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### Butcher v. Caldwell

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SUPREME COURT, STATE OF COLORADO

Case No. 83SA315

FILED IN THE  
SUPREME COURT  
OF THE STATE OF COLORADO

SEP 6 1987

OPENING BRIEF OF PETITIONER-APPELLANT

LOUIS BUTCHER,

Petitioner-Appellant,

v.

ELVIN R. CALDWELL, Manager of  
Safety and Excise, and Ex-Officio  
Sheriff of the City and County of  
Denver, and WAYNE K. PATTERSON,  
Warden of the Jail of the City  
and County of Denver, and State  
of Colorado,

Respondent-Appellees.

David W. Brozina, Clerk

Appeal from the District Court, City and County of Denver  
Colorado

Honorable JAMES CL FLANIGAN, Judge

DAVID F. VELA  
Colorado State Public Defender

KEITH R. GROSS  
Deputy State Public Defender

ATTORNEYS FOR PETITIONER-APPELLANT  
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Denver, Colorado 80202  
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FILED IN THE  
COURT of APPEALS  
STATE OF COLORADO

SEP 6 1983

MAC V. DANFORD  
Clerk, Court of Appeals

IN THE COURT OF APPEALS OF THE STATE OF COLORADO  
No. 83SA315

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OPENING BRIEF OF DEFENDANT-APPELLANT

---

THE PEOPLE OF THE STATE OF COLORADO,  
Plaintiff-Appellee,  
vs.  
LOUIS BUTCHER,  
Defendant-Appellant.

FILED IN THE  
SUPREME COURT  
OF THE STATE OF COLORADO

SEP 6 1983

David W. Brozina

---

Appeal from the District Court of the City and County of  
Denver, Colorado

Honorable JAMES C. FLANIGAN, Judge

DAVID F. VELA  
Colorado State Public Defender

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INDEX

	Page
STATEMENT OF THE FACTS .....	1
ARGUMENT .....	2
I. THE EXTRADITION DEMAND IS BASED UPON AN INVALID WARRANT AND SHOULD NOT BE RECOGNIZED. ....	2
CONCLUSION .....	4
CERTIFICATE OF SERVICE .....	4

TABLE OF CASES CITED

	Page
Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963) .....	3
David v. People, 172 Colo. 486, 474 P.2d 206 (1970) .....	2

STATUTES CITED

Colorado Revised Statutes 1973 Subsection 16-19-104 (as amended) .....	2
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IN THE COURT OF APPEALS OF THE STATE OF COLORADO

No. 83SA315

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OPENING BRIEF OF DEFENDANT-APPELLANT

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THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

vs.

LOUIS BUTCHER,

Defendant-Appellant.

---

Appeal from the District Court of City and County of Denver  
Colorado, Honorable JAMES C. FLANIGAN, Judge

---

STATEMENT OF THE FACTS

Louis Butcher appeared in Denver District Courtroom 16, on December 21, 1983, counsel was appointed to represent the Defendant as it was alleged that Butcher committed the crime of Probation Violation - Assault. Petitioner was also arraigned and pled not guilty to the fugitive charge. Pending arrival of the Governor's Warrant, the District Attorney sought and was granted a continuance until February 3, 1983. Butcher was formally advised by the District Court when the Warrant was filed on February 3, 1983. He subsequently filed a Petition for Writ of Habeas Corpus on February 17, 1983, which, after hearing was denied by the District Court on March 18, 1983.

A Stay of Execution on Extradition was granted to March 25, 1983, pending Petitioner's filing of an Appeal.

ARGUMENT

THE EXTRADITION DEMAND IS BASED UPON AN INVALID WARRANT AND SHOULD NOT BE RECOGNIZED.

Under Colorado law the extradition statutes must be strictly construed in favor of the Petitioner as they are in derogation of the common law. Davis v. People, 172 Colo. 486, 474 P.2d 206 (1970). Colorado Revised Statutes, §16-19-104 provides:

"No demand for the extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing alleging ... that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied ... by a copy of a judgment of conviction ... together with a statement by the executive authority of the demanding state that the person claimed ... has broken the terms of his bail, probation, or parole."

The demand of the Governor of the State of Minnesota states the Petitioner "... violated the conditions of his supervised release..." (v1,p12) as shown by the annexed application for requisition and copies of Clerk's Minutes and Bench Warrant. The Application of Requisition (v1,p14) is signed by one James Lyle, who is a Career Corrections Agent for Arrowhead Regional Corrections, St. Louis County, Minnesota. The Application refers to the original bench warrant from St. Louis County, Minnesota.

This bench warrant entitled Application for Summons/  
Warrant for Violation of Conditions of Supervised Release  
(vl,p18-19) is requested by James Lyle, Supervised Release  
Agent pursuant to Rule 6.03, Subd. 1, of Minnesota Rules  
of Criminal Procedure. The text of Rule 6.03 was also  
provided with the receipt of the Governor's Warrant:

"The charge against the accused is based upon the following provisions of statute: Section 6.03, of Minnesota Rules of Criminal Procedure. 6.03 Violation of Conditions of Release Subd. 1 Warrant. Upon an application of the prosecuting attorney alleging that a defendant has violated the conditions of his release, the judge, judicial officer or court that released the defendant may issue a warrant directing that the defendant be arrested and taken forthwith before such judge, judicial officer or court. A summons directing the defendant to appear before such judge, judicial officer or court at a specified time shall be issued instead of a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to the summons or when the whereabouts of the defendant is unknown." (vl,p29)

Clearly, the warrant was invalid as it was not issued upon an application of the prosecuting attorney as required by Rule 6.03, Subd 1, Minnesota Rules of Criminal Procedure. The validity of these extradition proceedings requires consideration whether the warrant which lies at the foundation of extradition charges makes Petitioner a fugitive from the justice of the demanding state. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963). Additionally, the warrant is defective as it was issued by order dated April 7, 1980, while the Complaint was not filed until December 4, 1980. (vlp20)



CONCLUSION

For the above-stated reasons, the judgment discharging the Writ of Habeas Corpus should be reversed.

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DATED: 9-6-83

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Opening Brief of Defendant-Appellant was duly served upon L. Duane Woodard, Attorney General of the State of Colorado, and John D. Dailey, Assistant Attorney General, by depositing it in the United States Mails, postage prepaid, addressed to the Office of the Attorney General of the State of Colorado, 1525 Sherman Street, Denver, Colorado 80203 on Sept. 6, 1983.

Joan L. Deakins