

1992

# State of Utah v. Matthw W. Miller : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :  
 Plaintiff-Respondent, : Case No. 20229  
 vs. :  
 MATTHEW W. MILLER, : Priority 2  
 Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION OF AGGRAVATED ASSAULT,  
A THIRD DEGREE FELONY, IN THE SEVENTH JUDICIAL  
DISTRICT, IN AND FOR CARBON COUNTY, THE  
HONORABLE BOYD BUNNELL, PRESIDING.

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STATEMENT OF ISSUES

1. Whether this Court should review defendant's claims of error absent support in the record for those claims.

IN THE SUPREME COURT OF THE STATE OF UTAH

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Defendant-Appellant. :

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BRIEF OF RESPONDENT  
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STATEMENT OF THE CASE

Defendant was originally charged with two counts of aggravated assault, third degree felonies, in violation of Utah Code Ann. § 76-5-103, 1953, as amended, for acts occurring on December 26, 1983 in Carbon County, Utah (R. 1).

Defendant pled guilty to the second count of aggravated assault and the State dismissed the first count at the arraignment (R. 7). Judge Bunnell sentenced defendant on July 31, 1984 to a term of imprisonment at the Utah State Prison not to exceed five years (R. 9).

Defendant filed motions to stay commitment and to withdraw his plea of guilty (R. 13-19). The Motion for Stay of Commitment was denied August 13, 1984 (R. 20). The Motion to Withdraw the Guilty Plea was denied by a memorandum decision September 19, 1984 (R. 33-36).

STATEMENT OF FACTS

No facts are available in the record provided by defendant on appeal. However, in the Memorandum Decision, Judge Bunnell notes that the official version of the facts is contained

in the pre-sentence report (R. 35). The record indicates that defendant designated the pre-sentence investigation report in his Designation of Record on Appeal but it is not part of the record (R. 38). There is no transcript of the guilty plea or the preliminary hearing in the record and no indication that a transcript was ever prepared. The State can only provide a sketchy synopsis of the facts of the case through what is provided in the record.

On December 26, 1983, defendant assaulted Joseph Lund and Glenn Hampton with a knife at the Pizza Hut in Price, Utah (R. 7, 23). On December 27, 1983, defendant was charged by Information with two counts of aggravated assault (R. 7).

Defendant appeared before the Honorable A. John Ruggeri in Eleventh District Court, in and for Carbon County on January 4, 1984. Defendant waived the formal reading of the Information and acknowledged receipt of a copy of the Information (R. 2). Preliminary hearing was held May 16 and 21, 1984 resulting in defendant being bound over to the Seventh Judicial District Court for Carbon County (R. 3).

Defendant appeared for arraignment on June 11, 1984, at which time the State advised the Court that the parties had agreed that if the defendant would plead guilty to the second count of aggravated assault the State would dismiss the first count (R. 7). To Count II, Aggravated Assault, the defendant pled guilty. The Court advised the defendant of the nature of the charges brought against him and upon determining that the defendant was fully aware of his legal and constitutional rights,



the Court accepted the guilty plea (R. 7). Although the record does not include a transcript of the preliminary hearing, it must be noted that the defendant and his counsel went through a full preliminary hearing at which the two victims testified and where the knife used by the defendant was introduced as an exhibit (R. 3).

Sentencing occurred July 31, 1984 (R. 10). Defendant was committed to the Utah State Prison for a term not to exceed five years (R. 10). On August 10, 1984, defendant filed the motions for stay of commitment and to withdraw his plea of guilty (R. 15-17). These motions were denied September 19, 1984 (R. 33-36).

#### SUMMARY OF ARGUMENT

Point I. Defendant has not provided this Court with an adequate record on appeal that would allow this Court to consider the defendant's allegations and has, thus, failed to support his assignment of error by the record.

#### ARGUMENT

##### POINT I

DEFENDANT'S FAILURE TO PROVIDE AN  
ADEQUATE RECORD PRECLUDES THIS COURT  
FROM CONSIDERING HIS CLAIMS OF ERROR.

The defendant has failed to provide an adequate record for this Court's consideration of the facts in this case which support his allegations of error. While defendant designated for the record a transcript of the plea, there is no transcript in the record (R. 38). There is in the record something entitled "Transcript" which contains only minutes of the preliminary

hearing but nothing concerning the guilty plea entered afterward (R. 1-3).

Without transcripts of the preliminary hearing and the guilty plea, it is not possible to determine the accuracy of defendant's claims. This Court should not consider defendant's allegations of harm that are based on matters outside the record on appeal. State v. Robbins, 21 Utah Adv. Rep. 37 (Nov. 4, 1985); State v. Sparks, 672 P.2d 92 (Utah 1983). It is the defendant's burden to make an adequate record in the trial court and on appeal. Id.

There is no support in the record for defendant's allegations. The Court has before it only a minute entry which states that defendant pled guilty to Count II, Aggravated Assault (R. 7), and the trial judge's memorandum decision stating that defendant did understand the nature and elements of the offense even though the court had not made a specific finding on that issue at the time (R. 33-36).

Since defendant has not supplied a complete record on appeal, this Court is unable to determine whether the trial judge's ruling that defendant understood the nature of the charges against him and the consequences of his plea was correct or if there were sufficient facts to support a finding that the defendant committed the crime for which he was charged. Since there is no support for defendant's allegations in the record, this Court must assume the regularity of the proceedings below and affirm the judgment. State v. Robbins, 21 Adv. Rep. 37

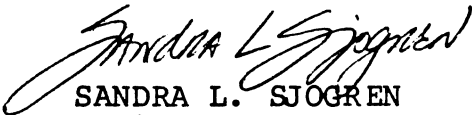
(Nov. 4, 1985); State v. Jones, 657 P.2d 1263 (Utah 1982); State v. Hamilton, 419 P.2d 770 (Utah 1966).

CONCLUSION

The State requests this Court to affirm defendant's conviction and deny his request for a new trial.

DATED this 27<sup>th</sup> day of March, 1986.

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Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and exact copies of the foregoing Brief, postage prepaid, to George M. Harmond, Jr., attorney for appellant, 190 North Carbon Avenue, Price, Utah 84501, this 28<sup>th</sup> day of March, 1986.

  
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