

1999

# Utah v. Stephen E. Russell : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



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.

Sirena M. Wissler; Deputy District Attorney; attorney for appellee.

Michael L. Humiston; attorney for appellant.

---

## Recommended Citation

Brief of Appellee, *Utah v. Stephen E. Russell*, No. 990846 (Utah Court of Appeals, 1999).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/2365](https://digitalcommons.law.byu.edu/byu_ca2/2365)

This Brief of Appellee 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.

---

IN THE UTAH COURT OF APPEALS

---

THE STATE OF UTAH

Plaintiff Appellee,

STEPHENE RUSSHILL,

Defendant Appellant.

PRIORITY NO. 2  
(defendant is not incarcerated)

Case No. 990846-CA  
Trial Court No. 981201732 MS

---

BRIEF OF THE APPELLEE

This is an appeal from a conviction for assault, a class B misdemeanor entered in the Third District Court in and for Salt Lake County, Murray Department, the Honorable Joseph C. Fratto, Judge, presiding.

MICHAEL L. HUMISTON  
23 WEST CENTER STREET  
P.O. BOX 486  
HEBER CITY, UT 84032  
TELEPHONE: (435) 654-1152

ATTORNEY FOR APPELLANT

SIRENA M. WISSLER (#7450)  
DEPUTY DISTRICT ATTORNEY  
231 EAST 400 SOUTH  
SALT LAKE CITY, UT 84111  
TELEPHONE: (801) 363-7900

ATTORNEY FOR APPELLEE

**FILED**

Utah Court of Appeals

MAR 30 2000

Julia D'Alessandro  
Clerk of the Court

---

IN THE UTAH COURT OF APPEALS

---

THE STATE OF UTAH,

Plaintiff / Appellee,

-v.-

STEPHEN E. RUSSELL,

Defendant / Appellant.

PRIORITY NO. 2  
(defendant is not incarcerated)

Case No. 990846-CA  
Trial Court No. 981201732 MS

---

BRIEF OF THE APPELLEE

This is an appeal from a conviction for assault, a class B misdemeanor, entered in the Third District Court in and for Salt Lake County, Murray Department, the Honorable Joseph C. Fratto, Judge, presiding.

MICHAEL L. HUMISTON  
23 WEST CENTER STREET  
P.O. BOX 486  
HEBER CITY, UT 84032  
TELEPHONE: (435) 654-1152

ATTORNEY FOR APPELLANT

SIRENA M. WISSLER (#7450)  
DEPUTY DISTRICT ATTORNEY  
231 EAST 400 SOUTH  
SALT LAKE CITY, UT 84111  
TELEPHONE: (801) 363-7900

ATTORNEY FOR APPELLEE

## TABLE OF CONTENTS

STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES	1
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	9

## CONTENTS OF ADDENDUM

Utah Code Ann. §78-2a-3(2)(e)

Utah Rules of Appellate Procedure 24

## TABLE OF AUTHORITIES

### CASES

<u>Amica Mut. Ins. Co. v. Schettler</u> , 768 P.2d 950 (Utah Ct. App. 1989)	5
<u>Koulis v. Standard Oil Co. of Calif.</u> , 746 P.2d 1182 (Utah Ct. App. 1987)	5
<u>State v. Bohn</u> , 248 P.2d 119 (Utah 1926)	7
<u>State v. Garza</u> , 820 P.2d 937 (Utah Ct. App. 1991)	5
<u>State v. Leyva</u> , 906 P.2d 910 (Utah Ct. App. 1995)	7, 8
<u>State v. Maestas</u> , 815 P.2d 1319 (Utah Ct. App. 1991) cert. denied, 826 P.2d 651 (Utah 1991)	9
<u>State v. Milligan</u> , 727 P.2d 213 (Utah 1986)	6
<u>State v. Olmos</u> , 712 P.2d 287 (Utah 1987)	5, 6
<u>State v. Ossana</u> , 739 P.2d 628 (Utah 1987)	8
<u>State v. Ortiz</u> , 782 P.2d 959 (Utah Ct. App. 1989)	5
<u>State v. Price</u> , 827 P.2d 247 (Utah Ct. App. 1992)	4,5
<u>State v. Snyder</u> , 932 P.2d 120 (Utah Ct. App. 1997)	7, 8
<u>State v. Sutton</u> , 707 P.2d 681 (Utah 1985)	6
<u>State v. Velasquez</u> , 641 P.2d 115 (Utah 1982)	6, 7
<u>State v. Willet</u> , 909 P.2d 218 (Utah 1995)	5
<u>Trees v. Lewis</u> , 738 P.2d 612 (Utah 1987)	5

STATUTES, RULES, AND CONSTITUTIONAL PROVISOS

Sixth Amendment United States Constitution	6
Utah Constitution Art. I, §12	6
Utah Code Ann. §78-2a-3(2)(e) (1996).	1
Utah Rules of Appellate Procedure 24.	1, 3, 4, 6,

---

IN THE UTAH COURT OF APPEALS

---

THE STATE OF UTAH,

Plaintiff / Appellee,

-v.-

STEPHEN E. RUSSELL,

Defendant / Appellant.

PRIORITY NO. 2  
(Appellant is not incarcerated)

Case No. 990846-CA  
Trial Court No. 981201732 MS

---

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over all criminal convictions that do not involve a first degree felony or a capital offense pursuant to Utah Code Ann. §78-2a-3(2)(e). Because the contested convictions are misdemeanor violations, the Utah Court of Appeals has appellate jurisdiction.

STATEMENT OF THE ISSUES

Pursuant to Utah R. App. P. Rule 24(1) the State is satisfied with the Appellant's statement of issues.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions, statutes and rules pertain and appear in full text in the addendum:

## STATEMENT OF THE CASE

The Appellant has claimed that his right to a speedy trial has been violated. As such, the pertinent facts those facts preceding the trial. Because the Appellant has failed to provide this Court with an appendix or any transcript of the proceedings below. The State relies for its facts upon the Third District Court docket, attached hereto as Exhibit A.

On October 13, 1998, the State filed an information in the Murray District Court alleging that the Appellant had committed a Battery with Substantial Bodily Injury, a Class A Misdemeanor. (Exhibit A, p. 2, hereafter "Exh. A"). On January 13, 1999, the State filed an amended information and requested that a warrant be issued. (Exh. A, p. 2). The warrant was issued after the trial court found that the Appellant would not appear upon a summons. (Exh. A, p. 2). On May 5, 1999, the warrant was recalled when the Appellant appeared for arraignment. (Exh. A, p. 2). At arraignment, the Appellant entered a plea of not guilty and a pretrial conference was scheduled for May 18, 1999. (Exh. A, p. 2). On May 14, 1999 the Appellant filed a motion for a continuance which was denied by the trial court in part because the State responded to the motion in a timely manner. (Exh. A, p. 2); See (Attached Copy, Exhibit B). On May 18, 1999 a pretrial conference was held. At the pretrial, Appellant asked the court for a 45-day continuance. However, because Appellant refused to waive his right to a speedy trial, his motion was denied. (Exh. A, p. 3). A jury trial was scheduled for June 17, 1999 with June 15, 1999 being set aside for a hearing on any



motions. (Exh. A, p. 3). On June 15, 1999, the Appellant again moved the trial court to dismiss the charges on the grounds that his right to a speedy trial was violated. (Exh. A, p. 4). The motion was denied and the case proceeded to trial on June 17, 1999. (Exh. A, p. 4). Following a trial by jury, the Appellant was found guilty of simple assault and a sentencing hearing was set for August 26, 1999. (Exh. A, p. 5). The Appellant was sentenced to 180 days jail, suspended, placed on 12 months probation, complete 50 hours community service pay a fine of \$750 with \$375 suspended, and pay restitution in the amount of \$353.57. (Exh. A, p. 6-7).

### SUMMARY OF ARGUMENT

This Court should summarily reject Appellant's challenge because the Appellant has failed to cite to the record as required in the Utah Rules of Appellate Procedure 24. However, if this Court does address Appellant's speedy trial challenge on its merits, it should affirm the trial court's rulings. From the moment the case was filed both the State and the trial court guarded defendant's speedy trial right despite the Appellant's attempts to confound the judicial process.

### ARGUMENT

#### POINT I. THE COURT SHOULD STRIKE APPELLANT'S OPENING BRIEF FOR FAILURE TO COMPLY WITH THE UTAH RULES OF APPELLATE PROCEDURE.

This Court should summarily affirm Appellant's convictions and all pertinent trial court rulings because Appellant's Opening Brief fails to comply

with Utah R. App. P. 24(a)(7). That rule requires that, “[a]ll statements of fact and references to the proceedings below shall be supported by citations to the record.”

Utah R. App. P. 24(a)(7). When the brief fails to cite to the record or omits other aspects required by Utah R. App. Proc. 24 “may be disregarded or stricken, on motion or sua sponte by the court.” Utah R. App. Proc. 24(k). Even a cursory glance at Appellant’s Opening Brief reveals that Appellant has woefully failed to comply with Rule 24. Appellant has filed no appendix, and his brief contains no exhibits. Moreover, the entire brief is devoid of any citations to the record in this case. In reliance upon Utah Rules of Appellate Procedure 24, the State therefore moves to strike Appellant’s opening brief and to dismiss his appeal. In the alternative, the State moves for summary disposition. Therefore, it is upon this basis that the State’s motion for summary disposition should be granted.

Both the Utah Supreme Court and the Utah Court of Appeals have addressed the issue of failure to cite to the record in an appellate brief. In State v. Price, 827 P.2d 247 (Utah Ct. App. 1992), a defendant was appealing his conviction on various counts of possession of a controlled substance. The defendant alleged that the search of his vehicle was unlawfully obtained by coercive tactics on the part of the police. The State simply answered the defendant’s allegations by stating that the issue could not be reached because the defendant had not complied with Utah Rules of Appellate Procedure 24. The Utah Court of Appeals agreed with the States position and refused to hear any further argument. In denying the defendant’s appeal on the grounds it was insufficient,

the Utah Court of Appeals recalled other instances in which Utah appellate courts have held similarly:

See, e.g., Trees v. Lewis, 738 P.2d 612, 612-13 (Utah 1987) (court dismisses appeal because Appellant “has not supported the facts set forth in his brief with citations to the record” as required by the Utah Rules of Appellate Procedure); State v. Garza, 820 P.2d 937, 939 (Utah Ct. App. 1991) (court refuses to reach an issue because defendant “failed to include a statement of facts in her brief, as required by Rule 24(a)(7)”); Koulis v. Standard Oil Co. of California, 746 P.2d 1182, 1184 (Utah Ct. App. 1987) (“If a party fails to make a concise statement of the facts and citation of the pages in the record where those facts are supported, the court will assume the correctness of the judgment below.”).

Price, 827 P.2d at 249, n. 4. It is apparent that failure to cite to the record is sufficient grounds to dismiss the appeal without reaching its merits. State v. Ortiz, 782 P.2d 959, 962 (Utah Ct. App. 1989) (holding “[w]e have consistently held that if counsel on appeal does not provide citations to the record, we need not reach the merits of his or her substantive claims.”); See e.g., Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 969 (Utah Ct. App. 1989).

The Utah Supreme Court also has dealt with failure to cite to the record on an appeal. In State v. Willet, 909 P.2d 218 (Utah 1995), the defendant was appealing from his conviction of capital homicide. One issue was whether the trial court should have quashed the bindover on constitutional grounds. The Utah Supreme Court never reached that issue because the defendant failed to cite to the record. The Court stated, “[t]his court has held that an Appellant’s failure to cite to the record in his brief is grounds for assuming regularity in the proceedings and correctness in the judgment appealed from.” Id. at 222. See also, State v. Olmos,

712 P.2d 287, 287 (Utah 1986). In yet another case, State v. Milligan, 727 P.2d 213 (Utah 1986), the defendant was appealing a conviction in absentia for driving without a license and failure to appear. The defendant was appealing pro se with stand-by counsel. The defendant set forth various arguments. In reply the State requested a summary disposition for failure to cite to the record. The Court recognized that the State's argument was correct but due to the defendant's status as pro se, the Court allowed the appeal to be heard. Id. at 214; See also State v. Sutton, 707 P.2d 681, 683 (Utah 1985) (holding that failure to cite to the record is grounds for upholding the trial court's decision). In the instant case, the defendant is represented by an attorney and should be held to the plain meaning of Utah case law and the Utah Rules of Appellate Procedure. The Utah appellate courts have consistently applied Utah Rules of Appellate Procedure 24 in holding that failure to cite to the record provides a sufficient reason to refuse to reach the merits of the case. Therefore, the State respectfully requests that Appellant's Opening Brief be stricken and his appeal dismissed.

## POINT II. THE APPELLANT'S RIGHTS TO A SPEEDY TRIAL WERE NOT VIOLATED.

Assuming, *arguendo*, that this Court determines to reach the merits of Appellant's appeal, it should nonetheless affirm his conviction because no such violation occurred. Both the Sixth Amendment of the United States Constitution and article I, § 12 of the Utah Constitution give a defendant the right to a speedy trial and the same analysis is applied in each provision. State v. Velasquez, 641

P.2d 115, 116 (Utah 1982). “In reviewing whether a defendant’s right to a speedy trial was violated, we examine four factors: 1) the length of the delay; 2) the reason for the delay; 3) whether the defendant asserted his right to a speedy trial; and 4) whether defendant was prejudiced as a result.” State v. Leyva, 906 P.2d 910, 912 (Utah Ct. App. 1995)(citations omitted). An evaluation of these factors will show that the defendant’s right to a speedy trial was not violated.

#### A. The Length of the Delay.

The Appellant has asserted that the State failed to bring Mr. Russell to trial for over 20 months. (Appellant’s Brief p. 3). The State takes exception to that characterization. The 20 months to which Appellant alludes accounts for the entire amount of time between the date of occurrence of the offense and the trial date before Judge Fratto. However, there was only nine months that elapsed between the date the information was filed and the defendant trial date. For seven of those months the case did not progress because the Appellant did not answer the summons and could not be found on the subsequent warrant that was issued on January 13, 1999. (Exh. A, p. 1-2). The proceedings at the justice court level are not pertinent because the Appellant never asserted his rights to a speedy trial during those proceedings. See State v. Snyder, 932 P.2d 120 (Utah Ct. App. 1997)(determining that the first trial was not included in the amount of the time lapse in a speedy trial determination.). See also State v. Bohn, 248 P.2d 119 (1926)(holding a defendant can not be inactive and then claim a speedy trial violation, the right to a speedy trial is considered waived if not requested).

Therefore, the total amount of time is approximately two months from the moment the Appellant was aware of the charges filed in the Murray District Court to the date of trial. See State v. Ossana, 739 P.2d 628, 632 (Utah 1987)(holding that a four and a half year delay did not deny the Appellant the right to a speedy trial); State v. Leyva, 906 P.2d at 912 (holding a four delay did not deny the Appellant's right to a speedy trial); State v. Snyder, 932 P.2d at 129-30 (holding one year eight month delay did not prejudice the Appellant).

#### B. The Reasons for Delay.

The two months that it took from the Appellant's arraignment to the Appellant's jury trial can hardly be described as a delay. In fact, there was no delay on the part of either the State or the Appellant. As stated in the facts above, the moment the Appellant became aware of the charges in the Murray District Court, only two months elapsed between the arraignment and the trial. Two months is not a violation of the Appellant's speedy trial rights.

#### C. The Assertion of the Right.

The State does not dispute the Appellant's claim that he asserted his right to a speedy trial during the proceedings before the Murray District Court. However, the State also asserts that the Appellants rights to a speedy trial was not asserted at the Justice Court level and as such, that time can not be calculated into the amount of time it took for the Appellant to be placed on trial. In addition, it is important to note that at his pretrial conference on May 18, 1999, Appellant requested a 45-day

continuance, a request which was denied because Appellant asserted his speedy trial right.

#### D. The Prejudice from Delay.

There are three areas where prejudice can occur in a speedy trial right violation. These are: “(i)to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” State v. Maestas, 815 P.2d 1319, 1322 (Utah Ct. App. 1991) cert. denied, 826 P.2d 651 (Utah 1991)(citations omitted). The Appellant claims that the time delay prejudiced the Appellant’s ability to pursue the claim of self-defense. (Appellant’s Brief, pp. 5-6). The factual basis for such a claim is the Appellant’s assertion that there existed a possibility that other witnesses exist who could corroborate the Appellant’s story. This claim fails to account for the Appellant’s opportunity to confront the other person involved in the fight. In fact the jury was able to hear both the Appellant’s testimony and the victim’s testimony concerning the fight. Clearly, the jury did not believe the Appellant’s story and gave more credibility to the victim’s story. Therefore, the Appellant was not prejudiced by the length of the delay.

Finally, the defendant’s claim of prejudice is specious at best given that he himself had requested a continuance at the pretrial conference.

#### CONCLUSION

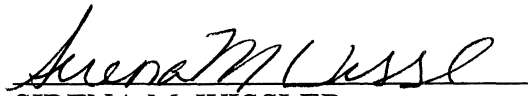
The State respectfully requests that Appellant’s convictions of Simple Assault be summarily affirmed based upon Appellant’s failure to properly cite to

the record. In the alternative, the State requests that following an analysis of Appellant's claims on their merits, the convictions be affirmed. The evidence and relevant law as applied to that evidence demonstrates that Appellant's right to a speedy trial was not violated.

For the foregoing reasons, the State respectfully requests that Appellant's convictions for Simple Assault be affirmed.

Dated this 30 day of May, 2000

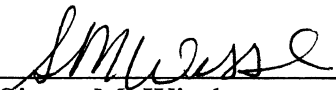
DAVID E. YOCOM  
District Attorney of Salt Lake County

  
SIRENA M. WISSLER  
Deputy District Attorneys



CERTIFICATE OF MAILING/DELIVERY

I, Sirena Wissler, hereby certify that I have caused to be hand-delivered/mailed, first class postage pre-paid, two true and correct copies of the foregoing to Michael L. Humiston, Attorney for Stephen E. Russell, 23 West Center Street, P.O. Box 486, Heber City, Ut 84032, this 30 day of May, 2000.

  
\_\_\_\_\_  
Sirena M. Wissler  
Deputy District Attorney

## ADDENDUM

Utah Code Ann. §78-2a-3. Court of Appeals jurisdiction.

- (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
  - (a) to carry into effect its judgments, orders, and decrees; or
  - (b) in aid of its jurisdiction.
- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
  - (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;
  - (b) appeals from the district court review of:
    - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
    - (ii) a challenge to agency action under Section 63-46a-12.1;
  - (c) appeals from the juvenile courts;
  - (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
  - (e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;
  - (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
  - (g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;
  - (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;
  - (i) appeals from the Utah Military Court; and
  - (j) cases transferred to the Court of Appeals from the Supreme Court.
- (3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate

review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

#### Utah Rules of Appellate Procedure 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(2) A table of contents, including the contents of the addendum, with page references.

(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(4) A brief statement showing the jurisdiction of the appellate court.

(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(A) citation to the record showing that the issue was preserved in the trial court; or

(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(8) Summary of arguments. The summary of arguments, suitably paraphrased, shall be a succinct condensation of the arguments actually

made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on.

(10) A short conclusion stating the precise relief sought.

(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraph (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rule 26, unless the parties otherwise agree or the court otherwise orders. The brief of the appellant shall not exceed 50 pages in length. The brief of the appellee/cross-appellant shall contain the issues and arguments involved in the cross-appeal as well as the answer to the brief of the appellant and shall not exceed 50 pages in length. The appellant shall then file a brief which contains an answer to the original issues raised by the appellee/cross-appellant and a reply to the appellee's response to the issues raised in the appellant's opening brief. The appellant's second brief shall not exceed 25 pages in length. The appellee/cross-appellant may then file a second brief, not to exceed 25 pages in length, which contains only a reply to the appellant's answers to the original issues raised by the appellee/cross-appellant's first brief. The lengths specified by this rule are exclusive of table of contents, table of authorities, and addenda and may be exceeded only by permission of the court. The court shall grant reasonable requests, for good cause shown.

(h) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(i) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly

advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made within 7 days of filing and shall be similarly limited.

(j) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

(k) Brief covers. The covers of all briefs shall be of heavy cover stock and shall comply with Rule 27.

## **“EXHIBIT A”**

THIRD DISTRICT COURT MURRAY  
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. STEPHEN E RUSSELL

SE NUMBER 981201732 Other Misdemeanor

---

ARGES

Charge 1 - 76-5-102 - SIMPLE ASSAULT  
Class A Misdemeanor Plea: May 04, 1999 Not Guilty  
Disposition: June 17, 1999 Not Guilty  
Charge 2 - 76-5-102 - SIMPLE ASSAULT  
Class B Misdemeanor Plea: June 17, 1999 Guilty  
Disposition: June 17, 1999 Guilty

RENT ASSIGNED JUDGE

JOSEPH C. FRATTO

RTIES

Defendant - STEPHEN E RUSSELL  
4698 S Sunstone Rd  
#149  
Taylorsville, UT  
Represented by: MICHAEL L HUMISTON

Plaintiff - STATE OF UTAH

ENDANT INFORMATION

Defendant Name: STEPHEN E RUSSELL  
Offense tracking number: 98016774  
Date of Birth: February 04, 1955  
Law Enforcement Agency: COUNTY SHERIFF  
Prosecuting Agency: SALT LAKE COUNTY  
Citation Number: 98016774  
Violation Date: October 06, 1997 3434 S Main St Kellys Auto Srvc

OUNT SUMMARY

TOTAL REVENUE	Amount Due:	409.23
	Amount Paid:	29.75
	Credit:	0.00
	Balance:	379.48
TRUST TOTALS	Trust Due:	357.80
	Amount Paid:	0.00
	Credit:	0.00
	Trust Balance Due:	357.80
	Balance Payable:	0.00



REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	0.75
Amount Paid:	0.75
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

Amount Due:	28.00
Amount Paid:	28.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: FINE

Amount Due:	375.00
Amount Paid:	0.00
Amount Credit:	0.00
Balance:	375.00

REVENUE DETAIL - TYPE: Interest

Amount Paid:	0.00
Amount Credit:	0.00
Balance:	4.48

Account Adjustments

Date	Amount	Reason
Nov 01, 1999	4.48	Criminal post judgment interest

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	1.00
Amount Paid:	1.00
Amount Credit:	0.00
Balance:	0.00

TRUST DETAIL

Trust Description:	Interest on Rstitutn
Recipient:	MOHAMMAD MAVADDAT
Amount Due:	4.23
Paid In:	0.00
Paid Out:	0.00

Account Adjustments

Date	Amount	Reason
Nov 01, 1999	4.23	Criminal post judgment interest

TRUST DETAIL

Trust Description:	Restitution
--------------------	-------------

SE NUMBER 981201732 Other Misdemeanor

---

Recipient: MOHAMMAD MAVADDAT  
Amount Due: 353.57  
Paid In: 0.00  
Paid Out: 0.00

SE NOTE

DAO #98016774

PROCEEDINGS

-13-98 Case filed by hollye hollye  
-13-98 Judge FRATTO assigned. hollye  
-13-98 Note: Filed: Information. Issued: Summons, retn 10-28-98. hollye  
-09-98 Tracking started for Other. Review date Nov 30, 1998. melanieb  
-13-99 Note: FILED AMENDED INFORMATION. STATE REQUEST WARRANT TO BE  
ISSUED. melanieb  
-13-99 Warrant ordered on: January 13, 1999 Warrant Num: 981022065  
Bail Allowed melanieb  
Bail amount: 2500.00  
-13-99 Warrant issued on: January 13, 1999 Warrant Num: 981022065 Bail  
Allowed melanieb  
Bail amount: 2500.00  
Judge: JOSEPH C. FRATTO  
Issue reason: The Court finds reasonable grounds to  
believe the defendant will not appear upon a summons.  
13-99 Tracking ended for Other. melanie  
29-99 ARRAIGNMENT scheduled on May 04, 1999 at 08:30 AM in Room 101  
with Judge FRATTO. lindav  
29-99 Note: STEPHEN E RUSSELL phoned requesting hearing on motion to  
quash warrant. Mr. Russell will bring in his motion for Judge  
Fratto's review. Case scheduled for arraignment court. lindav  
04-99 Warrant recalled on: May 04, 1999 Warrant num: 981022065 bonniel  
Recall reason: Warrant recalled because defendant  
appeared.  
04-99 Minute Entry - Minutes for Arraignment bonniel  
Judge: JOSEPH C FRATTO  
PRESENT  
Clerk: bonniel  
Defendant

Audio

Tape Number: 99-235 Tape Count: 2600

ARRAIGNMENT

Defendant is arraigned.  
PRETRIAL CONFERENCE is scheduled.  
Date: 05/18/1999  
Time: 08:00 a.m.

Location: Room 102  
MURRAY CIRCUIT COURT  
5022 SOUTH STATE STREET  
MURRAY, UT 84107

Before Judge: JOSEPH C FRATTO

-04-99 PRETRIAL CONFERENCE scheduled on May 18, 1999 at 08:30 AM in Room 102 with Judge FRATTO. bonniel  
-11-99 Note: PRETRIAL CONFERENCE calendar modified. bonniel  
-14-99 Filed: DEFENDANTS WRITTEN DEMAND FOR TRIAL BY JURY gailj  
-14-99 Filed: DEFENDANT'S MOTION FOR BILL OF PARTICULARS gailj  
-14-99 Filed: DEFENDANT'S MOTION FOR CONTINUANCE DENIED / JUDGE FRATTO gailj  
-14-99 Filed: DEFENDANT'S REQUEST FOR FORMAL INFORMATION gailj  
-14-99 Filed: NOTICE OF MAILING ADDRESS AND REQUEST FOR SERVICE OF CORRESPONDENCE gailj  
-18-99 BENCH TRIAL scheduled on June 15, 1999 at 01:30 PM in Room 102 with Judge FRATTO. bonniel  
-18-99 JURY TRIAL scheduled on June 17, 1999 at 08:30 AM in Room 102 with Judge FRATTO. bonniel  
-18-99 BENCH TRIAL Cancelled.  
-18-99 Minute Entry - Minutes for INCOURT NOTE bonniel  
Judge: JOSEPH C FRATTO  
PRESENT  
Clerk: bonniel  
Prosecutor: WISSLER, SIRENA  
Defendant

Audio

Tape Number: 99-252 Tape Count: 1490

Parties argue motion. Deft will not waive speedy trial but wishes to set it for pre-trial. Court sets for trial.  
JURY TRIAL is scheduled.

Date: 06/17/1999

Time: 08:30 a.m.

Location: Room 102

MURRAY CIRCUIT COURT  
5022 SOUTH STATE STREET  
MURRAY, UT 84107

Before Judge: JOSEPH C FRATTO

5-18-99 Filed: RESPONSE TO DEFT'S MOTION FOR BILL OF PARTICULARS gailj  
5-02-99 Filed: SUBPOENA DUCES TECUM ON RETURN gailj  
5-04-99 Fee Account created Total Due: 0.75 cristt  
5-04-99 COPY FEE Payment Received: 0.75 cristt  
5-10-99 Note: INCOURT NOTE minutes modified. bonniel  
5-10-99 Filed: Defts notice to submit fpr expedited hearing on motions, defts motion to quash information, defts memorandum of points and authorities in support of motion to quash information bonniel  
5-10-99 Filed: Defts memorandum of points and authorities in support of motion to dismiss for lack of speedy trial, defts motion to

dismiss for lack of speedy trial, affidavit of Stephen Russell.bonniel  
-14-99 HEARING ON MOTIONS scheduled on June 15, 1999 at 11:00 AM in Room 102 with Judge FRATTO. bonniel

-15-99 Minute Entry - Minutes for HEARING ON MOTIONS bonniel

Judge: JOSEPH C FRATTO

PRESENT

Clerk: bonniel

Prosecutor: WISSLER, SIRENA

Defendant

Defendant's Attorney(s): MICHAEL HUMISTON

Audio

Tape Number: 99-307 Tape Count: 1965

HEARING

(2065) Defense argues motion to quash the information, motion for speedy trial & motion to dismiss. (2925) State responds. (3250) Defense responds. (3388) \*\*\*Tape change 99-308\*\*\* Court denies the motions and the jury trial will proceed as scheduled.

State to prepare findings and facts and conclusions of law.

-15-99 Filed: Appearance of counsel bonniel

-17-99 Minute Entry - Minutes for Jury Trial bonniel

Judge: JOSEPH C FRATTO

PRESENT

Clerk: bonniel

Prosecutor: WISSLER, SIRENA

Defendant

Defendant's Attorney(s): HUMISTON, MICHAEL L

Audio

Tape Number: 99-310 Tape Count: 3120

TRIAL

(3585) Voir Dire of the jury. \*\*Tape change 99-321\*\* (1289) Swearing of the impaneled jury - Roger Nash, Kelley Bailey, Suzette Rowe, Lorna Steadman, Lester Catmull & Craig Smith. (1480) State makes opening statement. (1786) Defense makes opening statement. (1984) Exlcusionary rule invoked and excluded. (2021) States #1 witness Dr. Jerry Handy testifies. (2321) Deft cross exam. (2738) State re-direct. (3050) Deft re-direct. (3300) State re-direct. (3357) Deft exh d-1 thru 4 offered & received. (3373) States #2 witness Mohammad Mavvadatt testifies. (3773) Witness identifies deft. \*\*TAPE CHANGE 99-322\*\* (0009) Deft cross exam. (0393) State re-diredt. (0454) States #3 witness Marty Smith testifies. (0543) Deft cross exam. (0647) State re-direct. (0699) Defense renews motion to dismiss for lack of speedy trial. (0835) States #4 witness Officer James Jepson

sworn and testifies. (0966) Deft cross exam. (1024) State re-direct. (1053) Deft re-direct. (1102) State rests. (1236) Defense #1 witness Sarah Russell testifies. (1562) State cross exam. (1615) Deft #2 witness Stephen Russell. (1943) State cross exam. (1989) Deft re-direct. (2023) Deft rests. (2137) Court instructs the jury. (3015) State makes closing argument. (3603) Deft makes closing argument. \*\*\*Tape change 99-323\*\*\* (0125) State makes final argument. Jury deliberates at 4:50 pm. (0338) Defense makes objections to jury instruction dealing with the lessor included offense. Jury returns at 6:05 pm. (0412) Verdict read. Jury finds the deft not guilty of assault with substantial bodily injury but guilty of the lessor included offense of simple assault.  
SENTENCING is scheduled.

Date: 07/26/1999

Time: 08:30 a.m.

Location: Room 102

MURRAY CIRCUIT COURT  
5022 SOUTH STATE STREET  
MURRAY, UT 84107

Before Judge: JOSEPH C FRATTO

;-17-99	Note: JURY TRIAL minutes modified.	bonniel
;-17-99	Note: JURY TRIAL minutes modified.	bonniel
;-17-99	SENTENCING scheduled on July 26, 1999 at 08:30 AM in Room 102 with Judge FRATTO.	bonniel
;-21-99	Note: RECIEVED EVIDENCE FILE ON 6-18-99. PLACE EXHIBITS IN EVICENCE ROOM IN LOCKER AGAINST NORTH WALL SECOND SHELF, LEFT HAND SIDE.	melanieb
7-13-99	Fee Account created	28.00
7-13-99	AUDIO TAPE COPY	28.00
	Total Due:	28.00
	Payment Received:	28.00
	Note: AUDIO TAPE COPY	
7-20-99	Filed: REQUEST FOR DISCOVERY	gailj
7-26-99	Minute Entry - Minutes for INCOURT NOTE	bonniel
	Judge: JOSEPH C FRATTO	
	PRESENT	
	Clerk: bonniel	
	Prosecutor: HIGGINS, TRINA	
	Defendant	
	Defendant's Attorney(s): HUMISTON, MICHAEL L	

Audio

Tape Number: 99-393 Tape Count: 0001

Set for sentencing and restitution hearing.  
SENTENCING is scheduled.

Date: 08/26/1999

Time: 01:30 p.m.

Location: Room 102

MURRAY CIRCUIT COURT

5022 SOUTH STATE STREET

MURRAY, UT 84107

Before Judge: JOSEPH C FRATTO

RESTITUTION HEARING.

Date: 08/26/1999

Time: 01:30 p.m.

Location: Room 102

MURRAY CIRCUIT COURT

5022 SOUTH STATE STREET

MURRAY, UT 84107

Before Judge: JOSEPH C FRATTO

26-99 SENTENCING scheduled on August 26, 1999 at 01:30 PM in Room 102  
with Judge FRATTO. bonniel

26-99 RESTITUTION HEARING scheduled on August 26, 1999 at 01:30 PM in  
Room 102 with Judge FRATTO. bonniel

23-99 Filed: RESTITUTION REQUEST FROM DA gailj

26-99 Note: INCOURT NOTE minutes modified. bonniel

26-99 Tracking started for Fine. Review date Sep 30, 1999. bonniel

26-99 Tracking started for Probation. Review date Aug 26, 2000. bonniel

26-99 Tracking started for Community Service. Review date Jan 30,  
2000. bonniel

26-99 Fine Account created Total Due: 375.00 bonniel

26-99 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME bonniel

Judge: JOSEPH C FRATTO

PRESENT

Clerk: bonniel

Prosecutor: MICKLOS, ANGELA F

Defendant

Defendant's Attorney(s): HUMISTON, MICHAEL L

Audio

Tape Number: 99-470 Tape Count: 2880

HEARING

(3600) Parties argue restitution issue. Court orders restitution due in the amount of \$353.57. To pay in full by 9-30-99. The state to find out if the insurance company has paid. If it has the balance will be due.

SENTENCE JAIL

Based on the defendant's conviction of SIMPLE ASSAULT a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 180 day(s).

SENTENCE FINE

Charge # 2 Fine: \$750.00

Suspended: \$375.00  
Surcharge: \$172.30  
Due: \$375.00

Total Fine: \$750.00  
Total Suspended: \$375.00  
Total Surcharge: \$172.30  
Total Principal Due: \$375.00  
Plus Interest

The fine is to be paid in full by September 30, 1999.  
COMMUNITY SERVICE

Complete 50 hour(s) of community service.  
Community service is to be completed by January 30, 2000.  
SENTENCE COMMUNITY SERVICE NOTE

Complete 50 hours community service at 10 hours per month beginning  
9-30-99  
ORDER OF PROBATION

The defendant is placed on probation for 12 month(s).  
Probation is to be supervised by Murray District Court.  
Defendant is to pay a fine of 375.00 which includes the surcharge.  
Interest may increase the final amount due.  
Pay fine on or before September 30, 1999.  
Pay fine to The Court.

PROBATION CONDITIONS

Pay fines and fees as agreed  
No Violations of the Law  
Complete 50 hours community service. Pay restitution as deemed  
necessary.

-26-99 Note: SENTENCE, JUDGMENT, COMMITMENT minutes modified.	bonniel
-26-99 Tracking started for Other. Review date Sep 30, 1999.	bonniel
-26-99 Trust Account created Total Due: 353.57	bonniel
-26-99 Note: SENTENCE, JUDGMENT, COMMITMENT minutes modified.	bonniel
-07-99 Note: As per Nicci from the District Attorney the insurance company did not pay any of this restitution. So \$353.57 is due.	bonniel
-27-99 Filed: Notice of Appeal	sandrah
-01-99 Tracking started for Appeal. Review date Oct 01, 1999.	bonniel
-04-99 Tracking ended for Fine.	bonniel
-04-99 Tracking ended for Other.	bonniel
-14-99 Filed: LETTER FROM COURT OF APPEALS--RECEIVED THE APPEAL	gailj
-01-99 Trust Account created Total Due: 4.23	cristt
-01-99 Fee Account created Total Due: 4.48	cristt
-01-99 Fee Account created Total Due: 1.00	cristt
-01-99 COPY FEE Payment Received: 1.00	cristt

19-99 Filed: AFFIDAVIT IN SUPPORT OF AN ORDER TO SHOW CAUSE IN RE:  
PROBATION VIOLATION gailj  
19-99 Filed: ORDER TO SHOW CAUSE IN RE: PROBATION VIOLATION gailj  
19-99 ORDER TO SHOW CAUSE scheduled on December 13, 1999 at 10:30 AM  
in Room 102 with Judge FRATTO. gailj  
07-99 ORDER TO SHOW CAUSE rescheduled on January 10, 2000 at 10:30 AM  
Reason: Correct calendar. gailj  
29-99 Filed return: OSC gailj  
Party Served: RUSSELL, STEPHEN E  
Service Type: Personal  
Service Date: December 10, 1999  
10-00 Minute Entry - Minutes for INCOURT NOTE bonniel  
Judge: JOSEPH C. FRATTO  
PRESENT  
Clerk: bonniel  
Prosecutor: BURMESTER, FRED  
Defendant  
Defendant's Attorney(s): HUMISTON, MICHAEL L  
  
Audio  
Tape Number: 00-007 Tape Count: 4890  
  
Deft claims a misunderstanding as to staying the execution of the  
sentencing pending appeal. State responds. Court stays the  
execution at this time. However the deft is advised that interest  
may accumulate. OSC stricken at this time.  
10-00 Tracking ended for Community Service. bonniel



## **“EXHIBIT B”**

STEPHEN E. RUSSELL  
4972 SOUTH 1130 WEST  
TAYLORSVILLE UTAH, 84123  
(801) 293-3031  
DEFENDANT, PRO SE

RECEIVED  
MAY 17 1999  
DISTRICT ATTORNEY  
GC JUSTICE

---

IN THE SECOND DIVISION of the THIRD DISTRICT COURT,  
MURRAY DEPARTMENT IN AND FOR SALT LAKE COUNTY  
THE STATE of UTAH

---

THE STATE OF UTAH,  
Plaintiff,

DEFENDANT'S MOTION FOR  
CONTINUANCE

vs.

CASE No. 981201732

STEPHEN E. RUSSELL  
Defendant

---

JUDGE: JOSEPH C. FRATTO

COMES NOW Stephen E. Russell the Defendant, Appearing pro se to move the  
Court to grant a Continuance in the above entitled matter based on the following grounds.

1. The Defendant has moved the State to submit a Bill of Particulars in  
regards to these charges and the State will not have had time to prepare this for the defendant  
prior to the scheduled Pre Trial Hearing.

2. The Defendant will require time to prepare a proper defense once receiving  
these documents requested of the State

FOR the above reasons , the defendant requests the Court to grant his  
Motion for a Continuance.

DATED this 4 th day of May , 1999

Respectfully Submitted

X Stephen E Russell

Stephen E. Russell

Defendant, Pro Se

CERTIFICATE OF DELIVERY

I do hereby certify that on the 14<sup>th</sup> day of May I did hand deliver a true and exact copy of the forgoing for/to to the Third District Court, Second Division, Murray Department, 5022 South State Street, Murray Utah, 84107. Judge Joseph C. Fratto. E. Neal Gunnarson District Attorney for Salt Lake County, Gregory Warner, bar No 3388 Deputy District Attorney, 2001 South State Street S3700, Salt Lake City, Utah 84190-1210

Stephen E Russell

Stephen E. Russell  
Defendant, Pro Se