1970

State of Utah v. Dayton J. Belgard : Brief of Respondent

IN THE

SUPREME CO

OF THE

STATE OF

STATE OF UTAH,
Plaintiff

vs.

DAYTON J. BELGARD,
Defendant

BRIEF OF

Appeal from the
District Court, in and
the Honorable John F.

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CASES CITED

Belgard v. Turner, 307 F. Supp. 936 (10th Cir. 1969).. 4

Jenkins v. Delaware, 89 S. Ct. 1677, 395 U. S. 213 (1969) 3, 4

Miranda v. Arizona, 384 U. S. 436 (1966) 2, 3, 4, 5

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH,
Plaintiff-Respondent,

vs.

DAYTON J. BELGARD,
Defendant-Appellant.

Case No. 11956

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

Dayton J. Belgard appeals from judgment and conviction entered against him in a jury trial before the District Court of the Second Judicial District, in and for Weber County, the Honorable John F. Wahlquist, Judge, presiding.

DISPOSITION IN LOWER COURT

Appellant was found guilty of second degreee burglary by jury trial in the District Court of the Second Judicial District, in and for the County of Weber, State of Utah, and was sentenced according to law to imprisonment in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

The judgment of the verdict of guilty rendered in the District Court should be affirmed.

STATEMENT OF FACTS

Respondent agrees generally with the facts as expressed by appellant in his brief, with the following additions and clarifications.

An officer who was present when defendant made the statement of confession testified that defendant was advised that he could consult an attorney, and that he was not subjected to fear, threats or promises (Tr. 142). The officer typed the confession as defendant submitted it (Tr. 144).

Another officer, also present when the statement was made, testified that defendant was told he could have an attorney, and that defendant was not subjected to any threats or promises (Tr. 171).

The confession was admitted by the Court over defense counsel's objection (Tr. 184). Defense counsel's objection was on the grounds the *Miranda* warning was not complied with.

In proceedings out of presence of the jury, both of the attorneys and the judge had discussed the issue whether admission of the confession should be denied on the ground the *Miranda* rule was not complied with. The judge decided that the *Miranda* decision did not apply and that he would admit the confession into evidence (Tr. 99).

The appellant raises no issue as to whether pre-*Miranda* standards were complied with; respondent submits that they were. Appellant's only argument is that the

Miranda ruling should have been applied to case at bar (Appellant's brief at 3).

ARGUMENT

THE TRIAL COURT DID NOT ERR IN INTERPRETING THE LAW TO BE THAT THE *MIRANDA* DECISION IS NOT BINDING UPON CASE AT BAR, BECAUSE *MIRANDA* DOES NOT APPLY TO ANY RETRIAL OF A DEFENDANT WHOSE FIRST TRIAL COMMENCED PRIOR TO JUNE 13, 1966.

The United States Supreme Court held in *Jenkins* v. *Delaware,* 89 S. Ct. 1677, 395 U. S. 213 (1969), that the ruling in *Miranda* does not apply to any *retrial* of a defendant whose *first* trial commenced prior to June 13, 1966.

The first trial of defendant in case at bar commenced prior to June 13, 1966 (R. 30). He was tried again in 1969 for the same conduct that was the subject of his prior trial (Tr. 1-213).

Appellant argues that the 1969 trial was not a retrial under the *Jenkins* rule (Appellant's brief at 6).

Respondent submits that it makes no difference under the *Jenkins* rule whether the 1969 trial of the appellant was a retrial or was not a retrial.

> "[I]t is immaterial whether State law treats a retrial as the continuation of the original trial, [citation omitted], or as a completely new trial that proceeds as if the former trial never occurred. [Citation omitted.] *What is determinative is that the*

defendant is being tried for the same conduct that was the subject of a previously reversed conviction." *Jenkins* v. *Delaware, supra,* at footnote No. 10. (Emphasis added.)

Whether or not we choose to treat the 1969 trial as a retrial or as a continuation of the former trial which was never held due to the appellant's plea of guilty, it makes absolutely no difference. The appellant was charged with a crime in 1963; he pleaded guilty to the charge and was convicted. In 1969, the federal court found that the record did not show that the plea was valid. *Belgard* v. *Turner,* 307 F. Supp. 936 (10th Cir. 1969).

Pursuant to the federal court's decision, appellant was allowed to replead. He pleaded not guilty and was tried in 1969 — this time before a jury — and was convicted for the same conduct that was the subject of the 1963 conviction.

Furthermore, the granting of the writ of habeas corpus in the federal court, *Belgard* v. *Turner, supra,* was equivalent to a reversal on appeal. Thus, defendant was tried for the same conduct that was the subject of a previously reversed conviction, which places him exactly under the rule in *Jenkins* case. *Miranda does not apply to the 1969 trial.*

CONCLUSION

The Court below did not err in not applying the *Miranda* rule in the 1969 trial of appellant, because the 1969 trial was within the rule in *Jenkins* v. *Delaware,* hold-

ing that *Miranda* does not apply to a retrial of a defendant whose first trial commenced prior to June 13, 1966.

The judgment and conviction should be affirmed.

Respectfully submitted,

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