

2016

**In Re: Darrell Wayne Morris, Witness/Appellant State of Utah,
Plaintiff/Appellee, v. Danny Leroy Logue, Defendant**

Utah Court of Appeals

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Case No. 20150187-CA

IN THE
UTAH COURT OF APPEALS

IN RE:
DARRELL WAYNE MORRIS,
Witness/Appellant

STATE OF UTAH,
Plaintiff/Appellee,

v.

DANNY LEROY LOGUE,
Defendant.

Brief of Appellee

Appeal from an order finding Appellant in contempt for refusing to testify in a trial involving a first degree felony in the Fourth Judicial District, Utah County, the Honorable Derek M. Pullan presiding

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UTAH APPELLATE COURTS

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Brief of Appellee

STATEMENT OF JURISDICTION

Appellant appeals from an order finding him in contempt of court under Utah Code Ann. §78B-6-302 (West 2009), for refusing to testify in a trial involving a first degree felony. This Court has jurisdiction under Utah Code Ann. §78A-4-103(2)(j) (West Supp. 2015) (pour over provision).

In the conclusion of his brief, Morris asks this Court to dismiss a separate case in which he is charged with obstruction of justice. Br.Aplt.43. But this appeal is taken only from the order finding him in contempt of court, and entered in his co-defendant's case. R1543:2254-53. This Court therefore has no jurisdiction to consider the separate prosecution for obstruction of justice.

STATEMENT OF THE ISSUE

Morris—an eyewitness and accomplice to an aggravated murder—pled guilty to reduced charges for his role in that crime. The prosecution granted him use immunity and subpoenaed him to testify at his co-defendant’s trial but he refused, claiming that (1) testifying could endanger him; and (2) his testimony was privileged under the Fifth Amendment because it could be used against him if he were charged with federal crimes associated with the murder.

Did the trial court abuse its discretion in finding that Morris’s refusal to testify constituted contempt of court?

Standard of Review. A trial court’s finding of contempt is reviewed for abuse of discretion. *See State v. Clark*, 2005 UT 75, ¶18, 124 P.3d 235.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Addendum A contains:

U.S. Const. amend. V;

Utah Code Ann. §77-22b-1 (West Supp. 2015) (immunity);

Utah Code Ann. §78B-6-301 (West 2009) (acts constituting contempt);

Utah Code Ann. §78B-6-302 (West 2009) (contempt in immediate presence of court);

Utah Code Ann. §78B-6-310 (West 2009) (punishment for contempt).

STATEMENT OF THE CASE

A. Summary of facts.

Murdering a "snitch"

A drug dealer hired Appellant, Darrell Morris, to assault Andy Purcell because the dealer believed that Purcell had "snitched," i.e. informed police about the dealer's illegal activities. R1535:1243.¹ The dealer wanted Morris to inflict "serious bodily injury" on Purcell. R1535:1243. The dealer agreed to pay Morris one half-ounce of methamphetamine in advance and another half-ounce when he finished the job. R1535:1243.

Morris recruited Danny Logue to help him assault Purcell. R1535:1243. When they left for Purcell's house, Morris had a baseball bat and Logue had a loaded gun. R1535:1243-42.

Purcell was sitting on his front porch as the two approached. R1535:1242. Purcell shouted that he knew why they were coming and threatened to call

¹ Relevant documents are contained in the records of two separate but related cases: 111401535 (State v. Morris) and 111401543 (State v. Logue). The State differentiates between the two by first citing to the last four digits of the case number, and then the record page number—for example, R1535:1 designates the first page of the record in State v. Morris.

Morris eventually entered guilty pleas to reduced charges. R1535:1244-36. Logue went to trial. R1543:1846. Because Morris refused to testify at Logue's trial, the ruling finding Morris in contempt and the order imposing punishment were entered in Logue's case. R1543:2215-12 (Addendum B is a copy of the ruling and order).

police. R1535:1242. Logue responded by shooting Purcell. R1535:1242. Morris claimed to be surprised by the shooting and unaware that Logue had brought a gun. R1535:1242.

Morris drove Logue to a spot where Logue hid the gun. R1535:1242. Morris then collected the other half-ounce of methamphetamine and shared it with Logue. R1535:1242.

B. Summary of proceedings.

The State charged Morris, Logue, and the drug dealer with aggravated murder and various other crimes. R1535:9-3. During plea negotiations, the State offered to agree not to call Morris as a witness at Logue's trial if Morris would plead guilty to certain crimes. R1543:1294:9,12-13. Morris rejected that offer because he believed that the proposed crimes were too severe. R1543:1294:9,12-13; R1535:1285:7. The State then offered to allow Morris to plead to less-severe crimes but without a promise not to call him to testify. R1543:1294:9; R1535:7,14,23.

Morris accepted that offer and pled guilty to one count each of manslaughter, obstruction of justice, and possession of a dangerous weapon by a restricted person. R1535:1243; R1535:1294:12-13. The plea agreement required the State to recommend that Morris's sentences run concurrently with each other, and with his sentence for forgery imposed in an unrelated case.

R1535:1240. The plea agreement did not require the State to refrain from calling Morris as a witness at Logue's trial. R1535:1240; R1535:1285:7,14,23 (Addendum C is a copy of the written plea statement). Morris was sentenced to imprisonment for one to fifteen years for both manslaughter and obstruction, and zero to five years for possession of a dangerous weapon. R1535:1247-45.

The State subpoenaed Morris to testify at Logue's aggravated murder trial. R1543:2070. The prosecution also granted Morris use immunity under Utah Code Ann. §77-22b-1, even though he had already pled guilty to and been sentenced on various crimes arising from his role in the murder. R1543:211-18; R1543:1294:51. The immunity grant prevented the prosecution from using Morris's responsive testimony or "any information directly or indirectly derived from" that testimony "in any criminal or quasi-criminal case." R1543:2119-18.

After receiving the subpoena, Morris wrote to the prosecutor stating that he would not testify. R1543:2051-52. Morris's only reason for refusing was that he believed his plea agreement prevented the prosecution from calling him as a witness. R1543:2051-52 (Addendum E is a copy of Morris's letter).

Morris's counsel also moved to quash the subpoena. R1543:2050-42 (Addendum D is a copy of the motion). His counsel argued primarily that Morris had a Fifth Amendment privilege not to testify because he could be

charged with federal crimes arising from the murder. R1543:2050-42. Morris's counsel also argued that, based on the plea agreement and the prosecutor's representations, Morris believed that he could be called as a witness only if Logue testified first and Morris's testimony was necessary for rebuttal. R1543:2047-42. Morris's counsel also generally asserted "that Morris is at risk of suffering substantial bodily harm or death if he gives testimony in a homicide case due to the dangerous circumstances of the prison environment." R1543:2043.

The trial court denied Morris's motion to quash the subpoena. R1543:1294:12-20 (Addendum F is a copy of the oral argument and ruling on the motion to quash). The court found that the plea agreement did not prevent the prosecution from calling Morris as a witness and that Morris's fear of retaliation was "not a basis" to quash the subpoena. R1543:1294:12-13. The court also found that Morris could not refuse to testify based on the Fifth Amendment because he "ha[d] no Fifth Amendment privilege to assert." R1543:1294:18.

The court found that Morris had no Fifth Amendment privilege because he had already been convicted in state court for his role in the murder and the prosecution had granted him use immunity. R1543:1294:18-19. The trial court also found that the likelihood that the federal government would prosecute Morris was "fanciful and merely speculative," particularly in light of the federal

government's "Petite policy," which governs when the federal government will charge someone who has already been convicted in state court. R1543:1294:14-15:

Outside the presence of the jury, the trial court explained to Morris that he had no Fifth Amendment privilege to refuse to testify, that a subpoena was a court order to testify, and that if he refused to testify he could be held in contempt of court and could also be charged with obstruction of justice. R1543:1294:49. Morris nevertheless refused to testify. R1543:1294:50-54. Consequently, the trial court found him in contempt of court, sentenced him to thirty days in jail, to run consecutively to the prison terms he was currently serving, and fined him \$1,000. R1543:2215-12 (Addendum B is a copy of the ruling and order on contempt); R1543:1294:54 (Addendum G is a copy of the transcript pages where Morris refused to testify and the trial court made an oral finding of contempt).

Morris timely appeals the contempt finding. R1543:2254-53.

SUMMARY OF ARGUMENT

Morris argues that the trial court abused its discretion in finding him in contempt of court for refusing to testify because (1) he feared retaliation if he testified and (2) he had a Fifth Amendment privilege not to testify because his testimony could be used against him if he were charged with federal crimes

arising from the murder. The trial court acted well within its discretion in finding Morris in contempt. First, the trial court correctly concluded that Morris's claim of retaliation did not justify his refusal to testify because his claim was vague and unsubstantiated.

The trial court also correctly concluded that Morris had no Fifth Amendment privilege because he had been granted immunity. If the federal government did decide to prosecute Morris for his involvement in this murder, it could not use his immunized testimony against him directly or even indirectly. The immunity grant therefore nullified any Fifth Amendment privilege Morris possessed based on any potential of federal prosecution.

ARGUMENT

THE TRIAL COURT ACTED WELL WITHIN ITS DISCRETION IN FINDING MORRIS IN CONTEMPT FOR REFUSING TO TESTIFY WHERE MORRIS ASSERTED ONLY A VAGUE AND UNSUBSTANTIATED CLAIM OF RETALIATION AND POSSESSED NO FIFTH AMENDMENT PRIVILEGE

Morris argues that the trial court erroneously found him in contempt for two reasons. First, he asserts that the trial court ignored his claim that he feared retaliation if he testified, and that this fear justified his refusal to testify. Br.Aplt.24-33. Second, he argues that his Fifth Amendment privilege against self-incrimination justified his refusal to testify. Br.Aplt.24-43. The trial court

correctly rejected both arguments and therefore acted well within its discretion in finding Morris in contempt.

A. The trial court considered and correctly rejected Morris's claim that fear of retaliation justified his refusal to testify.

Morris argues that the trial court erred because it "failed to address" his claim that he faced a "substantial risk of bodily harm or death if he testified." Br.Aplt.24 (bolding and capitalization omitted). He also argues that this risk of retaliation outweighed any need for his testimony because the jury convicted Logue without his testimony. Br.Aplt.31-32. The trial court, however, expressly considered and correctly rejected Morris's claim that his fear of retaliation should excuse him from testifying. R1543:1294:12 (Add. F). This Court should not consider Morris's argument that his fear of retaliation outweighed any need for his testimony because Morris failed to preserve that argument and he argues no justification for that failure. Regardless, Logue's conviction cannot excuse Morris's refusal to testify, especially a refusal based on an unsubstantiated fear of retaliation.

1. Morris's vague and unsubstantiated claim of retaliation was insufficient to justify his refusal to testify.

The trial court did not ignore Morris's claim that he feared retaliation. On the contrary, the trial court found that although Morris had alleged "that he

is fearful of retribution should he testify,” that fear was “not a basis for a subpoena being quashed.” R1543:1294:12-13 (Add. F).

Had the trial court actually overlooked Morris’s alleged fear of retaliation, it would be difficult to fault the trial court for doing so. Only two sentences of Morris’s motion to quash addressed the issue. R1543:2043 (Add. D). And Morris’s counsel did not raise this issue in his oral argument on the motion. R1543:1294:5-9 (Add. F). Rather, it was the prosecutor who raised the issue and argued that unsubstantiated fear was “not grounds to quash a subpoena.” R1543:1294:9.

The trial court correctly agreed with the prosecutor. It “has been widely held that a witness’ fear of reprisal against himself or his family does not constitute just cause for refusing to testify.” *In re Grand Jury Proceeding (Doe)*, 13 F.3d 459, 461 (1st Cir. 1994); *see also LaTona v. United States*, 449 F.2d 121, 122 (8th Cir. 1971) (“The concept of due process does not encompass the privilege of a witness not to testify because of fear of reprisals.”); *Dupuy v. United States*, 518 F.2d 1295, 1295 (9th Cir. 1975) (“No federal court in a reported decision has held that fear of retaliation is sufficient reason to refuse to testify.”).

Indeed, the United States Supreme Court has recognized, albeit in dicta, that fear of retaliation is insufficient to justify a refusal to comply with an order to testify. *See Piemonte v. United States*, 367 U.S. 556, 559 n.2 (1961). Piemonte

was serving a federal prison sentence for heroin distribution when he refused to testify before a grand jury, despite being granted immunity. *Id.* at 557-58. He was found in contempt and sentenced to additional incarceration. *Id.* at 559. He appealed, claiming that the order requiring him to testify was not sufficiently clear and that his immunity grant was invalid. *Id.* at 559-61. He had also claimed that his testimony would endanger his life and the lives of his family, but he did not raise that argument as a basis for reversing his contempt sentence. *Id.* at 556-59. The Supreme Court nevertheless noted his alleged “fear for himself or his family,” and observed that it would not “be a legal excuse” for refusing to testify. *Id.* at 559 n.2. The Supreme Court stated that if “two persons witness an offense—one being an innocent bystander and the other an accomplice who is thereafter imprisoned for his participation—the latter has no more right to keep silent than the former.” *Id.* “[F]ear of reprisal offers an immunized prisoner no more dispensation from testifying than it does any innocent bystander without a record.” *Id.*

The Ninth Circuit explained why this is so. *See In re Grand Jury Proceedings (Lahey)*, 914 F.2d 1372, 1375 (9th Cir. 1990). After observing that no federal court had held “‘fear of retaliation is sufficient reason to refuse to testify,’” the Ninth Circuit explained that if it were “otherwise, any person involved with a criminal enterprise could point to the possible danger that

comes from giving testimony. The more vicious or sophisticated the enterprise, the greater the danger.” *Id.* (quoting *Dupuy v. United States*, 518 F.2d 1295 (9th Cir. 1975)). Likewise, as the Seventh Circuit has observed, the “entire criminal justice process could be rendered inoperable if a witness with evidence concerning a crime could refuse to provide such evidence based on a few vague threats of reprisal.” *United States v. Patrick*, 542 F.2d 381, 388 (7th Cir. 1976).

The Seventh Circuit has recognized that although “fear, by itself, will not legally justify or excuse a witness’ refusal to testify in violation of a court order,” duress can be a defense to a contempt charge. *See Patrick*, 542 F.2d at 388. But Morris failed to assert any reasonable basis to support a duress defense.

The defense of duress—codified in Utah as “compulsion”—excuses what would otherwise be criminal conduct when the accused engages in the conduct “because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.” *See Utah Code Ann. §76-2-302(1)* (West 2015). The defense is therefore available only to one who is “‘faced with a specific, imminent threat of death or serious bodily injury’ to himself or a third person” and who “must have had ‘no reasonable legal alternative to violating the law.’” *State v. Dozah*, 2016 UT App

13, ¶17, 2016 WL 299071 (quoting *State v. Ott*, 763 P.2d 810, 812 (Utah App. 1988)).

Vague, unsubstantiated, or indefinite threats are insufficient to entitle a defendant to assert a compulsion defense, let alone to establish it. For example, a defendant who claimed that he was compelled to escape from the prison because other inmates had threatened his safety was not entitled to assert a compulsion defense where he produced only “general and vague” testimony about the alleged threats. *See State v. Harding*, 635 P.2d 33, 35 (Utah 1981). About a month before his escape, Harding claimed that other inmates had threatened him because he had helped an inmate whom those inmates had stabbed. *Id.* at 34. When asked about what he feared if he did not escape, Harding replied, “I really didn’t know what was going to happen. It was you know situation [sic] where I just didn’t know.” *Id.* Because this testimony lacked “the specificity which is necessary to establish the existence of an immediate threat,” it was insufficient to entitle Harding to assert a compulsion defense. *See id.*

Cases addressing claims of compulsion or duress as a defense to a contempt finding likewise require proof of a specific, imminent threat of retaliation. For example, in *In re Grand Jury Proceedings (Freligh)*, 894 F.2d 881, 883 (7th Cir. 1989), the Seventh Circuit explained that while proof of “palpable

imminent danger” could be enough to entitle an alleged contemnor to the defense, “vague unsubstantiated fears” would be insufficient. Applying this test in *Patrick*, the Seventh Circuit affirmed the district court’s refusal to instruct on a duress in defense at a contempt hearing where Patrick presented no evidence “as to the immediacy of the danger to which he and his family were subjected or that he had no other opportunity to obey the court’s order without subjecting himself to such danger.” 542 F.2d at 388. Likewise, the Eleventh Circuit has held that to establish a defense of duress in a contempt proceeding, a defendant would have “to show that his refusal to testify before the grand jury was based on an *immediate threat of death or serious bodily injury*, that he had a well-grounded fear that the threat would be carried out, and that there was no legal alternative to violating the law.” *United States v. Herre*, 930 F.2d 836, 838 (11th Cir. 1991) (citing *United States v. Blanco*, 754 F.2d 940, 943 (11th Cir. 1985)).

Although Morris claims that he “had a justifiable fear for his life,” he cites nothing to substantiate that fear. Br.Aplt.28. Morris’s letter to the prosecutor declaring his refusal to comply with the subpoena did not even mention fear of retaliation, let alone identify any specific, imminent threat that he would face if he testified. R1543:2052. Rather, he objected to the subpoena only because he believed that his plea agreement prevented the prosecution from calling him as a witness. R1543:2048,2052 (Add. E).

Two sentences of Morris's motion to quash did vaguely allege that he faced potential retaliation if he testified. R1543:2043 (Add. D). But neither provided any specific allegation of imminent danger. The first sentence stated that "other persons and witnesses" had "claimed" to have been threatened for their potential testimony. R1543:2043. But hearsay reports of unspecific threats to other witnesses could not justify Morris's refusal to testify.

Morris also alleged that he was "at risk of suffering substantial bodily harm or death if he gives testimony in a homicide case due to the dangerous circumstances of the prison environment." R1543:2043. But this bald allegation identified no specific, imminent threat that Morris faced if he testified.

In his brief, Morris does not cite to any testimony or other evidence that he provided the trial court that would substantiate his alleged fear of retaliation. Nor does he identify any specific, imminent threat he faced if he testified. Instead, he cites to testimony from Brandon Wright, one of the State's witnesses at Logue's trial. Br.Aplt.28. Wright was a fellow inmate who belonged to the same prison gang as Morris and Logue, and to whom Logue allegedly confessed. R1543:2419:116-35. Morris also cites to a motion filed by Logue's counsel seeking to exclude Wright's testimony as unreliable. Br.Aplt.28. But Morris's reliance on Wright is misplaced because even though

Wright was a fellow gang member and claimed that he would face retaliation for his testimony, he nevertheless testified at Logue's trial. R1543:2419:116-135.

Logue's counsel moved to exclude Wright's testimony as unreliable because Wright was allegedly bartering his testimony for favors from the prosecution. R1543:1513-1492. Wright had written to the prosecution allegedly asking that in exchange for his testimony, he be transferred to a different section of the prison and have an opportunity to ask the Board of Pardons to terminate his sentence because he would "be on gang hit lists" in Utah. R1543:1512-11. Logue's counsel alleged that Wright had joined a prison gang during a previous incarceration but "'retired'" from the gang when he was paroled in 2006. R1543:1512. Wright allegedly wrote that, when he later returned to prison, he was told that he could not retire from the gang and that the gang had directed him to stab another inmate. R1543:1512-11.

Despite his prison gang membership, Wright testified at Logue's trial. R1543:2419:116-135. He testified that Logue had confided to him that Logue and Morris had gone to the victim's house, that Logue had shot the victim, and that Logue had disposed of the murder weapon. R1543:2419:118-21. Wright also testified that he was in the same prison gang with Logue and Morris and that although he had previously disassociated himself from the gang, Logue told him that he could not "just drop out." R1543:2419:117-18,129. Wright

testified that gang members are obligated to help each other and that those who inform on other members are in danger of being assaulted and seriously injured. R1543:2419:121. He acknowledged that he was violating a rule of the gang by testifying. R1543:2419:121. Wright confirmed, however, that he was still in prison and had not received any benefit, or even a promised benefit, for his testimony, although he hoped that the Board of Pardons would consider terminating his sentence early so that he could leave Utah. R1543:2419:130,134.

Wright's testimony undermines, rather than supports Morris's argument that the trial court should have quashed his subpoena. Wright testified at Logue's trial despite his acknowledged fear that his former association with the gang put him at risk of retaliation in prison, and despite the lack of any promised benefit from the prosecution. Moreover, Wright's general testimony that gang members could face retaliation if they informed on other gang members did not identify any specific, imminent threat that Morris faced if he testified. Wright's testimony therefore supports the trial court's decision to deny the motion to quash.

Morris argues that the government "'has an obligation to protect its citizens from harm.'" Br.Aplt.30 (quoting *Piemonte v. United States*, 367 U.S. 556, 559 n.2 (1961)). He also claims that the trial court offered him "no protection at all." Br.Aplt.31. But Morris never asked for protection. Instead, he simply

refused to testify based on a vague and unsubstantiated claim of retaliation. And he never claimed—let alone demonstrated—that the prison would not be able to protect him from any specific threat. Indeed, Morris acknowledges that the Department of Corrections could have transferred him “to a County Jail facility in order to protect [him].” Br.Aplt.31. Had Morris shown that he faced a specific, imminent threat if he testified, then the trial court could have required the prosecution to show that it had taken reasonable steps to protect him from retaliation, or at least explain why it should not be required to take such steps, before finding him in contempt. But Morris never identified such a threat. The trial court therefore correctly found that Morris’s alleged fear of retaliation was insufficient to justify his refusal to testify.

- 2. This Court should not consider Morris’s unpreserved claim that his fear of retaliation outweighed any need for his testimony because he argues no exception to the preservation rule; in any event, his argument is meritless.**

Morris also argues that the trial court should have quashed his subpoena because his fear of retaliation outweighed any need for his testimony where the jury convicted Logue without it. Br.Aplt.31-32. But Morris did not make this argument below. R1543:2050-42 (Add. D); R1543:1294:5-20 (Add. F). This Court should therefore decline to consider it because it is unpreserved and Morris does not argue any justification for appellate review. Br.Aplt.31-32. In any

event, the prosecution had a compelling reason for subpoenaing Morris because he had witnessed the murder.

Generally, this Court will not consider issues on appeal that were not timely and specifically raised below. *See State v. Isom*, 2015 UT App 160, ¶21, 354 P.3d 791. An appellate court will address an unpreserved “issue only if (1) the appellant establishes that the district court committed ‘plain error,’ (2) ‘exceptional circumstances’ exist, or (3) in some situations, if the appellant raises a claim of ineffective assistance of counsel in failing to preserve the issue.”² *State v. Low*, 2008 UT 58, ¶19, 192 P.3d 867.

An appellant cannot adequately brief an unpreserved issue unless he presents his argument “through the lens of one ... of these exceptions.” *See State v. Rhinehart*, 2007 UT 61, ¶21, 167 P.3d 1046; *see also* Utah R. App. P. 24(a)(5) (requiring an appellant, in his opening brief, to either demonstrate that the issue was preserved or state an exception for considering the unpreserved issue). Therefore, an appellate court will not consider unpreserved issues when the appellant articulates no justification for review. *See Rhinehart*, 2007 UT 61, ¶21; *Isom*, 2015 UT App 160, ¶23.

² “[E]xceptional circumstances’ is a concept that is used sparingly, properly reserved for truly exceptional situations” such as “rare procedural anomalies.” *State v. Irwin*, 924 P.2d 5, 11 (Utah App. 1996) (quotation and citation omitted). No such circumstances exist here.

Morris does not argue that any justification for appellate review should apply to excuse his failure to raise this argument in the trial court. Br.Aplt.24-33. This Court should therefore refuse to consider it. See *Rhinehart*, 2007 UT 61, ¶21; *Isom*, 2015 UT App 160, ¶23.

But even if this Court were to consider this argument, Morris could not establish that the trial court plainly erred for not sua sponte accepting it. Plain error occurs when the trial court commits obvious, prejudicial error. *State v. Davis*, 2013 UT App 228, ¶32, 364 P.3d 538 (citing *State v. Dunn*, 850 P.2d 1201, 1208 (Utah 1993)). An error cannot be obvious unless “the law governing the error was clear at the time the alleged error was made.” *Id.* (quoting *State v. Dean*, 2004 UT 63, ¶16, 95 P.3d 276)). Morris cites to no controlling case stating that a subsequent conviction can purge a contempt finding for a witness who refuses to testify. Br.Aplt.31-33. Nor could the State find one. Moreover, it could not have been obvious to the trial court that Morris’s fear of retaliation outweighed the need for his testimony where he never invited the trial court to weigh the need for his testimony against his alleged fear of retaliation, and especially where Logue had not yet been convicted. Therefore, Morris cannot show that the trial court plainly erred.

Regardless, no error occurred here because Logue’s conviction was irrelevant to Morris’s contempt citation for three reasons. First, a rule that a

conviction could purge a contempt finding for a witness who refuses to testify would severely undermine a court's essential authority to "compel obedience to its judgements, orders, and processes" and to "compel the attendance of persons to testify in a pending action or proceeding." See Utah Code Ann. §78A-2-201 (West 2009). Reluctant witnesses would feel greater freedom to flout court orders and subpoenas if a subsequent conviction in the case could purge their contempt. This would severely undermine a trial court's truth-seeking function.

Second, when Morris was called as a witness during Logue's trial, there was no way to know whether the jury would convict Logue without Morris's testimony. Thus, the trial court could not have relied on Logue's conviction as a basis for quashing the subpoena.

Third, the prosecution had compelling reasons to believe that Morris's testimony was necessary to its case, even though it ultimately convicted Logue without it. Logue's defense was that he "was not present at [the victim's] house when [the victim] was shot that night," and that he was "not part of this. He didn't have anything to do with this." R1543:2412:46 (Logue's counsel's opening statement). Logue also asserted that the State's witnesses who agreed to testify were "very untrustworthy" because they were all "big time drug user[s]" who "lied to the police and later changed their stories." R1543:2412:46.

Logue himself testified that he did not shoot the victim and was not even present when the victim was shot. R1543:1295:67. His counsel argued in closing that the “best evidence is that [Logue] wasn’t present.” R1543:2423:97.

Morris’s testimony was necessary because he was both an eyewitness and an accomplice. His testimony would have not only refuted Logue’s claim that he was not present at the murder scene, it would have also established that Logue was the murderer. The fact that the jury ultimately convicted Logue despite Morris’s refusal to testify did not diminish the prosecution’s need for Morris’s testimony.

Morris argues that Brandon Wright could have given similar testimony. Br.Aplt.32. As mentioned, Logue did confess to Wright. R1543:2419:118-21. But Wright was, as Morris notes—“a jailhouse snitch”—Br.Aplt.32, and therefore subject to a credibility challenge. Moreover, unlike Morris, Wright was not present and did not witness Logue shoot the victim. Wright’s testimony was therefore no substitute for Morris’s eyewitness testimony.

In sum, neither Morris’s vague and unsubstantiated claim of retaliation, nor Logue’s subsequent conviction, justified Morris’s refusal to testify. The trial court therefore did not abuse its discretion in refusing to quash his subpoena and ultimately finding him in contempt.

B. Morris had no Fifth Amendment privilege because the prosecution had granted him immunity.

Morris argues that “the trial court erred in determining that [he] had no Fifth Amendment privilege to assert.” Br.Aplt.33 (bolding and capitalization omitted). He reasons that even though the state charges had been resolved, he continued to possess a Fifth Amendment privilege against self-incrimination because there remained a possibility that he could be charged with federal crimes arising from the murder, and that his testimony in Logue’s trial could be used against him in that potential federal prosecution. Br.Aplt.38-41. Morris observes that the Double Jeopardy Clause does not prevent prosecution by a separate sovereign for crimes arising from the same facts. Br.Aplt.35-41.

The trial court found that Morris had no Fifth Amendment privilege because: (1) he had already pled guilty for his involvement in the crime; (2) the prosecution had granted him use immunity; and (3) under the federal government’s “Petite Policy,” the likelihood that the federal government would prosecute him was “fanciful and merely speculative.” R1543:1294:18. The trial court was correct. Morris could not claim a Fifth Amendment privilege because, even assuming that the federal government did charge him with crimes arising from the murder, the prosecution’s grant of use immunity prevented the federal government from using any testimony compelled by that immunity grant.

Two provisions of the Fifth Amendment to the Federal Constitution are relevant here. One provides that “No person ... shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. The other prevents a person from being “subject for the same offence to be twice put in jeopardy.” *Id.*

As Morris correctly observes, Br.Aplt.35, the Fifth Amendment protection against double jeopardy does not prevent separate sovereigns—for example a state and the federal government—from each prosecuting an individual for the same crime. *United States v. Lanza*, 260 U.S. 377, 382 (1922) (“It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.”); *see also Heath v. Alabama*, 474 U.S. 82, 88-89 (1985) (explaining dual-sovereignty doctrine). Thus, even though the State had already prosecuted Morris for his role in this murder, the federal government could also prosecute him for any federal crimes arising from his involvement.

The prosecution’s grant of immunity, however, nullified any Fifth Amendment privilege that arose from the possibility of a federal prosecution. When “a State compels an individual to testify through a grant of immunity, the federal government is prohibited from then using that testimony or its fruits against the witness in a federal prosecution.” *State v. Bond*, 2015 UT 88, ¶26, 361

P.3d 104 (citing *Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52, 79 (1964) and *United States v. Balsys*, 524 U.S. 666, 682 (1998)); see also *State v. Delacruz*, 364 P.3d 557 (Kan. App. 2015) (“[A] grant of immunity protects the witness from self-incrimination for any future state or federal prosecutions.”). Because the immunity grant prevented the federal government from using Morris’s testimony against him in any future federal prosecution, requiring his testimony at Logue’s trial would not have compelled him to be a witness against himself.

The Utah Supreme Court considered a similar issue in *State v. Bond*. 2015 UT 88, ¶¶18-29. Bond and a co-defendant, Rettig, committed an aggravated murder. *Id.* ¶¶3-4. Rettig pled guilty to various crimes based on his involvement and the State subpoenaed him to testify at Bond’s trial. *Id.* ¶18. Rettig answered some preliminary questions, but was excused after he refused to testify further. *Id.* The next day, the prosecution recalled Rettig and granted him use immunity. *Id.* ¶19. Rettig objected and asserted his Fifth Amendment privilege, arguing that the immunity grant would not protect him from possible federal prosecution. *Id.*

The trial court allowed the prosecutor to initially question Rettig outside the jury’s presence. *Id.* Because Rettig was consistently answering, the court brought the jury in and allowed the questioning to continue. *Id.* Shortly

thereafter, however, Rettig invoked his Fifth-Amendment privilege in front of the jury and Bond moved for a mistrial on the grounds that the prosecution had committed misconduct by calling Rettig, knowing that he would invoke his Fifth Amendment privilege. *Id.* ¶¶20-21. The trial court denied the motion and Bond appealed. *Id.* ¶22.

The Utah Supreme Court affirmed. *Id.* ¶29. It held that although a prosecutor may not call a witness who he knows can claim a valid Fifth Amendment privilege “simply to ‘impress[] upon the jury ... the claim of privilege,’ *id.* ¶25 (quoting *State v. White*, 671 P.2d 191, 193 (Utah 1983)), ... a ‘prosecutor need not accept at face value every asserted claim of privilege,’” *id.* (quoting *Namet v. United States*, 373 U.S. 179, 789 (1963)). Thus, “a prosecutor does not commit misconduct if he has at least ‘a colorable...argument’ that he is calling the witness for a proper purpose.” *Id.* (quoting *United States v. Torrez-Ortega*, 184 F.3d 1128, 1137 (10th Cir. 1999)).

The *Bond* court recognized that the prosecutor there “had far more than a colorable argument that Mr. Rettig could not validly claim the privilege against self-incrimination because the prosecution granted him use immunity.” *Id.* ¶26. As explained, the Utah Supreme Court recognized in *Bond* that when “a State compels an individual to testify through a grant of immunity, the federal government is prohibited from then using that testimony or its fruits against the

witness in a federal prosecution.” *Id.* The supreme court therefore concluded that “the immunity granted to Mr. Rettig by the State applied to both state and federal prosecutions, and the prosecutor’s argument that Mr. Rettig could not validly claim the privilege was therefore not only colorable, but very likely correct.” *Id.*

Granted, the *Bond* court did not declare that the prosecutor was in fact correct that the immunity grant nullified Rettig’s claim of privilege. It did not do so presumably because it did not have to decide that issue. The issue in *Bond* was whether the prosecutor had “‘a colorable’” argument that Rettig did not have a valid Fifth Amendment privilege. *Id.* ¶25 (quoting *Torez-Ortega*, 184 F.3d at 1137). Because it was clear that Bond’s prosecutor did, the supreme court did not have to decide whether Rettig’s immunity grant actually nullified his Fifth Amendment privilege.

Nevertheless, the United States Supreme Court authority on which *Bond* relied makes clear that a state prosecutor’s immunity grant does nullify the Fifth Amendment privilege. *Id.* at ¶29 (quoting *Murphy*, 378 U.S. at 79). The United States Supreme Court first addressed the potential federal use of state-immunized testimony in *Knapp v. Schweitzer*, 357 U.S. 371 (1958), *overruled in part by Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52 (1964). A New York grand jury granted Schweitzer immunity to compel his testimony

about alleged racketeering activities. *Id.* at 372. Schweitzer nevertheless refused to testify, claiming a fear of federal prosecution. *Id.* at 373-74. Citing a hesitance to interfere with state enforcement of state laws, the Supreme Court held that the Fifth Amendment did not apply to the States, and that Schweitzer thus did not have a valid claim of privilege. *Id.* at 379-80.

Six years later, the Supreme Court extended the Fifth Amendment's privilege against self-incrimination to the States. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964). That same day, the Court re-addressed *Schweitzer* in *Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52 (1964), *abrogated in part by United States v. Balsys*, 524 U.S. 666 (1998). Murphy was subpoenaed to testify before the Waterfront Commission about a work stoppage in New Jersey. *Id.* at 53. Though both New York and New Jersey granted him immunity from prosecution, he still refused to testify because he claimed that he feared federal prosecution. *Id.* at 53-54. The Supreme Court held that while the Fifth Amendment privilege against self-incrimination did apply to the States, the state immunity grants nullified any claim of privilege. *Id.* at 79. To honor the privilege against self-incrimination while still ensuring the states' ability to obtain information necessary to enforce state laws, the *Murphy* court created a federal exclusionary rule: if a state witness testifies under a state grant of

immunity, “the Federal Government may make no ... use of the answers” should it elect to prosecute. *Id.* at 80.

The Court most recently addressed *Murphy* in *United States v. Balsys*, 524 U.S. 666 (1998). Balsys—a suspected Nazi war criminal—was brought to testify before a Department of Justice investigatory panel. *Id.* at 669. He asserted his Fifth Amendment privilege on the ground that he feared prosecution by a foreign country. *Id.* The Court held that the Fifth Amendment privilege did not extend that far. *Id.* at 698.

In rejecting Balsys’s claim, the Court re-examined *Murphy*, explaining that its holding carried “two alternative rationales”: one which established the rule for domestic prosecutions, and one that left open the possibility of its application to foreign prosecutions. *Id.* at 680-81, 684. The first, more “traditional” rationale, was supported by “the principle that the courts of a government from which a witness may reasonably fear prosecution may not in fairness compel the witness” to incriminate himself. *Id.* at 683, 684. Although the executive branch of state or federal government can “exchange” the Fifth Amendment privilege “for an immunity to prosecutorial use of any compelled inculpatory testimony,” that immunity must be “as broad as the privilege itself.” *Id.* at 682 (citing *Kastigar v. United States*, 406 U.S. 441, 448-49 (1972)). Otherwise, a “witness could be ‘whipsawed into incriminating himself under

both state and federal law.’” *Id.* at 681 (quoting *Malloy v. Hogan*, 378 U.S. 1, 55 (1964)). The *Murphy* court therefore created a federal exclusionary rule for state-immunized testimony because the Fifth Amendment privilege applied to the states, but state immunity statutes could not bind the federal government. *Id.* at 682-83. Thus, the *Balsys* court explained that “[a]fter *Murphy*, the immunity option open to the Executive Branch could be exercised only on the understanding that the state and federal jurisdictions were as one, with a federally mandated exclusionary rule filling the space between the limits of state immunity statutes and the scope of the privilege.” *Id.* at 683.

The *Balsys* Court held that this rationale in *Murphy* was not only “sound,” *id.* at 683-84, but “undoubtedly correct,” *id.* at 680. But to the extent that *Murphy*’s broader rationale could be read to extend the privilege to include foreign prosecutions, the *Balsys* Court rejected it. *Id.* at 688.

Murphy therefore establishes, and *Balsys* confirms, that a state immunity grant nullifies a claim of Fifth Amendment privilege based on the possibility of federal prosecution. See *Murphy*, 378 U.S. at 79; *Balsys*, 524 U.S. at 680-83. Thus, the prosecutor in *Bond* was not merely “very likely correct” that Rettig—the immunized witness there—had no valid Fifth Amendment privilege based on an alleged fear of federal prosecution. See 2015 UT 88, ¶27. In fact, the

prosecutor was correct that the immunity grant nullified Rettig's Fifth Amendment privilege. *See Murphy*, 378 U.S. at 79; *Balsys*, 524 U.S. at 680-83.

Likewise, the prosecution's grant of immunity to Morris in this case nullified any Fifth Amendment privilege he possessed based on any potential federal prosecution. *See id.* The trial court therefore correctly concluded that he had no Fifth Amendment privilege and acted well within its discretion in finding Morris in contempt for refusing to testify. R1543:1294:18,48-55.


Morris asserts that the trial court's reliance on the Department of Justice's "Petite Policy" was insufficient to find that he lacked a Fifth Amendment privilege. Br.Aplt.41-42. The "Petite Policy" generally prohibits "a federal prosecution following a state prosecution except when necessary to advance compelling interests of federal law enforcement." *Rinaldi v. United States*, 434 U.S. 22, 28 (1977). But even if Morris is correct that this policy did not itself justify a finding that he had no Fifth Amendment privilege, the grant of use immunity did nullify the privilege. *See Bond*, 2015 UT 88, ¶¶26-27; *Murphy*, 378 U.S. at 79; *Balsys*, 524 U.S. at 680-83. The trial court therefore correctly found that Morris possessed no Fifth Amendment privilege, even if it incorrectly relied on the Petite Policy as an alternative rationale for its conclusion.

CONCLUSION

For the foregoing reasons, the Court should affirm.

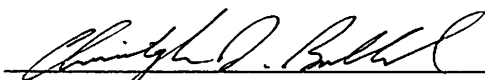
Respectfully submitted on April 4, 2016.

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Counsel for Appellee

CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 6938 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.


CHRISTOPHER D. BALLARD
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that on 4 April 2016 two copies of the Brief of Appellee were

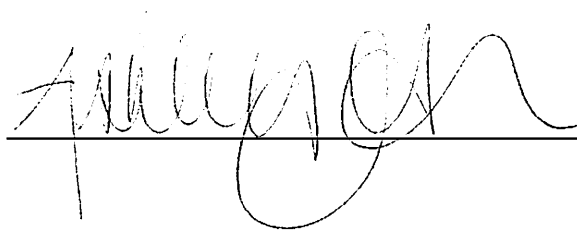
☒ mailed ☐ hand-delivered to:

Neil Skousen
P.O. Box 1771
Orem, UT 84059

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.

A handwritten signature in dark ink, appearing to read "Neil Skousen", is written over a horizontal line.

Addenda

Addendum A

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Utah Code Ann. §77-22b-1 (West Supp. 2015). Immunity granted to witness

(1)(a) A witness who refuses, or is likely to refuse, on the basis of the witness's privilege against self-incrimination to testify or provide evidence or information in a criminal investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of an investigation or inquiry being conducted by a government agency or commission, or by either house of the Legislature, a joint committee of the two houses, or a committee or subcommittee of either house, may be compelled to testify or provide evidence or information by any of the following, after being granted use immunity with regards to the compelled testimony or production of evidence or information:

- (i) the attorney general or any assistant attorney general authorized by the attorney general;
- (ii) a district attorney or any deputy district attorney authorized by a district attorney;
- (iii) in a county not within a prosecution district, a county attorney or any deputy county attorney authorized by a county attorney;
- (iv) a special counsel for the grand jury;
- (v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec. 16; or
- (vi) legislative general counsel in the case of testimony pursuant to subpoena before:
 - (A) the Legislature;
 - (B) either house of the Legislature; or
 - (C) a committee of the Legislature, including a joint committee, a committee of either house, a subcommittee, or a special investigative committee.

(b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to testify or provide evidence or information under a grant of use immunity, the prosecutor shall notify the witness by written notice. The notice shall include the information contained in Subsection (2) and advise the witness that the witness may not refuse to testify or provide evidence or information on the basis of the witness's privilege against self-incrimination. The notice need not be in writing when the grant of use immunity occurs on the record in the course of a preliminary hearing, grand jury proceeding, or trial.

(2) Testimony, evidence, or information compelled under Subsection (1) may not be used against the witness in any criminal or quasi-criminal case, nor any information directly or indirectly derived from this testimony, evidence, or information, unless the testimony, evidence, or information is volunteered by the witness or is otherwise not responsive to a question. Immunity does not extend to prosecution or punishment for perjury or to giving a false statement in connection with any testimony.

(3) If a witness is granted immunity under Subsection (1) and is later prosecuted for an offense that was part of the transaction or events about which the witness was compelled to testify or produce evidence or information under a grant of immunity, the burden is on the prosecution to show by a preponderance of the evidence that no use or derivative use was made of the compelled testimony, evidence, or information in the subsequent case against the witness, and to show that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information. The remedy for not establishing that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information is suppression of that evidence only.

(4) Nothing in this section prohibits or limits prosecutorial authority granted in Section 77-22-4.5.

(5) A county attorney within a prosecution district shall have the authority to grant immunity only as provided in Subsection 17-18a-402(3).

(6) For purposes of this section, "quasi-criminal" means only those proceedings that are determined by a court to be so far criminal in their nature that a defendant has a constitutional right against self-incrimination.

Credits

Laws 1997, c. 296, § 19, eff. May 5, 1997; Laws 2013, c. 237, § 43, eff. May 14, 2013; Laws 2013, 1st Sp. Sess., c. 1, § 6, eff. July 19, 2013.

Utah Code Ann. §78B-6-301 (West 2009). Acts and omissions constituting contempt

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

- (1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the course of a trial or other judicial proceeding;
- (2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;
- (3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;
- (4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;
- (5) disobedience of any lawful judgment, order or process of the court;
- (6) acting as an officer, attorney or counselor, of a court without authority;
- (7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;
- (8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;
- (9) any other unlawful interference with the process or proceedings of a court;
- (10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;
- (11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; and
- (12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

Credits

Laws 2008, c. 3, § 914, eff. Feb. 7, 2008.

Utah Code Ann. §78B-6-302 (West 2009). Contempt in immediate presence of court—Summary action—Outside presence of court—procedure

- (1) When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily. An order shall be made, reciting the facts occurring in the immediate view and presence of the court. The order shall state that the person proceeded against is guilty of a contempt and shall be punished as prescribed in Section 78B-6-310.
- (2) When the contempt is not committed in the immediate view and presence of the court or judge, an affidavit or statement of the facts by a judicial officer shall be presented to the court or judge of the facts constituting the contempt.

Credits

Laws 2008, c. 3, § 915, eff. Feb. 7, 2008.

Utah Code Ann. §78B-6-310 (West 2009). Contempt—Action by court

The court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days or both.

Credits

Laws 2008, c. 3, § 923, eff. Feb. 7, 2008.

Addendum B

FEB 12 2015

IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

STATE OF UTAH, Plaintiff, v. DANNY LEROY LOGUE. Defendant, in regard to DARRELL WAYNE MORRIS, Witness.	RULING AND ORDER – CONTEMPT OF COURT RE: DARRELL WAYNE MORRIS Case No. 111401543 JUDGE DEREK P. PULLAN
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This matter comes before the court during the jury trial in the above captioned case. On January 30, 2015, day seven of that jury trial, the State called Darrell Wayne Morris to testify. Mr. Morris was under subpoena and represented by Gregory Stewart and Neil Skousen. Before taking the witness stand and outside the presence of the jury, the State offered Mr. Morris use immunity for his testimony. Mr. Morris discussed this with his counsel, but refused to testify in this case. Mr. Morris was then brought in by the Department of Corrections and seated in the witness stand. After taking the witness stand in the presence of the jury and being directed by the Court to testify in this case, Mr. Morris refused to answer any questions.

Outside the presence of the jury, the Court found that with that grant of immunity Mr. Morris had no 5th Amendment privilege not to testify, and that if he refused to testify he would be held in contempt of court and punished as prescribed in § 78B-6-310, and could be subject to prosecution for obstruction of justice and perjury. Mr. Morris indicated that it was still his intention not to testify. The Court found Mr. Morris in direct contempt of court. Pursuant to §

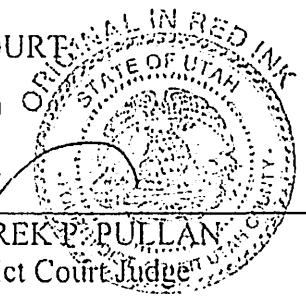

78B-6-310, the Court ordered Mr. Morris to pay a \$1000 fine and to serve 30 days in the county jail, to run consecutively to the time he is currently serving in prison.

Consistent with the Court's verbal ruling, and pursuant to § 78B-6-302, the Court hereby FINDS and ORDERS:

- Darrell Wayne Morris is guilty of contempt in the immediate view and presence of the Court;
- Pursuant to § 78B-6-310, Mr. Morris is ordered to pay a \$1000 fine and serve 30 days in the county jail, consecutive to the time he is currently serving in prison.

DATED this 12 day of February, 2015.

BY THE COURT



JUDGE DEREK P. PULLAN
Fourth District Court Judge

**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**

<p>STATE OF UTAH,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>DANNY LEROY LOGUE,</p> <p style="text-align: right;">Defendant,</p> <p>in regard to DARRELL WAYNE MORRIS,</p> <p style="text-align: right;">Witness.</p>	<p style="text-align: center;">WARRANT IN AID OF COMMITTMENT</p> <p style="text-align: center;">Case No. 111401543</p> <p style="text-align: center;">JUDGE DEREK P. PULLAN</p>
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THE STATE OF UTAH TO ANY PEACE OFFICER IN THE STATE OF UTAH:

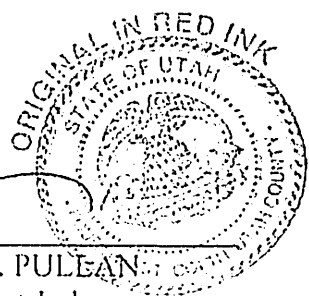
On January 30, 2015, Darrell Wayne Morris was found in direct contempt of court under Utah Code § 78B-6-302. (See Ruling and Order – Contempt of Court Re: Darrell Wayne Morris, Case No. 111401543, Feb. 12, 2015).

NOW THEREFORE, YOU ARE COMMANDED to arrest DARRELL WAYNE MORRIS upon his release from the Utah State Prison to serve 30 days in the Utah County Jail for Contempt of Court.

DATED this 12 day of February, 2015.

BY THE COURT:


JUDGE DEREK P. PULEAN
Fourth-District Court Judge



**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**


<p>STATE OF UTAH,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>DANNY LEROY LOGUE,</p> <p style="text-align: right;">Defendant,</p> <p>in regard to DARRELL WAYNE MORRIS,</p> <p style="text-align: right;">Witness.</p>	<p style="text-align: center;">ORDER OF COMMITMENT</p> <p style="text-align: center;">Case No. 111401543</p> <p style="text-align: center;">JUDGE DEREK P. PULLAN</p>
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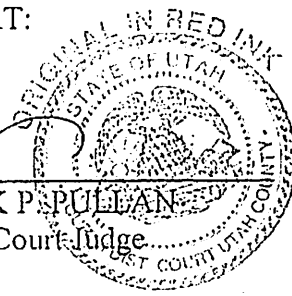
Darrell Wayne Morris was found guilty of direct contempt of court under Utah Code § 78B-6-302 on January 30, 2015. (See Ruling and Order – Contempt of Court Re: Darrell Wayne Morris, Case No. 111401543, Feb. 12, 2015).

Pursuant to Utah Code § 78B-6-310, Mr. orris is ordered to pay a \$1000 fine and serve 30 days in the Utah County Jail upon his release from the Utah State Prison.

DATED this 17 day of February, 2015.

BY THE COURT:


JUDGE DEREK P. PULLAN
Fourth District Court Judge



002212

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 111401543 by the method and on the date specified.

MANUAL EMAIL: CURTIS L LARSON curtisl@utahcounty.gov

MANUAL EMAIL: RYAN B MCBRIDE ryanm@utahcounty.gov

MANUAL EMAIL: NEIL SKOUSEN Ndkousen@aol.com

MANUAL EMAIL: GREGORY V STEWART greg.stewart@usa.net

MANUAL EMAIL: UTAH STATE PRISON marialister@utah.gov

MANUAL EMAIL: UTAH COUNTY JAIL jailrecords@utahcounty.gov

02/13/2015

/s/ MYKEL DALLEY

Date: _____

Deputy Court Clerk

Addendum C

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

STATE OF UTAH, : **STATEMENT OF DEFENDANT**
 : **IN SUPPORT OF GUILTY PLEA**
 Plaintiff, : **AND CERTIFICATE OF COUNSEL**
 :
 vs. : **Case No. 111401535**
 :
 DARRELL MORRIS, :
 :
 Defendant. :

Notification of Charges

I am pleading guilty (or no contest) to the following crimes:

	Crime & Statutory Provision	Degree	Punishment Min/Max and/or Minimum Mandatory
A.	<u>MANSLAUGHTER</u> <u>U.C.A. 76-5-205</u>	<u>F2</u>	<u>1-15 Year in the Utah State Prison; \$10,000.00 Fine plus a 90% surcharge and a \$33.00 security fee</u>
B.	<u>OBSTRUCTION OF JUSTICE</u> <u>U.C.A. 76-8-306</u>	<u>F2</u>	<u>1-15 Year in the Utah State Prison; \$10,000.00 Fine plus a 90% surcharge and a \$33.00 security fee</u>
C.	<u>POSSESSION OF A DANGEROUS WEAPON BY A RESTRICTED PERSON 76-10- 503</u>	<u>F3</u>	<u>0-5 Years in the Utah State Prison; \$5,000.00 fine plus a 90% surcharge and \$33.00 security fee.</u>

001244

I have received a copy of the (Amended) Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime(s) to which I am pleading guilty (or no contest).

The elements of the crime(s) to which I am pleading guilty (or no contest) are:

COUNT 1: MANSLAUGHTER: On or about 5/16/2011, in Utah County, Utah, I did recklessly cause the death of another.

COUNT 2: OBSTRUCTION OF JUSTICE: On or about 5/16/2011, in Utah County, Utah, I did, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constituted a criminal offense, to wit: aggravated murder, a first-degree felony, alter, destroy, conceal an item or other thing.

COUNT 3: POSSESSION OF A DANGEROUS WEAPON BY A RESTRICTED PERSON: On or about 5/16/2011, in Utah County Utah, I did intentionally or knowingly have under my custody or control, possess or use a dangerous weapon and I was a category I restricted person because I had been convicted of a violent felony as defined in Utah Code § 76-3-203.5.

I understand that by pleading guilty I will be admitting that I committed the crimes listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty pleas and prove the elements of the crimes to which I am pleading guilty:

Prior to May 15, 2011, I was introduced to Yuri Lara by Billy Thompson. Yuri Lara told me Andy Purcell had snitched on him to police and asked me if I would beat Andy Purcell to keep him from testifying. Yuri Lara wanted me to beat Andy Purcell, to commit serious bodily injury upon him. Yuri Lara offered to pay me one ounce of methamphetamine; half paid in advance and half paid afterwards. I agreed. Yuri Lara showed me where Andy Purcell lived. He drove his car and I drove with Brittany Bishop. Yuri Lara indicated which house Andy Purcell lived in as we drove by.

I asked Danny Logue to help with the beating of Andy Purcell. I told him Andy Purcell had snitched on someone and they wanted him beaten up. In the early morning hours of May 16, 2011, Danny Logue and I left Robin Jackson and Brittany Bishop at Robin's

residence in Orem, Utah, and drove to Andy Purcell's home. I took a baseball bat and, unbeknownst to me, Danny Logue took a gun. I am a restricted person due to having been convicted of aggravated assault, a third-degree felony. I drove. We left the car near Andy Purcell's home and walked the rest of the way to his home. Andy Purcell was outside the home on the front porch. Andy Purcell began yelling at us that he knew why we were there and threatened to call the police. We were about 25 feet from the front porch when to my surprise Danny Logue took out the gun and shot three or four rounds at Andy Purcell. When Andy Purcell fell to the ground we ran.

Danny Logue and I then drove away from the scene. I drove to a location where Danny Logue hid the gun; I was aware he was hiding it and drove him to and from the location.

Later that morning I contacted Yuri Lara requesting the second payment. He paid me the second half ounce of methamphetamine at the Home Depot in the East Bay area of Provo, Utah, in the evening hours of May 18, 2011. I later shared the methamphetamine with Danny Logue.

Waiver of Constitutional Rights

I am entering these pleas voluntarily. I understand that I have the following rights under the constitutions of Utah and of the United States. I also understand that if I plead guilty (or no contest) I will give up all the following rights:

Counsel: I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

I have not waived my right to counsel.

If I have waived my right to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty (or no contest). I also understand my rights in this case and other cases and the consequences of my guilty (or no contest) plea(s).

My attorneys are Greg Stewart and Neil Skousen. My attorneys and I have fully discussed this statement, my rights, and the consequences of my guilty pleas.

Jury Trial. I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

Confrontation and cross-examination of witnesses. I know that if I were to have a trial, a) I would have the right to see and observe the witnesses who testified

against me and b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

Right to compel witnesses. I know that if I were to have a trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

Right to testify and privilege against self-incrimination. I know that if I were to have a trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

Presumption of innocence and burden of proof. I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charge(s) beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.

Appeal. I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty. I understand that if I wish to appeal my sentence I must file a notice of appeal within 30 days after my sentence is entered.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Consequences of Entering a Guilty Plea

Potential penalties. I know the maximum sentence that may be imposed for each crime to which I am pleading guilty (or no contest). I know that by pleading guilty (or no contest) to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a fine, a ninety percent (90%) surcharge will be

imposed. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

Consecutive/concurrent prison terms. I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty (or no contest), my guilty (or no contest) plea(s) now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

Plea agreement. My guilty pleas are the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

The State makes the following agreements:

- A. To amend the original charges, to wit: aggravated murder, a first degree felony; Possession of a firearm by a restricted person, a second degree felony; obstructing justice, a second degree felony, to the offenses listed herein, to wit: manslaughter, a second degree felony; obstruction of justice, a second degree felony; and possession of a dangerous weapon by a restricted person, a third degree felony; and
- B. The State agrees to recommend the sentences for each offense to run concurrently with each other.
- C. The State agrees to recommend that the current case run concurrently with the sentence for defendant's forgery conviction in Utah case number 111903267 from June 2011.

In exchange for the State's agreement, I agree to the following:

- A. To plead guilty to the amended charges;
- B. To be sentenced to prison; and
- C. That I will not receive credit for time served.

Trial judge not bound. I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge. However, this agreement is being entered into pursuant to Rule 11 of the Utah Rules of Criminal Procedure. A

tentative plea agreement has been reached and the judge, upon request of the parties, was notified in advance of the time for tender of the plea. The judge indicated to the prosecuting attorney(s) and defense counsel that he would approve the proposed disposition. If the judge decides that final disposition should not be in conformity with the plea agreement, the judge shall advise the Defendant and then call upon the Defendant to either affirm or withdraw the plea.

Immigration/Deportation: I understand that if I am not a United States citizen, my plea(s) today may, or even will, subject me to deportation under United States immigration laws and regulations, or otherwise adversely affect my immigration status, which may include permanently barring my re-entry into the United States. I understand that if I have questions about the effect of my plea on my immigration status, I should consult with an immigration attorney.

Defendant's Certification of Voluntariness

I am entering this plea of my own free will and choice. No force, threats, of unlawful influence of any kind have been made to get me to plead guilty (or no contest). No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

I am satisfied with the advice and assistance of my attorney.

I am 41 years of age. I have attended school through the 12th grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

I understand that if I want to withdraw my guilty plea(s), I must file a written motion to withdraw my plea(s) before sentence is announced. If I waive time for sentencing and am sentenced at the time I enter my pleas I understand that I am waiving my right to withdraw my plea. I will only be allowed to withdraw my


pleas if I show that it was not knowingly and voluntarily made. I understand that any challenge to my pleas made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.

Dated this 15th day of July, 2014.

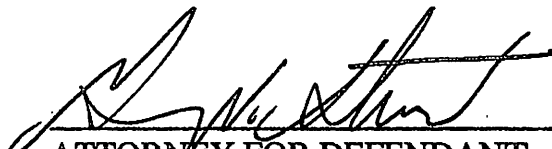
Adrian Mori
DEFENDANT

Certificate of Defense Attorney

I certify that I am the attorney for DARRELL MORRIS, the defendant above, and that I know he/she has read the statement or that I have read it to him/her; I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.



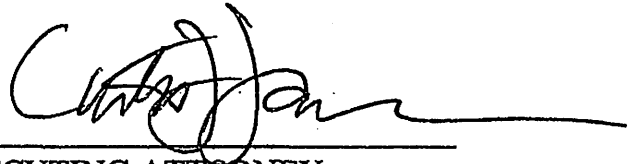
ATTORNEY FOR DEFENDANT
Bar No. 10064



ATTORNEY FOR DEFENDANT
Bar No. 10898

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against DARRELL MORRIS, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea(s) is/are entered and that the acceptance of the plea(s) would serve the public interest.



PROSECUTING ATTORNEY

Bar No. 6598



PROSECUTING ATTORNEY

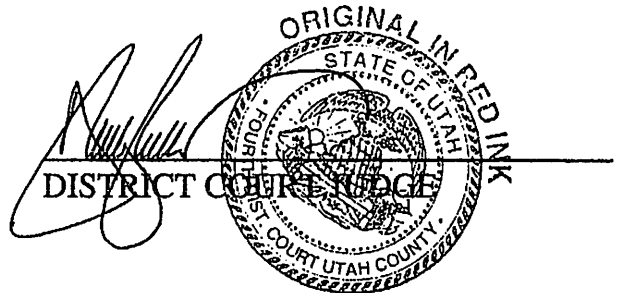
Bar No. 13079

Order

Based on the facts set forth in the foregoing Statement and the certification of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that defendant's guilty pleas are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty pleas to the crimes set forth in the Statement be accepted and entered.

Dated this 15 day of July, 2014.



Addendum D

NEIL SKOUSEN (10064)

Attorney at Law

P.O. Box 1771

Orem, Utah 84059

Tel: 801-376-6666

Fax: 801-225-4006

Email: Ndskousen@aol.com

GREGORY V. STEWART (10848)

Attorney at Law

P.O. Box 971

Orem, UT 84059-0971

Tel: 801-709-0234

Fax: 801-852-1375

Email: greg.stewart@usa.net

Attorneys for Defendant

Darrell Wayne Morris

**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

v.

DANNY LEROY LOGUE,

DOB: 12-23-1965

Defendant.

**MOTION TO QUASH
WITNESS SUBPOENA FOR
DARRELL WAYNE MORRIS**

Case No. 111401543

Judge Derek Pullan

COMES NOW, Darrell Wayne Morris ("Morris"), by and through his public defender attorneys Neil Skousen and Gregory Stewart, and respectfully moves this Court, pursuant to the Fifth Amendment privilege against self-incrimination under the United

States Constitution, Rule 14 of the Utah Rules of Criminal Procedure and Rule 45 of the Utah Rules of Civil Procedure, to quash the witness subpoena for Darrell Wayne Morris to testify in this matter, based upon the following assertions and argument.

STATEMENT OF FACTS

Darrell Wayne Morris was charged as a co-defendant in Fourth District Court Case No. 111401535. On or about April 3, 2012, Neil Skousen and Greg Stewart entered their appearance as conflict legal counsel for Mr. Morris and have continued to represent Mr. Morris as his legal counsel through all related criminal matters, including the current jury trial of co-defendant, Danny Leroy Logue.

On or about July 15, 2014, Mr. Morris pled guilty to state charges of: (1) manslaughter, a second degree felony, (2) possession of a dangerous weapon by a restricted person, a third degree felony, and (3) obstructing justice, a second degree felony. As part of the parties' plea agreement, the Court dismissed the remaining state charges of possession with intent to distribute a controlled substance x 2 counts, a first degree felony, and knowingly being present when controlled substance is used, a second degree felony. Mr. Morris was sentenced, on the above-referenced state convictions, on July 15, 2014 to 1-15 years in the Utah State Prison with all counts and Case No. 111903267 to run concurrent with each other.

On January 15, 2015, counsel for the State, Ryan McBride, verbally informed counsel for Morris that the State intended to call Mr. Morris as a witness in the Logue

trial on January 29, 2015 at 1:00 p.m. On January 16, 2015, Mr. McBride sent an email to counsel for Mr. Logue and Mr. Morris with an attached copy of an undated handwritten letter mailed to the Utah County Attorney's Office and signed by Darrell Morris. *See Exhibit A.* The letter states the following (with spelling errors, punctuation, etc. as written):

Jeffrey R. BuHman / Curtis Larson / Ryan McBride

I am writing because I recived a Subpoena and Im objecting to this I was offered a deal to testify and one Not to testify I took the one Not to testify. I was told the you wanted to leave it open but I said no. I will Not testify in this case. I think its a dirty trick to make that deal then call me anyway. I made it clear in court that statement was not from me and would not testify or confirm any of it.

Respectfully
Darrell Morris

Until January 28, 2015, due to heavy public defender schedules and other scheduling conflicts, Mr. Skousen and Mr. Stewart have not been able to coordinate a mutual time of a half-day to travel and consult with Mr. Morris to confirm whether Morris was, in fact, served a subpoena to testify, if Morris wrote the attached letter regarding his objection to being called as a witness, any legal privilege(s) he may assert,

and/or other related matters. On January 28, 2015, counsel met with Mr. Morris at the Fourth District Court in Provo.

Between the July 15, 2014 Morris Sentencing by this Court and the filing date of this motion to quash, counsel for Morris has not received a copy of any witness subpoena -- albeit verbal notice on January 15, 2015 -- from the State that Morris is being called as a witness in the Logue trial. As of about 5:00 p.m. on January 28, 2015, the court's X-change e-filing system does not show that the State has filed a "Return of Service" or similar proof of service, in the State of Utah v. Danny Leroy Logue case file with respect to Mr. Morris being served with a witness subpoena to testify.

Between July 15, 2014 and the filing date of this motion to quash, counsel for Mr. Morris has not received any formal written letter or verbal offer of immunity for Mr. Morris' testimony by the State of Utah or the United States Attorney's Office in the current State v. Logue trial.

ARGUMENT

Mr. Morris enjoys a right against self-incrimination under both the federal and Utah constitutions. *See* U.S. Const. Fifth Amendment; Utah Const. Article I, § 12. The respective governments of the United States and the State of Utah are dual sovereigns, and are entitled to bring separate criminal actions, indictments, prosecutions against a person for any act that violates both federal and state law. State v. Franklin, 735 P.2d 34, 36-38 (Utah 1987). Dual prosecutions by the United States government and the State of

Utah do not offend double jeopardy principles. *See e.g. Heath v. Alabama*, 474 U.S. 82, 88, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985).

In addition to being prohibited by Utah law, possession of a dangerous weapon/firearm by a restricted person/convicted felon is prohibited by federal statute. *See* 18 U.S.C. § 921, et seq. In addition to being prohibited by Utah law, possession with intent to distribute a controlled substance (i.e., methamphetamine) is prohibited by federal statute. *See* 21 U.S.C. § 841, et seq. Therefore, although Mr. Morris has been convicted, he could not be prosecuted a second time by the State for the firearm charge or the dismissed drug distribution charges. However, there is a substantial risk Morris could still be prosecuted federally for the firearm charge/conviction and dismissed drug distribution allegations by the U.S. Attorney's Office in federal court. If Mr. Morris was charged and convicted in federal court of the above crimes, there is a substantial risk Mr. Morris could be subject to a lengthy federal prison sentence.

Pursuant to Rule 14(a)(2) of the Utah Rules of Criminal Procedure, this "court may quash or modify the subpoena if compliance would be unreasonable." Rule 14(a)(4) states that "[w]ritten return of service of a subpoena shall be made promptly to the court and to the person requesting that the subpoena be served, stating the time and place of service and by whom service was made." In this matter, the State has not complied with the Rule 14 mandate that proof of service shall be "promptly" filed with the Court. Nor has the State provided a copy of any witness subpoena to counsel for Morris.

Utah Code Ann. § 77-22b-1(1)(b) directs the prosecutor to show his “intent” to “compel” a witness to testify...under a grant of use immunity” with notice to the witness. This has not occurred here. This same statute does allow for such use immunity to be granted by the prosecutor, on the record, at trial. However, given that this matter has been ongoing for over three (3) years now, and that Mr. Morris was sentenced by this Court over six (6) months ago, it is fundamentally unfair to Mr. Morris and his counsel to be surprised at trial and left in the dark as to how the State intends to specifically proceed here. The State received a handwritten letter from Mr. Morris on January 16, 2015 wherein Mr. Morris objected to the subpoena based upon his understanding that the State made him two offers: The first State offer required Morris to testify and the other State offer did not require Morris to testify at the Logue trial. Morris states in his letter he chose the latter offer because that offer from the State did not require him to testify at the Logue trial. The State knew of Morris’ intentions and his objection to the subpoena since at least January 16, 2015, yet the State and the U.S. Attorney’s Office still has not disclosed any immunity offer to Morris or his counsel as of January 28.

The State informed the Court that there was no agreement on testimony and the State reserved the right to subpoena Mr. Morris to testify at the Logue trial (July 15, 2014 Transcript, pg. 7, Lines 7-15). However, on July 15, 2015, the State’s subsequent representations to the Court led Morris to reasonably believe he would not be called as a

witness at the Logue trial or, if called, only in the State's rebuttal case if Mr. Logue testified first:

Mr. Larson: Our posture is we don't intend to call him [Morris]. A lot of it would just depend on how Mr. Logue's trial plays out.

The Court: Okay.

Mr. Larson: We don't know if Mr. Logue is going to take the stand or not. That would be a big factor in that.

July 15, 2014 Tr., 7:16-20.

Mr. Larson: Not that we -- like I said, not that we're going to call him, but we --

The Court: He's a possibility.

Mr. Larson: -- have no agreement that we wouldn't.

The Court: He's a may call.

Mr. Larson: May.

Tr., 14:17-22.

Given the above statements made by the State, it is reasonable to believe Morris' understanding that he would not be required to testify in the Logue trial except for the possibility of being called as a rebuttal witness if Mr. Logue testified first.

URCrP Rule 14(c) states that Rule 45 of the Utah Rules of Civil Procedure is applicable to criminal cases and "shall govern the content, issuance, and service of subpoenas to the extent that those provisions are consistent with the Utah Rules of Criminal Procedure." Pursuant to URCP Rule 45(e)(1), "[t]he party or attorney responsible for issuing a subpoena shall take reasonable steps to avoid imposing an undue burden...on the person subject to the subpoena." Rule 45(e)(3) states, in part:

The person subject to the subpoena or a non-party affected by the subpoena

may object if the subpoena:

...

(e)(3)(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

...

(e)(3)(F) *subjects the person to an undue burden* or cost; (italics added).

Rule 45(e)(4)(A) states: "If the person subject to the subpoena or a non-party affected by the subpoena objects, the objection must be made before the date of compliance." Morris is filing this motion "before the date of compliance."

URCP Rule 45(e)(5) states:

If objection is made, or if a party files a motion for a protective order, the party or attorney responsible for issuing the subpoena is not entitled to compliance but may move for an order to compel compliance. The motion shall be served on the other parties and on the person subject to the subpoena. *An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm.* The court may quash or modify the subpoena. If the party or attorney responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.

(italics added).

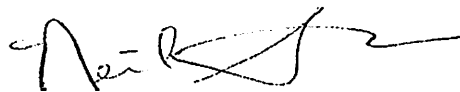
In this matter, the State and the Court is well aware of other persons and witnesses who have claimed to have received threats of harm and violence for their purported role or potential testimony in the Logue trial. Counsel for Morris asserts that Morris is at risk of suffering substantial bodily harm or death if he gives testimony in a homicide case due to the dangerous circumstances of the prison environment. In addition, Morris asserts his Fifth Amendment right against self-incrimination due to the substantial risk of federal

prosecution on his firearm conviction and drug distribution allegations. The witness subpoena should be quashed because it would be an undue burden on Morris due to the substantial risk of harm in a prison environment where testimony in a homicide case can place an inmate in danger of losing his life at the hands of other inmates.

Hypothetically, even if the State were to fully comply with the court's subpoena rules and seek a motion to compel Mr. Morris to comply with the subpoena, the State, the Utah Department of Corrections, and the Court have an obligation under URCP Rule 45 to ensure and protect Mr. Morris' safety and well-being from the undue burden and risk of substantial bodily harm or death if he were compelled to comply with the subpoena and to testify in this matter.

WHEREFORE, for the above reasons and good cause showing, Mr. Morris moves the Court to quash the witness subpoena for Mr. Morris to testify in this matter.

RESPECTFULLY Submitted this 28th day of January, 2015.

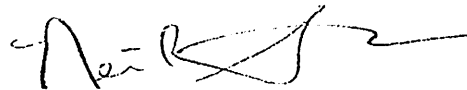


NEIL SKOUSEN
GREGORY V. STEWART
Attorneys for Darrell Wayne Morris

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I personally served a true and correct copy of the foregoing Motion to Quash Witness Subpoena for Darrell Wayne Morris, on this 28th day January, 2015, to the following:

UTAH COUNTY ATTORNEY 100 E CENTER ST PROVO UT 84606-3106	Sent via: <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile: (801) 851-8051 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input checked="" type="checkbox"/> Other: Email
FOURTH DISTRICT COURT – PROVO 125 N 100 W PROVO UT 84601-2849	Sent via: <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile: (801) 429-1033 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input checked="" type="checkbox"/> Other: E-filing system



☐ Secretary

☒ Attorney

Addendum E

Jeffrey R. Bullman / cvitis@Larson / Ryan McBride

I am writing because I received a Subpoena and I'm objecting to that I was offered a deal to testify and one not to testify I took the one not to testify. I was told the you wanted to leave it open but I said no. I will not testify in that case. I think it's a dirty trick to make that deal then call me anyway. I made it clear in court that statement was not from me and would not testify or confirm any of it.

Respectfully,

Darrell Morris

Addendum F

FILED

APR 16 2015

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

ORIGINAL TRANSCRIPT

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

STATE OF UTAH,

Plaintiff,

Case No. 111401543

vs.

DANNY LEROY LOGUE,

Defendant.

TRANSCRIPT OF TRIAL--DAY SEVEN

BEFORE THE HONORABLE DEREK P. PULLAN

JANUARY 30, 2015

FILED
UTAH APPELLATE COURTS

MAY 12 2015

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1 PROVO, UTAH; FRIDAY, JANUARY 30, 2015; 9:06 A.M.

2 THE COURT: Please be seated. We'll go on the record in
3 the matter of State of Utah v. Danny Logue. Mr. Logue is
4 present this morning with his counsel. The State's attorneys
5 are present. We are outside the presence of the Jury.

6 I would like to begin this morning by hearing argument, if
7 any, on Mr. Morris' motion to quash his trial subpoena. Counsel
8 would you state your appearances for the record?

9 MR. SKOUSEN: Neil Skousen, Public Defender attorney for
10 Darrell Morris.

11 MR. STEWART: And Greg Stewart for Mr. Morris.

12 THE COURT: Thank you. Who will be speaking to the motion
13 this morning?

14 MR. SKOUSEN: I'll be speaking to the motion Your Honor.

15 THE COURT: Go ahead.

16 MR. SKOUSEN: It will just be a second while I set up
17 here. Your Honor, on behalf of Mr. Morris we're asking the
18 Court, given the totality of the facts that we raised and the
19 case law that we argued, the legal argument, we would ask the
20 Court to quash Mr. Morris' subpoena from the State or in the
21 alternative we'd ask the Court to consider limiting--the Court
22 has the authority to limit the subpoena or to modify it to
23 limiting the State's ability to call Mr. Morris in the State's
24 rebuttal case only after Mr. Logue testifies and Your Honor when
25 I say the totality of the circumstances, I'm assuming the Court

1 has had an opportunity to read our motion.

2 THE COURT: I have.

3 MR. SKOUSEN: Thank you. On page 7 of our motion I cite
4 to the transcript in the Morris case, July 15th, and those
5 discussions were in chambers on the record obviously and given
6 what the State represented to the parties and the Court, and
7 given the issue that counsel for Mr. Morris, myself and Mr.
8 Stewart, have not received a copy of the subpoena. Yes, we did
9 receive verbal notice from the State as to that they now
10 intended to call Morris and we were told a date of January 29th
11 at 1:00 P.M. and then the next day, on January 16th, we did
12 receive an e-mail from Mr. McBride indicating that he had or the
13 State had received a handwritten letter from Mr. Morris and the
14 letter indicates, in my Exhibit A, that Mr. Morris objects to
15 the subpoena with his understanding that he believed that he had
16 a deal not to testify from the State.

17 I think that in fairness to the State, Mr. Morris in his
18 handwritten letter does acknowledge. He says I was told that
19 you wanted to leave it open, but I said no. First of all the
20 letter is not dated. I don't think it's disputed that he wrote
21 the letter and I think the issue here is it's a matter of
22 transparency.

23 If the Court is going to look at the totality of the
24 circumstances, which I would ask the Court to do, one moment six
25 months ago we're hearing from the State we don't intend to call

1 him. We reserve the right to and the clear implication, if not
2 expressed words from the State from that transcript back on July
3 15th of last year, seems to indicate that the State would call
4 Mr. Morris in the rebuttal case depending on what Mr. Logue does
5 here and again, given that Mr. Stewart and I have not received a
6 copy of the subpoena, Rule 14 does not explicitly say that we
7 need to be served with a copy of the subpoena, but I want to
8 point out to the Court a citation, Supreme Court of the State of
9 Utah.

10 The citation--the case name is State v. Gonzales, 2005 Ut.
11 72, November 4, 2005, and on page 9 of that case, paragraph 31,
12 this talks about what's required with Utah Rules of Criminal
13 Procedure, Rule 14, about notice to adverse parties and that
14 paragraph reads in evaluating the merits of Mr. Gonzales'
15 interpretation that Criminal Rule 14 silence regarding notice is
16 intentional, the Court wrote we note that the text of Rule
17 14(b), and Rule 14(b) is referring to victims' records, clearly
18 signals that some notice to adverse parties of the issuance of a
19 subpoena is contemplated. Now I suppose an issue that we would
20 like the Court to rule on is what is some notice? Is it verbal?

21 THE COURT: Well is he an adverse party? I don't think he
22 is.

23 MR. SKOUSEN: Well not specifically as to the Logue
24 matter, but it's clear that he's adverse and I think it's fair
25 to say that given that he was a co-defendant, he already pled

1 out, he was sentenced, that at that time he was an adverse party
2 and the State at that time, on July 15th before he entered a
3 plea, indicated they weren't going to call him.

4 THE COURT: Okay.

5 MR. SKOUSEN: So the other issue, and this is a sticking
6 point that I'm sure Mr. Larson will want to address unless it's
7 Mr. McBride, is the plea negotiations. Now under Rule 408,
8 generally speaking those are inadmissible as evidence before the
9 Court, but there are exceptions and we would argue that Mr.
10 Morris' understanding or the effect of what was represented to
11 him is relevant and is admissible under the exception under Rule
12 508 of the Utah Rules of Evidence in that he understood that he
13 had two offers from the State. One was to testify and one was
14 not to testify. He specifically accepted that offer.

15 We expressed that offer back to the State and then there
16 was a major dispute and we came before the Court. As the
17 transcript indicates, on July 15th there was no agreement on the
18 testimony or no testimony, but Mr. Morris' understanding or the
19 effect of the offer that he understood was that he would not
20 testify and that's consistent or mostly consistent with what the
21 State represented to the Court on July 15th of last year, that
22 the State did not intend to call him although they reserved the
23 right to.

24 THE COURT: Okay, anything else?

25 MR. SKOUSEN: Unless the Court has any other questions,

1 I'll submit it.

2 THE COURT: I do not. Thank you. From the State?

3 MR. MCBRIDE: Yes, Your Honor. I see maybe two main
4 issues here. One is with regard to the plea agreement. Counsel
5 I think has been clear that the plea agreement did not involve
6 an agreement by the State not to call Mr. Morris and Mr. Morris
7 was aware of that. He chose to take--there was an offer that
8 was if you take this offer, the offer he didn't take, we will
9 agree not to call you. He elected not to take that offer
10 because the penalties and the thing he would be pleading guilty
11 to were a great severity. So in the State's eyes he took the
12 offer knowing full well that he may be called as a witness.

13 Now with regard to the State's intent at the time and the
14 State's intent now, that was not disingenuous, Your Honor.
15 We're here at trial and we're learning that the defense here is
16 the defendant was not even there. We anticipated a defense of
17 he was there, but he didn't pull the trigger and Mr. Morris'
18 testimony that he was there is more important in our eyes now
19 although the State never made an agreement not to call him.

20 Fear is the other argument that I think the defendant
21 makes and every witness in this case is fearful and we've had
22 discussion about that in the past. Well, if not every--the most
23 important witnesses in this case are fearful. There will be
24 testimony on that today I think. That is not grounds to quash a
25 subpoena.

1 As to a copy of the subpoena, the return of service--are
2 they bringing that? I don't know if that was filed with the
3 Court or not, but according to my paralegal we have the return
4 of service on Mr. Morris. In addition, he wrote this letter.
5 He obviously got it.

6 As far as notice goes to his attorneys, Mr. Morris
7 notified the Court of his receipt--or not the Court, the State
8 and protested. He certainly could have notified his attorneys
9 at that time. I don't know if he did. Regardless, I notified
10 his attorneys of that letter and his objection at that time.

11 His attorneys have never come to me and said can I have a
12 copy of that subpoena. We have a copy of that subpoena. That's
13 not an issue and we all know what a subpoena says.

14 The other grounds of course is the Fifth Amendment and
15 I've handed that grant of immunity use and derivative use of
16 immunity to Mr. Stewart and that mitigates the Fifth Amendment.
17 Inasmuch as there is a Fifth Amendment Claim of privilege here,
18 again double jeopardy precludes that claim to at least the
19 majority of the questions that we'll ask here.

20 MR. SKOUSEN: May I respond Your Honor?

21 THE COURT: Briefly. Go ahead.

22 MR. SKOUSEN: Well Your Honor as stated in my motion, the
23 State received Mr. Morris' objection on January 16th, just today
24 while I was up here at the podium. My co-counsel handed the
25 grant of use immunity. I know the Court has concern--

1 THE COURT: That's really not uncommon, I'll tell you
2 that, providing the immunity letter on the day of because we
3 don't know what's going to happen and that's been especially
4 true in this case. We've been dealing with that issue with
5 regularity. So--

6 MR. SKOUSEN: Okay. The only reason I raise that is the
7 Court has brought up other issues with the State regarding
8 transparency on Brady issues and I'm just saying the State has
9 had an opportunity to let us know the grant of use. Yes, the
10 rule does allow them to grant the use immunity on the day of
11 trial.

12 So other than that, I think that there has to be some
13 remedy given the totality of the circumstances. No copy of the
14 subpoena. No proof of service filed yet, even right now. So
15 the word promptly filed with the Court doesn't have much meaning
16 if the State is just going to putt that in their back pocket and
17 not file it with the Court.

18 So again I'd ask the Court to pay special attention and
19 give added weight to what the State told us on the record in
20 chambers back on July 15th. It did not intend to call him and
21 if it did it would be--the implication clearly was that it would
22 be in their rebuttal case and I would ask the Court to limit or
23 modify the State subpoena. If the Court's not willing to quash
24 the subpoena, to limit Mr. Morris' testimony to rebuttal only,
25 only if Mr. Logue testifies.

1 THE COURT: Very good. Thank you. This matter comes
2 before the Court on Mr. Morris' motion to quash his trial
3 subpoena. There are really four grounds alleged. The first is
4 a contention that he has a Fifth Amendment privilege not to
5 testify. I'm going to deal with that item, that contention in
6 my more complete record as it relates to Mr. Lara. The issues
7 are the same there.

8 So setting aside the Fifth Amendment question, Morris
9 contends that the subpoena should be quashed because issuance
10 and service was procedurally flawed, that issuance of the
11 subpoena violates the plea agreement and third that he is
12 fearful of retribution should he testify.

13 With respect to procedural flaws, there is no requirement
14 that Mr. Morris' counsel receive a copy of the subpoena. Mr.
15 Morris is no longer an adverse party in this case. There's no
16 requirement for that notice and failure to file the return of
17 service is not a basis to quash the subpoena. That can be cured
18 and really Morris suffers no prejudice for the failure to file
19 the return. I will direct that the State file the return of
20 service with the Court today.

21 With respect to the plea agreement, Mr. Morris apparently
22 was offered three options. One option was that he would plead
23 to certain crimes and the State would bind itself not to call
24 him. He rejected that plea offer. He was offered to enter into
25 an agreement where he would plead to certain crimes and agree to

1 cooperate. He rejected that offer as well and what he
2 ultimately entered into was an agreement whereby he would plead
3 to certain crimes and the State would have the option to call
4 him, but he would be compelled to participate by the subpoena
5 powers of the Court and that's what's happened here.

6 The record is clear that Mr. Morris remained a may call
7 witness and the State in its discretion has issued a subpoena to
8 him and so I'm not persuaded that the subpoena in any way
9 violates the plea agreement to which Mr. Morris consented.

10 Finally while Mr. Morris may have legitimate fears of
11 retaliation if he testifies, that is not a basis for a subpoena
12 being quashed.

13 Turning to the Fifth Amendment question, I'd like to, as I
14 indicated yesterday, make a more complete record of what
15 occurred with Mr. Lara and then reach the Fifth Amendment
16 question on Mr. Morris as well. A witness' exercise of the
17 Fifth Amendment privilege is not evidence to be used in a
18 criminal case by any party. Indeed it is unprofessional conduct
19 when an attorney calls a witness to testify who he knows will
20 claim a valid privilege for the purpose of impressing upon a
21 jury the fact that the privilege is being claimed.

22 However an attorney need not accept at face value every
23 asserted claim of privilege no matter how frivolous. It is
24 sufficient to defeat the suggestion that a witness is being
25 called for an improper purpose when an attorney calling the

1 witness has a colorable, albeit ultimately invalid, argument
2 that the witness could not validly claim the privilege. These
3 principles are set forth in the case of State of Utah v.
4 Augustine, 2013 Utah Court of Appeals 61.

5 In this case Yuri Lara asserted a Fifth Amendment
6 privilege not to testify. Lara pled guilty to manslaughter in
7 this case because of his involvement in the homicide of Andy
8 Purcell. He also pled guilty to four first degree felony counts
9 of distribution of a controlled substance, specifically heroin,
10 cocaine, meth and XTC.

11 The State offered Lara immunity for all collateral conduct
12 committed in connection with the offense. Lara indicated that
13 the State's grant of immunity would not change his decision not
14 to answer questions.

15 Lara made no specific claim before the Court that his
16 Fifth Amendment privilege was asserted out of fear of federal
17 prosecution. Indeed such a possibility, if it exists at all, is
18 at best uncertain and speculative especially given the
19 well-established policy of the Department of Justice not to
20 prosecute a person for allegedly criminal behavior if the
21 alleged criminality was an ingredient in a previous state
22 prosecution against that person.

23 This policy, commonly known as the Petite policy, was
24 established in 1959 and continues in force today. The purpose
25 of the policy is to vindicate substantial federal interests

1 through appropriate federal prosecutions to protect persons
2 charged with criminal conduct from the burdens associated with
3 multiple prosecutions and punishments for substantially the same
4 acts or transactions and to promote efficient utilization of
5 Department of Justice resources and to promote coordination and
6 cooperation between federal and state prosecutors.

7 The policy precludes the initiation or continuation of a
8 federal prosecution following a prior state or federal
9 prosecution based on substantially the same acts or transactions
10 unless three substantive pre-requisites are satisfied. First
11 the matter must involve a substantial federal interest. Second
12 the prior prosecution must have left that interest demonstrably
13 unvindicated and third applying the same test that's applicable
14 to all federal prosecutions, the government must believe that
15 the defendant's conduct constitutes a federal offense and that
16 the admissible evidence probably will be sufficient to obtain a
17 conviction by the trier of fact.

18 Finally before a federal prosecution could be commenced,
19 it would require the approval of the authorized Assistant
20 Attorney General.

21 The Court concluded that Lara had no Fifth Amendment
22 privilege to refuse to testify. At the very least the State had
23 a colorable argument that no such privilege existed. Therefore
24 it was appropriate that Lara be called as a witness in the
25 presence of the Jury.

1 This case is very similar to the facts in State v.
2 Augustine. There the State called the co-defendant of the
3 accused. The co-defendant had pled guilty to criminal conduct
4 relating to the underlying offense for which the accused was
5 charged. Given the uncertainty of a Fifth Amendment privilege,
6 the court permitted the co-defendant to be called in the
7 presence of the Jury. Ultimately the Court of Appeals held that
8 this was not error and certainly not reversible error.

9 Consistent with this Utah case law the Court permitted
10 Lara to be called as a witness, to be sworn and then to decide
11 what he intended to do. I think to everyone's surprise Lara did
12 not refuse to testify, but rather began answering some
13 questions, admitting to his having pled guilty to manslaughter
14 and other felony offenses in connection with the case. Lara
15 then refused to answer any more questions posed to him by the
16 State.

17 Defense counsel stood and stated that he had only one
18 question for Mr. Lara on cross-examination. The question was do
19 you know Andy Purcell to which Lara said negative.

20 MR. SESSIONS: Your Honor?

21 THE COURT: Yes?

22 MR. SESSIONS: I think the question was do you know Danny
23 Logue.

24 THE COURT: Do you know Danny Logue, thank you.

25 MR. LARSON: If I recall it was the State that asked that

1 question.

2 THE COURT: There was one question on cross.

3 MR. LARSON: Yes. Yes.

4 THE COURT: What was it?

5 MR. SESSIONS: My question was--I don't know exactly, but
6 it was to the effect of prior to criminal charges being brought
7 had you ever met Danny Logue and he said no.

8 THE COURT: Okay, thank you.

9 MR. LARSON: And the Court is correct Your Honor in that
10 there were questions asked of him regarding his involvement and
11 being charged, what he pled to. Then I asked if he knew Andy
12 Purcell. He indicated no.

13 THE COURT: That's right.

14 MR. LARSON: Then I went to the next question and asked
15 wasn't he a friend of yours. At that time he said I'm not going
16 to answer any more questions.

17 THE COURT: Thank you. I knew there had been a question
18 of knowledge of both men. Thank you. In summary then, Lara is
19 a critical witness with knowledge of material facts. Not
20 calling him exposes the State to the argument that it failed to
21 produce critical witnesses or to the inference that Lara's
22 testimony would not have supported the State's theory of the
23 case. Under these circumstances it is not error for Lara to
24 have been called as a witness in the presence of the Jury.

25 This case is very similar to a case decided in New York

1 back in 1958. It's United States v. Gurney. There the Court
2 held that it was not improper for the government to call as a
3 witness an individual already convicted of participation in the
4 crime for which the accused was standing trial even though that
5 witness asserted his testimonial privilege and refused to
6 testify. Since the testimony which the government sought to
7 elicit from the witness concerning a meeting with the accused
8 and his possession of heroin immediately thereafter was both
9 relevant and material.

10 There the Court concluded that if the government had not
11 produced the witness, it would have been open to an argument by
12 counsel for the accused that its failure to do so showed that he
13 would not have corroborated the testimony of government agents
14 and that really is precisely the issue in this case.

15 Turning to Morris' claimed Fifth Amendment privilege, the
16 Court concludes as a matter of law that Morris has no Fifth
17 Amendment privilege to assert. He certainly has no Fifth
18 Amendment privilege because he has pled guilty to criminal
19 conduct related to the underlying offense for which Mr. Logue
20 has been charged. The State has offered him immunity for any
21 collateral conduct surrounding these events.

22 With respect to federal prosecution, the Court finds that
23 at best that fear is fanciful and merely speculative especially
24 given the well-established Petite policy and Morris' plea to
25 manslaughter, obstruction of justice and possession of a firearm

1 by a restricted person. This is not a case in which some
2 federal interest has been demonstratively unvindicated. That's
3 especially true as well given Morris' police statement in which
4 he denies possessing having knowledge that Logue possessed the
5 firearm.

6 Moreover, given Morris' already existing police statement,
7 testimony consistent with that statement would not serve to
8 incriminate him any further. Morris has already incriminated
9 himself to that extent.

10 Morris does have relevant and material information related
11 to the case and the State has a colorable argument that he has
12 no Fifth Amendment privilege. Indeed, the Court agrees with
13 that. Calling Morris is not for the purpose of impressing on
14 the Jury the fact that the privilege is being claimed and
15 certainly the State would be barred from making any such
16 argument in closing, but rather to rebut improper inferences the
17 Jury would draw from Morris' complete absence from the trial.
18 Those inferences would be that the prosecution has put on less
19 than what they could have or that Morris' testimony would not be
20 supportive of the State's theory.

21 For those reasons the Court concludes that Morris should
22 be treated in the same way that Lara was treated and this is the
23 procedure that we will follow. Morris will be called into Court
24 outside the presence of the Jury. I will have him sworn. I
25 will make a record at that time in his presence that he has no

1 Fifth Amendment Privilege to refuse to testify. I will explain
2 the penalties for not answering questions, specifically that he
3 may be charged with obstruction of justice, perjury or held in
4 contempt of Court.

5 I will then order him to answer questions. I will explain
6 the process to him; that the Jury will be invited back in, that
7 the prosecutor will be given an opportunity to pose questions to
8 him after which defense counsel will be given that opportunity
9 and he may then decide what he wants to do.

10 The Jury will be invited back for Morris' testimony. If
11 he refuses to answer questions, then the Jury will be dismissed.
12 Outside the presence of the Jury it will be my intent at that
13 time to hold him in direct contempt of Court, impose sanctions
14 and have him step down.

15 Let's have the Jury back.

16 MR. MCBRIDE: Your Honor I'm handing the return of service
17 for Darrell Morris [inaudible]

18 THE COURT: Thank you.

19 [Inaudible discussions.]

20 BAILIFF: All rise for the Jury.

21 [The Jury enters the Courtroom.]

22 THE COURT: Thank you very much. Please be seated.

23 Ladies and gentlemen thank you for your patience. We will go
24 back on the record in the matter of State of Utah v. Logue. Mr.
25 Logue is present with his counsel. The State's attorneys are

Addendum G

FILED

APR 16 2015

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

ORIGINAL TRANSCRIPT

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

STATE OF UTAH,

Plaintiff,

Case No. 111401543

vs.

DANNY LEROY LOGUE,

Defendant.

TRANSCRIPT OF TRIAL--DAY SEVEN

BEFORE THE HONORABLE DEREK P. PULLAN

JANUARY 30, 2015

FILED
UTAH APPELLATE COURTS

THACKER+CO

MAY 12 2015

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1 MR. LARSON: Yeah.

2 THE COURT: Okay. Let's have Mr. Morris in if we could.
3 Where is Mr. Stewart?

4 MR. SKOUSEN: I'll go get him.

5 THE COURT: Let me just ask you, did you need a few
6 minutes before Mr. Morris before we begin?

7 MR. SKOUSEN: We've already spoken to him.

8 THE COURT: Okay, very good.

9 MR. SKOUSEN: I think we're ready to go. I'll go get Mr.
10 Stewart.

11 BAILIFF: [inaudible]

12 THE COURT: Okay, very good.

13 [Inaudible discussions.]

14 BAILIFF: Are you ready for him?

15 THE COURT: I am.

16 BAILIFF: Bring him out.

17 THE COURT: Mr. Morris, if you'll come forward and be
18 seated here on the witness stand. The record should reflect
19 that we are on the record in the matter of State of Utah v.
20 Logue. Mr. Logue is present. His attorneys are present. The
21 State's attorneys are present. The Jury is not here and Mr.
22 Darrell Wayne Morris is on the witness stand. Is that your full
23 name, Sir?

24 MR. MORRIS: Yes.

25 THE COURT: All right. Mr. Morris you are currently under

1 a subpoena, a trial subpoena to testify in this case. Through
2 your attorneys--let me just ask initially, have you had an
3 opportunity to speak with your attorneys Mr. Stewart and Mr.--

4 MR. SKOUSEN: Skousen.

5 THE COURT: --Skousen, I'm so sorry. Have you had an
6 opportunity to speak with them?

7 MR. MORRIS: Yep.

8 THE COURT: Do you need any more time with them this
9 morning?

10 MR. MORRIS: No.

11 THE COURT: You're under a trial subpoena to give
12 testimony. Through your attorneys, they have asserted that you
13 have a Fifth Amendment privilege not to testify. I consider the
14 legal arguments about that and I've ruled that as a matter of
15 law you have on Fifth Amendment privilege to refuse to testify
16 in the case.

17 A trial subpoena is a Court order to testify. If you
18 willfully refuse to testify, then you can be held in contempt of
19 Court. The potential penalties for being held in contempt are
20 that you can serve up to 30 days in the County Jail. You can be
21 fined up to a thousand dollars.

22 More significantly, if you refuse to testify you can be
23 charged with obstruction of justice which is a second degree
24 felony, or perjury which is also a second degree felony. Those
25 offenses are punishable by terms of not less than one or more

1 than 15 years in the Utah State Prison and a ten thousand dollar
2 fine. If you were to commit multiple felonies in that regard,
3 you can serve those prison sentences consecutively, where you
4 would serve one 1-15 term and then begin serving the next term.

5 At this juncture is it your intent to testify in the case
6 understanding what I've explained to you?

7 MR. MORRIS: No.

8 THE COURT: Okay. Let me explain what--let me ask you
9 this. Now that I've explained that to you, do you want to speak
10 to your attorneys again or are you okay?

11 MR. MORRIS: I'm all right.

12 THE COURT: Okay. Let me explain how we'll proceed then.
13 I'm going to have the Jury brought back in. They'll be seated
14 here. I will have you sworn as a witness. Raise your right
15 hand as best you can, take an oath. Mr. McBride will be the
16 prosecutor. He will stand up. He will ask you a question and
17 then you can decide what you want to do. The defense attorneys
18 may ask a question. You decide what you want to do. If you
19 refuse to answer, then we'll proceed from that point. If you
20 decide you want to answer you may do so.

21 Lastly I want to give you plenty of opportunity to
22 consider what you're going to do because your decision today has
23 consequences. Do you need some time to think about it or are
24 you ready to go?

25 MR. MORRIS: I'm ready.

1 THE COURT: Okay.

2 MR. MCBRIDE: Your Honor can we just place on the record
3 that the State has provided immunity to Mr. Morris. I served
4 that on his attorney earlier today.

5 THE COURT: I appreciate that. Have you had an
6 opportunity to speak with your attorneys about a proposed
7 immunity agreement?

8 MR. MORRIS: Yep.

9 THE COURT: Okay. Have you done that Mr. Stewart.

10 MR. STEWART: We have Judge and we received a copy of the
11 immunity in writing.

12 THE COURT: Very good. Let me just explain. That
13 immunity, you've already entered guilty pleas in connection with
14 the underlying offense. That immunity agreement would bar the
15 State from using any evidence that you might give on the stand
16 today in a future prosecution. It would relate to the conduct
17 that surrounds this event to the extent that you were asked to
18 admit to criminal conduct.

19 Understanding that the State couldn't use anything that
20 you said today against you in a future prosecution, does that
21 change your mind about what you want to do?

22 MR. MORRIS: No.

23 THE COURT: Okay and do you need--again do you need any
24 more time at this point?

25 MR. MORRIS: No.

1 THE COURT: Okay. Let's have the Jury back. Is Mr. Logue
2 unrestrained? Good, thank you.

3 BAILIFF: All rise for the Jury.

4 [The Jury enters the Courtroom.]

5 THE COURT: Thank you ladies and gentlemen. Please be
6 seated. We will go back on the record in the matter of State of
7 Utah v. Danny Logue. Mr. Logue is present with his counsel.
8 The State's attorneys are present. The witness is on the stand.
9 Sir, would you state your full name for the record?

10 MR. MORRIS: Darrell Wayne Morris.

11 THE COURT: Thank you. Would you raise your right hand as
12 best you can and be sworn?

13 DARRELL WAYNE MORRIS called as a witness by the State of
14 Utah, being first duly sworn, was examined and testified on his
15 oath as follows.

16 THE COURT: Go ahead Mr. McBride.

17 DIRECT EXAMINATION

18 BY MR. MCBRIDE:

19 Q. Mr. Morris are you aware that a man by the name of
20 Andy Purcell was shot and killed on May 16, 2011.

21 A. I refuse to answer that question.

22 THE COURT: Thank you. Does the defense have any
23 questions for Mr. Morris?

24 MR. SESSIONS: I do. He may refuse to answer as well.

25 CROSS-EXAMINATION

1 BY MR. SESSIONS:

2 Q. Mr. Morris isn't it true that on the early morning
3 hours of May 16, 2011, you traveled from Orem to Provo, dropped
4 Danny off near a Maverick station and other hotels by the Provo
5 Towne Center and that you were away from him for a period of
6 time?

7 A. I refuse to answer the question.

8 THE COURT: Thank you.

9 MR. SESSIONS: No further questions.

10 THE COURT: Thank you.

11 MR. MCBRIDE: I would just make clear that I can ask many
12 questions, but is that his answer to all questions?

13 THE COURT: Thank you. Mr. Morris is it your intent to
14 refuse to answer all questions posed to you during the course of
15 this proceeding?

16 MR. MORRIS: Yes, it is.

17 THE COURT: Thank you. Ladies and gentlemen, we'll recess
18 for just a few minutes. Please keep in mind my prior admonition
19 to you. Don't discuss the case amongst yourselves or with
20 anyone else. Do no research on your own. Form or express no
21 opinions until you've heard all the evidence and you're in the
22 course of deliberations, which you are not at this time.

23 Court's in recess.

24 BAILIFF: All rise.

25 [The Jury leaves the Courtroom.]

1 THE COURT: Thank you. Please be seated. We are now
2 outside the presence of the Jury. Back on the record in the
3 matter of State of Utah v. Logue. His counsel are present. The
4 prosecutors are present. Mr. Morris is on the stand.

5 Mr. Morris based on your refusal to testify, I do find
6 that you are in direct contempt of Court. I will order that you
7 serve 30 days in the County Jail. Order that that run
8 consecutive to the prison terms you are currently serving and
9 that you pay a \$1,000.00 fine. Ultimately the State's
10 prosecutors will have to screen the case and decide whether or
11 not an obstruction of justice charge, one or more, will be filed
12 against you and that will be a decision for another day.

13 You may step down and go with the corrections officer.

14 MR. STEWART: Your Honor I just want to make clear, did
15 the Court order him to testify?

16 THE COURT: I did.

17 MR. STEWART: Thank you.

18 THE COURT: Mr. Morris before you go, could you just go to
19 the podium and let me make that record just in case it's not
20 clear. I explained to you earlier that a trial subpoena is a
21 Court order to testify and I don't need to do this again, but
22 I'll tell you I'm going to order that you testify in this case.
23 Is it your intent to comply with that order or not?

24 MR. MORRIS: No.

25 THE COURT: Okay. Thank you, Sir. If you will go with

1 the corrections officer. Let's take about ten minutes. Court's
2 in recess.

3 BAILIFF: All rise.

4 [RECESS.]

5 THE COURT: Thank you. Please be seated. We are back in
6 the matter of State of Utah v. Logue. He is present with his
7 counsel. The State's attorneys are present. We are outside the
8 presence of the Jury.

9 MR. LARSON: Your Honor our next witness is Brittany
10 Bishop. The Court appointed the Public Defender's Office to
11 converse with her. Mr. Thompson is here. He's had a lengthy
12 discussion with her. We'd just ask that he indicate what has
13 transpired in that.

14 THE COURT: Go ahead.

15 MR. THOMPSON: Yes, Your Honor. I received a copy of a
16 document called grant of use immunity pursuant to Utah Code
17 77-22B-1. The State has offered Ms. Bishop immunity in the
18 event that she decides to invoke her Fifth Amendment right. As
19 I've discussed this section with her and this offer, my
20 impression is that she is going to invoke the Fifth Amendment
21 right and that she would be, after that, ordered by this Court
22 to comply given the fact that the State has offered her
23 immunity. So we expect that's what will happen.

24 Because use immunity doesn't reach any and all potential
25 uses of her statements today, I have informed her that--well