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## **Court of Appeals of New York, People v. Paulman**

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## COURT OF APPEALS OF NEW YORK

People v. Paulman<sup>1</sup>  
(decided June 29, 2005)

Kenneth Paulman was convicted on thirteen counts of a twenty-two-count indictment<sup>2</sup> charging him with “sexual misconduct involving five children.”<sup>3</sup> He was sentenced to seventeen years for sodomy in the first degree, and ordered to serve another consecutive sentence of two to six years for rape in the second degree, with concurrent lesser sentences for the remaining offenses.<sup>4</sup> Before trial, Paulman moved to suppress all four of the statements he made during the investigation.<sup>5</sup> He contended that because two of his statements were elicited before *Miranda* warnings were given, his later statements were tainted even though obtained from him after being Mirandized.<sup>6</sup>

Paulman claimed a violation of his right against self-incrimination under both the federal and state constitutions.<sup>7</sup> On appeal, the Appellate Division held that one of the four statements

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<sup>1</sup> 833 N.E.2d 239 (N.Y. 2005).

<sup>2</sup> *Id.* at 242.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 242-43.

<sup>5</sup> *Id.* at 242.

<sup>6</sup> *Paulman*, 833 N.E.2d at 242.

<sup>7</sup> U.S. CONST. amend. V stating in pertinent part: “No person . . . shall be compelled in any criminal case to be a witness against himself . . . .” N.Y. CONST. art. I, § 6 stating in pertinent part: “No person shall . . . be compelled in any criminal case to be a witness against himself or herself . . . .”

made by Paulman during the child sexual abuse investigation was inadmissible because it was not properly preceded by *Miranda* warnings.<sup>8</sup> Though the court agreed with Paulman that his handwritten statement should have been suppressed at trial,<sup>9</sup> it nevertheless upheld the conviction and held that the Mirandized statements were admissible<sup>10</sup> and the statements made beforehand amounted to harmless error.<sup>11</sup>

Shortly after midnight on May 4, 2002, the police received a call from Ashlyn's mother, "who stated that she had information relating to a child sexual abuse investigation."<sup>12</sup> Paulman also called police to inform them that he had been receiving threats from Ashlyn's family.<sup>13</sup> After having spoken to Ashlyn's mother, New York State Trooper Jean Oliver and her partner visited Paulman's apartment and the two were invited inside.<sup>14</sup> In response to questions from Oliver, Paulman explained that his girlfriend often babysat Ashlyn and Tiffany, who were four and eight years-old, respectively.<sup>15</sup> He then detailed the incidents of sexual abuse and where they occurred, claiming that on one occasion, he had tickled both girls while they were naked and that he accidentally placed his finger inside Ashlyn's vagina.<sup>16</sup> Other incidents Paulman described

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<sup>8</sup> *Paulman*, 833 N.E.2d at 240.

<sup>9</sup> *Id.* at 243.

<sup>10</sup> *Id.* at 247.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 241.

<sup>13</sup> *Paulman*, 833 N.E.2d at 241.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

included rubbing Ashlyn against his penis<sup>17</sup> and engaging in sexual intercourse with a thirteen-year-old girl named Autumn, another girl who lived in Paulman's apartment complex.<sup>18</sup>

Paulman next agreed to ride with the officers to the barracks to speak further with an investigator.<sup>19</sup> While waiting for Investigator Christopher Baldwin, Oliver handed Paulman a notepad<sup>20</sup> on which he wrote all of the prior admissions he had made at his home.<sup>21</sup> Baldwin took Paulman to his office and read him his *Miranda* rights approximately half an hour after Paulman completed the written admission.<sup>22</sup> At that point, "Investigator Baldwin read defendant his *Miranda* rights and defendant acknowledge that he understood them but wished to give a statement."<sup>23</sup> In compliance with Baldwin's questions, Paulman repeated what he had previously told Oliver.<sup>24</sup> He added that he also "engaged in oral sex with Ashlyn and Autumn," and related incidents occurring with his girlfriend's two-year-old son and another twelve-year-old girl who resided in the same apartment complex.<sup>25</sup> Followed by a second *Miranda* warning, Paulman signed a waiver; Baldwin then typed up a written statement and placed Paulman under arrest.<sup>26</sup>

The court in *Paulman* reasoned that the admission of the pre-

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<sup>17</sup> *Paulman*, 833 N.E.2d at 241.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ("Trooper Oliver...said: 'Why don't you just start taking some notes then as to, you know, your best recollection as to what has happened.'").

<sup>21</sup> *Id.*

<sup>22</sup> *Paulman*, 833 N.E.2d at 241.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 241-42.

<sup>25</sup> *Id.* at 242.

Miranda statement was harmless error<sup>27</sup> because “a process of systematic, exhaustive or psychologically coercive questioning”<sup>28</sup> did not induce it. Furthermore, Paulman had chosen to answer police questions in a non-custodial setting, even before the *Miranda* violation had occurred.<sup>29</sup> The *Paulman* court further explained that failure to properly invoke warnings was not a violation of rights because a reasonable person would have perceived the events to have been sufficiently broken up in time and tone.<sup>30</sup>

To determine whether there is a ‘single continuous chain of events’ under *Chapple*, New York courts have considered a number of factors, including the time differential between the Miranda violation and the subsequent admission; whether the same police personnel were present and involved in eliciting each statement; whether there was a change in the location or nature of the interrogation; the circumstances surrounding the Miranda violation, such as the extent of the improper questioning; and whether, prior to the Miranda violation, defendant had indicated a willingness to speak to police.<sup>31</sup>

The Supreme Court in *Missouri v. Seibert*<sup>32</sup> held that police who use a “question-first” method before reciting *Miranda* warnings to a defendant might produce a coerced confession, warranting

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<sup>26</sup> *Id.*

<sup>27</sup> *Paulman*, 833 N.E.2d at 247.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 245.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 542 U.S. 600 (2004).

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suppression.<sup>33</sup> In *Seibert*, the officer delayed giving *Miranda* warnings to the defendant during the interrogation,<sup>34</sup> based on a technique where one “question[s] first, then give[s] the warnings, and then repeat[s] the question ‘until [he gets] the answer that she’s already provided once.’ ”<sup>35</sup> The Court reasoned that this technique would likely confuse a defendant caught in the midst of continuous interrogation and “depriv[e] a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.”<sup>36</sup> Furthermore, this police practice undermines the purpose of the *Miranda* warnings in that questioning can be “systematic, exhaustive, and managed with psychological skill.”<sup>37</sup>

In *Oregon v. Elstad*,<sup>38</sup> the United States Supreme Court held that a Mirandized statement followed by previous but uncoercive questioning effectively cures the constitutional violation, thus permitting statements at trial that would otherwise be inadmissible.<sup>39</sup> The Court explained that once a defendant is warned of his rights, he then has the choice to either exercise his right to remain silent or to speak with authorities.<sup>40</sup> It reasoned that a minor error in delivering a prophylactic *Miranda* warning should not then affect any subsequent Mirandized statement so long as both were voluntarily made;<sup>41</sup> to

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<sup>33</sup> *Id.* at 617.

<sup>34</sup> *Id.* at 605-06.

<sup>35</sup> *Id.* at 606.

<sup>36</sup> *Id.* at 613-14 (quoting *Moran v. Burbine*, 475 U.S. 412, 424 (1986)).

<sup>37</sup> *Seibert*, 542 U.S. at 616.

<sup>38</sup> 470 U.S. 298 (1985).

<sup>39</sup> *Id.* at 314.

<sup>40</sup> *Id.* at 308.

<sup>41</sup> *Id.* at 309.

hold otherwise would cripple the investigative process.<sup>42</sup> The focus for the Supreme Court is the defendant's volition in making statements because that is what the Fifth Amendment seeks to ensure.<sup>43</sup> Nevertheless, in his strongly worded dissent, Justice Brennan relays a different message: "the Court mischaracterizes our precedents, obfuscates the central issues, and altogether ignores the practical realities of custodial interrogation that have led nearly every lower court to reject its simplistic reasoning. Moreover, the Court adopts startling and unprecedented methods of construing constitutional guarantees."<sup>44</sup>

The court in *Paulman* relied heavily on prior holdings, thus broadening the minimal rights communicated by the Supreme Court in *Elstad*.<sup>45</sup> In *People v. Chapple*,<sup>46</sup> the court held that *Miranda* warnings are only effective when they precede a line of questioning toward the defendant, unless there is a definitive break during the interrogation enough to return the defendant back to status quo.<sup>47</sup> Subsequent warnings will be considered insufficient protection of the defendant's constitutional rights if those warnings occurred in the midst of "a single continuous chain of events," thus warranting suppression.<sup>48</sup>

To further support its broader analysis of *Paulman*'s

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<sup>42</sup> *Id.* at 311.

<sup>43</sup> *Elstad*, 470 U.S. at 315.

<sup>44</sup> *Id.* at 320 (Brennan, J. dissenting).

<sup>45</sup> *Paulman*, 833 N.E.2d at 244.

<sup>46</sup> 341 N.E.2d 243 (N.Y. 1975).

<sup>47</sup> *Id.* at 245-46.

<sup>48</sup> *Id.* at 245.

constitutional claim, the court cited *People v. Bethea*.<sup>49</sup> That case expressly adhered to the New York Constitution, holding, in the spirit of *Chapple*, that admissibility of statements depends on whether or not those statements were elicited by “continuous custodial interrogation.”<sup>50</sup> In *Bethea*, the defendant made an unwarned custodial statement upon being arrested and made the same statement after being advised of his constitutional rights.<sup>51</sup> The court held that both statements should be suppressed in order to remain consistent with state constitutional law.<sup>52</sup> *Paulman* yielded a different result, despite the unwarned statement, because it was obtained willingly, without police interrogation.<sup>53</sup> Furthermore, there was a significant enough change in external conditions for Paulman to be able to make a clear distinction between interrogation periods.<sup>54</sup>

Though both the relevant provisions of the Federal Constitution and New York Constitution are practically identical,<sup>55</sup> application of each may still yield inconsistent results.<sup>56</sup> The New York State Constitution requires that there be a significant break in police questioning between the period of unwarned and Mirandized statements in order for the latter to be admissible at trial. Otherwise, the defendant cannot reasonably understand that there is, in fact, a change in time and environment because the Mirandized statement

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<sup>49</sup> 493 N.E.2d 937 (N.Y. 1986).

<sup>50</sup> *Id.* at 938.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 939.

<sup>53</sup> *Paulman*, 833 N.E.2d at 246.

<sup>54</sup> *Id.*

<sup>55</sup> *See supra* note 7.

<sup>56</sup> *See Bethea*, 493 N.E.2d at 938. The court here recognizes the difference in state-



has already been tainted by the constitutional violation. On the other hand, the Fifth Amendment of the Federal Constitution employs a much narrower inquiry. Rather than searching for a “single continuous chain of events”<sup>57</sup> to determine whether or not a constitutional violation exists, the inquiry lies in the defendant’s true willingness to speak. This indicates that the police have employed good faith practices. If coercive methods are not used to reveal an unwarned statement from the defendant, once prophylactic warnings are given, subsequent statements will not be suppressed at trial.

*Michele Kligman*

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applied law. *Id.*

<sup>57</sup> See *Chapple*, 341 N.E.2d at 245.