

1988

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

Utah Supreme Court

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MENT

IN THE SUPREME COURT OF THE STATE OF UTAH

45.9

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DOCKET NO. 88355

JERRY JOE MEDINA

PETITIONER-APPELLANT

VS

GERALD L. COOK WARDEN ET AL.,

RESPONDENTS

CASE NO. 880355

CATEGORY NO. 3

REPLY BRIEF

REPLY BRIEF OF APPELLANT

REPLY TO RESPONDENTS BRIEF FROM THE
PETITIONERS APPEAL FROM THE DISMISSAL
OF APPELLANTS PETITION FOR A WRIT OF
HABEAS CORPUS IN AND FOR THE COUNTY
OF SALT LAKE, STATE OF UTAH, THE
HONORABLE J. DENNIS FREDRICK,
JUDGE, PRESIDING.

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PETITIONER; In Propria Persona

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Clerk, Supreme Court, Utah

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STATUTES AND Rules

NONE SUBMITTED FOR PURPOSE'S OF THIS REPLY

IN THE SUPREME COURT OF UTAH

JERRY JOE MEDINA

PETITIONER-APPELLANT

VS

GERALD, L. COOK WARDEN et al.,

Respondents

CASE No. 880355

CATEGORY No. 3

REPLY BRIEF

REPLY BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

THIS REPLY BRIEF IS FROM THE DISMISSAL OF APPELLANTS PETITION FOR A WRIT OF HABEAS CORPUS IN THE THIRD JUDICIAL DISTRICT COURT. JURISDICTION LIES IN THIS COURT UNDER UTAH CODE ANN. 78-2-2-(3)(1) (1987) (SUPP. 1988) BECAUSE THE CONVICTION AND INCARCERATION OF WHICH PETITIONER COMPLAINS WAS FOR A FIRST DEGREE FELONY

STATEMENT OF ISSUES PRESENTED FOR REVIEW

POINT I. . . HAVE THE ATTORNEYS FOR RESPONDENTS BEEN MISLEADING THIS COURT IN THEIR PRESENTING THE FACTS FOR REVIEW ?

POINT II. . . WAS PETITIONERS TRIAL AND APPELLATE COUNSEL INEFFECTIVE IN THEIR REPRESENTATION ?

POINT III. . . WAS THE PROSECUTOR IN MISCONDUCT ?

POINT IV. . . DO PETITIONER CLAIMS HAVE MERIT ?

CONSTITUTIONAL PROVISIONS, STATUTES, RULES

FOR PURPOSES OF THIS REPLY BRIEF PETITIONER
DOES NOT RELY ON ANY PROVISIONS, STATUTES OR RULES

STATEMENT OF THE CASE

PETITIONER WAS CHARGED WITH SECOND DEGREE MURDER
ON 4-1-84 AND CONVICTED ON 3-1-85 IN THE THIRD JUDICIAL DISTRICT COURT
AND SENTENCED TO 5 YRS TO LIFE IN PRISON AND IS CURRENTLY SERVING
THAT SENTENCE, THE HONORABLE J. DENNIS FREDRICK PRESIDING.

PETITIONER FILED A DIRECT APPEAL ALLEGING AMONG OTHER
THINGS INEFFECTIVE ASSISTANCE OF COUNSEL IN NOT OBJECTING TO THE
DYNAMITE ALLEN INSTRUCTION AGAINST PETITIONER'S CONSENT OR KNOWLEDGE
WHEREIN THE UTAH SUPREME COURT PROPERLY RULED THAT THOSE
DECISIONS FALL WITHIN THE STRATEGY AND TACTICS OF COUNSEL
AND CONFIRMED PETITIONER'S APPEAL IN APRIL 1985, CASE NO.
20629, STATE VS MEDINA 738 P.2D 1021 (UTAH 1987)

ON OR ABOUT NOV. 2 1987 PETITIONER FILED A PETITION FOR A
WRIT OF HABEAS CORPUS CHALLENGING HIS CONVICTION WHERE EVENTUALLY
IT WAS ASSIGNED TO THE JUDGE FRANK G. NOEL IN THE THIRD JUDICIAL
DISTRICT COURT AND AN EVIDENTRY HEARING WAS HELD MAR. 25, 1988
WHEREIN PETITIONER ALLEGED HIS RIGHTS UNDER THE 6TH AND 14TH AMD.
WERE VIOLATED THAT GUARANTEE PETITIONER DUE PROCESS, A FAIR TRIAL
AND EFFECTIVE ASSISTANCE OF COUNSEL, BECAUSE NOTHING WAS
USED BUT FALSE EVIDENCE AND TESTIMONY TO CONVICT THE PETITIONER
AT THE TIME OF TRIAL, WHEREIN PETITIONER SUBMITTED
MORE AFFIDAVITS, LETTERS FROM THE F.B.I. IN SUPPORT AND
ARGUED USING THE POLICE REPORTS AS FURTHER PROOF AND WHICH HE

PROVIDED ATTORNEY SANDRA SOJOGREN A COPY OF WHILE ARGUING FOR A REFERENCE, AFTER 10 MONTHS PETITIONER FILED A WRIT OF CERTIORARI IN THE UTAH SUPREME COURT REQUESTING REVIEW AND ALLEGING THAT HIS WRIT OF HABEAS CORPUS HAD EFFECTIVELY BEEN SUSPENDED WHEREIN 3 DAYS LATER JUDGE NOEL DISMISSED PETITIONERS WRIT AND A FEW DAYS LATER AFTER THE DISMISSAL PETITIONER FILED AN OBJECTION TO THE RULING, A PETITION FOR RECONSIDERATION AND ON THE 26TH DAY OF OCT 1988 A MOTION FOR PROBABLE CAUSE, MOTION FOR APPOINTMENT OF COUNSEL AND HIS APPEAL BRIEF IN THE SUPREME COURT AND DISTRICT ATTORNEY'S OFFICE TO BE FOLLOWED BY HIS SUPPLEMENTAL APPEAL ON DEC. 5 1988

STATEMENT OF THE FACTS

AFTER PETITIONERS TRIAL, PETITIONERS WIFE WAS SUMMONED TO THE OFFICE OF ASSISTANT ATTORNEY GENERAL BERNARD TANNER ON OR ABOUT APRIL 8, 1985, TO DISCUSS WHY PETITIONER WAS DELINQUENT IN HIS CHILD SUPPORT, WHEREIN MRS. MEDINA EXPLAINED PETITIONERS PREDICTMENT AND THE CIRCUMSTANCES SURROUNDING HIS TRIAL AND INSISTANCE OF INNOCENCE WHEREIN MR. TANNER REVEALED TO MRS. MEDINA THAT HE MR. TANNER KNEW BOTH RICKY MYERS AND THE VICTIM AND THAT THEY BOTH HAD EXTENSIVE CRIMINAL RECORDS IN UP TO 7 STATES AND WERE PARTNERS IN CRIME WHEREIN MRS. MEDINA WENT DOWN TO THE BUREAU OF THE CRIMINAL DIVISION OF IDENTIFICATION OF THE F.B.I. AND TALKED TO THE CHIEF MR. WENDELL COONBS WHO SUBSEQUENTLY ORDERED AND CONFIRMED RICKY MYERS EXTENSIVE CRIMINAL RECORD FOR A FEE BUT SAID MRS. MEDINA COULD NOT ORDER THE VICTIMS RECORD BECAUSE HE WAS DECEASED AND ALL MRS. MEDINA NEEDED NEXT WAS AN ORDER OR SUBPOENA FROM THE COURT

AND HE MR. COONBS COULD DELIVER IT RIGHT OVER (SEE EXHIBITS 1-5 OF PETITIONERS WRIT SUBMITTED FOR THE COURTS CONSIDERATION CONSISTING OF AFFIDAVITS OF MRS. MEDINA, MR. TANNER'S SECRETARY CHERYL SAXTON ALSO SUPREME COURT LAW LIBRAIAN, A WITNESS ALSO TO THE DISCLOSURE FROM MR. TANNER NAMED MRS SHURMAN AND A LETTER FROM THE F.B.I.) WHICH UPON BEING APPOINTED TO REPRESENT MR. MEDINA AT HIS EVIDENTRY HEARING, MR. JOHN SHEAFFER JR. ACQUIRED A COPY OF PETITIONERS WRIT FROM THE CLERK AND INQUIRED AT THE F.B.I. ABOUT MRS. MEDINA'S AFFIDAVIT AND THEIR LETTER AND WAS TOLD BY THE F.B.I. ABOUT RICKY'S RECORD AND THAT IT WAS STILL IN WASHINGTON D.C. HEADQUARTERS AND THAT IT WOULD TAKE 30 DAYS TO GET IF HE WISHED, WHICH HE TOLD PETITIONER ~~IN~~ THE HOLDING CELL RIGHT BEFORE THE START OF PETITIONERS EVIDENTRY HEARING, WHICH PETITIONER RE-ASSERTED AT HIS EVIDENTRY HEARING AS THE BASIS THAT RICKY'S TESTIMONY WAS PERJURED FROM START TO FINISH, WHICH PETITIONER FURTHER POINTED OUT THAT AT HIS TRIAL ALL POLICE OFFICERS TESTIFIED THEY ONLY RAN A LOCAL CHECK NOT AN OUT OF STATE F.B.I. RAP SHEET CHECK, WHICH PETITIONER ASSERTED SHOULD HAVE BEEN DONE FOR NUMEROUS REASONS, (DISCUSSED IN PETITIONERS BRIEF) FURTHER THAT HIS APPELLATE COUNSEL COULD NOT RAISE THESE ISSUE'S ON DIRECT APPEAL BECAUSE THEY CONCERNED MATTERS OFF THE RECORD, WHICH WAS ALSO CONCURRED BY SANDRA SOJOGREN WHEN SHE STATED THAT PETITIONER'S APPELLATE COUNSEL TRIED TO FILE A MOTION FOR THE SUPPLEMENTATION FOR CORRECTION OF RECORD BUT THE UTAH SUPREME COURT DENIED THE MOTION BECAUSE IT CONCERNED MATTER'S OFF THE RECORD, THUS THAT THEY WERE UNREVIEWABLE AT THE TIME

PETITIONER ALSO BROUGHT TO THE ATTENTION OF THE HABEAS

COURT THE ALLEGED FAILURE OF COUNSEL IN NOT INVESTIGATING OR MAKING AN INQUIREY OR AN INDEPENDANT INVESTIGATION TO ASCERTAIN AND KNOW FOR SURE IF THE BULLET ALLEGED TO OF BEEN FOUND IN PETITIONERS CAR WAS IN FACT FOUND IN PETITIONERS CAR, WHICH WAS THE ONLY EVIDENCE USED TO CONVICT THE PETITIONER, WHICH PETITIONER ARGUED WAS PREJUDICIAL TO HIS DEFENCE BECAUSE THE BULLET WAS NOT FOUND IN HIS CAR, WHICH PETITIONER PROCEEDED TO SUPPORT BY SHOWING AND READING THE JUDGE VARIOUS PAGES OF THE POLICE REPORTS AND TRANSCRIPTS, WHICH PETITIONER SUPPLIED A COPY OF TO SANDRA SOJOGREN WHICH SHOWED POSITIVELY THAT THE CAR SEARCHED WAS A BLACK 1974 CHEVROLET MONTE CARLO PARKED OUT ON THE STREET, THAT WAS UNLOCKED AND HAD NO ALCOHOLIC CONTAINERS, AND IN FURTHER SUPPORT SUBMITTED AN AFFIDAVIT STATING THE CAR BELONGED TO A VISTOR OF THE NEIGHBORS NAMED MARK VELARDE, PETITIONER FURTHER POINTED OUT TO THE JUDGE THAT ALL TO THE CONTRARY, DISTINCT AND IMPORTANT FACTUAL DISCREPENCIES KNOWN TO TRIAL COUNSEL THAT MANDATED INVESTIGATION AT THE TIME BEFORE TRIAL, THAT BEING THAT PETITIONER'S CAR DID NOT RESEMBLE A MONTE CARLO IN ANY WAY, SHAPE, OR FORM, AND WAS A 1972 CHEVELLE MALIBU PARKED IN THE DRIVEWAY WHICH WAS LITTERED WITH NUMEROUS ALCOHOLIC CONTAINERS FROM DRINKING IN HIS CAR, IN A BAR AND PARTY, AND WAS LOCKED, AND WHICH THE KEYS TO HIS CAR WERE IN HIS POCKET, FURTHER PETITIONER SHOWED THAT BY OFFICERS ACCOUNTS AND PETITIONER'S CLAIMS THAT HE WAS NOT EVEN PRESENT OR WITNESS THE SEARCH NOR DID HE GIVE PERMISSION TO SEARCH THE VEHICLE, AND FURTHER POINTED OUT NOWHERE ON HIS VEHICLE WERE THE WORDS "CHEVROLET" OR "MONTE CARLO" FOR IDENTIFICATIONAL PURPOSES, BECAUSE HIS CAR WAS A "CHEVELLE" NOT A "CHEVROLET"; AND A "MALIBU"; NOT A "MONTE CARLO"

AND TO ASSUME OR INSINUATE THEY WERE THE SAME CAR WOULD BE WRONG FOR SEVERAL REASONS BEING BOTH CARS ARE DISTINCT AND VERY DIFFERENT AND WOULD BE THE SAME AS SAYING UNDER THE SAME CIRCUMSTANCES FOR INSTANCE IF PETITIONER OWNED A 1972 PONTIAC GRAND PRIX THEN IT COULD EQUALLY AS WELL BE SAID IT WAS THE SAME CAR BECAUSE A 1972 PONTIAC GRAND PRIX RESEMBLES A 1974 MONTE CARLO AND IN FACT COMPETES WITH THE MONTE CARLO IN THAT SHARE AND CLASS OF THE AUTOMOBILE MARKET, WHERE JUDGE NOEL REPLIED "THAT THE DIFFERENCE THEIR IS THAT IS A PONTIAC" WHERE PETITIONER RESPONDED THAT "YEA BUT THEIR MADE BY THE SAME COMPANY GENERAL MOTORS BUT AT DIFFERENT PLANTS, AND IN FACT THEIR ARE NUMEROUS PONTIACS THAT COME MADE WITH CHEVROLET ENGINES, THUS IS THE SAME DIFFERENCE IN PETITIONERS CASE, TWO DISTINCT AUTOMOBILES MADE AT TWO DIFFERENT FACTORIES FOR DIFFERENT MARKETS.

PETITIONER LIKE WISE RESPONDS TO MS. BARLOW'S ASSERTION THROUGHOUT HER BRIEF THAT PETITIONER SHOULD HAVE TRIED TO BRING THESE FACTS CONCERNING THESE DIFFERENCES IN THE CARS OUT AT TRIAL OF WHICH PETITIONER IS COMPLAINING AND THAT FURTHER PETITIONER AND HIS COUNSIN MR. FERNANDEZ ALSO CALLED PETITIONERS CAR A "BLACK CHEVROLET" PETITIONER ASSERTS AT NO TIME DID HE OR HIS COUNSIN MR. FERNANDEZ DESCRIBE HIS CAR AS A "BLACK CHEVROLET" MR. FERNANDEZ STATED MR. MEDINA'S CAR WAS A BLACK '71 CHEVELLE WHERE THE PROSECUTOR NEXT STATED: (TR. OF TRIAL P. 93, 94)

PROSECUTOR: AGAIN THAT WAS A BLACK --- WHAT YEAR?

MR. FERNANDEZ: '71

PROSECUTOR: "CHEVROLET" WHAT?

MR. FERNANDEZ: "CHEVELLE"

FURTHER PETITIONER WHEN ASKED BOTH TIMES STATED HIS CAR WAS A "BLACK CHEVELE" AND "CHEVELE MALIBU" (TR. OF TRIAL P. 445, 466) THUS THE ONLY PEOPLE TO REFER TO PETITIONER'S CAR AS A "BLACK CHEVROLET" WAS THE PROSECUTOR AND INCOMPETENT TRIAL COUNSEL,

CHARLENE BARLOW'S OTHER ASSERTION PETITIONER DIDN'T TRY TO BRING TO THE COURTS ATTENTION THAT HIS CAR WAS PART OR HALF GREY IN THE FRONT END RESULTING FROM REPAIRS FROM AN AUTOMOBILE ACCIDENT IS ALSO MISLEADING, BECAUSE PETITIONER TRIED WHEN HE STARTED TO TALK ABOUT THE ACCIDENT, AND WAS EFFECTIVELY STOPPED AND PROHIBITED BY THE JUDGE, WHEN THE JUDGE IN A RAISED AND ANGRY DENOTING VOICE STATED:

THE COURT: MR. MEDINA I'M GOING TO ASK YOU TO LISTEN CAREFULLY AND PLEASE LIMIT YOUR RESPONSE'S ONLY TO THE QUESTIONS, DO NOT VOLUNTEER ANY INFORMATION SO WE CAN MOVE THE MATTER ALONG.
(TR. OF TRIAL P. 449)

MR. MEDINA: YES, YOUR HONOR

THUS BEING A COURT CONSTRUCTED DENIAL OF PETITIONER'S RIGHTS TO TRY AND RAISE THESE FACTS FOR FURTHER ANALYSIS AND INQUIRY WHICH NOW MS. BARLOW CHOSE'S TO COMPLAIN ABOUT, MERITLESSLY, WHICH THE SAME CAN BE SAID ABOUT THE STATES ASSERTION MR. FERNANDEZ STATED THE CAR WAS NOT DAMAGED, PETITIONER STATED THE CAR WAS REPAIRED NOT "DAMAGED".

ANOTHER POINT THAT SHOULD BE STRESSED IN RESPONSE IS THAT MS. BARLOW ESSENTIALLY STATED THAT PETITIONER STATED FURTHER THAT THE BULLET HAD BEEN DROPPED IN HIS CAR WHILE TARGET PRACTICING, THIS IS NOT AN ACCURATE PORTRAYAL OF

WHAT WAS SAID BY PETITIONER, PETITIONER MAINTAINED ALL ALONG HE DID NOT KNOW HOW THE BULLET GOT IN HIS CAR, AND AS A DEFENSE TRUTHFULLY STATED A PREVIOUS INCIDENT, BUT IN THE CONTEXT OF OF DEMURRER THAT THE ALLEGATIONS WERE DEFECTIVE WHICH PETITIONER SUBMITS FOR THIS COURTS CONSIDERATION :

TRIAL COUNSEL. Q: NOW JERRY WE KNOW YOU MIGHT NOT KNOW HOW THAT BULLET GOT IN YOUR CAR, BUT HOW CAN YOU POSSIBLY EXPLAIN IT?

MR. MEDINA A: WELL THERE'S ONLY ONE EXPLANATION I CAN EVEN THINK OF AND THAT WAS WHEN I WENT TARGET PRACTICING 3 OR 4 WEEKS AGO (TR. OF TRIAL P. 468)

PETITIONER ALSO ASSERTS THAT MS. BARLOW'S CONTENTION THAT NONE OF THE AFFIDAVITS OR EVIDENCE INTRODUCED AT PETITIONERS EVIDENTRY HEARING WAS SWORN IN OR "SWORN EVIDENCE" IS IRRELEVANT PETITIONER DOES NOT RUN THE COURTS FURTHER ASSUMING ITS ACCURACY WOULD ONLY FURTHER SUBSTANTIATE PETITIONERS CLAIMS OF NOT RECEIVING A FAIR AND FULL HEARING, BUT NONETHELESS REMINDS MS. BARLOW ALL ARE SIGNED UNDER THE OATH OF PERJURY AS ALL THAT IS REQUIRED BY LAW, AND HER ARGUMENT THAT THEY SHOULD HAVE TESTIFIED IS CORRECT THAT WHY PETITIONER FIRED HIS COURT APPOINTED ATTORNEY BECAUSE HE FAILED TO SUBPOENA WITNESS'S AS PETITIONER DEMANDED AMONG OTHER THINGS, LIKEWISE WITH THE WITNESS'S INVOLVING ELI ARCHULETTA, IF PETITIONER HAD FABRICATED THE CONFESSIONS OR STATEMENTS INVOLVING RON WARREN OR LORENZO TUERO I WOULD SURELY THINK IT WOULD HAVE BEEN DONE BEFORE PETITIONERS EVIDENTRY HEARING AND NOT AFTER, NONE ARE FABRICATED AND MS. BARLOW DOES NOT PRESENT EVIDENCE AS SUCH, ONLY THAT THEIR WASN'T A BUNCH OF WITNESS'S TO THEIR WRITING, NOR DOES SHE DENY THAT THEY WERE BROUGHT TO THE COURTS ATTENTION.

SUMMARY OF ARGUMENT

PETITIONER HAD RAISED ISSUES AND ALL DEFENCE OBJECTIONS AS TO HOW THE TRIAL WAS CONDUCTED ON DIRECT APPEAL THAT WERE APPEALABLE AT THE TIME AS REQUIRED BY LAW THAT WERE MATTERS IN THE RECORD

PETITIONERS CLAIMS ON COLLATERAL HABEAS REVIEW ALLEGING VIOLATIONS OF CONSTITUTIONAL PROPORTION ARE SUPPORTED BY THE RECORD AND EVIDENCE SUBMITTED FOR THE HABEAS COURTS CONSIDERATION WHICH HAVE NOT BEEN REFUTED OR DISPUTED AND EFFECTIVELY ESTABLISH THE ALLEGED VIOLATIONS OF CONSTITUTIONAL PROPORTION, COLLUSION AND PROSECUTORIAL MISCONDUCT AND FURTHER ARE REVIEWABLE BY THIS COURT BECAUSE THEY COULD NOT BE RAISED ON DIRECT APPEAL BECAUSE THEY CONCERNED MATTERS OFF THE RECORD

ARGUMENT

POINT I

THE RESPONDENTS ARE TOTALLY WRONG AND MISLEADING THIS COURT IN THEIR CLAIMS THAT THE HABEAS COURT RULED THAT THE PETITIONER "SHOULD HAVE OR COULD HAVE" RAISED ALL ISSUES CONCERNING HIS CONVICTION ON HIS INITIAL DIRECT APPEAL

PETITIONER ASSERTS THAT ATTORNEY FOR RESPONDENTS MS. BARLOW ASSERTS THAT PETITIONERS CLAIMS THAT THE DISTRICT COURT ERRED IN DISMISSING HIS WRIT STATING THAT PETITIONER COULD HAVE AND SHOULD HAVE RAISED HIS CLAIMS ON DIRECT APPEAL IS FALSE AND MERITLESS AND FURTHER MS. BARLOWS STATEMENT THAT PETITIONER THROUGHOUT HIS BRIEFS MISQUOTES, MISCONSTRUES, AND MISUNDERSTANDS THE TESTIMONY AND LAW

IS ABSURD AND PETITIONER ASSERTS THE ONLY MISQUOTING AND MISUNDERSTANDING IS BY MS. BARLOW, PETITIONER ASSERTS THAT IT IS ISN'T ENOUGH THAT PETITIONER HAS HAD TO WRITE PORTIONS OF THE FACTS OUT OF THE TRANSCRIPTS INTO HIS STATEMENT OF THE FACTS HERETO ATTACHED FOR THIS COURTS CONSIDERATION TO KEEP THE RECORD STRAIGHT, NO, BUT NOW PETITIONER HAS TO POINT OUT TO MS. BARLOW AND THIS COURT THAT NOWHERE IN JUDGE NOEL'S HABEAS MEMORANDUM DECISION SUBMITTED IN THE ADDENDUM OF PETITIONERS SUPPLEMENTAL BRIEF DOES IT SAY PETITIONER "SHOULD HAVE" OR "COULD HAVE" RAISED THE ISSUES ON DIRECT APPEAL, NOR DOES JUDGE NOEL GIVE ONE CASE LAW OR OTHERWISE IN SUPPORT, BUT MS. BARLOW WITH HER AND THE STATES CONTINUING FABRICATION OF THE FACTS TRIES TO CONCEAL THIS FURTHER BY CITING BUNDY VS DELANO, CORIANNA VS MORRIS, BROWN VS TURNER, VALASQUEZ VS PRATT, THESE CASES HAVE NOTHING IN COMMON WITH PETITIONERS CASE NOW BEFORE THIS HONORABLE COURT, BECAUSE ALL THE PETITIONERS MENTIONED ABOVE FAILED TO TAKE A DIRECT APPEAL AS OF RIGHT AND WAIVED THE RIGHT, PETITIONER DID NOT, PETITIONER RAISED ALL OBJECTIONS THAT WERE ALLOWED BY LAW, AS THIS HONORABLE COURT HAS STATED NUMEROUS TIMES THIS COURT WILL NOT CONSIDER ISSUES THAT CONCERN MATTERS OFF THE RECORD (STATE VS WULFFENSTEIN) (1982) WHICH IS THE NORM AND PRECEDENT ESTABLISHED IN THE CIRCUIT AND HIGH COURT⁽¹⁾ FURTHER SIMILARLY IN MATHEW VS

(1)

KIMMELMAN VS. MORRISON 106 S. Ct AT 2586 (1986)
UNITED STATES VS. GAMBINO 788 F.2d 738, (3RD CIR. 1986)
UNITED STATES VS. STITZER 785 F.2d 1506 (11TH CIR. 1986)
UNITED STATES VS. SHULTZ (5TH CIR. 1985)

COOK 754 P.2d 666 (UTAH 1988) THE PLAINTIFF FAILED TO SHOW CAUSE PETITIONER SHOWED CAUSE BECAUSE THIS COURT FAILED TO LET APPELLATE COUNSEL SUPPLEMENT THE RECORD FOR CORRECTION OF RECORD, WITH FACTS OFF THE RECORD WHICH WAS ADMITTED BY SANDRA SOJOGREN AT THE EVIDENTRY HEARING, WHICH FURTHER IN PETITIONERS CASE UNLIKE THE PREVIOUSLY MENTIONED CASES ABOVE THEIR WAS OUTRAGEOUS PREJUDICE BY THE OSTENSIBLE USE OF PERJURED TESTIMONY AND FALSE EVIDENCE THAT WAS DETERMINATIVE BECAUSE WITHOUT IT THERE WOULDN'T OF BEEN NOT ONE BIT OF TESTIMONY OR EVIDENCE FOR THE JURY TO CONSIDER TO USE TO SUBSTANTIATE A GUILTY VERDICT, THUS FURTHER QUALIFYING PETITIONERS CASE FOR THE "UNUSUAL CIRCUMSTANCES" EXCEPTIONS THAT SWALLOW UP THE NORMAL RULES THEREBY TRANSFORMING HABEAS CORPUS FROM AN EXTRAORDINARY REMEDY INTO AN ALTERNATIVE APPEAL MECHANISM IN CONTRAVENTION OF THE FINALITY OF A CRIMINAL JUDGEMENT BECAUSE IT WOULD BE UNCONSCIONABLE NOT TO RE-EXAMINE THE NUMEROUS ERRORS CONCEALED IN THE PETITIONERS CONVICTION.

POINT II

THE HABEAS COURT WAS NOT CORRECT IN FINDING THAT PETITIONER HAD FAILED TO DEMONSTRATE THAT HIS TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE

PETITIONER ASSERTS THE THRUST OF MS. BARLOW' ARGUMENT ON THIS POINT REST ON (1) THE DELUSIVE MISREPRESENTATION THAT THE PETITIONER DIDN'T PRESENT NO EVIDENCE AT HIS EVIDENTRY HEARING (2) THE DUPLICITOUS AND REPETITIOUSLY WEAK ARGUMENT THAT MATTERS SHOULD HAVE BEEN RAISED ON DIRECT APPEAL (WHICH WARRANTS NO MORE NEEDLESS OR CUMMALATIVE REBUTTA)) (3) THAT THE RECORD

SHOWS COUNSEL CONDUCTED ADEQUATE INVESTIGATION, PETITIONER AGAIN ASSERTS MS. BARLOW IS DISTORTING THE RECORD AND IS OBVIOUSLY CONFUSED AS TO ITS CONTENTS, WHICH PETITIONER POINTS OUT IN RESPONSE TO (1) THAT ITS INTERESTING TO SAY THE LEAST THAT IN MS. BARLOWS BRIEF SHE FIRST SAYS THAT THERE WAS NO "SWORN" EVIDENCE SUBMITTED IN THE PETITIONERS EVIDENTRY HEARING, THEN STATES THERE WAS NO SUBSCRIBING WITNESS TO THE AFFIDAVITS SUBMITTED AT THE HEARING, THEN STATES THERE WAS ABSOLUTELY NOTHING SUBMITTED AT THE EVIDENTRY HEARING, THEN STATES FOR THAT FACT THERE WAS NOTHING EVER SUBMITTED TO THE COURTS FOR ITS CONSIDERATION EITHER WITH THE WRIT OR BEFORE OR AFTER THE EVIDENTRY HEARING, FIRST PETITIONER BRINGS TO THIS COURTS ATTENTION THAT MS. BARLOW DOESN'T QUESTION THE AUTHORITY OF THE COURT TO ACCEPT THE AFFIDAVITS AND SECONDLY TO MARKINGS ON MARK VELARDE'S AFFIDAVIT WIELDING THE COURTS SEAL OF ACKNOWLEDGEMENT OF INTRODUCTION INTO EVIDENCE AT THE EVIDENTRY HEARING APPROPRIATELY TITLED "PLAINTIFF'S EXHIBIT 2 P" WHICH PETITIONER OBTAINED FROM THE HABEAS COURT RIGHT AFTER THE HEARING, WHICH THE NO. 2 IS INDICATIVE OF OTHER SUBSCRIBED DOCUMENTS THAT WERE INTRODUCED, COMPLETELY SHUTS DOWN HER ARGUMENT, ALSO PETITIONER ALSO POINTS OUT THAT ALL AFFIDAVITS IN PETITIONER WRIT OF HABEAS CORPUS ALONG WITH THE CERTIFICATE OF SERVICE WERE SUBSCRIBED BY A NOTARY OF THE PUBLIC MICHAEL A. INGLEBY WHO FURTHER WITNESSED THEIR PREPARATION AT A LOCAL XEROXING COMPANY AND THEIR SUBSEQUENT MAILING TO ALL PARTIES BY CERTIFIED MAIL NO. P55037543 AND SHOULD THAT NOT BE GOOD ENOUGH, TRUE AND

CORRECT COPIES FROM THE THIRD JUDICIAL DISTRICT COURT WITH ALL THE BEFOREMENTIONED AFFIDAVITS, EXHIBITS AND DOCUMENTS WHICH WERE SUPPLIED TO ATTORNEYS FOR PETITIONER AND HIS WIFE WHO FURTHER MADE COPIES WHICH ONE WAS SENT TO THE AMERICAN CIVIL LIBERTIES UNION AND OTHERS STORED FOR REFERENCE, FURTHER ITS UNLIKELY THE LOWER COURT WOULD NOT SUMMARILY DISMISS THE PETITIONERS WRIT AND TAKE ALMOST A WHOLE YEAR TO REVIEW THE ENORMITY OF ALL THE EVIDENCE SUBMITTED IN SUPPORT IF THEIR WERE NONE SUBMITTED.

PETITIONER LIKE MS. BARLOW FINDS ONE POINT INTERESTING HE WILL MAKE REFERENCE TO THAT, SHOULD BE ADDRESSED, AND THAT IS MS. BARLOWS STATEMENT THAT "IT IS ABSURD TO BELIEVE THAT THE OFFICERS MERELY PICKED OUT A CAR AT RANDOM NEAR PETITIONERS HOUSE AND SEARCHED IT" PETITIONER ASSERTS IT ISN'T SO ABSURD WHEN ONE CONSIDERS THAT A MONTE CARLO WAS POSITIVELY SEEN LEAVING THE SCENE OF THE HOMICIDE, ALTHOUGH IT WAS A NEWER 1979 YEAR AND BROWN, ALONG WITH A BLACK CAMARO AND YELLOW NOVA (SEE POLICE REPORTS NO. 84025540 PAGES 8) BY SIX EYE WITNESS'S, BUT PETITIONER ASSERTS IT IS INTERESTING TO NOTE THAT MS. BARLOW DOES NOT STATE PETITIONER DIRECTED THE OFFICERS TO THE CAR, BECAUSE IT CONFIRMS PETITIONERS POSITION THAT HE WAS NOT THERE DURING THE SEARCH OR GIVE PERMISSION TO SEARCH THE CAR, WHICH PETITIONER ALSO ASSERTS IT WOULD BE MORE ABSURD TO BELIEVE THAT DETECTIVES JOHNSON AND LEARY WITH 30 YRS. EXPERIENCE ON THE FORCE IDENTIFYING CARS, WOULD NOT BE ABLE TO IDENTIFY A 1974 BLACK CHEVROLET MONTE CARLO AFTER THEY HAVE CONDUCTED A "PHYSICAL SEARCH" OF THE VEHICLE.

ALSO EQUALLY AS INTERESTING IS MS. BARLOW'S STATEMENT :

IT IS POSSIBLE FOR THE JURY TO HAVE BELIEVED
THAT THE CHEVELLE CAR MODEL AND THE MONTE
CARLO WERE SIMILAR AND THE CONFUSION
WAS ONLY IN THE NAME AND NOT IN WHETHER
THE CAR SEARCHED WAS PETITIONER'S

RIGHT THEIR MS. BARLOW CAME AROUND TO THE WHOLE POINT IN
THAT THE JURY WAS TOLD THEY WERE THE SAME CAR WHEN
THEY WEREN'T, AND SHOULD HAVE BEEN EITHER DIRECTLY OR
THROUGH THOROUGH CROSS EXAMINATION TOLD THERE WAS ANOTHER
POSSIBILITY THAT THEY WEREN'T THE SAME CAR FOR CONSIDERATION
THUS BEING INADMISSIBLE EVIDENCE ON ITS FACE OR AT LEAST
EVIDENCE THAT REQUIRED A SUPPRESSION HEARING AS TO ITS
ADMISSIBILITY, BUT IN THE ALTERNATIVE THE JURY WAS MISLED.
AND FOR THE RECORD MS. BARLOW'S STATEMENT THAT PETITIONER
OWNED 3 OTHER CARS AT THE TIME, PETITIONER OWNED A 66 EL
CAMINO PICK UP TRUCK, AND A 66 GTO CONVERTIBLE, NONE RUNNING,
OR REGISTERED AT THE TIME WHICH WERE KEPT AT HIS COUSIN'S,
AND OF COURSE THE '72 CHEVELLE MAYBACH.

POINT III

THE PROSECUTOR WAS IN MISCONDUCT.
CLAIMED BY THE PETITIONER THAT DID OCCUR
AND THAT IS REVIEWABLE BY THIS COURT

PETITIONER ASSERTS MS. BARLOW'S CLAIMS ARE UNREVIEWABLE
AND HAVE NOT BEEN PRESERVED IN THE RECORD FOR REVIEW AND
ARE WITHOUT MERIT BECAUSE ATTORNEY'S FOR RESPONDENTS
IN THEIR RESPONSE TO PETITIONER'S WRIT AND AT PETITIONER'S
EVIDENTRY HEARING NEVER DENIED THE REMARKS WERE MADE
AND IN FACT SANDRA SOJOGREN EVEN CALLED PETITIONER'S
REMARKS NOT SO UNBELIEVABLE BECAUSE HE ACTS LIKE

A MACHO MEXICAN FURTHER THEY ONLY DISPUTED WHETHER OR NOT THE JURY WAS INFLUENCED BY THE REMARKS, NEVER HAVE THEY DISPUTED THAT THE REMARKS WERE SAID, WHICH PETITIONER FINDS IT INTERESTING THAT ALL THE WAY THROUGH MS. BARLOW'S BRIEF SHE STATES PETITIONER CANNOT RAISE THIS ISSUE OR THAT ISSUE BECAUSE IT IS NOT IN THE RECORD, THE THRUST OF PETITIONER'S CLAIMS IS THAT HE COULD NOT RAISE THEM IN THE FIRST PLACE BECAUSE THEY WERE NOT IN THE RECORD FOR REVIEW, THEN MS. BARLOW TRIES TO RAISE ISSUES THAT ARE NOT IN THE RECORD FOR REVIEW, THEN CARRIES ON AND ARGUES A COMPLETELY CONFLICTING AND CONTRADICTING POINT THAT PETITIONER SHOULD HAVE RAISED THE ISSUES ON DIRECT REVIEW THAT HAD NO BASIS IN RECORD, THEN TURNS AROUND AGAIN AND SAYS PETITIONER'S CLAIMS ARE NOT FOUNDED OR HAVE ANY BASIS IN RECORD AND CAN'T BE REVIEWED, THUS MS. BARLOW IS TRYING TO SET A PRECEDENT FOR SETTING AN UNFAIR DOUBLE STANDARD FOR REVIEW THAT SHE'S REQUESTING TO BE UNFAIRLY APPLIED TO THE PETITIONER AND NOT THE STATE, ALL HER CLAIMS FOR THIS REASON SHOULD BE DISMISSED.

POINT IV

THE ISSUES RAISED BY PETITIONER IN HIS SUPPLEMENTAL APPEAL BRIEF ARE NOT DUPLICITOUS AND HAVE PLenary MERIT

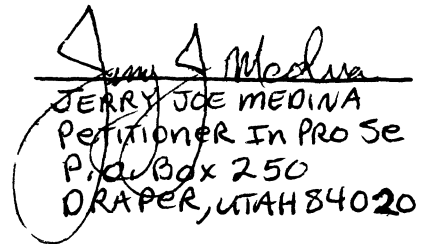
IN PETITIONER'S SUPPLEMENTAL BRIEF, PETITIONER USED THE SAME STATEMENT OF FACTS USED IN HIS INITIAL HABEAS APPEAL BRIEF TO BRING TO THIS HIGH COURT'S ATTENTION ALL THE FACTS AND EVIDENCE SUBMITTED TO THE HABEAS COURT IN SUPPORT

TO SHOW THAT THE COURT'S DECISION WAS NOT BASED ON ANY FACTS OR EVIDENCE AS PRESENTED ALONG WITH A FEW ADDITIONAL FACTS NOT IN THE INITIAL APPEAL BRIEF BUT THAT WERE PART OF PETITIONER'S "STATEMENT OF FACTS" IN THE WRITS MEMORANDUM, WHICH WITH PETITIONER ALSO SUBMITTED A COPY OF JUDGE'S NOEL'S MEMORANDUM DECISION, WHEREIN PETITIONER THEN ARGUED BY POINTS AND AUTHORITIES WHY JUDGE NOEL WAS WRONG AND ERRED, THUS EVEN BY THE WILDEST STRETCH OF THE IMAGINATION WAS NEITHER DUPlicitous OR WITHOUT MERIT, FURTHER MS. BARLOW DOESN'T SPECIFY WHY IT WAS DUPlicitous OR WITHOUT MERIT ONLY THAT SHE CHOSE'S AGAIN TO SIMPLY MISQUOTE, MISCONSTRUE AND MISUNDERSTAND THE ISSUES BY HER OWN DOINGS AND CHOICE.

CONCLUSION

BASED ON THE FOREGOING FACTS ESTABLISHED BY THE PETITIONER, THIS HONORABLE COURT SHOULD DISMISS RESPONDENTS CLAIMS AND REMAND FOR A FAIR TRIAL WHICH PETITIONER FURTHER RESPECTFULLY REQUESTS. THAT THIS COURT NOT HOLD ANY ARGUMENTS (ORAL) AND RULE ON THE MERITS OF THE CASE, AND SHOULD THIS COURT HOLD ORAL ARGUMENTS THAT THEY APPOINT PETITIONER A LAWYER (NOT FROM THE PUBLIC DEFENDERS) TO REPRESENT HIM FAIRLY TO ARGUE HIS POINTS AND AFFORD HIM THE SAME RIGHTS AS RESPONDENTS.

Respectfully Submitted THIS — DAY OF — 1989

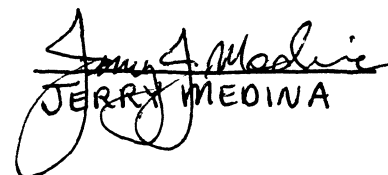

JERRY JOE MEDINA
PETITIONER IN PRO SE
P.O. Box 250
DRAPER, UTAH 84020

CERTIFICATE OF SERVICE

I JERRY JOE MEDINA HEREBY CERTIFY THAT
THROUGH MY BROTHER LARRY MEDINA I HAND DELIVERED
(4) TRUE AND CORRECT COPIES OF THIS REPLY BRIEF
TO THE RESPONDENTS PAUL VAN DAM ATTORNEY GENERAL
AT 236 STATE CAPITOL BLDG, SLC UTAH 84114 AND THE
CLERK OF THE SUPREME COURT, BEING (10) TRUE AND
CORRECT COPIES AT 332 STATE CAPITOL BLDG. SLC
UTAH 84114 ON THIS — DAY OF — 1989

Time: _____
CLERKS NAME: SUPREME COURT

CLERKS NAME DISTRICT ATTORNEY'S OFFICE


JERRY MEDINA
LARRY MEDINA