

1995

# Joseph M. Wisden v. Warren J. Granville : Reply Brief

Utah Court of Appeals

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Joseph M. Wisden.

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950486

IN THE UTAH COURT OF APPEALS

JOSEPH M. WISDEN,

*Plaintiff/Appellant,*

- vs -

WARREN J. GRANVILLE,

*Defendant/Appellee.*

Case No. 950486

**APPELLANT'S REPLY BRIEF**

Priority #15

This appeal is taken from the 2 May 1995 SUMMARY JUDGMENT dismissal pursuant to Defendant Granville's 31 October 1994, MOTION FOR SUMMARY JUDGMENT, the Honorable J. Philip Eves, presiding.

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**FILED**  
Utah Court of Appeals

**NOV 14 1995**

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## **TABLE OF AUTHORITIES**

1. PINUAD v. COUNTY of SUFFOLK, 52 F.3d 1139 (2d Cir 1995)  
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3. Utah Code Annotated, §77-30-1, et seq.  
..... p. 5
4. Utah Code Annotated, §77-30-16  
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## JURISDICTION

Jurisdiction is previously stated in the APPELLANT'S BRIEF.

## ISSUES PRESENTED ON APPEAL

Issues Presented on Appeal are previously stated in the APPELLANT'S BRIEF.

## VERBATIM RECITALS OF CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

### **77-30-16. Amount of bail.**

Unless the prisoner is not entitled to bail under Section 77-20-1, a judge or magistrate in this state may admit the person arrested to bail by bond with sufficient sureties and in an amount he considers proper, conditioned for his appearance before him at a time specified in the bond and for his surrender, to be arrested upon the warrant of the governor of this state.

## STATEMENT OF THE CASE

### **Nature of the Case**

Plaintiff previously stated the Nature of the Case in his APPELLANT'S BRIEF. Plaintiff strenuously objects to the characterization of the Nature of this case, stated by the Defendant, in it's BRIEF OF APPELLEE WARREN J. GRANVILLE.

Granville incorrectly states that Plaintiff's suit alleges " ..... that Defendant Warren J. Granville intentionally caused improper process to issue, resulting in Wisden's arrest, incarceration, **extradition from Utah to Arizona, and criminal conviction in Arizona.**" The phrase above in **boldface** type is absolutely false.

Plaintiff vociferously denies that his law suit against Granville has anything to do with his extradition or conviction in Arizona. Plaintiff's case is strictly focused on his rearrest in Utah while at liberty and free on bail, which arrest was subsequently struck down by a WRIT OF HABEAS CORPUS,

Defendant has continuously attempted to raise the additional facts of Plaintiff's extradition and conviction in Arizona, throughout the proceedings below, Said issues are irrelevant to these proceedings, and used by the Defendant to distract anyone who will listen, from the issues at hand.

### **Course of the Proceedings and Disposition Below**

The Course of the Proceedings and Disposition in the Court Below are previously stated in the APPELLANT'S BRIEF.

### **Statement of the Facts**

Plaintiff previously stated the Relevant Facts of this Case in his APPELLANT'S BRIEF. Generally, Defendant has recited the same facts. However, Plaintiff vociferously objects to the false statements made by the Defendant, regarding certain facts, which are meant to distort the issues at hand. Those facts which are in error, and entirely false includes:

**The State of Arizona, relying upon Wisden's statements that he would appear voluntarily, did not seek extradition. (Record, p. 334, Affidavit of Warren J. Granville.)** Found in the second (2nd) paragraph on page 4 of the BRIEF OF APPELLEE WARREN J. GRANVILLE

It is clear and apparent that this statement is, and always has been self serving. Including it in the AFFIDAVIT OF WARREN J. GRANVILLE, for the purpose of Defendant's Motion for Summary Judgment is also self serving. Plaintiff has strenuously denied such a fact and has independent proof of exactly the opposite.

Another fact stated by Granville which is in error, and entirely false includes:

**Instead, Wisden was allowed to post bail. (Id.)** Found in the second (2nd) paragraph on page 4 of the BRIEF OF APPELLEE WARREN J. GRANVILLE

The operative word in this statement is "Instead," which is entirely misleading and false. Plaintiff will expound on this point in his Argument.

Another fact stated by Granville which is in error, and entirely false includes:

**When Wisden failed to appear in Arizona as he had promised, ..... (Defendant Refers to the Record at page 305) Found in the third (3rd) paragraph on page 4 of the BRIEF OF APPELLEE WARREN J. GRANVILLE**

This statement is not only irrelevant, it is entirely false, in addition to not being found anywhere in the record as implied by the Defendant.

Another fact stated by Granville which is in error, misleading, and entirely false includes:

**At that time, the original arrest warrant was executed by the Maricopa County (Arizona) Sheriff's Office. (Defendant Refers to the Record at page 282 but conveniently ignores the Record at pages 4, ¶ #11, 14 [Exhibit #1 to Plaintiff's COMPLAINT], 391 & 392, beginning at line 23 of page 391 and ending at line 5 of page 392. ) Found in the second (2nd) paragraph on page 5 of the BRIEF OF APPELLEE WARREN J. GRANVILLE**

This statement is again, false and intended to mislead the Court. However, it is a contested issue of fact as to whether the law sustains such fact based on the Defendant's theory of the case. Plaintiff will elaborate in his Argument.

## **SUMMARY OF ARGUMENTS**

**POINT 1.** Plaintiff presented his Summary of Arguments in his APPELLANT'S BRIEF

**POINT 2.** Plaintiff presented his Summary of Arguments in his APPELLANT'S BRIEF

## **ARGUMENT**

### **POINT 1. REGARDING SUMMARY JUDGMENT**

Summary Judgment is to be granted where there are no disputed issues of material fact. In this case, there are a number of facts in dispute, however, Plaintiff contends that many facts the Defendant raises, regarding Granville's responsibilities as a prosecutor, are not material or relevant to this case. In addition, the facts revolving around the scheme of extradition are also irrelevant, except where Granville's incompetence is involved. However, Granville raises them and Plaintiff disputes them, thus summary judgment may not be appropriate, and the lower Court erred in dismissing this case in favor of the Defendant.

Examine the following statement of fact interposed by the Defendant:

**The State of Arizona, relying upon Wisden's statements that he would appear voluntarily, did not seek extradition. (Record, p. 334, Affidavit of Warren J. Granville.)** Found in the second (2nd) paragraph on page 4 of the BRIEF OF APPELLEE WARREN J. GRANVILLE

Plaintiff never, and he repeats — **NEVER**, led anyone to believe he would waive extradition to Arizona. Not Washington County. Not Maricopa County. No one! Arizona dropped the ball. Granville dropped the ball. Plaintiff waited for seven (7) months to hear from Arizona regarding his extradition, and the time ran out for Granville to act.

The premise that is faulty with the Defendant's statement is that he believes that the Plaintiff must have been incarcerated during the entire time it takes to effectuate extradition. This erroneous and fallacious notion stands the provisions of U.C.A. §77-30-16 on its head. Plaintiff was entitled to bail, and Plaintiff posted bail. Plaintiff thereafter waited for the issuance of governor's warrants and the extradition process to play its course.

Instead, Granville again deprived Plaintiff his liberty and his absolute right to bail, by activating an exhausted warrant, claiming it had not been executed in Arizona, and therefore it was still good and valid. Granville's actions constituted a bastard act on his part as they stand the entire statutory scheme of the Uniform Extradition Act, U.C.A. §77-30-1, *et seq.*, on its head.

The only conduct within the scope of Defendant's prosecutorial duties was to seek a governor's warrant for Plaintiff's extradition from Utah. Any other conduct was outside the scope of his duties as he acted to violate Plaintiff's Rights to liberty while Plaintiff was free on bail.

Returning to another statement of fact interposed by the Defendant:

**Instead, Wisden was allowed to post bail. (Id.)** Found in the second (2nd) paragraph on page 4 of the BRIEF OF APPELLEE WARREN J. GRANVILLE

The operative word in this statement is "Instead," which is entirely misleading and false. What does Defendant mean by using the word "instead?" Instead of what? What alternative does Defendant suggest would have been appropriate under the circumstances?

This statement appears to rely on the veracity of the prior statement regarding Defendant's allusion that Plaintiff made some promise to waive extradition. As the first statement is entirely untrue, so also is the use of the word "Instead," which is meant to mislead the trier of facts.

Returning to another statement of fact interposed by the Defendant:

**When Wisden failed to appear in Arizona as he had promised, ..... (Defendant Refers to the Record at page 305)** Found in the third (3rd) paragraph on page 4 of the BRIEF OF APPELLEE WARREN J. GRANVILLE

Wisden never promised to voluntarily appear in Arizona!

This is another attempt by the Defendant to mislead this Court, the lower Court, or any trier of fact in this case.

Returning to another statement of fact wrongfully interposed by the Defendant:

**At that time, the original arrest warrant was executed by the Maricopa County (Arizona) Sheriff's Office. (Defendant Refers to the Record at page 282 but conveniently ignores the Record at pages 4, ¶ #11, 14 [Exhibit #1 to Plaintiff's COMPLAINT], 391 & 392, beginning at line 23 of page 391 and ending at line 5 of page 392. ) Found in the second (2nd) paragraph on page 5 of the BRIEF OF APPELLEE WARREN J. GRANVILLE**

If this statement is considered material, then there are contested issues of material fact, which may not be a contested issue of fact but a contested issue of law for this Court to decide.

This issue was raised in the Court below and refuted by Judge Eves. The WARRANT is indicated in the record, and Plaintiff possess a certified copy of the original. The original warrant for Plaintiff's arrest was executed on 22/23 August 1990, not 26 August 1991, as Defendant wishes this Court to believe.

**POINT 2. PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE REGARDING "ABSOLUTE PROSECUTORIAL IMMUNITY."**

A warrant once executed, is exhausted; and Plaintiff's rearrest was a violation of his liberty, and his right to bail. In this particular case, Granville's participation was not prosecutorial in nature, but a police act, and absolute prosecutorial immunity does not stretch to blanket him from this liability.

In his BRIEF OF APPELLEE WARREN J. GRANVILLE, Defendant quotes the Pinaud case, 52 F.3d 1139 (2nd Cir. 1995) which is entirely off point. Plaintiff's case is not a malicious prosecution case.

Defendant goes on to argue that Plaintiff erroneously applies the case of Weathers v. Ebert, 505 F.2d 514 (4th Cir. 1974), claiming Granville was obtaining authorization for an arrest. Again the Defendant distorts the truth. Granville did not obtain authorization for Plaintiff's rearrest on 15 February 1991, seven (7) months after the original arrest warrant had been executed, Granville simply instructed an uninformed Sheriff's deputy to reenter warrant information regarding a warrant that had already been exhausted. This act was not the "obtaining [of] authorization" it was a police function that began the ultimate act of arrest by other unsuspecting law enforcement agents in Utah. Weathers specifically states that "If district attorney was involved in making unlawful arrest," it does not state if district attorney made the arrest. The operative word is "involve." In this case, Granville was "involved" in making Plaintiff's unlawful arrest. Granville lacks absolute prosecutorial immunity.

Defendant also made a false statement of fact in his footnote #1 at the bottom of page 9 in his BRIEF OF APPELLEE WARREN J. GRANVILLE. Plaintiff never agreed to waive extradition or appear voluntarily, and Wisden never instituted a "series of tactics designed to delay his return to Arizona." There was never a "promise" for Plaintiff to "fail to honor." The statements are bald faced lies. Nowhere in the record does Defendant elaborate as to the "Tactics" Plaintiff allegedly engaged in, much less in his BRIEF OF APPELLEE WARREN J. GRANVILLE.

It should also be noted that where Defendant now meekly admits he "merely requested" the entry of an exhausted arrest warrant "into the computers of the National Crime Information Center (see BRIEF OF APPELLEE WARREN J. GRANVILLE, page 9, ¶ 3) Defendant at one time denied he made such a request on the Maricopa County Sheriff's Department. (see **Record**, p. #115, ¶ #14)

## CONCLUSION

Plaintiff was once arrested, released to bail, and then rearrested on the same warrant information that was previously exhausted, while originating from a foreign state. Plaintiff's rights in Utah, were violated by a foreign citizen. Plaintiff is entitled to compensatory and punitive damages.

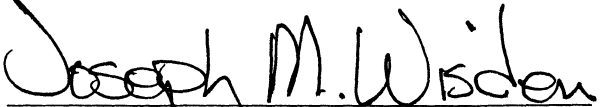
Plaintiff contends that Defendant's acts complained of are not protected by absolute prosecutorial immunity, and that the seminal decisions on the subject are decisively in his favor.

Plaintiff also contends that if the spurious facts Defendant interposes are to be construed as material to Defendant's case, then the facts are in dispute and this case is not ripe for summary judgment dismissal in favor of the Defendant.

WHEREFORE: Plaintiff prays for relief in the following:

1. Reverse the decision of the Court below.
2. Remand the case back to the District Court for further proceedings consistent with this Court's opinion, granting the Plaintiff summary judgment.
3. Award costs and fees to the Plaintiff, on appeal.
4. Award any other measures this Court deems just and appropriate.

DATED THIS 13th day of November, 1995.

  
Joseph M. Wisden

## **CERTIFICATE OF SERVICE**

I, Joseph M. Wisden, do hereby certify that I mailed or hand delivered true and correct copies of the foregoing APPELLANT'S REPLY BRIEF, by personal delivery, or by depositing same with the United States Postal Service, first class postage prepaid, this 13th day of November, 1995, to the following:

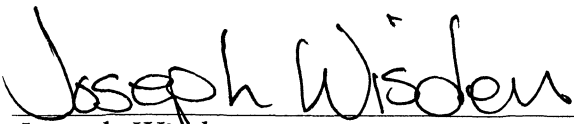
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