

2016

## **State of Utah, Plaintiff/Appellee, vs. William Tirado, Defendant/ Appellant**

Utah Court of Appeals

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Case No. 20140967-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

WILLIAM TIRADO,  
*Defendant/Appellant.*

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Brief of Appellee

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Appeal from a conviction for arranging the distribution of a controlled substance, a second degree felony, in the Second Judicial District, Weber County, the Honorable Ernie W. Jones presiding

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Brief of Appellee

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**STATEMENT OF JURISDICTION**

Defendant appeals from a conviction for arranging the distribution of a controlled substance, a second degree felony. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2015).

**STATEMENT OF THE ISSUES**

Defendant arranged to sell methamphetamine to a confidential informant at Defendant's house. At the time set for the sale, Defendant stood outside his house with his cousin Carl Courtney. When the deal fell through, the informant walked away, and the police advanced. Defendant had no drugs on him, but admitted that he owned the drug paraphernalia officers found in a consensual search of his bedroom. Courtney was arrested on outstanding drug warrants, but later faced a possession charge



when methamphetamine was found on him during booking. Courtney pled guilty to attempted possession of methamphetamine with intent to distribute and was sentenced five months before Defendant went to trial.

Defendant was tried for arranging to distribute a controlled substance. The State used Courtney's presence at Defendant's house with methamphetamine and Courtney's conviction to argue that Defendant acted as a middleman in arranging for a sale of Courtney's drugs. Defense counsel argued that Defendant was not guilty because he was an admitted user not a seller, he had no drugs on his person or in his home, he had no criminal record for selling drugs, Courtney had a history of distributing drugs, generally did not use a middleman, and possessed an inadequate amount of methamphetamine to complete the deal.

On appeal, Defendant claims that his trial counsel—who represented Courtney in the criminal case that concluded before Defendant's trial—had a conflict of interest, and he moves for a remand under rule 23B, Utah Rules of Appellate Procedure. The 23B motion is supported by non-record allegations that: (1) his trial counsel concurrently represented Courtney against the charges arising from these events and in "several other criminal cases"; (2) Courtney would have testified at Defendant's trial that he pleaded guilty and that he had 2.1 grams of methamphetamine on him



when he was arrested; and (3) Courtney would also have testified that he knew of the call between Defendant and the informant but did not know its content and did not arrange for Defendant to set up a drug sale.

*Issue.* Has Defendant carried his burden to show that: (1) his counsel was in a position where he could advance another client's interest to Defendant's detriment; and (2) his counsel did so?

*Standard of Review.* An ineffective assistance claim raised for the first time on appeal is reviewed for correctness. *See State v. Clark*, 2004 UT 25, ¶6, 89 P.3d 162.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provision and rule are reproduced in

Addendum A:           U.S. Const. amend. VI;  
                              Utah R. App. P. 23B.

## STATEMENT OF THE CASE

### A. Summary of facts.

Lorenzo Gomez had a criminal record and worked occasionally as a confidential informant with officers on the Weber-Morgan Narcotics Strike Force. R217:106-07, 111, 169-71, 180-81, 156. In July 2012, he made a deal with Defendant William Tirado in which Tirado agreed to sell Gomez two eight-balls of methamphetamine for \$440. R217:110-12, 171-72. An eight-ball is approximately 3.5 grams of methamphetamine and produces about

twenty uses. R217:111, 187. Two eight-balls are viewed as a common amount for distribution purposes. R217:190. The street value of two eight-balls was approximately \$440 in 2012. R217:168.

Gomez took the information to Officer Jason Vanderwarf and offered to do the transaction as a confidential informant. R217:111, 173. Officer Vanderwarf had successfully used Gomez's services in the past and agreed to pay him \$200 to make the drug buy with Defendant. R217:111, 152, 156.

Gomez and Defendant had agreed to conduct the sale on July 26, 2012. R217:111-12. When Officer Vanderwarf drove Gomez to the meeting, they drove by Defendant's house and saw Defendant and his cousin Carl Courtney standing outside. R217:112. Officer Vanderwarf parked "around the corner" and listened over the speaker as Gomez called Defendant from the car. R217:112-15, 174. Gomez tried to get Defendant to meet him across the street from Defendant's house, but Defendant wanted Gomez to come to his home, confirmed the sale, and stated "we're" waiting on the front porch. R217:144, 161, 247. Gomez asked again how much "it" would cost, to which Defendant responded, "four-four-zero," meaning the previously-agreed price of \$440. R217:174-75, 247-48. In the phone exchange, no one expressly said "methamphetamine" or "drugs," but instead used language identified

by Officer Vanderwarf and Gomez as slang commonly used by dealers and users. R217:153-54, 159-60, 184.

Officer Vanderwarf searched Gomez, gave him \$440, and attached to him a recording device. R217:116, 174. He also cautioned Gomez to stay on the north side of the street opposite Defendant's house no matter what happened. R217:122, 175. The officer believed it was safer for both Gomez and his officers to keep away from Defendant's house. R217:122.

Once Gomez got out of the car and started walking toward Defendant's house, Officer Vanderwarf moved his car so he could keep the exchange in sight. R217:117, 174. Gomez reached a corner of the block opposite Defendant's house about the time Defendant reached the opposite corner, and the two yelled to each other across the street. R217:122-23, 163; State's Exh. 3. When Gomez urged Defendant to cross the street and talk, Defendant refused and yelled for Gomez to cross the street. R217:178; State's Exh. 3. Gomez urged Defendant to hurry and confirmed that he had the money. *Id.* But when Gomez asked if Defendant had "it," Defendant said no, his "dude just left." *Id.*

When neither man would cross the street, Gomez walked away, and the officers moved in to make arrests. R217:124-25. Officers arrested Courtney on outstanding drug distribution charges. R217:128. Officer

Vanderwarf arrested Defendant, put him in his patrol car, then *Mirandized* and interviewed him. R217:128-29.

Meanwhile, Agent Shawn Grogan and Officer Derek Draper talked to Defendant's girlfriend, Courtney Reynolds. R217:190-92, 218-20. She and Defendant lived with Defendant's mother. R217:211. When the officers asked for permission to search, Reynolds agreed and led them to a computer area and bedroom she and Defendant used. R217: 129, 132-34. In the bedroom, the officers found: two meth pipes with unidentified residue on them; two marijuana pipes with unidentified residue on them; a spoon with unidentified residue on it; some baggies with unidentified white residue in them; a zig-zag roller with unidentified green leafy residue on it; empty baggies; two scales; and two pill bottles with the name "Kenneth Sparks" on the label. R217:132-34, 191. Even though most of the paraphernalia was in plain sight, Reynolds claimed that she did not know Defendant was still doing drugs and that she wanted everything gone. R217:129, 192, 195. Agent Grogan took the bag of paraphernalia to Officer Vanderwarf, and Defendant admitted all of it belonged to him. R217:129-30.

**B. Summary of proceedings.**

The State booked Courtney on the outstanding charges and added a possession charge when a search at the jail revealed that he had a small black box containing methamphetamine and some baggies. R217:138. Courtney admitted to Officer Vanderwarf that if he needed to make a sale, he would use the meth stash found on him at the jail. R217:138. When Courtney was declared indigent, Sean Young—who had been appointed to represent Defendant three weeks earlier—was appointed to represent Courtney. Docket, Case Number 121901671 [“Courtney Docket”] at 2-3 (in Addendum C). In November 2013, Courtney pled guilty to an amended charge of attempted possession of a controlled substance with intent to distribute based on the events occurring at Defendant’s house. State’s Exh. 10; R217:203-04.

Sean Young was appointed as Defendant’s counsel within two weeks of his arrest. R7-8. Because an immediate charge of arranging to distribute could potentially lead to discovery of the confidential informant’s identity, police booked Defendant only for possession of the paraphernalia Defendant admitted was his. R217:156-58, 196. They later screened with the district attorney’s office a charge of arranging to distribute a controlled substance, and included the new charge in an amended information. R31;

R217:157-58. Two months later and three weeks after Courtney entered his guilty plea, Defendant had a preliminary hearing and was bound over. R45; State's Exh. 10. Three weeks later, Courtney was sentenced, and the district court closed his case the same day. Courtney Docket at 16-18. Five months after Courtney was sentenced and his case was closed, Defendant stood trial. R78; State's Exh. 10.

At trial, the prosecutor established the first count—possession of paraphernalia within a drug-free zone—by relying on Defendant's confessed ownership of the drug paraphernalia and on testimony concerning the distance of Defendant's home from a nearby church. R217:123-26, 129-30.

Evidence that Defendant arranged for the sale of methamphetamine began with the phone calls between Gomez and Defendant in which the two established the quantity and price of the methamphetamine, together with the date, place, and time of the transaction. R217:111, 143-45, 155, 163, 171-74. Both Gomez and Officer Vanderwarf identified Defendant's voice in the recorded calls based on prior experience with him. R217:113-14, 149-51, 160-61, 171, 173-74. Gomez made at least one of the calls to Defendant at the same number Defendant later provided on the booking forms as his home number, and Defendant appeared at the time and place set for the

transaction and was recorded by the bug worn by Gomez. R217:112-13, 116, 122-24, 136, 145-46, 155, 161, 173-77. Although Defendant possessed no methamphetamine at that time, Officer Vanderwarf opined that he may nevertheless have appeared as the seller or as a middleman expected to spearhead the exchange of drugs for money on the seller's behalf. R217:146-49, 151, 153-54, 160, 163. The officer explained that it was not uncommon for a dealer or his middleman to appear at the designated site with some or none of the drugs. R217:146-49, 164. The individual would then verify that the buyer had money, go get the drugs and complete the transaction, take the buyer to the drugs at another location to complete the transaction, or rob the buyer and not provide any drugs. R217:146-49. Through Officer Vanderwarf and Gomez, the prosecutor established that Defendant had acted as a middleman in the past, he was present at the arranged time and place with an individual from whom he had been known to obtain his drugs, and that individual had in his possession the same drug Gomez wanted to buy, albeit in a smaller quantity than agreed. R217:112, 116, 122-24, 138, 141-42, 153, 161, 163-64, 168, 179. The State theorized that Courtney may have been the actual seller for the transaction Defendant arranged, but that the offense of arranging to distribute was completed regardless of who the ultimate seller may have been. R217:165-67, 249, 252-54.



Defendant attempted to prove that the charge of arranging to distribute was a fiction created by the prosecution only after Courtney was convicted of possession with intent to distribute. R217:257-61. Through cross-examination of the State's witnesses, he established that he was booked only on the paraphernalia charge, with the arranging charged added much later.<sup>1</sup> R217:157-59. Defendant admitted being a drug user but not a seller, and he sought to convince the jury that he did not become a seller simply by associating with someone who intended, at some unknown point, to sell meth. R217:129-30, 152-53, 257-62. He stressed that he had no drugs on him or in his home and had no access to the amount he supposedly arranged to sell as officers never found it. R217:163, 167-68.

The jury convicted Defendant as charged and, with the aid of a presentence investigation report, the trial court sentenced him to 365 days confinement for the class A misdemeanor and to a term of one-to-fifteen years in the state prison for the second degree felony, running the sentences concurrent with each other and with the sentence imposed in another case. R83-84, 157-70, 172-75. Defendant timely appealed. R172, 176.

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<sup>1</sup>Young argued in closing that the amendment occurred only after Courtney was convicted, but the record does not support this claim. R31 (amended information filed 10/15/13); State's Exh. 10 (entry of Courtney's guilty plea 11/14/13) and (entry of Courtney's judgment 12/30/13); R217:260-61.

## SUMMARY OF ARGUMENT

Defendant argues that trial counsel, Sean Young, was ineffective due to an actual conflict of interest that adversely affected his performance. Defendant alleges that Young had an actual conflict of interest because his loyalties were divided between Defendant and Courtney. Because of the divided loyalties, he argues, Young did not call Courtney as a witness to support the defense that Defendant neither knew about Courtney's drugs nor arranged to sell them.

To prevail under the Sixth Amendment, Defendant must show that Young had an actual conflict of interest—he was in a position where he could advance Courtney's interests to Defendant's detriment. Defendant also must show that the actual conflict adversely affected Young's performance—that he actually subverted Defendant's interests to advance Courtney's.

Defendant suggests that Young chose not to put Courtney on the stand in order to safeguard Courtney's confidential communications to his counsel, maintain Courtney's attorney/client relationship, and preserve the continued cooperation of the State in plea negotiations and sentencing recommendations for Courtney. He seeks a rule 23B remand to present evidence in support of his claim.

But the evidence he proffers with his motion fails to establish any of the concerns he alleges in support of his claim. Rather, the proffer and the record show that Young's representation of Courtney ended when Courtney was sentenced and his case was closed five months before Defendant went to trial. Defendant provides no evidence concerning the "other cases" in which Young was also allegedly appointed counsel for Courtney, preventing an assessment of whether any of those cases gave rise to a conflict of interest. Moreover, according to the rule 23B evidence, not only did Courtney want to testify, but his proposed testimony would involve no confidential or potentially incriminating information, and nothing he said could have affected his dealings with the State in a case that ended five months before trial. Defendant thus fails to show that Young was in a position to subvert Defendant's interests to Courtney's interests.

Even if Defendant has established that an actual conflict of interest existed, he must also prove that it adversely affected Young's performance. To do this, he must show that Young actually subverted Defendant's interests to advance Courtney's.

The record shows the opposite. Young may have legitimately decided not to call Courtney for two reasons. First, his testimony does not show that Defendant did not arrange a sale of meth. Second, his testimony

was subject to impeachment, making its marginal utility more harmful than helpful. Moreover, where the State's theory did not require that the jury find that Defendant was the middleman for Courtney, Courtney's testimony would not have done much to rebut the State's theory. Defendant thus fails to show that any alleged conflict adversely affected Young's performance. His remand request should therefore be rejected.

## ARGUMENT

### I.

#### **DEFENDANT HAS NOT CARRIED HIS BURDEN TO SHOW THAT TRIAL COUNSEL HAD AN ACTUAL CONFLICT OF INTEREST THAT ADVERSELY AFFECTED HIS PERFORMANCE**

Based wholly on speculation and extra-record evidence attached to his contemporaneously-filed rule 23B motion, Defendant alleges that trial counsel, Sean Young, had an actual conflict of interest because his loyalties were divided between Defendant's interests and Courtney's. Aplt.Br. 10-24 (citing extra-record evidence attached to rule 23B motion). Specifically, he claims that his trial counsel's representation of both men created an actual conflict of interest that adversely affected Defendant's trial by preventing Young from calling Courtney to testify so Defendant could "distance himself" from Courtney "in order to challenge the State's argument that Tirado was acting as his middleman." *Id.* at 22. Defendant claims the only

reason Courtney did not testify was Young's concern that, if called to testify in Defendant's case, Courtney would compromise his own attorney/client relationship with Young, risk revealing confidential communications and "potentially incriminating evidence," and jeopardize his ability to obtain favorable negotiations and sentencing recommendations from the State in his cases. *Id.* at 22-23.

Neither the evidence in the appellate record nor the extra-record evidence attached to Defendant's rule 23B motion, if true, supports Defendant's claim that he was denied his right to conflict-free counsel.

Defendant's sole claim on appeal is that he was denied his Sixth Amendment right to counsel because his attorney labored under an actual conflict of interest that adversely affected his performance. It depends in large part on the extra-record proffer made with his rule 23B motion.

But even accepting the proffer as true, it is insufficient when read with the rest of the record to prove either element of his claims. Therefore, the Court may affirm the conviction without granting a remand to prove the proffered evidence. If, however, the Court disagrees, then the appropriate course would be to remand the case for an evidentiary hearing.

- A. To prevail on his ineffectiveness claim Defendant must show not only an actual conflict, but that the alleged conflict adversely affected trial counsel's performance.**

Defendant claims that Young's representation of both Courtney and himself created an actual conflict of interest that forced Young to choose between his duties to him and to Courtney. Aplt.Br. 19-24. Defendant has not shown that his counsel either could or actually did subvert his interests to advance Courtney's.

Normally, a defendant claiming ineffective assistance of his trial counsel bears the "heavy burden of demonstrating that (1) trial counsel rendered deficient performance that 'fell below an objective standard of reasonableness' and (2) defendant was 'prejudiced' by the deficient performance of trial counsel." *State v. Stidham*, 2014 UT App 32, ¶18, 320 P.3d 696 (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052 (1984)) (footnote omitted). Prejudice usually requires a showing of "'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Mickens v. Taylor*, 535 U.S. 162, 166 (2002) (quoting *Strickland*, 466 U.S. at 694).

In the context of Defendant's claim that trial counsel had a conflict of interest, however, Defendant must show both that (1) Young was in a position that would force him to make choices advancing Courtney's

interests to the detriment of his interests, and (2) Young actually did so. See *Mickens*, 535 U.S. at 171-72; *Lafferty v. State*, 2007 UT 73, ¶62, 175 P.3d 530; *State v. Taylor*, 947 P.2d 681, 686 (Utah 1997); see also *United States v. Alvarez*, 137 F.3d 1249, 1251-52 (10<sup>th</sup> Cir. 1998). When counsel's choices can legitimately be attributed to advancing the defense, then it cannot be said that counsel made them to advance interests in competition with Defendant's. See *Alvarez*, 137 F.3d at 1252 (no Sixth Amendment conflict of interest where "none of counsel's tactics or procedures benefitted the other codefendant over Mr. Alvarez.").

If Defendant can prove both, then he does not have to prove traditional *Strickland* prejudice—that counsel's representation undermines confidence in the trial outcome. But that does not mean he need prove no harm at all. As stated, he must prove that counsel actually advanced competing interests to his detriment. See, e.g., *Mickens*, 535 U.S. at 171-72. He has not done so.

**B. Even if the 23B evidence were in the appellate record, Defendant cannot show that Young could or did advance Courtney's interests to his detriment.**

Even taking Defendant's rule 23B allegations as true, they do not show that his counsel had divided loyalties at the time he represented Defendant or that he advanced Courtney's interests to Defendant's



detriment. His rule 23B proffer, along with the record, shows only that (1) Young concurrently represented Courtney in a related matter only until Courtney was sentenced five months before Defendant's trial; (2) Young negotiated a plea for Courtney to a reduced charge, which plea was entered nearly a month before Defendant's preliminary hearing and five months before Defendant's trial; (3) Courtney did not try to appeal his sentence; (4) Courtney does not attest that he intends to challenge his plea in post-conviction review; (5) both Courtney and Defendant knew that Young was representing the other; (6) Courtney knew Defendant was going to go to trial; (7) Defendant wanted Courtney to testify on Defendant's behalf; (8) Courtney was willing to testify that he was arrested with 2.1 grams of methamphetamine and pled guilty to attempted possession; (9) Courtney was willing to testify that he knew of Defendant's phone call with Gomez but did not know what the two talked about; (10) Courtney "did not arrange" to have Defendant act as a middleman to arrange a sale of meth to Gomez; (11) the State did not contend at Defendant's trial that Courtney was necessarily the person for whom Defendant acted as the middleman; and (12) both Courtney and Defendant were unhappy with Young's representation.

Accepting Defendant's rule 23B evidence as true, it does not establish that Young was forced to neglect his defense of Defendant in order to further Courtney's interests. Young's representation of Courtney for the charges that arose out of the same events ended five months before Defendant's trial—there have been no further proceedings. R78; State's Exh. 10; Courtney Docket at 17-18. While there certainly was some overlap in the two cases, Defendant does not explain how Young could have done anything more for Courtney in a closed case, let alone something that would have harmed Defendant's interests in his ongoing case. *Cf. United States v. Gallegos*, 39 F.3d 276, 278-79 (10<sup>th</sup> Cir. 1994) (no denial of right to conflict-free counsel occurred as a result of successive representation of defendants where prior representation concluded before undertaking Gallegos' representation).

Defendant suggests that there was a conflict arising out of Courtney's interests involving "other cases" in which Young was his counsel. Appt.Br. 22; Affidavit of Carl Mack Courtney ["Courtney Affidavit "] at 2 (in Addendum B). He necessarily implies that Young somehow could have advanced Courtney's interests relative to those cases.

His claim is purely speculative in all respects. The only information he provides about the other cases is Courtney's claim that they existed at the

same time as the charges involving his arrest at Defendant's house and that Young represented him in those cases as well.<sup>2</sup> Courtney Affidavit at 2. He proffers nothing about the charges or the status of the cases at any time relevant to this case—they may all have been completed prior to Defendant's trial. Neither does he reveal any connection between Courtney's anticipated testimony in this case and any of the other cases. Because not all conflicts rise to the level of an actual conflict, the mere assertion that Young represented both Defendant and Courtney in unrelated matters at the same time does not meet Defendant's burden of "demonstrating with specificity that the actual conflict existed." *State v. Person*, 2006 UT App 288, ¶15, 140 P.3d 584; *see also Cuyler v. Sullivan*, 446 U.S. 335, 348, 350 (1980) (holding Sixth Amendment not violated by possible or potential conflicts); *accord State v. Maughan*, 2008 UT 27, ¶26, 182 P.3d 903.

Not only does Defendant provide insufficient information about the "other cases," but he offers no evidence besides their mere existence to show that Young's representation of Courtney in cases unrelated to Defendant's prosecution forced Young to choose between Defendant and Courtney here. Certainly, nothing in Courtney's anticipated testimony

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<sup>2</sup> Counsel asserts the cases were in the same court, but he provides no authority for the claim. Aplt.Br 22.

establishes the claimed conflict. Courtney would have testified that he "pleaded guilty to attempted possession of a controlled substance" and that the plea was based on his possession of 2.1 grams of methamphetamine when he was arrested with Defendant. Courtney Affidavit at 2-3. Courtney in fact pled guilty to attempted possession with intent to distribute, and the State established his plea at Defendant's trial by means of a certified copy of the judgment. *See* State's Exh. 10. The facts underlying his plea were included in the same exhibit and were independently established by Young on cross-examination of Officer Vanderwarf. R217:163-64; State's Exh. 10. Thus, Courtney's testimony on this point would have been cumulative and unnecessary.

Courtney also would have testified that he knew Defendant and Gomez spoke on the phone before Courtney was arrested, that he did not know what they were talking about, and that he did not arrange to have Defendant act as a middleman to arrange to sell meth to Gomez. Courtney Affidavit at 2-3. Defendant does not show how excluding this testimony at Defendant's trial furthered any of Courtney's interests in the "other cases" to Defendant's detriment.

Though Defendant posits that using Courtney's testimony would have compromised the relationship between Young and Courtney, the

record is otherwise. Courtney attests that he was willing to testify. Further, not calling Courtney to offer this testimony would not have furthered Courtney's interests because it would not have incriminated Courtney in anything beyond what he had pleaded to already.

It is equally unclear how the anticipated testimony reflected confidential and potentially incriminating communications between Young and Courtney. Courtney was already prosecuted for the events occurring at Defendant's house, there is no evidence that any of the testimony had any relationship to the "other cases," and the new information is not incriminating.

Finally, Defendant contends Young acted out of concern for preserving Courtney's chances to obtain favorable plea agreements and sentencing recommendations from the State. Aplt.Br. 22-23. To the extent he means that Young worried that calling Courtney to testify for Defendant would lead the State to retaliate against Courtney, the claim lacks any basis in the record or the 23B evidence. First, the proffer does not show that there would have been any outstanding cases against Courtney by the time Courtney testified. Second, he proffers nothing from Young himself that Young actually was concerned about retaliation if Courtney testified. Third, he does not explain why the State would retaliate in any way for Courtney's

testimony, which was essentially cumulative of other evidence in the record.

In sum, Defendant provides nothing more than speculation which, at best, merely suggests the possibility of a conflict of interest. Even assuming the truth of his 23B evidence, nothing illustrates that Young was compelled to choose between Courtney's interests and Defendant's. Without an actual conflict, no remand is necessary, and Defendant's ineffective assistance claim fails. *See Person*, 2006 UT App 288, ¶16.

And Defendant has not shown that Young actually subverted his interests to further Courtney's. Defendant posits that Courtney's testimony was vital to counter the State's evidence that Defendant was acting as Courtney's middleman. Aplt.Br. 21-22. He then extrapolates that, because Courtney's testimony was crucial, the only possible explanation for not calling him was to somehow advance Courtney's interests.

This argument is insufficient on its face because, as shown, Defendant has not established how not calling Courtney helped Courtney. Certainly counsel may be deficient for not calling a crucial, available witness. But without showing that the decision actually advanced the crucial witness's interests, that shows only objectively unreasonable representation that carries with it the burden of also proving prejudice.

Further, the argument lacks merit because a tactical reason other than a conflict justified counsel's decision not to put Courtney on the stand — putting Courtney on the stand was unnecessary because Young had all the evidence he needed to support the defense theory. Young's strategy was to distance Defendant from drug sales generally and from Courtney's drug activity specifically. The State established that Courtney, a man convicted of attempted possession of methamphetamine with intent to distribute, was with Defendant at the time and place of the arranged sale, had methamphetamine on him, and had outstanding distribution charges at the time. Defense counsel knew or could reasonably expect that the State would use Courtney's recent conviction to make its case. To counter that evidence and further the defense strategy, defense counsel established or stressed that (1) Defendant had no drugs on him or in his home; (2) the only drugs anywhere near Defendant were on Courtney; (3) Courtney only had 2.1 grams of methamphetamine on him, while the arranged sale required 7.0 grams; (4) Officer Vanderwarf knew from personal experience that Courtney generally sold his own drugs and preferred to sell himself; (5) although Courtney knew Gomez, he never sold drugs to him; and (6) only Courtney had a criminal history as a distributor. Young's efforts sought to show that the State had to overreach in order to connect Defendant with



Courtney's drugs, and that it was reasonable to believe that Courtney would not use Defendant's services to arrange to sell drugs, especially in an amount Courtney did not possess and to someone Courtney never sold to. R217:257-62.

Defense counsel used this evidence in closing to further distance Defendant from Courtney and his methamphetamine. He stressed that Courtney was convicted of having the requisite intent to sell the drugs, had a history of selling drugs, and had the drugs on him. *Id.* He further stressed that Defendant's mere proximity to Courtney does not mean Defendant harbored the same intent and that the charge against Defendant was an afterthought that occurred months after Defendant and Courtney were arrested. *Id.*

Although Young could have put Courtney on the stand to reinforce this strategy, it was not necessary. Courtney's anticipated testimony added nothing material to the defense.

And putting him on the stand had risks that may have deteriorated the evidence Young apparently planned to rely on. If Courtney testified, he would have been open to cross-examination and impeachment by the State. Courtney and Defendant were cousins, permitting the inference that they might lie to help each other. Of more concern, though, was Courtney's

criminal record. Courtney had distribution charges pending at time of his arrest with Defendant, he admitted that he had "several other cases" pending against him when this case began, and his criminal history was sufficiently significant to prompt discussion in open court at his sentencing in December 2013. R217:128; Courtney Affidavit at 2 (Young defended him "in several other cases"); State's Exh. 10; Courtney Docket at 17. Even Defendant tacitly admits that Courtney was open to impeachment, claiming that Young's alleged conflict prevented him from impeaching Courtney. Appt.Br. 20. Counsel could conclude that impeaching Courtney's testimony could make his marginal usefulness more harmful than helpful. Where counsel had what he needed to support the defense without Courtney's testimony and putting Courtney on the stand raised the risk of introducing impeachment that the jury would not hear without Courtney's testimony, counsel could legitimately conclude to go with what was in the record.

Defendant also argues that Courtney's testimony would have established that Defendant did not know Courtney had drugs with him, that he had no access to Courtney's drugs, and that he did not intend or arrange to sell the drugs. Affidavit of William Tirado ["Tirado Affidavit"] at 2 (in Addendum B). Although such evidence may have been beneficial to Defendant, Courtney's affidavit does not establish any of these claims. As

explained above, Courtney would have testified that: (1) he pled guilty to "attempted possession of a controlled substance" based on his possession of 2.1 grams of methamphetamine when he was arrested; and (2) he knew of the phone call between Defendant and Gomez shortly before the arrest but did not know what the two discussed and did not arrange to have Defendant act as a middleman to sell Courtney's meth. Courtney Affidavit at 2-3. He does not attest that he would have testified Defendant knew Courtney had methamphetamine, whether Defendant had access to it, or whether Defendant intended to or in fact did arrange to sell it. In fact, Courtney's affidavit contradicts the last—he attests that he knew about the telephone call with Gomez, but did not know what the two discussed. He therefore could not contradict Gomez's testimony that he and Defendant discussed a drug sale.

Even if Courtney had testified as Defendant's affidavit suggests, the jury could still have found that Defendant not only knew of the drugs, but arranged to sell them. Defendant's ability to access Courtney's stash would be irrelevant to his ability to arrange for its sale. And Defendant may well have acted on his own when Gomez presented him with the opportunity to arrange a sale. This could well explain why Courtney did not have

sufficient methamphetamine on him to complete the sale—he did not know ahead of time either of the sale or of its specific terms.

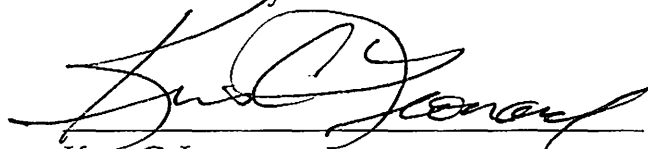
Where Young may have had a strategic reason for not using Courtney's testimony at Defendant's trial, Defendant cannot establish that his alleged conflict of interest adversely affected Young's performance. *See Person*, 2006 UT App 288, ¶17. Accordingly, his ineffectiveness claim fails.

### CONCLUSION

For the foregoing reasons, the Court should deny Defendant's rule 23B motion for a remand and affirm his conviction.

Respectfully submitted on April 6, 2016.

SEAN D. REYES  
Utah Attorney General

A handwritten signature in black ink, appearing to read "Kris C. Leonard", written over a horizontal line.

KRIS C. LEONARD  
Assistant Attorney General  
Counsel for Appellee

## CERTIFICATE OF SERVICE

I certify that on April 6, 2016, two copies of the Brief of Appellee were

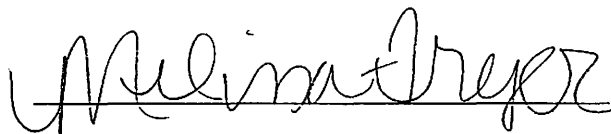
☒ mailed ☐ hand-delivered to:

Margaret P. Lindsay  
Douglas J. Thompson  
Utah County Public Defender Assoc.

Also, in accordance with Utah Supreme Court Standing Order No. 8,  
a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.



# Addenda



## Addendum A



United States Code Annotated

Constitution of the United States

Annotated

Amendment VI. Jury Trial for Crimes, and Procedural Rights (Refs & Annos)

U.S.C.A. Const. Amend. VI-Jury trials

Amendment VI. Jury trials for crimes, and procedural rights

Currentness

<Notes of Decisions for this amendment are displayed in three separate documents. Notes of Decisions for subdivisions I through XX are contained in this document. For Notes of Decisions for subdivisions XXI through XXIX, see the second document for Amend. VI. For Notes of Decisions for subdivisions XXX through XXXIII, see the third document for Amend. 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 defence.

Notes of Decisions (5274)

U.S.C.A. Const. Amend. VI-Jury trials, USCA CONST Amend. VI-Jury trials

Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

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End of Document

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West's Utah Code Annotated  
State Court Rules  
Utah Rules of Appellate Procedure (Refs & Annos)  
Title V. General Provisions

Rules App.Proc., Rule 23B

RULE 23B. MOTION TO REMAND FOR FINDINGS NECESSARY TO  
DETERMINATION OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

Currentness

**(a) Grounds for Motion; Time.** A party to an appeal in a criminal case may move the court to remand the case to the trial court for entry of findings of fact, necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion shall be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

The motion shall be filed prior to the filing of the appellant's brief. Upon a showing of good cause, the court may permit a motion to be filed after the filing of the appellant's brief. In no event shall the court permit a motion to be filed after oral argument. Nothing in this rule shall prohibit the court from remanding the case under this rule on its own motion at any time if the claim has been raised and the motion would have been available to a party.

**(b) Content of Motion; Response; Reply.** The content of the motion shall conform to the requirements of Rule 23. The motion shall include or be accompanied by affidavits alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits shall also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance. The motion shall also be accompanied by a proposed order or remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand.

A response shall be filed within 20 days after the motion is filed. The response shall include a proposed order of remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed by the trial court in the event remand is granted, unless the responding party accepts that proposed by the moving party. Any reply shall be filed within 10 days after the response is served.

**(c) Order of the Court.** If the requirements of parts (a) and (b) of this rule have been met, the court may order that the case be temporarily remanded to the trial court for the purpose of entry of findings of fact relevant to a claim of ineffective assistance of counsel. The order of remand shall identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order shall also direct the trial court to complete the proceedings on remand within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.

If it appears to the appellate court that the appellant's attorney of record on the appeal faces a conflict of interest upon remand, the court shall direct that counsel withdraw and that new counsel for the appellant be appointed or retained.

**(d) Effect on Appeal.** Oral argument and the deadlines for briefs shall be vacated upon the filing of a motion to remand under this rule. Other procedural steps required by these rules shall not be stayed by a motion for remand, unless a stay is ordered by the court upon stipulation or motion of the parties or upon the court's motion.

**(e) Proceedings Before the Trial Court.** Upon remand the trial court shall promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand shall not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. Evidentiary hearings shall be conducted without a jury and as soon as practicable after remand. The burden of proving a fact shall be upon the proponent of the fact. The standard of proof shall be a preponderance of the evidence. The trial court shall enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Proceedings on remand shall be completed within 90 days of entry of the order of remand, unless the trial court finds good cause for a delay of reasonable length.

**(f) Preparation and Transmittal of the Record.** At the conclusion of all proceedings before the trial court, the clerk of the trial court and the court reporter shall immediately prepare the record of the supplemental proceedings as required by these rules. If the record of the original proceedings before the trial court has been transmitted to the appellate court, the clerk of the trial court shall immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the appellate court, the clerk of the court shall transmit the record of the supplemental proceedings upon the preparation of the entire record.

**(g) Appellate Court Determination.** Upon receipt of the record from the trial court, the clerk of the court shall notify the parties of the new schedule for briefing or oral argument under these rules. Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

#### Credits

[Adopted effective October 1, 1992; amended effective April 1, 1998; November 1, 2010.]

Notes of Decisions (97)

Rules App. Proc., Rule 23B, UT R RAP Rule 23B

current with amendments received through February 1, 2016.

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End of Document

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## Addendum B

Prepared by  
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(801) 309-9625  
eadams@adamslegalllc.com

---

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,

Plaintiff / Appellee,

vs.

WILLIAM TIRADO,

Defendant / Appellant.

AFFIDAVIT OF  
CARL MACK COURTNEY

App. Case No. 20140967-CA  
Dist. Ct. Case No. 121901668

---

I, CARL MACK COURTNEY, state the following on personal  
knowledge:

1. I am the co-defendant of William Tirado in the Second District Case 121901761.
2. William Tirado and I were both represented in the District Court by Sean Young, who was assigned as a public defender.

3. While my case was pending in District Court I was also defending myself in several other cases. Sean Young was also appointed to represent me in those cases.

4. I resolved this case on November 14, 2013 when I entered a guilty plea to a reduced charge of Possession of a Controlled Substance, a third degree felony.

5. I was aware that William Tirado planned to go to trial in this case. Sean Young did tell me that William was going to take the case to trial, but he did not tell me about the specifics of the case. Sean Young did not speak to me about the possibility of testifying at William Tirado's case.

6. If I had been asked to testify as a witness in behalf of William Tirado I would have been willing to testify.

7. If I were called as a witness at William Tirado's trial I would have testified to the following:

a. I pleaded guilty to attempted possession of a controlled substance.

The facts underlying that plea were that when I was arrested I had a 2.1 grams of methamphetamine in a bag.

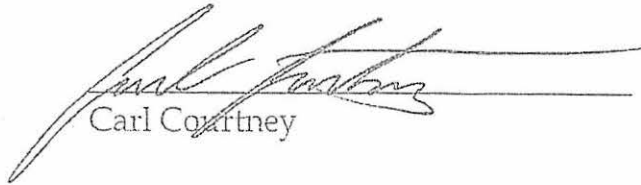
b. I was aware that William Tirado was talking on the phone with Lorenzo Gomez shortly before my arrest. I did not know what William and Lorenzo were talking about. I did not arrange to have



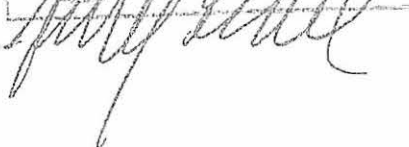
William act as a 'middleman' to arrange to sell methamphetamine  
to Lorenzo.

I declare under criminal penalty of the State of Utah that the foregoing is  
true and correct.

DATED this 23rd day of September, 2015.

  
Carl Courtney

Subscribed and sworn before me this 23 day of September, 2015.

Notary Public  
  
SCOTT J. EGELUND  
NOTARY PUBLIC - STATE of UTAH  
COMMISSION NO. 967412  
COMMISSION EXPIRES 09-04-2017  


Prepared by:  
DOUGLAS THOMPSON (12690)  
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,  Plaintiff / Appellee,  vs.  WILLIAM TIRADO,  Defendant / Appellant.	<b>AFFIDAVIT OF WILLIAM TIRADO</b>  App. Case No. 20140967-CA Dist. Ct. Case No. 121901668
---	---

I, WILLIAM TIRADO, state the following on personal knowledge:

1. I am the Defendant / Appellant in the above entitled case.
2. I was initially charged with Possession of Drug Paraphernalia in a Drug Free Zone, a class A misdemeanor, but the State later added the charge of Arranging to Distribute a Controlled Substance, a second degree felony.
3. My cousin, Carl Courtney, was also charged with a crime from the same incident at my home.



4. Carl Courtney and I were both represented in the District Court by Sean Young, who was assigned as our public defender.

5. When we were preparing for trial Sean Young and I spoke about what witnesses should be called to testify. I suggested we should call my mother (Joan Carrell), my fiancé at the time (Courtnee Reynolds), and my cousin (Carl Courtney).

6. I told Sean Young that Carl Courtney should testify on my behalf because he would be able to explain that I was not aware that he possessed the drugs that were found on him when he was searched.

7. I believed that if Carl Courtney was called as a witness he could help my defense by showing that I did not have access to any drugs, and that I was not intending or arranging to sell drugs to anyone.

8. I believed Sean Young would call Carl Courtney as a witness but he did not. Carl Courtney was not subpoenaed to testify as a witness on my behalf.

9. Carl Courtney resolved his case by pleading guilty in November of 2013, long before my trial in May of 2014.

10. I was dissatisfied with Sean Young's performance as my lawyer. He did not communicate with me and failed to prepare me defense. I believe that he was not pursuing my best interest when he represented both me and Carl at the same time in the same case. I repeatedly told Sean Young

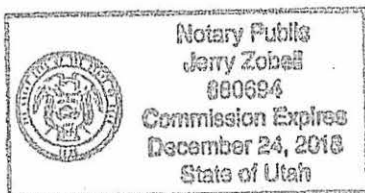
that I was unhappy with the way things were going in my case and that we were not preparing enough for my trial.


I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

DATED this 20 day of October, 2015.

  
William Tirado

Subscribed and sworn before me this 20 day of October, 2015.



  
Notary Public

## Addendum C

SECOND DISTRICT COURT - OGDEN  
WEBER COUNTY, STATE OF UTAH

STATE OF UTAH vs. CARL MACK JR COURTNEY

CASE NUMBER 121901671 State Felony

---

CHARGES

Charge 1 - 58-37-8(1)(A)(III) - ATTEMPTED POSS W/ INTENT TO  
DIST C/SUBSTANCE 3rd Degree Felony

Offense Date: July 27, 2012

Plea: November 14, 2013 Guilty

Disposition: November 14, 2013 Guilty

Charge 2 - 58-37A-5(1) - USE OR POSSESSION OF DRUG  
PARAPHERNALIA Class B Misdemeanor

Offense Date: July 27, 2012

Disposition: November 14, 2013 Dismissed (w/o prej)

CURRENT ASSIGNED JUDGE

MICHAEL DIREDA

PARTIES

Defendant - CARL MACK JR COURTNEY

Represented by: SEAN YOUNG

Represented by: STATE PUBLIC DEFENDER

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: CARL MACK JR COURTNEY

Offense tracking number: 15272248

Date of Birth: August 12, 1968

Law Enforcement Agency: WEBER COUNTY ATTY

LEA Case Number: 12-59990

Prosecuting Agency: WEBER COUNTY

Agency Case Number: 12002399

ACCOUNT SUMMARY

CASE NOTE

IN (FELONY ON FELONY)

PROCEEDINGS

07-30-12 Filed: Probable Cause Affidavit

Printed: 04/06/16 13:46:07

Page 1

07-31-12 Filed: Booking Sheet  
07-31-12 Filed: Order to Sheriff  
08-01-12 Filed: INFORMATION  
08-01-12 Case filed  
08-01-12 Filed: From an Information  
08-01-12 Judge SCOTT M HADLEY assigned.  
08-01-12 Judge NOEL S HYDE assigned.  
08-06-12 Judge MICHAEL DIREDA assigned.  
08-06-12 INITIAL APPEARANCE scheduled on August 30, 2012 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.  
08-06-12 Issued: Summons  
Clerk julieb  
08-08-12 Filed return: Summons on Return  
Party Served: COURTNEY, CARL MACK JR  
Service Type: Mail  
Service Date: August 07, 2012  
08-10-12 Note: INITIAL APPEARANCE calendar modified.  
08-10-12 Note: INITIAL APPEARANCE calendar modified.  
08-28-12 INITIAL APPEARANCE rescheduled to August 30, 2012 at 10:00 AM  
in 2nd Floor Southwest with Judge DIREDA.  
08-30-12 DECISION TO PRELIM scheduled on September 27, 2012 at 09:00 AM  
in 2nd Floor Southwest with Judge DIREDA.  
08-30-12 Minute Entry - Minutes for Appointment of Counsel  
Judge: NOEL S HYDE  
PRESENT  
Clerk: danellez  
Prosecutor: ARNOLD, GAGE H  
Defendant  
Defendant's Attorney(s): YOUNG, SEAN

Audio

Tape Number: 3C 083012 Tape Count: 12:18-12:22

INITIAL APPEARANCE

A copy of the Information is given to the defendant.  
Defendant waives reading of Information.  
Advised of charges and penalties.  
The defendant is advised of right to counsel.

Decision to preliminary hearing set for 9/27/2012 at 9:00 a.m.  
APPOINTMENT OF COUNSEL

Court finds the defendant indigent and appoints SEAN YOUNG to represent the defendant.

Appointed Counsel:

Name: SEAN YOUNG  
Address: 350 W 800 N STE 122  
City: SALT LAKE CITY UT 84103  
Phone: (801)410-4126

DECISION TO PRELIM is scheduled.

Date: 09/27/2012

Time: 09:00 a.m.

Location: 2nd Floor Southeast  
Second District Court  
2525 Grant Ave  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

09-12-12 Note: DECISION TO PRELIM calendar modified.

09-25-12 Note: DECISION TO PRELIM calendar modified.

09-25-12 Note: DECISION TO PRELIM calendar modified.

09-27-12 Minute Entry - Minutes for DECISION TO PRELIM

Judge: MICHAEL DIREDA

PRESENT

Clerk: angeeh

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): YOUNG, SEAN

Audio

Tape Number: 2D092712 Tape Count: 11:44-11:51

HEARING

Negotiations have not been reached. Preliminary

hearing is requested. State requests the defendant be taken into custody and be held felony on felony. Court grants and holds defendant felony on felony, but will address bail at next hearing.

PRELIMINARY HEARING is scheduled.

Date: 10/11/2012

Time: 10:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

09-27-12 Filed: An Order to Sheriff, 9/27/12

10-01-12 PRELIMINARY HEARING scheduled on October 11, 2012 at 10:00 AM  
in 2nd Floor Southwest with Judge DIREDA.

10-02-12 \*\*\*\* PRIVATE \*\*\*\* Filed: Return on Subpoena (Jason Vanderw

10-09-12 Filed: Letter from Ashlee Bartek

10-09-12 Filed: Letter from Kimberlee Clark

10-11-12 Filed: An Order to Sheriff, 10/11/12

10-11-12 Minute Entry - Minutes for WAIVER OF PRELIM

Judge: MICHAEL DIREDA

PRESENT

Clerk: angeeh

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): YOUNG, SEAN

Audio

Tape Number: 2D101112 Tape Count: 9:42-9:49

HEARING

Defendant is present in custody with the Weber County Jail. Time set for decision to a preliminary hearing. Preliminary hearing waiver is accepted. Court enters defendant's plea of not guilty. Counsel requests bail reduction. State objects. Court denies. Disposition is requested.

DISPOSITION is scheduled.

Date: 10/25/2012

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

10-12-12 DISPOSITION scheduled on October 25, 2012 at 09:00 AM in 2nd  
Floor Southwest with Judge DIREDA.

10-15-12 Filed order: Waiver of Prelim

Judge MICHAEL DIREDA

Signed October 12, 2012

10-25-12 Filed: Order to Sheriff (10/25/12)

10-25-12 Minute Entry - Minutes for LAW & MOTION HEARING continu

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D102512 Tape Count: 9:42-9:46

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter is  
continued to 1/3/13 at 9:00 a.m. to trail case no. 121900920.

Parties are working on a resolution.

The motion is granted.

2ND DISPOSITION is scheduled.

Date: 01/03/2013

Time: 09:00 a.m.



Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

10-30-12 2ND DISPOSITION continued to January 03, 2013 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.

01-03-13 Filed: Order to Sheriff

01-03-13 Minute Entry - Minutes for LAW & MOTION HEARING continu

Judge: MICHAEL DIREDA

PRESENT

Clerk: daniellr

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): YOUNG, SEAN

Audio

Tape Number: 2D010313 Tape Count: 1112-1114

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant is present in custody from the Weber County Jail. Matter  
continued to 01/25/13 at 9:00 a.m. to trail case #121900920.

The motion is granted.

DISPOSITION is scheduled.

Date: 01/25/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

01-04-13 DISPOSITION continued to January 25, 2013 at 09:00 AM in 2nd  
Floor Southwest with Judge DIREDA.

01-23-13 DISPOSITION scheduled on January 24, 2013 at 09:01 AM in 2nd

Printed: 04/06/16 13:46:08

Page 6

Floor Southwest with Judge DIREDA.

01-24-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: angik

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): YOUNG, SEAN

Agency: Adult Probation & Parole

Audio

Tape Number: 2D012413 Tape Count: 914-924

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant is present in custody from the Weber County Jail. Global resolution pending with all of the defendant's cases, pending a DNA check on the gun. Defense counsel request jury trial stricken.

Defendant waives time for speedy trial.

The motion is granted.

DISPOSITION is scheduled.

Date: 02/21/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

Before Judge: MICHAEL DIREDA

01-24-13 Filed: Order to Sheriff, 1/24/13

01-25-13 Law and Motion Cancelled.

01-28-13 DISPOSITION continued to February 21, 2013 at 09:00 AM in 2nd

Floor Southwest with Judge DIREDA.

02-21-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: angik  
Prosecutor: ARNOLD, GAGE H  
Defendant  
Defendant's Attorney(s): YOUNG, SEAN  
Agency: Adult Probation & Parole

Audio

Tape Number: 2D022113 Tape Count: 1032-1036

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant is present in custody from the Weber County Jail. Case  
to trial case # 121900920.

The motion is granted.

DISPOSITION is scheduled.

Date: 06/06/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

02-21-13 Filed: Order to Sheriff (2/21/13)

02-25-13 DISPOSITION continued to June 06, 2013 at 09:00 AM in 2nd Floor  
Southwest with Judge DIREDA.

03-18-13 DISPOSITION rescheduled to April 04, 2013 at 10:00 AM in 2nd  
Floor Southwest with Judge DIREDA.

04-02-13 DISPOSITION Modified.

04-02-13 7TH DISPOSITION scheduled on April 04, 2013 at 10:00 AM in 2nd  
Floor Southwest with Judge DIREDA.

04-04-13 Filed: Order to Sheriff

04-04-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D040413 Tape Count: 12:13-12:15

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter continued to 6/6/13 at 9:00 a.m. to trail case no. 121900920. State makes a record in regards to the deal offered to the defendant.

The motion is granted.

8TH DISPOSITION is scheduled.

Date: 06/06/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

Before Judge: MICHAEL DIREDA

04-08-13 8TH DISPOSITION continued to June 06, 2013 at 09:00 AM in 2nd Floor Southwest with Judge DIREDA.

06-06-13 Filed: Order to Sheriff (6/6/13)

06-06-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: HEWARD, GARY R

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D060613 Tape Count: 11:09-11:12

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter continued to 7/15/13 at 9:00 a.m. to trail case no. 121900920.

The motion is granted.

9TH DISPOSITION is scheduled.

Date: 07/15/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

07-12-13 9TH DISPOSITION continued to July 15, 2013 at 09:00 AM in 2nd Floor Southwest with Judge DIREDA.

07-12-13 Note: 9TH DISPOSITION calendar modified.

07-15-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Audio

Tape Number: 2D071513 Tape Count: 9:15-9:20

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter continued to 7/25/13 at 9:00 a.m.

The motion is granted.

10TH DISPOSITION is scheduled.

Date: 07/25/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

07-15-13 Filed: Order to Sheriff (7/15/13)

07-16-13 10TH DISPOSITION continued to July 25, 2013 at 09:00 AM in 2nd Floor Southwest with Judge DIREDA.

07-19-13 Filed: Letter from Defendant

07-19-13 Note: Clerk sent copy of docket to the defendant at the jail

07-23-13 Filed: Defendant's Letter regarding Jury Trial setting and requesting copy of police reports

07-25-13 Filed: Order to Sheriff (7/25/13)

07-25-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): STATE PUBLIC DEFENDER  
SEAN YOUNG

Agency: Adult Probation & Parole

Audio

Tape Number: 2D072513 Tape Count: 11:49-11:58

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter continued to 8/29/13 at 9:00 a.m. to trail case no. 131900508.

The motion is granted.

11TH DISPOSITION is scheduled.

Date: 08/29/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

07-26-13 11TH DISPOSITION continued to August 29, 2013 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.

08-29-13 Filed: Order to Sheriff (8/29/13)

08-29-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D082913 Tape Count: 10:10-10:12

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter continued to 9/19/13 at 9:00 a.m. to trail case no. 121901670.

The motion is granted.

12TH DISPOSITION is scheduled.

Date: 09/19/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

Before Judge: MICHAEL DIREDA

08-29-13 12TH DISPOSITION continued to September 19, 2013 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.

09-19-13 Filed: Order to Sheriff (9/19/13)

09-19-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D091913 Tape Count: 10:49-10:57

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter  
continued to 11/4/13 at 9:00 a.m. to trail case no. 131900508.

The motion is granted.

13TH DISPOSITION is scheduled.

Date: 11/04/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401



Before Judge: MICHAEL DIREDA

09-24-13 13TH DISPOSITION continued to November 04, 2013 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.

10-11-13 Filed: Letter from Defendant regarding request for new counsel  
and custody status

11-04-13 Minute Entry - Minutes for REVIEW HEARING continued

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): STATE PUBLIC DEFENDER  
SEAN YOUNG

Tape Number: 2D110413

CONTINUANCE

Whose Motion:

The Court.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter  
continued to 11/5/13 at 9:00 a.m. to trail case no. 131900508.  
The motion is granted.

13TH DISPOSITION is scheduled.

Date: 11/05/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

Before Judge: MICHAEL DIREDA

11-05-13 Filed: Order to Sheriff (11/5/13)

11-05-13 13TH DISPOSITION continued to November 05, 2013 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.

11-05-13 13TH DISPOSITION rescheduled to November 05, 2013 at 09:01 AM  
in 2nd Floor Southwest with Judge DIREDA.

11-05-13 Minute Entry - Minutes for REVIEW HEARING continued

Printed: 04/06/16 13:46:11

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Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Audio

Tape Number: 2D110513 Tape Count: 5:21-5:25

CONTINUANCE

Whose Motion:

The Defendant's counsel SEAN YOUNG.

Reason for continuance:

Court Ordered

Defendant present in the custody of Weber County Jail. Matter continued to 11/14/13 at 9:00 a.m. to trail case no. 131900508 and for the scheduling of the next jury trial.

The motion is granted.

14TH DISPOSITION is scheduled.

Date: 11/14/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

Before Judge: MICHAEL DIREDA

11-06-13 14TH DISPOSITION scheduled on November 14, 2013 at 09:00 AM in  
2nd Floor Southwest with Judge DIREDA.

11-14-13 Minute Entry - Minutes for 14TH DISPOSITION

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

Prosecutor: ARNOLD, GAGE H

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D111413 Tape Count: 11:40-11:46

HEARING

Defendant present in the custody of Weber County Jail.

Parties have reached a resolution.

Count 1 amended to attempted poss w/intent to dist c/substance, a third degree felony.

State agrees to not file a witness tampering charge.

Plea agreement executed.

Count 2 is dismissed upon motion of the State as part of the plea negotiation.

Presentence report addendum to be prepared.

Sentencing set on 12/30/13 at 9:00 a.m.

SENTENCING APP is scheduled.

Date: 12/30/2013

Time: 09:00 a.m.

Location: 2nd Floor Southwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

Before Judge: MICHAEL DIREDA

11-14-13 Charge 1 Disposition is Guilty

11-14-13 Charge 2 Disposition is Dismissed

11-14-13 Filed order: Statement of Defendant in Support of Guilty Plea and Certificate of Counsel

Judge MICHAEL DIREDA

Signed November 14, 2013

11-14-13 Filed: Order to Sheriff (11/14/13)

11-19-13 SENTENCING APP scheduled on December 30, 2013 at 09:00 AM in 2nd Floor Southwest with Judge DIREDA.

12-26-13 \*\*\*\* PROTECTED \*\*\*\* Filed: Pre Sentence Addendum Report

12-30-13 Minute Entry - Minutes for SENTENCING APP

Judge: MICHAEL DIREDA

PRESENT

Clerk: zoilab

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Prosecutor: HEWARD, GARY R

Defendant

Defendant's Attorney(s): SEAN YOUNG

STATE PUBLIC DEFENDER

Agency: Adult Probation & Parole

Audio

Tape Number: 2D123013 Tape Count: 10:49-11:02

#### HEARING

Defendant present in the custody of Weber County Jail.

Defense counsel requests a deviation from the prison recommendation.

Defendant addresses the Court.

Court makes prefacing comments.

State addresses the prison recommendation and the defendant's criminal history.

The Court makes a record regarding the sentence in this case running consecutively as opposed to concurrently with the defendant's other sentences.

#### SENTENCE PRISON

Based on the defendant's conviction of ATTEMPTED POSS W/ INTENT TO DIST C/SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the WEBER County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

#### SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

This sentence to run consecutively to the sentences imposed in case no. 121901670, 131900508 and 121900920.

#### SENTENCE RECOMMENDATION NOTE

The Court recommends the defendant be considered for a substance abuse treatment such as Con-Quest, Drug Board or some other

program.

Credit is granted for time served.

12-30-13 Filed order: Sentence, Judgment, Commitment

Judge MICHAEL DIREDA

Signed December 30, 2013

12-30-13 Note: Copy of J&C emailed to USP and WCJ

12-30-13 Case Closed

Disposition Judge is MICHAEL DIREDA

12-30-13 Filed: Order to Sheriff (12/30/13)

05-09-14 Note: Certified copy of Judgment, Sentence, Commitment, and  
Def's Statement mailed to WCAO.

02-11-15 Filed: TRANSCRIPT for Hearing of 12-30-2013

02-11-15 Note: Hard copy of Transcript from Sentencing on 12/30/13  
received.

