

2003

Utah v. Joseph Maka Langi : Brief of Appellant

Utah Court of Appeals

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Edwin Stanton Wall; Attorney for Appellant.

J. Fredric Voros, Jr.; Assistant Attorney General; Attorney for Appellee.

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COPY

Edwin S. Wall, A7446
WALL LAW OFFICES
68 South Main Street, Suite 800
Salt Lake City, Utah 84101
Phone Number: (801) 523-3445

Attorney for Defendant

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff/Appellee,)	
)	
v.)	Case No. 20030080-CA
)	
JOSEPH MAKALANGI,)	
)	
Defendant/Appellant.)	

BRIEF FOR DEFENDANT-APPELLANT

Edwin Stanton Wall
WALL LAW OFFICES
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101
Telephone (801) 523-3445
Attorney for Defendant-Appellant

J. Fredric Voros, Jr.
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114
Attorney for the Plaintiff-Appellee

Edwin S. Wall, A7446
WALL LAW OFFICES
68 South Main Street, Suite 800
Salt Lake City, Utah 84101
Phone Number: (801) 523-3445

Attorney for Defendant

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Edwin Stanton Wall
WALL LAW OFFICES
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101
Telephone (801) 523-3445
Attorney for Defendant-Appellant

J. Fredric Voros, Jr.
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114
Attorney for the Plaintiff-Appellee

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SUBJECT MATTER AND APPELLATE JURISDICTION

District Court Subject Matter Jurisdiction

The Third Judicial District Court had original jurisdiction as the trial court in this criminal matter pursuant to Utah Code § 78-3-4(1)

Court of Appeals Jurisdiction

The Utah Supreme Court had appellate jurisdiction pursuant to Utah Code § 78-2-2(3)(I). The matter was poured over to the Utah Court of Appeals on March 13, 1997. The Utah Court of Appeals has appellate jurisdiction pursuant to Utah Code § 78-2a-3(2)(j).

Order on Appeal

The defendant appeals from the trial court's *Findings of Fact and Conclusions of Law and Order Re: Defendant's Motion for New Trial* (filed March 15, 2002); *Aplt. A-74*.

The defendant further appeals from his convictions on two counts of Aggravated Robbery, both first degree felonies, in violation of Utah Code § 76-6-302, as amended, in the final written *Order of Final Judgment, Sentence and Commitment* (filed November 13, 2002); *Aplt. A-86*.

ISSUES ON APPEAL

Issue of Argument I:

Whether the trial court improperly prevented the defense from cross examining the victim's regarding their immigration status, in violation of the right of confrontation, which if allowed would have established that they were both illegal aliens, and that at least one had previously been deported, establishing that they were not credible about the existence of the contents of their wallets and as to whether their wallets were taken.

Objection Preserving Issue: On April 16, 2001, the State of Utah filed a motion in limine, together with a memorandum, to preclude the defense from inquiring into the victims immigration status, acknowledging that they were both illegal aliens. *Motion in Limine Re: Victims' Immigration and Custody Status* (filed April 16, 2001) *Aplt. A-26*; *Memorandum in Support of Motion in Limine Re: Victims' Immigration and Custody Status* (filed April 16, 2001) *Aplt. A-28*. Oral arguments on the states motion in limine were held on April 24, 2001. At trial defense counsel attempted to cross examine the first of the two victims regarding their immigration status, and was precluded from doing so upon the state's objections. *Tr. p. 147*. Defense counsel was then under the onus of contempt and did not engage in similar cross examination of the second victim.

Standard of Review: The right of confrontation is a question of law based on a

constitutional right that is reviewed for correctness, while the question of law requires the application of the facts to construe the standard, requiring the incorporation of the clearly erroneous standard for the subsidiary factual determinations. *See, State v. Hubbard*, 48 P.3d 953, 962 (Utah 2002).

Issue of Argument II:

Whether it was plain error for the government to have a law enforcement officer testify that a co-defendant's stated that Mr. Langi had the wallet in violation of the right of confrontation

Objection Preserving Issue: No objection was made at trial and therefore is brought on appeal under the plain error standard. *See, Tr. p. 133.*

Standard of Review: The court will review error for which no objection is made under the plain error standard of (1) whether error existed, (2) whether the error should have been obvious to the court and (3) whether the error was prejudicial. *State v. Dunn*, 850 P.2d 1201 (Utah 1993). The right of confrontation is a question of law based on a constitutional right and is reviewed for correctness, while the question of law requires the application of the facts to construe the standard, requiring the incorporation of the clearly erroneous standard for the subsidiary factual determinations. *See, State v. Hubbard*, 48 P.3d 953, 962 (Utah 2002).

Issue of Argument III:

Whether it was plain error for the trial court to allow a law enforcement officer to testify as to his lay interpretation of the events depicted on a video showing the events in violation of the right of confrontation.

Objection Preserving Issue: No objection was made at trial and therefore is brought on appeal under the plain error standard. *See, Tr. p. 117.*

Standard of Review: The court will review error for which no objection is made under the plain error standard of (1) whether error existed, (2) whether the error should have been obvious to the court and (3) whether the error was prejudicial. *State v. Dunn*, 850 P.2d 1201 (Utah 1993). The right of confrontation is a question of law based on a constitutional right and is reviewed for correctness, while the question of law requires the application of the facts to construe the standard, requiring the incorporation of the clearly erroneous standard for the subsidiary factual determinations. *See, State v. Hubbard*, 48 P.3d 953, 962 (Utah 2002).

Issue of Argument IV:

Whether the trial court erred in allowing the government to introduce evidence through the prosecution's impeachment of its own witness.

Objection Preserving Issue: This issue was preserved on appeal by the defense's

objection. *Tr. p. 204-205.*

Standard of Review: The introduction of statements in connection with criminal conduct are reviewed as a matter of law for correctness. *State v. Hamilton*, 827 P.2d 232, 239 (Utah 1992).

Issue of Argument V:

Whether the trial court erred in denying the defendant's motion for a new trial based on the newly discovered evidence that established that the co-defendant's material statement to law enforcement prior to trial was false.

Objection Preserving Issue: The issue was preserved by the defendant by motion; *Motion for a New Trial* (filed May 31, 2001) & *Memorandum in Support of Defendant's Motion for a New Trial* (filed June 25, 2001) *Aplt. A-33 & A-36.*

Standard of Review: The standard of review when the court reviews the denial of a motion for a new trial is the clear abuse of discretion by the trial court standard. *State v. Colwelli*, 2000 UT 8, ¶ 12, 994 P.2d 177; *State v. Hamilton*, 827 P.2d 232 (Utah 1992).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES
RULES AND REGULATIONS REQUIRING INTERPRETATION
IN THIS APPEAL

Federal Constitutional Provisions

United States Constitution, Fourteenth Amendment

United States Constitution, Sixth Amendment

State Constitutional Provisions

Utah Constitution, Article I, § 12

Utah Constitution, Article I, § 7

Federal Statutes

8 U.S.C. § 1182

8 U.S.C. § 1325

8 U.S.C. § 1326

State Statutes

U.C. § 53-3-205

U.C. § 76-6-302

Rules

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U.R.E. 704

STATEMENT OF THE CASE

Nature of the Case

Appellant was convicted of two counts of Aggravated Robbery, both first degree felonies, in violation of Utah Code Ann. § 76-6-302, as amended, with gun and gang enhancements.

Course of Proceedings

On October 13, 2000, Mr. Langi was charged in an information with two counts of Aggravated Robbery, both first degree felonies, in violation of Utah Code Ann. § 76-6-302, as amended, with gun and gang enhancements, was filed in the Third Judicial District Court, State of Utah, Dock. No. 001917415. A preliminary hearing was held on December 5, 2000, before the Hon. Paul G. Maughn, and Mr. Langi was bound over to stand trial on both counts. Also on December 5, 2000, the case was assigned to the Hon. Judith S. Atherton, District Judge. Mr. Langi was arraigned on December 18, 2000, and plead not guilty to both counts.

On April 16, 2001, the Final Pretrial Conference was held and the State of Utah filed a motion in limine, together with a memorandum, to preclude the defense from inquiring into the victims immigration status, acknowledging that they were both illegal aliens.

Motion in Limine Re: Victims' Immigration and Custody Status (filed April 16, 2001)

Aplt. A-26; Memorandum in Support of Motion in Limine Re: Victims' Immigration and Custody Status (filed April 16, 2001) *Aplt. A-28*. Oral arguments on the states motion in limine were held on April 24, 2001, at which time the court addressed the question of the defense cross examining the victims' immigration statice. Trial began the next day, on April 25, 2001 and continued through April 26, 2001, at which time the jury returned a verdict of guilty on both counts against Mr. Langi.

At the end of the first day of trial, April 25, 2001, the government moved to hold defense counsel in contempt of court for the violation of the Order granting motion in limine, which the trial court took under advisement at that time. At the conclusion of trial, on April 26, 2001, the court held defense counsel in contempt of court for violation of the Order granting the motion in limine. On May 23, 2001, defense counsel paid the contempt fine.

On June 11, 2001, Mr. Langi was sentenced to two concurrent sentences of nine (9) years to life for the convictions of aggravated robbery with gun and gang enhancements. No fine was imposed, but he was ordered to pay restitution in the amount of \$3,728. 47. Mr. Langi was immediately remanded to the custody of the Salt Lake County Sheriff and transported to the Utah State Prison.

Mr. Langi filed a *Motion for a New Trial* on May 31, 2001, prior to Sentencing. On June 25, 2001, after sentencing, Mr. Langi filed his *Memorandum in Support of*

Defendant's Motion for a New Trial, Aplt. A-36. A hearing was held on the motion for a new trial on September 7, 2001, which was orally denied with the government to submit findings of fact and conclusions of law. On February 20, 2002, the defendant filed *Defendant's Objections to Proposed Findings of Fact and Conclusions of Law and Order Re: Defendant's Motion for New Trial.* On the March 15, 2002, the court denied the objections and signed the *Findings of Fact and Conclusions of Law and Order Re: Defendant's Motion for New Trial (Aplt. A-74)* as submitted by the government.

The written *Order of Final Judgment, Sentence and Commitment* was entered by the trial court on November 13, 2002. A timely notice of appeal was filed on November 26, 2003.

Disposition in the District Court

Appellant was convicted of two counts of Aggravated Robbery, both first degree felonies, in violation of Utah Code Ann. § 76-6-302, as amended on April 26, 2002, and sentenced to two indeterminate terms of nine years to life, running concurrently on June 11, 2002. The *Defendant's Motion for a New Trial* was filed May 31, 2001; and was denied on March 15, 2002 in the trial court's written *Findings of Fact and Conclusions of Law and Order Re: Defendant's Motion for New Trial, Aplt. A-74.* The trial court entered its written *Order of Final Judgment, Sentence and Commitment, Aplt. A-86,* on

November 13, 2002.

Statement of Relevant Facts

During the early morning hours of February 26, 2000, Jose Farias, together with Rachel Redding and Gabriel Calvillo went to Beto's restaurant in Kearns, Utah, to have dinner. *Tr. p. 135-136; Tr. p. 179.* Beto's restaurant is a 24-hour, fast food, Mexican restaurant. *Tr. p. 179.* At the time of his arrival at the restaurant Mr. Farias was wearing an earring in his right eyebrow, he recalls arriving at the restaurant with his wallet. *Tr. p. 136-137.* The three ordered their food and sat down at a table to eat. *Tr. p. 180.* While they were eating three Polynesian men, Konai Bloomfield, Siaosi Afu, and Joseph Langi entered the restaurant. *Tr. p. 180, 202, 203.* After entering the restaurant they approached the table where Mr. Farias, Ms. Redding and Mr. Calvillo were sitting, and Mr. Afu said to Mr. Farias, "Everything is cool. We are just here to get something to eat." (*Tr. p. 181*) and Mr. Afu shook Mr. Farias's hand. *Tr. p. 158.* The three men went to the counter to order their food. *Tr. p. 182.*

While the three men were at the counter Mr. Farias asked Ms. Redding to go to the counter and get him a soda. *Tr. p. 182.* Ms. Redding approached the counter and Mr. Farias put on his coat and followed behind her. *Tr. p. 182, 187.* As she approached the counter the three men, who were standing together, let Ms. Redding and Mr. Farias ahead

of them. *Tr. p. 182.* As Ms. Redding was ordering she saw Mr. Farias fall forward, hitting his head on the cash register. *Tr. p. 183.* Mr. Bloomfield punched Mr. Farias, and in that single blow knocked him out. *Tr. p. 117.*

While Ms. Redding and Mr. Farias were approaching the counter, Mr. Calvillo got up, and Mr. Langi stood behind him. *Tr. p. 116.* When Mr. Bloomfield struck Mr. Farias Mr. Langi also struck Mr. Calvillo in the head. *Tr. p. 117.* Then Mr. Langi went over to Mr. Farias and bent over. *Tr. p. 117.* Officer Lone testified that while Mr. Langi was bent over Mr. Farias, Mr. Langi was "going through Farias's pocket." *Tr. p. 117.* Mr. Langi stomped on Mr. Farias's head. *Tr. p. 117.* After stomping on Mr. Farias's head, Mr. Langi went back over to Mr. Calvillo. *Tr. p. 117.* At which time, Officer Lone testified, Mr. Langi went through Mr. Calvillo's pockets. *Tr. p. 117.*

Officer Lone first testified that Mr. Calvillo's wallet had been taken, and that Mr. Calvillo had lost his cash from a cashed paycheck and his green card. *Tr. p. 119.* Officer Lone testified that a green card is an INS card that establishes a person is legally in the country and can work. *Tr. p. 119.* After Officer Lone had testified that it was Mr. Calvillo who had lost the wallet, he changed his testimony indicating that he had been mistaken, and that was Mr. Farias who had lost the wallet containing the cashed his paycheck and INS card. *Tr. p. 119.* Officer Lone never investigated whether or not Mr. Farias ever had an INS card. *Tr. p. 120.* Officer Lone never determined whether an INS

card existed. *Tr. p. 127.*

Ms. Redding testified that she did not see anything come out of Mr. Farias's pockets. *Tr. p. 193.*

Mr. Farias had no memory of what happened once he was struck until the next morning, as he was unconscious. *Tr. p. 137, 139.* He testified that when he went to the restaurant he had a wallet with him. *Tr. p. 136.* He stated that Ms. Redding had his money and that he did not know if anybody took any money from him. *Tr. p. 143-144.* When he woke up at the hospital he no longer had his eyebrow ring, he did not know what had become of it and never found it again. *Tr. 141.* Mr. Farias acknowledged that he was a convicted felon for a weapons charge. *Tr. p. 146.* However, when asked whether he claimed to have had an INS card on the night the incident occurred the court sustained an objection on grounds of relevance. *Tr. p. 147.* Mr. Farias never testified that his wallet, or that his money, had been taken.

After Mr. Farias had testified, but before Mr. Calvillo testified, the Court took a recess, at which time the prosecution objected to defense counsel's questions regarding the witnesses immigration status pursuant to the motion in limine. *Tr. p. 149.* The prosecution did, however, ask that defense counsel be held in contempt, and the court indicated it would reserve on that issue until the end of trial. *Tr. p 149-150.* At the end of the trial the court did, in fact, hold defense counsel in contempt of court and fined him.

Tr. p. 278.

Mr. Calvillo testified that when he went to the restaurant he had a wallet with about \$80 in it, and when he woke up at the hospital he no longer had his wallet, and never got it or the money back. *Tr. p. 164.* He testified he kept his wallet in his back pant pocket. *Tr. p. 172.* He further testified that his clothes were thrown away (implying by the hospital). *Tr. p. 172.* Mr. Calvillo testified that in his wallet there had been a driver's license and "some information papers." *Tr. p. 174.* Defense counsel, under the pending contempt charge, did not ask Mr. Calvillo anything about the INS card, or Mr. Calvillo's immigration status.

It should also be noted that Mr. Calvillo did not testify with regarding to Mr. Farias's eyebrow ring.

It should also be noted that when Officer Lone spoke with Mr. Calvillo, officer Loan had Mr. Farias act as translator between Officer Lone and Mr. Calvillo. *Tr. p. 127, l. 19-21.*

This appeal contests the admission of evidence at trial with regard to whether Mr. Langi took anything from the victim at the time of the assault and the trial court's failure to consider newly discovered evidence after the trial. At trial, counsel for the defendant acknowledged Mr. Langi was guilty of the assault, saying, "Mr. Langi admits that he did wrong, He did not commit an aggravated robbery. He will plead to you that he is guilty

of an assault." *Tr. p. 65, l. 15-17*. Mr. Langi's assault charges were aggravated because the government alleged he "took" something during the course of the assault.

Information, "unlawfully and intentionally took personal property in the possession of ... or immediate presence." of the victim.

SUMMARY OF ARGUMENTS

Argument I

The trial erred in preventing the defense from cross examining the two victims about the fact that they were illegal aliens, and in holding the defense counsel in contempt for attempting to do so. The fact that the victims were illegal aliens meant that they could not work, drive, or hold INS cards, which they claimed were in the wallets that were taken. The defense should have been permitted to cross examine the victims regarding their immigration status as it would have established that they either lied under oath in obtaining a paycheck, driver's license or INS card or that they had lied about even having the cash from a paycheck, a driver's license or an INS card. Thus establishing their propensity to make false statements under oath and negating the existence of wallets and the claimed content.

Argument II

The government had a law enforcement officer testify that during the interrogation of a co-defendant that the co-defendant stated that Mr. Langi had the wallet. This testimony directly violated *Bruton v. United States*, 391 U.S. 123, 135, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

Argument III

The trial court permitted plain error when it allowed a law enforcement officer to testify as to his lay interpretation of the events depicted on a video showing the events in violation of the right of confrontation. The testifying officer had watched the video about 20 times and during the time the jury was watching the video made statements interpreting the events depicted. Placing a spin, or interpretation, on the events being shown to the jury, when the officer had no personal knowledge of the events is an improper use of lay witness opinion evidence.

Argument IV

The trial court erred when it allowed the government to introduce evidence through the prosecution's impeachment of its own witness. Mr. Afu was called by the government for the purpose of introducing evidence that Mr. Langi had a victim's wallet after the incident. Instead, Mr. Afu testified that he had no recollection of seeing Mr. Langi with a wallet after the incident. The prosecution then impeached Mr. Afu with a transcript from a prior interrogation by law enforcement; but the court did not instruct the jury that the impeachment could not be considered as evidence.

Argument V

The trial court erred in denying the defendant's motion for a new trial based on the newly discovered evidence that, as conceded by the prosecution, Mr. Afu lied during the interrogation by law enforcement when he said that he saw Mr. Langi with a victim's wallet after the incident, and that Mr. Afu could not read. The lie about the wallet during the interrogation was introduced both through the *Bruton* violation that is the subject of Argument II, and to impeach Mr. Afu which is the subject of Argument IV.

ARGUMENT I

WHETHER THE TRIAL COURT ABUSED IT DISCRETION WHEN IT PREVENTED DEFENSE COUNSEL FROM CROSS-EXAMINING THE VICTIM REGARDING PROPERTY ALLEGED TO HAVE BEEN STOLEN.

On April 16, 2003, the government filed a *Motion in Limine Re: Victims' Immigration and Custody Status*, together with a *Memorandum in Support of Motion in Limine Re: Victims' Immigration and Custody Status*. In the government's memorandum they state that both Mr. Farias and Mr. Calvillo were residing illegally in the United States. *Memorandum*, p. 2, ¶3.

At the pretrial conference the issue of Mr. Farias's and Mr. Calvillo's immigration status was briefly mentioned. Defense counsel indicated that the immigration and custody status would arise if the government mentioned the matter or if it became relevant as a defense, which counsel indicated "is highly probable that it will be." *Hearing Tr (Apr. 24, 1991) p. 9*. The trial court indicated that it could not see how immigration status would be relevant. *Id.*

Whether Mr. Farias and/or Mr. Calvillo told officer Loan that a wallet having an INS card was taken was material to the defense in the present case. An illegal alien being questioned by law enforcement would be inherently concerned that their illegal status would be discovered and that they would be prosecuted. Pursuant to 8 U.S.C. § 1325 it is

a federal offense to be present in the United States illegally, and pursuant to 8 U.S.C. § 1326 it is substantial offense if an illegal alien returns after being deported, and if the person was convicted of a violent felony prior to their deportation it constitutes an offense for which a person may be imprisoned for 20 years. The fact that an illegal alien faces substantial federal criminal charges, especially for aggravated reentry, creates a powerful incentive for the illegal alien to tell a law enforcement officer that their wallet was stolen or is missing, and that as a consequence they don't have their INS card along with other items commonly found in a wallet.

The fact that the victims who claimed to have the wallet that was taken also claim that it contained an INS card was both relevant and material to the defense. The defense clearly sought to establish that these victims lied about the wallet being stolen with an INS card in it to hide the fact that they were illegal aliens. The government has acknowledged that they were illegal aliens so they could not have had an INS card, so clearly they lied to Officer Lone. The lie about the INS card and their immigration status was also materially relevant to whether they cashed a paycheck, as legal presence in the United States would be required in order for a person to legally work. No INS card means it was illegal for them to work, no work means no paycheck, ergo no cash in the wallet, ergo no wallet.

In the present case the court prevented the defense from establishing the nature and

degree of the motivation Mr. Farias and Mr. Calvillo had to lie to Officer Lone, and that the illegal immigrant status militated against them having cashed a paycheck or a legal driver's license. In other words, the immigration status went to the validity of the entire content of the purported wallet, and thus the existence of the wallet itself. Before defense counsel was placed under the onus of contempt, he had established grounds to believe Mr. Farias was guilty of aggravated reentry for which he could go to federal prison for up to 20 years for having a prior history for a violent felony, and having been previously deported. *See*, 8 U.S.C. §1326. Counsel was prevented from fully establishing the impeachment due to the government's objection. Counsel was then under the onus of contempt when he questioned Mr. Calvillo, and consequently could not pursue it to establish: (1) there was no INS card, (2) there was no paycheck as such would be in violation of 8 U.S.C. § 1182(a), or that such work was illegal for which no check issued, (3) there was no driver's license, or that such a license was obtained by false oath, because U.C. §53-3-205(9)(a)(I)(A)-(F) requires a person to provide their name, place of birth, social security or temporary identification number, and residence address.

It was highly material and relevant in the present case that the victims were illegal aliens. The court erred and abused its discretion when it precluded the defense from asking questions regarding their immigration status, and the charge and pending contempt chilled defense counsels ability and opportunity to conduct an appropriate cross-

examination which would have established the enormous lack of credibility of Mr. Farias and Mr. Calvillo. The fact that the defense was precluded from cross-examining in this area prejudiced the defendant, as the lack of a paycheck, cash, an INS card, and drivers license would have established that the wallet was fictitious; grounds for the jury to have acquitted the defendant of both counts of aggravated robbery.

ARGUMENT II

WHETHER IT WAS PLAIN ERROR FOR THE GOVERNMENT TO HAVE A LAW ENFORCEMENT OFFICER TESTIFY THAT A CO-DEFENDANT'S STATED THAT MR. LANGI HAD THE WALLET

It was plain error for the government to have Officer Lone to testify to the jury that during his interview of the co-defendant Mr. Afu, that Mr. Afu had stated that the defendant Mr. Langi had thrown the victim's wallet from the car. To establish plain error, appellant must show: "(i) An error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant." *State v. Dunn*, 850 P.2d 1201, 1208 (Utah 1993). The error in this case is a violation of *Bruton* and the confrontation clause. It should have been obvious to the trial court because of how the question was put to the witness by the prosecutor. It was harmful in that the prosecutor concedes Mr. Afu lied, and there is no other evidence of Mr. Langi having possession of the wallet, not even

from the declarant Mr. Afu.

The error in the present case arises from an out-of-court statement by a co-defendant about a defendant offered for the truth of the matter asserted, introduced by the prosecution at trial through the testimony of an investigating officer. The trial court should have immediately recognized the *Bruton* and confrontation violations of the testimony when the prosecutor asks the question: Tell me officer what did the co-defendant say the defendant did?

Q. My question is this, Detective, When is the first time that you were told that the wallet had been thrown out near the Methodist church near Kearns.

A. During Mr. Afu's interview.

Q. That was March 23; is that correct?

A. March 22.

Q. Did he indicate to you who had thrown the wallet out of the car?

A. He said that Mr. Langi had.

Tr. p. 133, l. 9-17.

The values protected by due process and the constitutional right of confrontation, which are preserved by both the Sixth and Fourteenth Amendment to the United States Constitution and Article I, sections 7 and 12 of the Utah Constitution. U.S. Const. Amends. VI & XIV; Utah Const. art. I, §§ 7 & 12 have been expressed as follows:

Classically, the primary object of the constitutional right of confrontation is to prevent depositions and ex parte affidavits from being used against the accused at trial in lieu of a personal examination and cross-examination of the witness against him. When confrontation is available the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face-to-face with the jury in order that they may look at him and judge by his demeanor and the manner in which he gives his testimony whether he is worthy of belief. Encompassed in this right of confrontation is the procedural right of cross-examination and the recognition of certain procedural rights regarding the exclusion of extra judicial statements, similar to those found protected by evidentiary rules excluding hearsay evidence.

State v. Anderson, 612 P.2d 785, 778 (Utah 1980)(footnotes omitted); *accord Murray City v. Hall*, 663 P.2d 1314, 1321 (Utah 1983); *Mattox v. United States*, 156 U.S. 237, 242-43, 15 S.Ct. 337, 339-40, 39 L.Ed. 409 (1895).

The general rule is that when an out-of-court statement is offered at trial for the truth of the matter asserted and the declarant is present and available for cross-examination, no federal or state confrontation problem is presented. *State v. Loughton*, 747 P.2d 426, 429 (Utah 1987). It has been recognized, on the other hand, that if the declarant is not present, the core values of the confrontation right are implicated because "[t]he essence of the confrontation right is the opportunity to have the accusing witness in court and subject to cross-examination, so that bias and credibility can be evaluated by the finder of fact." *State v. Nelson*, 725 P.2d 1353, 1356 (Utah 1986). In *Bruton v. United States*, 391 U.S. 123, 135, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), the United States Supreme Court holding that, regardless of a limiting jury instruction, a defendant's Sixth Amendment right to

confrontation is violated "when the facially incriminating confession of a nontestifying codefendant is introduced at their joint trial." *Richardson v. Marsh*, 481 U.S. 200, 207, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987). The Court determined that where a confession "expressly implicates" the defendant, the jury cannot be assumed to consider such "powerfully incriminating" evidence only with regard to the guilt of the declarant. *Id.* at 208, 107 S.Ct. 1702 (quoting *Bruton*, 391 U.S. at 124 n. 1, 135, 88 S.Ct. 1620).

The *Bruton* and *Richardson* and confrontation violations are obvious in the present case, as they should have been to the trial court. Officer Lone who was testifying about what the codefendant Mr. Afu said the defendant Mr. Langi had done. The prosecutor's question would clearly alert any trial court to the error when she asked Officer Loan: "Did he [referring to Mr. Afu] indicate to you who had thrown the wallet out of the car?" *Tr. p. 133, l. 15 - 17*. The classical *Bruton* and confrontation violation arises when a prosecutor asks an officer to tell a jury what a codefendant said the defendant did, it is always an error that is immediately apprehendable.

The testimony by Officer Lone that Mr. Afu stated Mr. Langi threw away the wallet violated the rules established by the *Bruton* and *Richardson* holdings. Mr. Afu was a codefendant making a statement which expressly implicated Mr. Langi. The rule in *Bruton* applies directly to statements by co-defendants. Although the present case is not a joint trial, as in *Bruton*, the present case was likewise not complicated by the need for the

approved method which requires redaction. *See State v. Nield*, 804 P.2d 537, 539-40 (Utah Ct.App.1990). A defendant's Sixth Amendment right to confrontation is violated when a codefendant's statement directly implicating the defendant is introduced at trial through an interrogating officer. Clearly there was error in the present case, and it constituted an error that should have been obvious to the trial court.

This error was harmful and in its absence, it is highly likely that the outcome of the trial would have been different. At trial the prosecution called the co-defendant, Mr. Afu, after Officer Lone testified. Mr. Afu testified that he stated that he did not recall seeing Mr. Langi with a wallet. *Tr. p. 204, l. 5-9*. Consequently, the prosecutor impeached him, during which time Mr. Afu admitted that his testimony was inconsistent with the statement he had made to the investigators. *Tr. p. 205, l. 21 to p. 206, l. 1*. Even so, Mr. Afu never testified that Mr. Langi ever had the wallet.

ARGUMENT III

WHETHER IT WAS PLAIN ERROR FOR THE TRIAL COURT TO PERMIT A LAW ENFORCEMENT OFFICER TO INVADE THE PROVINCE OF THE JURY TESTIFY AS TO HIS INTERPRETATION OF THE EVENTS DEPICTED ON A VIDEO SHOWING THE EVENTS.

During the time the jury was viewing the video Officer Lone did more than identify the various individuals, he gave a commentary regarding what the jury was viewing. Officer Lone invaded the province of the jury when he gave his opinion during the jury's

viewing of the video that Mr. Langi was going through Mr. Faria's pockets.

Officer Lone was not present at Beto's restaurant in Kearns, Utah, on February 26, 2000, when the events occurred which have precipitated this case. He was assigned to conduct the investigation in the case. *Tr. p. 104, l. 4-8*. However, he did not know any of the individuals involved. *Tr. p. 107, l. 1-4*. During his investigation he obtained a video of the events from Beto's restaurant. *Tr. p. 104, l. 18-20*. He watched the video approximately 20 times. *Tr. p. 16-17, p. 118, l. 23-24*. The video tape did not include any audio. *Tr. p. 110, l. 20-22*.

During the time the video was playing Officer Lone identified the various individuals including Gabriel Calvillo, *Tr. p. 111, l. 7*; Rachel Redding, *Tr. p. 111, l. 12*; Jose Farias, *Tr. p. 112, l. 3*; Siaosi Afu, Jr (aka "George") *Tr. p. 114, l. 11, 19*; Konai Bloomfield, *Tr. p. 115, l. 1*; and Joseph Langi, *Tr. p. 115, l. 3*.

As the events transpired during the critical period of the viewing of video tape at trial Officer Lone testified to his interpretation of the events, stating:

THE WITNESS: She walks over here and stands here for a second. Mr. Bloomfield gets his change. And you will see the defendant at today's trial, Mr. Langi, walk over here and he will stand behind Gabriel Calvillo. The assault starts simultaneously. See Mr. Bloomfield punch Farias in the head and knock him out, and simultaneously this is Mr. Langi punching Calvillo in the head, full blast, alternate fists, blow after blow. Afu, he engages in the attack initially, then he leaves, walks outside to get the car. Langi comes over, bends over and starts going through Farias's pocket.

MR. GOTAY: Objection - -

THE COURT: Lets not argue. I will rule on it. The objection is overruled.

THE WITNESS: Then he starts stomping on his head, nearly slips and falls. Walks back over and goes through Calvillo's pockets.

Tr. p. 116, l. 22 to p. 117, l. 13.

The facts shown in the video speak for themselves, and it was inappropriate for Officer Lone to add his interpretation and comment to what was being seen by the jury. The commentary regarding the assault are not germane to this appeal. However, Offer Lone's commentary with respect to what, if anything, Mr. Langi was doing with respect to Mr. Farias and Mr. Calvillo is highly relevant and unduly prejudicial to Mr. Langi.

Officer Lone's testimony is merely his interpretation and opinion that Mr. Langi was going through the pockets.

Rule 701 of the Utah Rules of Evidence allows a lay witness to give an opinion. Under Rule 701, a lay person can give opinion testimony if the opinion is "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Utah R.Evid. 701.

In the present case Officer Lone's ability to perceive the evidence was not better than that of any other member of the jury. The jury was in a position to view the video, and if it so desired to review it if necessary. Moreover, Officer Lone's perception of the video

was identical to that the jury had, he viewed exactly the same video as was in evidence.

Officer Lone's testimony was not helpful to a clear understanding of a factual issue, rather it was an interpretation given to the facts in the light favorable to the government. Officer Lone was not at the scene when the crime occurred. He did not use any special tools or techniques in viewing the video. He was not testifying to anything more than the jury would experience first hand by watching the video. Instead, he was giving an official governmental commentary as to the interpretation to be given to the conduct shown on the video.

The Rules of Evidence state that "testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Utah R. Evid. 704; *accord State v. Larsen*, 865 P.2d 1355, 1362 (Utah 1993). However, Rule 704 does not allow all opinions. *See Davidson v. Prince*, 813 P.2d 1225, 1231 (Utah Ct.App.1991). In *Davidson*, this court stated, "[t]he Advisory Committee notes [to Rule 704] make it clear that questions which would merely allow the witness to tell the jury what result to reach are not permitted. Nor is the rule intended to allow a witness to give legal conclusions." *Id.* (alteration in original) (quoting *Owen v. Kerr-McGee Corp.*, 698 F.2d 236, 240 (5th Cir.1983)). In the present case, Officer Lone's commentary was simply telling the jury that when they observed Mr. Langi with each victim they were to conclude that his conduct was that of going through

their pockets, the clear implication being that he was looking for something to take.

"The determination of whether [a witness's] opinion embraces an ultimate factual issue or constitutes a legal conclusion is a difficult call because '[t]here is no bright line between permissible questions under Rule 704 and those that call for overbroad legal responses.' " *Larsen*, 828 P.2d at 493 (quoting *Davidson*, 813 P.2d at 1231). However, the determination in the present case is simplified in that Officer Lone's testimony was merely a commentary on how the jury should interpret the same video he had watched. He was not a witness with first hand knowledge of the events, he was not a witness providing expert technical information, he was merely the government's spokesman providing the official government spin on the events being observed.

It is well settled that, "like any other evidentiary ruling, an erroneous decision to admit or exclude evidence ... cannot result in reversible error unless the error is harmful." *Hamilton*, 827 P.2d at 240. An error is harmful only if "absent the error there is a reasonable likelihood of an outcome more favorable to the defendant." *Dunn*, 850 P.2d at 1221. Reversal is required when an error undermines confidence in the verdict. *See Hamilton*, 827 P.2d at 240. To that end, the analysis includes, among other things, the importance of the challenged testimony and the overall strength of the State's case in evaluating whether an error is harmful. *See id.* In the present case Officer Lone's statements were highly improperly prejudicial. There is more than a reasonable

likelihood, there is a significant likelihood that the verdict as to both aggravated robbery convictions would have been different in the absence of Officer Lone's play-by-play interpreting the conduct shown on the video. Consequently, due to the improper lay opinion offered by Officer Lone, the convictions in the present case should be reversed and remanded for new trial.

ARGUMENT IV

WHETHER IT WAS ERROR WHEN THE PROSECUTION WAS PERMITTED TO IMPEACH ITS OWN WITNESS AND THE JURY WAS NOT INSTRUCTED THAT IMPEACHMENT IS NOT EVIDENCE.

Mr. Afu was called at trial and proceeded to testify that he did not remember Mr.

Langi having anything with him after the incident, when Mr. Langi got in the car.

Q. Do you recall whether the defendant had anything with him when he got into your car?

A. You know what, I really don't remember.

Q. You don't remember if he had anything in his hand?

A. No. I don't remember – no, I don't.

Tr. p. 204, l. 5-9.

The prosecution then proceeded to impeach Mr. Afu, and impeachment based exclusively on what Mr. Afu had previously stated to the investigators and which it has conceded was a lie at the hearing on the *Motion for a New Trial*.

MR. GOTAY: Objection, your Honor, she is impeaching her own witness.

MS. WHISSLER: Your Honor, the rules of evidence specifically allow me to impeach my own witness.

THE COURT: Objection overruled.

Q. Do you recall telling the detective when the defendant got into your car he had the wallet with him.

A. No, I don't recall, but if that's what I told him then ...

MS. WHISSLER: May I approach the witness, you Honor.

THE COURT: Yes.

Q. Are you aware of the interview you had with Detective Lone was audio recorded?

A. Yes.

Q. What was it that you told Detective Lone when you were interviewed?

A. Do you want me to read this?

Q. I just want – I want to ask you if that refreshes your memory about what you told Detective Lone.

A. Yes, this is what I told him, I guess. It was too long ago. I don't really remember what I said. But, yeah, this is what I said. If it was on tape, this is everything I said.

Q. That transcript accurately reflects the interview you had with Detective Lone.

A. Yes.

Q. Did you not tell Detective Lone it was the defendant that had a wallet in his hand when he got into your car?

A. Yes.

Q. Did you also tell Detective Lone that the defendant threw the wallet out of the car at some point?

A. Yes, I did.

Tr. p. 204, l. 15 to p. 206, l. 1.

It has long been a matter of well settled law in Utah that impeachment is not evidence. In *State v. Burns*, 51 Utah 73, 168 P. 955 (Utah 1917) the court held that statements made by witnesses out of court, contrary to their testimony, can be considered only as to their credibility, and not as evidence of the facts. *Burns* involved a defendant that was convicted of having carnal knowledge of a girl under the age of 15 years. *Id.* In *Burns* the Court, reviewed the jury instruction regarding evidence, which stated:

Evidence has been introduced of statements made by witnesses out of court, contrary to the testimony given by them upon the witness stand. *And you are instructed that such evidence cannot be considered by you as any proof of the facts contained in such statements, but can only be considered as affecting the credibility of such witnesses, and the weight that should be given to their testimony.*" (emphasis original)

Id. at 956. In upholding this instruction, focusing on the emphasized language, the court noted:

Impeaching evidence of the character referred to in the instruction is admissible for the sole purpose of informing the jury that the witness in question has made contradictory or conflicting statements regarding a particular fact in issue. The jury may thus take those statements into consideration in determining the credibility of the witness and the weight that should be given to his testimony. In any other respect the evidence is merely hearsay, and hence not competent to establish the facts contained in the conflicting statements which it is alleged were

made by the witness.

Id. See also, *State v. Herrera*, 338 P.2d 1086 (Utah 1958).

Prior to *State v. Chynoweth*, 41 Utah 354, 126 P. 302 (Utah 1912) the Utah Supreme Court stated the controlling rule of law:

A witness may be impeached by proof of verbal statements made by him out of court upon a material point, which are contradictory of his testimony on the trial, though such statements are not admissible as independent evidence upon the merits.

Id. at 305. *Chynoweth* was a case involving the theft of a heifer calf. The court, addressing the issue of sufficiency of the evidence, noted, "[t]he rule is elementary that 'what a witness, who is not a party, states out of court is not evidence in chief to prove the fact as stated by him, but can only be shown to discredit his testimony at the trial, when his testimony is contradicted by such outside statements. The effect of proving contradictory statements extends no further than the question of *credibility*; it does not tend to establish the *truth* of the matter embraced in the contradictory statements; it simply goes to the credibility of the witness.'" *Id.* (emphases original). The rule has been so axiomatic that Utah has only these few seminal cases addressing this rule of law.

The Tenth Circuit Court of Appeals has more recently followed this axiom of law. In *United States v. Lemon*, 497 F.2d 854 (10th Cir. 1974) the Tenth Circuit noted that prior inconsistent statements are admissible to impeach or discredit one's witness. *Id.* at 857

(citing, *United States v. Eaton*, 485 F.2d 102 (10th Cir. 1973); *Brooks v. United States*, 309 F.2d 580 (10th Cir. 1962)). The *Lemon* court went on to note that:

"[s]uch statements are admissible solely for purposes of impeachment, and then only insofar as they serve to remove the damage of surprise. Such statements cannot be used, by indirection, to present testimony to the jury which the Government expected the witness to supply directly. *United States v. Hill*, 481 F.2d 929 (5th Cir. 1973). . . . a prior inconsistent statement may be used solely insofar as it relates to credibility, and in no event is it to be considered for the truth of its contents. *United States v. Gilliam*, 484 F.2d 1093 (D.C.Cir. 1973)."

Id.

In the present case Mr. Afu testified that he had no recollection of Mr. Langi having the wallet. It was highly prejudicial for the court to permit the prosecution to use the impeachment as evidence that Mr. Langi had the wallet.

A perhaps more significant prejudice to Mr. Langi is that Mr. Afu's testimony compounds the *Bruton* err, and the violation of Mr. Langi's Sixth Amendment right of confrontation. The confrontation clause of the Sixth Amendment which made applicable to the States by the Fourteenth Amendment, is not violated by admitting a declarant's out-of-court statements, so long as the declarant testifies at trial and is subject to cross-examination. The purpose of the amendment is satisfied because the declarants appeared as witnesses in court, under oath, subject to cross-examination, and their demeanor can be observed by the trier of fact. *California v. Green* 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970). In the present case, however, the declarant appeared and

testified that he did not recall the facts to which Officer Lone testified. Consequently, the declarant testified contrary to the assertion made by Officer Lone. The prosecution then impeached Mr. Afu. This compounds the egregiousness of the *Bruton* violation because the impeachment makes Officer Lone's statement about what Mr. Afu said Mr. Langi did appear as more acceptable and credible as evidence. In reality it is nothing more than inadmissible hearsay being offered by the prosecution in a *Bruton* violation, and then being bolstered by impeachment. This violation of the confrontation clause is highly prejudicial, rendered even more significant because Mr. Afu's impeachment was used to corroborate Officer Lone's improper statement. Both Officer Lone's statement as to what Mr. Afu said about what Mr. Langi did, and the impeachment of Mr. Afu were improperly introduced by the government and used improperly as evidence in the present case and as such require a reversal of the aggravated robbery convictions in the present case.

ARGUMENT V

WHETHER IT WAS ERROR FOR THE TRIAL COURT TO DENY THE
DEFENDANT'S MOTION FOR A NEW TRIAL BASED ON THE
NEWLY DISCOVERED EVIDENCE THAT ESTABLISHED THAT THE
CO-DEFENDANT'S MATERIAL STATEMENT TO LAW
ENFORCEMENT PRIOR TO TRIAL WAS FALSE

After the trial Mr. Afu swore out a statement for the defense in which he stated, in

relevant part, "I DID NOT SEE JOE TOOK OR STEAL ANYTHING FROM THE 2 VICTIMS, BECAUSE I HAVE LEFT THE SEEN TO PICK UP THE VEHICLE."

Memorandum in Support of Defendant's Motion for a New Trial, Exhibit 1. The government interviewed Mr. Afu in its preparation of its memorandum in response to the defendant's Motion for a New Trial. Mr. Afu told the governments investigator that he had lied during the first investigative interview about Mr. Langi taking the wallet.

KJ: Okay, You mentioned that you did lie to the investigator but I couldn't see where you did okay so if you can try to explain to me where you think you lied to the investigator?

SA: Well I got, see the thing was, when we first got caught ...

KJ: Uh-huh.

SA: I never thought Joe would get caught so when we interviewed with the investigator, I told the investigator I put everything on Joe.

KJ: Uh-huh.

SA: So when there was, you know when he asked about wallets I was like, "Yeah he took them and . . .

KJ: Uh-huh.

SA: And he asked me where I, where he threw them and I told him see the whole statement about Joe was all incorrect cause I knew Joe. . . .

Memorandum in Opposition to Defendant's Motion for New Trial, Exhibit titled "Siaosi Afu Purjury Transcripts" p. 8, See. Aplt. A-45, 54. The State's own evidence shows that

Mr. Afu lied about Mr. Langi ever having the wallet.

Additionally, Mr. Afu stated can only read a little English. *Id.*, p. 1 & 4; *Aplt. A-45 & 49*.

At the hearing on the Motion for New Trial the prosecution conceded that Mr. Afu had lied to the investigators. "Well, the State concedes that he lied to investigators, he told the jury that he lied to investigators. He told the jury he had lied about certain things that he was interviewed about by Detective Jeff Lund [sic, Lone]. Those are things that were known to the defendant at the time of trial . . . " *Motion Hearing*, Sept. 7, 2001, p. 9, l. 15 - 21. There is only one matter which could even be considered the "certain things" referred to by the prosecutor, that is that Mr. Afu lied to the investigators when he said that Mr. Langi had the wallet. The state expressly conceded at the motion hearing that Mr. Afu lied when he stated to investigators that Mr. Langi had the wallet.

Mr. Afu's lie that Mr. Langi had the wallet is the very fact which the state relied upon at trial to establish that something had been "taken" at trial.¹ The government first

¹ Mr. Afu's lie consistently appears in the evidence acquired by both the government and the defendant with respect to the *Motion for New Trial and Request for Evidentiary Hearing* *Aplt. A-33*. See, *Memorandum in Support of Defendant's Motion for a New Trial, Exhibit 1, Aplt. A-36 & Memorandum in Opposition to Defendant's Motion for New Trial, Exhibit "Siaosi Afu Purjury Transcripts, p. 9, Aplt. A-54*.

introduced Mr. Afu's lie through the testimony of Officer Lone. *Tr. p. 133, l. 15-17.*² In *State v. Calliham*, 55 P.3d 573 (Utah 2002) the court stated "a criminal conviction procured by the knowing use of false testimony" must be vacated "if there is a reasonable likelihood that the false testimony could have affected the judgment of the jury." *State v. Hewitt*, 689 P.2d 22, 24 (Utah 1984). In *Cunningham* the defendant failed to identify any false testimony offered at trial. In the present case it is clear that Afu's statement to officers was false, and that the false statement was offered at trial through the testimony of Officer Lone. One of the seminal dangers raised by a violation of the confrontation clause is that false statements made out-of-court, such as Mr. Afu lie, improperly become the evidence of the case through the *Bruton* violation and the improper use of impeachment as evidence, previously addressed in this brief.

It is significant that the government has acknowledged that Mr. Afu's statement that Mr. Langi had the wallet was a lie for another reason in connection with the trial court's err in denying the defendant's motion for a new trial. It is this lie which was relied upon and improperly introduced by the government in violation of *Bruton*, and which was the basis of the impeachment of Mr. Afu at trial when Mr. Afu said he did not recall Mr.

² It should be noted that the focus of the argument here is that it is now known a lie was introduced and relied upon by the government at trial, and not that at the time of trial the prosecutor knew Mr. Afu statement was a lie. There is no evidence in the record to support or even merit consideration of the later circumstance.

Langi with the wallet.

It was error, and a blatant error in violation of the confrontation clause for Officer Lone to testify with regard to what Mr. Afu said he saw Mr. Langi do. The fact that the statement by Mr. Afu to Officer Lone was false and was brought in by both Officer Lone's testimony and through Mr. Afu's impeachment compounds the significance of the newly discovered evidence as asserted by the defendant in his *Motion for New Trial*, *Aplt. A-33*. The extraordinary degree of prejudice to Mr. Langi is that after the trial the prosecutor who was the proponent of the statement conceded that the out-of-court statement was false. *Motion Hearing*, Sept. 7, 2001, p. 9, l. 12-19. There could be no greater injustice, no greater miscarriage of justice, than that of permitting a conviction to stand based on a prosecution premised upon the introduction of a statement through a *Bruton* violation and impermissible impeachment hearsay, in violation of the confrontation clause and for which the government acknowledges is a lie. The convictions of Mr. Langi on both counts of aggravated robbery should therefore be reversed and remanded for a new trial based on the newly discovered evidence of Mr. Afu's lie during police interrogation being used as evidence at trial.

CONCLUSION

Error is first assigned to the trial in preventing the defense from cross examining the two victims about the fact that they were illegal aliens, and in holding the defense counsel in contempt for attempting to do so. The defense should have been permitted to cross examine the victims regarding their immigration status as it would have established that they either lied under oath in obtaining a paycheck, driver's license or INS card or that they had lied about even having the cash from a paycheck, a driver's license or an INS card.

Second, plain error is assigned to the government having a law enforcement officer testify that during the interrogation of a co-defendant that the co-defendant stated that Mr. Langi had the wallet in violation of the right of confrontation and the rule in *Bruton*, 391 U.S. at 135.

Third, plain error is assigned to the trial court allowing a law enforcement officer to testify as to his lay interpretation of the events depicted on a video showing the events in violation of the right of confrontation. The officer had no personal knowledge of the events is an improper use of law witness opinion evidence, thus invading the province of the jury as the finder of fact.

Fourth, err is assigned to the government introducing evidence through the impeachment of its own witness. The witness's failure to provide the government with

testimony that Mr. Langi had a wallet after the incident lead to the government's impeachment of Mr. Afu based on a pretrial interrogation transcript. In error, the impeachment occurred without the trial court instructing the jury that the impeachment could not be considered as evidence.

The fifth and final error is assigned to the trial court's denial of the defendant's motion for a new trial based on the newly discovered evidence that Mr. Afu lied during the interrogation by law enforcement and could not read. The government conceded that Mr. Afu lied during the interrogation by law enforcement and the undue prejudice arises because it was the statements of Mr. Afu during the interrogation that were introduced both through the officer's *Bruton* violation, and the transcript which was used for the impeachment that was introduced as evidence.

Each of these errors constitute grounds for the reversal and remand of Mr. Langi's convictions in the present case, and warrant the award of a new trial.

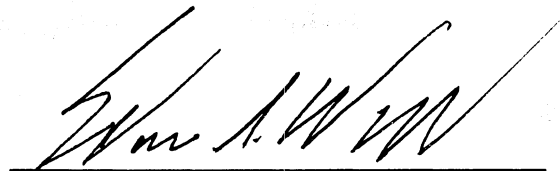
State Relief Sought

It is respectfully requested that Mr. Langi's convictions on two counts of Aggravated Robbery, both first degree felonies, in violation of Utah Code Ann. § 76-6-302, as amended, with gun and gang enhancements, be reversed and vacated, that the matter be remanded to the district court for a new trial.

Certificate of Service

I, Edwin S. Wall, hereby certify that on this 18th day of July, 2003, I served the foregoing Brief for the Defendant - Appellant upon the party at the address indicated below by depositing the same with the United States Postal Service, First Class Postage Prepaid.

J. Fredric Voros, Jr.
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114
Attorney for the Plaintiff-Appellee

A handwritten signature in black ink, appearing to read 'Edwin S. Wall', written over a horizontal line.

Edwin S. Wall
Attorney for Defendant-Appellant

ADDENDUM TO THE BRIEF

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UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER II--IMMIGRATION
PART II--ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS
AND ALIENS

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Current through P.L. 108-58, (excluding P.L. 108-36)
approved 07-14-03

8 U.S.C. § 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * * *

(5) Labor certification and qualifications for certain immigrants

(A) Labor certification

(i) In general

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that--

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER II--IMMIGRATION
PART VIII--GENERAL PENALTY PROVISIONS

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Current through P.L. 108-58, (excluding P.L. 108-36)
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§ 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under Title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under Title 18, or imprisoned not more than 2 years, or both.

(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of--

(1) at least \$50 and not more than \$250 for each such entry (or attempted entry); or

(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

(c) Marriage fraud

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

(d) Immigration-related entrepreneurship fraud

Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with Title 18, or both.

8 USCA § 1326
8 U.S.C.A. § 1326

▷

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12—IMMIGRATION AND NATIONALITY
SUBCHAPTER II—IMMIGRATION
PART VIII—GENERAL PENALTY PROVISIONS

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Current through P.L. 108-58, (excluding P.L. 108-36)
approved 07-14-03

§ 1326. Reentry of removed aliens

(a) In general

Subject to subsection (b) of this section, any alien who--

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under Title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection--

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such Title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V of this chapter, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under Title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence. [FN1] or

(4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under Title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2) [FN2] of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) of this section or subsection (b) of this section unless the alien demonstrates that--

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

UTAH CODE, 1953
TITLE 53. PUBLIC SAFETY CODE
CHAPTER 3. UNIFORM DRIVER LICENSE ACT
PART 2. DRIVER LICENSING ACT

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Current through the 2002 5th Special Session

53-3-205 Application for license or endorsement --Fee required --Tests --
Expiration dates of licenses and endorsements --Information required -- Previous
licenses surrendered --Driving record transferred from other states --Reinstatement
--Fee required --License agreement.

(1) An application for any original license, provisional license, or endorsement shall be:

- (a) made upon a form furnished by the division; and
- (b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original class D license entitle the applicant to:

- (a) not more than three attempts to pass both the knowledge and skills tests for a class D license within six months of the date of the application;
- (b) a learner permit if needed after the knowledge test is passed; and
- (c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for an original class M license entitle the applicant to:

- (a) not more than three attempts to pass both the knowledge and skills tests for a class M license within six months of the date of the application;
- (b) a learner permit if needed after the knowledge test is passed; and
- (c) an original class M license and license certificate after all tests are passed.

(4) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

- (a) not more than three attempts to pass both the knowledge and skills tests within six months of the date of the application;

(b) a motorcycle learner permit if needed after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(5) An application and fees for a commercial class A, B, or C license entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the knowledge test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(6) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

(7) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (5) or (6), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(8) (a) An original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) A renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) A duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was granted.

(e) A license and any endorsement to the license held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless the license is suspended, disqualified, denied, or has been cancelled or revoked by the division, or the licensee updates the information or photograph on the license certificate.

(9) (a) In addition to the information required by Title 63, Chapter 46b, Administrative Procedures Act, for requests for agency action, each application shall:

(i) state the:

(A) full legal name;

(B) birth date;

(C) sex;

(D) between July 1, 2002 and July 1, 2007, race in accordance with the categories established by the United States Census Bureau;

(E) Social Security number or temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number; and

(F) residence address of the applicant;

(ii) briefly describe the applicant;

(iii) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;

(iv) state whether the applicant has ever had any license suspended, cancelled, revoked, disqualified, or denied in the last six years, or whether the applicant has ever had any license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;

(v) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Uniform Anatomical Gift Act, in compliance with Subsection (16);

(vi) provide all other information the division requires; and

(vii) be signed which may include electronic signatures as defined in Section 46-4-102.

(b) An applicant's Social Security number or temporary identification number (ITIN) shall be maintained on the computerized records of the division.

(c) An applicant may not be denied a license for refusing to provide race information required under Subsection (9) (a) (i) (D).

(10) The division shall require proof of every applicant's name, birthdate, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(11) When an applicant receives a license in another class, all previous license certificates shall be surrendered and canceled. However, a disqualified commercial license may not be canceled unless it expires before the new license certificate is issued.

(12) (a) When an application is received from a person previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(13) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 53-3- 105.

(14) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(15) A person who applies for an original license or renewal of a license agrees that the person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(16) (a) The indication of intent under Subsection (9)(a)(v) shall be authenticated by the licensee in accordance with division rule.

(b) (i) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-2, the names and addresses of all persons who under Subsection (9)(a)(v) indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

- (A) obtain additional information for an anatomical gift registry; and
- (B) inform licensees of anatomical gift options, procedures, and benefits.

(17) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (9)(a)(v), for direct or indirect:

- (a) loss;
- (b) detriment; or
- (c) injury.

UT ST § 76-6-302
U.C.A. 1953 § 76-6-302

▶ This document has been updated. Use KEYCITE.

UTAH CODE, 1953
TITLE 76. UTAH CRIMINAL CODE
CHAPTER 6. OFFENSES AGAINST PROPERTY
PART 3. ROBBERY

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Current through the 2002 5th Special Session

76-6-302 Aggravated robbery.

(1) A person commits aggravated robbery if in the course of committing robbery, he:

- (a) uses or threatens to use a dangerous weapon as defined in Section 76-1- 601;
- (b) causes serious bodily injury upon another; or
- (c) takes an operable motor vehicle.

(2) Aggravated robbery is a first degree felony.

(3) For the purposes of this part, an act shall be considered to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery.

UT ST § 78-2a-3
U.C.A. 1953 § 78-2a-3

C

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART I. Courts
CHAPTER 2a. COURT OF APPEALS

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78-2a-3 Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first

degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

UT ST § 78-2-2
U.C.A. 1953 § 78-2-2

C

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART I. Courts
CHAPTER 2. SUPREME COURT

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Current through the 2002 5th Special Session

78-2-2 Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the School and Institutional Trust Lands Board of Trustees;

(iv) the Board of Oil, Gas, and Mining;

(v) the state engineer; or

(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of

the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART I. Courts
CHAPTER 3. DISTRICT COURTS

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Current through the 2002 5th Special Session

78-3-4 Jurisdiction --Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction to adjudicate trials de novo of the judgments of the justice court and of the small claims department of the district court.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the matter was properly filed in the circuit court prior to July 1, 1996;

(c) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed a justice court; or

(d) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

UT R REV Rule 701
Utah Rules of Evidence, Rule 701

C

WEST'S UTAH RULES OF COURT
UTAH RULES OF EVIDENCE
ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

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Current with amendments received through 9-15-2002.

RULE 701. OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 704. Opinion on ultimate issue.

(a) Except as provided in subparagraph (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

USCA CONST Amend. XIV-Full Text
U.S.C.A. Const. Amend. XIV-Full Text

C

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL
PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS;
PUBLIC DEBT; ENFORCEMENT

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Current through P.L. 108-58, (excluding P.L. 108-36)
approved 07-14-03

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL
PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC
DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

UTAH CODE, 1953
CONSTITUTION OF UTAH
ARTICLE I. DECLARATION OF RIGHTS

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Current through the 2002 5th Special Session

§ 12 [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

UT Const. Art. 1, § 7
U.C.A. 1953, Const. Art. 1, § 7

C

UTAH CODE, 1953
CONSTITUTION OF UTAH
ARTICLE I. DECLARATION OF RIGHTS

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Current through the 2002 5th Special Session

§ 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

DAVID E. YOCOM
District Attorney for Salt Lake County
JOHN N. SPIKES, 3062
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, -vs- JOSEPH MAKALANGI DOB 12/19/76, AKA NONE 10831 Avenida DeLos Lobos, San Diego, CA OTN SO# Defendant.	Screened by: J. Spikes Assigned to: M. Kouris (Thursday) DAO # 00020655 BAIL: \$250,000 Warrant/Release: Non-jail INFORMATION Case No.
---	--

The undersigned Detective J. Lone - Salt Lake County Sheriff's Office, Agency Case No. 00-24920, under oath states on information and belief that the defendant committed the crimes of:

COUNT I

AGGRAVATED ROBBERY, a First Degree Felony, at 5380 South 4015 West, in Salt Lake County, State of Utah, on or about February 26, 2000, in violation of Title 76, Chapter 6, Section 302, Utah Code Annotated 1953, as amended, in that the defendant, JOSEPH MAKALANGI, a party to the offense, unlawfully and intentionally took personal property in the possession of Jose Farias from the person or immediate presence of Jose Farias, and in the course of committing said robbery used or threatened the use of a dangerous weapon, and/or caused serious bodily injury to Jose Farias.

NOTICE IS GIVEN pursuant to Utah Code Annotated §76-3-203.1, that the defendant is subject to an enhanced penalty as provided in that section because the above offense was committed in concert with two or more persons.

COUNT II

AGGRAVATED ROBBERY, a First Degree Felony, at 5380 South 4015 West, in Salt Lake County, State of Utah, on or about February 26, 2000, in violation of Title 76, Chapter 6, Section 302, Utah Code Annotated 1953, as amended, in that the defendant, **JOSEPH MAKALANGI**, a party to the offense, unlawfully and intentionally took personal property in the possession of Gabriel Calvillo from the person or immediate presence of Gabriel Calvillo, and in the course of committing said robbery used or threatened the use of a dangerous weapon, and/or caused serious bodily injury to Gabriel Calvillo.

NOTICE IS GIVEN pursuant to Utah Code Annotated §76-3-203.1, that the defendant is subject to an enhanced penalty as provided in that section because the above offense was committed in concert with two or more persons.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

J. Lone, J. Huggard, R. Montanez, C. Chase, L. Prescott, J. Farias, G. Calvillo, R. Garcia, M. Pas, R. Briseno and R. Redding.

PROBABLE CAUSE STATEMENT:

Your affiant bases this Information upon the following:

1. On February 26, 2000 at 5380 South 4015 West in Salt Lake County, three Polynesian males attacked Jose Farias and Gabriel Calvillo at the Beto's Restaurant and robbed them. When police responded, both victims were covered in blood.
2. A security video camera recorded the attack. Witnesses who have watched the

INFORMATION
STATE OF UTAH v. JOSEPH MAKALANGI
DAO No. 00020655
Page 3

video and who have viewed photographs of the Defendant state that one of the attackers is in fact the Defendant.

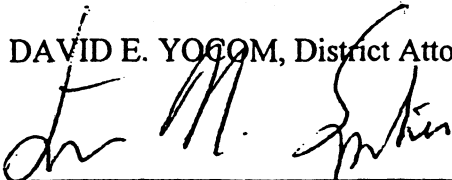
DETECTIVE J. LONE
Affiant

Subscribed and sworn to before me this _____
day of October, 2000.

MAGISTRATE

Authorized for presentment and filing:

DAVID E. YOCOM, District Attorney



Deputy District Attorney
October 13, 2000
cw/00020655

DAVID E. YOCOM
District Attorney for Salt Lake County
SIRENA M. WISSLER, Bar No. 7450
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

DEFENSE
COPY

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

JOSEPH LANGI,

Defendant.

MOTION IN LIMINE RE:
VICTIMS' IMMIGRATION AND
CUSTODY STATUS

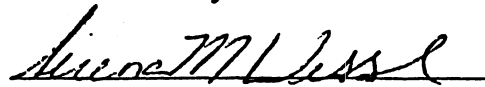
Case No. 001917415

Hon. JUDITH S. ATHERTON

Comes now the State of Utah, by and through its attorneys David E. Yocom, District Attorney for Salt Lake County, and Sirena M. Wissler, Deputy District Attorney, and moves this Court to enter an order prohibiting defendant from inquiring into or making reference to victim Jose Farias's immigration or custody status during the trial in the above-captioned matter. This motion is supported by an accompanying memorandum.

DATED this 16th day of April, 2001.

DAVID E. YOCOM
District Attorney for Salt Lake County


Sirena M. Wissler
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that on this 16th day of April, 2001, I caused a true and correct copy of the foregoing Motion in Limine re: Victim's Immigration and Custody Status to be mailed in the U.S. Mail, postage prepaid to: Paul Gotay, Attorney at Law, 357 South 200 East, Salt Lake City, Utah 84111.

A handwritten signature in cursive script, reading "Shire M. Lasse", written over a horizontal line.

DAVID E. YOCOM
District Attorney for Salt Lake County
SIRENA M. WISSLER, Bar No. 7450
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

DEFENSE
COPY

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

JOSEPH LANGI,

Defendant.

MEMORANDUM IN SUPPORT OF
MOTION IN LIMINE RE:
VICTIMS' IMMIGRATION AND
CUSTODY STATUS

Case No. 001917415

Hon. JUDITH S. ATHERTON

The State of Utah, by and through its counsel, David E. Yocom, District Attorney for Salt Lake County, and Sirena M. Wissler, Deputy District Attorney, hereby submits this memorandum in support of its Motion in Limine re: Victim's Immigration and Custody Status.

STATEMENT OF RELEVANT FACTS

1. On February 26, 2000, three persons attacked, beat, and robbed Jose Farias and Gabriel Calvillo at Beto's Restaurant in Kearns, Utah.
2. Defendant Joseph Langi has been identified as one of the persons who participated in the beating and robbery of Farias and Calvillo.

3. At the time of the attacks on February 26, 2000, Farias and Calvillo were residing in the United States illegally, having emigrated here from Mexico.
4. On or about February 29, 2001, Jose Farias was arrested as a result of his immigration status, and detained by the United States Marshal. Mr. Farias is currently facing federal charges pertaining to his unlawful presence in the United States.
5. Mr. Farias's federal charge remains pending. He will be held in the custody of the United States Marshal until such time as the matter is resolved, either by plea or verdict.

ARGUMENT

EVIDENCE OF MR. FARIAS'S IMMIGRATION STATUS SHOULD BE EXCLUDED BECAUSE IT IS NOT RELEVANT.

The first issue presented is whether the defendant should be permitted to introduce evidence as to either victim's immigration status. Specifically, whether the fact that Jose Farias is, and was on February 26, 2000, residing in the United States illegally, is relevant to the Aggravated Robbery at issue in the instant case. Utah Rule of Evidence 401 provides that "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Utah Rule of Evidence 402 provides that "evidence which is not relevant is not admissible." Therefore, unless the victims' immigration status falls within the definition of relevant evidence, it cannot be admitted.

Joseph Langi is charged with two counts of Aggravated Robbery. The elements of Aggravated Robbery as to Count I are (1) that on or about February 26, 2000, in Salt Lake County, State of Utah; (2) the defendant, Joseph Langi, a party to the offense; (3) took personal property in the possession of Jose Farias; (4) from the person or immediate presence of Jose Farias; (5) and in the course of committing such robbery caused serious bodily injury to Jose Farias. The elements of Count II are identical but for the name of the victim. Whether the victims are legal U.S. residents has no tendency to make the existence of any fact of consequence any more likely or less likely. It is certainly no defense to these charges that the victims were not lawfully present in the United States or Utah. In addition, whether the victims were lawfully present has no bearing upon whether they had personal property removed from their persons or immediate presence, and certainly has no bearing upon the nature or extent of their injuries. Because the victims' immigration status has no effect or impact on any element of the offenses charged, evidence of that status is not relevant, and is therefore inadmissible.

**DEFENDANT SHOULD BE PRECLUDED FROM ADMITTING EVIDENCE AS TO
EITHER VICTIM'S CUSTODY STATUS**

The second issue before the Court is whether defendant should be permitted to introduce evidence as to either victim's custody status. Again, as a threshold matter, defendant must demonstrate the evidence is relevant. Unless relevant, the evidence is inadmissible.

Victim Jose Farias is currently in custody. He is being detained by United States Marshals, having been indicted for an offense based upon his unlawful presence in the United States. Mr. Farias's federal matter remains pending. He has not been convicted by jury, nor has he entered a plea. Utah Rule of Evidence 609 provides that "evidence

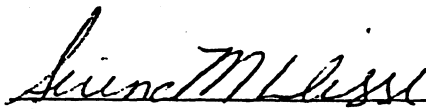
that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted..." Mr. Farias is a pre-trial detainee – no conviction has been entered. Therefore, pursuant to Rule 609, his credibility may not be attacked based upon the pending charge. Moreover, evidence of Mr. Farias's custody status is not admissible under Utah Rule of Evidence 404(b), because it is not offered for a non-character purpose.

CONCLUSION

For the foregoing reasons, the State respectfully requests that its Motion in Limine re: Victims' Immigration and Custody Status be granted.


DATED this 16th day of April, 2001.

DAVID E. YOCOM
District Attorney for Salt Lake County


Sirena M. Wissler
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that on this 16th day of April, 2001, I caused a true and correct copy of the foregoing Memorandum in Support of Motion in Limine to be mailed in the U.S. Mails, postage prepaid to Paul Gotay, Attorney at Law, 357 South 200 East, Salt Lake City, Utah 84111.

A handwritten signature in cursive script, reading "Steven M. Kessler", written over a horizontal line.

Paul Gotay (1224)
Gotay Law Office
357 South 200 East, Suite 300
Salt Lake City, Utah 84111
Telephone: 801-533-8373
Fax: 801-539-5210

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

STATE OF UTAH,
Plaintiff.

vs,

JOSEPH MAKALANGI,
Defendant.

MOTION FOR NEW TRIAL AND
REQUEST FOR EVIDENTIARY
HEARING

Case No. 001917415

Judge Judith Atherton

COMES NOW, the defendant, JOSEPH MAKALANGI, by and through his attorney of record, Paul Gotay, and pursuant to the provisions of Rule 24 of the Utah Rules of Criminal Procedure moves the Court for an Order granting the defendant a new trial.

Attached hereto and incorporated herein by reference is an affidavit in support of Motion for New Trial. It is anticipated that many more affidavits or live testimony will be offered in support of Motion for New Trial.

The affidavit and live testimony offered in support of the Motion for New Trial draw into question the truthfulness of a State's key witness against JOSEPH MAKALANGI, specifically Siasi Afu.

Siasi Afu was not truthful when he testified at the defendant's trial, and his conduct, activities, and statements made after the trial are consistent with the view that he was not truthful when he testified at JOSEPH MAKALANGI's trial.

It is further requested that at the time this matter is scheduled for evidentiary hearing that the State produce Siasi Afu for the purpose of being examined regarding these issues.

Respectfully submitted this _____ day of _____, 2001.

PAUL GOTAY
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for New Trial and Request for Evidentiary Hearing was

[] sent by first-class mail, postage prepaid,
[] sent by facsimile transmittal to #: _____,
[] hand-delivered,

this _____ day of _____, 2001, to:

Sirena M. Wissler, Esq.
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111

PAUL GOTAY
Attorney at Law

05/19/01

TO WHOM IT MAY CONCERN:

RE: JOSEPH MAKALANGI

STATEMENT OF FINEEVA MAKALANGI

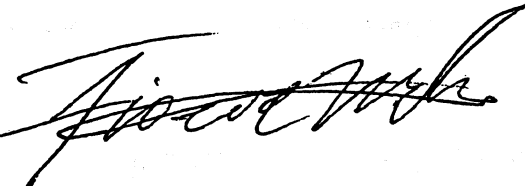
My name is Fineeva Maka, and I am Siasia's friend. I have known him for couple of years here in Salt Lake City, Utah. I have talk with Siasia a couple of times about this case, and he has told me that the prosecutor wanted him to testify against Joe as part of his deal and to dismiss his other cases. He also said that it was the prosecutor who asked and told him about the stolen items. He did not see Joe took anything from the two victim, because he has left the scene to go and pick up the car. He also told me that he has to lie to the investigator, because he was scared and doesn't want to stay in prison.

The above statement is true and if called to testify, I will testify.

Sincerely,

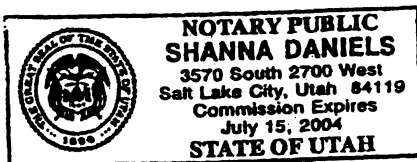
Fineeva Maka

(801)604-4112



Shanna Daniels

5/23/01



Paul Gotay (1224)
Gotay Law Office
357 South 200 East, Suite 300
Salt Lake City, Utah 84111
Telephone: 801-533-8373
Fax: 801-539-5210

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

STATE OF UTAH,
Plaintiff.

vs,

JOSEPH MAKALANGI,
Defendant.

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR A
NEW TRIAL

Case No. 001917415

Judge Judith S.H. Atherton

COMES NOW, the defendant, Joseph Maka Langi, by and through his attorney of record, Paul Gotay, and provides the Court with the following Memorandum in Support of his Motion for a New Trial.

PROCEDURAL BACKGROUND

The defendant, Joseph Maka Langi, was convicted of aggravated robbery on June 11, 2001. The State's key witness in that prosecution was Langi's co-defendant, Siaosi Afu, who testified regarding conversations he had with the defendant, Joseph Maka Langi, involving the robbery. The jury, believing that the conversations occurred between Joseph Maka Langi and Siaosi Afu convicted Joseph Maka Langi of two counts of aggravated robbery.

In June of 2001, the defendant re-filed a Motion for a New Trial and Request for Evidentiary Hearing, along with an affidavit of Siasosi Afu admitting that he lied when testifying at Joseph Maka Langi's trial for aggravated robbery. (Exhibit No.1.) Joseph Maka Langi, in support of his Motion for a New Trial, also supplies the Court with two other affidavits that corroborate Siasosi Afu's statement. Exhibits No.2 and No.3 consist of affidavits in which Siasosi Afu admits to other third persons that which he states in Exhibit No.1. Virtually all of the evidence came to light after the trial in that it consisted of statements made by Siasosi Afu after the trial.

DISCUSSION OF RELEVANT CASE LAW

In 1991, the Utah Supreme Court decided State v. James, 819 P. 2d 781, 793 (Utah 1991). The defendant, Stephen Ray James, was convicted of capital murder and received a life sentence resulting from the death of his son. During the State's case, the State produced a person by the name of Ronald Peterson, who at the time was an inmate at the Utah State Prison and who stated that Mr. James had confessed to him. Post-trial, James filed a Motion for a New Trial on the basis of two pieces of evidence. The second piece of evidence was obtained from another person, who was an inmate at the Utah State Prison and who stated, apparently in an affidavit, that Peterson had told this person (Lisner) that Peterson had fabricated his testimony at trial in an attempt to get

better treatment from the State at his own criminal trial. The Motions were denied by the Trial Court, and the Appeal followed.

The Supreme Court at 819 P.2d 793 held as follows:

Additionally, in order to constitute grounds for a new trial, evidence must meet three criteria:

(1) It must be such as could not with reasonable diligence have been discovered and produced at the trial; (2) it must not be merely cumulative; (3) it must be such as to render a different result probable on the retrial of the case. (Citation omitted).

The Supreme Court, in discussing the standards for granting a new trial in the State of Utah stated as follows:

However, the evidence of Peterson's perjury stands on a different footing than that presented in the first Motion. The evidence was not reasonably discoverable before trial. Peterson apparently spoke to Kenneth Lisner concerning his fabrications to the police about two weeks before the trial. He then told Lisner that he would not go through with the lie at the trial. Lisner only discovered that Peterson had, in fact, committed perjury by watching news accounts of the trial after Peterson had already testified. Lisner did not attempt to contact the defendant or his attorneys concerning the conversation until sometime in June 1989, after the trial, when the defendant was placed in the same cell block with Lisner. Therefore, Lisner was unaware of Peterson's perjury until near the conclusion of the trial, and the defendant was not aware of Lisner's knowledge until well after the trial...

The evidence also meets the second criterion for newly discovered evidence. The trial judge found that Lisner's testimony would be merely cumulative of James' testimony that he had never had a conversation with Lippencott. The trial judge also based his denial of the Motion upon the fact that the testimony to be

presented by Lisner went merely to the credibility of Peterson and did not present new evidence of the defendant's innocence. While it is true that the refusal to grant a new trial based merely on credibility will generally not be overturned on appeal, the credibility evidence went beyond refuting the testimony of Peterson and established independent evidence that he had deliberately committed perjury in an attempt to subvert the trial process to his own ends. This evidence was not merely credibility evidence and was not merely cumulative of James' testimony that he had not confessed to Lippencott. Lisner's testimony concerned a disputed fact that arose between Peterson's testimony and James', whether or not Peterson's testimony concerning the overheard confession was truthful. The testimony of Lisner would corroborate that of James and provide independent evidence of his version of the facts. Evidence from a neutral third party is not merely cumulative of a criminal defendant's testimony. It is of a different kind and nature than a defendant's statements, and it certainly could have a different quality in the eyes of the jurors, who assess the credibility of the witnesses.

Regardless of Siaosi Afu's explanation or characterization of statements made by him to the trial jury, which call into question the truthfulness of his testimony, the fact that he has retracted his testimony is not in dispute because of the existence of Exhibit No.1, which consists of his own admission. This Court is not obligated to pass on the truthfulness of the statements made by Siaosi Afu and is certainly not obligated to accept, as true, Siaosi Afu's explanation for those statements. There is little dispute that Siaosi Afu has made the statements considering that he notarized Exhibit No.1. It is for a jury to determine whether or not those statements made by Siaosi Afu, clearly impeaching his

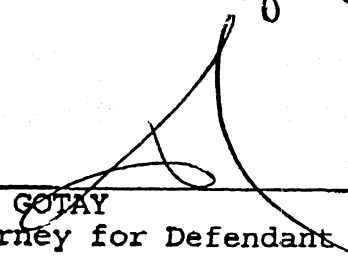
prior statements made under oath, were false or not. The only way that determination can be made is for this Court to grant a new trial based upon the existence of these statements and allow a fact-finder to pass on that credibility issue.

The three criteria for granting a new trial have been met. It is undisputed that a large portion of the evidence presented at the evidentiary hearing was evidence discovered after the trial. The evidence is certainly more than cumulative, because there was no independent evidence presented at the trial of Siaosi Afu's untruthfulness. The third criteria requires that the evidence must be such as to render a different result probable on the retrial of the case. It is difficult to imagine more important evidence affecting a more important witness in this case. It is direct testimony and evidence, documentary and otherwise, of Siaosi Afu's untruthful testimony at the trial. There is no question that Siaosi Afu was the key witness in this case.

CONCLUSION

For the foregoing reasons, the defendant, Joseph Maka Langi, is entitled to have this Court grant his Motion for a New Trial and conduct such a trial.

Respectfully submitted this 26 day of June, 2001.



PAUL GOTAY
Attorney for Defendant

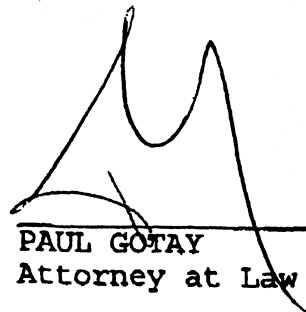
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Defendant's Motion for a New Trial was

[] sent by first-class mail, postage prepaid,
[] sent by facsimile transmittal to No.: _____,
[x] hand-delivered,

this 26 day of June, 2001, to:

Sirena M. Wissler, Esq.
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111



PAUL GOTAY
Attorney at Law

Exhibit 1

May 21, 2001

To Whom It May Concern:

RE; JOSEPH M. LANGI

STATEMENT OF SIAOSI AFU

MY NAME IS SIAOSI AFU AND I AM JOE'S CO-DEFENDER IN THIS CASE. I AM GIVEN THIS STATEMENT ON BEHALF OF JOE LANGI.

I AM SORRY TO SAY THAT I HAVE LIED ON THE INVESTIGATOR'S REPORT, BECAUSE IT WAS A PART OF OUR DEAL TO TESTIFY AGAINST JOE, AND BECAUSE OF THE PROSECUTOR'S PUSHING, AND COACHING QUESTIONS, I HAVE TO LIE. I DID NOT SEE JOE TOOK OR STEAL ANYTHING FROM THE 2 VICTIMS, BECAUSE I HAVE LEFT THE SCENE TO PICK UP THE VEHICLE. IT WAS THE INVESTIGATOR THAT ASKED ME AND TOLD ME ABOUT THE STOLEN ITEMS, AND ALSO TOLD ME THAT IF I TELL THEM WHAT THEY WANTED TO KNOW, THEY WOULD GIVE ME A LIGHTER SENTENCES AND DISMISSED MY OTHER CASES.

I TESTIFY TO THE ABOVE STATEMENT IS TRUE AND CORRECT STATEMENT MADE BY ME ON THIS 22 DAY OF MAY.

SINCERELY,

SIAOSI AFU

Gray af

Shanna Daniels

5/23/01

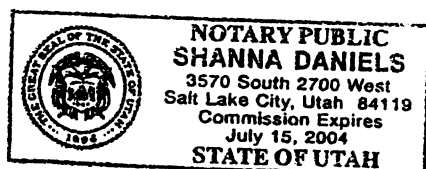


Exhibit 2

May 20, 2001

To Whom It May Concern:

Re: Joseph Maka Langi

I am writing this statement to testify that I have known Siao Si or George in English, for long time and that he is my close friend. Siao Si told me that he has to lie in court, because of the prosecutor's pushing, and coaching questions. Siao Si said that it was the prosecutor and the investigator who told him about the stolen items, but he did not see Joe took or stolen anything from the victims, because he has left first to pick up the vehicle. Siao Si also said that he make a deal with the prosecutor that if he testify against Joe, they would let him out of prison and dismissed his other cases.

I testify to the above statement is true and correct to the best of my knowledge.

Sincerely,

Samuel Misini

(818) 968-8293

Samuel Misini

Exhibit 3

05/19/01

TO WHOM IT MAY CONCERN:

RE: JOSEPH MAKALANGI

STATEMENT OF FINEEVA MAKALANGI

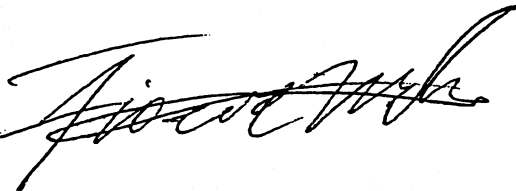
My name is Fineeva Makalangi, and I am Siaosi's friend. I have known him for couple of years here in Salt Lake City, Utah. I have talk with Siaosi a couple of times about this case, and he has told me that the prosecutor wanted him to testify against Joe as part of his deal and to dismiss his other cases. He also said that it was the prosecutor who asked and told him about the stolen items. He did not see Joe took anything from the two victim, because he has left the scene to go and pick up the car. He also told me that he has to lie to the investigator, because he was scared and doesn't want to stay in prison.

The above statement is true and if called to testify, I will testify.

Sincerely,

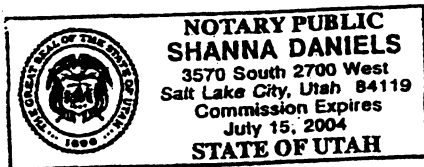
Fineeva Makalangi

(801)604-4112



Shanna Daniels

5/23/01



**SALT LAKE COUNTY DISTRICT ATTORNEY
CRIMINAL INVESTIGATION UNIT**

INTERVIEWEE: SIAOSI AFU (George)
SUBJECT: JOSEPH MAKALANGI
DATE: JULY 18, 2001
CASE No: 2001-893
RE: PERJURY

Okay today's date is July 18th year 2001. Time right now is 10:30 hours. This is a meeting with Defense Attorney David Biggs and his client Siaosi, spelling, S-I-A-O-S-I.

KJ: You go by the name of George?

SA: George Yeah.

KJ: Afu, A-F-U. This meeting is being held at the District Attorney's office, 231 east 400 south, Salt Lake City, Utah.

DB: Before we begin I wanted maybe to uh, well short circuit this a little bit. I told my client that he is under investigation for perjury since that is what Sirena Wissler indicated to me. Just as a general statement, "Before we begin, George wants you to know that the following are the facts in this case, having to do with the Perjury allegation. Number one; George doesn't read. George never read this document that he signed. That's number one. Number two; it was never read to him Verbatim by anyone. It was basically, distracted for him by his wife and then he signed it but he never read it, cant read and didn't read it. Um, Number three; he never lied under oath. Number four: he did lie to the investigating officer initially that only having to do with his participation. And that's what his wife told him this thing said, that his wife said that two things this document said, one, that he initially lied to the investigating officer which is accurate. But then he told the truth. Second she said that this document said that he never saw his two co-defendants actually take anything from the two victims. And that is true, he didn't see that he was out getting the car in the car leaving but he did tell the investigator that the gentleman in the back seat and I apologize I don't know which co-defendant that is, showed him some bloody money and said do you want some of this. And he said no. And so the document is incorrect when he says that he, or infers that he lied on the stand, he did not do that. It's incorrect or inaccurate when it indicates that he lied to the investigating officer concerning his sore testimony. He didn't do that either. And lastly he wants everyone to know

that Sirena Wissler did not coach him, and did not push him and did not threaten him to testify in any particular way, that just did not happen. And he apologizes to Mrs. Wissler and to the prosecution if he could read, he would have read it if he...

SA: Yeah I would have never signed anything like that saying that I lied under oath cause I didn't lie under oath.

KJ: And that's what the impression was when I read it. After reading the motion, the motion does not, this memorandum does not even really compare to the statement on this paper for one thing and I wanted to go through a series of questions and talk to you about those.

SA: Okay.

KJ: And how they relate okay?

SA: Okay.

KJ: And I talked to Deputy District attorney Sirena Wissler about picking this apart because in my opinion, it is not accurate of what you even signed okay?

SA: Okay.

KJ: What he is suggesting to the court you did okay.

SA: Okay.

KJ: And she didn't have a chance to really thoroughly read this, but I believe its all gonna come, the truth is gonna come out in our little interview here today.

SA: Okay.

KJ: Okay. And I that is what I want to stress, I want to stress truthfulness here.

SA: Okay.

KJ: And that will all come to light okay?

SA: Okay.

KJ: Because Mr. Gotay is accusing you of perjury okay?

SA: Okay.

KJ: Doesn't necessarily mean that we are accusing you of that okay? But that is what he is accusing you of okay? But because he is accusing you of that, I have to investigate because you were a witness for the state, Okay.

SA: Okay.

KJ: Does that make sense?

SA: Yeah.

KJ: Okay. But since you are being accused of that, I need to read your Miranda warnings okay? Even though you are being represented by your attorney here okay you have legal counsel here I'm still going to read you Miranda warnings okay?

SA: Okay.

KJ: And that, that we just want the truth okay?

SA: Okay.

KJ: And at any time you don't need to answer or Mr. Biggs can step in and tell me so, okay?

SA: Okay.

KJ: All right listen carefully. You have the right to remain silent anything you say can and will be used against you in court. You have the right to consult to a lawyer before answering any questions and to have a lawyer with you during any questioning. If you can't afford a lawyer one will be provided for you free of cost as you, if you want one, as you well know. Do you understand your rights as I have explained them?

SA: Yes.

KJ: Okay. And you are here with legal counsel right now and you are willing to talk with me about this?

SA: Yes sir.

KJ: Okay. And I appreciate your summary of Mr. Afu's statement from the very start Mr. Biggs. I believe we are all on about the same page here. But we want to get it down because she has to prepare a response to his memorandum, as you well know. Okay now let me start with the very first the letter that you have in front of you is marked exhibit one and it's um, I'm gonna read it for the record. It says it has a date at the top it says May 21, 2001. To whom it may concern; and then it

says, re, reference Joseph M. Langi statement of Siaoasi Afu. It says, "My name is Siaoasi Afu I am Joe's co-defender in this case. I am giving this statement on behalf of Joe Langi. I am sorry to say that I have lied on the investigators report because it was a part of our deal to testify against Joe. And because of the prosecutor's pushing and coaching questions, I have to lie. I did not see Joe took or steal anything from the two victims, because I have left the scene to pick up the vehicle. It was the investigator that asked me and told me about the stolen items, and also told me that if I tell them what they wanted to know, they would give me a lighter sentences and dismiss my other cases. I testified that the above statement is true and correct statement made by me on this 22 day of May. Sincerely Siaoasi Afu. And then there is a signature in cursive it looks like it's George Afu and then there is another signature in cursive says Shanna Daniels. With the date 5/23/01 and written and then there is Shanna Daniel notary republic stamp on the bottom of the letter. As Mr. Biggs has already stated, you cannot read, is that correct?

SA: I can read a little bit but I can't read big words.

KJ: Do you remember seeing this letter in front of you?

SA: Yeah.

KJ: Was it notarized in front of you?

SA: Yes.

KJ: Okay Um, who prepared the letter? Who actually typed this out?

SA: I don't even know.

KJ: Who's idea was this letter?

SA: It was brought to me by my friend his name is Sam.

KJ: A friend Sam, what is his last name.

SA: M-I...

KJ: M-I?

SA: S-I...

KJ: S-I?

SA: N-I.

KJ: N-I?

SA: Misini.

KJ: And when your friend Sam brought this to you,

SA: Yes.

KJ: At your house?

SA: Yeah.

KJ: Why did he say he was bringing it to you?

SA: To sign it.

KJ: Okay what for, to help Joseph?

SA: To help Joe yeah.

KJ: To help Joe get out of the bad sentencing he had gotten right?

SA: Yeah. I think he's, yeah.

KJ: Cause he was convicted in trial?

SA: Yeah. Well we didn't really talk about he just brought it and told me, "Hey this the thing to help out Joe.

KJ: Okay.

SA: And uh...

KJ: You want to help out Joe and he's a friend?

SA: Yeah.

KJ: And you don't have no hard feelings towards him or anything like that? You did not understand the letter and what it really said at the time that you signed it?

SA: No, no I didn't, I thought that the letter meant that I lied to the detectives when I got interviewed and that was what my wife told me.

KJ: So when Sam Misini brought it over, he said this is to help Joe?

SA: No.

KJ: And you kind of looked it over but you didn't really understand it?

SA: Well I took it, well my wife; I gave it to my wife.

KJ: And did your wife read it to you?

SA: Yeah she read it and then she told me that and I asked her if there was anything that would get me into trouble and she said she didn't think so but she didn't know for sure though.

KJ: Did Sam say that it was from Mr. Gotay? That Mr. Gotay...

SA: No I don't even think he knew where it came he came from L.A.

KJ: Okay so Sam didn't tell you that Joe's attorney that he had got it from Joe's attorney?

SA: No.

KJ: Okay. And at the time that Sam showed this to you, Mr. Biggs was not notified, you did not call Mr. Biggs?

SA: Oh no.

KJ: And ask him about it or anything right?

SA: No.

KJ: And Sam didn't tell you that you had the right to talk to your attorney before...

SA: No.

KJ: You looked it over and signed it did he?

SA: No.

KJ: Okay. So nobody told you that you had the right to legal representation before signing the letter such as this?

SA: No.

KJ: Are you aware that you do?

SA: Yeah, I had known when he called me and told me that.

KJ: Yeah the best thing you could have done at that point was to call Mr. Biggs when Sam showed up with this letter and read it to him even over the phone.

SA: Okay.

DB: That would have been the best thing to do. Just to clarify George, Your wife read it, but she didn't read it to you she just read it and said this is what it says, correct?

SA: Yeah.

DB: She didn't read it what is called verbatim she didn't read it to you she just read it and said this is what it say's right?

SA: Yeah that is right.

KJ: So she didn't read it out loud to you?

SA: No.

KJ: Okay.

SA: I just asked her to read it and then I took off and then I came back and she told me what was going on with it.

DB: Was this Shannon Daniels? Did you go somewhere to sign it where Shannon Daniels was?

SA: Yeah.

DB: Okay.

KJ: Is this the address where you went at 3570 south 2700 west?

SA: Uh yeah.

KJ: In West Valley?

SA: Right next to uh, West Valley Police.

KJ: West Valley Police?

SA: Yeah.

KJ: Okay and you went with Sam to get the stamp put on it?

SA: Yeah.

KJ: Okay let me talk to you about, a little bit about um, what Mr. Biggs has said, you told the investigator and also you know what I know from reading the interview with the investigator and what I also know as what you testified to on the stand okay?

SA: Okay.

KJ: Um, I couldn't see anywhere on the investigators interview with you that you lied about anything to be honest with you?

SA: Uh-huh.

KJ: Okay. You mentioned that you did lie to the investigator but I couldn't see where you did okay so if you can try to explain to me where do you think you lied to the investigator?

SA: Well I got, see the thing was, when we first got caught...

KJ: Uh-huh.

SA: I never thought Joe would get caught so when we interviewed with the investigator, I told the investigator I put everything on Joe.

KJ: Uh-huh.

SA: So when there was, you know when he asked about wallets I was like, "Yeah he took them and..."

KJ: Uh-huh.

SA: And he asked me where I, where he threw them and I told him see the whole statement about Joe was all incorrect cause I knew Joe. I told him, the investigator that I had dropped Joe off across the street from some church and I never did that. There was a lot of things that had to do with Joe that I didn't tell the investigator cause I never thought that they would catch Joe and when they did catch Joe, they found out then that I was, that Joe knew, that Joe knew me the whole time that they thought that this was going on they, when they caught Joe they thought that Joe knew (Inaudible) the other defendant.

KJ: Right.

SA: But the whole time Joe was, Joe knew me that's how Joe got, ended up with us.

KJ: So you lied about your relationship to Joe?

SA: Yeah.

KJ: But you didn't, you didn't, that had nothing to do with the crime itself as far as...

SA: No.

KJ: Who did what in the crime?

SA: Oh no, no, no.

KJ: And as far as a wallet goes, you were telling the truth when you uh, told the investigator and testified on the stand that you never saw who took the wallets?

SA: Yeah.

KJ: But you in the interview, you test, you told the investigator you saw Joseph pitch the wallet out the window by the Methodist church?

SA: Yeah.

KJ: Do you remember telling them that?

SA: Yeah.

KJ: You testified truthfully and you told the investigator truthfully that you did not see who took the wallet at the time of the assault cause you'd already walked outside to get a car?

SA: Yeah, yeah.

KJ: Okay. So the only lying you did to the detective was just your relationship with Joe?

SA: Yeah.

KJ: How well you knew Joe?

SA: Yeah.

KJ: But not about the crime itself?

SA: Yeah.

KJ: Also during the interview with the detectives um, they never offered you any kind of deal is that correct?

SA: No they didn't.

KJ: Yeah. So they never offered you a deal that if you testified against Joe Langi down the road or that you're going to get a better deal out of this, is that correct?

SA: That's correct.

DB: May I also add that in our discussions together that there was never any indication of that? Uh, at all that it would affect his sentencing what so ever.

SA: That's correct.

DB: But I did indicate that it certainly might if uh, if he were honest and forthright. That always is a helpful thing for a person to do when the Adult Probation and Parole presentence is prepared. If the presentence people believe that you are now being honest and truthful with them and you participation in the crime their much more willing to work with you as a probation.

KJ: So in all reality you did not lie about anything to the investigator about the crime itself?

SA: No.

KJ: Or to or to the state when you were witness on the stand is that correct?

SA: Oh I did not lie on the stand at all. The only time I lied was when I first got caught and I was talking to the investigators.

KJ: And you more or less minimized your relationship with Joe?

SA: Yeah.

KJ: You didn't tell them the whole...

SA: Story about Joe.

KJ: Story about how well you knew Joe?

SA: No.

KJ: But you did see him throw that wallet out the window by the Methodist church?

SA: I seen, I seen him with money I can't, I don't even remember what I said back then about the...

KJ: I, I understand it has been quite awhile.

SA: Yeah.

KJ: I will refer back to page 24 of the interview with Detective Jeff Lone. He asked, I will just mention a few statements on this interview. He says's, "Who had the wallets." This is Jeff Lone talking he said, "Who had the wallets and threw out?" Do you remember where and then you repeat, you answer, "Joe that Joe dude and you're referring to Joe Langi right?"

SA: Yeah.

KJ: And he says, "Cause they these guys you know they had their green cards in them, all their personal papers and stuff." That's Jeff Lone then your answer is, "Uh yeah, he threw out right on the street right when we were driving right on 54, you know what I mean cause we never went." And then there is some inaudible conversation and then uh, he asks, Jeff Lone asks you, "Let him out at the church"

SA: That was a lie.

KJ: Was that a lie?

SA: Yeah.

KJ: So there was little bits and pieces of where you lied to the...

SA: Yeah cause see I never let him out at the church. I took; he slept over at my house that night.

KJ: So that is what you're referring to?

SA: Yeah.

KJ: Is little bits and pieces about where you let Joe out because you were friends with Joe?

SA: Yeah.

KJ: And you didn't want Joe to get in to trouble at that time?

SA: Yeah.

KJ: Right.

SA: Yeah.

KJ: Okay. So he slept at your house that night?

SA: Yeah.

KJ: Any, can you think of any questions asked by you on the witness stand by either um, the prosecutor Sirena Wissler or the defense attorney Mr. Gotay, that you were untruthful about? Was there anything on there that you might have lied about during the trial of Joseph Langi?

SA: You know what to tell you the truth, I don't I don't think I did.

KJ: Uh-huh.

SA: But you know I have been to trial so many times you know and they ask, you know they I don't know, I have never been in courtrooms before and the way they ask their questions is sometimes you know they spin them around and one person will ask one thing and I don't, I just don't understand what they ask and that's just the plain, you know that's just the truth of it. Of sometimes I will say "yes" and they'll say, "But you stated this day before, this day that you did." And I would be like, "Well I guess then that's what I did then." But I don't, I don't, I've been in court so many times that I don't even know you know what's truth and what's not truth any more.

KJ: I know that some of those questions can get extremely confusing.

SA: Yeah.

KJ: Um, but, George what I am asking is, um, as far as you being truthful?

SA: Uh-huh.

KJ: Um, when it came to any fact about the crime itself?

SA: Uh-huh.

KJ: In your mind, you are not distorting the facts or trying to change what actually happened?

SA: Yeah.

KJ: Were you trying to be totally truthful at all times?

SA: Oh yeah.

KJ: Even when during confusing questions?

SA: Oh yeah, oh yeah.

KJ: Um, at that point, there was no reason to lie about anything right?

SA: No.

KJ: Uh, initially...

SA: Once they caught Joe, there was no reason to lie about anything.

KJ: Right so you never intentionally lied on the stand?

SA: No I never lied on the stand.

KJ: You were extremely truthful at all times?

SA: Yes I was.

KJ: Okay. That, that's the whole point of this interview today.

SA: Okay.

KJ: Is because uh, in the memorandum sent to the sent to our office, requesting a motion for a new trial, your being accused of lying on the stand.

SA: No I never...

KJ: And at no time did you lie on the stand?

SA: No way.

KJ: You did not give the whole truth to the investigator about your relationship with Joe?

SA: Yes.

KJ: But you did not lie even about the crime that occurred?

SA: No.

KJ: You told the truth about the crime from the start, from the time you went into Beto's...

SA: Yes I did.

KJ: And confronted the two individuals um or, you just confronted the one individual basically um, initially because of the, their staring problem?

SA: Uh-huh.

KJ: And fear of a gun and things like that. And that all came out in trial okay?

SA: Yeah.

KJ: And, and we want, we wanted the truth from the start and, and you gave the truth, is that correct?

SA: Yes sir.

KJ: Okay um, because your probably gonna have to be called upon to testify if their is a motion for a new trial with the judge and that's gonna be what your gonna be asked to testify to is your truthfulness.

SA: Okay.

KJ: Okay. Um,

DB: George, Sirena Wissler never asked you to lie did she?

SA: No she didn't.

KJ: And Kevin Judd never asked you to lie, did he?

SA: I don't know who Kevin Judd is?

KJ: I'm Kevin Judd. I never asked you to lie, is that correct?

SA: No, no.

KJ: Detective Jeff Lone never asked you to lie is that correct?

SA: No he didn't.

KJ: Okay. Mr. Biggs touched on a point about this letter also. Um, it refers to the prosecutors pushing and coaching questions did Sirena Wissler or Mark Kouris the previous prosecutor, did they ever push you or coach you into saying a certain statement about what happened?

SA: No.

KJ: They did not?

SA: No they didn't.

KJ: Okay you remember Mark Kouris he was the previous prosecutor?

SA: Yeah.

KJ: Okay cause that is, that is one of the statements that is on this letter that you signed and that's, that's an important...

DB: I can also state for the record that was always present with Mr. Kouris or Mrs. Wissler when they spoke to George and I never witnessed anything of that nature (Inaudible)

KJ: Very good. Can you think of anything Mr. Biggs that I might be forgetting to ask of uh, Mr. Afu?

DB: No I think you covered it.

KJ: Let me look over my notes briefly bare with me. As far as back to the reference of lying to the investigator, can you think of anything else that you might have lied about other than uh, your relationship with Joe?

SA: No.

KJ: And uh, letting him out of the church that night?

SA: No.

KJ: He slept at your house rather than let him out at the church and also...

SA: Anything that has to do with that.

KJ: You didn't want the detective to know how close you actually were to Joseph at that point?

SA: Yeah.

KJ: Okay. And at no time when you were under oath, when you gave that statement to that investigator, is that correct?

SA: Yeah.

KJ: Under oath is when you, as you raised your hand on the stand, on the witness stand, that is an oath.

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SA: Yeah.

KJ: And they didn't ask you to take an oath when you uh, met with them and gave them a statement?

SA: No.

KJ: Okay. I think that is about it. Mr. Biggs?

DB: That's fine.

KJ: All right. This will terminate the interview with um, Mr. George Afu and his attorney, David Biggs. Time right now is 11:00 on July 18th

SERGEANT KEVIN JUDD

Date: July 18, 2001

Typed by: flb

DAVID E. YOCOM
District Attorney for Salt Lake County
SIRENA M. WISSLER (7450)
Deputy District Attorney
231 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

**FILE
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IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, -vs- JOSEPH MAKALANGI, Defendant.	MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL Case No. 001907415 Hon. Judith S. Atherton
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The State of Utah, by and through its attorneys David E. Yocom, District Attorney for Salt Lake County, and Sirena M. Wissler, Deputy District Attorney, submits this Memorandum in Opposition to Defendant's Motion for New Trial.

STATEMENT OF RELEVANT FACTS

1. On or about February 26, 2000, Jose Farias and Gabriel Calvillo were attacked by three persons at Beto's Restaurant in Kearns, Utah. Beto's Restaurant was equipped with surveillance cameras, which captured and recorded the attacks.
2. Jose Farias and Gabriel Calvillo were accompanied by Rachel Redding at the time they were attacked. Ms. Redding was not injured.
3. Defendant Joseph Langi was identified as one of the three persons who attacked Farias and Calvillo as Redding looked on.

4. Defendant Langi has not denied being present and participating in the attacks on Farias and Calvillo. He claims, however, that he committed only assaults, and not robberies.
5. During defendant's trial in April, 2001, Farias and Calvillo testified as to their recollections of the events of February 26, 2000. Redding also testified as to what she had observed as she watched from a few feet away.
6. The State admitted into evidence (without objection by the defense) a videotape, which depicted the attacks. That video shows defendant Langi searching through the pockets of the unconscious victims, although it is unclear from the video whether any property was actually removed from either man.
7. Farias testified that he had been wearing an eyebrow ring, which had been removed from him during the assault. Calvillo testified that his wallet, which had been in his pocket and which contained money, had been removed from him and was not in his pocket when he looked for it at the hospital.
8. Siaoisi "George" Afu, one of the three people responsible for the attacks on Farias and Calvillo, testified at Langi's trial. He identified Langi as a participant, and also testified that after he had rendered Calvillo unconscious, he fled the restaurant to retrieve the car. He further indicated that, because he had left to go get the car, he did not actually see the defendant take or attempt to take anything from either victim.
9. Afu did testify, however, that when defendant Langi entered the car, Afu observed that he had money in his hand and that the money had blood on it.

10. Following two hours of deliberation, the jury empanelled in the above-captioned matter returned verdicts of guilty on two counts of Aggravated Robbery, each subject to enhanced penalties by virtue of the fact that the jury found beyond a reasonable doubt that the defendant had acted in concert with two or more persons.

11. Defendant then timely filed a motion for new trial, in which defendant claimed that he is entitled to a new trial because co-defendant Siao Si "George" Afu gave perjured testimony at trial.

ARGUMENT

I. DEFENDANT IS NOT ENTITLED TO A NEW TRIAL BECAUSE HIS TRIAL DID NOT CONTAIN ANY ERROR OR IMPROPRIETY, WHICH HAD A SUBSTANTIAL ADVERSE EFFECT UPON DEFENDANT'S RIGHTS.

The sole issue presented before this Court is whether defendant is entitled to a new trial. The issue is, of course, governed by Utah Rule of Criminal Procedure 24, which provides that a trial court

may, upon motion of any party or upon its own initiative, grant a new trial in the interest of justice if there is any error or impropriety, which had a substantial adverse effect upon the rights of a party.

Among the grounds for new trial are jury misconduct (see *State v. Durand*, 569 P. 2d Utah 1977)), prosecutorial misconduct (see *State v. Owens*, 753 P. 2d 976 (Utah App. 1988)), sufficiency of evidence (see *State v. BeBee*, 195 P. 2d 746 (Utah 1948), and newly discovered evidence (see *State v. Conrad*, 590 P. 2d 1264 (Utah 1979); *State v. Williams*, 712 P. 2d 220 (Utah 1985)). If present, and if determined to have affected the substantial rights of a party, any of these improprieties may stand as cause to grant a new trial. In his motion, defendant does not explicitly indicate under which of these theories

he believes he is entitled to a new trial. However, it appears as though he relies upon the notion that he is currently in possession of some newly discovered evidence that calls into question his guilt. Specifically, defendant asserts that co-defendant Siaosi "George" Afu gave perjured testimony at trial. Not only does he allege that Afu perjured himself, but further alleges that he admits to having done so. (See Defendant's Memorandum in Support of Motion for New Trial, hereafter "Defendant's Memorandum," pages 2, 4, 5).

II. DEFENDANT IS UNABLE TO DEMONSTRATE THAT HE IS CURRENTLY IN POSSESSION OF ANY NEWLY DISCOVERED EVIDENCE THAT WOULD ENTITLE HIM TO A NEW TRIAL.

In determining whether defendant is entitled to a new trial based upon newly discovered evidence, this Court should be guided by the principles most recently set forth in *State v. Boyd*, 25 P. 3d 985 (Utah 2001). In *Boyd*, the Utah Supreme Court reaffirmed the appropriate analysis to be conducted in reviewing a motion for new trial based upon alleged newly discovered evidence. The Court explained

The legal standard to be applied when considering a motion for a new trial based on newly-discovered evidence is that the moving party must show that the evidence satisfies the following factors: (i) it could not, with reasonable diligence, have been discovered and produced at the trial; (ii) it is not merely cumulative; and (iii) it must make a different result probable on retrial.

Boyd, ¶27. Defendant correctly cites *State v. James*, 819 P. 2d 781 (Utah 1991) for the proposition that where it is alleged that a new trial must be granted based upon the perjury of a State's witness, the analysis is essentially the same. However, for the reasons more fully articulated below, the State submits that *State v. James* is inapplicable to the instant case.

a. DEFENDANT MISCHARACTERIZES THE AFFIDAVIT OF SIAOSI AFU

In support of his motion for new trial, defendant asserts that the affidavit of Siaosi Afu, attached to defendant's memorandum as Exhibit 1, contains statements "admitting that he lied when testifying at Joseph Maka Langi's trial for aggravated robbery." (Defendant's Memorandum at page 2). However, a closer reading of the affidavit of Siaosi Afu reveals otherwise. In the affidavit, Siaosi Afu indicates that he "lied on the investigator's report." See Exhibit 1, attached to Defendant's Memorandum. Nowhere in that affidavit does Siaosi Afu admit that he lied under oath. Moreover, Siaosi Afu was cross examined at Joseph Langi's trial, and during that cross examination, he admitted that he had given statements to police that were inconsistent with his testimony at trial. He ultimately even admitted to the jury that he had lied to detectives. On redirect, however, he indicated that during the time he was interviewed by detectives, he was never placed under oath, unlike the trial where he swore under penalty of perjury to tell the truth.

b. SIAOSI AFU TESTIFIED TRUTHFULLY AT TRIAL

What remains to be determined is whether there is any evidence tending to establish that Siaosi Afu testified untruthfully at Joseph Langi's trial. Unless defendant can demonstrate to the Court's satisfaction that there is some reason to suspect that Afu perjured himself, defendant is left without a basis for new trial. In investigating the allegations made by defendant that Afu had perjured himself, Sergeant Kevin Judd of the Salt Lake County District Attorney's Office contacted Afu's attorney, David Biggs of Salt Lake Legal Defenders' Association. Sergeant Judd then arranged to conduct and did conduct an interview of Siaosi Afu, a transcript of which is attached hereto as State's

Exhibit A. David Biggs was present during the entire interview, and Afu was read his Miranda rights, having been informed that he was under investigation for perjury. At the outset of the interview, David Biggs made the shocking revelation that his client, Siaoasi Afu, is unable to read. (See Exhibit A, page 1). Siaoasi Afu confirmed that he "can read a little bit but I can't read big words." (Exhibit A, page 4). Afu went on to explain that Sam Misini, an uncle to defendant Joseph Langi, had come to Afu's home and presented him with an affidavit, asking him to sign it to "help Joe." (Exhibit A, pages 4-6). Misini never told Afu that he could talk to an attorney before signing the affidavit. (Exhibit A, page 6).¹ Afu, being unable to read, gave the affidavit to his wife, who looked over it and summarized it for Afu, telling him what she believed it said. (Exhibit A, pages 6-7). Afu never read the affidavit himself, nor did he have it read to him word for word. (Exhibit A, page 7). When he signed the affidavit, Afu thought it meant that he had lied to the detectives when he was first interviewed shortly after the crime. (Exhibit A, page 5). While his attorney was explaining Siaoasi's difficulties reading the affidavit, Siaoasi Afu interrupted and indicated that he "would never have signed anything like that saying that I lied under oath cause I didn't lie under oath." (Exhibit A, page 2).²

During his interview with Sergeant Kevin Judd, Siaoasi Afu was asked about how he had lied to investigators when he was first arrested. (Exhibit A, page 8). He indicated

¹ Interestingly enough, Samuel Misini is the very person who purportedly authored defendant's Exhibit 2, an affidavit in which Misini claims to have information relative to Siaoasi Afu's alleged perjury. Misini's affidavit is suspiciously similar to the affidavit presented to Siaoasi Afu for his signature. Conspicuously absent from Misini's affidavit is any acknowledgement that he is related to the defendant in this case, Joseph Langi. The Misini affidavit is neither sworn nor notarized.

² As further indication of Siaoasi Afu's confusion relative to the affidavit, both he and his attorney took pains to clarify that Afu had never been coached, pushed, or threatened about testifying or about the substance of his testimony. (Exhibit A, pages 2, 14-15). Moreover, Afu's attorney indicated that he had been present during the State's discussions with Afu, and had never witnessed any undue influence on the part of the State's attorneys. (Exhibit A, page 15). Clearly, Afu had no knowledge that the affidavit he signed contained allegations of impropriety on the part of State prosecutors.

that he had lied about the nature and extent of his relationship to Joseph Langi, and about where he had dropped Joseph Langi off after the crime had been committed (Exhibit A, page 8, 9, 11). Afu, however, steadfastly denied that he had ever lied to investigators about the specifics of the actual crime itself, or any participant's relative involvement in it. (Exhibit A, page 9, 10). Most importantly, Afu categorically insisted "I never lied on the stand." (Exhibit A, page 13). When asked again whether he had been untruthful during Joseph Langi's trial, Afu answered "No way." (Exhibit A, page 13).

It is apparent that the affidavit of Siaosi Afu, attached to Defendant's Memorandum as defendant's Exhibit 1, does not stand for the notion that Afu committed perjury during Joseph Langi's trial. At best, it demonstrates that Afu had been untruthful to police investigator Jeff Lone during his interview shortly after the offense was committed. Afu himself admitted at Langi's trial that he had been dishonest with ~~Jeff~~ Lone about certain things. He acknowledged that he was dishonest about his relationship to Joseph Langi, and about some details of what had gone on in the moments immediately after the crime. These facts, however, simply cannot qualify as "newly discovered evidence" for one very simple reason – they are all facts *known to the defendant at the time of trial*. Surely defendant cannot reasonably argue that he did not know how long Siaosi Afu had known him prior to the night of February 26, 2000, because it was precisely the same amount of time that Langi had known Afu. Moreover, Langi knew full well about the moments after the crime, because he himself was in that car. Not only *could* the defendant have discovered this information with the exercise of due diligence, defendant *actually knew* this information prior to trial.

Because Siaoosi Afu categorically denies having testified untruthfully at Joseph Langi's trial, and because there is no independent evidence establishing that Siaoosi Afu committed perjury, there is no newly discovered evidence before this Court upon which it could grant defendant's motion for new trial.

III. DEFENDANT IS NOT ENTITLED TO A NEW TRIAL BECAUSE ASSUMING, ARGUENDO, THAT THERE EXISTS SOME NEWLY DISCOVERED EVIDENCE, THAT NEW EVIDENCE WOULD NOT MAKE A DIFFERENT RESULT PROBABLE AT RETRIAL.

Assuming, *arguendo*, that this Court is satisfied that Siaoosi Afu's affidavit amounts to evidence which could not have been discovered prior to trial in the exercise of due diligence, this Court must then determine whether this new evidence is likely to produce a different result were a new trial granted. Defendant asserts, without argument or support from any source, that Siaoosi Afu was "the State's key witness." (Defendant's Memorandum, page 1). He recounts Afu's testimony regarding certain conversations, which occurred between Afu and defendant Langi in the moments after they had committed a crime together. Defendant then asserts that "the jury, believing that the conversations occurred between Joseph Maka Langi and Siaoosi Afu convicted Joseph Maka Langi of two counts of aggravated robbery." (Defendant's Memorandum, page 1). The State is at a loss to explain how the defendant can presume to know what the jury believed in arriving at its verdict. Defendant certainly does not attach any affidavit of any juror indicating what may have occurred during deliberation, and indeed such affidavits would be impermissible pursuant to Utah Rule of Evidence 606.³ In either

³ Utah Rule of Evidence 606(b) provides that "a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith," except under certain carefully delineated exceptions, none of which have been alleged in the instant case.

event, the State disputes defendant's characterization of Siaso Afu as a "key witness," and asserts that even without Siaso Afu's testimony, the State had presented sufficient evidence against defendant to secure his conviction on two counts of Aggravated Robbery.

At defendant's trial, both Jose Farias and Gabriel Calvillo testified as to their recollections of what occurred at Beto's Restaurant on February 26, 2000. Their companion, Rachel Redding, also testified, as did Deputy Jason Huggard and Detective Lone, both of the Salt Lake County Sheriff's Office. Without question, the critical piece of evidence in the State's case was a videotape, which had captured the events that ultimately became the subject of the trial. The videotape was admitted without objection by the defense, and was authenticated by Rachel Redding as truly and accurately depicting the events of February 26, 2000. That videotape, as the Court will likely recall, captured in ghastly detail the attacks on Jose Farias and Gabriel Calvillo, including defendant searching through both victims' pockets as they lay unconscious on the floor of Beto's. The victims and Rachel Redding offered testimony pertaining to the removal of Farias's eyebrow ring, and the taking of Calvillo's wallet. The only testimony that Siaso Afu offered in support of the State's robbery allegation was that after the incident, in the car, he observed defendant Langi in possession of money that had blood on it. Afu stands by that statement and indicated (as previously outlined) that he was absolutely truthful at trial in that regard. However, even assuming that he was less than truthful, the testimony of Farias, Calvillo, Redding and the videotape provide more than enough evidence to support defendant's conviction of Aggravated Robbery.

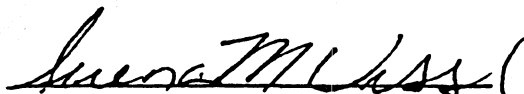
Defendant asserts, without argument, that "it is difficult to imagine more important evidence affecting a more important witness in this case." (Defendant's Memorandum, page 5). To the contrary – Siaso Afu's testimony at trial did little more than provide drama when Afu pointed to defendant Langi and told the jury that indeed, it was Langi who had participated in the savage beatings at Beto's Restaurant on February 26, 2000, a fact that Langi readily conceded at trial. Identification was never an issue during defendant's trial. As early as opening statement, defendant conceded his presence at Beto's on February 26, and acknowledged involvement in beating Farias and Calvillo. In short, even assuming that this Court were to find that the affidavit recently signed by Siaso Afu, an affidavit which he obviously misunderstood, amounts to newly discovered evidence, defendant is simply unable to demonstrate that this evidence would likely cause a different result in the event of a retrial.

CONCLUSION

For the foregoing reasons, the State respectfully requests that defendant's Motion for New Trial be denied.


DATED this 23rd day of July, 2001.

DAVID E. YOCOM
District Attorney for Salt Lake County


Sirena M. Wissler
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that on this 23rd day of July, 2001, I caused a true and correct copy of the foregoing Memorandum in Opposition to Defendant's Motion for New Trial to be mailed in the U.S. Mail, postage prepaid to: Paul Gotay, Attorney for Defendant Joseph Maka Langi, 357 South 200 East, Suite 300, Salt Lake City, Utah 84111.

_____

STATE OF UTAH,

Plaintiff,

VS.

JOSEPH MAKALANGI,

Defendant.

CASE NO. 001917415

MOTION HEARING

BEFORE THE HONORABLE JUDITH S.H. ATHERTON

SCOTT M. MATHESON COURTHOUSE

450 SOUTH STATE STREET

SALT LAKE CITY, UTAH 84114-1860

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 07, 2001

REPORTED BY: TEENA GREEN, CSR, RPR

238-7104

1 simply indicate that I think it's inappropriate at this point
2 in time for the defendant to now request that we conduct an
3 evidentiary hearing, when during the initial stages of this
4 motion the defendant specifically indicated that he did not
5 believe that witnesses would be necessary.

6 That having been said, Judge, the issue really comes
7 down to whether the defendant is entitled to a new trial based
8 upon the rule, which is Utah Rule of Criminal Procedure 24
9 which governs new trials, and the defendant, quite frankly, has
10 not come close to the burden that he bears in terms of the new
11 trial.

12 Your Honor, the State's position is that the
13 affidavit of George Afu, even on its face, does not indicate
14 that he committed perjury at trial; in fact, to the contrary.
15 What it says is that he lied to the investigators. Well, the
16 State concedes that he lied to investigators, he told the jury
17 that he lied to investigators. He told the jury that he had
18 lied about certain things that he was interviewed about by
19 Detective Jeff Lund. Those are things that were known to the
20 defendant at the time of trial, they cannot amount to newly
21 discovered evidence. That having been said, the defendant is
22 not entitled to a new trial based upon newly discovered
23 evidence.

24 There is no other allegation, as far as I'm aware, of
25 what could be considered newly discovered evidence. There's

DAVID E. YOCOM
District Attorney for Salt Lake County
SIRENA M. WISSLER, Bar No. 7450
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, -vs- JOSEPH LANGI, Defendant.	FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER RE: DEFENDANT'S MOTION FOR NEW TRIAL Case No. 001917415 Hon. Judith S. Atherton
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Defendant's Motion for New Trial came before the Court for argument on September 7, 2001 at 2:00 pm. The defendant was not present, having been transported to the Utah State Prison unbeknownst to the Court and counsel. However, defendant's counsel, Paul Gotay, was present and requested that the motion be heard despite the defendant's absence. The State was present and represented by Sirena M. Wissler, Deputy District Attorney for Salt Lake County. The Court, having presided over the trial, reviewed the memoranda submitted by each party, and heard oral argument, hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Defendant was charged with two counts of Aggravated Robbery, both First Degree Felonies, following an incident that occurred at Beto's restaurant on February 26, 2000. Both counts of Aggravated Robbery carried group enhancements, as it was alleged that in committing the offenses, defendant acted in concert with two or more persons.
2. Defendant was represented by Paul Gotay, who promptly filed both a Notice of Appearance of Counsel and Request for Discovery.
3. The State promptly responded to defendant's Request for Discovery and provided, among other things, a transcript of an interview conducted with George "Siaosi" Afu.
4. Co-defendant Konai Bloomfield had already been convicted by a jury of two counts of Aggravated Robbery with group enhancements. The other co-defendant, Siaosi "George" Afu (hereafter "George Afu"), was offered a plea bargain. He pled guilty to one count of Aggravated Assault, a Third Degree Felony, in exchange for his agreement to testify against Bloomfield and Langi.
5. Defendant Langi was tried before a jury beginning on April 25, 2001.
6. During the defendant's trial, the State introduced as evidence a videotape of the events that occurred at Beto's restaurant February 26, 2001.
7. Defendant did not object to the admission of the videotape. Rather, defendant utilized the videotape, arguing at trial that the videotape showed that while the victims were certainly beaten, they were not robbed.

8. As part of its case-in-chief, the State called George Afu to testify, who testified under oath as to the events of February 26, 2000, and his role in the events that occurred at Beto's on that night.
9. Defendant had been notified well in advance of trial that the State intended to call George Afu as a witness as part of its case-in-chief.
10. During his testimony, Afu admitted that when police initially interviewed him, he was untruthful about his relationship with defendant Langi. He testified that he had told police that he had only met Langi the night of the crime, when in fact, he had known Langi for some time.
11. George Afu also testified that he had been offered a plea bargain and had pled guilty to a reduced charge of Aggravated Assault, a Third Degree Felony, in exchange for testifying against defendant Langi.
12. At the time he entered his plea, Afu, who was then represented by David C. Biggs, executed a "Statement of Defendant, Certificate of Counsel, and Order." That document was written in English.
13. In executing the Statement of Defendant, Afu acknowledged that he could "read and understand the English language," or that "an interpreter has been provided to me."
14. George Afu testified that he had participated in assaulting Jose Farias and Gabriel Calvillo, and that when defendant Langi got into his car, Langi appeared to be holding a wallet and money with blood on it. George Afu indicated that he had not seen Langi take the wallet, because Afu had already left the restaurant to go get the car.

15. On cross-examination, George Afu was asked whether it was the detectives who interviewed him who first raised the issue of the bloody money. Afu indicated that he could not remember. When shown one portion of the transcript of that interview, Afu stated that it was the detectives who raised the issue. On re-direct, and upon being shown an earlier portion of the transcript, Afu acknowledged that it was he who first notified detectives that he had seen defendant Langi holding bloody money.
16. Afu was also questioned on cross-examination about the plea bargain he had received in exchange for his agreement to testify against defendant Langi. He was shown a copy of the Statement of Defendant he had executed in connection with his plea, and acknowledged that it indeed bore his signature.
17. After the State rested, defendant indicated that he did not wish to take the stand in his own behalf. Defendant called no other witnesses.
18. At the conclusion of the two-day trial, and following slightly more than two hours of deliberation, the jury returned a unanimous verdict of guilty as charged on both counts of Aggravated Robbery, and found beyond a reasonable doubt that in committing the offenses, the defendant had acted in concert with two or more persons, subjecting him to the group enhancement.
19. Defendant was sentenced on June 11, 2001. This Court imposed two indeterminate terms of 9 years to life, and ordered that the two terms run concurrently and not consecutively.

20. Defendant then timely filed a Motion for New Trial, attached to which were what purported to be affidavits from three people: George Afu, Samuel Misini, and Fineeva Maka.
21. The affidavit of George Afu contains a statement indicating that he "lied on the investigator's report," and that "because of the prosecutor's pushing, and coaching questions, I have to lie." The affidavit bears George Afu's signature and was notarized on May 23, 2001.
22. The affidavit of Samuel Misini contains a statement indicating that George Afu told him "he has to lie in court, because of the prosecutor's pushing, and coaching questions." The Misini affidavit further claimed that George Afu told Misini that "it was the prosecutor and the investigator who told him about the stolen items, but he did not see Joe took or stolen [sic] anything from the victims, because he has left first to pick up the vehicle."
23. In his memorandum in support of his motion for new trial, defendant Langi alleged that the affidavit of George Afu contained an admission that Afu had perjured himself during the trial. He later characterized the discovery of Afu's "perjury" as newly discovered evidence.
24. Based upon the allegations leveled in defendant's memorandum, the State contacted George Afu's attorney, David C. Biggs. Mr. Biggs and Afu agreed to an interview on the subject of the perjury allegation.
25. During the interview, Afu was read his Miranda rights, and informed that he was under investigation for perjury. Afu agreed to waive his right to remain

silent, and agreed to speak with Sergeant Kevin Judd. David Biggs was present during the entire interview.

26. David Biggs informed Sgt. Judd, on behalf of his client, that Afu does not read English well. He indicated that at the time Afu signed the affidavit which defendant attributed to him, he was not able to read the big words, and that his wife had paraphrased it but apparently not read the document word for word.
27. Afu admitted to having signed the affidavit, but indicated that he did not understand what it said.
28. Afu indicated that he believed that in the affidavit, he was only admitting that he had not been truthful to investigators when he was asked about his relationship with defendant Langi.
29. Afu stated that he did not lie to police or anyone else about anything pertaining to the events that occurred at Beto's Restaurant on February 26, 2000.
30. Afu vehemently denied on several occasions during his interview with Sgt. Judd that he had lied to the jury during defendant Langi's trial.
31. Afu further denied that any State prosecutor had ever coached him as to his answer to any question, and further indicated that he had not been pressured or coerced. Afu's counsel confirmed that he had been present during the prosecutors' meetings with his client, and had never witnessed any such inappropriate behavior on the part of the State's attorneys.

32. Afu affirmatively stated that he had been truthful when he testified at defendant Langi's trial.

CONCLUSIONS OF LAW

1. The revelation in the affidavit of George Afu that he lied to investigators does not constitute newly discovered evidence. All of the matters about which Afu admitted lying were matters known to the defendant at the time of trial. Defendant was certainly aware of the fact that he had known Afu prior to February 26, 2000, and was similarly aware that he had spent the night over at Afu's house on the night of February 26, 2000. Moreover, because defendant was present at the time the crimes at Beto's were committed, any discrepancies between Afu's version of events and his own were certainly known to defendant prior to trial. Because these matters were known to defendant prior to trial, they do not constitute newly discovered evidence.
2. The affidavit of George Afu, submitted by defendant, is on its face, insufficient to establish that Afu testified falsely at trial. Despite defendant's characterization of it, the affidavit does not contain an admission by Afu that he lied on the witness stand when he testified at defendant's trial. To the contrary, the affidavit indicates only that Afu lied to investigators, a fact which he admitted to the jury. Defendant's assertion that Afu perjured himself at trial is, therefore, unsupported.
3. The affidavits of Samuel Misini and Fineeva Maka are double hearsay and are so unreliable that this Court declines to consider them when evaluating defendant's motion for new trial.

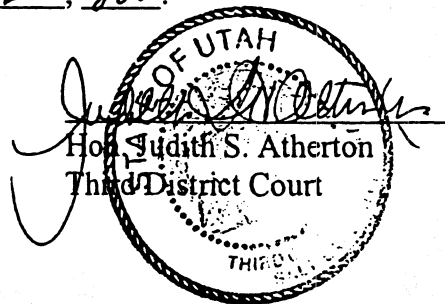
4. Defense counsel had ample opportunity, prior to trial, to conduct an interview with George Afu in order to ascertain any information that as not a part of the formal interview conducted by police. Therefore, any information disclosed during trial about which defense counsel had no prior knowledge could have, with due diligence, been discovered prior to trial.
5. Defendant's trial counsel conducted a competent cross-examination of George Afu which appropriately addressed the issue of the plea agreement he had reached with prosecutors in exchange for his testimony, and on the fact that because he had left the restaurant prior to the robbery, Afu did not actually witness defendant Langi removing or attempting to remove any property from the victims.
6. Based upon the transcript of Sergeant Kevin Judd's interview with George Afu, this Court finds that George Afu did not perjure himself during defendant Langi's trial. Any inconsistencies in his statements, or bias that may have arisen as a result of Afu's plea agreement with the State, were properly explored on cross-examination.
7. Also based upon this Court's review of the transcript of Sgt. Judd's interview with George Afu, this Court is satisfied that no representative of the State coached George Afu regarding his testimony, nor was George Afu coerced or pressured by any representative of the State.
8. Notwithstanding defendant's argument to the contrary, the evidence of defendant's guilt in this case was overwhelming. The videotape admitted into evidence, which captured the offenses in progress, provided sufficient

evidence to convict defendant. That video, particularly when coupled with the testimony of Jose Farias, Gabriel Calvillo, Rachel Redding, and George Afu, was so compelling that it makes the likelihood of a different result extremely remote. That is, even if this Court were to determine that some newly discovered evidence existed which could not have been discovered with due diligence prior to trial, that new evidence would not make a different result probable at a new trial.

9. Because this Court was not provided a transcript or other recording of George Afu's guilty plea in connection with his own involvement in the events that occurred at Beto's on February 26, 2000, this Court did not consider any issue related to the entry of that plea in reaching these Findings of Fact and Conclusions of Law.

This Court hereby enters the preceding Findings of Fact and Conclusions of Law on the issue of defendant's Motion for New Trial. Based upon those findings, and for the reasons enumerated above, defendant's Motion for New Trial is denied.

DATED this 14 day of March, 2002



Approved as to form:

Attorney for Defendant Joseph Langi

CERTIFICATE OF DELIVERY

I hereby certify that on this 6th day of February, 2002, I caused a true and correct copy of the foregoing Findings of Fact and Conclusions of Law Re: Defendant's Motion for New Trial to be mailed in the U.S. Mail, postage prepaid to: Joseph Jardine, Attorney for Defendant Joseph Langi, 39 Exchange Place, Suite 100, Salt Lake City, Utah 84111.

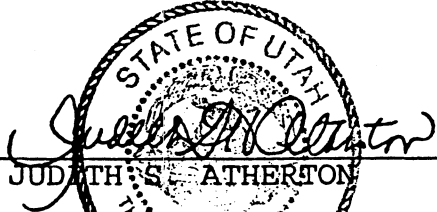
J. Melisse

THIRD DISTRICT COURT SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

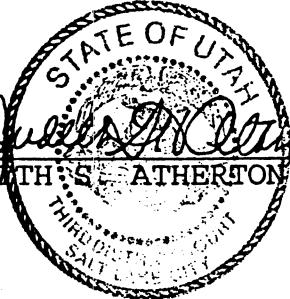
STATE OF UTAH,	:	
Plaintiff,	:	REG MOTION FOR NEW TRIAL
	:	
vs.	:	Case No: 001917415
	:	
JOSEPH MAKALANGI,	:	Judge: JUDITH S. ATHERTON
Defendant.	:	Date: 03/15/2002

Clerk: heathemh

HAVING RECEIVED DEFENDANT'S OBJECTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COURT SIGNS STATE'S PROPOSED ORDER AS DRAFTED.



Judge JUDITH S. ATHERTON



Case No: 001917415
Date: Mar 15, 2002

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 001917415 by the method and on the date specified.

METHOD	NAME
Mail	WISSLER SIRINA PAYOR UT
Mail	JOSEPH JARDINE ATTORNEY DEF 39 Exchange Place Suite 100 Salt Lake City UT 84111

Dated this 15 day of March, 2002.



Deputy Court Clerk

Edwin S. Wall, A7446
WALL LAW OFFICES
68 South Main Street, Suite 800
Salt Lake City, Utah 84101
Phone Number: (801) 523-3445

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IN THE THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

STATE OF UTAH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 001917415 FS
)	
JOSEPH LANGI,)	Hon. Judith S.H. Atherton
)	
Defendant.)	

ORDER OF
FINAL JUDGMENT, SENTENCE AND COMMITMENT

On April 25, 2001, the defendant was tried before a Jury and convicted on two counts of Aggravated Robbery, a first degree felony, in violation of U.C. § 76-6-302, as amended.

On June 11, 2001, the Court sentenced Mr. Langi in open court. The court imposed sentence as follows: (a) on Count I, Aggravated Robbery, a first degree felony, to an indeterminate term of not less than five years and which may be life in the Utah State prison, (b) on Count II, Aggravated Robbery, a first degree felony, to an indeterminate term of not less than five years and which may be life in the Utah State prison; (c) with respect to Count I and Count II, that the terms of imprisonment on Count I and Count II shall run concurrent with one another;

and further found (d) that Mr. Langi's sentence was subject to gun and gang enhancements, said findings being of record and thus ordered the defendant to serve a term of not less than nine (9) years and which may be for life in the Utah State Prison.

The Court remanded the defendant to the custody of the Salt Lake County Sheriff for transportation to the Utah State Prison where the defendant will be confined.

On June 11, 2001, the Court further ordered that the defendant pay restitution in the amounts of \$3,728.47 and \$3,603.53, together with such interest as might be authorized by law.

On September 19, 2002, the Court of Appeals for the State of Utah entered its Memorandum Decision in *State of Utah v. Joseph Maka Langi*, Case No. 20020396-CA, 2002 UT App 296 in which the Court of Appeals stated:

The district court docket reflects that Langi was orally sentenced on June 11, 2001. However, no signed judgment and sentence appears in the district court record that was transmitted to the Court. Because no final and appealable judgment has been entered, we lack jurisdiction over the appeal. . . . The time for initiating an appeal will not commence until entry of the signed judgment and sentence in the district court.

* * *

We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal filed after the entry of final judgment.

NOW THEREFORE, this Court enters its Final Judgment, Sentence and Commitment in the present case in accordance with the pronouncement of the court on June 11, 2001, to wit:

ORDER

IT IS ADJUDGED AND ORDERED that Mr. Joseph Maka Langi is sentenced on Count I, Aggravated Robbery, a first degree felony, to an indetermanant term of not less than five years

and which may be life in the Utah State prison.

IT IS FURTHER ADJUDGED AND ORDERED that Mr. Joseph Maka Langi is sentenced on Count II, Aggravated Robbery, a first degree felony, to an indetermanant term of not less than five years and which may be life in the Utah State prison.

IT IS FURTHER ADJUDGED AND ORDERED that the sentences imposed by this court with respect to Count I and Count II shall run concurrent with one another.

IT IS FURTHER ADJUDGED AND ORDERED, pursuant to the findings made of record in this matter, that Mr. Langi's sentence is subject to gun and gang enhancements, and that the sentence that has been imposed upon him by this court shall be so enhanced and that Mr. Joseph Maka Langi shall serve a term of not less than nine (9) years and which may be for life in the Utah State Prison.

IT IS FURTHER ADJUDGED AND ORDERED, pursuant to the findings made of record in this matter, that Mr. Langi pay restitution in this matter in the amounts of \$3,728.47 and \$3,603.53, together with such interest as might be authorized by law.

IT IS FURTHER ORDERED that Mr. Joseph Maka Langi be, and has been, remanded the defendant to the custody of the Salt Lake County Sheriff for transportation to the Utah State Prison where the defendant will be confined.

IT IS FURTHER ORDERED that Mr. Joseph Maka Langi be, and hereby is, committed to the Utah State Department of Corrections, Utah State Prison, and that such commitment is and shall be effective as of June 11, 2001.

FURTHERMORE, IT IS ORDERED this is, and shall be construed to be, the final written order of judgment, sentence and commitment of the court in the above-entitled matter, for which the defendant has the right of a direct appeal.

Done in chambers this ___ day of _____, 2002.

BY THE COURT:

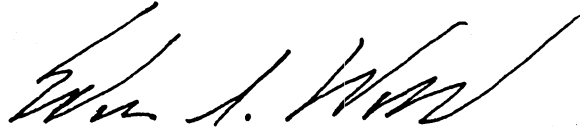
/s/

District Judge

CERTIFICATE OF SERVICE

I, Edwin S. Wall, do hereby certify that on this 5th day of November, ~~November~~, 2002, a true and correct copy of the foregoing document was served upon the person at the address indicated below by placing the same into the United States Postal Service, first class postage prepaid, addressed as follows:

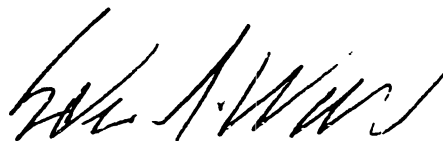
District Attorney's Office
231 East 400 South
Salt Lake City, Utah 84111



Edwin S. Wall
Attorney at Law

together with such interest as might be authorized by law.

Respectfully submitted this 26th day of November, 2002.

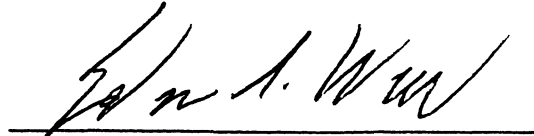
A handwritten signature in black ink, appearing to read "Edwin S. Wall", written in a cursive style.

Edwin S. Wall, Attorney for Defendant

CERTIFICATE OF SERVICE

I, Edwin S. Wall, do hereby certify that on this 26th day of November, 2002, a true and correct copy of the foregoing Notice of Appeal was served upon the person at the address indicated below by placing the same into the United States Postal Service, first class postage prepaid, addressed as follows:

Ms. Sirena Wissler
District Attorney's Office
231 East 400 South
Salt Lake City, Utah 84111

A handwritten signature in dark ink, appearing to read "Edwin S. Wall", is written over a horizontal line.

Edwin S. Wall
Attorney at Law