

JACKSON DENNO HEARING PREPARATION

(This is the Court hearing that determines if a statement made by a defendant will be admitted into the trial of the case)

A Jackson-Denno hearing is court proceeding determining whether a defendant's statement was voluntary given to an officer. The judge will make a determination if the statement can be admissible as evidence. A Jackson-Denno hearing is held outside the presence of a jury.

The Jackson-Denno hearing is required for a defendant who argues that his/her statement is inadmissible because it was not voluntarily given. The burden of proof is on the prosecution to show that the suspect was read their rights, fully understood their rights and freely and voluntarily waived their rights to provide the statement to the police. The court will judge each case on its own merits by preponderance of the evidence and not beyond a reasonable doubt.

The Jackson Denno hearing is where the defense attorney challenges:

- That the suspect was in custody and Miranda warnings apply
- That the suspect was read their rights, fully understood those rights and waived those rights to freely and voluntarily talk with the police
- That the statement the police have documented is accurate and a product of the suspects free will
- Whether police used coercive or other means such as a promise or hope of benefit or reward to obtain the statement of the suspect that would cause the statement to be involuntarily given and inadmissible as use as evidence against the defendant in court.

At the Jackson Denno hearing, the DA has the burden of showing that any statements obtained by law enforcement were done lawfully and constitutionally. The DA must prove that the officer read the suspect Miranda warnings if the suspect was in custody while questioned. Further the DA must provide evidence through the officer's testimony that the suspect fully understood their rights and waived their rights by their decision freely and voluntarily to talk to the police. The judge, not a jury, is the finder of fact and law. Initially, the prosecution will give opening remarks to the court. After opening remarks, the prosecution will present evidence through testimony of witnesses. Police officers who were involved in the detention, arrest and interview will testify. The Defense Attorney will have the opportunity to cross examine each of the Police witnesses on the facts and circumstances of each case.

After the prosecution rests its case, the defense attorney will have the opportunity to put up witnesses as well. Defense attorneys will advise the defendant whether to testify or not depending upon the facts and circumstances brought out in the case.

Once the defense has rested its case, both the defense attorney and DA will present closing arguments based on the facts and evidence presented at the hearing and the current law. The defense attorney will argue that statements should not be admitted at the upcoming trial. The DA will argue for the introduction and use all of the statement to prosecute the defendant during the pending trial.

Once closing arguments are over, the judge will analyze the testimony and evidence to rule on the issues. In cases where witness testimony is in conflict the judge will make “a finding of Fact” regarding who they believe and no reviewing court can disturb that finding unless such is found to be clearly erroneous. The judge has the option to deliver the ruling at the hearing or the judge may issue a ruling later, over time, after further review of the facts and circumstances from the evidence and testimony and its application to the law. This is why an officer’s reputation and credibility is so important. This also demonstrates the importance of specific documentation by officers of issues, actions, events and statements in their reports.

Key elements to be considered

1. Was the suspect in custody at the time of the statement:
 - a) If the suspect was under arrest then they must be read Miranda warnings before they are questioned. However, if the suspect is not in custody or in an investigative detention (such as a field sobriety test) then Miranda warnings are not required
 - b) The court will judge whether a person was in custody or not at the time of the statement under a totality of the facts and circumstances (The test is whether a reasonable person would have believed under those facts and circumstances)

NOTE: This demonstrates the importance of sound video/audio and report documentation

Key Points for Officer Preparation

1. ***Know your case:*** Read and study your report in order that you may testify in a truthful, accurate and thorough manner. Review any video or digital recordings prior to the hearing.
2. ***Schedule a pre-hearing meeting with your DA:*** Take the time before the hearing to discuss the facts and circumstances of your case and the reasons that justified your actions.
3. ***Insure you have plenty of rest and dress in a professional fashion***
4. ***Look at the Judge when you testify and speak in clear unambiguous terms:*** Do not use slang or jargon; describe issues and articulate facts and circumstances in an objective manner. (be specific)

5. *Do not let the defense attorney make you angry.*
6. *Do not let the defense attorney put words in your mouth or attempt to contradict or change your testimony.*
7. *Articulate why you thought or did what you did and “paint a picture” through your words for the judge.*
8. *If you don’t know then say you don’t know*
9. *Remember to tell your story in a very “specific and objective” context from the witness stand.*
10. *Stick to the facts and circumstances in the case*