

1986

Utah v. Charles N. Strain : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SECRET STATE OF UTAH, 860531

Plaintiff-Respondent,

vs.

CHARLES N. STRAIN,

Defendant-Appellant.

:

:

:

:

:

Case No. 860531

Category No. 2

BRIEF OF APPELLANT

APPEAL FROM THE JURY VERDICT AND JUDGMENT
OF THE COURT IN THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY, STATE OF UTAH,
THE HONORABLE GEORGE E. BALLIF, JUDGE, PRESIDING.

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FILED
MAY 7 1987

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 860531
vs.	:	
CHARLES N. STRAIN,	:	Category No. 2
Defendant-Appellant.	:	

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES PRESENTED ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	2
SUMMARY OF ARGUMENT.....	4
ARGUMENT:	
POINT I - THE TRIAL COURT ERRONEOUSLY ALLOWED THE ADMISSION OF DEFENDANT'S STATEMENTS TO LAW ENFORCEMENT OFFICERS.....	5
POINT II - DEFENDANT DID NOT VOLUNTARILY WAIVE HIS PRIVILEGE AGAINST SELF-INCRIMINATION AND RIGHT TO COUNSEL DURING INTERROGATION.....	7
CONCLUSION.....	13

TABLE OF AUTHORITIES

CASES

	Page
<u>Ashcroft v. Tennessee</u> , 322 US 143, 64 Sct 921, 88 Led 1192 (1944).....	9
<u>Brady v. United States</u> , 397 US 742, 90 Sct 1463, 25 Led 2nd 747.....	8
<u>Bram v. United States</u> , 168 US 532, 18 Sct 183, 42 Led 568.	8
<u>Brown v. Mississippi</u> , 297 US 278, 56 Sct 461, 80 Led 682 (1936).....	8
<u>Clewis v. Texas</u> , 386 US 707, 87 Sct 1338, 18 Led 2nd 423..	9
<u>Culombe v. Connecticut</u> , 367 US 568, 81 Sct 1860, 6 Led 2nd 1037 (1961).....	9
<u>Miller v. Fenton</u> , 106 Sct 445, 88 Led 2nd 405 (1985).....	8
<u>Mincey v. Arizona</u> , 437 US 385, 98 Sct 2408, 57 Led 2nd 290 (1978).....	8
<u>Miranda v. Arizona</u> , 384 US 436, 86 Sct 1602, 16 Led 2nd 694 (1966).....	5
<u>Payne v. Arkansas</u> , 356 US 560, 78 Sct 844, 2 Led 2nd 975.....	9,12
<u>Reck v. Pate</u> , 367 US 433, 81 Sct 1541, 6 Led 2nd 948 (1961).....	8
<u>Sims v. Georgia</u> , 389 US 404, 88 Sct 523, 19 Led 2nd 634.....	9
<u>Spano v. New York</u> , 360 US 315, 79 Sct 1202, 3 Led 2nd 1265 (1958).....	9

STATUTES CITED

UTAH CODE ANN. Sec. 76-5-203, as amended.....	1
---	---

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 860531
vs.	:	
CHARLES N. STRAIN,	:	Category No. 2
Defendant-Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF ISSUES PRESENTED ON APPEAL

The sole issue in this appeal is whether the trial court erroneously admitted statements of the defendant in violation of the defendant's rights under the constitutions of the United States and the State of Utah.

STATEMENT OF THE CASE

The defendant, Charles N. Strain, was charged with Criminal Homicide, Murder in the 2nd Degree, a first degree felony, in violation of the provisions of Utah Code Annotated, Section 76-5-203, as amended. On May 12, 1986, defendant filed a Motion to Suppress in the case, moving to suppress any and all statements made to law enforcement officers (R.26). A hearing was held on said motion on the 19th day of May, 1986. After having taken the matter under advisement and reviewing memoranda submitted by both parties, on July 8, 1986, the court rendered a ruling in which the court suppressed the statements of the defendant given to law enforcement officers (R.66).

Trial of the case was set for August 25, 1986. Four days prior to the date set for trial, plaintiff's counsel moved to

reopen the hearing on the suppression of defendant's statements to police officers on the grounds that new evidence had been discovered. The court agreed to hear the "new evidence" over the objection of counsel for defendant (R.83). After reviewing the evidence and considering memoranda submitted by counsel for both parties, on September 16, 1986, the court issued a ruling allowing two of the statements of the defendant previously suppressed to be used at the trial of the matter (R. 95). At the time of trial, prior to any part of the statements being admitted, defendant's counsel objected to their admission, which objection was sustained by the trial court. The defendant alleges the court committed prejudicial error in failing to suppress the statements of the defendant.

STATEMENT OF FACTS

On October 17, 1981, a badly decomposed body was found in a ravine in Spanish Fork Canyon, Utah County, by a deer hunter. Utah County Sheriff's Deputies went to the scene and conducted an investigation (R. 243). On February 26, 1986, the defendant was arrested on an fugitive warrant issued in the State of Idaho, by a Scottsdale, Arizona detective named Thomas Hill. Detective Hill testified that he advised the defendant of his Miranda rights at the time of arrest in Arizona, but did not question him concerning the Idaho case or the Utah case (R. 172). Some four hours after the arrest, the defendant was questioned by Detective Peter Bell of the Utah County Sheriff's office concerning the Utah homicide. The defendant was first advised of the interest in the Utah case at that time. Defendant at the conclusion of

the three hour interview maintained the position that he had nothing to do with the homicide (R.477). The defendant was again interrogated by Bell the following day, the 27th, beginning at 9:30 a.m. and continuing until 12:00 p.m. At the later stages of the interrogation, the defendant admitted culpability after being threatened with the filing of capital charges if he failed to admit culpability against the promise of five years in prison if he did admit culpability (R. 480-482), (Appendix pp.9-11).

The defendant was again questioned by Detective Bell and an additional Utah County Deputy, Scott Carter, beginning at 6:20 p.m. on the 27th and continuing until 8:09 p.m. At the beginning of this interrogation, the defendant denied killing the victim and maintained that posture. The detectives again used the threat of execution for a capital homicide as a lever to entice the defendant into confessing (Appendix C pp18-19). After obtaining admissions from defendant, the detectives again interrogated him for the purpose of restating his admissions to be transcribed by a secretary. All of the statements made to the Utah detectives were suppressed by the court after the suppression hearing on May 19, 1986, upon the grounds that the defendant had not been fully advised of his constitutional right to counsel and to remain silent.

On August 21, a motion of the plaintiff to reopen the issue of defendant's statements was granted by the court over the objection of defense counsel (R. 28-19; R. 166-172). At that hearing, the Arizona testified to his giving warnings to the defendant at the time of his arrest on the Idaho charges, four

hours before the first Utah interrogation. After taking the matter under advisement, the court allowed counsel for both plaintiff and defendant to submit memoranda of law to support their respective positions concerning the admissibility of the statements of defendant in light of the testimony of Detective Hill (R. 211-212).

Defendant's supplemental memorandum of law raised two points, to wit; Whether or not the warning by Detective Hill was sufficient, and, whether the defendant had voluntarily made the admissions and voluntarily waived Miranda rights in the present case. As to the second point, the defendant referred to argument previously made in his memorandum following the first suppression hearing identified as Point II. (It had not been necessary for the court to consider that argument at the time it was submitted since the court found the argument in defendant's Point I to require suppression.) (R. 89). The court's ruling of September 16, did not address or otherwise treat defendant's second argument (R. 95-98). At the time the statements were offered at the trial, defendant's counsel objected upon the grounds that the Miranda warnings were not properly given and also upon the grounds that the procedures used by the police were improper (R. 458-459). The statements were admitted for the jury to consider and the defendant was subsequently convicted as charged.

SUMMARY OF ARGUMENT

The statements of the defendant made to the Utah County Deputy Sheriffs should not have been admitted at the trial since the defendant was not fully advised as to his rights under the

constitutions of the United States and the State of Utah.

The statements of the defendant should not have been admitted in the event the court should determine the warnings required were given, for the reason that the police officers used threats and multiple interrogations in order to obtain the confession of the defendant, therefore, defendant's admissions were not made voluntarily.

ARGUMENT

POINT I

THE TRIAL COURT ERRONEOUSLY ALLOWED THE ADMISSION OF DEFENDANT'S STATEMENTS TO LAW ENFORCEMENT OFFICERS

The trial court reversed its' ruling prohibiting the admission of defendant's statements to law enforcement officers after allowing the plaintiff to reopen the issue of admissibility and present additional testimony. The additional testimony was that of Detective Tom Hill of Scottsdale, Arizona, the officer who had effected the arrest of the defendant on a fugitive warrant from Idaho. At the time of the hearing in August, 1986, Detective Hill indicated that the warnings given the defendant at the time of his arrest six months earlier were given from his memory and not read off the standard Miranda card (R. 195).

The United States Supreme Court in the landmark case of Miranda v. Arizona, 384 US 436, 16 Led 2nd 694, 86 Sct 1602 (1966), set forth the basic rights of which a defendant in custody must be advised before any statement or confessions made to law enforcement officials may be received in evidence. At 384 US 478, the court stated:

He must be warned prior to any questioning that he has

the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation.

As set forth above, the trial judge suppressed the statements of the defendant at the initial hearing on the Motion to Suppress, upon the grounds that the partial warnings given by the Utah authorities failed to measure up to the standard required by Miranda. The Miranda decision and subsequent rulings of the courts in interpreting and applying the Miranda warnings, leave little doubt as to the importance of the admonition concerning the right to counsel. This right is not simply the right to have counsel present at some future time, but the right to have counsel present prior to questioning or at any point in the interrogation. Further, the interrogator must make clear that the defendant will not be questioned until counsel is available if he desires counsel.

The record is clear in this case that the warning of Detective Hill advising the defendant of his right to an attorney was not the unconditional statement that would inform the defendant that an attorney would be available immediately at the

time of any interrogation. His advisement was as follows:

I said you have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning to be with you during questioning if you so desire. If you cannot afford an attorney, you have the right to have an attorney appointed for you by the court at a later date. Do you understand these rights?
(emphasis added. R. 182-183)

When the interrogation of Detective Bell began some four hours

later, at approximately 7:00 p.m. at the Scottsdale police station (R. 199), the courts were not in session and there was no indication made to the defendant that the interrogation was going to be delayed until the courts were in session.

As to whether the defendant ever made an indication that he understood the rights given him by Hill, the record does not reveal other than the following:

Q And did he respond to you?

A Yes, he did. (R. 182).

There was no indication that the response to Hill's question, "Do you understand these rights?", was in the affirmative.

The clear implication of the information given defendant was that an attorney would be available at some later time, but not at the time of the initial interrogation.

POINT II

DEFENDANT DID NOT VOLUNTARILY WAIVE HIS PRIVILEGE AGAINST SELF-INCRIMINATION AND RIGHT TO COUNSEL DURING INTERROGATION

The plaintiff has an obligation to establish not only that the rights denoted as the Miranda rights were given, but also to establish that the defendant knowingly and voluntarily waived the rights involved. The trial court in this case, having found that the warnings were not properly given at the time of the August hearing, did not address the issue of voluntariness. Defendant raised the issue in his supplemental memorandum of law submitted after the hearing was reopened at the request of plaintiff in September. The court's ruling did not address the arguments of defendant that even though the court might find the Miranda warnings had been given to defendant, defendant's subsequent

admissions were the result of threats or other improper coercion on the part of the interrogating officers.

The Supreme Court of the United States in the case of Brady v. United States, 397 US 742, 90 Sct 1463, 25 Led 2nd 747, stated that the confession of the defendant must not be extracted by any sort of threats or violence, nor obtained by direct or implied promises, however slight, nor by the exertion of any improper influence. In fact, this principle of American jurisprudence was recognized as early as 1897, in the case of Bram v. United States, 168 US 532, 18 Sct 183, 42 Led 568, and has continued to be recognized and upheld today. The court in Miller v. Fenton, 106 Sct 445, 88 Led 2nd 405, at 106 Sct 450, stated the ultimate issue to be "whether the State has obtained the confession in a manner that comports with Due Process..." As stated in Miller, the question of voluntariness of confession and waiver of Fifth and Sixth Amendment rights is a protection of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

There have been many specific situations in which the courts have held waivers or confessions to have been "involuntary". In Brown v. Mississippi, 297 US 278, 56 Sct 461, 80 Led 682 (1936) the overreaching by law enforcement officers involved physical torture or beatings. Mincey v. Arizona, 437 US 385, 98 S.Ct. 2408, 57 Led 2nd 290 (1978) found a four hour interrogation while incapacitated and sedated in an intensive care unit to produce and involuntary statement. Reck v. Pate, 367 US 433, 81 Sct 1541, 6 Led 2nd 948 (1961) involved a four day detention without

adequate food and medical attention until the confession was obtained. In Culombe v. Connecticut, 367 US 568, 81 Sct 1860, 6 Led 2nd 1037 (1961), the defendant was held for five days while the police repeatedly questioned him and employed coercive tactics. In Payne v. Arkansas, 356 US 560, 78 Sct 844, 2 Led 2nd 975 (1958) the defendant was held incommunicado for three days with little food and the defendant's confession was not obtained until the chief of police was preparing to admit a lynch mob into the jail. In Ashcroft v. Tennessee, 322 US 143, 64 Sct 921, 88 Led 1192 (1944), the defendant was subjected to 36 hours of continuous interrogation by relays of officers.

As the courts have frowned upon some of the more blatant and overt techniques of law enforcement to extract confessions, the police have resorted to more subtle forms of psychological coercion as was the case in Spano v. New York, 360 US 315, 79 Sct 1202, 3 Led 2nd 1265 (1958). In Clewis v. Texas, 386 US 707, 87 Sct 1338, 18 Led 2nd 423, the court found the situation of multiple interrogations accompanied by inadequate warnings to prohibit the use of resulting admissions of the defendant. Also, in Sims v. Georgia, 389 US 404, 88 Sct 523, 19 Led 2nd 634, the court held that despite warnings to defendant of his right not to speak, they were of little significance where the defendant had been in custody continuously for over eight hours, had not been fed at all during that time, had not been given access to family, friends, or counsel at any point, was illiterate with a third grade education, and where the defendant was of limited mental ability.

The defendant in this case was taken into custody at approximately 3:00 p.m. on the 26th day of February, 1986 (R. 187). He was first interrogated four hours later by Detective Bell for three hours continuously during which time he maintained his innocence of the crime. Defendant was not allowed access to telephone or food prior to the interrogation nor was he fed prior to the resumption of interrogation at 9:30 the next morning. Defendant indicated to the detective that he had not been fed since his arrest and that they would hold people days and days without food (Appendix A p.37-38, Appendix B p.3).

The defendant was subjected to multiple interrogations by law enforcement before he finally signed a statement admitting his involvement. He was interrogated from 9:30 a.m. to 12:00 p.m. on the 27th by Detective Bell. He was interrogated again on the 27th beginning at 6:20 p.m. by Detectives Bell and Carter until 8:00 p.m. (Appendix A p. 51) Then he was again interrogated from 8:09 until 8:20 p.m. The defendant was approached again on the 28th of February, 1986, at which time he signed a statement prepared from the taped confession made the day before.

The most coercive pressure the defendant was subjected to in order to extract his confession was the threat of execution in the event he did not confess. The defendant had maintained his innocence in the matter until Deputy Bell threatened him with the possibility of the death penalty. In the transcript of the morning interrogation on the 27th which was introduced as State's Exhibit #2 in the May 19, 1986 suppression hearing (a copy of

which is attached hereto as Appendix B), Bell made the following comments:

Now, what I'm trying to tell you right now Charlie is, all you have to do, all you've got to do...the only thing that is keeping you from going back to the State of Utah and looking at a possible execution on a first degree murder charge or a second degree murder charge, which is some jail time. The only thing that keeps between them two, is "yes, I did or no I didn't." Yes, second degree murder, no, I didn't, I will prove that you did and you are looking at a possible execution date in the State of Utah. That's all I want to hear from you Charlie, all I want to hear is yes or no. All I want to hear is, is there going to be first degree murder or second degree murder. I don't want to hear, "no I didn't have nothing to do with it," because I can prove it and I'm going to prove it. I'll go back to the State of Utah today, the County Attorney is going to file. (Appendix B p.9)

Again, in the same exchange, before the defendant had admitted any involvement:

Utah is, and Utah is going to bring you back down. Charlie, we're going to try you for murder. So, just tell me right now, let's just (not understandable), yes for jail time or no, are we going to go to trial and for possible execution. That's all I want to hear from you.

Defendant: Just that simple.

Bell: Just that simple. And I can guarantee it Charlie, I can guarantee it's that simple. My God, this thing has been drug on for years. The little girl's body up in the canyon, the soul crying for justice. (Appendix B p. 9-10)

Again, later in the same exchange:

Bell: You might have been drinking, you might have been raged, I don't know. But there was a reason why DeeDee was killed by you and all I have to know is that mitigating circumstance and then we'll see second degree murder, if you say nothing, we're going first. If you just tell me something, Charlie, we've got second degree murder. (Appendix B p. 11)

At the beginning of the evening interrogation involving Bell and Carter both questioning the defendant, the defendant maintained that he was not the person who killed the victim although he had

previously admitted having knowledge she was going to be killed. Defendant maintained this position well into the evening interview and did not change his account until after the following statements taken from State's exhibit 3 introduced at the May 19, 1986 suppression hearing (a copy of which is attached hereto as Appendix C):

Bell: The matter he is talking about Charlie, and I told you earlier today, there are two different charges that we are talking about here-1st degree murder...

Defendant: You tell me...

Bell: Just a second, let us finish. Which is punishable by probably execution in the State of Utah, or we are talking about 2nd degree homicide which is jail time. (Appendix C p. 18)

There were more exchanges during which the defendant was informed of the possibility of the death penalty as opposed to jail time. Finally, the defendant admitted he had shot the victim after a total of seven hours of interrogation. (Appendix C, p.24)

The effect of the threat of death through prosecution on a first degree homicide charge upon the defendant is readily apparent by reviewing the foregoing sequence of events. Although admittedly more civilized than putting a gun to the head of the defendant, or as in Payne v. Arkansas, supra, where the officer threatened to invite the lynch mob in, nevertheless, the basis of the threat is the same, to wit: life threatening. This threat is more effective since the defendant did not have the opportunity to consult with counsel prior to, during, or between interrogations. Add to the threat the other factors present in this case which have been set forth above such as lack of food, denial of telephone contact with relatives or friends, and

multiple interrogations, and the "totality of the circumstances" requires a finding that the defendant did not voluntarily waive his constitutional rights.

CONCLUSION

Defendant respectfully requests that his conviction be reversed and he receive a new trial in which the plaintiff is barred from using statements of the defendant. Based on the foregoing argument, defendant contends that the advice of rights given at the time of his arrest was not constitutionally sufficient and, further, the use of coercion by law enforcement officers was of such a nature as to violate his right to due process of law and any statements made as a result thereof were not voluntary.

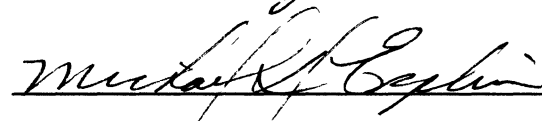
Respectfully submitted this 7th day of May, 1987.



MICHAEL D. ESPLIN
Attorney for Appellant

CERTIFICATE OF DELIVERY

I hereby certify that four true and correct copies of the foregoing Brief of Appellant were delivered to Mr. David Wilkinson, Utah Attorney General, Utah State Capitol Building, Salt Lake City, Utah this 7th day of May, 1987.



1 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

2 STATE OF UTAH

3 -----

4 STATE OF UTAH, :

5 Plaintiff, : Criminal Case No. CR 86-141

6 vs. : TRANSCRIPT OF HEARING

7 CHARLES N. STRAIN, :

8 Defendant. :

9 -----

10 MAY 19, 1986
11 Monday - 9:35 a.m.
12 Room 300, Utah County Building
13 51 South University Avenue
14 Provo, Utah County, Utah

15 BEFORE

16 HONORABLE GEORGE E. BALLIF, JUDGE
17 (Sitting Without a Jury)

18 APPEARANCES

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26 ---ooOoo---

27 WHEREUPON, the following proceedings were had:

28

MYRON A. FRAZIER, CSR, RPR
(License No. 43)

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INDEX OF WITNESSES AND EXHIBITS

<u>STATE'S WITNESSES:</u>	<u>PAGE</u>
1. PETER G. BELL	
By Mr. Watson--Direct Examination	11
By Mr. Esplin--Cross Examination	28
STATE RESTS	62
<u>DEFENDANT'S WITNESSES:</u>	
2. SCOTT W. CARTER	
By Mr. Esplin--Direct Examination	63
By Mr. Watson--Cross Examination	72
DEFENDANT RESTS	73

<u>STATE'S EXHIBITS:</u>	<u>MARKED</u>	<u>RECEIVED</u>
Exhibit No. 1	63	63
Exhibit No. 2	63	63
Exhibit No. 3	63	63
Exhibit No. 4	63	63
Exhibit No. 5	63	63

1 Q At that time, did you talk to him about the death
2 of Deanna Strain?

3 A Yes, I did. :

4 Q And what did he say?

5 A After our ensuing discussion leading up to the
6 point of her death, when I asked him why she had been killed,
7 he told me that she had to be silenced. She had to go.

8 Q Did he elaborate on that with any particularity?

9 A He did somewhat. He said that she knew too much.
10 When I tried to delve into what it was that she knew too much
11 about, he alluded to the fact that there was a person who had
12 been dealing in narcotics that she had apparently come upon
13 them in their dealings, and she just knew too much, as I took
14 it, about the narcotics operations.

15 Q Now, that interview concluded around the noon
16 hour?

17 A Yes, it did.

18 Q And did it start again later that day?

19 A Yes, it did. It started about 16:00 hours, which
20 would be four o'clock p.m.

21 Q Now, I notice on the second interview copy it
22 says, "Interview with Charles Strain on February 27, 1986 at
23 6:20 p.m."?

24 A Yes.

25 Q What happened in between four o'clock and 6:20?

1 A Until noon.

2 Q And then you did not interview him until 6:20?

3 A That's correct.

4 Q And you concluded that interview at 8:09?

5 A Yes.

6 Q So the total day was approximately four hours, is

7 that fair?

8 A That's correct.

9 Q Now, you didn't interview him at all subsequent to

10 that time while you were in Scottsdale, is that correct?

11 A No.

12 Q And he was subsequently extradited back to the

13 State of Utah?

14 A That's correct.

15 Q And do you remember the date that he came back?

16 A That was on the 24th of March.

17 Q The 24th of March?

18 A The 24th of March, yes.

19 Q Did you have occasion to interview him that day?

20 A Yes, we did.

21 Q And where did that interview take place?

22 A That was conducted at the Utah County Sheriff's

23 Office in the interview room there.

24 Q And who was present?

25 A Detective Carter and myself.

1 Q Now, other than what is on the transcript of that
2 conversation with him, were there any other times when you
3 advised him of any rights that he would have under the
4 constitution?

5 A No. I believe I advised him of his rights prior
6 to conducting the interview in the interview room, when we
7 sat down to talk.

8 Q While the tape recorder was running?

9 A Yes.

10 Q Now, you indicated that this conversation lasted
11 from approximately somewhere between 9:30 or ten o'clock to
12 12 o'clock noon, is that correct?

13 A That's correct.

14 Q Now, did he indicate to you during that conver-
15 sation that he was tired?

16 A No, he didn't.

17 Q He didn't tell you that he had a problem last
18 night, that he had a problem because there was a lot of
19 drunks that they were bringing in and he had not got much
20 sleep?

21 A He mentioned that, but he didn't indicate to me
22 that he was tired. I asked about his night in jail, and I do
23 recall that he said they did bring some drunks in that
24 evening.

25 Q You don't recall him saying, "Well, I didn't get

1 a lot of sleep last night?

2 A I don't recall him saying that. I don't recall
3 if that's in the transcript there.

4 Q Did he tell you--is there a conversation about
5 food? Did he indicate that he didn't get fed last night or
6 the night before?

7 A I believe there is some conversation to that
8 effect, yes.

9 Q Didn't he also tell you that he didn't get any
10 phone calls, or an opportunity to call?

11 A That's correct.

12 Q Did he talk about days and days at a time without
13 meals?

14 A Pardon?

15 Q Did he talk about days and days at a time being
16 in jail without any meals?

17 A That wouldn't have been on this occasion, because he
18 had only been in jail for 24 hours.

19 Q But you had a conversation with him about that?

20 A Yes sir.

21 Q Now, during this conversation you indicated that
22 he admitted to you that he was involved in the death of the
23 victim, didn't he?

24 A That's correct.

25 Q How long did it take, during your questioning,

1 before he made that admission to you?

2 A Oh, probably about half way through the interview
3 at that time.

4 Q That was after about an hour and-a-half or two
5 hours of your conversations?

6 A The interview only lasted about two hours. So I
7 would say probably an hour into the interview. Maybe not that
8 long.

9 Q Isn't it true that as you interviewed him, he
10 kept denying that, saying that he didn't pull the trigger on
11 that girl, and that he was not involved?

12 A That's correct.

13 Q Do you recall how many times he told you that?

14 A No, I don't.

15 Q Isn't it true that he told you that it was
16 someone else that had been involved in that homicide other
17 than him?

18 A That's correct.

19 Q A fellow named Jose, was it?

20 A Jose, yes. I believe Jose was supposedly the man
21 who ordered it, but he wasn't the exact man who was supposed
22 to have killed her. I believe he mentioned a man by the name
23 of Alex.

24 Q Do you have any other notes of this conversation,
25 other than the tape?

1 information back to the County Attorney's Office, they made
2 the determination as to what to charge him with.

3 Q Okay. After you and Detective Carter had
4 interviewed him that evening, you then had a transcription of
5 that tape--a portion of that tape typed up, is that correct?

6 A That's correct.

7 Q And that's what I have here entitled
8 "SUPPLEMENT"?

9 A Yes.

10 Q Now, was this entire conversation set forth in
11 what is entitled "SUPPLEMENT," here in this interview?

12 A Yes, it is.

13 Q So you questioned him from 6:20 until approxi-
14 mately what time?

15 A A little before 8:00. The tape of the
16 "SUPPLEMENT" says 8:09. But with regard to the "SUPPLEMENT,"
17 I know we took a few minutes break prior to taping the
18 "SUPPLEMENT" so we could again get a cup of coffee and have a
19 cigarette and use the restroom.

20 Q So then you did the "SUPPLEMENT"?

21 A That's correct.

22 Q According to the tape--your statement, that lasted
23 how long, approximately?

24 A I'm not really sure. Oh, it says 8:20.

25 Q So that was approximately a 15 minute summary?

PB: Peter Bell, Utah County Sheriff's Office

CS: Charles Strain

PB: There's a new cup.

CS: Was that my belongings they were carrying in last night?

PB: Yes, um hum.

CS: What was in there that they wanted so bad?

PB: Oh, there's just stuff we're looking for, going through, trying to check out your story, trying to make connections here and there.

CS: Trying to what?

PB: Make connections and stuff. Do you understand what Tom was saying about those forms right there?

CS: Not really.

PB: Well, there's instructions at the top of them, put your glasses on maybe and take a read there.

CS: Well, that's what I mean, I mean the necessity of it for here. I never filled it out before when I went back.

PB: Um hum, well that was a number of years ago, you know courts and systems can change from just night and day. I think there is a statement there on one of them that you didn't have to answer any questions there or whatever if you didn't feel it was in your best interest. Kind of like the rights, like I gave you last night.

CS: You what now?

PB: Kind of like the rights, like I gave you last night, you know you don't have to, you don't have to say anything if you want to.

CS: Well, I understand that, that's not any problem, I just didn't know the necessity of it.

PB: Um hum. Kind of still holds true today, you know, when we're talking today the same thing goes as last night, you don't have to talk if you don't want to.

CS: I've always known that. But sometimes all I do is make it worse and I found that out a long time ago, when you don't tell them what they want then they think the worst and

CS: that's what you're convicted of is something you don't know nothing about. It happened to me twice before.

PB: Oh, what incident was that?

CS: Huh?

PB: What was that about?

CS: Oh, the kids, it doesn't make any difference what I said.

PB: Um hum.

CS: Still didn't believe it so I figured the hell with them, so I shut up about it and then I get convicted anyway. This stuff just ain't none of their business, it's between you and me and the wall.

PB: Well, make a notation of such down there, there might be a place down there where they want you to . . .

CS: (Not understandable) big deal, I ain't going to be released so what's the sense (not understandable).

PB: Um hum. Is there a provision on the bottom there that shows you refusing to answer or you don't want to answer or. . .

CS: (Not understandable) this is something I . . . if you're going to go out on a bond or something.

PB: Um hum.

CS: You know.

PB: I briefly read through and that's . . .

CS: Huh?

PB: I briefly read through them and in essence that's what it's saying.

CS: Yea, if you're going out on bond, but hell, I'm not going out on bond. There can't be no bond on me.

PB: Well, you're getting a free trip to Idaho.

CS: Huh?

PB: You're getting a free trip to Idaho.

CS: I've had that before. Did you bring my cigarettes with you?

PB: Um hum.

CS: If I had have one of them I'll fill this thing out (not understandable).

PB: Don't know who to blame paperwork on.

CS: Are we supposed to be fed at six this morning? Is that what he said?

PB: I was told that you were fed at six in the morning, TV dinner or something like that.

CS: Yea (not understandable).

PB: That was about six hours ago.

CS: I didn't get nothing last night, no phone calls or anything else.

PB: They got pretty busy last night they said, I asked them this morning if you'd called.

CS: I asked him too.

PB: They were bringing drunk guys in and drunk girls and armed robbers and everything in last night when I was leaving.

CS: Well, I'm not getting down on this (not understandable).

PB: Well, I can assure you . . .

CS: Days and days at a time without meals.

PB: I can assure you that it's not an intentional thing, they just got busy.

CS: Sometimes it is, up in Idaho it is.

PB: Um hum.

CS: They flat turn their back on you and don't care if you survive or not, only the fittest are going to make it.

PB: Oh. Well, they had quite a crowd in there last night, I guess, you know, one guy on the phone and one guy coming in.

CS: Yea. You said you went up to where I used to live there in (not understandable).

PB: Um hum.

CS: And you talked to the people up there?

PB: Um hum.

and you cut them clothes off and you drug her over and put her in the ravine and you buried her. That I'm going to prove.

CS: I did all that?

PB: Now, what I'm trying to tell you right now Charlie is, all you have to do, all you've got to do . . . the only thing that is keeping you from going back to the State of Utah and looking at a possible execution on a first degree murder charge or a second degree murder charge, which is some jail time. The only thing that keeps between them two, is "yes, I did or no I didn't." Yes, second degree murder, no, I didn't, I will prove that you did and you are looking at a possible execution date in the State of Utah. That's all I want to hear from you Charlie, all I want to hear is yes or no. All I want to hear is, is there going to be first degree murder or second degree murder. I don't want to hear, "no I didn't have nothing to do with it," because I can prove it and I'm going to prove it. I'll go back to the State of Utah today, the County Attorney is going to file. When you get to Idaho, you're going to be down there. Now you've already made one mistake, Charlie. Idaho, Idaho told us this morning that had you stayed just probably a couple of more weeks . . .

CS: I know.

PB: You would have only probably been there another month or two.

CS: I'll tell you what . . .

PB: You were looking at a five year sentence, but they were going to look and well, maybe we can probably let Charlie out. In a couple more weeks you would have been on your way down the road. Do you know what you're looking at, you're going to go back, you're going to do at least them five years and they're going to tack on more time for escaping. They told us that on the phone today.

CS: When they . . .

PB: When Idaho gets done, who's going to be looking at you?

CS: What I . . .

PB: Utah is, and Utah is going to bring you back down. Charlie, we're going to try you for murder. So, just tell me right now, let's just (not understandable), yes for jail time or no, are we going to go to trial and for possible execution. That's all I want to hear from you is just yes or no.

CS: Just that simple.

PB: Just that simple. And I can guarantee it Charlie, I can guarantee it's that simple. My God, this thing has been drug on for five years. The little girl's body up in the canyon, the sole was crying for justice.

CS: I understand that.

PB: The biggest thing, the decent thing that you can do, Charlie, is just satisfy it, just to satisfy that little girl's sole. That's all we're asking for. I'm sure you can appreciate that. You know the girl, you've grown up with her, you know her..

CS: You know I have a . . .

PB: I don't want to hear it Charlie. All I want to hear is yes or no.

CS: No, I'm not going to try and do anything.

PB: You're not going to do anything.

CS: I've been trying to tell you, I have a funny outlook on life. To me, life doesn't matter anymore.

PB: Well, I'm sorry, I'm very sorry for that, Charlie.

CS: No, I don't mean that I don't want to go on living.

PB: No, and I understand where you're coming from.

CS: Because everybody wants to do that.

PB: I know you've had a rough hole in life. You know, you've had things and I'm going by your way and that's probably why your personality is, that's why you need people and probably try and snow them the way you do. You know, fine, you can snow your friends and you can snow people you come in contact, you can snow your employers, but right now, Charlie you're not snowing, you're not snowing the law enforcement.

CS: I'm not trying to.

PB: Well, you are by not telling me yes or no, because I know, Charlie, I know. Okay, I'm just going to tell you right out flat, I know. And all I have to do is prove it to twelve jurors in the State of Utah. All you have to do is just make an affirmative that, yes, you know too, or no, you don't know and we'll have a trial. That's all I'm asking for.

CS: We're going to have a trial anyway.

PB: Yes, we'll have a trial, everybody in the United States is subject to a try by their jurors, by their peers, that's just the way it is and that's the way it's going to happen. So, what's it going to be?

CS: Give me another cigarette, would you please.

PB: Do you want to think about that a second?

CS: No, I can (not understandable) rather you believe it or not is another thing.

PB: You've laid a story on me, definitely, yea you've told me all about Jose, yea there's a guy named Jose. Yea, there's a guy involved with narcotics named Jose, but I don't think Jose had anything to do with DeeDee's death. That's unexplainable. She was last seen in your company in the State of Utah. I can put you in the State of Utah, when I go to the jurors and tell them, Jose didn't bring DeeDee up to the State of Utah. Jose didn't bring her up to that ravine and kill her and bury her in that ravine. That motorcycle gang she left with didn't bring her up to that ravine and kill her. Charlie, you were with DeeDee and you were the only person that could have got her to that particular spot in that canyon. And the jury is going to know that. And when I lay it out, you're looking at first degree murder. All I know is that when we go to trial and prove it, it's going to be first degree murder. If there is any way, any possibility that there was mitigating circumstances and I'm sure there are, Charlie, I'm sure there is some reason in the back of your mind why DeeDee had to be killed.

CS: There's lots of reasons.

PB: You might have been drinking, you might have been raged, I don't know. But there was a reason why DeeDee was killed by you and all I have to know is that mitigating circumstance and then we'll see second degree murder, if you say nothing, we're going first. If you just tell me something, Charlie, we've got second degree murder.

CS: Let me ask you this, have you got a wife and kids?

PB: Yes, I do.

CS: Alright, you would probably go to any extent for them, wouldn't you, over somebody else?

PB: Yes, I would.

CS: Then, leave that in your mind. DeeDee had to go. It was either her or my kids.

Interview with Charles Strain on February 27, 1986 at 6:20 p.m. Conducted by Detective Peter Bell and Detective Scott Carter.

PB: There are some things that have to be recorded, O.K.?

CS: O.K.

PB: Like I told you earlier, I came in with the recorder to record you and we are going to go over what we talked about this morning. Maybe ask a few questions, get a few answers from you - we are trying to clarify what you told me this morning. The number one thing I want to make sure again is that you are very well aware of your rights. You are going to hear them over and over again - I told you last night and I told you this morning.

CS: That ain't going to make any difference.

PB: But you do have the right to remain silent.

CS: Hum um.

PB: You don't have to answer any of our questions if you don't want to.

CS: I know this.

PB: If you feel you need your attorney present, the State of Arizona I'm sure will be glad to appoint one for you.

CS: Ya, but that would just tie you up longer.

PB: But you understand that those are your basic rights.

CS: Hum um.

PB: That our country allows . . . O.K.

INTERVIEW:

PB: Today's date is February 27, 1986 - the time is 6:20 p.m. This is Thursday. This interview is being conducted in the Scottsdale City Police Station in Scottsdale, Arizona. To kind of clear up a few things, I am Detective Peter Bell from the Utah County Sheriff's Department based in Provo, Utah. Present is Detective Scott Carter from the Utah County Sheriff's Department in Provo, Utah and also Charles Nicholas Strain also known as Randall Charles Ducharmé.

CS: Ducharmé - do it right if you're going to do it.

PB: I knew it was french but I didn't want to slaughter it. I guess your last known address

PB: Never had a knife, pocket knife, buck knife, nothing?

CS: I never carry one.

SC: How come? You've got plenty of knives in your property.

CS: They weren't on my person were they?

SC: They were within your reach in the car and stuff, under your control. You traveled with them.

CS: Ya, to cut wires and stuff with. The little tiny thing . . .

SC: No those . . . knives, there are switch blades, hunting knives.

CS: Not from me.

SC: Charlie, you know as well as I do you stabbed her.

CS: Did I what?

SC: You stabbed her in the back.

CS: I did not stab her.

SC: The evidence is there.

CS: She was not stabbed to my knowlege.

SC: She was.

CS: Not to my knowledge. She was not stabbed.

SC: This knife thing is an issue that you need to deal with. Somebody stabbed her and you tell us these guys left.

CS: If she was found skin and bone, how could you even tell?

PB: She was found skin and bone.

CS: O.K. I never stabbed her anyway. She was shot once and where I don't know.

SC: Charlie, you are a party to it - you were there and you didn't report it, you didn't go to the authorities. The serious nature of this thing is already here, all of these little things don't matter. If you would tell it to us straight and give us a chance.

CS: If it doesn't matter then why keep going over and over a point that doesn't matter?

PB: The matter that he is talking about Charlie, and I told you earlier today, there are two different charges that we are talking about here - 1st degree murder . . .

CS: You tell me . . .

PB: Just a second, let us finish. Which is punishable by probably execution in the State of Utah, or we are talking about 2nd degree homicide which is jail time.

CS: Ya, life - what's the difference?

PB: No, it's not life. We talked about that earlier today. Now what you are telling me about these Mexican's . . .

CS: I have no life left.

PB: What you are telling me . . .

CS: This little thing doesn't matter, this is over and done.

PB: No, let me explain it to you right now. The way you explained is that some Mexican's came up and you were aware that they were going to kill her and you are a party of her killing. We are talking 1st degree murder here.

CS: I know this.

PB: You could probably be executed.

CS: I know this. And I don't care.

PB: Yes you do care.

CS: No I don't.

PB: Now we talked earlier today, you cared . . .

CS: I care about the ones I leave behind, but I have no life left - it doesn't matter to me anymore.

PB: No, Charlie I don't believe that.

CS: I'd just as soon it would happen and . . .

PB: You are just telling me a bunch of words - I can't believe that.

SC: Charlie, you have told us so many of the details about it and they are so accurate and we appreciate it.

CS: . . . mind telling me why this can't be what I'm saying.

SC: Cuz' it isn't that way, the way it happened.

CS: It was that way when I left the scene. I don't remember all what was strewn around. I didn't strew her clothes any place. They were most of them still in a bag that were on the bike, in fact all of them were. I threw the whole bag into the bushes, intact.

SC: Charlie, now we know that some of her stuff ended up down by where you parked the bike.

CS: That is where I threw it off at. That is where it all should have been.

SC: The bag wasn't there, just a lot of little things.

CS: No it was all in the bag.

SC: O.K. You bury her, you cover her with dirt, big rocks, what else?

CS: Just whatever I could find.

SC: Limbs?

CS: No. No, it was just sod and rocks from the dge of the bank.

SC: You take her personal belongings that you consider valuable, her camera, her pictures; you had to have taken the pictures she took, right?

CS: Ya, I think I did.

SC: You had to have for us to find them.

CS: Well I'm trying to . . . I didn't pick up any particular picture in particular, they were just there and I picked them up.