

2000

Utah v. Wayne Jay Soules : Petition for Writ of Certiorari

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Scott Keith Wilson; Assistant Attorney General; Jan Graham; Attorney General; Attorneys for Appellee.

Wesley M. Baden; Attorney for Appellant.

Recommended Citation

Petition for Certiorari, *Utah v. Soules*, No. 20000099.00 (Utah Supreme Court, 2000).
https://digitalcommons.law.byu.edu/byu_sc2/404

This Petition for Certiorari is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

✓

UTAH SUPREME COURT

DOCUMENT

KFU

45.9

.S9

DOCKET NO: 2000 0099

BRIEF

IN THE UTAH SUPREME COURT

STATE OF UTAH,)	
)	
Plaintiff and Appellee,)	Supreme Court Case No. <i>20000099-se</i>
)	
v.)	Court of Appeals Case No. 981311-CA
)	
WAYNE JAY SOULES,)	
)	
Defendant and Appellant.)	

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

SCOTT KEITH WILSON (7347)
 Assistant Attorney General
 JAN GRAHAM (1231)
 Attorney General
 160 East 300 South, Sixth Floor
 P. O. Box 140854
 Salt Lake City, Utah 84114-0854

Attorneys for Appellee

WESLEY M. BADEN (4528)
 418 East Main, Suite 210
 P. O. Box 537
 Vernal, Utah 84078

Attorney for Appellant, pro bono

FILED
UTAH SUPREME COURT

JAN 31 2000

PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE UTAH SUPREME COURT

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

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

SCOTT KEITH WILSON (7347)
Assistant Attorney General
JAN GRAHAM (1231)
Attorney General
160 East 300 South, Sixth Floor
P. O. Box 140854
Salt Lake City, Utah 84114-0854

Attorneys for Appellee

WESLEY M. BADEN (4528)
418 East Main, Suite 210
P. O. Box 537
Vernal, Utah 84078

Attorney for Appellant, pro bono

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
QUESTIONS PRESENTED FOR REVIEW	1
CITATION TO OPINION OF THE COURT OF APPEALS	3
STATEMENT OF JURISDICTION OF THE SUPREME COURT	3
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES	3
STATEMENT OF THE CASE	4
SPECIAL AND IMPORTANT REASONS FOR ISSUANCE OF THE WRIT	8
CONCLUSION	8
APPENDICES	10

TABLE OF AUTHORITIES

	Page
CONSTITUTIONAL PROVISIONS	
Sixth Amendment, United States Constitution	3
STATUTES	
Utah Code Ann. § 58-37-8 (Supp. 1999)	1, 4
Utah Code Ann. § 78-2-2(3)(a) (1989)	3
CASES	
<u>State v. Lovell</u> , 984 P.2d 382 (Utah 1999)	2, 6, 8
<u>State v. Pursifell</u> , 746 P.2d 270 (Utah Ct. App. 1987)	2, 6, 8
<u>State v. Sery</u> , 758 P.2d 935 (Utah Ct. App. 1988)	2, 7
<u>State v. Vessey</u> , 967 P.2d 960 (Utah Ct. App. 1998)	2, 6, 8
<u>United States v. Webb</u> , 83 F.3d 913 (7th Cir. 1996)	7

IN THE UTAH SUPREME COURT

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

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

QUESTIONS PRESENTED FOR REVIEW

Wayne Jay Soules appeals from guilty pleas to one count of possession of a controlled substance, methamphetamine, with intent to distribute, and one count of possession of a controlled substance, amphetamine, with intent to distribute, both second degree felonies, in violation of Utah Code Ann. § 58-37-8 (Supp. 1999). Soules entered

conditional guilty pleas, expressly reserving the right to appeal the trial court's denial of his motion to suppress evidence. See State v. Sery, 758 P.2d 935, 938-40 (Utah Ct. App. 1988). The Utah Court of Appeals affirmed Soules' convictions. State v. Soules, 1999 Ut. App. 391; see Appendix A.

Soules presents this question for review: **When a criminal defendant enters a Sery plea, expressly reserving the right to appeal the trial court's denial of a motion to suppress evidence, does he waive the right to appeal the manner in which the trial court conducted the suppression hearing?** Soules' appeal was in part grounded on the claim that at the beginning of the suppression hearing he and his court-appointed defense counsel expressed dissatisfaction with each other¹ but the trial court failed to conduct specific inquiry into the nature of the complaints and ascertain whether appointment of substitute counsel was required. See State v. Pursifell, 746 P.2d 270 (Utah Ct. App. 1987); State v. Vessey, 967 P.2d 960 (Utah Ct. App. 1998); State v. Lovell, 984 P.2d 382 (Utah 1999). However, the Court of Appeals refused to address this contention. It stated that the knowing and voluntary nature of Soules' plea

¹Soules complained that counsel had pressured him to enter a guilty plea, failed to meet with him and review certain material as promised, and told him point-blank that "he has 240 active cases, that he don't have time to teach me the law." Soules also said, "I would like to maybe get a new lawyer." Counsel said, "Mr. Soules and I have [a] pretty hefty conflict because we don't agree about anything," and he stated on the record, before any evidence was adduced at the suppression hearing, that there was no legal issue of probable cause with respect to search and seizure issues. Tr. Suppression Hearing 7-10; see Appendix B.

necessarily precluded consideration of such matters on appeal.

Soules therefore presents a subsidiary question for review: **Did the trial court in fact commit reversible error when it learned at the beginning of the suppression hearing that Soules and defense counsel openly disagreed with each other but it did not conduct even perfunctory questioning and denied appointment of substitute counsel?**

CITATION TO OPINION OF THE COURT OF APPEALS

A panel of the Utah Court of Appeals unanimously affirmed Soules' convictions in a memorandum decision, not for official publication, on December 30, 1999. State v. Soules, 1999 Utah Ct. App. 391.

STATEMENT OF JURISDICTION OF THE SUPREME COURT

The Utah Court of Appeals entered its decision in this case on December 30, 1999. No petition for rehearing was filed. The Utah Supreme Court has appellate jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(a).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES

Sixth Amendment, United States Constitution.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor;

and to have the assistance of counsel for his defense.”

STATEMENT OF THE CASE

A. NATURE OF THE CASE

Soules appeals his convictions on one count of possession of a controlled substance, methamphetamine, with intent to distribute, and one count of possession of a controlled substance, amphetamine, with intent to distribute, both second degree felonies, in violation of Utah Code Ann. § 58-37-8 (Supp. 1999).

B. COURSE OF PROCEEDINGS AND DISPOSITIONS IN OTHER COURTS

On October 6, 1997 the State charged Soules with five counts: (I) possession of a controlled substance, methamphetamine, with intent to distribute, enhanced to a first degree felony; (II) possession of a controlled substance, marijuana, with intent to distribute, enhanced to a first degree felony; (III) illegal possession or use of a controlled substance, methamphetamine, enhanced to a first degree felony; (IV) tampering with evidence, a second degree felony; and (V) possession of drug paraphernalia, enhanced to a class A misdemeanor. In an amended information, dated October 22, 1997, the State charged Soules with an additional count: (VI) aggravated assault, a third degree felony. In a second amended information, dated December 8, 1997, the State still charged Soules with six counts, but count (III) was amended to possession of a controlled substance, amphetamine, with intent to distribute, enhanced to a first degree felony, and count (VI) was amended to simple assault, a class B misdemeanor.

On January 14, 1998 preliminary hearing was held. The trial court, for unexplained reasons, referred to counts (I) through (V) but not (VI). Tr. Preliminary Hearing 5-6. Soules was bound over on and denied all five counts.

On April 30, 1998, on Soules' motion, a suppression hearing was held. At the close of the hearing, the trial court requested briefs from both the prosecutor and defense counsel and indicated that it would make its ruling in a timely manner. Tr. Suppression Hearing 108. Subsequently, however, a plea bargain was struck in the case. On May 13, 1998, at a change of plea hearing, Soules admitted to counts (I) and (III), both reduced to second degree felonies, conditioned on reserving the right to appeal the suppression motion, which the trial court, at the same time, denied without benefit of briefs. Tr. Plea Hearing 3-8, 12.

Soules waived sentencing at a later date. Accordingly, on May 13, 1998, the trial court sentenced Soules to one to fifteen years imprisonment on count (I) and one to fifteen years imprisonment on count (III), the prison terms to be served concurrently. The trial court signed the judgment and order of commitment on May 26, 1998, and it was entered on May 27, 1998. See Appendix C. Soules was transported to the Utah State Prison, where he remains at this time.

Soules immediately appealed his convictions to the Utah Court of Appeals. He made two assignments of error: first, that the trial court committed reversible error when at the beginning of the suppression hearing it failed to conduct specific inquiry into the

dispute with assigned counsel and refused to appoint substitute counsel, and second, that the trial court committed reversible error when after the suppression hearing it failed to make findings of fact and conclusions of law sufficiently detailed to permit appellate review. The Utah Court of Appeals rejected both arguments in its December 30, 1999 memorandum decision. The court specifically rejected Soules' first assignment of error on grounds that review of any kind was precluded by the Sery plea made in trial court. This petition for writ of certiorari followed.

C. STATEMENT OF FACTS RELEVANT TO THE QUESTIONS PRESENTED

The trial court listened to the complaints that Soules and defense counsel leveled against each other, in quick succession, at the beginning of the suppression hearing. Tr. Suppression Hearing 7-9; see Appendix B. However, the court did not ask Soules or counsel any questions about the nature and extent of their complaints, as Pursifell, supra, at 273, Vessey, supra, at 962, and Lovell, supra, at 388 all require. Id. In fact the court summarily denied appointment of substitute counsel with these brief comments: "Okay. At this point in time, there are, sometimes, conflicts between the court—or counsel and the client. In this case, though, if [defense counsel] has a duty to proceed to represent your interests, but the fact that you are not happy with how he's proceeding, isn't grounds to get a new attorney involved at this point." Id. at 9, l. 23 to 10, l. 4; Appendix B.

At the appellate level, Soules, in his original brief, argued that the trial court was

obliged to conduct specific inquiry into his dispute with assigned counsel and, more than that, appoint him substitute counsel. See generally Br. Appellant 11-17. The State, in its brief, responded that when Soules entered his conditional guilty pleas he waived the issue of appointment of substitute counsel. Br. Appellee 10-13. In reply, Soules explored the issue of whether, when a defendant enters a Sery plea reserving the right to appeal the outcome of a suppression hearing, he waives the right to appeal issues concerning the manner in which the court conducted the hearing. See generally Reply Br. Appellant 10-13. The issue is one of first impression in Utah. Also, there is no United State Supreme Court decision in point. However, the Seventh Circuit has considered the matter. See United States v. Webb, 83 F.3d 913 (7th Cir. 1996). Defendant Webb pleaded guilty to a weapons violation. He expressly reserved district court's denial of a motion to suppress evidence. On appeal, he claimed that district court's handling of the suppression hearing was prejudicial and interfered with his right to a fair trial. The government argued that Webb had waived the right to appeal any issue other than the outcome of the hearing. The court of appeals, affirming, nonetheless rejected the government's argument. It said, at 917, "We cannot agree with the government's submission that the defendant waived his right to appeal any issues regarding the manner in which the suppression hearing was conducted by the district court. In his plea agreement, the 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”

(emphasis added).

SPECIAL AND IMPORTANT REASONS FOR ISSUANCE OF THE WRIT

The Court of Appeals has decided an important question of state and federal law, namely a criminal defendant’s right, or lack thereof, to appeal not only the outcome of a suppression hearing but the manner in which a trial court conducted the hearing, following a conditional guilty plea. This question has not been, but should be, settled by the Supreme Court. Furthermore, the Court of Appeals, in refusing to consider the issue of Soules’ right to appointment of substitute counsel, has sanctioned such a departure from well-established case law in Pursifell and Vessey, and particularly Lovell (Utah 1999), that the Supreme Court should exercise its power of supervision in this case.

APPENDICES

Attached are:

Appendix A. Memorandum Decision, State v. Soules, 1999 Ut. App. 391.

Appendix B. Transcript, Suppression Hearing, pp. 7-10.

Appendix C. Judgment and Order of Commitment, State v. Soules, Trial Court Case No. 971800220 FS.

CONCLUSION

Soules prays that the Utah Supreme Court grant certiorari and order the State and appellate counsel to prepare and file briefs in support of the merits of this case.

DATED this 31 day of January, 2000.



WESLEY M. BADEN
Attorney for Defendant and Appellant,
pro bono

MAILING CERTIFICATE

On this 31 day of January, 2000 I mailed, by United States Post Office overnight express mail, an original and ten copies of this petition for writ of certiorari to

Appellate Clerks' Office
Utah Supreme Court
450 South State
P. O. Box 140210
Salt Lake City, Utah 84114-0210,

along with two copies to

Scott Keith Wilson (7347)
Assistant Attorney General
Criminal Appeals Division
Utah Attorney General's Office
160 East 300 South, Sixth Floor
P. O. Box 140854
Salt Lake City, Utah 84114-0854.



APPENDICES

Appendix A. Memorandum Decision, State v. Soules, 1999 Ut. App. 391.

Appendix B. Transcript, Suppression Hearing, pp. 7-10.

Appendix C. Judgment and Order of Commitment, State v. Soules, Trial Court
Case No. 971800220 FS.

Appendix A

FILED

DEC 30 1999

IN THE UTAH COURT OF APPEALS

COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 981311-CA	
v.)		
)	F I L E D	
Wayne Jay Soules,)	(December 30, 1999)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>1999 UT App 391</td></tr></table>	1999 UT App 391
1999 UT App 391			

Eighth District, Vernal Department
The Honorable John R. Anderson

Attorneys: Wesley M. Baden, Vernal, for Appellant
Jan Graham and Scott Keith Wilson, Salt Lake City,
for Appellee

Before Judges Bench, Davis, and Jackson.

JACKSON, Judge:

Soules appeals from guilty pleas to one count of possession of a controlled substance, methamphetamine, with intent to distribute, and one count of possession of a controlled substance, amphetamine, with intent to distribute. See Utah Code Ann. § 58-37-8 (Supp. 1999). Soules entered a conditional guilty plea, expressly reserving the right to appeal the trial court's denial of his motion to suppress evidence. See State v. Sery, 758 P.2d 935, 938-40 (Utah Ct. App. 1988). He now argues (1) the trial court erred when it denied him substitute appointed counsel and (2) the trial court failed to make adequate findings of fact when it denied his motion to suppress. We affirm.


By pleading guilty, Soules waived all nonjurisdictional defects, "including alleged pre-plea constitutional violations." State v. Parsons, 781 P.2d 1275, 1278 (Utah 1989); accord James v. Galetka, 965 P.2d 567, 570-71 (Utah Ct. App. 1998). "Examples of such nonjurisdictional issues that may be waived by a guilty plea 'involve[] . . . a number of important rights, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination.'" James, 965 P.2d at 571 (alterations in original) (quoting Salazar v. Warden, Utah State Prison, 852 P.2d 988, 991 (Utah 1993)). Soules does not challenge the knowing and voluntary nature of his guilty plea. Further, he does not argue that his challenge is based on a

jurisdictional defect.¹ Thus, we will not address his contention that the trial court should have appointed substitute counsel.


Soules next argues the trial court's findings of fact were insufficiently detailed to support its denial of Soules's motion to suppress. When findings of fact on a particular issue do not appear on the record, "we "assume that the trier of [the] facts found them in accord with its decision, and we affirm the decision if from the evidence it would be reasonable to find facts to support it.'" State v. Robertson, 932 P.2d 1219, 1224 (Utah 1997) (alteration in original) (quoting State v. Ramirez, 817 P.2d 774, 787 (Utah 1991) (citation omitted)).

In this case, Soules's parole officer had the authority to ask Soules questions. See Minnesota v. Murphy, 465 U.S. 420, 432, 104 S. Ct. 1136, 1144 (1984) (stating "the nature of probation is such that probationers should expect to be questioned on a wide range of topics relating to their past criminality").² The parole officer asked Soules whether he had been using drugs, and Soules admitted that he had. This admission gave the parole officer the reasonable suspicion necessary to perform a warrantless search. See State v. Davis, 965 P.2d 525, 529 (Utah Ct. App. 1998). We thus conclude the trial court correctly denied Soules's motion to suppress.

Accordingly, we affirm Soules's convictions.


Norman H. Jackson, Judge

I CONCUR:


Russell W. Bench, Judge

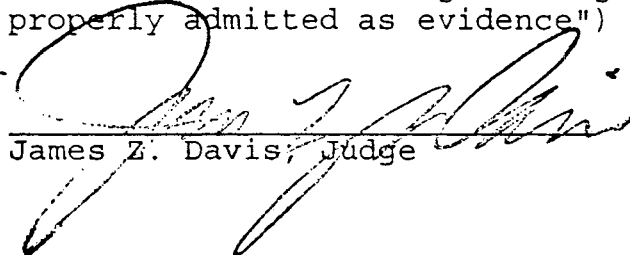
1. Instead, he merely asserts that if the alleged error were jurisdictional, it could not be waived. We agree. However, Soules has not cited any legal authority to indicate that this is the case.

2. When evaluating searches of probationers and parolees similar considerations typically apply to each group. See State v. Davis, 965 P.2d 525, 529 n.2 (Utah Ct. App. 1998) (citing 4 Wayne R. LaFave, Search and Seizure § 10.10(c), at 767-69 (3d ed. 1996)).

DAVIS, Judge (concurring):

The warrantless search conducted by the parole officer had little, if anything, to do with the charges to which defendant entered his Sery plea. See State v. Sery, 758 P.2d 935, 938-40 (Utah Ct. App. 1988). The drugs which were the subject matter of the charges resulting in the plea were discovered while defendant was booked into jail.

Based on defendant's involvement in the assault and his admission to his parole officer that he had been using drugs, the parole officer was justified in taking defendant into custody "on a 72 hour hold," and it is well settled that contraband discovered during the booking process is admissible. See State v. Maestas, 815 P.2d 1319, 1323 (Utah Ct. App. 1991) (holding, "piece of glass taken from defendant's pocket as part of an inventory search during booking was legally seized, and was properly admitted as evidence") (citation omitted).


James Z. Davis, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of December, 1999, a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to:

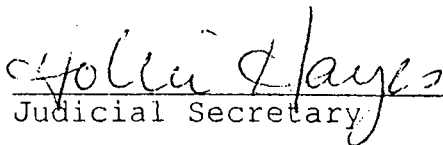
WESLEY M. BADEN
UINTAH COUNTY LEGAL DEFENDER
418 E MAIN STE 210
PO BOX 537
VERNAL UT 84078

and a true and correct copy of the attached MEMORANDUM DECISION was hand-delivered to a personal representative of the Attorney General's Office to be delivered to:

JAN GRAHAM
ATTORNEY GENERAL
SCOTT KEITH WILSON
ASSISTANT ATTORNEY GENERAL
160 E 300 S 6TH FL
PO BOX 140854
SALT LAKE CITY UT 84114-0854

and a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to the judge listed below:

HONORABLE JOHN R. ANDERSON
EIGHTH DISTRICT, VERNAL DEPT
147 E MAIN
PO BOX 1015
VERNAL UT 84078



Judicial Secretary

TRIAL COURT: EIGHTH DISTRICT, VERNAL DEPT, 971800330
APPEALS CASE NO.: 981311-CA

Appendix B

1 Your Honor. And I produced it on the understanding
2 that there would be an order from the court that the
3 document be sealed if it's offered into evidence. I
4 don't intend to offer it into evidence.

5 MR. LUNNEN: We can stipulate, I think, to
6 the time.

7 THE COURT: If you want to offer it we'll
8 seal it. Okay?

9 MR. LUNNEN: Now, I know you will. All the
10 witnesses are here. I have done some research on this
11 case. And I want to put a few things on the record.
12 And Mr. Soules can respond if he would like to. I
13 have told Mr. Soules, I have advised him that there is
14 no legal issue of probable cause. I have done the
15 research on it. I have looked at the facts. In my
16 mind, as his counselor, I have advised him there is no
17 issue of probable cause. We disagree to that. I
18 think we still disagree. He believes there is an
19 issue. The case law that I have looked at indicates
20 to me that there is not an issue. I am concerned that
21 Mr. Soules and I have pretty hefty conflict because we
22 don't agree about anything. He's upset with me. I am
23 frustrated with him because we just are completely at
24 odds. The reason I am bringing this up is I like
25 to -- and I realize all the witnesses are here -- I

1 would like to ask for a continuance that he either be
2 allowed to obtain another attorney or that I have a
3 chance to go over this some more with him. I have
4 talked to him several times about this issue. I think
5 it's against his best interest. There's been a plea
6 offer made in this case. I think it's in his interest
7 to accept the plea offer. He refuses. And I feel
8 ethically bound to at least put it on the record that
9 in my mind there is no issue of probable cause. And I
10 just want it on the record, Your Honor.

11 Wayne may want to say some things.

12 THE DEFENDANT: Yes. I would like to speak.
13 Mr. Lunnan has seen me three times. I am facing three
14 five to life's. I feel this is a pretty big, pretty
15 important part of my case. I have more stuff that I
16 want to show him and present my case to him. I have
17 told -- he told me he would be in here to see me every
18 day this week to prepare for this. I have not seen
19 him. I have not been able to talk to him on the
20 phone. The first time I talked to him was this
21 morning in passing. And I still got more stuff that I
22 want to show him and present to him. And I ain't even
23 had a chance to present it to him. He's made the
24 comment to me that he has 240 active cases, that he
25 don't have the time to teach me the law. I am not

1 asking him to teach me the law. I am just asking him
2 to teach me a little bit about my case. That way I
3 could go in this with my eyes open. I mean, three
4 five to life's. It's pretty big charges. And I would
5 like to know what I am getting myself into before I
6 take a plea bargain. And I would like to know some
7 case law, some case history, something to help me in
8 my mind believe that this is in my best interest.

9 I do feel there is some legitimate points in
10 my case. And I would like some -- I would like some
11 case law. I have asked him, and I have asked through
12 the jail, I have requested case law numerous amounts
13 of times, and they have told me that I had to go
14 through the County Attorney's Office and through my
15 lawyer. I can't -- I ain't been able to get it yet.
16 I am fighting for everything I got here. I mean,
17 three five to life's is pretty steep. So I still
18 think there is more that I need to present to
19 Mr. Lunnen. If he feels he can't do this or that
20 there is too big of a conflict between me and him, I
21 would like to maybe get a new lawyer. But that's all
22 I got to say.

23 THE COURT: Okay. At this point in time,
24 there are, sometimes, conflicts between the court --
25 or counsel and the client. In this case, though, if

1 Mr. Lunnen has a duty to proceed to represent your
2 interests, but the fact that you are not happy with
3 how he's proceeding, isn't grounds to get a new
4 attorney involved at this point.

5 This is a suppression motion. Mr. Lunnen has
6 made a record indicating that he doesn't think
7 probable cause is an issue. But I guess he's got a
8 duty to proceed. And we'll make a record if he wants
9 to supplement the probable cause hearing with a
10 record, and he can develop his motion. Fine. My
11 interest here is in protecting your rights and getting
12 this matter set for trial. Are you incarcerated
13 waiting trial in this matter?

14 MR. LUNNEN: Yes, he is, Your Honor.

15 THE COURT: Are you on parole hold or any
16 other reason?

17 THE DEFENDANT: Yes, I am on parole hold.

18 THE COURT: We are here today. Let's develop
19 the record with what evidence Mr. Soules thinks would
20 be appropriate. And I'll -- we'll hear the motion.
21 My interest, though, is to set the matter for trial if
22 the motion is not warranted. Or even if it is, that
23 won't, you know -- and you'll have enough time to
24 prepare your case. This isn't the trial here today.
25 In fact, I can't give you a trial date for a long

Appendix C

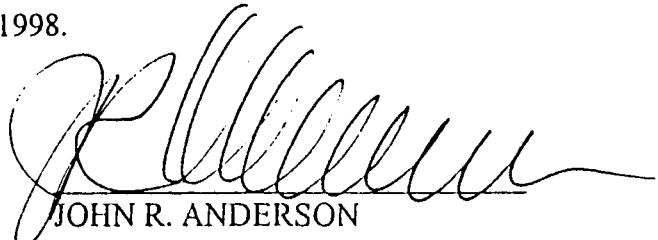
Court having inquired of Defendant as to whether he had any statement he desired to make; and no legal reason having been shown why judgment and sentencing should not be imposed;

IT IS ADJUDGED AND DECREED that the Defendant is guilty of the crime of (I) Possession of a Controlled Substance with the intent to Distribute, a Second Degree Felony; (II) Possession of a Controlled Substance with the intent to Distribute, a Second Degree Felony, and Defendant is hereby sentenced to (I) serve not less than one (1) year, nor more than fifteen (15) years in the Utah State Prison; (II) not less than one (1) years, nor more than fifteen (15) years in the Utah State Prison. Prison terms will served concurrently.

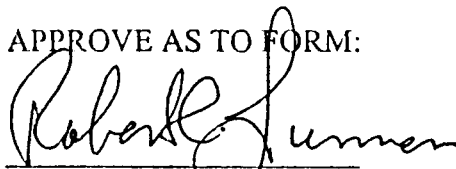
IT IS HEREBY ORDERED:

1. That the Defendant is forthwith remanded to the custody of the Uintah County Sheriff for transportation to the Utah State Prison and execution of the sentence given herein.

DATED this 26 day of May, 1998.


JOHN R. ANDERSON
District Court Judge

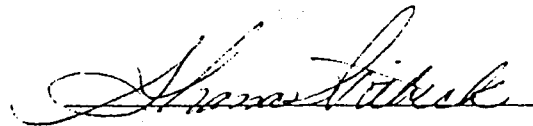
APPROVE AS TO FORM:


ROBERT C. LUNNIEN
Attorney for Defendant

CERTIFICATE OF MAILING/HAND DELIVERY

I hereby certify that I mailed, postage prepaid, or hand delivered a true copy of the foregoing Judgment and Order of Commitment to Robert C. Lunnen, Attorney for Defendant, 47 East 400 South, Vernal, Utah 84078; Department of Corrections, 437 East Main Street, Vernal, Utah 84078; Uintah County Jail, Vernal, Utah 84078.

DATED this 27 day of May, 1998.

A handwritten signature in cursive script, appearing to read "James L. Lusk".