

1971

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

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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RAY CLINTON BIRMINGHAM,  
*Plaintiff and Appellant,*

vs.

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

Case No.  
11806

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## BRIEF OF RESPONDENT

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Appeal from Third District Court of Salt Lake County  
Honorable Leonard W. Elton Presiding

**FILED**

JUL 30 1971

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Clerk, Supreme Court, Utah

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## BRIEF OF RESPONDENT

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### STATEMENT OF THE NATURE OF THE CASE

This is an appeal in a habeas corpus proceeding brought by the appellant herein challenging the warrant of arrest issued by the Honorable Calvin Rampton, Governor of the State of Utah, pursuant to a request for extradition received from the governor of the State of Louisiana.

## DISPOSITION IN THE LOWER COURT

The Honorable Leonard W. Elton, Judge of the Third Judicial District Court, in and for Salt Lake County, State of Utah, heard the matter before the court and ruled that the request for extradition from the governor of the State of Louisiana, and the governor's warrant as issued pursuant thereto by the governor of the State of Utah, was sufficient and adequate to direct the sheriff of Salt Lake County, respondent herein, to take the appellant into custody and deliver said appellant to the demanding State of Louisiana.

## RELIEF SOUGHT ON APPEAL

The respondent seeks reaffirmance of the lower court's findings that the State of Louisiana request for extradition was in proper form and that the appellant pursuant to the governor's warrant should be delivered to the Louisiana authorities to stand trial for the alleged crime set forth in the extradition papers.

## STATEMENT OF FACTS

The appellant was arrested by the respondent, (one of his officers) in Salt Lake County, State of Utah, and charged with being a fugitive from justice from the State of Louisiana. The appellant, after being charged with being a fugitive, posted bail and was released pending disposition of the fugitive from justice charge. Said

appellant is still on bail to the present time. While on bail, the governor's office of the State of Utah received from the governor's office of the State of Louisiana the request for extradition herein. Pursuant to said request from the State of Louisiana, the Honorable Calvin Rampton, governor of the State of Utah, issued a governor's warrant for the arrest of the appellant. Said governor's warrant of arrest was received by the respondent, and said appellant was served with said warrant and taken into custody by respondent. A petition for a writ of habeas corpus was filed by the appellant in accordance with Section 77-56-10 Utah Code Annotated 1953 as amended and a hearing date was set for May 6, 1969, before the Honorable Leonard W. Elton, one of the judges of the Third Judicial District Court in and for Salt Lake County, State of Utah. Judge Elton, after having received evidence and argument at the hearing held on May 6, 1969 took said matter under advisement and thereafter issued and rendered a memorandum decision holding that the governor's request for extradition from the State of Louisiana was in adequate form and that the governor's warrant issued by the governor of the State of Utah was proper based upon said Louisiana State extradition request. At the hearing held on May 6, 1969, the evidence submitted consisted of the papers received from the State of Louisiana and the governor's warrant issued in the State of Utah.

## ARGUMENT

THE STATE OF LOUISIANA REQUEST FOR EXTRADITION OF THE RESPONDENT IS IN SUFFICIENT LEGAL FORM TO WARRANT THE ISSUANCE BY THE GOVERNOR OF THE STATE OF UTAH OF HIS GOVERNOR'S WARRANT.

The appellant in his argument has taken exception to the papers that have been received from the State of Louisiana in two particulars which respondent respectfully submits is of insufficient consequence to bar the issuance of the governor's warrant of the State of Utah and/or to serve as a bar for the issuance and request for extradition as submitted by the governor of the State of Louisiana. Said particulars are first, that page 3, or P-1, which is an "application for requisition" form used in the State of Louisiana, appears merely to be that of a person named Sargent Pitcher, Jr. with the claim he is the district attorney of the Nineteenth Judicial District. Said signature of the district attorney, Sargent Pitcher, Jr. was in fact, notarized by a notary public with his seal affixed.

We would submit that this particular application appears to be a form used in the State of Louisiana as between the different judicial districts and the governor's office for the purpose of making an application for extradition to the governor's office. We would submit that this particular form in accordance with the laws of the State of Utah would not be necessary to even be includ-

ed, and that the fact that an application is included would not be that material. Further, however, by the form being included, we would submit that this particular authentication of these signatures is properly finalized by the executive department order of the governor of the State of Louisiana in the request also made a part of plaintiff's exhibit. The executive department request of the governor of the State of Louisiana to the governor of the State of Utah is complete as to form and content in that the specific individual is named. The individual is specifically cited and charged with a crime that sets forth the date and the amount and the specific notation that the person so charged was personally and physically present within the State of Louisiana at the time of said crime. Said document contains the signature of the governor of the State of Louisiana together with the signature of the secretary of state and the seal of said state appears affixed to said documentation.

Further papers contained in said request consisted of an affidavit signed by the complaining witness before a judge of the Nineteenth Judicial District Court. Said judge's signature was subscribed and affixed on the same affidavit as the complaining witness, and said judge and said clerk of the Nineteenth Judicial District Court purport to exemplify by proper attestation and affidavit, the respective positions of the clerk and judge. Said clerk further sets forth in his affidavit that said affidavit is a true and correct copy of same. This same judge's signature is further appearing on a document which appellant has indicated in Utah would be known as a complaint



with a warrant of arrest attached. Appellant contends that error is committed in this particular document. Although the original signature of the judge is present, both in the complaint section and the warrant section, Appellant contends there is error as to authentication created by the words, "a true copy as of (and then the date and the signature of a deputy clerk of the court)," said deputy court clerk's signature or identity being non-exemplified or identity proven.

We would submit that this particular defect as alleged by appellant is not sufficient to make the issuance of the governor's warrant void as to form and that Rule 44a of the Utah Rules of Civil Procedure dealing with authentication of copy as cited by appellant is not controlling as to this particular act.

35 CJS (Extradition) Page 381 sets forth the general rule that proceedings as to extradition are executive in function and being summary rather than judicial in effect. Said extradition procedure is only exercised by the one government at the request of another government for the return of those accused of a crime for the purpose of standing trial. The constitutional and statutory provisions relating to interstate extradition should be *liberally* construed to effectuate their purposes; but since such provisions involve the substantial rights of citizens, their *essential elements* and requirements have been required to be strictly followed. Clearly the federal constitution guarantees no right of asylum to a person who has committed a crime in one state and has fled to

another. 35 CJS (Extradition) page 385. It has been generally held that it is the duty of the executive officer of the state where an individual has fled to comply with the request for extradition where compliance with said constitutional and statutory prerequisites appears to be shown. This duty, however, has been held to be ministerial and not directory and should therefore be faithfully discharged and always dependent upon the circumstances of each case. 35 CJS (Extradition) page 386.

The prerequisites for an extradition are set forth by statute in the State of Utah in Section 77-56-3 Utah Code Annotated 1953 as amended, appears to be as follows:

1. That a crime has been committed.
2. That said request must be in writing from the demanding state.
3. That the accused was present in the demanding state at the time the crime was alleged to have been committed.
4. That said accused has fled from the demanding state and that a copy of an indictment, information, affidavit, judgment of conviction, or sentence has been sent. The last sentence of said 77-56-3 we would submit is controlling in that after listing the aforementioned copies or documents which may be submitted it concludes with, "must be authenticated by the *executive authority* making the demands." (Emphasis added)

We would agree with appellant that a leading case in point is that of *Bell v. Corless*, 57 Utah 604, 196 P. 568. The facts and issues of the *Bell* case are similar to the case presently before the court, and in said case, the question of proper authentication was raised which the court held to be valid. The request in the case at bar as well as in the *Bell v Corless* case, was duly signed by the Governor and attested by the Secretary of State with the seal attached and the annexed papers are attached setting forth in sum and substance the requisite identity of the offense charged and the crime. Two specific individuals are identified by the Governor of the State of Louisiana to be the agents of said State in receiving the appellant. An application by said prosecuting attorney of the 19th Judicial district is attached and the grounds for said extradition are fully set forth and stated. The specific dates and times and amount in question and the signature of the complaining witness before a Judge whose identity is made by affidavit of the Court clerk is present within said documentation. A warrant signed by the Judge appeared, with said Judge being the same Judge whose identity is made by affidavit of the Court clerk by other documents contained in the extradition papers that were sent by Louisiana authorities. The allegation that said matter is a crime is also set forth and charged. The affidavit of the complaining witness is sworn to before the Judge of the 19th District Court in two separate documents which are attached. In the request from the executive department of the State of Louisiana signed by the Secretary of State and Governor preceeding all of the

attachments and documents of the Extradition Request is a statement as follows: "It appears by the papers required by the Statutes of the United States which are hereto annexed and which I certify to be *authentic* and *duly authenticated* in accordance with the laws of this State, that Ray Clinton Birmingham stands charged with the crime . . . ."

Clearly it appears from the foregoing that the requirements of *Bell v. Corless* are complied with in the papers which were submitted. As is pointed out in the *Bell* case, the Federal statute does *not* prescribe any form of authentication and the only question here is whether the provision of the statute have been *substantially* complied with." *Bell v. Corless*, 57 Utah 604, 608. Said case further sets forth the general provision of law which we would submit to be where valid in most States that "the statute precribes no form of certification, the form of certification to some extent, at least, is a matter that is *within the discretion of the Governors* of the several States, so long as the provisions of the Federal Statutes are *substantially complied with*." (Emphasis added)

Clearly the charge as set forth in the present case is positive and direct as to its terms and the essential facts as required by the general rule of law. The substantial compliance with the terms and provisions of extradition is that a complete disclosure of the crime and surrounding facts pertaining to said event is clearly set forth and that no vindictiveness or improper motive for the return of an individual from one State to another is indulged in.

The general rule is that papers accompanying

the demand or requisition must be properly authenticated . . . must be certified to be authentic by the Governor of the demanding State. The certificate need not state papers are genuine, but only that they are duly authenticated . . . in no particular form . . . but it must be clear that the facts and documents are what they purport to be. . . . The question of authenticity is one for the determination of the Governor of the demanding State and his certificate to the fact is alone required and is conclusive, or, at least makes the prima facie case that there has been a compliance with the requirements of the law. In the absence of a showing that the documents for extradition purposes, certified as authentic by the Governor of the demanding State, are spurious, the certification of the Governor is sufficient. 35 C.J.S. (Extradition), page 415.

In the case of *State v. Reiman*, 4 Pacific 2nd, 866, 165 Washington, 192, the Court dealt with the question of authentication as required by statute and set forth the proposition, "this contention is based on a misrepresentation of the meaning and purpose of the statute. They refer, when properly construed, to the authentication for *evidentiary* purposes of legislative and judicial records and proceedings and of records kept in offices not pertaining to Courts.

We would submit that Section 77-56-3 Utah Code Annotated 1953, as amended, has been complied with as to its requirements and that there is, in fact, by the signatories in the State of Louisiana, proper authentication

of the documents submitted for extradition purposes. The fact that the general rule of law as to extradition holds same to be a ministerial act, and that said documents are submitted, not for the purpose of evidence at time of trial, but merely for the purpose of protecting the individual rights of an accused, have been met herein in that the *necessary substantial elements* of the offense and documentation has been complied with by the State of Louisiana. By virtue of said Governors requisition from the State of Louisiana, the Governor of the State of Utah was well within his duty and function of office in issuing a Governor's Warrant for the arrest of the appellant.

## CONCLUSION

The respondant respectfully requests this Court to affirm the memorandum decision of the District Court, ordering the appellant to be taken into respondant's custody for delivery to the duly authorized agents of the Governor of the State of Louisiana, and requests that said appellant's petition for a Writ of Habeus Corpus should be denied.

Respectfully submitted,

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By Robert D. Crofts  
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