

Jackson v. Giurbino
(9th Cir. March 26, 2004) ___ F.3d ___

ISSUE

Did an officer violate *Miranda* when he questioned an incarcerated murder suspect who had previously invoked his right to remain silent?

FACTS

Jackson was a suspect in the rape-murder of a woman in Ventura County. When an investigator learned that Jackson was in custody on unrelated charges, he sought to interview him. Jackson waived his *Miranda* rights, made no incriminating statements, and ended the interview by invoking his right to remain silent.

About 18 months later, with Jackson still in custody, the investigator sought to interview him again. This time, however, he did not advise Jackson of his *Miranda* rights or seek a waiver. Instead, he began by telling Jackson that the evidence of his guilt in the rape-murder was mounting, and that he would be better off by telling his side of the story. Jackson said he still didn't want to talk to the investigator.

Undaunted, the investigator attempted five more times persuade Jackson to talk, but each time Jackson flatly declined. Then the investigator said to Jackson, "Okay, alright, well you know I thought I would give it a shot." In response, Jackson said, "Yeah, well you know I didn't do this. . . . You know I just happened to be there."

Jackson's admission that he was present when the rape-murder occurred was used against him at his trial. He was convicted of first-degree murder with special circumstances.

DISCUSSION

Jackson argued that his statement was obtained in violation of *Miranda* and, therefore, his murder conviction should be overturned. The court agreed.

The U.S. Supreme Court has ruled that if the suspect invokes only the right to remain silent, and if officers "scrupulously honor" the invocation, they may contact him later to see if he has changed his mind about talking to them.¹ If so, and if he waives his rights, officers may question him about the crime for which he invoked or any other crime.²

Consequently, the main issue in *Jackson* was whether the investigator "scrupulously honored" Jackson's invocation. To scrupulously honor an invocation, officers must do four things:

- (1) STOP QUESTIONING: Officers must stop questioning the suspect when he invokes and must not try to persuade him to reconsider his decision to invoke.
- (2) WAIT BEFORE RECONTACTING: Officers must not recontact the suspect until a "significant period of time" had passed, which may be as little as two hours.³
- (3) NO PRESSURE: When recontacting the suspect, officers must not pressure him to waive his rights.⁴

¹ See *Michigan v. Mosley* (1975) 423 US 96; *People v. DeLeon* (1994) 22 Cal.App.4th 1265, 1271; *People v. Lispier* (1992) 4 Cal.App.4th 1317, 1324 ["Until a suspect affirmatively invokes the *Miranda* right to counsel during interrogation, the less stringent rule of *Michigan v. Mosley* applies."].

² See *People v. Warner* (1988) 203 Cal.App.3d 1122, 1129-31.

³ See *Michigan v. Mosley* (1975) 423 US 96.

⁴ See *Michigan v. Mosley* (1975) 423 US 96; *People v. Harris* (1989) 211 Cal.App.3d 640; *People v. McClary* (1977) 20 Cal.3d 218, 226 ["(A) change of mind prompted by continued interrogation and efforts to convince the defendant to communicate with the officers cannot be considered a voluntary, self-initiated conversation."].

(4) MIRANDA WAIVER: If the suspect agrees to submit to questioning, officers must obtain a *Miranda* waiver from him.

In *Jackson*, the investigator complied with the 1 and 2, but not 3 or 4. As noted, when the investigator recontacted Jackson, he disregarded Jackson's unambiguous refusal to be interviewed and attempted five times to convince him change his mind. The court did not, however, discuss this issue, apparently because the violation of the fourth requirement was so plain. As the court observed, "Jackson did not receive the [*Miranda*] warnings at all during the relevant interview." Consequently, the court ruled his statement should have been suppressed.⁵

⁵ NOTE: Technically, Jackson's statement was not obtained in violation of *Miranda* because it was not made in response to police "interrogation." As noted, it was made in response to the investigator saying, "Okay, alright, well you know I thought I would give it a shot." We don't know if this issue was argued on appeal but, in light of the overall atmosphere of the meeting, it is doubtful the court would have been receptive.