

1970

## State of Utah v. Dayton J. Belgard : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, )  
 )  
 Plaintiff and Respondent, )  
 )  
 -vs- )  
 )  
 DAYTON J. BELGARD, )  
 )  
 Defendant and Appellant. )

Case No.  
11956

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE SECOND JUDICIAL  
COURT FOR WEBER COUNTY, HONORABLE JOHN P. ...  
PRESIDING.

L. G. ...  
Attorney  
203 ...  
Ogden, ...

VERNON B. ROMNEY  
Attorney General  
State Capitol  
Salt Lake City, Utah  
Attorney for Plaintiff  
and Respondent

FILE

Clk. ...

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 . . . . .	3
Point I . . . . .	3
<p>THE HOLDING OF THE TRIAL COURT THAT THE REQUIREMENTS OF <u>MIRANDA v. ARIZONA</u>, 384 U.S. 436, ARE NOT BINDING UPON THE 1969 TRIAL OF THE DEFENDANT IS IN ERROR, INASMUCH AS THE 1969 TRIAL WAS NOT A "RETRIAL" WITHIN THE RULING OF THE U.S. SUPREME COURT IN <u>JENKINS v. DELAWARE</u>, 395 U.S. 213.</p>	
Conclusion . . . . .	7

TABLE OF CONTENTS (continued)

Authorities Cited

Cases

	Page
Dayton J. Belgard v. John W. Turner No. C95-69 . . . . .	2
Desist v. United States, 394 U.S. 244 . . . . .	5
Jenkins v. Delaware, 395 U.S. 213 . . . . .	3, 5, 6
Miranda v. Arizona, 384 U.S. 436 . . . . .	3, 7
Orozco v. Texas, 394 U.S. 324 . . . . .	5
State v. Swann, 170 S.E. 2d 611 . . . . .	6
Stovall v. Denno, 388 U.S. 293 . . . . .	5

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Plaintiff and Respondent,	)	
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-vs-	)	Case No.
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DAYTON J. BELGARD,	)	
	)	
Defendant and Appellant.	)	

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BRIEF OF APPELLANT

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STATEMENT OF NATURE OF CASE

This is an appeal by the defendant, Dayton J. Belgard, from his conviction of the crime of Second Degree Burglary and the sentence thereon to the Utah State Prison.

DISPOSITION IN LOWER COURT

The Second Judicial District Court in and for the County of Weber, State of Utah, after trial before a jury, sentenced the defendant to an indeterminate term in the Utah State Prison upon his conviction of the crime of burglary in the second degree; defendant having been tried and convicted before a jury.

RELIEF SOUGHT ON APPEAL

The appellant seeks reversal of the conviction and judgment thereon and an order directing the case be dismissed.

STATEMENT OF FACTS

The appellant is presently at liberty on an Appeal Bond granted by the District Court in the above-entitled matter.

The defendant was accused by a complaint filed in Ogden City Court on November 1, 1963, of the crime of Second Degree Burglary, an alleged car prowler, committed in the nighttime.

On November 26, 1963, the defendant entered a plea of guilty to the charge of Burglary in the Second Degree before the Honorable Charles G. Cowley and was, on December 4, 1963, sentenced to the Utah State Prison. Thereafter, appeals were taken first to this Honorable Court, and later to the United States District Court for the District of Utah, Central Division. The Honorable A. Sherman Christensen, United States District Judge, in a memorandum decision, Dayton J. Belgard v. John W. Turner, No. C95-69, dated August 6, 1969, granted Dayton J. Belgard a Writ of Habeas Corpus and discharged the defendant from custody unless within twenty days the State of Utah permitted the defendant the right to replead to the original charge. The State of Utah appealed this decision by the Federal District Court, and the Federal District Court's decision was sustained.

The defendant did replead to the charge, and entered a plea of not guilty. Counsel was appointed and the matter tried before a jury on October 23, 1969, the defendant being found guilty and sentenced to the Utah State Prison.

In the early morning hours of the 19th day of September, 1963, a Mr. John Knight was preparing to go elk hunting. He testified he had purchased groceries in excess of Fifty Dollars in value and placed them in his automobile (T.105).

Thereafter, he drove to 25th Street in Ogden, Utah, parked the automobile, and went into a restaurant for breakfast. He then went to a hotel to see an acquaintance, and upon returning to the vehicle found the groceries were missing (T.107). He immediately contacted the Ogden City Police.

An officer named Stettler alleges he saw the defendant and another man load a box into an automobile around 5:00 A.M. on the same day and at the same location Mr. Knight reported parking his vehicle. Officer Stettler further reports that the time was approximately 5:00 A.M. A few moments later, Officer Stettler testified, he was notified by Mr. Knight of the theft and he placed an alert for the automobile and the men he had observed (T.119).

The defendant was taken into custody near Ogden and returned to the Ogden Police Department. A written confession was obtained and the defendant charged with burglary in the second degree.

## ARGUMENT

### POINT I

THE HOLDING OF THE TRIAL COURT THAT THE REQUIREMENTS OF MIRANDA v. ARIZONA, 384 U.S. 436, ARE NOT BINDING UPON THE 1969 TRIAL OF THE DEFENDANT IS IN ERROR, INASMUCH AS THE 1969 TRIAL WAS NOT A "RETRIAL" WITHIN THE RULING OF THE U.S. SUPREME COURT IN JENKINS v. DELAWARE, 395 U.S. 213.

During the interrogation of the defendant in 1963 by the Ogden Police Department, which was gone into in great detail during the 1969 trial of the defendant, it is conceded by the Trial Court (T.99) that the defendant was not informed of his right to appointed counsel if he could not afford to hire his own attorney.

Officer Jacobsen at (T.153), the only officer who interrogated the defendant, states he did not inform the defendant of the right to appointed counsel. See also (T.51) wherein the same officer asserts no such offer was made.

The Honorable Trial Court, at (T.186), ruled as follows:

'THE COURT. The record may show the Court interprets the law to be that Miranda is not binding upon this trial. It does not apply. That the test in this case is the same test that would have been applied had this trial taken place in 1963.

"The Court's determination of findings of fact that he has been told of his right to counsel, and that he has been told of his right to remain silent. I find no evidence of promise. There is missing under the Miranda warning the information concerning the appointment of counsel, the providing of counsel. This is missing, but under the circumstances, viewing the Miranda as not having retroactive effect, I receive the evidence."

It is apparent from the Trial Court's ruling that it felt the point of time involved was the date of the interrogation. The Court specifically ruled that Miranda did not have retroactive effect.

Defendant Belgard's trial was held on the 23rd day of October, 1969. The United States Supreme Court on the 2nd day of June, 1969, decided the case of Jenkins v. Delaware, 395 U.S. 213.

The Jenkins case dealt specifically with the problem of how to apply the Miranda case requirements and when they are to have effect.

In Stovall v. Denno, 388 U.S. 293, and in Desist v. United States, 394 U.S. 244, the United States Supreme Court settled upon the date on which the prohibited procedure was engaged in, rather than the date the trial was commenced, to determine the applicability of the newly formulated Miranda standards.

The United States Supreme Court in Orozco v. Texas, 394 U.S. 324, is a case decided in March of 1969, while Jenkins v. Delaware was decided in June of 1969. There is no mention of the Orozco case by Chief Justice Warren in the Jenkins decision.

In the Orozco case, confession evidence was obtained January 5, 1966. This is prior to the June 13, 1966, cutoff date announced in Jenkins v. Delaware. The ruling in Orozco applies the requirements of Miranda to a confession obtained prior to June 13, 1966, when offered at a first trial that was held after June 13, 1966.

In the instant case it appears clearly that the main issue will be determined by a decision concerning whether or not Dayton Belgard's trial in 1969 was a "Retrial" of his 1963 alleged conviction.

The United States District Court held there must be an opportunity for the defendant to replead to the charge within twenty days of the United States District Court's decision or he would be

discharged. It is obvious that the plea of guilty entered in 1963 was of no legal import.

In the case of State v. Swann, 170 S.E. 2d 611 decided November 19, 1969, the Supreme Court of North Carolina held that where a defendant had made inculpatory statements during 1964, was tried in 1964 by a jury and found to be insane, that thereafter when tried in 1969, that this did not constitute a "retrial" within the meaning of Jenkins v. Delaware, and the requirements of Miranda did apply to statements taken from the defendant in 1964.

The Court continued in the Swann case and held as follows:

"We cannot accept the view on which the Court of Appeals based its decision, namely, that the determination by the jury at the October 15, 1964 Criminal Session that defendant was then unable to plead and stand trial constituted a trial in the sense used in the Johnson and Jenkins cases." (emphasis by Court)

In the instant case the matter was not sent back to the Second Judicial District Court by the United States District Court for a "new trial" or to be retried, but was sent back for a new plea (my emphasis). It is therefore apparent that, in the eyes of the law the matter was to be commenced. The United States District Court, in holding there had not been a voluntary and intelligent plea entered by the defendant Belgard in 1963, did not order a retrial but ordered a trial in the first instance; the purported plea in 1963 not constituting a valid plea, hence being a nullity. Therefore, the defendant's trial commenced after Jenkins v. Delaware and the Court erred in not requiring the standards enumerated in Miranda to be followed.

CONCLUSION

That the District Court erred in ruling that the requirements of Miranda v. Arizona did not apply to this case and hence in allowing into evidence the purported confession of the defendant, the same having been given in violation of the requirements of the Miranda case.

Respectfully submitted,

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