

2010

# State of Utah v. Charles Howard Williams : Brief of Appellant

Utah Court of Appeals

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## Recommended Citation

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CASE NO. 20101022

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH,

Appellee,

v.

CHARLES HOWARD WILLIAMS,

Defendant-Appellant.

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On Appeal from the Third Judicial District Court  
In and For Salt Lake County, State of Utah  
Honorable Royal I. Hansen  
No. 091902668

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**BRIEF OF APPELLANT**

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Respectfully submitted,

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ORAL ARGUMENT IS REQUESTED

June 24, 2011

FILED  
UTAH APPELLATE COURTS

JUN 24 2011

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## STATEMENT OF ISSUES AND STANDARD OF REVIEW

Defendant Charles Williams raises three issues in his appeal from a trial court judgment entered in favor of the State:

**Issue 1:** Whether the trial court should have arrested judgment after new evidence established that the State rested its case on substantially unreliable evidence.

**Standard of Review:** The Court reviews the denial of a Defendant's Motion to Arrest Judgment for abuse of discretion. *State v. Wengreen*, 2007 UT App 264, ¶10, 167 P.3d 516, 519.

**Issue 2:** Whether the Trial Court should have granted Defendant's Motion for New Trial after new evidence concerning the central issue of the case was brought to light.

**Standard of Review:** The Court reviews the denial of a motion for new trial based on newly discovered evidence for abuse of discretion. At the same time, however, the court reviews the legal standards applied by the trial court in denying the motion for correctness." *State v. Wengreen*, 2007 UT App 264, ¶12, 167 P.3d 516, 519; *State v. Martin*, 2002 UT 34, ¶45, 44 P.3d 805.

**Issue 3:** Whether the Trial Court should have granted Defendant's Motion for New Trial after defense counsel discovered evidence of prosecutorial misconduct.

**Standard of Review:** The Court reviews the denial of a motion for new trial based on newly discovered evidence for abuse of discretion. At the same time, however, the court reviews the legal standards applied by the trial court in denying the motion for correctness." *State v. Wengreen*, 2007 UT App 264, ¶12, 167 P.3d 516, 519; *State v. Martin*, 2002 UT 34, ¶45, 44 P.3d 805.

## STATEMENT OF THE CASE

### I. Nature of the Case.

This case arises from criminal charges related to domestic violence. It is undisputed that the victim and defendant engaged in a heated disagreement. However, the details of that disagreement remain in dispute. Criminal charges were entered upon alleged victim Alecia Belt's written statement to police, produced shortly after said disagreement. In her statement, Alecia accused Defendant Charles Williams of threatening her life and kicking her in front of her two minor children. Charles has consistently maintained his innocence, and following trial, Alecia provided additional testimony that corroborates Charles's version of events. This appeal involves factual issues regarding witness credibility and procedural issues concerning post-trial evidence.

### II. Course of Proceedings and Disposition Below.

Defendant was tried by a six-person jury on June 16, 2010. Alecia was the State's only substantive witness, and Charles was the sole defense witness. At the close of trial, the jury returned guilty verdicts on one charge of Domestic

Violence Assault and two charges of Domestic Violence in the Presence of a Child. Shortly thereafter, Alecia contacted defense counsel and admitted to committing perjury as a result of prosecutorial misconduct. On August 16, 2010, Defendant filed a Motion to Arrest Judgment or for New Trial, accompanied by two affidavits prepared by Alecia. The court held an evidentiary hearing on the motion on November 6, 2010 and heard arguments from counsel on December 6, 2010. The court denied defense counsel's motion and proceeded to sentencing. Defendant hereby appeals the trial court's denial of his Motion to Arrest Judgment or for New Trial.

## **STATEMENT OF FACTS**

### **I. The Incident.**

Defendant Charles Williams (Charles) dated alleged victim Alecia Belt (Alecia) for nearly three years, lived with her for a portion of that time, and had four children with her. (R. at 97) In early 2009, Charles was unemployed, Alecia was pregnant with twins, and finances were a constant source of contention for the couple. (R. at 103, 124) On March 6, Charles and Alecia were eating breakfast together, when an argument over an unpaid utility bill erupted. (R. at 98, 101) As the disagreement progressed, Charles became increasingly frustrated and upset; he yelled, swore, and called Alecia names. (R. at 104, 169) In the midst of this heated argument, Alecia engaged in a telephone conversation with her nurse regarding pain related to pregnancy. (R. at 105, 172) The nurse

overheard yelling in the background, and concerned, called the police. (R. at 108, 172) A police officers and crime lab technician responded to the couple's home, but Charles was no longer there. (R. at 116) The technician photographed several marks on Alecia's leg, which she alleged were the result of Charles kicking her during their heated disagreement. (R. at 116, 127) According to Alecia, both of the couple's children were present at the time. (R. at 111) Alecia also alleged that Charles threatened her life during the altercation. (R. at 111) Charles was subsequently charged with Domestic Violence Assault and two counts of Domestic Violence in the Presence of a Child.

## **II. Trial by Jury.**

On June 16, 2010, Charles was tried by a six-person jury. (Docket) During her opening statements to the jury, the State's prosecutor emphasized that a large part of the jury's job was to assess the credibility of witnesses. (R. 86) She further explained that a victim's willingness to testify in a domestic violence case is one factor that should be considered in assessing credibility. (R. 86)

Alecia was the State's only substantive witness, and Charles was the sole defense witness. The witnesses provided substantially different versions of the events and details leading to Charles's arrest. The witnesses disagreed as to whether the children were at home during the argument, who provided money for the unpaid bill, who initiated Alecia's phone call, and even as to whether Charles owned a car. (R. 104, 108, 111, 121, 169, 172, 174)

Alecia took the witness stand first and testified for a short twelve minutes before the prosecutor presented her with her written statement to police, prepared on the day of the incident. (State's Objection, R. 110) Alecia then proceeded with her testimony, which largely reflected the written statement. (R. 110-117) Specifically, Alecia testified that the defendant threatened to kill her and kicked her on the left leg in the presence of her two children. (R. 114) Alecia further testified that she did not want to come to court, because she was afraid of Mr. Williams. (R. 111) However, during cross examination and re-direct, Ms. Belt admitted that she continued to keep her belongings at the defendant's house and stayed overnight with him on occasion, including an overnight stay the weekend prior to trial. (R. 118, 150)

When called to the witness stand, Charles corroborated Ms. Belt's testimony as to the cause of the couple's argument. (R. 167) He additionally admitted to calling Alecia names, yelling and swearing. (R. 169) However, Charles denied making any physical contact with Alecia or threatening her life. (R. 174-175) He also testified that the children were not at home at the time of the incident. (R. 175)

At the close of trial, the jury returned guilty verdicts on one count of Assault and two counts of Domestic Violence in the Presence of a Child. (R. 232)

### **III. New Evidence.**

Following trial, Alecia contacted defense counsel concerning improprieties at trial. Alecia memorialized the improprieties in two written affidavits, detailing numerous instances of wrongful and potentially criminal conduct on the part of herself, the State, and the victim advocate. (See Affidavits of Alecia Bell) Alecia recanted her testimony in its entirety, claiming she was coerced by the State into committing perjury at trial. (Affidavits of Alecia Bell) In response to Alecia's allegations, the State filed affidavits of the trial prosecutor and victim advocate, wherein Alecia was described as "cooperative" and "consistent." (Affidavits of Michael Riquino and Jaclyn Crawmer). Both the prosecutor and the victim advocate denied engaging in any misconduct. (Affidavits of Michael Riquino and Jaclyn Crawmer).

In light of Alecia's post-trial statements, defense counsel filed a Motion to Arrest Judgment or for New Trial. On November 29, 2010, the court took evidence on the motion. Alecia was advised of the potential legal consequences of admitting to perjury. (M.R. at 9-10) After acknowledging her understanding, Alecia reaffirmed the allegations set forth in her affidavits, specifically, she admitted to providing false testimony at trial. (M.R. at 11) Alecia claimed she had been threatened and coerced into testifying by the process server, prosecutor, and victim advocate. (M.R. at 16, 17) She further testified that she had attempted to prevent the prosecutor from pursuing false charges by refusing to enter to the courtroom. (M.R. at 21) According to Alecia, the prosecutor

physically forced her into the courtroom. (M.R. at 24) On cross examination, Alecia admitted she aware of Charles's recent release from jail but denied that was the reason she had recanted her testimony. The State's attorney attempted to admit evidence of threats made by Charles against Alecia prior to his release date, but Alecia denied any fear of Charles. Following Alecia's testimony, Charles's mother and aunt testified to hearing Alecia in the hallway prior to her taking the witness stand, corroborating Alecia's claim that she had refused to enter the courtroom. (M.R. at 74)

The State's prosecutor and victim advocate testified on behalf of the State. The prosecutor admitted to instructing Alecia to come to court if subpoenaed, but denied engaging in any coercion or other misconduct. (R. at 87) The victim advocate testified that Alecia was afraid to testify but denied that she had told him or the prosecutor that she had falsely accused Charles. (R. at 92)

Following the evidentiary hearing, the court heard oral argument and subsequently denied defense counsel's motion. The court entered the following

Findings of Fact and Conclusion of Law:

1. Whether Ms. Belt did or did not want to testify does not establish a basis to grant either of the Defendant's motions.
2. The testimony presented by Ms. Belt after trial . . . was dramatically different from her testimony at trial. However, Belt's testimony after the trial was not credible and did not provide a basis to support defendant's motions.
3. The testimony presented by Ms. Williams was biased in favor of her son's motion.

4. The testimony provided by Ms. Crawmer was credible and reliable, and supported the factual basis for, and regularity of, the jury's verdict, and provided additional reason for the denial of the Defendant's motion.
5. Mr. Riquino's testimony also supports the basis and regularity of the verdict. Mr. Riquino's testimony also possesses special credibility, as he is the only witness who did not have a "side" in the case.

The Court finds that:

1. Based upon the unconvincing nature of the evidence presented in support of the Defendant's motion, the record on its face does not present a basis to support the defendant's motion to arrest judgment, or motion for new trial; therefore,
2. The Defendant's motions are denied."

Defendant appeals the trial court's judgment, arguing: (1) that substantially unreliable evidence constitutes good cause to arrest judgment; (2) that the evidence discovered post-trial goes to the central issue of the case and constitutes grounds for a new trial; and (3) that the evidence of prosecutorial misconduct is sufficient to warrant a new trial.

## SUMMARY OF THE ARGUMENT

Criminal defendants are presumed innocent until proven guilty *beyond reasonable doubt*. Thus, convictions grounded in false or improbable evidence should not be permitted to stand. The State rested its case on the testimony of one substantive witness, Alecia Belt, the alleged victim in this case. Alecia's

testimony constituted the only direct evidence against Defendant. Accordingly, when post-trial evidence shed new light on the credibility of Alecia's trial testimony, as well as the prosecutor's conduct at trial, the trial court should have arrested judgment, or alternately, ordered a new trial.

The requirements for an arrest of judgment or new trial are set forth in Rules 23 and 24(a) of the Utah Rules of Criminal Procedure. Defendant submits that the evidence admitted in this case provides good cause for an arrest of judgment, because it establishes substantial inconsistencies in Alecia's testimony. Defendant further argues that the post-trial evidence constitutes grounds for a new trial, because it (a) could not have been discovered prior to trial, (b) is not cumulative, and (b) is likely to result in a different jury verdict. Importantly, the trial court did not enter findings of fact as to any of the elements for new trial, as set forth in *State v. James*, 819 P.2d 781, 793 (Utah 1991). Finally, Defendant submits that Alecia's allegations regarding prosecutorial misconduct are sufficient to warrant a new trial.

## ARGUMENT

### **I. The Trial Court Should Have Arrested Judgment When New Evidence Established That Charles's Conviction Was Not Based On Substantial Reliable Evidence.**

Rule 23 of the Utah Rules of Criminal Procedure provides that, "at any time prior to the imposition of sentence, the court, upon its own initiative may, or upon motion of a defendant shall, arrest judgment if the facts proved or

admitted do not constitute a public offense, or the defendant is mentally ill, or *there is other good cause* for the arrest of judgment.” Utah R. Crim. P. 23 (emphasis added). “At common law, an arrest of judgment was the trial court’s act of refusing to enter judgment on a verdict because of some error appearing on the face of the record.” *State v. Owens*, 753 P.2d 976, 978 (Utah App. 1988)(internal citations omitted). In *State v. Owens*, the court applied common law to find that the defendant’s motion looked past the record, and therefore, did not constitute a motion for arrest of judgment. *Id.* However, Utah courts subsequently departed from the common law rule and now permit motions to arrest judgment based on facts proved, “at any time prior to the imposition of sentence,” based on the evidence or facts, as proved in trial *or as admitted by the parties*. *State v. Workman*, 806 P.2d 1198, 1202 (Utah App. 1991). In appropriate cases, the court is permitted to “invade the province of the jury” and find that the “verdict was based on inherently improbable evidence.” *Id.* at 1203.

In *State v. Robbins*, 2009 UT 23, 210 P.3d 288, the court emphasized that convictions must be based on substantial reliable evidence or they cannot stand. *Id.* at ¶ 14. The court further explained, that although credibility of witnesses is generally determined by the jury, the jury’s determination is appropriately challenged where the witness’s testimony is “inherently improbable,” or “apparently false.” *Id.* at ¶ 16. Testimony is “apparently false” if its falsity is apparent, without any resort to inferences or deductions. *Id.* at 17. Testimony is

“inherently improbable” where there are “substantial inconsistencies in a sole witness’s testimony.” *Id.* at 17. Attention to inconsistencies is particularly important in criminal cases, where the high burden of proof beyond a reasonable doubt permits the court to afford less deference to convictions arising from inherently improbable, inconsistent, uncorroborated witness testimony. *Id.*

In the instant case, defense counsel appropriately moved the court for arrest of judgment, prior to sentencing, on grounds that the State’s only substantive witness committed perjury. Alecia’s affidavits and subsequent post-trial testimony raise serious credibility issues. She admitted, under oath, to committing perjury. Such admissions render her trial testimony “apparently false,” or in the least, “inherently inconsistent. There are substantial inconsistencies between Alecia’s testimony at trial and her testimony after trial.

Charles respectfully submits that, at this juncture, the State’s only substantive witness has recanted her trial testimony in its entirety. Accordingly, his conviction is not based on substantial reliable evidence and does not support the jury’s finding of guilty beyond reasonable doubt. Charles asks that the Court reverse the trial court’s denial of his Motion to Arrest Judgment.

**II. The Trial Court Should Have Ordered A New Trial When New Evidence Going Directly To The Central Issue Of The Case Was Brought To Light Post-Trial.**

Pursuant to Rule 24(a) of the Utah Rules of Criminal Procedure, a trial judge may grant a motion for new trial, “in the interest of justice, if there is any

error or impropriety which had a substantial adverse effect upon the rights of a party.” Utah R. Crim. P. 24(a). “While the granting or refusing of the motion lies in the sound discretion of the court, where there is grave suspicion that justice may have been miscarried because of the lack of enlightenment on a vital point which new evidence will apparently supply, and the other elements attendant on obtaining a new trial on the ground of newly discovered evidence are present, it would be an abuse of sound discretion not to grant the same.” *Jensen v. Logan City*, 89 Utah 347, 57 P.2d 708, 723 (1936). To constitute grounds for a new trial, new post-trial evidence must be sufficient to establish three elements: “(1) It must be such as could not with reasonable diligence have been discovered and produced at the trial; (2) it must not be merely cumulative; and (3) it must be such as to render a different result probable on retrial of the case.” *State v. James*, 819 P.2d 781, 793 (Utah 1991).

Importantly, in the instant case, the trial court did not enter findings of fact as to any of the above-referenced *James* elements. Charles submits that the evidence supporting his motion for new trial sufficiently establishes all three elements.

**a. Alecia’s perjured testimony could not with reasonable diligence have been discovered and produced at trial.**

First, new evidence must be such as could not with reasonable due diligence have been discovered and produced at trial. *Id.* The evidence in this

case clearly establishes the first element, and thus, warrants little argument. In, *State v. Wengreen*, 2007 UT App 264, 167 P.3d 516, the court found that new testimony could not have been discovered prior to trial because the witness did not come forward with such testimony until after trial. *Id.* at ¶ 22. Similarly, in *State v. James*, the court found that third party testimony could not have been discovered prior to trial, because the third party witness did not have personal knowledge of the events to which he testified and did not come forward until after the trial. 819 P.2d at 794. Here, defense counsel could not reasonably have discovered that Alecia committed perjury prior to trial, because she did not come forward with that information until after trial. Any knowledge that the prosecutor may have had regarding Alecia's false statements was concealed from the defendant. Accordingly, Charles respectfully submits that Alecia's post-trial statements are sufficient to establish the first element required for a new trial.

**b. Alecia's perjured testimony is not merely cumulative.**

Testimony corroborating a criminal defendant's version of events is not cumulative. In *State v. James*, Defendant James filed a motion for new trial after a third party came forward to testify that one of the State's key witnesses had committed perjury. 819 P.2d at 793. The trial court found the new evidence cumulative, because "it went merely to the witness's credibility" and "did not present new evidence of defendant's innocence." *Id.* at 794. The Utah Supreme overruled the trial court, finding that the credibility evidence went beyond

refuting the witness's testimony. *Id.* The witness provided the State's only evidence as to James's state of mind at the time of the crime. *Id.* The court found that the third party's testimony was important evidence, in that it corroborated the defendant's statements would be viewed by jurors as a different quality of evidence than the defendant's own testimony. *Id.*

Similarly in the instant case, Alecia was the State's only witness to the alleged criminal acts for which Charles was charged. Alecia and Charles were the only people who testified as to the disputed facts in the case. The key issue in this case was witness credibility, and Alecia's post-trial statements go directly toward the truthfulness of the witnesses. There was no evidence presented at trial to corroborate Charles's version of the incident at issue. Alecia's post-trial affidavits and subsequent testimony effectively refutes the State's only direct evidence. That evidence has an exceedingly high impeachment value. Multiple inconsistent accounts of the same events produced by the same individual would likely be viewed in a substantially different light by a jury than inconsistent accounts produced by opposing parties.

Pursuant to the foregoing, Charles respectfully submits that Alecia's post-trial statements are not merely cumulative but provide new evidence going directly to the heart of the case.

- c. Alecia's perjured testimony is likely to render a different result on retrial of the case.**

Finally, if the first two elements have been satisfied, and “there is a reasonable likelihood that the new evidence would lead a jury to an outcome more favorable” to the defendant, the court must grant a new trial. *Utah v. Martin*, 2002 UT 34, ¶47; 44 P.3d 805, 816.

In *Utah v. Martin*, Defendant Martin was accused of forcing an alleged victim into his vehicle at gun point, raping her, and then returning her to her car. *Id.* at 806-807. Martin maintained that the alleged victim voluntarily entered his car, and after a lengthy conversation, engaged in consensual sexual intercourse with him. *Id.* at 808. In closing argument, the State framed the “central issue” in the case as the credibility of the parties, and contended that the victim’s testimony was more reasonable than Martin’s. *Id.* at 809, 816. The jury convicted Martin. *Id.* However, following trial, new evidence was found that cast doubt upon the victim’s testimony. *Id.* The trial court denied Martin’s motion for a new trial, but the Utah Supreme Court reversed. *Id.* The Court held that “evidence with strong impeachment value could significantly impact the central issue of the case – whom to believe about the circumstances of the sexual contact.” *Id.* at 816. The only direct evidence against Martin was Egan’s testimony, so any newly discovered evidence that could reasonably impact a jury’s assessment of that issue was sufficient to establish the likelihood of a more favorable outcome to Martin. *Id.*

New trials were similarly ordered on the basis of witness credibility in the Utah cases of *State v. James*, 819 P.2d at 795-796, and *State v. Lenkart*, 2011 UT 27, ¶43-44.

Alternately, in *State v. Wengreen*, Defendant Wengreen filed a motion for new trial after he discovered that the alleged child victim's version of events changed during interviews subsequent to trial. *Wengreen*, 167 P.3d at 521. In that case, the court found that the issue went beyond the credibility of the child's testimony, because the State had introduced physical evidence and corroborating testimony, which also supported the jury's verdict. *Id* at 522.

The instant case is similar to *Martin*, in that the alleged victim provided the only direct evidence against Charles. The central issue in the case was witness credibility, that is, which witness's version of the facts the jury adjudged to be truthful. The State, in fact, stressed witness credibility in presenting its theory of the case in opening statements. The State's effectively argued that Alecia's willingness to confront her alleged abuser in court established her credibility as a witness. Thus, evidence that Alecia subsequently admitted to committing perjury could significantly impact a jury's determination of that central issue. What is important here is not which of Alecia's two versions of events is more credible, it is the fact that Alecia committed perjury, related to the case, on at least one occasion. Such misconduct constitutes evidence of an extraordinarily high impeachment value.

Charles respectfully submits that Alecia's post-trial statements are sufficient to establish the likelihood of a more favorable outcome for Charles upon retrial.

### **3. Alecia's Allegations Of Prosecutorial Misconduct Constitute Sufficient Grounds For A New Trial.**

Criminal defendants have a Constitutional right to a fair trial. US Const., am. 6. Witness intimidation by a prosecutor can warrant a new trial where it results in the denial of that right. *State v. Larsen*, 834 P.2d 586 (Utah App 1992). Due process imposes two additional duties on prosecutors: (1) the duty to timely correct any false testimony, and (2) the duty to "provide, without request by the defendant, all exculpatory evidence." *State v. Doyle*, 2010 UT App 351, 245 P.3d 206, 209. "A prosecutor's role transcends that of an adversary: a prosecutor is the representative...of a sovereignty...whose interest...in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Id.* at 211 (internal citations omitted). Prosecutorial misconduct thus constitutes grounds for a new trial, if, absent a prosecutor's misconduct, the court concludes that "there is a reasonable likelihood the jury would have reached a more favorable result." *Utah v. Wengreen*, 2007 UT App 264, 167 P.3d 516, 519.

In the instant case, Alecia has alleged witness intimidation, admission of false testimony, and failure to provide exculpatory information. Alecia claims that State coerced her into testifying by threatening her with criminal charges

and the potential loss of child custody. Moreover, Alecia allegedly refused to testify until the prosecutor physically forced her into the courtroom. Alecia claims that she repeatedly told both the prosecutor and victim advocate that she had falsely accused Charles and that they were pursuing false charges. Alecia communicated these allegations twice, in written affidavits to the trial judge and in testimony under oath at a motion hearing. Importantly, Alecia testified to committing perjury after she was fully aware of the potential criminal consequences of her actions. That Alecia was willing to criminal charges to set clear the record is one factor that should be considered in determining the credibility of her allegations.

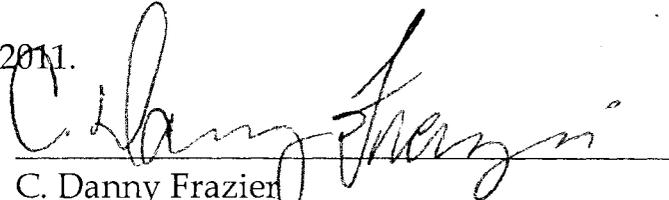
## CONCLUSION

Defendant Charles Williams was tried by jury and convicted on multiple domestic violence charges. Following trial, the State's only substantive witness recanted her testimony, shedding new light on the credibility of her testimony. Additionally, allegations of prosecutorial misconduct were brought to the courts attention. Despite this new evidence, the trial court denied Defendant's Motion to Arrest Judgment or for New Trial. The court abused its discretion by refusing to grant the Defendant's motion, because (a) new evidence established that Charles's conviction was not based on substantial reliable evidence; (b) new evidence went to the central issue of the case; and (c) evidence of prosecutorial misconduct warrants an order for new trial.

## RELIEF SOUGHT

For all of the reasons set forth above, the Court should reverse the trial court's order and remand this case for arrest of judgment or new trial.

DATED this 24th day of June, 2011.

  
C. Danny Frazier  
*Attorney for Defendant-Appellant*

## CERTIFICATE OF COMPLIANCE WITH RULE 27(b)

This brief complies with Utah Rule of Appellate Procedure 27(b) because:

1. The brief is typewritten in 13-point proportionally spaced typeface.
2. The brief, with blue cover page, is bound along the left margin and
2. All printing is double-spaced, with the exception of block quotations, which are customarily single-spaced and indented.
3. Margins are one inch on the top, bottom and sides of each page.
4. The brief contains less than 50 pages.
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## SUPPLEMENTAL APPENDIX/ADDENDUM

No Supplemental Appendix or Addendum is needed.

**CERTIFICATE OF SERVICE**

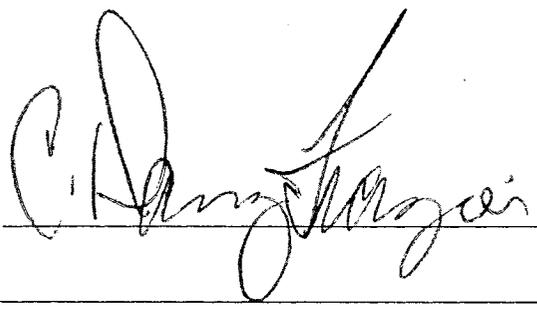
This is to certify that true and correct copies of BRIEF OF APPELLANT were mailed, postage prepaid, this 24th day of June, 2011, to the following:

SALT LAKE COUNTY DISTRICT ATTORNEY'S OFFICE

ATTN: \_\_\_\_\_

111 East Broadway, #400  
Salt Lake City, Utah 84111

*Attorney for Appellee*

Signed:  \_\_\_\_\_  
By: \_\_\_\_\_