

2016

**State of Utah, Plaintiff/Appellee, v. Cullen Christopher Carrick,  
Defendant/Appellant : Brief of Appellee**

Utah Court of Appeals

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Case No. 20160249-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

CULLEN CHRISTOPHER CARRICK,  
*Defendant/Appellant.*

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Supplemental Brief of Appellee

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Appeal from a conviction for burglary, a second degree felony,  
in the First Judicial District, Box Elder County, the Honorable  
Brandon J. Maynard presiding

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Case No. 20160249-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

CULLEN CHRISTOPHER CARRICK,  
*Defendant/Appellant.*

---

Supplemental Brief of Appellee

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Pursuant to this Court's May 24, 2019 order (Addendum A), this brief addresses "whether trial counsel's failure to introduce evidence that Defendant knew the passcode to the garage constituted objectively deficient performance and if it did, whether Defendant was prejudiced."

**RELEVANT PROCEEDINGS**

Defense counsel did not present any evidence at trial that Defendant knew the passcode to the garage of April and her husband's house, the house he was charged with burglarizing. This Court granted Defendant's motion for a 23B remand to allow Defendant to present evidence that he told defense counsel before trial that April had given him the passcode and that he, thus, would not have had to break into April's house through a back window.

On remand, the trial court found that Defendant told defense counsel at a pretrial meeting that Defendant “knew the garage code and would not need to go through the window.” Supp. Findings (SF) at 2; Findings (F) at 8 (both attached at Addendum B). The court also found that during the meeting, defense counsel “was focused on trial strategy relating to the impossibility of the Defendant being at the burglary scene—later indicating that the garage code would not have been significant to him because it was not part of the theory and strategy of the defense and he would not have presented alternate theories.” SF:2. On remand, Defendant presented no evidence other than his own testimony that the passcode actually worked on April’s garage. F:*passim*; SF:*passim*.

## ARGUMENT

**Defendant cannot prove that his trial counsel was constitutionally ineffective for not introducing evidence that Defendant knew the passcode to April’s garage**

Because of this Court’s simultaneous briefing order, the State cannot be sure what Defendant’s ineffectiveness claim will be related to the passcode to April’s garage. The State thus proceeds on the assumption that Defendant’s argument will be the same one he presented in support of his rule 23B motion. There, Defendant argued that defense counsel was ineffective for not presenting evidence that April had given him the passcode. Def. Memo 15.

Defendant asserted this evidence would have established that “if indeed the jury had believed that [he] had been in the home, which [he] had not, [he] arguably had permission to be in the home, which conflicts with the elements of burglary.” Def. Rule 23B Aff.;Def. Memo at 15. Defendant’s claim fails because he cannot prove that counsel performed deficiently or a reasonable likelihood of a different result had counsel presented the evidence.

To prove ineffective assistance of counsel, Defendant must prove both deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687-89, 694 (1984). To prove deficient performance, he must show “that counsel’s representation fell below an objective standard of reasonableness,” *id.* at 687-88 – that “no competent attorney” would have done what his counsel did, *Premo v. Moore*, 562 U.S. 115, 124 (2011). To prove prejudice, he must show “a reasonable probability” that but for counsel’s error, “the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

Concerning deficient performance, the trial court found that defense counsel’s trial strategy was to argue “the impossibility of the Defendant being at the burglary scene.” SF:2;F:13. The court also found that counsel would not have paid much attention to the passcode evidence because he “would not have presented alternate theories,” SF:2, such as the inconsistent theory that if Defendant was present in April’s home, his knowing the passcode meant



he had permission to be. It is well-established that “any election between inconsistent defenses [is] a legitimate exercise of trial strategy rather than ineffective assistance of counsel.” *State v. Pascual*, 804 P.2d 553,556 (Utah App. 1992); accord *State v. Campos*, 2013 UT App 213, ¶34, 309 P.3d 1160.

Concerning prejudice, Defendant offered no authority establishing that any permission April gave her lover to enter her and her husband’s home extended beyond her death. Def. Memo at 1-17. Absent such authority, the fact that Defendant may have been able to open April’s garage door did not eliminate the possibility that he knew he lacked authority to enter, which would explain why he chose a more discreet entry point. In other words, evidence that Defendant had the passcode did not so clearly establish as Defendant might think that he’d not have entered through a window instead.

Further, Defendant presented no evidence at his 23B hearing, other than his own testimony, that the passcode he allegedly had actually opened April’s garage. Thus, whether the jury believed him on that point would have turned on its judgment of his credibility. But Defendant testified to his innocence at trial, claiming that he was not near and never went into April’s home on the day of the burglary. R615. If the jury had found Defendant a credible witness, it would have acquitted him. The jury thus did not find him a credible witness. Consequently, there is no reasonable likelihood that

additional testimony from him—that he had the passcode—would have altered the result of his trial. This is especially so where four people identified him as the person at April’s home at the time of the burglary; two of them testified they saw him, wearing the same unique hat he admitted wearing to April’s funeral, enter April’s house through the back window; he did not deny breaking into April’s home but rather simply hung up when the investigating officer called him shortly after the burglary; and he never returned the officer’s call after the officer later left him a message asking him to call the officer back. R324,365-66,369,384,387,403,427,466-67,624.

In short, Defendant cannot show either that defense counsel was objectively unreasonable in not presenting the passcode evidence or that he was prejudiced by counsel’s not presenting it.

## CONCLUSION

This Court should affirm Defendant’s conviction.

Respectfully submitted on June 6, 2019.

SEAN D. REYES  
Utah Attorney General

/s/ Karen A. Klucznik  
KAREN A. KLUCZNIK  
Assistant Solicitor General  
Counsel for Appellee

## CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(g), Utah Rules of Appellate Procedure, this brief contains 5 pages, excluding the table of contents, table of authorities, addenda, and certificate of counsel. I also certify that in compliance with rule 21(g), Utah Rules of Appellate Procedure, this brief, including the addenda:

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

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

/s/ Karen A. Klucznik

KAREN A. KLUCZNIK

Assistant Solicitor General

## CERTIFICATE OF SERVICE

I certify that on June 6, 2019, the Supplemental Brief of Appellee was served upon appellant's counsel of record by ☐ mail ☒ email ☐ hand-delivery at:

Scott L. Wiggins  
Arnold & Wiggins, P.C.  
American Plaza II, Suite 105  
Salt Lake City, UT 84101

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

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

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

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

                    /s/ Melanie Kendrick

Addenda

# Addendum A

The Order of the Court is stated below:

Dated: May 24, 2019  
10:24:16 AM

At the direction of:  
/s/ JUDGE GREGORY K. ORME

by

/s/ Lisa A. Collins  
Clerk of Court, Utah Court of Appeals



IN THE UTAH COURT OF APPEALS

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State of Utah,  
Appellee,  
v.  
Cullen Christopher Carrick,  
Appellant.

ORDER

Case No. 20160249-CA

Trial Court Case No. 141100418

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Before Judges Orme, Mortensen, and Harris.

This matter is before the court on its own motion. The parties are directed to provide the court with supplemental briefing addressing Judge Brandon Maynard's findings of fact filed on April 29, 2019, and supplemental findings filed on May 15, 2019. Specifically, the court looks for guidance on the question whether trial counsel's failure to introduce evidence that Defendant knew the passcode to the garage constituted objectively deficient performance and if it did, whether Defendant was prejudiced.

The parties shall submit their memoranda to the court within fourteen (14) days of this order. The memoranda shall not exceed five (5) pages in length and shall comply with the Utah Rules of Appellate Procedure in form, but may be emailed in PDF rather than bound and delivered in hard copy.

**End of Order - Signature at the Top of the First Page**

## Addendum B



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**FIRST JUDICIAL DISTRICT COURT  
COUNTY OF BOX ELDER, STATE OF UTAH**

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STATE OF UTAH,  Plaintiff,  vs.  CULLEN CRISTOPHER CARRICK,  Defendant.	FINDINGS OF FACT  Case No. 141100418  Judge Brandon Maynard
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THIS MATTER IS BEFORE THE COURT pursuant to the Order of Remand Pursuant to Rule 23B of the Utah Court of Appeals filed May 23, 2018. Following a hearing held on November 13, 2018, the Court hereby enters the Findings of Fact:

**TESTIMONY OF CURTIS FUNK**

1. Witness provided the live stream webcasting of the funeral.
2. Upon his review of the webcast, the funeral began about 4:00 pm and ended about 5:04 pm.

**TESTIMONY OF AMANDA REED**

3. Witness is the cousin to the Victim's deceased wife. She and the deceased were pretty close and made telephone calls between each other. They did not see each other very much, but would at family functions.
4. Witness was present at the funeral and sat close to the front.

5. She took pictures of the balloon release that took place in the parking lot after the funeral. She provided them to someone else. After the balloon release she left. A pretty good sized crowd remained.

6. Witness also identified pictures of Nicholas Anthony Seymour (Tony). She indicated that she considers him a cousin because Tony and a first cousin of hers are half siblings. She testified that April and Tony are cousins.

#### **TESTIMONY OF ANDREW DEAN HASLEM**

7. Witnesses dated April Taylor's younger sister, Holly Lunday for about 7 years until the end of 2017. They are no longer dating, but they remained friends.

8. He knew who Nicholas Seymour was and identified him in photographs.

9. He testified that he would visit with Nicholas at family functions that he and Holly attended.

He said that Nicholas was homeless most of the time because of substance abuse problems. They would bring him food down to Ogden.

#### **TESTIMONY OF ERIN CARRICK MOORE**

10. Witness is the Defendant's older sister.

11. She testified that she went with the Defendant to two meetings with Ryan Bushell, trial counsel for Defendant.

12. The first meeting was in April of 2015 and lasted 15-20 minutes. In that meeting, she stated that Mr. Bushell was given the name of Matt Bishop and a person named Ally as alibi witnesses. She did not know Ally's last name. She said that the Defendant provided a number for Matt



Bishop but didn't have one for Ally because he had just met her at the funeral and hadn't even caught her last name. No other people were mentioned at this meeting. She indicated that Mr. Bushell mentioned that the case was open and shut.

13. The second meeting occurred in the fall of 2015 and lasted 10-15 minutes. The meeting took place in Mr. Bushell's office. They talked about the events of the day. She testified that Mr. Bushell had not talked to Matt Bishop. She testified that Mr. Bushell would be providing a time chart for the trial. She testified that she never saw Mr. Bushell take notes. She testified that the Defendant told Mr. Bushell that he knew about the garage code at the April's home and therefore would not need to go through the window. The person that had given him the code was April. She testified that Mr. Bushell had not contacted Matt Bishop and asked for his contact information again. No other people were mentioned at this meeting.

14. A third meeting was on the Tuesday evening before the trial. She was asked to attend by the Defendant, but could not. She testified that after that meeting, Mr. Bushell had not contacted Matt Bishop and so she went out and found Matt Bishop's work and left a note for him and gave the information to the Defendant. They also found an address through Google and she and the Defendant went to try and find that address.

#### **TESTIMONY OF COREE BUCK**

15. Witness is an older sister to the Defendant with about 13 years between them.

16. She testified that she went a meeting on a Tuesday, just before the trial, at Mr. Bushell's office in Ogden. Mr. Bushell, the Defendant and she were the only ones at the meeting which lasted about 10-15 minutes. She testified that there had been no trial preparation and that Mr.

Bushell only had the police report. She testified that Mr. Bushell indicated that he had not been able to contact any witnesses. She testified that she was not aware of any disclosure of alibi witnesses from Mr. Bushell about 30 days before the trial. She was not aware of how Mr. Bushell was able to call multiple witnesses at trial.

#### **TESTIMONY OF EDITH DAWSON**

17. Witness did not testify at trial. She stated that April was an employee of hers who worked as a barber at Rack's Barber Shop. She knew the Defendant because he was a client of April.

18. She testified that she went to the funeral in Brigham City with another employee, Cheryl Stoker. She testified that they all met at the barbershop in Harrisville and carpooled with two cars, Cheryl and her in one – a red SUV - and Matt Bishop, the Defendant, and Ally in the other car – a little white car. They drove in tandem because they wanted to be together at the funeral.

19. She saw the Defendant during the funeral and after the funeral, at the balloon launch. After the funeral they had to ask the Defendant to come and leave as he was talking to friends. She determined that the parties, including the Defendant, left somewhere between 35-45 minutes after the funeral, that it was not even 6:00 pm and that it was light outside. She stated that the parties left together in the two cars and drove back to Rack's in Ogden. She testified that they spent about 20-30 minutes there and then all left.

20. She was first contacted about being a witness by Mr. Wiggins earlier in 2018. I knew about the first trial because of Matt being called – he works with me. We talked about Matt coming and why none of us were called. We didn't reach out to anyone because we really didn't know about what was going on.



### **TESTIMONY OF CHERYL STOKER**

21. Witness was another witness that did not testify at trial. She has been cutting hair for 35 years and is a Councilwoman for North Ogden City for 7 years.

22. Edith, Matt, Ally, the Defendant and she met at Rack's. They drove in two different cars. She drove with Edith in her 2011 red Santa Fe, and the Defendant went in Matt's white car. They travelled in tandem together up to the funeral.

23. She uncertain of the time that the parties left after the funeral. At times she estimated 10-20 minutes. She also estimated a few more minutes than 10-20 minutes. After the parties left, the funeral, they drove back to Rack's in the same manner they drove to the funeral – never leaving sight of the other vehicle.

24. They drove on Highway 89 at the speed limit. The drive took about 22-25 minutes. They remained at Rack's for a few minutes talking about April and the funeral and then went home.

25. She was not contacted by Mr. Bushell.

### **TESTIMONY OF LYNETTE HATCH**

26. Lynette was a friend of April Taylor. She met April through Celeste McCulley. She met the Defendant through Celeste.

27. She went to the funeral and saw the Defendant there and he was there the whole time she was there – until he left a few minutes before her. She stated that the Defendant was at the balloon release and left about 55-65 minutes after the funeral. It was bright outside when Defendant left.

### **TESTIMONY OF ANNIE CELESTE MCCULLEY**

28. Witness was called and testified as a witness at trial. She was at April's funeral and that they had been best friends since they were age 13. She was contacted by Mr. Bushell because she was at the funeral and the time after when the events supposedly happened. She was contacted by a brief phone call right before trial. She never met with Mr. Bushell.

29. She talked for about 10 minutes with Mr. Bushell before trial. Later she said it was maybe 5 minutes. She told him what she was trying to convey, but she felt like he wasn't listening. She thought that maybe she hadn't conveyed it in the right way. She wanted him to tell her more about what was going on. She wanted Mr. Bushell to tell her about how many witnesses there would be and what they were going to talk about. She told Mr. Bushell that she thought it was an open and shut case because a group had been together at the funeral home with the Defendant at the time of the incident and that a person can't be in two places at once. She told Mr. Bushell that she was with the Defendant at the funeral home until it was getting dark.

30. She stated that she conveyed what she wanted to at the trial. However, she wanted to tell the jury that April's husband could have saved her life and didn't, and that there was a lot of underlying circumstances.

### **TESTIMONY OF MATT BISHOP**

31. Witness was called and testified as a witness at trial. He testified that he knew April and that they went as a group to her funeral. They met at Rack's Barber Shop and split up into two groups. Cheryl and Edie went in Cheryl's car and the Defendant, Ally and he went in his white 2002 Mazda Protégé. They drove separately because he was vaping and Ally was a smoker. We



never lost sight of Cheryl's car because I had never been to the funeral chapel before. He said he had a phobia of getting lost.

32. The Defendant never left the funeral services. About 15-20 minutes after the funeral they had the balloon release. They then left about 50 minutes after that. He thought it was brighter outside after the funeral then when they were driving back. It wouldn't surprise him if other witnesses at trial said it was getting dark outside. They drove back to Rack's on Highway 89 in the same manner they came. They drove the speed limit and did not make any stops. They went into the barber shop and visited about the funeral and April's death for about 30 minutes. When the Defendant left, he watched him turn South on Highway 89. He was aware that the Defendant and April were having an intimate relationship.

33. He testified that never met Mr. Bushell before trial. He spoke to Mr. Bushell the day before trial and was told needed me to testify for the Defendant's case. He talked to Mr. Bushell for about three minutes on the phone before trial.

34. He said that he answered all of the questions that were asked of him at trial. He felt that Mr. Bushell should have asked him who was at the funeral with him.

#### **TESTIMONY OF CULLEN CARRICK**

35. Witness is the Defendant and was advised of his right not to testify.

36. Witness testified the first meeting with Mr. Bushell was about 8 months before trial. Erin, Mr. Bushell and he were present. The meeting lasted up to 30 minutes, where he told his story. At that meeting, the Defendant gave witness names to Mr. Bushell and Mr. Bushell kept asking for the names.

37. The Defendant testified there was a second meeting in the fall of 2015 that lasted about 15 minutes. Erin, Mr. Bushell and he were present. The Defendant said he told Mr. Bushell about the garage code and that he could enter the house without using a window. The Defendant testified that April had given him the garage code and he had used it 2 or 3 times to get into April's house. The Defendant testified that Mr. Bushell did not use the information at trial. Nor was he aware if Mr. Bushell investigated that information.

38. The Defendant said that he met with Mr. Bushell 2 days before trial. The meeting lasted maybe 20 minutes. He learned that Mr. Bushell never contacted any witnesses. The Defendant told his sister and sought advice as to what to do. They then tried to find the witnesses. The Defendant knocked on 2-3 dozen doors at an apartment complex he believed Matt Bishop to be living at. Having no success, he left a message on Facebook for Matt to call him. When Matt called, the Defendant asked him to call Mr. Bushell and have him Mr. Bushell's phone number. He was unaware if Mr. Bushell had hired an investigator.

#### **TESTIMONY OF ROBERT WELLING**

39. He is a licensed private investigator for Utah for 35 years. He is the owner of his company, Beehive Detective Agency, Inc. He indicated that he is a member of the Private Investigator's association of Utah and has served as a former chairman of the board. In his business he has handled all types of investigations. He testified that it takes 10,000 hours of experience to get a license and then 35 years of work from there. He has done surveillance, timeline reconstruction and witness interviews. He was hired by the Defendant for the appeal.



40. Mr. Welling testified to meeting with the Defendant, reviewing police reports, witness statements and other documents related to the trial. He created a timeline of the Defendants movements before, during and after the burglary.

41. Mr. Welling did 2 time-distance-speed calculations from the funeral home to the barber shop and determined the miles between them to be 15.7 miles and the time to drive at the speed limit was 23 minutes and 15 seconds. He made determinations of where the Defendant was at during the time of the burglary. He obtained photos from Amanda Reed of the balloon release. After reviewing a report from a forensic examiner, Clint Emmet's report of metadata from the balloon release photos, he interviewed the Defendant, Matt Bishop, Edie Dawson and Cheryl Stoker. He didn't have enough information to locate and speak with Ally. From the witnesses' timelines of events, he determined that the Defendant would have left the funeral home at approximately 5:50 pm with them and arrived at Rack's at approximately 6:15 pm. They then remained there visiting for about 30 minutes. He also obtained a call detail report showing that the burglary call came in at 6:03 pm and that the burglary was concluded 10 minutes earlier at 5:53 pm. He concluded, based on his investigation, that Edie Dawson and Cheryl Stoker were critical alibi witnesses. He also concluded that the Defendant did not have the opportunity to commit the burglary.

42. Mr. Welling looked into Nicholas Seymour as another suspect. He came up with Nicholas Seymour's name from interviewing Holly Lunday.

43. Mr. Welling determined that the April's address, the location of the burglary, was 7.3 miles away. The distance in time from the funeral home was 11 minutes and 36 seconds to April's address. He admitted that April's address was on Highway 89 between the funeral home and

Rack's. At trial, witnesses testified that they saw the Defendant commit the burglary. Mr. Welling did not interview the eyewitnesses from the police report that placed the Defendant at the burglary address while doing a timeline, but he did review their statements. He believed that any eyewitnesses, that identified the Defendant at the burglary address, misidentified him. He was directed by Mr. Wiggins not to interview the eyewitnesses. Mr. Welling said he did not weigh the credibility of the witnesses and later admitted credibility mattered.

#### **TESTIMONY OF JEFFERY NELSON**

44. Mr. Nelson has been a licensed private investigator since 1977. He helped create Private Investigators Association of Utah. It is a private group whose membership requires private investigators to have a license. He has investigated all types of criminal cases including approximately 70 murder cases some of which were capital cases. He has had training with law enforcement and attended Utah Peace Officers Association although not a sworn officer. He has been involved in a couple high profile type cases wherein at least one involved a timeline investigation. He also attended a law enforcement training relating to death and blood spatter investigations at Davis Area Training Association, it also dealt with timelines. He was hired to look at the timeline and alibi, as well as another suspect Nicholas Seymour.

45. Mr. Nelson's investigation established a similar timeline to Mr. Welling. He accompanied Mr. Welling on one trip determining distance and time of travel between the funeral home and the barbershop. He reviewed police reports, statements, a transcript of the trial, he interviewed Matt Bishop and looked at photos of the location.



46. Mr. Nelson learned that Nicholas Seymour had two burglary convictions from Texas, including a dwelling. He based his information on a document obtained from TLO. The report was generated based on information that Mr. Nelson plugged into the database. Mr. Nelson also used Mugshots.com to obtain some information on Nicholas Seymour's criminal history.

47. Mr. Nelson testified that the only connection between Seymour and the burglary was that he was related to the victim's family. Mr. Nelson acknowledged age differences, as well as that Nicholas Seymour is bald. Mr. Nelson agreed that at trial it was testified that the Defendant wore a very unique hat and that none of the pictures of Nicholas Seymour with a hat resembled such a hat. Mr. Nelson stated that it was not known when the pictures of Nicholas Seymour were taken. Mr. Nelson did not place Nicholas Seymour at the scene of the burglary. Mr. Nelson indicated that there was a difference in the eyewitnesses that testified at trial and Matt, Edie and Cheryl because they were with the Defendant longer. He agreed that there were no pictures or other corroborating evidence that showed the Defendant at the funeral.

#### **TESTIMONY OF RYAN BUSHELL**

48. Mr. Bushell was trial counsel for the Defendant. Mr. Bushell kept a file in this matter. They first met in March or April 2015. Mr. Bushell testified that he met between one dozen to two dozen times with the Defendant, including a time with Coree Buck and the Defendant just before trial. Mr. Bushell said that he was sure that he spent more than 12 hours in preparing that case with the Defendant. He also testified that he spent numerous hours working on the case without the Defendant present.

49. Mr. Bushell indicated that he had the names of individuals who would have been alibi witnesses. The names, phone numbers and some addresses written in Mr. Bushell's file were between the dates of June 1, 2015 and June 26, 2015 – they included Tawnie Mulberg, Celest McCulley, Elias Karras, and Matt Bishop. Mr. Bushell identified an email in April 2015 between him and the Defendant where it was mentioned that Matt Bishop was working at a barber shop. It took a while to find Mr. Bishop, as Mr. Bushell said he was hard to find. He was contacted a day or two before trial. He met a couple of times with the Defendant and talked about who should be called as alibi witnesses. He did not recall hearing the name of Edith Dawson or Cheryl Stoker before. Because it had been so long he did not remember anything other than the names he had written down. If he had been given other names, he would have written them down. He contacted all the witness, that the Defendant and he discussed, and the witnesses gave him what was presented at trial.

50. Mr. Bushell testified that there were four alibi witnesses at trial and their stories were consistent. Mr. Bushell stated that there was no need for two more witnesses.

51. Mr. Bushell testified that he went over the timeline with the Defendant. He said they thoroughly discussed things such as; who was there, what the Defendant was doing, whose car he was driving in, where they went, and the balloon release after the funeral.

52. Mr. Bushell stated that if he called too many alibi witnesses, the jury would tune out. He felt like there may be value to calling more witnesses unless they were cumulative. However, he felt like a defense loses some of its strength if the same thing is presented over and over. He indicated that the 3 alibi witnesses, that they presented, were sufficient.



53. Mr. Bushell testified that Defendant never told him about the garage code. He further testified that he would not have brought that up at trial, as the theory of the case was that the Defendant was not there – it was cut and dry that it couldn't have been the Defendant. To indicate different, he felt, would not have made sense. He would have never presented alternate theories – because the defense was, it wasn't the Defendant, he was with friends.

54. Mr. Bushell testified that he never heard of Nicholas Seymour until trial and would have never used him as a possible alternative suspect, as the connections were not significant. He said that, if it was discussed, with no contact information or any way to contact him it would have been frivolous. Likewise, he felt that he would have had no chance of getting anything in at trial. His practice is not a shotgun approach to see what sticks.

55. Mr. Bushell talked to his witnesses and felt prepared for trial. He said it was not true that he had only spent about an hour meeting with the Defendant. Mr. Bushell submitted his alibi list 11 days before trial.

56. Mr. Bushell stated that all of his alibi witnesses testified at trial and he did not have any other alibi witnesses to call. He felt that Matt Bishop was very strong because he was the driver of the car the Defendant was in. He had no other names other than Ally. However, she could not be further identified or located. Mr. Bushell did not feel like he needed a private investigator. He testified that the Defendant couldn't have afforded one.

DATED this 29<sup>th</sup> day of April, 2019.  
BY THE COURT:

Brandon Maynard  
Judge Brandon Maynard



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 141100418 by the method and on the date specified.

MANUAL EMAIL: COURT OF APPEALS courtofappeals@utcourts.gov

MANUAL EMAIL: BRIAN P DUNCAN bduncan@boxeldercounty.org

MANUAL EMAIL: KAREN A KLUCZNIK kklucznik@agutah.gov

MANUAL EMAIL: SCOTT L WIGGINS swiggins@awpc.net

04/29/2019

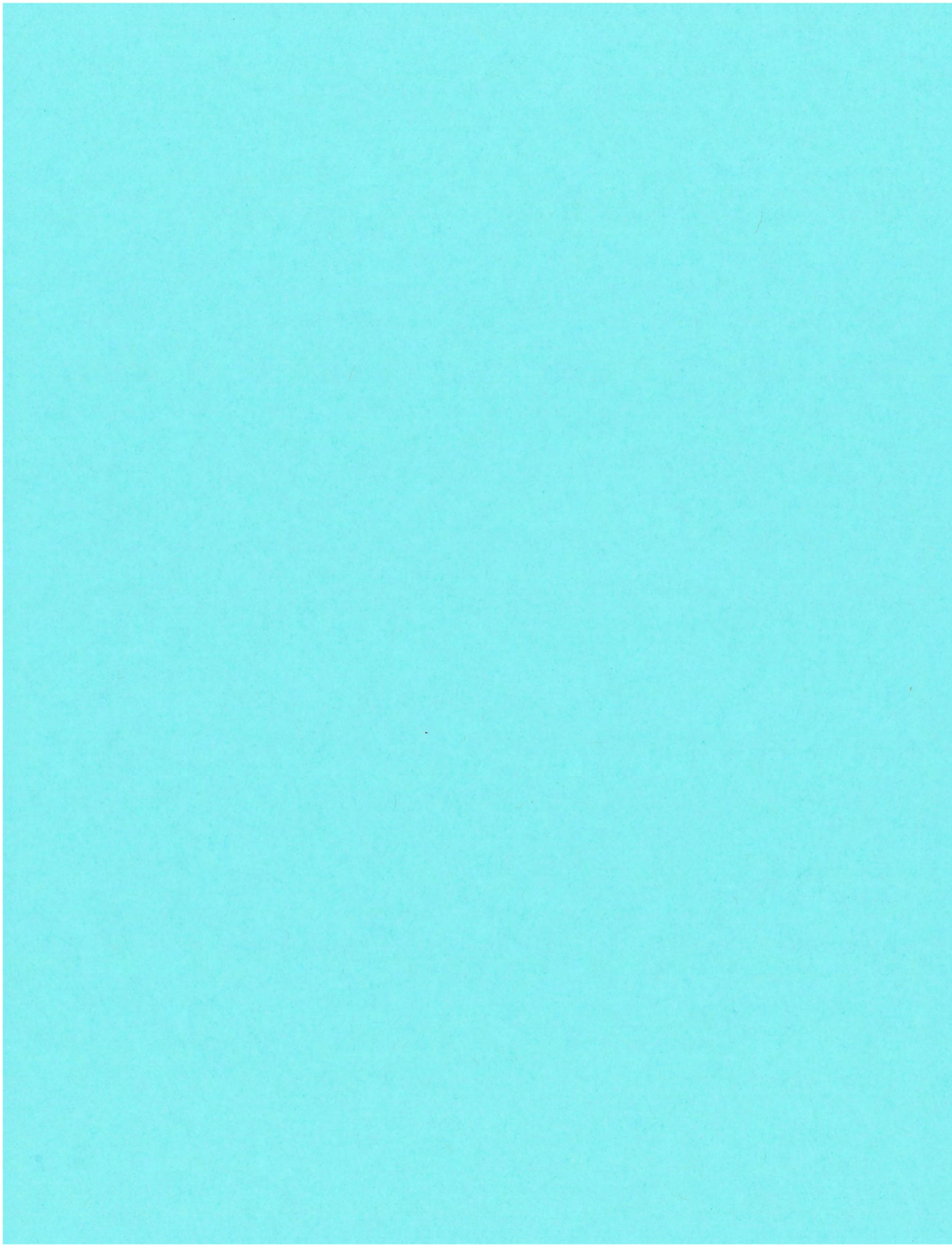
/s/ KATHI JOHNSTON

Date: \_\_\_\_\_

\_\_\_\_\_

Deputy Court Clerk





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**FIRST JUDICIAL DISTRICT COURT  
COUNTY OF BOX ELDER, STATE OF UTAH**

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STATE OF UTAH,

Plaintiff,

vs.

CULLEN CRISTOPHER CARRICK,

Defendant.

SUPPLEMENTAL FINDINGS OF FACT

Case No. 141100418

Judge Brandon Maynard

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THIS MATTER IS BEFORE THE COURT pursuant to the Order of Further Remand Pursuant to Rule 23B of the Utah Court of Appeals filed May 8, 2019. The Court hereby enters the Supplemental Findings of Fact:

1. There were a few meetings that took place with Mr. Bushell and the Defendant. Erin Moore and Coree Buck accompanied the Defendant and were present during at least one meeting each, however, Erin Moore and Coree Buck never attended the same meeting. A discussion of alibi witnesses occurred during a meeting where Erin was present. In that meeting Mr. Bushell wrote down the names and contact information the Defendant gave him. Erin Moore indicated that only the people that rode in the Defendant's vehicle to the funeral were discussed. These names did not include Edith Dawson or Cheryl Stoker. Although the Defendant indicates that he mentioned two other "older ladies" to Mr. Bushell, neither Mr. Bushell nor Erin Moore corroborate that Mr. Bushell was told about them by the Defendant. If Mr. Bushell had been given other alibi witness names, he

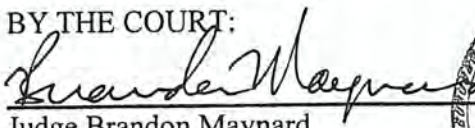


would have written them down. The Court finds that the Defendant failed to disclose additional alibi witnesses and that Mr. Bushell was not aware of them.

2. During another meeting between the Defendant, Mr. Bushell, and Erin Moore, a strategy and timeline of events was discussed wherein Mr. Bushell told the Defendant that he would be preparing a time chart for the trial. This was important to establish and show that the Defendant could not be in two places at the same time. A discussion of the events led to the Defendant indicating that he had the garage code and would have no need to go through the window. Erin Moore said that during the meeting, the Defendant told Mr. Bushell that he had the garage code at April's home and, therefore, would not need to go through the window. During this discussion, Mr. Bushell was focused on trial strategy relating to the impossibility of the Defendant being at the burglary scene – later indicating that the garage code would not have been significant to him because it was not part of the theory and strategy of the defense and he would not have presented alternate theories. Although Mr. Bushell indicated that he was not told about the Defendant's knowledge of the garage code, Erin Moore corroborated the Defendant's disclosure relating to the code. The Court finds that, during the meeting, the Defendant disclosed that he knew the garage code and would not need to go through the window.

DATED this 15<sup>th</sup> day of May, 2019.

BY THE COURT:

  
Judge Brandon Maynard



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05/15/2019

/s/ KATHI JOHNSTON

Date: \_\_\_\_\_

Deputy Court Clerk