

1980

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

Utah Supreme Court

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Lynn R. Brown; Attorney for Appellant;

Robert Hansen; Attorney fo Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

REBUTTAL BRIEF OF APPELLANT

A rebuttal brief of appellant in response to Brief of
Respondent.

LYNN R. BROWN
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111
Attorney for Appellant

ROBERT B. HANSEN
Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorney for Respondent

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LYNN R. BROWN
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111
Attorney for Appellant

ROBERT B. HANSEN
Attorney General
206 State Capitol Building
Salt Lake City, Utah 84111
Attorney for Respondent

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REBUTTAL ARGUMENT

POINT I

THE INTERROGATION OF THE DEFENDANT AT POLICE HEADQUARTERS WAS SUFFICIENTLY CUSTODIAL AND SUFFICIENTLY COERCIVE AS TO REQUIRE THE "MIRANDA WARNING" AT THE OUTSET.

Respondent relies almost exclusively on Oregon v. Mathiason, 409 U.S. 492, 50 L.Ed. 2d 714, 97 S.Ct. 711 (1977), in arguing that the police officer's failure to apprise the defendant of his constitutional rights at the outset of the interrogation should not have required exclusion of the defendant's eventual statement. Respondent appears to be arguing that Mathiason should be interpreted in total isolation from the intent clearly expressed in Miranda v. Arizona, 384 U.S. 436, 16 L.Ed. 694, 86 S.Ct. 1602 (1966), and its progeny. The Miranda line of cases speak to and clarify the Supreme Court's concern with those interrogation situations where inherently compelling pressures work to undermine the

the individual's will and compell him to speak where he would not likely otherwise do so. Mathiason did not change that concern, for such a holding would have overruled Miranda. This central concern expressed in the Miranda line of cases cannot be satisfied by the use of a simplified formula of showing the lack of an actual arrest or by showing that the defendant was in fact physically free to leave if he chose to do so. While such facts may be crucial, they are not the sole touchstones in determining the requirement for the "Miranda warning". If they were then the protections that Miranda tries to guarantee would be fictitious. Respondent's statement that the Mathiason court announced "restraint on freedom" as the determinative factor in establishing "custodial" interrogation is totally misleading. Mathiason represents a clarification of the Miranda rule and stands for the proposition that :

[A] noncustodial situation is not converted to one in which Miranda applies simply because . . . the questioning took place in a "coercive environment."
429 U.S. at 495.

This is not the same thing as saying that an arrest or its functional equivalent is the only determinative factor. Such a holding would mean that a person "invited" to the station house and the told he was free to leave at any time automatically has no right to be informed of his constitutional rights no matter what other actions the police may take. It requires very little creativity to see the potential for abusive and unconstitutional interrogations arising from such a rule.

Unquestionably, Mathiason narrows Miranda, but respondent skips too lightly over those facts in Mathiason that bear directly on the issue of "custodial" interrogation. First of all, the defendant in Mathiason was asked where he would prefer to meet the detective and subsequently agreed on the state patrol office. At the very outset Mathiason was specifically told he was not under arrest. The interview, which lasted a total of 30 minutes, took place in an office rather than an interrogation room. It was conducted by one detective, with no one else but the defendant in the office. The defendant was a parolee under active supervision and undoubtedly well aware of his rights and the consequences of waiving them. In any event, it was less than five minutes from the time the defendant arrived at the office until the "Miranda warning" was actually given. In short, the defendant in Mathiason exercised considerable personal control in the situation from the outset; the coercive pressures were minimal and the defendant likely had sufficient understanding at every stage of the very short period during which his rights might have been put in jeopardy.

In this present case, the sworn testimony of the investigating officer points out that the "Miranda warning" was given either only as an afterthought by the detectives, or after the interrogators felt the defendant had been sufficiently conditioned or "softened up." Detective Bailess states that the "pre-warning" interrogation lasted only 20 minutes (T. 137). Reference to the interrogation transcript itself will show this to be a gross underestimation. The entire interrogation lasted

for two hours and 20 minutes, and took 44 1/2 pages for transcription. The beginning of the "Miranda warning" is recorded on page 21. Simple mathematics denies the detective's estimate of the time spent questioning the defendant before any warning was given. Indeed, it may have been as much as one hour before the defendant was first appraised of his constitutional rights. Detective Bailless further states that the entire time was not taken up by questioning, but there were breaks allowing the defendant to go to the restroom or smoke a cigarette (T. 120). A complete reading of the interrogation transcript gives no indication of such rest periods. In fact, the transcript of the questioning indicates that the interrogation was on continuous session beginning at 10:10 in the morning and ending at 12:30 that afternoon.

Several other factors strongly point to the probability that the failure to give the defendant his rightful warnings at the outset was either an oversight or part of a ploy by the detectives. An examination of the pre-warning questions and answers reveals no apparent attempts by the defendant to falsify his answers or to cover up his actions. In fact, Detective Bailless stated under oath that the pre-warning answers were consistent with his understanding of the facts at that time (Pre-trial Motion Transcript, 18, 19). Yet at the end of this period of questioning immediately prior to the "Miranda warning" the following exchange took place:

Q. Dave, your story is - a story.

A. What can I say, I'm not lying.

Q. Well, you're not telling us the truth.

(Interrogation Transcript, 20)

The inescapable conclusion is the before the interview even took place the defendant was, in the minds of the investigating officers, the cause of the injuries to the victim, and the sole point of focus of the officer's investigation. This conclusion is based not only on a reading of the interrogation transcript, but from the testimony of Officer Bailless himself (Pre-trial Motion Transcript, 16).

This conclusion takes on serious constitutional demensions when the following statement, made by the interrogator during the questioning, is analyzed. A statement that proves not only that the police officers had had prior discussions with the defendant before the interrogation took place, (a fact that the defendant's father stated during trial {T. 127}), but that the discussion was a very improper one.

Q. Do you desire to consult with an attorney first or to have one during this interview?

A. What would be better?

Q. 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.

(Interrogation Transcript, 21, emphasis added)

An examination of the interrogation transcript preceeding this statement by the police detective reveals no discussion whatsoever about the merits of the defendant consulting with an attorney. The respondent would have you believe that this statement is

in protecting the defendant's rights. In reality, the significance on this statement is its proof of at least one prior conversation the police officer had with the defendant. A conversation that, at minimum, discussed the drawbacks of the defendant consulting an attorney. This statement, taken in context of the entire interrogation, can have no other meaning and Detective Bailess's sworn testimony of no prior discussions with defendant (Pre-trial Motion Transcript, 13, and T. 114) cannot overcome this. More importantly, it is highly likely that trial judge was misled by the officer's in-court statements as to prior discussions (not to mention his statements regarding the length of the pre-warning questioning and total duration and intensity of the interrogation).

Unlike Mathiason, the defendant herein was told to come down to the police station where a two hour-plus isolated interrogation took place, not in an office, but in a interrogation room. Except for some prior conversation with these detectives where the necessity of an attorney for the defendant had been discussed, the defendant had had no previous experiences in dealing with the police or the criminal justice system. Miranda established and Mathiason reaffirmed that a citizen must be appraised of his constitutional rights to remain silent and to have an attorney present if he so chooses whenever he undergoes:

. . .questioning initiated by law enforcement officers after a person has been . . .deprived of his freedom of action in any significant way.
429 U.S. at 474.

the opportunity to leave the police station in order for these constitutional rights to attach. David Meinhart had been significantly deprived of his freedom to act pursuant to those constitutional rights by the time the police got around to informing him of those rights.

POINT II

THE DEFENDANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS PRIVILEGE AGAINST SELF INCRIMINATION AND THUS HIS STATEMENT WAS IMPROPERLY ADMITTED INTO EVIDENCE.

In Fare v. Michael C., ____ U.S. ____, 61 L.Ed. 2d 197, 99 S.Ct. ____ (1979), the Supreme Court reiterated its long held position that:

... after the warnings are given the accused, "[i]f the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. 61 L.Ed. 2d at 212.

During the State's attempt to meet this burden, at pre-trial hearing and during trial, the interrogating officer stated, contrary to what appears in the interrogation transcript, that he had had no contact with the defendant prior to the interview. His interrogation statement (quoted above) not only establishes that he had had a prior discussion, but indicates that he had attempted to convince the defendant that it would not be in the defendant's best interests to have an attorney at that time. This discrepancy between the officer's interrogation statements and his testimony not only undermines the State's attempt to

light how the trial court was likely misled in its determination of the admissibility of the defendant's statement.

In determining the voluntariness of a waiver the Fare Court declares that the admissibility of an accused's statement is to be determined upon an examination of the "totality of the circumstances surrounding the interrogation" (61 L.Ed. 2d at 212) and that this approach mandates inquiry into the accused's:

. . . age, experience, education background and intelligence and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. 61 L.Ed. 2d at 212.

We have discussed in our initial brief the defendant's age, background, and intelligence as they relate to his capacity to make a voluntary waiver and therefore we will not further labor those points. However, it is crucial to underscore the fact that by testifying that he had had no other conversations (let alone a discussion on the merits of having an attorney), with the defendant, Detective Bailless deprived the trial judge of a full appreciation of the circumstances surrounding the defendant's supposed waiver of his rights.

In the Fare case the 16 1/2 year old defendant, implicated in a murder, was taken into custody and advised of his rights. Following several statements indicating a reluctance to talk to police he made a number of incriminating admissions. In applying the "totality of the circumstances" test and in finding a voluntary waiver, the Court specifically noted the following

police, he had a record of several arrests, he had served time in a youth camp, he had been on probation for several years, he was under the full-time supervision of probation authorities, he was not worn down by improper interrogation or lengthy questioning nor was there any indications that he did not understand his rights or the consequences of waiving them. We would simply point out to this Court that David Meinhardt has none of the personal background the Supreme Court looked to in Fare, and that there are solid indications that David Meinhardt did not fully understand his rights and the consequences of waiver. The defendant did not understand, and the trial judge was never permitted to see how or why that happened.

Respectfully submitted,

LYNN R. BROWN
Attorney for Appellant