

1990

Utah v. Terry L. Hay : Unknown

Utah Supreme Court

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R. Paul Van Dam; attorney general; Marion Decker; assistant attorney general; attorney for respondent.

Manny Garcia; attorney for appellant.

Recommended Citation

Legal Brief, *Utah v. Terry L. Hay*, No. 900457.00 (Utah Supreme Court, 1990).
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UTAH
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BRIEF

FRANCES M. PALACIOS, #2502
ROGER K. SCOWCROFT, #5141
Attorneys for Defendant/Appellant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

FILED

JUL 29 1991

CLERK SUPREME COURT,
UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,		DOCKETING STATEMENT
		Subject to Assignment to the
Plaintiff/Appellee,	:	Court of Appeals
	:	
v.	:	
	:	
TERRY L. HAY,	:	Case No. <u>900457</u>
	:	Priority No. 2
Defendant/Appellant.	:	

1. DATE OF ENTRY OF JUDGMENT, SENTENCE AND CONVICTION FOR CRIMINAL HOMICIDE, SECOND DEGREE MURDER, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. SECTION 76-5-203 (1990): June 24, 1991.

2. NATURE OF POSTJUDGMENT MOTION(S) AND DATE(S) FILED:
None.

3. DATE AND EFFECT OF ORDER(S) DISPOSING OF POSTJUDGMENT MOTION(S) AND ORDER OF DETERMINATION OF FINAL JUDGMENT UNDER UTAH R. CIV. P. 54(b): None.

4. DATE OF FILING NOTICE OF APPEAL: July 9, 1991.

5. JURISDICTION: The Supreme Court has jurisdiction in this matter pursuant to Utah Code Ann. section 78-2-2-(3)(i) (Supp. 1990), whereby the defendant in a criminal action may take an appeal to the Supreme Court from a final judgment and conviction for a first degree felony.

6. NAME OF TRIAL COURT OR AGENCY: The Honorable Michael R. Murphy, Judge, Third Judicial District Court in and for Salt Lake County, State of Utah.

7. STATEMENT OF FACTS:

On July 27, 1989, Appellant Terry L. Hay, and the victim, Lony Crosby, left Murray, Utah together for Wales, Utah in Sanpete County to stay with Lony's grandparents, Arlene and John Crosby, Sr., for a few days. They rode a four-wheeler belonging to Terry's family to Mapleton, Utah, where it broke down. They left the vehicle at Lony's biological father's house and continued on foot to Wales. The two spent the next few days working for a family friend, hunting and walking in the mountains which were in close proximity. During that time, according to Arlene Crosby, there appeared to be no friction or arguments between the two boys.

On Wednesday, July 31, 1989, the day before Hay and Crosby were scheduled to return to Murray, the two went up into the mountains just shortly after lunch time. Arlene Crosby left for the store and John Crosby, Sr. was sitting on the porch of their trailer when he heard what sounded like two gunshots in rapid succession. Later that afternoon, Terry Hay came down the mountain alone and gathered some of his items he had left in Crosby's trailer. Arlene Crosby inquired as to the whereabouts of her grandson, Lony. Terry Hay responded that Lony was still in the mountains preparing for their dinner. Arlene and John Crosby did not see Lony Crosby or Terry Hay again.

On August 2, 1989, Terry Hay showed up at the home of Lony's mother and stepfather, Lois and John Crosby, Jr. Lois Crosby asked for Lony and Terry told her that Lony had stolen a truck in Wales and they returned to Salt Lake City. Terry said Lony then left Terry's company at the Draper exit and Terry drove the truck to Murray, abandoned it and phoned in the stolen vehicle to the police.

Jennifer Bratt testified that, in the late evening of August 1, 1989, Terry came to her home dirty, upset and shaken. She asked for Lony. Terry told her that he passed out when Lony hit him on the head with a rock; when he awakened, Lony was gone. He surmised Lony may have gone to Nevada to see a girlfriend. Terry left after a short while.

On the morning of August 2, 1989, Travis Pearce, a mutual friend of Lony Crosby and Terry Hay, also talked to Terry. Travis said Terry appeared shaken and nervous. When asked for Lony, Terry told Travis that he was taking a nap and, when he awakened, Lony was gone. He also told Pearce that he stole a truck in Wales to return to Murray. Lony's mother and stepfather asked a friend who was a police officer to question Terry Hay about the disappearance of their son as his mother did not believe Terry's explanation of the whereabouts of her son. Terry told the officer, Paul Pelch, that Lony had asked him to not reveal his whereabouts, but, in fact, Lony had gone to Reno, Nevada, where he was now residing and working. Terry also said that he had heard from Lony.

During the period of Lony's absence from August 1, 1989 until his body was found on December 31, 1989, Terry, according to

witnesses, told Lony's mother and several mutual friends that he had personally spoken to Lony Crosby, who continued to ask that his location not be revealed. Terry also told Lois Crosby that he had dropped Lony off at the Draper exit and that was the last time he saw Lony.

Crosby's family filed a missing persons report on approximately August 4, 1989. Terry Hay was again questioned regarding the last time he saw Lony Crosby, and his response was the same.

On December 31, 1989, two hunters found a decomposed body which was later identified as Lony Crosby at Utah Lake in Utah County.

Once identity of the body was made, Terry Hay was questioned by Utah County detectives. During this questioning, he admitted shooting Lony Crosby and disposing of his body in Utah County at Utah Lake; however, he stated the killing was in self-defense as Lony attacked him with a knife that had a black handle with red trim. He further told detectives from Utah County that the killing occurred in Murray, Utah in Salt Lake County. For that reason, Detective Jeff Anderson with Murray Police Department took over the questioning of Terry. Again, Terry made statements implicating himself in the shooting but asserting self-defense.

Terry told Detective Anderson that Lony had a girlfriend, Jennifer Bratt, who was also seeing Terry. Lony confronted Terry regarding this and came after him with the above-described knife. Terry described becoming very frightened, picking up the loaded

rifle sitting next to him, and aiming it at Lony in hopes of scaring him off. Terry said he was shaking very badly and heard the rifle go off twice. Lony fell to the ground. Terry called his name and there was no response. When he realized Lony was dead, he panicked and attempted to hide Lony's body.

The statement Terry gave to Detective Anderson during questioning and his testimony at trial were basically the same except that he told Anderson the shooting occurred in Murray and he got rid of Lony's personal items and the black handle with red trim knife by throwing them in a nearby river. Also, he said it was from that point that he took Lony's body and left it near Utah Lake.

At trial, Terry testified that the shooting occurred in Wales, Utah, up in the mountains by the trailer home belonging to Lony's grandparents. He said he took all of Lony's items down the mountain except for the red trim, black handle knife Lony used to attack him, which he threw south from the campsite where the shooting occurred. He also testified that he tried to hide Lony's body in a fire pit the two had dug. Terry said he alone stole the truck from Wales, left it on a Salt Lake City road, and anonymously contacted police as to its whereabouts. Several weeks later, he testified, he returned to the mountain in Wales where he had hid Lony's body and moved Lony's remains to the site where it was located in Utah County. In all his statements to Utah County detectives, Detective Anderson and at trial, Terry asserted the killing was in self-defense.

During the trial, testimony by Detective Anderson and Utah County detectives regarding the search of the campsite area on the mountain indicated a number of items were found and marked for evidence. One of those items was an old knife with a black taped handle. At trial, the State moved to introduce that knife into evidence over defense objection made on grounds of relevance, since it did not match Terry's description of the knife Lony used against him.

After the case was submitted to the jury for deliberations, prosecutor Charles Behrens withdrew from his briefcase a knife with a black handle and red trim. Defense attorney Frances Palacios made a motion for mistrial on grounds that (1) the existence of the knife should have been provided in discovery; (2) if the knife was part of the discovery, defense counsel was ineffective as she was proceeding under the assumption that no such knife was found; and (3) in any event, the State's action of introducing into evidence the black knife had the effect of misleading the jury regarding the existence of the actual knife Defendant described, especially since the State actually did have the knife which would corroborate Defendant's testimony but chose to not introduce it. This had the effect of prejudicing Defendant's trial.

The court denied the motion for mistrial asserting that the corrective measures taken by the court in response to Defendant's motion were sufficient to remove any prejudice. Defense counsel disagreed and made another request for mistrial, which was also denied.

Prior to trial, Defendant moved the court to exclude evidence at trial regarding transportation of victim's corpse by Defendant on the grounds that (1) such evidence is not relevant to the determination of guilt; and (2) any probative value of such evidence is substantially outweighed by the danger of unfair prejudice and confusion of the jury. That motion was denied.

The trial court suggested and allowed the alternate juror to deliberate and reach a verdict with the other jurors.

8. ISSUE(S) FOR REVIEW AND STANDARD(S) OF APPELLATE REVIEW:

A. Issue: The trial court violated Mr. Hay's right to an impartial jury in allowing the alternate juror to deliberate.

Standard: This question of law is to be reviewed by this Court for correctness. State v. Ramirez, 159 Utah Adv. Rep. 7, 16 n.3 (Utah 1991).

B. Issue: The trial court permitted unconstitutional prosecutorial misconduct in failing to grant Defendant's motion for mistrial after the prosecution misled the jury by implying that the knife supporting Mr. Hay's self-defense testimony did not exist, when, in fact, the knife was in the prosecutor's briefcase.

Standard: This question of law is to be reviewed by this Court for correctness. State v. Ramirez, 159 Utah Adv. Rep. 7, 16 n.3 (Utah 1991).

C. Issue: The trial court violated Utah Rules of Evidence 402 and 403 in denying Defendant's motion to exclude evidence at trial regarding transportation of the victim's corpse by Defendant.

Standard: This question of law is to be reviewed by this Court for correctness. State v. Ramirez, 159 Utah Adv. Rep. 7, 16 n.3 (Utah 1991).

D. Issue: The trial court violated Mr. Hay's right to an impartial jury in submitting Instruction #8. The language "The testimony of a witness known to have made false statements on one matter is naturally less convincing on other matters" for the reasons that:

a) It is confusing and inconsistent with Instruction #10 and other language in Instruction #8 that jurors are the sole judges of facts;

b) It usurps the jury's fact-finding function; and

c) The error is compounded by failure to submit Defendant's proposed Instruction #9 regarding prior admissions.

Standard: This question of law is to be reviewed by this Court for correctness. State v. Ramirez, 159 Utah Adv. Rep. 7, 16 n.3 (Utah 1991).

E. Issue: The trial court violated Mr. Hay's constitutional right to proof beyond a reasonable doubt in submitting Instruction #7 on reasonable doubt (State's Instruction #14; Defendant's Instruction #12 on reasonable doubt not given) which unfairly casts burden on the defendant to prove that reasonable doubt exists and misstates the standard of proof.

Standard: This question of law is to be reviewed by this Court for correctness. State v. Ramirez, 159 Utah Adv. Rep. 7, 16 n.3 (Utah 1991).

9. DETERMINATION OF CASE BY SUPREME COURT: This Court should determine this case because the propriety of allowing alternate juror(s) to deliberate is an important issue of first impression in this state.

10. DETERMINATIVE LAW:

Article I, sections 7, 10 and 12, Constitution of Utah;

State v. Harding, 635 P.2d 33 (Utah 1981);

State v. Ireland, 773 P.2d 1375 (Utah 1989 (Stewart, J., dissenting));

State v. Jiminez, 761 P.2d 577 (Utah 1988);

State v. Johnson, 774 P.2d 1141 (Utah 1989) (Stewart, J., concurring; majority agrees);

State v. Maurer, 770 P.2d 981 (Utah 1989);

United States v. Olano, 1991 WL 88486 (9th Cir. May 31, 1991);

Rule 19(d), Utah Rules of Criminal Procedure
(1990);

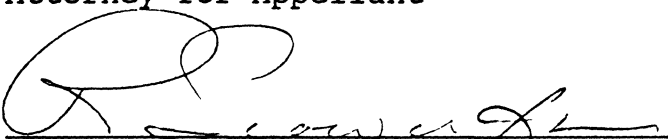
Rules 401, 402 and 403, Utah Rules of Evidence.

11. RELATED APPEALS: There are no related appeals.

12. ATTACHMENTS: Notice of Appeal; Designation of Record;
Certificate; Request for Transcript with attachment; Motion and
Stipulation for Resentencing; Judgment, Sentence (Commitment).


RESPECTFULLY SUBMITTED this 15th day of July, 1991.


FRANCES M. PALACIOS
Attorney for Appellant


ROGER K. SCOWCROFT
Attorney for Appellant

CERTIFICATE OF DELIVERY

I, FRANCES M. PALACIOS, hereby certify that a copy of the
foregoing Docketing Statement will be delivered to the Attorney
General's Office, 236 State Capitol, Salt Lake City, Utah 84114,
this 15th day of July, 1991.


FRANCES M. PALACIOS

I, _____, delivered a copy of
the foregoing to the Attorney General's Office this _____ day of
July, 1991.

FILED DISTRICT COURT
Third Judicial District

JUL 9 1991

SALT LAKE COUNTY

By _____ Deputy Clerk

FRANCES M. PALACIOS, #2502
ROGER K. SCOWCROFT, #5141
Attorneys for Defendant/Appellant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

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

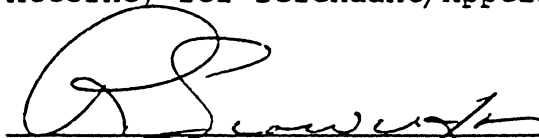
THE STATE OF UTAH,	:	NOTICE OF APPEAL
Plaintiff/Appellee,	:	
v.	:	
TERRY L. HAY,	:	Case No. 901900171
Defendant/Appellant.	:	HONORABLE MICHAEL R. MURPHY

NOTICE IS HEREBY GIVEN that TERRY L. HAY, Defendant/
Appellant in the above-entitled action, hereby appeals to the Utah
Supreme Court from the final judgment and conviction rendered
against him on the 24th day of June, 1991 by the Honorable
Michael R. Murphy, Judge, Third Judicial District Court in and for
Salt Lake County, State of Utah.

DATED this 9th day of July, 1991.



FRANCES M. PALACIOS
Attorney for Defendant/Appellant



ROGER K. SCOWCROFT
Attorney for Defendant/Appellant

DELIVERED/MAILED a copy of the foregoing to the Salt Lake County Attorney's Office, 231 East 400 South, Salt Lake City, Utah 84111; GAYLE CAMPBELL, Court Reporter, Metropolitan Hall of Justice, Salt Lake City, Utah 84111; and the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 9 day of July, 1991.



FRANCES M. PALACIOS, #2502
ROGER K. SCOWCROFT, #5141
Attorneys for Defendant/Appellant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 South 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

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

THE STATE OF UTAH,	:	DESIGNATION OF RECORD
Plaintiff/Appellee,	:	
v.	:	
TERRY L. HAY,	:	Case No. 901900171
Defendant/Appellant.	:	HONORABLE MICHAEL R. MURPHY

TO THE CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY:

You are hereby requested to prepare, certify and transmit to the Supreme Court of the State of Utah, with reference to the Notice of Appeal heretofore filed in this case, all documents contained in the file in the above-entitled matter together with the transcript of the following hearing before the Honorable Michael R. Murphy, Judge, Third Judicial District Court:

06/24/91 Resentencing hearing

PREVIOUSLY ORDERED AND NOT RECEIVED:

06/11/90 Motion hearing

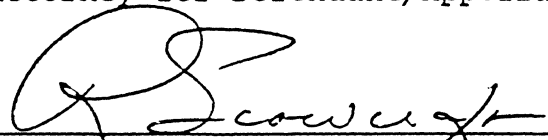
06/25/90 Motion hearing

07/02/90 Pretrial conference and motion hearing

DATED this 9th day of July, 1991.

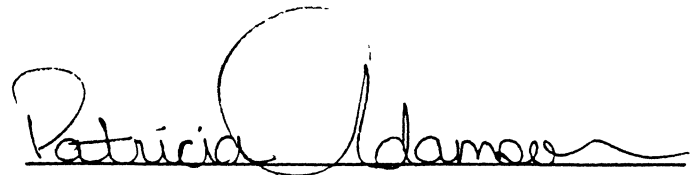


FRANCES M. PALACIOS
Attorney for Defendant/Appellant



ROGER K. SCOWCROFT
Attorney for Defendant/Appellant

DELIVERED/MAILED a copy of the foregoing to the Salt Lake County Attorney's Office, 231 East 400 South, Salt Lake City, Utah 84111; GAYLE CAMPBELL, Court Reporter, Metropolitan Hall of Justice, Salt Lake City, Utah 84111; and the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 9 day of July, 1991.



FRANCES M. PALACIOS, #2502
ROGER K. SCOWCROFT, #5141
Attorneys for Defendant/Appellant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

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

THE STATE OF UTAH,	:	CERTIFICATE
Plaintiff/Appellee,	:	
v.	:	
TERRY L. HAY,	:	Case No. 901900171
Defendant/Appellant.	:	HONORABLE MICHAEL R. MURPHY

TO THE CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY:

With reference to the Designation of Record heretofore filed by the Defendant/Appellant in the above case, Defendant/Appellant hereby certifies that the transcript of the following hearing before the Honorable Michael R. Murphy, Third District Court Judge, has been ordered in the above-entitled matter:

06/24/91 Resentencing hearing

PREVIOUSLY ORDERED AND NOT RECEIVED:

06/11/90 Motion hearing

06/25/90 Motion hearing

07/02/90 Pretrial conference and motion hearing

DATED this 9th day of July, 1991.



FRANCES M. PALACIOS
Attorney for Defendant/Appellant



ROGER K. SCOWCROFT
Attorney for Defendant/Appellant

DELIVERED/MAILED a copy of the foregoing to the Salt Lake County Attorney's Office, 231 East 400 South, Salt Lake City, Utah 84111; GAYLE CAMPBELL, Court Reporter, Metropolitan Hall of Justice, Salt Lake City, Utah 84111; and the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 9 day of July, 1991.



FRANCES M. PALACIOS, #2502
ROGER K. SCOWCROFT, #5141
Attorneys for Defendant/Appellant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

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

THE STATE OF UTAH,	:	REQUEST FOR TRANSCRIPT
Plaintiff/Appellee,	:	
v.	:	
TERRY L. HAY,	:	Case No. 901900171
Defendant/Appellant.	:	HONORABLE MICHAEL R. MURPHY

TO THE COURT REPORTER OF THE DISTRICT COURT OF SALT LAKE COUNTY:

Pursuant to the Utah Rules of Appellate Procedure, Rule 11(e)(1) and (4), you are hereby requested to prepare, certify and transmit to the Utah Supreme Court the original transcript of the following hearing before the Honorable Michael R. Murphy, Third District Court Judge:

06/24/91 Resentencing hearing

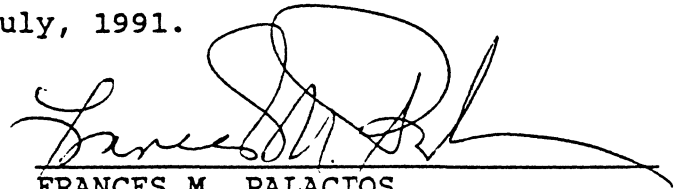
PREVIOUSLY ORDERED AND NOT RECEIVED (see attached
Request for Transcript):

06/11/90 Motion hearing

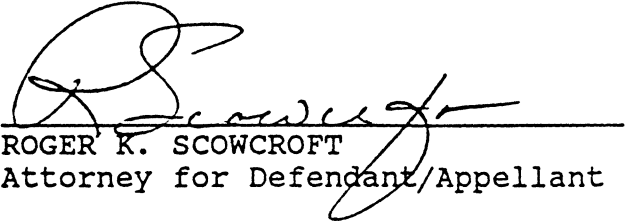
06/25/90 Motion hearing

07/02/90 Pretrial conference and motion hearing

DATED this 9th day of July, 1991.



FRANCES M. PALACIOS
Attorney for Defendant/Appellant



ROGER K. SCOWCROFT
Attorney for Defendant/Appellant

DELIVERED/MAILED a copy of the foregoing to the Salt Lake County Attorney's Office, 231 East 400 South, Salt Lake City, Utah 84111; GAYLE CAMPBELL, Court Reporter, Metropolitan Hall of Justice, Salt Lake City, Utah 84111; and the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 9 day of July, 1991.



ELIZABETH HOLBROOK, #5292
Attorney for Defendant/Appellant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

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


THE STATE OF UTAH,	:	SUPPLEMENTAL REQUEST FOR
Plaintiff/Appellee,	:	TRANSCRIPT
v.	:	
TERRY L. HAY,	:	Case No. 901900171
Defendant/Appellant.	:	Supreme Court No. 900457
	:	HONORABLE MICHAEL R. MURPHY

TO THE COURT REPORTER OF THE DISTRICT COURT OF SALT LAKE COUNTY:

Pursuant to the Utah Rules of Appellate Procedure, Rule 11(e)(1) and (4), you are hereby requested to prepare, certify and transmit to the Utah Supreme Court the original transcripts of the following hearings before the Honorable Michael R. Murphy, Third District Court Judge:

06/11/90	Motion hearing
06/25/90	Motion hearing
07/02/90	Pretrial conference and motion hearing
07/14/90	Jury trial

DATED this 6th day of May, 1991.


ELIZABETH HOLBROOK
Attorney for Defendant/Appellant

DELIVERED/MAILED a copy of the foregoing to the Salt Lake County Attorney's Office, 231 East 400 South, Salt Lake City, Utah 84111; GAYLE CAMPBELL and NORA WORTHEN (7/14/90 only), Court Reporters, Metropolitan Hall of Justice, Salt Lake City, Utah 84111; the Utah Supreme Court, 332 State Capitol, Salt Lake City, Utah 84114; and the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 6 day of May, 1991.


Patricia Adams

FILED
DISTRICT COURT

MAY 23 3 50 PM '91

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY H. H. H.
DEPUTY CLERK

FRANCES M. PALACIOS, #2502
ROGER K. SCOWCROFT, #5141
ELIZABETH HOLBROOK, #5292
Attorneys for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

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

THE STATE OF UTAH,	:	MOTION AND STIPULATION
	:	FOR RESENTENCING
Plaintiff,	:	
	:	
v.	:	
	:	
TERRY L. HAY,	:	Case No. 901900171FS
	:	
Defendant.	:	JUDGE MICHAEL R. MURPHY

Defendant, TERRY L. HAY, by and through his attorneys of record, FRANCES M. PALACIOS, ROGER K. SCOWCROFT and ELIZABETH HOLBROOK, hereby moves this Court to resentence him. Resentencing Mr. Hay is necessary to facilitate Mr. Hay's exercise of his right to appeal, guaranteed by Article I section 12 and Article VIII section 5 of the Utah Constitution.

After this Court sentenced Mr. Hay on August 27, 1990, the notice of appeal was inadvertently filed one day late, on

September 27, 1990. See attached copies of judgment and conviction and notice of appeal. Under Utah Rule of Appellate Procedure 4, the late filing of the original notice of appeal precludes the Utah Supreme Court from exercising appellate jurisdiction over Mr. Hay's case.

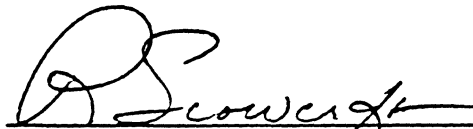
Resentencing nunc pro tunc is the appropriate remedy to facilitate Mr. Hay's right to appeal. See State v. Johnson, 635 P.2d 36 (Utah 1981); Utah Rule of Criminal Procedure 65(i).

This motion is supported by stipulation of counsel for the State.

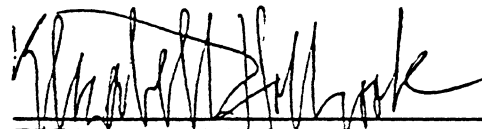
DATED this 16 day of May, 1991.



FRANCES M. PALACIOS
Attorney for Mr. Hay



ROGER K. SCOWCROFT
Attorney for Mr. Hay

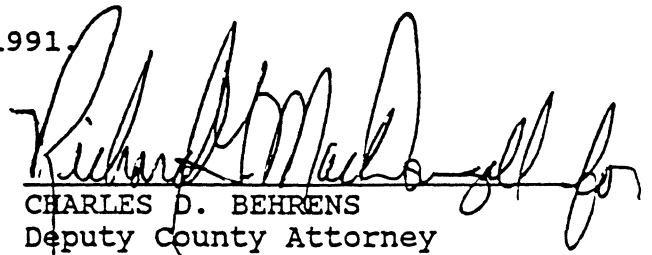


ELIZABETH HOLBROOK
Attorney for Mr. Hay

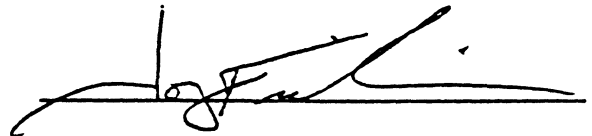
STIPULATION

I, Charles D. Behrens, Deputy County Attorney, have read the foregoing motion for resentencing and stipulate to the resentencing.

DATED this 23 day of May, 1991.


CHARLES D. BEHRENS
Deputy County Attorney

DELIVERED/ MAILED a copy of the foregoing to the County Attorney's Office, 231 East 400 South, Salt Lake City, Utah 84111, this 17 day of May, 1991.



IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JUN 24 1991

THE STATE OF UTAH,

By Mark Bells
SALT LAKE COUNTY
Deputy Clerk

RE- JUDGMENT, SENTENCE
(COMMITMENT)

Plaintiff,

vs.
Serry L Nay

Defendant.

Case No. 901900171
Count No. 1
Honorable Michael R. Murphy
Clerk Mark Bells
Reporter Gayle Campbell
Bailiff Shirley Smith
Date June 24, 1991

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☒ a jury; ☐ the court; ☐ plea of guilty; ☐ plea of no contest; of the offense of Criminal Homicide, 2nd degree Murder, a felony of the 1st degree, ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by J. Palacio, and the State being represented by W. Elliott, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

- ☐ to a maximum mandatory term of _____ years and which may be for life;
☐ not to exceed five years;
☐ of not less than one year nor more than fifteen years;
☒ of not less than five years and which may be for life;
☐ not to exceed _____ years;
☐ and ordered to pay a fine in the amount of \$ _____;

- ☐ and ordered to pay restitution in the amount of \$ _____ to _____;
☒ The Court recommends defendant enter into treatment consistent with letter from Dr. Le Begue
☐ such sentence is to run concurrently with _____;
☒ such sentence is to run consecutively with 1 year on firearm enhancement
☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) _____ are hereby dismissed.
☒ The Court recommends the defendant be referred to the Young Adult Facility
☐ Defendant is granted a stay of the above (☐ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____, pursuant to the attached conditions of probation.
☒ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☒ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.
☒ Commitment shall issue for the with

DATED this 24th day of June, 1991

APPROVED AS TO FORM:

Michael R. Murphy
DISTRICT COURT JUDGE

Defense Counsel