No. 20-7343

IN THE

SUPREME COURT OF THE UNITED STATES

Justin David Williams — PETITIONER
(Your Name)

vs.

State Of Utah — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Utah Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Justin David Williams
(Your Name)

C.U.C.F P.O. Box 550
(Address)

Gunnison, Utah, 84634
(City, State, Zip Code)

N/A
(Phone Number)

Questions Presented For Review

1. Did the court of appeals err by holding that the father's entire 911 call was admissible Under the Confrontation Clause?
2. Did the court of Appeals err by holding that the first portion of the 911 call was excited utterance?
3. Did the court of appeals err in its use of the invited-error doctrine to affirm Williams's convictions.
4. Was Williams's Sixth Amendment Right, "United States Constitution Amendment VI and rule 803 of the Utah Rules of Evidence?
5. Did the Utah Supreme Court err in dening Williams's case for review?

QUESTION(S) PRESENTED

Q.[6] Why was I denied the right to Cross examine my accuser at trial. Therefore Violating my Sixth Amendment right "The accused Shall enjoy the right... to be confronted with witnesses against him"?

Q.[7] Does the 911 call made by the Father prove that the son "Justin Williams" was actually there on that specific day and that specific time?

Q.[8] Was the sons voice recorded on the audio presented by the State. (The son meaning Justin David Williams)?

Q.[9] Was the son Actually arrested by Police officers in the area of or at the alledged crime scene?

Q.[10] Did the Victom or Wittnesses testify under oath at Mr. Williams trial confirming that the allegations against him are true and Correct?

Q.[11] How credible are the Victom/Wittnesses?

Q.[12] Why wasn't a redaction of the 911 tape followed through with by my trial Attorney?

Q.[13] Is there a possibility that there was a mistake of Identity?

Q.[14] Did the Victom get a clear look at the intruder?

Q.[15] Was it Dark during the time of the incident?

Q.[16] How much time had elapsed between the Alledged Assult and the 911 call? (State v. Gill, 470 P.2d 250, 251 (Utah 1970)

Q.[17] Was the Victom Covering for Some one else by blurting out the name Justin David Williams? which would be an easy name to remember using reflective thought (The son)

Q.[18] If my Brother Aaron Williams was present During the time of the Assult Why didn't he identify Justin Williams as The aggressor

Q.[19] Why wasn't Aaron Williams called as a wittness During trial

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Arnold v. Grigsby, 2018 14, 417 P.3d 606
Benitez v. Dep't of Health, Div. of Health Care Fin, 2009 UT App 250U
Crawford v. Washington, 541 U.S. 36 (2004)
Davis v. Washington, 547 U.S. 813 (2006)
Delaware v. Van Arsdall, 475 U.S. 673 (1986)
Gunn Hill Dary Prop., LLC v. Los Angeles Dep't of Water & Power 2015 UT App 261, 361 P.3d 703
Kunej v. Labor Comm'n, 2013 UT App 172, 306 P.3d 855
Layman v. State 652 So.2d 373 (Fla. Dist. Ct. App. 2006)
Mariano v. State 933 So.2d 111 (Fla. 1995)
Michigan v. Bryant, 562 U.S. 344 (2011)
Moore v. State, 169 S.W. 3d 467 (Tex. App. 2005)
Scott v. HK Contractors, 2008 UT App 370, 196 P. 3d 635
See v. Van Der Veur, 971 P.2d 924 (Utah 1998
State v. Barela, 2015 UT 22, 349 P.3d 676
State v. Barrett, 2005 UT 88, 127 P.3d 682
State v. Bond, 2015 UT 88, 361 P.3d 104
State v. Bray, 472 P.2d 54 (Ariz. 1970)
State v. Cude, 784 P.2d 1197 (Utah 1989)
State v. Davis, 2007 UT App 13, 155 P.3d 909
State v. Fairchild, 2016 UT App 205, 385 P.3d 696
State v. Garrido, 2013 UT App 245, 314 P.3d 1014
State v. Gill, 470 P.2d 250 (Utah 1970)
State v. Guzman, 2018 UT App 93, 427 P.3d 401
State v. Hales, 2007 UT 14, 152 P.3d 321
State v. Holgate, 2000 UT 74, 10 P.3d 346

◁ continued ▷

Related Cases

State v. McNeil, No. 21451-6-III, 2003 WL 22794560 (Wash. Ct. App. Nov. 25, 2003)
State v. Morales, 895 A.2d 114 (R.I. 2006)
State v. Rhinehart, 2006 UT App 517, 153 P.3d 830
State v. Richardson, 2013 UT 50, 308 P.3d 526
State v. Rieck, 2008 UT App 367, 196 P.3d 609
State v. Smith, 1985 Tenn. Crim. App. LEXIS 3020 (Feb. 14, 1985)
State v. Smith, 909 P.2d 236 (Utah 1995)
State v. Tiliaia, 2006 UT App 474, 153 P.3d 757
State v. Vigil, 2013 UT App 167, 306 P.3d 845
State v. White, 880 P.2d 18 (Utah Ct. App. 1994)
State v. Wright, 678 So. 2d 493 (Fla. Dist. Ct. App. 1996)
Strickland v. Washington, 466 U.S. 668 (1984)
United States v. Ellis, 868 F.3d 1155 (10th Cir. 2017)
United States v. Lawrence, 699 F.2d 697 (5th Cir 1983)
[redacted]
Walczak v. General Motors Corp., 340 N.E. 2d 684 (Ill. App. Ct. 1976)
West Valley City v. Hutto, 2000 UT App 188, 5 P.3d 1
Wright v. Swann, 493 P.2d 148 (Or. 1972)

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In THE Utah Court Of Appeals No. 20180649-CA

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In The Utah Supreme Court No. 20200527-SC

CASES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A, B, E to the petition and is
[X] reported at State V. Williams, 2020 UT App. 67, 462 P.3d 832; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Utah State Supreme court appears at Appendix C to the petition and is
[X] reported at State V. Williams, 474 P.3d 949 (Table); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was Denied. A copy of that decision appears at Appendix A & C.

[X] A timely petition for rehearing was thereafter denied on the following date: MAY, 7th 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendment VI

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and Disposition in Lower Courts

The State charged Williams with one count of aggravated burglary (domestic violence), a first degree felony, Utah Code § 76-6-203; one count of criminal mischief (domestic violence), a class B misdemeanor, Utah Code § 76-6-106(2)(c); and one count of assult (domestic violence), a class B misdemeanor, Utah Code § 76-5-102. R.1-2.

The State filed a motion in limine to introduce an audio recording of Father's 911 call at trial, contending that the recording was "an excited utterance pursuant to Rule 803(2) of the Utah Rules of Evidence." R.43. Williams objected. R.68. On the morning of trial, the court heard argument on the State's motion, which the court thought could "be dispositive of the case, one way or another, depending on [its] ruling." R.180. The court said "explicitly [that it] was concerned about the Crawford issue"; it was "a primary concern for the Court." R.197.

During defense counsel's argument, she asserted that the whole 911 tape was inadmissible but that "at least... parts of it need to be redacted." R.198. The court responded, "Well, yeah, and... I think we can cross that bridge if we get there." Addendum G (relevant transcript pages).

Ultimately, the court concluded that the 911 call satisfied the elements of an excited utterance under rule 803(2) and was therefore admissible hearsay. R.206-07. The court also decided that for Confrontation Clause purposes, Father's statements in the 911 call were nontestimonial, given the existence of "an ongoing emergency." R.208-10. The jury heard the 911 call in its entirety. R.313-19.

Aside from the recording of the 911 call, the jury did not hear from any witness to the actual offense—neither Father nor Brother; the jury instead heard only the testimony of three peripheral witnesses. See R.304-08 (testimony of 911

dispatcher); R. 309-13 (testimony of records custodian at the 911 center for the majority of the Salt Lake valley); R. 320-33 (testimony of an officer, who recounted his observations on the scene after the assault had occurred).

Given the state of the evidence, the jury asked several questions, such as "Do we have information on why [Father] and [Brother] are not here to testify as witnesses?", "Did the police officer get a statement from [Brother] as to what happened[?]", and, "Was a statement given to the officer by [Father]?" R. 142-43.

After deliberation, the jury convicted Williams as charged.

On direct apeal, Williams raised three issues: (1) Whether admission of the 911 call violated Williams's constitutional rights guaranteed by the Confrontation Clause, (2) whether admission of the 911 call violated Utah's evidentiary rules against hearsay, and (3) whether the district court erred by determining the admissibility of the entire audio recording rather than considering individual statements contained thereon. The State in its briefing addressed the issues on the merits except to argue that a discrete portion of the hearsay issue – whether the trial court erred in failing to consider the spontaneity of the statements – was unpreserved. See State's Brief at 25-27; Addendum F (relevant portions of the State's brief). The State raised no invited-error argument. Addendum F.

The court of appeals held (1) "that the primary purpose of the 911 call was to enable police assistance to meet an ongoing emergency. Therefore, William's Sixth Amendment right to confrontation was not violated when the call was admitted into evidence," State v. Williams, 2020 UT App 67, ¶ 19, 462 P.3d 832; (2) "that the father's statements at the outset of the call were a spontaneous reaction to the event

STATMENT OF THE CASE

or condition, rather than the result of reflective thought processes," and thus were excited utterances, id. ¶ 30; and (3) "Because the father's statements during the second part of the call do not qualify as excited utterances, those statements should have been excluded. However," the court concluded, "Williams waived his right to appeal this issue by deliberately abandoning any request to stop the call at that point." Id. ¶ 31.

The court of appeals did not address Williams's argument that the trial court erred by making legal conclusions regarding the Confrontation Clause without considering individual statements or whether the purpose of the call ever transitioned from nontestimonial to testimonial.

Statement of Relevant Facts

"At trial, the State presented limited evidence." State v. Williams, 2020 UT App 67, ¶ 5, 462 P.3d 832. The facts alleged against Williams were that one night, "Williams spotted his father's motor home parked outside a business in Midvale, Utah. He broke down the door, entered, and assaulted his father and brother. After Williams fled, the father called 911 and reported the assult." Id ¶ 2.

According to the court of appeals "At the outset of the call, the father's tone was distressed and his breathing labored." Id. ¶ 3. Eventually, a "Unified Police dispatcher (the second dispatcher) joined the call and the first dispatcher explained the nature of the emergency. When the father spoke again, his voice had calmed." Id ¶ 4. "The second dispatcher asked the father a series of questions about the father's age and injuries, details of the assult, Williams's name and birthdate, [and] Williams's physical description...." Id.

REASONS FOR GRANTING THE PETITION

I. This court should grant certiorari to decide whether admission of an entire 911 call, placed after the commission of a crime and when there is no enduring danger, violates a defendant's right to confrontation.

This Court grants certiorari "for special and important reason. The primary consideration is whether a decison on the question presented is likely to have significant precedential value." Utah R. App. P. 46(a). The Confrontation Clause question presented by Williams's case is a recurring one. This is at least the third petition for certiorari raising this issue in as many years. See State v. Sherrick, 20180720-SC; State v. Farnworth, 20180148-SC. This is to say nothing of the number of times the issue arises in district courts, and district courts are presently without direction from this Court. This Court should thus grant certiorari to provide guidance on "a legal issue that has not been addressed by the Supreme Court and that is likely to recur in future cases." Utah R. App. P. 46(a)(4)

Additionally, while the court of appeals has twice addressed the use of 911 calls in violation of the Confrontation Clause, neither of those cases considered the issue within the landscape created by recent United States Supreme Court precedent. Most recently, the court of appeals saw this issue in State v. Farnworth, 2018 UT App 23, 414 P.3d 1053. But the court declined to address the issue on the merits, holding that any error was harmless beyond a reasonable doubt. Id. ¶ 23. Before that, the court of appeals' last considered the issue in Salt Lake City v. Williams, 2005 UT App 493, 128 P.3d 47.

Since the court of appeals' decision in Salt Lake City v. Williams, the United States Supreme Court has issued Confrontation Clause decisions in Ohio v. Clark, 576 U.S. 237 (2015);

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Williams v. Illinois, 567 U.S. 50 (2012); Bullcoming v. New Mexico, 564 U.S. 647 (2011); Michigan v. Bryant, 562 U.S. 344 (2011); Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009); Davis v. Washington, 547 U.S. 813 (2006), and Davis's companion case Hammon v. Indiana.

In that same span of time, the Court has addressed the Confrontation Clause in the context of preliminary hearing testimony, Mackin v. State, 2016 UT 47, ¶ 42, 387 P.3d 986; State v. Timmerman, 2009 UT 58, ¶ 13, 218 P.3d 590; cf. State v. Goins, 2017 UT 61, ¶ 24, 423 P.3d 1236 ("Focusing first on Rule of Evidence 804 permits us to leave the constitutional question for another day.") a detective's written notes, State v. Griffin, 2016 UT 33, ¶ 35, 384 P.3d 186, a prosecutor's leading questions, State v. Bond, 2015 UT 88, ¶ 49, 361 P.3d 104, the exclusion of a victom's sexual history under rule 412 of the Utah Rules of Evidence, State v. Billingsley, 2013 UT 17, ¶ 17, 311 P.3d 995, and child testimony provided through closed circuit television, State v. Henrlod, 2006 UT 11, ¶ 17, 131 P.3d 232.

But no Utah case - whether from the court of appeals or the Utah Supreme Court has addressed how the Confrontation Clause affects the admissibility of 911 audio, through the lens of recent United States Supreme Court cases, until the court of appeals' opinion in the instant case. In this regard, then, the Confrontation Clause question is also "a legal question of first impression in Utah that is likely to recur in future cases." Utah R. App. P. 46(a)(2)

Williams's argument on appeal was that the admission of the 911 call violated his right to confrontation under the Federal Constitution. Recent United States Supreme Court precedent provides guidance on this issue, explaining that the Confrontation Clause "bars admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior

opportunity for cross-examination." Davis, 547 U.S. at 821 (internal quotation marks omitted). Davis distinguished from testimonial hearsay a situation where the 911 "call was plainly a call for help against bona fide physical threat." Id. at 827. The Court acknowledged, however, that "one might call 911 to provide a narrative report of a crime absent any imminent danger." Id (emphasis omitted). Here, the phone call occured after Williams had Allegedly completed the burglary and assult and fled Father's home.

Said simply, although the admissibility of 911 calls comes up quite frequently in criminal cases,[1] the most recent Utah case dealing with 911 calls and the Confrontation [redacted] Clause is from the court of appeals, and it predates Davis. See Salt Lake City v. Williams, 2005 UT App 493. Williams "conclude[d] that whether statements made to a 911 dispatcher are testimonial or nontestimonial must be determined on a case-by-case basis." Id. ¶ 24. A holding from this Court regarding the 911 call in the instant case would therefore provide helpful guidance to litigants and trial courts dealing with Confrontation Clause issues related to 911 calls. Utah R. App. P. 46(a)(4).

This Court should also grant certiorari for the "special and important reason" that the court of appeals and the Utah Supreme Court overlooked Williams's claim that for purposes of the Confrontation Clause, the trial court had an obligation to consider it and when the purpose of the 911 call changed from nontestimonial to testimonial, which the trial court failed to do. See Id. R. 46(a). The court of appeals' opinion did not engage with this argument at all. See generally State v. Williams, 2020 UT App 67.

II. This Court should grant certiorari to decide whether

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admission of the beginning of the 911 call violated Utah's rules or the U.S. Constitution's rules against hearsay.

The court of appeals properly held that the portion of the 911 call after the Second dispatcher joined the line should have been excluded, because Father's statements were not excited utterances. See State v. Williams, 2020 UT App 67, ¶ 31. However, it incorrectly concluded that the first portion of the call was admissible. The court of appeals reasoned, "Looking at each discrete statement in the Call, we agree that the father's statements to the first dispatcher at the outset of the call were a spontaneous reaction to the event or condition, not the result of reflective thought." Id. ¶ 26 (citation and internal quotation mark omitted).

In reality, Father's statements during the beginning of the call were not spontaneous, uncoached, or blurted out. Instead, that portion of the call was a conversation, a back-and-forth with the 911 operator, who was seeking to elicit information from Father, as opposed to Father independently and excitedly uttering statements of his own or on his own.

The 911 call contained some short statements that might arguably be considered excited utterances. Father's repeated and unprompted use of profanity could be viewed as such a statement. R. 182; see, e.g., West Valley City v. Hutto, 2000 UT App 188, ¶ 13 (collecting the following cases and providing the following parentheticals: United States v. Lawrence, 699 F.2d 697, 703 (5th Cir. 1983) ("You're a dead man."); State v. Bray, 472 P.2d 54, 57 (Ariz. 1970) ("Daddy shot Mommy. Mommy is dead."); Layman v. State, 652 So.2d 373, 375 (Fla. 1995) ("Oh my God."); Walczak v. General Motors Corp., 340 N.E.2d 684, 687 (Ill. App. Ct.

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1976) ("It won't turn, Mom," refferring to steering wheel); Wright v. Swann, 493 P.2d 148, 149-50 (Or. 1972) ("Oh, God... It wasn't your fault."); State v. Smith, 1985 Tenn. Crim. App. LEXIS 3020, *5 (Feb. 14, 1985) ("the son-of-a-bitch cut me")).

But the substantive statements made during the beginning of the 911 call — the statements for which the State undoubtedly sought the call's admission — were not of this same quality. The 911 call begins, and rather than blurting out what happened, Father responds directly to questions posed by the 911 operator. R.181. The operator asks for an address, which Father provides. R.181. The first operator then follows up by asking what city and whether Father is located in a house, apartment, or business, which information Father provides. R.181. The operator eventually prompts, "tell me exactly what happend," and Father obliges. R.182. When asked whether he needs medical attention, Father says yes. R.182.

By holding that these statements were excited utterances, the Court of appeals and the Utah Supreme Court contradicted thier Court's binding precedent that to be considered an excited utturance, "the declaration must be a spontaneous reaction to the event or condition, not the result of reflective thought." State v. Smith, 909 P.2d 236, 239 (Utah 1995). This petition thus also "provides an opportunity to resolve confusion or inconsistency in a legal standard set forth in a decision of the Court of Appeals and the Utah Supreme Court... that is likely to affect future cases." Utah R. App. P. 46(3).

Additionally, casses from the Utah Supreme Court which address the hearsay issue, see, e.g., Smith, 909 P.2d at 239; State v. Thomas, 777 P.2d 445, 447 (Utah 1989), are over twenty years old and do not address a 911 call. Therefore,

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the precise hearsay issue presented by this case is an important question of state and Federal law which has not been, but should be, settled by this Court. Utah R. App. P. 46(a)(2),(4).

III. This Court should grant certiorari to decide whether the court of appeals and the sate supreme court improperly considered the invited-error doctrine in resolving this case.

A. The lower courts improperly reached the question of invited error sua sponte.

The lower courts opinion included reference to an invited error argument the State did not make, either in its briefing or at oral argument. Williams sought rehearing to amend the relevant paragraph of the courts opinion to clarify the posture of the issue considered on appeal.

The court of appeals denied the petition for rehearing and the Utah Supreme court denied the petition for Writ of Certiorari. This court should grant certiorari to address the issues not remedied by the lower courts.

Paragraph 34 of the court of appeals' opinion reads, in relevant part:

> Here, the State argues that any error in admitting the entire phone call was invited because defense counsel encouraged the court to make the erroneous ruling... Williams contends that, at most, he failed to properly preserve this issue by not asking for further redactions at that time and that we should still review this forfeited issue for plain error.

State V. Williams, 2020 UT App 67, ¶ 34.

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This paragraph introduces the issue of invited error as one raised by the State, when the State made no such argument, and casts Williams's alternative plain-error argument as a response to an argument, when Williams never had the opportunity to respond to a claim of invited error.

The State never argued that Williams invited any error in the admission of inadmissible hearsay. The State's brief engaged with issues of redaction and consideration of individual statements versus the call as a whole. The State argued the merits of admitting the first thirty-six seconds of the recording and argued the merits of admitting the the rest of the recording was harmless. See State's Brief at 3, 11-12, 14-15, 37, 63 (Addendum F)

Nowhere in the State's brief do the words "invited" or "waived" or any form thereof appear.[2] This is so even though the State directly addressed the portion of the transcript where the trial court broached the issue of redaction. The issue also was not raised or addressed at oral argument. See generally Oral Argument, State v. Williams (No. 20180649) available at http://youtu.be/KyoUZ.US1BIk (beginning at 38:03, State's argument beginning at 51:35).[3]

Because the State did not make the argument "that any error in admitting the entire phone call was invited because defense counsel encouraged the court to make the erroneous ruling," as the court of appeals' opinion says, see Williams, 2020 UT App 67, ¶ 34, Williams was denied the opportunity to respond to such an argument - a denial which implicates due process concerns. Cf. State v. Malo, 2020 UT 42, ¶ 20 n. 7 (noting that the effect of "the State's failure to make the argument" was that the Appellant "could not address the argument in his reply").

In fact, the State's only argument regarding Williams's

failure to preserve an issue for appeal related to the trial court's obligation to consider whether the statements made during the 911 call were spontaneous. State's Brief at 25-27. Adding also that there is no way Williams could be preserving an issue for appeal because the fact is that during trial the prosecution argued for the admission of the 911 call, the Judgement being made in the prosecutions favor but not before the court could inform the prosecution that he was setting this case up for an appeal. Therefore inviting error himself. Further mare At oral argument, the only issue the State claimed was not preserved was whether an officer's hearsay statement could be relied upon for the truth of the matter asserted, an argument made in response to the Court's questioning. Oral Argument at 53:30-54:04. So the real question is can the report that was made to the 911 operator and the officers involved be relied upon as the truth.

Furthermore, who raised the issue of invited error has substantive ramifications. The lower Court has held "that while the invited error doctrine 'may preclude application of the plain error analysis,' the court will refuse to consider invited error when 'neither party raised this question below or in their briefs or at oral argument.' Pratt v. Nelson, 2007 UT 41, ¶ 20 n.32, 164 P.3d 366 (quoting State v. Casey, 2003 UT 55, ¶ 39 n.10, 82 P.3d 1106). The court of appeals relied on Pratt in expaining the invited-error doctrine, see Williams, 2020 UT App 67, ¶ 33, yet it seemed to overlook Pratt's reaffirmance of the principle that appellate courts will "decline to apply invited error" when "the State has failed to raise the issue in its brief," Pratt, 2007 UT 41, ¶ 20.

Given this Court's direction that an argument of invited error must be raised by the State to be considered,

Pratt 2007 UT 41, ¶ 20 & n. 32, and the lack of argument or briefing on this issue, the court of appeals should not have considered the issue of invited error. This Court should grant certiorari "to resolve confusion or inconsistency in a legal standard set forth in a decision of the Court of Appeals." Utah R. App. P. 46(3). "Also in the Utah Supreme Court." State v. Williams 474 p.3d 949 (Table)

B. The court of appeals and the Utah Supreme Court improperly articulated and analyzed the invited-error doctrine.

The State likely raised no invited-error argument because it understood that counsel's statements – considered in context – invited no error. By holding otherwise, the courts misapplied the invited-error doctrine.

To begin, the State acknowledged that the relevant conversation between defense counsel and the court was based on confusion:

> Defense counsel responded by first asking the court to redact an alleged statement that Defendant was "dangerous when he's on drugs." R201, 214. But upon relistening to the 9-1-1 call, the trial court determined that defense counsel had misheard David's statement where he says, "he's a fucking danger." R215:21 (emphasis added). The trial court thus found that David had not in fact made the alleged statement: "He doesn't say anything about being on drugs. He says he's a fucking danger." R216. There thus was no statement to redact. R216.

State's Brief at 21.[4] In other words, the State noted that counsel appeared to be confused about what was contained on the recording. See State's Brief at 21, 63. This conversation was the same one the lower courts determined supported a finding of waiver. State v. Williams, 2020 UT App 67,

¶¶ 34-35. The State thus had the opportunity to argue that counsel engaged in the "intentional relinquishment of any request to redact the statements made after the second dispatcher joined the call," cf. id ¶ 36, but it chose not to.

see also State's Brief at 63 ("The record also shows that the court ultimately declined Defendant's redaction requests because it determind that the father never in fact said Defendant was "dangerous when he's on drugs," R216, and because it deemed the father's statements describing Defendant's physical characteristics and clothing admissible as nontestimonial, excited utterances, see R206-11."

The lower courts, in holding that defense counsel invited the error, failed to consider the issue in context and changed the test for invited error. It conflated the idea's of waiver, abandonment, and invited error, simultaneously holding that this was not "a typical case involving invited error" because "the record does not demonstrate that counsel independently made a clear affirmative representation of the erroneous principle," id. ¶ 35 (citation and internal quotation marks omitted), but that "when the district court asked if Williams wanted to stop the call at the further questioning, defense counsel responded, No." Id. ¶ 36 (cleaned up).

The court's recasting of the invited doctrine warrants address by the United States Supreme Court to clarify the doctrine. Utah R App. P. 46(3). Additionally, by holding that defense counsel's actions satisfied its new form of invited error, the court overlooked the fact that counsel's "NO" was not given in isolation but in connection with a separate request to redact any reference to drugs.

Defense counsel asked that the call be cut off when

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Father indicated Williams was on drugs. On further review, it became clear that Father never made that statement. Counsel, then, did not provide a categorical "NO" to the trial court redacting the call; she merely suggested redaction should start at a different point. Because the call did not contain drug references counsel initially thought it did, there is no way of knowing whether defense counsel sought redaction before or after the portion of the call the trial court asked about. It is thus unclear how the lower courts could confidently say that defense counsel invited the trial court to err by admitting the second part of the 911 call. This Court should thus also grant certiorari to review the lower courts iteration of the invited-error doctrine and its substantive invited-error holding.

III. Did admitting the 911 call violate Williams's Sixth amendment right?

Although the 911 call may assure that there was actually made and recorded also when the police officers arrived on the scene of the alledged crime they can confirm and did confirm under oath at Williams's preliminary hearing that it was the Father David Willidms who they encountered when they arrived on the scene. It only proves still today that there was some pretty serious allegations being made against Mr. Williams.

Without the Father and the Wittness in court at trial and under oath to confirm the allegations made against him are true then it was just a phone call that is hearsay, I belive strongly that if the Victom/Wittness was in court at trial that

thier testimony would have fallen in favor of the defendant. It is also a fact that police reports and emergency call made can be falsified, not to say that a police officer or a 911 call operator are falsifying a report but it is possible that the person or persons reporting is inaccurate or that thier perception is altered. It is the Duty of an officer or a 911 call operator to record what is actually being said at that moment in time. Along also with other duties such as solving crimes etc. but in this case with mr. Williams the only thing that was proven in court was that the Father was making allegations against the defendant and they described what the Alledged crime scen looked like when they arrived. The 911 call and the statements given by the police officers doesn't prove beyond a resonable doubt that the defendant is actually guilty, everything being said on the 911 call is hearsay we actually need the victom/witness in court for cross examination.

The victom/witness was not and still is not deceased or absolutly unavailible due to other circumstances. They chose not to come to court and avoided every attempt made by the court to supeana them to testify at trial.

This type of action should raise red flags when it comes to making decisions [redacted] Regaurding Sixth Amendment Rights and Hearsay Acts.

There are many, many other questions that need to be asked to the Father and the Brother See page [redacted] i and ii of the petition for writ of certiorari in the united states supreme court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Justin Williams

Date: Dec, 29, 2020

Conclusion

For the reasons above, Williams respectfully requests that this Court grant certiorari to consider important and recurring questions regarding the proper interpretation of the Confrontation Clause, United States rules against hearsay, the invited-error doctrine, and the U.S. Constitution Amendment VI.

U.S. Const. amend VI

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.