

2010

Utah v. Jamie Lynn Greenwood : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Utah v. Jamie Lynn Greenwood*, No. 20100632 (Utah Court of Appeals, 2010).
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Case No. 20100632-SC

IN THE
UTAH SUPREME COURT

State of Utah,
Plaintiff/ Appellant,

vs.

Jamie Lynn Greenwood,
Defendant/ Appellee.

Brief of Appellant

Appeal from an interlocutory order granting defendant's motion to waive jury trial, entered in the Third Judicial District Court of Utah, Salt Lake County, the Honorable Robert Adkins presiding.

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FILED
UTAH APPELLATE COURTS
APR - 6 2011

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IN THE
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State of Utah,
Plaintiff/ Appellant,

vs.

Jamie Lynn Greenwood,
Defendant/ Appellee.

Brief of Appellant

STATEMENT OF JURISDICTION

Defendant is facing trial on two counts of rape, a first degree felony, in violation of UTAH CODE ANN. § 76-5-402 (West Supp. 2010); one count of forcible sodomy, a first degree felony, in violation of UTAH CODE ANN. § 76-5-403 (West Supp. 2010); and one count of forcible sexual abuse, a second degree felony, in violation of UTAH CODE ANN. § 76-5-404 (West Supp. 2010). The State petitioned for review of the trial court's interlocutory order granting defendant's motion to waive a jury trial without the consent of the prosecution. This Court granted review and has jurisdiction under UTAH CODE ANN. § 78A-3-102(3)(h) (West 2009) (*Add. D*).

STATEMENT OF THE ISSUE

Rule 17(c), UTAH RULES OF CRIMINAL PROCEDURE, permits a defendant to waive jury trial in a felony case, but only with the consent of the prosecution and

approval of the court. *See Add. A (Rule)*. Here, the trial court concluded that enforcing the rule would impinge on defendant's due process rights because: (a) a criminal defendant has a constitutional right to a bench trial over the objection of the prosecution; and (b) under the circumstances of this case, the selection of an impartial jury was impossible or unlikely.

1. Did the trial court erroneously conclude that a defendant has a constitutional right to a bench trial over the objection of the prosecution?

Standard of Review. A trial court's determination of constitutionality is reviewed for correctness on appeal. *See State v. Angilau*, 2011 UT 3, ¶ 7, 245 P.3d 745.

Preservation. The State preserved the issue at R. 114-17 (*Add. B*) & R139: 7-10, 14-15, 17-19, 22-23, 25, & 29 (*Add. C*).

2. Did the trial court erroneously conclude that compelling a jury trial in this case would violate due process because selection of an impartial jury was not possible or likely?

Standard of Review & Preservation. *See* Issue I.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following determinative provisions are attached in *Addendum A*:

U.S. CONST., amend. VI;
UTAH R. CRIM. P. 17.

STATEMENT OF THE CASE

In March 2010, defendant was charged with one count of rape, two counts of forcible sodomy, and one count of forcible sexual abuse (R. 1-4). The information alleged that defendant, who was in her forties, engaged in various sex acts with her son's teenage friend (*id.*). After the victim testified at a preliminary hearing, defendant was bound over for trial (R. 16). A three-day jury trial was scheduled for August 2010 (R. 22-23).

The morning of the scheduled jury trial, defendant for the first time sought to waive a jury trial and requested that the trial judge determine the case (R139: 3). Defendant acknowledged that rule 17(c), UTAH RULES OF CRIMINAL PROCEDURE, permitted jury waiver in a felony case only if the prosecution consented – which it had not in this case – but claimed that “there are certain circumstances . . . where . . . the Court has the discretion” not to enforce the rule (R139: 20).

Defendant asserted that this case was such a circumstance. She admitted that she had illegally engaged in sex with the teenage victim, but claimed that based on his alleged consent and other age-based issues, she might be convicted of some lesser offense than the offenses charged (R139: 5 & 20-21). Defendant explained that “an analytical and legal pre-trained mind looking and weighing the factors is going to give her a much more objective decision than trying to, in a short time, explain and try to articulate to a jury the fine lines between perhaps rape and unlawful

sexual activity or unlawful sexual conduct with a minor, and for this reason, she is choosing to go with the bench as a trier of fact” (R139: 5-6, 12-13, & 21). Defendant opined that the trial judge would “be more objective in looking specifically at the facts and not weighing out the media and the impression that they may have already made upon the public down here in the Salt Lake Valley,” but admitted that no media had attended “the last couple” of hearings (R139: 6).

The prosecutor objected (R139: 7-10, 17-19, & 22-23). Citing rule 17(c), the prosecutor argued that a defendant’s waiver of a jury in a felony case could not be accepted over the prosecution’s objection (R. 114-117; R139: 7-10, 14-15, 17-19, 22-23, 25 & 29). The prosecutor pointed out that precedent interpreting rule 17(c) and an identical federal rule had repeatedly upheld the constitutionality of this limitation (R. 114-17). And although dicta in the leading Supreme Court case recognized that compelling a defendant to undergo a jury trial might possibly violate due process “in some circumstances,” the Supreme Court and other courts recognized that this possibility was rare and might occur only if a defendant established that an impartial jury was impossible or unlikely in a given case (R139: 13-24). The prosecutor argued that such a circumstance did not exist here, especially given that potential jurors had not even been questioned (R139: 7-10, 17-19, & 22-23).

The prosecutor acknowledged that the charges initially generated some media attention, but by the time of trial, only one reporter had expressed interest in the

case (R139: 9). The prosecutor also noted that if pretrial publicity were a concern, the defense should have requested a pretrial juror questionnaire as was often done in high-profile cases (R139: 9-10). In any case, any undue influence that publicity might have had on an individual juror could be discovered in voir dire and cured (R139: 22-23). The prosecutor further explained that the State did not oppose inclusion of a lesser offense instruction, but that this involved only one of the four charged offenses (R139: 8-9). The prosecutor noted that juries typically consider consent and other age-determinative issues in sex offense cases and that there was no basis here to assume that the selected jury could not fairly resolve these issues (*id.*).

The trial court disagreed (R139: 10-12, 13-15, & 23-26; R. 106-07) (*Add. B & C*). First, the court was “concerned” that rule 17(c)’s requirement of prosecution consent unfairly gave the State “the ability to control the case from the standpoint of whether its going to be tried by the jury or by the Court” (R139: 10-11). The court recognized that rule and precedent allowed such “control,” but opined that compelling a defendant to undergo a jury trial “simply because the State refuses to give its consent to the waiver” creates a “tremendous burden” on the defense that implicates due process (R139: 13-14). The court second concluded that the circumstances of this case mandated a bench trial:

The Court is satisfied in this case [of defendant's waiver of jury trial] because of the nature of the allegations and the prior publicity, along with the . . . very fine line between offenses charged and the potential lesser included offenses. The Court believes that it would be a denial of [defendant's] due process rights to force her to be tried by a jury.

(R139:14).

The court then accepted defendant's waiver of jury trial, excused the jury pool, and ordered a bench trial to begin the next morning (R139: 14). The court refused to stay commencement of the bench trial to allow the State time to seek interlocutory review (R138: 4-11). The State petitioned this Court for an emergency stay and interlocutory review, both of which were granted (R. 121 & 135) (*Add. D*).

STATEMENT OF FACTS

Defendant has not yet been convicted of any crime and the facts are only alleged. Nevertheless, the allegations are relevant because the trial court concluded that no jury could fairly determine the facts. *See Statement of the Case, supra*.

The probable cause statement in the information states that A.B. alleged that "beginning around March 1, 2009 through January 31, 2009, he had a sexual relationship with the defendant, Jamie Lynn Greenwood. Throughout the above time period the defendant would give A.B. gifts and cash and asked to be paid back with sexual favors. At the same time the defendant would threaten to call A.B.'s mother unless he did as she requested" (R. 3). "The two engaged in sexual intercourse and had oral sex numerous times at different locations in Salt Lake

County. The relationship ended when the defendant and A.B. were discovered as the defendant forced A.B. to put his finger in her vagina” (*id.*). A.B. was fifteen and sixteen during the above time period, and the defendant was forty and forty-one. The defendant was A.B.’s friend’s mother” (R. 4).

SUMMARY OF ARGUMENT

This Court – as well as the United States Supreme Court – has recognized that a defendant charged with a felony has no constitutional right to a bench trial. Consequently, both courts have upheld the constitutionality of reasonable limitations on a defendant’s waiver of jury trial. Specifically, this Court has upheld the constitutionality of rule 17(c), UTAH RULES OF CRIMINAL PROCEDURE, which requires that the prosecution consent before a defendant’s waiver of jury trial is accepted. Similarly, the United States Supreme Court has upheld the constitutionality of substantively identical rule 23, FEDERAL RULES OF CRIMINAL PROCEDURE.

Nevertheless, the trial court refused to enforce rule 17(c) and accepted defendant’s waiver of jury trial over the prosecution’s objection. The court ruled that rule 17(c)’s requirement of prosecution consent impinges on a defendant’s constitutional right to a bench trial. The court further concluded that compelling this defendant to undergo a jury trial violated due process because selection of an impartial jury in this case was impossible or unlikely. Although the court had not yet questioned a single prospective juror, it based its decision on three factors: (1)

the case involved sex charges; (2) defendant claimed that the teenage victim consented; and (3) the case had generated some pretrial publicity. The trial court erred.

It is well established that compelling a defendant to undergo a jury trial impinges on no constitutional right. Some dicta in the leading Supreme Court case acknowledges the possibility that compelling a defendant to undergo a jury trial might implicate due process, but only in the unusual circumstance where “passion, prejudice[,or] public feeling” rendered selection of an impartial jury impossible or unlikely. Numerous cases recognize, however, that this circumstance rarely, if ever, occurs. Contrary to the trial court’s ruling, no such unusual circumstance exists here and enforcement of rule 17(c) would not have resulted in an unfair trial.

In sum, the trial court’s acceptance of defendant’s jury waiver should be reversed and a jury trial ordered.

ARGUMENT

I.

A CRIMINAL DEFENDANT CHARGED WITH A FELONY HAS NO CONSTITUTIONAL RIGHT TO A BENCH TRIAL OVER THE OBJECTION OF THE PROSECUTION; CONSEQUENTLY, THE TRIAL COURT ERRED IN NOT ENFORCING RULE 17

In Utah, a defendant charged with a felony may waive jury trial only with the consent of the prosecution:

All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

UTAH R. CRIM. P. 17(c) (*Add. A*). Rule 17(c) is patterned on a substantively identical federal rule:

If the defendant is entitled to a jury trial, the trial must be by jury unless:

- (1) the defendant waives a jury trial in writing;
- (2) the government consents; and
- (3) the court approves.

FED. R. CRIM. P. 23(a) (*Add. A*). Both rules embrace a criminal defendant's constitutional right to be tried by a jury. But both state and federal precedent interpreting these rules recognize that the converse is not true: a defendant has no constitutional right to a bench trial. *See cases cited, below*.

In this case, the trial court refused to enforce rule 17(c) and granted defendant's waiver of jury trial over the objection of the prosecution (R. 106-07) (*Add. B*). The court's reasoning was two-fold. The court first concluded that a defendant has a constitutional right to a bench trial whether or not the prosecution consents (R. 106). The court second concluded that compelling this defendant to undergo a jury trial violated due process because no jury could be impartial in this case (R. 106-07).

Both determinations are erroneous. A criminal defendant charged with a felony has no constitutional right to a bench trial. *See discussion, below*. And the circumstances of this case do not establish that an impartial jury was impossible or unlikely. *See Point II*. The trial court's order granting defendant's motion to waive jury trial should be reversed.

* * *

Over fifty years ago, the United States Supreme Court held that a criminal defendant's Sixth Amendment right to a jury trial does not "carry with it the right to insist upon the opposite of that right." *Singer v. United States*, 380 U.S. 24, 34-35 (1965). That is, a defendant has no constitutional right to a bench trial. *Id.* *See also Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 382-83 (1979) (reaffirming *Singer's* holding that defendants may not compel "private" bench trials over "public" jury trials).

This Court has consistently recognized the same principle. *See State v. Robbins*, 709 P.2d 771, 772 (Utah 1985) (holding that "there is no constitutional right to a trial by a judge rather than a jury"); *State v. Davis*, 689 P.2d 5, 13 (Utah 1984) (holding that "neither the state nor the federal constitution guarantees [a defendant] a right to 'waive' a jury trial); and *State v. Studham*, 655 P.2d 669, 671 (Utah 1982) (same).

Consequently, a defendant's waiver of a jury trial — like other constitutional rights — may be "subjected to reasonable procedural regulations." *Singer*, 380 U.S. at 35. Such reasonable regulation includes conditioning the acceptance of a defendant's jury waiver upon the consent of the prosecution and the approval of the court. *Id.* at 36. *See also Robbins*, 709 P.2d at 771-72; *Davis*, 689 P.2d at 12-13; and *Studham*, 655 P.2d at 671 (all upholding requirement of prosecution consent).

While such a limitation may compel a defendant to "undergo a jury trial against his will," it is not "contrary to his right to a fair trial or to due process," because "the result is simply that the defendant is subject to an impartial trial by jury — the very thing that the constitution guarantees him." *Singer*, 380 U.S. at 36. Moreover, the government, "as a litigant, has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal which the Constitution regards as most likely to produce a fair result." *Id.* *See also State v. Justice Court*, 56 P.3d 5, 10; *Commonwealth v. Tharp*, 754 A.2d. 1251, 1253-54 (Penn. 2000) (both upholding legitimacy of state constitutional provisions granting prosecution same jury trial right as defendant).

Here, the trial court acknowledged rule 17(c)'s requirement of consent and the precedent upholding that requirement (R139: 10-11 & 13; R.106). Nevertheless, the court refused to enforce rule 17(c) because the court disagreed with the rule's underlying premise. According to the trial court, compelling a defendant to

undergo a jury trial creates a “tremendous burden” that potentially infringes on a defendant’s “due process rights” (R139: 13-14; R. 106-07).

No Supreme Court or federal circuit court decision has so held, however. *See United States v. U.S. Dist. Court for Eastern Dist. of Calif.*, 464 F.3d 1065, 1070-72 (9th Cir. 2006) (recognizing that federal appellate decisions have consistently upheld constitutionality of rule 23’s government consent requirement), *cert. denied*, 551 U.S. 1133 (2007). The Utah Supreme Court—like the majority of state courts—has likewise concluded that there is no constitutional infringement in requiring the prosecution’s consent for jury waiver. *See Robbins*, 709 P.2d at 772 (recognizing Utah has consistently upheld constitutionality of rule 17(c)’s requirement of prosecution consent for jury waiver); *State v. Oakley*, 72 P.3d 1114, 1120-21 (Wash. App. 2003) (citing various state authorities upholding requirement of prosecution consent). The few decisions to the contrary are based on specific state provisions granting a defendant the unilateral right to control the mode of trial. *See id.* at 1121 (citing Oregon and Illinois contrary decisions based on their state constitutional or common law provisions). Or, one case was based on the defendant’s religious belief in a non-jury trial. *See United States v. Lewis*, 638 F.Supp. 573, 581 (W.D. Mich. 1986) (ruling that “sincerely held religious belief against submitting to a jury trial” is protected under the First Amendment and trumps procedural rule requiring government consent to jury waiver).

The trial court's conclusion here was erroneously based on dicta in *Singer* (R139: 10-14; R. 106-107). In *Singer*, the Supreme Court noted the possibility that compelling a defendant to undergo a jury trial might result in a due process violation in the rare circumstance where no impartial jury could be seated:

We need not determine in this case whether there might be some circumstances where a defendant's reasons for wanting to be tried by a judge alone are so compelling that the Government's insistence on trial by jury would result in a denial to a defendant of an impartial trial. Petitioner argues that there might arise situations where "passion, prejudice . . . public feeling" or some other factor may render impossible or unlikely an impartial trial by jury. However, since petitioner gave no reason for wanting to forgo jury trial other than to save time, this is not such a case, and petitioner does not claim that it is.

Singer, 380 U.S. at 37-38. In the ensuing years since *Singer*, no federal appellate court has ever found such a case to actually exist. See *U.S. Dist. Court for Eastern Dist. of Calif.*, 464 F.3d at 1070-71 (recognizing that neither Supreme Court nor federal circuit courts have found "circumstances alluded to in *Singer* actually existed"). But see *United States v. Clark*, 943 F.2d 775, 784 (7th Cir. 1991) (holding that a defendant has no constitutional right to bench trial, but recognizing two federal district court cases from 1970's that allowed jury waiver over government objection due to complexity of trying "multiple defendants" on "multiple medicaid, medicare and tax fraud" charges), *cert. denied*, 509 U.S. 926 (1993). Utah likewise has never found such a case to actually exist. Cf. *Robbins*, 709 P.2d at 772.

Moreover, decisions discussing *Singer's* dicta recognize that not being able to impanel an impartial jury is only a remote possibility given the “abundance of tools” trial courts have to ensure a fair trial. For example, courts may order pretrial jury questionnaires; they may conduct more extensive voir dire; they may grant additional jury strikes; they may limit admission of unduly prejudicial evidence; or they may continue a trial to allow any adverse impact of pretrial publicity to diminish. See UTAH R. CRIM. P. 18 (governing selection of jury); UTAH R. EVID. 403 (permitting relevant, but unduly prejudicial information to be excluded). See also *U.S. Dist. Court for Eastern Dist. of Calif.*, 464 F.3d at 1071 (recognizing that jury questionnaires, individual voir dire, jury instructions, and limitations on admission of unduly prejudicial evidence minimize possibility of inflaming or biasing jury); *United States v. Daniels*, 282 F.Supp. 360, 361 (N.D. Ill. 1968) (recognizing that trial continuance after media coverage had ended likely would reduce adverse effect of pretrial publicity on potential jurors). Thus, while the possibility of a due process violation may exist in some rare case, this possibility does not negate the general legitimacy of waiver-limitation rules. Rather, recognition of such a possibility acknowledges only a truism: a defendant may prove a denial of due process if he establishes that his trial was unfair.

In sum, the trial court erred in concluding that a defendant charged with a felony has a constitutional right to a bench trial over the objection of the prosecution. As a result, the trial court erred in not enforcing rule 17(c).

II.

SELECTION OF AN IMPARTIAL JURY WAS NOT IMPOSSIBLE OR UNLIKELY IN THIS CASE; CONSEQUENTLY, THE TRIAL COURT ERRED IN NOT ENFORCING RULE 17

The trial court also erroneously concluded that enforcement of rule 17(c) in this case would necessarily result in an unfair trial because selection of an impartial jury was impossible or unlikely (R139: 10-14; R. 106-07).

After the court concluded that rule 17(c)'s requirement of prosecution consent could not constitutionally be required in all cases, the court considered the rule's application to the facts of this case (R139: 14; R. 106-07). The court concluded that three circumstances established the impossibility of a fair trial if defendant were compelled to undergo a jury trial: (1) the case involved sex offenses; (2) a "close line" existed between the charged offenses and any lesser offense based on consent and the victim's age; and (3) there had been some pretrial publicity (*id.*). None of these circumstances, however, establishes that a jury trial would be unfair.

As discussed, the trial court relied on *Singer's* dicta in concluding that enforcement of rule 17(c) in all cases would be unconstitutional. The trial court relied on the same dicta in concluding that enforcement of the rule in this case

would result in an unfair trial (R. 13-14; R. 106-07). But as discussed, very few cases have reached a similar conclusion based on the facts of a given case. *See cases, supra, at 13.*

The trial court first concluded that the sexual nature of the charges established that no jury hearing the case could be impartial (R. 13; R. 106). That conclusion is erroneous. The fact that sex crimes are involved does not affect the applicability of rule 17(c) or its constitutional preference for jury trial. *See Robbins*, 709 P.2d at 771-72 (compelling jury trial in child sex abuse case did not violate due process). *See also U.S. Dist. Court for the Eastern Dist. of Calif.*, 464 F.3d at 1067 & 1071-72 (compelling defendants to face jury trial in “horrific” case involving “ten years of ritualistic sexual abuse” and five children did not violate due process). Moreover, juries comply resolve sex crime allegations—including allegations involving issues of consent and minors. *See, e.g., State v. Jeffs*, 2010 UT 49, 243 P.3d 1250 (reversing based on erroneous jury instructions and remanding for new jury trial of polygamous religious leader charged with rape as an accomplice based on performance of underage “marriage”); *State v. Holm*, 2006 UT 31, 137 P.3d 726 (upholding jury convictions for bigamy and unlawful sexual conduct with minor arising from polygamous underage “marriage”); *State v. Taylor*, 2005 UT 40, 116 P.3d 360 (upholding jury instructions on consent and affirming convictions for rape of a child and sodomy on a child).

The trial court next concluded that no jury could fairly resolve the “close line” between the charged offenses and any lesser offense based on consent and other age-determinative issues (R. 13-14; R. 106-07). But again, juries typically resolve such issues. *See cases cited, above*. And, in any event, a defense of consent in a case involving adult sex with a minor is statutorily limited. *See State v. Martinez*, 2002 UT 80, ¶ 18, 52 P.3d 1276; *State v. Christensen*, 2001 UT 14, ¶ 8, 20 P.3d 329 (both recognizing legislative policy of enacting laws that protect minors from sex with adult regardless of minor’s willingness to participate in offense).

The trial court also concluded that no impartial jury could be selected in this case because some pretrial publicity had occurred (R. 13-14; R. 106-07). While it is undisputed that some publicity occurred initially (R139: 9), the record does not establish to what extent this publicity continued over the ensuing months. Moreover, defense counsel admitted that no members of the media had even attended the “last couple” of hearings before the scheduled trial (R139: 6).

In any case, the mere fact that some pretrial publicity occurred does not establish that all the potential jurors were exposed to that publicity or that any of the potential jurors were biased. *See State v. James*, 767 P.2d 549, 555 (Utah 1989) (recognizing that “[j]urors are commonly seated to hear felony trials after . . . [having heard] prejudicial information about the defendant and perhaps even having formulated some opinion as to guilt,” if they fairly represent that “they

would be able to set aside any preconceived notions and decide the case on the evidence presented at trial”). Nor can the record establish that any of the potential jurors in this case were partial or otherwise incapable of fairly deciding the case where none was even questioned before the trial court ruled. *See State v. Widdison*, 2001 UT 60, ¶¶ 35-39, 28 P.3d 1278 (recognizing that despite extensive pretrial publicity in small community, ultimate impartiality of jury established through jury questionnaires and jury voir dire).

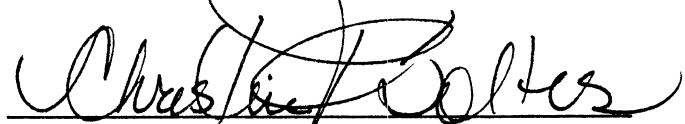
In sum, the trial court’s presumption that no impartial jury was possible or likely in this case is not supportable by the record. Consequently, the court erred in concluding that enforcement of rule 17(c) would necessarily result in defendant being deprived of a fair trial.

CONCLUSION

For the foregoing reasons, the trial court’s “Decision on Defendant’s Motion to Waive Trial by Jury” should be reversed and jury trial ordered.

Respectfully submitted April 7th, 2011.

MARK L. SHURTLEFF
Utah Attorney General

A handwritten signature in black ink, appearing to read "Christine F. Soltis", written over a horizontal line.

CHRISTINE F. SOLTIS
Assistant Attorney General
Counsel for Appellant

CERTIFICATE OF SERVICE

I certify that on April 6, 2011, two copies of the foregoing brief were

☒ mailed ☐ hand-delivered to:

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A digital copy of the brief was also included: ☒ Yes ☐ No

Lee Nakamura

Addenda

Addendum A

UNITED STATES CONSTITUTION

Amendment VI

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.

Utah R. Crim. P. 17 - The Trial

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

(a)(1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his absence;

(a)(2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and

(a)(3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) Cases shall be set on the trial calendar to be tried in the following order:

(b)(1) misdemeanor cases when defendant is in custody;

(b)(2) felony cases when defendant is in custody;

(b)(3) felony cases when defendant is on bail or recognizance; and

(b)(4) misdemeanor cases when defendant is on bail or recognizance.

(c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-5, U.C.A. 1953.

(f) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(g) After the jury has been impaneled and sworn, the trial shall proceed in the following order:

(g)(1) The charge shall be read and the plea of the defendant stated;

(g)(2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested;

(g)(3) The prosecution shall offer evidence in support of the charge;

(g)(4) When the prosecution has rested, the defense may present its case;

(g)(5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits;

(g)(6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury; and

(g)(7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument.

The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.

(h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall be discharged and a new trial ordered.

(i) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(i)(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(i)(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(i)(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(j) When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, he will suffer no person other than the person so

appointed to speak to them nor to do so himself on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

(k) At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(l) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(m) When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under his charge shall not allow any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(n) After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall

be entered in the record.

(o) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(p) At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

Federal R. Crim. P. 23 – Jury or Nonjury Trial

(a) Jury Trial. If the defendant is entitled to a jury trial, the trial must be by jury unless:

- (1)** the defendant waives a jury trial in writing;
- (2)** the government consents; and
- (3)** the court approves.

(b) Jury Size.

(1) In General. A jury consists of 12 persons unless this rule provides otherwise.

(2) Stipulation for a Smaller Jury. At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:

(A) the jury may consist of fewer than 12 persons; or

(B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins.

(3) Court Order for a Jury of 11. After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.

(c) Nonjury Trial. In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.

Addendum B

FILED
THIRD DISTRICT COURT

AUG 04 2010

WEST JORDAN DEPT.

IN THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DEPARTMENT,
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	*	
Plaintiff,	*	
	*	DECISION ON DEFENDANT'S
	*	MOTION TO WAIVE
v.	*	TRIAL BY JURY
	*	
JAMIE GREENWOOD,	*	Case No.: 101400544
Defendant	*	Honorable Robert W. Adkins

THIS MATTER came before the Court prior to the beginning of the jury selection process in the trial of the above-captioned matter. Defense counsel, on behalf of Defendant, moved to waive the jury in this matter and to proceed with a bench trial. The State objected to the waiver of a jury pursuant to Rule 17(c) of the Utah Rules of Criminal Procedure.


The Court, after having reviewed the applicable case law in this area, requested Defense Counsel to state on the record the basis for the motion. After receiving the basis for the motion and the State's argument in objection thereto, this Court hereby makes the following ruling:

1. This Court understands Rule 17(c) of the Utah Rules of Criminal Procedure and the case law applicable to the matter at hand. The Court believes that upon a proper showing a defendant should be able to waive his or her right to a jury trial. To allow the State in every case to defeat this ability would place a tremendous burden upon a Defendant and a tremendous amount of power in the hands of the State. The State, although representing the people, is not subject to the loss of liberty as is a defendant.
2. This court believes that if a defendant can make a showing upon a proper basis why a defendant desires to waive a jury, this Court believes that by denying such request simply at the objection of the State would implicate the due process rights of the Defendant.
3. The Court is satisfied that Defendant has met ^{her} ~~his~~ burden because of the nature of the case, the publicity this case has received, and the time line between the offenses charged and lesser included offenses which the court has agreed to consider. In the Supreme Court


decision of *Singer v United States*, the Supreme Court stated, “we need not determine in this case whether there might be some circumstances where a defendant’s reasons for wanting to be tried by a judge alone are so compelling that the Government’s insistence on a trial by jury would result in the denial to a defendant of an impartial trial.” This Court believes that the cumulative impact of the factors stated above creates such an unusual circumstance.

4. This Court finds that it would be a denial of Defendant’s due process rights to refuse to honor Defendant’s request to waive a jury trial. Therefore, Defendant’s motion is hereby granted.

DATED this 4 day of August, 2010.



ROBERT W. ADKINS
District Court Judge



Addendum C

ORIGINAL TRANSCRIPT

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,

STATE OF UTAH

Case No. 101400544

Plaintiff,

JAMIE LYNN GREENWOOD,

Defendant.

TRANSCRIPT OF HEARING

AUGUST 04, 2010

BEFORE THE HONORABLE ROBERT ADKINS

FILED DISTRICT COURT
Third Judicial District

OCT 26 2010

SALT LAKE COUNTY

By

Deputy Clerk



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UTAH APPELLATE COURTS

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Transcript of Hearing

August 4, 2010

PROCEEDINGS

BAILIFF: Sorry, Your Honor. Mr. Arrington, I think, just walked to the restroom.

THE COURT: That's fine. It took me a little longer than I anticipated. Alright, we're on the record in the case of *State of Utah v. Jamie Lynn Greenwood*. It's Case 010400544. Counsel will state their appearances, please.

MR. ARRINGTON: Mark Arrington representing Jamie Greenwood, co-counsel with Jim Retallick.

THE COURT: Alright, and for the State?

MS. CRANDALL: Kim Crandall and Marc Mathis for the State, Your Honor.

THE COURT: Alright, and the defendant is present. We're outside the presence of the jury panel. I did have an in chambers meeting with all counsel this morning. Mr. Arrington indicated that Ms. Greenwood wanted to waive her right to be tried by jury, and I was informed the State objected to that. So I wanted to put that on the record. Mr. Arrington, I'll hear from you.

MR. ARRINGTON: Well, Your Honor, and

1 obviously, as I've been talking with my client over
2 the months, and especially the last few weeks
3 looking at options, discussing the numerous avenues
4 that we have, and weighing the particulars of this
5 case, my client wants to place her confidence and
6 trust in having a bench trial at this time, and
7 wishes to waive the option or the right of a jury.

8 THE COURT: Alright, and Ms. Greenwood,
9 is that accurate? Is that what you would like to
10 do?

11 MS. GREENWOOD: Yes, Sir.

12 THE COURT: And Mr. Arrington, without
13 getting too far into the specifics of it, I've
14 looked at a few of the cases in this area and also
15 the rule. The Court, I believe, to make a
16 decision, would need to know the reason behind that
17 waiver if I'm going to be able to grant it, and
18 I'll hear from you, Mr. Arrington. I don't want to
19 get into the facts of it, but just generally, the
20 reason that Ms. Greenwood wants to waive a trial by
21 jury.

22 MR. ARRINGTON: Well, and just to make
23 it clear, Your Honor, she understands she has the
24 constitutional right to choose a jury of her peers
25 chosen from the community. I've explained that to

1 her exhaustively. She feels that, first of all, to
2 say nothing of judicial comity and so forth, that
3 her faith and her belief about getting a fair and
4 reasonable and objective trier of fact at this
5 point and under the circumstances of this case lies
6 greater with a bench trial, rather than a jury and
7 believes that the legal analysis that's going to be
8 applied specifically to this case, the argument is
9 not if illegal circumstances happened. She
10 cooperated with authorities on this and gave
11 admissions. The question that this whole case
12 surrounds is a question of consent, and reviewing
13 the law with my client, believes that there is a
14 relatively fine line between--in issues of consent.

15 If there is consent under the
16 circumstances and the facts of the case between the
17 victim and my client, then there are lesser
18 included offenses than what she is charged with.
19 We believe that having an analytical and legal pre-
20 trained mind looking and weighing the factors is
21 going to give her a much more objective decision
22 than trying to, in a very short time, explain and
23 try to articulate to a jury the fine lines between
24 perhaps rape and unlawful sexual activity or
25 unlawful sexual conduct with a minor, and for this

1 reason, she is choosing to go with the bench as a
2 trier of fact.

3 THE COURT: Alright. Does part of the
4 decision to ask to waive the jury, does that have
5 anything to do with the publicity in this case, or
6 the nature of the allegations?

7 MR. ARRINGTON: It does, Your Honor.
8 It does, although the last couple of final pre-
9 trials, for instance, that we've had hasn't
10 included media. It was heavily in the media at the
11 time and feels that there was at least some
12 exposure, if not quite a bit of exposure. There
13 was multiple channels and T.V. stations. Her
14 picture is plastered on the website at KSL and the
15 State has maintained in their negotiations that
16 this is a public interest, high-profile case and
17 that causes concern for my client as well and,
18 again, feels that a bench trial is going to be more
19 objective in looking specifically at the facts and
20 not weighing out the media and the impression that
21 they may have already made upon the public down
22 here in the Salt Lake Valley.

23 THE COURT: Alright, and as to the
24 lesser and included offenses, I will tell all
25 counsel that I spent quite a bit of time yesterday

1 looking at the case, and also specifically dealing
2 with lesser included offenses. I do believe that
3 if the matter were tried by a jury, that a court,
4 at this point, preliminarily at least, would be
5 inclined to submit some lesser and included
6 offenses, and I don't know whether based on that,
7 that would change Ms. Greenwood's decision on
8 requesting the waiver of the jury.

9 MR. ARRINGTON: It would not, Your
10 Honor.

11 THE COURT: Alright. Mr. Arrington, is
12 there anything further at this time?

13 MR. ARRINGTON: I would submit it on
14 those arguments, Your Honor.

15 THE COURT: Alright, and Ms. Crandall?

16 MS. CRANDALL: Your Honor, this morning
17 is the first we've even heard it. I understand
18 he's been in discussion for the last couple of
19 weeks about it, but this is the first the State
20 ever even heard of this. When we had the pretrial
21 last week, it never came up about her possibly
22 waiving the jury trial.

23 Rule 17(c), under the Rules of Criminal
24 Procedure, is clear. It says all felony cases
25 shall be tried by jury unless the defendant waives

1 a jury in open court with the approval of the court
2 and the consent of the prosecution. This is a case
3 where the prosecution is not consenting to the
4 waiver. I understand the concerns with the legal
5 arguments, but that's what we're here for. We're
6 here to explain to the jury what needs to happen
7 and instruct them on the law. That's why we have
8 the jury instructions, and that's why we're going
9 to go through this voir dire process. If there
10 were huge concerns as far as the media or something
11 like that, then it should have been brought up
12 before now. We could have done a jury
13 questionnaire or something like that to try to
14 alleviate some of those concerns, but we're here
15 now. We didn't do that. It's just going to have
16 to go through the voir dire process, and then
17 through the instruction process.

18 As far as the lesser included, the
19 State's position is that the ones that have been
20 submitted by Mr. Arrington are probably
21 appropriate, other than a few variations, and I
22 have prepared that I'll work on and can hand out
23 after lunch to Your Honor and Counsel. I think
24 they are a little bit-- They deal with 16 and 17
25 year-olds. I think the facts of this case will

1 support a finding that only one offense happened
2 when he was 16, the rest would have been when he
3 was 15. So I think, just as far as the lesser
4 included, we maybe need to re-work those so I'll
5 have some I'll submit. We're not objecting to the
6 lesser included.

7 And I think the Jury--juries all the
8 time find guilty if they are going to find guilty
9 on a lesser included, they do. It's a disservice
10 to them to say that they are unable to do that and
11 understand the law.

12 THE COURT: Mr. Crandall, Mr. Arrington
13 indicated that the DA's office has indicated that
14 this is a public interest, high profile case. Do
15 you have any comment on that?

16 MS. CRANDALL: Well, I think that that,
17 as Mr. Arrington said, yes. There has been media
18 interest in it. I received a phone call from Steve
19 Hunt at *The Tribune* yesterday wondering if it was
20 going forward. We're not denying that, but that
21 shouldn't be a deciding factor over whether or not
22 it's a judge or a bench trial, or a bench trial or
23 a jury trial. If that was a concern, then, as I
24 said, that needed to be addressed through a jury
25 questionnaire process which, you know, we do jury

1 questionnaires all the time. I did one a couple
2 weeks ago on a case. So that could have easily
3 been handled. Now is not the time to say that
4 because it's high profile, that at this point it
5 should be a bench trial, and I don't have it in
6 front of me right now, but I know there's Utah
7 Supreme Court case law on this issue and if you are
8 inclined to look at that, if you give us some time,
9 we can run downstairs and get a motion to that
10 effect.

11 THE COURT: Ms. Crandall, I have looked
12 at *State v. Serpent*, S-E-R-P-E-N-T, a 1989 decision
13 of the Utah Court of Appeals. I've also looked at
14 *State of Utah v. Robbins*, a 1985 decision of the
15 Utah Supreme Court, and I've also looked at *State*
16 *of Utah v. Davis*, the 1984 decision of the Utah
17 Supreme Court. The Robbins case and the other
18 cases indicate that as a general rule, that the
19 defendant cannot waive a right to a jury trial in a
20 felony case, and I understand that I'm bound by
21 that, but with that said, the defendant is the one
22 that is on trial. The defendant is the one that
23 faces a loss of freedom for life, and certainly has
24 a right to a jury trial, but the Courts have held,
25 generally, that she's not--that a defendant is not

1 entitled to generally waive that right to a jury.

2 The Court is concerned that the
3 defendant, in order to waive that right, has to
4 have the consent of both the Court and the
5 prosecution, and if the Court were inclined to give
6 its consent and the State did not in this case, it
7 seems to this Court that it really places a
8 tremendous control over the action in the hands of
9 the prosecution when the prosecution and the Court
10 understands that the prosecution is representing
11 the State, but the State is not the one that's
12 subject to a loss of liberty, and the Court is
13 concerned about the State having the ability to
14 control the case from the standpoint of whether
15 it's going to be tried by the jury or by the
16 Court.

17 I will indicate to all parties that I
18 would prefer the jury making that decision rather
19 than the Court, and I should indicate, Ms.
20 Greenwood, that before you could be convicted, all
21 eight members of the jury would have to unanimously
22 agree that you were guilty of each and every charge
23 alleged and, ma'am, do you understand the
24 difference between the jury trial and the bench
25 trial that with a jury trial, all eight members of

1 the jury would have to unanimously agree, beyond a
2 reasonable doubt, that you were guilty of the
3 offense charged or offenses charged, but with a
4 bench trial, that there would only be one finder of
5 fact and that would be the Court, and so instead of
6 having to convince eight people, the State would
7 only have to agree one and I would ask Mr.
8 Arrington if you would take a moment and just make
9 sure that Ms. Greenwood understands that.

10 MR. ARRINGTON: Yes, thank you.

11 (Inaudible discussion)

12 MR. ARRINGTON: If I may address the
13 Court, Your Honor?

14 THE COURT: Yes, please.

15 MR. ARRINGTON: Thank you. I have
16 explained to her prior to this, I have visited her
17 at least once every two weeks to ten days or even
18 lately every several days the last few weeks and
19 spent time with her and she does understand that
20 the idea of a unanimous jury, that all eight jurors
21 would have to find unanimously in favor of the
22 State, whether it's the charges filed or we're
23 hoping would be lesser included offenses. Even
24 those must be by unanimous decision and that should
25 there be one, even one strong hold out out of eight

1 jurors that would not budge, then we end up with a
2 hung jury. She does know that under the
3 circumstances, if there were a hung jury that the
4 State would have the option of re-trying her,
5 basically, a whole new trial and that should she go
6 with a bench, that her fate would lie in the
7 decision of one individual, tat being this Court.
8 She still feels strongly that she believes the more
9 objective and fairness option between the jury and
10 the bench lies with the bench.

11 THE COURT: Alright, and is there
12 anything further from either counsel?

13 MR. ARRINGTON: We would submit, Your
14 Honor.

15 THE COURT: Ms. Crandall?

16 MS. CRANDALL: No, Your Honor. The
17 State has made its position clear.

18 THE COURT: The Court understands the
19 conflicting interests and the Court also
20 understands the rule, Rule 17(c) and the cases that
21 have come down; however, the Court does not believe
22 that that in every case prevents a defendant from
23 waiving their right to a jury trial. The Court
24 believes that upon a proper showing, that the
25 defendant should be able to waive her right to a

1 jury trial, that to allow the State in every case
2 to defeat that would place a tremendous burden on
3 the defendant that if a showing can be made, that
4 there is a proper reason why the case should be
5 tried to the Court rather than to the jury. It
6 appears to the court that there would be an
7 implication of due process rights to the defendant
8 if the Court were to deny that simply because the
9 State refuses to give its consent to the waiver.

10 The Court is satisfied in this case
11 because of the nature of the allegations and the
12 prior publicity, along with the, as Mr. Arrington
13 indicated, the very fine line between the offenses
14 charged and the potential lesser included offenses.
15 The Court believes that it would be a denial of Ms.
16 Greenwood's due process rights to force her to be
17 tried by a jury. The defense motion to waive the
18 jury is granted.

19 I will need to take a few moments and
20 speak to the jury and let them know that their
21 services are not going to be needed. I'm not going
22 to go into any detail with them. With that said,
23 I assume, Ms. Crandall, that you probably
24 anticipated that you would not present any
25 witnesses until this afternoon, I'm assuming.

1 MS. CRANDALL: Your Honor, yes. If we
2 could have a recess, we'll decide where we're going
3 to go from here. Are you willing to even look at
4 this motion that we could put together within ten
5 minutes?

6 THE COURT: If you want to do that, I
7 will certainly consider it, you know, where I am at
8 this point, but if there's something else that you
9 would like to submit to convince the Court
10 otherwise, Ms. Crandall, I'll give you an
11 opportunity to do so. I don't want to foreclose
12 you from presenting anything that you want
13 regarding the motion because it is a very important
14 motion to both the state and to the defendant. So
15 if you want ten minutes, we'll recess and give you
16 that opportunity.

17 MS. CRANDALL: Okay, thank you, Your
18 Honor.

19 MR. ARRINGTON: Thank you, Your Honor.

20 (Recess)

21 THE COURT: Alright, let's go back on
22 the record. We're back on the record in the case
23 of *State of Utah v. Jamie Lynn Greenwood*. The
24 defendant is present and so are both counsel.
25 Before we get to the matter we were addressing

1 before the recess, juror number 51 is Dr. Brown. He
2 has surgery scheduled at noon. Unless there is
3 some objection, I would like to excuse him now. Is
4 there any objection to the excusing Dr. Brown at
5 this time from the State?

6 MS. CRANDALL: No, Your Honor.

7 THE COURT: From the defendant?

8 MR. RETALLICK: No, Your Honor.

9 MR. ARRINGTON: No, Your Honor.

10 THE COURT: Alright, Casey, if you would
11 let Dr. Brown know that he is excused. I've also
12 now received the State's objection to waiver of the
13 jury trial and memorandum in support thereof. I
14 will indicate to counsel that I misspelled, when I
15 indicated that I read cases, the case that was not
16 applicable was *Case v. Serpent*. That is not
17 applicable, and that was included in all of the
18 ones that I read, but that has no application to
19 this issue, and I'll hear from the State, but I
20 will tell the State that I've seen that motion
21 because it appears to be very similar to *State v.*
22 *Fagness*, and I had the benefit of that file.
23 That's where I got those earlier cases. So--

24 MR. MATHIS: And, Your Honor, we do
25 have copies of the case law that is cited in that

1 motion if you've had an opportunity to read.

2 THE COURT: If you would like to argue
3 that, I'll hear from you, Mr. Mathis.

4 MR. MATHIS: Well, I just have copies
5 for the Court before proceeding.

6 THE COURT: Oh, alright. Thank you.
7 Alright, and I had previously seen *Davis* and
8 *Robbins*. If you would give me a moment to look at
9 *Black* and *Singer*.

10 MR. MATHIS: Your Honor, I believe that
11 the State did submit those, the *Studham* case is
12 attached to the *Robbins* case, and that's stapled
13 separately.

14 THE COURT: Alright, alright, thank you.
15 Alright, I'll hear from the State, Mr. Mathis or
16 Ms. Crandall?

17 MR. MATHIS: Your Honor, I think, just
18 to echo the earlier argument that the plain reading
19 of the Rule 17(c) clearly does indicate that in
20 order for a defendant to waive or for there to be
21 a waiver of a jury trial, that three things need to
22 happen: (1) that the defendant requests it, (2)
23 that the Court approves it, and (3) that the State
24 gives its consent.

25 This identical issue was brought up in

1 *State v. Robbins*, which is a Utah Supreme Court
2 case; *State v. Davis*, which is another Utah Supreme
3 Court case; *State v. Studham*, additionally a Utah
4 Supreme Court case, and *Singer v. United States*, a
5 United States Supreme Court case. In all the Utah
6 Supreme Court cases, judge, the Supreme Court held
7 that it is a meritless argument to say that it is
8 an unconstitutional rule that they have violated
9 due process by denying the waiver of a jury trial.

10 I don't know that--I have not heard any
11 authority that the defendant has cited that would,
12 could even come close to circumventing these cases
13 or give a separate rationale to say that we're not
14 making that same argument. They're making the
15 identical argument and this--I believe that the
16 Supreme Court is saying that it is a meritless
17 claim because it is well settled law.

18 I think the plain language of the rule
19 which is accepted by the Utah Supreme Court, plus
20 the Utah Supreme Court rulings in all the
21 aforementioned cases and the holding in the U.S.
22 Supreme Court case clearly states that the
23 Constitution's guarantee of a fair trial gives a
24 defendant a right to safeguard themselves against
25 possible jury prejudice by insisting on trial

1 before the judge alone. That is not the argument
2 that's necessarily being made today.

3 In light of the Constitution emphasis on
4 a jury trial, we find it difficult to understand
5 how the petitioner could submit the bald
6 proposition that to compel the defendant in a
7 criminal case to undergo a jury trial against his
8 will is contrary to the right to a fair trial or
9 due process. There is no constitutional impediment
10 to a conditioning a waiver of this right on the
11 consent of the prosecuting attorney and the trial
12 judge when, if either refuses to consent, the
13 result is simply that the defendant is subject to
14 an impartial trial by the jury, the very thing that
15 the Constitution guarantees them.

16 That's what we're dealing with today,
17 Judge, and I think that it's very well settled law
18 that there is no defendant right to waive a jury
19 trial in the absence of consent of the State.

20 THE COURT: Alright, thank you. Mr.
21 Arrington or Mr. Retallick, anything further?

22 MR. RETALLICK: Well, Your Honor,
23 it's difficult. We're at a disadvantage. We don't
24 have an office with law clerks that can run down in
25 the extended ten minute break and write up a brief

1 in this matter, Your Honor, but we do maintain that
2 some of the cases that's cited indicate that there
3 are certain circumstances where this right to a
4 jury may be waived in some instances and the Court
5 has the discretion which the Court exercised here.
6 I just don't have the time and I don't know if Mr.
7 Arrington has anything to add to provide further
8 legal analysis to this because, as I say, we've
9 just received these cases and we're going through
10 them right now.

11 MR. ARRINGTON: Just to echo, Your
12 Honor, just that the way the law is written here in
13 Utah, and under which--although there's similar
14 cases, I don't know that they're identical as far
15 as the charges are concerned. There is a legal
16 fine line between the charges that have been--in
17 fact, if I can go back for a moment. She was
18 originally booked on charges that we've asked for
19 jury instructions of the lesser included offenses.
20 The State, upon reviewing the information and the
21 discovery submitted by the police department,
22 amends the charges to include the rape, the first
23 degree felonies.

24 There is a fine line in between the
25 charges filed and the charges she was arrested on,

1 and what we're asking for if this goes to a jury,
2 to the lesser included offenses. It boils down to
3 an issue of consent, and there is jury instructions
4 that have been submitted by the State that we're
5 going to, at least when it comes to that, take
6 issue as to defining coercion, enticement, those
7 kinds of things and have brought case law to back
8 that up.

9 The point being is that there--it's
10 going to take, whether it's a bench trial or a jury
11 trial, fine hair analysis and coming down to an
12 issue of factual v. legal consent in this case, and
13 reiterating that my client is, although it would
14 rest with a single individual, that being this
15 Court, to decide her fate. She is more comfortable
16 because we go to deliberation with a legal mind
17 versus the jury who, in all likelihood, have no
18 understanding of the details and the fine analysis
19 between rape and unlawful sexual intercourse and
20 unlawful sexual conduct involving a minor, and I
21 don't know that they are going to be, although we
22 do normally rely on Americans to be intelligent and
23 objective in our daily dealings, I don't know that
24 they are going to be able to completely understand
25 the gravamen in the short time we have in giving

1 jury instructions and for them weighing
2 objectively, again, with the media attention that
3 has been present on this case. I submit.

4 THE COURT: Alright, Mr. Mathis?

5 MR. MATHIS: Judge, first I would like
6 to respond to the issue that was raised that the
7 defense is not given the same advantage as we have.
8 I can assure you, we also do not have law clerks
9 that do this research for us. We have to do it on
10 our own, number one. Number two, given the
11 defendant's own admission, this is something that
12 they've been talking about for months. So to say
13 that this is an unanticipated argument, I think, is
14 unpersuasive to me and I believe to be unpersuasive
15 to the Court.

16 Given also the arguments given by
17 defendant today, his claim is that he is afraid
18 that the, or that he believes that the Court will
19 be more fair and objective than the jury who hasn't
20 even been, we haven't even gone through the voir
21 dire process. So without even going through the
22 voir dire process, Your Honor, I think that that
23 puts the burden on the Court, if the Court stays
24 with its original ruling, to make the finding that
25 the jury pool, as assembled today, is unfair and

1 would be unobjective in hearing the matter today,
2 and I think the safe argument, although I haven't
3 talked to Mr. Arrington or his colleague today, say
4 that they have much more experience than I do or
5 Ms. Crandall combined discussing and arguing to
6 juries the fine lines of legal analysis in
7 different laws. To say that we're unable to do
8 that, or they would be unable to do that, I think,
9 Your Honor, is just unpersuasive. I mean, that's
10 what the very trial is and what it entails.

11 THE COURT: Alright, thank you, counsel.
12 Let me just say that in my short time on the
13 bench, I have been surprised and amazed at the
14 collective wisdom of the juries that I've had the
15 experience of viewing here in this Courtroom.

16 In looking at the Supreme Court, United
17 States Supreme Court decision of *Singer v. The*
18 *United States*, I'm looking at the last page of
19 that, the Court states: we need not determine in
20 this case whether there might be some circumstances
21 where a defendant's reasons for wanting to be tried
22 by a judge alone are so compelling that the
23 government's insistence on trial by jury would
24 result in the denial of a defendant of an impartial
25 trial. Petitioner argues that there might arise

1 situations where passion, prejudice, public feeling
2 or some other factor may render impossible or
3 unlikely by an impartial trial by jury; however,
4 since petitioner gave no reason for wanting to
5 forego jury trial, other than to save time, this is
6 not such a case and the petitioner does not claim
7 that it is.

8 I think the Supreme Court in *Singer*
9 leaves open, as an exception to that general rule
10 which the Court recognizes that that is the general
11 rule, but I think, based on what has been
12 presented, the reasons why the defendant wants to
13 waive a jury in this case, because of the nature of
14 the allegations, because of the publicity, because
15 of the lesser included offenses that the cumulative
16 impact of those factors seem, to this Court, to
17 require that the Court grant the motion, that the
18 State cannot, in every case, prevent the
19 defendant's waiver, and it's in the unusual case
20 that the State--only in the unusual case is there a
21 waiver of the right would be granted, and I think
22 this is the unusual case.

23 The Court believes that to not waive
24 the--not allow the defendant to waive a jury trial
25 implicates her due process rights and for those

1 reasons the motion is granted.

2 We will take a recess. I will excuse
3 the jury panel and, Ms. Crandall, when did you
4 anticipate starting testimony?

5 MS. CRANDALL: Your Honor, the State
6 won't be beginning today. If Your Honor would
7 issue a written finding, we'll be planning on doing
8 an interlocutory appeal on this.

9 THE COURT: And does counsel want to be
10 heard on that?

11 MR. ARRINGTON: Well, Your Honor,
12 granted that our concern is my client was
13 originally arrested on third degree felony charges.
14 She was booked into the jail, bail was set at ten
15 thousand dollars for third degree felonies, which
16 is a little high, but she paid that bail. The
17 State got the case, got the information, amended
18 the information, re-filed it as first degree
19 felony. She was booked on bail of five hundred
20 thousand dollars, even though she is 42 years old.
21 She has no prior record. She's born and raised in
22 Utah. She has been in the same house for 13 years.
23 She's been married for 20 years.

24 We were able to get the bail down to
25 two hundred and fifty thousand dollars; however,

1 that is way above anything that she or her family
2 combined to come up with. Understanding that the
3 interlocutory appeal is going to take some time,
4 she has been a model prisoner. She has even been
5 in as a trustee during her stay. She's been in
6 custody for five months. There have been no write-
7 ups or anything. I think it would be appropriate
8 to re-visit her custody status and either allow her
9 O.R., because she has paid a bail in this matter on
10 charges that would be lesser included offenses, or
11 at least place her on home confinement pre-trial
12 services where she is being constantly supervised.
13 It is available down here, or at least lower that
14 bail down to something that's much more reasonable.
15 Again, any pre-trial services, home confinement
16 would be satisfactory for us.

17 THE COURT: Alright, anything further
18 from the State?

19 MS. CRANDALL: Yes, Your Honor, just so
20 we're clear. There was never an amended
21 information. The defendant was booked on probable
22 cause by police officers, by Sandy police, and
23 that's what she was booked on. That's what she
24 bonded out on.

25 The State, once they received the case

1 and actually filed an information, we requested two
2 hundred and fifty thousand, at which time, when I
3 believe it was Judge Coriss at the time, saw the
4 information, he raised it to five hundred thousand.

5 We already had a bond hearing back in
6 March in front of Judge Kelly. At that point, it
7 was lowered to the two hundred and fifty thousand.
8 He said if she bailed out, ordered pre-trial
9 services after forty-eight hours. We've already
10 had that hearing. I don't think what has happened
11 here today really changes that in any material
12 manner, and the victim has a right, if you are
13 inclined to grant for some reason, even though
14 there's no legal basis to do so, another bond
15 hearing, and we have the right to have the victim
16 present, at least speak to him and get some input
17 from him.

18 MR. ARRINGTON: And we would stipulate
19 to a bond hearing, Your Honor.

20 THE COURT: And Mr. Arrington and Mr.
21 Retallick, what is the defendant's position on not
22 proceeding with the trial. The State, apparently,
23 is going to take an interlocutory appeal, and
24 whether or not that will be granted, the Court
25 anticipated that we would go ahead and proceed with

1 the trial.

2 MR. ARRINGTON: Well, I think the
3 interlocutory appeal has been availed just because
4 it requires a disposition, I think. We're
5 objecting to--we would like to go forward with the
6 trial today and proceed. The interlocutory appeal
7 is going to take some time. It's going to involve
8 other counsel, lots of legal argument and
9 preparation I think that this Court is well aware
10 of. We would like to proceed with trial today.

11 MR. RETALLICK: Your Honor, if I may,
12 just one additional point on the interlocutory
13 appeal. I've been involved in many of them and one
14 of the keys to the interlocutory appeal is that the
15 issue that is sought to be decided by the Court of
16 Appeals must be--have some dispositive impact on
17 the case before the Court. It's not dispositive.
18 The only decision would be to reverse you and say
19 we should have a jury. Having a jury or not
20 having a jury is not going to be dispositive of the
21 underlying charges.

22 Typical interlocutory appeal is on a
23 suppression issue where the district court--someone
24 claims the district court made an error. So if the
25 evidence--if the denial of the suppression hearing

1 is reversed, the evidence is allowed in, then that
2 becomes dispositive if everything else flows
3 through it.

4 And so I think, in this claim of a
5 right to an interlocutory appeal, while they may
6 file it, I don't believe it's provident, and I
7 believe it's just another delaying tactic to keep
8 defendant in custody longer than absolutely
9 necessary.

10 THE COURT: Alright, anything further
11 from the State?

12 MS. CRANDALL: Other than, Your Honor,
13 to say this is a delaying tactic to keep the
14 defendant in custody is highly offensive. This is
15 the first we've heard of even them saying that they
16 wanted to waive the jury trial was this morning.
17 It hasn't even been brought up. We're just kind of
18 snow-balled with it. It's up to the Court of
19 Appeals to decide whether or not the interlocutory
20 appeal is appropriate and if Your Honor's decision
21 is appropriate, and we have the right to request
22 that.

23 THE COURT: Alright. What we're going to
24 do, we will recess until tomorrow morning at 8:30.
25 I intend to proceed with the trial at 8:30, unless

1 the Supreme Court or the Court of Appeals directs
2 me to do otherwise. Thank you. We'll see you
3 back here at 8:30 tomorrow morning.

4 MR. MATHIS: Your Honor, will the Court
5 be placing its findings in writing, or would you
6 like defense or the State to do that?

7 THE COURT: Mr. Arrington or Mr.
8 Retallick, could you prepare findings and an order
9 on the motion, and how long would you need to do
10 that?

11 MR. RETALLICK: If we can get a copy of
12 the audio tape, Your Honor, of this proceeding, we
13 can get it done probably by the end of the day.

14 MR. ARRINGTON: Your Honor, obviously,
15 this tape would be to get it done before the end
16 of the day in order to contact the Attorney
17 General's Office.

18 MR. RETALLICK: Okay, it gets two
19 minutes, Your Honor. It's 10:30. We could have it
20 probably done by 1:00.

21 THE COURT: Alright. That will be the
22 order. Have that submitted. We'll give you our e-
23 mail for both the Court, and if the District
24 Attorney's Office would give them your e-mail and
25 we'll expect that by 1:00 o'clock. Thank you.

1 We'll be in recess.

2 MS. CRANDALL: Your Honor, maybe, just
3 so we can track where we're at, if we could have a
4 Court hearing maybe later this afternoon. We can
5 make sure we have those written rulings and, I
6 think, at that point, we'll be able to--maybe we
7 can give Your Honor the State's better position as
8 far as the Attorney General's Office and Court of
9 Appeals would say on the matter. I don't know if
10 there's any objection to that. I think--

11 THE COURT: Well, I suppose we could do
12 it by phone. Mr. Retallick has to return to Ogden
13 to get that done, and Mr. Arrington to North Salt
14 Lake. So what is your preference, Mr. Arrington or
15 Mr. Retallick?

16 MS. CRANDALL: A phone conference is
17 fine.

18 MR. ARRINGTON: Telephone conference.

19 MR. RETALLICK: Telephone conference
20 would be fine, Your Honor.

21 THE COURT: Alright. We will plan on a
22 telephone conference at 1:30 then.

23 MR. RETALLICK: Very good, Your Honor.

24 MR. ARRINGTON: Thank you, Your Honor.

25 THE COURT: And my clerk will set that

1 up. Thank you.

2 MR. ARRINGTON: Very well. Thank you.

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Addendum D

FILED
UTAH APPELLATE COURT

AUG - 4 2010

FILED
THIRD DISTRICT COURT

10 AUG -6 PM 2:20

IN THE SUPREME COURT OF THE STATE OF UTAH

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State of Utah,

Petitioner,

v.

Case No. 20100632-SC

Jamie Lynn Greenwood,

Respondent.

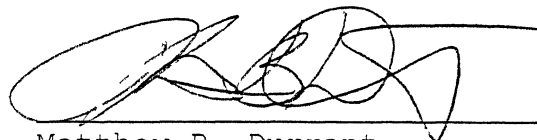
ORDER

This matter is before the Court on Petition for Permission to Appeal Interlocutory Order filed by the State of Utah, accompanied by a Petition for Emergency Relief Pursuant to Rule 8A of the Rules of Appellate Procedure. The Court grants a provisional stay of the district court proceedings to afford this Court the time necessary to consider the Petitions.

FOR THE COURT:

8-4-10

Date



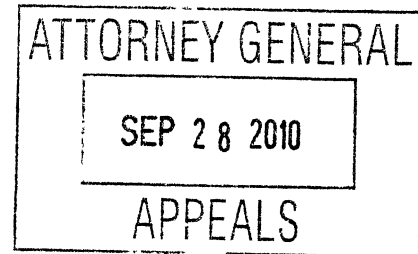
Matthew B. Durrant
Associate Chief Justice

0000121

IN THE UTAH SUPREME COURT

SEP 27 2010

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State of Utah,

Plaintiff and Petitioner,

v.

Case No. 20100632-SC

Jamie Lynn Greenwood,

Defendant and Respondent.

ORDER

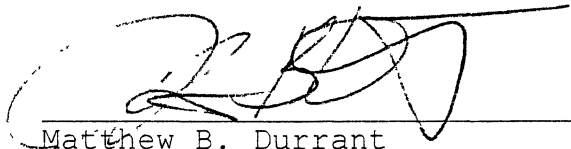
This matter is before the court upon a Petition for Permission to Appeal an Interlocutory Order, filed on August 4, 2010.

IT IS HEREBY ORDERED pursuant to Rule 5 of the Utah Rules of Appellate Procedure, the Petition for Permission to Appeal an Interlocutory Order is granted.

For The Court:

Date

9-27-10


Matthew B. Durrant
Associate Chief Justice