1968

State of Utah v. Donald Joe Thornton : Brief of Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

vs.

DONALD JOE THORNTON,
Defendant and Appellant.

Case No. 11320

BRIEF OF RESPONDENT

Appeal from a conviction of rape entered in the District Court, Second Judicial District Honorable Charles G. Cowley, Presiding

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STATEMENT OF NATURE OF CASE

The appellant, Donald Joe Thornton, appeals from a conviction of rape in violation of Utah Code Ann. § 76-53-15 (1953).

DISPOSITION IN LOWER COURT

Appellant was tried for and found guilty of the crime of rape by a jury verdict on February 29, 1968. The trial was conducted before the Honorable Charles

G. Cowley in the Second Judicial District Court. Sentence was imposed on April 15, 1968, committing the appellant to the Utah State Prison for the indeterminant sentence as provided by law of from not less than ten years to life imprisonment.

RELIEF SOUGHT ON APPEAL

Respondent submits that the jury verdict should be affirmed.

STATEMENT OF FACTS

On November 17, 1967, appellant Donald Joe Thornton, forcibly raped Mrs. Beverly Winquist near the garage at her place of residence (Tr. 5-9). The appellant was arrested on November 27, 1967 at approximately 4:30 p.m. on the charge of the crime of rape by Police Detective Raymond R. Donnally of the Ogden City Police Department (Tr. 64). Detective Donnally advised and explained to appellant his constitutional rights after appellant was in the police car (Tr. 64-66), and he was then taken to the Ogden City Police Station for questioning. At the police station the appellant was questioned by Sergeant Larry Dean Scott, this questioning beginning at approximately 5 p.m. (Tr. 76). Before Sergeant Scott began his questioning, he not only advised Mr. Thornton of his constitutional rights but thoroughly explained to the appellant each of his rights (Tr. 76-79:113), stopping frequently to deter-

mine if the appellant understood these rights (Tr. 76-79). After Mr. Thornton had intelligently and knowingly waived his constitutional rights, appellant was questioned concerning the alleged rape. He voluntarily confessed to committing the crime as charged (Tr. 119).

This confession was reduced to writing and signed by appellant. A preliminary hearing was held December 8, 1967, and at its conclusion the appellant was bound over to the District Court for trial. On December 18, 1967, the appellant was committed to the Utah State Hospital for observation. The psychiatrists' report (R.6) concluded that appellant was legally sane to stand trial and aid in his own defense and knew the nature of the act of which he was accused.

Trial was held before a jury in the Second Judicial District Court with a verdict of guilty being returned by the jury. On April 15, 1968, sentence was imposed upon the appellant.

ARGUMENT

POINT I

APPELLANT MADE A KNOWING, INTELLIGENT AND VOLUNTARY WAIVER OF HIS CONSTITUTIONAL RIGHTS AND HIS CONFESSION GIVEN VOLUNTARILY WAS ADMISSABLE INTO EVIDENCE.

Appellant contends that he did not make an intelligent, knowing or voluntary waiver of his constitutional

rights under the standards of *Miranda v. Arizona*, 384 U.S. 436 (1966). The state contends, however, that the record clearly shows that appellant was advised of his constitutional rights, and the meaning and impact of these rights were carefully explained to him (Tr. 65, 113). The interrogating officer, Sergeant Scott, testified that he carefully explained each of the *Miranda* warnings to appellant. In relating what he said to appellant, the sergeant testified as follows:

> THE WITNESS: I said to him that he was a suspect in some crimes that happened in Ogden City and that I wanted to advise him of his rights as I knew them. I told him then at that time that he had a right to remain silent. At that time I said: "Now, this means that you don't have to talk to me in any way whatsoever. If you have nothing to say all you have to do is indicate that you don't want to talk to me and I will not talk to you any farther." And he said "no", that I should talk to him. He was then told that "Anything you say can and will be used against you in a court of law." I explained to him that this meant that if he did admit committing any crimes in Ogden City or anywhere else that these would be taken before the judge and he would possibly be charged with these crimes as a defendant. He asked me who could be against him. I told him this meant that it could be used in court to show that he had admitted to the crime which was in question.
>
> Q. (By Mr. Judd) What did he then say?
>
> A. Well, he said "I understand it. Go ahead." So I told him: "Well, I have some more to ex-

plain to you. Then I told him "You have the right to talk to a lawyer and have him present with you while you are being questioned." I said "This means that if you want to talk with an attorney before you talk with me or while you are talking to me, we shall get you an attorney if you so desire, and if you want to hire an attorney or if you want to call one, you may do so." And I indicated the telephone to him if he would like to call one.

Q. Was there a telephone on the desk at that time?

A. Yes, there was, and a telephone book.

Q. Was there a working telephone there?

A. Yes. And at that time I indicated to him:

"If you don't want to call a lawyer and wish me to do so, I will call one for you."

Sergeant Scott's testimony continued:

THE WITNESS: He was told that if he didn't want to call an attorney I would call one for him. And he said: "No, I don't need an attorney." And he was then advised that if he didn't have the money to hire an attorney we would see thta one was appointed for him and he would have one. He was then told that if he understood it and everything that I had told him, and he said "Yes," that he understood everything that I had explained to him. I asked him if now that he understood everything that I had told him if he wished to talk to me, and he said "Yes," that he would talk to me.

MR. JUDD: And after that did you have a conversation with him?

THE WITNESS: Yes, sir, I did. (Tr. 77-79).

This testimony clearly reflects that every safeguard was taken by the police to insure that appellant was aware of his constitutional rights and that he understood the scope of these rights. In response to these carefully explained warnings, the appellant stated that he understood them and waived them. There is no showing that the police coerced or induced the confession from the appellant. Instead the atmosphere was one wherein every effort was made to guarantee that appellant's constitutional rights were protected. The waiver by appellant of his rights was knowingly, intelligently and voluntarily made.

POINT II

APPELLANT'S LOW INTELLIGENCE DID NOT PRECLUDE HIM FROM MAKING A VOLUNTARY, KNOWING AND INTELLIGENT WAIVER OF HIS CONSTITUTIONAL RIGHTS.

Appellant contends that due to his low intelligence, his inability to read, and his general lack of common knowledge, he is not capable of making a knowing, intelligent and voluntary waiver of his constitutional rights. While the state sees merit in the argument that a person of low intelligence may not be able to comprehend quickly the full meaning of his constitutional rights, the fact that a person is of low mentality does

not preclude him from being able to understand these rights and voluntarily waive them. A person's intelligence is but one factor to be considered in determining the volition of a confession.

People v. Lara, 62 Cal. Rept. 586, 432 P.2d 202 (1967) states:

> To sum up, we have seen that a minor, even of subnormal mentality, does not lack the capacity as a matter of law to make a voluntary confession without the presence or consent of counsel or other responsible adult, or to make a knowing and intelligent waiver of his right to counsel at trial, in either event, the issue is one of fact to be decided on the "totality of the circumstances" of each case.

The California Court stated in ***People v. Tipton,*** 48 Cal.2d 389, at 394, 309 P.2d 913 (1957) that:

> However, a confession is not rendered inadmissible by a . . . low emotional and mental stability on the part of the suspect if he is nevertheless capable of understanding the meaning end effect of his confession. ***People v. Isby,*** 30 Cal.2d 879, 897-898, 186 P.2d 405 (1947).

In *State v. Ashdown,* 5 Utah 2d 59, 296 P.2d 726 (1956), aff'd 357 U.S. 426 (1958), the Utah Court said:

> Certainly the intelligence, character, and situation of the accused at the time of the understanding is an important consideration. Manifestly, the will of a person who is of tender age or of weak intellect may be more mature or more intelligent. This, alone, however, will not render

> a confession inadmissable and if the confession was obtained in a manner and by such methods as are consistent with the proper detection of crime and determination of guilt then our duty is to sustain the trial court. Citing, *State v. Mares,* 113 Utah 225, 192 P.2d 861 (1948).

In the present case the evaluation of the appellant at the Utah State Hospital by Dr. Roger S. Kiger and Dr. Gordon P. Johnson (R.6) lead to the determination that the appellant had an I.Q. of 68. However, the conclusion also stated that there were indications of an overall I.Q. potential of 80, which implies that the appellant has more innate intelligence than the test's result indicates. Later in the letter, the doctors conclude that, "It is our further opinion that Mr. Thornton is responsible for the act for which charged in that he knows the nature, quality and wrongfulness thereof; and that he was not suffering from an irresistable urge, R.6).

The evaluation and conclusions contained in this report sent to the trial judge certainly indicate that appellant had the ability and intelligence to comprehend both the nature of the charge against him and his constitutional rights, of which he was adequately advised. Also, the circumstances surrounding the obtaining of the confession were consistent with lawful police detection of crime and determination of guilt.

POINT III

THE RECORD CLEARLY SUPPORTS THE TRIAL JUDGE'S DETERMINATION THAT THE CONFESSION WAS VOLUNTARY.

In Utah, the trial judge must determine whether or not a confession has been voluntarily obtained before it may be admitted into evidence before a jury. The jury then must determine the weight and credibility to be given the confession. The rule, well stated in Justice Wade's concurring opinion in *State v. Crank,* 101 Utah 592, 126 P.2d 1047 (1943) is that:

> . . . a confession isn't admissable in evidence unless voluntarily made; that this question must be determined by the court from all of the evidence from both sides bearing thereon; that if the court is satisfied from the evidence that the confession was voluntary then the court admits the confession in evidence to the jury, together with all of the evidence on the question of whether it was voluntary, and the circumstances surrounding its being made, and from such evidence the jury must determine the weight and credibility to be given it, but may not determine its competency as evidence that being a question for the court.

In the present case, the trial judge determined absent the jury that based upon all the evidence and events leading thereto, the confession was voluntarily obtained. The record clearly shows why the judge made this determination. The letter from the Doctors at the

Utah State Hospital states that appellant was capable of understanding the nature of the act of which he was charged (R.6). The testimony of the arresting officer indicates that appellant was immediately advised of his constitutional rights under the standards established by *Miranda v. Arizona, supra* (Tr. 64). The testimony of the interrogating officer indicates that before any questioning began the appellant was again advised of his constitutional rights, and their meaning was carefully explained to him (Tr. 76-78). The record shows that after these rights were thoroughly explained to appellant he voluntarily, intelligently and knowingly waived these rights (Tr. 79).

Based upon this testimony as to the waiver of constitutional rights and voluntary confession, the trial judge determined that the appellant's confession could be admitted into evidence. He left it with the jury as to what weight, if any, this testimony should receive.

CONCLUSION

The state submits that the record clearly reveals a knowing, intelligent and voluntary waiver of appellant's constitutional rights. Great effort was made to inform the appellant of these rights, their impact, extent and meaning. Appellant waived these rights and at this time should not be allowed to return to society simply upon the argument that he is not intelligent enough to

understand them. The judgment of the trial court should be sustained.

Respectfully submitted,

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