

1970

Edward Earl Pass v. John W. Turner, Warden Utah State Prison Et Al. : Brief of Appellant

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

EDWARD EARL PASS,

Appellant,

VS.

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON, et al;

Respondent.

Case No.
11729

BRIEF OF APPELLANT

Appeal from denial of Petition for a Writ
of Habeas Corpus, Judgment rendered after
Evidentiary Hearing in the Fifth Judicial
District Court, in and for Millard County,
State of Utah, Honorable C Nelson Day, -
Presiding.

EDWARD EARL PASS

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FILED
JUL 8 - 1970

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

EDWARD EARL PASS,)

Petitioner-Appellant,)

VS.)

Case No.

JOHN W. TURNER, WARDEN,)
UTAH STATE PRISON, et al;)

11729

Respondent-Appellee.)

BRIEF OF APPELLANT

STATEMENT OF NATURE OF THE CASE

The Appellant Edward Earl Pass, Appeals from a denial of a Petition for a Writ of Habeas Corpus after an Evidentiary Hearing in the lower Fifth Judicial District Court in and for Millard County, State of Utah.

DISPOSITION IN LOWER COURT

Appellant appeared before the Honorable C. Nelson Day, Judge, Fifth Judicial District Court of Millard County, State of Utah, for an Evidentiary Hearing on a Petition for a Writ of Habeas Corpus on February 14, 1969 and on May 2, 1969. Said Writ of Habeas Corpus was denied in a Memorandum Decision on May 8, 1969.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower Courts opinion and absolute discharge by Habeas Corpus. In the alternative Appellant seeks an opportunity to be allowed to replead and that the Judgment and Sentence be set aside and a New Trial by a Jury on the alleged offense.

STATEMENT OF FACTS

Appellant Edward Earl Pass, filed a Petition for a Writ of Habeas Corpus in the Utah Supreme Court on December 17, 1968. (Index to Record on Appeal. 42, 43, 44, 45, 46). Appellant In Propria Persona; alleged in his Petition for a Writ of Habeas Corpus that he was a victim of the deprivation of his Constitutional Rights to be afforded Due Process and Equal Protection of the Law beginning at the time of his Arrest and throughout the proceedings against him leading up to the entry of his Guilty Plea of Guilty entered under duress in a manner that was not freely and voluntarily nor intelligently and understandingly to the Crime of Second Degree Murder in the Fifth Judicial District Court of Millard County, State of Utah. Appellant was deprived of Due Process and Equal Protection of the Law throughout the entire proceedings against him including the Imposition of Sentence. In Appellants initial Petition for a Writ of Habeas Corpus it was alleged that Appellants Constitutional Rights were violated under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and under Article 1. Sections 2, 3, 7, 9, 10 and 12, of the Constitution of the State of Utah.

On December 23, 1968, the Utah Supreme Court - ordered and directed that an Evidentiary Hearing be held before the Honorable C. Nelson Bay, Judge, in the Fifth Judicial District Court of Millard County, State of Utah. Said Evidentiary Hearing was held on February 14, 1969, - and May 2, 1969. Petitioner being represented by Jay V. Barney, of the Salt Lake Legal Defender Association and the State of Utah (Respondent John W. Turner, Warden, Utah State Prison) Respondent being represented by Joseph P. McCarthy, Assistant Attorney General and J. Marlan Burns, Fifth Judicial District Attorney.

STATEMENT OF FACTS CONTINUED

Said Writ of Habeas Corpus was denied in a Memorandum Decision rendered on May 8, 1969, by the Honorable C. - Nelson Day, Judge of the Fifth Judicial District Court of Millard County, State of Utah. (Index to Record on Appeal 62, 63, 64, 65, 66).

The facts in the case at bar are briefly as follows. Appellant was taken into custody on or about January 15, 1968, after a high speed automobile chase by City Marshal Darrell Snyder at Fillmore, Utah. Appellant was not - formally placed under arrest in the lawful manner as - prescribed by law in compliance with Due Process and Equal Protection of the Law Requirements. Appellants person and effects were searched and seized without benefit of a - Warrant. Appellant was subjected to intensive in-custody interrogation without being represented by Counsel nor having been adequately made fully aware of his Rights in compliance with the Miranda requirements. As a result of the said in-custody interrogation statements and admissions were illegally and unconstitutionally extracted from - Appellant. Appellant was then taken to a Motel where the body of Jack Stokes, was found, the said Jack Stokes had been shot and subsequently killed. Appellant was subsequently Arrested and charged with the Crime of "First Degree Murder" Appellant was Arraigned in the Justice of the Peace Court in and for Fillmore Precinct, State of Utah, the Honorable Eugene McBride, Presiding. The Court Appointed Thorpe A. - Waddingham, Attorney at Law to represent Appellant. A - Preliminary Hearing was requested by Appellant and therefore Appellant subsequently appeared in the Justice Court, in and for Fillmore Precinct, Millard County, State of Utah, the Honorable Eugene McBride, Presiding, for a Preliminary Hearing on January 26, 1968. At said Preliminary Hearing Appellants Court Appointed Counsel Thorpe A. Waddingham, advised the Court that he had been temporarily as - an Assistant Deputy County Attorney, even in light of this Counsel was allowed to proceed and represent Appellant at said Preliminary Hearing. (Prelim TR. 2, 3, 4, 5). Said Preliminary Hearing was continued until February 3, 1968. Appellant appeared with Counsel Thorpe A. Waddingham for Preliminary Hearing on February 3, 1968, the Honorable - Eugene McBride, Presiding in the Justice Court, in and for Fillmore Precinct, Millard County, State of Utah,,

STATEMENT OF FACTS CONTINUED

Appellant was upon the conclusion of said Preliminary Hearing, Bound over to the Fifth Judicial District Court of Millard County, State of Utah, to face the Charge of "First Degree Murder."

An Information was subsequently filed in the Fifth Judicial District Court of Millard County, State of Utah, signed by J. Harlan Burns, District Attorney of the Fifth Judicial District, Accusing Appellant of the "Crime of First Degree Murder." On February 3, 1968. Criminal No. 336. Appellant entered a Plea of "Not Guilty" to the Charge of First Degree Murder. Said Plea was entered on February 19, 1968, and the Court set the matter for Jury Trial on - Tuesday March 12, 1968.

Appellant was taken to the Utah County Jail located at Provo, Utah to await Trial. Appellant did not have any adequate opportunity to discuss the facts of his case or possible defenses that may have been available. On the - day before Appellant was scheduled to appear for Trial he recieved a long distance telephone call from his Court - Appointed Counsel Thorpe A. Waddingham, and was allowed to talk on the phone with Counsel, at this time Counsel advised Appellant that he had an offer from the District Attorney for Appellant to be allowed to enter a Plea of Guilty to the lesser Offense of Second Degree Murder, at this time Appellant refused. On the following day March 12, 1968, Counsel again talked to Appellant and urged him to Plead Guilty to the lesser offense of Second Degree Murder, Appellant being indignant and afraid of not being afforded adequate representation by Court Appointed Counsel at - Trial on the Charge of First Degree Murder, agreed to - Plead Guilty to the Crime of Second Degree Murder, the lesser offense.

Appellant subsequently entered a "Mentally Coerced Plea of Guilty under Duress through Ignorance to the - Crime of Second Degree Murder." On March 12, 1968, in the Fifth Judicial District Court of Millard County, - State of Utah, the Honorable C. Nelson Day, Judge, --- Presiding.

Appellant submits that the facts and circumstances surrounding the Crime Appellant was Accused of and allowed to Plea to of Second Degree Murder. Are insufficient to support said Conviction. Appellant submits that if he - should have been charged and Accused of Anything it should have been "Involuntary Manslaughter" Or at most "Voluntary Manslaughter."

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part is a report from the Secretary of the Treasury, dated January 1, 1861, on the state of the Treasury.

3. The third part is a report from the Secretary of the Navy, dated January 1, 1861, on the state of the Navy.

4. The fourth part is a report from the Secretary of the War, dated January 1, 1861, on the state of the War.

5. The fifth part is a report from the Secretary of the Interior, dated January 1, 1861, on the state of the Interior.

STATEMENT OF FACTS CONTINUED

Appellant submits that had Court Appointed Counsel adequately represented him he would have made appropriate investigations both factual and legal. He would have also in properly investigating the facts learned that the evidence intended to be used by the State must of necessity be suppressed for the reason that it was unlawfully illegally and unconstitutionally improperly obtained in violation of the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article 1. Sections 1, 3, 7, 9, 10 and 12, of the Utah Constitution. And further that Appellant was not Guilty of Murder in any Degree. Also that an important Defense of Self Defense among others was - available to Appellant. Counsel would have learned that the alleged Murder Victim was a "Gangster" in Phoenix, Arizona. And that the said victim had been involved in many acts of "Violence" while incarcerated in the Arizona State Prison located at Florence, Arizona. Counsel would have learned that there was no "Joint Union of Act and Intent" to commit a Felony Murder or otherwise and that Appellant may very have been merely guilty of "Justifiable Homicide" it is an established fact and Statutory Requirement that for a Crime to be Committed there must be a Joint Union of Act and Intent. Court Appointed Counsel failed to advise Appellant of this fact but instead advised Appellant that in Utah all the State had to prove was that he Appellant was the person who shot the victim.

In order for the Court to be appropriately aware of the facts in the case at bar. Appellant will submit the following testimony from the Preliminary Hearing Transcript and Habeas Corpus Hearing Transcript.

TESTIMONY OF

DARRILL ROBERT SNYDER

Q. What is your occupation? (Prelim TR. 21).

A. Fillmore--I work for Fillmore City Police.
(Prelim TR. 21).

Q. Now then Officer Snyder, directing your attention to on or about the 15th day of January, 1948, were you so employed? (Prelim TR. 21).

A. Yes, sir. (Prelim TR. 21).

STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRELL ROBERT SNYDER

- Q. And in the evening hours of that particular day, about 10:00 or 10:30, where were you? (Prelim TR. 21).
- A. I was traveling on 91, southbound. (Prelim TR. 21).
- Q. How were you traveling? (Prelim TR. 21).
- A. By means of the City Police car. (Prelim TR. 21).
- Q. And you were on duty at that time? (Prelim TR. 21).
- A. That's right. (Prelim TR. 21).
- Q. And are you acquainted with the location of the El Ana Motel? (Prelim TR. 21).
- A. Yes sir. (Prelim TR. 21).
- Q. All right as you approached the El Ana Motel, tell what happened if anything? (Prelim TR. 21).
- A. Well, I was approximately a block north of the motel traveling in a southerly direction and I noticed this car pull up out of the motel, - El Ana Motel and it had one headlight. (Prelim TR. 21).
- Q. All right, as it pulled out from the El Ana Motel and the fact that it had one headlight, was there anything other than that unusual or different that you noticed? (Prelim TR. 22).
- A. No, sir. It was traveling in a moderate speed. (Prelim TR. 22).
- Q. What did you do, if anything as the vehicle approached you? (Prelim TR. 22).
- A. I put my red light on and hollered out the window, just hollered and told him that he had one headlight, as the car approached me, and as I hollered that, he started out at a faster speed. (Prelim TR. 22).
- Q. What did you do if anything? (Prelim TR. 22).

STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRELL ROBERT SHYDER

- A. Then I made a U turn and approached in the same direction as he was traveling, trying to overtake the automobile. And, oh, about two blocks further, he had approached a high rate of speed. What his speed was, I don't know, but I was traveling at - 70, 75 miles an hour, between that speed. We - traveled about a mile, a mile and a half out north and I finally got up near him and he made a left turn in front of me. (Prelim TR. 22).
- Q. I see. You say he made a left turn in front of you? (Prelim TR. 23).
- A. Right. (TR. 23).
- Q. What happened then? (Prelim TR. 23).
- A. He traveled out into the field. The snow was real crusted and he traveled out there approximately, I would say, a hundred feet and left--the car - stopped. (Prelim TR. 23).
- Q. What did you do? (Prelim TR. 23).
- A. I finally got--I stopped my vehicle and parked it on the right hand of the highway facing north and then I got out of the car. As I got out of the car, the victim in the other car got out of the car and started running. (Prelim TR. 23).
- Q. All right what happened then? (Prelim TR. 24).
- A. He broke and ran in the--following the beam of his car, the lights from his car, running in a northwesterly direction. I got out of my car - across the highway, and over to the shoulder of the road and hollered at him, stepped off the road and shot one shot in the air. (Prelim TR. 24).
- Q. When you shot what did he do? (Prelim TR. 24).
- A. He still made no attempt the first shot. I hollered again and shot one more time and then he went to the ground. (Prelim TR. 24).

[illegible]

STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRELL ROBERT SNYDER

Q. When you say he went to the ground, what do you mean? (Prelim TR. 24).

A. Like he fell, just he immediately went down. I approached him to his rear. (Prelim TR. 24).

Q. Approached him on foot? (Prelim TR. 24).

A. On foot over the crusted snow, till I got up to him and told him to get up with his hands in the air, which he did. We then walked—I put the handcuffs on him. I walked to the car and put the handcuffs on him. (Prelim TR. 24).

Q. What car? (Prelim TR. 24).

A. His car. (Prelim TR. 24).

Q. The Pontiac? (Prelim TR. 24).

A. Yes, and put the handcuffs on him, closed the door, went back to the police car, which we got into that and approached back in a southern direction, back to the Sheriff's Office. (Prelim TR. 24).

Q. Now at this time did you have conversation with (Prelim TR. 24) him? (Prelim TR. 25).

A. No, because we were both so out of wind we couldn't talk. (Prelim TR. 25).

A. We immediately come back to the Sheriff's Office. We went into the office and sit down. (Prelim TR. 25).

Q. What happened, then? (Prelim TR. 25).

A. And I read him his rights. (Prelim TR. 25).

Q. When you say you read him his rights, you gave him the Miranda Warning? (Prelim TR. 25).

A. Yes, that is right. (Prelim TR. 25).

STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRELL ROBERT SNYDER

Q. What did you have him in custody for at that time?
(Prelim TR. 25).

A. For what I started with was a headlight and it - continued on to a speeding violation and failure to stop for a Police Officer. (Prelim TR. 25).

Q. And that's all you had him for at this time?
(Prelim TR. 25).

A. At that time right. (Prelim TR. 25).

Q. All right after you read him the Miranda Warning how did you do this? (Prelim TR. 25).

A. By taking the card out of my wallet and reading it from the card. (Prelim TR. 25).

Q. Did you advise him of the charges you just told me about? (Prelim TR. 25).

A. I hadn't advised him of the charges no. (Prelim TR. 25).

Q. All right what happened then if anything? (Prelim TR. 26)

A. Well, then, he volunteered the statement he had just shot a man in the motel and he didn't distinguish the motel, didn't tell me the name. He says, "The motel next to the cafe down the street." And I said--
(Prelim TR. 26).

Q. What did you do, then? (Prelim TR. 26).

A. He said, "I don't know if I killed the man," he says, "I think we had better get a doctor." So we left the Sheriff's Office at that time. (Prelim TR. 26).

Q. All right. Now, then, when you and Mr. Pass left the Sheriff's Office and he told you he had just shot a man, what did you do, then? (Prelim TR. 27).

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STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRELL ROBERT SNYDER

- A. We left the Sheriff's Office, went out to the car, and in the meantime--well, when I was in pursuit of Mr. Pass, not knowing what he had committed, but just on his headlights, I didn't know, so I called Cedar for assistance and they tried to contact Mr. Rasmussen. The Highway Patrol was unable to get ahold of him, so they contacted the Sheriff. (Prelim TR. 27).
- Q. All right did you go to the El Ana Motel? (Prelim TR. 27).
- A. We went to the El Ana Motel, and asking Mr. Pass (Prelim TR. 27) what room it was, he told me, and told me it was room 3. We approached the Room 3 and I hollered at Mr. Stewart. Calvin Stewart, he had better get a key from the Office. And Mr. Pass - stated that we didn't need a key, the door was open. So we approached the door, and on opening the door Mr. Pass went in. I followed Mr. Pass in and hollered at Mr. Stewart and said that we didn't need the key. And he followed him in with Mr. Rowser. (Prelim TR. 28).
- Q. State what you saw when you got inside? (Prelim TR. 28).
- A. Well, when I walked in, the immediate time I didn't see the body at all and I started towards the - restroom in the motel and Mr. Pass stated to me, he says, "He's not over there." "He's right here." And he directed my attention to Mr. Stokes laying - between the two beds. (Prelim TR. 28).
- Q. All right, did you have an occasion to go back to the place that you had picked the defendant Edward-Earl Pass, out of the snow? (Prelim TR. 32).
- A. Yes, sir. (Prelim TR. 32).
- Q. Why did you go back out there? (Prelim TR. 32).
- A. To pick up the weapon that he said that he had thrown before he fell. (Prelim TR. 32).

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STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRELL ROBERT SNYDER

- A. I don't believe he did. He did after he came back, (Prelim TR. 40) after we got back here. I mean, the Sheriff and the Chief of Police got back. He did want an attorney present before he made any-- (Prelim TR. 41).
- Q. When you say he got back, are you referring to after you had made the visitation to the motel room, I - suppose, to the Millard County Sheriff's Office again? (Prelim TR. 41).
- A. That's right. (Prelim TR. 41).
- Q. And, then, as I recall, the body was--your attention was directed to the body between the two beds? - (Prelim TR. 42).
- A. That's right, by Mr. Pass. (Prelim TR. 42).
- Q. And, then, the defendant, in your judgment, apparently wasn't feeling well, requested that he be allowed to sit down? (Prelim TR. 42).
- A. That's right. (Prelim TR. 42).
- Q. Now, was it at this time that Sheriff Stewart asked Mr. Pass whether or not he had had the Miranda Warning read to him previously? (Prelim TR. 42).
- A. That's right. It was shortly after he had made a quick investigation. (Prelim TR. 42).
- Q. And was your testimony that you could or could not recall Mr. Pass's answer when Sheriff Stewart asked him whether or not the Miranda Warning had been - given him? (Prelim TR. 42).
- A. Well, I'm not sure if he did state or he didn't I knew Mr. Stewart asked him if he had been, had it given to him. (Prelim TR. 42).
- Q. Now immediately following the reading of the card, was Mr. Pass subjected to any questioning by yourself or Sheriff Stewart? (Prelim TR. 44).

STATEMENT OF FACTS CONTINUED

TESTIMONY OF DANIEL ROBERT STEWART

A. No. (Prelim TR. 44).

Q. Was there any conversation between Sheriff Stewart and Mr. Pass? (Prelim TR. 44).

A. He just asked Mr. Pass if he would volunteer to let the doctor examine him. That was, I think, the only conversation that was had between the Sheriff and Mr. Pass at that time. (Prelim TR. 44).

Q. --and you state at that time you read him the - Miranda Warning, did you ask him any particular questions concerning why he had not stopped when you originally put your red light on? (Prelim TR. 45).

A. I did ask him that. I asked him why he didn't stop, and he didn't answer for a few seconds, and answered back, "well, I just as well tell you because you'll find out anyway." (Prelim TR. 45).

Q. Before he made the statement to the effect that he had just as well tell you, did you at any time - threaten him? (Prelim TR. 45).

A. No, sir. (TR. 45).

Q. Did you at any time indicate to him that you had any reason to believe that something other than the traffic violations had taken place? (Prelim TR. 45).

A. Not at that time. (Prelim TR. 45).

Q. Did you at a later time? (Prelim TR. 45).

A. No, not until after he had made the statement that he had shot the defendant or the deceased in self-defense, in the words that he used. (Prelim TR. 45).

Q. Mr. Snyder, you have just testified that immediately following your reading of the waiver on the card - that the defendant answered, "No," that he wouldn't like to talk with you further at that time, is that correct? (Prelim TR. 47).

A. Now, what-- (Prelim TR. 47).

STATEMENT OF DARRELL ROBERT SNYDER

TESTIMONY OF DARRELL ROBERT SNYDER

- Q. He said no, that he didn't want to talk with you further, was that your testimony? (Prelim TR. 48).
- A. Now, I will have to rephrase it. I don't know whether it was this time or the time when the Sheriff read him the same thing. (Prelim TR. 48).
- Q. You are not certain? (Prelim TR. 48).
- A. I am not certain, but he did say one or the other time that he would--he wanted to have a lawyer present if he did, before he did any talking. (Prelim TR. 48).
- TESTIMONY OF DARRELL ROBERT SNYDER
AT HABEAS CORPUS HEARING
- Q. And let me call your attention to the time period discussed in the Courtroom where you were at the police station, or at some point wherein Mr. Pass discussed particulars involving this case after you returned from the motel, can you orient yourself to that time period regarding this case? Habeas TR. 60).
- A. After we left the motel? (TR. 60).
- Q. After you had left the motel and came back with Mr. Pass to some police building, or either the office or the jail? (Habeas TR. 60).
- A. After we got back to the Sheriff's office we went by--left the motel and went to the hospital for a blood test. (Habeas TR. 60).
- Q. And from there--
- A. And from there to the Sheriff's office. (Habeas TR. 60).
- Q. All right, now, I will ask you if a conversation took place between yourself and Mr. Pass at the Sheriff's office at that time? (Habeas TR. 60).
- A. Only his voluntary statement. (Habeas TR. 60).
- Q. Now, will you indicate to the Court what the nature of that statement was? (Habeas TR. 60).

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population of the country is

of the same race and language.

2. The second is the fact

that the majority of the

population of the country is

of the same race and language.

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that the majority of the

population of the country is

of the same race and language.

4. The fourth is the fact

that the majority of the

STATEMENT OF FACTS CONTINUED

TESTIMONY OF DARRILL ROBERT HYDER

- Q. Well, as -- we did ask him if he would let the doctor give him an examination, which he said yes. (Habeas TR. 61).
- Q. Don't tell us about that, I only want to go -- I only want you to tell me -- well, let me ask this, did he inform you there at the Sheriff's office after you had returned from the motel and hospital, did he inform you about the incident relating to this shooting? (Habeas TR. 61).
- A. Not after we got back, it was prior to going down to the motel. He didn't volunteer any statement until the Sheriff did come up to the office. - (Habeas TR. 61).
- Q. Well, all right, then, a statement was made at the Sheriff's office? (Habeas TR. 61).
- A. Right. (Habeas TR. 61).
- Q. But there was nothing that you -- as you recall, there was nothing discussed regarding the incidents of the shooting at the Sheriff's office? (Habeas TR. 61).
- A. Well, yes, he told me that he had shot the man Mr. Stokes, in self defense. (Habeas TR. 61).

TESTIMONY OF EDWARD EARL PASS
AT HABEAS CORPUS HEARING

- Q. And are you presently incarcerated in the Utah State Prison? (Habeas TR. 6).
- A. Yes, I am. (Habeas TR. 6).
- Q. And what is the nature of your incarceration? What is the basis of your being incarcerated? (Habeas TR. 6).
- A. Well, I am there on a conviction of Second Degree Murder. (Habeas TR. 6).

STATEMENT OF FACTS CONTINUED

TESTIMONY OF EDWARD PAUL PASS

- Q. And that is based upon a Plea entered March 12, 1968, is that correct? (Habeas TR. 6).
- A. Yes, sir. (Habeas TR. 6).
- Q. All right, now, at the time he arrested you did he inform you why he was arresting you? (Habeas TR. 7).
- A. No sir, he didn't. (Habeas TR. 7).
- Q. All right, will you describe for the Court, to the best of your knowledge, what occurred from the time you entered the police station until such time as you may have had occasion to leave? (Habeas TR. 8).
- A. Well, Mr. Snyder, after we got to the police station, he started asking me what I had done and why I was running, and I told him I hadn't done anything. - (Habeas TR. 8).
- Q. Now, prior to that -- well, strike that. Are you familiar with what is known as the Miranda Warning? (Habeas TR. 8).
- A. Yes sir, I am. (Habeas TR. 8).
- Q. Prior to his requesting why you were running or what you might have done did he in fact warn you of any rights? (Habeas TR. 8).
- A. No sir, he didn't. (Habeas TR. 8).
- Q. All right, then, going back to that time period when he asked the question "why did you run", will you then relate (Habeas TR. 8) the events that transpired after that at the police station? - (Habeas TR. 9).
- A. Well, I told him I hadn't done anything. He told me to stand up and put my hands against the file cabinet. And he searched me and I had two rolls of money with money clips on each one in my pocket and he put them on the desk and he said, "who did you rob for this?" and I told him, "Nobody," and he said, "well, we will find out if we have to choke it out of you." So I sit back down and thought about it for

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and wondering how you are getting on.

I hope you are well and happy.

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STATEMENT OF FACTS CONTINUED

TESTIMONY OF EDWARD PAUL PASS

it for awhile and I told him I had shot a man at the motel. I didn't know the name of the motel at that time. (Habeas TR. 9).

Q. I see. Now, at the time that you indicated to him that you had shot a man had he warned you of your rights? (Habeas TR. 9).

A. No sir. (Habeas TR. 9).

Q. I see. Will you now state, then, to the best of your recollection, what occurred, if anything, after you entered the motel? (Habeas TR. 10).

A. Well, when we entered Mr. Snyder was going toward (Habeas TR. 10) the restroom and I told him where the body was at, and so he made me stand against the wall and I started getting sick and he told me to sit down, and then from the rest, I remember him just taking pictures and things like that, and that was the first time that the Miranda part was read to me. Habeas TR. 11).

Q. All right, now, you say you were warned of your rights while you were sitting down in the motel? (Habeas TR. 11).

A. Yes sir. (Habeas TR. 11).

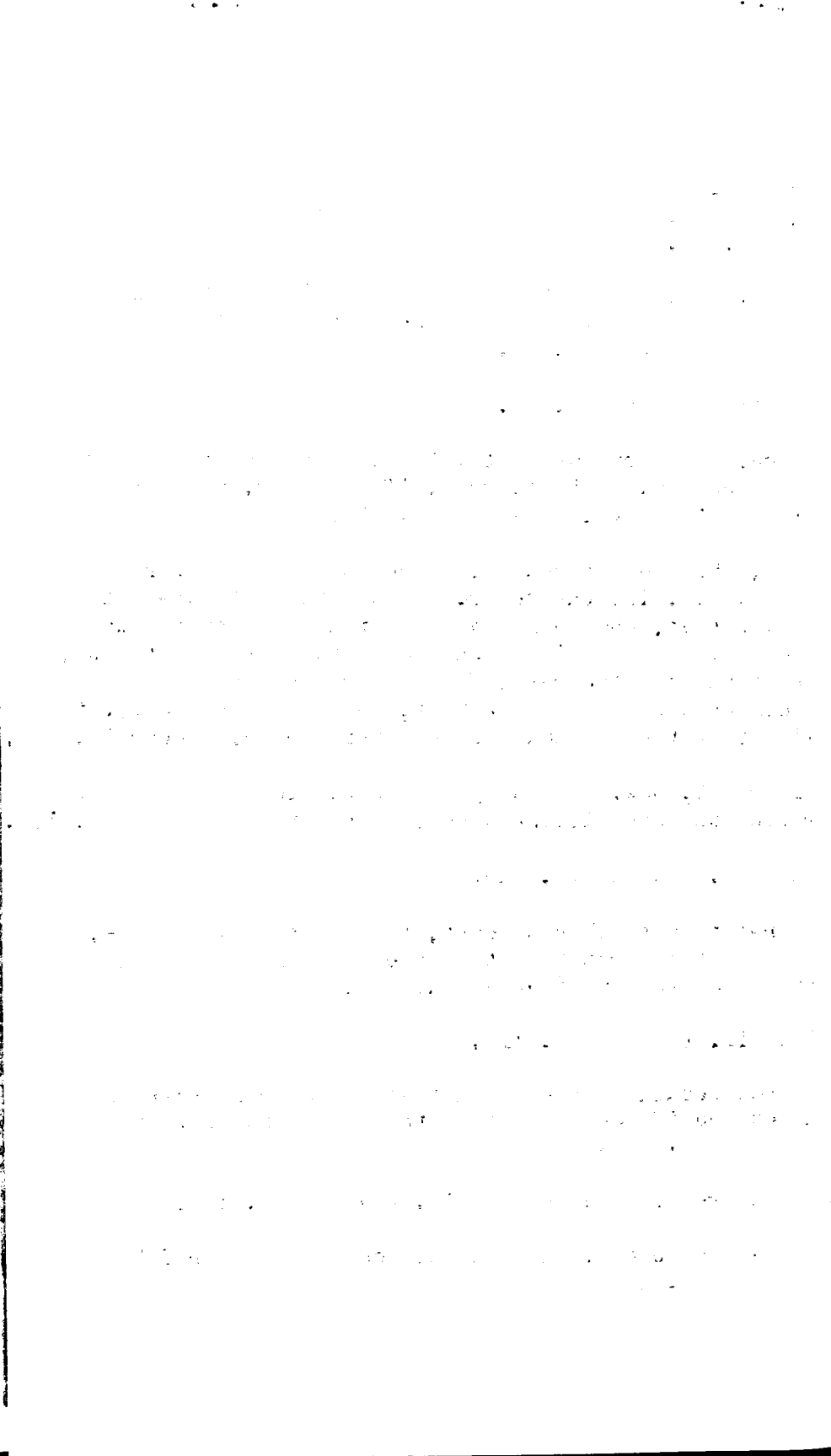
Q. In relation to this defense, is that the -- offense, is that the first time that the Miranda warning had been read to you? (Habeas TR. 11).

A. Yes sir. (Habeas TR. 11).

Q. Do you recall whether or not after he read those he asked you if you understood those particular rights? (Habeas TR. 12).

A. I don't recall whether he did. (Habeas TR. 12).

Q. Was anyone ever identified to you as the Sheriff? (Habeas TR. 12).



STATEMENT OF FACTS CONTINUED

TESTIMONY OF EDWARD EARL PASS

Q. Based upon your past experience and association with Mr. Stokes, did you have reason to believe that he might carry out that threat? (Habeas TR. 15).

A. Yes sir, I did. (Habeas TR. 15).

Q. (By Mr. Barney) Mr. Pass, on your past experience with Mr. Stokes, what, if anything, would lead you to believe (Habeas TR. 17) that he might carry out that threat? (Habeas TR. 18).

A. Well, in one instance in Beverly Hills, California--

Q. Lets establish a time and a place. About how long prior to this incident did this occur? (Habeas TR. 18).

A. Approximately a month, I'd say. (Habeas TR. 18).

Q. All right, will you indicate what, if anything, happened? (Habeas TR. 18).

A. Well, he pulled a gun on me at this time and threatened to shoot me and over an argument that we had had and I'd tried to split off from him and he said I was trying to run out on him and he was going to shoot me, and we argued it out and kind of smoothed things over and-- (Habeas TR. 18).

Q. At that time you were afraid of Mr. Stokes, that is were you afraid at that time? (Habeas TR. 18).

A. I was sure in my own mind that he was intending on taking me out and shooting me, and I knew he was capable of doing it. (Habeas TR. 18).

Q. (By Mr. Barney) Other than that event were there any other incidents that occurred that would cause you to fear that he might carry out that threat, in your association with him? (Habeas TR. 18).

A. Well, when I first met him in the Arizona State Prison. (Habeas TR. 18).

STATEMENT OF FACTS CONTINUED

TESTIMONY OF EDWARD EARL PASS

- Q. Now, when you first met him, prior to this incident, or the first time that you met him -- (Habeas TR. 18).
- A. The first time I had ever met him in 1960 was in the Arizona State Prison and I was there for three or four (Habeas TR. 18) years with him, in prison at the same time he was, and I know that he, you know, that he was very violent and had stabbed two or three guys the time I was there. (Habeas TR. 19).
- Q. All right, now, during your travel with Mr. Stokes, did he carry a gun with him? (Habeas TR. 19).
- A. Yes sir. (Habeas TR. 19).
- Q. Was there any other factors involved? (Habeas TR. 19).
- A. Well, he had told me in Kansas City, Missouri, that he'd shot a guy in Arizona and dumped him in Nevada and that the police were looking for him for this. (Habeas TR. 19).
- Q. Do you know whether or not Mr. Stokes carried that gun loaded? (Habeas TR. 19).
- A. Yes he did. (Habeas TR. 19).
- Q. (By Mr. Barney) when did you, that is, after counsel was appointed for you, when did you first have a chance to talk to Mr. Waddingham? (Habeas TR. 20).
- A. I think I talked to him for about ten or fifteen minutes prior to my arraignment. (Habeas TR. 20).
- Q. (By Mr. Barney) At that meeting there, Mr. Pass, did you have any occasion to inform Mr. Waddingham of the events that you have told the Court today? (Habeas TR. 21).
- A. Yes sir. (Habeas TR. 21).
- Q. Okay. Following your arraignment when did you see Mr. Waddingham again? (Habeas TR. 21).
- A. At my Preliminary Hearing, I believe. (Habeas TR. 21).

... of your contact with Mr. Waddingham between the time of Probationary hearing and the time you were arraigned in District Court for arraignment (Habeas Tr. 22).

... (Habeas Tr. 22).

... ask you between the time of probationary hearing in District Court arraignment whether you had anything you felt you needed to communicate with Mr. Waddingham? (Habeas Tr. 22).

... there was one letter that I had wrote to his home. (Habeas Tr. 22).

... calling your attention to the period of time between the arraignment in District Court and the time you appeared for trial, did you have any further contact with Mr. Waddingham that you discussed the matter of your case, and defense or other matters? (Habeas Tr. 23).

... think two days prior to -- before my trial I -- received a phone call from him in the Bell County Jail. (Habeas Tr. 23).

... could you relate, to the best of your knowledge, (Habeas Tr. 23) what the latter of that conversation entailed? (Habeas Tr. 24).

Well, he told me he had spoke to the District Attorney and that the District Attorney, had agreed to allow me to enter a plea of guilty of second degree murder and not the first, and asked me if I wanted to do that. (Habeas Tr. 24).

... answer that question? (Habeas Tr. 24).

... told him I didn't want to plead guilty (Habeas Tr. 24).

... did you have an occasion to discuss entering that plea with Mr. Waddingham other than the plea -- conversation that you mentioned previously? (Habeas Tr. 24).

STATEMENT OF FACT CONTINUED

TESTIMONY OF EDWARD EARL PASS

- A. Yes sir, I did. (Habeas TR. 24).
- Q. Do you recall when you discussed that after the phone call? (Habeas TR. 24).
- A. Well, it was the night before my scheduled Trial. (Habeas TR. 24).
- Q. And where did this conversation take place? (Habeas TR. 24).
- A. Well, it was in the Millard County Jail in my cell there. He came to see me that night about 8:00, I think. (Habeas TR. 24).
- Q. Now, I will ask you this, when you were transferred to the Millard County Jail, that is, on that evening prior to your trial, was it your intention of going to Trial on the (Habeas TR. 24) charge pending the following day? (Habeas TR. 25).
- A. Yes sir. (Habeas TR. 25).
- Q. Now, I will ask you prior to this at 8:00 P.M., the evening before the Trial, had you indicated at all to Mr. Waddingham that you did desire to change your plea? (Habeas TR. 25).
- A. Well, I think at one time that I told him that I would be willing to plead guilty to "Voluntary - Manslaughter" and I think that was the only incident I had indicated that I would Plead. (Habeas TR. 25).
- Q. To the best of your recollection, and prior to this evening, had you ever told Mr. Waddingham that you would change your plea to Second Degree Murder? (Habeas TR. 25).
- A. No sir. (Habeas TR. 25).
- Q. Would you tell the Court, Mr. Pass -- strike that. All right, then, you did the next day change your plea to murder in the Second Degree, is that correct? (Habeas TR. 25).
- A. Yes sir. (Habeas TR. 25).

Q. Did you then tell the Court what, if anything, occurred to cause you to change your plea?
(Answer: No. 29).

A. Well, Mr. Magditcher, on the night that he came to visit me told me that if I didn't plead guilty, you know, if I waited till tomorrow all the witnesses would be there and the chance to plead guilty, I - wouldn't have it, and I told him I didn't want to plead guilty and that I didn't feel there was much of a case; and he told me that he would have to put me on the stand for the reason that -- to prove -- for me to prove the intent or the lack of intent, and I told him that I thought the State had to prove the intent of the Crime and that I was in no way - compelled to prove my innocence but they had to prove my guilt; and he told me that the proof of intent in that case -- well, just that the Crime was committed with a gun and that I had the gun was in itself proof of intent and that was all they had to show, and with that in mind, I felt there was nothing else I could do under these circumstances. (Habeas No. 29).

ARGUMENT

Page 1

AS PLAINLY SEES TO THAT THE JUDGMENT OF THE COURT
COURT SHOULD BE REVERSED AND THAT HE SHOULD BE
RECEIVED ON A PETITION OF HABEAS CORPUS FOR THE -
REASON THAT APPELLANT DID NOT ENTER HIS PLEA OF
GUILTY TO THE CHARGE OF MURDER FREELY AND VOLUNTARILY
AND FULLY UNDERSTANDINGLY AND THE TRIAL JUDGE
DID NOT ADVISE APPELLANT FULLY AS TO HIS CON-
STITUTIONAL RIGHTS AS TO THE CONSEQUENCES OF HIS PLEA,
AND APPELLANT ENTERED THAT SUCH PLEA WAS -
VOLUNTARILY AND KNOWINGLY ENTERED BY APPELLANT, AND
THAT IT WAS NOT UNLAWFULLY AND UNCONSTITUTIONALLY
OBTAINED AND AS TO DUE PROCESS AND EQUAL PROTECTION
OF THE LAW, APPELLANT DOES NOT FEEL THAT SELF INCORPORATION
DOCTRINE APPLIES TO A TRIAL BY JURY:

ARGUMENT PART 1 CONTINUED

Appellant submits that he is entitled to be discharged on a Writ of habeas Corpus for the reason that his rights have been violated under Article 1, Section 7 and Section 14 of the Utah Constitution and under the Fifth, Sixth, - and Fourteenth Amendments to the United States Constitution.

Appellant submits that his Plea of Guilty was not entered Freely, Voluntarily, understandingly, or knowingly as required by decided precedents as follow. McCarthy v. United States, - U.S. - 89 S.Ct. 1166, 22 L.Ed. 2d 418 - (1969). Boykin v. Alabama, No. 642 October Term United - States Supreme Court (Decided June 2, 1969) - U.S. -, - S.Ct. -, - L.Ed. 2d - (1969). Also the recent decision in the United States District Court for the District of Utah, Central Division, No. C 415-69, Juan Jaramilla v. John W. Turner, Warden, (D.C. Utah 1970).

ARGUMENT

POINT 2.

APPELLANT WAS DEPRIVED OF THE EFFECTIVE AID AND ASSISTANCE OF COUNSEL DURING THE CRITICAL STAGES AGAINST HIM (IN-CUSTODY INTERROGATION) AND THROUGHOUT THE ENTIRE PROCEEDINGS AGAINST HIM:

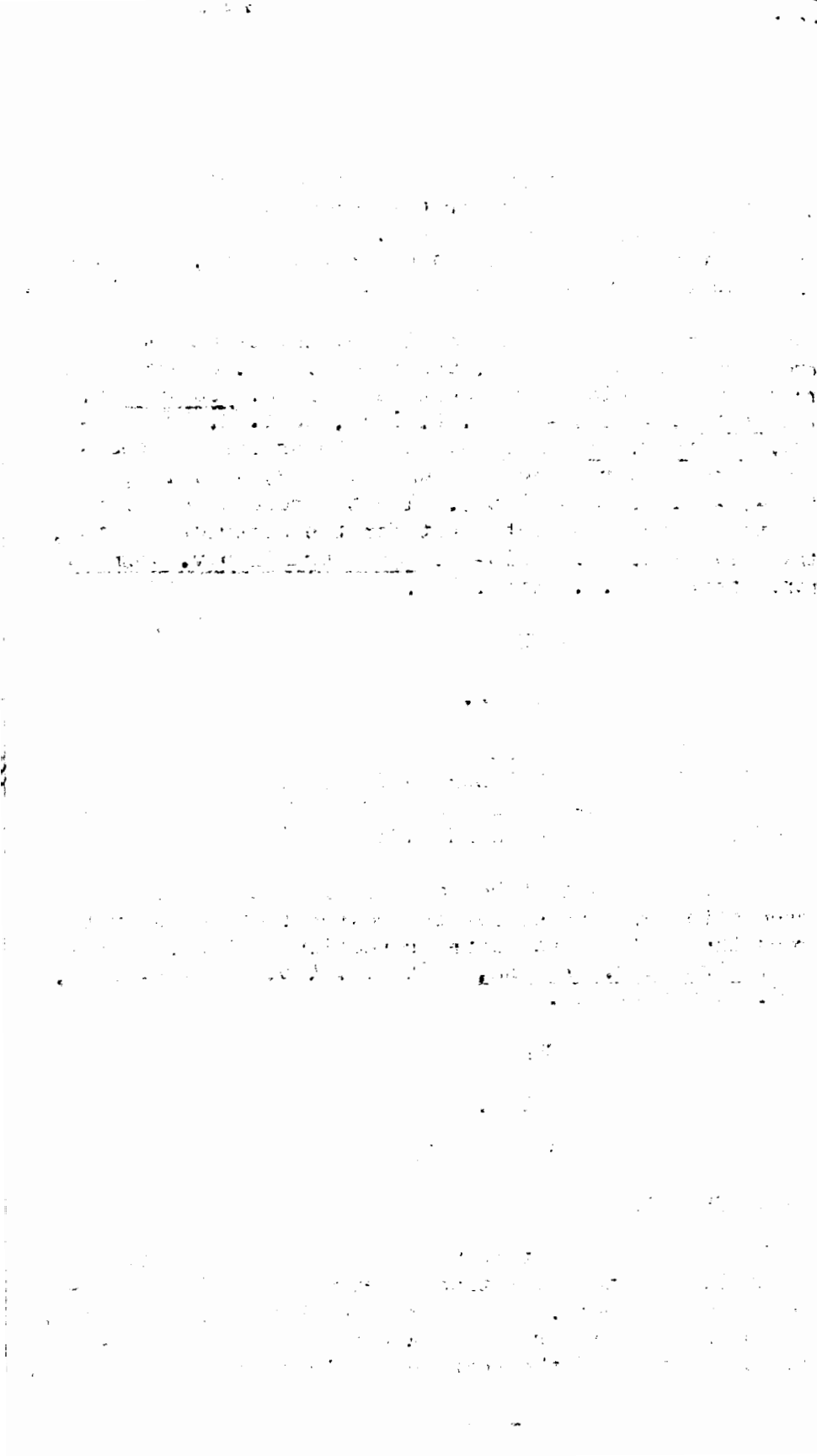
Appellant submits that he was not afforded effective representation by Counsel for the reason that he was not afforded the full and adequate protection of the requirements of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

ARGUMENT

POINT 3.

APPELLANT WAS A VICTIM OF THE ILLEGAL AND UNCONSTITUTIONAL SEARCH AND SEIZURE OF HIS PERSON AND EFFECTS:

Appellant submits that he was the victim of the illegal unreasonable and unconstitutional Search and Seizure of - his person and effects. For the reason that Officer Snyder, failed to properly inform Appellant that he was under - Arrest at the time of the seizure of his person and effects.



Appellant therefore submits that his incarceration is unlawful and unconstitutional under Article 1 Section 14 of the United States Constitution and under the Fourth and Fourteenth Amendments to the United States Constitution.

Appellant was arrested and is incarcerated in violation of the following precedents set forth as guidelines for the lower Courts of the States and the United States to adhere to: Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 601 (1961). Linkletter v. Walker, 381 U.S. 618, 85 S.Ct. 731, 14 L.Ed. 2d 601 (1965). Schwerbar v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed. 2d 908 (1966).

CONCLUSION

For the reasons heretofore stated, Appellant respectfully submits that the opinion of the lower Court should be reversed and he should be discharged by Habeas corpus. Alternatively, Appellant would submit that he should be granted an opportunity to Re-Plead and afforded a New Trial.

RESPECTFULLY SUBMITTED

Edward Earl Pass

EDWARD EARL PASS,
Appellant in Propria Persona;
P.O. Box 250
Draper, Utah

84020

Dated this 29 day of
June 1970.

Prepared by
W. Lodge