

2008

# Michael A. Bacon v. The State of Utah : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

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

Michael A. Bacon; Appellant Pro Se.

Kris C. Leonard; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Counsel for Appellee.

---

## Recommended Citation

Brief of Appellant, *Bacon v. Utah*, No. 20080212 (Utah Court of Appeals, 2008).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/778](https://digitalcommons.law.byu.edu/byu_ca3/778)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals 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](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UML

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,  
PLAINTIFF/APPELLEE

BRIEF OF  
APPELLANT

V.

CASE NO. 2008 0212-CA

MICHAEL A. BACON,  
DEFENDANT/APPELLANT

MICHAEL A. BACON, PRO SE  
P.O. Box 130  
FARMINGTON, UTAH 84025  
DEFENDANT/APPELLANT

J. FREDERIC VORAS JR.  
ASS. ATTY. GEN  
160 E. 300 S.  
P.O. Box 140854  
SALT LAKE CITY, UTAH 84114  
PLAINTIFF/APPELLEE

FILED  
UTAH APPELLATE COURTS  
JUN 12 2008

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUE AND STANDARD OF REVIEW	1
STATEMENT OF CASE	1
STATEMENT OF FACT	2
PLEADINGS TO BE CONSTRUED LIBERALLY	2
ARGUMENT	2
CONCLUSION	9

# TABLE OF AUTHORITIES

PAGE

HALL V. BELLMON, 935 F.2d 1106, 1110 (10 <sup>th</sup> Cir. 1991)	2
STATE V. RAMIREZ, 817 P.2d 774 (UT. 1991)	3, 5
STATE V. MATSAMAS, 1991, 808 P.2d 1048	3, 5
STATE V. GENOVESE, 1994, 871 P.2d 547	3, 5
STATE V. HUMPHREY, 794 P.2d 496 (UT. CT. App. 1990)	4, 5
STATE V. HOWIE, 2002, UT. 4, 15 P3d 971	4
STATE V. MARQUEZ, 2002, UT. App. 127, 7, 54 P.3d 637	4
STATE V. HOLGATE, 2000, UT. 74, 11, 10 P.3d 346	4
SULLIVAN V. LOUISIANA, 508 U.S. 275 (1993)	5, 6
CHAPMAN V. CALIFORNIA, 386 U.S. 18 (1967)	5
STATE V. LOVELL, 2005, UT. 23	5
STATE V. RHODES, 818 P.2d 1048 (UT. App. 1991)	5
STATE V. GERRARD, 584 P.2d 885 (1978)	5
U.S. V. LORN, 400 U.S. 470 (1971)	5
U.S. V. OLANO, 507 U.S. 725 (1983)	5
STATE V. DUNN, 850 P.2d 1201 (UT. 1993)	5
STATE V. HUMPHREY, 2003, UT. App. 333, 79 P3d 960	6
STATE V. MARSHALL, 791 P2d 880 (UT. App.) cert denied 800 P.2d 1705 (1990)	6
STATE V. CORWELL, 2003, 74 P.3d 1171, cert granted 2005 UT 28 7, 8	7, 8
STATE V. MORA, 2003, 69 P.3d 838, 2003 UT. App. 117	7, 8
STATE V. MILLIS, 1995, 898 P.2d 819	7
STATE V. VALENCIA, 1989, 776 P.2d 1332	7
STATE V. GIBBONS, 1987, 740 P.2d 1309	7
U.S. V. BUONOCORE, 2005, 416 F.3d 1124	8
STATE V. STILLING, 1993, 853 P.2d 666	8
BLUMEN <del>EL</del> V. STATE, 2006, 134 P.3d 181, 2007 UT. 90	8
KUMMEIMAN V. MORRISON, 477 U.S. 365 (1986)	9
STATE V. HALE, 2007 UT. 14	9
ADCOX V. OBIEN, 899 F.2d 735 (8 <sup>th</sup> Cir 1990)	9

<u>STATUTES, RULES AND CONSTITUTION</u>		<u>PAGE</u>
UT. R. C. P. RULE	10	4, 5
"	11	6
"	12	2, 3, 4, 5, 6
"	16	6
"	22	1
"	30	2, 5
U.C.A.	78-2a-3	1
	77-18a-1	1
U.S.C.	4 <sup>TH</sup> AMENDMENT	3, 7
UT. CONST.	ART. 1 Sec. 14	3, 7

## JURISDICTIONAL STATEMENT

THIS APPELLATE COURT HAS JURISDICTION, BELIEVED  
U.C.A. 78-29-3 AND 71-18a-1

## STATEMENT OF ISSUE AND STANDARD OF REVIEW

DEFENDANT CAUSED TO BE FILED A MOTION TO VACATE  
SENTENCE PURSUANT TO VT. R. C. P. RULE 22(e) JULY 27, 2001  
(RECORD INDEX 43-50) BASED UPON FAILURE OF LOWER COURT  
TO HEAR TIMELY FILED MOTION TO SUPPRESS EVIDENCE AND  
MEMORANDUM IN SUPPORT THEREOF (RECORD INDEX 24-29)  
THIS ISSUE WAS PRESERVED IN TRIAL COURT (OTHER # INDEX  
FOR 5 CASES APPLY ALSO SEE 97-104, 235-242, 454-461,  
664-671)

## STATEMENT OF CASE

DEFENDANT FILED A TIMELY MOTION TO SUPPRESS REQUESTED BY  
THE TRIAL JUDGE FOR DEFENDANT TO FILE IT. THE MOTION WAS  
NEVER HEARD BEFORE ENTRY OF PLEA NOR DID DEFENDANT'S  
COUNSEL REQUEST IT TO BE HEARD. THUS DEFENDANT THEN  
FILED A MOTION TO VACATE THE SENTENCE AS HARMFUL  
ERROR, INEFFECTIVE ASSISTANCE OF COUNSEL AND THE  
COURT NOT HAVING LEGAL ADEQUATE FACTUAL BASIS  
TO ACCEPT THE PLEA AND PLEA NOT KNOWINGLY NOR  
VOLUNTARILY ENTERED ESPECIALLY WHEN NO DISCOVERY  
WAS DISCLOSED.

## STATEMENT OF FACT

- 1) ON MAY 1, 2007, JUDGE DAVID L. MOWER TOLD THE DEFENDANT TO FILE A MOTION TO SUPPRESS FOR DEFENDANT TRIED TO MOVE FOR VERBAL SUPPRESSION. HOWEVER THE JUDGE TOLD DEFENDANT TO PLACE IT IN WRITING.
- 2) THE DEFENDANT FILED THE MOTION TO SUPPRESS THE COURT ORDERED, RATIFIED, HELP AUTHOR ON OR ABOUT MAY 10, 2007
- 3) THE MOTION TO SUPPRESS WAS NEVER HEARD BEFORE ENTRY OF PLEA
- 4) DEFENDANTS ATTORNEY NEVER MOVED FOR MOTION TO BE HEARD

## PLEADINGS TO BE CONSTRUED LIBERALLY

DUE TO LIMITED ABILITY AND ACCESS TO ADEQUATE RESOURCES TO PROPERLY LITIGATE THE ISSUES CONTAINED HEREIN, THE APPELLANT REQUEST THIS HONORABLE COURT TO WAIVE FILING REQUIREMENTS A PRO SE LITIGANTS PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY LAWYERS. HALL V. BELLMON, 935 F.2d 1106, 1110 (10TH CIR. 1991)

## ARGUMENT

THE LOWER COURT FAILED TO ENTER A FINDING OF FACTS AND CONCLUSION OF LAW PURSUANT TO UT. R. C. P. RULE 12 WHICH IS A HARMFUL ERROR UNDER UT. R. C. P. RULE 30

SEE STATE V. RAMIREZ, 817 P.2d 774 (UTAH 1991) id at 788-89  
REGARDLESS IF RAMIREZ DEALS WITH TRIAL BY JURY,  
CONSTITUTIONAL ISSUES STILL APPLY U.S.C. 4<sup>TH</sup> AMENDMENT  
AND UT. CONST. ART 1 §14, A MOTION TO SUPPRESS IS A  
PIVOTAL MOTION ON LEGAL EVIDENCE THAT DESERVES THE COURTS  
ATTENTION TO RESOLVE CONSTITUTIONAL ISSUES AFFECTING THE  
SUBSTANTIAL RIGHTS OF DEFENDANT. TRIAL BY JURY OR ENTRY  
OF PLEA DOES NOT LOSE ITS LEGAL BASIS NOR CRITICAL VITAL  
NATURE FOR THE MOTION TO BE HEARD. IT IS A TIMELY  
OBJECTION AND ALL OBJECTIONS MUST BE REVIEWED  
PURSUANT TO UT. R. CR.P. RULE 12(E) AND ENTRY UPON THE  
RECORD. NO ENTRY WAS MADE. THE MOTION TO SUPPRESS  
WAS PENDING AND PRESERVES THE RIGHT TO RAISE ISSUE  
AT APPELLATE LEVEL STATE V. MATSAMAS, 1991, 808 P.2d 1048  
TRIAL COURT MUST SPECIFY ITS FINDINGS ON RECORD  
WHEN RESOLUTION OF FACTUAL ISSUES IS NECESSARY TO  
DISPOSITION OF MOTION. FAILURE TO MAKE FACTUAL FINDINGS  
REQUIRES REMAND FOR ENTRY OF FINDINGS OF FACT CONCLUSION  
OF LAW. STATE V. GENOVESE, 1994, 871 P.2d 547.

HOWEVER, "TO ASK THE TRIAL COURT TO ADDRESS THE  
ADMISSIBILITY QUESTION NOW WOULD BE TO TEMPT IT TO  
REACH A POST HAC RATIONALIZATION FOR THE ADMISSION  
OF THIS PIVOTAL EVIDENCE. SUCH A MODE OF PROCEEDING  
HOLDS TOO MUCH POTENTIAL FOR ABUSE. THE ONLY FAIR  
WAY TO PROCEED IS TO VACATE DEFENDANTS CONVICTION  
AND REMAND THE MATTER FOR RETRIAL" RAMIREZ SUPRA  
24 799

IT NEEDS TO BE UNDERSTOOD THAT THE MOTION TO  
SUPPRESS IS NOT WAIVED BY ENTRY OF A GUILTY PLEA  
BECAUSE THE MOTION WAS REQUESTED BY THE TRIAL  
JUDGE AND ENTERED BEFORE ARRAIGNMENT. THE CRITICAL  
POINT IS THE LOWER COURT TOLD THE DEFENDANT TO FILE  
THE MOTION TO SUPPRESS BECAUSE OF THE ORAL ARGUMENT  
A BRIEFING THAT TOOK PLACE WHICH THE COURT ALLOWED.



PURSUANT TO U.T.R. C.P. RULE 12(F) THE LOWER COURT SET THE TIME FOR THE MOTION TO BE ~~RAISED~~ RAISED AND HEARD WHEN IT ACCEPTED ORAL ARGUMENT MAY 1, 2007 THEN REQUESTED IT PLACED IN WRITING. THUS U.T.R. C.P. RULE 10 (C) MERELY REAFFIRMS THE GENERAL RULE THAT ALL OBJECTIONS BE MADE BEFORE A GUILTY PLEA IS ENTERED OR THE OBJECTION IS WAIVED. STATE V HUMPHREY, 794 P.2D 496 (UT CT APP. 1990) REVERSED ON OTHER GROUNDS 823 P.2D 464 (UT 1991). A MOTION TO SUPPRESS IS AN OBJECTION UNDER RULE 12 AND IS PRESERVED FOR THE APPELLATE COURT TO REVIEW.

"AS A GENERAL RULE, IN ORDER FOR AN APPELLATE COURT TO REVIEW CONTENTIONS OF ERROR ON APPEAL, THE ERRORS MUST BE OBJECTED TO OR BE PRESERVED IN TRIAL COURT RECORD" STATE V HONIE, 2002, UT 4, 15 P.3D 977, "FOR [2] [d]efendant TO HAVE PRESERVED HIS SUFFICIENCY OF THE EVIDENCE CLAIM HE MUST HAVE RAISED IT BY PROPER MOTION OR OBJECTION IN THE COURT BELOW."

STATE V MARQUEZ, 2002, UT APP. 127, 7, 54 P.3D 637

THERE ARE EXCEPTIONS TO THESE RULES "[T]HE PRESERVATION RULE APPLIES TO EVERY CLAIM... UNLESS A DEFENDANT CAN DEMONSTRATE THAT 'EXCEPTIONAL CIRCUMSTANCES' EXIST OR 'PLAIN ERROR' OCCURRED." STATE V. HOLGATE, 2000, UT. 74, 11, 10 P.3D 346

LET'S BACK TRACK FOR A SECOND OBJECTION TO EVIDENCE WAS MADE VERBALLY AT A BAIL HEARING, AT FIRST APPEARANCE IN CASE NO. 071600133 MAY 1, 2007. BUT MOTION WAS FILED UNDER CASE NO. 071600015 BECAUSE THAT IS WHERE THE EVIDENCE DERIVED FROM WHICH ENCOMPASSED ALL 5 CASES. WITHOUT THE EVIDENCE PROSECUTION WOULD HAVE NO CASE. (5 CASES 071600015, 071600016, 071600022, 071600012, 071600133)

THE MOTION IS PRESERVED NOT ONLY BECAUSE IT WAS MADE BEFORE ASSIGNMENT PURSUANT TO 10 (C) HUMPHREY 794 P.2d 496, BUT ALSO BY THE JUDGE REQUESTING IT, HAVING ORAL ARGUMENT, SETTING THE TIME UNDER RULE 12 (F) AND NOT HEARD OR ENTERED UPON THE RECORD OF FACT CONCLUSION OF LAW UNDER RULE 12, 30 AND RAMIREZ SUPRA, MASTMASES SUPRA, GENDRESI SUPRA.

THE LOWER COURT ABUSED ITS DISCRETION COMMITTING PLAIN ERROR RESULTING IN HARMFUL ERROR. IT WAS THE COURTS RESPONSIBILITY TO HEAR THE MOTION IT REQUESTED. A GUILTY PLEA DOES NOT WAIVE HARMFUL ERROR, ABUSE OF DISCRETION, PLAIN ERROR DOCTRINES OR STRUCTURAL ERROR SULLIVAN V. LOUISIANA, 508 U.S. 275 (1993). A CONVICTION OBTAINED BY CONSTITUTIONAL ERROR MUST BE SET ASIDE. CHAPMAN V. CALIFORNIA, 386 U.S. 18 (1967) THE MOTION TO SUPPRESS IS STILL PENDING UNDER STATE V. LOWELL, 2005 UT. 23, AND WAS NOT DISPOSED OF BY NECESSARY IMPLICATION SO IT IS PLAIN ERROR AND ABUSE OF DISCRETION. AN ABUSE OF DISCRETION OCCURS WHEN THE ACTION OF THE JUDGE WERE INHERENTLY UNFAIR. STATE V. RHODES, 818 P.2d 1048 (UT. APP. 1991); STATE V. GERRARD, 584 P.2d 885 (UT. 1978). AN ABUSE OF DISCRETION ON PART OF JUDGE AUTOMATIC REVERSAL APPLIES U.S. V. JURN, 400 U.S. 470, 486 (1971). BY THE COURT NOT RULING UPON A MOTION IT REQUESTED, HEARD ORAL ARGUMENT AND SET THE TIME BY STATUTE ALL THE ABOVE APPLIES.

THE U.S. SUPREME COURT STATED ERROR IS CLEAR OR OBVIOUS. U.S. V. OLAND, 507 U.S. 725, 733-34 (1993) ANOTHER EXAMPLE ABSENT THE ERROR THERE IS A REASONABLE LIKELIHOOD OF A MORE FAVORABLE OUTCOME. STATE V. DUNN, 850 P.2d 1201, 1208-09 (UT. 1993).

THE ERROR IN THIS INSTANT MATTER EXISTS WAS OBVIOUS, PLAIN AND HARMFUL AND A DIFFERENT OUTCOME WOULD OF BEEN REACHED IF MOTION HEARD.

THE FAILURE TO RULE UPON THE MOTION INTENTIONALLY  
ELIMINATED A CONSTITUTIONAL BASIS FOR THE PLEA. THE MOTION  
HAD DIRECT RELEVANCE IN PREVENTING THE COURT FROM FINDING  
A LEGALLY ADEQUATE FACTUAL BASIS FOR THE PLEA UNDER UT. R.  
C. P. RULE 11(b)(4)(B) BECAUSE IT UNDERMINED THE COURTS  
ABILITY TO ESTABLISH THAT THE CHARGED CRIME WAS ACTUALLY  
COMMITTED OR BY CONSTITUTIONAL MEANS OR IF THERE WAS  
SUBSTANTIAL EVIDENCE TO ESTABLISH A SUBSTANTIAL RISK OF  
CONVICTION, THIS HAD DIRECT AFFECT ON THE LEGALITY OF  
SENTENCING IN 2 WAYS, FIRST, IT DENIED THE DEFENDANT DUE  
PROCESS RIGHT TO BE SENTENCED ON LEGALLY RELEVANT AND  
ACCURATE INFORMATION OF CONSTITUTIONAL ISSUES AFFECTING  
SUBSTANTIAL RIGHTS OF DEFENDANT. BECAUSE THE SEIZED EVIDENCE  
WAS THE CENTRAL FOCUS OF THE STATE CASE, IT MADE THE  
SENTENCE ILLEGAL BECAUSE THE PROCESS OR STRUCTURAL ERROR  
(STRUCTURAL ERROR DEFIES HARMLESS ERROR ANALYSIS SULLIVAN  
V. LOUISIANA SUPRA) (AND MAKING DEFENDANT PLEAD BEFORE  
DISCLOSURE OF ANY DISCOVERY SEE RULE 16(b) STATES THAT  
DISCLOSURE MUST BE MADE BEFORE DEFENDANT SHALL PLEAD),

FLAWED THE WHOLE FACT FINDING PROCESS TO WHERE  
GETTING TO THE SENTENCING STAGE DID NOT PROVIDE A LEGAL  
REASON OR BASIS TO BE SENTENCED, THE PLEA DID NOT MOST  
THE MOTION TO SUPPRESS BECAUSE HE OBJECTED TO THE  
ISSUE IN A TIMELY MANNER. STATE V. HUMPHREY, 2003, UT.  
APP 333, 19 P.3d 960; ALSO STATE V. MARSHALL, 791 P.2d  
880 (UT. APP) CERT DENIED 800 P.2d 1705 (1990), IN  
WHICH IS WHAT A MOTION TO SUPPRESS IS UNDER RULE 12  
AN OBJECTION.

IT WAS CRITICAL THAT THE COURT MADE AN EXPLICIT  
RULING UPON THE MOTION BEFORE REQUIRING DEFENDANT TO  
PLEAD. FAILURE TO DO SO MADE SENTENCE ILLEGAL IN  
CONSTITUTIONAL SENSE. CANNOT PLEAD WHILE A CONSTITUTIONAL  
MOTION IS PENDING. THE LOWER COURT NEVER TOLD

DEFENDANT THAT HE WOULD BE WAIVING A CONSTITUTIONAL RIGHT IN REGARD TO A 4<sup>TH</sup> AMENDMENT AND ART 1 SEC 14 RIGHT TO HAVE HIS PENDING MOTION TO SUPPRESS HEARD ESPECIALLY WHEN THE TRIAL COURT REQUESTED MOTION AND HEARD ORAL ARGUMENT. THE DEFENDANT HAD A RIGHT TO HAVE HIS MOTION HEARD AND DIRECT IMPLICATION TO THE MOTION NEEDED TO BE ADDRESSED AS ONE OF HIS RIGHTS HE WAS WAIVING. THE DUTY TO ENSURE THAT DEFENDANT KNOWS AND UNDERSTANDS WHAT RIGHTS THEY ARE SURRENDERING WHEN PLEADING GUILTY RESTS NOT ON THE PARTIES, BUT ON THE TRIAL COURT. STATE V. CORWELL, 2003, 74 P.3d 1171. Cert granted 2005 UT.28. RULE GOVERNING PLEAS SQUARELY PLACES ON TRIAL COURTS THE BURDEN OF ENSURING THAT CONSTITUTIONAL AND RULE REQUIREMENTS ARE COMPLIED WITH WHEN A GUILTY PLEA IS ENTERED. STATE V. MORA, 2003, 69 P.3d 838. ALSO SEE STATE V. MILLS, 1995, 898 P.2d 819.

BY IMPLICATION THE PLEA WAS NOT A KNOWING NOR VOLUNTARY PLEA WITH RELATIONS OF LAW TO FACTS MILLS SUPRA AND IF A DEFENDANT IS NOT FULLY INFORMED OF HIS OR HER RIGHTS CONCERNING THE MAKING OF A PLEA PRIOR TO PLEADING GUILTY THEN THE PLEA CANNOT BE VOLUNTARY. CORWELL SUPRA ALSO SEE STATE V. VALENCIA 1989, 776 P.2d 1332 AND STATE V. GIBBONS, 1987, 740 P.2d 1309.

A MOTION THAT CONTAINS FACTUAL BASIS OF CONSTITUTION NATURE NEEDS TO BE HEARD PRIOR TO ENTRY OF A PLEA WHEN IT IS PENDING AND ORAL ARGUMENT TOOK PLACE.

COURT OF APPEALS WILL PRESUME HARM WHEN A TRIAL COURT FAILS TO INFORM A DEFENDANT OF HIS CONSTITUTIONAL RIGHTS UNDER RULE GOVERNING PLEAS;

COURT OF APPEALS PRESUMES HARM BECAUSE BY NOT KNOWING WHICH RIGHTS A DEFENDANT IS WAIVING, THE DEFENDANT CANNOT MAKE A FULLY INFORMED DECISION. STATE V. MORA, 69 P.3D 838, 2003 UT. APP. 117

WHETHER THE TRIAL COURT STRICTLY COMPLIED WITH RULE GOVERNING PLEAS IS A QUESTION OF LAW, WHICH COURT OF APPEALS REVIEWS FOR CORRECTNESS. STATE V. CORWELL, 2003, 74 P.3D 1171, CERT ~~GRANTED~~ 2005 UT. 28

PLAIN ERROR EXISTED IN THIS MATTER AND UNDER THE PLAIN ERROR STANDARD OF REVIEW, COURT OF APPEALS MAY EXERCISE ITS DISCRETION TO REVERSE 1) ERROR, 2) THAT IS PLAIN, 3) THAT AFFECTS SUBSTANTIAL RIGHTS, AND 4) THAT SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS. U.S. V. BUONOCORE, 2005, 416 F.3D 1124.

DEFENDANT DID NOT MAKE AN INFORMED KNOWINGLY VOLUNTARY PLEA. THE TRIAL COURT SIGNIFICANTLY DEPARTED FROM CONSTITUTIONAL AND PROCEDURAL REQUIREMENTS CREATING DOUBT AS TO KNOWING AND VOLUNTARY NATURE OF DEFENDANTS PLEA. STATE V. STILLING, 1993, 853 P.2D 666

IT HAS BEEN STATED THAT THE APPELLATE COURT WILL PRESUME HARM WHEN A TRIAL COURT FAILS TO INFORM A DEFENDANT OF HIS CONSTITUTIONAL RIGHTS UNDER RULE GOVERNING PLEAS, BECAUSE BY NOT KNOWING WHICH RIGHTS DEFENDANT IS WAIVING DEFENDANT CANNOT MAKE A FULLY INFORMED DECISION. BLUMEL V. STATE, 2006, 134 P.3D 181, 2007 UT. 90

LASTLY BY NO MEANS CAN A DEFENDANTS COUNSEL BE EFFECTIVE WHEN COUNSEL NOT ONLY DID NOT GET NOR REQUESTED DISCOVERY BEFORE HE MADE HIS CLIENT TO PLEAD GUILTY, VIOLATION OF RULE 16(b), PLEA NOT KNOWING NOR VOLUNTARY IN RELATION TO FACT

DISCOVERY IS NEEDED TO MAKE A KNOWING PLEA, BUT ALSO  
BUT NOT MORE IMPORTANTLY INSURING THAT THE MOTION TO  
SUPPRESS IS HEARD. KIMMELMAN V. MORRISON, 477 U.S. 365  
(1986). DISCOVERY IS NEEDED FOR PROPER INVESTIGATIVE  
PURPOSES. IF NOT FOR THE DEFICIENCIES THERE IS A MORE  
LIKELIHOOD OF A DIFFERENT OUTCOME, NO WAY BY HIS  
ACTIONS COULD THERE HAVE BEEN A JUST RESULT. STATE V.  
HALES, 2007, UT. 14. IT IS DEFENDANT'S COUNSEL'S  
RESPONSIBILITY TO REQUEST RULINGS ON PENDING MOTIONS  
TO SUPPRESS AND FAILURE TO DO SO IS INEFFECTIVE.  
ANDCOX V. O'BRIEN, 899 F.2d 735 (8<sup>TH</sup> CT. 1990).

#### CONCLUSION

THIS COURT SHOULD GRANT RELIEF AND REQUEST THE CD  
OF THE HEARING OF MAY 1, 2007 SHOWING THE JUDGE REQUESTED  
MOTION TO SUPPRESS AND MAY 15, 2007 PLEA HEARING.  
REMAND FOR TRIAL, WITHDRAWAL OF PLEA, MOTION TO  
SUPPRESS TO BE HEARD.

DATED THIS <sup>31<sup>ST</sup></sup> DAY OF May 2008

Michael O. Bacon  
MICHAEL A. BACON

I HEREBY CERTIFY THAT I MAILED A TRUE AND CORRECT COPY TO THE  
FOLLOWING: THIS <sup>31<sup>ST</sup></sup> DAY OF May 2008

J. FREDERIC VOROS JR.

ASS. ATTY. GEN.

160 E. 300S

P.O. BOX 140854

SALT LAKE CITY, UTAH 84114

Michael O. Bacon  
MICHAEL A. BACON