

1967

State of Utah v. James Floyd Workman : Brief of Appellant

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STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- :

JAMES FLOYD WORKMAN, :

Defendant-Appellant. :

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Case No.

10735

BRIEF OF APPELLANT

Appeal from the Judgment of the Third Judicial
District Court for Salt Lake County, Honorable
A. H. Eilett, Judge.

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UNIVERSITY OF UTAH

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TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	7
POINT I. THE DISTRICT COURT ERRED IN FAILING TO GRANT THE DEFENDANT'S MOTION TO SUPPRESS, SINCE THE DEFENDANT WAS NOT FULLY ADVISED OF HIS RIGHT TO HAVE AN ATTORNEY APPOINTED TO HIM IF HE COULD NOT AFFORD ONE, DURING THE IN-CUSTODY INTERROGATION.	7
CONCLUSION	13

CASES CITED

Johnson v. New Jersey, No. 762 June 20, 1966 ..	11
Miranda v. Arizona, No. 759, June 13, 1966 ...	7, 8, 11, 12, 13
State v. Gray, 150 SE 2d 1, 1966	9
Workman v. Turner, No.	6

STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- : Case No.

JAMES FLOYD WORKMAN, : 10735

Defendant-Appellant. :

BRIEF OF APPELLANT

STATEMENT OF NATURE OF THE CASE

This is an appeal from a criminal case wherein the appellant was charged with Robbery and Grand Larceny.

DISPOSITION IN LOWER COURT

The matter was tried before the Honorable A. B. Ellett, Judge, of the Third Judicial District Court. On the 6th day of July, 1966, pursuant to

the defendant's Motion to Suppress, a hearing was held before the aforesaid Judge and the defendant's Motion was denied. Thereafter, on the 7th day of July, 1966, the matter was submitted to the same Judge on stipulation of counsel as to the testimony of the State's witnesses. The Motion to Suppress was renewed and denied. The trial court found the defendant guilty of Grand Larceny after the defendant's confessions were admitted into evidence.

RELIEF SOUGHT ON APPEAL

The appellant seeks reversal of the ruling on the Motion to Suppress and of the conviction of Grand Larceny.

STATEMENT OF FACTS

On December 19, 1964, the defendant was taken

into custody by Salt Lake City Police Officers (Tr-28)
of a suspect in a robbery which occurred on
December 19, 1964. (Tr-6) He was held in custody
in the police station from 8:30 in the morning until
later in the afternoon when it became convenient
for the police to interrogate him. On December 21,
1964, at 8:30 p.m. the defendant was taken from his
cell to a detective's room in the Salt Lake Police
Station where he was interrogated by Officer
Melvin W. Shields and Officer Dale Pascoe. (Tr-3)
Prior to the interrogation and after the defendant
supposedly consented to give a statement, the
appellant was advised as follows: (Tr-5)

(Officer Melvin W. Shields)

- A. We advised him that we were police officers of Salt Lake City and that he was a suspect in an armed robbery. After he consented to give a statement, we advised him that he didn't have to make the statement, that he had a right to consult with an attorney before he

did so, and that anything he might tell us after that point could be used against him in court.

Q. Was there anything else said?

A. Not to my knowledge.

The appellant admitted the transcribed statement of the confessions as Exhibit 1 to show what transpired at the interrogation. (Tr-6) This statement included everything that occurred at the interrogation. (Tr-5) This Exhibit indicates that the following advice was given:

I, James Floyd Workman, make this statement freely and voluntarily to Officers J. D. Pascoe and M. W. Shields, whom I know to be officers of Salt Lake City, having had no threats made against me nor promises or rewards made to me. Further, I understand that I have the right to call an attorney and that anything that I now say may be used as evidence in court.

Officer Dale Pascoe stated that the appellant was advised as follows: (Tr-18)

Q. What was said by either yourself or Mr. Shields?

A. Officer Shields identified himself, and I identified myself, and we advised him that we were police officers and that he had the right to counsel before he made any statement, that anything he did say could be used against him as evidence in court.

Further, he testified that the appellant was transferred to the detective room from the jail because the facilities at the jail were not adequate to sit down and talk and that the officer had in mind to obtain a statement. (Tr-19) There was no question that the appellant was a suspect. (Tr-4, 19)

The District Attorney called the defendant as a witness and the defendant testified that he informed the officers that he did not have any money for a lawyer. (Tr-22) Further, the defendant was unaware that the law would require an appointment of counsel. (Tr-23) The defendant testified that the statement was voluntary. (Tr-24) On cross-examination, he

further stated that the representation by Officers Shields and Pascoe that there was a good chance that the defendant would be violated on his parole rather than have a new charge filed did influence him in making a statement. (Tr-32) None of this latter testimony was rebutted by the State. The complaint for the charge allegedly committed on December 19, 1964, was, in fact, filed on May 6, 1966, after the defendant was violated on parole and Habeas Corpus proceedings were commenced by the defendant and denied by the court. (See Workman v. Turner, Case No.)

In March of 1966 the appellant was once again taken into custody by the police and charged with the robbery of December 19, 1964. The Court appointed present counsel to represent the appellant and, based on answers to appellant's Bill of Particulars, a Motion to Suppress the statements was filed. Prior

to appellant's trial on the charge, the Motion to suppress was heard, argued, and denied. The appellant was tried on stipulation of counsel and was convicted by the Court, sitting without a jury. The confession was admitted over renewed objection by counsel and the appellant was found guilty of Grand Larceny as charged in the Information.

ARGUMENT

Point I

THE DISTRICT COURT ERRED IN FAILING TO GRANT THE DEFENDANT'S MOTION TO SUPPRESS, SINCE THE DEFENDANT WAS NOT FULLY ADVISED OF HIS RIGHT TO HAVE AN ATTORNEY APPOINTED FOR HIM IF HE COULD NOT AFFORD ONE, DURING THE IN-CUSTODY INTERROGATION.

In the case of Miranda v. Arizona, No. 759,

June 13, 1966 and companion cases, the Court held that:

In order to fully apprise a person interrogated of the extent of his rights under this system, then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him.

In the instant case, the undisputed facts show that prior to the questioning, the defendant was not advised of his right to have an attorney appointed for him if he could not afford one. It is clear and undisputed that the defendant could not afford an attorney and so informed the interrogating officers. Therefore, he fell within the class of persons intended to be protected by the Miranda decision. See Foot Note 43 in Miranda v. Arizona, supra, wherein the Court made the following statement:

While a warning that the indigent may have counsel need not be given to a person who is known to have an attorney or is known to have ample funds to secure

one, the expedient of giving the warning is too simple and the rights involved too important to engage in ex post facto inquiries into financial ability, where there is any doubt at all on that score.

There was no affirmative evidence of the defendant's financial condition at the time of the interrogation. Rather, there was evidence, uncontradicted, that the defendant was financially unable to secure his own attorney. Consequently, the case at bar would not fall within the case of State v. Gray, 150 SE 2d 1, (1966) wherein the North Carolina Court found upon the record that the defendant was not indigent in that he was able to make bond and did retain two competent attorneys to defend him.

Moreover, it would appear from the recital contained in defendant's Exhibit 1 and from the testimony of Officer Dale Pascoe that the defendant

was not informed of his absolute right to remain silent. Thus, the full requirements as set forth below were not met.

The Court further clarifies the limits of the constitutional standard in the following language:

To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required.

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. After such warnings have been given, and such opportunity afforded him, the individual

may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

Without the critical advice required by the United States Court in Miranda, the statement taken from the defendant and subsequent evidence discovered through the use of the statement may not be used against him.

In the case at bar, the district court clearly erred in not granting the defendant's Motion to suppress the statement. In addition, it is clear that the standards announced in Miranda must be used to measure the validity of the statement in the instant case.

In the case of Johnson v. New Jersey, No. 762, June 23, 1966, the Court held:

In the light of these additional

considerations, we conclude that Escobedo and Miranda should apply only to cases commenced after those decisions were announced. We recognize that certain state courts have perceived the implications of Escobedo and have therefore, anticipated our holding in Miranda. Of course, states are still entirely free to effectuate under their own law stricter standards than those we have laid down and to apply those standards in a broader range of cases than is required by this decision.

And in the following language the Court specifically states an exact date for the determination of the issue of retroactivity as follows:

The disagreements among other courts concerning the implication of Escobedo, however, have impelled us to lay down additional guidelines for situations not presented by that case. This we have done in Miranda, and these guidelines are therefore available only to persons whose trials had not begun as of June 13, 1966.

In the case at bar, the Motion to Suppress was argued and denied on July 8, 1966 and in the subsequent trial the defendant was convicted through the use of the invalid statement.

In conclusion, the conviction of the defendant should be reversed and remanded to district court for a new trial consistent with the constitutional standards required by Miranda v. Arizona.

Respectfully Submitted,

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