1970

The State of Utah v. Gerald Scandrett : Brief of Respondent

In The Supreme Court of the State of Utah

THE STATE OF UTAH,
Plaintiff-Respondent,

vs.

GERALD SCANDRETT,
Defendant-Appellant.

Case No. 11[illegible]

BRIEF OF RESPONDENT

Appeal from the Judgment of the District Court of [illegible] Lake County, State of Utah, The Honorable [illegible] Judge.

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Case No. 11733

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant appeals from his conviction in the Third Judicial District Court, Honorable Merrill C. Faux, Judge, presiding, of the crime of murder in the second degree.

DISPOSITION IN THE LOWER COURT

On March 25, 1969, the trial was held before Judge Faux. Appellant plead not guilty to a reduced charge of murder in the second degree. Upon a hearing of the evidence, as stipulated to by the prosecution and defense, Judge Faux found Gerald Scandrett guilty of murder in the second degree.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of appellant's conviction in the Third Judicial District Court.

STATEMENT OF FACTS

The facts presented to the Honorable Merrill C. Faux, Judge, were entered on stipulation by both parties. Respondent agrees with the statement of facts set out in appellant's brief. Respondent wishes to make an additional statement, however, about the confessions and the manner in which they were presented at the trial.

This case is unique because no jury was impaneled. The entire evidence and appellant's motion to suppress the recorded confession were presented to Judge Faux.

The appellant, furthermore, made several voluntary statements to the police before a confession was ever recorded. All of these statements were presented to Judge Faux. Even though appellant was intoxicated, the officers who observed him said that he spoke coherently, appeared to understand questions put to him, and made intelligent and spontaneous responses to those questions (T. 108).

It should also be noted that it was the appellant himself who directed the room clerk to call the police after the stabbing (T. 106).

ARGUMENT

POINT I

APPELLANT'S STATE OF INTOXICATION DID NOT DEPRIVE HIM OF THE REQUISITE MENTAL CAPACITY TO KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVE HIS CONSTITUTIONAL RIGHTS.

Appellant contends that the admission into evidence of the alleged confession was reversible error. He asserts that the confession was made without the benefit of counsel and without a valid waiver of his constitutional rights. His contention is premised solely on the fact that because he was drunk he could not make an intelligent and knowing waiver. Respondent presented evidence showing that the appellant was given his *Miranda* warnings.

Intoxication affecting an accused's ability to waive his rights and confess is a question to be determined by the trial judge. *Winn. v. State*, 44 Ala. App. 268, 207 So.2d 138 (1968). Judge Faux, after a hearing, denied appellant's motion to suppress the confession. He determined that appellant was coherent and could intelligently and knowingly waive his right to remain silent and his right to counsel. It should be noted that appellant's confession was not ever presented to a jury. The case was presented on stipulated facts before Judge Faux. The prejudicial consequences of a jury hearing a confession were not present in this case. This is particularly

significant when it is noted that the appellant made voluntary statements before ever being taken into custody. This point will be discussed separately. This fact alone is sufficient to distinguish *Logner v. North Carolina,* 260 F. Supp. 970 (M.D. N.C. 1966). It also can be distinguished on other grounds. In *Logner* the defendant was not only intoxicated but also under the influence of amphetamines. The amount consumed deprived him of the capacity to even make a statement about the traffic accident in which he was involved. The appellant Scandrett, on the other hand, was able to tell the story not only once but several times, and each time the story was coherent and consistent with the previous telling.

Coherence, rationality, and responsiveness are all relevant factors in determining the extent of influence that alcohol has on a person when he confesses or waives his rights. *In Re Cameron,* 68 Cal.2d 487, 439 P.2d 633, 67 Cal. Rptr. 529 (1968). Whether an accused has intelligently waived his right to counsel depends in each case upon the particular facts and circumstances surrounding the case. Appellant's conduct in the instant case indicated that he wanted to talk without counsel. In *State v. Matt,* 444 P.2d 914 (Ore. 1968), the Oregon Supreme Court held that an intoxicated defendant by his conduct had waived his right to counsel.

> "A verbal acknowledgment of understanding and willingness to talk, followed by conduct which is consistent only with a waiver of his right to have his lawyer present, by one who has been advised of his rights, constitutes an

> effective waiver of his right to counsel at that stage of the proceeding." *Id.* at 915

The trial judge in the instant case after listening to the recording of the confession determined that it was very coherent and that appellant could knowingly and intelligently waive his constitutional rights. The officers who observed the appellant testified that he spoke coherently, appeared to understand the questions put to him, and made intelligent and spontaneous responses to those questions (T. 108).

Mere intoxication does not prevent a person from making a valid waiver. In *Fant v. Peyton*, 303 F. Supp. 457 (W.D. Va. 1969), the court held that defendant's intoxicated condition did not prevent him from waiving his rights under *Miranda*. In *People v. Stroud*, 78 Cal. Rptr. 270 (1969), a California appellate court was faced with an almost identical fact situation as in the instant case. Stroud killed his wife about 6:00 p.m. He called a deputy sheriff who arrived a little after 6:00. Stroud then confessed to the deputy. Later at 8:30 p.m. a tape recorder was set up, and Stroud was advised of his rights. He waived his rights and confessed. At 10:00 p.m., a blood alcohol test was taken. It revealed an alcohol content of .229 milligrams. Presumably the blood alcohol content would have been somewhat higher earlier when he made the confessions. After hearing the conflicting testimony, the trial judge ruled that despite the amount of alcohol, Stroud was able to knowingly and intelligently waive his constitutional

rights under *Miranda*. In affirming the trial judge the appellate court said:

> "Keeping in mind the rule that our review of the record is not a fact finding process, we measure the totality of circumstances in the light of uncontroverted evidence and the trial court's resolution of conflicting evidence. About the only pertinent uncontradicted fact is that at 10 p.m. defendant's alcohol blood content was .229 milligrams. *But a blood alcohol content of .229, standing alone, neither proves nor disproves defendant's capacity to understand and rationalize, since there is no established statutory or decisional standard correlating blood alcohol content with cerebral impairment of which this court can take judicial notice. Consequently the import of and inference to be drawn from an alcohol blood content of .229 must rest upon other relevant evidence.*" *Id.* at 276. (Emphasis added.)

In the present case the defense put on an expert witness. However, this expert witness had never observed anyone with a blood-alcohol count above .1 (R. 74). He admitted that a specified amount of alcohol in the blood would affect different individuals differently (R. 74, 75, 86), and that it would be "unprecise" to speculate on the extent of the impairment of Scandrett's mental faculties at .26 (T. 76, 83), and that it would have been "immeasurably" helpful to have been present and heard and observed him while intoxicated (T. 83).

The blood alcohol content in this case cannot

be relied upon as the sole factor in determining whether appellant waived his rights. It does not prove that appellant's capacity to understand was substantially impaired. Other relevant factors to be considered are the accused's response to questions, his voluntary statements, his manner of speaking, his syntax, his grammar, and his mode of speech as revealed by the taped statements. These factors, along with the blood alcohol level, were considered by the trial judge. He listened to the taped confession and ruled that Mr. Scandrett had made a knowing and intelligent waiver, and that the confession was admissible (T. 98-99).

This ruling was correct. In the absence of any "statutory or decisional standard correlating blood alcohol content with cerebral impairiment," Judge Faux was free to recognize and conclude that "much depends upon the reaction of each individual person," and that appellant's ability to remember and narrate the incidents of the stabbing in smooth, unslurred speech, as revealed by the tape, was more conclusive proof of his mental capacity than was the expert testimony as to what appellant's mental capacity *might* have been.

POINT IA

SINCE THE APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS CONSTITUTIONAL RIGHTS, HIS CONFESSION WAS PROPERLY ADMITTED IN EVIDENCE.

To render a confession inadmissible, drug or

alcohol intoxication must be of such a degree as to negate the defendant's comprehension and render him unconscious of what he is saying. If the defendant understands the statements directed to him and knows what he is saying, the confession is admissible. *State v. Manuel,* 253 La. 195, 217 So.2d 369 (1969). There was no evidence presented at the trial which indicated that appellant was unconscious of what he was saying. He understood the statements directed to him and voluntarily waived his rights before he confessed.

A very comprehensive view of the cases on the subject of the effect of intoxication on the voluntariness of confessions is found in 69 A.L.R.2d 361, wherein, at page 364, the annotation says:

> "The courts are agreed that proof that one who has confessed to crime was intoxicated at the time of making a confession goes to the weight and credibility to be accorded to the confession, but does not require (at least where the intoxication does not amount to mania, and the intoxicants were not furnished the accused by the police or other government officials) that the confession be excluded from evidence." 69 A.L.R. 2d 631, 364.

This annotation appeared in 1960 and since that time many cases have considered the question before this Court. Even since *Miranda,* most of the cases refer to and approve the rule as stated in the annotation. *See: e.g., State v. Cuzzetto,* 457 P.2d 204 (Wash., 1969); *State v. Manuel, supra; People v. Green,* 105 Ill.

App.2d 345, 245 N.E.2d 507 (1969). In only three cases has it been held error to have admitted the confessions. But in each case the degree of intoxication amounted to mania, i.e., so drunk as to be unconscious of the meaning of his words.

The case on which the appellant places his greatest reliance is *Logner v. North Carolina, supra.* Logner, however, was so drunk when arrested that he could not make a statement about the traffic collision in which he was involved. He was still very drunk during the afternoon when he was interrogated.

Also in *Warren v. State,* 44 Ala. App. 221, 205 So.2d 916 (1967) the court said:

> "The proof clearly shows that defendant's intoxication amounted to mania, that is, he was so drunk as to be unconscious of the meaning of his words, and that such intoxication rendered inadmissible his confession." *Id.* at 225, 205 So.2d at 919.

A similar result was reached in *State v. Williams,* 208 So.2d 177 (Miss. 1968). The defendant's intoxication had produced mania, and his confession was held to be inadmissible.

Respondent submits that this standard should be adopted by this Court in determining whether appellant's confession was voluntary and should have been admitted. The State further submits that appellant's intoxication did not per se render his confession involuntary and hence inadmissible. His con-

duct did not amount to mania or render him unconscious of what he was saying. *State v. Thornton*, 22 Utah 2d 140, 449 P.2d 987 (1969), in an analogous fact situation, is authority for this proposition.

POINT II

APPELLANT'S VOLUNTARY CONFESSION GIVEN TO OFFICER HUNT IS ADMISSIBLE UNDER *MIRANDA* AND IS SUFFICIENT TO SUSTAIN HIS CONVICTION.

Miranda v. Arizona, 384 U.S. 436 (1966) applies only to custodial interrogations.

> ". . . the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444.

It does not apply to confessions which are voluntary. In writing the opinion for the Court ,Mr. Chief Justice Warren emphasized:

> "There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volun-

> teered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." *Id.* at 478.

Appellant made several voluntary statements before he was arrested and taken into custody, and before he made the confession which is the subject of this appeal. After Officer Hunt arrived at the hotel where the stabbing occurred, he found the victim in the hallway. The appellant and a Mr. Ferguson were seated on the bed in the room and the door to the hallway was open. Officer Hunt heard the appellant say: "I did it; I did it; my fingerprints are on the knife." Subsequently, Captain Ferguson arrived and placed the appellant under arrest. Officer Hunt identified appellant as the person who had admitted stabbing Mr. Trujillo (T. 106-107).

Ample authority exists for the rule that statements made at the scene of the crime are admissible. *See: e.g., Britton v. State,* 44 Wis.2d 109, 170 N.W.2d 785 (1969); *State v. Jiminez,* 22 Utah 2d 233, 451 P.2d 583 (1969); *Cash v. State,* 224 Ga. 798, 164 S.E.2d 558 (1968); *Miranda v. Arizona, supra.*

Appellant's confession is the classic example of a "threshold" confession, i.e., appellant initiated the call to the police and blurted out his guilt the moment an officer appeared on the scene. The confession was spontaneous and unsolicited. It was given prior to any custodial interrogation; it was even prior to custody or investigative interrogation. It was the spontaneous expression of a "free will"

burdened with guilt. This confession was voluntarily given in the traditional sense and *Miranda* does not require its exclusion, but on the contrary, sanctions its admission as evidence.

This admissible statement when considered in light of other special circumstances, i.e., there was no jury, and no prejudice resulted to appellant because of the taped confession, is sufficient to sustain the conviction in this case. The Supreme Court of the United States has never reversed a conviction based in part on an inadmissible confession which was never before a jury, where there was a prior admissible confession which would support the conviction. On the other hand, the Supreme Court has recognized that some constitutional errors are harmless.

> "We are urged by petitioners to hold that all federal constitutional errors, regardless of the facts and circumstances, must always be deemed harmful. Such a holding, as petitioners correctly point out, would require an automatic reversal of their convictions and make further discussion unnecessary. We decline to adopt any such rule. All 50 States have harmless-error statutes on rules, and the United States long ago through its Congress established for its courts the rule that judgments shall not be reversed for "errors or defects which do not affect the substantial rights of the parties." 28 U.S.C. § 2111. None of these rules on its face distinguishes between federal constitutional errors and errors of state law or federal statutes and rules. All of these rules, state or

> federal, serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial. We conclude that there may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction." *Chapman v. California,* 386 U.S. 18, 21-22 (1967).

In the absence of a controlling mandate from the High Court, many states have applied the harmless error rule to confessions obtained in violation of *Miranda.* In *Soolook v. State,* 447 P.2d 55 (Alaska 1968), the court applied the harmless error rule to a factual situation almost identical to the instant case. The defendant had confessed to his parents in his own home before he was arrested. He was later arrested, given his *Miranda* warnings, and he confessed while in custodial interrogation. He was not intoxicated, but the court held that even assuming that the confession was inadmissible, the error was harmless and did not require reversal. *Id.* at 65. The court relied on a Nevada case, *Guyette v. State,* 438 P.2d 244 (Nev. 1968). The *Guyette* court held that failure to advise the accused of his right to the presence of counsel, either retained or appointed, constituted harmless error. The court said:

> "Although the High Court has not yet ruled that the doctrines of harmless error may be applied to a *Miranda* warning violation, the drift

> of its opinions would suggest that the rule of harmless error may be utilized when any of the new procedural safeguards, as expressed in [citations omitted], are breached. We say this mainly because the constitutional doctrines of those cases were not given retrospective application, apparently for the reason that a violation may occur without necessarily affecting the fundamental fairness of the trial. Due process in the traditional sense is not necessarily denied the accused. The very integrity of the fact finding process is not necessarily infected by the violation. The reliability of the evidence received is not necessarily suspect. Hence, the rule of "automatic reversal" does not control appellate disposition." *Id.* at 248.

The Court then ruled that there was limited room for a "state court to consider the rule of harmless error when the procedural safeguards of *Miranda* are not fully honored." *Id.* at 249.

The respondent submits that the facts of this case provide such a setting. The appellant was not denied due process of law. No jury considered the later confession. The appellant had made voluntary statements which were admissible and not objected to by defense counsel. The basic tests of reliability were met in this case. There was no police brutality or coercion. The appellant was given his complete *Miranda* warnings. The evidence shows that even though intoxicated, the statements made were voluntary. Finally, respondent notes that perhaps the most damning confession was made prior to interrogation and completely admissible. Due process

was complied with. The trial judge made an independent determination that the appellant's confession was admissible. But even assuming that this determination was error, it can be deemed harmless error and the prior confession can sustain the conviction.

CONCLUSION

Respondent submits that the trial court did not err in denying appellant's motion to suppress his confession. The appellant intelligently, knowingly and voluntarily waived his right to counsel under *Miranda*. The confession was admissible and the conviction should be affirmed.

Further, the threshold confession was admissible and was sufficient to sustain appellant's conviction. Assuming that the later confession was inadmissible, the rule of harmless error prevails. There was no jury and the prejudices which result because of inadmissible confessions were not present in this case. The conviction must be affirmed.

Respectfully submitted,

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