1964

State of Utah v. Lloyd B. Hart : Brief of Respondent

Utah Supreme Court

A. Pratt Kesler; Ronald N. Boyce; Attorneys for Respondents;
Phil L. Hansen; Attorney for Appellant;

IN THE SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

— vs —

LLOYD B. HART,
Defendant and Appellant.

Case No. 9995

BRIEF OF RESPONDENT

Appeal from the Conviction of the
District Court of Salt Lake County
Hon. Ray Van Cott, Jr., *Judge*

A. PRATT KESLER
Attorney General

RONALD N. BOYCE
Chief Assistant Attorney General

Attorneys for Respondent

PHIL L. HANSEN
410 Empire Building
Salt Lake City, Utah
Attorney for Appellant

TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	1
ARGUMENT	2
POINT I. THE TRIAL COURT DID NOT ERR IN ADMITTING THE APPELLANT'S ORAL CONFESSION INTO EVIDENCE	2
CONCLUSION	6

AUTHORITIES CITED

Anno. 1 L.Ed. 2d 1747	3
Anno. 19 A.L.R.2d, 1332	4

CASES CITED

Brown v. Allen, 344 U.S. 443 (1953)	3
Hurtado v. California, 110 U.S. 516 (1884)	4
Ker v. California, 374 U.S. 23 (1963)	4
Lyons v. Oklahoma, 322 U.S. 596 (1944)	3
Mallory v. United States, 354 U.S. 449 (1957)	2
Mapp v. Ohio, 367 U.S. 643 (1961)	3, 4
Mares v. Hill, 118 Utah 484, 222 P.2d 811 (1951)	4
McNabb v. United States, 318 U.S. 332 (1943)	2, 3, 5
Osborn v. Harris, 115 Utah 204, 203 P.2d 917 (1949)	4
Palko v. Connecticut, 302 U.S. 319 (1937)	4
State v. Braasch, 119 Utah 458, 229 P.2d 289 (1951)	4
State v. Gardner, 119 Utah 579, 230 P.2d 559 (1951)	5

TABLE OF CONTENTS — Continued

Page

Stein v. New York, 346 U.S. 156 (1953) 3

Stroble v. California, 343 U.S. 181 (1952) 3

Turner v. Pennsylvania, 338 U.S. 62 (1949) 4

STATUTES CITED

Utah Code Annotated 1953:

76–9–3 1

77–13–17 2

IN THE SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

— vs —

LLOYD B. HART,
Defendant and Appellant.

Case No. 9995

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant Lloyd B. Hart was tried and convicted on the crime of second degree burglary in violation of 76-9-3, U.C.A. 1953, and appeals from that conviction.

DISPOSITION IN LOWER COURT

After full jury trial in the Third Judicial District Court, the appellant was convicted of second degree burglary and sentenced to be committed to the State Prison.

RELIEF SOUGHT ON APPEAL

The appellant submits the judgment should be affirmed.

STATEMENT OF FACTS

The only issue raised by this appeal is the validity of the trial court's action in admitting the appellant's confession into evidence. The appellant was charged with second

degree burglary of the dwelling of Maurice D. Warshaw in the Wasatch Towers on the 27th day of January, 1963 (R–1). The facts relevant to the commission of the crime are set out in the appellant's brief. The following facts are relevant to the admission of the appellant's oral confession. The appellant was questioned on the morning of the 28th of January, 1963, after his arrest (R–43). The questioning was done by officer David P. Bradford of the Salt Lake City Police Detective Bureau (R–43). The appellant had been arrested on Sunday night the 27th of January and questioned on Monday morning (R–50, 51). A complaint had not yet been issued nor had appellant been taken before a magistrate (R–50). No issue of the voluntariness of the confession was raised (R–44). The court admitted the testimony of the officer as to the oral confession of appellant (R–44).

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN ADMITTING THE APPELLANT'S ORAL CONFESSION INTO EVIDENCE.

The appellant contends that the trial court erred in admitting into evidence his oral confession. The basis of the appellant's contention is that the confession should have been excluded because appellant was not taken before a magistrate "without unnecessary delay," as contemplated by 77–13–17, U.C.A. 1953. It should be noted that appellant was arrested on Sunday night and questioned the next morning. Whether the delay was unnecessary or unconscionable is open to doubt. However, as appellant tacitly recognizes in his brief the matter is immaterial. The appellant relies upon *McNabb v. United States,* 318 U.S. 332 (1943) and *Mallory v. United States,* 354 U.S. 449 (1957)

to support his position. He acknowledges that the *McNabb* rule has not as yet been incorporated into the 14th Amendment provision relating to due process of law and applicable against the States, but appellant contends that the rule of *McNabb* should be so applied and contends that *Mapp v. Ohio,* 367 U.S. 643 (1961) supports his position. Obviously the appeal is without merit. In *McNabb v. United States,* supra, the court excluded a voluntary confession taken during a period of delay in between arrest and presentment. The court, however, did not indicate any constitutional basis for the ruling, but indicated that they were acting on the basis of their supervisory power over government officers. The court stated:

> "Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them."

In subsequent cases petitioners from State Court judgments have sought to have the Supreme Court vitiate their confessions by raising the *McNabb* rule to one of constitutional level. The Supreme Court has consistently refused and ruled that the delay attendant to taking an accused before a magistrate will not prohibit the use of a confession otherwise voluntary. *Lyons v. Oklahoma,* 322 U.S. 596 (1944); *Stroble v. California,* 343 U.S. 181 (1952); *Brown v. Allen,* 344 U.S. 443 (1953); *Stein v. New York,* 346 U.S. 156 (1953). In Anno. 1 L.Ed. 2d 1747 speaking of State Courts it is stated:

> "A confession is not, as a matter of due process, inadmissible merely because of an undue delay, prior to the making of the confession, on the part of the police in taking the accused before a committing magistrate."

See also Anno. 19 A.L.R. 2d, 1332.

Nor does *Mapp v. Ohio,* supra, add any weight to appellant's position since it was concerned with excluding evidence as the result of an illegal search. This is not the case here. The fact also that one Justice of the Supreme Court, Justice Black, may feel that the 4th Amendment is incorporated in the Fourteenth hardly bolsters appellant's position since the majority of the court has consistently refused to apply the 5th Amendment against the states in total. *Hurtado v. California,* 110 U.S. 516 (1884); *Palko v. Connecticut,* 302 U.S. 319 (1937); and in *Ker v. California,* 374 U.S. 23 (1963) the court made it clear that *Mapp* did not extend beyond the 4th Amendment. Indeed, there is no reason to consider the implications of such an argument as appellant raises, since the "due process" concept is expressed in the 14th Amendment. Consequently, the appellant's position is without merit.

In *Osborn v. Harris,* 115 Utah 204, 203 P.2d 917 (1949) this court recognized the limitations on the *McNabb* rule and that it did not apply to State matters. In *Mares v. Hill,* 118 Utah 484, 222 P.2d 811 (1951) the court rejected the *McNabb* rule noting:

> "This case is distinguishable from *McNabb v. United States,* 318 U.S. 332, 63 S. Ct. 608, 87 L. Ed. 819. In that case the Federal Supreme Court was dealing with a *federal rule of procedure* and whether there had been prejudicial error in failing to bring the accused without unnecessary delay before a magistrate. On the question of whether error had been committed, this court is the court of last resort in this case and we have already determined that question against plaintiff. Here plaintiff must show more than mere error in the trial — he must show a lack of due process of law which is much more limited in its scope than error."

In *State v. Braasch,* 119 Utah 458, 229 P.2d 289 (1951) the court again rejected the *McNabb* rule quoting from *Turner v. Pennsylvania,* 338 U.S. 62 (1949):

"But 'the mere questioning of a suspect while in the custody of police officers is not prohibited either as a matter of common law or due process,' and 'the mere fact that a confession is made while the accused is in the custody of the police officers does not render it inadmissible.' "

In *State v. Gardner*, 119 Utah 579, 230 P.2d 559 (1951) this court in a thoughtful opinion by Justice Wade not only rejected the rule of *McNabb* but the underlying principle as well. The court stated:

"The mere fact that the confession was made while defendant was being held in violation of Section 105–12–14, U.C.A. 1943, and not taken before a magistrate without unnecessary delay is not alone sufficient to render a voluntary confession inadmissible in evidence. This is contrary to the decisions of the Supreme Court of the United States under Rule 5 (a), Federal Rules of Criminal Procedure, * * *."

* * *

"Although the federal statute construed in the *McNabb case* has for many years been the law and is similar to the laws of long standing in most states, as far as we can find no prior case has excluded a voluntary confession because the accused had not been promptly taken before a magistrate at the time he confessed. We find no state court which has adopted such a rule and several have expressly rejected it."

* * *

"To exclude such evidence deprives the state of reliable evidence for the purpose, it is said, to check the practice of secret questioning of prisoners. But it is not unlawful for officers to question prisoners suspected of crime as long as no coercion, physical or psychological, is exerted and no unfair advantage is taken."

Consequently, there is no merit to appellant's position.

CONCLUSION

The appellant was duly and properly convicted. The only basis raised on appeal is contrary to law and reason. This court should affirm.

Respectfully submitted

A. PRATT KESLER
Attorney General

RONALD N. BOYCE
Chief Assistant Attorney General

Attorneys for Respondent