

2009

## Utah v. Clay Lowe : Brief of Appellant

Utah Court of Appeals

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### Recommended Citation

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH, )  
 )  
 ) **APPELLANT'S BRIEF**  
 )  
 Plaintiff, )  
 )  
 vs. ) Case 2008-149  
 )  
 )  
 CLAY LOWE, )  
 )  
 Defendant. )  
--0000000--

THIS IS AN APPEAL FROM A CRIMINAL CONVICTION ENTERED IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY, STATE OF UTAH. THE HONORABLE CLAUDIA LAYCOCK, TRIAL JUDGE.

PRIORITY NO. 2

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	)	
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	)	
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	)	
CLAY LOWE,	)	APPELLATE No. 20090149
	)	
Appellant/Defendant.	)	
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Both Article I, Section 14 of the Utah State Constitution and the Fourth Amendment to the United States Constitution prohibit unreasonable searches and seizures. The language is almost identical and provides as follows:

The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or things to be seized.

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#### JURISDICTION OF APPELLATE COURT

Authority for said appeal is found within the confine of Rule 26 of the Utah Rules of Criminal Procedure; Utah State Constitution Article 1, Section 12; Utah Code Annotated Section 77-1 6(g); and Section 78-2-2 (i) Utah Code Annotated.

#### STATEMENT OF ISSUE

Defendant challenges the trial court's denial of his motion to suppress evidence. Officers commenced a search of one individual (Lamoreaux) based solely on the desire to speak with him about the location of another person sought by

police. The initial officer then conducted a weapons search of Mr. Lamoreaux locating a small knife in his back pocket. Mr. Lowe, appellant, was observing the detention of Mr. Lamouriex when a second officer, Provo Policeman Morgan, felt it necessary to search Mr. Lowe for weapons. During this search, officer Morgan located methamphetamine.

No cause existed by either officer to suspect any criminal activity of either person searched. Defendant argues that citizens are entitled to be free from police intervention absent reasonable cause to believe criminal activity is afoot. The trial court denied the defendant's motion to suppress.

#### STATEMENT OF CASE

The defendant is charged with Possession of a Controlled Substance. The date of the offense alleged is February 24, 2008.

Defendant filed a motion to suppress evidence. The defendant challenged the search of the defendant specifically the search of his person. Defendant alleged a violation of her rights as guaranteed by our Constitutions protecting him from unreasonable searches and seizure. The trial court ruled found that officer Morgan



was entitled to search the defendant for weapons absent any suspicion of criminal activity.

### FACTUAL STATEMENT

The defendant was present when one officer (Deputy Sheriff Deke Taylor) was attempting to interview another person (Tim Lamoreaux). *Suppression Hearing (SH) Page 5 Line 19*. Deputy Taylor was question Mr. Lamoreaux about the whereabouts of a reported fugitive. *SH Page 6 Line 6*. It all occurred at the residence of Mr. Lowe. *SH Page 16 Line 16*. It was reported that Mr. Lowe had been detained by Officer Taylor for an unknown reason. *SH Page 17 Line 1*. (*The State of Utah did not call Deputy Taylor but introduced Officer Taylor's report into evidence. Appellant will cite this report by the notation Officer Taylor (OT) Report.*) The Court made findings that Deputy Taylor was lawful in taking Mr. Lamoreaux from the home based on officer safety concerns. *See Findings, Paragraph 3*.

Deputy Taylor had no suspicion of criminal activity neither of Mr. Lamoreaux nor of Mr. Lowe. He simply wanted to interview Mr. Lamoreaux about the location of another person (Joe Crocker). *OT Page 4 of 6*.

Lamoreaux was inside the home and did not want to speak with Officer

Taylor. He refused Officer Taylor's order to come from the house. *OT Page 4 of 6.*

Taylor ordered him from the house. *OT Page 4 of 6.* Officer Taylor then pulled Lamoreaux from the home and wrestled him to the ground. Taylor had reported that Lamoreaux had placed his hands in his pocket. Although not having Lamoreaux detained or under suspicion, Mr. Taylor forcibly withdrew Lamoreaux from within the home and took him to the ground and conducted a search of Lamoreux. *SH Page 6 Line 20-24.* Mr. Lamoreaux apparently was not suspected of any crimes excepting not complying with Mr. Taylor's request.

As Lamoreaux was taken down to the ground at the drive way of the home of Mr. Lowe, a second officer (Provo City Officer Morgan ) in company with a third officer (Provo City Officer Parker) arrived on the scene. *SH Page 6 Line 20-24*

The defendant was not suspected of any criminal activity but was simply present at the location of the arrest (driveway of his house). The Provo City officers reported the defendant was being detained for an unknown reason. *SH Page 7 Line 15-24.* Mr. Lowe He was standing about 4-5 feet away from Lamoreaux and Taylor.. *SH Page 7 Line 18-19.*

Morgan than decided to physically control Mr. Lowe. *SH Page 8 Line 2-3.*

Lowe was controlled by placing him up against a vehicle. *SH Page 8 Line 7.* The

officers (Taylor) searching Mr. Lamoreaux removed a butterfly knife from his waistband. *SH Page 8 Line. 9-10. See Court findings, paragraph 4.* Lowe was doing nothing to arouse any suspicion. *SH Page 15 Line 3.* Mr. Lowe had merely present observing. *SH Page 15 Line 9.*

Officer Morgan justified the 'Terry' frisk based on Lowe's turn into him. . *SH Page 8 Line 11.* Morgan speculated that since Lamoreaux had a weapon, Lowe may have one also. *SH Page 8 Line 16-17.* Absent any suspicion of any criminality, Morgan then did a 'Terry' frisk of Lowe. *SH Page 8 Line 19.* See Court findings, paragraph 4.

During this search, Morgan located a smaller pill bottle in Mr. Lowe's pant pocket and pulled it out. *SH Page 9 Line 6-9. Page 11 Line 8.* Nothing was unusual about the pill bottle, a typical pill bottle. *SH Page 11 Line 2-5.* It was two inches in length and one half inch width. *SH Page 11 Line 11-13.* Officer Morgan attempted to justify the search for the pill bottle by suggesting it may have been a cylinder shaped knife although there was no suggestion of a blade. *SH Page 12 Line 21. Court finding, paragraph 5.*

As he pulled the pill bottle out of the pocket, a clear plastic baggie reportedly fell out onto the ground. *SH Page 9 Line 7-9.* The substance in the baggie tested as

methamphetamine. *SH Page 9 Line 13.*

The Court made findings after the motion to suppress hearing. The Court found the initial detention of both Lamoreaux and Lowe by Officer Taylor was lawful. *Court's Findings, Paragraph 3.* Lowe was not obstructing Officer Taylor's dealings with Mr. Lamoreaux. *Court's findings, Paragraph 4.* However, when Mr. Lowe turned into Officer Morgan, Morgan was justified in concluding that Mr. Lowe may have a weapon. *Court's Findings, Paragraph 4.*

#### SUMMARY OF ARGUMENT

The search of Mr. Lowe cannot be supported under a 'reasonable suspicion of criminal activity' exception to the Fourth Amendment. No such cause existed to suspect any crime. Further, a turn into the officer does not justify a reasonable suspicion justifying a weapon search.

#### DETAILED ARGUMENT

Both Article I, Section 14 of the Utah State Constitution and the Fourth Amendment to the United States Constitution prohibit unreasonable searches and seizures. The language is almost identical and provides as follows:

The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or things to be seized.

The balance between the public interest and the individual Constitution guaranteed right, personal security and privacy, tilts in favor of freedom from police interference. Brown v. Texas, U.S. 47 (1979). This Court has a responsibility to jealously guard the rights of the citizens of this State against a violation of their civil liberties. State v. Hansen, 63 P.3d 650 (Utah 2002).

#### ENTRANCE INTO PRIVATE RESIDENCE

Here, Officer Taylor detained Lamoreaux based on Lamoreaux's refusal to cooperate and to come outside an talk. As a result, Taylor pulled Lamoreaux out of the Lowe home wrestling him to the ground. This is prohibited by section 77-7-8, Utah Code Annotated. It provides:

Forcible entry to make arrest — Conditions requiring a warrant.

(1)(a) Subject to Subsection (2), a peace officer when making an arrest may forcibly enter the building in which the person to be arrested is, or in which there are reasonable grounds for believing him to be.

(b) Before making the forcible entry, the officer shall demand admission and explain the purpose for which admission is desired.

(c) The officer need not give a demand and explanation before making a forcible entry under the exceptions in Section 77-7-6 or where there is reason to believe evidence will be secreted or destroyed.

**(2) If the building to be entered under Subsection (1) appears to be a private residence or the officer knows the building is a private residence, and if there is no consent to enter or there are no exigent circumstances, the officer shall, before entering the building:**

**(a) obtain an arrest or search warrant if the building is the residence of the person to be arrested; or**

**(b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.**

No search warrant exists. No consent was obtained. No criminality existed.

Deputy Taylor should have simply left and obtained whatever judicial approval he may.

## LEVEL OF ENCOUNTERS

Before an officer is entitled to place his hands on the accused, he must have constitutionally adequate reasons to do so. Sibron v. New York, 392 U.S. 40, 64 (1968); Terry v. Ohio, 392 U.S. 1, 29 (1968); Ybarra v. Illinois, 444 U.S. 85, 93-94 (1979). Adams v. Williams, 407 U.S. 143, 146 (1972). No justification existed to search either Lamoreaux or Mr. Lowe.

Questions regarding weapons search is governed by Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Lafond, 2003 UT App 101 68 P.3d 1043. See also Utah Code Ann. § 77-7-15 (1999) which codified the 'Terry' standard3d 285. State v. Hansen, 63 P.3d 650 (Utah 2002).

A level one citizen encounter with a law enforcement official is consensual - -- wherein a citizen voluntarily responds to non-coercive questioning by an officer. This is not a consensual encounter.

A level two encounter involves an investigative detention or a detention authorized under Terry v. Ohio, 392 U.S. 1 (1968). A "Terry" search requires specific and articulable facts giving rise to a reasonable suspicion that a person has or is committing a crime. State v. Naranjo, 2005 Ut App 281, 118 P.3d 285. State v. Deitman, 739 P.2d 616, 617 (Utah 1987). The detention should be brief and non-intrusive.

Here no suspicion of criminality existed. The encounter was very intrusive including physical contact, physical control and in the case of Lamereaux forcing him to the ground and starting a physical confrontation. No accusation of any criminal conduct is made preceding the search of Lamoreaux or Lowe.

See also Utah Code Ann. § 77-7-15 (1999). It provides:

A peace officer may stop any person in a public place when he has a reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

In State v. Warren, 2003 UT 36, 78 P.3d 590, the Supreme Court addressed the standards for determining the standard for determining the reasonableness of a protective frisk ("Terry frisk") for weapons. The officer there had no reason to believe Warren was armed and dangerous but the trial court denied the motion to suppress. The court of appeals reversed the trial court's decision. The Supreme Court affirmed the decision of the court of appeals.

There Officer Swensen observed an unidentified male leaning into an open passenger door of a parked car n. Warren was in the driver's seat. Swensen turned his vehicle around to investigate. Swensen suspected drug activity or prostitution. After watching the proceedings for less than a minute, Officer Swensen observed the person who was leaning into the passenger door shut the door and leave on foot.

Swensen pulled Warren's car over for failure to signal. He asked Warren for his driver's license, vehicle registration, and proof of insurance. Finding Warren's



license to be invalid because of unpaid reinstatement fees, Swensen decided to impound the vehicle and asked Warren to step out of his vehicle to sign the citation.

After Warren exited the vehicle, Officer Swensen asked him if he had any weapons. Warren responded that he did not. Warren did not do anything that caused Swenson any concern. Nevertheless, Officer Swensen decided to perform a Terry frisk for weapons. He testified that to promote the safety of officers as a matter of routine. During the frisk, cocaine fell from underneath Warren's sweatshirt. Swensen then placed Warren under arrest. A more thorough search of Warren's person incident to his arrest revealed additional controlled substances and drug paraphernalia.

The Court's analysis turned on Terry v. Ohio, where the United States Supreme Court held that an officer may perform a protective frisk pursuant to a lawful stop when the officer reasonably believes a person is "armed and presently dangerous to the officer or others." 392 U.S. 1, 24 (1968). But first the officer must first have a valid reason for stopping the person, and the officer's subsequent actions must be "reasonably related in scope to the circumstances" justifying the stop.

Hunches do not justify a search.. To justify a weapons frisk, a police officer must be able to point to specific and articulable facts, which taken together with

rational inferences warrant such an intrusion. 392 U.S. at 21. The Utah Supreme Court found Officer Swensen's suspicion was too attenuated to justify the search under the guise of officer safety. Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more than inarticulate hunches.

To justify a Terry frisk, the first condition requires a reasonable suspicion that a person presently is engaged in criminal activity must exist. Arizona v. Johnson, 129 U.S. 781 (2009), State v. Schlosser, 774 P.2d. 1132 (Utah 1989.) State v. White, 856 P.2d 656 (Ct. App. 1993). No suspicion existed.

The illegal detention of Lamoreaux did not justify a second officer (Morgan) conducting a 'weapon search' without reasonable cause to believe Lowe was committing a crime. U.S. v. Terry, 391 U.S. at 30, 88 S. Ct. at 1884. Arizona v. Johnson, 129 U.S. 781 (2009).

#### SEARCH OF MR. LOWE

Mr. Lowe's presence at the scene of Officer Taylor's illegal search of Lamoreaux does not subject Lowe to search. Witnesses and observes are not subject to search.. United States v. Di Re, 332 U.S. 581, 586-87, 92 L. Ed. 210, 68 S. Ct. 222 (1948). Ybarra v. Illinois, 444 U.S. 85, 91, 62 L. Ed. 2d 238, 100 S. Ct.

338 (1979), reh. denied 444 U.S. 1049 (1980) (patrons at a bar); State v. Baker, 2008 UT App 115 (April 2008) 182 P.3d 935 (passengers in a car)..

When officer Taylor makes a forcible detention (without cause) of Lamoreaux, this illegality cannot justify the search of Lowe but, in fact, taints the search of Lowe. . State v. Johnson, Ariz. App. 2007, 170 P.3d 667; Terry v. Ohio, 391 U.S. at 30, 88 S. Ct. at 1884. Metzker v. State, 797 P.2d 1219 (Alaska Ct.App. 1990). United States v. Ward, 488 F.2d 162 (9th Cir. 1973).

Observers or passengers are free to leave a traffic stop and are not subject to search. Brendlin v. California, 551 U.S. 249; State v. Baker, 2008 UT App 115 (April 2008) 182 P.3d 935. In State v. Johnson, 805 P.2d at 764, the Utah Supreme Court held running a warrant check on a automobile passenger exceeded the appropriate scope of a traffic stop. In Arizona v. Johnson, 129 U.S. 781 (2009), the U.S. Supreme Court cautioned that the 'weapons search' exception must be preceded by a 'suspicion of criminality' and a 'reasonable belief that the subject is armed.'

In State v. Valdez, 2003 UT App 100, 68 P.3d 1052, police officer's request for a defendant's identification during the arrest of arrestee at her home did

not justify a search of another occupant of the home which was not the focus of the arrest warrant.

Individuals cannot be subjected to search based on a third party's crime.

United States v. Di Re, 332 U.S. 581, 586-87, 92 L. Ed. 210, 68 S. Ct. 222 (1948).

Ybarra v. Illinois, 444 U.S. 85, 91, 62 L. Ed. 2d 238, 100 S. Ct. 338 (1979), reh.

denied 444 U.S. 1049 (1980).

#### CAUSE TO SUSPECT WEAPONS

In State v. White, 856 P.2d 656 (Ct. App. 1993), the Court found that an officer must have more than an unparticularized hunch to justify a weapon search. He must be able to point to particularized specific and articulable facts, which taken together with rational inferences, reasonably warrant a frisk. State v. Warren, supra. State v. Carter, 707 P.2d 656 (Utah 1985). Here, Officer Morgan justified a 'weapon search' by Lowe turning into the officer (away from the confrontation).

In State v. White, 856 P.2d 656 (Ct. App. 1993) is particularly instructive presenting similar facts. Officers received via dispatch information from an ex-wife that the defendant was using cocaine and that he may have been involved in a domestic disturbance. The arresting officer and three back up officers responded. They confirmed the defendant's presence at a parking lot and noting a man and a

woman leaning over in the back seat of a car.. Officers drove up behind the Oldsmobile in two marked police cars and one unmarked police car. They approached the car and asked the parties to step out of the vehicle. They questioned the passenger while the arresting officer focused on defendant, instructing him to keep his hands in sight, out in front of him and then to place his hands on the back portion of the car. The officer then proceeded to frisk defendant for weapons.

This precaution was taken due to the allegation that the defendant had violated his parole and had possibly been involved in a domestic disturbance. The officer conceded the defendant gave no indication that he was armed. The officer was concerned that defendant's heavy coat could be concealing weapons so he frisked defendant.

The White court noted the Utah Supreme Court's invalidation of a search based on the suspect's "common gestures and movements" . No reasonable suspicion can be based on furtive gestures and a fidgeting appearance. See State v. Schlosser, 774 P.2d 1132, 1138 (Utah 1989). The Court found the search of White was illegal at its inception. The officers were not allowed to conduct a frisk of White. The personal observations did not provide a reasonable suspicion of danger, much less criminal activity.

No justification existed to believe Mr. Lowe was involved in any criminal activity nor Mr. Lamoreaux.. Since no information was provided that Mr. Lowe was under any criminal suspicion, the exception granted under Terry v. Ohio does not apply.

#### OFFICER SAFETY

Routine pat down searches based on general concerns for officer safety are not constitutionally permitted. State v. Warren, supra. The mere possibility that a suspect may have a weapon or that evidence might be destroyed is simply not enough. State v. Palmer, 803 P.2d at 1253.

In State v. Chapman, 921 P.2d 446 (Utah 1996), an officer had pulled behind a vehicle and initiated his warning lights. The officer questioned them about what they were doing and they advised just talking. He then requested identification from each of them. The woman, who owned the car, produced a driver's license and a vehicle registration. Chapman did not have any identification but provided his name. The officer then ran driver's license and warrants checks on Chapman which came back negative. A second officer contacted the first officer. He warned him to be careful because Chapman was an alleged gang member and was known to carry a

gun. Second officer Ellertson then drove to the scene. Upon his arrival, both officers approached the car, asked Chapman to step out, and told him to place his hands on his head and lean forward against the car. They then conducted a pat-down search and found no weapon. When asked if he was armed, Chapman replied that he was not carrying a gun, but later conceded that he did have a gun in a small pack under the front seat of the car.

The State claimed that the secondhand information concerning gang membership and possession of a gun supported reasonable suspicion and therefore justified Chapman's continued detention. The State conceded that gang affiliation, by itself, is no basis for an investigative detention but argued that coupled with information about possible possession of a gun, the detention and succeeding search were legal.

The Court disagreed. They found that upon receiving the report that Chapman was known to carry a weapon, the officer was entitled to follow ordinary safety procedures to protect himself. This would authorize the officer to wait for a back-up officer to arrive, asks Chapman to step out of the vehicle, and even questioning him about being armed. However, once he was outside of the vehicle

and known to be unarmed, the officers had no reasonable, articulable suspicion either to continue questioning him regarding weapons or to search for them.

In State v. Baker, the Court of Appeals concluded an already confiscated knives did not justify a frisk of the passengers under the guise of officer safety.

See also State v. Parke, 2009 Ut App 50, an officer observed a vehicle pull out of a gas station parking lot and onto a city street "without stopping and checking for traffic." He initiated a traffic stop and pulled the vehicle over in a movie theater parking lot. Parke was the only occupant of the vehicle. The officer commenced a Terry frisk because Parke made a "shoulder movement ". The officer also saw what appeared to be defendant reaching towards his waistband area. The officer speculated that he may be hiding either drugs or a weapon.

Based on these facts, he searched Parke's person and "felt what appeared . . . to be [a] knife in [Parke's] pocket". Parke confirmed it was a knife. Officer Anderson removed from Parke's pocket a pocket knife on a chain, to which a capsule was also attached. The officer then extended his search to the vehicle. The Court found such behavior insufficient to justify a Terry frisk for weapons. Here we have a 180 degree turn into the officer---turning away from Taylor's confrontation with Lamoreaux



In State v. Schlosser, 774 P.2d 1132 (Utah 1989) the Court noted that turning to the left and to the right, appearing fidgety, bending forward, and turning to look at the officer, do not, without more, show a reasonable possibility that criminal conduct had occurred or was about to occur.

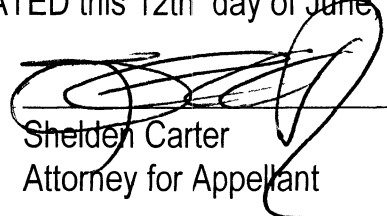
Applying the logic of Schlosser and Parke, the turn of 180 degrees into the office is no more than a hunch or an inchoate suspicion. When it is impossible to draw a clear inference regarding the nature of the movement, any interpretation of criminality or danger in such a movement by a police officer is iust a "hunch" or "inchoate suspicion." State v. Parke, supra.

## CONCLUSION

1. The officer's search was illegal and the evidence must be suppressed.
2. Deputy Taylor had conducted an illegal search of Mr. Lamoreaux by withdrawing him from a residence and subjecting him to search. This conduct should have been preceded by a suspicion of some criminality. It was not.
3. Defendant Lowe mere presence does not justify a suspicion of any criminality. Prior to laying a hand on Lowe, the officer must have reasonable cause.

4. The presence of a knife on Lamoreaux did not support that Mr. Lowe was armed or a danger to the officer. The turn into the officer by Lowe is consistent with innocence behavior. Any interpretation of criminality or danger in turn is just a "hunch" or "inchoate suspicion lacking a reasonable basis to search.

DATED this 12th day of June, 2009.



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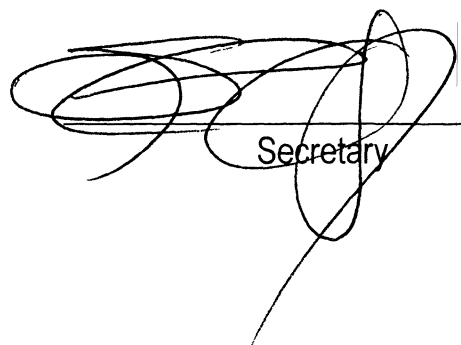
MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 16<sup>th</sup> day of June, 2009, by first-class, U.S. Mail, postage prepaid to the following:

--Original and eight Copies to--  
Clerk of the Court of Appeals  
Utah Court of Appeals  
450 South State Street  
P.O. Box 140230  
Salt Lake City, Utah 84114-0230

801-578-3999

ATTORNEY GENERAL FOR THE STATE OF UTAH  
160 East 300 South  
#600  
SALT LAKE CITY, UTAH 84114



Secretary

Addendum to Brief

Officer Taylor's Report

**SUPPLEMENTAL NARRATIVE :**

**Name:** Taylor R (UC)

**Date:** 19:06:21 03/06/08

**FACTS**

On February 24, 2008 at approximately three p.m. Payson P.D. Detective Brett Lloyd located Timothy Lamoreaux at a residence in Provo at 284 N 500 W. Detective Lloyd contacted me to respond to assist him with an interview of Lamoreaux who is a known associate of then fugitive Joe Crocker whom Detective Lloyd was attempting to locate to arrest for several outstanding arrest warrants he had out on him. Lamoreaux was located in apartment three at the above location when the renter of that unit, Clay Lowe, approached Lloyd and I in the driveway while we were waiting for uniformed Provo P.D. officers to respond.

**ALTERCATION**

Detective Lloyd and I were dressed in plain clothes and when I initially made contact with Timothy Lamoreaux, Lamoreaux was standing in the doorway to apartment three. We both made eye contact with one another and I identified myself as a deputy sheriff and asked to speak with him. Lamoreaux was holding two cell phones in his right hand when I first observed him and he immediately placed his left hand in his front left pants pocket. I ordered him to keep his hands where I could see them and further to come out of the building and Lamoreaux refused. Lamoreaux continued to stand in the doorway of the building and moved the cell phones to his left hand and began to put his right hand in his front right pants pocket when I again ordered him to keep his hands in sight and to exit the building. Lamoreaux reached in to his right pants pocket and so I approached and physically pulled him out of the home by taking ahold of his shirt with my left hand and forcing him to the ground while a third time ordering him to keep his hands where I could see them.

**PAT SEARCHES FOR WEAPONS**

I searched and handcuffed Tim Lamoreaux and while doing so, recovered a red butterfly type knife from his front right pants pocket. The knife was red in color and had an approximate six inch blade.

Because of the physical confrontation the other two individuals present at the time were also patted down for weapons. Provo Officer Troy Morgan pat searched Clay Lowe and when he did so, he found a small plastic zip lock type baggy of what appeared to be crystal methamphetamine in one of Lowe's pants pockets.

**OFFICER TROY MORGAN'S STATEMENTS**