

2016

**The State of Utah, Plaintiff/ Appellee v. Carl Holm, Defendant/  
Appellant.**

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

**Recommended Citation**

Reply Brief, *Utah v Holm*, No. 20150623 (Utah Court of Appeals, 2016).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/3617](https://digitalcommons.law.byu.edu/byu_ca3/3617)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**IN THE UTAH COURT OF APPEALS**

---

THE STATE OF UTAH,  
*Plaintiff/Appellee*

v.

CARL HOLM,  
*Defendant/Appellant.*

Appellant is not incarcerated

---

**REPLY BRIEF OF APPELLANT**

---

Appeal from a judgment of conviction for Negligent Homicide, a class A misdemeanor,  
in the Third Judicial District Court of Utah, Salt Lake County, the Honorable Katie  
Bernards-Goodman presiding.

---

PETER D. LEAVITT (11407)  
Salt Lake District Attorney's Office  
111 East Broadway, Ste. 400  
Salt Lake City, Utah 84114

*Attorney for Appellee*

RICHARD G. SORENSON (12240)  
Salt Lake Legal Defender Assoc.  
424 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
rsorenson@sllda.com  
(801) 532-5444

*Attorney for Appellant*

---

FILED  
UTAH APPELLATE COURTS

JUL 21 2016

**IN THE UTAH COURT OF APPEALS**

---

THE STATE OF UTAH,  
*Plaintiff/Appellee*

v.

CARL HOLM,  
*Defendant/Appellant.*

Appellant is not incarcerated

---

**REPLY BRIEF OF APPELLANT**

---

Appeal from a judgment of conviction for Negligent Homicide, a class A misdemeanor,  
in the Third Judicial District Court of Utah, Salt Lake County, the Honorable Katie  
Bernards-Goodman presiding.

---

PETER D. LEAVITT (11407)  
Salt Lake District Attorney's Office  
111 East Broadway, Ste. 400  
Salt Lake City, Utah 84114

*Attorney for Appellee*

RICHARD G. SORENSON (12240)  
Salt Lake Legal Defender Assoc.  
424 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
rsorenson@sllda.com  
(801) 532-5444

*Attorney for Appellant*

---

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
ARGUMENT .....	1
I.    The Trial Court Abused Its Limited Discretion by Refusing to Conduct Individual Voir Dire. ....	1
II.   The Trial Court Abused Its Limited Discretion by Allowing Introduction of a Disturbing Crime-Scene Photograph of Mr. Garcia’s Deceased Body.....	3
III.  The Trial Court Erred in Denying Mr. Holm’s Request to Define “Simple Negligence” for the Jury. ....	5
IV.  There is Insufficient Evidence that Mr. Holm Committed the Crime of Negligent Homicide.....	7
CONCLUSION .....	11
CERTIFICATE OF COMPLIANCE.....	12
CERTIFICATE OF DELIVERY.....	12
Addendum A: Jury Instruction 24	

## **TABLE OF AUTHORITIES**

### **Cases**

<i>State v. Bluff</i> , 2002 UT 66, 52 P.3d 1210.....	3
<i>State v. Cloud</i> , 722 P.2d 750 (Utah 1986) .....	4
<i>State v. Dibello</i> , 780 P.2d 1221 (Utah 1989).....	4
<i>State v. Ekstrom</i> , 2013 UT App 271, 316 P.3d 435.....	7
<i>State v. Hamilton</i> , 827 P.2d 232 (Utah 1992) .....	7
<i>State v. Lafferty</i> , 749 P.2d 1239 (Utah 1988).....	4
<i>State v. Larsen</i> , 2000 UT App 106, 999 P.2d 1252 .....	11

### **Rules**

Utah R. App. P. 24 .....	1
Utah R. Evid. 403 .....	3

---

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH, :  
Plaintiff and Appellee, :  
v. : Case No. 20150623-CA  
CARL HOLM, :  
The Honorable Katie Bernards-  
Goodman  
Defendant and Appellant. : Appellant is not incarcerated.

---

INTRODUCTION

Mr. Holm submits this reply brief “limited to answering any new matter set forth in the [State’s] opposing brief.” Utah R. App. P. 24(c). Thus, Mr. Holm does not respond to the State’s arguments to the extent that they were adequately addressed in the opening brief or do not merit a response.

ARGUMENT

**I. The Trial Court Abused Its Limited Discretion by Refusing to Conduct Individual Voir Dire.**

The State in its brief argues that “the [trial] court asked sufficient questions to allow counsel to gain information necessary to evaluate the juror’s potential bias based on experience with car wrecks.” See Aple.Br. 17. Mr. Holm reminds the Court of the relevant voir dire proceedings at issue which establish that he had no such opportunity.

At no point during voir dire did the trial court inform the venire that the allegations involved Mr. Holm causing a serious car accident.

The trial court asked the venire if anyone or anyone close to them had been involved in a serious car accident. R.353, 355. Several jurors (jurors 1, 6, 8-10, 13, 15, 17, 18, 20, 21-26, 28, 31, and 32) answered in the affirmative. R.353-356. The trial court then asked whether there was “anything about that experience that makes you feel like you might be biased for one side or the other?” R.356. Jurors 1, 13, 17, and 26 answered in the affirmative and the trial court spoke with each of these jurors individually. R.356, 359, 362-363.<sup>1</sup>

Mr. Holm requested the trial court to call in each juror individually<sup>2</sup> who indicated they or someone close had been involved in a serious car accident in order to find out more details of the accidents. R.358-359, 367. The trial court refused Mr. Holm’s request, reasoning that the potential jurors had indicated they would have no bias. R.359, 367.

---

<sup>1</sup> After questioning jurors 1, 13, and 17 individually, the trial court struck for cause 1 and 17. R.360-364. The trial court did not question juror 26 because there was no possibility juror 26 could be chosen as a juror due to her being near the end of the venire. The State discusses in its brief how defense counsel only asked juror 13 one question during individual questioning; ultimately, the Court did not strike juror 13 for cause even though she originally indicated she may have a bias. R.362-363. However, because juror 13 originally indicated she may have a bias, defense counsel used his first peremptory challenge to strike juror 13; no detailed questions were needed. R.229.

<sup>2</sup> In addition to jurors 1, 13, 17, and 26, these would have included jurors 6, 8-10, 15, 18, 20, 21-25, 28, 31, and 32.

Reasonable and detailed inquiry into the circumstances surrounding the jurors' own experience with serious car accidents – such as the extent of any injuries, whether someone ran a red light, the location of the accident, whether speed played a factor, whether someone died, their feelings towards an individual who causes an accident – was necessary and imperative where it may have revealed a bias against someone who caused a car accident. This was particularly true because the venire was not able to recognize a bias at this point in the proceedings because they knew next to nothing about the case; the jurors did not even know that the case involved a car accident, let alone the details of the car accident.

Even if individual voir dire did not reveal a bias, it would certainly have given Mr. Holm more information when exercising his right to peremptory challenges. Besides a few individual jurors the trial court questioned, Mr. Holm knew nothing of the other potential jurors who had experience with serious car accidents.

## **II. The Trial Court Abused Its Limited Discretion by Allowing Introduction of a Disturbing Crime-Scene Photograph of Mr. Garcia's Deceased Body.**

Mr. Holm limits this issue on appeal to part three of the test outlined in *State v. Bluff*, 2002 UT 66, ¶ 46, 52 P.3d 1210 – whether the trial court erred in admitting the photograph at issue pursuant to Rule 403 because the risk of unfair prejudice substantially outweighed the probative value of the photograph.



With regard to the probative value, the State argues that the probative value of the photograph established an essential element of the charge, namely that Mr. Holm caused the death of another. As stated by the State, “[t]hese circumstances raise the issue of whether the victim could have been saved, and whether the actions of emergency responders were an intervening cause of the victim’s death.” *See* Aple.Br. 22.

The evidentiary value of the photograph was extremely weak, especially because the main dispute at trial was whether Mr. Holm acted with criminal negligence. At no point in the trial (including opening and closing arguments) did Mr. Holm dispute that he caused the death of Mr. Garcia, and at no point did he in any way suggest that the emergency responders caused Mr. Garcia’s death. Even if the emergency responders’ actions somehow contributed to Mr. Garcia’s death, Mr. Holm is unaware of any case law to support a defense that this excused Mr. Holm’s actions in this situation.

As discussed in Mr. Holm’s brief (and not disputed in the State’s brief), Utah appellate courts have determined that graphic photographs in murder cases lack the high degree of evidentiary significance necessary to overcome their potential to unfairly prejudice the defendant when they are only offered to prove death. *See* Aplt.Br. 29, *citing State v. Dibello*, 780 P.2d 1221, 1230-31 (Utah 1989), *State v. Lafferty*, 749 P.2d 1239, 1257 (Utah 1988), *State v. Cloud*, 722 P.2d 750, 753-54 (Utah 1986).

With regard to the risk of unfair prejudice, the photograph – an 8x10 color close-up photograph of Mr. Garcia’s deceased body sitting pinned in a smashed vehicle with wet blood around his gapping mouth with his eyes rolled back – created a great danger of unfair prejudice. Weighed together, the limited probative value of the photograph was substantially outweighed by the danger of unfair prejudice. Thus, the trial court abused its discretion by admitting the photograph.

### **III. The Trial Court Erred in Denying Mr. Holm’s Request to Define “Simple Negligence” for the Jury.**

Mr. Holm’s defense was that he was not guilty of negligent homicide because he at most acted with an alternative mens rea, *i.e.* simple negligence, than with the mens rea of the statute under which he was charged, *i.e.*, criminal negligence. It was particularly important in this case to have both the terms “criminal negligence” and “simple negligence” defined for the jury because both have similarities but clear distinctions.

Jury Instruction 24<sup>3</sup> operated as a universal reference and roadmap of the legal definitions of mental states, only one of which – “criminal negligence” – was applicable to this case and which did not include a definition of “simple negligence.”<sup>4</sup> R.211. Although Jury Instruction 24 correctly sets forth the

---

<sup>3</sup> Jury Instruction 24 is attached as Addendum A.

<sup>4</sup> Mr. Holm originally had no objection to including the definitions of “intentional,” “knowing,” or “reckless” in Jury Instruction 24 because the trial court originally had determined to include Mr. Holm’s proposed instruction

definitions of “intentionally,” “knowingly,” “recklessly,” and “criminal negligence,” it did not include a definition of “simple negligence.” This created potential confusion because in the absence of any lower mental state – *i.e.*, simple negligence – being defined, the jury may have mistakenly understood that the lowest culpable mental state in criminal law is “criminal negligence.” Having “simple negligence” defined with the other mental states in Jury Instruction 24 would clearly have shown the jury the hierarchy of the various mental states and supported Mr. Holm’s defense that he acted with a less culpable mental state than that with which he was charged.

It was particularly important in this case, the main dispute being did Mr. Holm act with “criminal negligence” or “simple negligence,”<sup>5</sup> to have both terms specifically defined. Without having both definitions, the jury may have incorrectly assumed that there is only one type of “negligence,” *i.e.* “criminal negligence.”

---

defining “simple negligence.” R.698-699. However, the trial court later determined to not define “simple negligence” for the jury but to include the definitions of “intention,” “knowing,” and “reckless,” despite Mr. Holm’s objection. R.716-727.

<sup>5</sup> In its brief, the State argues that Mr. Holm was not prejudiced from the trial court failing to instruct the jury as to the definition of “simple negligence” because, according to the State, “[i]f the jury believed [Mr. Holm]’s testimony, they would not [have] conclude[d] that he was even guilty of simple negligence.” See Aple.Br. 31. Mr. Holm never made this argument and assuming the jury believed Mr. Holm’s version of events, the jury could certainly have determined that he acted with simple negligence but not criminal negligence.

Mr. Holm had “a right to have his ... theory of the case presented to the jury in a clear and understandable way.” *State v. Hamilton*, 827 P.2d 232, 238 (Utah 1992). Mr. Holm’s theory of the case was that he did not act with “criminal negligence,” but rather with “simple negligence.” An instruction defining a term is necessary when the term “has a technical legal meaning so different from its ordinary meaning that the jury, without further explanation, would misunderstand its import in relation to the factual circumstances.” *State v. Ekstrom*, 2013 UT App 271, ¶ 15, 316 P.3d 435 (citation omitted). This instruction error prevented Mr. Holm from presenting a complete defense which error seriously calls into question the jury’s verdict.

#### **IV. There is Insufficient Evidence that Mr. Holm Committed the Crime of Negligent Homicide.**

The State argues that in marshaling the evidence, “the defendant vastly undersold the record evidence supporting his conviction for Negligent Homicide.” *See* Aple.Br. 33. The State then proceeds to list seven “facts from the record to supplement the defense presentation of the marshaled evidence.” *See* Aple.Br. 33.

Mr. Holm more than adequately marshalled the evidence. In Mr. Holm’s “Statement of Facts,” he spends approximately sixteen pages where in every sentence he cites to the record of the evidence presented at trial. *See* Aplt.Br. 4-20. Although Mr. Holm does not repeat these sixteen pages in his “Insufficiency

of Evidence” section, he summarizes the main points. Contrary to the State’s assertion, he does not “vastly under[sale] the record. *See* Aple.Br. 33.

The State lists seven examples of how Mr. Holm “undersold” the record. *See* Aple.Br. 33-35. Below is a citation to Mr. Holm’s brief where he discusses what the States claims he failed to marshal:

(1) The State discusses that “Bangerter Highway is a fast moving highway, with a speed of 50 mph.” *See* Aple.Br. 33. In his brief, Mr. Holm stated, “[t]he posted speed limit between 9000 South and 3400 South is 55 mph and 50 mph between 3400 South and the 201-Overpass Intersection.” *See* Aplt.Br. 6, *citing* R.691.

(2) The State discusses Mike and Brittany Grange’s testimonies. *See* Aple.Br. 33. Mr. Holm in his brief discusses the Granges’ testimonies in length, including that they observed a vehicle weave multiple times, that they tried to get the license plate number to call the police because they believed the driver was impaired, and that they estimated the other vehicle was traveling anywhere between 70-90 mph. *See* Aplt.Br. 7-11.

(3) The State discusses the testimony and conclusions of its own expert, Detective Darren Mower. *See* Aple.Br. 34. The State seems to call into question its own expert’s conclusions related to the speed Mr. Holm was driving at the time of the accident. It is true, as discussed in both briefs, that some of the

methods<sup>6</sup> Detective Mower in some cases uses to give a rate-of-speed estimate were inapplicable in this specific accident. *See* Aplt.Br. 18, *citing* R.497-500. In some cases, Detective Mower is unable to estimate the rate of speed at the point of impact of an accident. *See* Aplt.Br. 18, *citing* R.497-500. However, he was able to give an estimate in this case, an estimate he is “confident” about, given his fourteen years of experience and training and despite the fact that witnesses estimated that Mr. Holm was traveling much faster. Neither party disputed the credentials of Detective Mower at trial nor did either party dispute Detective Mower’s estimate of the rate of speed Mr. Holm was traveling at the time of the accident. Detective Mower’s “confident” conclusion was that Mr. Holm was traveling 50 mph – the speed limit – at the time of the accident. *See* Aplt.Br. 17-18, *citing* R.501, 537.

(4) The State discusses how witnesses testified that it was dark outside at the time of the crash. *See* Aple.Br. 35. Mr. Holm does the same in his brief. *See* Aplt.Br. 7 (stating that “[i]t was dark outside with little traffic,” *citing* R.R418-420, 430); Aplt.Br. 10 (stating that “[i]t was still dark outside at the time of the accident,” *citing* R.445); Aplt.Br. 14 (stating that Ms. Daybell “remembers it was dark outside” at the time of the accident); Aplt.Br. 16 (stating that Mr. Holm discussed how it was dark outside he would have noticed since it was dark outside, *citing* R.650, 651, 656-657, 674).

---

<sup>6</sup> These methods Detective Mower discussed included the conservation of momentum equation, the conservation of energy method, and examining the airbag control module. *See* Aplt.Br. 18, *citing* R.497-500.

(5) The State discusses how Mr. Holm was eight minutes late for work and “still had some distance to go before he arrived....” *See* Aple. Br. 35. In his brief, Mr. Holm discusses how he was expected to be to work at 6:00 am and that the first 911 call was placed around 6:07-6:08 am. *See* Aplt.Br. 16-17, *citing* R.482, 596-597.

(6) The States discusses how Mr. Holm “passed through this same intersection to and from work every day for two months prior to the crash.” *See* Aple.Br. 35. Similarly in his brief, Mr. Holm discussed how Ms. Holm drove Mr. Holm to and from work through the intersection six days a week for two months. *See* Aplt.Br. 5. Mr. Holm reminds the Court that Mr. Holm was the passenger and he drove through the intersection as the driver only a few times because typically his wife drove him to work. *See* Aplt.Br. 5, *citing* R.615-617, 626, 652-653, 670-672, 676.


(7) The State discusses how four other witnesses who are familiar with the intersection testified that they are not confused with the intersection at issue. *See* Aple.Br. 35. Similarly in his brief, Mr. Holm discussed that multiple other people who are familiar with the intersection are not confused with the intersection’s layout. *See* Aplt.Br. 19, *citing* R.401, 414, 436, 458, 616, 621. Although others were not confused with the intersection at issue, it was not in dispute that the layout of the intersection is unique and different from standard intersections. R.685-686.

As discussed in Mr. Holm's brief and similar to the Utah Court of Appeals' determination in *State v. Larsen*, 2000 UT App 106, 999 P.2d 1252, Mr. Holm respectfully requests this Court to reverse his conviction for negligent homicide because the facts do not support the jury's determination that he acted with criminal negligence. Like the defendant in *Larsen*, Mr. Holm's conduct can be "more accurately characterized as a serious mistake in judgment." *Id.* at ¶ 21.

### CONCLUSION

Mr. Holm asks this Court to reverse his conviction for insufficiency of the evidence. Alternatively, Mr. Holm asks this Court to reverse and remand for a new trial because (1) the trial court abused its discretion in voir dire when it denied Mr. Holm the opportunity to conduct individual voir dire, (2) the trial court erred in admitting a disturbing photograph showing Mr. Garcia's dead body pinned in the smashed vehicle shortly after a fatal car accident, and (3) the trial court erred in denying Mr. Holm's request to instruct the jury regarding the definition of "simple negligence."

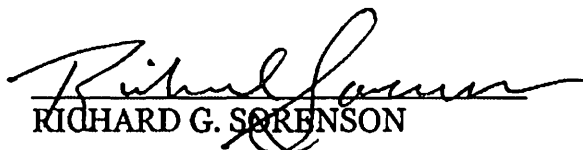
SUBMITTED this 21<sup>st</sup> day of July, 2016.

  
Richard Sorenson  
Attorney for Defendant/Appellant



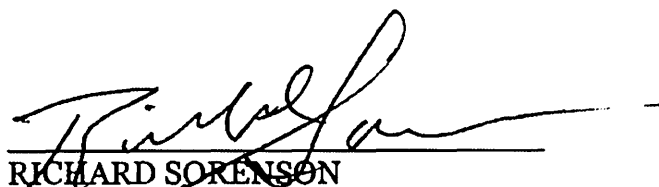
### **CERTIFICATE OF COMPLIANCE**

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(I), I certify that this brief contains less than 7,000 words, excluding the table of contents, table of authorities, and addenda. In compliance with the typeface requirements of Utah R. App. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Georgia 13 point.

  
RICHARD G. SORENSON

### **CERTIFICATE OF DELIVERY**

I, Richard Sorenson, hereby certify that I have caused to be hand-delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and 3 copies to the Salt Lake District Attorney's Office, 111 East Broadway, Ste. 400, Salt Lake City, UT 84111, this 21<sup>st</sup> day of July, 2016.

  
RICHARD SORENSON

DELIVERED this 21 day of July, 2016.



Tab A

JURY INSTRUCTION NO. 24

A person engages in conduct intentionally with respect to the nature of his conduct, or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

A person engages in conduct knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person engages in conduct recklessly with respect to the circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that is disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

A person acts with criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

"Conduct" means either an act or an omission.