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### Cates v. Sullivan

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FILED IN THE  
SUPREME COURT  
OF COLORADO

NOV 5 1984

NO. 84SA265

David W. Brazina

IN THE SUPREME COURT OF THE STATE OF COLORADO

MARK WILLIAM CATES, )  
 )  
 Petitioner-Appellant, )  
 )  
 vs. )  
 )  
 PATRICK SULLIVAN, Sheriff of )  
 Arapahoe County, State of )  
 Colorado, )  
 Respondent-Appellee. )

Honorable  
JOHN P. GATELY  
Judge

REPLY BRIEF

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INDEX

Page

ARGUMENT

I. THE MOTION TO STRIKE BRIEF AND DISMISS  
APPEAL SHOULD BE DENIED BECAUSE THE  
ISSUES RAISED AND THE SERIOUSNESS OF  
THE CHARGE REQUIRE APPELLATE REVIEW . . . . .1

II. THE DOCUMENTATION USED TO SUPPORT  
THE FINDING OF IDENTITY IS UNTRUSTWORTHY  
AND INSUFFICIENT. . . . .2

CONCLUSION . . . . .5

TABLE OF CASES CITED

Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973). . . . 3

Furman v. Georgia, 408 U.S. 238 (1972). . . . . 2

Richardson v. Cronin, 621 P.2d 949 (Colo. 1981) . . . . . 2

TABLE OF STATUTES CITED

Fla. Stat. Ann. 782.04 (West 1984) . . . . .2

SUPREME COURT, STATE OF COLORADO

Case No. 84SA265

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REPLY BRIEF

Appeal from the District Court of Arapahoe County  
Honorable JOHN P. GATELY, Judge

---

MARK WILLIAM CATES,

Petitioner-Appellant,

vs.

PATRICK SULLIVAN, Sheriff of Arapahoe  
County, State of Colorado

Respondent-Appellee.

---

ARGUMENT

I.

THE MOTION TO STRIKE BRIEF AND DISMISS  
APPEAL SHOULD BE DENIED BECAUSE THE  
ISSUES RAISED AND THE SERIOUSNESS OF THE  
CHARGE REQUIRE APPELLATE REVIEW

After reviewing the record, Petitioner's Opening Brief and filing a fifteen page Answer Brief, the Attorney General filed a Motion To Strike Brief and Dismiss Appeal. This Motion should be denied because the issues raised by Petitioner's appeal and the seriousness of the charge and penalty in Florida, should Mr. Cates be turned over to Florida, require this Court to review the findings and rulings of the trial court.

The right to appellate review of the findings and rulings of a trial court is so fundamental that it need not be argued here. The Opening Brief raised three issues and this brief will further address the issue of identity. These issues, and identity in particular, must be reviewed by this Court.

The second reason this Court should deny the Motion To Strike Brief And Dismiss appeal is the seriousness of the charge and penalty facing Mark Cates should this Court affirm the trial court's Order. Mr. Cates is in danger of being turned over to the State of Florida to face a charge of capital murder lodged there against one Thomas McDonald. If Mr. Cates is returned and convicted of the charge as it now stands in Florida, he is subject to execution or life imprisonment. Fla. Stat. Ann. 782.04. Death penalty cases are qualitatively different from all others in that they involve the government-sanctioned taking of human life, a sanction which, once imposed, cannot be reviewed, altered or corrected. Furman v. Georgia 408 U.S. 238 (1972). Trial Court rulings in a life or death case should not go unreviewed.

## II.

### THE DOCUMENTATION USED TO SUPPORT THE FINDING OF IDENTITY IS UNTRUSTWORTHY AND INSUFFICIENT

It is correct, as stated by the Attorney General, that identification may be established through documentation; Richardson v. Cronin, 621 P.2d 949 (Colo. 1981), and that a prima facie showing of identity can be made if the name of the person before the court

is the same as the name of the person demanded in the requisition documents; Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973). However, to call written words 'documentation' without regard to their source is to exalt form over substance.

The so-called documentation of the assertion that Petitioner Mark W. Cates is the Thomas McDonald demanded by the requisition documents has no substantive basis. Neither the documents from Florida, nor the Florida teletype, nor the documents from the Governor of Colorado make any reference whatsoever to Mark W. Cates. These documents refer only to Thomas McDonald. It is interesting to note in this regard that the Florida Indictment and Probable Cause Affidavit do list Thomas McDonald as having an alias, but that alias is "Bomber." The only place where the name Mark W. Cates appears is on the custody report of the Sheriff of Arapahoe County. It is this 'documentation' which must be examined.

The question is how the name of Mark W. Cates became linked to the name Thomas McDonald. The testimony adduced from Sergeant Stanton suggested three possible sources for this link. When asked for the source of the information on the custody report, he replied "The information was either by the Denver police or by teletype saying this individual is wanted, and we also verify it by that state (v.1, p.17, 18).

Having narrowed down the possible source of the link between Cates and McDonald to three possible sources, Sergeant Stanton eliminated

all of the possible sources. First, he admitted that there was no indication in the Florida teletype that Mark Cates was Thomas McDonald (v.1, p.18).

Secondly, contrary to the assertion in the Answer Brief that Sergeant Stanton personally verified a link between Cates and McDonald through a phone call (Answer Brief, p.7), Sergeant Stanton said only that he often verified extradition information through phone calls. Nowhere does he say he actually verified a link between Cates and McDonald by a phone call to Florida.

Thirdly, nowhere in any of the documentation or testimony is there any indication that Sergeant Stanton or anyone else from the Arapahoe County Sheriff's Department contacted, or was contacted by, the Denver Police Department, to establish a link between Mark Cates and Thomas McDonald.

Sergeant Stanton admitted as much in his testimony. When asked how the names of Cates and McDonald became linked, he responded "As far as the alias of McDonald, I really can't answer unless it was on the teletype" (v.1, p.18). But, as already noted, no such link appears anywhere in the teletype.

The other possible method of linking Mark W. Cates with Thomas McDonald, viz., date of birth, suffers from the exact same flaws suffered by the use of the names as a link. The date of birth information has the same unknown basis as the name information. There is no fingerprint comparison. The only link left between Cates and McDonald is the statement that the photograph of McDonald bears

a "striking likeness" to Mark Cates.

The attorney general suggests that the questions raised in this appeal are really no more than attack on the power of states to extradite. The Answer Brief states that to grant Mr. Cates' petition "would enable fugitives to avoid extradition simply by establishing, in an asylum state, an identity totally unknown to officials in the demanding state" (Answer Brief, p.9). In fact, the denial of Mark Cates' petition would allow the forcible removal of Colorado citizens to other states simply because, at some unknown point in time, some unknown person, without apparent justification, has written an alias next to the name of that citizen on a D.U.I. custody report.

#### CONCLUSION

In light of the fact that the prosecution failed to establish even a prima facie basis for their assertion that Mark Cates is really Thomas McDnald, Mr. Cates has no obligation to present any evidence at all. The petition should, therefore, be granted.

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the within  
REPLY BRIEF to Duane Woodard, Attorney General, at 1525 Sherman Street,  
Denver, Colorado 80203 this 5<sup>th</sup> day of November, 1984.

James H. Little