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Sivak v. State Appellant's Brief Dckt. 40583

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IN THE IDAHO SUPREME COURT

LACEY MARK SIVAK,) A.S. CUPC 2012-16755
PETITIONER,) SSC 40583-2012
APPELLANT,) (CAPITAL CASE)
US,)
STATE OF IDAHO,) APPEAL BRIEF
RESPONDENT.)

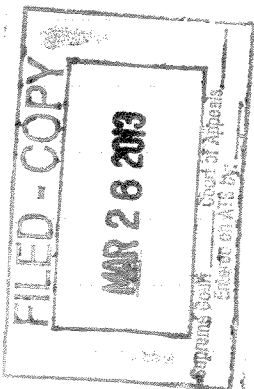
COMES NOW, LACEY SIVAK, APPELLANT IN THE
ABOVE-ENTITLED ACTION, FILING
THIS APPEAL BRIEF, PROVIDING:

I.

IN 1981, ABOUT ONE MONTH BEFORE TRIAL,
THE TRIAL COURT GRANTED THAT
LACEY'S COUNSEL OF RECORD WAS INCOMPETENT,
BUT, LEFT THEM ON AND STOPPED
LACEY FROM BEING ABLE TO DEAL WITH
MATTERS.

AND, DUE TO NO MEDICAL, LACEY WAS
SUFFERING INFECTIONS. - MEDICAL
HAD LACEY ON MIXED PAIN PILLS.

AFTER THE JURY WAS SELECTED,
THAT AFTER NOON LACEY WAS TAKEN



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TO COURT AND THE AMENDED INFORMATION PUT IN, ADDING A SECOND MURDER ON THE SAME PERSON. - THE NEXT MORNING THE TRIAL STARTED. - AT DELIBERATIONS, THE JURY THOUGHT THE ONLY FOUR CHOICES THEY HAD WERE WHAT WAS ON THE AMENDED INFORMATION. - THAT IS EVIDENCED BY THE JURY QUESTION ON THE PETITION. -

AND, THE COURT AND HARRIS TOLD THE JURY IN THE JURY INSTRUCTIONS (I DON'T HAVE), THAT THEY COULD CONDUCT LACEY OF BOTH MURDERS ON THE AMENDED INFORMATION. -

THE JURY ACQUITTED ON COUNT II MURDER. -

THE INCOMPETENT COUNSEL WOULD NOT FILE AN APPEAL, AND, LACEY'S MOM ASKE DAVID NEVIN, WHO GOT THE STAY ABOUT 18 HOURS BEFORE THE EXECUTION, IN 1982.

(IT TOOK SEVERAL YEARS TO GET ACCESS TO LAW BOOKS AT THE PRISON; NEVIN AND BENJAMIN TOLD

#3

LACEY HAD TO BE CONVICTED AND SENTENCED TO CHALLENGE THE CASE.-

IN THE EARLY 1990'S DENNIS TOLD LACEY THEY WOULD FINALLY RULE THE SENTENCING WAS PROPER. - SO, BEFORE NEW HOUSE 28 SEPT, 1992, LACEY ADDRESSED THE DOUBLE jeopardy. - LACEY ADDRESSED MORE 23 MARCH 1993. - NAVE WAS RULED ON.

BOTH OF THOSE WERE TYPED AND DENNIS BENJAMIN PUT THEM AS AN ATTACHMENT TO THE APPEAL BEFORE THE STATE SUPREME COURT. - THEY DID NOT RULE ON THEM. -

AND, VAUGHAN KILLEN WAS THE STATE'S INVESTIGATOR IN 1981. - HE WENT TO ADA COUNTY SHERIFF, AND, ON 13 NOV. 1989, ONE OF KILLEN'S DEPUTIES DISPOSED OF MY FILES, ILLEGALLY. -

THE STATE ALSO DISPOSED OF MY FILES 2002 AND 2003, AND, PARTS AT OTHER TIMES (LISTED IN DOCUMENTS IN THE ADA COUNTY AND SSC

#4

COURTS IN FEB 2012).

LACEY WAS NOT ALLOWED TO DEAL WITH ISSUES ON THIS CASE TILL MID 2012. (SEE ADA COUNTY COURT'S JUNE 2012 ORDER ON CRFE 1981-10183)

II

AS LACEY'S PETITION SAYS:

UNDER 19-4901

- (6)(1) THAT THE CONVICTION WAS IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION AND LAWS OF THIS STATE;
- (4) THAT THERE EXISTS EVIDENCE OF MATERIAL FACTS, NOT PREVIOUSLY PRESENTED AND HEARD, THAT REQUIRES VACATION OF THE CONVICTION... IN THE INTEREST OF JUSTICE;
- (5) THAT... IS OTHERWISE UNLAWFULLY HELD IN CUSTODY OR OTHER RESTRAINT;

#5

LACEY SAYS THATS IS UNDER 19-4902
(a) A PROCEEDING IS COMMENCED ... 1
ANY TIME WITHIN ONE (1) YEAR
FROM ... THE DETERMINATION OF
A PROCEEDING FOLLOWING AN
APPEAL

AND THAT IS THE NINTH CIRCUIT
MANDATE OF O'SAN, 2012 IN *SEU*
U. HARDISON 08-99006 (USDC 1:96-C
00056-BLW)

III

AND, LACEY DID TELL BOTH THE U,
DISTRICT COURT AND NINTH CIRCUIT
NO ONE DECIDED. - (SEE G. WILCOX
FOOD ISSUES IN THE OPINION IN
SEVAK U. HARDISON NINTH CIR 08-
99006 07 SEPT. 2011 - LACEY WAS
DENIED ABILITY TO BE HEARD
TILL ADA COUNCIL COURT'S 15 JUNE 2012
ORDER)

IV

WILCOX DENIED RELIEF, STATING
19-2719 (3)(4) - BUT, PT OF CLEAR

*6

THOSE PERTAIN TO AN ORIGINAL SENTENCING, NOT REPEATED "RE"-SENTENCINGS.- TO HAVE ALL ISSUES DEALT WITH, IN "NEW" CASES.-

U

AS PROVIDED IN THIS DOCUMENT, UNDER IC 19-4901 AND FC 19-4903, LACEY'S ISSUE IS THAT UNDER IDAHO CODE, AS CITED IN THE PETITION, (SEE IC 19-1719, 19-2311, 19-2312) COUNT TWO OF THE AMENDED INFORMATION IS ALL GRADES AND DEGREES OF MURDER, AND, THE SECOND MURDER, COUNT II, IS DOUBLE JEOPARDY.- THE PETITION IN THE CASE PROVIDES ALL THE IDAHO CODES AND FOOTNOTES THAT TELL IT.-

ALL ARGUMENTS THE STATE HAD, HAVE BEEN COUNTED IN LACEY'S DOCUMENTS.-

LACEY DOES NOT HAVE THE 1981 JURY INSTRUCTIONS.-

LACEY WAS FOUND NOT GUILTY ON COUNT II MURDER, AS ATTACHED TO PETITION.

VI

SO, THIS MATTER IS SIMPLY READING THE APPLICATION/PETITION, COUNT THREE OF THE AMENDED INFORMATION IS DOUBLE JEOPARDY.

AND, WILPER'S NOT WANTING TO DEAL WITH THE MATTER IS WRONG. 14-214 (3)(4) DEAL WITH THE INITIAL APPEAL ON A CAPITAL CASE, AFTER ITS EFFECTIVE DATE

*ADDED 1984

* (4) ... OR BY JULY 1, 2002, [WHICH WAS ADDRESSED IN THE EARLY 1990'S, AS PROVIDED IN PART I. OF THIS DOCUMENT, BUT NOT RULE 50N.]

VII

THE COURT JUST NEEDS TO RULE THAT COUNT THREE OF THE AMENDED INFORMATION, ON THE PETITION (APPLICATION, IS DOUBLE JEOPARDY, AND THAT IT BE STRICKEN.

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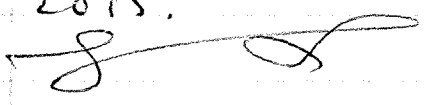
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LACEN STATES SERVICE OF THIS DOCUMENT WAS MADE BY US, POSTAL SERVICE CO.

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BOISE, IDAHO 83720

* ONE COPY ON H2123024 FUND WITHDRAWAL TO: LAWRENCE WARDEN
IDAHO ATTORNEY GENERAL
STATE HOUSE, P.O. BOX 83720
BOISE, IDAHO 83720

ON OR AFTER THIS 15TH DAY OF JANUARY 2013.



LACEY SIVAK 18114
S-BLOCK, IMPD
P.O. BOX 51
BOISE, IDAHO 83707

TBZ890

*9

SEE DC 19-1719

DC 19-2311

DC 19-2312

AMENDED INFORMATION

State of Idaho v. LACEY M. SIVAK

COUNT IV

That the said defendant, LACEY M. SIVAK, on or about the 6th day of April, 1981, in the County of Ada, State of Idaho, did carry and use a firearm, to-wit: a .22 caliber revolver, in the commission of the crimes alleged in Counts I, II or III above.

X
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T-12

ATTACHMENT B

T-128443

If we convict him of robbery and agree that a murder took place by one or both of the two men do we HAVE to convict him of 1st degree murder or court III, or can we convict him of second degree murder?

The instructions you have cover this question. ~~They may~~ continue deliberating under these instructions.

Judge Newhouse

B. H. Knight
8/28/81

10:30 pm
8/28/81

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EA7325

~~Amended~~

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. 11524 FILED
P.M.

SEP. 29 1981

THE STATE OF IDAHO)
Plaintiff,)
vs.)
LACEY M. SIVAK,)
Defendant.)

BY Alinda Longstreet

Criminal Case No: 10183A

VERDICT

MURDER IN THE FIRST DEGREE, Count II

We, the jury in the above entitled case, find the
defendant Not Guilty.

D. G. Hays
Foreman

9-29-81
Date

VERDICT
COUNT II

IN THE IDAHO SUPREME COURT

LACEY MARK SJAK,) AC. CUPC 2012-16755
PETITIONER,) ISSC 40583-2012
APPELLANT,) (CAPITAL CASE)
US,

STATE OF IDAHO,) FIRST SUPPLEMENT TO
RESPONDENT.) LACEY'S APPEAL BRIEF

COMES NOW, LACEY SJAK, PETITIONER,
APPELLANT IN THE ABOVE-ENTITLED
ACTION, FILING THIS FIRST SUPPLE-
MENT TO LACEY'S APPEAL BRIEF,
SUPPLEMENTING AS:

I.

THE ATTACHED IS THE JURY
INSTRUCTION LACEY TELLS OF IN
HER APPEAL BRIEF. - AS CAN BE
SEEN, BOURNE LIED, AS IT IS
TWO MURDERS.

II

LACEY STATES THE ORIGINAL AND
SIX COPIES WERE SENT ALONG WITH
THE APPEAL BRIEF, TO:

#2

IDAHO SUPREME COURT
STATEHOUSE, P. O. BOX 83720
BOISE, IDAHO 83720

ON THIS 12TH DAY OF FEBRUARY 2013,



LACEY SVAJAK 18114
J-BLOCK, JWP
P.O. BOX 51
BOISE, IDAHO 83707

(NOTE: LACEY SENT THE APPEAL BRIEF
IN 15 JAN, 2013.)

* ON 12 FEB, THE SSC
RETURNED, SAYING PREMATURE
* ON 12 FEB, THE JURY
INSTRUCTION WAS PROVIDED
* THUS, THIS SUPPLEMENT)

TB3114

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INSTRUCTION

The State has charged the defendant with the First Degree Murder of one person, namely, Dixie Bell Wilson. It has done that by alleging in Counts II and III distinct and separate theories as to how that murder was committed. In Count II the State alleges the First Degree Murder was committed by wilfully, unlawfully, deliberately, with premeditation and with malice aforethought murdering one Dixie Bell Wilson. In Count III the State alleges the Murder was committed in the perpetration of a robbery. You may find the Defendant guilty of either one or both of these counts. You may find the defendant not guilty of either one or both of these counts. If you find the defendant not guilty of both counts of First Degree Murder as charged in Counts II and III you must then decide if the defendant is guilty of the crime of Murder in the Second Degree, a lesser included crime under Count II.

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