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4 This document is available in WordPerfect, pdf and text format by return email.
This document is posted on the web at:

5 www.lawyerdude.8k.com/5842.html and www.lawyerdude.8k.com/5842.pdf

6 Related documents:

Original motion: www.lawyerdude.8k.com/5818v2.html

7 The Circuit Court of the Second Judicial District

Judge Wade E. Waldrup

8 Carbon County Wyoming

Rawlins Carbon County Courthouse, 415 West Pine Street, Rawlins, WY 82301.

9 Voice: 307 324 6655. E-mail ccraw@courts.state.wy.us.

10 Prosecutor Joseph Cole,
Rookie Jason Green, doing
business as "THE STATE OF
11 WYOMING"

v

12 Russell Magarity erroneously
sued under the name of
13 RUSSELL LYNN MAGARITY
in all caps.

Appellate Case Number: CR 2002- 5680

Trial court case number: CT 0112-0308

Document #5842 version 1.01

Response to Joseph Cole's Notice of 18 June 2003

**Notice of Intention to Seek Damages Under Local Rules and 42
USC Section 1983**

Demand to Cease use of 14 inch paper.

Request for responses by e-mail.

Reference: My document 5818 version 2.

Proof of Service.

15 Notice of Intention to Seek Damages Under Local Rules and 42 USC Section 1983

16 I demand my full panoply of constitutional rights. I keep asking for that full panoply. You continue to
17 sandbag my rights. Now you threaten to punish me for demanding my rights. The prosecution's "Notice of
18 Sanctions" is an attempt to dissuade me from exercising my litigatory rights under the constitution. The
19 prosecution is merely raising the ante. Such brinkmanship is not productive. I would like to simply have this
20 bogus case dismissed but I am ready, willing and able to take this further and expose the fraud,
unconstitutional procedures, and predatory police state that is evolving in this case.

21 The times are changing.

22 We the people will no longer accept the revenue game played by the police state. The people have
23 no use for speed traps on the major transcontinental highways on the continent. At the barest spot on the most
24 famous highway in American your prison-mentality police-state town puts its patrol car in the median and sets
25 up shop. Not acceptable. I will not tolerate it. Your uncalibrated radar gun and rookie operator made a
26 mistake in my case. I will not let you ram it through. Stealthy encroachment on the rights of humans is what
27 this is about. Our forefathers did not establish a government of predators. They did not labor to build this
transcontinental highway so you can sit on the side like a spider. You rely on the reluctance of people to drive
300 miles or hire a lawyer. I flew over 250 missions over North and South Viet Nam. I have 5 air medals

1 fighting for our constitutional freedoms and the Bill of Rights. I am not intimidated by the prosecution's letter
2 of warning. The letter is merely an attempt to dissuade me from litigating for my rights and those of others
3 similarly situation. I warn him right back.

4 The prosecution does not speak for the people. You denied me the right to hear from the people. The
5 people speak in a jury. You denied me my right to a jury. When you act under the color of law and use your
6 office to trample my rights you may expect to either right your wrong or face a lawsuit under 42 USC section
7 1983 et seq.

8 Also, I am aware of the prosecutorial duty to pursue only just cases and to uphold the constitution. When
9 the prosecution attempts to violate my rights he violates his own ethics rules.

10 I stand by my contentions in my document 5818 version 2 as more fully set forth below after the
11 table of contents. - Russell Magarity

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1 **What is really happening here is this: you failed to respond to my motion in time.**

2 I gave you adequate time. Do you need more time?

3 **The Matter of paper size.**

4 The rest of the world has agreed to use 11 inch paper. I ask that you join us.

5 **The matter of email.**

6 I invite you to save time for my lawyer by posting your letters by email so that he can extract and
7 manipulate your data with ease. I am speculating that you do your pleadings on a word processor. My
8 pleadings are available in txt or pdf, your choice, by email.

9 **My Comment on your Notice regarding seeking to punish me for litigating**

10 I would like the issue settled in this action but I am ready, willing, and able to seek relief under 42 USC
11 section 1983 et seq. My counsel is experienced in that regard.

12 I will address the concerns of Joseph Cole one by one.

13 **Show me the proof that asking for dismissal is punishable. It is not.**

14 1. Just show me a Wyoming case where a person was punished for demanding a transcript, a hearing,
15 a jury, and other unalienable rights. If you don't have a Wyoming case then show me a case from
16 any other jurisdiction.

17 **Calling a rookie a rookie is not punishable**

18 2. Jason Green was a rookie at the time of the traffic stop. That's a fact. He had only 14 month's
19 experience. He could not even fill out one ticket right. He could not find the vin number on my trailer.
20 It was posted in plain view at eye level. He does not understand how to properly set up radar; he
21 apparently ignored the manual or did not read it. He became angered when he could not find the VIN
22 number and he took it out on me. He falsely accused me of stealing the horse trailer and refused to
23 examine the registration papers that I tendered. If you dispute the fact, then dispute it - and it
24 becomes an issue - a moot issue. There is no malignment. There is no basis for rule 11 fines. We
25 are simply "at issue".

26 **Definition: "At Issue"**

27 3. Definition: "At issue" is a term of litigatory science. It means that each side has stated its position, that
28 the positions are opposite, and that a jury or judge knows what issue it must resolve.

Mr. Cole does not speak for the state of Wyoming. Telling him so is not punishable.

4. Mr. Cole portends to do business as the "state of Wyoming". This legal fiction has gone far enough.
He is one man employed by Carbon county to raise revenue by preying off the travelers on the
ancient trail westward. Mr. Cole has nothing to do with the vast majority of Wyoming people. He
does not know us and he does not speak for us. If he gets a murder case he may then speak for the
deceased. That's about is. Beyond that is useless legal fiction.

Dismissal is always available. Asking for it is not punishable.

1 5. The relief I demand is indeed available to me. Dismissal is an available remedy before, during, and
2 after the case. That is the remedy that I demand. You say it is not available. We are at issue.

3 **You failed to state any authority to counter the venerable supreme court cases that I cited**

4 6. As for your contention that I am not entitled to a court reporter, I ask that you posit your argument in
5 response to my motion. My motion contains authority supporting my position. Please cite your
6 authority in a response - and then we will be at issue.

7 **What about rule 12? You ignored my rule 12 argument.**

8 7. You have completely ignored rule 12. I did a pre-trial conference by phone. A written Notice and
9 Order of Scheduling Conference, in substitution of Arraignment, was filed 11 March 2002 stating that
10 this was to take place on the 21st of March 2002 at 3:45 in afternoon with Judge, ADA, and myself.
11 A copy of the transcript is required by Rule 12 (h) of WRCP. It seems that some of my rights were
12 trampled there. Was there a pre-trial conference that I missed? If there was no pre-trial conference
13 then there should have been one. We are at issue. I say that there was a pre-trial conference or two
14 and that they were not reported or recorded. We are at issue.

15 **I neither waived nor forfeited any of my rights.**

16 8. Regarding your contention that I "forfeited" some of my rights, I contend that my rights are
17 unalienable! Even a waiver is ineffective against unalienable rights. I had no intention to forfeit
18 anything. It appears we are at issue on that issue.

19 "The state cannot diminish the rights of the people." - Hurtado v
20 California. Circa 1890 110 U.S. 516

21 "Where Rights secured by the Constitution are involved,
22 there can be no rule-making or legislation which would
23 abrogate them." - Miranda v Arizona, circa 1966.

24 **The legislature has no authority to eliminate ancient writs/ rights.**

25 9. The court and Wyoming legislature may not eliminate ancient writs! Therefore your contention that
26 I may not use ancient writs is mistaken. The rule is unconstitutional and void. We are an issue here.

27 "All sorts of restrictions and burdens are imposed under police power,
28 and when these are not in conflict with any constitutional prohibitions
or fundamental principles, they cannot be successfully assailed in a
judicial tribunal . . . but under the pretense of prescribing police
regulation, the State cannot be permitted to encroach upon any of the
just rights of the citizen which the Constitution intended to secure
against abridgement." - Slaughterhouse cases 16 Wall 36, 87

Transcript is fundamental. Griffin v Illinois 1956.

10. The court's refusal to provide a transcript is a violation of its duty as a court of record. This transcript

1 denial is one of the leading instruments of modern oppression throughout these United States. The
2 right to a transcript is fundamental - and it must be delivered before the time even begins to run on
3 any appeal or motion to vacate. Equitable Estoppel is the theory here. The transcript tells my lawyer
4 what happened - and if I even have grounds for a motion. In a traffic ticket we cannot always afford
5 to fly in a lawyer just to listen to an arraignment. It is more efficient to transcribe the event and make
6 it available to all. This keeps everybody honest. For example, as to whether I demanded a jury or a
7 court reporter, that would be on the record if we had one. Also, the record will show everybody if you
8 advised me that I have a right to a transcript, that time does not begin to run until I have the paper
9 transcript, and that I have a right to pre-plea motions to litigate the legal issues - whether this pre-plea
10 thing is called a demurrer, a plea in abatement, a rule 12 motion, or whatever. I just don't remember
11 being advised of that. I think that the burden lies with the prosecution and court to prove that there
12 was such an advisement.

Appeal is premature. Running of Appellate time is tolled until transcript is delivered.

- 11 11. As to your contention that all these matters should have been brought to the attention of the court of
12 appeal, my contention is that they will be brought there in due time. Time begins to run after I receive
13 a transcript so that I can show my lawyer what happened at trial court. Also, we need to give the trial
14 court opportunity to vacate its judgment - if, after reading the transcript, my lawyer thinks I should do
15 a motion to vacate - and I think that my lawyer will recommend a motion to vacate.

I need a transcript to discuss motions with my lawyer.

- 15 12. A motion to vacate requires a record. A transcript. We need one. You say that the motion hearings
16 were recorded; well then I want a transcript.

I don't have a foot pedal operated tape recorder - and those tapes are confusing.

- 17 13. I asked for a transcript. I received some tape recordings. I don't recall anything other than the trial
18 recording. I plan to make another inquiry to the court.

Bottom Line: You failed to respond on time and now you muddy the waters.

- 19 14. Do you deny that you failed to answer my motion on time? Have I misunderstood the rules? Aren't
20 you presumed to acquiesce to my motion by your failure to timely respond?

21 Russell Magarity _____ June 2003

Proof of Service

22 I, Russell Magarity, declare the following under penalty of perjury: On ___ June 2003 I mailed this document
23 5842 to the prosecutor and to the court in this case. I mailed it by first class, postage prepaid to the parties
24 on the service list below.

25 Signed _____ R Magarity. ___ June 2003.

26 Attorney Joseph Cole
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Rawlins WY 82301

Clerk of District Court
Box 67
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