask], "Can we talk to you?", and you say "yes", they may not be required to give you a *Miranda* warning.
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> . . .
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> And if [your lawyer] had brought to my attention their belief that there was a *Miranda* violation, [then the lawyers] would have briefed it [and] argued it. I would have considered it and made a decision [as to] whether there was or was not a *Miranda* violation. [But] that never came to my attention. [And] from what I gleaned [from the evidence presented at trial], your conversations with the police, ... in the eyes of the law, were voluntary.

Given this record, Kelila's current *Miranda* claim was not preserved for appeal. See Alaska Criminal Rules 12(b)(3) and 12(e) — which, taken together, declare that suppression claims are waived if they are not raised before trial.

Nor is Kelila entitled to raise his *Miranda* claim under the rubric of plain error. In *Moreau v. State*, 588 P.2d 275 (Alaska 1978), our supreme court held that

claims involving the exclusionary rule are "not appropriately raised for the first time on appeal." *Id.* at 280. The supreme court explained:

> The exclusionary rule is not the type of doctrine designed to protect against conviction of the innocent. Rather, it is a prophylactic device to curb improper police conduct and to protect the integrity of the judicial process. Thus, justice does not generally require that it be applied on appeal where it is not urged at trial or where new grounds for its invocation are presented on appeal.

Moreau, 588 P.2d at 280.

Moreau involved a Fourth Amendment claim raised for the first time on appeal, but this Court has applied the *Moreau* rule to a *Miranda* claim raised for the first time on appeal. *See Longley v. State*, 776 P.2d 339, 343-44 (Alaska App. 1989).

Both *Moreau* and *Longley* recognize that an appellate court can make an exception to this rule if the record shows a "singularly egregious violation".[2] But at Kelila's trial, the trooper who interviewed Kelila testified that Kelila voluntarily came to the trooper station to be interviewed — and that, during this interview, the trooper repeatedly told Kelila that he was free to leave at any time, and that he would not be arrested that day, regardless of how the interview went. Thus, the record indicates that there was no *Miranda* violation at all, much less a "singularly egregious" one.

For these reasons, the judgement of the superior court is AFFIRMED.

Before we end our discussion of Kelila's appeal, we wish to remind the lawyers who practice in front of us that they are not permitted to raise claims on appeal unless (1) the claim was preserved in the lower court or (2) the claim is raised under the rubric of plain error.

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[2] *Moreau*, 588 P.2d at 280 n. 13; *Longley*, 776 P.2d at 344.

A lawyer is required to either (1) expressly identify where in the record a claim was raised and ruled on, or (2) expressly acknowledge that the claim was not preserved for appeal and is being raised as a claim of plain error. *See* Appellate Rule 212(c)(8)(B). Kelila's brief to this Court fails to mention that no *Miranda* claim was litigated in the trial court, and that the trial judge made no *Miranda* ruling. Instead, Kelila's attorney argues the *Miranda* claim to this Court as if he were arguing a suppression motion to a trial court judge, asking us to interpret the facts in the light most favorable to the suppression claim. This is not allowed.

In addition, as we discuss in this opinion, it has been the law in Alaska for forty years that claims invoking the exclusionary rule cannot be raised as claims of plain error for the first time on appeal, at least absent a "singularly egregious violation" of the defendant's rights. Kelila's appellate attorney fails to acknowledge this law in his brief to this Court.

When attorneys fail to candidly discuss the pertinent facts and law in their briefs, they do their clients a disservice, and they fail in their duty to this Court.