

People v. Molano

(2019) __ Cal.5th __ [2019 WL 2621826]

Issues

(1) Did investigators violate *Miranda* by lying to a murder suspect about their reasons for wanting to interview him? (2) Did the suspect reinitiate questioning after he invoked his *Miranda* rights?

Facts

On June 15, 1995, an habitual sex offender named Carl Molano murdered Suzanne McKenna who lived in a cottage near his apartment in unincorporated Alameda County. The next day, he returned to the cottage to wipe his fingerprints. While there, some of McKenna's friends happened to arrive because she wasn't answering her phone. One of them happened to look through a window and saw a man, later identified as Molano, standing in McKenna's kitchen. The woman yelled and Molano ran out a back door. When McKenna's friends entered the cottage, they found that it had been ransacked, and they notified the Alameda County Sheriff's Office. When deputies arrived, they found McKenna's body. She had been strangled. While searching McKenna's cottage, deputies preserved some biological samples which were not analyzed because the crime lab was not yet able to conduct DNA testing.

When Molano left the cottage, he returned to his apartment and told his wife, Brenda, that he had been "partying with a couple in one of the cottages" and that the other man had choked McKenna to death. Molano asked Brenda not to notify sheriff's deputies because the man had threatened to kill his family if he did. That afternoon a deputy knocked on the door, told Brenda about the murder. Brenda said she didn't know anything about it. There were no leads, and the investigation stalled.

Six years later, Benda took her 13-year old son, Robert, to the sheriff's substation and admitted that she had lied to the deputy who had questioned her, and she reported what Molano said and did when he arrived home. Detectives also questioned Robert who said that, on the day after the murder, he had seen Molano jogging away from the cottages and later encountered him—sweating and shoeless—in a nearby storage shed. Molano told him that he would kill him if he reported it.

As the result of this information, the investigation was reopened and three things happened in quick succession: First, one of McKenna's friends positively identified Molano as the man she had seen in the cottage. Second, investigators learned that Molano was an habitual sex offender. Third, because DNA testing was now possible, technicians were able to process the biological samples from the scene, and they found Molano's DNA on a ligature that had been wrapped around McKenna's neck.

It wasn't difficult for investigators to locate Molano, as he was currently incarcerated at San Quentin. Before interviewing him, however, they devised a ruse whereby they would tell him that they were assigned to a unit that kept track of habitual sex offenders, and they merely wanted to talk to him about the registration matters. After obtaining a *Miranda* waiver, they asked Molano about his job prospects, family background, and substance abuse issues. Then they asked if he remembered the murder of his neighbor in 1995.

Molano admitted that he and McKenna had had sexual intercourse one or two days before the murder, and that he did not come forward because of his status as an habitual

sex offender. Because the topic of conversation had changed dramatically, it apparently dawned on Molano that he had been duped. So he told the investigators “I understand where this is leading to, and I would rather not say anything else until I have a public defender of mine.” The investigators terminated the interview but told Molano that if he wanted to resume their conversation he would have to initiate contact. Molano responded that he wanted to tell them “about his involvement with McKenna’s murder,” but that he first “wanted to have a counseling session with his psychologist.” The investigators gave him their cards and left.

One week later, Molano was charged with the murder, and the investigators returned to San Quentin and transported him back to Alameda County to stand trial. When they informed him that he was under arrest for murdering McKenna, he said “he had been meaning” to call them, had “intended to,” and that he had already talked to a counselor. Because Molano had previously invoked his right to remain silent and right to counsel, the investigators told him they could not discuss the murder until they arrived at their substation. During the drive, Molano asked “What’s it look like I’m facing?” An investigator responded, “[I]f you’d like to give an explanation then we’re gonna give you another opportunity once we get to our station.” What followed was a lengthy conversation in which the investigators made it clear that they wanted to talk with him, but they put no pressure on him. When they arrived, Molano said he “wanted to get this over with, [that] he knows that the public defender would tell him not to talk to the police,” but that he “just wants to tell the story, and get it over with.”

When the interview began, and after Molano waived his *Miranda* rights, the investigators confirmed with him that he wanted to talk with them about the murder, and that he had initiated the interview. He then claimed that he and another man were having rough sex with McKenna, and that the other man inadvertently strangled her. Shortly thereafter, a deputy district attorney interviewed Molano and, after obtaining a *Miranda* waiver, asked, “Would it be a fair statement to say that you reinitiated the discussion about the case? Molano replied that it “would be fair because I asked like if I will be straight up with you both like I was with them.” He then repeated his story.

Before trial, Molano filed a motion to suppress his statements on grounds that he had previously invoked. The motion was denied and the case went to trial. He was found guilty and sentenced to death.

Discussion

On appeal, Molano argued that his confession should have been suppressed on the following grounds: (1) his initial *Miranda* waiver at San Quentin was ineffective because the investigators lied to him about the real purpose of their visit, and (2) he did not freely reinitiate the interview that took place at the sheriff’s station.

The ruse

As noted, the investigators lied to Molano when they met with him at San Quentin when they said they wanted to talk about the sex registration matters. Although Molano did not then make any incriminating statements, he argued that the incriminating statement he made later at the sheriff’s station should have been suppressed because “he would not have waived his *Miranda* rights if he had actually been told who the officers were and what they were investigating.”

It is settled, however, that officers who are seeking a *Miranda* waiver need not provide suspects with any information other than the *Miranda* rights themselves. As the

Supreme Court observed, “[W]e have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights.”¹ More to the point, the Court has ruled that officers may ordinarily lie to the suspect about other matters so long as they do not misrepresent the *Miranda* rights. For example, waivers have been deemed “knowing and intelligent” even though officers told the suspect that his victim was “hurt” when, in fact, she was dead;² and when FBI agents told the suspect that they wanted to question him about “terrorism” when, in fact, he was under investigation for having sex with children.³

Applying these principles, the court ruled that “the fact that the officers did not tell defendant they were going to ask him about McKenna’s killing does not invalidate the waiver. Defendant’s lack of awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether he voluntarily, knowingly, and intelligently waived [his rights].”

Reinitiating questioning

Molano also argued that his incriminating statements should have been suppressed because he had invoked his right to counsel when the investigators sought to interview him at San Quentin. Although Molano clearly invoked, the Supreme Court has ruled that officers may question a suspect who had previously invoked the right to remain silent or the right to counsel if the suspect (1) freely initiated the questioning; and (2) demonstrated a willingness to open up a general discussion about the crime, as opposed to merely discussing incidental or unrelated matters, or “routine incidents of the custodial relationship.”⁴ As the Court observed, “There are some inquiries, such as a request for a drink of water or a request to use a telephone, that are so routine that they cannot be fairly said to represent a desire on the part of an accused to open up a more generalized discussion.”

In most cases, a suspect’s intent to engage in a general discussion may be implied if he did not restrict the interview to incidental or unrelated matters. Because Molano did not impose such a restriction, the court ruled that he had voluntarily reinitiated the interview and that his subsequent statements were properly admitted.

For these reasons, the court ruled that Molano’s statement to the investigators was obtained lawfully, and it affirmed Molano’s conviction and death sentence. POV

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¹ *Moran v. Burbine* (1986) 475 U.S. 412, 422. Also see *People v. Tate* (2010) 49 Cal.4th 635, 683, 683 [the “mere failure by law enforcement officers to advise a custodial suspect of all possible topics of interrogation is not trickery sufficient to vitiate the uncoerced waiver of one who had and understood the warnings required by *Miranda*”].

² *People v. Tate* (2010) 49 Cal.4th 635, 683.

³ *Illinois v. Perkins* (1990) 496 U.S. 292, 297.

⁴ *Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1045.