



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 340

June 3, 2009

The Right to Counsel During Custodian Interrogation

Reference: Jesse Jay Montejo
v.
Louisiana

U.S. Supreme Court
Opinion No. 07-1529
_____U.S._____
May 26, 2009

IN THIS CASE THE UNITED STATES SUPREME COURT OVERRULES MICHIGAN v. JACKSON (see Legal Bulletin no. 105). IN THE JACKSON CASE, THE U.S. SUPREME COURT HAD RULED POLICE CANNOT INITIATE INTERROGATION OF A CRIMINAL DEFENDANT ONCE HE HAS INVOKED HIS RIGHT TO COUNSEL AT AN ARRAIGNMENT OR SIMILAR PROCEEDING.

FACTS:

MONTEJO was arrested in connection with a robbery and murder. MONTEJO waived his Miranda rights and was interrogated at the sheriff's office by police detectives through the late afternoon and evening and into the early morning hours. He ultimately admitted that he had shot and killed the victim in the course of a batched burglary. Several days later, MONTEJO appeared before a judge for what (in Louisiana) is known as a "72 hour hearing" - a preliminary hearing required under state law. The judge read the charges against MONTEJO, ordered him held without bail and ordered the Office of Indigent Defender be appointed to represent the defendant. MONTEJO remained mute during this proceeding. Louisiana is one of the states who, without asking the defendant, appoint counsel to represent indigent defendants. About half of the states use this or a similar method, while the other half asks the defendant if he needs and is qualified for court appointed counsel.

Later that day, detectives contacted MONTEJO at jail and requested that he accompany them on an excursion to locate the murder weapon which MONTEJO had earlier indicated he had thrown into a lake. MONTEJO was read his Miranda rights and agreed to go along. During the excursion, MONTEJO wrote an inculpatory letter of apology to the victim's widow. When MONTEJO returned from this trip with the police, he met with his court appointed attorney, who was quite upset that the detectives had interrogated his client in his absence.

At trial, over the objection of MONTEJO's attorney, the letter of apology was admitted into evidence. MONTEJO was convicted and sentenced to death.

ISSUE:

Did this police-initiated interrogation violate the defendant's Sixth Amendment right to counsel?

HELD: No - because MONTEJO simply stood mute at his 72-hour hearing while the judge ordered the appointment of counsel; he had made no such request or assertion.

REASONING:

1. The "Jackson Rule" (overruled by this opinion) forbids police to initiate interrogation of a criminal defendant once he has invoked his right to counsel at an arraignment or similar proceeding. (emphasis added)

2. The upshot is that even on Jackson's own terms, it would be completely unjustified to presume that a defendant's consent to police initiated interrogation was involuntary or coerced simply because he had previously been appointed a lawyer.

3. Any suspect subject to custodial interrogation has the right to have a lawyer present if he so requests, and to be advised of that right.

4. Under the Miranda - Edwards (see bulletin no. 48) - Minnick (see bulletin no. 152) line of cases (which is not in doubt), a defendant who does not want to speak with the police without counsel present need only say as much when he is first approached and given the Miranda warning.

5. Under Minnick, who asked for appointed counsel at his arraignment (see bulletin no. 152), no subsequent interrogation may take place until counsel is present, "whether or not the accused has consulted with his attorney. (emphasis added)

6. Under Edwards who had asked for a lawyer but was interrogated by other detectives who did not know of the request, those detectives gave Edwards (who was in custody for murder) his Miranda rights; he waived those rights and consented to interrogation. The fresh Miranda warning matters not; once a defendant has invoked his right to have counsel present, interrogation must stop. The only exception is if the defendant initiates contact.

NOTES:

This decision will probably not have much effect in Alaska because Alaska is one of the states that mandate the court to inform a defendant of his right to counsel. Criminal Rule 39(2) directs the court to advise a defendant of his right to counsel and will not continue the proceeding without counsel unless the defendant knowingly waives the right to counsel.

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