

1986

William Jay Robbins v. Gerald L. Cook, Warden,  
Main Facility, Utah State Prison; David L.  
Wilkinson, Utah State Attorney General : Brief of  
Appellant

Utah Supreme Court

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Sandra Sjogren; assistant attorney general; attorney for respondent.

William Jay Robbins; pro se.

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#### Recommended Citation

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IN THE SUPREME COURT

STATE OF UTAH

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WILLIAM JAY ROBBINS.

Defendant and  
Appellant, pro se,

**va.**

GERALD L. COOK, Warden, Main Facility, Utah State Prison;  
DAVID L. WILKINSON, Utah State Attorney General,

Plaintiffs and Respondents,:

Case No. 860367

Classification No. 3

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## BRIEF OF APPELLANT

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Appeal from a denial of a Petition for Writ of Habeas Corpus, by the Honorable J. Dennis Frederick, a Judge of the Third Judicial District Court of the State of Utah, at Salt Lake County, Utah, on June 2, 1986.

## APPEARANCES

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**FILED**

OCT 22 1986

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT

STATE OF UTAH

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WILLIAM JAY ROBBINS,	:	
	:	Case No. 860367
Defendant and	:	
Appellant, <u>pro se</u> ,	:	
	:	
vs.	:	
	:	
GERALD L. COOK, Warden, Main	:	
Facility, Utah State Prison;	:	
DAVID L. WILKINSON, Utah	:	Classification No. 3
State Attorney General,	:	
	:	
Plaintiffs and Respondents,:	:	

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STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether Appellant was legally arrested.
2. Whether Amended Information was tainted.
3. Whether Amended Information was constitutional.

STATEMENT OF FACTS

Appellant was arrested on February 17, 1984, by Officer Dave Helquist, of the Kaysville Police Department. Appellant was told that he was being arrested for the uncorroborated claim of sexually molesting an eight year old neighbor girl. Appellant denied the accusation and attested to his innocence.

Notwithstanding Appellant's denial, Appellant was immediately incarcerated in the Davis County Jail. Appellant was not presented with a written charge until February 21, 1984, when an affidavit stating facts based on INFORMATION AND BELIEF was

signed by Mike Lee. The affidavit (Information) indicated that the complaint was based on information obtained from himself and Officer Dave Helquist.

Appellant moved through the judicial process, which culminated in his conviction on April 23, 1984. Appellant was incarcerated in the Utah State Prison on May 9, 1984, where he has since continuously resided. The Second District Court case number was #4525, before Judge Douglas L. Cornaby.

#### SUMMARY OF ARGUMENT

Appellant contends that his arrest, being contrary to Utah law, deprived him of intended constitutional safeguards, and was therefore illegal.

Additionally, Appellant contends that the Information was improperly generated by an unscrupulous complainant, who was his adversary, and was therefore tainted.

Finally, Appellant contends that the Information, being based on information obtained from complainant himself, and the arresting officer, neither having personal knowledge of the facts contained therein, was unconstitutional.

#### ARGUMENT

##### POINT I

##### APPELLANT'S ARREST WAS ILLEGAL

Arresting Officer Dave Helquist, of the Kaysville Police Department, had no justification for incarcerating Appellant since he had only the alleged victim's uncorroborated accusation

against Appellant's claim of innocence at the time of arrest.

The arrest was made in the manifest face of reasonable doubt. Specifically, the alleged victim claimed four other people were with her in the house at the time of the alleged offense which reportedly occurred over a twenty minute period of time. Yet, nevertheless, no corroboration was offered by those four people. Appellant submits that Officer Helquist acted contrary to U.C.A. 77-7-2(2), and by so doing, acted illegally.

Further, Appellant does not believe Officer Helquist presented any magistrate with evidence upon which probable cause could have been determined and upon which a valid warrant for arrest might issue. Since he could have and should have obtained magistrative authority and failed to do so, he acted contrary to U.C.A. 77-7-5. This action was illegal.

Officer Helquist invited Appellant to step from his home to talk without informing him of intention, cause, or authority to arrest. Appellant was then invited to sit in the police car to talk. Appellant was then driven to the Kaysville Police Department still without being so informed. At the Kaysville Police Department, Appellant was confronted with the alleged victim's accusation. Appellant denied the accusation, was searched, handcuffed and delivered directly to Davis County Jail, where he was incarcerated. Officer Helquist, without justification, failed to comply with U.C.A. 77-7-6 as none of the conditions of 77-7-6(1)(2)(3) existed. The entire procedure was

therefore illegal.

Finally, Officer Helquist, in his warrantless arrest of Appellant, failed to meet any of the requirements of U.C.A. 77-7-23. Namely, he failed to take Appellant before any magistrate and in Information state the charge against Appellant before such magistrate. Omission of this procedure in the arrest was illegal.

Officer Helquist's failure to avail Appellant of constitutional safeguards contained in U.C.A. 77-7-2(2), 77-7-5, 77-7-6 and 77-7-23 was in itself not only a public offense, but it deprived Appellant of constitutional safeguards against illegal arrest intended by Utah law.

## POINT II

### THE AMENDED INFORMATION WAS TAINTED.

Because of a notable conflict of interest which complainant Mike Lee had in this case, he properly should have deferred to a less biased person. Since he did not do so, and for other reasons which follow, the Amended Information developed by Lee was seriously tainted.

Mike Lee had threatened Appellant with criminal charges in a serious confrontation about two years prior to his arrest. Earlier on the day of Appellant's arrest, Mike Lee detained Appellant and Appellant's daughter in a confrontation in which Lee accused Appellant of a probation violation.

Prior to Appellant's arrest, Appellant and members of

Appellant's family were intimidatingly pursued in and around the Kaysville area by Mike Lee. Subsequent to Appellant's arrest and while on bail, Lee continued this intimidation even into the town of Layton where Appellant's family had moved. Lee's intimidation continued until Appellant sought and obtained relief through his attorney, John Caine.

Additionally Lee, being an intimate friend of the alleged victim's family, was a frequent visitor at their home before and after Appellant's arrest.

Mike Lee had previously been twice suspended from the Kaysville Police Department for improper investigative conduct, as may be discovered from a cursory review of his employment record with the department.

At the time of Appellant's arrest, Appellant was informed by Officer Dave Helquist that Mike Lee had obtained a tape recorded statement from the alleged victim under conditions which improperly permitted Lee to be alone with her during the entire process. Information obtained by Lee from the alleged victim was laced with serious inconsistencies compared with her testimony at preliminary hearing and trial.

The Information, obtained under improper conditions by Appellant's unscrupulous adversary, was seriously tainted.

### POINT III

#### THE AMENDED INFORMATION WAS UNCONSTITUTIONAL.

The affidavit (Amended Information) indicates the complaint



was based on information obtained from himself (Mike Lee) and Officer Dave Helquist.

Under the United States Constitution, Amendment IV, an affidavit stating facts on INFORMATION AND BELIEF is insufficient. An officer's affidavit may state facts of which he has personal knowledge, and not facts of which he has been informed by others. Schenks\_v.\_U.S. 2d 185.

Under Rule 4 of the F.R.C.P., it provides that an arrest warrant shall be issued only upon a written and sworn complaint showing that there is probable cause to believe that the offense charged has been committed and that the defendant has committed it. "An arrest warrant is invalid where the underlying complaint . . . contains no affirmative allegation that the complainant spoke with personal knowledge of the matters contained therein, does not quote any sources for the complainant's belief, and does not set forth any other sufficient basis upon which a finding of probable cause could be made; and these deficiencies cannot be cured by reliance . . . upon a presumption that the complaint was made on the personal knowledge of the matters on which his charge was based." Giordenello\_v.\_U.S., 357 U.S. 480, 78 S.Ct. 1245, 2 L. Ed. 2d 1503.

It may be safely argued that Officer Lee had no personal knowledge of the alleged incident, but was instead relying on information which he browbeat out of the alleged victim in secret.

Further, there is no evidence contained within the four

corners of the Information, or on any supporting documentation, which may lead the Court to believe that Lee satisfied either of the two tests within the "two-pronged test" of Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. U.S., 393 U.S. 410 (1969).

It can only be assumed that his actions resulted in an unconfirmed, unsupported, and unsworn statement which the Circuit and District Courts improperly accepted as the basis for the charging of a crime.

Officer Lee was not a witness of knowledge, and absent the satisfying of other tests for the determination of probable cause, is wholly incompetent to make the statements which he did against Appellant.

The Information, as written, cannot withstand the bright light of a constitutional validity test, is null and void, and must be overturned.

#### CONCLUSION

The State has indicated that all the claims raised in Appellant's Petition for Writ of Habeas Corpus were known or should have been known at the time of direct appeal, and in fact prior to trial, as they challenge the arrest warrent.

With respect to those claims, Appellant did not know the serious significance of the irregularities connected with complainant Mike Lee until he recently had the opportunity of discussing them with other inmates at the prison.

Only by recent review of the few scanty law books available

at the Utah State Prison did Appellant become aware of the above mentioned higher court rulings concerning the unconstitutional nature of the Information used against him.

Similarly, Appellant did not know of the irregularity of the arrest procedure until he recently read the Utah Code.

Thus, it may be seen that there was no way Appellant could have had the knowledge to have raised these claims until now. He believes his claims do have merit. He knows that Justice did not have her full opportunity in his case, and that it would be wholly unconsionable not to reexamine the conviction.

The State contends that an illegal arrest does not void an otherwise valid subsequent conviction. They also contend that once the risk of illegal detention is dissipated through a subsequent trial, the protection is no longer relevant or necessary because other constitutional safeguards have come into play.

Appellant vehemently takes issue with such a position. Constitutional safeguards apply to arrest procedures, charging documents (Information), and the trial itself. These constitutional safeguards protect against conviction of the innocent. It is obvious that such safeguards do not provide a 100% guarantee that the innocent will never be convicted. However, if three separate safeguards must fail in order to convict the innocent, a greater guarantee of protection will exist than if only one safeguard stands between the innocent and conviction.

This case is one of those in which the constitutional safe-

guards of arrest were brushed aside, as were the safeguards against a tainted and illegal Information. The one final barrier against conviction of the innocent was the trial in which those constitutional safeguards, not being 100% reliable, did, in fact, fail to protect the innocent from conviction. A convincing indication that this is true comes from the trial judge himself.

Judge Cornaby, a rational trier of fact, wrote on the day following trial, "The evidence in this case was not clear cut as to whether or not he was guilty of the offense, but the jury found him guilty."

Appellant designates the entire Record on Appeal along with any other related documents which may be needed by this Honorable Court in its effort to fully judge this matter.

Based on the above, Appellant requests that this Honorable Court grant relief from the conditions which now burden him by setting aside his conviction.

DATED this 21<sup>st</sup> day of October, 1986.

William Jay Robbins  
WILLIAM JAY ROBBINS  
Defendant and Appellant, pro se

## ADDENDUM

77-7-5. Issuance of warrant - Time arrests may be made.

77-7-6. Manner of making arrest.

77-7-7. Force in making arrest.

77-7-8. Doors and windows may be broken, when.

77-7-9. Weapons may be taken from prisoner.

77-7-10. Telegraph or telephone authorization of execution of arrest warrant.

77-7-11. Possession of warrant by arresting officer not required.

77-7-12. Detaining persons suspected of shoplifting - Persons authorized.

77-7-13. Arrest without warrant by peace officer - Reasonable grounds, what constitutes - Exemption from civil or criminal liability.

77-7-14. Person causing detention or arrest of person suspected of shoplifting - Civil and criminal immunity.

77-7-15. Authority of peace officer to stop and question suspect - Grounds.

77-7-16. Authority of peace officer to frisk suspect for dangerous weapon - Grounds.

77-7-17. Authority of peace officer to take possession of weapons.

77-7-18. Citation on misdemeanor or infraction charge.

77-7-19. Appearance required by citation - Arrest for failure to appear - Collection of bail amounts by Office of Recovery Services - Motor vehicle violations - Disposition of fines and costs.

77-7-20. Service of citation on defendant - Filing in court - Contents of citations.

77-7-21. Proceeding on citation - Voluntary forfeiture of bail - Information, when required.

77-7-22. Failure to appear as misdemeanor.

77-7-23. Delivery of prisoner arrested without warrant - Information - Violation as misdemeanor.

#### 77-7-1. "Arrest" defined - Restraint allowed.

An arrest is an actual restraint of the person arrested or submission to custody. The person shall not be subjected to any more restraint than is necessary for his arrest and detention. 1980

#### 77-7-2. By peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) for any public offense committed or attempted in the presence of any peace officer; "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when he has reasonable cause to believe a felony has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person. 1986

#### 77-7-3. By private persons.

A private person may arrest another:

(1) For a public offense committed or attempted in his presence; or

(2) When a felony has been committed and he has reasonable cause to believe the person arrested has committed it. 1980

#### 77-7-4. Magistrate may orally order arrest.

A magistrate may orally require a peace officer to arrest anyone committing or attempting to commit a public offense in the presence of the magistrate, and in the presence of a peace officer.

peace officer to arrest a person for a public offense, and thereafter, as soon as practical, an information shall be filed against the person arrested. 1980

#### 77-7-5. Issuance of warrant - Time arrests may be made.

A magistrate may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. If the offense charged is:

(1) A felony, the arrest upon a warrant may be made at any time of the day or night; or

(2) A misdemeanor, the arrest upon a warrant can be made at night only if the magistrate has endorsed authorization to do so on the warrant. 1980

#### 77-7-6. Manner of making arrest.

The person making the arrest shall inform the person being arrested of his intention, cause and authority to arrest him. Such notice shall not be required when:

(1) There is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(2) The person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(3) The person being arrested is pursued immediately after the commission of an offense or an escape. 1980

#### 77-7-7. Force in making arrest.

If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in section 76-2-404. 1980

#### 77-7-8. Doors and windows may be broken, when.

To make an arrest, a private person, if the offense is a felony, and in all cases, a peace officer, may break the door or window of the building in which the person to be arrested is, or in which there are reasonable grounds for believing him to be. Before making the break, the person shall demand admission and explain the purpose for which admission is desired. Demand and explanation need not be given before breaking under the exceptions in section 77-7-6 or where there is reason to believe evidence will be secreted or destroyed. 1980

#### 77-7-9. Weapons may be taken from prisoner.

Any person making an arrest may seize from the person arrested all weapons which he may have on or about his person. 1980

#### 77-7-10. Telegraph or telephone authorization of execution of arrest warrant.

Any magistrate may, by an endorsement on a warrant of arrest, authorize by telegraph, telephone or other reasonable means, its execution. A copy of the warrant or notice of its issuance and terms may be sent to one or more peace officers. The copy or notice communicated authorizes the officer to proceed in the same manner under it as if he had an original warrant. 1980

#### 77-7-11. Possession of warrant by arresting officer not required.

Any peace officer who has knowledge of an outstanding warrant of arrest may arrest a person he reasonably believes to be the person described in the warrant, without the peace officer having physical possession of the warrant. 1980

18, the peace officer or public official shall issue one copy to the person cited and shall within five days file a duplicate copy with the court specified in the citation.

(2) Each copy of the citation issued under authority of this chapter shall contain:

(a) The name of the court before which the person is to appear;

(b) The name of the person cited;

(c) A brief description of the offense charged;

(d) The date, time and place at which the offense is alleged to have occurred;

(e) The date on which the citation was issued;

(f) The name of the peace officer or public official who issued the citation, and the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested person before a magistrate;

(g) The time and date on or before and after which the person is to appear;

(h) The address of the court in which the person is to appear;

(i) A certification above the signature of the officer issuing the citation in substantially the following language: "I certify that a copy of this citation or information (Summons and Complaint) was duly served upon the defendant according to law on the above date and I know or believe and so allege that the above-named defendant did commit the offense herein set forth contrary to law. I further certify that the court to which the defendant has been directed to appear is the proper court pursuant to section 77-7-21."; and

(j) A notice containing substantially the following language:

#### READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You **MUST** appear in court on or before the time set in this citation. **IF YOU FAIL TO APPEAR AN INFORMATION WILL BE FILED AND THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.**

1980

#### 77-7-21. Proceeding on citation - Voluntary forfeiture of bail - Information, when required.

(1) Whenever a citation is issued pursuant to the provisions of section 77-7-18, the copy of the citation filed with the magistrate may be used in lieu of an information to which the person cited may plead guilty or no contest and be sentenced or on which bail may be forfeited. With the magistrate's approval a person may voluntarily forfeit bail without appearance being required in any case of a class B misdemeanor or less. Such voluntary forfeiture of bail shall be entered as a conviction and treated the same as if the accused pleaded guilty.

(2) If the person cited willfully fails to appear before a magistrate pursuant to a citation issued under section 77-7-18, or pleads not guilty to the offense charged, or does not deposit bail on or before the date set for his appearance, an information shall be filed and proceedings held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code, which information shall be deemed an original pleading; provided, however, that the person cited may by written agreement waive the filing of the information and thereafter the prosecution may proceed on the citation notwithstanding any provisions to the contrary.

1980

#### 77-7-22. Failure to appear as misdemeanor.

Any person who willfully fails to appear before a court pursuant to a citation issued under the provisions of section 77-7-18 is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which he was originally cited.

1980

#### 77-7-23. Delivery of prisoner arrested without warrant - Information - Violation as misdemeanor.

When an arrest is made without a warrant by a peace officer or private person, the person arrested shall, without unnecessary delay, be taken to the magistrate in the precinct of the county or municipality in which the offense occurred, and in information, stating the charge against the person shall be made before such magistrate. In the event the magistrate of the precinct is not available, the arrested person shall be taken before the available magistrate nearest to the scene of the alleged offense. Any officer or person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

1980

### Chapter 8. Lineups

#### 77-8-1. Order of magistrate - Grounds - Arrested suspect's appearance without order.

#### 77-8-2. Suspect's right to have attorney present.

#### 77-8-3. Conduct of peace officer.

#### 77-8-4. Record of proceedings - Access by suspect.

#### 77-8-1. Order of magistrate - Grounds -

##### Arrested suspect's appearance without order.

(1) A magistrate may issue an order requiring a suspect to appear in a lineup when probable cause exists to believe a crime has been committed and there is reason to believe the suspect committed it.

(2) A suspect who has been arrested, and is in custody, may be required by a peace officer to appear in a lineup without a court order.

(3) Upon application of any suspect and a showing of good cause, a magistrate may order a lineup.

1980

#### 77-8-2. Suspect's right to have attorney present.

A suspect has the right to have his attorney present at any lineup. The magistrate or party in charge of the lineup shall notify the suspect of this right. Every suspect unable to employ counsel shall be entitled to representation by an attorney appointed by a magistrate for a lineup either before or after an arrest.

1980

#### 77-8-3. Conduct of peace officer.

The peace officers conducting a lineup shall not attempt to influence the identification of any particular suspect.

1980

#### 77-8-4. Record of proceedings - Access by suspect.

The entire lineup procedure shall be recorded, including all conversations between the witnesses and the conducting peace officers. The suspect shall have access to and may make copies of the record and any photographs taken of him or any other persons in connection with the lineup.

1980

### Chapter 9. Uniform Act on Fresh Pursuit

#### 77-9-1. Authority of peace officer of another state.

#### 77-9-2. Procedure after arrest.

#### 77-9-3. Authority of peace officer of this state beyond normal jurisdiction.

CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) true and correct copies of the forgoing Brief of Appellant to David L. Wilkinson, Utah State Attorney General, Room 236 State Capitol, Salt Lake City, Utah 84114 by United States Mail, postage prepaid, this 21st day of October, 1986.

William Jay Robbins  
William Jay Robbins  
Appellant, pro se