

Clark v. Murphy
(9th Cir. January, 23 2003) ___ F.3d ___

ISSUES

Did a murder suspect invoke his *Miranda* right to counsel? Was his confession voluntary?

FACTS

Clark killed his stepmother during an argument in her home in Phoenix. He then dumped the body in the desert and took his stepmother's car to California where he sold it to a car dealer. He was arrested for car theft when he picked up the check from the dealership. At the time of Clark's arrest, the victim had been reported missing under suspicious circumstances.

After waiving his *Miranda* rights, Clark admitted stealing the car and driving to California, but claimed he stole it the day *before* his stepmother was last seen. After Clark provided some details, a homicide detective told him there were "serious problems" with his story, at which point Clark said, "I think I would like to talk to a lawyer."

The detective testified he told Clark that if he wanted a lawyer "our dialogue would be over." Then he told Clark he was going to leave him alone while he interviewed his sister, but that when he returned he expected Clark to tell him whether or not he wanted a lawyer. About a half hour later when the detective returned to the interview room, Clark said he was willing to talk without a lawyer.

About 20 minutes into the interview, Clark said, "[S]hould I be telling you or should I talk to a lawyer?" The detective responded that in his opinion if the case went to trial the jury "would be concerned with remorse," and that remorse would be a factor that would have an impact on the sentence. Clark replied, "[W]ell, let's talk about it then." Shortly afterwards, he confessed and led officers to the body. Clark was convicted of second degree murder.

At issue in this proceeding was Clark's petition for a writ of habeas corpus.

DISCUSSION

Clark contended his confession should have been suppressed because, (1) he previously invoked his right to counsel, and (2) his confession was involuntary.

Invocation?

As noted, on two occasions before he confessed, Clark made reference to an attorney: "I think I would like to talk to a lawyer" and "[S]hould I be telling you or should I talk to a lawyer?" Clark argued that each of these statements constituted an invocation of his *Miranda* right to counsel and, therefore, any further questioning was unlawful.

In the past, it was the rule that a *Miranda* invocation occurred if the suspect made an ambiguous remark that indicated he *might* be invoking.¹ This changed in 1994 when the United States Supreme Court, in *Davis v. United States*,² ruled that a statement by a suspect may be deemed in invocation only if it was clear and unambiguous. Said the Court, "Unless the suspect actually requests an attorney, questioning may continue."

¹ See *People v. Porter* (1990) 221 Cal.App.3d 1213, 1218-9; *People v. Duran* (1983) 140 Cal.App.3d 485, 492; *People v. Hinds* (1984) 154 Cal.App.3d 222, 235; *People v. Green* (1987) 189 Cal.App.3d 685, 693.

² (1994) 512 US 452, 458-9. ALSO SEE *People v. Cunningham* (2001) 25 Cal.4th 926, 993; *People v. Michaels* (2002) 28 Cal.4th 486, 510.

The issue, then, was whether either of Clark's references to a lawyer constituted an actual request for a lawyer. In *Davis*, the defendant had said to the officer, "Maybe I should talk to a lawyer." In ruling this was not an invocation, the Court determined that the word "maybe" rendered the statement ambiguous because it was not clear whether or not he actually wanted a lawyer.

Following *Davis* the courts have generally ruled that invocations did not result when the suspect was uncertain as to whether he wanted a lawyer; e.g., "Do you think I need a lawyer?"³ "I think I need a lawyer,"⁴ "Do I need a lawyer?"⁵ or "Shall I call my lawyer?"⁶

Based on these cases, the court in *Clark* ruled neither of the defendant's statements constituted an invocation. Although it said the issue was "close," it concluded that "Clark failed to articulate his desire to have counsel present sufficiently clearly that a reasonable police officer standing in [the homicide detective's] shoes would have understood the statement to be a request for counsel."

Voluntariness

Clark also claimed his confession should have been suppressed because it was involuntary. As a general rule, a statement is involuntary if it was motivated by police coercion, such as threats and promises.⁷

PROMISE? Clark contended the detective essentially promised him a more lenient sentence when he said that, in his opinion, a jury "would be concerned with remorse," and that remorse would be a factor that would have an impact on the sentence. The court ruled, however, this could not constitute an implied promise because the officer made it clear it represented only his personal opinion.⁸

COERCION? Clark also argued that the interview was inherently coercive because it took place in a small, windowless interview room, in which he was kept for approximately eight hours.⁹ Although it is possible that coercion might also result from lengthy questioning in a confining interview room, as a practical matter this is not likely to happen when the suspect has waived his *Miranda* rights because he knows he can terminate the interview at any time.

³ *Diaz v. Senkowski* (2nd Cir. 1996) 76 F.3d 61, 63.

⁴ *Burket v. Angelone* (4th Cir. 2000) 208 F.3d 172, 198.

⁵ *U.S. v. Ogbuehi* (9th Cir. 1994) 18 F.3d 807, 813-4.

⁶ *U.S. v. Jara* (9th Cir. 1992) 973 F.2d 746, 750.

⁷ See *Colorado v. Connelly* (1986) 479 US 157 163, 163, 167; *In re Aven S.* (1991) 1 Cal.App.4th 69, 75-6 ["the ultimate question [is] whether the individual's free will was overborne."]; *People v. Andersen* (1980) 101 Cal.App.3d 563, 581 ["The critical element in coerced confession is compulsion, an overcoming of the will of the suspect which forces or tricks her into saying something she would not otherwise be willing to say."]; *Culombe v. Connecticut* (1961) 367 US 568, 601-2 ["The ultimate test" of voluntariness is as follows: "Is the confession the product of an essentially free and unconstrained choice by its maker?"]; *In re Deborah C.* (1981) 30 Cal.3d 125, 132 ["Statements obtained without manifest physical or psychological coercion usually are deemed voluntary . . ."]; *Oregon v. Elstad* (1985) 470 US 298, 304 [a statement is involuntary if it "had been obtained by techniques and methods offensive to due process, or under circumstances in which the suspect clearly had no opportunity to exercise a free and unconstrained will . . ."]; *People v. Lee* (2002) 95 Cal.App.4th 772, 782 ["The statement of a suspect is coerced if it is the product of police conduct which overcomes the person's free will."].

⁸ ALSO SEE *People v. Clark* (1993) 5 Cal.4th 950, 989 ["(The officer's) statement merely offered his opinion that the person who committed a crime like the one for which defendant was under arrest would serve substantial time in prison, but probably less than 30 years. There was no mention of the effect of cooperation upon the time to be served."].

⁹ **NOTE:** There was some confusion as to the exact size of the room. In any event, the court said it was either 6'X8' or 8'X10', and it "was furnished with a table and two or three chairs. It did not contain a drinking fountain or toilet."

In any event, the court rejected Clark's contention, noting, "The duration and conditions of the detention were not coercive. Clark was detained in an interview room in the Phoenix police station for approximately eight hours. The room itself was unremarkable in its size and nature." The court also pointed out that, at no time while he was confined in the room did Clark ask for food or water, or request to use the bathroom.

Clark's petition for a writ of habeas corpus was denied.