

1969

Ray Clinton Birmingham v. Delmar L. Swede Larson, Sheriff of Salt Lake County : Brief of Appellant

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Recommended Citation

Brief of Appellant, *Birmingham v. Larson*, No. 11806 (1969).
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IN THE SUPREME COURT
of the
STATE OF UTAH

RAY CLINTON BIRMINGHAM,
Plaintiff and Appellant,

vs.

DELMAR L. SWEDE LARSON,
Sheriff of Salt Lake County,
Defendant and Respondent.

Case No.

11806

BRIEF OF APPELLANT

APPEAL FROM THIRD DISTRICT COURT
OF SALT LAKE COUNTY
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FILED

OCT 6 - 1969

Clerk, Supreme Court, Utah

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vs.

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Sheriff of Salt Lake County,
Defendant and Respondent.

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STATEMENT OF KIND OF CASE

This is a Habeas Corpus proceeding brought by Appellant challenging the propriety of the warrant of arrest issued by the Honorable Calvin Rampton, Governor of the State of Utah, pursuant to a State of Louisiana request for extradition.

DISPOSITION IN LOWER COURT

The District Court of Salt Lake County, the Honorable Leonard Elton, Judge, presiding, ruled that the request for extradition from the State of Louisiana was sufficient in form and Appellant should be taken into custody by the Salt Lake County Sheriff for delivery to the demanding state.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower court finding that the Louisiana request for extradition was in proper form.

STATEMENT OF FACTS

Appellant was arrested in Salt Lake County and charged with being a fugitive from justice from the State of Louisiana. While on bail, the request for extradition was received by the Governor's office of the State of Utah (Exhibit P-1). Pursuant thereto, the Honorable Calvin Rampton issued a Governor's warrant of arrest (Exhibit P-2). The same having been served upon Appellant, he was taken into custody. A petition for Writ of Habeas Corpus was filed in accordance with 77-56-10 UCA, 1953, which is the instant case. The matter was set down for hearing before the Honorable Leonard Elton, who, after taking the matter under advisement, rendered a memorandum decision that the Governor's request for extradition was in adequate form. At the

hearing to challenge the extradition request, no evidence was offered by either side other than the receipt of Exhibits P-1 and P-2, previously described.

STATEMENT OF POINT ON APPEAL

THE LOUISIANA REQUEST FOR EXTRADITION IS NOT SUFFICIENT LEGAL FORM TO WARRANT THE ISSUANCE BY THE GOVERNOR OF THE STATE OF UTAH OF HIS GOVERNOR'S WARRANT.

ARGUMENT

THE LOUISIANA REQUEST FOR EXTRADITION IS NOT SUFFICIENT LEGAL FORM TO WARRANT THE ISSUANCE BY THE GOVERNOR OF THE STATE OF UTAH OF HIS GOVERNOR'S WARRANT.

Page 3 of Exhibit P-1, entitled Application for Requisition, appears to be an affidavit of a person by the name of Sargent Pitcher, Jr., who claims by virtue of the printed form to be the District Attorney of the Nineteenth Judicial District, Parrish of East Baton Rouge, State of Louisiana, whose signature is notarized by one Walter L. Smith, Jr., who claims to be a notary public. No other authentication of these signatures exists.

Page 4 of Exhibit P-1 appears to be what in Utah is known as a Complaint with attached Warrant of Arrest. This assumption is indulged in since the laws of Louisiana pertaining to pleadings was not proved. See

Whitmore Oxygen Co. vs. Utah State Tax Commission,
114 Utah 1, 196 P.2d 976.

No attempt is made in that document to establish its authenticity as a copy of anything. The Court will notice that it contains the following words,

“A TRUE COPY this 27th day of February, 1969.

/s/ Ruth White
Deputy Clerk”

Appellant submits that the document is a true copy of *what*, and in *whose custody?* The succeeding page purports to exemplify by proper attestation an affidavit on file with the Nineteenth Judicial District Court which is the last page of Exhibit P-1 and appears to be under seal of court and signature of one of the judges of that district who takes turns with the clerk swearing to the identity of each other. No such deed was indulged in on behalf of Ruth White. Nobody, including the Governor, ever attested to the fact that an original of the apparent Complaint and Warrant of Arrest actually exists and that Ruth White is a custodian of same, and, therefore, the Governor of this State should issue a Governor's warrant causing Appellant to be taken into custody for return to Louisiana by Louisiana authorities with the proper credentials.

Rule 44(a) of the Utah Rules of Civil Procedure reads as follows:

“Authentication of copy. An additional record or entry therein, when admissable for any purpose, may be evidenced by an official publication thereof *or by a copy attested by the officer having the legal custody of the record, or by his deputy,* and in the absence of judicial knowledge or competent evidence, accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.” (Emphasis added)

The cursory statement of the Louisiana Governor on Page 2 of Exhibit P-1 reads as follows, “WHEREAS, it appears by the papers required by the Statutes of the United States which are hereunto annexed and which I certify to be authentic and duly authenticated in accordance with the Laws of this State. . . .”, could not, in the absence of further proof than was offered in the introduction and receipt of Exhibit P-1 comprised of six pages loosely stapled together, suffice to authenticate the existence of formal criminal charges and an outstanding warrant of arrest against Appellant.

The only Utah case substantially in point is that of *Bell vs. Corlass*, 57 Utah 604, 196 Pac.Rptr. 568. Under

the discussion in that case as to the sufficiency of authenticating documents of a sister state, Appellant submits that mere application of a seal of the State of Louisiana is not sufficient to authenticate the necessary requisition documents to justify the Governor of the State of Utah to issue a warrant of arrest.

SUMMARY

Appellant requests this Court reverse the memorandum decision of the District Court ordering Appellant to be taken into Respondent's custody for delivery to the duly authorized agents of the Governor of the State of Louisiana and grant Appellant's Petition for Writ of Habeas Corpus.

Respectfully submitted,

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