

1956

# State of Utah v. Eugene Myers : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Eugene Myers;

---

## Recommended Citation

Brief of Appellant, *State of Utah v. Myers*, No. 8504 (Utah Supreme Court, 1956).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/2581](https://digitalcommons.law.byu.edu/uofu_sc1/2581)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

RECEIVED

IN THE SUPREME COURT

DEC 18 1956

OF THE STATE OF

LAW LIBRARY  
UTAH

FILED  
MAY 7 - 1956

STATE OF UTAH  
Plaintiff & Respondent

vs.

EUGENE MYERS  
Defendant & Appellant

Clerk, Supreme Court, Utah

Case Number

8504

-o-o-o-o-o-

APPELLANT'S BRIEF

-o-o-o-o-o-

Appeal From Third Judicial District Court  
Salt Lake County, State of Utah  
Honorable A. Ray Van Cott, Jr., Judge

-o-o-o-o-o-

EUGENE MYERS

In Propria Persona  
Box 250, Draper, Utah

INDEX TO CONTENTS

Pages

STATEMENT OF THE CASE.....1-12

POINT ONE

THE APPELLANT WAS DENIED HIS STATE AND  
FEDERAL CONSTITUTIONAL RIGHTS TO COUNSEL AND  
TO BE HEARD AND THEREBY DENIED HIS STATE AND  
FEDERAL CONSTITUTIONAL RIGHTS TO "DUE PROCESS  
OF LAW" AND THE "EQUAL PROTECTION OF THE LAWS  
UNDER SECTION ONE OF THE FOURTEENTH AMENDMENT  
TO THE CONSTITUTION OF THE UNITED STATES.

.....13.

ARGUMENT AND AUTHORITIES ON POINT ONE...13-40

POINT TWO

THE VERDICT AND JUDGEMENT IS CONTRARY TO THE  
LAW AND EVIDENCE, IS IN VIOLATION OF THE  
APPELLANT'S STATE AND CONSTITUTIONAL RIGHTS  
TO BE CONFRONTED BY THE WITNESSES AGAINST HIM  
AND DENIAL OF HIS STATE AND FEDERAL RIGHT TO  
DUE PROCESS OF LAW. ....41

ARGUMENT AND AUTHORITIES ON POINT TWO...41-50

INSTRUCTION NO. 6.....47

CONCLUSION.....50-52

AUTHORITIES CITED

## Pages

GLASSER v. U. S.	315 U.S., 60, 71, 62 S. Ct. 457, 465...	39-40.
In re BARTON,	6. U.264, 21 Pac.	998..28-29
PEOPLE v. CHALMERS,	5 U. 201, 14 Pac....	131..20
PEOPLE v. GREEN,	88 U. 491, 496, 55 P. 2d. 1324.....	21
POWELL v. ALABAMA,	287, U.S. 45, 68, 53 S. Ct. 55, 64.....	33-39
STATE v. DAVIS,	28 U. 10, 76, Pac,	705...26
STATE v. HALL	139, 2d. 228, 230.....	46-47
STATE v. HALL	145 P.2d. 494, 496.....	47
STATE v. HOWS,	31 U. 168, 87 Pac.	163.....28
STATE v. NICHOLS,	145 P.2d. 802, 807.....	33
STATE v. O'DAY,	93 U. 337, 73 P.2d.	965....26
STATE v. LAWRENCE,	234 P. 2d. 600. 601.....	49
STATE v. THOMPSON,	53 U. 291, 199 Pac. 161.....	28-29
STATE v. WHITE,	152 P. 2d. 80-81.....	49

(INDEX Page(2) )

( Index Page 2.)

STATUTES CITED .

CONSTITUTION OF UTAH, pages

Article One, Section 12.....15

UTAH CODE ANNOTATED 1953,

Section 2, 2	76-1-41.....	23
"	77-1-8.....	15
"	77-1-10.....	28
"	77-22-16.....	22
"	77-24-1.....	26
"	77-24-5.....	22
"	77-24-13.....	27
"	77-27-1.....	28
"	77-48-1.....	22-23

TEXTS CITED .

Cyclopedia of Law and Procedure,

Volume 25, Title LARCENY..... 48

IN THE SUPREME COURT  
OF THE STATE OF UTAH

-o-o-o-o-o-

STATE OF UTAH	)	
Plaintiff & Respondent	)	
vs.	)	Case Number
EUGENE MYERS	)	8504
Defendant & Appellant	)	

-o-o-o-o-o-

The Appellant, a 30 year old Negro was  
condicted of Grand Larceny in the Third District  
Court, Salt Lake County, State of Utah on November  
26, 1955.

This case stems from an original information  
which alleged that the Appellant and Co-defendant,  
Oliver Townsend "Did Rob DEAN JONES and WAYNE LUCK  
at the Nelson Motor Lodge, 27th. South & State Sts.  
Salt Lake City, Utah on March 29, 1954.

Appellant, ~~Myers and two~~ women who had paid him to drive them to Boise, Idaho, were arrested as they were going through Twin Falls, Idaho, on March 30, 1954. After waiving extradition, they were returned to Salt Lake City, Utah .

On July 1, 1954 the Appellant Myers charged jointly with Oliver Townsend was put on trial on an information of ROBBERY (14571). After the jury was duly impaneled and sworn to try the defendants one of the jurors, JOHN J. BERGER, stated (in Judge Lewis' chambers) that he knew the state's first witness that was about to take the stand - DEAN JONES, and proceeded to tell Judge Lewis what a "Drunkard" and "no good thing" he knew Jones to be and Mr. Berger added that if he stayed on the jury he would find for the defendants. At this point, Assist. Dist. Attorney, Christian Ronnow asked for and received "a recess until 2:00 P. M... During the recess, ANOTHER INFORMATION, was brought against the Appellant, Myers alleging that he alone "Stole" the property that he and co-dendant, OLIVER TOWNSEND were STILL

ON TRIAL (in jeopardy) for supposedly having taken property in evidence during an alleged "Robbery".

Also during the said recess, the Appellant, Myers was taken into the chambers of Judge, Marcellus K. Snow. Judge Snow asked "Is this the man who has waived his preliminary hearing", someone, (not the Appellant) said "yes". And Judge, Snow said "take him up to Judge, Lewis".... No information was read to the defendant, "no copy thereof, was given to him, nor was the Appellant asked any questions whatsoever with regards to the NEW INFORMATION OF " GRAND LARCENY". When the defendant, (Appellant) Myers, told his attorney, Ben D. Browning that he would not plead guilty to "Grand Larceny Mr. Browning, looked at the clock in the court room and said to the Appellant - "YOU EITHER PLEAD GUILTY TO GRAND LARCENY OR I'LL WITHDRAW FROM THE CASE". At this point, the Appellant was "shocked" and afraid and under the threat and coercion of his attorney, he unwillingly entered a plea of Guilty to the said NEW INFORMATION OF GRAND LARCENY. On July 17, 1954, the defendant swore to and submitted an Affidavit for a change of Plea, which Affidavit was prepared by a court-appointed attorney, Allen Swan. (Trans;



Mr. Swan withdrew from the Appellant's case on the 29th. day of September. Mr. Lee W. Hobbs, who was appointed by the court to represent the defendant, made a motion for a Bill of Particulars on November 30, 1954 (Trans. pp. 33-34) at which time the Appellant, under the advise of Mr. Hobbs entered an "AMENDED PLEA" of "NOT GUILTY BECAUSE OF PRIOR JEOPARDY". Later Mr. Hobbs made a further motion for a bill of Particulars. (Trans. p.37)

On or before the 13th. day of December, 1954 Mr. Hobbs submitted a 'PETITION FOR A WRIT OF HABEAS CORPUS' designated - Civil No. 103 849, in which Appellant Myers alleged that he had already been 'Once in jeopardy' for the offense charged as follows:

" 3. That your petitioner has been once in jeopardy for the offense charged in that he was heretofore charged with and tried for the crime of robbery before the Hon. David T. Lewis, one of the judges of this court, on July 1, 1954, that a lawful jury was impaneled therein and that thereafter, on motion of counsel for the state of Utah, the aforesaid information wherein your

Statement of case, Cont. 45 -

petitioner was charged with robbery, being Salt Lake County Criminal Case No. 14571, State of Utah vs. Eugene Myers & Oliver Townsend, et al was dismissed.

4. "That the acts alleged to have been committed by your petitioner in the information in Case No. 14608 are the identical acts and constitute the identical offense charged in Criminal Case No. 14571 as is shown in the Bill of Particulars on file in the aforesaid Criminal Case No. 14608.

A WRIT OF HABEAS CORPUS was granted upon the foregoing Petition by Judge Ray Van Cott, Jr., on the 13th day of December, 1954, as Civil No. 103 849 and was summarily denied with the prejudicial and "against the man" ruling in the following words (Verbatim) "Mr. Hobbs, 'this man' (referring to defendant Myers) "is using sleight of hand tactics - trying to out-wit the court - writ denied". Later, on January 13, 1955, Judge Lewis Jones, ordered Mr. Lee W. Hobbs, to "perfect the Appellant's appeal to the State Supreme Court from the said ruling of

(Statement of Case Cont.) --6--

Judge Van Cott. In addition, Judge Lewis Jones ordered that the District Attorney "Subpoena Oliver Townsend and other witnesses whose names the Appellant submitted and the judge said "WE CANNOT TRY THIS MAN WITHOUT HIS MATERIAL WITNESSES

However, Mr. Hobbs refused to comply with the said orders of the court and in excess of eleven months later, the District Attorney still had not subpoenaed the Appellant's witnesses as ORDERED BY THE COURT (Judge Lewis Jones) and, contrary to the above-quoted statement of Judge Jones, the appellant was forced to stand trial WITHOUT HIS "MATERIAL WITNESSES" etc. On the 7th day of March 1955, Mr. Hobbs was permitted by the Honorable A. H. Ellett to withdraw from the Appellant's case. (Trans. P. 51.)

On the 10th of March, 1955, Myers appeared in person and without counsel Before Hon. A. H. Ellett, and was informed that he must be ready for trial March 15, 1955 (Trans. P. 52)...On March 11, 1955 the District Attorney made a petition the two (2) psychiatrists be appointed to examine defendant Myers, as to his sanity (Trans. P. 58) and it was so ordered by Judge A. H. Ellett (Trans. P. 59)

And after ~~such examination~~, Myers was committed to the State Hospital at Provo for "30 days observ. (Trans. P. 54)

On April 7, 1955, Judge, Ellett received a letter from Dr. Owen P. Heninger , Supt. of State Hosp. stating Myers to be "INSANE" (Trans. P. 62) and Judge A. H. Ellett ordered a sanity hearing for Myers ( Trans. P. 63-64) at which hearing on April 19, 1955 (IN THE ABSENCE OF THE APPELLANT, MYERS) the court found and determined Myers to be INSANE. And the Judge ordered Myers committed to the State Hospital until restored to sanity, (Trans. P. 65.) In the first part of July, 1955, Myers asked that he be given a re-hearing on the question of his ~~sane~~ sanity which letter, Judge Ellett did not answer but later he issued an order that Myers be returned to Salt Lake, but Dr. Heninger, the Supt. of St. Hos in a letter to Judge Ellett expressed doubt as to Myers having regained his sanity, saying : "however we have nothing in our files to indicate this"... (Trans. P. 66.)

On the 26th. day of October, 1955, upon the assumption of JUDGE ELLETT, that Myers was sane, an order was issued for him to be returned to Salt

for trial (Trans. P. 71) Myers was returned to the Salt Lake County on October 26, 1955.

On November 16, 1955, Myers appeared before Judge, Ray Van Cott, Jr. and was told he was going to trial on the 25th. of November, and that counsel would be appointed to represent him. (Trans. P.74)

On November 19, 1955, Wayne A. Ashworth, newly appointed counsel for Myers, Made a motion for a continuance of trial date (Nov.25.) and despite the written motion of Mr. Ashworth stating the reasons he did not have time to prepare A DEFENSE (Trans/ P. 82.), Judge Van Cott Summarily ordered the motion for Continuance denied. (See Trans. P.75.) the defendant Myers already having made a motion for a DIFFERENT JUDGE, on the 17th of November, 1955 (Trans. P. 81.) although mistakenly calling it a "Change of Venue". After being personally told that he could not get a "FAIR TRIAL" by Mr. Ashworth who also told the defendant that his case had been "butchered" and he did not wish to handle the case especially in view of the court's denial of his motion for a continuance, the defendant, Myers

Mailed a written request to Judge Van Cott asking that other counsel be appointed to represent him rather than FORCE the unwilling Mr. Ashworth to continue JUST FOR THE RECORD and NOT FOR THE DEFENDANT. The defendant's request was not recognized

Mr. Ashworth then made a Written Motion for WITHDRAWAL as counsel for the defendant but this too was denied by the court ( Judge, Van Cott ) and unwilling and UNPREPARED, Mr. Ashworth was FORCED to continue as counsel for Myers, (Trans. 76) Another motion for a continuance was denied by Judge Van Cott (Trans. P. 90)

Thus the defendant Myers was FORCED to go to trial on the 25th of November(1955) without any Preparation for trial and none of his witnesses having been subpoenaed or contacted and with the "UNWILLING" Mr. Ashworth being Forced to remain as COUNSEL OF RECORD, while the defendant was Forced to attempt to defend himself on the spur of the moment and in his own words "stumble along" . He was without counsel at the start of the trial (Trans. PP 139-140) and was refused counsel at the start of the second day of the trial when he was in

the midst of the cross-examination of the

State's Chief witness at which time the defendant needed Competent counsel most. (Trans. 273) And the defendant was also denied his request for counsel to make the closing address to the jury. (Trans. P. 366) In addition, the trial court refused to even allow the defendant to offer an evidence on an " Amended Plea" of " Once in jeopardy - A plea that was entered on or about November 30, 1954 before Judge, Ellett. Nor was the defendant who had only been back from the State Hospital (Where he had spent 7½ mos. because of diagnosed "INSANITY") he had only been released from Hosp. less than a month and the defendant was not allowed to enter a Plea of not Guilty by reason of insanity. (Trans. PP. 136. 173

The official report of the proceedings of the trial shows that it was a continual round of arguments with the Judge and Dist, Att. with Judge, Van Cott joining forces with the D.A. along with county Attorney Sagers, (who kept whispering in the ears of the District Att. ) and JUDGE ARTHUR J. MAYS, who sat at the counsel table talking to the Dist. Att. and turning



pages in the transcript as he talked to the the Dist. Att. All these events took place in the PRESENCE OF THE JURY and when called to the judge's attention, he stated that he could not do anything about it, All these things tended to harass, bewilder and frighten a helpless defendant who was only trying to protect himself in a legal procedure he did not understand. Naturally in the face of the defendant's ignorance of legal procedures, without PREPARED and WILLING counsel, in the absence of any witnesses in his behalf, not being confronted by one of two complainants against him in conjunction with the forementioned un-declared assistance given the Dist, Att. By Mr. Sagers, Judge Mays and others during the trial, the defendant Myers was found guilty of Grand Larceny (Tr. P. 79, 103

After conviction, (Nove30,1955) Myers made a written request for counsel to represent him, and work on perfecting an Appeal, stating that he would prefer Mr, Grover Giles ( Tr. P. 110) Judge Van Cott appointed Mr. Giles (Tr. P. 108) and Mr. Giles promptly made a motion for a con-



St. of Case Cont. - 121-

and it was continued to December 24, 1955.

(Trans. P. 109) However it seems that Judge Van Cott was afraid that the victim Myers might be able to protect himself with his new Counsel, so the Hon. Judge had the defendant Myers brought before him on the 23rd. of Dec. ONE DAY BEFORE THE DATE ORIGINALLY SET FOR SENTENCING, which of course meant that Myers would be WITHOUT COUNSEL and was then and there (over the defendant's requests for counsel), Was sentenced to the Utah State Prison for Grand Larceny (Tr. P. 113) although the court granted a stay of execution, the harm had already been done, in that Myers had no knowledge of the fact that he could have entered a Motion for new trial, 'Motion in arrest of Judgement' and any other motions to show cause against judgement that he could have done had there been counsel present to advise him what to do.

- 12 - - 12 -

\*\*\*\*\*

**\*\* POINT ONE \*\***

THE APPELLANT WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO COUNSEL AND TO BE HEARD AND THEREBY DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO "DUE PROCESS OF LAW" AND THE "EQUAL PROTECTION OF THE LAWS" UNDER SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

\*\*\*\*\*

In that:

- A. He was deprived of his constitutional Right to DEFEND and be heard by competent COUNSEL in his behalf.
- B. He was deprived of his constitutional right to defend himself and be heard, to "Testify in his own behalf" -- that is, to offer evidence on his plea of 'ONCE IN JEOPARDY'. and to enter and offer evidence on a Plea of Not guilty by reason of insanity; either one of which was a complete defense to the crime charged;
- C. He was denied his constitutional right to be confronted by the witnesses against him that he was convicted on purely HEARSAY

EVIDENCE in the absence of DEAN JONES who did not testify nor appear at the trial of which proceeding the defendant was found guilty of Grand Larceny on said evidence.

- D. He was deprived of his constitutional right to compel the attendance of witnesses in his his own behalf -- in that Court-appointed Counsel was not allowed time to so so, and the court itself, would not issue subpoenas for the witnesses - " Material witnesses" contrary to the orders of Judge, Lewis Jones on January 13, 1955 and contrary to the defendant's said constitutional right.

\*\*\*\*\*

Consistent with the Appellant's deficiency in knowledge of and training in this field, he must present these foregoing contentions under POINT ONE, as an intermingled whole, jumping from one to the other as the case progresses, but he wishes this honorable court to keep in mind that the basic point intended to underlie all else is that he was deprived of his constitutional right to COUNSEL, and although he was given token appoint-

ment of counsel at various times that in reality, the aid of counsel was PRO FORMA, that during the actual trial and other critical proceedings against him, the APPELLANT did not have the assistance of in any sense of the word; For if he had competent counsel IN HIS BEHALF, none of the other matters complained of would not have happened, therefore he first brings up the denial of counsel, weaves in the other matters of which he complains, and then returns to the basic issue of denial of his constitutional right to counsel.

The Constitution of the State of Utah through Article I, Section 12, guarantees:

"In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel,... to testify in his own behalf, to be confronted by the witnesses against him, to have a compulsory to compel the attendance of witnesses in his own behalf nor shall any person be twice put in jeopardy for the same offense.

\* ( Underlining by Appellant)

See also U.C.A. 1953 Sec's 77-1-8, 10

Appellant conceded that the trial

Court appointed several different attorneys as Counsel for him on different occasions during this case, but insists that their assistance was almost entirely PRO FORMA, and that he was not in any way assisted by competent (PREPARED) Counsel during his trial on November 25-26, 1955 (Tr.P. 138.) That he was refused Counsel at the start of the second day of the trial, at which time the state's Chief Witness was being cross-examined, the stage in the trial when the assistance of Counsel was most urgently needed. (Tr.PP 276-277). That he was denied his request for ~~COUN~~ Counsel to address the jury at the close of the case, another critical stage in the trial, when the assistance of counsel would have been most valuable (Trans. Page 366.)

That he was without counsel at the time of his ~~an~~ sentencing, which Judge Van Cott called a day ahead of the set time and Court-appointed Counsel for the Appellant was not present and therefore the Appellant- not read in legal procedures, was not aware of his right to enter a motion for 'New Trial', Motion in Arrest Of Judgement or

or the other legal steps that could have been taken to protect the defendant's Legal Rights (Tr. PP. 109, 113)

At the start of the trial on the 25th day of November, 1955, from the mid page 136 to 138 (TR) there appears the discussion in regard to Mr. Ashworth, to the effect that he had not been ~~gix~~ given time in which to prepare the case for trial and contact witnesses, and that he wished to WITHDRAW because he felt that he could not get the defendant, Myers a "FAIR TRIAL". Appellant wished the unwilling Mr. Ashworth to withdraw as requested by ~~Mr.~~ Ashworth himself. And appoint other counsel, but the court finally told Mr. Ashworth to step aside but remain in in case the Court needed him further (Tr.Pl38) There was no offer to appoint other Counsel but the defendant was forced to proceed to trial WITHOUT COUNSEL, and the transcript clearly shows the complete ignorance of the defendant as to legal procedures -probably consistent with the fact that the defendant had only

recently been declared INSANE and with no knowledge of law, a fair trial could not have been had, by the Appellant under those conditions.

At Transcript Page 82, is the MOTION FOR CONTINUANC made on the 19th. day of November, 1955, and it states as follows:

" This motion is based upon the grounds that counsel for the defendant was appointed on the 17th. day of November, 1955 and that seven days is not sufficient to prepare a defense in the defendant's behalf. Further the defendant has a material witness at 80 Stone St., Newark, New Jersey and another at 525 Fifth Ave., Seattle, Washington, which he feels would be aids in his defense, and the time allowed counsel to contact these witnesses before trial is not sufficient..

Dated this 19th. day of November, 1955

Wayne A. Ashworth.

This motion was summarily 'DENIED' (Trans.90.) and it is once more noted that the defendant was FORCED to stand trial without any possibility of receiving a FAIR TRIAL in the



total absence of all essential Constitutional contents inherent in a FAIR TRIAL in America.

On the 21st. day of November, 1955, said Counsel Mr. Ashworth in disgust over the Court's abuse of discretion, submitted his withdrawal from the case (Trans. P. 98.) The record shows that the defendant Myers continually asked for counsel, Competent Counsel and his requests were continually evaded by

Trans. P. 140, lines 4-5, Myers requested:

"MYERS: 'I would like counsel that  
you give time to prepare my trial at this time...

Trans. Page 140, lines 24-25:

MYERS: I want an attorney that you have given  
more than a week to get my case prepared.

Trans. Page 141, lines 7-8:

MYERS: I don't have no lawyer and don't  
know no law, Is this a Court of Justice?



Trans. Page 143, lines 21-22, he stated :

Mr. MYERS: I didn't know I would be forced to stand trial without a lawyer, your honor.

Trans. Page 148, lines 9-17,

MYERS: I would like a peice of paper, Your honor I would like the record to show that I don't consider me as representing myself. I am just saying a few things in the absence of counsel. I do not have Com petent counsel. I do not want the record to show tha I am representing myself. I am just saying something for myself, as there is no one who has been given time to say something for me. I do want the record to show that on this date, I didn't try to handle my case. I am not representing myself; I am not counsel

Trans. Page 159. Lines 9-10: Appellant stated:

MYERS: " It doesn't matter to me what the state use I am just stumbling here as I don't have a lawyer"

Trans. Page 169, lines 22-25:

CROSS EXAMINATION

By MYERS: Mr. Luck, if my questions don't make any sense, its just because I don't know anything about

this deal. I didn't have no time to prepare. I just had one minute in which to prepare...

Trans. Page 261, lines 4-7:

"Q. Yes sir. I think I pointed out at the beginning of this that I was not representin myself, I was just saying a few words. I think the court is aware that I don't know anything about the law. I am just stumbling,....

The foregoing exerpts should clearly show that the defendant was in need of Counsel and wanted Counsel for his defense, that is PREPARED COUNSEL.

Trans. Page 136 shows that defendant Myers attempted to enter a Plea of 'Not Guilty by reason of Insanity and was not allowed to do so as follows:

"MYERS: Your honor as you know, I am no Lawyer and I want to change my plea at this time from Not Guilty to Not Guilty by reason of Insanity. I would like the record to show I want to change my plea (Lines 1-4)...

THE COURT: You are too late for such a Plea and it wi

will be denied (L.11-12)

Referring to U.C.A. 1953 Section 77-22-16:

Notice of Proposed defense of Insanity.. last three lines state:...

" The Court may however, permit such evidence to be introduced where good cause for the failure to file notice has been made to appear"

U. C. A. 1953 Section 77-24-5, provides:

" All matters of fact tending to establish a defense other than once specified, in the third or fourth subdivisions of section 77-24-1 may be given in evidence under the plea of Not Guilty.

Under section 77-24-1 it is stated:

" Since the adoption of Laws 1935, Ch.122, a defendant may enter a plea of not guilty because of insanity. (PEOPLE vs. GREEN 88 U. 491, 496, P. 2d. 1324)."

U.C.A. 1953, Section 77-43-1, provides:

" no person while insane shall be tried adjudged to punishment or punished for public offense"

U. C. A. 1953 SECTION 76-1-41. Provides:

" All persons are capable of committing crimes except those belonging to the following classes:

(4.) Lunatics and insane persons...

\*\*\*\*\*

The state may make much of the fact that the Appellant did ~~not~~ give notice of his proposed defense of insanity, but it is of interest to note that the nearly twenty six (26) months that this case has been existent, the District Attorney, himself, made a petition for an examination of Myers as to his Insanity and on the 11th. day of March 1955, (Trans. P.58) which was ordered (Tr. P.53, 59) and that such hearing upon his sanity, Myers was committed to the State Hospital at Provo, Utah "For thirty days obser-

After the said thirty days period of observation, the Supt. at the State Hosp. informed Judge, A. H. Ellett that MYERS WAS INSANE (Tr.

P. 62, 63)

On April 15, 1955, Judge, Ellett ordered another Sanity hearing for Myers, which hearing was held in the ABSENCE OF THE DEFENDANT and on April 19, 1955, Myers was formally adjudged INSANE (In the ABSENCE OF THE DEFENDANT) and the record shows that the defendant Myers was committed to the State Hospital at Provo, Utah (Trans. PP.64-67)

On October 26, 1955, the Appellant was ordered returned to the Salt Lake County Jail but he failed to hear anything from the court until November 16th. at which time he was told by Judge Van Cott that he "Must<sup>2</sup> stand trial on the 25th. of November 1955 only nine days away and at that time, Nov.16th. the DEFENDANT WAS WITHOUT COUNSEL. And as evidenced by the forementioned Motion for a continuance by Court-appointed counsel(Mr. Ashworth) the eight days (7) day given him by the court, was INSUFFICIENT for him to prepare his defense. And Mr. Ashworth's failure to contact the Appellant from November 19th. to the day of the trail (November 25th) during which time, he mailed the Appellant a Notice of Withdrawal. Hence, therefore was no opportunity for a Notice of nor Plea of Not Guilty by reason of insanity to

be entered by the defendant, In view of the fact that the defendant, Myers had been recently declared INSANE, the requisites of circumstances justifying an exception to the rule of "prior Notice" were met and under our system of democracy, "surprise" should not be a technicality condoned in a court of Justice.

In regards to the Plea of 'Once in Jeopardy' (Trans. P. 173, lines 8-10, 15-25, is pertinent:

" Q. Your honor, does the record show, that I entered an "Amended Plea" of Not Guilty because of prior jeopardy. Does the record show that....

Q. (By Myers) " well, I would like to know if the Court was going to grant that that Plea be recognized and if it were going to be recognized, well then I would like to be allowed to say something about it something on the prior jeopardy that Plea was entered before Judge Lewis (Judge Ellett) because of a prior jeopardy.

THE COURT: That matter is not in issue at this time in this case, so far as I know.

MYERS: 'Yes Sir'.

THE COURT: The only plea that is here that is officially made is that of not Guilty and upon that issue we will try the case.

As stated on pages 3 & 4 Supra, the Appellant was placed in jeopardy under the information No. 14571, for Robbery on the First day of July 1954, before the Hon. David T. Lewis (~~XXXXXXXX~~) That as stated on pages 8-9 supra, a Plea of 'Once in Jeopardy' had been entered on the 30th day of October, 1954 in case No. 14608 before the Hon. A.H. Ellett, a Mr. Lee W. Hobbs represented the defendant Myers.

U. C. A. 1953 Section 77-24-1, Provides:

There are four kinds of Pleas to an indictment or information:

(1) Guilty (2) Not Guilty (3) A former Judgment of Conviction or Acquittal of the offense charged. (4) Once in Jeopardy.

A defendant who does not plead guilty may enter one or more of the other pleas.

Therefore, the Appellant submits that he was entitled to and did enter a plea of Once in

Jeopardy and can prove that this Plea was entered through the hand-writing of Counsel, Lee W. Hobbs, whose written words the Appellant read while entering the said Plea. The paper on which the words of the Plea were written (By Mr. Hobbs) is in the possession of the Appellant.

The Bill of Particulars in this case (14608) Tr. PP. 35-36, by Par's. (1) (3) (4) (7) and 8 shows that the acts and facts relied upon by the State in the instant case are the same acts and facts that were relied upon by the State in Case No. 14571, for Robbery. The first case being Robbery it included the offense of Grand Larceny.

(State V. O'Day, Utah 387, 73, P. 2d. 965;  
State V. Davis, 28 Utah 10, 76 Pac. 705)

U. C. A. 1953 Section 77-24113, Provides:

" When the defendant has been once placed in jeopardy upon an information... the jeopardy shall be a bar to another information for the offense charged... or for an offense necessarily included therein of which he might have been convicted under that information..."



A NOTE , under this Section reads:

" A discharge of the jury trying a party charged with a felony, unless for an overwhelming necessity, such as death, insanity and the like, or at the request of such party, effects his acquittal because the party is placed in jeopardy when the jury is sworn".

PEOPLE v. CHALMERS, 5 U. 201, 14 Pac. 131)

U. C. A. 1953 Section 77-1-10, provides:

".... Nor shall any person be Twice put in jeopardy for the same offense.

And A NOTE under this Section reads:

" where the Jury was impaneled and sworn to try the case and after evidence was all introduced Court refused to submit case to jury, defendant was thereby placed in jeopardy and could not be for crime charged in information or for any offense included therein.

STATE v. HOWS, 31 U. 168, 87 Pac. 163)

See Also: STATE v. THOMPSON, 58 U. 291, 199 Pac. 161

U. C. A. 1953 Section 77-27-1 States;

An issue of fact arises:

(3.) Upon a Plea of 'Once in Jeopardy'.

NOTE: Under Section 77-27-1:

" Under this section, the defense of once in jeopardy raises an issue of fact to be determined by a jury .. A judgement on the verdict without such finding, will be reversed" (In re

BARTON, 6U. 224, 21 P. 998 STATE vs. Thompson  
58 U. 291, 199 P. 161.)

Appellant Myers attempted to testify regarding trial and jeopardy for Robbery but was not allowed to do so. (Trans. P. 343, L. 15.--P. 344.)

Appellant submits that because he was not allowed to proceed and offer evidence on his plea of Once in Jeopardy and to enter and offer evidence on a Plea of Not Guilty by reason of Insanity he was thereby denied his Constitutional right to DEFEND, to be HEARD, to testify in his own behalf (on the said pleas.)

True enough the Court allowed him to testify regarding his whereabouts on the night of the alleged crime, but it would not allow him to offer evidence on the said two Pleas either of which if established, would be a complete defense of crime charged. (U. C. A. 1953 Sections 77-24-1 13 77-48-1.)

Regarding his Constitutional right to be confronted by the witnesses against him,

the Appellant submits:

That Mr. DEAN JONES, of Milford, Utah one of two men from whom the jury convicted Myers of stealing property was duly subpoenaed to appear as a witness (Trans. P. 106) but he did not appear at the trial, hence , did not testify.

The State attempted to explain his failure to appear by offering a letter supposedly from a doctor stating that his condition of health was such that he could not appear to testify. Trans: P. 178. Ll. 1928 and the following transpired:

(Trans. P. 178, Line 29 - P. 179, L. 9)

MR. MYERS: May I ask, Sir, if any testimony (or) anything from Mr. Jones is going to be used in this case?

THE COURT: I can't tell you that, you will have to ask Mr. Anderson.

MR. ANDERSON: NO. I am unable to have him appear for the reasons stated.

THE COURT: Well, Mr. Anderson, do you offer this letter for filing or as an exhibit.

MR. ANDERSON: For filing , I would like to offer it.

THE COURT: Well, you may put it in the file I think it is HEARSAY AS TO THE FACT but you may file it.

BUT.. on Page 182 of Transcript:.....

MR. MYERS: Is that Mr. Luck's Watch that he is asking about or is it Mr. Jones'?

MR. ANDERSON: No, it's Mr. Jones?

MR. MYERS: Well, Sir, is the court going to allow him to testify for Mr. Jones? I asked a few minutes ago if anything with reference to Mr. Jones is going to be asked and he said "NO" Now he is asking about Mr. Jones.

THE COURT: Now Mr. Myers, you have the right to object to any questions that Mr. Anderson ask

MR. MYERS: Well, I would like to Object to that as HEARSAY, sir.

Yet the District Attorney was allowed by the

Court to ask Mr. Luck a number of questions

-35-

regarding exhibit "3", alleged to be Mr. Jones' watch, but on cross-examination, Mr. Luck admitted that he could not identify the watch said to be that of Dean Jones....

(Transcript P. 183)

Q. Mr. Luck, would you definitely say that that is Mr. Jones' watch?

A. No, I couldn't say that.

Q. You couldn't say that? It could be anybody's watch as far as you know (as you can say).

A. As far as I know, Yes.

Elsewhere in the testimony of Mr. Luck, it appears that he or one of the three drove down to the Nelson Motor Lodge where he and Mr. Jones are said to have been robbed but he admitted that he did not know what happened to Mr. Jones, the Page 152, L. 1-7 shows as follows:

Q. Now while you were inside and this robbery was going on, what happened to Mr. Jones, what was he doing?

A. He was over against the other wall. I could see him out of the corner of my eye and the other fellow was over with him, ACTUALLY I COULDN'T SEE

VERY WELL.

Q. You don't know what happened to him specifically?

A. Not except what he told me.

It is readily apparent from this testimony that all that Mr. LUCK knew about Mr. Jones losing anything was what he had been told, there fore, it is purely HEARSAY AND NOT LEGALLY ADMISSABLE EVIDENCE.

In STATE v. NICHOLS (Utah 1944) 145 P. 2d. 802, this Court held that even an attempt to introduce such HEARSAY evidence was reversible error, and as Mr. Chief Justice McDONOUGH said in his concurring opinion on Page 807:

"... " We are advised by the Constitution and the Statutes of this State and Trial Courts have been admonished...as indeed, have State Prosecutors by prior opinion of this court, that one accused of a crime is possessed of certain rights He has a right to be confronted by the witnesses against him. Art. I Sec. 12. Const of Utah:  
105-1-8 U.C.A. 1943 (Now U.C.A. 1953 - 77-1-8)

In the instant case, these two men, DEAN JONES and WAYNE LUCK were entirely separate individuals not even partners in business together, therefore neither could testify regarding the property of th



The matter of the defendant asking for Counsel and the Court refusing it to him continues at Trans. PP. 278, 279, 280, to line 6 Page 281 where the Court after the defendant had asked for only an hour recess so he could talk to a Doctor, that he had just been returned from the Utah State Hospital at Provo, and feared that the strain of the FORCED trial etc. would cause a mental relapse....

THE COURT: Your motion for a continuance in

At another one of the most critical stages of the trial, when the instructions were being assembled before the submission of the case to the jury, Trans. P. 359, L. 24 on the Appellant made another request for Counsel as follows:

MR. MYERS: Your honor, not knowing anything about this, I would like to go on record as saying that because of my ignorance, I would like a lawyer to assume this position. I have never taken the role of a lawyer. It is explained that I did not know anything about the law. On this

procedure I do not understand it. I am contesting but I am saying it is going on in my ignorance since I do not know anything about the law".

And again the Trial Court EVADED THE ISSUE with arguments. (Trans. pp 360.) and the helpless defendant (in ignorance) literally 'Stumbled' through the requests for instructions. Trans. (360 - 365.)

Finally, as the Court was about to instruct the the jury, the defendant made another request for Counsel as follows: (Trans. P. 366, L.6-10)

" MR. MYERS: Your honor, please forgive me for interrupting you. Could the record show that I asked for counsel to address the jury in my behalf.

THE COURT: It may show and the record may show that your request is denied at this stage of the

The Appellant submits that the main testimony upon which he was convicted..the testimony of ROSE ARLENE THOMPSON should have been



received with great caution, if received; For her own testimony shows her to have been an active ACCOMPLICE and Principal through aiding and abett- especially if her statement that she recog.- nized the robbers VOICES and yet failing to report it despite several occasions during which time she could have reported it but chose to conceal the so-called identity of the robbers' voices. About a couple hours after the alleged robbery, she states that she went home..BUT DID NOT REPORT THE ROBBERY. She didn't tell LUCK nor JONES who had robbed them.. she states that the next morning she went to a Buy Rite Store on 23rd. East off 13th.S. and the manager there, MR. BILL GRAINGER, told her that the sheriff had been there looking for her STILL SHE DID NOT MENTION THE ROBBERY NOR CALL THE SHERIFF'S OFFICE.. But accompanied and HIRED one of the men whose voice she claims to have recognized as the voice of one of the robbers, (Eugene Myers) to drive her and Joan Reeser to Boise, Idaho, The Appellant Eugene Myers tried to get the Court to Subpoena an Ogden Police Officer who stopped them on the way to Boise and the said

ARLENE THOMPSON, did not mention the robbery to the Policeman. The Transcript of the Preliminary hearing of the Robbery shows clearly that Arlene Thompson was not sure about her recognition of the Appellant's voice but was definitely sure of her recognition of co-defendant Oliver Townsend's voice and she quoted him as telling the men (Luck and Jones to "get up against the wall") at no time during this lengthy prosecution, has ARLENE THOMPSON or any one been able to quote a single word that the Appellant Myers said TO THE Men that are alleged to have been robbed .... Appellant Myers was denied his right to compel the attendance of Oliver Townsend whom Judge Jones said was A "Material witness" and said that the defendant could not be tried without his "material witnesses". When arrested in Twin Falls and questioned by Mr. Callicot of the Salt Lake Sheriff's Dept. Appellant Myers, stated that he had received the property on his person from another negro about his size but before could elaborate on his explanation, the sheriff insulted him by telling him to tell that story

to some of your colored friends, this is Mr. Callicot". And he proceed to attempt to extract a confession to Robbery from the defendant of which the defendant (Appellant) could not truly give.

OLIVER TOWNSEND , from whom the appellant received the property found on his person was going to show that the State's Chief was definitely was definitely AN ACCOMPLICE, that is ROSE ARLENE THOMPSON...which would have naturally made it impossible for the state to frame the Appellant in the absence of CORROBORATION. Hence, Oliver Townsend, whose voice is alleged to have been more positively identified than the Appellant was released in the midst of the said trial for robbery (July 1, 1954) "In the interest of justice", and as Mr. Henry Nygaard, Attorney, said to the subject's wife.."Your husband (The Appellant, Myers)"was left holding the bag".

In the famous case of Powell v. Alabama 287 U.S. 45 S. Ct. 55. The UNITED STATES SUPREME COURT held that appearance of Counsel was simply PRO

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act administered by the Utah State Library. Must be preserved and made available to the public.

FORM rather than ~~serious~~ and active

and that the defendants were not accorded the right to counsel in any substantial sense.

Among other things the Supreme Court said, at Pages 68-69 of 287 U.S. Pages 64 of 53 S. C. t.

" What then does a hearing include? Historically and in practice in our country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard in many cases would be of little avail if it did not comprehend the right to be heard by counsel EVEN THE INTELLIGENT AND EDUCATED LAYMAN HAS SMALL AND SOMETIMES NO SKILL IN THE SCIENCE OF LAW. If charged with a crime, he is INCAPABLE generally of determining for himself whether the indictment is good or bad. HE IS UNFAMILIAR WITH THE RULES OF EVIDENCE. Left without the aid of Counsel he may be put on trial WITHOUT A PROPER CHARGE, and CONVICTED UPON INCOMPETENT EVIDENCE, or evidence IRRELEVANT to the issue or other wise inadmissible. He lacks both the KNOWLEDGE and SKILL adequately to prepare his defense, even though he have a perfect one. HE REQUIRES THE GUIDING HAND OF COUNSEL AT EVERY STEP IN THE PROCEEDINGS AGAINST HIM. Without it though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

In GLASSER v. UNITED STATES, 315 U.S. 607-71 62, S. Ct. 457, 465, The Supreme Court of the United States said:

(12, 13) Upon the trial judge rest the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused. Speaking for the obligation of the trial Court to preserve the right to jury trial for an accused.

**Mr. Justice Sutherland said that such duty" is not**

to be discharged as a mere matter of rote, but with sound and advised discretion, with an eye to avoid UNREASONABLE or UNDUE departures from that mode of trial or any of the essential elements thereof, and with a caution increasing in degrees as the offenses dealt with increase in gravity".

In PATON v. UNITED STATES: 281 U.S. 276, 312, 3150 S. Ct. 2. 53, 263, 74 L. Ed. 854, 70 A.L.R 263.

" The trial Court should protect the right of an accused to have the assistance of Counsel. "This protecting duty imposes the serious and weighty responsibility upon the trial judge in determining whether there is a proper waiver- competent waiver by the accused. While the accused may waive the right to Counsel, whether there is a proper waiver should be clearly determined by the trial Court and it would be fitting and appropriate for that determination to appear upon the record. " Johnson v. Zerbst, 304 U.S. 458 465, 58 S. Ct. 1019, 1023, 82 L.Ed. 1461.

**\*\*      POINT TWO      \*\***

THE VERDICT AND JUDGEMENT IS CONTRARY TO THE LAW AND THE EVIDENCE IS IN VIOLATION OF THE APPELLANT'S STATE AND CONSTITUTIONAL RIGHT TO BE CONFRONTED BY THE WITNESSES AGAINST HIM AND A DENIAL OF HIS STATE AND FEDERAL RIGHT TO DUE PROCESS OF LAW.

\*\*\*\*\*

In That: There was NO TESTIMONY of MR. DEAN JONE either to identify the property alleged to have been stolen from him, or to place any value upon it; That any other attempted identification and valuation of his alleged property is HEARSAY. That the only property that was properly identified was that of Mr. LUCK which according to the Bill of particulars had a total value of \$22.00 therefore, the alleged crime as proved was not Grand Larceny but only PETIT LARCENY.

That the instruction of the Court No. 6. and the verdict of the Jury of Guilty as charged in the information INCLUDES MR. DEAN JONES who did NOT APPEAR at the trial and never did TESTIFY therefore, there is no legal evidence to show the identity and VALUE of the alleged property of Mr. DEAN JONES, and thereby should be VOID as a matter of Pure Law.



There is no allegation in the information (Trans. P. 21.) or the Bill of Particulars (Trans. 35-36 38, ) that any property was taken from the person or immediate presence of another, and the instructions to the Jury do not consider any such means or theory. The Instructions to the jury (Tr.P.95 and 369, states:

"Grand Larceny is committed in the following cases: when the property taken is of value exceeding \$50.00. Larceny in other cases is Petit larceny".

The Verdict of the Jury pronounced Myers "Guilty as charged in the information", and the information (Trans. P. 21) charges that:

"Myers, Stole from DEAN JONES and Wayne Luck, personal property having a value in excess of \$50.00,..."

And the Bill of particulars, (Trans. Page. 35) states: "The value of the Property is more than \$50.00 total."

The said Bill of Particulars nor information does allege that Mr. LUCK lost property having a value of the said amount, it only gives the TOTAL

apparently combining the property of both men

that is JONES and LUCK.

And the further Bill of Particulars:Trans. P.38  
alleged in paragraph (2) that:

The wallet of Mr. Wayne Luck had a value of \$2..  
and contained \$10. lawful money of the U.S. of  
America. belonging to Mr. Luck; that the Lord Elgin  
Watch alleged ly taken from Mr. LUCK had a value of  
\$10.

That the total property allegedly taken from Mr.  
MR. WAYNE LUCK had a TOTAL VALUE of \$22.00, there-  
fore the jury, in order to convict the Appellant  
Myers "as charged in the information" or of Grand  
Larceny at all, obviously HAD to include the alleged  
ed Property of MR. DEAN JONES and Mr. Jones himself  
without any valid reason other than HEARSAY to  
believe that the property in question was that of  
a certain DEAN JONES or that any such person actualy  
ly exist and that the property without expert  
appraisal actually had the contended value AT THE  
TIME OF "THE ALLEGED STEALING". As the property has  
been RETURNED TO JONES & LUCK from EVIDENCE and re-  
gained or substituted. In addition to the "irregu-  
larity" of returning property in evidence to claimed



ownership while a case is still pending, the submits that NEW WATCH BANDS which definitely (according to all the evidence in this matter) were put on the "stolen Property" AFTER IT WAS RETURNED TO JONES AND LUCK(i.e. their watches) clearly indicates that ADDITIONAL (NEW) property NOT CHARGED IN THE INFORMATION AND NOT CLAIMED TO HAVE BEEN STOLEN BY THE APPELLANT to wit: Two new "expansion" watch bands WERE VIEWED BY THE JURY and on which property its VERDICT ~~as~~ against the defendant was based. ??

Also the Wallets in this matter are supposed to have been "Initialed" by the Officer who entered them in evidence after supposedly having found them at a MAPLE MOTOR LODGE about eighteen blocks from the alleged Robbery Scene(Nelson Motor Lodge) in an Apt. rented by a woman that was never charged in this case; if admissable, NOT HAVING BEEN FOUND ON THE APPELLANT, in view of the fact that these wallets were returned to Jones and Luck , how could the Officer who supposedly "Initialed" them give A LEGAL

Documentary evidence supporting the foregoing accounts of "irregularities" and possibly inadmissible evidence is as follows:

TRANS. Page 171, lines 7-13, ~~taxpayers~~

Q. I mean Mr. Luck after these robbers took it from you I think later the police got it. Could you ~~you~~ tell me what happened to your property after that?

A. "I don't know but it was returned to me. That's all I know" .

Q. Your property was returned to you? (?)

A. "That's right" .

The Appellant may be again reflecting on his ignorance of LAW but he has always been led to believe from persons read in law that anything taken from a suspect must be kept by and under an official until it is produced in court; That such evidence cannot be handed over to whatever party that may ~~claim~~ claim it, WORN BY THEM FOR SEVERAL YEARS, ALTERED IN APPEARANCE and INCREASING THE VALUE BY HAVING NEW BANDS PUT ON THE WATCHES and then brought in and used as EVIDENCE in a Mock and

unconstitutional proceeding which bore the name of a "Trial". The Appellant submits that such is Not admissable evidence.

There were no WALLETS Nor Identifiable money found on or near the APPELLANT, the wallets introduced by Officer Mohenry were alleged found under a couch in the MAPLE MOTOR LODGE about eighteen blocks from the scene of the "Robbery" - Nelson Motor Lodge. There is no evidence what so ever that the Appellant ever had the wallets in his possession, but nevertheless the trial Court admitted them in evidence against him (Tr. P 219 L. 25. -- P. 220 L. 7.) over the objections of the Appellant.

In STATE v. HALL (UTAH 1943) 139. P. 2d. 228, at 230, This Honorable Court Held:

" (3) Under the authorities, it is clear that the state must DEFINITELY identify the goods found in the defendant's possession as the good which were charged to have been stolen before the jury can draw an inference of guilt based upon

the proof of possession by the defendant by such means

And at Page 231 STATE v. HALL Supra, HELD:

" (6) The conclusion that the State failed as a matter of law to identify the plugs disposed of the case for without identification the jury could not draw the inference of guilt there is not sufficient evidence of guilt to support the conviction.

And this same foregoing ruling was adhered to in STATE v. HALL (Utah 1944) 145 P. 2d. 494, at 496 Opinion ( 3)

Appellant submits that Instruction No. 5. Trans. Pages 99 and 369, is erroneous and was prejudicial to him and misleading... as follows:

" You are instructed in determining the value of the property alleged to have been stolen from JONES (DEAN JONES) and Luck as charged in the information you may add the total property together in determining its value as to whether or not it exceeds the sum of \$50.00 lawful money of the United States, or equal to under \$50.00."

NOTE: In view of the fact (admitted fact ) by Mr. LUCK (See Trans. Page 171 Lines 7-13) that the property in question alleged to have been stolen by the Appellant (and Townsend) WAS RETURNED TO LUCK and JONES and NEW BANDS (watch bands) are now in evidence which bands are not alleged to have been stolen by the defendant... In the absence of DEAN JONES, and Mr. Luck's admission that he could not say what happened to Jones on the night of the robbery nor DEFINITELY identify the property alleged to have been stolen,... The Jury INFERRED GUILT from the INFERENCE of Mr. Luck that the property was JONES' "So Jones told him" Hence, HEARSAY and "INFERENCE UPON INFERENCE" both of

practices have effected reverses of convictions by this honorable Court.

As to the adding (combining) the property of two different owners: The Cyc.of Law and Proc. Vol. 25, (Larceny) P. 60, the following rule is stated:

"..The value of property stolen from different owners or from the same owner at different times cannot be combined to make out a case of Grand Larceny".

The Appellant submits that this rule is especially applicable to the instant case, where one of the alleged owners of the alleged stolen property, and which property of the ABSENT owner was necessarily included and the evidence of the Dist. Attorney's "Bill of Particulars" clearly show that without the inclusion (combining) of Mr. JONES property with that of Mr. Luck and a conviction of GRAND LARCENY would have in every respect been impossible - Under the FORM of Grand Larceny charged which charge is wholly dependent upon the establishment (logically) of value in excess of \$50. HEARSAY evidence was admitted; the Jury ruled on not only hearsay evidence but NEW (added) property



NEW WATCH BANDS and other improvements not any of which were a LEGAL part of this case, or any wherein the Appellant has been held to answer.

In State v. WHITE (Utah 1944.) 152 P. 2d. 80, at Page 81 this Court stated :

" (1) The rule relating to the identification is stated in 17 R.C.L. Sec. 70, P. 65, as follows:  
" The prosecution must identify stolen property found in the possession of the accused with that for the theft for which he is indicted, and this must be done with the MOST DIRECT and POSITIVE the cause is susceptible".

In STATE v. LAWRENCE (Utah 1951) 234 P. 2d.600, this Supreme Court held , at Page 601:

" (1-4) This is not a case where the defendant either expressly or impliedly admitted the value nor by conduct or statements of himself or counsel allowed it to be assumed that the matter was not disputed. His Plea of Not Guilty cast upon the State the burden of proving every essential element of the offense by SUFFICIENT evidence to convince the Jury beyond a reasonable doubt. In a charge of Grand Larceny, one of those essentials is that the value be greater than \$50.00. A conviction for that offense cannot stand unless there is satisfactory evidence of the value of the of the property.

The Appellant submits that the insufficiency of the evidence as to value is clearly seen in the Bill of Particulars of the Dist. Att. when recognizing the invalidity of the HEARSAY EVIDENCE as

applied to the evidence of JONES in his absence. And especially the admission of evidence not a of the instant case against the Appellant ..to wit NEW WATCH BANDS etc. thus misleading the Jury ~~thru~~ through an illegal appearance true and material VALUE.

IN CONCLUSION:

The Appellant submits that he has affitmativ: shown under POINT ONE, Supra, that he was grossly DENIED his Constitutional Right to 'Due Process Law' That under POINT TWO, he has shown that the Verdict is contrary to LAW and evidence, that the Jury under the misleadings etc. of the Court ruled wrongly upon IMPROVED and Inadmissable evi- Which evidence in admissable condition, if allow ed could only satisfy PETIT LARCENY and only the if the essential elements of DUE PROCESS were being accorded to the defendant which essential elements WERE NOT RECEIVED BY THE APPELLANT.

A conviction has been had in the absence of conceivable regard for the "Equal protection of accused" under the laws , and aside from what this Court has termed even-handed justice".

The Appellant has twice been in jeopardy for the same offense. He has spent in excess of two years (Continuously) in confinement for the offense charge during which time he has failed in every attempt to to obtain the services of Counsel who would assist the defendant in securing the rights guaranteed him through the virtue of the State and Federal

Constitutions. The incompetency of counsel may be attributed to the statement of one of several lawyers appointed to represent the Appellant:

MR. ASHWORTH: "I can't buck the Court in your "butchered case" -I have a wife and child and have to eat".

HON. LEWIS JONES: (In a letter in the Trans) Refers to the Appellant's case as "A HOT POTATO". Which statement by a Judge should clearly show why the Appellant has been forced to WORK ALONE on this "Hot Potato" and without any REQUESTED assistance of Competent "counsel in his behalf" as obviously the "heat" of said "potato" comes from the prosecuting body where Judge Jones' hear of my case and where Mr. Ashworth and others get their source of livelihood.



Having been Twice put in jeopardy for the same offense, Having been wholly denied "Due Process of Law" and Having been convicted on invalid and misleading evidence, coupled with the fact that the Appellant has been incarcerated continually in excess of two (2) years, should justify a Modification of the illegally effected Grand Larceny Conviction to PETIT LARCENY if not a New (FAIR) TRIAL or complete dismissal "in the interest of justice".

Respectfully Submitted By:

Ernest Myers  
Appellant, In Propria Persona,  
Box 250, Draper, Utah