

1995

Salt Lake City v. Robert Blanco : Brief of Appellant

Utah Court of Appeals

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Jeanne Robison; Asst. Salt Lake City Prosecutor; Attorney for Appellee.

Robert Macri; Attorney for Appellant.

Recommended Citation

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BEFORE THE UTAH COURT OF APPEALS

SALT LAKE CITY,	:	
	:	
Plaintiff/Appellee,	:	
	
vs.	:	
	:	Case No. 950555-CA
ROBERT BLANCO,	:	Priority Classification 2 Not
	:	incarcerated. Subject to
Defendant/Appellant.	:	assignment to the Utah
	:	Supreme Court

BRIEF OF APPELLANT

THIS IS AN APPEAL FROM A CONVICTION AND SENTENCING DATED AUGUST 11, 1995 AS WELL AS DENIAL OF DEFENDANT'S MOTION FOR A NEW TRIAL FILED MAY 9, 1995 AND DISPOSED OF JUNE 6, 1995, HONORABLE COMMISSIONER FRANCES PALACIOS PRESIDING

ROBERT MACRI #2043
211 East 300 South #213
Salt Lake City, Utah 84111
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Attorney for Appellant

UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 95 0555-CA

FILED

FEB 07 1996

COURT OF APPEALS

Jeanne Robison
Asst. Salt Lake City Prosecutor
451 South 200 East, 1st floor
Salt Lake City, Utah 84111
Telephone: 535-7767

Attorney for Appellee

BEFORE THE UTAH COURT OF APPEALS

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Attorney for Appellee

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CONSTITUTIONAL PROVISIONS

See, Determinative Statutes attachment C hereto

STATUTES

Section 78-2(a)-3(2)(f)	1
Section 77-32-2	2

BEFORE THE UTAH COURT OF APPEALS

SALT LAKE CITY, :
 :
 :
 Plaintiff/Appellee, :
 :
 :
 vs. :
 : Case No. 950555-CA
 ROBERT BLANCO, : Priority Classification: 2 Not
 : incarcerated. Subject to
 Defendant/Appellant. : assignment to the Utah
 : Supreme Court

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Section 78-2(a)-3(2)(f).

STATEMENT OF ISSUES

1. This appeal raises the allegation that Robert Blanco was denied a fair trial due to his lack of knowledge of legal procedures and the fact he was not informed of them due to an arraignment confusion. As a result he faced trial and although he had numerous defenses, he was not prepared to raise them nor did he recognize his right against self incrimination when he took the witness stand, nor did he effectively argue lines of facts which would be advantageous to him. Since the question of whether or not Defendant received a fair trial is one of law, the standard for challenging the Conclusions of Law in criminal cases is that "a trial court's conclusions of law in criminal cases are reviewed for correctness". State v. Thurman, 446 P.2d 1256, 1271 (Ut. 1993) and other cases. In other words there is no deferral to a trial judge's determination of law State v. Pena, 869 P.2d 932-936 (Utah 1994).

2. Also, was Defendant's right to due process under the Fourteenth Amendment of the United States Constitution violated.

3. Also, was Defendant's right to the effective assistance

of counsel under the Sixth Amendment to the United States Constitution violated.

In Gideon v. Wainwright, 372 U.S. 335 (1963) (construing the Sixth Amendment right of a defendant to counsel) when Gideon asked for the assistance of an attorney he was denied one. The Supreme Court of the United States declares that the Fourteenth Amendment "made obligatory upon the states" appointment of counsel for an indigent criminal defendant.*

One of the roles of counsel would be to request a trial by jury in a factual questionable case and might have advised a client of his right not to take the stand.

STATEMENT OF THE CASE

Robert A. Blanco was found guilty of solicitation of sex for hire following a trial in front of Commissioner Frances Palacios. Defendant was sentenced on August 11, 1995. His Motion for New Trial was filed on May 9, 1995 and decided June 26, 1995. Defendant represented himself at trial.

The parties agreed on the transcript which consists of pages 42 through 49 of the record. The case is thus clearly short and to characterize it as similar to Gideon v. Wainwright is correct. To compare it factually to Gideon's situation would be correct. Mr. Blanco valiantly attempted to cross examine witnesses and then took the stand to give a definite denial which was used equivocally by the law trained prosecutor. Factual issues, such as whether or not Mr. Blanco and the decoy prostitute left together was left unanswered and equivocal. Clearly, in the hands of an experienced attorney or even a new public defender, a trial would have been held rather than a charade.

In his sworn statement on page 11 and 34 of the record (and Appendix A), Mr. Blanco states under oath that he was not aware that he could have an attorney represent (him) for free as a result of (his) financial condition or, that he was unaware that he could have a jury decide his case because he has had no dealing with the criminal justice system and could not defend himself. (Record at page 11 and 34, paragraphs 2, 4, 5 and 6. See also Appendix A).

This^{was} the argument made to Honorable Frances M. Palacios when defendant managed to secure an attorney and a Motion for New Trial was filed on May 8, 1995. (Record at page 14).

It is clear from the certified copy of the docket printout in this case of which this Court can take judicial notice, (See Appendix B) that Defendant failed to appear for his arraignment. He subsequently appeared on the miscellaneous arraignment calendar and this is the reason he was not notified of his rights to have an attorney appointed to represent him if he could not afford one as indicated in his affidavit. It was for this reason that the Motion for New Trial and Commissioner Palacios requested the transcript.

In a civil case to set aside a default judgment all one needs to do is prove a procedural irregularity coupled with a defense. Shouldn't a criminal proceeding have an even higher standard? Clearly an error was made in not making Mr. Blanco aware of his various rights, including his right to counsel and the rights that would be normally explained by counsel or in a regular arraignment setting, such as did not happen in this case.

Judge Palacios denied the Motion for New Trial on June 26, 1995 and Mr. Blanco was subsequently sentenced on August 14, 1995 for the charge of solicitation of sex for hire for which he was

sentenced to serve one day in jail. He filed his appeal and a Certificate of Probable Cause was granted.

SUMMARY OF ARGUMENT

It is praiseworthy that Defendant Blanco was willing to attempt to defend himself against a seasoned prosecutor not knowing he was entitled to an attorney skilled at cross examination, a jury, witnesses and exhibits, and the right to keep from giving testimony. All of these he was denied. When he pointed out^{to} the trial Court that he had been denied these items, the Court denied him a new trial and a new judge sentenced him to one day in jail.

A different result is likely with a skilled attorney and a jury. Mr. Blanco in jest suggested \$5.00 and drove to a direction different from the direction proscribed by the decoy prostitute (See Record at page 23, bottom five exchanges set out as follows:

R: OK. There's a corner right here and this lady was standing right here and this is east and this is west and this is south and that's north and this is State Street right here. This is State. And I was talking to her and my car was facing this way and there was a driveway that went into a building right here, and then there was another block right here. And this is where they pulled me over, right here. And after I talked to her, I drove away and I went up here and I could have turned around and went back and I decided I didn't even want to do that so I just kept going and I was just going to drive away and then, about right here is when they turned the lights on and I pulled over right there. So I could have turned around and went back before I even knew they were going . . .

J: Why would you go back if you claim that no deal was made?

R: That's what I'm saying. There wasn't, and I wasn't going to go back and I wasn't going to go back and I went up here and went like that and went like that and drove away.

J: Well, why did you do that if you had no intentions of returning? Why did you even pull into that driveway?

R: Because, this looks like a street from right here when you pull in.

Defendant has also maintained that this is a crime of speech and he was unable to be prepared to defend on the issue of speech; that is, it has been maintained that even if he was speaking in jest, he was guilty. A First Amendment argument should have been made although it is clear that Mr. Blanco is not capable of making it. (First Amendment text attached in Attachment C)

ARGUMENT

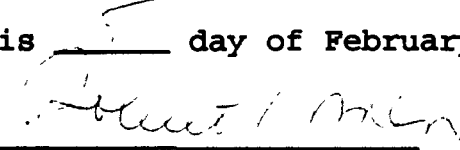
**MR. BLANCO WAS DENIED DUE PROCESS
OF LAW**

The steps of that denial are clearly traced above. He was not informed he could have the emoluments of a fair trial as guaranteed him as a Federal and State citizen. These rights denied were fundamental.

CONCLUSION

The Defendant's conviction should be reversed and the case should be remanded for a new trial.

RESPECTFULLY SUBMITTED this 5 day of February, 1996.



ROBERT MACRI
Attorney for Appellant

CERTIFICATE OF MAILING

I certify I hand delivered a true and correct copy of the foregoing to:

Jeanne Robison
Asst. Salt Lake City Prosecutor
451 South 200 East, 1st Floor
Salt Lake City, Utah 84111

this 5 day of February, 1996.

Jeanne Robison

ADDENDUM

Appendix A

AFFIDAVIT OF DEFENDANT IN SUPPORT OF
MOTION FOR NEW TRIAL

APPENDIX A

Comes now Robert A. Blanco under oath to declare as true the following:

1. I was convicted by Commissioner Frances Palacios of a crime of Solicitation of Prostitution on January 9, 1995.

2. I was not made aware that I could have an attorney represent me for free as a result of my financial condition.

3. I did not believe the matter could result in my conviction because my offer of \$5.00 to the decoy prostitute was made in jest and I had no reasonable expectation that such a ridiculous offer could be accepted.

4. I had no intention of making such a contract for sex and this was evidenced by the fact that I left the scene of the conversation before any follow-up on the conversation occurred.

5. I was not aware that I could have had a jury decide this case.

6. I have had no dealing with the criminal justice system and could not defend myself.

7. I do not believe I am guilty of the crime charged and believe that due process of law requires that I be given a real opportunity, instead of just a formal opportunity to defend myself.

The foregoing is true and complete to the best of my knowledge and belief.

Dated this 18 January, 1995.

Robert Blanco

Robert A. Blanco

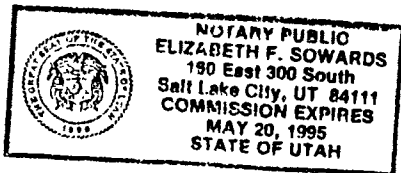
State of Utah)
County of Salt Lake) ss

Subscribed and sworn before me by Robert Blanco this 18 January, 1995.

Elizabeth F. Sowards

Notary Public, State of Utah
Residing in Salt Lake County

MCE: *may 20th, 1995*



Appendix B

CERTIFIED COPY OF DOCKET TEXT PRINTOUT

THIRD CIRCUIT COURT - SLC

FRIDAY

FEBRUARY 2, 1996

9:42 AM

Defendant

Citation: C339403

SLP Case: 941016370 MC
Agency No.: 94-137658

BLANCO, ROBERT A

409 EAST 150 NORTH
BOUNTIFUL

UT 84010

STATE OF UTAH
County of Salt Lake
City of Bountiful
Judge: Frances M. Palacios
I, the undersigned, Judge of the Peace, State of Utah, Salt Lake County, do hereby certify that the annexed and filed copy of an original document is a true and correct copy of the original document as shown to me by the clerk of said court. This day of February 1996

City Misdemeanor
Judge: Frances M. Palacios
2nd
1996
Deputy Clerk

NO OTN # FOR THIS CASE

Charges

Violation Date: 09/22/94
1. SEX SOLICITATION
Sev: MB

11.16.020

Deputy

Bail

100.00

Proceedings

09/26/94	Case filed on 09/26/94.		LCK
	ARR scheduled for 10/ 4/94 at 10:00 A in room 1 with ARR		LCK
10/04/94	TPC/JLC DEFT FAILED TO APPEAR C/O BW \$505		JLC
10/07/94	Warrant ordered		DBL
10/11/94	Warrant printed		DFJ
	DEFT APPEARED REQUESTING HEARING - GRANTED		RBM
	ARR scheduled for 10/11/94 at 11:05 A in room 1 with ARR		RBM
	Mis Arraignment JUDGE: FRANCES M. PALACIOS		MEM
	TAPE: 2238 COUNT: 1871		MEM
	ATD: None Present PRO: GREY, JEFF		MEM
	Deft is present		MEM
	Information was read in court		MEM
	PTC scheduled for 11/09/94 at 0930 A in room ? with FMP		MEM
	Chrg: 11.16.020 Plea: Not Guilty		MEM
	Warrant order cancelled		MEM
10/12/94	Judge ID changed from ARR to FMP		SL
11/09/94	Hearing (PRE-TRIAL CONFERENCE): JUDGE: FRANCES M. PALACIOS		MEM
	TAPE: 2463 COUNT: 1147		MEM
	Deft Present		MEM
	ATD: None Present PRO: GODFREY, TODD		MEM
	TRL scheduled for 01/09/95 at 0200 P in room ? with FMP		MEM
	UNABLE TO REACH A SETTLEMENT		MEM
	C/O SET FOR BENCH TRIAL		MEM
01/09/95	Hearing (TRIAL): JUDGE: FRANCES M. PALACIOS		MEM
	TAPE: 131 COUNT: 2194		MEM
	Deft Present		MEM
	ATD: None Present PRO: GIL, SIM		MEM
	SNT scheduled for 02/10/95 at 0200 P in room ? with FMP		MEM
	CITY WITNESSES		MEM
	C-2218 WITNESSES SWORN		MEM
	C-2236 OFFICER DEBBIE PETRSON EXAMINED		MEM
	C-2456 ROBERT LINTON EXAMINED		MEM
	C-2600 CITY RESTS		MEM
	DEFENSE WITNESS		MEM
	C-2605 ROBERT A BLANCO (DEFT) SWORN AND EXAMINED		MEM

Defendant

Citation: C339403

SLP Case: 941016370 MC
Agency No.: 94-137658
City Misdemeanor

BLANCO, ROBERT A

01/09/95	C-2777 DEFENSE RESTS		MEM
	C-2792 THE COURT FINDS DEFT GUILTY AS CHARGED		MEM
	C/O REFER TO HEALTH DEPT FOR TESTING PRIOR TO SENT		MEM
	CITY RECOMENDING 12 MONTHS PROBATION		MEM
	Chrg: 11.16.020 Find: Guilty - Bench		MEM
01/24/95	ATD/ROBERT MACRI FILED MOTION FOR NEW TRIAL AND TO SUSPEND		MWS
	HEALTH TEST		MWS
	FILED PULLED AND GIVEN TO MAURIE		MWS
02/10/95	Hearing (SENTENCING):	JUDGE: FRANCES M. PALACIOS	MEM
	TAPE: 478 COUNT: 1595		MEM
	Deft Present		MEM
	ATD: MACRI, ROBERT	PRO: None Present	MEM
	MO scheduled for 03/02/95 at 0930 A in room ? with FMP		MEM
	ON DEFENSE MOTION C/O SET FOR MOTION HEARING		MEM
03/02/95	Hearing (MOTION HEARING):	JUDGE: FRANCES M. PALACIOS	MEM
	TAPE: 579 COUNT: 1757		MEM
	Deft Present		MEM
	ATD: MACRI, BOB	PRO: GRAY, JEFF	MEM
	C/O DEFT'S ATTORNEY TO OBTAIN TRANSCRIPT AND PROVIDE A COPY TO		MEM
	CITY.		MEM
03/03/95	ROBERT MACARI REQUESTED COPY OF TAPE #131		SLB
03/08/95	MR. MACRI TO CONTACT COURT WITHIN 30 DAYS TO SET EITHER MOTION		MEM
	OR SENTENCING DATE.		MEM
	Began tracking Stay / Clerk Stay	Review on 04/02/95	MEM
05/09/95	FILED MOTION FOR NEW TRIAL		KJH
05/10/95	LEFT MESSAGE ON RECORDER THAT A HEARING MUST BE SET FOR A MOTION		MEM
	TO BE CONSIDERED		MEM
05/11/95	COPIED TAPE #131 FOR SIM GIL C.P.		SLB
05/15/95	PALACIOS/MM C/O SET FOR SENT		MEM
	SNT scheduled for 5/31/95 at 2:00 P in room ? with FMP		MEM
	LEFT MESSAGE ON MR. MACRI MESSAGE MACHINE OF SENT DATE		MEM
05/31/95	Hearing (SENTENCING):	JUDGE: FRANCES M. PALACIOS	MEM
	TAPE: 1270 COUNT: 7		MEM
	Deft Present		MEM
	ATD: MACRI, ROBERT	PRO: None Present	MEM
	MO scheduled for 06/26/95 at 0200 P in room ? with FMP		MEM
	C/O SET FOR MOTION TO WITHDRAW HEALTH		MEM
06/26/95	Hearing (MOTION HEARING):	JUDGE: FRANCES M. PALACIOS	MEM
	TAPE: 1471 COUNT: 387		MEM
	Deft Present		MEM
	ATD: MACRI, ROBERT	PRO: WARD, VIRGINIA	MEM
	SNT scheduled for 07/27/95 at 0200 P in room ? with FMP		MEM
	C/O MOTION DENIED		MEM
	C/O REFER TO HEALTH DEPT FOR TESTING PRIOR TO SENT		MEM
07/20/95	FILE: HEALTH TESTING RESULTS HIV NEG		MEM
07/27/95	Hearing (SENTENCING):	JUDGE: FRANCES M. PALACIOS	KJH
	TAPE: 1702 COUNT: 3312		KJH
	Deft Present		KJH
	Deft advised of rights		KJH
	ATD: MACRI, ROBERT	PRO: None Present	KJH
	MO scheduled for 08/11/95 at 0200 P in room ? with FMP		KJH

THIRD CIRCUIT COURT - SLC

FRIDAY

FEBRUARY 2, 1996

9:42 AM

Defendant

Citation: C339403

SLP Case: 941016370 MC

BLANCO, ROBERT A

Agency No.: 94-137658

City Misdemeanor

07/27/95	COURT ORDERS CASE SCHEDULED FOR MOTION HEARING			KJH
	ATD TO FILE MOTION AND NOTIFY CITY			KJH
08/08/95	FILED NOTICE OF SENTENCING HEARING			SL
08/11/95	Hearing:	JUDGE: S. MARK JOHNSON		GAR
	TAPE: 1752	COUNT: 3310		GAR
	Deft Present			GAR
	ATD: MACRI, ROBERT	PRO: ROBISON, JEANNE		GAR
	DEFT MO TO RECUSE WAS DENIED			GAR
	DEFT MO FOR DIVERSION AGREEMENT WAS DENIED			GAR
	DEFT MO TO STAY FOR APPEAL WAS DENIED PENDING CERT OF PROB CAUSE			GAR
	BASED ON COURTS RULING DEFT WAIVED HIS RIGHTS AND PLEAD GUILTY			GAR
	TO INFO AS CHARGED			GAR
	WAIVED TIME FOR SNT			GAR
	HEARING CONT ON TAPE 1753			GAR
08/14/95	Chrg: SEX SOLICITATION	Plea: Guilty	Find: Guilty Plea	GAR
	Jail: 1 DAYS	Suspended:		GAR
	DEFT TO REPORT TO JAIL 081495 AT 500PM			GAR
	COMMITMENT SENT TO JAIL			GAR
	FILED CERTIFICATE OF PROBABLE CAUSE, MOTION FOR CERTIFICATE			GAR
	OF PROBABLE CAUSE AND MEMORANDUM IN SUPPORT OF MOTION FOR			GAR
	PROBABLE CAUSE SIGNED BY JUDGE			GAR
	ORDER TO REPORT TO JAIL STAYED PENDING HEARING ON PROBABLE CAUSE			GAR
09/11/95	FILED NOTICE OF APPEAL			JDL
09/12/95	Judge ID changed from FMP to PRO			JDL
09/14/95	*RECEIVED NOTICE OF APPEAL*			CPN
	SENT CERTIFIED COPY OF NOTICE OF APPEAL TO THE COURT OF APPEALS			CPN
11/17/95	SENT ORIGINAL FILE TO THE COURT OF APPEALS			CPN
	Citation Amount:			

Additional Case Data

Sentence Summary

1. SEX SOLICITATION
Jail: 1 DA

Plea: Guilty
Suspended:

Find: Guilty Plea

Personal Description

Sex: M DOB: 05/18/67

Dr. Lic. No.:

Employer:

Height: 0 00 Weight: 000

State: UT

Expires:

Soc. Sec. No.: 529 43 2212

Eyes:

Hair:

Race:

Vehicle Year: 00 Make:

Model:

Style:

Color:

Scheduled Hearing Summary

ARRAIGNMENT	on 10/04/94	1000 A in room 1 with ARR
ARRAIGNMENT	on 10/11/94	1105 A in room 1 with ARR
PRE-TRIAL CONFERENCE	on 11/09/94	0930 A in room ? with FMP
TRIAL	on 01/09/95	0200 P in room ? with FMP
SENTENCING	on 02/10/95	0200 P in room ? with FMP
MOTION HEARING	on 03/02/95	0930 A in room ? with FMP

THIRD CIRCUIT COURT - SLC

D O C K E T

FRIDAY

Page 4
FEBRUARY 2, 1996
9:42 AM

Defendant

Citation: C339403

SLP Case: 941016370 MC
Agency No.: 94-137658
City Misdemeanor

BLANCO, ROBERT A

Scheduled Hearing Summary (Cont.)

SENTENCING	on 05/31/95	0200 P in room ? with FMP
MOTION HEARING	on 06/26/95	0200 P in room ? with FMP
SENTENCING	on 07/27/95	0200 P in room ? with FMP
MOTION HEARING	on 08/11/95	0200 P in room ? with FMP

End of the docket report for this case.

Appendix C

DETERMINATIVE STATUTES

DETERMINATIVE STATUTES

ARTICLE I
DECLARATION OF RIGHTS

Sec. 7. [Due process of law.]
No person shall be deprived of life, liberty or property, without due process of law. 1998

Sec. 12. [Rights of accused persons.]
In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

AMENDMENTS TO THE
CONSTITUTION OF THE UNITED
STATES

AMENDMENT VI

[Rights of accused.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of counsel for his defence.

AMENDMENT XIV

Section

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]
4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Code Annotated

7-32-2. Assignment of counsel on request of defendant or order of court.

(1) Counsel shall be assigned to represent each indigent person who is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

- (a) the defendant requests it; or
- (b) the court on its own motion or otherwise so orders and the defendant does not affirmatively waive or reject on the record the opportunity to be represented.

FIRST AMENDMENT (1791)

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition Government for a redress of grievances.