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Montejo v. Louisiana

2009 U.S. Lexis 3973
May 26, 2009, Decided

On May 26, 2009, the U.S. Supreme Court, in a five to four decision written by Justice Scalia, in *Montejo v. Louisiana*, 2009 U.S. LEXIS 3973, took the opportunity to overturn its previous ruling in *Michigan v. Jackson*, 475 U.S. 623; 106 S. Ct. 1404; 89 L. Ed. 2d 1986; 1986 U.S. LEXIS 91.

The Court held: "In sum, when the marginal benefits of the *Jackson* rule are weighed against its substantial costs to the truth-seeking process and the criminal justice system, we readily conclude that the rule does not 'pay its way,' (Cite). *Michigan v. Jackson* should be and now is overruled." *Montejo*, at 32-33.

The Rule announced in *Michigan v. Jackson* required trial courts to presume that any waiver of the right to remain silent was involuntary if received by law enforcement after the defendant obtained counsel or was appointed counsel. Therefore, any confession or admission so obtained was inadmissible.

The *Montejo* decision determined that the Jackson Rule was designed to preclude the State from badgering defendants into waiving their Fifth and Sixth Amendment rights to have counsel present during a custodial interrogation after counsel had been obtained. Reasoning that this purpose was already secured by the trilogy of *Miranda v. Arizona*, 384 U.S. 436 (1966), *Edwards v. Arizona*, 451 U.S. 477 (1981) and *Minnick v. Mississippi*, 498 U.S. 897 (1990) the Court found that *Jackson* was simply superfluous.

Under the announced *Montejo* Rule, law enforcement is now allowed, after *Mirandizing* a defendant and receiving a knowing and intelligent voluntary waiver, to interrogate a defendant who is represented by counsel if one of two of the following conditions exists:

1. The defendant HAS NOT previously exercised his or her *Miranda* right to counsel; or,

2. The defendant HAS previously exercised his or her *Miranda* right to counsel but the defendant himself or herself initiates further communication, exchanges, or conversations with law enforcement.

NOTE: The *Montejo* Rule applies only to law enforcement. Prosecutors are still bound by the State Bar Rule 4.2. Pursuant to this Rule, any prosecutor who instructs a law enforcement officer to approach a represented defendant has made the officer an agent of the prosecutor and the prosecutor is subject to discipline under Rule 4.2.

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