

1992

William H. Babbel v. Tamara Holden : Unknown

Utah Court of Appeals

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William H. Babbel; Pro Se.

Jan Graham; Kenneth A. Bronston; Attorneys for Appellee.

Recommended Citation

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JAN 27 1993

IN THE UTAH COURT OF APPEALS


Mary T. Noonan
Clerk of the Court

-----ooOoo-----

William H. Babbel,)	MEMORANDUM DECISION
)	(Not For Publication)
Petitioner and Appellant,)	
)	
v.)	Case No. 920709-CA
)	
Tamara Holden,)	
)	
Respondent and Appellee.)	F I L E D
		(January 27, 1993)

Third District, Salt Lake County
The Honorable J. Dennis Frederick

Attorneys: William H. Babbel, Draper, Appellant Pro Se
Jan Graham and Kenneth A. Bronston, Salt Lake City,
for Appellee

Before Judges Garff, Bench, and Billings (Law & Motion).

PER CURIAM:

William H. Babbel, appeals from the trial court's denial of his petition for a writ of habeas corpus. We affirm.

Babbel was convicted, after a trial by jury, of two counts of aggravated sexual assault, and one count of aggravated kidnapping. Babbel was sentenced to a term of five years to life for the first count of aggravated assault, a concurrent term of five years to life for the aggravated kidnapping, and a consecutive term of five years to life for the second count of aggravated sexual assault. Babbel appealed the convictions, claiming the trial court should have excluded evidence seized pursuant to a warrant because the warrant was issued without probable cause. The Utah Supreme Court affirmed the convictions but ruled that sentencing was improper and remanded for resentencing. State v. Babbell, 770 P.2d 987, 993 (Utah 1989). On remand, the court resentenced petitioner to three concurrent minimum mandatory terms of ten years to life. On appeal the sentences were affirmed.

In January of 1991, Babbel filed his first petition for a writ of habeas corpus, claiming counsel failed to inform him that the supreme court could vacate the sentence and allow the trial

As a general rule, a writ of habeas corpus is not a substitute for and cannot be used to perform the function of regular appellate review. Codianna v. Morris, 660 P.2d 1101, 1104 (Utah 1983). However, a conviction may nevertheless be challenged by collateral attack in unusual circumstances or upon a showing of good cause shown.¹ Hurst v. Cook, 777 P.2d 1029, 1035 (Utah 1989). "The unusual circumstances test was intended to assure fundamental fairness and to require reexamination of a conviction on habeas corpus when the nature of the alleged error was such that it would be 'unconscionable not to reexamine' . . . and thereby to assure that 'substantial justice [was] done'" Codianna, 660 P.2d at 1115 (quoting Martinez v. Smith, 602 P.2d 700, 702 (Utah 1979)). Further, "[t]he prior adjudication of a habeas petition does not bar the adjudication of a subsequent petition as a matter of res judicata, but Rule 65B(i)(4) does require a showing of good cause for filing a successive writ." Id. at 1036-37. "Frivolous claims, once-litigated claims with no showing of unusual circumstances or good cause, and claims that are withheld for tactical reasons should be summarily denied. In a successive petition, the burden is on the petitioner "to show that the ends of justice would be served by permitting the redetermination of the ground." Id.

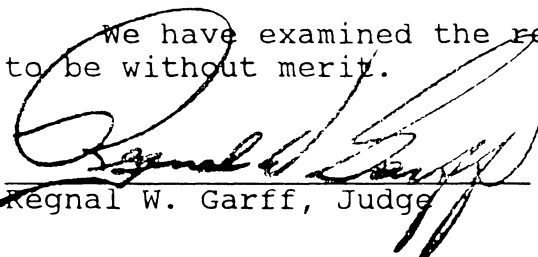
Babbel essentially claims that his petition should not have been dismissed as successive because there are "unusual circumstances." Specifically, Babbel claims that the following constitute unusual circumstances: the conviction was obtained through the use of illegally seized evidence, Officer Cazier obtained the warrant illegally, Officer Cazier committed perjury to obtain the search warrant and to get evidence admitted, trial counsel was ineffective, and appellate counsel was ineffective.

We first consider whether the allegation that the conviction was obtained through the use of illegally seized evidence constitutes "unusual circumstances." The Utah Supreme Court addressed Babbel's claim regarding whether the evidence should have been suppressed in his first appeal and concluded that the trial court was justified in denying the motion to suppress. Babbell, 770 P.2d 987 (Utah 1989). Babbel has not shown good cause or unusual circumstances that warrant reconsideration of that issue.


Babbel also claims he was unable to raise certain claims in his first petition because he did not have the transcripts and documents to prove the claims. Specifically, he did not have the documents to prove that Officer Cazier obtained the warrant

1. The Utah Supreme Court has not clarified whether unusual circumstances and good cause are synonymous. However, one justice has stated that the terms are comparable. Dunn v. Cook, 791 P.2d 873, 879 (Zimmerman, J., concurring).

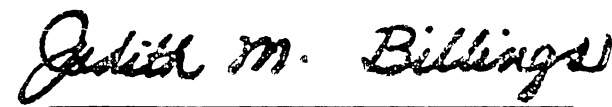
We have examined the remaining issues raised and find them to be without merit.



Regnal W. Garff, Judge



Russell W. Bench, Judge



Judith M. Billings, Judge

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

BABBEL, WILLIAM H	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920903226 HC
	:	DATE 08/03/92
VS	:	HONORABLE J. DENNIS FREDERICK
	:	COURT REPORTER
HOLDEN, M TAMARA	:	COURT CLERK CLB
DEFENDANT	:	

TYPE OF HEARING:
PRESENT:

P. ATTY.
D. ATTY.

AFTER REVIEW OF THE PLEADINGS AND PURSUANT TO THE ORAL ARGUMENT ON RESPONDENT'S MOTION TO DISMISS HELD JULY 31, 1992, THE COURT HAVING TAKEN THE MATTER OF ITS DECISION UNDER ADVISEMENT, RULES AS FOLLOWS:

1. RESPONDENT'S MOTION TO DISMISS (TREATED AS SUMMARY JUDGMENT) IS GRANTED FOR THE REASONS STATED IN THE MEMORANDA IN SUPPORT THEREOF.

2. COUNSEL FOR RESPONDENT TO PREPARE THE APPROPRIATE ORDER.

received

WILLIAM H. BABBEL
Pro Se
P.O. Box 250
Draper, Utah 84020

IN THE
UTAH SUPREME COURT

-----oooOooo-----

:

WILLIAM H. BABBEL,

:

Appellant,

:

MEMORANDUM IN SUPPORT OF
SUMMARY REVERSAL

vs.

:

TAMARA HOLDEN,

:

Appellee.

:

Case No. _____.

-----oooOooo-----

COMES NOW the appellant, William H. Babbel, and pursuant to the Rules of this Court and in Support of the Motion for Summary Reversal of the District Court's Order, submits the following Memorandum.

FACTS

On 5 June 1992, the appellant filed a petition for habeas corpus relief in the Third Judicial District Court, J. Dennis Frederick, Judge, presiding. The petition was filed in Third District Court as a result of an Order in the United States District Court, requiring the appellant to return to State Court and exhaust issues not previously exhausted. The petition filed in Third District Court raised eight issues.

1. The evidence used at trial was gained through a warrant which was obtained by the use of false information in the affidavit in support of the search warrant, given by Detective Larry Cazier.
2. Detective Larry Cazier perjured himself during the suppression hearing to ascertain that the illegally seized evidence would be admitted into evidence.
3. The appellant was denied effective assistance of counsel during the suppression hearing, at trial and on appeal.
4. That the appellant was denied effective assistance of counsel on his second appeal in this Court.
5. That the Deputy County Attorney withheld Detective Cazier's notes because he knew that they would show the detective was never told about a specific piece of evidence, which was admitted into evidence.
6. That the initial entry onto the appellants property by Det. Cazier was illegal and gained through threats and lies.
7. That the seizure of a "55 M.P.H. Sucks Button" was in violation of the appellants Fourth Amendment Rights.
8. That the trial Court abused it's discretion in refusing to consider evidence in mitigation when it sentenced the appellant to three terms of ten years to life, pursuant to this Court's order in Pabbel I, 770 P.2d 987 (Utah 1989).

The respondent filed a motion to dismiss in part stating that the appellant had had the opportunity to address these issues in a previous petition filed in Third District Court. After briefing

the issues and having oral arguments, Judge Frederick dismissed the petition. (See order attached to Docketing Statement) Subsequently, this appeal was taken.

WHY THIS COURT SHOULD GRANT THE
MOTION FOR SUMMARY REVERSAL

In the petition for habeas corpus relief filed in Third District Court, the appellant articulated sufficient facts, supported by documentation, which show that there was a fundamental unfairness on the part of the State in obtaining the conviction in this matter; and that counsels' repeated failure to raise issues or supply the appellant with documents with which to raise the issues himself, give rise to sufficient "unusual circumstances" to warrant a second petition for habeas corpus relief. (See petition attached as Exhibit A to this Motion)

While the petition raises several claims, they can be put into four categories;

1. That Det. Cazier used false information to gain a search warrant, thus making his search illegal;

2. That Cazier compounded this false information by committing perjury during the suppression hearing, thus making sure that the illegally seized evidence was admitted;

3. That the appellant was denied effective assistance of counsel at various stages of this case, to include; Brooke Wells failure to show that Cazier used false information in gaining the warrant,

that the Detective lied during the suppression hearing, that Ms. Wells failed to compel production of supposed notes in the possession of Det. Cazier, and that Ms. Wells refused to raise issues on appeal that the appellant wanted raised, further that Joan Watt refused to raise issues on appeal that the appellant specifically wanted raised, or supply the appellant with the necessary documents to raise the issues himself.

4. And, that Judge Scott Daniels abused his discretion in refusing to consider evidence in mitigation prior to imposing three ten year to life terms of imprisonment.

While the issues of Detective Cazier obtaining a warrant illegally and committing perjury, and Ms. Wells ineffectiveness were known to the appellant at the time of the filing of the first petition, the appellant could not have brought those issues without the necessary documents, and transcripts with which to prove the allegations. Ms. Wells supplied the respondent with an affidavit, which was attached to the motion to dismiss the petition. In that affidavit Ms. Wells states that the appellant had access to the transcripts to the proceedings, prior to trial, to include the suppression hearing transcripts. Ms. Wells fails to note that the suppression hearing transcripts were not transcribed until two months after the trial had ended. See Ms. Wells affidavit attached as Exhibit B to this Motion, and the Certificate of Susan S. Sprouse, certifying that the transcripts were not produced until 30 December 1985.

Ms. Wells affidavit also clearly states that she did not raise issues that the appellant wanted raised. Ms. Wells includes letters to her and Jeffrey Hunt, the intern that wrote the brief, which show the specific allegations that the appellant wanted raised. Ms. Wells affidavit clearly shows that she did not raise issues that the appellant wanted raised. This admission falls squarely within the language the Utah Court of Appeals used in Wagstaff v. Barnes, 802 P.2d 774, 776 (Utah App. 1990) "On direct appeal, Wagstaff's appointed counsel failed to raise the representation argument, contrary to Wagstaff's expressed desire. This places the case squarely within the language of Chess v. Smith and constitutes and obvious injustice justifying habeas corpus relief." Accord Jensen v. Deland, 795 P.2d 619, 621 (Utah 1989). See also Chess v. Smith, 617 P.2d 341, 343-44 (Utah 1980).

This Court addressed the "unusual circumstances test" in Hurst v. Cook, 777 P.2d 1029, 1035 (Utah 1989), stating in part; that "a conviction may nevertheless be challenged by collateral attack in "unusual circumstances", that is where an obvious injustice or a substantial denial of a constitutional right has occurred, irrespective of whether an appeal has been taken."

Both Ms. Wells and Ms. Watt refused to raise issues on appeal that the appellant wanted raised. Ms. Wells states that she did not raise those issues, and the respondent has never argued that Ms. Watt refused to raise issues the appellant wanted raised. These two allegations satisfy the unusual circumstances test that was developed by this Court.

Further, the allegations of Detective Cazier using false information in the affidavit, and committing perjury during the suppression hearing were supported by the record. This allegation was not made in the hopes of being able to prove it, it was made and substantiated with the record. Does the use of perjured testimony and illegally seized evidence to gain a conviction rise to a level of a denial of a right guaranteed constitutional right ? The appellant believes that it does indeed.

Attached to this Memorandum (as Exhibit D) is a copy of the affidavit Cazier furnished to Judge Burton in support of the warrant. In that affidavit Cazier states that Karen Sine described the truck as having a cracked windshield, drink holders on the dash, and orange seat covers. Cazier also testified to this during the suppression hearing. See Exhibit E to this Memorandum. But during trial it came out, thru cross examination that Not only did Karen Sine describe the truck as having white seats, but that the truck Cazier saw in the appellants driveway did not have drink holders in it. After removing these two items from the warrant, because they did not exist at the time the detective saw the truck, it leaves a brown Chevrolet truck with a cracked windshield and a 55 Sucks button on the dash. The State did not ever establish that the windshield was cracked. And the button which has been the object of review, was never described to the detective in any report. He claimed that it only existed in his hand written notes. But both he and the State refused to make those not²available to the appellant or his counsel. The button was only

recalled by Karen Sine on the day of trial after prompting by the detective. See Exhibit F to this Memorandum.

Both testimony by the detective and photos taken by the Salt Lake County Sheriffs' Office on the day of the search establish that the seats were not white as described by the victim, Karen Sine, that there were no drink holders on the dash, and that the windshield was not cracked. See Exhibit G to this Memorandum. In TT, 221-22-23-24, Cazier's own reports indicate that he believed that the truck he was looking for had white seats, in fact, the detective was looking for a light colored truck, as is evidenced by his own testimony at trial. See Exhibit H to this Memorandum. Ms. Sine's testimony establishes that there were no drink holders on the dash of the truck on the day Cazier saw it. See Exhibit I to this Memorandum. Additionally, Ms. Sine never identified the truck itself. See Exhibit J to this Memorandum.

Both the record and Caziers' reports show, very clearly, that the detective used false information to gain the warrant, and then perjured himself to make sure that the illegally seized evidence was admitted.

The appellant believes that these facts give rise to a violation of the due process clause of both the Utah Constitution and the Constitution of the United States.

Ms. Wells had all the documents which established that Cazier used false information to gain the warrant, and that he lied during the suppression hearing. Additionally she should have raised this as an

issue on appeal, but refused. In Strickland v. Washington, 466 U.S. 668, 692 (1983), the Court held that, "except for counsel's unprofessional errors, the result of the proceeeing would have been different. A reasonable probability is a "probability sufficient to undermine the confidence in the outcome of the trial." Counsel failed to use information known to her to show that Cazier lied in the affidavit and during the supression hearing. Had she done so, the result of the trial would probably have been different. Likewise, had Ms. Wells shown, on appeal, that the detective used false information, and perjury to gain evidence, the decision in State v. Babbel, 770 P.2d 987 (Utah 1989), might have been just as different. In Babbel I this Court held; "Although we conclude that the magistrate did not err in finding the affidavit sufficient, we must observe that this is a close question. If the affidavit were more vague, we might well reach the opposite conclusion." See footnote 3. Justice Zimmerman, for the Court, stated; We acknowledge that the affidavit is ambiguous in its use of the word "match", but conclude that it was within the magistrates discretion to construe Cazier's statement that Babbel(1)'s (sic) truck matched the description to mean that the truck matched with respect to those characteristics expressly described in the affidavit. The record clearly shows that the affidavit contained false information. With that false information, there were insufficient facts to sustain probable cause to issue the warrant. The only other paragraph that made reference to the appellant was removed from the affidavit by

stipulation of the parties. See Babbel I, 992, footnote 2.

In Franks v. Delaware, 438 U.S. 154 (1978), the Court held; "when determining whether misstatements contained in an affidavit in support of a search warrant should invalidate the warrant, the court must determine whether any misstatement was material, that is (1) whether it was critical to a finding of probable cause, (2) whether it was deliberately made, and, (3) whether without the information probable cause would not have been established."

In the instant matter it is obvious that the description given by Karen Bine was crucial to a finding of probable cause. Without that description there would have been no information on which to issue the warrant. When Cazier was confronted with his reports and numerous photos and witness statements, he admitted that the truck did not match in at least three respects he had articulated in his affidavit in support of the warrant. That left a brown Chevrolet pickup. Which was not enough to establish probable cause. Were these misstatements made deliberately. The appellant believes that they were. Cazier made the same statements numerous times. But when, and only when, he was confronted with his reports, photos, and the witness statements he recorded, did he tell the truth. This Court sustained the warrant because the detective used the descriptions he used. But, if this Court had known that the information was false, had Brooke Wells brought to this Court's attention that the information was false, would it have ruled as it did. The appellant does not believe so.

Ms. Wells knew that the information in the affidavit was incorrect. She was supplied with copies of the reports and statements in June of 1985. A full two months before the suppression hearing. She was told numerous times by the appellant that the truck did not match the description in the affidavit. Still she refused to raise the issue before Judge Daniels. After numerous phone calls and letters, after the trial, she refused to raise the issue on appeal. Ms. Wells conduct falls with the meaning of unusual circumstances articulated by this Court. Further, the conduct of Ms. Watt refusing to raise issues of Ms. Wells ineffective assistance on appeal meet the same test. When the appellant filed his appeal in Babbel II he requested that counsel be appointed. He specifically requested that neither Ms. Wells, nor anyone be appointed from the Legal Defenders Assoc. because of ineffectiveness of counsel claims. Ms. Watt was appointed anyway. Once appointed, she refused to raise issues the appellant wanted raised. See Exhibit K, letter to Brooke Wells, and Exhibit L, motion for appointment of counsel, to this Memorandum. After Ms. Watt refused to raise these issues, but before she withdrew as counsel, the appellant asked Ms. Watt for copies of the police reports, witness statements ect. The appellant wanted to raise these issue in the first petition. Ms. Watt indicated that she could not produce them for several months. Which was four months after the initial petition was already dismissed.

The appellant has tried to raise these issues on numerous occasions, but has been precluded by counsels refusal to raise them or to

supply the appellant with documents to raise them himself. The appellant has never tried to delay the process or abuse the writ. The appellant only now raised the issues because he had the documents to do so. During the initial filing of the first petition, the appellant contacted Mr. Coeffrey Butler of this Court, to try to get copies of the transcripts, but was told that the State had them and that they were not available. The appellant believes that Justice Durham took notice of this fact during oral arguments in Babbel II. The appellant never had all of the transcripts or documents with which to articulate or prove the allegations in this petition until August of 1991. Two months after the initial petition had been dismissed.

Do the facts articulated in the petition meet the unusual circumstances test developed by this Court ? The appellant believes that they do. In Hurst v. Cook, 777 P.2d 1029, 1035, this Court held; " this Court has frequently addressed and resolved the merits of claims asserted in petitions for writs of habeas corpus even though the issues raised were known or should have been known at the time of conviction or appeal. It follows, and it has long been our law, that a procedural default is not always determinative of a collateral attack on a conviction where it is alleged that the trial was not conducted within the bounds of basic fairness or in harmony with constitutional standards." The Court also stated that any number of petitions could be sought for good cause shown. In defining good cause, the Court stated, " A showing of good cause that

justifies the filing of a successive claim may be established by showing, (3) the existence of fundamental unfairness in a conviction, and (5) a claim overlooked in good faith with no intent to delay or abuse the writ."

The claims as to Ms. Wells refusal to raise issues on appeal fall within the language of "obvious injustice" articulated in Wagstaff, Chess, and Jensen. These cases also apply to the claims of Ms. Watts refusal. The claims of false information and perjury by Det. Cazier also fall with the language of obvious injustice, or unusual circumstances, or good cause as are articulated in Dunn v. Cook, and Hurst v. Cook. Supra.

The United States Supreme Court visited the issue of perjured testimony in Brady v. Maryland, 373 U.S. 83, 86 (1963), the Court stated; "if a state has contrived a conviction . . . through a deliberate deception of the court . . . by the presentation of testimony known to be perjured . . . such a contrivance by the state to procure a conviction of a defendant is as inconsistent with the rudimentary demands of justice as is obtaining of a like result by intimidation." Citing Mooney v. Holohan, 294 U.S. 103, and Pyle v. Kansas, 317 U.S. 213. The went on to say; "These allegations sufficiently charge a deprivation of rights guaranteed by the federal constitution and, if proven would entitle petitioner to release from his present custody."

Cazier's perjury constitutes a substantial and prejudicial denial

of a constitutional right justifying habeas corpus relief.

In Sanders v. United States, 373 U.S. 1, 10 L.ed.2d 143, the Court stated; "the principle of res judicata is inapplicable in habeas corpus proceedings, Conventional notions of finality have no place where life or liberty is at stake and infringement of constitutional rights is alleged. This Court, in Hurst stated that neither "collateral estoppel nor issue preclusion is an absolute defense in habeas corpus proceeding." And in Dunn v. Cook, 791 P.2d 873 (Utah 1990), this Court again stated; "The doctrines of waiver and res judicata do not stand as an unyielding bar to the litigation of claims that either once were or could have been litigated in a prior proceeding. The policy of finality certainly does have a high place in our hierarchy of judicial values, but that policy is not so compelling as to be more important than the vindication of a persons constitutional right to a fair trial." Justice Stewart went on to say, "Howsoever desirable it may be to adhere to the rules, the law should not be so blind and unreasoning that where an injustice has resulted the defendant should be without a remedy."

The appellant in this matter has shown that there is sufficient good cause to warrant habeas corpus review of his claims. His counsel has refused to raise issues on appeal, and during proceedings prior trial, the investigating detective used false information to gain a search warrant, and perjured himself to insure that evidence he seized was admitted, and the trial court imposed sentence while

refusing to consider evidence in mitigation.

Judge Frederick erred in dismissing all the claims. Good cause was shown. Good cause within the meaning of this Court's prior decisions. The claims as to Joan Watt and Judge Daniels should not have been dismissed because those claims came after the initial petition had been dismissed. Joan Watt was still counsel of record before this Court, and the issue of Judge Daniels was still before this Court on a petition for re-hearing. Which was not denied until two months after the initial petition was dismissed.

The claims in this petition warranted an evidentiary hearing, and, if proven warranted habeas corpus relief. The appellant has shown good cause, and that unusual circumstances exist. Judge Frederick erred in granting summary judgement, and ruling that the petition was frivolous.

Justice Louis D. Brandeis once stated that, "Crime is contagious, if the government becomes a lawbreaker, it breeds contempt for the law. To declare that in the administration of criminal law, the end justifies the means, to declare that the government may commit crimes in order to secure a conviction of a private criminal, would be to bring terrible retribution." Justice cannot be served if a detective is allowed to lie to obtain a warrant, and then lie to make sure his illegally seized evidence is admitted. That type of conduct is as illegal as the crimes the appellant was convicted of.

In Jencks v. U.S., 353 U.S. 657 (1957), the Court held that, "The interest of the United States in a criminal prosecution, is not that it shall win the case, but that justice will be done."

Is Utah's interest any different ? Does the State want to win at any cost, so long as it wins ? In Donnelly v. DeChristofano, 416 U.S. 637 (1974), the Court stated, "The function of the prosecutor under the federal constitution is not to tack as many skins of victims to the wall. His function is to vindicate the rights of the people expressed in the laws and give those accused of a crime a fair trial."

Is a trial fair when a detective lies to get illegally seized evidence admitted ? Is the process fair when the defendants right under the Sixth Amendment, to effective assistance of counsel is denied ? Is the sentencing process fair when a judge refuses to consider mitigating evidence ? The appellant does not believe that fundamental fairness exists when these facts are present. The facts articulated in the petition, supported by Ms. Wells affidavit and the record itself warranted an evidentiary hearing. Those facts sufficiently show that both good cause and unusual circumstances exist. Judge Frederick' holding that the petition is frivolous is without basis, and flies in the face of the decisions cited above. Especially those decisions cited from this Court. The appellant has shown that the petition warrants an evidentiary hearing, and if the facts are proven, he should be granted habeas corpus relief.

WHEREFORE the appellant prays that this Court will reverse the order of the District Court, and remand this matter back for an evidentiary hearing.

DATED this _____ day of September 1992

WILLIAM H. BABBEL
Pro Se
P.O. Box 250
Draper, Utah 84020

FILED
CLERK OF DISTRICT COURT

JUN 5 10 17 AM '04

CLERK
Lu Ann B. Harris

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

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WILLIAM H. BABBEL,

Petitioner,

v.

M. TAMARA HOLDEN,

Respondent.

PETITION FOR POST
CONVICTION RELIEF

Case No.

920903226 HC

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JUDGE J. DENNIS FREDERICK

COMES NOW the petitioner, William H. Babbel, and pursuant to
Rule 65B (b)(1), Utah Rules of Civil Procedure, for cause of action
states and alleges;

1. That he is the petitioner in the above-entitled action.
2. That M. Tamara Holden is the Warden of the Utah State Prison
and currently has custody of the petitioner.
3. That this Court has jurisdiction to hear this matter as
is enumerated in Title 78-3-4 (1), and (2), of the Utah Code Ann.
4. That the statute of limitations enumerated in Title 78-12-
31.1, of the Utah Code Ann. are not applicable in the instant case,
as the petitioner was tried and convicted prior to the enactment
of the above statute. Any application of the statute of limitations

in this matter would be an ex post facto application of the law.
(See Smith v. Cook, 803 P.2d 788 (Utah 1990).)

5. The petitioners conviction was entered in the Third Judicial District Court, for Salt Lake County, State of Utah, in CR-85-843. The Honorable Scott Daniels presiding.

6. The petitioner was found guilty of three counts, and not guilty of one count. Guilty on two counts of aggravated sexual assault, and one count of aggravated kidnapping. Not guilty of aggravated robbery.

7. The petitioner was found guilty after trial by jury.

8. The petitioner pleaded not guilty.

9. The petitioner was found guilty after a two day trial on 28 October 1985.

10. The petitioner did not testify at trial.

11. The petitioner appealed the conviction to the Utah Supreme Court.

12. The Court upheld the conviction and issued their decision on 3 March 1989.

13. The grounds raised on appeal were; that the evidence seized and used at trial was seized illegally, and that without the illegally seized evidence, the evidence at trial would have been insufficient to sustain the verdict. The decision of the Court is cited as State v. Babbel, 770 P.2d 987 (Utah 1989), and is attached as Exhibit A.

*grounds for
Exhibit I*

14. On appeal, the Court vacated the petitioners sentences and ordered him resentenced, because, the trial court had failed to impose sentences that complied with the required minimum/mandatory time frame.

15. The petitioner appealed the new harsher sentences as violating the double jeopardy clause. The Court found no merit in that argument and upheld the sentences in State v. Babbel, 813 P.2d ___, (Utah 1991). The petitioner filed a timely petition for re-hearing alleging that the trial court had refused to consider evidence in mitigation. The Court denied rehearing.

16. The petitioner filed a petition for writ of certiorari in the United States Supreme Court. Cert. was denied. Babbel v. Utah, ___ U.S. ___ (1992)

17. The petitioner filed a petition for writ of habeas corpus in this Court in December 1990. (910900585HC). This petition was denied by Judge David Young on or about 20 June 1991. The petition alleged ineffectiveness of counsel during plea discussions. That matter is on appeal in the Utah Court of Appeals.

18. The issues presented in this petition were not presented previously because the petitioners trial counsel had the transcripts, and the petitioner could not gain access to them. Only after the petition was filed did the petitioner receive the transcripts. This issue could not have been discovered without the transcripts of the trial and the suppression hearings.

19. The above petition was brought because the petitioners counsel on appeal would not bring ineffective assistance of counsel allegations against his trial counsel Brooke C. Wells.

20. The petitioners counsel on appeal at that time was Joan Watt of the Legal Defenders Association. A colleague of Ms. Wells. After the petition was filed, Ms. Watt withdrew as counsel on appeal. Mr. Walter Bugden than appeared as counsel.

21. The petitioner was represented by Brooke C. Wells in all of the motion hearings and at trial in this matter, as well the first appeal.

22. The petitioner was represented by Joan C. Watt on the second appeal to the Utah Supreme Court.

23. The petitioner was represented by Robert D. Pusey at the evidentiary hearing on the previous petition.

24. The petitioner brought the appeal on the petition as well as the petition for writ of certiorari pro se.

25. The petitioners restraint is illegal and unlawful in that the evidence used at trial was illegally seized pursuant to a warrant which was gained by perjured testimony of Larry Cazier.

26. The evidence illegally seized was admitted at trial by use of perjured testimony of Detective Larry Cazier.

27. The petitioner was denied effective assistance of counsel during the suppression hearing on the illegally seized evidence, and on appeal.

28. The petitioner was denied effective assistance of counsel on appeal when Ms. Watt refused to raise ineffective assistance of counsel claims.

29. FACTS:

On 22 April 1985, Det. Larry Cazier went to the petitioners home in West Jordan. After discussion with the petitioners family, the detective made threats to the effect that the petitioner would be shot and questions asked later. After the threats were made, the detective was allowed to look into the petitioners truck. After looking into the bed and cab of the truck, the detective went to, then, Deputy County Attorney Barbara Bearnson, who prepared an affidavit and search warrant. In the affidavit in support of the warrant, the detective relied on three paragraphs to find sufficient probable cause to issue the warrant. See attached copy of affidavit and warrant in Exhibit B. The first two paragraphs recounted the descriptions of the vehicle allegedly used in the abduction. The third paragraph was information told to the detective by another detective.

It should be noted, that on appeal, the State stipulated that the third paragraph, containing information of Detective Virgil Johnson, should not be considered when reviewing the sufficiency of the affidavit. The Utah Supreme Court agreed. See Babbel I 770 P.2d 992 foot note 2.

Once that paragraph is removed, the only statements left to find probable cause are the two paragraphs describing the truck.

The first paragraph relates the victims description of the vehicle.

"Karen Sine described the interior of the vehicle as having orange seat covers, a cracked windshield, beverage holders on the dashboard, a 55 mph sucks button on the driverside visor, and a cassette player in the dashboard."

The detective stated that the truck "matched" that description. During the suppression hearing the detective testified that the victim described the truck as having orange seat covers, in response to a question by Ms. Wells. Suppression Hearing transcripts at page 51.

On page 44 of the same transcripts the detective testified in response to the following question;

Q. "All right. And you swore to Judge Burton at the time the information contained in that probable cause statement was true and correct to the best of your knowledge; isn't that right?"

A. "Yes I did."

The following exchange took place at pg. 51 of the suppression hearing transcripts.

Q. "Your reports indicate that Karen Sine had described the interior of the truck as having orange seat covers or portions of cushions; isn't that right ?

A. "Correct."

At trial during questioning by Mr. Vuyk, the following exchange took place;

Q. "Tell me what she said about the interior.

A. "She recalled that the front seat was what she referred to as orange spongy material. She described two drink holders that were mounted on the dash." T.T. at 207

But when the detective was confronted with his own reports, he changed that testimony.

Q. (By Ms. Wells) And in that report you describe the description given to you as not having orange seats right ?

A. Well - -

Q. You don't describe it as having orange seats do you ?

A. Well, lets compare reports.

Q. If you'll look at page four of your report.

A. I'm on page 4.

Q. On the third paragraph approximately the seventh line down, you've described there what her description of the interior looks like, don't you ?

A. Yes.

Q. And there you don't say anything about orange seat covers do you ?

A. No. She said white--

Q. . . . you do say something about white seat covers ?

A. Thats correct.

Q. And you don't say anything about yellow seat covers at all, do you ?

A. It says white.

See trial transcripts at 222, 223.

The detective also stated that the truck had drink holders of the wire type mounted on the dash. But during cross examination by Ms. Wells the detective testified that he did not have the drink holders. The detective had pictures taken of the truck, just as he saw it on the day the search was conducted. See T.T. at 211. Deputy Bruce Clemens took the pictures that were to become States Exhibits S-1, S-3, and S-4.

During cross examination Karen Sine made the following responses to questions by Ms. Wells. T.T. at 183.

Q. Now let me show you whats been marked as States Exhibit S-3.

Q. Now, in that picture you don't see any cassette tapes, do you ?

A. No.

Q. You don't see any drink holders, do you ?

A. No.

Q. You don't see any type cord hanging down, do you ?

A. No.

Q. You don't see any beer bottles, do you ?

The detectives own testimony and the pictures he had taken establish that the truck did not match the description given by the victim. His own testimony that his reports indicated that the

victim described the truck as having orange spongy seats, is later contradicted when confronted with the reports. The report states "white spongy material like styrofoam". See attached report in Exhibit C. The detective made false statements in the affidavit in support of the warrant. Further he compounded this perjury by re-stating it in court, and only corrected himself when confronted with his reports. The truck did not match the description given by the victim. It did not have drink holders on the dash, the seats were yellow and black, not orange and not white as he had memorialized in his reports. No evidence was ever introduced to establish that the truck had a broken windshield, and the 55 mph sucks button was never mention in any report. Additionally, the victim, Karen Sine did not mention the button in a 26 page recorded statement, at the preliminary hearing, or in the written report made by the detective. She only "rembered the button" when the detective showed it to her on the day of trial and showed her a photograph of where it was in the truck. The detective stated that the button was mentioned in his field notes but refused to turn the notes over to either the defense or the State. See S.H. at 47, and T.T. at 231.

The transcripts referred to in this petition are included in this petition as Exhibit D.

The truck did not match the description given by the victim to the detective. In swearing that the truck matched the victims

description, the detective perjured himself. This perjury was compounded by Deputy Salt Lake County Attorney Tom Vuyk during trial. Mr. Vuyk having read the reports and knowing that the report stated "white spongy" seats asked the detective what color she stated and then did nothing when the detective committed perjury again. T.T. at 207.

Without that one paragraph, the Utah Supreme Court would have most probably struck down the warrant. See Babbel I, 992, and 992 footnote 3. The Court held that the affidavit was very poor and it was a "very close question".

30. FACTS:

Petitioners counsel, Brooke C. Wells, was given the police reports and witness statements three months prior to the suppression hearing before Judge Daniels. Counsel had several weeks to read and look over the reports. Additionally, the petitioner told her during several meetings that the truck did not have white seats, as the reports indicated. Counsel knew that the reports stated white seats. However, counsel did not raise the discrepancies in the reports until the time of trial. After the illegally seized evidence had been admitted. Had counsel used the reports at the suppression hearing, and shown that the truck did not match the descriptions, the evidence probably would not have been admitted. Further, if counsel would have shown that the detective used such false information in the affidavit, the Utah Supreme Court would

probably have ruled differently than they did. Counsel's failure to use the reports at the suppression hearing fell below the standard of performance expected of trial counsel. Additionally, because the Court found the affidavit so lacking, there is a very likely probability that the warrant would have been struck down on appeal, if not at trial. Because one of the two paragraphs used to establish probable cause contained false information, the affidavit and warrant would have failed.

Counsel did use the reports at trial, but the evidence was already before the jury. Even after showing that the detective used false information, counsel did not raise it before the Utah Supreme Court. Had counsel shown that the truck did not match, as the detective stated in the affidavit, the Utah Supreme Court would have ruled differently than they did.

31. FACTS:

After the petitioner was resentenced, he appealed the new sentences pro se. After failing to get case law from the contract firm at the prison, the petitioner moved for appointment of counsel. Specifically stating that he did not want anyone from the Legal Defenders Association appointed because of ineffectiveness of counsel. The court appointed Joan Watt anyway. See Exhibit E to this petition. The petitioner requested Ms. Watt to review the brief filed and asked if ineffective assistance of counsel could be raised. Ms. Watt indicated that she could not raise any issue against Ms. Wells.

32. The trial court abused its discretion by refusing to consider the mitigating circumstances presented by the petitioner and authorized by U.C.A. 76-3-201(5)(c).

FACTS: In Babbel I, the Utah Supreme Court vacated the petitioner's original sentences because they did not conform to the statutory punishments for the offenses for which he was convicted. The sentences first imposed were illegal because the trial court treated the convictions as if they were ordinary first degree felonies, rather than first degree felonies subject to minimum/mandatory sentences. Based upon the mandate of U.C.A. 77-35-22(e), (supp. 1981), the Supreme Court directed the petitioner be re-sentenced.

At the time of the re-sentencing on March 24, 1989, the petitioner had been incarcerated nearly four years. During the period of his incarceration at the Utah State Prison, the petitioner availed himself of many treatment and rehabilitation programs offered by the Department of Corrections. These counseling programs included the Intermountain Sexual Abuse Treatment (I.S.A.T.) and a Southwest Utah Mental Health program. Additionally, the petitioner received no disciplinary write-ups while housed at the Utah State Prison.

In eschewing this mitigation evidence, the trial judge did not rule that the evidence failed to justify imposing the lowest term of severity. Instead, the trial court made the threshold decision to not even consider the proffered evidence. The judge erroneously believed that he was constrained to consider aggravation and

mitigation in the context of only the crime. The trial court elaborated on this reasoning by stating, "I'm really talking about the facts of the crime itself." (3/24/89 Transcript, pg. 13)

Yet nothing in the governing statute requires such a limitation on the evidence. In fact the statute states ;

In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officers report, other reports, including reports received under section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

U.C.A. 76-3-201-(5)(c)

In refusing to consider evidence presented by the petitioner, the trial court abused it's discretion.

33. Petitioners current sentences are illegal in that the trial court went beyond the meaning of Rule 22 (e), U.R.Cr.P.

FACTS: In Babbel I, the Supreme Court ordered the petitioner resentenced because the sentences imposed by the trial court failed to comply with the minimum/mandatory time scheme. When the trial court corrected the sentences, it should have only corrected the portion of the sentence that was illegal. That being, that the court failed to impose the minimum/mandatory term, and did not state it's reasons for the sentence given on the record. The original terms imposed by the trial court were legal sentences and should not have been increased. See Babbel II, page two, footnote 1. (Babbel II is attached to the petition as Exhibit A)

34. Deputy County Attorney Tom Vuyk knowingly used and relied on false testimony to secure use of illegally seized evidence.

FACTS: Prior to trial Dpty Co. Atty Vuyk had possession of all the official police reports in this matter. He knew that the reports stated that the victim identified the color of the truck seats as white. Not orange. Additionally, Tom Vuyk knew that the photos taken of the truck clearly showed that the truck did not have white seats, or beverage holders on the dash. Despite these established facts, Vuyk allowed the testimony of Det. Cazier, to the effect that the truck matched as to those descriptions to remain in the record at the suppression hearing. Vuyk relied and used this testimony in his argument to the court, not to suppress the evidence illegally seized. The photos mention above are the States exhibits used at the suppression hearing, and at trial. As previously stated, these photos clearly show that the truck did not match. This is corroborated by the victims testimony, attached as an exhibit to this petition. Tom Vuyk knew that the reports did not state "orange seats". Tom Vuyk knew that the truck did not have beverage holders in it, as the affidavit in support of the warrant stated. But he did nothing to correct this mis-information presented to the court at the suppression hearing. Had it been shown that the affidavit had false information in it, it is possible that the outcome would have been different. Tom Vuyk intentionally let false testimony into the record at the suppression hearing and relied on it to gain the admission of illegally seized evidence.

35. Deputy County Attorney Tom Vuyk with-held documents after he was served with a motion to discover evidence he intended to use at trial.

FACTS: During the preliminary hearing, counsel for the petitioner filed a motion to discover evidence. To include all police reports, statements, ect. The State turned over most, but not all of the documents sought by counsel.

In the affidavit in support of the warrant, Cazier made a reference to a stick pin button, which had "55 M.P.H. Sucks", printed on it. Stating that the victim described the button. But in a very detailed statement, 26 pages, the victim never mentions the button. Nor is it mentioned in any report that Cazier prepared. When asked about the truck at preliminary, the victim never mentions the button. The victim did, however, recall the button on the day of trial, but only after Cazier had shown it to her, and told her where it was in the truck.

During trial, and the supression hearing, the detective testified from his personal notes. Which, according to Cazier, was the only place that the buttoned was mentioned. While on the stand the detective used the notes to refresh his memory, and then give testimony. But, after using those notes to secure illegally seized evidence, and to give testimony, the State never turned those notes over to the petitioner or his counsel. Those notes were crucial to the case presented by the State. But the defense was not given copies for impeachment purposes.

Because those notes were the only place, allegedly, that any type reference was made to the button, those notes should have been made available to the defense. Especially when the detective used them on the witness stand.

The petitioner was denied crucial material after a motion for discovery was filed. The State's attorney intentionally with-held those notes from the defense, because, the petitioner believes, they would show that the descriptions given by the victim were in fact different from those Cazier used in the affidavit.

36. Counsel was ineffective for failing to obtain an order from the court requiring that those notes be turned over.

37. The intrusion onto the property known as 8558 South 3830 West, West Jordan, Utah was illegal, and the subsequent visual search of the petitioners truck violated the Fourth Amendment of the United States Consitution.

FACTS: On 22 April, 1985, Det. Cazier went to the petitioners home and requested to see the petitioner. Identifying himself only "as a friend of Bills". After being told that the petitioner was not at home, the detective went across the street and held sack on the home. After surveilling the home for several hours, the detective returned. He told the petitioners mother that the petitioner was wanted, and that he wanted to search the petitioners truck. Cazier was told that he could not search the truck. He stated to petitioner's mother, that the petitioner was armed and dangerous and would be shot on sight. He was then allowed to look into the truck.

After looking into the truck and making notes of the contents, Cazier sought a warrant. But even after looking into the truck, he did not put factual information into the affidavit. The initial intrusion into the property and the subsequent looking into the truck are violative of the Fourth Amendment for two reasons. First, Cazier used threats and coercion to gain access to the truck to gain information he could not have otherwise have gotten. The truck could not be seen from the street, (the interior, or the bed), nor could it be seen from the walk to the house from the street. And as if by coincidence, the stick pin button first appeared in written form right after the illegal intrusion. Second, the petitioner was the registered owner of the truck. No other person used or had access to the use of the truck. The petitioners mother was not an owner or user of the vehicle, and could not give permission for the police to look into the truck. After making the threats to petitioners mother, Cazier did not tell her that she did not have to let him look into the truck. He left her with the impression that the petitioner would be shot on sight if he was not allowed to look into the vehicle. After looking at the truck, Cazier sought a warrant. Knowing that the truck did not match the descriptions given by the victim, Cazier intentionally supplied false information to the court to gain the warrant. The seats did not match, no drink holders, and no crack in the windshield. And tye button only became noticed after the illegal intrusion.

38. The seizure of the stick pin button violated the Fourth Amendment.

FACTS: The stick pin button was not an item to be seized in the body of the warrant. It only appears in the affidavit in support of the warrant. Cazier swore, under oath, that the victim had described the button. But in a detailed 26 page statement, where the victim recalled items as small as a piece of tape on the dash, she never described the button. She described gauges, tapes, papers mirrors, and cords, but never mentions the button. Nor does the button appear in any other report. The victim did not recall it in her statement, at preliminary hearing, and only recalled it at trial, when Cazier showed it to her before she testified. The button only appeared after Cazier used threats to gain access to petitioners truck. During the suppression hearing Cazier made admissions to the effect he had mentioned he might have to use force in arresting the petitioner. (See suppression hearing transcripts in Exhibit F)

39. The petitioner filed a petition in the U.S. District Court, for the District of Utah on or about 15 May 1992. The Magistrate filed his Report and Recommendation on 21 May 1992. In part Magistrate Boyce stated that these issues have not been previously presented to any Utah Court, and therefore, the petitioner must go back, and let a Utah Court have the opportunity to rule on the issues presented. The federal petition alleged the same facts as are alleged in this petition. The federal order states; The petitioner still has state habeas corpus relief available to him on his claims.

547 (Utah 1989); Bundy v. Deland, 763 P.2d 803 (Utah 1988). This Court cannot say that remedy is still not available, especially where petitioner asserts in his petition that counsel who represented him at various stages refused to raise the issue of incompetency of counsel. See discussion State v. Humphries, 818 P.2d 1027 (Utah 1991)."

Because of the Federal Court's ruling, in this matter, the petitioner brings this petition to exhaust his available state remedies.

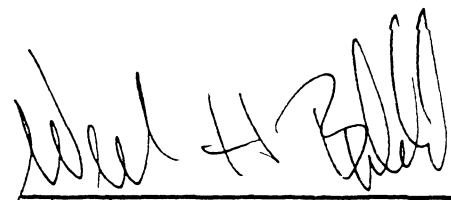
40. The petitioner filed a motion to dismiss the federal petition without prejudice on 27 May 1992. There are no other existing petitions presently before any court, in this matter.

41. The facts as stated above violated the petitioners right to a fair trial, appeal, and to the effective assistance of counsel.

42. The facts as stated above violated the petitioners rights as are guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and his Article I, sections 7, 11, 12, and 14 of the Constitution of the State of Utah.

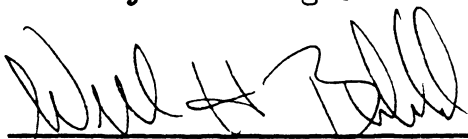
WHEREFORE, because the petitioners conviction was gained by the use of false testimony, and he was denied effective assistance of counsel at all stages of the proceedings, the petitioner prays that this Court will hold a hearing, at which time the petitioner may be represented by counsel, and decide this matter on the facts, and the merits. And, if proven to be a true and correct recital of the facts, issue a writ freeing the petitioner from his illegal custody.

RESPECTFULLY SUBMITTED this 27th day of May 1992.



William H. Babbel

Pursuant to the penalty for perjury enumerated in 28 U.S.C. section 1746, I declare that the foregoing facts alleged in this petition are true and correct to the best of my knowledge.



William H. Babbel

R. PAUL VAN DAM (3312)
Attorney General
KENNETH A. BRONSTON (4470)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801)538-1021

Attorneys for Respondent

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

WILLIAM H. BABBELL,	:	
Petitioner,	:	AFFIDAVIT OF BROOKE C. WELLS
v.	:	
HOLDEN, TAMARA M., Warden,	:	Case No. 920903226 HC
Utah State Prison,	:	Judge J. DENNIS FREDERICK
Respondent.	:	

COMES NOW Brooke C. Wells, affiant, and hereby deposes,
states and swears under oath that:

1. She is an attorney licensed to practice under the
laws of the State of Utah.

2. She represented petitioner William H. Babbell
before the Third Judicial District Court, Salt Lake County,
wherein Mr. Babbell was convicted of two counts of aggravated
sexual assault and one count of aggravated kidnapping, in all
pretrial proceedings in that Court, and in Mr. Babbell's appeal
to the Utah Supreme Court, wherein his convictions were affirmed
in State v. Babbell, 770 P.2d 987 (Utah 1989).

3. In the course of this affiant's preparing for
trial, Mr. Babbell was an active participant in assisting in the

preparation of his own defense, including the preparation of research memoranda in support of the motion to suppress, directed at excluding evidence obtained in a search of his vehicle. Attached are two letters received by this affiant from Mr. Babbell evidencing such assistance. In the letter dated November 11, 1985, Mr. Babbell notes discrepancies in the testimony of Ms. Sine and Officer Cazier concerning the color of the truck. In the letter of September 14, Mr. Babbell again notes the discrepancy in witness testimony concerning the color of the truck and, further, congratulates me on my performance in dealing with Officer Cazier.

4. Petitioner was also an active participant in the preparation of his appeal, evidenced by the attached letter of February 6, 1986, to Jeffrey Hunt, a clerk who assisted this affiant in the preparation of Mr. Babbell's appeal. In this letter Mr. Babbell specifically notes issues for appeal, including Officer Cazeer's [sic] alleged perjured testimony during the evidentiary hearing, the refusal of the County Attorney's Office to supply allegedly favorable evidence to the defense (Officer Cazier's notes) and allegedly misleading comments by Mr. Vuyk in closing argument.

5. Affiant supplied Mr. Babbell with all transcripts requested by Mr. Babbell at all stages of preparation prior to trial and appeal, including transcripts of the motion to suppress and trial. Mr. Babbell again requested copies of the preliminary hearing and police reports only in the last six weeks, although

Handwritten:
Name got
this
Jan 1991

it is my firm belief that he had access to these documents throughout the proceedings, considering his active assistance in preparing his defense.

6. Based on the discovery provided to me by the Salt Lake County Attorney's Office, I never believed that there existed firm grounds for claiming that Officer Cazier had perjured himself, but rather that he had made mistakes subjecting him to attacks on his credibility.

7. In January, 1990, Salt Lake Legal Defender sent to Mr. Babbell transcripts of the motion to suppress and the trial, which to date he had not returned.

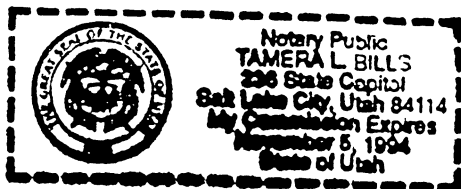
DATED this 9 day of July, 1992.

Brooke C. Wells
BROOKE C. WELLS

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

On this the 9th day of July, 1992, before me,
Tamera L. Bills, the undersigned officer, personally appeared BROOKE C. WELLS, known to me to be the person whose name is subscribed to the within affidavit and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Tamera L. Bills
Notary Public
residing at Salt Lake County
My Commission Expires 11-5-94

Brooke

Sept 14

I know you're extremely so - I won't take too much of your time. -----

My Congratulatorys on the way you dealt with Mr. Cazier.

I've found several more cases that might be pertinent to our cause.

I'm wondering if it might not be to our advantage to Capitalize on Cazier's two reports, the first being the one made on the day of the crime itself and the second being the day of the search.

The first point would be the description he had in his possession, from the other witnesses and the victim herself, i.e; no chrome wheels did have mirrors and spot lights, and the statement since made about it having white seat covers, (not orange).

Second, he claims my truck fit the description given by witnesses. It might help you to know that my truck was backed in the drive-way, not pulled in therefore affording Cazier an unrestricted view of both the front and the top of the seat. He could plainly see that there were no spotlights or mirrors on the truck and that the top of the seat was black not white, and that if it did have chrome wheels, there was no need to go over and look at it.

The case I've located are from US Courts
and fit our case exceptionally well.

Probable Cause, to justify search must be
determined by existence of facts known to officer
before, not after search.

Darnell v U.S. 1943 Mun. Ct App D.C.
33 A 2d 743

Issuance of search warrant must rest
exclusively on facts in supporting affidavit.
U.S. v Cobb 1970 CA 4 NC, 432 F2d 716.

Fourth Amendment prevents seizure of one
thing under warrant describing another,
Since nothing is left to the discretion of
the officer executing the warrant
U.S. v Sanchez (1975 CA 6 OHIO) 509 F2d 866

I sent some more out to be typed, they
are included. Again, thank you.

Bill

File

11-5-85

Dear Brooke

I have been doing some research on this matter and have come across several items of interest.

In title 18 of the US Code, rule 201, Hearsay, this rule deals with prior statements made by witness and then testified to in court.

Section C on page 242 deals with out of court identification and its admissibility as hearsay. i.e.; photo line ups.

Beginning on pg 243 (Senate report) and ending on 244 it deals specifically with statements given closer to the time of the crime as the one's to be relied upon, not the inconsistent statements given at the time of trial.

At the top of 244 it is stated, Utah has adopted the policy of basing evidence on statements made at the time of the crime and "Moreover will provide a party with desirable protection against turncoat witnesses who change their story on the stand." There are several citations concerning the inadmissible testimony.

As you recall Sine changed her story numerous times during the trial and changed her descriptions from prior statements. i.e.; physical description, the + shirt, the truck.

*
over Cazeer testified the original description of the truck was Tan with white seats. And the assailant had no mustache.

in his closing Sine was shown the photos they used prior to the trial. Thus clouding the issue and making it impossible for sine to testify from her own recollection. Most of this, by the standards set forth in title 18 is hearsay or rehear and inconsistent, therefore should have been stricken. It the matter of the evidence, the state has never produced a copy of the warrant. And if you have not given them one I don't believe they have one. Nor has Cazeer ever made a return to the court or a receipt or itemized list. Also in the photo's it shows several items that were seized that no receipt was given for. Adding to the conduct or lack of it on Cazeers part. Another point is the fact that Vuyn changed the time of the crime to better fit his needs, he started with 5-7 and then in closing changed to 3:30 to 5:30 or 6 where it is a matter of record it was 5am and reported at 5:36

IF, when you get the transcripts you would send me a copy I will go over them and note the differences.

Thank you for your time

Within Babbl

Mr. Jeffrery Hunt
Salt Lake Legal Defenders Assoc.
333 South 200 East
Salt Lake City, Utah, 84116

February 6 1986

Dear Mr. Hunt,

Thank you for your letter letting me know that you are doing my appeal. In regard to whether or not I have anything that I want to include, yes there are some areas that I have questions about. These areas are as follows;

1. Knowing use of perjured testimony by Detective Cazeer during the evidentiary hearing, and in his affidavit in support of the warrant.
2. Illegally seized evidence.
3. Failure of the prosecution to inform the defence of evidence that was favorable to our case.
4. Inconsistent testimony by the victim during all phases of the proceedings.
5. Violation of the exclusionary rule by Cazeer during the trial.

And of course the misleading comments made by Vuyk during his closing remarks.

First I will address the perjury by Cazeer. In his affidavit he stated that the description he was going by when he searched my truck was given to him by Ms. Sine. He also states this in the transcripts of the evidentiary hearing. However, during the trial while making reference to notes, that he refused to let Brooke look at, he stated "she said that the truck was Tan with a White interior, until I showed her pictures of the defendants truck". Now this being the case, and a matter of record, it is obvious that Cazeer either lied during the trial, or more likely he lied in his affidavit and the evidentiary hearing. This matter is in itself a reversible error.

Next I find that the evidence was admitted by means of deceit and of course knowing perjury by Cazeer. Along with all the other abuse of authority Cazeer used in gaining the warrant I think that the fact he lied about the description of the truck involved in itself is an error.

If in fact Ms. Sine did not describe my truck and did in fact describe a tan truck with a white interior then it is more than obvious that he lied. Next the issue of the photo identification he testified to during the trial. Cazeer stated in court that he had shown photos to Sine the day after the search, however Sine stated in court and during the preliminary that she was shown photos on the day of her recorded statement and then again two weeks after the search, not on the 23rd of April. If you look at Cazeer's testimony you will see that he stated that he only showed Sine one set of photos. But if you read the preliminary hearing and the trial, you will find that Sine said she was shown books on the 19th and pictures two weeks after.

If the field notes that Cazeer were shown to Vuyk, then he knew that Sine said the truck that was used in the abduction was tan with a white interior, if that is the case, he knew that Cazeer had lied during the evidentiary hearing and on the affidavit. If he did in fact know this and withheld that information he was in violation of the Utah Code. I further believe that he knew Cazeer had shown Sine the evidence on the day of the trial. That in itself is a violation of the exclusionary rule that was invoked by Judge Daniels at the beginning of the trial...

I need to add to the point of Cazeer lying about the description of the truck. HE COULD NOT HAVE SHOWN SINE ANY PICTURES OF THE TRUCK BEFORE HE CONDUCTED THE SEARCH. The showing of pictures of the truck had to have happened after the search, he then was proceeding under the description of a tan truck with a white interior. The fact the interior mentioned was white is documented in Cazeer's report dated April 19 1985. It is also mentioned that he did not contact Sine on the day of the search. He was then proceeding under his own conclusion that the truck was in fact the truck he wanted. This is a violation of the rules of evidence, in as much as a showing of probable cause needs to be made other than the officers "belief" that the evidence is there.

The next point that I have found and backed up with Case Law is in the area of Cazeer not allowing Brooke to look at his field notes. Cazeer used those notes to refresh his memory while on the stand and by law we had the right to look at those writings before he did use them. I believe that Brooke included them in the summons she issued for the evidentiary hearing. However they were never produced. The case law in this matter is at the end of this letter.

The inconsistent testimony that Sine gave during the trial was so obvious that it should have been suppressed by the Judge. Some of the areas that were inconsistent were about a mustache, the color of the seat in the truck, the knife the gun, and description of the truck. In Cazeer's report of the 19th it states that the victim said "he had no mustache and the color of the seat was white", there is something about sunglasses and bald spots on the assailants head also. During the preliminary Sine stated that she could not remember any color in the truck, this is in the transcripts, and that the man had a mustache. She also stated that I had dyed my hair, but during the trial she said that it was the same as on the night of the crime. During the trial she stated that she had made all those inconsistent statements.

The fact that Cazeer violated the exclusionary rule is in the transcripts of the trial. Sine admitted that Cazeer had shown her the evidence on the day of the trial. This came when she made a comment about the "55 M.P.H. SUCKS" button that she had failed to identify any where prior to the trial. That button is not mentioned in any of her statments nor during the preliminary hearing. In fact at the pre-lim she was asked to recall any specif identifying mark in the interior of the truck, she was unable to do this. It seems obvious that she did not know of it's existence until Cazeer had shown it ot her on the day of the trial. I will include the case law that I have found in some of these areas, most of it has been sent to Brooke already, but I will send it to you again. Thank You for your time and assistance in this matter. I appreciate your help.

Sincerly,

A handwritten signature in cursive script that reads "Bill".

William Babbel

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C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Susan S. Sprouse, hereby certify that I am
a Certified Shorthand Reporter of the State of Utah; that
as such Certified Shorthand Reporter, I attended the hear-
ing of the above-mentioned matter at that time and place
set out herein; that thereat I took down in shorthand the
testimony given and the proceedings had therein; and that
thereafter I transcribed my said shorthand notes into type-
writing, and that the foregoing transcription is a full,
true, and correct transcription of the same.

DATED this 30 day of December, 1985.

Susan S. Sprouse
Susan S. Sprouse, C.S.R., R.P.R.

My Commission Expires:

Nov. 1987

* * *

IN THE FIFTH CIRCUIT COURT,

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH)
): ss
County of Salt Lake)

AFFIDAVIT FOR SEARCH WARRANT

BEFORE: Micheal Burton
 JUDGE

ADDRESS

The undersigned affiant being first duly sworn, deposes and says:

That he has reason to believe

That (X) in the vehicle(s) described as 1971 Chevrolet pickup
 truck, License #MK3127, dark brown in color
 (X) on the premises known as 8558 South 3830 West with a
 white camper located in the driveway; and the house at
 the same address, a white and brown mobile home which
 is not presently mobile

In the City of West Jordan, County of Salt Lake, State of Utah,
there is now certain property or evidence described as:

1. Small revolver, snub-nose type
2. Hunting knife, with approximately 6" blade
3. Wondra Lotion
4. Large black flashlight
5. Wallet, maroon in color, velcro fastner, containing credit cards
and identification of Karen Sine
6. Clothing consisting of white short-sleeved O.P. Brand T-shirt,
blue baseball cap

and that said property or evidence:

- (X) was unlawfully acquired or is unlawfully possessed;
- (X) consists of an item or constitutes evidence of illegal
conduct, possessed by a party to the illegal conduct;

Affiant believes the property and evidence described above is
evidence of the crime(s) of Aggravated Sexual Assault, Aggravated
Kidnapping, Aggravated Robbery.

PAGE TWO
AFFIDAVIT FOR SEARCH WARRANT

The facts to establish the grounds for issuance of a Search Warrant are:

Your affiant, Detective Larry Casler, Salt Lake County Sheriff's Office, has been employed by the Sheriff's Office for thirteen years and has been assigned to the Sex Crimes Unit for two years, and bases this request for a search warrant upon the following:

1) A statement by Karen Sine that on April 18, 1985, at about 5:00 a.m. she was in Millcreek Canyon with 3 other individuals when she was approached by a person who identified himself as a narcotics officer and asked her to come with him. Once inside his vehicle, she was taken to a different location where she was sexually assaulted and was deprived of her wallet by the suspect.

Karen Sine described the interior of the vehicle as having orange seat covers, a cracked windshiel^f, beverage holders on the dashboard, a "55 mph sucks" button on the driver's side visor, and a cassette player in the dashboard.

The 3 other individuals who saw the victim leave with the suspect, Lisa Jenkins, Jack Moyer, and Alfonso Ulibarri, describe the truck as a older model Chevrolet 4-wheel drive pick-up, dark brown in color, with no front or rear bumpers.

Based on the modus operadi of the suspect and the description of the suspect, Det. Virgil Johnson, Salt Lake County Sheriff's Office, believed the vehicle may belong to William Babbel. The detectives drove by the address of the suspect, 8558 South 3830 West, and noticed a truck in the driveway that matched the description. The suspect's mother, a resident at the address, gave the detectives permission to look at the truck.

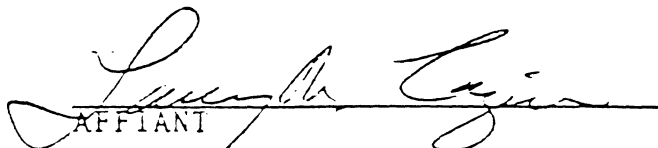
The suspect's mother stated that the suspect resides both in the camper located in the driveway and inside the residence previously described.

The victim, Karen Sine, reports that during sex acts forced upon her by the suspect, he used Wondra lotion, which he obtained from the glove box. She also described a 6" hunting knife, and a small revolver, the both of which suspect placed behind the seat of the pickup truck. She further described his clothing as being a white short-sleeved O.P. brand T-Shirt and as him having wore a blue baseball cap. She also stated the suspect deprived her of her maroon wallet, with a velcro fastener, containing her identification and credit cards. The suspect used a large black police-type flashlight during the commission of the offenses.

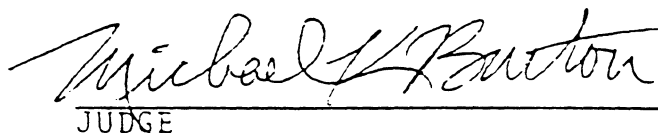
PAGE THREE
AFFIDAVIT FOR SEARCH WARRANT

WHEREFORE, the affiant prays that a Search Warrant be issued for the seizure of said items:

(X) in the day time.


AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME this 22 day of April, 1985.


JUDGE

IN THE FIFTH CIRCUIT COURT, IN AND
FOR SALT LAKE COUNTY, STATE OF UTAH

PRESSION

1 A That's not true.

2 Q Nothing that's articulated within the body of
3 this affidavit, is there?

4 A We had a case filed that we--

5 Q If you'll answer my question. Is there anything
6 listed within the body of this affidavit which states that
7 you would have independently corroborated what Virgil Johnson
8 may have told you, even though we don't know what Virgil
9 Johnson told you?

10 A You're asking me is my independent corroboration--

11 Q I'm asking you what is stated in here. Is there
12 anything stated within that, that corroborates what Virgil
13 Johnson may have told you, whatever that may be?

14 A It doesn't state that in those words, no.

15 Q ~~Your reports indicate that Karen Sine had~~
16 ~~described the interior of the truck as having orange seat~~
17 ~~covers or portions of cushions; isn't that right?~~

18 A Correct.

19 Q The interior of Mr. Babbell's truck does not
20 have orange inside of it, does it?

21 A Yes, it does.

22 MS. WELLS: May I have those pictures back.

23 Q (By Ms. Wells) Mr. Cazier, I'm asking you to
24 look at Defendant's Exhibit D-3. What color do you see
25 in there? Isn't it yellow?

1 with those notes or just relying solely--

2 THE WITNESS: I have an independent recollection
3 of what she told me, yes.

4 THE COURT: All right. You can proceed.

5 Q (By Mr. Vayk) Thank you, Your Honor. Would
6 you tell us what she told you about the vehicle itself?

7 A Yes. She remembered it was a four-wheel drive
8 with no bumpers. She described the interior in some detail.

9 Q Tell me what she said about the interior.

10 A She recalled that the front seat was what she
11 referred to as orange spongy material. She described two
12 drink holders that were mounted on the dashboard. She
13 remembered--she described the shifting arrangement. It
14 was an automatic with a four-wheel drive shifter on the
15 floor. She recalled a broken windshield on the passenger's
16 side. She described a button that was mounted on the
17 driver's visor.

18 Q What did that button say? Did she say?

19 A She stated it was a 50 miles per hour sucks
20 button.

21 Q What did she say about the interior?

22 A She indicated it was quite cluttered. There
23 were some beer cans in it, just in general disarray.

24 Q Anything else you can remember?

25 A Well, without referring to the notes, that's

1 MS. WELLS: That's all I have.

2 THE COURT: Anything further, Mr. Vuyk?

3 MS. WELLS: Oh, I thought of one, I'm sorry.

4 THE COURT: Go ahead.

5 Q (By Ms. Wells) Regarding the button that you
6 have described, you took Ms. Sine's recorded statement,
7 didn't you?

8 A Yes, I did.

9 Q All right. And have you had an opportunity to
10 review that statement?

11 A Yes.

12 Q Nowhere in that statement did she ever describe
13 a 55 miles per hour sucks button, did she, when asked to
14 describe the interior of the truck?

15 A No, it's not on the recorded statement.

16 MS. WELLS: Thank you.

17 THE COURT: Mr. Vuyk?

18 MR. VUYK: Just one or two questions.

19 REDIRECT EXAMINATION

20 BY MR. VUYK:

21 Q Did Ms. Sine indicate to you at any time or in
22 your conversation that there was a 55 miles per hour sucks
23 button?

24 A She did.

25 Q Do you recall exactly when that was?

1 A Today. When I saw the button.

2 Q Okay. No one said anything to you about it?

3 A No.

4 Q Larry didn't say anything to you about that?

5 A No. He just said, "Have you ever seen these
6 before", and I said, "Yes. Told him where they were."

7 Q So, though, you have said that on the day that
8 you were giving your recorded statement, you were giving
9 an accurate statement as you could concerning the description
10 of the person as well as the truck, you left this out, didn't
11 you?

12 A I guess so.

13 Q And it didn't--you didn't remember it when you
14 gave your recorded statement, did you?

15 A No.

16 Q And you didn't remember it when you were asked
17 to give detailed accounts of the truck at the preliminary
18 hearing, did you?

19 A No.

20 Q Now, have you gotten to know Detective Cazier
21 fairly well through this incident?

22 A Just 'cause he's been by me, that's--you know.

23 Q Standing by you in the sense supportive and that
24 type of thing?

25 A Yeah. And he's the one who's, you know, took

1 A That's correct.

2 Q Now, officer, you made a report on the 19th of
3 April, did you not?

4 A Concerning this case?

5 Q Yes.

6 A I'm sure I did.

7 Q All right. Let me show you what purports to
8 be your report of April 19th. Does that appear to be your
9 report, Officer?

10 A Yes, it does.

11 Q And it is dated April 19th, is it not?

12 A It is.

13 Q And it's a four-page report?

14 A Yes.

15 Q It looks to be a detailed report, does it not?

16 A I would call it detailed, yes.

17 Q Have you had an opportunity to review this report
18 before coming in today?

19 A Yes, I have.

20 Q So you are familiar with its contents, correct?

21 A Yes.

22 Q And in preparing this report, you attempted to
23 be as detailed and accurate as possible, did you not?

24 A With the information available at that time,
25 yes.

1 Q And in this report, Detective Cazier, there is
2 no mention of any 55 miles per hour sucks button, is there?

3 A That's correct.

4 Q In this report you write the description given
5 by Karen Sine of the person who assaulted her as being a
6 person without any mustache; isn't that true?

7 A That's correct.

8 Q And in that report you describe the description
9 given to you of the interior of the truck not as having
10 orange seats, right?

11 A Well--

12 Q You don't describe it as having orange seats,
13 do you?

14 A Well, let's compare reports.

15 Q If you'll look at Page 4 of your report.

16 A I'm on Page 4.

17 Q On the third paragraph approximately the seventh
18 line down, you've described there what her description of
19 the interior of that truck looks like, don't you?

20 A Yes.

21 Q And there you don't say anything about orange
22 seat covers, do you?

23 A No. She said what--

24 Q And you don't say anything about white seat --
25 you do say something about white seat covers?

1 A That's correct.

2 Q And you don't say anything about yellow seat
3 covers at all, do you?

4 A It says white.

5 Q Now, you executed a search warrant in Mr.
6 Babbell's home and of the truck; is that right--

7 A Yes.

8 Q --as you've described? Now, Karen Sine also
9 told you that this particular truck had side mirrors on
10 it, didn't she?

11 A Yes, she did.

12 Q All right. That hasn't been included in any
13 of your descriptions today, has it?

14 A Not so far.

15 Q Not in response to counsel's question to you
16 about what your recollection might have been about her
17 descriptions, correct?

18 A My independent recollection, yes.

19 Q All right. You have no side mirrors to present
20 today as evidence having been found at Mr. Babbell's house,
21 do you?

22 A No, I do not.

23 Q You don't have any spotlights to present as
24 evidence today, do you?

25 A No, I do not.

1 Q You don't have any drink holders to present as
2 evidence, do you?

3 A Not the holders themselves, no.

4 Q You don't have any, any beer bottles, do you?

5 A It's fairly obvious I don't have beer bottles.

6 Q Just as I ask you each question, please respond.
7 You don't have any--

8 A That's my response, counselor.

9 Q You don't have any cassette tapes to present,
10 do you?

11 A No, I do not.

12 Q You do, however, have a tee-shirt which you have
13 described, correct?

14 A Yes.

15 Q You've described Karen Sine as saying that this--
16 her assailant was a large framed individual, correct?

17 A Correct.

18 Q Would you please look at that tee-shirt and tell
19 me what size that is?

20 A Well, it's got an M on it. If you'll allow me
21 an assumption, I would say it's medium.

22 Q Do you think a medium tee-shirt will fit a large
23 framed man?

24 A Yes.

25 Q Mr. Babbell, would you stand, please take off

1 A Virgil Johnson, Detective Skogg, and Sargent
2 Carlson, and I believe there's one other, but I don't recall
3 who it was or anything.

4 Q Now, when you went there with that search warrant,
5 did you have an opportunity to review the inside of the
6 truck?

7 A Yes, I did.

8 Q And were you present when pictures were taken?

9 A Yes.

10 Q Who took those pictures?

11 A I had Officer Bruce Clemens.

12 Q I'm going to show you what's been marked as
13 State's Exhibit S-1, S-3, S-4, and ask you if you recognize
14 those?

15 A Yes. These are the pictures of the vehicle that
16 were taken at the time we executed the search warrant.

17 Q Now, when you executed the search warrant, were
18 there license plates on that car?

19 A Yes. There was one. That's depicted in the
20 photograph on State's Exhibit S-1 which is mounted on the
21 left rear of the truck.

22 Q Were there any license plates on the front of
23 the truck?

24 A There were not.

25 Q Now, I'm going to show you what's been marked

1 what my recollection is.

2 Q What else did she say about the truck itself?

3 A She described some items that were in the back
4 of the truck. in the bed of the truck, those items being
5 a spare tire, some auxillary gas tanks, spare gas cans,
6 and a cooler. drink cooler.

7 Q Did she indicate anything about the color of
8 the truck?

9 A Yes. It was her impression at the time that
10 it was a light color, that she didn't--

11 MS. WELLS: Objection. The question has been
12 answered.

13 Q (By Mr. Vuyk) Anything else?

14 THE COURT: Sustained.

15 Q (By Mr. Vuyk) --that she said about the truck?

16 A Without referring to the notes, that's my
17 recollection.

18 Q Now, did she also describe the individual to
19 you?

20 A She did.

21 Q Can you tell me what her description was as best
22 you recall?

23 A Yes. She described him as being quite large
24 frame, dark hair with glasses, fairly thick glasses. She
25 described a tattoo on his arm, described his clothing, a

1 A No.

2 Q Was it light when you started walking down the
3 canyon?

4 A Yeah.

5 Q Do you have any notion of when approximately
6 you would have called your husband, what the time was?

7 A He was already at work, and he gets to work at
8 8:00, so I don't know. About 8:30 or so. I don't know.

9 Q So somewhere between 8:00 and 8:30?

10 A Yeah.

11 Q And it took you approximately two hours to walk
12 down?

13 A Yeah. I guess. - - - - -

14 Q Yesterday, Karen, I believe you described the
15 inside of the car as being very dirty and messy, is that
16 right?

17 A Yes.

18 Q And you described it as having drink holders
19 inside; is that right?

20 A Yes.

21 Q And you described eight-track tapes as being
22 around?

23 A Cassettes.

24 Q Cassettes, I'm sorry. Cassette tapes as being
25 around?

1 A Yes.

2 Q And beer bottles on the floor?

3 A Yes.

4 Q And although you didn't mention it yesterday,
5 haven't you previously indicated that the truck that you
6 were in had some sort of a cord hanging down?

7 A Yes.

8 Q Now, let me show you again what's been marked
9 as State's Exhibit S-3. Do you remember seeing that picture
10 yesterday?

11 A Yes.

12 Q Now, in that picture, you don't see any cassette
13 type tapes, do you?

14 A No.

15 Q You don't see any drink holders, do you?

16 A No.

17 Q Don't see any cord of any type hanging down,
18 do you?

19 A No.

20 Q You don't see any beer bottles, do you?

21 A No.

22 MS. WELLS: Thank you. Your Honor, has State's
23 Exhibit S-3 been introduced?

24 THE COURT: I don't think it was.

25 MR. VUYK: I haven't offered any of the pictures

1 A Yes.

2 Q And you recall that you identified that picture
3 as looking like, or in fact, being the truck that you saw
4 on the morning of the 17th and you were riding in it?

5 A It looked like the boxes in the back.

6 Q So you're not identify the truck itself, but
7 you're looking--you're referring to what appears to be boxes
8 in the back?

9 A Yeah.

10 Q Is that correct? Though, that's the picture
11 you've identified?

12 A Yes.

13 Q Now, in that particular picture, State's 13,
14 there is no license plate shown in that picture, is there?

15 A No.

16 Q And is that because the picture itself would
17 cut off any license plate if it were there?

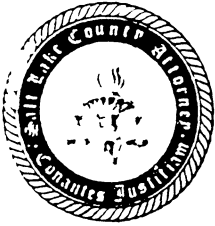
18 MR. VUYK: I object. That's conjecture, Your
19 Honor. She has no information as to when it might have
20 been cut off.

21 THE COURT: Sustained.

22 Q (By Ms. Wells) Looking at the picture, can you
23 see the rear end of the truck?

24 A Not the very end.

25 Q All right. Let me, then, show you what's been



Office of the Salt Lake County Attorney

T.L. "TED" CANNON
County Attorney

MICHAEL N. MARTINEZ
Chief Deputy County Attorney



June 17, 1985

Brooke C. Wells
Salt Lake Legal Defender Association
333 South 200 East
Salt Lake City, Utah 84111

Re: WILLIAM H. BABBELL
Case No. 85FS0935 & 85FS0883

Dear Ms. Wells:

Enclosed you will find copies of the police reports, witness list, etc., that you requested. If you need any additional information, please advise me.

Sincerely,

HEIDI BUCHI
Secretary

hab/001-04

enclosures

pc: file

32

William BABEL
Pro Se.

ORIGINAL

BOX 250
DRAPER, UTAH 84020
FILED
OCT 30 1983

SUPREME COURT
STATE OF UTAH

Clerk, Supreme Court, Utah

William BABEL,
Appellant,

v.

STATE OF UTAH,
Respondent,

MOTION FOR APPOINTMENT
OF COUNSEL. AND FOR
ORAL ARGUMENTS.
NO. 890165

COMES NOW THE APPELLANT, WILLIAM BABEL,
AND PURSUANT TO 77-32-1(5) UTAH CODE OF CRIMINAL
PROCEDURE, MOVES THIS COURT TO APPOINT COUNSEL
TO REPRESENT HIM IN THE ABOVE-ENTITLED ACTION.
APPELLANT FURTHER REQUESTS THAT THE SALT LAKE
LEGAL DEFENDERS OFFICE IS NOT APPOINTED. COUNSEL
OF RECORD HAS REFUSED TO ASSIST APPELLANT AND
HAS BEEN NAMED IN A PREVIOUS ACTION AS
INEFFECTIVE, THUS CREATING A CONFLICT OF INTEREST.
APPELLANT FURTHER MOVES THIS COURT TO

27 February 1993

Mr. Geoffrey Butler
Clerk of the Court
Utah Supreme Court
Salt Lake City, Utah 84114

FILED

MAR 2 1993

CLERK SUPREME COURT,
UTAH

Re; Babbel v. Holden, 930091

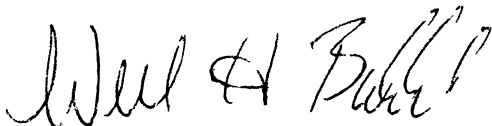
Dear Mr. Butler,

I am writing to invite the Court to review it's decision in the matter of Utah v. Paston, 910266, as it applies to the petition for Writ of Certiorari now before it.

Thank you for your time and assistance in this matter.

Sincerely yours

William H. Babbel



cc. Kenneth Bronston
Asst' Utah Atty Gen.