

1988

Jerry Joe Medina v. Gerald L. Cook, Warden, et al. : Brief of Appellant

Utah Supreme Court

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Jerry Joe Medina; Appellant Pro Se.

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IN THE UTAH SUPREME COURT OF THE STATE OF UTAH
IN AND FOR THE COUNTY OF SALT LAKE

JERRY JOE MEDINA

Appellant-Petitioner,

vs.

GERALD L. COOK, WARDEN et, al.,

Respondent's.

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Case No. C87-7241

BRIEF OF APPELLANT

Appeal to the Utah Supreme Court of the State of Utah from the Memorandum Decision of the Honorable Frank G. Noel, Presiding denying Appellant's Petition for a Writ of Habeas Corpus seeking relief from a Judgement and Conviction of Criminal Homicide, Murder in the Second Degree, Pursuant to Utah R. Civ. Pro. 73 B (i) 10 and 28 U.S.C. 2254 Alternate Writ of Error in Corum Nobis.

UTAH SUPREME COURT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CASES AND AUTHORITIES.	ii
STATEMENT SHOWING JURISDICTION.	v
STATEMENT SHOWING NATURE OF PROCEEDINGS	v
DETERMINITIVE CONSTITUTIONAL PROVISIONS, STATUTES, RULES.	vi
STATEMENT OF THE FACTS OF THE CASE.	1
SUMMARY OF ARGUMENT.	12
DETAIL OF ARGUMENT.	12
POINT I . . . Appellants Court appointed Trial Counsel committed reversible error by failing to conduct substantially adequate investigation both factual and legal, and discovery into Ap- pellants plausible line of defense, Counsel chose to employ at trial which prejudiced Appellants defense and worked to an actual and substantial disadvantage depriving Appellant of due process, and a fair trial and effective assistance at each critical stage of the proceedings against him, by Counsel failing to investigate the foregoing presented as A,B,C. . .	12
A. Counsel failed to conduct independant investigation to know and ascertain if the governments charges were ture that if in fact the bullet the victim allegely died from was found in the Appellants car, as the Appellant was charged.	18
B. Counsel failed to adequately investigate the sole witness. . .	20
C. Counsel's failure to investigate and suppress the false testi- mony of a convict with a vendetta was ineffective.	21
D. Counsel was further ineffective by not objecting, recording and preserving for Appeal, racially biased and prejudicial closing arguments that falsely insinuated previous heinous murder crimes.	24
E. Appellant Counsel was ineffective at a critical stage.	24
POINT II . . . Appellant alleges Prosecutorial misconduct that denied Appellant of due process and a fair trial.	25
CONCLUSION WITH A STATEMENT OF THE RELIEF SOUGHT	30
ADDENDUM	31
CERTIFICATE OF SERVICE	50

TABLE OF CASES AND AUTHORITIES

<u>CASE'S CITED</u>	<u>PAGE</u>
<u>AMERICAN BAR ASSOCIATION STANDARD FOR CRIMINAL JUSTICE</u> .	20
4-4.11 (2d ed. 1980) Guide for defense function.	
<u>ANDERS VS. CALIFORNIA</u> 386 U.S. 738, 734, 18 L.Ed 2d 493 87.	17
S.ct 1396 (1967)	
<u>BAGLEY VS. LUMPKIN</u> 719 F.2d 1462 (9th Cir. 1983).	28
<u>BALDWIN VS. MAGGIO</u> 704,F.2d 1325, 1333, (5th Cir. 1983) . .	20
<u>BELL VS. WATKINS</u> 692 F.2d 999, 1009, (5th Cir. 1982). . . .	20
<u>BERGER VS. UNITED STATES</u> 295 U.S. 78, 88 (1975)	29
<u>BINES-REMEDYING INNEFFECTIVE REPRESENTATION</u>	23
in criminal cases.	
<u>BROOKHARD VS. JANIS</u> 384 U.S. 1, 3, 16 LEd. 2d 314	23
86 S.Ct. 1245 (1966)	
<u>BRUTON VS. UNITED STATES</u> 391 U.S. 123, 136, 20 Led. 2d . .	23
476 88 S.Ct 1620 (1968)	
<u>COOPER VS. FITZHARRIS</u> 586 F.2d 1325, 1332-36 (CA-9, 1974) .	23
<u>CUYLER VS. SULLIVAN</u> 446 U.S. at 343, 64 L.Ed 2d	17
333, 100 S.Ct 1708	
<u>DAVIS VS. ALABAMA</u> 596 F.2d 1214, 1221-23 CA-5 (1979). . . .	20
<u>DAVIS VS. ALASKA</u> 415 U.S.308, 39 L.Ed 2d	23
347, 94 S. Ct 1105 (1974)	
<u>DEPARTURES FROM HABEAS CORPUS</u>	23
59 Va L Rev 927 (1973)	
<u>DONNELLY VS. DECHRISTOFORO</u> 416 U.S. 637-648 (1974).	29
<u>ESTELLE VS. WILLIAMS</u> 425 U.S. 501, 504, 48 L.Ed 2d	23
126, 96 S.Ct 1691 (1976)	
<u>FEDERAL. R. CRIM. PRO. 12F</u>	18
<u>FEDERAL. R. CRIM. PRO. 52 (B)</u>	18
<u>FLANAGAN VS. UNITED STATES</u> 465 U.S. 259, 267, 268	23
79 L.Ed 2d 288, 104 S.Ct. 1051 (1984)	
<u>FOSTER VS. CALIFORNIA</u> 394 U.S. 440, 442, N.2 (1964)	25
<u>INRE VS. MURCHISON</u> 349, U.S. 133, 136, 99 L.Ed 2d	23
942, 75 S.Ct. 623 (1955)	
<u>KNOTT VS. MABRY</u> 671 F.2d 1208, 1212-13 (8th Cir. 1982) . .	20

<u>CASES'S CITED CONTINUED</u>	<u>PAGE</u>
<u>KENNEDY VS. MAGGIO</u> 725 F.2d 269, 272 (5th Cir. 1984)	20
<u>KIMMELMAN VS. MORRISON</u> 106 S.Ct at 2586 (1986)	18,30
<u>MARTIN VS. MAGGIO</u> 711 F.2d 1273, 1280, (5th Cir. 1980)	20
<u>MASON VS. BRAITHWAITE</u> 432 U.S. 98 (1977)	18
<u>MURPHY VS. FLORIDA</u> 421 U.S. 794, 44 L.Ed 2d 589 95 S.Ct 2031 (1975)	23
<u>NEIL VS. BIGGERS</u> 409 U.S. 188 (1972)	25
<u>PAYNE VS. ARKANSAS</u> 356 U.S. 560, 567, 568, L.Ed 2d 975 78 S.Ct 844 (1958)	23
<u>PHELPS VS. DUCKWORTH</u> 757 F.2d 811, 824 (7th Cir. 1985)	29
<u>POWELL VS. ALABAMA</u> 287 U.S. 45, 77, L.Ed 2d 158 53 S.Ct. 55, 84, ALR 527 (1932)	23
<u>RULES OF EVIDENCE</u>	18
<u>RUMMEL VS. ESTELLE</u> 590 F.2d 103, 104 (CA-5 1979)	18,20
<u>SHEPPARD VS. MAXWELL</u> 384 U.S. 333, 351-52 16 L.Ed 2d 600, 86 S.Ct 1507 (1966)	23
<u>SMITH VS. ILLINOIS</u> 390 U.S. 129, 131, 19 L.Ed 2d 956 88 S.Ct. 1507 (1968)	23
<u>STATE VS. FRAME</u> 723 P.2d 401, 425 (Utah 1984)	16
<u>STATE VS. GEARY</u> 707 P.2d 645, 646, (Utah 1985)	19
<u>STATE VS. LAIRBY</u> 669 P.2d 1187, 1203-06 (Utah 1984)	16
<u>STATE VS. MCNICHOL</u> 554 P.2d 203 (Utah 1976)	18
<u>STATE VS. SMITH</u> 700 P.2d 1106 (Utah 1985)	24
<u>STATE VS. VALDEZ</u> 513 P.2d 422, 426 (Utah 1973)	24
<u>STATE VS. WULFFENSTEIN</u> 657 P.2d 289, 292 (Utah 1982)	18
<u>STOUALL VS. DENNO</u> 388 U.S. 293 (1967)	18
<u>STRICKLAND VS. WASHINGTON</u> 466 U.S. 668 (1983)	16,18
<u>UNITED STATES VS. AGURS</u> 427 U.S. 97, 110 (1976)	27
<u>UNITED STATES VS. CRONIC</u> 466 U.S. 648 80 L.ed 2d 657,104 S. Ct 2039	23
<u>UNITED STATES VS. GAMBINO</u> 788 F.2d 938 (3rd Cir. 1986)	29

<u>CASE'S CITED CONTINUED.</u>	<u>PAGE</u>
<u>UNITED STATES VS. LORD</u> 711 F.2d 887 (9th Cir. 1983).	27
<u>UNITED STATES VS. MCPHEE</u> 731 F.2d 1150-53 (5th Cir. 1984). . . .	29
<u>UNITED STATES VS. MONAGHAN</u> 741 F.2d 1434 (D.C. Cir. 1984). . . .	29
<u>UNITED STATES VS. MORRISON</u> 449 U.S. 361, 364, 66 L.Ed 2d 564, 101 S.Ct 665 (1981)	17
<u>UNITED STATES VS. SERLIN</u> 707 F.2d 953 (7th Cir. 1983).	29
<u>UNITED STATES VS. SHULTZ</u> 689 F.2d 365 (8th Cir. 1983)	18
<u>UNITED STATES VS. SMITH</u> 700 F.2d 627 (11th Cir. 1983)	29
<u>UNITED STATES VS. STITZER</u> 785 F.2d 1506 (11th Cir. 1986)	29
<u>UNITED STATES VS. VALDES-GUERRA</u> 785 F.2d 1411 (11th Cir. 1985) .	29
<u>WAINWRIGHT VS. SYKES</u> 443 U.S. 72, 93, REH, denied 443, U.S. 880 (1977)	24
<u>WASHINGTON VS. STRICKLAND</u> 693, F.2d 1243, 1251, (5th Cir. 1982). .	23
<u>WATKINS VS. SOWDERS</u> 449 U.S. 341 (1981)	18
<u>WILLIAMS VS. MARTIN</u> 618 F.2d 1021, 1027 (4th Cir. 1980)	20

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BRIEF OF APPELLANT

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STATEMENT SHOWING JURISDICTION OF THE UTAH SUPREME COURT

Appellant-Petitioner hereby appeals from the Memorandum decision of the Third Judicial District Court, the Honorable Frank G. Noel, Presiding. Pursuant to Rule 65 B (i) 10 of the Utah Supreme Court.

STATEMENT SHOWING NATURE OF THE PROCEEDINGS

Appellant-Petitioner filed a Petition for a Writ of Habeas Corpus Pursuant to Utah R. Cov. Pro. 65 B (i) 10 and 28 U.S.C. 2254 Alternate Writ of Error in Corum Nobis, alleging Newly Discovered Evidence that the convicting testimony, and evidence at trial, was tainted false, and contaminated and a fabrication of the facts that rose to a level of deprivation of due process and a fair trial and by the same logic Ineffective Assistance of Counsel and Prosecutorial Misconduct.

STATEMENT OF ISSUES PRESENTED ON APPEAL

POINT I . . . Did Appellants Court appointed trial counsel commit reversible error by failing to conduct substantially adequate investigation both factual and legal that she chose to employ at trial? And did this prejudice Appellants defense and work to an actual and substantial disadvantage depriving Appellant of due process and a fair trial and effective assistance at each critical stage of the proceedings against the Appellant? By Counsel failing to investigate the following herein presented A, B, C,:	12
A. Did Counsel fail to conduct an independent investigation to know and ascertain if the governments charges were true, being that if in fact the bullet the victim allegedly died from was found in the Appellants car as he was charged with? .	18
B. Did Counsel fail to adequately investigate the sole witness? .	20
C. Was Counsels failure to investigate and suppress the false testimony of a convict with a known vendetta ineffective? . . .	21
D. Was Counsel further ineffective by not objecting, recording, and preserving for Appeal, racially biased and prejudicial closing arguments that also falsely insinuated previous heinous murder crimes?	24
E. Was Appellant Counsel ineffective at a critical stage?	24
POINT II . . . Did the Appellant allege Prosecutorial Misconduct that denied Appellant of due process and fair trial?	25

DETERMINITIVE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

PAGE

CRIMINAL LAW 46.4 COUNSEL INEFFECTIVENESS

Strategic choices made after thorough investigation of facts and law relevant to plausible options are virtually unchallengible, while strategic choice's made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgements support the limitations or investigations or in other words Counsel has a duty to make a reasonable decision that makes particular investigation unnecessary.

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HABEAS CORPUS 85.2 (2) 28 U.S.C. 2254 CONST. AMEND. 6

Habeas Corpus Petitioner has burden of persuasion to demonstrate the alleged ineffective assistance of counsel and not only the possibility of prejudice but it worked to an actual and substantial disadvantage, but if the Petitioner successfully satisfies such a burden the Writ of Habeas Corpus must be granted unless the State can prove that Counsels, Ineffectiveness was harmless beyond a reasonable doubt.

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CRIMINAL LAW 641.13 (1) U.S.C.A. CONST. AMEND. 6

When defense counsel discerns only one plausible line of defense to serve his clients interests, effective counsel is obligated to conduct reasonable substantial investigations into that line of defense before proceeding to trial and failure to perform substantial investigation is clear example of breach of duty to investigate, and further when an attorney fails to conduct substantial investigation into any of his clients plausible lines of defense the attorney has equally failed to render effective assistance of counsel to a criminal defendant and also when counsel choose's among several plausible lines of defense excluding others for no strategic reason.

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CRIMINAL LAW 641.13 (6) U.S.C.A. CONST. AMEND. 6.

A particular decision not to investigate must be directly assessed for reasonableness in all the circumstances applying a heavy measure of deference to counsel's judgements, and at a minimum counsel has a duty to interview potential witness's and to make an independant investigation of the facts and circumstances of the case and if Petitioners Counsel fails to contact potential alibi witness's and to locate witness's who could have corroborated Petitioners testimony, counsels judgements were not professional reasonable.

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STATEMENT OF THE FACTS OF THE CASE

Appellant was charged on 4-1-84 with Criminal Homicide in the Second Degree under 76-5-203 Utah Code Annotated 1953 as amended, in connection with 1984 in Salt Lake City, Utah.

Appellant was tried before a Jury and found guilty of Second Degree Homicide in the Third Judicial District Court and was sentenced to 5-years to Life at the Utah State Prison by the Honorable J. Dennis Fredricks, Presiding, and is currently serving that sentence.

Appellant submits that the cause or origin of the Homicide is still unclear, only that the charges of Criminal Homicide arose out of two neighboring apartment buildings where two different parties were underway, located at 320 West 800 North in Salt Lake City, Utah.

Appellant had gotten off work at approximately 10:00 p.m. this same evening, which Appellant worked just a half block up the street at the Union Pacific Railroad at the time as a Pressure Systems Specialist Mechanic on locomotives, which Appellant had been employed for the Union Pacific for approximately 11-years at the time of this occurrence (Tr. of Trial P.442).

Appellant Mr. Medina who has strongly maintained his innocence, testified at trial that he (Appellant) and his cousin Leonard Fernandez had left this party between the early morning hours of 3:30-4:00 a.m. being approximately 30-minutes before the homicide occurred at 4:20 a.m. (Tr. of Trial P.18, 119,189,459) which was corroborated by all witness's accounts who testified that could remember when the Appellant had left this party (Tr.of Trial P.119, 123,210) which even the alleged sole eyewitness Ricky Myers even corroborated by testifying that:

"When everybody started leaving the party between 3:30 - Jerry Medina also left, and I didn't see him anymore after that, I would have to say that much" (Tr. of Trial P.233).

Appellants claim that he had left approximately 30-minutes before the Homicide can further be corroborated by the fact that at the time of the homicide all six (6) eyewitness's who talked to police and identified the cars and people they seen leaving the scene never identified the Appellant or his car, which these identifications were consistant, accurate and identical (See Police - Reports No. 84025540 P. 1, 7, 10, 12, and Tr. of Trial P. 43, 51).

At the time of trial the States convicting evidence and testimony consisted of three (3) witness's and closing arguments being;

- (A) Detective John Johnson, the arresting officer.
 - (B) Ricky Myers, the alleged sole eyewitness.
 - (C) Eli Archuletta, a inmate at the Utah State Prison and
 - (D) Closing arguments by the Prosecutor that mis-stated the facts and evidence and were inflammatory and prejudicial and insinuated previous heinous murder crimes.
- (A) Appellant submits in the first instance, Detective Johnson testified at trial that:

He (Detective Johnson) physically conducted a search of the Appellants (Mr. Medina) car and found a .38 Calibur bullet and that the car he searched was a 1974 Black Chevrolet Monte Carlo (Tr. of Trial P. 321) and that he Appellants Monte Carlo was parked out in the street in the circle (Catherine Circle Street) with numerous other cars (Tr. of - Trial 325) and that there were a couple vehicles also parked in the driveway (Tr. of Trial P. 316) that he (Detective Johnson) did not need no key's to enter the car because it was unlocked and that there were no alcoholic beverage containers in the car, either full or empty (Tr. of Trial P.317, 319). [1]

Appellant Mr. Medina asserts that Detective John Johnson assumed upon his search that this Black 1974 Chevrolet Monte Carlo belonged to the Appellant Mr. Medina, where in fact the car belonged to a friend of the neighbors named Mark Velarde who would of testi-

fied so at the time of Trial (EXHIBIT 2) and in further support Appellant submits the foregoing for this Courts consideration:

- (1) That Mr. Medina's car was a 1972 Chevelle Malibu that has no resemblance in any way, shape, or form to a 1974 Monte Carlo and does not have the words "Chevrolet" or "Monte Carlo" anywhere on the car for identificational purposes (Tr. of Trial - P. 446).
- (2) Mr. Medina's car was half painted grey primer from doing repairs and auto-body work on the car resulting from an automobile accident in a snowstorm after hitting "black ice" a few months previously (Tr. of Trial P. 449).
- (3) Appellants car was parked in the driveway, not in the street, where Appellant "pulled up into the house" and "parked in front of the house" "in the driveway" and further Appellants car doors were "locked" (Tr. of Trial P. 129, 489, 461).
- (4) Further its undisputed that Appellants car the night of the homicide was littered with numerous beverage (alcohol) the evening and Appellant drinking in his car upon leaving a bar and the Najera party (Tr. of Trial P. 129, 445, 454).
- (5) Further there were only two cars owned in the Fernandez household and only room for both of these cars in the Fernandez driveway and both the Fernandez car and the Appellants car were in the driveway at the time of Appellants arrest, which Detective Johnson testified he seen both cars in the driveway (Tr. of Trial - 316) by testifying he seen more than one car in the driveway.

Appellant Mr. Medina asserts that he was not present at the time this car was searched, nor did he witness or made aware or participate, further Appellant (Mr. Medina) was totally unaware that a bullet had allegedly been found at this time, and was not made aware of this fact until after his (Appellant) arrest when he bailed out of Jail, wherein he was notified by Court appointed trial counsel Francis Palacios, where he (Mr Medina) had informed Counsel of these facts, and also that he didn't know how a .38 could of been found in his car, and seen the bullet for the first time at trial (Tr. of - Trial P. 487) (2) Thus Appellant alleges Counsels performance was deficient and prejudicial because trial counsel not only made

[1] By all officers accounts who accurately identified the vehicle by make, model and year further stated the car searched was a Black 1974 Chevrolet Monte Carlo.

- See Police Reports No. 840254 Page 10, 21, (EXHIBIT NO. 10) "one live round of .38 Special Ammunition was found on the passenger side floor board of a car that was a Black 1974 Chevrolet Monte Carlo"

- See also testimony of Detective Leary; "the car Detective Johnson searched was a Black Monte Carlo". (Tr. of Trial P. 357).

no attempt to investigate or explain or contradict this discrepancy involving two different car's resulting in the use of this .38 bullet, and also being the only evidence used against the Appellant, but then Counsel further stipulated to its admission (Tr. of Trial P. 495). Thus resulting a manifest injustice by having the Jury consider convicting false evidence it shouldn't have which relieved the State of having to prove its case beyond a reasonable doubt and deprived the Appellants defense the opportunity to challenge on cross examination, which Appellant also states he never heard this discrepancy during trial do to at the time Appellant was preoccupied with how the bullet could of possibly of been in his (Appellants) car in the first place, and feels both Trial and Appellate Counsel should of caught this error, which Appellant never really knew about this error until after Direct Appeal when Appellant obtained his copies of the Trial Transcripts and Police Reports.

(B) Witness Ricky Myers, alleged sole eye witness;

Appellant Mr. Medina alleges the testimony of this States witness and alleged sole adverse eye witness was perjured, tainted and inaccurate for good reason by Ricky Myers own admission and testimony, in that at the initial confrontation at the Preliminary Hearing

[2] The record clearly shows that Appellant was never present during the search of the vehicle in question being a 1974 Monte Carlo, and further the Appellants assertion he relayed all information to Counsel in not having knowledge of how the bullet got in his car and not being present is corroborated by Counsel's and Detective Leary's testimony,

- See: Detective Leary testimony that: "No" me (Detective Leary) and Jerry Medina were not present when Detective Johnson conducted the search of the vehicle nor did we participate, after I (Detective Leary) remained with Jerry (in the patrol car) while Detective Johnson conducted the search of the vehicle which was a Black Monte Carlo and I wasn't made aware that the .38 bullet was found until after Mr. Medina's arrest (Tr. of Trial P.354,357).
- See: Francis Palacios: Now Jerry "we" know you don't have any idea how that bullet got in your car, but how can you explain it? (Tr. of Trial P. 467)

Ricky Myers testified the foregoing;

That he Ricky Myers denied he seen the Appellant shoot the victim 17-times in a row when asked by Francis Palacios and finally told Court appointed Lawyer Francis Palacios "I'll say it was Jerry medina because you (Francis Palacios) pressured me to say it was Jerry Medina (Tr. of Pre-lim Trial P. 52) and that at the time of the homicide he (Ricky) was intoxicated and didn't know who was allegedly standing outside with Appellant because he didn't pay no attention and that the flash of the gun came from the direction of the Appellant Mr. Medina but he couldn't say it was Medina who fired the gun because his back was to Medina at the time, and he never had any conversations with Mr. Medina only a couple of passing statements (Tr. of Pre-lim Pages 50, 53, 58) but did see the revolver which was a large Magnum type revolver approximately 10 $\frac{1}{2}$ -inches in length and that it seemed to him (Ricky) at the time that the victim was acting childish in his eyes that evening (Tr. of Prelim P. 62, 64) and that the victim never talked, argued or fought with Appellant Mr. Medina and Appellant also brings to this Courts attention that when Ricky was arrested he never identified Mr. Medina as wearing the clothes Mr. Medina was wearing that evening nor did he identify Mr. Medina as being overweight or having a beard, and a gun shot residue test that was performed on Appellant was negative and there was not one drop of blood found on the Appellants clothes when examined by a microscope at the State Crime Lab.

Then this witness Ricky Myers admitted to meeting with the Prosecutor Michael Christiansen and discussing this Preliminary Testimony and matters and recieving additional facts and details about the case from this Prosecutor and Police shortly before trial (Tr. of Trial P. 267) where then after this contact with the Prosecutor shortly before trial and after discussing Ricky's testimony Ricky's testimony radically altered and took on a different characterization and was completely different in that then, Ricky Myers testified that:

Then he (Ricky Myers) was not any longer intoxicated at the time of the homicide and also after this talk with the Prosecutor he could also remember who was out side with the Appellant at the time of the homicide and his (Ricky's) back was no longer to the Appellant, and in fact could even remember seeing the Appellant shoot the victim and also could even remember not just the passing statements he had with the Appellant but after the talk with the Prosecutor could even remember having conversations. In fact he could even remember having a big conversation with the Appellant when he allegely shot the victim (Tr. of Trial P. 244, 245, 249) but could no longer remember the size of the large 10 $\frac{1}{2}$ -inch

revolver he seen the Appellant use just 6-months earlier (Tr. of Trial P. 252) which then this lapse of memory resulted in the Prosecutor stuffing on the Appellant in front of the Jury the smallest manufactured .38 revolver in the Continental United States being a 5-shot stainless steel Smith & Wesson "Flyweight Special" with a 1/2-inch barrel and overall length of 4½-inches being a little bit larger than a derringer and less than half as large as the revolver previously described by Ricky (Tr. of Trial P. 474, 476).

Appellant alleges Ricky Myers trial testimony was perjured from start to finish because Ricky testified at trial that:

He (Ricky) had been in the Army and had an Honorable Discharge from the Army and that at the time of the homicide he was gainfully employed with a firm in Omaha, Nebraska called "New Energy Consultants" (Tr. of Trial P. 231, 272). Further that he drove long haul semi trucks for a living and was a truck driver and in the process of starting his own trucking company and firm, insinuating he was worth the possible millions it would take to undergo such a financial undertaking and that he had only been to Utah once before as a child 20-years earlier (Tr. of Trial P. 218, 223) and had arrived at the party and place of the homicide at 12:30-Midnite and had never met the victim George Givens before the evening of the homicide (Tr. - of Trial P. 231, 221) and that he Ricky Myers had never been convicted or arrested of any crimes or felonies, and that when he seen the Appellant Mr. Medina shoot the victim that he (Ricky) ran and walked to the Greyhound Bus Depot and waited 4 or 5 minutes then called the Police (Tr. of Trial P. 339,257)

But Appellant submits all to the contrary he has learned through investigation and informed sources that:

That it was showed at trial that Ricky was never in the Army and that no such place of employment existed called "New Energy Consultants" in Omaha, Nebraska (Tr. of Trial P. 424, 494). Further Appellant ran a check on Ricky Myers drivers license D.L. E0002253 and Ricky could not of been a truck driver because his license had been revoked for a long time for D.U.I. further Ricky couldn't have been in the process of starting his own trucking company because he was a transient, further Ricky did not arrive to this party at almost 1:00 a.m., in the morning because by all witness's accounts he had been at this party drinking since 9:00 p.m., (Police Reports P. 10, See; Tr. of Trial P. 64, 69, 107, 183, 444) a witness named Mrs. Schuurman after trial by Assistant District Attorney Bernard Tanner and Mr. Wendell Coombs of the F.B.I. (EXHIBITS 3, 4, 5) that Ricky Myers in fact knew the victim previously and in fact was "fall" partners in crime with the victim and had been arrested with the victim in up to seven states including in Utah and that both had extensive criminal records and further Mr. Tanner stated that everyone from the District Attorney's Office to the Jail knew both Ricky and the victim, George Givens and also Ricky's testimony that he

seen Mr. Medina shoot the victim where he Ricky then ran to the Greyhound Bus Depot and waited 4 or 5 minutes then called the Police is also false because the Appellant never shot the victim and because the walking distance to the Greyhound Bus Depot was approximately 29-minutes, and the homicide occurred at 4:20 a.m., but Ricky had not called the Police till 6:08 a.m., leaving a 1-hour and 20 minutes unaccounted for by Ricky (Tr. of Trial P. 429, 18, 340). Which was even more pronounced and incriminating on Ricky's part because at the time of his arrest he stated to Police that he was only calling them (Police) because his truck was parked at the scene of the homicide and was registered in his name and he didn't feel like digging a deeper hole for himself and he also, had negative feelings about calling the Police and that he saw the Police arrive, who had arrived in less than a minute after the homicide, but didn't want to talk to them and ran away from the area on foot (Tr. of Trial P. 296-298 339, 18).

which was indicative of guilt on Ricky Myers part and alleged and used a defense by Trial Counsel and should have been investigated as such by Counsel before proceeding to Trial.

(C) The only other person to implicate the Petitioner was a witness by the name of Eli Archuletta whose testimony came about after the defense rested (Tr. of Trial P. 496) when Counsel was made aware of the Prosecutors intention of calling Eli as a witness, Appellant claims that the handling of the evidence and known facts concerning this witness Eli, that Counsel's performance was again prejudicial in not comprehending the importance of investigating a witness's testimony in a murder trial when all facts known to Counsel show that this witness's testimony was inaccurate, self serving, motivated and uncorroborated, and warranted inquiry for the foregoing facts and circumstances alleged to be the basis of Appellants claims at this stage:

- (1) When Counsel was made aware of Eli's testimony and that a confession and incriminating testimony by the Appellant, Counsel stated that "she had not been aware of Eli or his testimony and was put in a bad posture, and therefore; requested she be given an opportunity to talk to Eli about his testimony and to talk to Appellant and have an opportunity to call a witness in rebuttal to Eli Archuletta or she (Counsel) would be an ineffective assistant, (Tr. of Trial P. 497) where the Judge agreed and stated

that he thought it would only be appropriate "In the light of the fact Eli has recently appeared" and therefore; recessed, and put no time limit in affording Counsel this opportunity and stated "we will recess and I'll just check with you later about when we will reconvene" (Tr. of Trial P. 498)

- (2) After recess Counsel talked to Eli (10-min.) and told by Eli that Appellant had met him (Eli) in the Annex Bar several months before the homicide resulting (3) in Eli later selling Appellant a .38 revolver, in which 1-month after the homicide Mr. Medina was alleged to of met Eli again in the Annex Bar and essentially confessed saying, "I didn't use any gun you sold me I used a .32" and that he (Appellant) shot the victim because "they were arguing" in which the alleged incidents from the initial meeting to the confession had occurred within the past year, prior to trial (Tr. of Trial P.508).
 - (3) After spending approximately 10-minutes talking to Eli, Counsel then discussed Eli's testimony with Appellant (for about 10-min.) where Counsel was made aware of Eli trying to shoot Appellants cousin Leonard several months* before Trial, which resulted in a confrontation with Appellant Mr. Medina at a local auto parts store also; before Trial, Counsel was also told that Eli's testimony was fabricated and a vendetta because Eli had made threats to get even with Appellant and his cousins and brother Charlie. Also; before trial (Tr. of Trial P. 515,521) in which Appellant further pointed out Eli's Rap Sheet (4) And deal which were also indicative of the motivation against the Appellant, which could also be corroborated further by the fact Eli's testimony lacked factual knowledge because Eli was going to testify Appellant confessed by saying he was "arguing with the victim" when it was undisputed by all at Trial Appellant had never argued with the Appellant, which Counsel never told the Appellant at this time the alleged confessions and meetings surrounding Eli had occurred allegedly at the Annex Bar, only that they were alleged to have happened, which Appellant had told Counsel to please object to the use of Eli's uncorroborated, false testimony.
-
- (3) In Trial about (25) minutes after talking to Counsel Eli erroneously testified that Appellant Mr. Medina had made the confession prior to December 1983 being 4-months before the homicide had occurred (Tr. of Trial P. 500,503) And could not remember if he had sold Appellant the alleged firearm 4 or 5 months before or after the homicide, until the State used a "Time Continuum" being a blackboard with the date January 1984 to lead Eli to say "before the - homicide" over a sustained objection for leading (Tr. of P. 508). Nor could Eli remember where he got the alleged firearm he allegedly sold the Appellant, Mr. Medina and that no one knew about this transaction and for the fact the first time he (Eli) had ever mentioned it or talked about it to anyone was here at Trial.

Wherefore Appellant alleges Counsel's performance was prejudicially deficient in allowing Eli's unfounded and inaccurate testimony by Trial Counsel's own admission in that Trial Counsel requested a recess to find a witness in rebuttal to Eli or she would be an "Ineffective Assistant", and Counsel did not call the Annex Bar to check Eli's story for rebuttal witness's and if Counsel had tried she would of called the Annex Bar (as Appellant did) and found out by the owner Joe Giron and Bartenders that Eli was lieing and would have testified so (EXHIBIT 9) but instead Counsel simply talked to Eli and Appellant for 25-minutes (Tr. of Trial P. 500) and rushed back to Trial, which really galls Appellants sense of fairness in light of witness Eli, now openly brags about having lied and gotten Appellant convicted of the very reasons alleged by Appellant (See Exhibit 12) here at the Utah State Prison.

Appellant asserts another alleged instance of prejudice was the Prosecutors use of/and Counsel's failure to object, record, and preserve for Appeal, prejudicial closing arguments dealing in matters not in fact or record that were racially inflammatory and insinuated previous murder crimes and also in which the Jury was not admonished or requested to be so by Counsel, which called to the attention of the Jury remarks they were not justified in considering, for instance when the Prosecutor stated: (EXHIBIT 6)

[4] At the time of Trial Eli was testfying pursuant to an agreement with District Attorney Ted Cannon and Deputy District Attorney Michael Christensen that he would not be prosecuted for dealing in stolen firearms and property and Felony Burglaries and all pending charges would be dropped thus Eli would not be sent back to prison for violating his parole in which at this time Eli had further served time at the Colorado State Prison and had an extensive criminal record since he was a juvenile and presently back in prison for numerous other Felony Burglary and thefts.

"What more do you need a confession from Mr. Medina just the fact the bullet found in his car matched the bullet that killed the victim proves he's the murderer, further Eli Archuletta is Mr. Medina's friend and he testified Medina had confessed to him and that he had sold Medina a .38 revolver, just look at him he ain't nothing but a macho-mexican who was being macho the night he became irate with the victim and shot him, don't kid yourself you have to live with the consequences of your verdict and all you have to do to put an end to all the needless bloodletting, murdering and killing going on is simply just convict Mr. Medina, and Mr. Medina shot the victim at point blank range because he was a bad shot with a firearm when he then jumped the wall enclosing the victim and ran to his car. (5)

Appellant submit this was plain error need admonishment because :

Because no where in the record does it prove the bullet was found in the Appellants car or that the Appellant was a macho Mexican or become irate with the victim or Eli Archuletta's friend or that Appellant had ever been involved in any murders. Further Appellant was awarded the highest meritorious commendation 'n marksmanship hitting targets at 500-ft. being an expert sharpshooter (EXHIBIT 7) and could not of (and not proved) jumped the 4-ft. enclosing the victim because Appellant has a lame left leg and can't jump which he injured in the army and can be proven by Army and hospital records, further at no time was there ever any blood or gunshot residue found on Appellant when extensive tests were conducted at the State Lab.

- [5] The State has stressed by insinuation that upon leaving the party that Appellants cousin admitted he stepped over the victim's body upon his arrest, Leonard Fernandez stated there was bodies lying all over the place and upon leaving the victim and Ricky Myers were still in the kitchen (Tr. of Trial P. 122, 124, 144, 146).

SUMMARY OF ARGUMENT

Appellants Court appointed Trial Counsel by failing to conduct adequate investigation and discovery resulted in Counsel undermining the proper function of the adversarial process resulting in appalling prejudice by the use of perjured testimony and false evidence to convict Appellant that decisely affected the outcome of trial which the challenged actions of Counsel cannot be considered sound trial strategy because Counsel had a duty to conduct these investigations at a minimum to ascertain strategy, but were inexcusable ignorance and senseless disregard of Appellants Rights resulting in a Manifest Injustice.

Appellant submits by the same logic the Prosecutor knowingly used perjured testimony and false evidence and prejudicial closing arguments and direct actions that deprived Appellant of his rights of due process and a fair trial, resulting in Collusion and Contamination and Fabrication of the facts that arose to a constitutional level of deprivation of Appellants above stated Constitutional Rights, Pursuant to the Provisions of the 6th and 14th Amendments.

DETAIL OF ARGUMENT

POINT ONE

Appellants Court appointed Trial Counsel comitted reversible error by failing to conduct adequate investigation and discovery both Factual and Legal into Appellants plausible line of defense that worked to an actual and substantial disadvantage depriving Appellant of due process and a fair trial and effective assistance of counsel at each of the critical stages of the proceedings against Appellant, in that Counsel failed to conduct adequate investigation into the foregoing herein after represented as A,B,C,

- (A) Counsel failed to conduct independent investigation to know and ascertain if the governments charge were true if in fact, the bullet that the victim allegedly died from was found in the Appellants car as the Appellant was charged.
- (B) Counsel failed to adequately investigate the sole adverse witness.
- (C) Counsel failed to investigate and suppress the false testimony of a convict with a vendetta.

- (D) Counsel was further ineffective by not objecting, recording, or preserving for Appeal prejudicial and racially biased closing arguments that were inflammatory and falsely insinuated previous heinous murder crimes.
- (E) Appellate Counsel was ineffective at critical stages.

The Right of an accused to Counsel is assured by Section 12, Article 1 of the Utah Constitution and by the Sixth and Fourteenth Amendments to the United States Constitution, which in State vs. Lairby 699 P. 2d 1187, 1203-06 (Utah 1984) the Utah Supreme Court adopted the standards for assessing an ineffective assistance of Counsel claim by articulation of the United States Supreme Court decision in Strickland vs. Washington, 466 U.S. 668 (1983). See; also; State vs. Frame 723 P. 2d 401, 405 (Utah 1986) in which the court in Strickland held that this Sixth Amendment Right is to effective assistance of counsel, and the benchmark for judging any ineffective assistance of counsel claim must be whether Counsel's (1) conduct and representation so undermined the proper function of the adversarial process that the trial cannot be relied on as having produced a just result, Strickland, Supra at 682, thus this "very premise" that underlies and gives meaning to the Sixth Amendment is meant to assure fairness in adversary criminal process, United States vs. Morrison, 449 U.S. 361, 364, 66 L.Ed. 2d 564, 101, S Ct 665 (1981). Thus the right to effective assistance of Counsel is the right of the accused to require that the prosecutions case to survive the crucible of meaningful adversarial testing by being subjected to meaningful effective cross examination as a result of Trial Counsel conducting investigations to secure evidence,

witness's, testimony and exhibits to test the Prosecutions case or the process loses its character as a confrontation between adversaries rendering counsel ineffective as an advocate, which infects the trial by the lack of adversarial testing and effective cross examination, thus violating this constitutional guarantee. (Cuyler - vs. Sullivan 446 U.S. at 343, 64 O. Ed 2d 333, 100 S. Ct 1708, Anders vs. California 386 U.S. 738, 743, 18 L.Ed 2d 493, 87 S. Ct 1396 (1967)).

Thus Courts in the past have focused on Counsels overall performance, but the type of breakdown in the adversarial process that implicates the Sixth Amendments is not limited to Counsel's performance as a whole, specific errors and omissions may be the focus of a claim of Ineffective Assistance as well, see; Strickland at 693-696 and has held that the Sixth Amendment imposes on Counsel a duty to investigate because reasonable effective assistance must be based on professional decisions and informed legal choices which can be made only after investigation of options and investigatory decisions and must be assessed in light of the information known to Counsel at the time, thus if there's only one plausible line of defense, Counsel must conduct a "Reasonably Substantial Investigation: into that line before proceeding to trial, "Since there can be no strategic choice that renders such an investigation unnecessary". Strickland, Supra at 689, (Quoting Rummel vs. Estelle, 590, F.2d 103, 104, (CA-5 1979)).

Thus with regard to the two-part standard set forth by the High Court in Strickland, Appellant asserts that the High Court and Circuit have been called upon to address the issue of Counsel's failure to conduct reasonable pre-trial investigation and discovery -

[1] The two prong standard mandated by Strickland requires Appellant to show (1) that Counsel rendered a demonstrable deficient performance and (2) that trial Counsels error was prejudicial and

and have continually found it ineffective which the Appellant herein submits for this Courts consideration the Three (3) case's that have had the most exhaustive review and are directly analogous to Appellants claims submitted herein, whcih Appellant first directs this Courts attention to the High Courts decision in Kimmelman vs. - Morrison 106 S. Ct 2574 (1986) (Id. at 2588) which held:

- (A) That Trial Counsel rendered Ineffective Assistance in his failure to conduct Pre-Trial discovery and investigations that would have disclosed the illegal search and seizure of incriminating evidence used against the Appellant, which the High Court found this to be a dereliction of duty to make reasonable investigation and ineffective for failing to make a reasonable decision that made particular investigations unnecessary Id. at 2589, (Quoting Strickland Supra at 668) which Appellant asserts should be assessed in light of Appellants claim in the first instance (A) Involving the only evidence used against the Appellant being a .38 bullet and pursuant to Criminal Law 641.13 (6) U.S.C.A. Const. Amend. 6. (Supra Page (1))
- (B) Appellant in the second instance directs this Courts attention to the Fifth Circuit's Courts decision in Nealy vs. Cabanna 764 F.2d 1173 (1985) (Id. at 1173) which held that:
 - (1) Petitioners Counsel's failure to contact potential alibi witnesses and locate witnesses who could have corroborated the Petitioners testimony was not under the circumstances reasonably professional conduct and was a deficient performance.
 - (2) That the missing testimony might have affected the Jury's appraisal of truthfulness of the State's witness's and its evaluation of the credibility of the conflicting witness's testimony Id. at 1173. Which Appellant respectfully requests this Court to view this reasoning pursuant to Criminal Law 46.4 Counsel Ineffectiveness Supra. Page (1); In conjunction primarily with Appellants claims involving both adversarial witnesses against the Appellant at the time of Trial.

[2] Martin vs. Maggio 711 F.2d 1273, 1280 (5th Cir. 1980) quoting Washington vs. Strickland 693 F. 2d 1243, 1251 (5th Cir. 1982) See; Kennedy vs. Maggio 725 F. 2d 269, 272 (5th Cir. 1984) Baldwin vs. Maggio 704 F. 2d 1325, 1333 (5th Cir. 1983) "Counsel has a duty at a minimum to interview potential witness's and independant investigation of the facts," Bell vs. Watkins 692 999; 1009 (5th Cir. 1982) Rummel vs. Estelle 590 F.2d 103,104, (5th Cir. 1979) This duty is also reflected in the American Bar Association standard for Criminal Justice 4-4.11 (2d ed.-1980) See: Knot vs. Maybry 671 F.2d 1208, 1212-13 (8th Cir.-1982) Williams vs. Martin 618 F.2d 1021, 1027, (4th Cir. 1980)

(C) And in the third instance Appellant request's this Court to view Davis vs. Alabama 596 F.2d 1214, 1221 (5th Cir. 1979) for its opinions regarding the amount of investigation into expert testimony and evidence required of a Defense Counsel and to ascertain if Counsel's performance was reasonable in discerning the plausible line of defense employed by Counsel regarding investigating persons to implicate the Appellant before proceeding to Trial also being mostly a convict parolee with a know vendetta or if Counsel's choice of defense was ineffective for excluding other critical lines of defense for no apparent investigative or strategic reason, especially in light of what was known to Counsel at the time and circumstances which Appellant submits for consideration that the Court in Davis found that:

When Trial Counsel failed to investigate and develop possible sources of evidence regarding the Defense Counsel chose to employ at Trial, and being the only line of defense, Counsel ascertained as plausible, Counsel's performance was deficient and ineffective because Counsel did not discharge the duty owed to the client and remanded the case to determine whether Counsel would have uncovered helpful evidence had Counsel properly investigated Id. at 1221; which Appellant respectfully asks this Court in their determination to view this in accordance to Criminal Law 641.13 (1) U.S.C.A. Const. Amend. 6. Supra. Page (1)

Therefore with redress to the two-part standard set forth by the Court in Strickland Appellant has easily met the first step because it is evident Trial Counsel rendered a deficient performance because all three (3) case's submitted for this Court's consideration (Supra) where investigative axioms have had exhaustive review the Courts have presumed that due to the facts and circumstance's surrounding a particular case that Counsel's decision usually not to investigate was a clearly developed strategy which reasonable judgement supported Counsel's limitation on investigation, or that most Defendant's could not point to any specific evidence or witness's that could have

been uncovered by a more through investigation, but here Appellant is arguing by pointing to decisively missing evidence and witness's that Counsel's decision to limit investigation into the facts known to Counsel before Trial was not supported by reasonable judgement or strategy because the missing testimony was needed for strategy to guide the Jury's correct appraisal and evaluation of the State's witness's conflicting testimony and the correctness of the evidence wrongly used against the Appellant, and reasonable judgement in supporting decisions and Appellants testimony in the presentation of Appellants defense.

Notwithstanding investigations and simple competence a member of the Bar should show a willingness to identify himself with the interests of the Defendant and present such defenses as are available to him under the law and consistant with the ethic's of the profession Id. upon review of the witness's affidavits in this matter it becomes apparent Appellants Trial Counsel did neither and was negligent in her handling of the evidence regarding potential witnesses by facts known before trial for instance, concerning the testimony and circumstance's surrounding Detective John Johnson who testified he found a bullet in the Appellants car upon a consent search, in which Counsel was provided a copy of the Police Reports No. 84025540 before Trial and Appellants immediate initial consultation (25-days after the homicide) when released from Jail, which Appellant stated:

That Appellant had told Counsel that he (Appellant) had not fired any gun or shot anyone and that he Appellant had left the party between 3:30-4:00 a.m., being almost 30-minutes before the homicide and at the time of his arrest he was drunk and could not remember giving permission or watching officers allegedly search his car and Appellant further did not have any idea how a .38 bullet could of been allegedly found in his car or for that fact how the police got in his car because the keys to his car were in his pocket and his

car doors were locked upon his arrest, and when asked by Counsel stated his (Appellants) car was an old 1972 Chevelle Malibu with lots of problems and was grey and black from a wreck and upon arriving home had parked in the driveway which Appellants discussion with Counsel at this initial consultation was corroborated by the Police Reports, Counsel was holding at this time which they specifically showed that a gunshot residue test was performed on Appellants hands and clothes and showed he had not fired a gun, and by all witness's accounts other than Ricky Myers who could remember at the time of the homicide when asked by Police remembered Appellant and his cousin had left before the victim and Ricky and before the homicide and that Ricky was the one seen leaving with the victim further that (6) other witness's that positively identified the car's leaving never identified the Appellants car further concluding that the Appellant had left earlier further Police Reports showed that at the time of the Appellants arrest that he was intoxicated and had his keys to this car in his possession and did not witness the search allegedly of his car which was also corroborated by Detective Leary's testimony and Police Reports also positively identified by all officers accounts at this time that the car searched was a black 1974 Chevrolet Monte Carlo parked out on the Street and Detective Johnson stated the car had no alcoholic beverage, containers being further indicative of not being Appellants car, or how a .38 bullet had been allegedly found in his car with no explanation to that or how police searched his locked car without his keys, further Appellants car did not resemble in anyway the car searched and identified by make, model, and year by all the arresting officers (See Addendum) which Appellant was never made aware of these factual differences by Trial Counsel and in fact had seen the bullet found for the first time at Trial.

Thus in the face of such equivocal and inaccurate evidence an effective advocate in a murder case would have understood the importance of investigating these facts to produce evidence to challenge the accuracy of the evidence being adduced by the State and to ascertain a plausible line of defense and to make strategic choice's, but in the instant case Defense Counsel not only made no attempt to contradict or explain this evidence but then Counsel stipulated to its use and admission which was deficient because if Counsel had

[3] See; United States vs. Gambino 788 F.2d 738, 949 (3rd Cir. - 1986) Ineffective Assistance Claims not entertainable on Direct Appeal with the narrow exception of a clear conflict of interest on record or where claim concerns an Ineffectiveness regarding an objection, See; United States vs. Stitzer 785 F.2d 1506, 1520 (11th Cir. 1986) Claims of Ineffective Assistance may not generally be considered for the first time on Direct Appeal. See; Kimmelman vs. Morrison 106 S. Ct. at 2586 (1986) it would be error

made investigation Counsel would have found the car belonged to the neighbors which was more compounded by the prosecution stressing from opening arguments all the way through Trial and Closing Arguments (EXHIBIT 8) that the bullet was found in the Appellants car and proved he was the murderer, and Appellant could not raise these issue's on Direct Appeal because:

Appellants investigative issues and closing arguments were not cognizable on Direct Appeal because they concern matters off the record and all cognizable issues were raised on Direct Appeal which the Supreme Court stated in (State vs. Wulffenstein 657, P.2d 289, 292, (Utah 1982) They will not consider matters off the record, thus Appellants immediate claims are no cognizable on Direct Appeal. (3).

Appellant asserts that Counsels performance was not only deficient for stipulating to t . s evidence but was also prejudicial requiring reversal as well because its been well settled and established that you cannot use mistaken identification of evidence resulting in the Jury being mislead as to its reliability, because the Jury's only duty is to assess the reliability of the evidence, and if the Jury is given mistaken identification of evidence to consider the high court and circuits have held its a direct violation of due process and a fair trial, the Rules of Evidence (402) and cognizable as just plain error.(4).

The Appellant readily admits that the adequacy of an attorney's service on behalf of an accused must be gauged by the totality of his representation, not be fragmentary segments analyzed in isolated

[4] See; Stouvall vs. Denno 388 U.S. 293 (1976) Neil vs. Biggers 409 U.S. 188 (1972) Manson vs. Brathwaite 432 U.S. 98 (1977) Foster vs. California 394 U.S. 440, 442 N.2 (1969) Watkins vs. Sowders 449 U.S. 341 (1981) United States vs. Shultz 689 F.2d 365, 368 (8th Cir. 1983) See; Fed. R. Crim. Pro. Rule 12 F that grants relief despite waiver if Defendant can give colorful showing he was unaware that evidence used was irreparable mistaken identification. See; also Rule 52 (B) Court may notice a plain error at any stage of a criminal proceeding despite a timely objection and See; also Rules of Evidence 402 that prohibit the use of evidence that is misleading, unfair & prejudicial.

cells (State vs. McNichol 554 P.2d 203 (Utah 1976) but while at first blush it may appear that the Appellant is attempting to isolate one particular part of his Counsel's representation, a closer examination reveals that Counsel's failure to further adequately investigate the State's alleged sole eyewitness and the only other person to implicate the Appellant effectively destroyed all of the Appellant's Rights to a Fair Trial and Effective Representation throughout the entire course of his Trial, which at this point it is critical to recall what was known to Counsel before Trial with respect to these two witnesses when considering if Counsel's conduct was reasonable or strategic or just plain derelict, which Appellant looks to what the Court stated in State vs. Wood 648 P.2d 71, 91 (Utah 1982) which the Court noted that to avoid forcing a Defendant to resorting to self representation an attorney should present a defense when insisted upon by a defendant even though it may be against the better judgement of the attorney Id. Whereas Appellant was also denied a defense when insisted upon by telling Counsel of the inaccuracy of the State's witness's which required objection or, immediately required investigation without Appellant's insistence in the first place, because of the inaccuracy of the facts and evidence in the case, which by pointing out what was known to Counsel before trial about both adverse witness's a clear denial of a defense can be established.

(B) Counsel before trial knew from the police reports that the victim and alleged eyewitness Ricky Myers were from the same area of California being the "Bay Area" of Oakland and San Francisco which Ricky Myers claimed he didn't know the victim or ever been arrested, but upon his arrest had made incriminating statements, Counsel I knew also that no efforts were made to retrace Ricky's steps for a weapon or to run an F.B.I. Rap Sheet for an out of State Record or breathalyzer test when Ricky was drunk, or anything but on Counsel's copy of the Police Reports it was stated by a witness named Willie Valdez that he seen a person who was possibly Ricky fighting with the neighbor the day before and Counsel was further told by Appellant of numerous witness's who had seen Ricky and the victim drinking and waving around firearms a week before the homicide also next door, Ricky claimed he just arrived in town 3-days before. Also at the Preliminary Hearing Counsel knew Ricky tried to deny he seen the Appellant shoot the victim 18-times then simply state "I'll say it was Jerry who shot the victim because you (Counsel) pressured me to" which Counsel at this point knew Ricky Myers was lying enough to choose it as a defense and say it to the Jury in Opening and closing arguments (Addendum).

Thus Appellant asserts that Counsel was ineffective for not investigating and developing possible sources of evidence like the

F.B.I. for Ricky's out of State Rap Sheet because it would of showed Ricky and the victim were crime partners and further was needed for the defense employed at trial because if Counsel; had Counsel would have perjured and impeached this alleged sole witness and the State's case could not have been established had this alleged sole witness's credibility been discredited, which Counsel's conduct was further drelict because Counsel did not discharge the duty owed to the Appellant Pursuant to U.S.C.A. Criminal Law 641.13 (1-6) and by conducting Pre-Trial Discovery and ineffective for notmaking a reasonable decision that made certain investigations unnecessary because Counsel also before trial knew Rickyk was lieing because he had lied at Preliminary about his alleged place of employment, but nonetheless the the only other investigation conducted by Counsel before trial was into the weather and a walk to a bus depot being unnecessary because witness's were called to testify and point out to the Jury matters already testified to and which were in the Police Reports being it was raining and snowing the night of the homicide and that Ricky walked to the Greyhound Bus Depot and called Police.

Counsel's deficient conduct was again demonstrated with the only other person to implicate the Appellant named Eli Archuletta, which Counsel's conduct considering the circumstance's was indicative of serious misconduct on Counsel's part in regard to her duties concerning the facts which were:

- (C) That after Counsel had rested Appellants defense Counsel was informed of the Prosecutions intention to call a "Surprise witness" who was a parolee from the Utah State Prison who had been arrested for numerous felony burglaries and possession and selling stolen property and guns in which this witness Eli had agreed and made a deal to testify against Appellant if the State dropped all pending charges and did not violate his parole and send him to prison, which at the time that Counsel was informed that Eli was going to testify Counsel requested that she be allowed time to question Eli about what his testimony was going to, discuss the matter with Appellant and try to find witness's in rebuttal to afford Appellant "Effective Assistance" and "Effective Representation" (Tr. of Trial P.497) which the Honorable Judge J. - Dennis Fredrick agreed and gave Counsel all the time she needed to do so by stating "it would only be appropriate to take a recess for this opportunity to hear Eli's testimony and try to contact rebuttal witness's and I'll just contact you later about when we'll reconvene" at which point Counsel talked to Eli and was told by Eli what his testimony was going to be, talked to the Appellant and was informed of a serious conflict and that Eli was lieing and never sold Appellant anything (which Counsel never mentioned anything that the alleged transaction occurred in the Annex Bar) and that Eli's testimony was fabricated and self-

serving because of this "deal" and "conflict" and was only obvious because it was uncorroborated by no evidence or witness's and that Counsel should object, but Counsel should of also objected because it was also apparent Eli lacked factual knowledge, because Eli stated Appellant essentially confessed saying he killed the victim because they were "arguing" when the fact was at this time by all witness's accounts Appellant never argued or fought with the victim, which at this point Counsel had spent approximately 15-minutes talking to Eli and 10-minutes talking to the Appellant and instead of trying to verify Eli's testimony and find rebuttal witness's as was the purpose of the recess. Counsel chose to just go back to Trial 25-minutes after the recess (Tr. of Trial P.500) leaving the Appellant hollering to his brother to run down and try to find out if Richard Martinez (the rebuttal witness) was home to try and shed some light on the motive behind Eli's testimony and to hurry, which Counsel never even planned to call this witness and another recess was called for discussion with this witness (Tr. of Trial P.519).

Thus Appellant asserts that under these circumstances that Counsel was derelict because Eli had told Counsel what his testimony was going to be which was that he Eli had met Appellant in the Annex Bar a few months before the homicide to discuss a transaction about buying a gun around December 1983 and Appellant had confessed to him Eli a month after the homicide around May of 1984, the Judge gave Counsel all the time she wanted by recess to converse with witness's and find rebuttal witness's by conducting investigation, to afford effective representation and assistance and Counsel chose to do neither, because if nothing else Counsel had a duty to at least call the Annex Bar and see if the Appellant had been there in the last year and when and or to try and call Appellants cousin back to the stand to testify, when given this recess, to the seriousness of the conflict because if Counsel had Counsel would of learned from the owner and part time bartender and disc-jockey that the Appellant had not been in the Bar from at least December 1983 to September 1984 and had never been seen around Eli anywhere much less the Annex Bar (Addendum) but Counsel instead simply chose to falsely implicate Appellant with Eli by giving inaccurate credibility to this witness and corroborate the Prosecutions claim that Eli was dealing in stolen guns and sold Appellant a gun and was testifying so he would not be charged as an accessory which was totally unfounded in the first place (Tr. of Trial P.512) Counsel should have just objected to this witness as suggested on the grounds he lacked personal knowledge, evidence, and his testimony was falsely

motivated and wrongly self serving and inaccurate and Eli was an uncredible witness.

Appellant further asserts for this Courts consideration that notwithstanding Counsel's deficient performance and the irreparable prejudice already established by the Appellant, that it is error to assume that prejudice has to be shown in all the circumstances, Appellant re-asserts that he is also alleging that Counsel's failure to conduct reasonable investigation also denied him his right of Effective Cross Examination at Trial, which the High Court in Davis vs. Alaska 415 U.S. 308, 39 L.Ed 2d 347, 94 S. Ct 1105 (1974) Held that prejudice need not be demonstrated under these circumstances and would be assumed under these circumstances and stated:

When a Petitioner has been denied his Right to Effective Cross Examination, it is Constitutional error of the First Magnitude that no amount of showing of want of prejudice would cure because the likelihood that even a fully competent lawyer could provide adequate assistance is so unlik.ly that prejudice is presumed without inquirey into the actual conduct at Trial (Citing Smith vs. Illinois 390 U.S. 129, 131, 19 L.Ed 2d 956, 88 L.Ed 2d 657, 104 S.Ct (1986) Powell vs. Alabama 287 U.S. 45, 77 L.Ed 2d 158 S.Ct 55, 84 ALR 527 (1932)

Further that circumstances of this magnitude are so likely to prejudice that the cost of litigating the effect is not justified. [5] (D) Appellant asserts in response to another alleged instance of Counsels ineffectiveness in not objecting, recording, or preserving - appeal prejudicial closing arguments that had no basis in record or evidence that insinuated previous heinous murder crimes and racial bias which Counsel failed to also ask for Jury instructions admonishing the Jury the State cites State vs. Smith 700 P.2d 1106 (Utah 1985) for the proposition that the remarks and comments were at most harmless error, but the Court in Smith stated:

"The test is did the remarks call to the attention of the Jury matters which they would not be justified in considering in determining their verdict and were they under the circumstances of the particular case probably influenced by the remarks" State vs. Valdez P.2d 422, 426, (1973) Id. at 1112.

[5] See e.g. Flanagan vs. United States 465, U.S. 259, 267, 79 L.Ed 2d 288, 104 S.Ct 1051 (1984) Estelle vs. Williams 425 U.S. 501, 504 48 L.Ed 2d 126, 96 S.Ct 1691 (1976) Murphy vs. Florida 421 U.S. 794, 44, L.Ed 2d 589, 95 S.Ct 2031 (1975) Bruton vs. United States 391 U.S. 123, 136, 137, 20 S.Ed 2d 476, 88 S.Ct 1620 (1968) Sheppard vs. Maxwell 384 U.S. 333, 351 16 L.Ed 2d 600, 86 S.Ct 1507 (1964) Payne vs. Arkansas, 252 U.S. 560 567 W.D. 074 58 S.Ct 844 (1958) Inre vs. Murchinson

it goes without saying bringing remarks that had no basis in Evidence or record called to the Jury's attention matters **that** were unjustified in considering and that they were influenced by these remarks, because the factual difference is in Smith the Court found substantial evidence of Appellants guilt and no prejudice because the Jury was instructed not to consider the statements as evidence, but unlike Smith the Court in the instant case, the Jury was not admonished not to consider the remarks as evidence and the Prosecution did not present substantial evidence indicative of guilt but used inaccurate and falsely established testimony and evidence to convict Appellant thus prejudice to Appellant is more easily established.

(E) Appellant alleges Counsel on Direct Appeal was ineffective for not catching and bringing to the attention of the Utah Supreme Court on Appeal or Supplementation of Record Trial Counsels error's notwithstanding that they were unappealable and satisfy the cause and prejudice standard Pursuant to Wainwright vs. Sykes 443 U.S. 72, 87 (1977) But mostly ineffective for failing to file a Petition for Reconsideration which Appellant made an attempt to within 30-days of decision to affirm his conviction but asserts this prejudicial error could hamper Appellants desire to show that Trial Counsels error's raised on Direct Appeal had nothing to do with strategy and tactic's or even logic, in which the High Court in Evitts vs. Lucy 105 S.Ct 837 (1985) Guaranteed Effective Assistance of Counsel on Direct Appeal where it is an Appeal as of a Right.

Appellant submits for this Courts consideration that Trial Counsel Francis Palacios or Attorney for Respondents never testified at Appellants Evidentry Hearing that Counsels failures to investigate would of been fruitless or unreasonable, nor did they show or argue any specific strategy or tactic because Trial Counsel "did not choose" strategic or otherwise but simply abdicated her responsibility that resulted in a decisive and determinative "factual vacuum" in Appellants conviction, of such prejudicial gravity that Appellants Petition for a Writ of Habeas Corpus should be granted to insure Appellant receives a Fair Trial unless the State can prove Trial Counsel's error's were harmless beyond a reasonable doubt Pursuant to Habeas Corpus Criminal Law 85.2 (2) 28 U.S.C.A. 2254 with respect to Appellant demonstrating prejudice that worked to an actual and substantial disadvantage.

POINT TWO

Appellant alleges Prosecutorial Misconduct that denied him of Due Process and a Fair Trial because the Prosecutor should have or could have known of the Fabrication of all witness's testimony and Evidence at the time of Trial and further that the prejudicial closing arguments had no basis in record or fact and were to simply mislead and inflame the Jury, which at Trial the Prosecutor could have or should have known that (1) that the bullet used at the time of trial against the Appellant was not Appellants or found in his car as he Appellant had insisted and all Police Reports showed by all Officers accounts who positively identified the car (2) that he (Prosecutor) should have know that the alleged sole adverse witness Ricky Myers was lieing because he (Prosecutor) stated he had extensive criminal checks run on Ricky Myers (Tr. of Trial P.347) And Assistant District Attorney stated everyone from the District Attorneys Office to the Jail knew Ricky and the victime had been crime partners for years and (3) he should have also known Eli was lieing because Eli's testimony was uncorroborated and lacked factual knowledge and was self-serving, inaccurate and criminally motivated and (4) he (Prosecutor) further should have known that his Closing Arguments were Plain Error. Because his Closing Arguments had no basis in fact or evidence and were prely to mis-lead and inflame the Jury wrongly by insinuating previous murders, and using racial remarks for instance when he stated:

What more do you need a confession from Mr. Medina just the fact the bullet found in his car matched the bullet that killed the victim proves he's the murder, further Eli Archuletta is Mr. Medina's friend and he testified Medina confessed to him and he sold Mr. Medina a .38 revolver, just look at him he ain't nothing but a Macho-Mexican who was being Macho the night he became irate with the victim and shot him, don't kid yourselves, you have to live with the consequences of your verdict, so all you have to do to stop all the needless bloodletting, murdering and killing going on is to simply just convict Mr. Medina.

Appellant submits the Jury should have been admonished because:

No where in the record does it prove the bullet was found in the Appellants car a 1972 Grey and Black Chevelle Malibu or that Eli Archuletta was ever Appellants "friend" or that Appellant was a "Macho-Mexican" or ever become "irate" or argue with the victim or that he was ever a suspect in any crime or murder previously as insinuated.

Thus the Jury would of reach a different conclusion because without testimony and false evidence because without it there wouldn't of

been any convicting evidence or testimony, and the Appellant submits a new trial is warranted because the Appellant was left unable to correct this falsity because he didn't learn of it until after trial because of the Prosecutor's intentional concealment, which possibly involved Trial Counsel, which is why Appellant alleges collusion, because trial counsel should have or could have known also, barring unexcusable prejudicial negligence in her ineffective representation.

Appellant submits that the Court in United vs. Lord 711 F.2d 887, 889 (9th Cir. 1983) found that the Prosecutor's deliberate intent to distort the fact finding process justified reversal when revealing post conviction discovery of evidence or perjury, in which Appellants claim of intentional misconduct involving this post conviction discovery of the known use or should of known use of perjured testimony or false evidence. Appellant is reminded of the "Brady" requirement of materiality set forth by the Supreme Court which has declared that "Implicit" is a concern at the suppressed evidence might have affected the outcome of the trial, for this the Appellant looks at the Court for its opinion in United States vs. Agurs, 427 U.S. 97, 110 (1976) which stated the degree of materiality required to overturn a conviction varied with the circumstances of the particular case, and distinguished three situations involving Posttrial Revelation of Evidence favorable to the Defendant that the government knew or should of knew that the Defendant did not:

- (1) When a Prosecutor knew or should of knew the case contained perjured testimony the Court will reverse for non-disclosure, if the false testimony could of affected the judgement of the Jury.
- (2) If the Defendant makes a "Brady" material, and the failure to disclose the material might of affected the outcome of trial.
- (3) When the Defendant did or did not fail to make a Brady request, the Court may reverse if the Nor-Disclosed evidence would of created a reasonable doubt that might not of otherwise existed.

Agurs thus recognized that some evidence is so clearly ex-
pulatory that due process requires its disclosure, even when the
defense fails to make a Brady request, and the Court went even
further in Bagley vs. Lumpkin 719 F.2d 1462 (9th Cir. 1983) where
it noted that precedent set in the Circuit dictated that prosecu-
torial failure to respond to a specific Brady request is error
and resulting conviction must be reversed unless the error is harm-
less beyond a reasonable doubt, Id. at 1463-64, but the court was
apparently more concerned with Sixth Amendment problems in the
case determining that the governments failure to provide the im-
peaching Brady material to Bagley, denied him the Right of Effective
Cross Exmination of the Sole Adverse Witness, Id. at 1464, citing
the holding of Davis vs. Alaska 415 U.S. 308, 318 (1974) "That such
denial was Constitutional Error of the first magnitude "Requiring
Reversal," the Court granted Bagley's motion, Id. 1464.

Appellant submit that the Prosecutor in implying the existance
of previous heinous murder crimes in closing arguments with racial
implications and arguments that had no basis in record, prejudicing
the Appellant, demonstrated a pattern of serious prosecutorial
misconduct that was designed to obtain this wrongful conviction in
which Appellant submits for the Prosecutor to avoid misconduct
the Prosecutor should confine the opening and closing arguments to
admissible evidence on record, and inferneces from that evidence,
a Prosecutor should also avoid unfair or improper remarks about the
Defendant, See; United States vs. Valdez-Guerra 758 F.2d 1411, 1416,
(11th Cir. 1985) "Prosecutor should refrain from using arguments
that have no basis in record and that are calculated to obtain a
wrongful conviction, See; opinion of Chief Justice Burger in the
case of Berger vs. United States 295 U.S. 78 88 (1975) "While a
government attorney may strike hard blows, he is not at liberty to
strike foul ones" See; Donnelly vs. DeCristoforo 416 U.S. 637-647,
648, (1974). Compare Phelps vs. Ducksworth 757, F.2d 811, 824 (7th
Cir.1985) Affirming District Court decision granting Defendants Writ
of Habeas Corpus when Prosecutor engaged in conduct which denied
Defendant due process. See; United States vs. Smith 700 F.2d 627,
633 (11th Cir. 1983) United States vs. Barton 731 F.2d 669, 675
(10th Cir. 1987) "Court may notice plain error even if not objected
to "Fed. R. Crim. Pro. 52 (B) See; United States vs. Monagan, 741
F.2d 1434 1440-41 (D.C. Cir. 1984) When assissing effect of Prose-

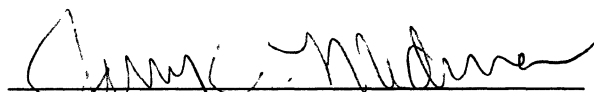
cutor's remark on Jury, due respect must be accorded to the Jury's commonsense, but Prosecutor may not urge Jurors to convict Defendant in order to protect community values, preserve civil order or deter future law breaking or for reason's irrelevant to own guilt or innocence. See; United States vs. Serlin 707 F.2d 953, 960 (7th Cir. 1983) Court does not condone misrepresentation of evidence. See; United States vs. McPhee 731 F. 2d 1150, 1152-53 (5th - Cir. 1984) reversal required when Prosecutor urged Jury to find Defendant guilty for a "Bunch of other reasons" and implied existence of other serious offences.

CONCLUSION WITH A STATEMENT OF THE RELIEF SOUGHT

WHEREFORE: Appellant respectfully submits that he verily believes that he has a meritorious cause of action and that he entitled to be granted an unconditional release and discharge from the unlawful and unconstitutional confinement and restraint imposed upon him as a result of the conviction entered against him deprivation of his Constitutional Rights, or in the alternate remand for a new Trial.

THEREFORE: Appellant respectfully prays that upon the failure of the Respondent's to adduce legal evidence to the contrary in rebuttal to the Appellants claims that this Court shall grant the Writ of Habeas Corpus and direct that said Writ of Habeas shall issue forthwith;
consistant therewith causing the release and discharge of Appellant unconditionally from the unlawful and unconstitutional confinement and restraint and imprisonment presently imposed upon the Appellant by the Respondent's at the Utah State Prison.

Respectfully Submitted, ~



JERRY JOE MEDINA
P.O. Box 250
Drapers, Utah 84020

Subscribed and sworn to before me this _____ day of _____ 1988.

NOTARY PUBLIC _____

My Commission expires: _____

IN THE UTAH SUPREME COURT OF THE STATE OF UTAH
IN AND FOR THE COUNTY OF SALT LAKE

JERRY JOE MEDINA

Appellant-Petitioner

vs.

GERALD L. COOK, WARDEN et al.,

Respondent's.

)
)
)
)
)
)
)

Case No. C87-7241

"ADDENDUM" TO APPELLANTS BRIEF

Appeal to the Utah Supreme Court of the State of Utah from the Memorandum Decision of the Third Judicial District Court the Honorable, Frank G. Noel, Presiding, denying Appellants Petition for a Writ of Habeas Corpus Pursuant to Utah R. Civ. Pro. 65 B (i) 10 and 28 U.S.C. 2254 Alternate Writ of Error in Corum Nobis.

Jerry Joe Medina
P.O. Box 250
Draper, Utah 84020

Appellant-Petitioner, In Propria Persona

David L. Wilkinson
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorney for Respondent's.

INDEX TO ADDENDUM

	<u>PAGE</u>
EXHIBIT NO. 1 & 2 Affidavit of Mark Velarde	1
EXHIBIT NO. 3 Affidavit of Ruth Medina	2
EXHIBIT NO. 4 Affidavit of Janet Schuurman	3
EXHIBIT NO. 5 Letter from F.B.I.	4
EXHIBIT NO. 6 & 7 Affidavit of Leonard Fernandez	5
EXHIBIT NO. 8 Newspaper Article of Closing Arguments	6
EXHIBIT NO. 9 DD-214	7
EXHIBIT NO. 10 Police Reports P. 10,21	8
EXHIBIT NO. 11 Affidavit of Lorenzo Tuero	9
EXHIBIT NO. 12 Affidavit of Ronald Warren	10
EXHIBIT NO. 13 Affidavit of Jerry Medina	11

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SALT LAKE

STATE OF UTAH

JERRY JOE MEDINA

PETITIONER

VS

GERALD L. COOK WARDEN et al.,

RESPONDENTS

CIVIL ACTION

CASE No. C87-7241

AFFIDAVIT OF MARK VELARDE



STATE OF UTAH)
COUNTY OF SALT LAKE) AFFIDAVIT OF MARK VELARDE :

I MARK VELARDE BEING FIRST DULY SWORN UPON
MY OATH Depose And SAY :

That on April 1, 1984 I was made aware By A Friend who owns
A Black Chevrolet monte Carlo, that his car was shook down in front
of Fernandez home At 618 Catherine Circle, For no Apparent
reason, around 9:30 Am which the Fernandez home was right
next door to my moms At 626 Catherine Circle where i was staying
at that Period of time, And i state right now Jerry Medina was
not the owner of that car And i could Prove it. At that Period of
time on April 1, 1984 I was on 18 hour Home Visits from the Utah
State Prison which lasted from Sat - afternoon Til Sun -

mornings where i would leave my moms House at 10:Am sharp on Sunday mornings to return to prison, on this Particular Sunday of April 1, 1984 A Bro who is a parolee stopped by my moms At about 9:00Am to leave me some money for my Books and Because there was no room to Park in Front of our house, This Parolee had to Park in Front the Fernandez home, which at about ~~at 9:30 Am~~ he witnessed his car get ting shook down, and got scared, and left and returned later to pick it up, IF necessary At a trial i will testify who the owner is and present Proof if i get subpoena to go, At this time however i do not wish to reveal the name of that Person who owns that Car For good reasons, some of which is Because i am Presently Incarcerated at the Utah state Prison For an Armed Robbery conviction, From that same period of time and do not want to PreJudeice on this Armed Robbery Con- viction Because of the Bullet found in that Car and i don't want to - Jepordize my Bro's parole, which Prohibit Being around Guns, weapons and Ammo which was found in that Car, which if i did, it could turn and put my life at Danger and Grave Risk. But to the Best of my knowledge i am 100 percent sure that the car they shook down that day was my friend.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT Signed THIS 14TH DAY OF March 1988.

SIGNATURE Mark Velarde
ADDRESS P.O. Box 250
Draper, Utah 84020

Subscribed And Sworn to Before me THIS _____ 1988

NOTARY PUBLIC

JERRY JOE MEDINA
P.O. Box 250
DRAPER, UTAH 84020

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JERRY JOE MEDINA

PETITIONER In PROPRIA PERSONA

VS.

GERALD L. COOK WARDEN ET AL.,

RESPONDENTS

CIVIL ACTION

CASE NO. C87-7241

AFFIDAVIT OF MARK VELARDE

STATE OF UTAH)
COUNTY OF SALT LAKE) AFFIDAVIT OF MARK VELARDE

I Mark Velarde BEING FIRST DULY SWORN UPON
MY OATH DEPOSE AND SAY: As i stated on my previous Affidavit i will
testify For Jerry Medina about ownership of the 1974 Black chev-
rolet monte carlo But for clarification Because of things that
have come to my attention is what i m saying is that at the
time of trial i would ~~of~~ have also testified and Jerry medina
would of used me to Testify to that monte carlo.

X I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

DATED THIS 10 DAY OF April 1988

Signed Mark Velarde

1 Jerry Joe Medina
2 Petitioner, In Propria Persona;
3 P.O. Box 250
4 Draper, Utah 84020

5 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH
6
7 IN AND FOR THE COUNTY OF SALT LAKE

8 JERRY JOE MEDINA

9 Petitioner, In Propria Persona;

10 vs.

11 GARY DELAND, DIRECTOR UTAH STATE DEPARTMENT
12 OF CORRECTIONS, DANIEL FRANCHINA, SUPERINTENDENT

13 Respondent's.

Civil No. _____

AFFIDAVIT OF RUTH MEDINA

14
15 I, Ruth Medina being first duly sworn, on oath depose and say:

16 I received a letter from the office of Assistant Attorney General, Bernard
17 Tanner, April 8, 1985 regarding an overpayment turned over to him from Recovery
18 Services advising me to contact his office and schedule an appointment within
19 7-days from the date of his letter or he'd pursue legal action against me.
20 (EXHIBIT - 2)
(Copy of letter is attached for reference) I did so, scheduling my appointment
21 on or near April 13, 1985 for 11:30 a.m., I kept my appointment. Mr. Tanner
22 asked me why wasn't I getting child support and I told him my husband was in
23 prison, he asked me why, and I told him he was convicted for second degree
24 murder, but he was in process of appealing it because he wasn't guilty. Mr.
25 Tanner asked me who the deceased was, and I told him his name was George Givens
26 or Gregory Newman, one of the two, Mr. Tanner sat back in his chair for a minute
27 and asked if he was black, and I said, "Yes, how do you know that?" he then
28 asked me if there was a witness and I told him that the person who was the
29 witness, we believe is the one who shot this George Givens. Mr. Tanner replied;

1 know of Jerry's trial? He said, "No, that he knows Ricky Myers and George both
2 and they hang out at sleezy, dirty bars and have been arrested and in and out
3 of court more than he has, and they both have criminal history's here in Utah
4 and several other states. He asked, "How did Ricky ever stand to testify
5 under oath, and who was Jerry's attorney?" I said, "Francis Palacios a Legal
6 Defender. Mr. Tanner chuckled, and shook his head, he said, "That's too bad,
7 she must of been the pits, and that trial a farce, why didn't she research
8 police records?" Because everyone from the District Attorneys Office to the
9 County Jail knows Ricky and George, I told him, I don't know, there were alot
10 of things she didn't do and alot of things she should have done. He said,
11 "Sounds like it, well good-luck with your Appeal." I told him "Thanks."
12 Almost a year later, after we lost our Appeal with the Supreme Court and we
13 decided to file a Writ of Habeas Corpus, I thought of the conversation with
14 Bernard Tanner and I was thinking that hopefully if I could get an affidavit
15 from him regarding the information he had given during our appointment
16 previously maybe it would help, so I called his office and spoke with his
17 secretary. He asked if he could relay the nature of the appointment and I told
18 him briefly why I needed to see Mr. Tanner, and all I asked for was fifteen
19 minutes, he asked, for my phone number and said he'd call me back, and he did
20 only minutes after I hung up, and said; "Mr. Tanner remembers you and your
21 conversation and can see you at 2:15 p.m. today which was May 11, 1987. I told
22 him "Thank-You" and hung up.

23 I took Janet Schuurman with me so I would have someone who could verify
24 the conversation this time. Mr. Tanner admitted he remembered me, I went over
25 the whole conversation we had at the first appointment, he admitted he did
26 remember our conversation, then he tried to bypass the request of an affidavit
27 by picking up the phone and talking to Reed Stringham to find out the standing
28 of my overpayment case, when he finished the conversation with Mr. Stringham,
29 he turned to me and said he couldn't write an affidavit for me, but if I

1 through the Freedom of Information Act and I could get that at the Salt Lake
2 City Library or I could even go across the hall to the Supreme Court Law Library
3 and he pointed the way, I asked him again to please sign an affidavit and he
4 said, "I'm sorry." So Janet and I went down the hall directly from Mr. Tanner's
5 office and I waited a few minutes because the Librarian was busy at the moment,
6 when she asked if I needed something, I told her, Yes, I need the Freedom of
7 Information Act on Ricky Myers criminal record, she looked confused, so did I,
8 she asked me, "What? I don't really understand what it is your asking for" and
9 I told her Bernard Tanner sent me here to get the Freedom of Information Act
10 on Ricky Myers criminal record, he sent me here to get that information. She
11 then was frustrated and even angry, she apologised for being rude but that he
12 was always doing that, she told me to wait a minute because she was by herself
13 until the others came back from their break and she would help me. So I waited
14 and I heard her phone Mr. Tanner's secretary and she asked to speak to Barney
15 about what he was actually needing but apparently he was on another line so she
16 left a message for him to return her call, then she came back to me and said,
17 "Well any information of the Freedom of Information Act is found there and she
18 pointed at the wall of books and told me to start there and she'd try to get
19 over and help me," so I did, after looking a few minutes I found something
20 regarding the Freedom of Information Act and walked back over to her and asked
21 her, "If this was it?" She laughed, and commented about being surprised that
22 I was able to find it, that most people stay there for an hour or so before
23 finally asking for help. She told me that was it but there was probably more
24 updated information, by then she was able to come and help me and she did, and
25 by then I was pretty humiliated by Mr. Tanner that I told her the whole reason
26 I was needing that information and the affidavit and Mr. Tanner refused to
27 write one, I even told her that Mr. Tanner told me exactly what to ask for and
28 I could tell, she didn't even have an idea of what I was talking about.
29 Through our conversation she added comments, such as: "Figures, Sounds like

1 I looked at the books she pulled off the shelf and I copied anything
2 pertaining to the Freedom of Information Act, I didn't feel I was getting the
3 information Mr. Tanner told me I could obtain but at that point I felt I was
4 definitely getting the run around and that was Mr. Tanners way of brushing me
5 off. Before I left the library I saw the Librarian who helped me I also looked
6 at her name badge, her name is Sheryl Saxton, I thanked her for her help and
7 she said, "Sure, don't feel bad, your not the first one Barney's sent here;
8 he should come with the people and tell me what he's after or they're after,
9 but he don't.

10 It was in July when I initially tried to contact Sheryl Saxton, but she was
11 on vacation so I tried again a week later and spoke with her, I told her who
12 I was, why I was calling and I hoped she would sign an affidavit.

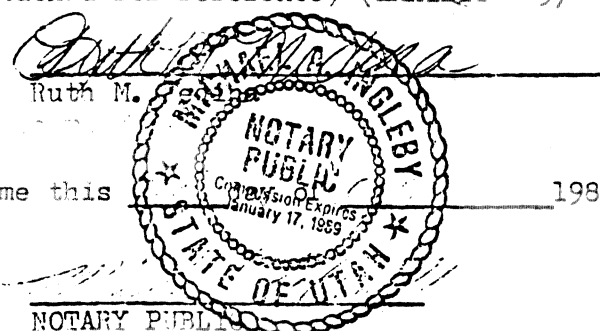
13 She remembered me and our conversation that day I was in the library, she
14 told me she would write and affidavit for me but first she wanted to talk to a
15 friend and she asked me to call her back later that day.

16 I phoned her back that same day 3:00 p.m. and asked her if there were any
17 problems with her writing an affidavit for me and she said, "No, she could
18 write about her remembering me and that she helped me in obtaining the Freedom
19 of Information Act and we did have conversation but she could not write anything
20 else on the affidavit because it would directly involve her," and I said, I
21 understood but I'd appreciate whatever she could give me, just as some kind of
22 verification of me ever being there.

23 I personally picked her affidavit up on August 5th, 1987.

24 (Copy of Sheryl Saxton's affidavit attached for reference) (EXHIBIT - 5)

25
26
27 Subscribed and sworn to before me this



1987

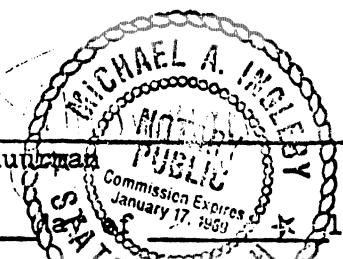
I, Janet C. Schurman the undersigned being first duly

sworn, on oath depose and say: I accompanied Ruth Medina to the office of Assistant District Attorney General Mr. Janner on May 11, 1987 at 11:00 AM as a bystander witness to Ruth Medina's claim that Mr. Janner had told her that Ricky Myers had known the victim George Alvarez and that Ricky Myers had a long record in several states, where when we got to Mr. Janner's office Ruth Medina reported a bunch of things about the lives of Ricky and George's relationship and their long police records where Mr. Janner acknowledged the appointment and drawing said things in that of a duty and that he was not at liberty to discuss the case any further nor could he give Mrs. Medina an affidavit and if she wanted a copy of Ricky's Criminal Record she would have to go to the Supreme Court Law Library and get a copy of the Freedom of Information Act, where Ruth Medina proceeded to the Supreme Court Law Library to pick up a copy of the Freedom of Information Act.

Signed: Janet C. Schurman

Janet C. Schurman

Subscribed and sworn to before me this



1987



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Room 3203
Federal Office Building
125 South State Street
Salt Lake City, Utah 84138
October 6, 1987

Ms. Medina
3516 San Carlos Drive
West Valley City, Utah 84199

Dear Ms. Medina:

This is in response to your letter dated September 22, 1987, and received at the Salt Lake City Office on September 24, 1987, concerning the procedures to obtain information under the Freedom of Information Act.

To insure an accurate search of our records you must provide your complete name, date and place of birth, prior addresses, employments, and any other specific details that would aid in identifying the requested records.

Additionally, to insure that personal information is released only to an authorized individual, the requester must submit a notarized signature (or a notarized authorization giving the requester access to another individual's records).

Very truly yours,

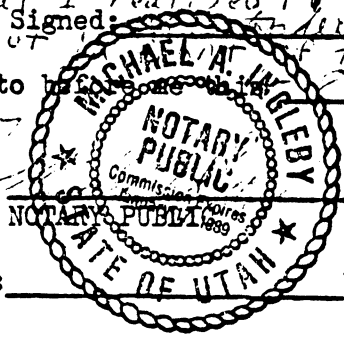
Robert M. Bryant

A handwritten signature in cursive script, reading "Vernon D. Kohl", is written over the typed name.

By: Vernon D. Kohl
Assistant Special Agent in Charge

I, CHRISTOPHER L. FERNANDEZ the undersigned being first duly sworn, on oath depose and say: THAT ON JULY ⑦ 1984 Ely Archuletta and me had a confrontation in which he inflicted the injuries attached to this hospital statement, which caused bad feelings and conflict between Ely and me and Jerry because Jerry lived with me and my family at 618 Catherine Circle in rose park. And Ely had made threats to me at this time that he would get even with all my brothers including Jerry and Charlie (Jerry's brother). And there are still hard feelings between us to this day. I would also at this ~~time~~ moment like to recant part of my misunderstood testimony at this time, the night of the homicide when I was leaving I stepped over bodies of people on the way out of the front door, and they were layed back as I testified, but on the floor and a bean bag in front of the door it was possibly Danny Pivas, though there were others there also at the side of the couch by the front door. I had been drunk a couple of days at the time and never thought about it, until after the trial I realized it was in fact on the way out the front door and not out Signed: Christopher L. Fernandez at the door.

Subscribed and sworn to before me this 10th day of July 1987



My Commission expires: 19

1. Jerry Joe Medina
2. P.O. Box 250
3. Draper, Utah 84020

4. IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SALT LAKE
5. STATE OF UTAH

6.
7. JERRY JOE MEDINA

8. Petitioner,

9. vs.

10. GERALD L. COOK, WARDEN et al.,

11. Respondent's,

} CIVIL ACTION

} CASE NO: C87-7241

} SUPPLEMENTAL AFFIDAVIT OF
} LEONARD FERNANDEZ

12.
13. STATE OF UTAH)
14. : SUPPLEMENTAL AFFIDAVIT
15. COUNTY OF SALT LAKE)

16. I, Leonard Fernandez, being first sworn upon my oath
17. depose and say:

18. That if I had known Eli Archuleta was going to testify against Jerry
19. during his trial I also would have testified as to the vendetta and threats
20. he constantly made with our family.

21. I declare under penalty of perjury that the foregoing is true and
22. correct signed this 1 day of July 1988.

23.
24.
25.
26. Signed: Leonard Fernandez
27. Leonard Fernandez
28.
29.
30.

ripped open a second portal into the Wilberg Mine Friday and began pumping in nitrogen foam in hopes of using the entrance to shorten the task of reopening the mine. The mine's portals were sealed shut with earth and cement-like materials to help smother the fire that killed 27 miners Dec. 19. The portal, known as Third East, would

to the bodies. Ultimately, the Emery Mining Corp., which operates the mine for Utah Power & Light Co., hopes to recover the bodies and mine the Wilberg's coal again. In February, crews entered the mine through the nearby Fourth East portal, but the attempt was abandoned when it was discovered the Third East tunnel was not

route could save several weeks in reopening the mine. UP&L spokesman John Ward said workers will continue pumping nitrogen foam into the mine to cool the smoldering coal and could possibly enter the tunnel Friday night. The crews will inch their way forward, shoring up the burned roof as they go, he said.

EXHIBIT - 8

Medina guilty in slaying of Ohio man

By Jan Thompson
Deseret News Staff writer

Jerry Joe Medina was found guilty of second-degree homicide for the shooting death of a Cleveland man after a jury deliberated 10 hours Friday.

Medina, 29, 851 S. Second West, was charged with shooting George Givens, 19, in the head at a close range during a party held April 1, 1984, at 321 W. Eighth North. Givens was pronounced dead on arrival at LDS Hospital.

The trial was held before 3rd District Judge J. Dennis Frederick.

The complaint says Medina threatened a witness to the crime by pointing the gun at him and saying, "You want some of this?"

"There was no evidence of provocation by victim or witnesses, no signs of self-defense or struggles," the charge read.

In closing arguments, Deputy Salt Lake County Attorney Michael J. Christensen told the jury the state's evidence proved Medina's guilt beyond a reasonable doubt.

The fact the bullet casing found in Medina's car the night of the shooting matches the bullet that killed Givens proves Medina is the murderer, Christensen said.

Further convincing evidence, Christensen told the jury, was the testimony given by Eli Archuletta, Medina's friend. He testified Medina purchased a gun from him then later told him, "Don't worry. I didn't use the gun you sold me to kill him, I used another one."

An eyewitness to the crime — Rickey R. Myers — also testified he was at the party and saw Medina shoot Givens.

"What more convincing evidence could there be but a confession from Medina?" the prosecutor said.

Reconstructing the scene of the crime, he said Medina was being macho with his friends the night of the party. He'd had a lot to drink. He got irritated with Givens, so he reached out and shot the man with a gun he had concealed.

After the shooting, he hopped in his car and emptied the bullets in his gun outside the car. One bullet casing, however, accidentally fell on the car floor. He then got rid of the gun.

"Don't be deceived. You have to live with the consequences of your verdict," he told jurors.

Defense attorney Frances M. Palacios refuted the prosecutor's arguments by suggesting the eyewitness who testified he saw Medina shoot Givens may have actually been the killer — although she said she couldn't prove it.

There are conflicts in Myers's testimony because he's not telling the truth, she said. He left the scene of the crime because he did the shooting, she alleged.

Archuletta's testimony isn't valid because detectives threatened to charge him as an accessory to the crime if he didn't testify against Medina. She said the prosecuting attorney had portrayed Medina as being macho just because he is Mexican. "Being Mexican doesn't necessarily mean being macho."

Appealing to the jury, she said, "If you go to the jury room and go over all this and say, 'I don't know if he's guilty' then that's not enough to convict him."

"If you are suspicious or think he may be the murderer, that's not enough."

"Justice and society will win if you find Medina not guilty."

Gunman kidnaps a S.L. man and then releases him unhurt

A man sitting alone in a car outside a restaurant was kidnapped by an armed robber before being released without injury Thursday.

The victim, Harold E. Harding, Salt Lake City, is partially blind, according to the Salt Lake police report. He was waiting for a friend outside a restaurant at 1300 S. State about 10:30

Harding told police a bearded man came up to the vehicle and asked for the time. About 10 minutes later, a man wearing a nylon stocking over his head and armed with a automatic gun opened the car door. He told Harding: "This is no joke," and had him put his hands on the dash.

Harding said the man then said the

Yellowstone shaken by 2 small quakes

Associated Press

Two small earthquakes were recorded Friday in Yellowstone National Park about six miles northwest of Norris Junction near Grizzly Lake, University of Utah seismologists said.

The quakes, both about 3.5 on the

Richter scale, were at 4:33 p.m. and 4:45 p.m., said Janet Saffer, data analyst.

No damage was reported, although residents reported that household furnishings were shaken, she said.

A quake of 3.5 on the Richter scale can cause slight damage.

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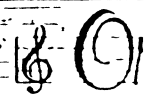
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"E AUDITION

PERFORM

MEDINA JERRY JOE				NA		529 86 0347			
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U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8. PLACE OF BIRTH (City and State or Country)				9. DATE OF BIRTH		DAY MONTH YEAR 8 SEP 1954	
SELECTIVE SERVICE NUMBER		10. SELECTIVE SERVICE LOCAL BOARD NUMBER CITY, COUNTY STATE AND ZIP CODE				11. DATE INDUCTED			
NA		LB #NA				DAY MONTH YEAR NA			
12. TYPE OF TRANSFER OR DISCHARGE				13. STATION OR INSTALLATION AT WHICH EFFECTED					
TRF TO USAR				FORT DIX NEW JERSEY					
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22. SOURCE OF ENTRY				23. TERM OF SERVICE (Years)		24. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC		25. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State)	
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26. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code)				27. STATEMENT OF SERVICE		28. YEARS		29. MONTHS	
851 SO 2ND WEST SALT LAKE CITY (SALT LAKE) UT 84101				(1) NET SERVICE THIS PERIOD		1		11	
30. SPECIALTY NUMBER & TITLE				(2) OTHER SERVICE		0		0	
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859 281 BLASTER				FOREIGN AND/OR SEA SERVICE		1		5	
32. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITIZENSHIP AND				33. EXPERT M16		34. NATIONAL DEFENSE SERVICE MEDAL		35. EXPERT M16	
36. EDUCATION AND TRAINING COMPLETED				37. PIONEER 12A10 8WKS 72		38. NON-PAY PERIODS TIME LOST (Preceding Two Years)		39. DAYS ACCRUED LEAVE PAID	
NONE				NONE		NONE		NONE	
40. VA CLAIM NUMBER				41. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE		42. MONTH ALLOTMENT DISCONTINUED		43. AMOUNT OF ALLOTMENT	
NA				NONE		NA		NA	
44. REMARKS				45. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED					
CIV ED:HS GED 23A PIONEER ES NONE BLOOD GP:O+ 22C USAREUR				JERRY JOE MEDINA					
46. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code)				47. SIGNATURE OF OFFICER AUTHORIZED TO SIGN					
851 SO 2ND WEST SALT LAKE CITY (SALT LAKE) UT 84101				AC					
48. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER				49. SIGNATURE OF OFFICER AUTHORIZED TO SIGN					
G E CARTER CW3 USA ASST CHIEF ENL BRANCH---				AC					

NSR SALT LAKE POLICE SUPPLEMENTARY REPORT CASE 85025540
VERIFIED NCIC:0905 : HELPFUL KILL.NORMALLY.SUN :
CLASSIFICATION CHANGE?:N FELONY?:Y OCCURRED DATE:04/01/84 TIME: :
DAY OF WEEK:SUN ADDRESS OF OCCURRENCE:321 W 800 N
LOCATED ADDRESS/RECOVERY:
OWNER: ADDRESS: PM3
AFFIDAVIT FILED?: IMPOUNDED?: PLACED IMPOUNDED:
HELD FOR: CLERK OF COURT WHEELER CO.:
WHERE IMPOUNDED: VEH CONV. GOOD?: FAIR?: POOR?:
IGN LOCKED?: KEY IN LOCK?: REMOVED FROM LOCKS LOCKED?: PROPERLY PARKED?:
SCENE PROCESSED?:

NRK 104-10700-1000 CASE 35025540
R/D RECEIVED INFORMATION THAT JOHN W. MCKINLEY, WAS THE PROBABLY SHOOTER IN
THIS MURDER. R/D WAS TOLD BY THE PERSON RESIDING WHICH IS LOCATED IN THE
600 BLOCK OF CATHERINE STREET IN NEW YORK CITY AND WISHES TO REMAIN
ANONYMOUS.

R/O RETURNED TO THE MEDINA RESIDENCE AND THEN RETURNED TO THE MEDINA RESIDENCE WITH CT LEADER IN THE VEHICLE. THIS RESIDENCE ON CATHERINE CIRCLE IS THE HOME OF CTAS FORMERLY OF 5000 CATHARINE CIRCLE. THE DOOR, ALLOWED US IN AND WE LOCATED JERRY MEDINA IN THE NORTHWEST CORNER OF THIS RESIDENCE. HE WAS WEARING A BLUE SHIRT AND PANTS. HE WAS DRESSED IN A BLUE SHIRT, BROWN SLACKS AND SHOES.

IT WAS NOTED THAT [REDACTED] WAS READ HIS RIGHTS BY R/O

ARC AND AT THIS TIME HE REQUESTED TO SEE THE DISTRICT ATTORNEY. CASE 88023540
HOWEVER DID GIVE CONSENT SEARCH FOR HIS CAR WHICH WAS A BLACK CHEVROLET MONTE
CARLO. PARKED IN FRONT OF THIS PHYSICIAN'S OFFICE. CAR WAS SEARCHED BY DET JOHNSON
AND HE DID RECOVER SOME EXPLANATION. SEE HIS REPORT FOR THAT
INFORMATION.

ON 4/2/84, AFO TECH AND INVEST. COLLECTED FROM THE CRIME SCENE AND THE EVIDENCE FROM THE SUSP. VEH. TO THE STATE CRIME LAB. THIS ANALYSIS A REPORT COMPLETED AND RETURNED TO THIS OFFICE BY 5/10/84.

WFO CONTACTED CO ATTORNEY MICHAEL CHRISTENSEN ON 4/3/84. HE TURNS OVER ALL THE KNOWN FACTS AND INFORMATION ON THIS CRIMINAL MURDER AND HE DID NOT HAVE ANY INFORMATION. THIS INFORMATION CHARGED JERRY LEE MEDINA WITH CRIMINAL MURDER.

RECEIVED
HOMICIDE, MURDER, WHICH IS A FIRST DEGREE FELONY. R/O TOOK THIS INFORMATION TO JUDGE FLOYD GOWANS AND BAIL WAS SET AT \$500.00. THIS IS CRIMINAL COURT CASE #44P50709. R/O TOOK THIS WARRANT TO THE JAIL WINDOW AT 14:10 PM THIS SAME DATE.

ON 4/19/84, ARRANGEMENTS HAD BEEN MADE BY THE GO ATTORNEY TO TAKE DEPOSITIONS FROM STEVE NAJERA, GILBERT NAJERA, LEONARD FERNANDEZ. THESE DEPOSITIONS WERE TAKEN IN MIKE CHARLTON'S OFFICE AND A POLYGRAPH WAS TO BE GIVEN BY STEVE BARTLETT. HOWEVER, ON 4/20/84, FERNANDEZ DID ARRIVE AT STEVE BARTLETT'S OFFICE. THIS WAS ON 4/20/84, BUT FERNANDEZ REFUSED TO TAKE THE POLYGRAPH EXAMINATION.

ON 4/11/84 AT APPROX 19:30, 271 1/2 LOCATE HALL IN. IRENE ARREDONDO, AT 234

NRG COMMENTS: SOUTH 1300 W, HOME PHONE 539 1364, AND WORK PHONE 13 364 6571. STATEMENTS WERE TAKEN FROM THESE TWO INDIVIDUALS BY R/J AND THEIR INFORMATION WAS THE SAME AS THE INFORMATION R/J HAD RECEIVED FROM OTHER PERSONS AT THE PARTY. CASE 05025540

ON 4/20/66, JERRY MEDINA BAILED OUT OF JAIL AND R/O RELEASED SOME OF HIS PERSONAL PROPERTY FROM THE EVIDENCE ROOM TO HIM.

ON 7/5/64 A PRELIMINARY HEARING WAS HELD IN JUDGE JNO'S COURTROOM AND JERRY WAS BOUND OVER AS CHARGED AT THIS TIME.

ON 11/4/84, R/O RECEIVED INFORMATION THROUGH POLICE REPORT CASE 084/97680.

ERT

NSR SALT LAKE POLICE SUPPLEMENTARY REPORT CASE 84025540
VERIFIED NCIC#0903 : : MURDER KILL, NO FLY, GUN :
CLASSIFICATION CHANGE:IN FELONY?? OCCURRED DATE:04/01/84 TIME:04130
DAY OF WEEK:SUN ADDRESS OF OCCURENCE:323 WEST 600 NORTH
LOCATED ADDRESS/RECOVERY:
OWNERS: ADDRESS: FBI
AFFIDAVIT FILED?: IMPOUNDED?: REASON IMPOUNDED:
HELD FOR: CLAIM CHK #: BRECKER CO.?
WHERE IMPOUNDED: VEN CONC. SCOUT?: PAINT?: POOR?:
IGN LOCATED?: KEY IN IGN?: WINDSH LOCKED?: DOORS LOCKED?: PROPERLY PARKED?:
SCENE PROCESSED?:

NSA ARRESTED PERSON FIELD CASE 84025540
NAME: MEDINA, JERRY JOE DOB: 09/08/54 SEX: M RACE: MEX
BOOKING TYPE: C 0:4624 MASTER FILE: 109435 COR#: 253819 SOC. SEC. # 6529860347
STATEMENT TAKEN?:

NRC COMMENTS FIELD CASE 84025540
ON 04/01/84, AT ABOUT 05:00, THIS OFFICER WAS CONTACTED BY SGT. DIAMOND. HE REQUESTED THIS OFFICER RESPOND TO A SHOOTING AT 323 W 600 N. ON ARRIVAL, I WAS MET BY NIELSON WHO TOLD THIS OFFICER WHAT INFORMATION WAS AVAILABLE AT THAT TIME.
THIS OFFICER WAS DIRECTED TO THE WALKWAY BY THE FRONT DOOR WHERE BLOOD WAS OBSERVED NEXT TO WHERE A WALK OUTLINE OF A BODY WAS OBSERVED. I WAS ALSO DIRECTED TO A BEDROOM, SOUTHEAST CORNER OF THE APARTMENT, WHERE A GUN WAS SHOWN THIS OFFICER UNDER THE MATTRESS OF A BED.
THIS OFFICER WITH LT. LEOPOLD DID A DIAGRAM OF THE INSIDE OF THE APARTMENT AS WELL AS WALKWAY OUTSIDE THE FRONT DOOR WHERE THE VICTIM HAD BEEN FOUND.
THIS OFFICER THEN COLLECTED THE FOLLOWING EVIDENCE AND PROPERTY:

NRC COMMENTS FIELD CASE 84025540
A 1. ONE SEMIAUTO RUGER HANDGUN FOUND UNDER MATTRESS OF BED.
B 1. ONE LIVE ROUND .22 APMC. FOUND ON TABLE BY SOUTH WALL OF LIVING ROOM.
C 1. THE VICTIM'S CLOTHES FOUND ON FRONT LAWN, HAD BEEN REMOVED BY PARAMEDICS.
D 1. ONE \$1.00 BILL FOUND ON WALKWAY NEAR FRONT DOOR WHERE VICTIM WAS.
THIS OFFICER DID PLACE THE ABOVE PROPERTY INTO EVIDENCE ON 04/01/84.
ON 04/01/84, INFORMATION WAS RECEIVED ON THE SUSPECT, NAME BEING JERRY MEDINA, DET. LEARY HAD A WITNESS SHOW HIM THE HOUSE MEDINA WAS LIVING IN ON CATHERINE CIRCLE. THIS OFFICER, WITH DET. LEARY AND LT. LEOPOLD DID ENTER THE HOUSE. THIS OFFICER DID LOCATE HIM IN A BEDROOM, NORTHWEST CORNER OF RESIDENCE. HE WAS FULLY DRESSED IN LEVIS, A BLUE SHIRT AND BROWN SHOES. THE CUFFS OF HIS PANTS WERE MET. HE WAS TAKEN INTO CUSTODY WITHOUT INCIDENT. HE DID HAVE OFFICERS

NRC COMMENTS FIELD CASE 84025540
PERMISSION TO SEARCH THE BEDROOM HE WAS SLEEPING IN, NOTHING WAS FOUND. HE ALSO GAVE THIS OFFICER PERMISSION TO SEARCH HIS VEHICLE. THIS OFFICER DID LOCATE ONE LIVE ROUND OF FEDERAL .38 SPECIAL AMMO. ON THE PASSENGER'S SIDE FLOORBOARD OF THE CAR. THE CAR WAS A BLACK CHEVROLET, MONTE CARLO.
THE ARRESTEE PERSON WAS READ MIRANDA BY DET. LEARY, AFTER WHICH HE DECLINED ANY COMMENT. THIS OFFICER DID TRANSPORT THE ARRESTED PERSON TO JAIL WHERE HE WAS BOOKED FOR CRIMINAL HOMICIDE. HIS CLOTHES, WHICH CONSISTED OF ONE PAIR OF BLUE LEVIS, ONE BLUE KNIT FULLOVER SHIRT, ONE PAIR WHITE UNDERSHORTS, ONE PAIR BLACK SOCKS, ONE PAIR BROWN SHOES AND ONE BROWN NYLON JACKET, WERE TAKEN AND PLACED IN TO EVIDENCE. AT THE JAIL THIS OFFICER ALSO DID A COMBAT RESISTANCE KIT ON HIM. THE IS WAS TURNED OVER TO DET. LEARY.

NRC COMMENTS FIELD CASE 84025540
THIS OFFICER ALSO PLACED INTO EVIDENCE THE BULLET FOUND ON THE FLOORBOARD OF THE CAR AND PERSONAL PROPERTY CONSISTING OF A WALLET WITH MISCELLANEOUS PAPERS.

Jerry Joe Medina
Petitioner, In Propria Persona
P.O. Box 250
Draper, Utah 84020

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JERRY JOE MEDINA

Petitioner,

vs.

GERALD L. COOK, WARDEN, et al.,

Respondent's

Civil No. C87-7241

AFFIDAVIT OF LORENZO TUERO

Honorable Frank G. Noel

STATE OF UTAH)
: AFFIDAVIT OF LORENZO TUERO
COUNTY OF SALT LAKE)

I, Lorenzo Tuero the undersigned being first duly
sworn upon my oath depose and say:

1. That I know Jerry Joe Medina, the Petitioner above named.
2. That between the time frame of or around December thru September 1984 that I as a favor to Joe Giron, I would "Disc Jockey" at the "Annex Bar" being twice weekly on "Disco Nights" or "Lady Nights" or go there to socialize and can not ever recall seeing Jerry Medina there to the best of my knowledge.
3. Further at this time I was gainfully employed at the La Frontera Cafe and Bar located at 1400 South 6th West in Salt Lake City, Utah and would see Jerry there playing pool, in fact he was on the La Frontera's, Pool League at this time, or fill in occasionally.
4. And I also have never seen Jerry at any time at the La Frontera Cafe, or anywhere socializing with one Eli Archuletta in any respect.
5. And I would have testified to the same if asked at the time of Jerry Medina's trial, February 26, 1985. And he would have used me this capacity.

RESPECTFULLY SUBMITTED

Lorenzo Tuero

I, Lorenzo Tuero, hereby declare under Penalty of Perjury that to the best of knowledge the foregoing is true and correct except as to those matters upon which I rely on information and belief, and as to those matters I do believe them to be true.

DATED: _____

August 9 88

SIGNATURE: _____

Lorenzo TueroCERTIFICATE OF SERVICE

I Jerry Joe Medina, depose and say that on this 9th day of August 1988 I placed (3) true and correct copies in the mail of the foregoing to wit: Affidavit of Lorenzo Tuero, Postage Prepaid to Attorney General, David L. Wilkinson, Attorney for Respondent's, located at 236 State Capitol, Salt Lake City, Utah 84114. And the Clerk and Honorable Judge Frank G. Noel in and for the Third Judicial District Court, Salt Lake City, Utah 84111.

JERRY JOE MEDINA
P. O. Box 250
DRAPER, UTAH 84020

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JERRY JOE MEDINA

PETITIONER

CIVIL ACTION

CASE No. C87-7241

VS.

GERALD L. COOK WARDEN et al.,

RESPONDENTS

AFFIDAVIT OF RONALD CRAIG WARREN

HONORABLE FRANK G. NOEL
PRESIDING

STATE OF UTAH)

: AFFIDAVIT OF RONALD CRAIG WARREN

COUNTY OF SALT LAKE)

I RONALD CRAIG WARREN BEING FIRST ONLY SWORN

UPON MY OATH DEPOSE AND SAY:

(1) THAT I AM A INMATE AT THE UTAH STATE PRISON AND ON
OR ABOUT AUG 2 1988 I WAS MOVED FROM SECTION 1 TO SECTION
2 WHERE AT THE JUDITH II FACILITY WHERE I MET JERRY MEDINA
AND USED TO TALK TO HIM AND HE USED TO DISCUSS HIS CASE AND HOW
DAY TOLD ME OF A PERSON NAMED ELI ARMSTRONG AND THAT
HE HAD TESTIFIED AGAINST HIM AT TRIAL BUT THAT HE JERRY
DIDNT HAVE NO MORE FEELING AND THAT UNDER THE JURY
DIDNT WANT TO BE SENT BACK TO PRISON AND THAT HE
WAS IN SECTION 1, WHERE AFTER ABOUT 1 WEEK I WAS SENT BACK TO SECTION
2 BECAUSE THEY HAD REPEATED MY NAME, WHICH IS WHY I WAS,

BOX 250
DRAPER, UTAH 84020

SENT TO SECTION 3.

2) ABOUT A WEEK LATER ON OR ABOUT AUG 15 1988 JERRY MEDINA WAS MOVED
WER NEXT TO ME ON SECTION 2 WHERE I WAS ASSAULTED BY AN INMATE AND MOVED
TO THE "HOLE" IN SECTION 4 ON AUG. 18 1988 PENDING THE OUTCOME OF THE
IN-ESTIGATION.

3) WHEN I ARRIVED IN THE HOLE I WAS PUT IN CELL 2409, WHICH TO MY
SURPRISE WAS NEXT TO ELLI ARRIOLA IN CELL 2407 WHERE WE STARTED TALKING
ABOUT JERRY MEDINA. I TOLD ELLI THAT JERRY WAS MAD AT HIM
FOR LYING ABOUT SELLING MEDINA A GUN AND THINGS AND THAT JERRY
UNDERSTOOD BECAUSE OF ELLI BEING ON PAROLE AND STANDING TEST 4 30 DAYS
CHARGES AND THAT WAS (ELLI'S) BROTHER DANIEL WHO TOLD MEDINA IN JAIL IN
VISITING THAT ALSO AT THE TIME ELLI WAS STRUNG, BUT HIS GIRLFRIEND HAD
LEFT HIM, AND ELLI EVEN FLIPPED OUT AND CALLED THE COPS ON HIS OWN
AND 3 DAYS LATER ALLEGING HE WAS IN THE HOLE BECAUSE HIS DAD
WOULD NOT BABYSIT, WHICH ELLI STATED TO ME THAT HE KNEW HE WAS IN THE WRONG
FOR DOING IT, BUT HE WAS SCARED TO BE SENT TO PRISON FOR SOME REASONS TO ME
NEVER STATED BUT SAID HE WAS GLAD JERRY WASN'T MAD AND UNDERSTOOD ABOUT
HIM ELLI LYING ON THE HOLE, WHICH THIS CONVERSATION OCCURED ABOUT 9 PM
ON SUNDAY NIGHT THE 21 OF AUG. 1988

4) TWO DAYS LATER I WAS MOVED OUT OF THE HOLE AND BACK ON THE SAME

BOX 250
DRAPER, UTAH 84020

THERE AND OUR CONVERSATIONS AND SHE TOLD ME THAT

AND TOLD MARGARET THAT SHE WAS AND BELIEVED IT AS THAT WHERE MARGARET

ASKED IF I WOULD SIGN AN AFFIDAVIT TO WHAT WAS SAID TO ME BY HER

AND I DID AS THIS

BOX 250
DRAPER, UTAH 84020

I DECLARE UNDER PENALTY OF PERJURY THAT TO THE BEST
OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT, EXCEPT AS TO THOSE
MATTERS UPON WHICH I RELY ON INFORMATION AND BELIEF, AND AS TO THOSE
MATTERS I DO BELIEVE THEM TO BE TRUE

DATED THIS 24 DAY OF AUG 1988

SIGNATURE Ronald Warren
RONALD CRAIG WARREN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY
OF THE FOREGOING AFFIDAVIT OF RONALD WARREN WAS MAILED
POSTAGE PREPAID TO ATTORNEY GENERAL DAVID L. WILKINSON AT 236
STATE CAPITOL, 84114 AND THE HONORABLE JUDGE FRANK G. NOEL AND
THE CLERK OF THE COURT H. DIXON, HINDLEY AT THE THIRD JUDICIAL
DISTRICT COURT IN SALT LAKE CITY, UTAH 84111 ON THIS 24 DAY OF
AUG 1988

Jerry Joe Medina
JERRY JOE MEDINA

Jerry Joe Medina
P.O. Box 250
Draper, Utah 84020

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JERRY JOE MEDINA

Petitioner

vs.

GERALD L. COOK, WARDEN et al;

Respondent's,

CIVIL ACTION

Case No. C87-7241

AFFIDAVIT OF JERRY JOE MEDINA

HONORABLE FRANK G. NOEL
PRESIDING

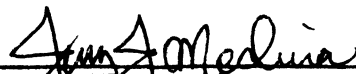
State of Utah)
: AFFIDAVIT OF JERRY JOE MEDINA
County of Salt Lake)

I, Jerry Joe Medina being first duly sworn upon my oath depose and say:

That at the time of my arrest I was not aware that police officers were attempting to search my car and searched another car being a 1974 black Monte Carlo parked in the street at 618 Catherine Circle nor was I aware that a .38 caliber bullet was found at that time in that Monte Carlo, and if I had been aware I would of asked the neighbors who owned the car and subpoenaed witness's who would of testified to ownership to that car, to wit: Mark Velarde who I would of called to testify and who would of testified at the time of trial.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed this 10 of APRIL 1988.



JERRY JOE MEDINA

CERTIFICATE OF SERVICE

I, Jerry Joe Medina, the undersigned being first duly sworn upon my oath depose and say:

That I served (11) Eleven, true and correct copies of the foregoing cause of action to-wit; Appeal from denial of Writ of Habeas Corpus upon the parties therein involved in the following manner.

On this 26 day of October 1988, I placed the original notarized copy of the Appeal for Writ of Habeas Corpus, Memorandum of Points and Authorities and Affidavits in support of said appeal along with true copies of the same in the United States Mail Certified Mail Return Receipt Requested addressed to the ~~Presiding Judge of the Utah Court of Appeals~~ of Salt Lake County, State of Utah, located at 230 South 500 East Suite 400, Salt Lake City, Utah 84102.

I further depose and say that on this 24 day of October 1988, I placed a true and correct notarized copy of said cause of action in the United States Mail addressed to the Honorable David L. Wilkinson, Attorney General of the State of Utah and Legal Counsel for the Respondents, located at 236 State Capitol Office of the Attorney General, Salt Lake City, Utah 84111.

Signed: _____

Jerry Joe Medina
JERRY JOE MEDINA
P.O. Box 230
Draper, Utah 84020

Appellant-Petitioner, In Propria Persona

Subscribed and sworn to before me this ____ day of _____ 1988.

NOTARY PUBLIC

My Commission Expires: _____