

1979

State of Utah v. David Harmon Meinhart : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *State v. Meinhart*, No. 16421 (Utah Supreme Court, 1979).

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent	:	
-v-	:	
DAVID HARMON MEINHART,	:	Case No. 16421
Defendant-Appellant	:	

BRIEF OF APPELLANT

Appeal from a conviction of Aggravated Assault, a
Felony in the Third Degree, in the Third Judicial District,
in and for Salt Lake County, State of Utah, the Honorable
David B. Dee, Judge, presiding.

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FILED

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-v-	:	
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
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 v. :
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 DAVID HARMON MEINHART, : Case No. 16421
 :
 Defendant-Appellant.

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, DAVID HARMON MEINHART, appeals from a conviction of Aggravated Assault, a Felony in the Third Degree, in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable David B. Dee, Judge, presiding.

DISPOSITION IN THE LOWER COURT

The appellant, DAVID HARMON MEINHART, was charged with Aggravated Assault pursuant to Utah Code Ann. §76-5-103 (1953 as amended). On the 16th day of February, 1979, the appellant was found guilty of the offense as charged by a jury. Subsequently, the appellant was sentenced to incarceration in the Utah State Prison for an indeterment term not to exceed five years.

RELIEF SOUGHT ON APPEAL

The appellant seeks reversal of the lower court and

STATEMENT OF THE FACTS

The information issued by the office of the Salt Lake County Attorney alleged:

That on or about the 30th day of May, 1978, in Salt Lake County, State of Utah, the said David Harmon Meinhart did assault Angela Janda by an attempt, with unlawful force of violence to do bodily injury to Angela Janda (age 2), and did recklessly use such means or force likely to produce death or serious bodily injury to Angela Janda.

On May 30th, the Appellant was placed in a relationship of in loco parentis as a babysitter to Angela Janda while Angela's mother was away. During this period, at approximately 7:00 p.m., Angela suffered a head injury resulting in brain damage.

Sworn testimony established that within two days following the incident investigating officers had a least one and perhaps several, interviews with the Appellant. (T. 125) Following these, Appellant was summoned to the main Sheriff's office for further questioning by the same investigating officers, Detectives Bailess and Pechina (T. 114). Prior to this the Appellant's father had requested of these officers that his son not be questioned without the presence of an attorney as Appellant was somewhat slow witted for his age and was easily influenced by others (T. 125). This interview took place on June 1, 1978, in an interrogation room at the Salt Lake County Metropolitan Hall of Justice. Aside from the

Appellant, only Detective Bailess and Detective Pechina were

present; the interrogation being recorded on tape. The questioning was conducted from 10:10 in the morning until 12:20 that afternoon. The Appellant was not informed of his constitutional rights, his right to remain silent, or his right to advice of counsel, in any form at the outset of the interrogation. Approximately half way through the questioning Detective Bailess gave the Appellant the full "Miranda warning". When asked if he desired to consult an attorney the Appellant in turn asked "what would be better?" Detective Bailess responded "You know if you'd talk to an attorney he'd tell you not to say anything . . . you're going to feel a hell of alot better once it's out in the open" (Interrogation Transcript, page 21). Later on in the interview Detective Bailess, unsatisfied with the answers he was getting, stated, "Now the sooner we can get it out, we can wrap the thing up and talk to the County Attorney, and we can start working on this help we talked about on the psychiatric, . . . but we're not getting anywhere this way" (Interrogation Transcript, page 33). And still later, Detective Bailess, continuing the theme of the theraputic help, said " . . . get if off your conscience and then (sic) so we can start on the other program and that's getting you lined up in some type of psychiatric counseling, that you yourself admit you need" (Interrrogation Transcript, page 36). During the entire interview the only direct reference to the possibility of the Appellant's criminal liability were the formalized statement

"the Constitution requires that I inform you anything you

say can be used in a court as evidence" and vague reference to "going to the County Attorney" which was in every instance couched in terms of arrangement for psychiatric counseling.

At the time this interview took place the appellant was 20 years old and had completed his high school education only as far as the 11th grade and had only minimal employable skills. Prior to being charged in this offense the defendant had had no previous involvement with law enforcement officers or the criminal justice system.

During the trial, appellant's father testified that because of a severe accident some five years previous, appellant was noticeably less perceptive than the average boy his age and is easily persuaded by people.

During the interrogation, after the formal "Miranda warning" had been given and after repeated assertions of disbelief by Detective Bailess, appellant finally stated that he had struck the child with his open hand or the heel of his hand. The significance of appellant's "confession" at trial is aptly summarized by statements the prosecutor made during a pre-trial motion to exclude the interrogation: ". . . if the Court were to grant counsel's motion to suppress the confession, then of course we won't be able to allege specific conduct (by the appellant) . . . What conduct (appellant engaged in) we couldn't tell without the confession" (January 15th, 1979, Transcript page 3).

ARGUMENT

POINT I

APPELLANT WAS NOT PROPERLY WARNED AT THE OUTSET OF THE INTERROGATION OF HIS RIGHT TO REMAIN SILENT OR HIS RIGHT TO COUNSEL.

In Miranda v. Arizona, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, 10 A.L.R. 3d 974 (1966), the United States Supreme Court substantially changed the law with respect to criminal defendants' statements made to police during interrogation situations. The Court directly and pointedly addressed the potential problem of defendants being unduly and unfairly influenced by the tactics and atmosphere often present in police interrogations. The Court concluded that:

... without proper safeguards the process of in custody interrogation of persons suspected of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored. 384 U.S. at 467.

The Court went on to elaborate as to its fears and the prosecutions they demanded:

At the outset, if a person in custody is to be subjected to interrogation he must be first informed in clear and unequivocal terms that he had the right to remain silen. - - - (And)

such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumbe to an interrogator's implications, whether implied or expressly stated, that the interrogation will continue until a confession is obtained
384 U.S. at 467-468

The basic rule as expressed in Miranda is that:

. . . [T]he 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. By custodial interrogation, we mean questioning intitiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right to silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he had a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently. If, however, he indicates in any manner and at any stage of the process that he wished to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has

with an attorney and thereafter
consents to be. [Emphasis Supplied]
[footnote omitted] 384 U.S. at
444-445

The first issue to be decided in determining a
Miranda question is whether the defendant's statements were
made in the course of a custodial interrogation. This
was defined very basically as "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." [footnote omitted] 384 U.S. at 444.
Some typical features of a custodial interrogation, the Court
noted, were that the suspect was held incommunicado and
the atmosphere of such an interrogation is police dominated.

It is obvious that such an interrogation
environment is created for no purpose
other than to subjugate the individual
to the will of his examiner. This
atmosphere carries its own badge of
intimidation, but it is equally destructive
of human dignity. The current practice
of incommunicado interrogation is at odds
with one of our Nation's most cherished
principles-- that the individual may not
be compelled to incriminate himself.
Unless adequate protective devices are
employed to dispel the compulsion inherent
in custodial surroundings, no statement
obtained from the defendant can truly be
the product of his free choice. [footnote
omitted] 384 U.S. at 457-458.

Susequent cases have clarified the Supreme Court's
definition of custodial interrogation. In Mathis v. United
States, 391 U.S. 1, 20 L.Ed. 2d 381, 88 S.Ct. 1503, the
Court found there was custodial interrogation for purposes
of the "Miranda Rule" where the defendant was in prison
serving a state sentence when he was interrogated by federal

investigators regarding federal income tax fraud. In Orozco v. Texas, 394 U.S. 324, 22 L.Ed. 2d 311, 89 S.Ct. 1095 (1969), the defendant had been questioned and he made incriminating statements in his room after he had been placed under arrest. The court stated that by placing the defendant under arrest the authorities had deprived the defendant's freedom of action in a significant way.

However, in two recent cases the court found that there was not custodial interrogation. In Beckwith v. United States, 425 U.S. 341, 48 L.Ed. 2d 1, 96 S.Ct. 1612 (1976), the court held that statements made by the petitioner during an interview with Internal Revenue Service agents did not amount to a custodial interrogation after the petitioner had become the focus of a tax investigation. Beckwith is readily distinguished from the above cases and the present fact situation in that the interview took place in a friendly atmosphere at the defendant's private residence and that he was read a standard I.R.S. warning informing him that he had a right to remain silent and had the right to an attorney before answering. Defendant agreed to the interview after the warning was given. Defendant's contention on appeal was that he had not been given the formal "Miranda warning".

In the most recent case on the issue, Oregon v. Mathiason, 429 U.S. 492, 50 L.Ed. 2d 714, 97 S.Ct. 711 (1977) the court held that questioning of a suspect at the police station from which the suspect was free to leave did not

amount to custodial interrogation. Mathiason had agreed to meet the investigator at the police station (the defendant himself having chose the police station as the most convenient). The atmosphere of the interview contained few if any of the " . . .compelling pressures which work to undermine the individual's will . . ." that were such a central concern of the Miranda court. The interview was a one-on-one situation, lasting for a total of only 30 minutes. The defendant confessed within the first five minutes of the interview and was then given the proper warning. It should also be noted that Mathiason was at that time a parolee under supervision and undoubtedly had a personal familiarity with the workings of the criminal justice system. In addition there was no indication that he was confused as to his rights or whether he should exercise them.

With regards to what constitutes custodial interrogation as interpreted by the Utah Supreme Court is has been held that a brief questioning of the defendant by the victim in the court building prior to his arrest is not custodial interrogation, State v. Guerrero, 29 Utah 2d 243, 507 P.2d 1029 (1973); nor is police questioning a suspect at his home in front of family and friends custodial interrogation, State v. Martinez, 23 Utah 2d 62, 457 P.2d 613 (1969).

In this present case the Appellant had been interviewed initially by investigating officers. These same officers

acting in their official capacity then requested that he

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appear at their headquarters building for further questioning. The interrogation took place at the Metropolitan Hall of Justice which contains the headquarters of the Salt Lake City Police Department, the Salt Lake County Sheriff's Office, and the Salt Lake County Attorney's Office. The questioning lasted for two hours and 20 minutes in an isolated room with only the Appellant and the two police officers present. The officers knew at that time the Appellant had been tending the victim when the injuries allegedly occurred, and the facts indicate that the officer's interest in him rose at least to the level of being a suspect in their investigation. All that Miranda requires is:

[I]ncommunicado interrogation of individuals in a police dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.
384 U.S. at 445.

In short, this situation presents a 20 year old boy, of less than average abilities, being confronted by two adult male policemen in an isolated room at police headquarters; confronted with continuous questions and expressions of disbelief in his answers. There is no way of knowing for sure if the Appellant would have been restrained had he tried to leave, but it cannot logically be imagined that the atmosphere of the interview or the attitude of the interrogators would have been any more "custodial" if the

by these officers. Under the letter and spirit of Miranda, and distinct from the facts in Beckwith, supra, and Mathiason, supra, this present situation falls unequivocally into the category of a custodial interrogation.

The next question to be addressed is the constitutional necessity for a full "Miranda Warning" at the outset of the interrogation. The Supreme Court in Miranda specifically stated:

Our aim is to assure that the individual's rights to choose between silence and speech remain unfettered throughout the interrogation process. (Emphasis Supplied) 384 U.S. at 469.

The Miranda Court cited Escobedo v. Illinois, 378 U.S. 478, 12 L.Ed. 2d 977, 84 S.Ct. 1758 (1964), to stress the constitutional importance of informing the examinee of his right to remain silent at the outset of the interrogation.

State case law has also reflected concern over when the warning should be given and the effect of failure to give timely warning. In Buckham v. State, 356 So. 2d 1327 (Fla. App. 1978), an officer stopped and questioned the defendant after he was observed dropping a package later found to contain narcotics. The court held that the answers to the questions were inadmissible because the defendant had not been given the "Miranda Warnings". Furthermore, if the suspect is not given the necessary warnings his statements will be inadmissible. In State v. Erho, 463 P.2d 779 (Wash. 1970), the defendant was given inadequate warnings, after

which he made several incriminating statements. Subsequently,

he was given proper warnings and he made a written confession. The later statements were found to be the direct and derivative product of the prior "unwarned" oral admissions and hence none were admissible.

In People v. Hutton, 547 P.2d 237 (Colo. 1976), in a situation similar to the one at hand, officers questioned the defendant concerning a burglary, placed him under arrest and then for the first time advised him of his "Miranda Rights". (The record reflected that the defendant was not free to leave from the time of his first encounter with the police). The defendant was again questioned. Both parties agreed with the court that the first statement, prior to the "Miranda Warnings", was inadmissible. The Supreme Court of Colorado upheld the trial court's decision that the statement taken after a proper "Miranda Warning" was given was also inadmissible as it had been obtained under circumstances not sufficiently distinguishable to purge it of the original taint, citing, Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963). The Colorado Supreme Court held that:

The officers should ----have advised the defendant of his Miranda rights before questioning him at all. We do not sanction their failure to do so by allowing into evidence defendant's post-advisement remarks. [citation omitted] 546 P.2d at 239.

The Colorado Supreme Court emphasized that the second statement was actually a continuation of the first, made only a few minutes earlier. The Supreme Court of Colorado noted

People v. Pinedo, 513 P.2d 452 (1973), the second statement was

" . . . an integral part of the first, and therefore, the impermissible inducement for the first statement carried over to the second statement" 513 P.2d at 454.

Likewise, the case at hand involves two statements, the second being but a continuation of the first, but preceded by a "Miranda Warning". The second statement should be suppressed as it was not purged of the original taint of the failure to give the proper warnings at the outset of the questioning. This was one interrogation, not two. The hour or so of questioning that proceeded the announcement of the Appellant's constitutional privileges supplied ample opportunity to " . . . undermine the Appellant's will to resist and to compel him to speak where he would not otherwise do so freely" in complete contravention of the Miranda guidelines.

POINT II

THE APPELLANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO REMAIN SILENT OR HIS RIGHT TO COUNSEL.

The Supreme Court in Miranda cited Johnson v. Zerbst, 304 U.S. 458, 82 L.Ed. 1461, 58 S.Ct. 1019, 146 A.L.R. 357 (1938) as establishing the standard for waiver of constitutional rights. The Johnson court stated:

It has been pointed out that "courts indulge every reasonable presumption

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constitutional rights and that we "do not presume acquiescence in the loss of fundamental rights." A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused. [footnotes and citations omitted] 304 U.S. at 464.

Miranda v. Arizona, supra, is silent on the questions of the degree of proof necessary or type of analysis required for the courts to find that a defendant had knowingly and intelligently waived his rights. The leading cases on this question are United States v. Nielson, 392 F.2d 849 (7th Cir. 1968), United States v. Springer, 460 F.2d 1344 (7th Cir. 1971) and United States v. Frazier, 476 F.2d 891 (D.C. 1973).

In United States v. Nielson, supra, the defendant had been arrested for auto theft and he refused to sign a waiver of rights and asked for an attorney. However, when the agent continued to question him he answered the questions. The court held that when a suspect assumes such obviously contradictory positions (asserting right to remain silent, then answering questions) the agents should have been alerted. The court then went on to hold that instead of accepting such an equivocal invitation, before continuing questioning the agents should have inquired further to determine if the waiver was the product of intelligence and understanding or of ignorance and confusion.

an inquiry was conducted, the court stated that it was compelled to conclude that there was no knowing and intelligent waiver of rights.

United States v. Nielson, supra, was distinguished in United States v. Springer, supra. In Springer the defendant had been arrested, read his "Miranda Rights", and signed the waiver form. The court found that the signed waiver, and the undisputed testimony that the waiver form was read and that the defendant understood the contents of the waiver was sufficient to raise a presumption of a valid waiver. In such a situation the burden of going forward was shifted to the defendant. The court found that the reason why the burden of going forward had not shifted in Nielson, was because the conduct by the defendant in that case was self-contradictory evidencing a lack of understanding, and in Springer, there was no such self-contradictory behavior.

In United States v. Frazier, supra, the defendant was arrested and upon arrest he stated that he knew his rights and that at the time he was not under the influence of narcotics or alcohol. During the interrogation, however, the defendant refused to allow the police officers to take notes and also refused to sign a written version of his statements. The court held that the burden of proving waiver is on the government. The government's burden includes a showing that the warnings were properly given and, if the defendant raises the issue, that the defendant was capable of understanding the warnings. In Frazier, the court found that the defendant

never asserted that he misunderstood or misinterpreted the words of warning.

State courts have considered a variety of factors in determining if there has been a valid waiver of constitutional rights. The defendant's youth at the time that the statements were made had been held to be a factor to consider along with the other circumstances of the interrogation, Tennell v. State, 348 So.2d 937 (Fla. App. 1977) but in other jurisdictions a juvenile cannot waive these constitutional rights without the aid of an interested adult, Commonwealth v. Smith, 372 A.2d 797 (Pa. 1977). Some other factors which have been considered are the low intelligence of the defendant, Tennell v. State, supra, State V. Welch, 337 So. 2d 1114 (La. 1976), State v. Hahn, 259 N.W. 2d 753 (Iowa 1977), State v. Thornton, 22 Utah 2d 140, 449 P.2d 987 (1969), the confusion of the defendant at the time the warnings were given, State v. Hilpipre, 242 N.W. 2d 306 (Iowa 1976), Commonwealth v. Dustin, 368 N.E. 2d 1388 (Mass. 1977), and the emotional stress which the defendant was undergoing at the time of the interrogation, State v. LaRoser, 313 A.2d 375 (R.I. 1974).

In a very recent decision the Supreme Court has reaffirmed its strong reluctance to find a waiver of "Miranda Rights." In Tague v. Louisiana, ___ U.S. ___, Criminal Law Reporter 4166, (decided January 21, 1980), the arresting officer testified that he had read the defendant his "Miranda Rights" from a card, that he could not himself remember what

those rights were, nor could he recall whether the defendant understood those rights. The officer could not recall whether he determined if the defendant was capable of understanding his rights. The Supreme Court held that a defendant's capacity to understand his rights cannot be presumed from his rote responses to a formal "Miranda" type warning and reiterated the doctrine that a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination.

According to federal and state case law on waiver of constitutional rights during interrogation the Appellant herein was in a very poor condition to be asked to waive those rights. He had been in isolated interrogation at police headquarters for a least an hour; with two men accusing him of lying and in all likelihood, viewing him as their prime suspect. The Appellant was a 20 year old youth who had not completed high school and who had an apparent history pointing to emotional, if not intellectual, retardation (a fact made known to the interrogators during this interview). Prior to this occasion Appellant had had no involvement with the criminal justice system and had no particular knowledge of his specific legal rights nor any experience in how or why he should be concerned about them. When confronted with the choice of foregoing legal counsel he expressed confusion and in fact turned to his interrogator for the answer. Detective

Bailess then directly implied he would be better off if he did

not seek legal advice at that time. The legal advice he did get in the formalized "Miranda Warning" hardly offset the multitude of factors, internal as well as external, operating to compromise his constitutionally guaranteed protections or allow him to validly waive those protections.

CONCLUSION

The trial court erred in allowing the prosecution to use a statement taken from the appellant while he was the subject of custodial interrogation. The interrogators had failed to inform the appellant of his constitutional right to remain silent and his right to counsel at the outset of the questioning. When finally informed of these constitutional protections, it was highly likely that the coercive atmosphere of the interrogation had irretrievably forfeited those safeguards for this young and callow appellant. The law sets a very high standard for demonstrating a waiver of these rights and is most reluctant to assume such a waiver particularly from the rote-type responses as this appellant gave. The error of admitting this statement at trial demands that this court reverse the trial judge's ruling and direct that a new trial be conducted without admission of the appellant's statement taken at police headquarters on June 1, 1978.

Respectfully submitted this ____ day of March, 1980.

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