

1987

Utah v. Lancaster : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

870154

THE STATE OF UTAH

PLAINTIFF/RESPONDENT,

VS.

RONALD DEAN LANCASTER,

DEFENDANT/APPELLANT.

STATE SUPREME COURT CASE NO:

870154.

CATEGORY NO. 2.

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT AND CONVICTION OF AGGRAVATED ASSAULT BY A PRISONER, WHICH WAS BASED ON THE MIS-JOINED JUNE 26TH, 1978, PRIOR CONVICTION OF SECOND DEGREE MURDER OF THE ABOVE-NAMED DEFENDANTS. BOTH ARE UNRELATED (DISSIMILAR) FELONIES OF THE FIRST DEGREE, IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE TIMOTHY R. HANSEN, PRESIDING.

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FIL

DEC 22 1987

LIST OF ALL PARTIES

DEFENDANT - RONALD DEAN LANCASTER, IN PRO-SE
STAND-BY COURT APPOINTED COUNSEL - MS. FRANCIS PALACIOS.
HONORABLE, TIMOTHY R. HANSON, JUDGE OF THE THIRD DISTRICT
COURT, PRESIDING, ET AL.,
MICHAEL CHRISTENSEN, STATE PROSECUTOR, FOR THE STATE,
ET AL,

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,
PLAINTIFF/RESPONDENT,

VS.

RONALD DEAN LANCASTER,
DEFENDANT/APPELLANT.

STATE SUPREME COURT CASE NO. 870154.
CATEGORY NO. 2.

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

THE APPELLANT, IN PRO-SE, RONALD DEAN LANCASTER, APPEALS FROM THE CONVICTION AND JUDGMENT OF AGGRAVATED ASSAULT BY A PRISONER, OF WHICH SAID CONVICTION AND JUDGMENT WAS BASED ON A MIS-JOINED JUNE 26TH, 1978, PRIOR CONVICTION OF SECOND DEGREE MURDER OF THE ABOVE-NAMED APPELLANTS. BOTH ARE UN-RELATED (DISSIMILAR) FELONIES OF THE FIRST DEGREE, IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE, TIMOTHY R. HANSON, PRESIDING.

DISPOSITION IN THE LOWER COURT

ON MARCH 10TH AND ON THE 11TH, DAY OF 1987, THE HONORABLE, TIMOTHY R. HANSON, PRESIDED AT THE BENCH TRIAL WHERE THE APPELLANT WAS FOUND GUILTY OF THE OFFENSE OF AGGRAVATED ASSAULT BY A PRISONER, OF WHICH SAID CRIME WAS BASED ON THE MIS-
... .. JUNE 26TH 1978 PRIOR CONVICTION OF SECOND DEGREE

MURDER. (A FIRST DEGREE FELONY.).

ON MARCH 11TH, 1987, IN APPELLANTS (PRO-SE) CLOSING ARGUMENT HE FILED AND THUS ARGUED HIS CASE BEFORE THE BENCH TRIAL JUDGE TWO SEPARATE TRIAL MOTIONS. ONE ON A "MISTRIAL". ANOTHER ON "INSUFFICIENT EVIDENCE", IN WHICH TO SUPPORT A CONVICTION 1 AGGRAVATED ASSAULT BY A PRISONER. BOTH OF THEM WERE ARBITRARILY DENIED BY THE BENCH TRIAL JUDGE TIMOTHY R. HANSON

ON MARCH 30TH, 1987, AT APPELLANTS SENTENCING HEARING, HE FILED MOTIONS FOR "ARREST OF JUDGMENT" "DENIAL OF HIS MAY 2 1986, PRELIMINARY HEARING TRANSCRIPT". AND APPELLANTS COURT APPOINTEE STAND-BY COUNSEL, A MS. FRANCIS PALACIOS; AND AS WELL THE STATE PROSECUTOR, MS. B. BYRNE, MADE ORAL MOTIONS TO ENTER JUDGMENT OF CONVICTION FOR THE NEXT LOWER CATEGORY OF OFFENSES AND IMPOSE CONCURRENT PRISON TERMS ACCORDINGLY, WERE ALL AS WELL ARBITRARILY DENIED WITHOUT THE BENCH TRIAL JUDGE, TIMOTHY R. HANSON. MAKING SPECIFIC FINDINGS OF FACT AND CONCLUSION OF LAW RELATIVE TO ALL OF THE PRE-TRIAL AND TRIAL ISSUES THAT WHICH WERE ALL RE-RAISED AGAIN, IN ALL OF THE AFORE- SAID SENTENCING HEARING MOTIONS, PURSUANT TO RULE 12, UTAH CODE, TITLE, 77-35-12 - RULE 12, SUBS. (C), (1987-88), OF THE RULES OF CRIMINAL PROCEDURE.

ON MARCH 30TH, 1987, APPELLANT WAS SUBSEQUENTLY SENTENCED TO AN ALLEGED INDETERMINATE TERM OF FIVE YEARS TO LIFE AT THE UTAH STATE PRISON TO RUN CONSECUTIVELY WITH HIS PRIOR SENTENCE OF FIVE YEARS TO LIFE, THAT HE WAS CURRENTLY SERVING. APPELLANT WAS ORDERED BY THE SENTENCING COURT TO PAY C-----

FINAL JUDGMENT WAS ENTERED ON MARCH 30TH, 1987. AND APPELLANT'S HANDWRITTEN "NOTICE OF APPEAL" "AFFIDAVIT OF IMPECUNIOSITY" AND HIS "DESIGNATION OF RECORD ON APPEAL", WERE FILED WITH THE SENTENCING JUDGE, TIMOTHY R. HANSON, ON THE SAME DAY.

RELIEF SOUGHT ON APPEAL

APPELLANT SEEKS A REVERSAL OF HIS CONVICTION AND A REMAND TO THE THIRD JUDICIAL DISTRICT COURT FOR A NEW TRIAL.

STATEMENT OF THE FACTS AND ARGUMENTS

ON APRIL 25TH, 1986, DEFENDANT, RONALD DEAN LANCASTER, APPEARED BEFORE THE HONORABLE, JAMES D. MAURICE, JUDGE OF THE FIFTH CIRCUIT COURT, FOR HIS INITIAL ARRAIGNMENT UPON THE FIRST DEGREE FELONY (A CAPITAL OFFENSE) OF "AGGRAVATED ASSAULT BY A PRISONER, AT WHICH TIME HE ENTERED A PLEA OF "NOT GUILTY" TO AN INFORMATION COMPLAINT IN CRIMINAL CASE NO. 8600-25697fs, WHICH HAD BEEN FILED BY, T.L. "TED" CANNON, COUNTY ATTORNEY, ON APRIL 25, 1986, WITH THE FIFTH CIRCUIT COURT, ACCUSING THE ABOVE-NAMED DEFENDANT OF AGGRAVATED ASSAULT BY A PRISONER, IN VIOLATION OF TITLE 76, CHAPTER 5, SECTION 103.5, SUBS. (B), (A CAPITAL OFFENSE), UNDER UTAH CODE ANNOTATED 1953, AS AMENDED, ABOVE-SAID INFORMATION COMPLAINT WAS BASED ON THE STATES' ALLEGATION

- 1 -

... of a prior

JUNE 26TH, 1978, CONVICTION OF SECOND DEGREE MURDER, A FIRST DEGREE FELONY AS WELL.

MOREOVER, HONORABLE, JAMES D. MAURICE, JUDGE OF THE AFORE-NAMED COURT, ON THE SAME DAY, HAD GRANTED DEFENDANT ORAL MOTION TO REPRESENT HIMSELF AND TO THUS PROCEED IN PRO-SE ON HANDLING THE CHIEF AFFAIRS OF HIS CASE, SUCH AS ON CONDUCTING HIS OWN PRESENTATION OF HIS PURPOSED TRIAL DEFENSES TO THE COURT.

ON THE 28TH DAY OF MAY, 1987, DEFENDANT APPEARED IN PRO-SE FOR HIS SET PRELIMINARY HEARING BEFORE HONORABLE, MS. ELEANOR VAN SCIVER, JUDGE OF THE FIFTH CIRCUIT COURT, AT WHICH TIME SHE APPOINTED A STAND-BY COUNSEL (LEGAL ADVISOR), MR. JAMES A. YALDEZ, OUT OF THE SALT LAKE LEGAL DEFENDERS ASSOC., THE COURT THEN PROCEEDED WITH HIS PRELIMINARY HEARING. THE STATE'S CHIEF WITNESS WAS THE STATE'S VICTIM OF THE ALLEGED CRIME OF AGGRAVATED ASSAULT ON A PRISONER, A CORRECTIONAL OFFICER, MR. DENNIS MOODY, TESTIFIED FOR THE STATE. NO OTHER STATE WITNESSES, OR, EVIDENCE WAS INTRODUCED BY THE STATE. (TR. OF OCT, 27, 1986, AT P. 20 TO 25).

NOTWITHSTANDING, IN DEFENDANT'S DIRECT CROSS-EXAMINATION OF THE VICTIM, MR. MOODY'S, PREVIOUSLY GIVEN POLICE AND COURT TESTIMONY, DEFENDANT BROUGHT OUT OF THE FACT THAT, IF ANYTHING, MR. MOODY'S TESTIMONY TO THE COURT WAS NOTHING MORE THAN "PERJURED TESTIMONY", ESPECIALLY WITH REGARDS TO HOW HE WAS ALLEGEDLY CUT WITH A HOMEMADE PRISON KNIFE, AND IN PARTICULAR, ON EXACTLY WHAT TYPES OF MEDICAL CARE HE HAD FALSELY CLAIMED

KNIFE CUTS OR STAB WOUNDS (PL. TR. OF MAY 28TH, 1986, AT P. 1 TO 9).

IT HAD ALSO BEEN ESTABLISHED AT DEFENDANT'S PRELIMINARY HEARING, THAT THE PRISON CRIME INVESTIGATOR, MR. TOM CARLSON, HAD NOT CONDUCTED A PROPER THOROUGH CRIMINAL INVESTIGATION OF DEFENDANT'S CASE AT THE UTAH STATE PRISON, ON APRIL 17TH, 1986, IN THAT, THE VICTIM WAS ALLOWED TO INTENTIONALLY WITHHOLD ALLEGED VITAL MEDICAL EVIDENCE, NAMELY: "AN AMERICAN FORK MEDICAL REPORT" FROM THE STATE PROSECUTOR, MICHAEL CHRISTENSEN, THE COURT, THE DEFENDANT, AND IN PARTICULAR, THE AFORE-NAMED PRISON INVESTIGATOR, HIMSELF (PL. TR. OF MAY 28TH, 1986, AT P. 8 AND 9).

THE JUDGE, MS. VAN SCIVER, DENIED DEFENDANT'S MOTION TO "DISMISS" THE STATE'S CASE AGAINST THE DEFENDANT ON THE GROUND OF "INSUFFICIENT EVIDENCE" ON WHICH TO HOLD DEFENDANT FOR TRIAL IN THE THIRD DISTRICT COURT. THUS IN TURN, IT CAN ONLY BE SAID THAT DEFENDANT WAS BOUND OVER TO STAND TRIAL IN THE THIRD JUDICIAL COURT ON A PROBABLE CAUSE STATEMENT BY JUDGE, MS. VAN SCIVER, THAT WAS BASED ON THE STATE'S KNOWINGLY USE OF THE PERJURED COURT TESTIMONY OF THE VICTIMS, OFFICER MOODY, IN DOING SO.

ON SEPTEMBER 4TH, 1986, THE PUBLIC DEFENDER, MR. VALDEZ, WAS FIRED FOR HAVING SHOWN HIS PREJUDICE IN ATTEMPTING TO TAKE TOTAL CONTROL OF DEFENDANT'S CASE ON ASSISTING HIM IN PREPARING HIS CASE FOR TRIAL; WHERE A CONFLICT OF INTEREST HAD DEVELOPED TO THE MORAL POINT TO WHERE HE EVEN HAD THE THIRD DISTRICT COURT JUDGE, JAMES S. SAWAYA, FIRED FROM

4). SEE AS WELL DEFENDANT'S PRE-TRIAL ISSUE OF THE PUBLIC DEFENDER, MR. VALDEZ, HAVING INTENTIONALLY INTERFERING W DEFENDANT'S CASE, IN ORDER TO INDIRECTLY ASSIST THE STATE BY ASKING THE COURT FOR CONTINUANCES IN THE DEFENDANT'S CASE WITHOUT INFORMING HIM OF SUCH MATTERS. THUS CAUSING DEFENDANT'S RIGHT TO ENJOY A FAIR SPEEDY PUBLIC TRIAL TO BE IGNORED BY THE TRIAL COURT (TR. OF OCTOBER 27TH, 1986, AT P. 38, 39, 40, AND 44).

MS. FRANCIS PALACIOS, ON JANUARY OF 1987, ALSO A PUBLIC DEFENDER, WAS APPOINTED AS A STAND-BY COUNSEL (A LEGAL ADVISOR) BY THE TRIAL COURT JUDGE, TIMOTHY R. HANSON WHO REMAINED ASSISTING DEFENDANT WITH HIS CASE UNTIL THE DAY OF SENTENCING. (ST. OF MARCH 30TH, 1987, AT P. 3).

ON OCTOBER 27TH, 1986, DEFENDANT FILED WITH THE THIRD DISTRICT COURT, A PRE-TRIAL MOTION TO DISMISS, ATTACKING BOTH THE STATE'S INFORMATION COMPLAINT, AS BEING DEFECTIVE ON ITS FACE, FOR ITS FAILURE TO STATE A PUBLIC OFFENSE, AND THAT THE UTAH AGGRAVATED ASSAULT BY A PRISONER STATUTE AS BEING UNCONSTITUTIONAL ON ITS FACE AS WELL. (TR. OF OCT, 27TH, 1986, AT P. 30 TO 35). IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS THE STATE'S DEFECTIVE INFORMATION COMPLAINT FOR ITS FAILURE TO STATE A PUBLIC OFFENSE, THE HONORABLE, TIMOTHY R. HANSON, ARBITRARILY DENIED AFORE-SAID MOTION BY ORDERING THAT THE STATE "AMEND" THE DEFECTIVE INFORMATION COMPLAINT TO "CORRECT THE ERROR" AND HAVING IT AMENDED BY IN THE JUDGES' WORDS: "INTERLINEATION TO SHOW SENTENCE 127 F (2) (2)" (TR. OF OCT, 27TH, 1986, AT P. 35).

ALTERING THE STATE'S ORIGINAL CHARGE FROM A "CAPITAL OFFENSE" UNDER SECTION, 103.5 (1)(B), TO ANOTHER ESSENTIAL CRIMINAL ELEMENT OF AGGRAVATED ASSAULT BY A PRISONER. THE DEFENDANT OBJECTED TO THE TRIAL COURT'S UNCONSTITUTIONAL PROCEDURE OF ALLOWING THE STATE TO "AMEND" THE DEFECTIVE INFORMATION COMPLAINT. SEE HIS AFORE-SAID MOTION TO DISMISS THE STATE'S DEFECTIVE INFORMATION COMPLAINT AGAINST HIM. (TR. OF OCTOBER, 27TH, 1986, AT P. 36).

ON APRIL 17TH, 1986, AFTER DEFENDANT HAD ATTEMPTED TO TURN IN A CONTRABAND "KNIFE" TO THE VICTIM, IN ORDER TO BE MOVED TO MAXIMUM SECURITY. (TR. OF MARCH 10TH, 1987, AT P. 24 TO 26), AND SEE AS WELL (PL. TR. OF MAY 28TH, 1986, AT P. 10). THE VICTIM INSTEAD TURNED THE WHOLE MATTER INTO BECOMING A CRIME BY ARRESTING THE DEFENDANT AT THE UTAH STATE PRISON. (TR. OF MARCH 10TH, 1987, AT P. 18). ACCORDING TO THE VICTIM, THE ALLEGED STRUGGLE OVER A KNIFE HAD LASTED "PROBABLY NOT MORE THAN 45 SECONDS". (TR. OF MARCH 10TH, 1987, AT P. 19, LINE 5). UPON THIS ARREST, THE VICTIM AND THE DEFENDANT WERE PHYSICALLY EXAMINED FOR POSSIBLE INJURIES AT THE PRISON HOSPITAL. (TR. OF MARCH 11TH, 1987, AT P. 24). AND SEE AS WELL. (TR. OF MARCH 10TH, 1987, AT P. 50, LINES 22 TO 24). THE VICTIM WAS, IN FACT, TREATED FOR A SCRATCHED LEFT ARM WOUND. (SEE DEFENDANT'S COURT EXHIBIT #6, AND SEE TR. OF MARCH 11TH, 1987, AT P. 24 LINES 22 TO 25). THE TYPES OF MEDICAL TREATMENT THAT THE VICTIM RECEIVED AT THE STATE PRISON HOSPITAL, CONSISTED

"WITH HYDROGEN PEROXIDE, AND COVERED WITH BAND-AIDS". (TR. OF MARCH 11TH, 1987, AT P. 26). HOWEVER, ON THE OTHER HAND, THE VICTIM IN HIS TRIAL COURT TESTIMONY, STATED TO THE COURT THAT HE WAS NEVER PHYSICALLY EXAMINED, OR, MEDICATED FOR HIS ALLEGED ARM WOUND BY A PRISON MEDICAL OFFICER, AT THE PRISON HOSPITAL. (TR. OF MARCH 1987, AT P. 26 TO P. 27), BUT THAT INSTEAD HAD RECEIVED HIS MEDICAL CARE FROM THE AMERICAN FORK, EMERGENCY CENTER (TR. OF MARCH 10, 1987, AT P. 29, LINES 10 TO 25). AND FURTHER THE VICTIM ALLEGED THAT HE WENT DIRECTLY FROM THE STATE PRISON TO THE AMERICAN FORK, EMERGENCY CENTER, FOUR TO FIVE HOURS AFTER HAVING ACCUSED DEFENDANT OF HAVING ASSAULTING HIM WITH A KNIFE AT THE STATE PRISON (TR. OF MARCH 10TH, 1987, AT P. 31, LINES 1 TO 10). BUT THEN AGAIN COMPLETELY CONTRADICTS HIMSELF BY STATING TO THE TRIAL COURT THAT INSTEAD OF GOING DIRECTLY TO THE AMERICAN FORK, EMERGENCY CENTER AFTER LEAVING THE STATE PRISON, HE WENT DIRECTLY HOME TO WIFE AFTER LEAVING THE STATE PRISON. (TR. OF MARCH 10TH, 1987, AT P. 40). NONE OF THE STATE WITNESSES, EVER SAW THE DEFENDANT STAB THE VICTIM, OR, HURT THE VICTIM IN ANY OTHER PHYSICAL WAY. SEE FOR EXAMPLE, CORRECTIONAL OFFICER'S, A MS. ROBIN WILLIAMS, COURT GIVEN TESTIMONY CONCERNING THE ALLEGED INCIDENT (TR. OF MARCH 10TH 1987, AT P. 63, LINES 1 TO 15). AS WELL, SEE CORRECTIONAL OFFICER, MR. ROBERT LEE'S, TESTIMONY. (TR. OF MARCH 10TH, 1987 AT P. 80; LINES 1 TO 30). THE STATE PROSECUTOR, A MR.

THE STATE'S ALLEGED MATERIAL EVIDENCE OF HAVING SUCH A PRISON HOMEMADE KNIFE. THEREFORE, THE STATE DID NOT CORROBORATE THE VICTIM'S ALLEGED THEORY THAT HE WAS CUT BY A KNIFE, OR, MUCH LESS THAT HE WAS STABBED IN THE ARM BY A PRISON HOMEMADE KNIFE BY THE DEFENDANT. (TR. OF MARCH 11TH, 1987, AT 67, LINES 24 TO 25). NOR ACCORDING TO THE VICTIM'S OWN TESTIMONY, DID HE EVER SUBMIT HIS ALLEGED CUT PANT LEG, OR, MUCH LESS HIS ALLEGED BLOODED PRISON GUARD UNIFORM TO THE PRISON CRIME INVESTIGATOR'S AND STATE PROSECUTOR TO BE USED AS EVIDENCE IN DEFENDANT'S CASE. (TR. OF MARCH 10TH, 1987, AT P. 36 TO 37). AND SEE DEFENDANT'S CLOSING ARGUMENTS REGARDING THE SAME SUBJECT MATTER. (TR. OF MARCH 11, 1987, AT P. 69 TO 70). NOR WERE THE STATE'S ALLEGED PRISON CRIME INVESTIGATORS, A MR. TOM CARLSON AND A MR. LOW JALLEY, USED BY THE STATE, AS CORROBORATING TESTIMONIAL EVIDENCE IN DEFENDANT'S CASE EITHER. (TR. OF MARCH 11TH, 1987, AT P. 70 TO 71). IN ESSENCE, ALL THAT THE STATE HAD USED AS SO-CALLED CORROBORATING EVIDENCE WERE MERE PHOTOGRAPHS; WHICH WERE IN TURN UNRELIABLE AND HENCE UNCORROBORATED AS WELL. PARTICULARLY, THE PHOTO SHOWING AN ALLEGED KNIFE STICKING THROUGH A CORRECTIONAL OFFICER'S PANT LEG. (TR. OF MARCH 11TH, 1987, AT P. 28. LINES 5 TO 10). IN EFFECT, AS SHOWN, THE AFORE-NAMED STATE PROSECUTOR, THEREFORE KNOWINGLY AND INTENTIONALLY ALLOWED THE VICTIM'S PERJURED TESTIMONIES, CONCERNING HIS ALLEGED KNIFE CUT PRISON UNIFORM, WHEN AND WHERE HE HAD RECEIVED HIS MEDICAL CARE AT; ON HOW HE WAS ALLEGEDLY

Whether or not his alleged arm wound, was in fact caused by a knife, to all remain uncorrected and thus uncorroborated from the day of defendant's very first successful court room attack, in impeaching the victim's testimony, as being nothing more than "perjured testimonies" at defendant's May 28th, 1986, preliminary hearing. (Pl. Tr. May 28, 1986, at p. 1 through 11). Defendant in his pre-trial motion again attacked the state's unlawful use of knowing given perjured testimony of the victims, in having him bound over for trial on it. (Tr. of October 27, 1986, at p. 21 to 22). And again, in his pre-trial motion to dismiss for prosecutorial misconduct of Michael Christensen, and the victims, on their intentional withholding vital medical evidence, namely: the "American Fork Medical Report" from the defendant and the court itself. (Tr. of January 30th, 1986 at p. 16, and p. 21).

In truth, as the entire trial record itself shows, the state prosecutor, Michael Christensen, had in fact knowingly and intentionally allowed the victim, Dennis Moody, to give perjured testimony; to create his own particular type of criminal investigation of the state's case, in effect to even create his own medical evidence that he was stabbed by the defendant. And to as well intentionally and knowingly withhold the afore-said evidence of the "American Fork Medical Report" for over nine months, from the trial court, the state county attorney's office, the prison crime investigators

AT P. 43). SEE AS WELL. (TR. OF JANUARY 30TH, 1987, AT P. 17 TO 19).
AND. (TR. OF OCTOBER 27TH, 1987, AT P. 15 TO 16).

IN ALL, THE VICTIM WAS ALLOWED TO CREATE HIS OWN TYPE OF
AN AGGRAVATED ASSAULT BY A PRISONER CASE AGAINST THE
DEFENDANT. (TR. OF MARCH 11TH, 1987, AT P. 68 TO 72). NOR FOR
THAT MATTER, WAS THE ALLEGED "AMERICAN FORK MEDICAL REPORT,"
THAT WHICH WAS ALLEGEDLY MADE ON THE VICTIM'S PHYSICAL
CONDITION BY A DR. ROGER SHEFFIELD, EVER CORROBORATED BY
THE STATE PROSECUTOR, MICHAEL CHRISTENSEN. IN THAT, DOCTOR
ROGER SHEFFIELD, WAS NEVER SUBPOENAED TO THE TRIAL COURT
TO TESTIFY FOR THE STATE, AND BECAUSE OF IT, DEFENDANT
OBJECTED TO THE STATE'S ACTION OF NOT SUBPOENAING DR. R.
SHEFFIELD. ON THE GROUND, THAT THE STATE HAD INTENTIONALLY
DEPRIVED DEFENDANT OF HIS CONSTITUTIONAL RIGHT ON BEING
ABLE TO CONFRONT AND THUS CROSS-EXAMINE, DR. ROGER SHEFFIELD,
INCLUDING ALL OF THE OTHER UNSUBPOENAED STATE WITNESSES.
(TR. OF MARCH 10TH, 1987, AT P. 83, LINES 10 TO 15). OF WHO
ACCORDING TO THE VICTIM, WAS HIS OWN PERSONAL MEDICAL
DOCTOR. (PL. TR. OF MAY 28TH, 1986, AT P. 9). BUT WHERE AT
THE DEFENDANT'S BENCH TRIAL OF MARCH 10TH, 1987, THE
VICTIM ONCE AGAIN CONTRADICTS HIS PREVIOUS TESTIMONY
OF HAVING A PERSONAL DOCTOR; BY STATING TO THE TRIAL COURT
THAT HE DID NOT KNOW OF ANY DR. R. SHEFFIELD. NOR DID HE
EVER HAVE A PERSONAL DOCTOR! (TR. OF MARCH 10TH, 1987, AT
P. 42 TO 43).

THUS, BEYOND ANY DOUBT, THE SOCIAL IDEA OF THE EXISTENCE

validity, originated from the victim, officer, DENNIS MOODY, himself!

Thus, As the defendant has shown to this court, the afore-said "AMERICAN FORK MEDICAL REPORT" WAS, IN FACT, A FORGERY OF THE VICTIM'S OWN SOCIAL CREATION. (TR. OF JANUARY 30TH, 1987, AT P. 17), FOR AS THE TRIAL RECORDS THEMSELVES ALL SHOW, THE VICTIM, IN FACT, CREATED THE AFORE-SAID "MEDICAL REPORT" BY FIRST INTRODUCING THE SOCIAL THOUGHT OF ITS EXISTENCE IN THE MIND OF THE DEFENDANT HIS MAY 25TH, 1986, PRELIMINARY HEARING, AND WHERE THE DEFENDANT LATER INTRODUCES IT TO BOTH THE STATE AND THE TRIAL COURT, IN HIS PRE-TRIAL MOTION FOR "DISCOVERY", (TR. OF OCTOBER 27TH, 1987, AT P. 12 TO 16). AND SEE AS WELL (ST. OF MARCH 30TH, 1987, ON HEARING OF MOTION "ARREST OF JUDGMENT", AT P. 16 TO 17, LINES 1 TO 25). IN ESSENCE AND AS ALL OF THE TRIAL RECORDS WILL ALSO SHOW, THE VICTIM HAD AS WELL CREATED THE SOCIAL IDEA, IN EVERYONE'S MIND THAT HE WAS ALLEGEDLY STABBED BY THE SAME KNIFE THAT WHICH THE DEFENDANT HAD ATTEMPTED TO TURN IN TO HIM (ST. OF MARCH 30TH, 1987, AT P. 13 TO 14). PARTICULARLY, IN LIGHT OF THE FACT THAT THERE WAS NO MATERIAL EVIDENCE IN THE COURT RECORD TO SUBSTANTIATE SUCH A FALSE CLAIM OF THE VICTIMS?

ON MARCH 11TH, 1987, IN DEFENDANT'S CLOSING ARGUMENTS BEFORE THE BENCH TRIAL JUDGE, TIMOTHY R. HANSON, HE ATTACK THE STATE'S WEAKNESS OF ITS CASE AGAINST THE DEFENDANT, IN

TWO BASIC ESSENTIAL CRIMINAL ELEMENTS OF "INTENT" TO COMMIT AGGRAVATED ASSAULT BY A PRISONER, OR, MUCH LESS EVEN AN "ATTEMPT" TO COMMIT THE AFORE-NAMED OFFENSE, AS IS REQUIRED BY THE STATUTORY MANDATE OF THE AGGRAVATED ASSAULT BY A PRISONER UTAH CODE ITSELF. DEFENDANT IN HIS CLOSING ARGUMENTS HAD ALSO ATTACKED THE STATE'S UNCONSTITUTIONAL ACT ON TRYING HIM "TWICE" IN A COURT OF LAW, FOR HIS JUNE 26th, 1978, PRIOR CONVICTION OF SECOND DEGREE MURDER. ALSO A FIRST DEGREE FELONY. THUS MAKING HIS PRESENT CONVICTION OF AGGRAVATED ASSAULT BY A PRISONER UNCONSTITUTIONAL AS WELL. (TR. OF MARCH 11, 1987, AT P. 66-67 THROUGH P. 88).

NONETHELESS, ON THE 11th, DAY OF MARCH 1987, THE HONORABLE BENCH TRIAL, TIMOTHY R. HANSON, JUDGE OF THE THIRD DISTRICT COURT, FOUND THE DEFENDANT "GUILTY" AS CHARGED OF "AGGRAVATED ASSAULT BY A PRISONER". WHERE ACCORDING TO THE BENCH TRIAL JUDGE, HIMSELF, HIS FINDINGS OF "GUILT" WERE BASED PRIMARILY ON FINDING CREDIBILITY IN ALL OF THE AFORE-SHOWN PERJURED TESTIMONIES OF THE VICTIMS. WHERE HE, IN EFFECT STATES FOR THE TRIAL RECORD THAT: "MR. MOODY IN HIS TESTIMONY IS MORE CREDIBLE" THAN WAS THE DEFENDANT (TR. OF MARCH 11th, 1987, AT P. 92). AND WHERE HE AS WELL VOUCHERED FOR THE CREDIBILITY OF THE PROSECUTION, IN CONSIDERING AS VALID EVIDENCE, THE "AMERICAN FORK MEDICAL REPORT" AS A TRUE LEGAL PIECE OF EVIDENCE, WHEN IN FACT, THE AFORE-SAID "MEDICAL REPORT" WAS WITHDRAWN BY THE STATE AS EVIDENCE, AND THUS WAS NEVER ENTERED

(ST. OF MARCH 30th, 1987, AT P. 20). BUT SEE WHERE PREVIOUS TO FINDING DEFENDANT "GUILTY" OF AGGRAVATED ASSAULT BY A PRISONER THE TRIAL JUDGE, HIMSELF, HAD VOICED THE LEGAL VIEW ON RECORD THAT SINCE THE "AMERICAN FORK MEDICAL REPORT" WAS NOT INTRODUCED IN EVIDENCE, THEN HE WOULD NOT "CONSIDER THE REPORT AT ALL". (TR. OF MARCH 10th, 1987, AT P. 86). AND SEE AS WELL WHERE THE TRIAL JUDGE HAD ALSO CONVEYED SKEPTICISM ABOUT THE DEFENDANT'S CONSPIRACY DEFENSE, IN TOTALLY IGNORE ALL OF THE EVIDENCE THAT WHICH THE DEFENDANT WAS ABLE TO PRESENT TO THE TRIAL COURT THROUGH THE DEFENSE WITNESSES THAT SUPPORTED DEFENDANT'S DEFENSE IN THAT REGARD. (TR. OF MARCH 11, OF 1987, AT P. 35) AND (TR. OF MARCH 11th, 1987, AT P. 12 TO 16), AND SEE AS WELL. (TR. OF OCTOBER 27th, 1986, AT P. 16, 18, AND 19).

SUMMARY OF STATEMENT OF FACTS AND ARGUMENTS

THE TRIAL COURT JUDGE COMMITTED PREJUDICIAL REVERSIBLE "PLAIN ERROR" IN A NUMBER OF AREAS OF DEFENDANT'S TRIAL IN THE THIRD DISTRICT COURT; ONE IN PARTICULAR, WAS WHERE THE BENCH TRIAL FOUND DEFENDANT "GUILTY" AS CHARGED OF AGGRAVATED ASSAULT BY A PRISONER, BY BASING HIS "GUILTY" VERDICT ON EVIDENCE THAT WAS NEVER INTRODUCED BY THE STATE PROSECUTOR, NAMELY: "THE AMERICAN FORK MEDICAL REPORT. (ST. OF MARCH 30th, 1987, AT 20), AND SECONDLY, ON BASING SUCH A "GUILTY" VERDICT ON THE VICTIM'S PERJURED TESTIMONY REGARD

THAT SPECIFIC "MEDICAL REPORT".

AND FINALLY, THE BENCH TRIAL JUDGE ALSO COMMITTED PREJUDICIAL REVERSIBLE "PLAIN ERRORS" IN ARBITRARILY DENYING ALL DEFENDANTS' PRE-TRIAL AND TRIAL MOTIONS TO DISMISS THE STATE'S DEFECTIVE INFORMATION COMPLAINT, ON THE GROUNDS THAT IT CHARGED HIM WITH TWO "MIS-JOINED" UNRELATED (DISSIMILAR), CRIMINAL OFFENSES, by STATING TO THE DEFENDANT: "FEDERAL RULES DON'T HAVE ANY APPLICATION IN THE STATE CRIMINAL ACTION". (TR. OF JANUARY 30TH, 1987, AT P. 14, LINES 19 AND P. 21). IN ARBITRARILY DEFENDANTS' MOTION FOR "ARREST OF JUDGMENT" by NOT MAKING ANY SPECIFIC FINDING OF FACT AND CONCLUSIONS OF LAW RELATIVE TO THE PRE-TRIAL AND TRIAL CONTENTIONS OF THE DEFENDANTS THAT THE STATE HAD USED NOTHING MORE THAN "PERJURED TESTIMONY" AND OTHER TYPES OF FALSE EVIDENCE IN OBTAINING ITS UNLAWFUL CONVICTION OF THE DEFENDANTS. (ST. OF MARCH 10TH, 1987, AT P. 10 TO 21), IN ARBITRARILY DENYING STAND-BY COUNSEL (LEGAL ADVISOR), MS. FRANCIS PALACIOS, ORAL MOTION TO THE TRIAL JUDGE TO SENTENCE DEFENDANT TO A LESSER INCLUDED OFFENSE, ON THE GROUND THAT THE STATE HAD FAILED TO PROVE ITS REQUIRED CRIMINAL ELEMENT OF "INTENT" IN DEFENDANTS' CASE. (ST. OF MARCH 30TH, 1987, AT P. 24); IN ARBITRARILY DENYING DEFENDANTS' PRE-TRIAL MOTION TO DISMISS THE STATE'S INITIAL FILED DEFECTIVE INFORMATION COMPLAINT CHARGING A "CAPITAL OFFENSE" IN THE FIRST DEGREE, IN STATUTORY NUMBER ONLY. (TR OF OCTOBER 27TH, 1986, AT P. 30), AND SEE AS WELL DEFENDANTS' TRIAL OBJECTION TO THE TRIAL JUDGES' ORDER TO THE STATE TO "..." THE "..." IN THE ABOVE-SAID DEFECTIVE INFORMATION

FOR ITS FAILURE TO STATE AN OFFENSE. (TR. OF OCTOBER 27TH, 1986, AT P. 33 TO 36) AND IN ARBITRARILY DENYING BOTH OF DEFENDANT'S PRE-TRIAL MOTION TO "DISMISS" AND "MISTRIAL" MOTION ATTACKING THE AGGRAVATED ASSAULT BY A PRISONER STATUTE AS BEING UNCONSTITUTIONAL ON ITS FACE BECAUSE OF THE FACT THAT IT HAD ALLOWED THE STATE TO RE-TRY DEFENDANT'S JUNE 26TH, 1971 PRIOR CONVICTION OF SECOND DEGREE MURDER "TWICE" IN A COURT OF LAW. THUS IN TURN VIOLATING DEFENDANT'S CONSTITUTIONAL RIGHT UNDER THE DOUBLE JEOPARDY CLAUSES OF BOTH THE STATE AND FEDERAL CONSTITUTIONS, IN BEING FREE FROM BEING TRIED "TWICE" IN A COURT OF LAW FOR THE SAME OFFENSE. (TR. OF JANUARY 30TH, 1986, AT P. 6 TO 16), AND SEE (TR. OF MARCH 11TH, 1987, ON HEARING "MISTRIAL" MOTION, AT P. 74, 80, TO 83), IN ARBITRARILY DENYING DEFENDANT'S PRE-TRIAL MOTION TO DISMISS, ON THE GROUND OF THE STATE'S PROSECUTORIAL MISCONDUCT OF THE STATE PROSECUTOR, MICHAEL CHRISTENSEN'S INTENTIONAL WITHHOLDING OF VITAL COURT ORDERED DEFENSE MATERIAL FROM BOTH THE DEFENDANT AND THE COURT ITSELF. (TR. OF JANUARY 30TH, 1987, AT P. 20), AND AGAIN, ARBITRARILY DENYING DEFENDANT'S RIGHT TO OBTAIN A COMPLETE COPY OF (WHICH WAS A TRIAL COURT'S UNENFORCED PRE-TRIAL ORDER), DEFENDANT'S MAY 28TH, 1986, PRELIMINARY HEARING TRANSCRIPT. (ST OF MARCH 30TH, 1987, AT P. 8 TO 10), AND IN ARBITRARILY DENYING DEFENDANT'S PRE-TRIAL MOTION TO PRODUCE (AT A PRE-TRIAL DISCOVERY HEARING) ALL OF THE STATE'S INVESTIGATIVE PRISON REPORTS RELATIVE TO A MAY 24TH, 1984, UTAH STATE PRISON FIRE, OF WHICH DEFENDANT WAS A VICTIM OF: AND OF WHICH AFORE-SAID PRISON REPORTS WERE

ALL (ATER SHOWN TO BE, IN FACT, RELEVANT AND MATERIAL TO THE RAISED ISSUES IN HIS PRE-TRIAL AND AS WELL HIS CHIEF TRIAL DEFENSE, THAT CERTAIN PARTICULAR PRISON EMPLOYEES WERE INVOLVED IN A CONSPIRACY TO SET DEFENDANT UP FOR A STATE PROSECUTION, BY USING AS BAIT A PRISON INFORMER, KNOWN AS "MICHAEL WHITE" WHO WAS A PRISON ENEMY OF THE DEFENDANTS. (TR. OF OCTOBER 27TH, 1986, AT P. 16, 19, AND 20), AND AGAIN, IN ARBITRARILY DENYING DEFENDANT'S PRE-TRIAL MOTION TO DISMISS, IN HIS ATTACK ON THE STATE FOR SELECTIVELY AND THUS VINDICTIVELY PROSECUTING HIM ON AN "AGGRAVATED ASSAULT BY A PRISONER" OFFENSE OF WHICH THE VICTIM, OFFICER MOODY, WAS ALLOWED TO CREATE. (TR. OF OCTOBER 27TH, 1986, AT P. 26 TO 20); AND MOREOVER, IN ARBITRARILY DENYING DEFENDANT'S PRE-TRIAL MOTION ATTACK ON THE STATE'S BIASED MOTIVE IN INTENTIONALLY DELAYING THE PROSECUTION OF DEFENDANT'S CASE, OR, IN NOT BRINGING HIS CASE TO TRIAL WITHIN THE STATUTORY TIME LIMITS. THUS, IN TURN, DENYING DEFENDANT HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO RECEIVE A SPEEDY PUBLIC TRIAL. (TR. OF OCTOBER 27TH, 1986, AT P. 38 TO 41). AND IN ARBITRARILY ILLEGALLY SENTENCING THE DEFENDANT TO A CONSECUTIVE 5-YEAR TO LIFE PRISON TERM, TO BE SERVED ONLY "WHEN YOU COMPLETE YOUR OTHER SENTENCE", SUCH A SENTENCE IS ILLEGAL, BECAUSE OF THE FACT THAT UNDER UTAH'S INDETERMINATE SENTENCING LAW; INDETERMINATE SENTENCES OF CONSECUTIVE 5-YEAR TO LIFE, MANDATE THAT A SENTENCING COURT RUN THEM CONCURRENT RATHER THAN CONSECUTIVE. (ST. OF MARCH 30TH, 1987, AT P. 23 TO 28).

JUDGES 'PLAIN TRIAL ERRORS' IN DENYING DEFENDANT A FAIR TRIAL IN THE THIRD DISTRICT COURT. REQUIRES A REVERSAL OF DEFENDANT'S MARCH 30TH, 1987, CONVICTION OF AGGRAVATED ASSAULT BY A PRISONER, AND THAT HIS CASE BE REMANDED BACK TO THE THIRD DISTRICT COURT FOR A NEW TRIAL.

REASONS FOR GRANTING A REVERSAL AND
NEW TRIAL IN THE CASE AT BAR

POINT I

JUDICIAL MISCONDUCT IN ALLOWING THE STATE PROSECUTOR TO CONVICT APPELLANT OF AGGRAVATED ASSAULT BY A PRISONER ON A DEFECTIVE INFORMATION COMPLAINT, (1) BY ITS FAILURE TO STATE A PUBLIC OFFENSE, (2) BY BASING IT ON HIS 1978 PRIOR CONVICTION FOR SECOND DEGREE MURDER, THUS TRYING APPELLANT "TWICE" FOR THE SAME OFFENSE ON THE UNCONSTITUTIONAL AGGRAVATED ASSAULT BY A PRISONER UTAH STATUTE IN ORDER TO DO SO; (3), AND MOST IMPORTANTLY, BY BASING IT ON THE PERJURED TESTIMONY OF THE VICTIMS AND AS WELL ON ALL OF THE OTHER KINDS OF INVALID EVIDENCES THAT WHICH WERE USED BY THE STATE IN OBTAINING ITS UNLAWFUL CONVICTION OF THE APPELLANTS.

BASED ON ALL OF THE FOREGOING FACTS AND ARGUMENTS

COURT. APPELLANT hereby Respectfully pleads to this Court, that it REVIEW APPELLANT'S ENTIRE TRIAL RECORD NOW ON APPEAL WITH THIS COURT, ON THE GROUNDS THAT IN DOING SO, IT WOULD INDEED FIND MERIT IN MANY OF HIS LOWER COURT PRE-TRIAL CONTENTIONS OF HAVING BEEN DENIED A FAIR TRIAL IN THE THIRD DISTRICT COURT, IN THAT, THE APPELLANT WAS TRIED AND CONVICTED ON A DEFECTIVE INFORMATION COMPLAINT, UNDER CRIMINAL CASE NO. 8600-25697FS, WHICH HAD FAILED TO STATE A PUBLIC OFFENSE, PURSUANT TO VIOLATION OF UTAH CRIMINAL CODE TITLE 76, CHAPTER 5, SECTION 103.5 (B), BY MERELY CHARGING APPELLANT WITH AN "ATTEMPT" TO COMMIT AN AGGRAVATED ASSAULT BY A PRISONER, RATHER THAN AS REQUIRED BY THE AFORE-SAID UTAH STATUTE, CHARGING HIM WITH AN "INTENT" TO COMMIT AN AGGRAVATED ASSAULT BY A PRISONER, WHICH WAS NOT DONE BY THE STATE, NOR DID THE ABOVE-NOTED DEFECTIVE INFORMATION, SPECIFICALLY ALLOGE A FIRST DEGREE CAPITAL OFFENSE, AS REQUIRED BY UTAH CODE 76-5-SECTION 103.5 (B), THUS, IN TURN, DENYING APPELLANT A FAIR TRIAL, ON HIS CONSTITUTIONAL RIGHT TO KNOW WHAT HE IS BEING CHARGED WITH BY THE STATE. WHERE AS SHOWN IN THE TRIAL RECORD ITSELF, APPELLANT ADDRESSES THE TRIAL COURT THUS:

"MR. LANCASTER: IM CHARGED WITH VIOLATION OF TITLE 76 CHAPTER 5 SECTION 103.5 (B), SUBSECTION, WHICH MAKES IT A CAPITAL OFFENSE. AND I WASNT AWARE
— obtained a copy of the

-- UTAH CRIMINAL PROCEDURES, AND FOUND IT. AND THE INFORMATION ITSELF DOES NOT PROPERLY INFORM ME OF THE CHARGE IN REGARDS TO BEING CHARGED WITH A SERIOUS OFFENSE. AND THE ELEMENT -- THE NECESSARY AND ESSENTIAL ELEMENT OF ALLEGE AGGRAVATED ASSAULT IS INTENTIONAL CAUSE OF A CERTAIN INJURY. AND IT DOES NOT ALLEGE THAT IN THE INFORMATION, WHICH MISINFORMS ME OF THE ENTIRE MATTER. I DON'T EVEN KNOW WHAT TO -- HOW TO DEFEND MYSELF AGAINST THAT. I MEAN, THIS IS A CAPITAL CRIME, BUT YET IT DON'T STATE THAT IN THE INFORMATION. IT SAYS SO IN THE PENAL CODE, BUT IT DON'T INFORM ME THAT I'M CHARGED -- THAT MY LIFE IS AT STAK THAT SERIOUSLY." SEE, (TR. OF OCTOBER 27TH, 1986, AT P. 31 TO 32).

APPELLANT DOES ADMIT HERE THAT AN INFORMATION OR INDICTMENT NEED CONTAIN ONLY THOSE FACTS AND ELEMENTS OF THE ALLEGED OFFENSE NECESSARY TO INFORM THE ACCUSED OF THE CHARGE SO THAT THE ACCUSED CAN PREPARE A DEFENSE AND INVOKE THE DOUBLE JEOPARDY CLAUSE IN ANY SUBSEQUENT PROCEEDING FOR THE SAME OFFENSE. SEE HAMLING VS. UNITED STATES, 418 U.S. 87, 117 (1974) (CITING HAGNER VS. UNITED STATES, 285 U.S. 427 (1932); AND UNITED STATES VS. DEBROW, 346 U.S. 374 (1935).

HOWEVER, AS SHOWN IN THE INSTANT CASE AT BAR,

OFFENSE IN IMPROPERLY CHARGING HIM WITH AGGRAVATED ASSAULT BY A PRISONER; BUT IT HAD AS WELL FAILED TO ALLEGE THE MANDATED ESSENTIAL CRIMINAL ELEMENT OF "INTENT". THEREBY CAUSING THE INFORMATION TO BE FATAALLY DEFECTIVE ON ITS FACE; AND DENYING APPELLANT OF A FAIR TRIAL IN THE THIRD DISTRICT COURT BECAUSE OF IT. (TR. OF MARCH 11th, 1987, AT P. 74 TO 85).

IN SUPPORT OF THE ABOVE TAKEN POSITION OF THE APPELLANTS, SEE AS WELL, UNITED STATES VS. HAYES, 775 F.2d 1279, 1282 (4th CIR. 1985), HOLDING THAT INDICTMENT MUST CHARGE ALL ESSENTIAL ELEMENTS OF OFFENSE ENABLING DEFENDANT TO PREPARE DEFENSE WITHOUT BEING MISLED AND MUST PROTECT DEFENDANT AGAINST LATER PROSECUTION FOR SAME OFFENSE); UNITED STATES VS. BRACK, 747 F.2d 1142, 1146 (7th CIR. 1984), HOLDING THAT INDICTMENT MUST ALLEGE ESSENTIAL ELEMENT OF CRIME CHARGED WITH SUFFICIENT CLARITY TO ENABLE ACCUSED TO PREPARE DEFENSE AND INVOKE DOUBLE JEOPARDY CLAUSE IN SUBSEQUENT PROCEEDING FOR SAME OFFENSE, CERT. DENIED, 469 U.S. 1216 (1985).

MOREOVER, IN THE STATE OF UTAH, IN ENACTING UTAH'S AGGRAVATED ASSAULT BY A PRISONER STATUTE, IT MUST BE BELIEVED HERE THAT THE STATE LEGISLATURE HAD NO INTENTION OF PERMITTING THE PROSECUTION TO JEOPARDIZE THE ACCUSED RIGHTS BY EVASIVENESS. NOR VACILLATION. THE ACCUSED IS AN INNOCENT MAN.

IT IS AS MUCH THE DUTY OF THE PROSECUTION TO RECOGNIZE HIS INNOCENCE AS IT IS TO ACCOMPLISH A CONVICTION, IF THE FACTS JUSTIFY IT. THE CODE OF CRIMINAL PROCEDURE IS NOT INTENDED AS A SUBSTITUTE FOR "INSUFFICIENT FACTS" SEE STATE VS SPENCER, 101 UTAH 287, 121 P. 2D 912.

IN ADDITION, IN THE STATE OF UTAH, WHEN ACT DENOUNCED BY STATUTE CREATED OFFENSE IN COINED GENERIC TERMS, THEN INFORMATION MUST GO FURTHER IN STATING OFFENSE THAN BY MERELY USING LANGUAGE OF STATUTE. SEE STATE VS SWAN, 31 UTAH 336, 88 P. 12.

SINCE UTAH'S STATE CONSTITUTION COMTEMPLATES THAT PERSONS ACCUSED OF CRIME SHALL BE ENTITLED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST THEM, (CONT. ART. 1, 12), THIS AMENDMENT AND ESPECIALLY SUB-DIVISION (b), CANNOT, IT WOULD SEEM, HAVE THE EFFECT OF RELAXING THE FOREGOING RULES WITH REGARD TO THE SUFFICIENCY OF THE INDICTMENT AND INFORMATION ANY FURTHER THAN THAT. CHARGING THE OFFENSE IN THE MERE LANGUAGE OF THE STATUTE IS NOT SUFFICIENT, IF ESSENTIALS OF OFFENSE ARE NOT THEREBY CHARGED, SEE, STATE VS TOPHAM 41 UTAH 39, 123 P. 828.

IF STATUTORY LANGUAGE IS SO GENERAL AS NOT TO MEET THE REQUIREMENT OF THE CODE OF CRIMINAL PROCEDURE, PROPER PLEADING REQUIRES THAT THE INFORMATION GO FURTHER IN STATING THE OFFENSE THAN

TO MERELY USE THE LANGUAGE OF THE STATUTE. SEE, STATE VS. HALE, 71 UTAH 134, 263 P.2D 86; STATE VS. RICKENBERG, 58 U.270, 198 P.764.

THE SUFFICIENCY OR INSUFFICIENCY OF AN INFORMATION MUST BE TESTED BY ITS ALLEGATIONS, AND NOT BY THE EVIDENCE INTRODUCED AT THE TRIAL. SEE, STATE VS. FISHER, 79 UTAH 115, 121, 8 P.2D 589; BALLAINE VS. DISTRICT COURT OF FIRST JUDICIAL DISTRICT BOX ELDER COUNTY, 107 UTAH 247, 153 P.2D 265.

SEE ALSO, NIELSON VS. DROUBAY, (JULY 20TH, 1982), 652 UTAH P.2D 1293, WHERE THIS COURT (THE STATE SUPREME COURT), HELD: "AN INFORMATION FRAMED UNDER A STATUTE WHICH CREATES AN OFFENSE AND PROSCRIBES ITS CONSTITUENT ELEMENTS, MUST ALLEGE ALL OF THE CIRCUMSTANCES OR INGREDIENTS, WHICH ENTER INTO THE ESSENTIAL DESCRIPTION OF THE OFFENSE. IF THE INTENT, IS A STATUTORY CONSTITUENT, NOT ONLY THE ACTS, IN THE DOING OF WHICH THE OFFENSE CONSISTS, BUT THE INTENT WITH WHICH THEY ARE DONE, MUST BE ALLEGED. PROOF OF THE INTENTION, WITHOUT AN ALLEGATION, IS NOT SUFFICIENT".

NOR WILL RELIANCE ON STATUTORY LANGUAGE ALONE CURE A FATAL DEFECT IN AN INDICTMENT, OR, FOR THAT MATTER, AN INFORMATION. SEE, UNITED STATES VS. MURPHY, 762 F.2D 1115, 1154-55 (1ST CIR. 1985), HOLDING THAT INDICTMENT TRACKING STATUTORY LANGUAGE IN CHARGING

TESTIMONY did NOT ADEQUATELY INFORM DEFENDANTS OF CHARGES AGAINST THEM AND WARRANTED REVERSAL OF CONVICTIONS); UNITED STATES VS. OPSTA, 659 F.2d 848, 850 (8th Cir. 1981) (INDICTMENT TRACKING LANGUAGE OF INVOLUNTARY MANSLAUGHTER STATUTE INSUFFICIENT WHEN STATUTE DOES NOT CONTAIN ALL NECESSARY ELEMENTS OF OFFENSE); CF. UNITED STATES VS. ROJO, 727 F.2d 1415, 1418-19 (9th Cir. 1983) (CITATION FOR THEFT OF PUBLIC PROPERTY INSUFFICIENT WHEN IT CONTAINS ONLY REFERENCE TO STATUTE WITHOUT ANY REFERENCE TO ACT ALLEGEDLY COMMITTED OR TO SPECIFIC PROVISIONS OF STATUTE); UNITED STATES VS. PURVIS, (1979), 580 F.2d 853, 877, 858, WHERE THE COURT HELD: "FAILURE TO CHARGE A SPECIFIC OFFENSE, IS THE KIND OF DEFECT INVOLVED IN DUE PROCESS OF LAW, AND IT CANNOT BE WAIVED".

ALSO SEE: ILLINOIS VS. SOMERVILLE, 410 U.S. 458, 468-69 (1973) ("POTENTIAL WASTE OF TIME, ENERGY, AND MONEY MAY JUSTIFY EARLY MISTRIAL DECLARATION WHEN INDICTMENT FATALLY DEFECTIVE AND NOT AMENDABLE UNDER STATE LAW, ASSURED ULTIMATE REVERSAL AND REQUIREMENT FOR RETRIAL.") THE SOMERVILLE COURT NOTED THAT THE STATE RULE WAS DESIGNED TO PROTECT THE DEFENDANT'S RIGHT TO A PROPER INDICTMENT AND THIS POLICY IS BETTER IMPLEMENTED BY A MISTRIAL THAN A WASTEFUL APPEAL AND RETRIAL. Id. AT 468-86".

NOT ONLY WAS THE STATE'S INFORMATION DEFECTIVE ON ITS FACE, FOR ITS FAILURE TO STATE A SPECIFIC OFFENSE AGAINST THE APPELLANT, BUT BECAUSE OF IT, SUCH A TYPE OF A FATALLY DEFECTIVE INFORMATION COMPLAINT HAD AS WELL SERIOUSLY AFFECTED APPELLANT'S CONVICTION OF AGGRAVATED ASSAULT BY A PRISONER, TO WHERE HIS CONVICTION WAS BASED ON A DIFFERENT CRIMINAL ELEMENT OF THE AGGRAVATED ASSAULT BY A PRISONER STATUTE THAN THAT CONTAINED IN THE ORIGINAL CHARGE OF AGGRAVATED ASSAULT BY A PRISONER, IN THAT, THE APPELLANT WAS ORIGINALLY CHARGED IN THE STATE'S DEFECTIVE INFORMATION WITH AN "ATTEMPT" TO COMMIT AGGRAVATED ASSAULT BY A PRISONER. BUT WHERE IT HAS BEEN SHOWN, APPELLANT WAS INSTEAD CONVICTED OF AN "INTENT" TO COMMIT THE AFORE-SAID OFFENSE. THE ERRONEOUS CONVICTION HAD DERIVED FROM THE BENCH TRIAL JUDGE, HIMSELF, BY HIS ORDERING THE STATE TO "AMEND" THE DEFECTIVE INFORMATION COMPLAINT, TO "CORRECT THE ERROR" BY HAVING IT AMENDED, IN THE JUDGE'S WORDS: "INTERLINEATION TO SHOW SECTION 103.5 (2) (A)". (TR. OF OCTOBER 27TH, 1981 AT P. 36). THUS, AS PREVIOUSLY ARGUED, ALTERING THE STATE'S ORIGINAL DEFECTIVE CRIMINAL CHARGE UNDER SECTION 103.5 (1) (B), (A CAPITAL OFFENSE) TO AN ENTIRELY DIFFERENT AND THEREFORE NEW CRIMINAL ELEMENT OF UTAH CODE, TITLE - 76 - 5 - 103.5 (2) (A) ! AND IN TURN, DENYING APPELLANT A FAIR TRIAL BECAUSE OF IT. AND IN SUPPORT OF APPELLANT'S CONTENTION OF HAVING BEEN

ERRONEOUSLY CONVICTED FOR A KIND OF A CRIME THAT WHICH HE WAS NEVER ORIGINALLY CHARGED IN THE ORIGINAL DEFECTIVE INFORMATION COMPLAINT. NOR IN THE TRIAL COURT'S AMENDED INFORMATION COMPLAINT. (TR. OF OCTOBER 27TH, 1986, AT P. 36). AND SEE UNITED STATES vs. BEGNAUD, 783 F.2d 144, 147, N.4 (8TH CIR. 1986), HOLDING THAT AMENDMENT RESULTS WHEN ESSENTIAL ELEMENTS OF OFFENSE PRESENTED IN INDICTMENT ARE ALTERED, ACTUALLY OR IN EFFECT, BY PROSECUTOR OR COURT AFTER INDICTMENT HAS BEEN RETURNED BY THE GRAND JURY); SEE STIRONE vs. UNITED STATES, 361 U.S. 212, 217 (1960) (PREJUDICIAL AMENDMENT OF INDICTMENT FOUND WHEN EVIDENCE ADMITTED ON INTERFERENCE WITH STEEL EXPORTATION WHEN GRAND JURY CHARGED ONLY INTERFERENCE WITH SAND IMPORTATION); UNITED STATES vs. PAZZINT, 703 F.2d 420, 423-24 (9TH CIR. 1983) (REVERSIBLE ERROR TO AMEND INDICTMENT TO ADD ASSAULT CHARGE WHEN ASSAULT MENTIONED ONLY IN INDICTMENT'S CAPTION).

ADDITIONALLY, THE U.S. SUPREME COURT IN UNITED STATES vs. MILLER, 471 U.S. 130 (1985), THE COURT NOTED THAT AS LONG AS THE PROOF ON WHICH CONVICTIONS ARE BASED CORRESPONDS TO THE OFFENSE THAT WAS CLEARLY SET OUT IN THE INDICTMENT, THE CONVICTIONS WILL GENERALLY BE UPHOLD, *Id.* AT 136-38. THE COURT IN UNITED STATES vs. MILLER, 105 S. CT. AT 1814, REAFFIRMED, HOWEVER, THAT PART IN, EX PARTE BAIN, 121 U.S. 1 (1887), HOLDING THAT A DEFENDANT

THAT CONTAINED IN THE INDICTMENT. ID. AT 141-43."

THE SEVENTH CIRCUIT HAS SUGGESTED THAT THE STANDARDS USED TO ASSESS THE PERMISSIBILITY OF AMENDMENTS AND VARIANCES HAVE MERGED. IN UNITED STATES VS. CINA, 699 F.2d 853 (7TH CIR.), CERT. DENIED, 464 U.S. 991 (1983), THE COURT HELD THAT ALL CHANGES ARE PERMISSIBLE IF THEY DO NOT AFFECT A MATERIAL ELEMENT OF THE OFFENSE CHARGED IN A WAY THAT WOULD PREJUDICE THE DEFENDANT. ID. AT 855-8."

WHEREAS, SHOWN IN THE INSTANT CASE AT BAR, APPELLANT'S MARCH 30TH, 1987, CONVICTION WAS BASED ON THE TRIAL COURT'S ORDERED "AMENDMENT" OF THE STATE'S FATALLY DEFECTIVE INFORMATION COMPLAINT RATHER THAN ON WHAT HE WAS ORIGINALLY CHARGED WITH BY THE STATE, WHICH WAS THAT OF A CRIMINAL ELEMENT OF AN "ATTEMPT" TO COMMIT AGGRAVATED ASSAULT BY A PRISONER RATHER THAN THAT OF THE CRIMINAL ELEMENT OF AN "INTENT" TO DO SO. THEREFORE, REQUIRING REVERSAL OF APPELLANT'S CONVICTION (TR. OF OCT, 27, 1986, AT P. 31).

POINT II

APPELLANT FURTHER CONTENDS THAT HE WAS NOT ONLY UNLAWFULLY TRIED AND CONVICTED ON THE STATE'S FATALLY DEFECTIVE INFORMATION COMPLAINT FOR THE FOREGOING REASONS, BUT WELL BECAUSE OF THE FACT THAT THE STATE'S INFORMATION

PRISONER STATUTE, WHICH IS UNCONSTITUTIONAL ON ITS FACE, PARTICULARLY ON "double JEOPARDY" grounds, IN THAT, EVEN THOUGH THE STATE PROSECUTOR DID NOT DIRECTLY TRY APPELLANT'S JUNE 26TH, 1978, PRIOR CONVICTION FOR SECOND DEGREE MURDER "TWICE" IN A STATE COURT OF LAW; THE STATE PROSECUTOR, HOWEVER, DID, IN FACT, INDIRECTLY RETRY APPELLANT'S AFORESAID PRIOR 1978 CONVICTION "TWICE" IN A STATE COURT OF LAW, IN THE LEGAL SENSE, THAT IT WAS UNCONSTITUTIONAL FOR THE STATE TO USE HIS PRIOR 1978, PRIOR CONVICTION TO FORM A BASIS IN ORDER TO CHARGE APPELLANT WITH THE INSTANT CRIME OF AGGRAVATED ASSAULT BY A PRISONER. THUS AUTOMATICALLY PREJUDICING HIS CASE BEFORE THE TRIAL COURT. AND IN TURN, DENYING HIM OF A FAIR TRIAL IN THE THIRD DISTRICT COURT BECAUSE OF IT.

ON THIS ISSUE, APPELLANT, IN PRO-SE, ADDRESSES THE BENCH TRIAL, ON HIS MARCH 11TH, 1987, MOTION FOR A "MISTRIAL"; THUS:

"THIS IS A MOTION FOR MISTRIAL IN RE: CASE NO. 8600 — 25697FS, AND CASE NO. 86-829. THE HONORABLE TIMOTHY R. HANSON, JUDGE PRESIDING.

THIS MOTION IS BASICALLY IN REGARDS TO A MISTRIAL IN THIS WHOLE CASE. THE ABOVE-NAMED DEFENDANT IS BEING CHARGED BY INFORMATION WITH ALLEGEDLY VIOLATING THE CRIMINAL STATUTE OF AGGRAVATED ASSAULT BY PRISONER TO WIT: TITLE 76, CHAPTER, SECTION 103.5,

UTAH CODE ANNOTATED, 1953 AS AMENDED, OF WHICH SAID UTAH CRIMINAL STATUTE IS UNCONSTITUTIONAL ON ITS FACE IN THAT, THE AFORESAID UTAH CRIMINAL STATUTE UNLAWFULLY PERMITS THE STATE PROSECUTOR TO ENHANCE HIS ORIGINAL CHARGE OF AGGRAVATED ASSAULT BY PRISONER PENALTY TO EITHER LIFE IMPRISONMENT OR DEATH PENALTY, BY BASING IT UPON AN ALLEGED 1978 PRIOR CONVICTION OF THE ABOVE-NAMED DEFENDANT RONALD DEAN LANCASTER". (TR. OF MARCH 11th, 1987, AT P. 74). AND SEE WHERE ON PAGE 82 TO 83, THE APPELLANT CONCLUDES HIS ARGUMENT FOR "MISTRIAL" BY STATING THE

"BEFORE I CONCLUDE THIS MOTION, I'D LIKE TO EXPLAIN THE STATUTE ITSELF AS IT PERMITS THE STATE PROSECUTOR TO PROP UP HIS ORIGINAL CHARGE, WHICH IN MY CASE WOULD BE THE AGGRAVATED ASSAULT BY A PRISONER STATUTE, TO PROP IT UP, TO MAKE IT STAND UP IN A SENSE BY STICKING A PRIOR CONVICTION RIGHT UNDER THAT STATUTE, OF THAT ALLEGATION AND INFORMATION IN RETRYING THE WHOLE THING BEFORE EITHER A JUDGE OR A JURY, WHICH IN EFFECT VIOLATES THE DOUBLE JEOPARDY CASE THAT I JUST CITED REGARDING CUMULATIVE PUNISHMENTS, RETRYING A CASE BEFORE A JURY, THAT'S ALREADY BEEN TRIED AND CONVICTED, AND THE PRISONER SERVES HIS PRISON TERM FOR THAT SPECIFIC OFFENSE (TR. OF MARCH 11th, 1987, AT P. 82 TO 83).

While it is permissible to join multiple charges in an information if they result from the same transaction or continuing act or transaction and are of the same or similar nature. UNITED STATES vs. SHELTON, 736 F.2d 1397, 1409 (10th Cir.), cert. denied, 469 U.S. 857 (1984).

It nonetheless is plain error to charge a single defendant (as was the appellant) with mis-joined unrelated (dissimilar) offenses in the same information. See UNITED STATES vs. BUSIC, 587 F.2d 577, 585 (3d Cir. 1978) (if it appears before trial that evidence of prior conviction will be admitted but would be inadmissible as to joined counts if severed, "then severance should be granted"), cert. denied, 452 U.S. 918 (1981); UNITED STATES vs. LEWIS, 787 F.2d 1318, 1322 (9th Cir.) (when defendant's prior felony conviction only admissible as to possession of firearm's charge and not as to robbery and killing to avoid apprehension charges, joinder invalid because there is a "presumption favoring severance" in these circumstances), amended by 798 F.2d 1250 (1986).

Also see: UTAH CRIMINAL CODE OF PROCEDURE, (1984-85), Title, 77-35-4 - Rule 4 (B), and its counterpart FEDERAL RULES OF CRIMINAL PROCEDURE, Rule 8 (A). Both of which disallow the unlawful joining of unrelated (dissimilar) criminal offenses in the same information or indictment.

TITLE 77-1-7. REGARDING ALLEGATIONS OF PRIOR CONVICTIONS, NO INFORMATION OR INDICTMENT SHALL CONTAIN AN ALLEGATION OF A PRIOR CONVICTION UNLESS SUCH ALLEGATION IS NECESSARY TO CHARGE THE OFFENSE UNDER SECTION 77-1-8.

MOREOVER, IN STATE VS. SAUNDERS, (UTAH 1985), 699 P.2. 738, WHERE UTAH SUPREME COURT, HALL, C.J., HELD: (1) THAT TRIAL COURT'S REFUSAL TO SEVER BURGLARY AND THEFT CHARGES FROM POSSESSION OF FIREARM CHARGE, SO THAT EVIDENCE OF DEFENDANT'S PRIOR CONVICTION, ADMISSIBLE ON FIREARM CHARGE, MAY HAVE INFLUENCED JURY TO CONVICT DEFENDANT BECAUSE OF BAD CHARACTER, REQUIRES REVERSAL OF THOSE THREE CONVICTIONS, AS WELL AS HABITUAL CRIMINAL CONVICTION BASED ON THOSE CONVICTIONS

SEE AS WELL APPELLANT'S PRE-TRIAL MOTION TO DISMISS, ATTACKING THE STATE'S MIS-JOINED OFFENSES IN THE INSTANT CASE AT BAR. (TR. OF JANUARY 30TH, 1987, AT P. 7, 8, TO P. 16).

IN FURTHER SUPPORT OF APPELLANT'S "DOUBLE JEOPARDY" AND "MIS-JOINED" CRIMINAL OFFENSES CLAIMS. SEE THE FOLLOWING COURT HOLDINGS THAT INFORMATION'S CHARGING TWO OR MORE DISTINCT OFFENSES IN A SINGLE COURT (AS HAD OCCURRED IN THE CASE AT BAR) AS BEING DUPLICITOUS AS WELL SEE FOR EXAMPLE, UNITED STATES VS. KIMBERLIN, 781 F.2d 124 1250-51 (7TH CIR. 1985), HOLDING THAT INDIVIDUAL COUNT C BOTH FALSE IMPERSONATION OF A FEDERAL OFFICIAL AND SUCH IMPERSONATION ALONG WITH DEMANDING OF

SINCE CONGRESS INTENDED TWO SEPARATE OFFENSES), CERT. DENIED, 106 S. CT. 2251 (1986), SUCH INFORMATIONS AND INDICTMENTS VIOLATE CONSTITUTIONAL PROTECTIONS, INCLUDING THE DEFENDANT'S RIGHT TO NOTICE OF THE CHARGES AGAINST HIM AND PREVENTION OF EXPOSURE TO DOUBLE JEOPARDY IN A SUBSEQUENT PROSECUTION BY OBSCURING THE SPECIFIC CHARGES ON WHICH EITHER A TRIAL COURT OR A JURY CONVICTED THE DEFENDANT.

IN COMPARING APPELLANT'S CASE, AND THE ISSUES INVOLVED IN HIS CASE WITH, UNITED STATES vs. KIMBERLIN, SUPRA, 781 F.2d 1247, 1250 (7TH CIR. 1985), THIS COURT WILL ALSO FIND THAT DUPLICIOUS INFORMATIONS OR INDICTMENTS CREATES POSSIBILITY THAT DEFENDANT DID NOT RECEIVE PROPER NOTICE OF CHARGES, MAY PRODUCE INADEQUATE TRIAL RECORDS TO PERMIT DEFENDANT TO PLEAD PRIOR CONVICTION OR ACQUITTAL AS BAR TO LATER PROSECUTION FOR SAME OFFENSE, AND MAY SUBJECT DEFENDANT TO PREJUDICIAL EVIDENTIARY RULINGS AT TRIAL), CERT. DENIED, 106 S. CT. 2251 (1986); UNITED STATES vs. MORSE, 785 F.2d 771, 774 (9TH CIR.), HOLDING AS WELL THAT DUPLICITY MAY UNDERMINE SUBSEQUENT DOUBLE JEOPARDY DEFENSE), CERT. DENIED, 106 S. CT. 2925 (1986).

THE TENTH CIRCUIT HELD THAT DOUBLE JEOPARDY IS NOT A PERSONAL RIGHT AND THEREFORE, CAN NEVER BE WAIVED. SEE UNITED STATES vs. BROCE, 781 F.2d 792, 795 (10TH CIR. 1986)

THE DOUBLE JEOPARDY CLAUSE PROTECTS AN ACCUSED

FROM BEING THREATENED "TWICE" WITH PUNISHMENT FOR THE THE SAME OFFENSE. U.S. CONST. AMEND. V., AND UTAH STATE CONSTITUTION ARTICLE 1, SECTION 12.

NONETHELESS, AS SHOWN IN THE INSTANT CASE AT BAR, APPELLANT'S JUNE 26TH, 1978, PRIOR CONVICTION OF SECOND DEGREE MURDER, WAS IN THE EYES OF THE LAW, A FINAL CONVICTION. PARTICULARLY, IN THE LEGAL SENSE THAT NO STATE APPEAL WAS EVER TAKEN FROM THE THIRD DISTRICT COURT'S FINAL JUDGMENT OF SECOND DEGREE MURDER O JUNE 26TH, 1978. THEREFORE THE STATE IN 1986 VIOLATED APPELLANT'S RIGHTS UNDER THE "DOUBLE JEOPARDY" CLAUSE OF BOTH UTAH'S AND UNITED STATES' CONSTITUTIONS BY INDIRECTLY RETRYING HIS 1978 PRIOR CONVICTION, BY USI AFORE-SAID PRIOR CONVICTION AS AN UNDERLYING CHARGE I ITS FILED INFORMATION COMPLAINT, IN ORDER TO ENHANCE THE PENALTY OF THE INSTANT CHARGE OF AGGRAVATED ASSAULT BY PRISONER TO A CONSECUTIVE 5-YEAR TO LIFE TERM OF IMPRISONMENT. (ST. OF MARCH 30TH, 1987, AT P. 23, LINES 1-3.

ALSO, ONCE JEOPARDY HAS ATTACHED AND THE ORIGINAL JEOPARDY HAS TERMINATED, EITHER IN AN ACQUITTAL O IN A CONVICTION THAT HAS RUN ITS FULL COURSE, THE DOUBLE JEOPARDY CLAUSE PROHIBITS FURTHER PROSECUTION FOR THE SAME OFFENSE. SEE PRICE VS. GEORGIA, 398 U.S. 323, 326 (1970). THE SUPREME COURT IN PRICE VS. GEORGIA, MADE CLEAR THAT THE PROTECTION WAS NOT LIMITED TO SUCCESSIVE PUNISHMENTS FOR THE SAME OFFENSE, BU

POINT III

AS HAS BEEN SHOWN, APPELLANT'S MARCH 30TH, 1987, CONVICTION OF AGGRAVATED ASSAULT BY A PRISONER WAS NOT ONLY OBTAINED UNLAWFULLY BECAUSE OF THE FOREGOING REASONS, BUT MOST SHOCKINGLY IS THE FACT THAT AFORE-SAID CONVICTION WAS BASED ON PERJURY AND FRAUD! IN THAT, APPELLANT WAS WRONGFULLY CONVICTED NOT ONLY ON THE KNOWINGLY GIVEN PERJURED TESTIMONY OF THE AFORE-NAMED VICTIM'S AND BOGUS "AMERICAN FORK MEDICAL REPORT", BUT AS WELL ON ALL OF THE OTHER TYPES OF FABRICATED FALSE EVIDENCES THAT WHICH THE AFORE-NAMED BENCH TRIAL JUDGE OF THE THIRD DISTRICT COURT HAD UNLAWFULLY ALLOWED THE STATE PROSECUTOR, MICHAEL CHRISTENSEN, TO USE IN OBTAINING HIS ERRONEOUS CONVICTION AGAINST APPELLANT. WHERE AS PREVIOUSLY NOTED IN THE TRIAL RECORD OF MARCH 10TH, 1987, AT PAGE 86, LINES 1 TO 7, WE FIND THE TRIAL JUDGE IN HIS STATEMENT TO APPELLANT, STATING THAT IN MAKING HIS FINAL VERDICT ON THE GUILT OR INNOCENCE ISSUE IN APPELLANT'S CASE, THAT HE WOULD NOT CONSIDER THE ABOVE-CITED "AMERICAN FORK MEDICAL REPORT", AS EVIDENCE IN THE STATE'S CASE "AT ALL". (TR. OF MARCH 10TH, 1987, AT P. 86, LINES 1 TO 7). BUT HE IN FACT DID CONSIDER THE "AMERICAN FORK MEDICAL REPORT", AS MATERIAL EVIDENCE ON FINDING APPELLANT "GUILTY" AS CHARGED OF AGGRAVATED ASSAULT BY A PRISONER.

WHEREAT APPELLANTS' SENTENCING HEARING OF MARCH 30TH, 1987, IN RESPONSE TO APPELLANTS' "ARREST OF JUDGMENT" MOTION, THE SENTENCING JUDGE, TIMOTHY R. HANSON, JUDGE OF THE THIRD DISTRICT COURT, STATES FOR THE RECORD: "AND I DON'T THINK YOU REALLY SERIOUSLY CONTEND THAT THIS MEDICAL REPORT IS FALSE. BUT EVEN IF YOU DO, I THINK IT IS NOT. SO THAT'S THE END OF THAT". (ST. OF MARCH 30TH, 1987, AT P. 20).

NOR WAS THAT THE ONLY TYPE OF EXTRINSIC AND AS WELL FALSE EVIDENCE THAT WHICH THE SENTENCING JUDGE HAS CONSIDERED IN ARBITRARILY MAKING HIS FINAL VERDICT OF "GUILTY" AS CHARGED IN APPELLANTS' CASE. FOR HE WAS ALSO BIASED IN CONSIDERING AS BEING VALID EVIDENCE THE STATES #4, bias exhibits of small 4 by 5 colored photo's of an alleged arm wound of the victims, AN PARTICULARLY OF TWO OTHERS ALLEGEDLY SHOWING A PHOTO OF A KNIFE STICKING THROUGH THE VICTIM'S PANT LEG. WHERE IN RESPONSE TO A DIRECT QUESTION FROM THE STATE PROSECUTOR, MICHAEL CHRISTENSEN, IT IS SAID: (TR. OF MARCH 16TH, 1987, AT P. 20).

"WAS A PHOTOGRAPH TAKEN TO INDICATE THE ENTRY OF THAT KNIFE INTO THAT PANT LEG AREA?
THE VICTIM'S REPLY WAS: "I DON'T RECALL".

ALSO SEE WHERE ON PAGE 35 OF THE SAME TRIAL TRANSCRIPT, IN RESPONSE TO APPELLANTS' DIRECT QUESTION,

his ALLEGED CUT PANT LEG OF his PRISON UNIFORM TO THE CRIME INVESTIGATORS AT THE PRISON?

THE VICTIM'S ANSWER: "NO, I did NOT". (TR. OF MARCH 10th 1987, AT P. 35, LINES 20 TO 25).

HENCE, THE STATE'S FOUR EX-HIBITS OF AN ALLEGED ARM WOUND OF THE VICTIM'S AND PARTICULARLY OF A PHOTO SHOWING A KNIFE GOING THROUGH A PANT LEG OF THE VICTIM'S PRISON UNIFORM, WERE UNCORROBORATED AND THEREFORE INVALID PIECES OF SO-CALLED MATERIAL EVIDENCE. FOR EVEN AS THE VICTIM, HIMSELF, HAD TOLD THE TRIAL COURT, HE DID NOT SUBMIT AS EVIDENCE HIS ALLEGED CUT PRISON UNIFORM TO THE CRIME PRISON INVESTIGATORS AT THE UTAH STATE PRISON. NOR DID HE RECALL IF A PHOTOGRAPH WAS TAKEN OF HIS CUT PANT LEG WITH A KNIFE GOING THROUGH IT OR NOT!

IT SHOULD FURTHER BE NOTED HERE THAT IN THE VICTIM'S TESTIMONY OF MARCH 10th, 1987, HE DENIED GOING STRAIGHT TO THE AMERICAN FORK HOSPITAL AFTER GOING OFF OF WORK AT THE STATE PRISON AT ABOUT 10:30 AT NIGHT. INSTEAD, HE TESTIFIED THAT HE WENT STRAIGHT HOME. WHEREAS THE AMERICAN FORK HOSPITAL REPORT SHOWS HIM AT THE HOSPITAL AT 22:55 HOURS, WHICH IN STANDARD TIME IS FIVE MINUTES TO 11 AT NIGHT. WHICH AMOUNTS TO BE SAYING IN EFFECT THAT THE AFORE-SAID MEDICAL REPORT, OF THE VICTIM'S, WAS INDEED A FALSE MEDICAL REPORT, "FOR A PERSON CANNOT BE AT TWO PLACES AT THE SAME TIME". (ST. OF MARCH 30th, 1987, AT P. 17).

Judge's "guilty" verdict be based exclusively on evidence at trial, and not on extrinsic evidence that was never used by the state, which was done in the appellant's case where the trial judge did in fact consider as being valid evidence the extrinsic false American Fork Medical Report of the victims in finding appellant "guilty" as charged. Therefore requiring that his case be reversed because of it. See UNITED STATES vs. PERKINS, 748 F.2d 1519, 1533 (11 Cir. 1984), holding that right to a fair trial by a jury, or, for that matter, a bench trial judge requires a trial court's verdict be based exclusively on evidence at trial, as extrinsic evidence threatens defendant's rights to confrontation, cross-examination and counsel. And see REMMER vs. UNITED STATES, 347 U.S. 227, 230 (1954), holding also that juror consideration of extrinsic evidence which poses reasonable possibility of prejudice requires new trial, and PATTERSON vs. COLORADO, 205 U.S. 454, 462 (1907), (dictum) (juries should consider only evidence and argument heard in open court); CARSON vs. POLLEY, F.2d 562, 569-71 (5th Cir. 1982) (new trial granted where inadmissible guilty pleas and complaints against defendant went to jury room and were considered by jury); UNITED STATES vs. Tebha, 770 F.2d 1454, 1456 (9th Cir. 1985) (taking unadmitted exhibit to jury room when exhibit was only evidence government offered

RELEVANT TO ISSUE WHETHER DEFENDANT INTENDED TO "CUT" HEROIN AND DISTRIBUTE IT, DEFENDANT ENTITLED TO NEW TRIAL."

MOREOVER, A STATE PROSECUTOR ALSO HAS A SWORN DUTY NOT TO PRESENT OR USE FALSE TESTIMONY IN TRYING A CRIMINAL CASE BEFORE A TRIAL COURT. BUT THAT IS EXACTLY WHAT WAS DONE IN THE INSTANT CASE AT BAR, IN THAT, AS THE APPELLANT HAS SHOWN, THE VICTIM'S FALSE TESTIMONY REGARDING THE ALLEGED VALIDITY OF THE SO-CALLED "AMERICAN FORK MEDICAL REPORT" WAS ALLOWED BY THE STATE PROSECUTOR TO BE USED AGAINST APPELLANT IN CONVICTING HIM OF AGGRAVATED ASSAULT BY A PRISONER, AND BECAUSE OF IT, REQUIRES THAT HIS CASE BE REVERSED ON THAT GROUND AS WELL. FOR REVERSAL IS REQUIRED WHEN THE PROSECUTION KNOWINGLY PRESENTS FALSE EVIDENCE TO THE TRIAL JUDGE. PARTICULARLY, WHERE AS SHOWN THAT THE VICTIM'S (OFFICER MOODY), FALSE TESTIMONY REGARDING EXISTENCE OF HIS APRIL 17TH, 1986 "AMERICAN FORK MEDICAL REPORT" IS FOUND TO BE MATERIAL TO THE OUTCOME ON THE BENCH TRIAL JUDGE BASING HIS "GUILTY" VERDICT ON IT. SEE BROWN VS. WAINWRIGHT, 785 F.2d 1457, 1464 (11TH CIR. 1986). (GOVERNMENT HAS DUTY NOT TO PRESENT FALSE EVIDENCE. (CITING Giglio VS. UNITED STATES, 405 U.S. 150 (1972)); IT WAS ALSO HELD IN "BROWN VS. WAINWRIGHT" SUPRA, THAT: "WRIT OF HABEAS CORPUS GRANTED BECAUSE WITNESS FALSE TESTIMONY MATERIAL TO OUTCOME".

(7th Cir. 1985), holding that "evidence obtained in violation of defendant's due process rights held plain error".

ONE OF THE MOST SIGNIFICANT EARLY CASES IN THIS AREA WAS MOONEY vs. HOLLOHAN, 294 U.S. 103 (1935), in which the Supreme Court held that the prosecutors' deliberate use of perjured testimony, and deliberate non-disclosure of evidence that would have impeached the testimony violated the defendant's Fourteenth Amendment right to due process. *Id.* at 112. And further, the U.S. Supreme Court had held since MOONEY vs. HOLLOHAN, *supra*, (1935), 294 U.S. 103, 79 L. Ed. 791, 55 S. Ct. 340, 98 A.L.R., that a state's knowing use of perjured testimony denies a fair trial to the accused. MOONEY has been understood to include cases in which a state knowingly permits false testimony to remain uncorrected. As was the case in appellant's bench trial in the Third District Court. Where the state prosecutor, MICHAEL CHRISTENSEN, had allowed the victim's knowingly given perjured testimony regarding when and where he had allegedly received his medical examination and treatment at. (Tr. of March 10th, 1987, at p. 26, 27, 28, and p. 29), on how the victim was allegedly stabbed in the leg, arm, chest, and particularly whether or not his

MARCH 10TH, 1987, AT P. 29, 35 TO 50); AND WHERE THE VICTIM WAS ALSO ALLOWED TO INTENTIONALLY AND KNOWINGLY WITHHOLD "AMERICAN FORK MEDICAL REPORT" FOR OVER NINE MONTHS FROM THE COURT, THE STATE PRISON CRIME INVESTIGATORS, AND PARTICULARLY, FROM THE APPELLANT EVEN LONG AFTER HIS INITIAL MAY 28, 1986, PRE-TRIAL REQUEST TO BE FURNISHED A COPY OF AFORE-SAID MEDICAL REPORT. (TR. OF OCTOBER 27TH, 1986, AT P. 12, 13, 14, 15, AND P. 16.) AND SEE. (TR. OF MARCH 10TH, 1987, AT P. 43) ALL TO REMAIN UNCORRECTED THROUGHOUT APPELLANT'S ENTIRE TRIAL, ESPECIALLY, TO EVEN REMAIN UNCORRECTED FROM THE DAY OF APPELLANT'S VERY FIRST PRE-TRIAL ATTACK ON THE VICTIM'S IMPEACHED PRELIMINARY HEARING TESTIMONY OF MAY 28TH, 1986, AS BEING NOTHING MORE THAN PERJURED TESTIMONY. AND SEE APPELLANT'S SECOND PRE-TRIAL ATTACK ON THE STATE'S UNLAWFUL USE OF THE KNOWINGLY GIVEN PERJURED TESTIMONY OF THE VICTIM'S IN HAVING HIM BOUND OVER FOR TRIAL ON IT. (TR. OF OCTOBER 27, 1986, AT P. 21 TO 22). AND SEE APPELLANT'S PRE-TRIAL MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT IN THE STATE ALLOWING SUCH A KIND OF PERJURED TESTIMONY TO REMAIN UNCORRECTED IN APPELLANT'S CASE. (TR. OF JANUARY 30TH, 1987, AT P. 16 TO 21). SEE ALCORTA v. TEXAS, (1957), 355 U.S. 28; 2 L. ED. 9, 78 S. CT. 103); NAPUE v. ILLINOIS, (1959), 360 U.S. 264, 3 L. ED. 1217, 79 S. CT. 1173. THE STANDARD APPLIED IN SUCH CASES, HAS BEEN WHETHER THE TESTIMONY "MAY HAVE HAD AN EFFECT ON THE OUT-

Applied in MILLER vs. PATE, 386 U.S. 1, 17 L. Ed. 2d 690, 87 S. Ct. 785 APART FROM dicta in BRADY vs. MARYLAND, (1963), 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194, WHERE JUSTICE HARLAN CONCEDES THAT THE STATE MAY NOT KNOWINGLY USE PERJURED TESTIMONY OR ALLOW IT TO REMAIN UNCORRECTED".

SEE ALSO UNITED STATES vs. AGURS, 427 U.S. 97, 103-0 (1976) (CONVICTION OBTAINED BY KNOWING USE OF PERJURED TESTIMONY SET ASIDE IF ANY REASONABLE LIKELIHOOD THAT TESTIMONY COULD HAVE AFFECTED JUDGMENT JURY").

THE SUPREME COURT FURTHER HELD IN BRADY vs. MARYLAND SUPRA, THAT THE GOVERNMENT'S FAILURE TO DISCLOSE EVIDENCE FAVORABLE TO A DEFENDANT WHO SPECIFICALLY REQUESTED IT, (AS THE APPELLANT HAD DONE AT HIS MAY 28, 1986, PRELIMINARY HEARING) VIOLATED DUE PROCESS RIGHTS OF THE ACCUSED WHEN THE EVIDENCE WAS MATERIAL AS TO GUILT OR INNOCENCE. Id. AT

AND SEE Giglio vs. UNITED STATES, (1972), SUPRA, 405 U.S. 150, 154, HOLDING THAT IMPEACHMENT EVIDENCE, AS WELL AS EXCULPATORY EVIDENCE FALLS WITHIN BRADY RULE.

HENCE, AS IN THE INSTANT CASE AT BAR, THE STATE PROSECUTOR, MICHAEL CHRISTENSEN'S, FAILURE TO PRODUCE ALL EVIDENCE FAVORABLE TO APPELLANT. (TR. OF JANUARY 27, 1987, AT P. 16 TO 21), IN TURN, VIOLATED APPELLANT'S DUE PROCESS RIGHTS TO A FAIR TRIAL EVEN THOUGH THE PROSECUTOR ACTED IN GOOD FAITH. SEE SMITH vs. PHILLIPS

OF TRIAL RATHER THAN OVERSIGHT OF PROSECUTORIAL CONDUCT).

IN GILES VS. MARYLAND, (1967), 386 U.S. 66, 17 L.ED. 2d 737, 87 S. CT. 793, THE COURT HELD FURTHER: "WE NOW HOLD THAT SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO THE DEFENDANT UPON REQUEST VIOLATES DUE PROCESS WHERE EVIDENCE WAS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF GOOD FAITH OR BAD FAITH OF THE PROSECUTION".

MOREOVER, "PROSECUTION HAS OBLIGATION NOT TO LET FALSE EVIDENCE GO UNCORRECTED AT TRIAL, EVEN IF PROSECUTION DID NOT SOLICIT IT". SEE NAPUE VS. ILLINOIS, SUPRA, (1959), 350 U.S. 264).

SEE ALSO WHERE THIS COURT ITSELF HELD IN WALKER VS. STATE, (1981), 624 P. 2d 687, THAT "WHERE PROSECUTOR DISCOVERED DURING TRIAL EVIDENCE WHICH CONTRADICTED THE TESTIMONY OF POLICE OFFICERS AND SUPPORTED DEFENDANT'S POSITION IN THE CASE, AND PROSECUTOR DID NOT DISCLOSE THE CONTRADICTORY EVIDENCE TO THE DEFENDANT OR TO THE COURT BUT RELIED UPON THE POLICE OFFICER'S TESTIMONY IN BOTH HIS CLOSING ARGUMENT AND SUMMATION TO THE JURY, HIS CONDUCT CONSTITUTED PROSECUTORIAL MISCONDUCT, SIMILAR TO KNOWING USE OF FALSE EVIDENCE AND DENIED DEFENDANT A FAIR TRIAL AND DUE PROCESS".

IN UNITED STATES VS. BAGLEY, 105 S. CT. 3375 (1985), THE U.S. SUPREME COURT AGAIN EXAMINED THE

"SPECIFICALLY EXAMINING WHAT STANDARD TO APPLY IN DETERMINING WHETHER TO REVERSE A CONVICTION BECAUSE THE PROSECUTOR FAILED TO DISCLOSE REQUESTED EVIDENCE THAT COULD HAVE BEEN USED TO IMPEACH GOVERNMENT WITNESSES. ID. AT 3377. IN ESSENCE, THE COURT HELD THAT SUPPRESSION OF IMPEACHMENT OR OTHER EXCULPATORY EVIDENCE AMOUNTS TO CONSTITUTIONAL ERROR REQUIRING REVERSAL ONLY IF SUCH EVIDENCE IS MATERIAL IN THE SENSE THAT ITS SUPPRESSION UNDERMINES CONFIDENCE IN THE OUTCOME OF THE TRIAL. ID. AT 3383 AND REMANDED THE CASE TO THE COURT OF APPEALS FOR A DETERMINATION. ID. AT 3385".

WHEREAS SHOWN IN THE APPELLANT'S CASE AT BAR, BOTH THE BENCH TRIAL JUDGE, TIMOTHY R. HANSON, AND THE STATE PROSECUTOR, NOT ONLY USED FALSE EVIDENCE AND TESTIMONY TO CONVICT APPELLANT, BUT AS WELL HAD KNOWINGLY ALLOWED THE VICTIM, DENNIS MOODY, TO GIVE HIS AFORE-SHOWN PERJURED TESTIMONY; TO CREATE HIS OWN PARTICULAR KIND OF CRIMINAL CASE AGAINST APPELLANT; TO CREATE HIS OWN FALSE STORY ABOUT AN ALLEGED "AMERICAN FORK MEDICAL REPORT." AND TO AS WELL EVEN INTENTIONALLY AND KNOWINGLY WITHHELD SUCH A TYPE OF "MEDICAL REPORT" FROM THE COURT, THE STATE PRISON CRIME INVESTIGATORS, THE STATE COUNTY ATTORNEY'S OFFICE, AND MOST IMPORTANTLY FROM THE DEFENDANT FOR OVER NIN

APPELLANT FALSELY. THEREFORE REQUIRING THAT HIS CASE BE REVERSED BECAUSE OF IT. PLUS, FOR THE OTHER REASONS SHOWN

CONCLUSION

BASED ON THE FOREGOING ARGUMENTS AND GIVEN REASONS FOR REVERSAL. THE REVERSAL OF APPELLANT'S MARCH 30TH, 1987, CONVICTION OF AGGRAVATED ASSAULT BY A PRISONER SHOULD BE GRANTED AND REMANDED TO THIRD DISTRICT COURT FOR A NEW TRIAL.

DATED: THIS 16TH, DAY OF DECEMBER, 1987.

Respectfully Submitted,
Ronald Dean Lancaster,
Appellant in pro-se

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED ONE HANDWRITTEN TRUE AND CORRECT COPY OF THE FOREGOING APPEAL BRIEF OF APPELLANT, POSTAGE PREPAID, TO MS. SANDRA L. STORGEN, ASSISTANT ATTORNEY GENERAL, 236 STATE CAPITOL, SALT LAKE CITY, UTAH 84114, THIS 16TH, DAY OF DECEMBER 1987.

/s/ Ronald Dean Lancaster
APPELLANT in pro-se