2018

State of Utah, Plaintiff/Petitioner, v. Calvin Paul Stewart, Defendant/Respondent : Reply Brief

Utah Supreme Court

Case No. 20180847-SC

IN THE

UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Petitioner,

v.

CALVIN PAUL STEWART,
Defendant/Respondent.

Reply Brief of Petitioner

On Writ of Certiorari to the Utah Court of Appeals

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

STATE RULES

Case No. 20180847-SC

IN THE

UTAH SUPREME COURT

STATE OF UTAH,
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Pursuant to rule 24(c), Utah Rules of Appellate Procedure, the State submits this brief in reply to new matters raised in the respondent's brief.

ARGUMENT

I.

Stewart Misconstrues This Court's Binding Precedent, Which, When Properly Understood, Mandates Reversal

The State has asked this Court to reverse the court of appeals' decision, *State v. Stewart*, 2018 UT App 151, —P.3d—, because it conflicts with this Court's binding precedent in two ways.

First, this Court has held that reinstating the time to appeal under rule 4(f), Utah Rules of Appellate Procedure, is only available if a defendant can prove that something beyond his control prevented him from filing a timely

notice of appeal. *State v. Collins*, 2014 UT 61, ¶¶31, 42, 342 P.3d 789; *State v. Rees*, 2005 UT 69, ¶¶17–19, 125 P.3d 874. The court of appeals, however, erroneously held that even though Stewart filed a timely notice of appeal, he was still eligible for reinstatement if he could prove that he was not informed of his right to counsel on appeal. *See* Pet.Br.12–26.[1]

Second, this Court has held that where a trial court does not make findings of fact, or its findings are inadequate, an appellate court has only two options: assume the trial court made findings consistent with its decision and affirm; or remand for further findings. *State v. Ramirez*, 817 P.2d 774, 787–88 & n.6 (Utah 1991). The court of appeals determined that the trial court did not make critical findings to support its order and erroneously made its own findings and reversed. It should have instead assumed findings consistent with the trial court's ruling and affirmed. *See* Pet.Br.26–32.

Stewart defends the court of appeals' decision. In doing so, he misconstrues rule 4(f) and this Court's precedent.

[1] In preparing this reply brief, counsel for the State noticed a typo in Petitioner's opening brief. On page 26, in the last paragraph before Part II, the fourth line should be corrected as follows: "not required to inform him again of his right to ~~appeal~~ counsel after he waived it…."

A. Rule 4(f) may not be used to remedy an alleged denial of the right to counsel on appeal

Stewart argues that he should get a new appeal because his first one was not meaningful without counsel. He also argues that this Court's precedent should be disavowed. Neither argument is availing.

1. Stewart improperly focuses his argument on whether his appeal without counsel was meaningful

First, Stewart asserts that the "heart" of this case is "what is required for a meaningful right to appeal." Resp.Br.11; *see also id.* at 31 (claiming Stewart was deprived of right to appeal because he was denied "the right to meaningful access to the appellate process"). But Stewart's argument misunderstands how this Court used "meaningful" when talking about reinstating the time to appeal. In fact, this Court has corrected that misunderstanding before, explaining the relevant inquiry is not whether a defendant's appeal was "meaningful," but whether something prevented him in a "'meaningful way'" from filing a timely notice of appeal. *Rees*, 2005 UT 69, ¶¶17–19 (quoting *Manning v. State*, 2005 UT 61, ¶24, 122 P.3d 628); *see* Pet.Br.18–22. Nothing prevented Stewart from filing a timely notice of appeal—he filed one—and Stewart does not contend otherwise. Rule 4(f), therefore, is inapplicable.

Second, Stewart's argument focuses on using rule 4(f) to "cure the deprivation of counsel on appeal." Resp.Br.10; *see id.* at 11–31 (arguing that he was denied his right to appeal because he did not have counsel on appeal). That is not the purpose of the rule. The purpose is singular and narrow—to cure a complete deprivation of the right to appeal. Utah R. App. P. 4(f) (requiring a defendant to show he "was deprived of the right to appeal"). Nothing in the rule's plain terms or the way it has been interpreted by this Court even suggests that a person who exercised his right to appeal can use the rule to get a second appeal based on an alleged denial of the right to counsel on the first appeal. That is not what the rule is for.

Stewart argues, however, that "[w]hen a defendant is deprived of counsel on appeal, his right to appeal is deprived." Resp.Br.10. He relies on a number of cases, including from the United States Supreme Court, interpreting the right to counsel. *See* Resp.Br.11–21. Stewart's reliance on these cases is misplaced.

Stewart claims that "implicit" in the holding of *Douglas v. People of State of California*, 372 U.S. 353 (1963), is that the right to counsel at trial is separate from the right to counsel on appeal and that a valid waiver of the former does not waive the latter. Resp.Br.13. The *Douglas* Court held that the defendants were denied the right to counsel on appeal because they "requested, and were

denied, the assistance of counsel on appeal" when the trial judge determined that "no good whatever could be served by appointment of counsel." *Douglas*, 372 U.S. at 354–55. The Court said nothing about waiving the right to counsel or separating that right between trial and appeal. It merely held that indigent defendants must be extended the same right to counsel as non-indigent defendants. *Id.* at 355.

Stewart also misconstrues *Halbert v. Michigan*, 545 U.S. 605 (2005). He claims that the Court held that "because the sentencing court did not inform [Halbert] of the relevant right (to be appointed appellate counsel) his plea did not constitute a knowing and intelligent waiver." Resp.Br.19. That was not the holding. Rather, the Court held that a Michigan law that did not guarantee counsel to defendants who entered a guilty or no contest plea was unconstitutional. *Halbert*, 545 U.S. at 609–10, 623. In so doing, the Court rejected the premise that Halbert had waived his right to appellate counsel by entering a no contest plea because under the Michigan law, Halbert "had no recognized right to appointed appellate counsel he could elect to forgo." *Id.* at 623. The Court said nothing about informing a defendant of his right to counsel on appeal or whether the failure to do so voided a previously valid waiver of the right to counsel.

Moreover, the federal cases Stewart cites about the right to counsel do not broaden rule 4(f). Rule 4(f) is a State procedural accommodation for someone who was wholly denied a State right to appeal. Consequently, nothing in the federal cases Stewarts cites do or even can inform the analysis of what rule 4(f) reaches. Nor do the Utah cases on the right to counsel because they are unrelated to rule 4(f) and its limited scope.

This Court is the supreme authority on all things rule 4(f) and it has held definitively that a person is deprived of his right to appeal only if he has been prevented from filing a timely notice of appeal. *Rees*, 2005 UT 69, ¶¶17–18 (a defendant is denied the right to appeal when he is "prevented" from "proceeding" with an appeal, and "proceeding" with an appeal means "filing a notice of appeal, not more") (cleaned up); *see Collins*, 2014 UT 61, ¶42 ("A defendant who actually files an appeal…has not been prevented from

proceeding with an appeal"). Whether Stewart's right to counsel was deprived is not an issue rule 4(f) remedies. *See* Pet.Br.20–22.[2]

Third, Stewart also asserts that at the "heart" of this case is "what constitutes a first appeal of right" and he suggests that it requires a ruling on the merits. Resp.Br.11. This Court has already rejected that proposition. The act of filing a timely notice of appeal allows defendants to "gain[] entry to appellate courts" and whether the appeal ends "by a ruling on the merits or

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[2] Stewart's right to counsel was not violated in any event. Stewart waived his right to counsel after he was "fully advised of his right to have counsel." R211. Stewart admitted at the rule 4(f) evidentiary hearing twelve years later that he could not remember everything the trial court said at the time of his waiver. R1120. And there is no transcript of that hearing. Stewart then represented himself at trial and at sentencing. R568–70, 625–27, 678–83. He filed a *pro se* notice of appeal and docketing statement without ever requesting counsel. Even after his appeal concluded, Stewart filed "several" post-conviction petitions, R729–30, 936, numerous motions with the trial court, R737–38, 762–67, 771, 774–75, 780–81, and another direct appeal to challenge the denial of those motions, R808, 818–19, 827, without ever complaining of his lack of counsel on appeal.

There is no dispute that Stewart waived his right to counsel, and there is no dispute that Stewart did nothing to indicate that he had changed his mind for his appeal. Neither Stewart nor the court of appeals cite any authority holding that a valid waiver of the right to counsel expires when the trial proceedings are over, requiring another waiver before the appeal. Other States reject such a requirement. *See, e.g.*, *State v. Tharp*, 395 N.W.2d 762, 765 (Neb. 1986) (waiver of counsel at trial and *pro se* appeal constituted waiver of right to counsel on appeal).

Under rule 4(f) it is Stewart's burden to prove a deprivation of the right to appeal. He failed to do that here where, even assuming the lack of counsel could violate the right to appeal, he did not prove that he was denied counsel.

involuntary dismissal," they "have exhausted their remedy of direct appeal and are thereby drawn into the ambit of the PCRA." *Rees*, 2005 UT 69, ¶18. Filing a timely notice of appeal constitutes "proceeding" with a first appeal of right, even if the merits are not reached. *Id.* Again, the question under rule 4(f) is not whether a defendant's appeal was meaningful—the rule stops short of inquiring what happens on appeal because one "who actually files an appeal…has not been prevented from proceeding with an appeal." *Collins*, 2014 UT 61, ¶42. The question is whether an appeal was wholly denied. Here, it was not.

In sum, Stewart seeks to uphold the court of appeals' decision by adding requirements that this Court has already foreclosed. The Court should reverse the court of appeals' decision and reaffirm that the limited nature of the reinstatement remedy applies only when a defendant was prevented from filing a timely notice of appeal.

2. This Court should reject Stewart's invitation to disavow its precedent

Stewart makes two arguments challenging the validity of this Court's decision in *Rees*.

First, he claims that the court of appeals was correct when it held that *Rees*' holding that proceeding with an appeal means filing a timely notice of appeal, not more, does not apply to a defendant who did not have counsel on

appeal. Resp.Br.25–27; *see Stewart*, 2018 UT App 151, ¶10 n.1. Stewart asserts that "Rees could not allege that he was deprived of his first right of appeal" and the Court "concluded that reinstatement was not appropriate" because Rees had counsel and his case was decided on the merits. Resp.Br.26, 43. But that was not the reason this Court denied reinstatement; it was because Rees filed a timely notice of appeal. *Rees*, 2005 UT 69, ¶¶17–20. The State addressed this argument further in its opening brief. Pet.Br.17–22.

Stewart also argues that the interpretation of "proceeding with an appeal" in paragraph 18 in *Rees* "should be disavowed" because it purportedly conflicts with rule 4(f), *Manning*, and decisions of the United States Supreme Court. Resp.Br.27–32. He refers to it as "a single, short paragraph" in the opinion. Resp.Br.25. But it is not just an inconsequential paragraph. It is part of the Court's holding in the case and a fundamental interpretation of the reinstatement remedy.

The *Manning* Court created the reinstatement remedy to "provide a readily accessible and procedurally simple method" to restore an unconstitutionally denied right to appeal—"when a defendant has been prevented in some meaningful way from proceeding with a first appeal of right." *Manning*, 2005 UT 61, ¶¶24, 26 (cleaned up). But the Court did not say what it means to "proceed" with an appeal. Two months later, the Court

answered that question in *Rees*: "We construe the act of 'proceeding' with an appeal to encompass filing a notice of appeal, not more." *Rees*, 2005 UT 69, ¶18. This paragraph is central to the Court's decision in *Rees* and to the proper interpretation of *Manning* and rule 4(f).

Stewart, therefore, bears a heavy burden by asking this Court to disavow *Rees*. "Parties who ask this court to overturn prior precedent have a substantial burden of persuasion." *State v. Allgier*, 2017 UT 84, ¶17, 416 P.3d 546 (cleaned up). That "substantial burden" requires a defendant "to persuade [the Court] that [its] precedent is not sufficiently weighty or supported, or that it works poorly." *Id.* ¶21. Stewart has not met his burden.

As explained in the State's opening brief, the only purpose of rule 4(f) is to allow a defendant who was prevented from filing a notice of appeal during the original 30-day period to have a second chance to file a timely notice of appeal. That purpose is clear from this Court's unbroken precedent beginning with the original *Johnson* remedy, through *Manning*, and continuing with *Rees* and *Collins*. Pet.Br.12–17.

Stewart makes three futile attempts to show how *Rees* is inconsistent with the purpose of rule 4(f) and other authorities.

First, he challenges *Rees*' definition of "proceeding" by offering a dictionary definition of the nouns "proceedings" and "proceeding," not the

verb for the act of "proceeding" with an appeal that *Rees* defined. Resp.Br.28 n.9; *see Rees*, 2005 UT 69, ¶18 ("We construe the act of 'proceeding' with an appeal…"). Obviously, offering a definition of a different word has no bearing on this Court's interpretation of the actual word at issue.

Second, Stewart relies on the United States Supreme Court's statements in *Garza v. Idaho*, 139 S.Ct. 738, 745–46 (2019), that the act of filing a notice of appeal is a "purely ministerial task" and a "simple, nonsubstantive act," but he ignores its context. *See* Resp.Br. at 29. The *Garza* Court explained that filing a notice of appeal is "a simple, nonsubstantive act that is within the defendant's prerogative." *Garza*, 139 S.Ct. at 745–46. The Court held that counsel's failure to file a timely notice of appeal at defendant's request constitutes deficient performance, and prejudice is presumed because that failure deprives a defendant of his right to appeal by forfeiting the appellate process altogether. *Id.* at 746–47. The Supreme Court did not downplay the importance of filing a timely notice of appeal. To the contrary, consistent with rule 4(f), it held that counsel's failure to do so deprives a defendant of his right to appeal. *Id.*

Rees is fully consistent with *Garza* because it cures the only error Garza dealt with—it reopens the appellate courthouse doors when they are closed by not timely filing a notice of appeal. *See Rees*, 2005 UT 69, ¶18. Because

nothing in *Garza* looks beyond that threshold, *Rees* does not conflict with it by remaining at the threshold.

Third, Stewart returns again to his main point—that not informing him of his right to counsel on appeal denied him "the right to *meaningful* access to the appellate process." Resp.Br.29–32 (emphasis added). Once again, rule 4(f) is not concerned with a "meaningful" appeal—whether a defendant has counsel or not, whether counsel is excellent or deficient, whether an appeal is successful or a complete failure—it is only concerned about whether the opportunity to have an appeal at all is denied because something outside a defendant's control prevented him from timely appealing. Stewart cites no authority to show that *Rees'* interpretation of "proceeding with an appeal" is inconsistent with the purpose of rule 4(f), or that it "is not sufficiently weighty

or supported, or that it works poorly." *Allgier*, 2017 UT 84, ¶21. Stewart's request that the Court disavow paragraph 18 of *Rees* should be denied.[3]

B. Stewart is incorrect that the court of appeals could reverse the trial court's conclusion that Stewart failed to meet his burden of proof

Stewart bore the burden of proving a denial of his right to appeal by a preponderance of the evidence. Utah R. App. P. 4(f). The only evidence he presented to support his claim that he was not informed of his right to counsel on appeal was his "self-serving and not detailed" testimony twelve years later, which was also replete with memory deficiencies. *See Stewart*, 2018 UT App 151, ¶21. The trial court described it as a "mere claim," and ruled that it failed to meet the preponderance of the evidence standard. R1156–57. The only logical conclusion that can be drawn from the trial court's ruling is that

[3] Stewart also claims that his denial of counsel on appeal is a structural error not subject to harmless error review. Resp.Br.40–42. This argument also improperly focuses the question on the possible denial of his right to counsel, which may not be raised under rule 4(f). Stewart's reliance on *Penson v. Ohio*, 488 U.S. 75 (1988), in misplaced. *See* Resp.Br.41–42. There, the Ohio Court of Appeals allowed Penson's attorney to withdraw without following the procedures outlined in *Anders v. California*, 386 U.S. 738 (1967), and refused to grant Penson new counsel upon his request. *Penson*, 488 U.S. at 81–83. That error violated Penson's right to counsel and prejudice was presumed. *Id.* at 88. But here, the question is whether Stewart was denied his right to appeal and thus merits reinstatement under rule 4(f)—a question that *Penson* does not address and one which this Court has held is subject to harmless error review. *See Collins*, 2014 UT 61, ¶¶40–43.

the court found Stewart's memory unreliable and his testimony incredible. The court of appeals should have affirmed. Pet.Br. 26–32.

The court of appeals, however, determined that the trial court did not make findings about the credibility of Stewart's testimony and that because the State did not present its own evidence, Stewart's testimony had to be given some weight. *See Stewart*, 2018 UT 151, ¶22. This was error as it amounted to the court of appeals making a credibility determination, which it may not do.

Stewart agrees that the trial court did not make factual findings. Resp.Br.34–36 ("the district court's ruling had nothing to do with factual findings"). But he argues that there was no error because neither court made factual findings and the court of appeals merely corrected the trial court's "legal error" that Stewart's memory-based testimony was not enough evidence to prove his claim. Resp.Br.32–40. Stewart's arguments are unavailing for three reasons.

First, Stewart's contention that "the district court's conclusion was not based on facts" is wrong. Resp.Br.37. Whether Stewart was informed about his right to counsel on appeal is a factual issue that the trial court, as finder-

of-fact, was obligated to decide.[4] Utah R. App. P. 4(f) (reinstatement is appropriate "[i]f the trial court finds" that defendant was denied his right to appeal); *Manning*, 2005 UT 61, ¶31 (defendant must prove deprivation "based on facts in the record or determined through additional evidentiary hearings"). Stewart testified, the State cross-examined him, and the trial court had to "balance the evidence, using discretion to weigh its importance and credibility, and decide whether" it is "more likely than not" that Stewart's allegations were true. *See State v. Archuleta*, 812 P.2d 80, 82 (Utah Ct. App. 1991) (describing the preponderance of the evidence standard).

Although the trial court's findings were not explicit, it had to make them in order to decide the motion. By referring to Stewart's testimony as a "mere claim" and denying his motion, it was reasonable to assume that the trial court found Stewart's testimony not credible. And that assumption is reasonable. *See Ramirez*, 817 P.2d at 787 (appellate courts "assume that the trier of facts found them in accord with its decision" and affirm if "it would be reasonable to find facts to support it") (cleaned up). After all, Stewart never complained about his lack of counsel on appeal in the twelve years between his conviction and his rule 4(f) motion, despite several opportunities

[4] Assuming that this fact is germane to rule 4(f), which the State disputes. *See* Part I(A), *supra*.

to do so. *See supra* n.2. When he finally did complain he was inconsistent, and his memory was poor. He claimed in his *pro se* rule 4(f) motion that he was not informed of his right to counsel because he could not hear anything at all at his sentencing. R874–75. But he made no such hearing-based claim during his testimony. He claimed only that the court did not inform him about the right to counsel on appeal, even though he admitted he could not remember everything the court said. R1119–25.

It was not clearly erroneous for the trial court to be unpersuaded by Stewart's self-serving, undetailed, and contradictory claim, which was based on a poor memory, after many years during which he failed to raise his claim in any form. *See State v. Robles-Vazquez*, 2015 UT App 108, ¶¶7–10, 349 P.3d 769 (affirming denial of rule 4(f) motion without express findings because trial court said defendant's testimony "seem[ed] disingenuous" because it took him three years to raise claim). The court of appeals should have affirmed. *See* Pet.Br. 26–32.

Second, even if the trial court truly made no findings (or it was unreasonable to assume it found Stewart not credible), the court of appeals still erred when it did not remand so the trial court could make the necessary factual findings. As stated, factual findings were necessary to decide the motion. And only the trial court can make factual findings: "it is not the

function of an appellate court to make findings of fact because it does not have the advantage of seeing and hearing witnesses testify." *Rucker v. Dalton*, 598 P.2d 1336, 1338 (Utah 1979). The very greatest relief the court of appeals could have given Stewart was to remand to have the trial court make the findings that only it could make, not make the findings on its own. *See State v. Ruiz*, 2012 UT 29, ¶¶24–27, 282 P.3d 998; Pet.Br.27–29.

Finally, Stewart argues that the court of appeals did not make its own findings as to Stewart's credibility. Rather, he claims that the court merely corrected the trial courts erroneous conclusion that "as a matter of law…anything short of a transcript of the sentencing hearing would be insufficient to support Stewart's claim that he was not informed of the right to counsel." Resp.Br.34–39. Even if that was all the court of appeals did, it still should have remanded for the trial court to make the necessary findings.

But the court of appeals did more than tell the trial court that it made an erroneous legal conclusion. It also decided for the trial court that Stewart's testimony "tended to prove that [he] was not informed of his right to counsel on appeal" and held that it met the preponderance of the evidence standard. *Stewart*, 2018 UT 151, ¶22. His testimony only "tended to prove" his claim if what he said was true, which is a factual finding that the court of appeals is not authorized to make. "We emphasize that the weighing of the evidence is

to be done by the trial court, not this court." *Archuleta*, 812 P.2d at 83 n.2; *see Rucker*, 598 P.2d at 1338.

Stewart contends that the court of appeals' holding that Stewart's testimony alone carried his burden is "logical," "uncontroversial," and a "simple, elegant resolution" of the issue. Resp.Br.39–40. But it was an erroneous overstep of the court of appeals' authority. The court of appeals determined that Stewart's testimony was sufficient to meet his burden of proof based on its own finding that Stewart's testimony was reliable because it was uncontradicted. *See Stewart*, 2018 UT App 151, ¶¶21–22 & n.6. But that finding was wrong for two reasons: (1) it conflicted with the trial court's implicit conclusion that Stewart's testimony was not credible; and (2) it was an appellate finding of reliability that an appellate court is not allowed to make. And an appellate finding does not become permissible merely because the State had no affirmative contrary proof. A fact-finder may find even uncontradicted evidence to be inherently incredible. *See* Pet.Br.29–30.

It was error for the court of appeals to accept Stewart's testimony from a cold record at face value and conclude that it met his burden of proof. For all the court of appeals knew, Stewart exhibited during his testimony a demeanor, body language, voice inflection, and other behaviors—all unknowable from a transcript—that indicated that he was, if not outright

lying, at least propping up an admittedly incomplete memory of what happened twelve years earlier with "self-serving" testimony. By finding Stewart's testimony "insufficient," the trial court implicitly gave Stewart's testimony no weight. The court of appeals erred by deciding for itself that the testimony was sufficient to meet his burden of proof. This Court should reverse.

C. Other procedures are available to seek redress for the alleged denial of the right to counsel on appeal

Stewart argues that reinstatement is the "only remedy for redress of the loss of his first right of appeal, due to the denial of his right to appellate counsel." Resp.Br.42. He is incorrect. Rule 4(f) is an "improper procedural vessel for bringing" a claimed deprivation of the right to counsel on appeal. *See Sandoval v. State*, 2019 UT 13, ¶13, —P.3d—. But other procedural remedies are available for such claims.

First, Stewart could have requested counsel at any time during his appeal. He did not. And had such a request been denied, or had Stewart otherwise believed that he his right to counsel had been violated, he could have raised a claim for denial of counsel in his first appeal of right. He did not.

Second, the law provided Stewart a remedy for errors relating to his right to counsel on appeal—post-conviction relief. Stewart could have raised

his present claim in one of his "several" post-conviction petitions. *See* R729–30, 936; *see also* Utah Code Ann. § 78B-9-102(1) (West 2017) (PCRA is "sole remedy" for defendants who have "exhausted all other legal remedies, including a direct appeal"); *Rees*, 2005 UT 69, ¶18 (defendants whose appeals are dismissed involuntarily following a timely notice of appeal are "drawn into the ambit of the PCRA"). Again, he did not.

Stewart argues that, unlike *Rees*, he may not seek post-conviction relief for the alleged denial of his right to counsel on appeal because of his twelve-year delay. Resp.Br.44. It is possible that Stewart's lengthy delay precludes post-conviction relief either because it is beyond the one-year statute of limitations or because it could have been raised in a prior appeal or request for post-conviction relief. *See* Utah Code Ann. § 78B-9-106(1). But Stewart does not contend that he could not have raised it at an earlier time.

In sum, rule 4(f) is not the appropriate avenue to challenge the alleged denial of the right to counsel on appeal, especially for a defendant, like Stewart, who already appealed. Stewart may have forfeited his claim by waiting twelve years to raise it. But that does not mean that no remedy existed. Stewart's failure to raise his claim through the proper procedures at the proper times does not grant him license to distort rule 4(f)'s narrow purpose.

CONCLUSION

For the foregoing reasons and those set forth in the State's opening brief, the Court should reverse the judgment of the court of appeals.

Respectfully submitted on April 8, 2019.

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CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(g), Utah Rules of Appellate Procedure, this reply brief contains less than 7,000 words, excluding the table of contents, table of authorities, addenda, and certificate of counsel. I also certify that in compliance with rule 21(g), Utah Rules of Appellate Procedure, this brief, including the addenda:

☑ does not contain private, controlled, protected, safeguarded, sealed, juvenile court legal, juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law (non-public information).

☐ contains non-public information and is marked accordingly, and that a public copy of the brief has been filed with all non-public information removed.

/s/ Jeffrey D. Mann
JEFFREY D. MANN
Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that on April 8, 2019, the Reply Brief of Petitioner was served upon respondent's counsel of record by ☐ mail ☑ email ☐ hand-delivery at:

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I further certify that an electronic copy of the brief in searchable portable document format (pdf):

☑ was filed with the Court and served on respondent by email, and the appropriate number of hard copies have been or will be mailed or hand-delivered upon the Court and counsel within 7 days.

☐ was filed with the Court on a CD or by email and served on respondent.

☐ will be filed with the Court on a CD or by email and served on respondent within 14 days.

/s/ Melanie Kendrick