1972

State of Utah v. Ronald Easthope : Brief of Appellant

In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

RONALD EASTHOPE,

Defendant-Appellant.

Case No. 12739

BRIEF OF APPELLANT

Appeal from a judgment of the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Bryant H. Croft, Judge.

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STATEMENT OF THE NATURE OF THE CASE

The appellant, Ronald Easthope, appeals from convictions of rape, robbery and sodomy in the Third Judicial District Court.

DISPOSITION IN THE LOWER COURT

Ronald Easthope was convicted October 19, 1971 of having raped, robbed and forcibly sodomized Terri Dee Gill. He was sentenced for an indeterminate term, as provided by law, for each of the convictions.

RELIEF SOUGHT ON APPEAL

The appellant, Ronald Easthope, seeks reversal of his convictions below with the direction that his case be remanded.

STATEMENT OF FACTS

On February 25, 1971, two police officers visited Ronald Easthope and talked with him. They explained that they were investigating a case, and since they did not have a search warrant, asked and received permission to search appellant's house. (R. 34, 38) On February 26, 1971, the two police officers again talked with appellant about the case they were investigating. (R. 35, 48) The police officers asked appellant to stand in a line-up, and when he agreed to do so, he was given the Miranda warnings. (R. 37, 49) On the way to the police station, appellant asked if he had to stand in the line-up. He was told that it was to his advantage to do so, since he maintained his innocence. (R. 49)

The line-up was conducted that same evening (R. 38), and appellant was identified by Terri Dee Gill as her assailant. (R. 41) Miss Gill later identified appellant in court as the person she had identified in the line-up. (R. 22)

After the line-up, appellant was arrested and given the Miranda warnings. (R. 35) The police officers asked if appellant wanted to make any statements. Appellant stated that he did not want to make any state-

ment and that he wanted a lawyer. (R. 54) When asked who his lawyer was, appellant replied that he did not have one since he had been unemployed and did not have any money. The police officers gave him a phone book opened to the lawyer section and told him he could call anyone he wanted. (R. 54) Appellant then said he did not want to call one. (R. 54, 55) In the same conversation about wanting a lawyer, appellant made an incriminating statement, admitted into evidence, that he did not think anybody could identify him with a stocking over his face. (R. 54, 55)

ARGUMENT

POINT I

THE COURT BELOW ERRED IN ADMITTING INTO EVIDENCE THE IDENTIFICATION AT THE LINE-UP.

Appellant contends that the identification at the line-up should have been excluded on the ground that he was denied his constitutional right to counsel at such line-up.

In *United States v. Wade*, 388 U.S. 218, 87 S. Ct. 1926, 18 L.Ed. 1149 (1967), the United States Supreme Court held the Sixth Amendment right to counsel requires, absent an intelligent waiver, that the accused and his counsel be notified of the impending line-up and that counsel be present. In holding that the line-up is a

critical stage of the criminal prosecution, at which the accused is entitled to counsel, the court said:

> . . . the confrontation compelled by the State between the accused and the victim or witnesses to a crime to elicit identification evidence is peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, deregate from a fair trial. (388 at 288)

The court held the presence of a lawyer at the line-up would ensure the accused protection from unfair practices. Furthermore, the court noted there is a serious difficulty in depicting what transpires at the line-up and there are obvious risks of suggestion which attend line-ups.

> The impediments to objective observation are increased when the victim is the witness. Line-ups are prevalent in rape and robbery prosecutions and present a particular hazard that a victim's understandable outrage may excite vengeful or spiteful motives.

The court in *Wade* also stated since the accused's conviction may rest on a courtroom identification based on a suspect pretrial identification, which the accused is helpless to subject to effective scrutiny, the accused is deprived of the right to cross-examination of the witnesses against him.

In *Gilbert v. California,* 388 U.S. 263, 87 S. Ct. 1951, 18 L. 1178 (1967) the court held that conducting a line-up without notice to and in absence of accused's counsel denied the accused his Sixth Amendment right, and called into question the admissibility at trial of the in-court identification of the accused by witnesses who attended the line-up.

Appellant contends he did not intelligently waive his Sixth Amendment right to counsel at the line-up because he was not aware of the severity and possible prejudice of such a line-up. Since he did not intelligently waive his right to have counsel present at the line-up, the identification at the line-up should have been excluded.

POINT II

THE COURT BELOW ERRED IN ADMITTING INTO EVIDENCE APPELLANT'S STATEMENT MADE TO THE POLICE OFFICERS.

Appellant contends that his statement made to the police officers should have been excluded on the ground that it was admitted in violation of his constitutional right against self-incrimination.

In *Miranda v. Arizona,* 394 U.S. 436, 86 S. Ct. 1602 L.Ed. 694 (1966), the United States Supreme Court held the prosecution must 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 the court meant the questioning initiated by law enforcement officers after a person had been taken into custody or otherwise deprived of his freedom of action in any significant way. Waiver of an accused's right against self-incrimination must be made voluntarily, knowingly and intelligently.

The court further noted that if the individual states that he wants an attorney, the interrogation must cease until an attorney is present. If the interrogation continues without the presence of an attorney and a statement is taken, the burden rests on the prosecution to demonstrate that the accused knowingly, intelligently waived his privilege against self-incrimination.

In *People v. Fioritto,* 68 Cal.2d 714, 68 Cal.R. 718, 441 P.2d 625 (1968) the court dealt with the admissibility of a defendant's statement after he initially refused to waive his rights against self-incrimination.

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during the questioning, that he wishes to remain silent, interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege and any statement taken after the person invokes his privilege cannot

be other than the product of compulsion, subtle or otherwise. (441 P.2d at 627)

In *People v. Ireland,* 70 A.C. 577, 75 Cal.R. 188, 450 P.2d 580 (1968) the court found that one of the ways a defendant may indicate his wish that the custodial interrogation wholly cease is to ask for an attorney. (450 P.2d at 587)

Appellant contends that he did not knowingly and intelligently waive his right against self-incrimination. Since appellant made an incriminating statement after invoking his right against self-incrimination, that statement should not have been admitted into evidence against him.

CONCLUSION

For the reasons above stated, the court erred in admitting the identification at the line-up on the ground that appellant was denied his constitutional right to counsel at such line-up, and that the court erred in admitting into evidence appellant's incriminating statement to the police officers on the ground that it was admitted in violation of his right against self-incrimination, appellant respectfully submits that the judgment of the court below be reversed and that his case be remanded.

Respectfully submitted,

DAVID P. RHODE

Attorney for Appellant