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SUPREME COURT, STATE OF COLORADO

Case No. 85 SA 390

APPEAL FROM THE DISTRICT COURT, PUEBLO COUNTY, FILED AS CIVIL 85-1

COURT OF APPEALS NUMBER 85CA1346

SUPREME COURT  
OF THE STATE OF COLORADO

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REPLY BRIEF

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MAR 18 1986

JAMES D. BLEVINS,  
Petitioner-Appellant,

Mac V. Danford, Clerk

vs.

DAN TIHONOVICH, Sheriff of the County of Pueblo, State of  
Colorado,  
Respondent-Appellee.

-----  
LAW OFFICES OF J. E. LOSAVIO, JR.

By Corinne E. Martinez  
Corinne E. Martinez, #14757  
Attorney for Petitioner-Appellant  
616 West Abriendo Ave.  
Pueblo, CO 81004  
(303) 544-2929

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SUPREME COURT, STATE OF COLORADO  
Case No. 85 SA 390  
APPEAL FROM THE DISTRICT COURT, PUEBLO COUNTY, NO. 85CV391  
COURT OF APPEALS NUMBER 85CA1346

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REPLY BRIEF  
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JAMES D. BLEVINS,  
Petitioner-Appellant,

vs.

DAN TIHONOVICH, Sheriff of the County of Pueblo, State of  
Colorado,  
Respondent-Appellee.

-----  
INTRODUCTORY STATEMENT

Petitioner-Appellant incorporates all of his arguments from  
the Opening Brief filed on January 30, 1986, and briefly responds  
to the Answer Brief filed by the Attorney General's office.

SUMMARY OF THE ARGUMENT

1. The District Court was not asked to re-open or recon-  
sider the County Court's determination of probable cause.

2. The County Court failed to allow Petitioner-Appellant  
his procedural rights when it refused to allow him to call a  
witness at Preliminary Hearing.

## ARGUMENT

1. THE DISTRICT COURT WAS NOT ASKED TO RE-OPEN OR RECONSIDER THE COUNTY COURT'S DETERMINATION OF PROBABLE CAUSE.

Petitioner-Appellant agrees that the District Court was without jurisdiction to reopen or reconsider the County Court's determination of probable cause.

In White v. McFarlane, 85 SA 180 (Colo. Jan. 17, 1986), the Supreme Court found that a Habeas Corpus proceeding was improper to review County Court's finding of probable cause in a criminal prosecution. In the case presently before this court, Petitioner-Appellant is asking the court to review the deprivation of his procedural rights during the Preliminary Hearing.

2. THE COUNTY COURT FAILED TO ALLOW PETITIONER-APPELLANT HIS PROCEDURAL RIGHTS WHEN IT REFUSED TO ALLOW HIM TO CALL A WITNESS AT PRELIMINARY HEARING.

Petitioner-Appellant was deprived of his right to counsel, and to call and cross-examine witnesses as provided by the Sixth Amendment of the U. S. Constitution, and Article 2, Section 16, of the Colorado Constitution.

Additionally, the Colorado Rules of Criminal Procedure, Rule 5(4)(II), specifically provides that a Defendant "may cross examine witnesses against him and may introduce evidence in its own behalf." Petitioner-Appellant was denied this right during his Preliminary Hearing.

Petitioner-Appellant sought a Writ of Habeas Corpus because he is alleging that the process is defective in some substantial form as required by law. This is proper under C.R.S. 1973, §13-45-103(c).

In Zaharia v. County Court in and for Jefferson, 673 P.2d 378 (Colo. App. 1983), the Court found that the District Court had jurisdiction to determine whether the County Court abused its discretion by refusing to allow the recall of a witness at a Preliminary Hearing. The Court of Appeals was not granting jurisdiction to review probable cause, but rather to review whether the lower court failed to follow necessary procedures in conducting a Preliminary Hearing.

#### CONCLUSION

For the reasons stated in Petitioner-Appellant's Opening Brief, and for the reasons stated above, this case should be reversed and remanded with directions for the Petitioner-Appellant's Writ of Habeas Corpus to be granted and appropriate remedy be given.

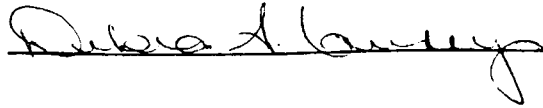
Respectfully submitted this 18<sup>th</sup> day of March, 1986.

LAW OFFICES OF J. E. LOSAVIO, JR.

By Corinne E. Martinez  
Corinne E. Martinez, #14757-3  
Attorney for Petitioner-Appellant  
616 West Abriendo Ave.  
Pueblo, CO 81004  
(303) 544-2929

CERTIFICATE OF MAILING

The undersigned certifies that on the 18 day of March, 1986, a true and correct copy of the foregoing Brief was served by mail upon John Milton Hutchins, Attorney General, 1525 Sherman St., Denver, CO 80203.

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