

2003

# The State of Utah v. Liza Victoria Corwell : Brief of Respondent

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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THE STATE OF UTAH :  
Plaintiff/Petitioner :  
v. : Case No. 20030667-SC  
LIZA VICTORIA CORWELL :  
Defendant/Respondent :

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**RESPONDENT'S BRIEF ON CERTIORARI REVIEW**

Respondent Liza Victoria Corwell responds to the State of Utah's brief on certiorari review of the Utah Court of Appeals' decision to allow Ms. Corwell to withdraw her guilty plea to attempted tampering with evidence, a third degree felony under Utah Code Annotated sections 76-8-510 and 76-4-101 (1999).

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**JURISDICTION AND NATURE OF THE PROCEEDINGS**

On July 17, 2003, the Utah Court of Appeals reversed Ms. Corwell's conviction and ruled that the trial court failed to strictly comply with Utah Rule of Evidence 11(e) in accepting Ms. Corwell's guilty plea. State v. Corwell, 2003 UT App. 261, ¶19, 74 P.3d 1171. On August 18, 2003, the State filed a petition for a writ of certiorari seeking this Court's intervention in this matter. Through appellate counsel, Ms. Corwell opposed the State's petition. This Court granted the State's request for certiorari review on December 12, 2003. This Court has jurisdiction to grant certiorari review of the Court of Appeals' decisions under Utah Code Annotated sections 78-2-2(5) and 78-2a-4 (2002).

**STATEMENT OF THE ISSUE, STANDARD OF REVIEW AND  
PRESERVATION OF THE ARGUMENTS**

Trial judges must strictly comply with Utah Rule of Criminal Procedure 11(e) in accepting guilty plea to ensure that criminal defendants knowingly and voluntarily waive their constitutional rights. The trial judge below failed to inform Ms. Corwell of her right to a speedy trial or to explain the limits that a guilty plea placed on her right to appeal. Did the Court of Appeals correctly rule that the proceedings below did not communicate the nature of these rights sufficiently to remedy the trial judge's omissions?

In State v. Visser, 2000 UT 88, 22 P.3d 1242, this Court defined the standards for reviewing the Court of Appeals' decision to order the withdrawal of a guilty plea:

On certiorari, we review the court of appeals' decision for correctness. See Bear River Mut. Ins. Co. v. Wall, 1999 UT 33, ¶4, 978 P.2d 460. The correctness of the court of appeals' decision turns on whether that court accurately reviewed the trial court's decision under the appropriate standard of review. See Newspaper Agency Corp. v. Audit Div., 938 P.2d 266, 267 (Utah 1997). Whether the trial court strictly complied with rule 11 is a question of law, reviewed for correctness. See State v. Benvenuto, 1999 UT 60, ¶10, 983 P.2d 556. The trial court's underlying factual findings are reviewed for clear error. See id.

Visser, 2000 UT 88, ¶9, 22 P.3d 1242. Trial counsel preserved appellate review of the validity of the guilty plea by filing a timely motion to withdraw the plea. R. 84, 120-22; see State v. Reyes, 2002 UT 13, ¶3, 40 P.3d 630.

## COURT RULE

Utah Rule of Criminal Procedure 11(e) details the requirements for trial judges to review in accepting guilty pleas:

(e) The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and may not accept the plea until the court has found:

(1) if the defendant is not represented by counsel, he or she has knowingly waived the right to counsel and does not desire counsel;

(2) the plea is voluntarily made;

(3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;

(4) (A) the defendant understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements;

(B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged crime was actually committed by the defendant or, if the defendant refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk of conviction;

(5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

(6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;

(7) the defendant has been advised of the time limits for filing any motion to withdraw the plea; and

(8) the defendant has been advised that the right of appeal is limited.

These findings may be based on questioning of the defendant on the record or, if used, a written statement reciting these factors after the court has established that the defendant has read, understood, and acknowledged the contents of the sworn statement. If the defendant cannot understand the English language, it will be sufficient that the sworn statement has been read or translated to the defendant.

Unless specifically required by statute or rule, a court is not required to inquire into or advise concerning any collateral consequences of a plea.

### **STATEMENT OF THE CASE AND FACTUAL BACKGROUND**

On March 13, 2000, the police received an anonymous tip that a woman named Liza Corwell was with another woman in room 236 at a motel located at 1990 West and North Temple Street. R. 40; 99: 3.<sup>1</sup> The caller claimed that the two women may be selling drugs from the room. R. 3. The police conducted a warrantless search of the room and found Ms. Corwell and her friend, Rebecca Champneys, in possession of drugs and drug paraphernalia. R. 3-4; 99: 3-12.

On April 4, 2001, the State filed an Information charging Ms. Corwell and Ms. Champneys with one count each of tampering with evidence, unlawful possession of a controlled substance, and unlawful possession of drug paraphernalia. R. 2. On December 7, 2001, following the denial of a motion to suppress, Ms. Corwell agreed to

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<sup>1</sup>The volume marked 99 contains the transcript of the hearing on the motion to suppress. Volume 100 contains the plea hearing transcript and volume 182 includes the hearing on the motion to withdraw Appellant's guilty plea. The internal page numbers of those volumes are included after "R.:" and the volume number.

plead guilty to one count of attempting to tamper with evidence R. 56; 99: 24-26. In exchange for the pleas, the State agreed to dismiss the remaining charges and to allow Ms. Corwell to appeal the denial of the motion to suppress. R. 56; 99: 2-4.

As part of the agreement, Ms. Corwell completed a plea affidavit in which she waived several constitutional rights. R. 56. The affidavit did not address Ms. Corwell's right to a speedy trial nor did it explain that Ms. Corwell had the right to appeal all pre-plea issues and any other errors if she had chosen to go to trial. Ms. Corwell attested in the statement that she had reviewed the statement with counsel, understood her rights, and agreed to plead guilty. R. 60-61.

The trial judge conducted a joint plea colloquy with Ms. Corwell and Ms. Champneys, who had also agreed to plead guilty. R. 100. Counsel for Ms. Corwell stated for the record that Ms. Corwell had pleaded guilty based on State v. Sery, 758 P.2d 935 (Utah Ct. App. 1988). R. 100: 4. The trial judge explained, "so everybody is clear on that," Sery meant that Ms. Corwell could "appeal it." Id.

The trial judge then reviewed several rights that the defendants were waiving and asked each of the women if they understood those rights. R. 100: 7. The trial judge first mentioned that the defendants were waiving their right to a trial which was scheduled for the following Monday. Id. The hearing took place on the preceding Friday. R. 149. Both defendants nodded affirmatively to waive this right. R. 100: 7. The trial judge did not mention the right to a speedy trial or any additional limits on the right to an appeal.

After reviewing the factual basis for the charges, the potential penalties, and the elements of the offense, the trial judge accepted the defendants' guilty pleas. R. 100: 10, 13-15.

On March 29, 2002, the trial court sentenced Ms. Corwell to a term of up to five years imprisonment but suspended that term and placed her on probation for 24 months. R. 68-69. The judge also imposed a fine but suspended part of it, ordered Ms. Corwell to pay \$350 toward the cost of her court-appointed attorney, required her to enroll in a drug treatment program, and imposed 75 hours of community service. *Id.* Ms. Corwell filed a timely notice of appeal on April 26, 2002. R. 75.

Three days after filing her notice of appeal, Ms. Corwell filed a timely motion to vacate her conviction and to withdraw her guilty plea.<sup>2</sup> R. 84. She argued that she did not knowingly and voluntarily plead guilty because the trial judge failed to advise her of her right to a speedy public trial, her limited appeal rights, and other requirements found in Rule 11(e). R. 122. The State opposed the motion and argued that the trial judge substantially complied with Utah Rule of Criminal Procedure 11(e). R. 145-49. The Court of Appeals stayed Ms. Corwell's appeal pending the trial court's decision on the motion to withdraw. R. 156.

At a hearing on the motion, the trial judge agreed that he failed to advise Ms.

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<sup>2</sup>At the time Ms. Corwell pleaded guilty and was sentenced, Ms. Corwell had up to 30 days after sentencing to file a motion to withdraw her guilty plea. *State v. Ostler*, 2002 UT 68, ¶11, 31 P.3d 528. The legislature has since amended Utah Code Ann. § 76-13-6(2)(b) (2003), to now require defendants to file such motions "before sentence is announced."

Corwell of her right to a “speedy” trial. R. 182: 5. Nevertheless, he denied the motion to withdraw because, except for omitting that right, he included Rule 11's remaining requirements in either Ms. Corwell's written plea statement or in his oral plea canvass.

Id. The trial judge concluded that Ms. Corwell had knowledge of her right to a speedy public trial because the plea hearing occurred on a Friday and she knew that the trial was set for the following Monday. Id.

The trial judge entered a written order denying the motion on October 11, 2002. R. 177. In it, he ruled that because he had “substantially” complied with “most” of Rule 11's requirements, Ms. Corwell had voluntarily entered her plea. R. 178. Ms. Corwell filed an amended notice of appeal on October 28, 2002. R. 201-02.

The Court of Appeals reversed Ms. Corwell's conviction for the trial judge's failure to comply with the strict compliance rule for accepting guilty pleas under Utah law. State v. Corwell, 2003 UT App 261, ¶19, 74 P.3d 1171. But, the Court upheld the denial of the motion to suppress. Id. at ¶11 n.1. The State filed a petition for a writ of certiorari on August 18, 2003. Ms. Corwell opposed the petition. On December 12, 2003, this Court granted certiorari review of the Court of Appeals' conclusion that Ms. Corwell's guilty plea was invalid.

## SUMMARY OF THE ARGUMENT

The trial judge's and the State's admissions that the trial judge failed to apprise Ms. Corwell of her right to a speedy trial and the limits on the right to appeal indisputably support the Court of Appeals' decision below. The Court of Appeals relied on this Court's well-reasoned, established precedent in concluding that Ms. Corwell did not knowingly and voluntarily plead guilty. The State seeks to excuse the trial judge's omissions by arguing that the pending trial and Ms. Corwell's involvement in the proceedings showed her understanding of her speedy trial and appeal rights. Nevertheless, the record establishes that the trial judge did not explain the concept of a speedy trial to Ms. Corwell. Likewise, this Court has ruled that the limits to the right to appeal encompass more than the trial judge's references to Ms. Corwell's right to appeal the denial of the motion to suppress. Because Ms. Corwell did not know her rights or the implications of her guilty plea, the Court of Appeals soundly ruled that she involuntarily pleaded guilty.

The State can only prevail on appeal if this Court were to accept the State's invitation to retreat from the fundamental constitutional principles underlying the strict compliance doctrine. But, adopting the State's approach would encourage the deprivation of criminal defendants' fundamental rights in the absence of a knowing and voluntary waiver. Moreover, the State's request would return to the fuzzy substantial compliance approach and thereby promote additional post-conviction challenges to guilty



pleas. The State's arguments essentially invite this Court to overrule the strict compliance doctrine without showing that strict compliance was originally faulty or no longer remains sound. To the contrary, strict compliance preserves constitutional guarantees and promotes the administration of justice. These constitutional concerns and sound policies irrefutably support affirming the Court of Appeals' decision that Ms. Corwell pleaded guilty without understanding her rights or the consequences of her decision to plead guilty.

### **ARGUMENT**

**THIS COURT SHOULD UPHOLD THE COURT OF APPEALS' DECISION BECAUSE THE TRIAL JUDGE FAILED TO STRICTLY COMPLY WITH THE REQUIREMENTS FOR ACCEPTING GUILTY PLEAS, MS. CORWELL UNKNOWINGLY AND INVOLUNTARILY PLEADED GUILTY, AND THE STATE PRESENTS NO REASONS FOR RETREATING FROM THE STRICT COMPLIANCE DOCTRINE**

The Court of Appeals correctly applied this Court's precedents on strict compliance with Rule 11(e) in concluding that Ms. Corwell did not knowingly and voluntarily plead guilty. Both the trial judge and the State concede that the judge failed to strictly comply with Rule 11(e). Further, the trial judge failed to otherwise satisfy the strict compliance doctrine under State v. Visser or State v. Martinez. Unlike Visser, the circumstances here show that the trial judge failed to communicate to Ms. Corwell her

right to a speedy trial and the limits on her right to appeal. The omissions failed to satisfy the purposes of the strict compliance doctrine of ensuring that defendants know their rights and understand the consequences of pleading guilty. Likewise, Martinez never addressed the issues presented in this appeal. In any event, the State's proposed application of Visser here would eliminate the well-established strict compliance doctrine and return to the problematic substantial compliance approach. In essence, the State seeks to overrule sound law without showing any need to do so. In fact, adopting the State's approach would lead to defendants unknowingly and involuntarily pleading guilty in violation of state and federal constitutional precepts.

**A. The Trial Judge, the State, and the Court of Appeals Agree that the Trial Judge Failed to Strictly Comply with Rule 11(e).**

The Court of Appeals correctly followed long-established constitutional principles and this Court's precedents in ruling that Ms. Corwell did not knowingly and voluntarily plead guilty. This Court has consistently required strict compliance with Rule 11(e) for almost 25 years. State v. Gibbons, 740 P.2d 1309 (Utah 1987). Strict compliance requires “the trial court [to] personally establish that the defendant's guilty plea is truly knowing and voluntary and establish on the record that the defendant knowingly waived his or her constitutional rights.” State v. Visser, 2000 UT 88, ¶11, 22 P.3d 1242 (quoting State v. Abeyta, 852 P.2d 993, 995 (Utah 1993)) (emphasis added). “Strict

compliance, however, does not mandate a particular script or rote recitation of the rights listed.” Id. Rather, trial judges must ensure that the defendant understands each right listed and that “no requirement of the rule is omitted. . . .” Id. at ¶12 (quoting State v. Maguire, 830 P.2d 216, 218 (Utah 1991)).

In applying strict compliance, the overall focus of the inquiry must be on the constitutional requirements that support Rule 11(e). Visser, 2000 UT 88, ¶12, 22 P.3d 1242. That rule is designed “to ensure that a defendant knows his or her rights and thereby understands the consequences of a decision to plead guilty.” State v. Martinez, 2001 UT 12, ¶22, 26 P.3d 203. Strict compliance, in turn, undergirds the fundamental constitutional principle that defendants may only waive constitutional rights “knowing[ly]” and with “full understanding of the consequences.” United States v. Ruiz, 536 U.S. 622, 629 (2002); Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); State v. Hoff, 814 P.2d 1119, 1122 (Utah 1991).

The Court of Appeals correctly applied this law to the plea colloquy below. That Court accurately concluded that the trial judge failed to “effectively communicate” to Ms. Corwell her rights to a speedy trial and the limits on the right to appeal. Corwell, 2003 UT App 261, ¶¶15, 17, 74 P.3d 1171. Even the State concedes that neither the plea affidavit nor the trial judge explained Ms. Corwell’s right to a speedy trial. State’s Brief at 5, 7. Likewise, the State does not contest that the trial judge expanded on the limits to the right to appeal, other than mentioning Ms. Corwell’s right to appeal the denial of the

motion to suppress. Id. at 4-5. The trial judge admitted himself that he failed to review the right to a speedy trial with Ms. Corwell. R. 182: 5. He then conceded in his order denying the motion to withdraw the guilty plea that he had only “substantially” complied with Rule 11(e) and had merely informed Ms. Corwell of “most” of the rights waived by pleading guilty. R. 178. Under these circumstances, the Court of Appeals aptly ruled that “the trial court did not strictly comply with rule 11(e).” Corwell, 2003 UT App 261, ¶19, 74 P.3d 1171.

**B. Visser Does Not Support Strict Compliance Because The Trial Judge Never Communicated to Ms. Corwell Her Right to a Speedy Trial or the Limits on Her Right to Appeal, Nor Do the Circumstances Below Otherwise Indicate that Ms. Corwell Understood Those Rights**

Because the Court of Appeals properly applied the law, the State turns its attention to State v. Visser, 2000 UT 88, 22 P.3d 1242, the only instance of which appellate counsel is aware in which this Court has excused the failure to follow the requirements of Rule 11(e). The State relies on the trial judge’s omissions in Visser to contend that the Court of Appeals “elevated form over substance” in ruling that the trial judge failed to inform Ms. Corwell of her constitutional rights. State’s Brief at 13. But, Visser does not favorably compare to this case because the trial judge did not communicate the Rule 11(e) rights to Ms. Corwell. Also contrary to Visser, the record below does not support

that Ms. Corwell understood her speedy trial right or the limits on her right to appeal.

This Court specifically limited its holding in Visser to an unique factual scenario that is not analogous here. In particular, this Court carefully confined its ruling to the "mid-trial context of the plea" and "the particular circumstances of this case." 2000 U T 88, ¶13, 22 P.3d 1242. Specifically, this Court concluded that the defendant understood his rights to a speedy public jury trial before an impartial jury because he pleaded guilty during the middle of his jury trial and he had actively participated in the jury selection . Id. at ¶¶14-16. In other words, the defendant's "actual trial experience" had adequately substituted for the trial judge's failure to comply with Rule 11(e). Id. at ¶16. Therefore, the defendant had "first-hand knowledge of the method of ensuring the right to a trial by an impartial jury." Id. Stated even more clearly, this Court reasoned that the defendant's "personal trial experience . . . communicated at least as much as would the mere oral recitation of the 'right to a speedy public trial before an impartial jury.'" Id. at ¶13.

Contrary to the "particular circumstances" of Visser, the facts of this case are not analogous to a complete "oral recitation" of the rights listed under Rule 11(e). 2003 U T 88, ¶13, 22 P.3d 1242. First, unlike in Visser, Ms. Corwell's never had an "actual trial experience" that "communicated at least as much as would the mere oral recitation" of the right to a speedy trial. Id. at ¶¶13, 16. Specifically, the defendant in Visser actually received the benefit of the right to a speedy trial. In contrast, Ms. Corwell pleaded guilty

before she ever went to trial. Thus, the Court of Appeals correctly ruled that because Ms. Corwell was “never afforded the right to a speedy trial,” her experience did not “evidence[] a clear understanding of” her speedy trial right. Corwell, 2003 UT App 261, ¶15, 74 P.3d 1171; see also State v. Dean, 2002 UT App 323, ¶12 n.3, 57 P.3d 1106, cert. granted 64 P.3d 586 (Utah 2003) (no strict compliance where trial judge failed to mention the separate right to a speedy trial); State v. Hittle, 2002 UT App 134, ¶10, 47 P.3d 101, cert. granted 59 P.2d 603 (Utah 2002) (same).<sup>3</sup>

Second, the trial judge’s references to a trial that was scheduled for the following Monday, at most, only “communicated” to Ms. Corwell that she had the right to a trial. Visser, 2000 UT 88, ¶13, 22 P.3d 1242. A scheduled trial is not the same as actually receiving the right to a speedy trial. “Modern trial practice is replete with opportunities for delay, postponement, or continuance.” Corwell, 2003 UT App 261, ¶15, 74 P.3d 1171. As the Court of Appeals astutely observed, the absence of any reference to the right to a speedy merely showed that Ms. Corwell understood that she had a “right to a lengthy and delayed trial.” Corwell, 2003 UT App 261, ¶16, 74 P.3d 1171.

Third, Visser is further inapplicable because the defendant there made no

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<sup>3</sup>Dean and Hittle present similar issues concerning whether the trial judge strictly complied with Rule 11(e) in failing to inform guilty-pleading defendants of their right to a speedy trial. Those cases remain pending before this Court. Nevertheless, Ms. Corwell contends that the Court of Appeals correctly concluded in those cases that the right to a speedy trial is a separate and distinct right that must be disclosed to the defendant under Rule 11(e). Dean, 2002 UT App 323, ¶¶11-12, 57 P.3d 1106 ; Hittle, 2002 UT App 134, ¶10, 47 P.3d 101

"allegation that the commencement of the trial or its proceedings to that point were not timely." 2000 UT 88, ¶14, 22 P.3d 1242. In contrast, this case involved numerous delays that communicated to Ms. Corwell that there was no guarantee that her trial would proceed on schedule. The State charged Ms. Corwell by Information on April 4, 2001. R. 2. The case then sat dormant for over three months until June 14, 2001, when Ms. Corwell appeared for a roll-call hearing. R. 21. The preliminary hearing was scheduled for two months later, on August 14, 2001. R. 35. The parties then litigated the motion to suppress. Ms. Corwell finally entered her guilty plea on December 7, 2001, the same day the trial judge denied her suppression motion. R. 53.

Irrespective of Visser, the State unpersuasively argues that the trial judge's references to the scheduled trial adequately communicated to Ms. Corwell her speedy trial right. State's Brief at 12. The State erroneously construes State v. Martinez, 2001 UT 12, 26 P.3d 203, as holding that strict compliance does not require trial judges to inform criminal defendants of the right to a speedy trial. State's Brief at 15. In Martinez, this Court listed the Rule 11(e) rights that the trial judge had reviewed with the defendant and concluded that the trial judge had strictly complied with the rule. 2001 UT 12, ¶¶4, 23, 26 P.3d 203. Those rights included "the right to a jury trial. . . ." Id. at ¶23. The State contends that this Court's failure to specifically mention together with that right the right to a "speedy" trial "constituted strict compliance and supported the conclusion that the guilty plea was knowingly and voluntarily entered." State's Brief at 15.

The Court of Appeals rejected this same argument in Dean, 2002 UT App 323, ¶11, 57 P.3d 1106. Dean soundly concludes that nothing in Martinez even suggests that the trial judge failed to mention the right to a speedy trial. Id. Moreover, because the parties had not raised that question, the Court of Appeals correctly ruled that Martinez did not sanction trial judges omitting the right to a speedy trial in accepting guilty pleas. Id. Thus, the only way for this Court to conclude that Martinez supports the State's claims would be to require this Court to assume facts and legal issues that were presented in that case. Although Dean is pending before this Court, the Court of Appeals correctly analyzed Martinez in Dean by refusing to sanction the omission of the right to a speedy under Rule 11(e). Dean, 2002 UT App 323, ¶¶11, 57 P.3d 1106 .

The State further fails to support its contention that the Court of Appeals' decision violates the strict compliance rule because it effectively requires a "rote recitation of rule 11 rights." State's Brief at 10. This Court premised its decision in Visser on its conclusion that the defendant's actual experience "communicated at least as much as would the mere oral recitation" of the right to a speedy trial. 2000 UT 88, ¶13, 22 P.3d 1242. But, the trial judge's repeated references to the scheduled trial merely conveyed the date on which the trial was scheduled. Strict compliance required the trial judge to communicate more—the actual concept of the right to a speedy, as opposed to just, any trial.

Moreover, the State's contention that delays do not necessarily deprive a person of



the right to a speedy trial is simply irrelevant. State’s Brief at 13. Visser, as well as this Court’s supporting decisions, bars trial judges from omitting any of the rights listed in Rule 11(e). 2000 UT 88, ¶12, 22 P.3d 1242. Instead, judges have an affirmative duty to “communicate” the Rule 11(e) rights. Id. at ¶¶14-15 Although Ms. Corwell may have understood that she had a right to a trial, there is not “an adequate basis in the record to conclude” that she understood her right to a speedy trial. Id. at ¶13.

The State, likewise, provides no support for its claim that merely communicating that a trial is “imminent” satisfies the strict compliance requirement. State’s Brief at 16. The State concedes itself that an “imminent” trial is only ““likely to happen”” and is not certain to take place. State’s Brief at Petition at 14 (quoting Webster’s New World Dictionary (1956)). The mere mention of a pending trial fails to “effectively communicate” the concept of a speedy trial. Corwell, 2003 UT App 261, ¶15, 74 P.3d 1171. Because Ms. Corwell did not understand this concept, she did not knowingly and voluntarily plead guilty. Abeyta, 852 P.2d at 995.

**C. The Trial Judge’s Reference to the Right to Appeal the Denial of the Motion to Suppress Failed to Inform Ms. Corwell of the Limits on the Right to Appeal.**

The trial judge similarly failed to inform Ms. Corwell of the limits on her right to appeal as required under Rule 11(e)(8). Although the trial judge identified the one issue Ms. Corwell could appeal, he never discussed the numerous other appeal issues that she

had waived by pleading guilty. Without an understanding of these limits, Ms. Corwell did not knowingly and voluntarily plead guilty.

The trial judge's failure to "communicate[]" to Ms. Corwell the limits on her right to appeal violated the strict compliance requirement. Visser, 2000 UT 88, ¶13, 22 P.3d 1242. The trial judge correctly explained Ms. Corwell's right to appeal the denial of her motion to suppress under State v. Sery, 758 P.2d 935, 938 (Utah 1988). But, Sery is not the only limit on the right to appeal following a guilty plea. "[B]y pleading guilty, the defendant is deemed to have admitted all of the essential elements of the crime charged and thereby waives all nonjurisdictional defects." State v. Parsons, 781 P.2d 1275, 1278 (Utah 1989). "Thus, a guilty plea precludes reservation of issues for appeal, even those concerning alleged pre-plea constitutional violations." State v. Munson, 972 P.2d 418, 421 (Utah 1998).

The record below contains no discussion of the waiver of non-jurisdictional pre-plea issues. The State agrees that the trial judge only referred to the Sery plea and did not discuss any other limits on the right to appeal. State's Brief at 18. Likewise, the plea affidavit broadly states that Ms. Corwell's right to appeal if she had gone to trial and was convicted:

10. I know that under the Constitution of Utah that if I were tried and convicted by a jury or by the Judge that I would have the right to appeal my conviction and sentence to the Utah Court of Appeals . . . and that if I could not afford to pay the costs for such appeal, those costs would be paid by the State. I understand that I am giving up these rights if I plead guilty.

R. 59.

Although the trial judge informed Ms. Corwell of the one issue she had preserved for appeal, the record includes no support for finding that she knew and understood the additional limits on her appeal rights. The plea affidavit's vague reference to appealing a "conviction and sentence" provides no elucidation on the right to appeal "pre-plea" issues or disputes that arise during or even after a trial. Munson, 972 P.2d at 421. Neither the trial judge nor the plea affidavit mention the right to raise any additional arguments, including pre-plea questions or issues that arise at trial. Something more meaningful than a general reference to a "conviction and sentence" is needed to explain the waiver of the right to appeal the host of issues that may arise in the trial court.

Contrary to the State's implications, Ms. Corwell's involvement in the motion to suppress and the plea bargaining process does not substitute for the trial judge's failure to canvass her about the limits on appeal. State's Brief at 19. Trial judges have a duty to determine the defendant's understanding "at the time the plea is entered. . . ." Gibbons, 740 P.2d at 1313 (quoting McCarthy v. United States, 394 U.S. 459, 470 (1969)) (emphasis in the original). Contrary to Visser, Ms. Corwell's participation in the proceedings does not reveal her understanding of the limits on the right to appeal, other than the Sery plea. Without being "fully informed . . . prior to pleading guilty" of the appeal rights that criminal defendants waive when entering a plea, Ms. Corwell involuntarily pleaded guilty. Hittle, 2002 UT App 134, ¶10, 47 P.3d 101; see also Ostler,

2000 UT App 28, ¶16, 996 P.2d 1065.

The State dismisses the need to explain the limits on a guilty-pleading defendant's right to appeal by asserting that "it is apparent from the history of rule 11 that subsection (e)(8) was enacted to require the trial court only to explain that any appeal was limited to an expressly reserved issue" under Sery. State's Brief at 18 n.5. The State premises this argument on the addition of subsection (e)(8) at the same this court adopted subsection (i), which codified the right to enter a conditional plea under Sery. Id.

The State includes no support for this argument on appeal and bases its reasoning on pure assumption. Rather than linking subsection (e)(8) and (i) together, the addition of those provisions reflects an effort to update and harmonize this Court's rules with its reported decisions. Specifically, this Court established a conditional right to appeal from a guilty plea in Sery in 1988. 758 P.2d 935, 938 (Utah 1988). The next year, this Court fully detailed, for the first time, that a guilty plea "waives all nonjurisdictional defects." State v. Parsons, 781 P.2d 1275, 1278 (Utah 1989). Thus, the addition of those subsections shows an intent to expand Rule 11 to correspond with the present state of the law, including the waiver of the right to appeal pre-plea issues.

The Court of Appeals has supported explaining to defendants all of the relevant limits on the right to appeal. According to that Court, "[s]pecific inquiry should be made as to whether defendant understands that by his [or her] plea he [or she] waives his rights . . . to appeal . . . ." State v. Ostler, 2000 UT App 28, ¶12, 996 P.2d 1065 (quoting State

v. Valencia, 776 P.2d 1332, 1335 (Utah Ct. App. 1989) (per curiam)), affirmed 2001 UT 68, 31 P.3d 528. The Court of Appeals was even more specific in this case. It specifically cited the holding in Parsons and concluded that the trial judge's references to the Sery plea did not "sufficiently explain[]" the limits on the right to appeal. Corwell, 2003 UT App 261, ¶17, 74 P.3d 1171.

The State's misconstrues the Court of Appeals' discussion of the trial judge's oblique reference to the Sery plea as "it." State's Brief at 18-19. There is no dispute that "it" referred to the right to appeal the denial of the motion to suppress. The Court of Appeals simply concluded that referring to "it" coupled with the failure to explain the waiver of "all nonjurisdictional defects" did not "sufficient[ly] explain" the limits on the right to appeal. Corwell, 2003 UT App 261, ¶17, 74 P.3d 1171 (quoting Parsons, 781 P.2d at 1278)). The State's argument does not eliminate the absence of evidence about Ms. Corwell's understanding of the "basic consequences of [her] decision to plead guilty," including the limits on her right to appeal. Visser, 2000 UT 88, ¶11, 22 P.3d 1242.

**D. Adopting the State's Lax Approach to Strict Compliance Would Undermine Fundamental Constitutional Rights and Violate The Doctrine of Stare Decisis**

Should this Court adopt the State's arguments, it would risk violating criminal defendants' fundamental rights, thwarting the predictability of the law, and undermining

the precedential value this Court's decisions. Concluding that the trial court strictly complied with Rule 11(e) here would encourage the unknowing and involuntary denial of defendants' fundamental rights. Moreover, adopting the State's approach would undermine this Court's decisions that have repeatedly upheld the strict compliance doctrine. The State has presented no reasons for departing from this Court's past decisions. Chipping away at the strict compliance rule undermines the doctrine of stare decisis by reducing the predictability of the law on guilty pleas and, by default, returning to a substantial compliance approach.

The need for the strict compliance doctrine has not changed since this Court established it nearly 25 years ago in State v. Gibbons, 740 P.2d 1309 (Utah 1987). As stated previously, the ultimate objectives of Rule 11 and the strict compliance doctrine are to protect criminal defendants from unknowingly or voluntarily waiving constitutional rights when pleading guilty. United States v. Ruiz, 536 U.S. 622, 629 (2002); State v. Hoff, 814 P.2d 1119, 1122 (Utah 1991). Accordingly, "the rule announced in Gibbons was intended to ensure that the record demonstrates that the judge who takes the plea personally establishes that a defendant's guilty plea is truly knowing and voluntary." Hoff, 814 P.2d at 1122.

This Court eliminated any doubt about the viability of the strict compliance rule shortly after deciding Gibbons. In two cases, this Court rejected the State's claims that Gibbons did not require strict compliance and that the Court of Appeals had limited the

reach of that case. Maguire, 830 P.2d at 218; Hoff, 814 P.2d at 1123 & n.2. In Hoff, this Court unequivocally ruled, “[t]he strict compliance rule announced in Gibbons was [] a clear break with this Court’s rulings in previous cases dealing with the validity of guilty pleas.” 814 P.2d at 1123. This Court has consistently applied this rule since deciding Gibbons. Martinez, 2001 UT 12, ¶22, 26 P.3d 203; State v. Abeyta, 852 P.2d 993, 995 (Utah 1993).

In contrast to this well-developed case law on basic constitutional principles, finding that the trial judge strictly complied with Rule 11(e) in this case would promote the unknowing and involuntary waiver of rights. Because the trial judge did not personally comply with Rule 11(e), the only way for this Court to find strict compliance is to conclude that the trial judge otherwise communicated the right to a speedy trial and the limits on the right to appeal to Ms. Corwell. But, such a conclusion would constitute an unwarranted expansion of this Court’s limited ruling in Visser and an intrusion upon the strict compliance rule. Because the trial judge never communicated to Ms. Corwell the concepts behind the right to a speedy trial or the limits on the right to appeal, a finding of strict compliance here would simply sanction trial courts’ omitting Rule 11(e) requirements.

Approving of such omissions would, in turn, invite the State to make additional efforts to chip away at the strict compliance rule. The strict compliance doctrine eventually could include so many exceptions that it would essentially be rendered

meaningless. Instead, this Court would, by default, return to mere substantial compliance even though this Court rejected that view long ago. The end result of proceeding down this path is the sanctioning of the unknowing and involuntary denial of fundamental constitutional rights.

Inviting challenges to the strict compliance doctrine would also unduly burden the courts with additional post-conviction challenges. In contrast, this Court adopted strict compliance to promote fairness, judicial efficiency, and judicial economy. "The more meticulously the Rule is adhered to, the more it tends to discourage, or at least to enable more expeditious disposition of, the numerous and often frivolous post-conviction attacks on the constitutional validity of guilty pleas." Hoff, 814 P.2d at 1122 (quoting McCarthy v. United States, 394 U.S. 459, 465 (1969)). Should this Court cut back on the strict compliance doctrine, Utah courts can expect additional and more complicated post-conviction challenges to guilty pleas.

In effect, the State's arguments that Visser justify the trial judge's failings amount to requesting this Court to slowly overrule the strict compliance doctrine one case at a time. The State seeks a similarly substantive change to the law based on its argument that Martinez, 2002 UT 12, 22 P.3d 203, does not require trial judges to specifically address the right to a speedy trial. This Court has repeatedly stated that it will only overrule its precedents when it is "clearly convinced 'that the [established] rule was originally erroneous or is no longer sound because of changing conditions and that more



good than harm will come by departing from precedent.'" State v. Menzies, 889 P.2d 393, 399 (Utah 1994) (quoting John Hanna, The Role of Precedent in Judicial Decision, 2 Vill. L. Rev. 367, 367 (1957)). The party seeking a change in the law has a "substantial burden of persuasion" in asking that precedent be overturned. Id. at 398.

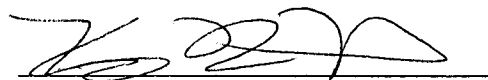
The State makes no attempt in this appeal to show that the strict compliance rule was originally misguided or that evolving conditions support overruling that doctrine. Rather, it seeks to reduce the effect of that rule by building upon Visser and Martinez and poking more holes in this Court's approach to guilty pleas. As shown above, undermining strict compliance leads to the unwarranted deprivation of constitutional rights and increases the volume of post-conviction challenges that already flood the courts. Thus, the State completely fails to meet its burden of showing a need to overrule that doctrine.

The adoption of the State's claims would further undermine the goals of stare decisis of "forg[ing] certainty, stability, and predictability in the law." State v. Shoulderblade, 905 P.2d 289, 292 (Utah 1995). In essence, the State requests this Court to encourage the elimination of a rule that it established almost 25 years ago and has repeatedly upheld ever since. In contrast, upholding that doctrine "reinforces confidence in judicial integrity and lays a foundation of order upon which individuals and organizations in our society can conduct themselves." Id.

CONCLUSION

Ms. Corwell requests this Court to reaffirm this Court's repeated upholding of the strict compliance doctrine rule and to affirm the Court of Appeals' decision that Ms. Corwell did not knowingly and involuntarily plead guilty.

SUBMITTED this 19<sup>th</sup> day of April, 2004.



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**CERTIFICATE OF DELIVERY**

I, KENT R. HART, certify that I have caused to be delivered ten copies of this brief to the Utah Supreme Court, 450 South State, 5<sup>th</sup> Floor, P.O. Box 140210, Salt Lake City, Utah 84114-0210, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6<sup>th</sup> Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 19<sup>th</sup> day of April, 2004.



KENT R. HART

DELIVERED to the Utah Supreme Court and the Utah Attorney General's Office as indicated above this \_\_\_\_ day of April, 2004.

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