

1980

State of Utah v. Ronald John Martinez : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *State v. Martinez*, No. 15744 (Utah Supreme Court, 1980).
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :

Plaintiff-Respondent, :

-v- :

No. 15744

RONALD JOHN MARTINEZ, :

Defendant-Appellant. :

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third Judicial District Court
Salt Lake County, State of Utah
Honorable Dean E. Conder, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	No. 15744
RONALD JOHN MARTINEZ,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

NATURE OF THE CASE

This is a criminal proceeding brought by the State of Utah against Ronald John Martinez, defendant-appellant, charging him with the crime of unlawful possession of a controlled substance with intent to distribute for value, in violation of Section 58-37-8(1)(a)(ii), Utah Code Annotated (1953).

DISPOSITION IN LOWER COURT

In the Third Judicial District Court in and for Salt Lake County, State of Utah, on January 31, 1978, after a jury trial, the defendant was found guilty of the crime of unlawful possession of a controlled substance with intent

to distribute for value.

RELIEF SOUGHT ON APPEAL

Appellant seeks an order of this court reversing the judgment rendered at trial and remanding the cause to the trial court for a new trial.

STATEMENT OF FACTS

The appellant, Ronald John Martinez, was charged in the information with the unlawful possession of a controlled substance with the intent to distribute for value. The trial began on January 30, 1978, in the Third Judicial District Court in and for Salt Lake County, before the Honorable Dean E. Conder, and concluded on January 31, 1978. At trial eight witnesses testified.

Deputy George testified he first had contact with the defendant in a traffic stop on July 18, 1977, at approximately 3900 South and 900 West (Tr. 13). At that location, prior to arrest, Deputy George advised appellant that he had a right to remain silent; that anything said could and would be used in court; that defendant had a right to an attorney during questioning, and that one would be appointed without cost; and received defendant's understanding of those rights (Tr. 29, 30). Defendant remained silent.

Deputies Michael George, Stephen Alexander, Randal

Anderson, the defendant's wife, Sergeant Patiena, Deputy Duncan, and Special Deputy Dorothy Akin were present after the travel to 1158 Warbler. They conducted a thorough search of defendant's residence. Then, after placing the defendant under arrest, the interrogation began without a fresh set of Miranda warnings. It was only asked of the defendant if he remembered his constitutional rights. The incriminating statement, "Yeah, I deal dope, but I sold my last bag last night," was made by the appellant.

ARGUMENT

POINT I

THE TRIAL COURT IMPROPERLY ADMITTED EVIDENCE OBTAINED BY POLICE OFFICERS WHEN APPELLANT HAD NOT BEEN GIVEN HIS MIRANDA RIGHTS WHILE UNDER "CUSTODIAL INTERROGATION."

The United States Supreme Court's holding in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) is based on the premise that in-custody interrogation creates an inherent compulsion on an individual to incriminate himself in response to police questioning. Statements obtained under circumstances are, therefore, obtained in violation of the Fifth Amendment privilege against compelled testimonial self-incrimination unless the privilege is "knowingly and intelligently waived." Id. at

471, 475, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The procedural safeguards set forth in Miranda are limited to questioning while the defendant is in police custody or significantly deprived of his freedom. Again, it is this environment which is innately coercive and threatens Fifth Amendment constitutional rights. In this setting Miranda seeks to protect the defendant from self-incrimination.

The prosecution may not use statements whether exculpatory or inculpatory stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. Id at 696, 384 U.S. 436, 86 S. Ct. 1602 (1966) (emphasis added).

Custodial interrogation was defined by the United States Supreme Court in Miranda as:

Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Id. at 696, 384 U.S. 436, 86 S. Ct. 1602 (1966) (emphasis added).

In the present case, the appellant was allegedly read the Miranda warnings at the location of 3900 South 900 West, Salt Lake County (Tr. 30). The appellant, however, was

not taken into custody at this time. He was informed that the police had a search warrant to search his alleged residence, but the appellant was given the free choice whether to return with the police to execute said search warrant or to go his own way (Tr. 52).

The appellant's personal freedom was not restrained in any "significant" way. He was free to leave if he so chose (Tr. 51, 52). Consequently, the appellant was not under "custodial interrogation" when read his rights. The coercive environment which Miranda was aimed at controlling was not present.

The appellant was later placed under arrest at the location of 1158 Warbler, Salt Lake County (Tr. 30, 31). After being taken into custody, he was not given his constitutional rights as required by the United States Supreme Court in Miranda. The appellant was subsequently interrogated by Officer Michael George.

Undoubtedly, respondent would argue that since the appellant was read his rights prior to arrest, this warning would be a sufficient substitute to the requirement that his rights be read while in custodial interrogation. Miranda, however, does not provide for any form of substitution as to the time this warning is to be given.

The purpose for Miranda is obvious, i.e., protection from self-incrimination while under "custodial interrogation. To not inform a person of his Fifth Amendment rights at the time of interrogation is a flagrant violation of Miranda.

The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether defendant was aware of his rights without a warning being given . . . More important, whatever the background of the person interrogated a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time. Miranda at 720, 384 U.S. 436, 86 S. Ct. 1602 (1966) (emphasis added).

Strict compliance with Miranda was upheld by the United States Court of Appeals, Seventh Circuit, in United State v. Bensinger, 436 F.2d 576 (1972). In this case petitioner, in a writ of habeas corpus proceeding, was advised of his constitutional rights when taken into custody and again about an hour later. Petitioner desired to remain silent. Police officers, however, continually confronted him, imploring him to talk in the absence of counsel. The court held that evidence obtained as the result of such police action was

not admissible. The court further stated:

To be effective, those safeguards must be fully observed and the rights of the suspect must be jealously guarded. Not even the slightest circumvention or avoidance may be tolerated. Id. at 578. (Emphasis added).

In the case at bar, the trial court relied on Oregon v. Mathiason, 97 S. Ct. 711 (1977) in overruling defense counsel's objection to the admission of statements made by appellant while under custodial interrogation, but not having been given his Miranda warnings. Taken from the transcript in relevant part, the trial court stated:

. . . as long as an individual is in the coercive environment where he is in such a restriction of his freedom to render him in custody, Miranda must be given. (Tr. 33).

and

I think that having given it to him at the site when they first talked to him and then again by referring back to it would be sufficient and would overrule the motion. (Tr. 33).

In Mathiason, the defendant on parole went to the police station in response to a request by police officers. He was not placed under arrest. Defendant gave a half hour interview during which he made a taped confession concerning

his participation in a burglary. The United States Supreme Court held that the defendant was not in custody or otherwise deprived of his freedom of action in any "significant" way and, therefore, it was not necessary that he be given the Miranda warnings prior to confession.

The trial court interpreted this case incorrectly. The factual situation in Mathiason created a more coercive environment than in the present case, however, the United States Supreme Court found the defendant was not under custodial interrogation. In Mathiason the defendant was on parole. Whether he went to the police station voluntarily, as a matter of free choice, is highly suspect. The threat of parole violation infringes on a parolee's freedom of movement. The interview took place at the police station. The setting for the interrogation, therefore, was inherently intimidating. In spite of this coercive setting, the United States Supreme Court found that the defendant was not under "custodial interrogation."

Following the decision in Mathiason, the trial court in the present case erred in concluding that the appellant was under custodial interrogation when given the Miranda warning. Consequently, the prior warning could not be substituted to satisfy the requirements of Miranda.

The constitutional requirements that, as a prerequisite to any questioning, an individual held for interrogation by a law enforcement officer has a right to remain silent does not depend upon whether he is aware of his rights without a warning being given. Again, the warnings were not given when the appellant was taken into custody. The procedural safeguards established in Miranda were not upheld.

There is no question that the statements obtained by police officers in violation of Miranda were prejudicial. Officer Michael George interrogated the appellant, and during this questioning the appellant allegedly confessed to distributing a controlled substance. Officer George testified that the appellant stated, "Yeah, I deal dope, but I sold my last bag last night." (Tr. 35).

This statement amounts to an alleged confession on the part of the appellant to the crime charged. It tends to establish his guilt and should not have been admitted into evidence in violation of Miranda and his Fifth Amendment right against self-incrimination.

POINT II

FAILURE TO ADVISE APPELLANT THAT WHILE UNDER "CUSTODIAL INTERROGATION" HE COULD CEASE MAKING ANY STATEMENT AT ANY TIME WAS A VIOLATION OF HIS FIFTH AMENDMENT RIGHT AND MIRANDA.

The American accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors rather than by the expedient of compelling it from his own mouth. The privilege against self-incrimination is accorded a liberal construction. The privilege against self-incrimination is as broad as the mischief against which it seeks to guard.

If an individual held for interrogation by police indicates in any manner at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. An accused who remains silent after being given his Miranda warnings signifies his election to remain silent and may not thereafter be questioned in any way without proof of a clear, intelligent and understanding waiver either declared or by conduct of his right to remain silent.

It has clearly been established that a defendant has a constitutionally protected right to cut off questioning when he has indicated he will not make a statement. Miranda v. Arizona, 384 U.S., 436, 473-474, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); Michigan v. Mosley, 423 U.S. 96, 102-106, 46 L. Ed. 2d 313, 96 S. Ct. 321 (1975). Accordingly, a warning of that right should precede custodial interrogation.

State v. Workmen, 435 P.2d 919, reversed per curiam

21 L. Ed. 2d 20 dealt with the warning to an accused of his right to have an appointed counsel present during custodial interrogation. By analogy, the Fifth Amendment of the United States Constitution right against self-incrimination and Article I, Section 12 of the Constitution of Utah should compel a warning of the constitutional right to cut off questioning as a necessity for fair procedure to protect the broad base of protected silence under the constitutions.

For without a prior warning of the privilege to control the interrogation as a balance against the coercive custodial environment, the accused remains ignorant of this important constitutionally protected privilege to cut off questioning. It is submitted that this right is not scrupulously honored as mandated by the United States Supreme Court in the Mosley case unless a procedural protective warning containing that right is given to the accused prior to interrogation.

Mosley also implies by its holding that a fresh set of warnings be given after a significant time lapse between interrogations.

Miranda warning cards customarily carried by police officers to be read to suspects preceding custodial interrogation state:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer one will be appointed to represent you before you answer questions, if you wish.
5. If you wish to answer questions now without contacting a lawyer or without a lawyer present, you have the right to stop answering questions at any time.

Appellant's constitutional right to stop answering questions was omitted in violation of Miranda and his Fifth Amendment right against self-incrimination.

CONCLUSION

Because the police did not warn the accused of his constitutional rights to cut off questioning and because his silence was not scrupulously honored during custodial interrogation, all incriminating statements made by him were inadmissible and should have been suppressed.

This case should be reversed, or, in the alternative,
the appellant should be granted a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing
Brief of Appellant were served on Robert B. Hansen, Utah State
Attorney General, 236 State Capitol, Salt Lake City, Utah
84114, this _____ day of November, 1978.
