

1979

## State of Utah v. David Harmon Meinhart : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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

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BRIEF OF RESPONDENT  
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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 Court, 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 indeterminate term not to exceed five years. Execution of sentence was stayed pending appeal.

#### RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of appellant's conviction.

#### STATEMENT OF THE FACTS

On May 30, 1978, Gloria Hintz entrusted her eighteen month old daughter, Angela, to the care of appellant (T.13,164,193). During the evening appellant became frustrated and angry with Angela. He responded by slapping her and striking her head with the heel of his hand (T.25,54,58,107,108,112,115; Interrogation Transcript 25,26,27,28,29,34,58), a blow appellant admitted was a karate punch (Interrogation Transcript 113). This beating caused the child to suffer a fractured skull, blood clot, and brain damage which resulted in permanent paralysis of her left arm as well as mental and motor retardation (T.76,89,91,92,104,107,108,109).

During the investigation of this incident police officers, having failed to contact appellant at the home of his parents, left word there that they wanted to speak with him (T.115). On June 1, 1978, appellant's mother drove him to the Metropolitan Hall of Justice

where appellant voluntarily presented himself to police officers for discussion of the incident of May 30th (T.114,115,118,134). Present during the questioning of appellant were two police officers (T.114). They spoke with appellant for twenty minutes. Then, because at the time appellant's responses lead the officers to suspect that appellant was responsible for Angela's injuries, they warned him of his constitutional rights as required by Miranda (T.139, Interrogation Transcript 92). Appellant acknowledged that he understood each right explained to him (Interrogation Transcript 21, 93). When the officer asked appellant whether he desired to have an attorney present during the interview, appellant asked, "what would be better?" The officer's response was:

It's up to you. It's like we talked about. You know if you'd talk to an attorney, he'd tell you not to say anything. You know that. We talked about that. It's up to you. Like I said, I think we can - if we get down to the bare facts, we can present it to our County Attorney and we can go from there. You're gonna feel a hell of a lot better once it's out in the open, that's - I know that for a fact.

(Interrogation Transcript 21.)

Appellant replied that he did not need an attorney (Interrogation Transcript 21). This entire interview lasted two hours and twenty minutes with interruptions so appellant could freely use the restroom and smoke a cigarette (T.120). Appellant was never told that he was under arrest and he freely left the Hall of Justice at the completion of the interview.

Appellant was 20 years and 11 months old when he spoke to the officers. He had an eleventh grade education. Although appellant's father testified that appellant was functioning at a level two years behind that of his peers, there is no indication either from his response to questioning at trial or from his replies to police questioning that appellant had difficulty understanding what was being asked of him. As appellant noted, the police officer did make two remarks regarding psychiatric help (Interrogation Transcript 33,36), but they were made after appellant had confessed to having repeatedly struck Angela Janda (Interrogation Transcript 25,26,27,28,29).

#### ARGUMENT

#### POINT I

QUESTIONING OF APPELLANT WAS NOT CUSTODIAL. THEREFORE, THE FACT THAT HE WAS NOT GIVEN MIRANDA WARNINGS PRIOR TO THE COMMENCEMENT OF THE POLICE INTERVIEW DOES NOT REQUIRE SUPPRESSION OF APPELLANT'S CONFESSION.

In Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966), the United States Supreme Court established procedural safeguards to protect an individual's privilege against self-incrimination while in custody or "otherwise deprived of his freedom by the authorities in any significant way. . . ." Id. at 478. A subsequent Supreme Court decision reiterated the concern that individuals be given Miranda warnings prior to custodial interrogation, but rejected the argument that the principle of Miranda be extended to cover interrogation in non-custodial circumstances merely because police investigation had concentrated upon the individual being questioned. Beckwith v. United States, 425 U.S. 341, 48 L.Ed.2d 1, 96 S.Ct. 1612 (1976).

In order to determine whether the Miranda requirements are applicable in the present case the threshold question to be answered is whether appellant was in custody or deprived of his freedom during interrogation. In the recent decision of Oregon v. Mathiason, 429 U.S. 492, 50 L.Ed.2d 714, 97 S.Ct. 711 (1977), the Supreme Court focused upon those aspects of police questioning which should be considered by the lower courts in determining whether police questioning was "custodial," and therefore triggered the necessity of giving the Miranda warnings. The Court found that the Oregon Supreme Court "read Miranda

too broadly" when it concluded that an interrogation was "custodial" merely because the suspect was questioned in a "coercive environment." Id. at 493. The Court emphasized that the psychological compulsion of an intimidating atmosphere is not sufficient to render an interrogation "custodial."

Appellant's attempt to distinguish the facts of Mathiason from those of the case under consideration is not successful because of the exaggerated importance he places upon the atmosphere of the interview rather than the restraint on freedom which the Mathiason Court announced as the determinative factor in the establishment of "custodial" interrogation. A review of the circumstances of Mathiason's interrogation in fact reveals a striking similarity to that of appellant. After several unsuccessful attempts to contact Mathiason, a state policeman left a note asking him to call the officer. Mathiason, a parolee, called the following day and agreed to meet the officer at a state patrol office. During the interview, which took place behind closed doors, Mathiason was told that the police suspected him of burglary and his truthfulness would possibly be considered by the judge or prosecutor. The officer also falsely told Mathiason that his fingerprints had been found at the scene of the crime.

Mathiason stated that he had taken the property, at which point the officer advised him of his Miranda rights and taped his confession. When the interview ended Mathiason was allowed to leave. The facts of the present case present precisely the same pattern except appellant was not a parolee and the officers mentioned no incriminating evidence. As in the Mathiason case, police officers left a message with appellant's parents requesting that he contact the officers. The following day appellant phoned the police and agreed to meet them at the Metropolitan Hall of Justice. Appellant was accompanied by his mother, but she was not present during the interview which took place in the detectives' office. After twenty minutes of conversation, appellant became the primary suspect in the police investigation. The officer informed appellant of his Miranda rights, which he acknowledged understanding. In addition, the officer informed appellant that an attorney would probably advise him not to speak with police regarding the incident under investigation. Appellant indicated he had no need of an attorney. He confessed that he had struck eighteen month old Angela Janda several times (Interrogation Transcript 25,26,27,28,29,34,36). Appellant's confession was taped and he was allowed to leave.



The main thrust of appellant's argument is that his confession should be suppressed in spite of the fact that he was advised of his constitutional rights. This argument misconstrues the purpose of those rights. As the Utah Supreme Court stated in State v. Martinez, 595 P.2d 897 (Utah 1979):

[The Miranda rights] came into being as a safeguard against oppressive methods and abuses by which innocent persons were imposed on and sometimes unjustly convicted and punished. . . . But neither their purpose, nor the safeguarding of the peace and good order of society are served if the protection of individual rights is so distorted as to give irresponsible protections to criminal conduct and impose such restrictions on peace officers that they are thwarted in their efforts to combat crime.

Id. at 899 (emphasis added).

It is clear from the record that appellant was no more "deprived of his freedom of action in any significant way" than was Mathiason. Id. at 495 (quoting Miranda, 384 U.S. at 444). The Mathiason Court held:

. . . such a noncustodial situation is not converted into one in which Miranda applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a coercive environment.

Id. at 495.

The setting of the interview which appellant describes as coercive was not sufficient to render the police questioning "custodial," and therefore did not trigger the necessity of apprising appellant of his constitutional rights. Yet shortly after the interview began the officer realized that appellant's contradictory statements might be an indication of his culpability. This realization prompted the officer in his sensitive awareness of the judicial concern regarding police protocol, to advise appellant of his Miranda rights. In doing so he exceeded his duty by explaining to appellant that an attorney would advise him not to discuss his behavior with the police. The circumstances of this case demand that the Utah Supreme Court follow the precedent of State v. Burr, 579 P.2d 331 (Utah 1978), and hold the Mathiason decision controlling.

## POINT II

EXAMINATION OF THE TOTALITY OF THE CIRCUMSTANCES PRESENTED IN THIS CASE INDICATES APPELLANT'S CONFESSION WAS GIVEN VOLUNTARILY AND THUS WAS PROPERLY ADMITTED IN EVIDENCE.

In the absence of a showing of abuse of discretion, the Utah Supreme Court has repeatedly upheld trial court determinations that an accused's confession had been given voluntarily. State v. Ashdown, 5 Utah 2d 59,

296 P.2d 726 (1956). See also: State v. Hunt, \_\_\_\_ P.2d \_\_\_\_ (Utah, February 14, 1980, No. 16437), State v. Adams, 583 P.2d 89 (1978); State v. Peterson, 560 P.2d 1387 (1977); State v. Winkle, 535 P.2d 82 (1975); State v. Allen, 29 Utah 2d 88, 505 P.2d 303 (1973); State v. Strohm, 23 Utah 2d 37, 456 P.2d 170 (1969). In the present case there is a substantial and reasonable basis to support the trial court's finding that appellant's confession was voluntary. During a pretrial hearing evidence of the circumstances of appellant's confession was presented and the determination of admissibility was made. At trial appellant's father testified on his son's behalf and explained that appellant had had an accident which left him susceptible to suggestion. The jury then determined the credibility of the witnesses and the evidentiary value of the confession, returning a verdict convicting appellant. Review of the totality of the circumstances of appellant's confession does not reveal any "abuse, threats, coercion, or promises of reward or immunity on the part of the officers" which would negate the validity of appellant's confession. State v. Hunt, \_\_\_\_ P.2d \_\_\_\_ (Utah, February 14, 1980, No. 16437).

Appellant contends that the officer's suggestion that appellant would "feel a hell of a lot

better once it's all out in the open" (Interrogation Transcript 21) impaired appellant's ability to make a rational choice. Such reference to the cathartic benefits of discussing the incident with police officers in a noncustodial situation after being warned of his Miranda rights could not have engendered such psychological pressure as to exert substantial influence upon appellant's will. Neither could such reference be interpreted as a promise to reduce the severity of the legal consequences of the criminal act. The mere suggestion to appellant that confession would make him feel better is no reason to exclude the confession as involuntary. The United States Supreme Court indicated in Culombe v. Connecticut, 367 U.S. 568, 81 S.Ct. 1860 (1961), that such a confession should not be invalidated.

. . . a confession is not always the result of an overborne will. The police may be the midwife to a declaration naturally born of remorse, relief or desperation, or calculation.

Id. at 576. See also Bram v. United States, 168 U.S. 532 (1897).

Appellant also contends that the two references to psychiatric counseling (Interrogation Transcript 34, 36) made by the police officer was an inducement to confess which rendered appellant's confession involuntary. This

argument is without merit because the officer's reference to therapeutic help occurred after appellant had confessed to the act of aggravated assault. It is indeed tortured reasoning which concludes that statements made after a confession could have "induced" the confession itself. Finally, appellant contends that he was a callow youth, confused, coerced, and therefore unable to withstand the pressures of questioning. This argument is baseless. Appellant was twenty years and eleven months old at the time of the police interview. Accompanied by his mother, appellant voluntarily presented himself at the detective's office and was free to leave to smoke, free to leave and go to the bathroom, free to leave and get an attorney, and free to leave when the interview terminated. Appellant was not under arrest and the questioning was not custodial. Oregon v. Mathiason, 429 U.S. 492, 50 L.Ed.2d 714, 97 S.Ct. 711 (1977). Appellant was responsive to questioning and demonstrated a clear understanding of what was being asked of him. He possessed an eleventh grade education. Appellant was advised of his constitutional rights, then chose to answer the officer's questions. Almost immediately after being informed of his rights, appellant confessed that he did repeatedly strike Angela Janda (Interrogation Transcript 25). There is no evidence of physical abuse, threats or promises made on the part of police officers which could

have overborne appellant's will thus rendering his confession involuntary. In light of the totality of the circumstances, appellant's confession was properly admitted in evidence.

#### CONCLUSION

In light of the circumstances of this case it is apparent that police questioning of appellant was not custodial, and therefore did not warrant the giving of Miranda warnings at the outset of the interview. The fact that appellant was fully apprised of his constitutional rights is one factor of many which tipped the balance in favor of finding that appellant's confession was freely given. In view of the totality of the circumstances of this case, the trial court finding that appellant's confession was voluntary was not an abuse of discretion, and therefore should be affirmed.

Respectfully submitted,

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