

Recent Case Report

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Montejo v. Louisiana

(2009) __ U.S. __ [2009 WL 1443049]

Issue

May officers seek to question a represented suspect about a crime with which he had been charged?

Facts

Officers in Gretna, Louisiana arrested Montejó for murdering a man during a robbery. After waiving his *Miranda* rights, Montejó confessed. Three days later, he was arraigned on the murder charge and the public defender's office was appointed to represent him.

Shortly thereafter, two detectives visited Montejó in jail and, after obtaining a second *Miranda* waiver, asked if he would accompany them to the scene of the crime to look for the murder weapon. Montejó agreed. During the trip to write "an inculpatory letter of apology to the victim's widow." And he did. At his trial, the letter was admitted into evidence and Montejó was convicted. He was sentenced to death.

Discussion

On appeal to the United States Supreme Court, Montejó argued that his letter should have been suppressed because it was obtained in violation of his Sixth Amendment right to counsel, specifically the rule of *Michigan v. Jackson*.¹ In *Jackson*, the Court held that officers may not seek to question a suspect about a crime with which he had been charged if the suspect had invoked his Sixth Amendment rights during an arraignment or other court proceeding. The Court had also ruled that such an invocation occurs if the suspect requested or accepted a court-appointed attorney during the hearing.² It was therefore apparent that Montejó's letter to his victim was obtained in violation of *Jackson* because Montejó had been charged with murder, the subject of the letter was the murder, and he was represented by counsel on the murder charge.

But in a dramatic transformation of Sixth Amendment law, the Court in *Montejo* overturned *Jackson*, ruling that officers may now seek to question represented suspects

¹ (1986) 475 U.S. 625.

² See *Michigan v. Harvey* (1990) 494 U.S. 344, 352 ["To be sure, once a defendant obtains ... counsel as respondent had here, analysis of the waiver issue changes."]; *Brewer v. Williams* (1977) 430 U.S. 387, 405 ["Williams had effectively asserted his right to counsel by having secured attorneys"]; *People v. Wader* (1993) 5 Cal.4th 610, 654 ["The record does not show that defendant asked for a lawyer to represent him in the capital case at or before his interview."]; *People v. Hayes* (1988) 200 Cal.App.3d 400, 407 ["[W]here a defendant is represented by an attorney he is entitled to no less Sixth Amendment protection than a defendant who simply requested an attorney."]; *U.S. v. Harrison* (9th Cir. 2000) 213 F.3d 1206, 1209 ["But attachment of the right alone does not guarantee a defendant the assistance of counsel. A defendant must also invoke the Sixth Amendment right by hiring a lawyer or asking for appointed counsel."].

about crimes with which they had been charged. The only restriction is that they must obtain a waiver of Sixth Amendment rights from the suspect which, as discussed in the Comment, occurs when the suspect waives his *Miranda* rights.

The main reason for the Court's decision was that the purpose of *Jackson* (to prevent officers from badgering suspects into giving statements) was already being achieved by *Miranda* which, among other things, prohibits badgering. As the court pointed out:

[A] defendant who does not want to speak to the police without counsel present need only say as much when he is first approached and given the *Miranda* warnings. At that point, not only must the immediate contact end, but badgering by later requests is prohibited.

Another reason for overturning *Jackson* was its "substantial costs" to society; i.e., it deterred officers from "trying to obtain voluntary confessions" and thus, it hindered "society's compelling interest in finding, convicting, and punishing those who violate the law."

Although Montejo had waived his *Miranda* rights before writing the letter, the Court disposed of the case by remanding it back to Louisiana so that he could litigate the issue of whether his waiver was knowing and voluntary.

Comment

There are several things about *Montejo* that should be noted. First, it will be a great help to officers because it eliminates the confusion (and there was a lot of it) over when they may question suspects about crimes with which they had been charged. As the Court observed, its decision "changes the legal landscape" and should make this area of the law "easy to apply."

Second, it is still the law that officers may not seek to question suspects who, in conjunction with custodial interrogation, invoke their *Miranda* right to counsel by informing officers that they wanted to talk with a lawyer before questioning or have one present during questioning.³ As the Court explained, "If Montejo made a clear assertion of the right to counsel when officers approached him about accompanying them on the excursion for the murder weapon, then no interrogation should have taken place unless Montejo initiated it."

Third, prior to the Court's decision in *Montejo*, if a suspect was charged with a crime, officers were required to comply with the requests or instructions of the suspect's attorney pertaining to questioning; e.g., "Don't question my client."⁴ It would appear, however, that this rule has been abrogated by *Montejo*.

Fourth, the Court ruled that ability of officers to seek interviews with charged suspects is not affected by anything the suspect or his attorney said at arraignment. "What matters," said the Court, "is what happens when the defendant is approached for interrogation, and (if he consents) what happens during the interrogation—not what happened at [the arraignment]."⁵ This makes the law easier to apply because officers

³ See *Arizona v. Roberson* (1988) 486 U.S. 675; *McNeil v. Wisconsin* (1991) 501 U.S. 171, 177 ["Once a suspect invokes the *Miranda* right to counsel for interrogation regarding one offense, he may not be reapproached regarding any offense unless counsel is present."].

⁴ See *Moran v. Burbine* (1986) 475 U.S. 412; *People v. Ledesma* (1988) 204 Cal.App.3d 682; *People v. Duck Wong* (1976) 18 Cal.3d 178.

⁵ ALSO SEE *McNeil v. Wisconsin* (1991) 501 U.S. 171, 182, fn3 ["Most rights must be asserted when the government seeks to take the action they protect against."].

seldom know what the suspect or judge said during arraignment. Thus, it is now immaterial that the suspect asked the judge to appoint an attorney to represent him; or that the judge, without being asked to do so, referred the suspect to the public defender.

Fifth, as noted, officers must obtain a Sixth Amendment waiver before questioning a suspect about a crime with which he had been charged. This can be accomplished by obtaining a *Miranda* waiver because the Supreme Court has ruled that a suspect who waives his *Miranda* rights also effectively waives his Sixth Amendment rights. As the *Montejo* Court pointed out, “[W]hen a defendant is read his *Miranda* rights (which include the right to have counsel present during interrogation) and agrees to waive those rights, that typically does the trick.”

Finally, the California Rules of Professional Conduct prohibit prosecutors from communicating with a defendant who is represented by counsel if, (1) the communication concerns a crime for which he is represented, and (2) the defendant’s attorney did not consent to the communication.⁶ But this rule does not affect officers because, as the *Montejo* Court pointed out, the Constitution “does not make investigating police officers lawyers.” POV

⁶ Rule 2-100, California Rules of Professional Conduct.