

2005

## Utah v. Rich : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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**STATE OF UTAH,**

**Plaintiff/Appellant,**

**vs.**

**JOSHUA RICH,**

**Defendant/Appellee.**

**Case No. 20050264-CA**

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**REPLY BRIEF OF APPELLANT**

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**ARGUMENT**

**I. DEFENDANT’S CLAIM THAT CASES FROM OTHER JURISDICTIONS ARE INAPPLICABLE IS INCORRECT; IN FACT, THIS COURT HAS PREVIOUSLY STATED THAT THE CASES ARE APPLICABLE.**

In his opposition brief, defendant claims that authority from Georgia appellate courts is distinguishable because that state’s “speedy trial” statute “differs considerably” from Utah’s statute. Aplt. Br. at 9. Defendant points out that the Georgia statute “is applicable to basically all defendants while the Utah statute . . . applies only to defendants serving a term of incarceration.” *Id.* Defendant also notes that the Georgia statute “seemingly places the burden of bringing a defendant to trial timely on the . . . corresponding trial court while the Utah statute places the burden on the prosecuting agency.” *Id.* at 9-10. Finally, defendant points out that the Georgia Court of Appeals denied a motion to dismiss on speedy trial grounds because the demand did not state the “name, date, term of court or case number” and

was therefore insufficient under the statute. *Id.* (citing *Aranza v. State*, 444 S.E.2d 349, 350, (Ga. App. 1994)).

Although defendant correctly notes some of the differences between the two statutes, he never explains why these differences make a difference. Simply because the statute is more inclusive does not lessen the persuasiveness of cases interpreting its language in circumstances in which the defendant is incarcerated.

As for defendant's claim that the Georgia statute appears to place the burden on the court to ensure a defendant is brought to trial within the statutory time limits, defendant misreads the statute. Although defendant correctly notes that the Georgia statute requires that a disposition request be *filed* with the court, it also requires that the request be *served* on the prosecutor, who will then, like his Utah counterpart, be responsible for preparing the case for trial. *See* Ga. Code Ann. § 17-7-170.

As for defendant's oblique suggestion that *Aranza* is distinguishable because the court found that Aranza's request was insufficient under the statute to put the prosecutor on notice due to its lack of "name, date, term of court and case number," there is no reason why this would limit or undermine the applicability of the case's rationale to the facts in this case. *Aranza*, 444 S.E.2d at 350. Indeed, defendant's listing of the wrong case number and the wrong crime is more egregious—and misleading—than the mere errors of omission in Aranza's request.

Thus, defendant has offered no reason for this Court to reject the analysis of the Georgia appellate courts, which, "if applicable, would resolve this issue in [the State's]

favor.” *See State v. Coleman*, 2001 UT App 28, ¶ 5 n.5, 34 P.3d 790 (declining to apply non-Utah authority, which cannot support plain error claim because “any error on the part of the trial court was not obvious”).

### **CONCLUSION**

For the foregoing reasons and the reasons discussed in the State’s Opening Brief, this Court should reverse the trial court and reinstate the aggravated robbery charge against defendant.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March, 2006.

MARK L. SHURTLEFF  
Attorney General

A handwritten signature in black ink, appearing to read "Brett J. DelPorto", written in a cursive style.

BRETT J. DELPORTO  
Assistant Attorney General



**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of March, 2006, I caused to be U.S. Mail two  
copies of the foregoing to:

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