

2000

# State of Utah v. Wayne Jay Soules : Reply to Brief in Opposition

Utah Supreme Court

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IN THE UTAH SUPREME COURT

STATE OF UTAH, )
Plaintiff and Appellee, )
v. ) Case No. 981311-CA
WAYNE JAY SOULES, )
Defendant and Appellant. )

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Appeal from the Judgment and Order of Commitment Eighth District Court Uintah County, State of Utah Honorable John R. Anderson, Judge

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FILED MAR 30 2000 CLERK SUPREME COURT

IN THE UTAH SUPREME COURT

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STATE OF UTAH,	)	
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Plaintiff and Appellee,	)	
	)	
v.	)	Case No. 981311-CA
	)	
WAYNE JAY SOULES,	)	
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Defendant and Appellant.	)	

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FOR WRIT OF CERTIORARI

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Appeal from the Judgment and Order of Commitment  
Eighth District Court  
Uintah County, State of Utah  
Honorable John R. Anderson, Judge

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**Argument**

Sery plea. This case is about a Sery plea. More specifically, it is about whether Soules' conditional guilty plea, preserving the right to contest the outcome of a suppression hearing, includes the right to contest the manner in which the trial court conducted that hearing.

Soules believes that, at the beginning of the suppression hearing, the trial court failed to conduct specific inquiry into numerous complaints that he and his defense counsel expressed about each other. Soules also believes that the court should have appointed substitute counsel for the hearing. But the Court of Appeals has decided that Soules waived this particular matter by pleading guilty. The State agrees.

Both the Court of Appeals and the State rely on Parsons. In that case, however, defendant did not enter a Sery plea. Rather, his guilty plea was unconditionally entered without limitations. The same is true of defendant in Munson, a case that the Court of Appeals does not cite but the State also relies on. Soules concedes that, had he not entered a Sery plea, he would be barred from appealing all matters relating to the suppression hearing. But Soules did enter a Sery plea. And he believes that his conditional guilty plea includes the right to appeal matters reasonably related to the outcome of the hearing--in particular the court's decision not to appoint substitute counsel but go forward with the hearing, with assigned counsel, as scheduled.

Soules agrees with the State's assessment that the Seventh Circuit, in Webb, announced no completely new rule or sweeping change in existing case law. That court simply interpreted the parameters of the waiver rule when it held, "In his plea agreement, defendant expressly preserved his right to appeal the outcome of the suppression hearing. This reservation necessarily included the right to litigate any allegedly prejudicial conduct by the district court at that hearing." No Utah court, prior to Soules' appeal,

has specifically addressed the narrow question presented. That is, there has been no interpretation of Sery to determine whether contesting the outcome of a suppression hearing includes the right to contest the manner in which the trial court conducted that hearing. Soules, with Webb in mind, is hopeful that Sery will be expressly interpreted to contain this right. Soules seeks nothing radically new or different. Interpreting Sery, as Soules wishes, is fully consistent with Parsons and Munson and does not negate their ongoing vitality, since defendants in those cases neglected to enter conditional guilty pleas.

Certiorari is appropriate to interpret Sery. It also is appropriate to find out if Lovell has teeth. The Supreme Court, in Lovell, gives every appearance of wanting to protect defendants' Sixth Amendment right to effective representation. In this case, Soules did not have able and vigorous representation given the following facts, none of which, significantly, the State disputes:

- Despite promises, counsel did not meet with Soules before the hearing to review certain material.
- Counsel told Soules that he had 240 active cases and therefore no time to teach him the law about his case.
- Counsel pressured Soules to cop a plea, which Soules did not want to do.
- Counsel claimed, even before evidence was adduced at the hearing, that he had researched Soules' case as well as applicable law and that Soules had no suppression issue to present.



- Counsel pointed out none of the discrepancies between evidence at the hearing and evidence from the preliminary hearing, and he appears not to have read the transcript of the preliminary hearing.
- Soules wondered aloud if he needed a new lawyer.

The State does claim that the trial court gave Soules and his counsel full opportunity to explain their differences. True, the court allowed them to vent their feelings for a few minutes each. But such venting, while perhaps helpful in a psychotherapy group, does not meet the specific inquiry requirement in Lovell, intended to protect defendants' constitutional right to effective representation. The court never ascertained, in a measured, interactive way, the nature and extent of the conflict between Soules and his counsel. All in all, there are many reasons to conclude that the court did not comply with Lovell, then--for compelling reasons--appoint substitute counsel for Soules. Consideration of this issue, however, has been successfully frustrated by the holding of the Court of Appeals that Soules' guilty plea bars appellate review.

### **Conclusion**

The Supreme Court should grant certiorari to settle an important question of state law--whether Sery permits Soules, in contesting the outcome of a suppression hearing, to contest the manner in which the trial court conducted that hearing. Assuming certiorari, the Supreme Court ultimately should determine whether the trial court failed to comply with Lovell and also erred in not appointing substitute counsel.

DATED this 29 day of March, 2000.



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MAILING CERTIFICATE

On this 29 day of March, 2000 I mailed, by United States Post Office overnight express mail, an original and ten copies of this reply brief to

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