

2010

Utah v. CPB : Brief of Appellee

Utah Supreme Court

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Case No. 20100901-CA

IN THE
UTAH COURT OF APPEALS

State of Utah in the Interest of

C.P.B.,

A person eighteen (18) years of age or older.

Brief of Appellee

Appeal from a juvenile court adjudication for possession or use of
a controlled substance, a class A misdemeanor if committed by an
adult, in the Sixth Judicial Juvenile Court, Kane County, the
Honorable Paul D. Lyman presiding

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UTAH APPELLATE COURTS

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UTAH COURT OF APPEALS

State of Utah in the Interest of

C.P.B.,

A person eighteen (18) years of age or older.

Brief of Appellee

STATEMENT OF JURISDICTION

C.P.B appeals from a juvenile court adjudication for possession or use of a controlled substance, a class A misdemeanor if committed by an adult, in violation of Utah Code Ann. § 58-37-8(2)(a)(1) (West Supp 2010). This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2009).

STATEMENT OF THE ISSUES

1. Is reliable, properly authenticated, non-hearsay evidence sufficient in itself to prove possession of marijuana?

Standard of Review. When reviewing a bench trial for sufficiency of the evidence, the Court must sustain the judgment of the trial court unless it is against the clear weight of the evidence or the Court otherwise reaches a definite and firm conviction that a mistake has been made. *State v. Briggs*, 2008 UT 75, ¶10, 197 P.3d 628 (citations omitted).

Whether the evidence was sufficient is largely dependent on the whether the juvenile court properly admitted a State's exhibit of text messages as non-hearsay. "In reviewing the admissibility of hearsay, legal questions are reviewed for correctness while the ultimate ruling on admissibility is reviewed for an abuse of discretion." *State v. Burke*, 2011 UT App 168, ¶ 16, 256 P.3d 1102 (citation omitted).

STATUTES AND RULES

The following statutes and rules are attached at Addendum A:

UTAH CODE ANN. § 58-37-8(2)(a)(i) (West Supp. 2011);

UTAH CODE ANN. § 78B-5-608 (West 2009);

Utah R. Evid. 801, 802, 803, 901.

INTRODUCTION

C.P.B., a minor at the time of the offense, was adjudicated guilty of possessing marijuana. At trial, the State presented testimony to support three exhibits — cell phone text messages and written statements — showing that C.P.B. had obtained marijuana from a drug dealer, although it did not present the contraband itself. C.P.B. objected to the admission of all of exhibits. The juvenile court overruled the objections and admitted the exhibits, finding that they were properly authenticated and constituted reliable non-hearsay. The text messages

and the drug dealer's prior statements thus formed the factual basis for the juvenile court's adjudicating C.P.B. guilty of possession of marijuana.

STATEMENT OF THE CASE

The State filed a petition in juvenile court alleging that on October 1, 2008, C.P.B. had possessed or used a controlled substance (less than an ounce of marijuana) in a drug-free zone, in violation of Utah Code Ann. §58-37-8(2)(a)(i), -(d) (West Supp. 2011), a class A misdemeanor if committed by an adult (allegation 2). R54-56.¹ The petition also alleged that on six other occasions in 2008, C.P.B. had attempted to possess or use a controlled substance (less than an ounce of marijuana) in a drug-free zone, class B misdemeanors if committed by an adult (allegations 3-8). R55-56. The State later amended its petition twice — once to eliminate the “drug free zone,” element, which reduced all of allegations by a degree, and a second time, to strike all but one of the six attempt allegations (allegation 3). R7-12.

Following trial, the juvenile court found that the State had proved allegation 2 — that C.P.B. possessed a controlled substance — but dismissed the attempt allegation. R4-6; 60:71, 79. C.P.B. timely appealed. R2.

¹ Citation is to the current code, which, although amended since the events at issue, does not alter the disposition of this case.

STATEMENT OF FACTS

C.P.B. was an acquaintance of Luke Johnson, a drug dealer in Kanab, Utah. R60:42. In 2008, Johnson was convicted of distribution of controlled substances and money laundering and sentenced to prison. R60:40-42. Based on Johnson's testimony and telephone records of his text communications with C.P.B., the juvenile court found sufficient evidence to prove that C.P.B had possessed marijuana. R5; 60:79

As part of his investigation of Johnson's case, Sergeant Ted Bernard of the Kane County Sheriff's Office reviewed Johnson's lengthy cell phone text message history, obtained from Johnson's service provider. R60:5, 7-8, 17. Sergeant Bernard sorted and organized the messages between C.P.B and Johnson in chronological order, dating from October 2008 through March 2009, to show the time and content of each text message and the telephone number from which the message was sent and telephone number at which the message was received. R60:7, 14-18; State's Ex. 1 (Addendum B). Johnson's telephone number — (435) 616-5528 — was identified through an investigative subpoena; C.P.B.'s telephone number — (435) 689-2147 — was identified by Johnson himself from personal experience. R60:15, 18. Sergeant Bernard highlighted and assigned a number to two particular series of text messages between Johnson and C.P.B concerning illegal drug activity, one on October 1, 2008 — #213 — and

one on October 11, 2008 — #214. R60:28-30; State's Ex. 1. In text messages #213, C.P.B. wrote to Johnson, "Got any bud?" and that "a ten sack" would be "good for [her]." Within text messages #214, C.P.B. wrote again to Johnson, "Do you have like a bowl or something? I can give you a few bucks." State's Ex. 1.

Through this investigative work, Sergeant Bernard concluded that C.P.B. had attempted to obtain drugs from Johnson on one occasion and had actually obtained drugs from him on another. R60:28-38; State's Ex. 1-3. Sergeant Bernard then interviewed Johnson about particular text communications with C.P.B., their purpose, and the events arising out of them. R60:28, 30-31, 54-55; State's Ex. 1. At this meeting, Johnson signed statements confirming that the messages in question were for the purchase of "weed," which Johnson acknowledged was marijuana. R60:31-32, 51, 55; State's Ex's. 2 & 3 (Addendum C). At that time, Johnson also admitted that on at least one occasion, October 1, 2008, "the transaction" — C.P.B.'s purchase of drugs — did "take place." State's Ex. 2. Johnson wrote that his statements were "true and accurate" and made of his "own free will. State's Ex. 2 & 3.

On May 20, 2010, the State filed its initial petition. R54-56. On October 15, 2010, the juvenile court held a bench trial on the allegations that C.P.B. had possessed marijuana on October 1, 2008 and had attempted to possess marijuana

on October 11, 2008. R60. The State called two witnesses: Sergeant Bernard, and Luke Johnson. R60:5, 40.

Sergeant Bernard testified that he had met with Johnson, that they had gone through the text message record together, and that Johnson had filled out and signed two forms, State's exhibits 2 and 3. R60:31-33; State's Ex. 2 & 3. State's exhibit 2 reflected that on October 1, 2008, Johnson sent messages to, and received messages from, "Pagie Bush" — C.P.B. — concerning a sale of "weed" — marijuana — and that "the transaction did take place." R60:31-33, 51-52; State's Ex. 2. State's exhibit 3 reflected the same information concerning communications Johnson had with C.P.B. on October 11, 2008, except that the transaction did not take place and no place of the intended transaction was stated. R60:31-34, 52; State's Ex. 3. Sergeant Bernard watched Johnson fill out and sign both exhibits. R60:32-33, 55. Sergeant Bernard also identified State's exhibit 2, reflecting text messages #213, and State's exhibit 3, reflecting text messages #214, with the corresponding message numbers he had highlighted on State's exhibit 1; Sergeant Bernard also watched Johnson initial State's exhibit 1. R60:34-36, 55; State's Ex. 1.

C.P.B. objected to the admission of exhibits 2 and 3 — Johnson's written statements — based on hearsay and lack of authentication. R60:33. The court overruled her objection because Sergeant Bernard had witnessed Johnson sign

the exhibits. R60:33. C.P.B. also objected to the admission of State's exhibit 1, the document prepared by Sergeant Bernard that contained a record of the text messages between C.P.B. and Johnson. R60:21-22; State's Ex. 1. C.P.B. objected on the ground that the document was hearsay and did not fall within one of the exceptions to the hearsay rule. R60:21-22, 56-57. Although the court refused to admit the document at that time, it left open the possibility that the document could be admitted later, reasoning that the admissibility of the document was "all going to be determined by what Luke [Johnson] says." R60:24-27

When the State called Luke Johnson to the stand it was clear from the outset that he would be an uncooperative and evasive witness. R60:40-41. He repeatedly answered the prosecutor's questions by answering negatively to questions patently requiring an affirmative response, equivocating, or saying, "I don't recall." (*See, e.g.*: Q: "And at what time did those crimes [for which you were imprisoned] take place?" A: "I don't know" (R60:40-41); Q: "Do you recognize the telephone number 435-616-5528?" A: No (R60:45-46); Q: "Did ... he show you a document that listed text messages?" A: Yeah. I think he might -- I think he did" (R60:44); Q: "Did you meet with Sergeant Bernard about this document?" A: "Not - - not sure. Yeah, yeah, I could (R60:46); Q: "Is that your initials?" A: "I don't recall, I don't know." Q: And you wrote this, didn't you? A: I don't recall writing that" (R60:49)). After a series of such answers, the

prosecutor asked Johnson, "How is it for you in prison right now?" F60:47.

Johnson admitted that he was being repeatedly beaten in prison because he was a "f ---k'n narc." R60:48.

After hearing Johnson's evasive testimony and Sergeant Bernard's testimony corroborating their conversations concerning Johnson's drug transaction with C.P.B, the Court admitted into evidence those portions of State's exhibit 1 reflecting text messages #213 and #214. R60:60-61. The court reasoned: "Why wouldn't I let this . . . in? . . . Luke hasn't said it isn't from [C.P.B.], he said[,] ["I don't recall.["] So the only evidence I've got is this officer saying that." R60:60. Addressing Johnson's testimony in his closing argument, the prosecutor explained:

the reason that [Johnson] did not remember is because he's in prison and he gets beat up . . . he was beat up at least six times for remembering that he did these drug transactions with—with people, including the defendant. He doesn't want to get beat up anymore, so today, conveniently, he did not remember.

R60:64.

The court found that Johnson had only experienced convenient memory loss due to his fear of prison reprisals, noting that Johnson seemed afraid on the stand. R60:47-48, 77. Based on Johnson's evasive testimony and the exhibits introduced through Sergeant Bernard, whom the court found to be credible, the court ruled that the State met its burden by proving beyond a reasonable doubt

that C.P.B. had committed the offense of the possession of marijuana on October 1, 2008. R60:75-79.

SUMMARY OF ARGUMENT

C.P.B. claims that the evidence supporting the adjudication that she possessed marijuana was insufficient. The Court should decline to consider the claim because C.P.B. has failed to adequately challenge the legal basis for the adjudication or to marshal any evidence in support of the juvenile court's findings. In any case, the claim fails.

A drug distributor provided law enforcement with signed and initialed statements indicating that he had completed a transaction for the sale of marijuana to C.P.B. Those statements were properly authenticated through testimony at trial. They were also properly admitted as non-hearsay, when the drug distributor conveniently could not recall the statements or their substance. Those statements were sufficient to support the adjudication because they contained incriminating admissions of the C.P.B. and the drug distributor and were highly reliable.

ARGUMENT

PROPERLY AUTHENTICATED, NON-HEARSAY EVIDENCE WAS SUFFICIENTLY RELIABLE TO PROVE BEYOND A REASON DOUBT THAT C.P.B POSSESSED MARIJUANA

C.P.B. claims that the evidence was insufficient to support her adjudication for possession of marijuana because it was founded only on unauthenticated hearsay and without any evidence of actual possession. Aplt. Br. at 9-22. The claim fails. First, C.P.B. has failed to marshal the evidence in support of the juvenile court's findings that any hearsay evidence was properly authenticated and fully admissible. Second, C.P.B has almost totally omitted a legal analysis necessary to support his claim. Based only on failure to marshal and inadequate briefing, this Court should decline to consider C.P.B.'s claim. But even considering the merits, the claim fails because a conviction based only on patently reliable non-hearsay is sufficient to support a conviction for possession of contraband, even when the contraband is not presented at trial.

A. C.P.B. has failed to both adequately brief her claim and marshal the evidence in support of the juvenile court's findings.

C.P.B. challenges the sufficiency of the juvenile court's adjudication primarily on the ground that she was never actually identified as the caller soliciting marijuana from Johnson or through State's exhibits 1 and 2. Aplt. Br. at 11-12, 14-15, 17-23. Based on C.P.B.'s failure to adequately brief her claim or

marshal the evidence in support of the court's adjudication, the Court should decline to consider her challenge.

An appellant must provide an argument that contains the "contentions and reasons of the appellant with respect to the issues presented." Utah R. App. P. 24(a)(9). A brief is inadequate if it fails to cite authority, fails to develop the authority cited, or if it lacks "reasoned analysis based upon that authority." *Allen v. Friel*, 2008 UT 56, ¶9, 194 P.3d 903 (citation and internal quotation marks omitted); *see also Chrisman*, 2011 UT App 189, ¶5 (brief must contain "meaningful legal analysis" to be adequate). If a brief is so deficient as "to shift the burden of research and argument to the reviewing court," the court should decline to address the argument. *State v. Thomas*, 961 P.2d 299 (Utah 1998).

Rule 24 (a)(9) also requires an appellant challenging a factual finding to marshal the evidence. To properly marshal the evidence, the appellant must set forth all evidence and reasonable inferences that support the adverse decision. *West Valley City v. Majestic Investment Co.*, 818 P.2d 1311, 1315 (Utah App. 1991). Appellant must then show that even viewing that evidence in the light most favorable to the State, the court's factual finding is legally insufficient. *United Park City Mines Co. v. Stichting Mayflower Mountain Foods*, 2006 UT 35, ¶¶24, 39, 140 P.3d 1200; *State v. Chrisman*, 2011 UT App 189, ¶¶3-4, 257 P.3d 1083.

Central to the juvenile court's adjudication was its legal assessment that the State's exhibits sufficiently identified C.P.B. as having obtained marijuana from Johnson.² That assessment was primarily based on the admissibility of State's exhibit 2. The court ruled State's exhibit 2 to be Johnson's written statement, that he had received a text message from C.P.B. on October 1, 2008, seeking to purchase marijuana and that the transaction had in fact taken place. R60:32-33; State's Ex. 2. The court implicitly ruled that the statement was authenticated by Sergeant Bernard, whom the court found to be credible, when he testified that he had gone over the statement with Johnson and witnessed Johnson sign it. R60:33. See UTAH CODE ANN. § 78B-5-608(1) (West 2009) ("A writing may be proved . . . by any one who saw the writing executed."); Utah R. Evid. 901(a), -(b)(1) (providing that the "requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims," such as "[t]estimony that a matter is what it is claimed to be"). And the court expressly ruled that the statement was properly authenticated and admissible under as non-hearsay under rule 801(d)(1)(A), Utah Rules of Evidence, when it admitted State's exhibit 2 over C.P.B.'s objections. R60:33, 79.

² See UTAH CODE ANN. §58-37-8(2)(a)(i) (West Supp. 2011) (Addendum A), providing elements of possession of marijuana.

See Utah R. Evid. 801(d)(1)(A) (admitting declarant's prior out-of-court statement if "the witness *has forgotten*") (emphasis added).

The court also admitted State's exhibit 1, a record of text messages in which C.P.B. asked to purchase marijuana on October 1, 2008. R60:60-61; State's Ex. 1. Like State's exhibit 2, Sergeant Bernard had gone over that exhibit with Johnson and witnessed him initial it in reference to his statements that C.P.B. had purchased marijuana from him. R60:36. The court admitted the exhibit, ruling that it had been authenticated by Sergeant Bernard when he witnessed Johnson sign the exhibit. R60:56-61. See Utah Code Ann. § 78B-5-608(1) (West 2009); Utah R. Evid. 901(a), -(b)(1). The court implicitly ruled that State's exhibit 1 was also admissible as non-hearsay under rule 801(d)(1)(A), because Johnson said as to the exhibit, "I don't recall." R60:60. See Utah R. Evid. 801(d)(1)(A).³

The juvenile court's adjudication of C.P.B.'s guilt was based exclusively on its legal assessment of the authenticity, admissibility, and weight of the State's exhibits and the testimony supporting those assessments. R60:31-36, 60-61, 75-79 (Addendum D). C.P.B., however, has failed to address any of those legal bases. Aplt. Br. at 9-22. Cf. *State v. Montiel*, 2004 UT App 242, ¶ 20, 95 P.3d 1216, *aff'd*, 2005 UT 48, 122 P.3d 571 (in challenging a court's decision on appeal,

³ The correctness of the court's conclusion that State's exhibit 1 was admissible as non-hearsay is discussed more fully at part B.

a defendant “must address all of the circumstances upon which the court’s decision was based”). Indeed, on appeal, C.P.B. does not even challenge the juvenile court’s implicit conclusion that State’s exhibit 2—Johnson’s admission that he sold marijuana to C.P.B— was properly authenticated, admissible non-hearsay, sufficient by itself to prove her guilty of possession of marijuana. R60:79. Instead, she argues only that the record of her text messages with Johnson, State’s exhibit 1, admitted without direct evidence of an exchange of marijuana, was insufficient to prove her possession. Aplt. Br. at 16, 19-22. This argument, too, is not adequately briefed, lacking citation to the correct rule and meaningful analysis.⁴ *Allen*, 2008 UT 56, ¶9.

⁴ C.P.B.’s other challenges to the sufficiency of the evidence lack substance.

Argument—Text messages #213 do not adequately identify C.P.B.

C.P.B. argues that State’s exhibit 1, purporting to contain her text messages to Johnson on October 1, 2008, does not conclusively identify her as the actual sender of messages. Aplt. Br. at 11. In support, she notes that at the time of disposition she asserted that her boyfriend was the actual correspondent. *Id.*

Further, C.P.B. has failed to marshal *any* of the evidence, discussed more fully below, in a context that supports the adjudication. *See Strichting Mayflower Mountain Foods* 2006 UT 35 at ¶26 (observing that in properly marshaling evidence, an appellant must essentially become the “devil’s advocate” against himself). The Court should therefore decline to consider the claim that the

This argument disregards the juvenile court’s conclusion, and the testimony supporting it, that Johnson acknowledged through State’s exhibit 2 that it was C.P.B. who sent text messages #213. Defendant has not marshaled that Johnson was personally acquainted with C.P.B. and that he knew her telephone number to be (435) 616-2147. R60:18, 42. Given those facts, the trial court was entitled to infer that Johnson knew it was C.P.B., and not her boyfriend, who sent the messages. C.P.B. did not testify at the adjudication hearing and her unsworn comments at the disposition phase are of no import. R60:81. Moreover, it is not credible that C.P.B.’s boyfriend, Johnson’s codefendant in distributing substantial amounts of illegal drugs, would have used C.P.B.’s cell phone to call Johnson to purchase “a ten sack” of marijuana. R60:7, 42; State’s Ex. 1 (#213).

Argument—Term, “transaction,” in State’s exhibit 2 is ambiguous

C.P.B. argues that the term, “transaction,” as used in State’s exhibit 2 and interpreted by the court, was ambiguous in that it arguably referred not to purchase and sale of marijuana, but to the text messages themselves. Apl’t. Br. at 13.

“Transaction,” means a “piece of business,” or a “deal.” Webster’s New World Dictionary (college ed. 1957). While a text message may be the vehicle of a transaction or refer to a transaction, it is not the “deal” itself. Moreover, the question, “Did the transaction take place?” and the parties’ and juvenile court’s use of the term throughout the trial, patently does not refer to the text message itself, but rather to the purchase and sale of marijuana between C.P.B. and Johnson. R60:State’s Ex. 30-31, 51-53, 63-66, 71-79.

evidence was insufficient to prove that she possessed marijuana. In any case, the documentary evidence, along with testimony supporting its foundation, was admissible and sufficient to prove C.P.B. possessed marijuana.

B. The juvenile court correctly admitted as non-hearsay a forgotten, prior out-of-court statement from a witness.

C.P.B. argues that the trial court abused its discretion when it admitted State's Exhibit 1 ("the text message record"). Aplt. Br. at 19. She is mistaken.

Hearsay is inadmissible except as provided by the law or the rules of evidence. Utah R. Evid. 802. However, an oral or written assertion is not hearsay, and is therefore admissible, when it concerns a "prior statement by [a] witness" and "the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is ... inconsistent with the declarant's testimony or the witness denies having made the statement or has forgotten." Utah R. Evid. 801(d)(1)(A). A witness is considered to be subject to cross-examination when the witness takes the stand, is placed under oath, responds to questions, and when the party adversely affected by the testimony has the opportunity to examine the witness concerning the statement. *United States v. Owens*, 484 U.S. 554, 561-62 (1988); *State v. Barker*, 797 P.2d 452, 455 (Utah App. 1990).

An inconsistent or forgotten out-of-court statement by a witness is admissible as substantive evidence under both the Utah and Federal Rules of Evidence 801(d)(1)(A). *State v. Ramsay*, 782 P.2d 480, 483 (Utah 1989); *accord United States v. Murphy*, 696 F.2d 282, 284 (4th Cir. 1982); *United States v. Williams*, 737 F.2d 594, 608 (7th Cir. 1984); *United States v. Bigham*, 812 F.2d 943, 946-47 (5th Cir. 1987). Utah's rule 801(d)(1)(A) is similar but more permissive than the corresponding federal rule because Utah does not require the prior statement to have been made under oath. *Ramsay*, 782 P.2d. at 483-84.

Here, when Johnson initialed text messages (#213) on State's exhibit 1, he affirmed that he recognized the October 1, 2008 text messages as being between him and C.P.B. R60: 30-31, 55-56. At the same time, Johnson acknowledged that those messages concerned a later-completed sale of marijuana with C.P.B., when he signed State's exhibit 2. R60:31-33. That acknowledgment constituted Johnson's "prior statement." At trial, however, when asked about his prior statement, Johnson was evasive and repeatedly testified, "I don't recall." R60:40-41, 44-46, 49. Accordingly, the juvenile court correctly admitted the text messages of October 1, 2008—State's exhibit 1—under Utah R. Evid 801(d)(1)(A). R60:60-61.

C.P.B. nevertheless relies on Utah Rule Evid. 801(d)(2)(A)—"admission by party opponent"—which applies only when "the statement is offered against a

party” and is “the party’s own statement.”⁵ Aplt. Br. at 20. Plainly, this rule is inapplicable to Johnson, who was a witness, not a party opponent.⁶

C.P.B. relies on *Ramsay* in support of his argument that the court erred in admitting State’s Exhibit 1. Aplt. Br. at 21. But *Ramsay* unequivocally supports the notion that an inconsistent or forgotten out-of-court statement by a witness is admissible. 782 P.2d at 483. C.P.B.’s citation to *State v. Mauchley*, 2003 UT 10, 67 P.3d 477, is also not helpful or relevant to the issues at hand. Aplt. Br. at 21. *Mauchley* concerned the use of an individual’s confession as the sole evidence to convict that individual. 2003 UT 10, ¶1. C.P.B. never confessed to anything, and her conviction is not based in any part on a confession, thus the is inapplicable. *Id.* Defendant’s use of this caselaw is frivolous and C.P.B.’s argument should accordingly be disregarded. Aplt. Br. at 21.

⁵ C.P.B. also fails to adequately brief this argument. Appellant’s entire argument on this issue consists of a block citation to Utah R. Evid. 801(d)(2) in its entirety but with 801(d)(2)(A) underlined. Appellant cites no case law in support of the proposition that 801(d)(2)(A) applies. *See Allen*, 2008 UT 56, ¶9.

⁶ Although the court did not specifically cite rule 801(d)(1)(A) when it made the decision to admit Exhibit 1, R.60:60, the language used by the court suggests that rule 801(d)(1)(A) was the rule relied upon, (namely, the court’s focus on the fact that Luke had forgotten his prior statement). Also, the court made no further mention of the inapplicable rule, 801(d)(2)(A) – “admission of a party opponent.”

C. The circumstantial, non-hearsay evidence was particularly reliable, and therefore sufficient to support the adjudication that C.P.B. possessed marijuana.

C.P.B. argues that the evidence was insufficient largely because the State presented no direct evidence that she actually possessed marijuana: no marijuana was recovered from C.P.B., nor was an exchange of marijuana observed. Apl't. Br. at 16. However, Sergeant Bernard's testimony in conjunction with Johnson's prior statements (State Ex's. 2 & 3) and the text message record (State Ex. 1) provided sufficient circumstantial evidence to support an inference that C.P.B. possessed marijuana on October 1, 2008. Importantly, the context in which Johnson's prior statements were admitted showed that his statement that C.P.B. purchased marijuana from him was particularly reliable.

"It is...clear that circumstantial evidence alone can be sufficient to satisfy" the burden of proving guilt beyond a reasonable doubt. *State v. Buck*, 2009 UT App 2, ¶ 12, 200 P.3d 674, *cert. denied*, 207 P.3d 432. "Circumstantial evidence need not be regarded as inferior evidence if it is of such quality and quantity as to justify a jury in determining guilt beyond a reasonable doubt" *State v. Lyman*, 966 P.2d 278, 281 (Utah App. 1998) (internal quotation marks omitted)).

Contrary to C.P.B.'s claim, a conviction for possession of a controlled substance may be sustained even without introducing the drug itself. In *State v.*

Spotts, an officer observed Spotts in his truck taking "hits" from a thinly rolled up cigarette which appeared to be a "joint." 861 P.2d 437, 438 (Utah App. 1993). When the officer asked Spotts to roll down his window, the officer smelled the odor of marijuana. *Id.* But Spotts was not found with the "joint," and he claimed that he had given it to his friend who had earlier left the truck. *Id.* at 439. Spotts, however, appeared to admit that he had been smoking marijuana when he suggested he could safely drive even having smoked marijuana. *Id.* This Court found the evidence sufficient to support Spotts' conviction for possession of marijuana, based on the officer's observations and Spotts' inculpatory statements. *Id.* at 442-44. See also *United States v. Baggett*, 890 F.2d 1095, 1096 (10th Cir. 1989) (holding evidence insufficient for heroin possession where no direct evidence of drug possession and circumstantial evidence was "not strong," but recognizing that, when the government lacks direct evidence of possession, the circumstantial evidence must be enough to support the inference that the defendant "actually did possess the drugs"); *United States v. Hall*, 473 F.3d 1295, 1307 (10th Cir. 2007) (if the Government "fails to seize and analyze the chemical composition of the alleged narcotic substance," the evidence must support an inference of actual possession). Dicta in the *Baggett* decision suggested that in the absence of direct evidence of possession the 10th

Circuit would require "some testimony linking defendant to an observed substance." 890 F.2d at 1097.

In *United States v. Bryce*, much like the current case, the evidence presented at trial to prove the charge of possession was indirect and consisted primarily of tapes of recorded calls, plus the testimony of a witness that the witness had purchased illegal drugs from the defendant at a certain time. 208 F.3d 346, 352 (2nd Cir. 1999). The court held that the witness's testimony was "clearly sufficient to establish Bryce's possession and distribution of cocaine in March and July," but because "Bryce was not charged with possession and distribution during either of those two months" the court was compelled to reverse his conviction. *Id.*

In this case, like *Bryce*, the circumstantial evidence is sufficient to support an adjudication for possession of contraband, but without its evidentiary defect. Johnson signed forms acknowledging an exchange of text messages with C.P.B. for the purchase and sale of marijuana on October 1, 2008, and admitting that he sold marijuana to C.P.B. State's Ex. 1 & 2. Following *Baggett*, Johnson's prior statement, that he completed a drug transaction with C.P.B., constitutes a "link[] . . . to an observed substance." 890 F.2d at 1097. Thus, following *Bryce*, Johnson's properly admitted prior statements were sufficient as a matter of law to support C.P.B.'s conviction for possession of marijuana on October 1, 2008.

Defendant challenges this conclusion based on *Ramsey*, 782 P.2d 480 (Utah 1989). In *Ramsay*, the court ruled that the uncorroborated, incriminating prior out-of-court statement of a 5-year-old boy, who then denied on the stand that he participated in the abuse, was admissible, but was not by itself sufficient to convict the the boy's father of sexual abuse of a child. *Id.* at 483. The court concluded that "an out-of-court statement which is *denied* at trial by the declarant is insufficient by itself to sustain a conviction." *Id.* at 484 (emphasis added).

This Court has questioned the precedential authority of *Ramsay*'s limiting conclusion on hearsay in at least two cases on formal grounds. In *State v. Hamilton*, Hamilton argued that his conviction for burglary was based only on his codefendant's unsworn statements, which the codefendant denied making at trial, and that the evidence was therefore insufficient to support his conviction under *Ramsey*. 2007 UT App 130U, *1. This Court affirmed the conviction, recognizing that there was also corroborating evidence of Hamilton's participation in the offense. *Id.* at *1-2. In rejecting Hamilton's argument, the Court recognized that "*Ramsey* has limited precedential value" because its limiting conclusion was supported by only two justices, with one justice concurring only in the result and two justices dissenting. *Id.* at *1 n.1. See also *State v. Zaelit*, 2010 UT App 208U *2 (recognizing limited precedential value of

Ramsey's limiting conclusion where dissent specifically asserted "that the lead opinion's 'analyses and conclusions regarding ... hearsay rules [and] corroborative and substantive evidence ... do not command a majority and are not to be considered the view of the [c]ourt'" (citing *Ramsey*, 782 P.2d at 489).

In any case, *Ramsey* is distinguishable from this case. First, Johnson did not deny the statements he made to Sergeant Bernard; rather, he claimed only to have forgotten his prior statements. R60:49; State's Ex. 1-3. The *Ramsay* court did not address the sufficiency of an out-of-court statement that is forgotten by the witness. *Id.* Indeed, one of the most obvious acceptable uses of testimony under Rule 801(d)(1)(A) is to admit evidence of statements that the witness made but has now (often conveniently) forgotten. *See, e.g. United States v. Williams*, 737 F.2d 594, 609 (7th Cir. 1984) (citing Advisory Committee Notes that Fed. R. Evid. 801(d)(1)(A) meant to provide "protection against the 'turncoat' witness who changes his story on the stand and deprives the party calling him of evidence essential to his case") (internal citation omitted); *accord United States v. Bigham*, 812 F.2d 943, 946-47 (5th Cir. 1987); *State v. Amos*, 658 N.W.2d. 201, 204-05 (Minn. 2003).

The text messages also corroborate Johnson's prior statement that he sold marijuana to C.P.B. because they contain information from C.P.B. herself that she at least participated in a drug purchase: C.P.B. asked Johnson, "Got any

bud?" and she offered to buy it. State's Ex. 1. C.P.B.'s text message statements were properly admissible as non-hearsay admissions of a party-opponent. See Utah R. Evid. 801(d)(2)(A) ("A statement is not hearsay if ... [t]he statement is offered against a party and is ... the party's own statement[.]")

Finally, Johnson's statements were particularly reliable because he himself provided the rationale for his refusal to now directly incriminate C.P.B. See *State v. Robbins*, 2009 UT 23, ¶ 16, 210 P.3d 288 ("A witness's testimony may be considered insufficient on grounds of reliability only when "it is (1) physically impossible or (2) apparently false[.]") After Johnson repeatedly answered questions evasively about the record of his text messages with C.P.B. and his own statement that the drug transaction had taken place, the prosecutor asked Johnson what being in prison was like. Johnson admitted that he was being repeatedly beaten because he was a "f---k'n narc." R60:48. The court was clearly persuaded that Johnson had only experienced convenient memory loss due to his fear of prison reprisals, and indeed noted that Johnson seemed afraid on the stand. R60:47-48, 77. In essence, Johnson's refusal to recall the details of the text messages and his own incriminating statement, spoke volumes that his statement incriminating C.P.B. was true. In sum, this Court should affirm the juvenile court's adjudication that C.P.B. possessed marijuana.

D. A *Ramirez* hearing, to determine the reliability of an eyewitness identification, is inapposite to this case.

In conclusion, the State summarily addresses C.P.B.'s claim that the juvenile court plainly erred by not holding a hearing under *State v. Ramirez*, 817 P.2d 774 (Utah 1991), to determine the reliability of her being identified as the actual purchaser of marijuana. Apl't. Br. at 17-19.

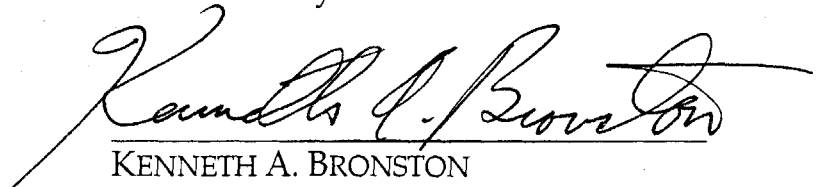
No error, let alone obvious error, occurred since a hearing under *Ramirez* is not required in a bench trial. See *State in re K.O.*, 2010 UT App 155, ¶ 14, 238 P.3d 59 (rejecting claim of error for court's not conducting *Ramirez* hearing in case tried to bench; judge assumed capable of recognizing unreliable evidence). Further, *Ramirez*, concerned with the reliability of an eyewitness's identification of a suspect observed visually in suggestive or compromising circumstances, is inapplicable to this case.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted this 28th day of October.

MARK L. SHURTLEFF
Utah Attorney General

A handwritten signature in black ink, appearing to read "Kenneth A. Bronston", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on this 28th day of October, 2011, two copies of the foregoing
brief were ☒ mailed ☐ hand-delivered to:

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A digital copy of the brief was also included: ☒ Yes ☐ No

Lee Nakamura

Addenda

Addendum A

U.C.A. 1953 § 58-37-8

West's Utah Code Annotated Currentness

Title 58. Occupations and Professions

*Chapter 37. Utah Controlled Substances Act (Refs & Annos)

➔§ 58-37-8. Prohibited acts--Penalties

(1) Prohibited acts A--Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

- (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;
- (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;
- (iii) possess a controlled or counterfeit substance with intent to distribute; or
- (iv) engage in a continuing criminal enterprise where:
 - (A) the person participates, directs, or engages in conduct which results in any violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and
 - (B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

- (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony;
 - (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or
 - (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.
- (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.
- (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(2) Prohibited acts B--Penalties:

(a) It is unlawful:

- (i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;
- (ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied

by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

(ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree felony; or

(iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A misdemeanor.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4

(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection 58-37-8 (2)(g) whether or not the injuries arise from the same episode of driving.

(3) Prohibited acts C--Penalties:

(a) It is unlawful for any person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

(4) Prohibited acts D--Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions;

(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (4)(a)(i) and (ii);

(iv) in or on the grounds of a preschool or child-care facility;

(v) in a public park, amusement park, arcade, or recreation center;

(vi) in or on the grounds of a house of worship as defined in Section 76-10- 501;

(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto;

(viii) in or on the grounds of a library;

(ix) within any area that is within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

(x) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or

(xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b)(i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is

guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d)(i) If the violation is of Subsection (4)(a)(xi):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(xi).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of guilty or no contest to a violation of this section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8)(a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof which shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12)(a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional

ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c)(i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13)(a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:

(i) was engaged in medical research; and

(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(16) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

Laws 1971, c. 145, § 8; Laws 1972, c. 22, § 1; Laws 1977, c. 29, § 6; Laws 1979, c. 12, § 5; Laws 1985, c. 146, § 1; Laws 1986, c. 196, § 1; Laws 1987, c. 92, § 100; Laws 1987, c. 190, § 3; Laws 1988, c. 95, § 1; Laws 1989, c. 50, § 2; Laws 1989, c. 56, § 1; Laws 1989, c. 178, § 1; Laws 1989, c. 187, § 2; Laws 1989, c. 201, § 1; Laws 1990, c. 161, § 1; Laws 1990, c. 163, §§ 2, 3; Laws 1991, c. 80, § 1; Laws 1991, c. 198, § 4; Laws 1991, c. 268, § 7; Laws 1995, c. 284, § 1, eff. May 1, 1995; Laws 1996, c. 1, § 8, eff. Jan. 31, 1996; Laws 1997, c. 64, § 6, eff. May 5, 1997; Laws 1998, c. 139, § 1, eff. May 4, 1998; Laws 1999, c. 12, § 1, eff. May 3, 1999; Laws 1999, c. 303, § 1, eff. May 3, 1999; Laws 2003, c. 10, § 1, eff. May 5, 2003; Laws 2003, c. 33, § 6, eff. May 5, 2003; Laws 2004, c. 36, § 1, eff. March 15, 2004; Laws 2005, c. 30, § 1, eff. May 2, 2005; Laws 2006, c. 8, § 4, eff. May 1, 2006; Laws 2006, c. 30, § 1, eff. May 1, 2006; Laws 2007, c. 374, § 1, eff. April 30, 2007; Laws 2008, c. 295, § 1, eff. May 5, 2008; Laws 2009, c. 214, § 3, eff. May 12, 2009; Laws 2010, c. 64, § 2, eff. March 22, 2010; Laws 2011, c. 12, § 8, eff. Feb. 25, 2011.

U.C.A. 1953 § 78B-5-608

West's Utah Code Annotated Currentness

Title 78B. Judicial Code

^§ Chapter 5. Procedure and Evidence

^§ Part 6. Evidence

→§ 78B-5-608. Writings--How proved

A writing may be proved either:

- (1) by any one who saw the writing executed;
- (2) by evidence of the genuineness of the handwriting of the maker; or
- (3) by a subscribing witness.

Laws 2008, c. 3, § 817, eff. Feb. 7, 2008.

Utah Rules of Evidence, Rule 801

West's Utah Code Annotated Currentness

^§ Utah Rules of Evidence (Refs & Annos)

^§ Article VIII. Hearsay

→RULE 801. DEFINITIONS

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony or the witness denies having made the statement or has forgotten, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

[Amended effective October 1, 1992]

Utah Rules of Evidence, Rule 802

West's Utah Code Annotated Currentness

^Utah Rules of Evidence (Refs & Annos)

^Article VIII. Hearsay

➔RULE 802. HEARSAY RULE

Hearsay is not admissible except as provided by law or by these rules.

Utah Rules of Evidence, Rule 901

West's Utah Code Annotated Currentness

State Court Rules

^Utah Rules of Evidence (Refs & Annos)

^Article IX. Authentication and Identification

➔ Rule 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

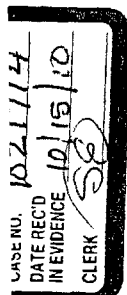
(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by court rule or statute of this state.

Addendum B

RECEIVED

OCT 14 2010

KANE COUNTY ATTORNEY



ige Bush
5-689-2147

ite	From	To	SMS
1/08 12:37	(435) 689-2147	(435) 616-5528	So are you workin today?
1/08 12:43	(435) 616-5528	(435) 689-2147	Na what u doin. luke
1/08 12:46	(435) 689-2147	(435) 616-5528	Watchin a movie at school. What are you doing at like 11:50?
1/08 12:47	(435) 616-5528	(435) 689-2147	pobaly work crew what r u doin after school. luke
1/08 12:49	(435) 689-2147	(435) 616-5528	Nothin probably will just be at home with chris.
08 12:52	(435) 616-5528	(435) 689-2147	how gay. luke
1/08 12:53	(435) 689-2147	(435) 616-5528	Yea but we need to chill for sure today
1/08 12:54	(435) 616-5528	(435) 689-2147	K we bet. luke
1/08 16:09	(435) 689-2147	(435) 616-5528	So much for inviting me over to your house too jerk. Lol
1/08 16:10	(435) 616-5528	(435) 689-2147	shutup bitch u no ur welcome here at my pad. come over. luke
1/08 16:11	(435) 689-2147	(435) 616-5528	Well i asked what you were doin. And you said work crew so i didnt go over lol
1/08 16:14	(435) 616-5528	(435) 689-2147	plans changed but im mad at u 4 not comin u no ur my penny slut and i want 2 see u anytime. luke
1/08 16:14	(435) 689-2147	(435) 616-5528	I didnt know anyone was going to your house no one told me.
1/08 16:15	(435) 616-5528	(435) 689-2147	O i see. r u at school. luke
1/08 16:16	(435) 689-2147	(435) 616-5528	Yea
1/08 16:16	(435) 616-5528	(435) 689-2147	We should hangout after. luke
1/08 16:17	(435) 689-2147	(435) 616-5528	You should come by my house after school and visit with me. Please
1/08 16:18	(435) 616-5528	(435) 689-2147	4 sure. luke
1/08 16:18	(435) 689-2147	(435) 616-5528	K now i all excited i cant wait to see you
1/08 16:54	(435) 616-5528	(435) 689-2147	What time did u get out of school. luke
1/08 16:55	(435) 689-2147	(435) 616-5528	3:10
1/08 16:58	(435) 689-2147	(435) 616-5528	Get any buds?
1/08 16:59	(435) 616-5528	(435) 689-2147	I dont cant can get. luke
1/08 17:00	(435) 689-2147	(435) 616-5528	From where?
1/08 17:01	(435) 616-5528	(435) 689-2147	Wring person. luke
1/08 17:01	(435) 616-5528	(435) 689-2147	No but can find. luke
1/08 17:02	(435) 689-2147	(435) 616-5528	How much?
1/08 17:03	(435) 616-5528	(435) 689-2147	Like a ten sack is all i can get. luke
1/08 17:04	(435) 689-2147	(435) 616-5528	Thats good for me
1/08 17:05	(435) 616-5528	(435) 689-2147	K. luke

LT

What time did u get out of school. luke

3:10

Get any buds?

I dont cant can get. luke

From where?

Wring person. luke

No but can find. luke

How much?

Like a ten sack is all i can get. luke

Thats good for me

K. luke

/08 17:23	10/1/08 17:23	(435) 689-2147	(435) 616-5528	Lotsa motsa is out of bread
/08 17:25	10/1/08 17:25	(435) 616-5528	(435) 689-2147	Damn r u guys still gettin food. luke
/08 17:27	10/1/08 17:27	(435) 689-2147	(435) 616-5528	I dont know i think chris might but im not
/08 17:28	10/1/08 17:28	(435) 616-5528	(435) 689-2147	K so when u goin be home. luke
/08 17:28	10/1/08 17:28	(435) 689-2147	(435) 616-5528	Like ten minutes i will be there
/08 17:31	10/1/08 17:31	(435) 689-2147	(435) 616-5528	Im going home right now so meet me there
/08 19:13	10/1/08 19:13	(435) 689-2147	(435) 616-5528	Haha dude kailey just saw austin drive by and she's like oh baby theses austin and got all excited
/08 19:29	10/1/08 19:29	(435) 616-5528	(435) 689-2147	Lol. luke
08 13:57	10/2/08 13:57	(435) 689-2147	(435) 616-5528	What it do lukey? You workin?
/08 14:15	10/2/08 14:15	(435) 616-5528	(435) 689-2147	At my house what u doin. luke
/08 14:16	10/2/08 14:16	(435) 689-2147	(435) 616-5528	Eatin lunch.
/08 14:22	10/2/08 14:22	(435) 616-5528	(435) 689-2147	What u eatin. luke
/08 14:23	10/2/08 14:23	(435) 689-2147	(435) 616-5528	Wendys. What are you doing at your house?
/08 14:24	10/2/08 14:24	(435) 616-5528	(435) 689-2147	Sittin her. luke
/08 15:51	10/2/08 15:51	(435) 689-2147	(435) 616-5528	What you doing?
/08 15:53	10/2/08 15:53	(435) 616-5528	(435) 689-2147	Work crem. luke
/08 16:00	10/2/08 16:00	(435) 689-2147	(435) 616-5528	Psh thats no fun
/08 16:04	10/2/08 16:04	(435) 616-5528	(435) 689-2147	I no. luke
/08 16:04	10/2/08 16:04	(435) 689-2147	(435) 616-5528	How long you gonna do that?
/08 16:13	10/2/08 16:13	(435) 616-5528	(435) 689-2147	like an hour. luke
/08 16:16	10/2/08 16:16	(435) 689-2147	(435) 616-5528	Text me or somethin when you get off
/08 16:29	10/2/08 16:29	(435) 616-5528	(435) 689-2147	K. luke
/08 2:11	10/5/08 2:11	(435) 616-5528	(435) 689-2147	U fuckin bitch. luke
/08 2:42	10/5/08 2:42	(435) 689-2147	(435) 616-5528	What
08 2:43	10/5/08 2:43	(435) 616-5528	(435) 689-2147	I love u dog. luke
/08 2:44	10/5/08 2:44	(435) 689-2147	(435) 616-5528	Love you too
/08 2:44	10/5/08 2:44	(435) 616-5528	(435) 689-2147	i miss u. luke
/08 2:45	10/5/08 2:45	(435) 689-2147	(435) 616-5528	I miss you too dude
/08 11:06	10/5/08 11:06	(435) 689-2147	(435) 616-5528	Are you alive? Did you make it home safe? Let me know.
/08 11:25	10/5/08 11:25	(435) 616-5528	(435) 689-2147	safe. luke
/08 11:32	10/5/08 11:32	(435) 689-2147	(435) 616-5528	Okay good. I love you pooh bear
/08 11:51	10/5/08 11:51	(435) 616-5528	(435) 689-2147	I love u. luke
/08 13:56	10/5/08 13:56	(435) 689-2147	(435) 616-5528	Im going with you to your moms tonite at 6
/08 13:56	10/5/08 13:56	(435) 616-5528	(435) 689-2147	hell ya. luke
/08 13:57	10/5/08 13:57	(435) 689-2147	(435) 616-5528	I love you. Are you feeling better

5/08 13:58	10/5/08 13:58	(435) 616-5528	(435) 689-2147	Love ya 2 dog thanks i think im fine ur the shit. luke
5/08 14:01	10/5/08 14:01	(435) 689-2147	(435) 616-5528	Yea when you didnt call me back last night i got worried lol cause you're like i think im gonna throw up i will call you back lol
5/08 14:02	10/5/08 14:03	(435) 616-5528	(435) 689-2147	Really dont really remember. luke
5/08 14:06	10/5/08 14:07	(435) 689-2147	(435) 616-5528	Haha well i will have to tell you about it later then lol
5/08 17:20	10/6/08 17:21	(435) 689-2147	(435) 616-5528	What are you doing?
5/08 17:21	10/6/08 17:21	(435) 616-5528	(435) 689-2147	Just gettin off work. luke
5/08 17:21	10/6/08 17:21	(435) 689-2147	(435) 616-5528	Are you going home?
5/08 22:56	10/6/08 22:56	(435) 616-5528	(435) 689-2147	Whaj doin. luke
5/08 22:56	10/6/08 22:56	(435) 689-2147	(435) 616-5528	Nothin just watching tv at home what are you doing pooh bear?
5/08 23:01	10/6/08 23:01	(435) 616-5528	(435) 689-2147	8017982632 will u call linze and tell her 2 call me plz. luke
5/08 23:03	10/6/08 23:03	(435) 689-2147	(435) 616-5528	She isnt there she is staying the night at someone elses house
5/08 23:03	10/6/08 23:03	(435) 616-5528	(435) 689-2147	Said the ladie. luke
5/08 23:05	10/6/08 23:05	(435) 689-2147	(435) 616-5528	Yea. I told her to have linze call me back and she said that linze wasnt coming home tonite
5/08 23:06	10/6/08 23:06	(435) 616-5528	(435) 689-2147	K im on my way. luke
5/08 13:36	10/7/08 13:36	(435) 689-2147	(435) 616-5528	You workin today
5/08 13:36	10/7/08 13:36	(435) 616-5528	(435) 689-2147	Ya what u doin. luke
5/08 13:37	10/7/08 13:37	(435) 689-2147	(435) 616-5528	School
5/08 23:06	10/10/08 23:08	(435) 689-2147	(435) 616-5528	What it do homie
5/08 23:09	10/10/08 23:09	(435) 616-5528	(435) 689-2147	come over whore luke
5/08 23:12	10/10/08 23:13	(435) 689-2147	(435) 616-5528	They dont want to go to your house sorry lukey i love you
5/08 23:14	10/10/08 23:14	(435) 616-5528	(435) 689-2147	I dont give a fuck about them u still comin. luke
5/08 23:15	10/10/08 23:15	(435) 689-2147	(435) 616-5528	I cant lol i dont have a ride and i cant leave chris cause he's sleeping at my house
5/08 23:17	10/10/08 23:17	(435) 616-5528	(435) 689-2147	U gay bitch i will give u a ride. luke
5/08 23:18	10/10/08 23:19	(435) 689-2147	(435) 616-5528	No lol its fine just call me tomorrow
5/08 23:19	10/10/08 23:19	(435) 616-5528	(435) 689-2147	K. luke
5/08 14:50	10/11/08 14:51	(435) 689-2147	(435) 616-5528	What are you doing?
5/08 14:51	10/11/08 14:51	(435) 616-5528	(435) 689-2147	Workin
5/08 16:44	10/11/08 17:16	(435) 689-2147	(435) 616-5528	When do you get off work?
5/08 17:18	10/11/08 17:18	(435) 616-5528	(435) 689-2147	Im off about 2 shower
5/08 17:19	10/11/08 17:19	(435) 689-2147	(435) 616-5528	Do you have like a paw for something? i can give you a few bucks.
5/08 17:20	10/11/08 17:20	(435) 616-5528	(435) 689-2147	I dont
5/08 17:20	10/11/08 17:20	(435) 689-2147	(435) 616-5528	Dang
5/08 17:21	10/11/08 17:21	(435) 616-5528	(435) 689-2147	Imo

2/08 0:26	10/13/08 21:31	(435) 689-2147	(435) 616-5528	What it do lukey?
3/08 21:38	10/13/08 21:38	(435) 616-5528	(435) 689-2147	On my way back from vegas bitch
3/08 21:39	10/13/08 21:42	(435) 689-2147	(435) 616-5528	I've been calling your slutty little ass all day. Call me when your back
3/08 21:43	10/13/08 21:43	(435) 616-5528	(435) 689-2147	K i will crazy bitch
3/08 21:44	10/13/08 21:44	(435) 689-2147	(435) 616-5528	How far away are you?
3/08 21:44	10/13/08 21:45	(435) 689-2147	(435) 616-5528	How far away are you?
3/08 21:45	10/13/08 21:45	(435) 616-5528	(435) 689-2147	St.g
3/08 21:46	10/13/08 21:46	(435) 689-2147	(435) 616-5528	Nice see you in a little cockmeat sandwich master. Come to sheila's when you get back
3/08 21:46	10/13/08 21:46	(435) 616-5528	(435) 689-2147	K
3/08 21:47	10/13/08 21:47	(435) 616-5528	(435) 689-2147	Its sav bday
3/08 22:09	10/13/08 22:09	(435) 689-2147	(435) 616-5528	Did you get any green from vegas
3/08 22:21	10/13/08 22:21	(435) 616-5528	(435) 689-2147	Lolnt
3/08 22:21	10/13/08 22:22	(435) 689-2147	(435) 616-5528	Psh lame lol
3/08 22:22	10/13/08 22:22	(435) 616-5528	(435) 689-2147	Lol
4/08 13:55	NULL	(435) 689-2147	(435) 616-5528	Know where I can buy any green?
3/08 20:34	10/16/08 20:34	(435) 616-5528	(435) 689-2147	U unsocial little bitch
3/08 20:35	10/16/08 20:35	(435) 689-2147	(435) 616-5528	Haha thanks lukey pooh
3/08 20:36	10/16/08 20:36	(435) 616-5528	(435) 689-2147	Dude where r u
3/08 20:37	10/16/08 20:37	(435) 689-2147	(435) 616-5528	With chris
3/08 20:37	10/16/08 20:37	(435) 616-5528	(435) 689-2147	Nice
3/08 20:38	10/16/08 20:38	(435) 689-2147	(435) 616-5528	Yea what are you doing?
3/08 20:40	10/16/08 20:40	(435) 616-5528	(435) 689-2147	goin 2 get food
3/08 20:42	10/16/08 20:42	(435) 689-2147	(435) 616-5528	Where at?
3/08 20:44	10/16/08 20:44	(435) 616-5528	(435) 689-2147	Goin 2 subway
3/08 20:45	10/16/08 20:45	(435) 689-2147	(435) 616-5528	Oh
3/08 20:45	10/16/08 20:45	(435) 616-5528	(435) 689-2147	Where r u
3/08 20:46	10/16/08 20:46	(435) 689-2147	(435) 616-5528	At Chasen's house
3/08 20:52	10/16/08 20:52	(435) 616-5528	(435) 689-2147	Lol how gay
3/08 20:53	10/16/08 20:53	(435) 689-2147	(435) 616-5528	Yea it is
3/08 20:53	10/16/08 20:53	(435) 616-5528	(435) 689-2147	Ditch them come hang with me
3/08 20:55	10/16/08 20:55	(435) 689-2147	(435) 616-5528	Im going to watch whitney's concert in a few minutes
3/08 20:58	10/16/08 20:58	(435) 616-5528	(435) 689-2147	Nice
7/08 20:39	10/17/08 20:39	(435) 689-2147	(435) 616-5528	What it do homie g?

LT #215

LT #216

17/08 23:01	10/17/08 23:01	(435) 689-2147	(435) 616-5528	Dude what are you doing?
17/08 23:03	10/17/08 23:03	(435) 689-2147	(435) 616-5528	Dude i really have like the weirdest shit ever to tell you. I think i might just call you but im not sure and i think we might be going to your house
17/08 23:23	10/17/08 23:23	(435) 689-2147	(435) 616-5528	Dude everyone is taking forever lol i really just want to go to your house this is sooo fuckin crazy. Lol so crazy so crazy crazy crazy. So weird and crazy.
17/08 23:24	10/17/08 23:24	(435) 616-5528	(435) 689-2147	Lol ur crazy silly bitch
17/08 23:25	10/17/08 23:25	(435) 689-2147	(435) 616-5528	Haha thanks i guess dude lol
17/08 23:25	10/17/08 23:25	(435) 616-5528	(435) 689-2147	Ur cute
17/08 23:26	10/17/08 23:26	(435) 689-2147	(435) 616-5528	Thanks man i freakin love love love you man
17/08 23:27	10/17/08 23:27	(435) 616-5528	(435) 689-2147	Love u more dude
17/08 23:27	10/17/08 23:27	(435) 689-2147	(435) 616-5528	No i love you more man
17/08 23:28	10/17/08 23:28	(435) 616-5528	(435) 689-2147	Lol no way
17/08 23:28	10/17/08 23:28	(435) 689-2147	(435) 616-5528	Yes way dude
17/08 23:29	10/17/08 23:29	(435) 616-5528	(435) 689-2147	What r u thinkin about
17/08 23:30	10/17/08 23:30	(435) 689-2147	(435) 616-5528	Dude i dont even know we are just sittin here talking to Chelsea and Damian its weird i just real want to go to your house
7/08 23:36	10/17/08 23:36	(435) 689-2147	(435) 616-5528	Oh man dude im coming
7/08 23:36	10/17/08 23:36	(435) 616-5528	(435) 689-2147	Yes
7/08 23:37	10/17/08 23:37	(435) 689-2147	(435) 616-5528	K dude this is gonna be fuckin crazy
7/08 23:38	10/17/08 23:38	(435) 616-5528	(435) 689-2147	Lol love ya
7/08 23:39	10/17/08 23:39	(435) 689-2147	(435) 616-5528	Love you too
8/08 13:11	10/18/08 13:11	(435) 689-2147	(435) 616-5528	When are you going on your lunch break?
8/08 13:12	10/18/08 13:12	(435) 616-5528	(435) 689-2147	I didnt have 2 work
8/08 13:12	10/18/08 13:13	(435) 689-2147	(435) 616-5528	Oh okay thats cool lol well what are you doing?
8/08 13:16	10/18/08 13:16	(435) 616-5528	(435) 689-2147	Thinkin about how it feels like u r the bitch that i can trust any more what u doin
8/08 13:18	10/18/08 13:19	(435) 689-2147	(435) 616-5528	Wait what you can or cant trust me? That was sorta confusing im to E tarded lol. Im not doing anything just sittin at home thinking cant u and what u were doing
9/08 1:39	10/19/08 1:49	(435) 689-2147	(435) 616-5528	Pooh bear what is up in the club?
9/08 1:51	10/19/08 1:51	(435) 616-5528	(435) 689-2147	Goin home 2 crash
9/08 18:32	10/19/08 18:32	(435) 689-2147	(435) 616-5528	What you doing Lukey
9/08 19:45	10/19/08 19:45	(435) 689-2147	(435) 616-5528	You got any bud?
9/08 19:50	10/19/08 19:50	(435) 616-5528	(435) 689-2147	Don't
9/08 19:50	10/19/08 19:50	(435) 689-2147	(435) 616-5528	Do you know where i can get any?
9/08 19:51	10/19/08 19:51	(435) 616-5528	(435) 689-2147	Not that i know of
9/08 19:52	10/19/08 19:52	(435) 689-2147	(435) 616-5528	Dang
9/08 19:52	10/19/08 19:52	(435) 616-5528	(435) 689-2147	Ya dog

10/08 15:30	10/24/08 15:30	(435) 689-2147	(435) 616-5528	Lukey pooh do you our savannah have any bud?
10/08 15:31	10/24/08 15:31	(435) 616-5528	(435) 689-2147	Ya but at work right now
10/08 18:08	10/24/08 18:09	(435) 689-2147	(435) 616-5528	You off work yet
10/08 13:55	10/27/08 13:56	(435) 689-2147	(435) 616-5528	What it do?
10/08 17:39	10/28/08 17:39	(435) 689-2147	(435) 616-5528	Luke do you have like a bowl i can give you five bucks
10/08 17:46	10/28/08 17:46	(435) 616-5528	(435) 689-2147	I dont
10/08 17:47	10/28/08 17:47	(435) 689-2147	(435) 616-5528	Thanks anyways pumpkin
10/08 23:55	10/30/08 23:55	(435) 689-2147	(435) 616-5528	What time are we going to chases tomorrow
10/08 0:01	10/31/08 0:01	(435) 616-5528	(435) 689-2147	8
10/08 0:11	10/31/08 0:11	(435) 689-2147	(435) 616-5528	K
10/08 14:21	10/31/08 14:22	(435) 689-2147	(435) 616-5528	What are you doing lukey?
10/08 15:08	10/31/08 15:08	(435) 616-5528	(435) 689-2147	Hey do u want me 2 pick u up
10/08 15:10	10/31/08 15:10	(435) 616-5528	(435) 689-2147	Do want me 2 pick u up
10/08 15:17	10/31/08 15:18	(435) 689-2147	(435) 616-5528	No i have a ride
10/08 15:18	10/31/08 15:18	(435) 616-5528	(435) 689-2147	K what time school out
10/08 15:19	10/31/08 15:19	(435) 689-2147	(435) 616-5528	Im going home right now
10/08 15:20	10/31/08 15:20	(435) 616-5528	(435) 689-2147	So we can come now
10/08 15:21	10/31/08 15:21	(435) 689-2147	(435) 616-5528	Yea i wil be there in like 5 minutes
10/08 15:21	10/31/08 15:21	(435) 616-5528	(435) 689-2147	K
10/08 20:34	11/1/08 20:34	(435) 689-2147	(435) 616-5528	When you go to the library will you pick me up
10/08 20:34	11/1/08 20:34	(435) 616-5528	(435) 689-2147	At ur house
10/08 20:35	11/1/08 20:35	(435) 689-2147	(435) 616-5528	Yes
10/08 20:35	11/1/08 20:35	(435) 616-5528	(435) 689-2147	K
10/08 13:24	11/2/08 13:24	(435) 689-2147	(435) 616-5528	lukey are you feeling better today?
10/08 13:26	11/2/08 13:26	(435) 616-5528	(435) 689-2147	Luke is in the shower and no prob not we r goin 2 visit my son 4 a few days
10/08 13:26	11/2/08 13:26	(435) 689-2147	(435) 616-5528	Oh okay
10/08 15:40	11/2/08 15:40	(435) 689-2147	(435) 616-5528	Omg what is your mom freaking out about?
10/08 15:43	11/2/08 15:43	(435) 689-2147	(435) 616-5528	Nevermind now i know. And just to let you know linze did tell your mom something about the acid this morning but i dont know what she told her.
10/08 15:44	11/2/08 15:44	(435) 616-5528	(435) 689-2147	Tell her i never did acid
10/08 15:45	11/2/08 15:45	(435) 616-5528	(435) 689-2147	What a stupid bitch
10/08 15:45	11/2/08 15:45	(435) 689-2147	(435) 616-5528	Okay i will if she asks me but i dont want to make it obvious
10/08 15:46	11/2/08 15:46	(435) 689-2147	(435) 616-5528	Yea your mom told me not to tell you so dont tell her i told you
10/08 15:47	11/2/08 15:47	(435) 616-5528	(435) 689-2147	Just tell and tell her i was wih brett alnigh and he aint down with shit like that

2/08 15:51	11/2/08 15:51	(435) 689-2147	(435) 616-5528	Okay fer sure
2/08 15:51	11/2/08 15:51	(435) 616-5528	(435) 689-2147	Tell me what she says
2/08 15:55	11/2/08 15:55	(435) 689-2147	(435) 616-5528	K
2/08 16:04	11/2/08 16:04	(435) 689-2147	(435) 616-5528	I told your mom that stuff and she said one of you is lying and she is gonna find out who it is. Cause linze said she was on acid last night but i told your mom
2/08 16:04	11/2/08 16:04	(435) 689-2147	(435) 616-5528	Linze is lying cause i was with her last night and she was not on acid
2/08 16:05	11/2/08 16:05	(435) 616-5528	(435) 689-2147	Good
3/08 17:12	11/5/08 17:12	(435) 689-2147	(435) 616-5528	You got any green stuff?
3/08 17:12	11/5/08 17:12	(435) 616-5528	(435) 689-2147	I dont
3/08 12:55	11/6/08 12:55	(435) 616-5528	(435) 689-2147	Is mark at ur house
3/08 12:56	11/6/08 12:56	(435) 689-2147	(435) 616-5528	I dont know
3/08 14:18	11/7/08 14:18	(435) 689-2147	(435) 616-5528	What you doing?
5/08 16:22	11/15/08 16:22	(435) 689-2147	(435) 616-5528	What you doing?
5/08 16:25	11/15/08 16:25	(435) 616-5528	(435) 689-2147	Goin 2 the montain
5/08 16:26	11/15/08 16:26	(435) 689-2147	(435) 616-5528	Whats that?
5/08 18:56	11/15/08 20:33	(435) 689-2147	(435) 616-5528	What up?
1/08 19:39	11/21/08 19:40	(435) 689-2147	(435) 616-5528	When is kailey gonna come get me
1/08 19:40	11/21/08 19:40	(435) 616-5528	(435) 689-2147	Shes not there
1/08 19:41	11/21/08 19:41	(435) 689-2147	(435) 616-5528	Not where?
3/08 14:12	11/23/08 14:12	(435) 616-5528	(435) 689-2147	Is mark at ur house
3/08 14:13	11/23/08 14:13	(435) 689-2147	(435) 616-5528	No he's at Nedra's
4/08 12:41	11/24/08 12:41	(435) 616-5528	(435) 689-2147	Hey have 2 talked 2 kalie
4/08 12:41	11/24/08 12:41	(435) 689-2147	(435) 616-5528	No why
4/08 12:43	11/24/08 12:43	(435) 616-5528	(435) 689-2147	She wont ever answer my calls
4/08 19:51	11/24/08 19:51	(435) 689-2147	(435) 616-5528	Did you ever talk to kailey?
4/08 19:57	11/24/08 19:57	(435) 616-5528	(435) 689-2147	Na i didnt
4/08 20:24	11/24/08 20:24	(435) 689-2147	(435) 616-5528	Dang
4/08 20:26	11/24/08 20:26	(435) 616-5528	(435) 689-2147	Where u at
4/08 20:31	11/24/08 20:31	(435) 689-2147	(435) 616-5528	Work stupid ass
4/08 20:31	11/24/08 20:31	(435) 616-5528	(435) 689-2147	O ya what u doin 2night
4/08 20:32	11/24/08 20:32	(435) 689-2147	(435) 616-5528	I dont know just going home after work. What about you?
4/08 20:33	11/24/08 20:33	(435) 616-5528	(435) 689-2147	Chillin
4/08 20:34	11/24/08 20:34	(435) 689-2147	(435) 616-5528	Well you should hit me up later
4/08 20:57	11/24/08 20:57	(435) 616-5528	(435) 689-2147	K
3/08 19:23	11/30/08 19:23	(435) 689-2147	(435) 616-5528	What are you doing?

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0/08 19:24	11/30/08 19:24	(435) 616-5528	(435) 689-2147	Goin by my hommies what u doin
0/08 19:25	11/30/08 19:25	(435) 689-2147	(435) 616-5528	Chillen at my house.
0/08 22:19	11/30/08 22:19	(435) 689-2147	(435) 616-5528	Baby where are you?
0/08 22:20	11/30/08 22:20	(435) 616-5528	(435) 689-2147	Im goin back
0/08 22:20	11/30/08 22:20	(435) 689-2147	(435) 616-5528	Okay hurry hoochie face
0/08 22:21	11/30/08 22:21	(435) 616-5528	(435) 689-2147	Lol I
0/08 19:24	12/1/08 19:24	(435) 689-2147	(435) 616-5528	What you doing?
0/08 19:25	12/1/08 19:25	(435) 616-5528	(435) 689-2147	Sittin at bob d what r u doin
0/08 19:26	12/1/08 19:26	(435) 689-2147	(435) 616-5528	Sittin at home you should come get me :]
0/08 19:26	12/1/08 19:26	(435) 616-5528	(435) 689-2147	Ill send mark girly pooh
0/08 19:27	12/1/08 19:28	(435) 689-2147	(435) 616-5528	Okay lol
0/08 21:05	12/1/08 21:05	(435) 689-2147	(435) 616-5528	Are you coming back pooh bear?
0/08 21:46	12/1/08 21:46	(435) 616-5528	(435) 689-2147	Ya after i pick up mitch
0/08 21:46	12/1/08 21:46	(435) 689-2147	(435) 616-5528	Okay hoochie mama
0/08 21:47	12/1/08 21:47	(435) 616-5528	(435) 689-2147	Lol see ya soon pooh bear
0/08 21:48	12/1/08 21:48	(435) 689-2147	(435) 616-5528	:]
0/08 21:48	12/1/08 21:48	(435) 616-5528	(435) 689-2147	Lol
0/08 21:49	12/1/08 21:49	(435) 689-2147	(435) 616-5528	You wanna go eat Escobars? And you better say yes lol
0/08 22:17	12/1/08 22:17	(435) 616-5528	(435) 689-2147	Lol na
0/08 22:20	12/1/08 22:20	(435) 689-2147	(435) 616-5528	I will kill you lol jk
0/08 18:42	12/3/08 18:42	(435) 689-2147	(435) 616-5528	Hi baby. What are you doing?
0/08 18:47	12/3/08 18:47	(435) 616-5528	(435) 689-2147	Just about 2 get off work
0/08 18:47	12/3/08 18:47	(435) 689-2147	(435) 616-5528	What are you gonna do after you get off?
0/08 18:52	12/3/08 18:52	(435) 616-5528	(435) 689-2147	Shower no plans
0/08 18:52	12/3/08 18:53	(435) 689-2147	(435) 616-5528	We should hang out
0/08 18:54	12/3/08 18:54	(435) 616-5528	(435) 689-2147	4sho
0/08 18:55	12/3/08 18:55	(435) 689-2147	(435) 616-5528	Okay you better call me after you shower or i will kill you :]
0/08 19:00	12/3/08 19:00	(435) 616-5528	(435) 689-2147	K
0/08 19:44	12/3/08 19:44	(435) 689-2147	(435) 616-5528	Geeze are you almost done? Lol
0/08 19:54	12/4/08 19:57	(435) 689-2147	(435) 616-5528	You hungry?
0/08 19:57	12/4/08 19:57	(435) 616-5528	(435) 689-2147	Ya
0/08 19:59	12/4/08 20:01	(435) 689-2147	(435) 616-5528	We gotta eat something then lol. What do you wanna eat?
0/08 20:02	12/4/08 20:02	(435) 616-5528	(435) 689-2147	20 mins
0/08 20:02	12/4/08 20:02	(435) 616-5528	(435) 689-2147	what do u want 2 eat
0/08 20:03	12/4/08 20:03	(435) 689-2147	(435) 616-5528	I dont know you choose i am starving just no mc donalds
0/08 20:04	12/4/08 20:04	(435) 616-5528	(435) 689-2147	U
0/08 20:11	12/4/08 20:11	(435) 689-2147	(435) 616-5528	I cant. You choose.

/08 20:24	12/4/08 20:24	(435) 616-5528	(435) 689-2147	fernadez
/08 20:25	12/4/08 20:25	(435) 616-5528	(435) 689-2147	I mean the other resturant
/08 20:26	12/4/08 20:26	(435) 689-2147	(435) 616-5528	Fiesta?
/08 20:27	12/4/08 20:28	(435) 689-2147	(435) 616-5528	Mark just ate there yesterday
/08 20:28	12/4/08 20:28	(435) 616-5528	(435) 689-2147	The one by byron
/08 20:29	12/4/08 20:29	(435) 689-2147	(435) 616-5528	Okay lol Escobars?
/08 20:30	12/4/08 20:30	(435) 616-5528	(435) 689-2147	Lol
/08 20:30	12/4/08 20:30	(435) 689-2147	(435) 616-5528	Where you at?
/08 16:54	12/6/08 16:54	(435) 689-2147	(435) 616-5528	Hi cutie pie. What are you doing?
/08 16:55	12/6/08 16:55	(435) 616-5528	(435) 689-2147	Sittin here what u doin pooh bear
/08 16:56	12/6/08 16:56	(435) 689-2147	(435) 616-5528	Nothin lol you wanna throw in for a pizza from Pizza Hut?
/08 16:57	12/6/08 16:57	(435) 616-5528	(435) 689-2147	I just eat.
/08 16:57	12/6/08 16:57	(435) 689-2147	(435) 616-5528	:] well what are you doing today?
/08 16:59	12/6/08 16:59	(435) 616-5528	(435) 689-2147	No plans
/08 17:00	12/6/08 17:00	(435) 689-2147	(435) 616-5528	You get your car fixed lol
/08 17:01	12/6/08 17:01	(435) 616-5528	(435) 689-2147	No goin go fix it now
/08 17:01	12/6/08 17:01	(435) 689-2147	(435) 616-5528	Haha cool
/08 17:01	12/6/08 17:01	(435) 616-5528	(435) 689-2147	It sucks
/08 17:02	12/6/08 17:02	(435) 689-2147	(435) 616-5528	Yea i know
/08 18:22	12/7/08 18:23	(435) 689-2147	(435) 616-5528	Pick me up at like 4:50 please
/08 12:02	12/8/08 12:02	(435) 616-5528	(435) 689-2147	is mark at ur house
/08 12:35	12/8/08 12:35	(435) 689-2147	(435) 616-5528	Yea
/08 18:59	12/8/08 18:59	(435) 689-2147	(435) 616-5528	What are you doing?
/08 19:18	12/12/08 19:18	(435) 616-5528	(435) 689-2147	Hey dont tell mark not 2 go
/08 19:23	12/12/08 19:23	(435) 689-2147	(435) 616-5528	I do what i want
/08 19:24	12/12/08 19:24	(435) 616-5528	(435) 689-2147	Plz dude we need this
/08 21:34	12/20/08 21:34	(435) 689-2147	(435) 616-5528	Dont forget my ketchup :]
/08 21:35	12/20/08 21:35	(435) 616-5528	(435) 689-2147	should we still go get ht will be gross
/08 21:36	12/20/08 21:36	(435) 689-2147	(435) 616-5528	Yes go get it. It wasnt that long ago and they know me. You better get it
/08 21:36	12/20/08 21:36	(435) 616-5528	(435) 689-2147	k
/08 14:00	12/23/08 14:00	(435) 689-2147	(435) 616-5528	Whats up lukey pooh
/08 14:02	12/23/08 14:02	(435) 616-5528	(435) 689-2147	Come over pooh bear
/08 14:02	12/23/08 14:02	(435) 689-2147	(435) 616-5528	Come pick me up and i gladly will
/08 20:52	12/25/08 20:58	(435) 689-2147	(435) 616-5528	MERRY CHRISTMAS!
/08 22:00	12/26/08 22:00	(435) 689-2147	(435) 616-5528	Is mark going back to your house after they look at that shit?
/08 20:27	12/31/08 20:27	(435) 689-2147	(435) 616-5528	Why did you call?
/08 20:28	12/31/08 20:28	(435) 616-5528	(435) 689-2147	Lookin 4 mark

1/08 20:28	12/31/08 20:28	(435) 689-2147	(435) 616-5528	Did you get ahold of him
1/08 20:41	12/31/08 20:41	(435) 616-5528	(435) 689-2147	Ya
1/08 23:23	12/31/08 23:23	(435) 616-5528	(435) 689-2147	Better hurry
1/08 23:24	12/31/08 23:24	(435) 689-2147	(435) 616-5528	I'm already on my way
9 18:13	1/3/09 18:13	(435) 689-2147	(435) 616-5528	What are you gonna do tonight?
9 19:48	1/5/09 19:48	(435) 689-2147	(435) 616-5528	What are you doing?
9 19:49	1/5/09 19:49	(435) 616-5528	(435) 689-2147	Goin a moms 2 eat
9 19:50	1/5/09 19:50	(435) 689-2147	(435) 616-5528	Cool cool you should go get me junction
9 17:23	1/9/09 17:23	(435) 689-2147	(435) 616-5528	Hahahaha you are missing out on some hilarious shit right now it is fuckin hilarious.
09 17:09	1/14/09 17:09	(435) 689-2147	(435) 616-5528	So how about that food?
09 13:38	1/15/09 13:38	(435) 689-2147	(435) 616-5528	Is it cool if we bring your pipe or do you have one already?
09 11:23	1/16/09 11:23	(435) 689-2147	(435) 616-5528	Linze just called me but i cant answer at school
09 13:16	1/16/09 13:16	(435) 616-5528	(435) 689-2147	Call her and tell her 2 call me
09 13:16	1/16/09 13:16	(435) 689-2147	(435) 616-5528	K
09 1:03	1/18/09 1:03	(435) 689-2147	(435) 616-5528	Times up home fry. If you make us wait any longer you have to bring us a mountain dew.
09 1:04	1/18/09 1:04	(435) 616-5528	(435) 689-2147	Im good i dont want any
09 1:05	1/18/09 1:05	(435) 689-2147	(435) 616-5528	Luke you asshole we have been waiting forever for you. Mark said now you have to let him use your car to collect his money tomorrow
09 18:05	1/21/09 18:05	(435) 689-2147	(435) 616-5528	We need a lighter please
09 21:06	1/21/09 21:06	(435) 689-2147	(435) 616-5528	When are you coming back to Kanab?
09 21:06	1/21/09 21:06	(435) 616-5528	(435) 689-2147	Now
09 21:08	1/21/09 21:08	(435) 689-2147	(435) 616-5528	Well do you still have the truck?
09 21:19	1/21/09 21:19	(435) 616-5528	(435) 689-2147	Ya
09 18:14	1/29/09 18:14	(435) 689-2147	(435) 616-5528	What are you doing pooh bear
09 18:28	1/29/09 18:28	(435) 616-5528	(435) 689-2147	Sittin at my house what u doin
09 18:29	1/29/09 18:29	(435) 689-2147	(435) 616-5528	Trying to get mark to wake up but he's being a douche. I want to come hang out!
09 17:27	1/30/09 17:27	(435) 689-2147	(435) 616-5528	Will you drop me and mark off at home pretty please. And mark says he needs to talk to you.
09 17:28	1/30/09 17:28	(435) 616-5528	(435) 689-2147	ya in a min
09 17:29	1/30/09 17:30	(435) 689-2147	(435) 616-5528	K cool just come get us when your ready. :]
09 17:30	1/30/09 17:30	(435) 616-5528	(435) 689-2147	After i do the dishes
09 17:30	1/30/09 17:30	(435) 689-2147	(435) 616-5528	K
9 22:51	2/1/09 22:51	(435) 689-2147	(435) 616-5528	Hey so whats going on over at your house tonight?
9 22:53	2/1/09 22:53	(435) 616-5528	(435) 689-2147	Where u at?
9 22:54	2/1/09 22:54	(435) 689-2147	(435) 616-5528	Home
9 22:55	2/1/09 22:55	(435) 616-5528	(435) 689-2147	Where down the street come over
9 22:57	2/1/09 22:57	(435) 689-2147	(435) 616-5528	I'm waiting for my mom to come over

'09 19:01	2/5/09 19:01	(435) 689-2147	(435) 616-5528	Hey pooh bear. What up? You wanna go eat dinner with me and mark tonight?
'09 19:11	2/5/09 19:11	(435) 616-5528	(435) 689-2147	i just got pizza but where u want 2 eat
'09 19:12	2/5/09 19:13	(435) 689-2147	(435) 616-5528	It doesnt matter. we dont have to go if you already ate.
'09 19:33	2/5/09 19:33	(435) 616-5528	(435) 689-2147	but we need 2 chill
'09 19:34	2/5/09 19:34	(435) 689-2147	(435) 616-5528	Yea i know
2/09 10:00	2/22/09 10:00	(435) 689-2147	(435) 616-5528	What are you doing lukey
3/09 13:48	2/23/09 13:48	(435) 616-5528	(435) 689-2147	R u with mark?
3/09 12:26	3/16/09 12:26	(435) 689-2147	(435) 616-5528	Hey pooh bear. What are you up to?
3/09 23:42	3/16/09 23:42	(435) 689-2147	(435) 616-5528	You guys almost home?

Addendum C

KANE COUNTY ATTORNEY
JUN 30 2010
RECEIVED

KANE COUNTY SHERIFF'S OFFICE

SHERIFF LAMONT SMITH
76 NORTH MAIN KANAB UTAH 84741
PHONE (435) 644-2349
FAX (435) 644-2096

In ref to text message # 213 on 10/1/09 from pagie bush

Was the purpose of this text msg to purchase / sell / or trade illegal drugs (circle one)
(initials) (Y/N) ry

The illegal drug transaction was for: weed

Did the transaction take place? yes

Where? Kanab

When? _____

Any additional comments:

I understand that pursuant to Rule 1102, Utah rules of Evidence and Section 76-8-504.5 Utah Code Annotated, the statements I have made in this document may be presented to a magistrate or a judge in lieu of my sworn testimony at preliminary hearing. I also understand that any false statement I make and that I do not believe to be true may subject me to criminal punishment as a "Class A Misdemeanor".

Is this a true and accurate statement? yes

Did you make this statement on your own free will? yes

[Signature]
Signature
11-14-09
Date

[Signature]
Signature
11/14/09
Date

JUN 30 2010

KANE COUNTY SHERIFF'S OFFICE

CASE NO.	10-111
DATE REC'D IN EVIDENCE	10/15/1
CLERK	88

KANE COUNTY SHERIFF'S OFFICE

SHERIFF LAMONT SMITH
76 NORTH MAIN KANAB UTAH 84741
PHONE (435) 644-2349
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In ref to text message # 214 on 10/11/09 from pagle bash

Was the purpose of this text msg to purchase / sell / or trade illegal drugs (circle one)
(initials) (Y/N) Y

The illegal drug transaction was for: weed

Did the transaction take place? no

Where? _____

When? _____

Any additional comments:

I understand that pursuant to Rule 1102, Utah rules of Evidence and Section 76-8-504.5 Utah Code Annotated, the statements I have made in this document may be presented to a magistrate or a judge in lieu of my sworn testimony at preliminary hearing. I also understand that any false statement I make and that I do not believe to be true may subject me to criminal punishment as a "Class A Misdemeanor".

Is this a true and accurate statement? yes

Did you make this statement on your own free will? yes

[Signature] 11-14-09
Signature Date

[Signature] 11/14/09
Signature Date

[Signature] 11/14/09

Addendum D

ORIGINAL

IN THE SIXTH DISTRICT JUVENILE COURT
FOR KANE COUNTY, STATE OF UTAH

-o0o-

STATE OF UTAH, in the)
interest of)

C.P.B.,)

A person 18 years of)
age of older.)

Case No. 1021714

TRIAL

-o0o-

BE IT REMEMBERED that on the 15th day of October,
2010, commencing at the hour of 9:59 a.m., the above-entitled
matter came on for hearing before the HONORABLE PAUL D. LYMAN,
sitting as Judge in the above-named Court for the purpose of
this cause, and that the following proceedings were had.

-o0o-



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1 -but I can believe your officer, 'cause there's absolutely no
2 evidence other than what your officer presented and he
3 appeared to be believable, okay?

4 So, Luke signed it, Luke filled it out, Luke did it,
5 but now, given that and this--these--this eleven minutes of
6 conversation on the cell phone, do I have enough to conclude
7 that the deal actually happened?

8 MR. VAN DYKE: So, your--your--your question then is
9 to the truthfulness of the statement that Mr. Johnson filled
10 out?

11 THE COURT: No. No. I'm saying, you've got--you've
12 got an officer who appeared to me to be credible, he testified
13 today, he was there, this document was filled out, Luke signed
14 it, Luke says, I can't recall. I'm going to believe your
15 officer, there's no contrary evidence, and on the face of it,
16 it appears to me that that's what happened, that this
17 conversation occurred and Luke filled this Exhibit 2 out.
18 Okay?

19 MR. VAN DYKE: Okay.

20 THE COURT: I'll also believe that Luke initialed
21 that one little paragraph that I'm admitting on Page 1 of
22 Exhibit 1, so, we went over it and Luke did identify and say--
23 you asked him about--I'm pretty sure you asked him about bud,
24 didn't you? Yeah. Yeah. Asked him about bud, he knew it was
25 called bud and they're talking about buying bud. Okay?

1 So--but is that enough to convict a person? Just
2 this call on the phone. 'Cause what Mr. Leigh is saying, is,
3 we don't know a transaction actually occurred. We know there
4 was an arrangement for a transaction because Luke also says he
5 doesn't remember giving--or--or dealing drugs to her. And
6 your officer can't refute or support that, 'cause your officer
7 wasn't there for that.

8 Luke says in writing, the transaction took place,
9 yes; but today, he says, I don't remember. Is that sufficient
10 to convict someone beyond a reasonable doubt? That's what I'm
11 asking.

12 MR. VAN DYKE: That, alone, probably not, your
13 Honor, but we have--we have some more. I mean, if we--if we
14 take the testimony--

15 THE COURT: Tell me what more you've got.

16 MR. VAN DYKE: If we take the testimony of Luke
17 Johnson saying that he's been beat up in prison several times
18 because he has informed on people, that shows why he doesn't
19 want to remember.

20 THE COURT: Okay. So, you think he's lying to--
21 because he's protecting himself, doesn't want to get beat up
22 again. If word gets to the prison that--that he--that she
23 gets convicted and he gets beat up again.

24 MR. VAN DYKE: Exactly.

25 THE COURT: So, he's saying, I'll just lie about

1 everything, say I don't remember anything; that's what you're
2 saying? Okay.

3 MR. VAN DYKE: Exactly. And because of that, we
4 have to believe that he was telling the truth in the
5 statement. In that statement--

6 THE COURT: That's Exhibit 2?

7 MR. VAN DYKE: Exactly. Exhibit 2. He stated that
8 the transaction did take place.

9 THE COURT: Okay. All right.

10 Let's go to Mr. Leigh. Mr. Leigh, you--tell me what
11 you think about what--what we just went through.

12 MR. LEIGH: Well, we don't know why Luke stated what
13 he did.

14 THE COURT: Well, I've got--I can draw a pretty good
15 conclusion. I watched him--

16 MR. LEIGH: Yeah.

17 THE COURT: He acted scared on the stand today, he's
18 nervous.

19 MR. LEIGH: Yeah. Yeah.

20 THE COURT: He's fidgeting the whole time he's there
21 making any statement. You know, he--he acted like somebody
22 who's afraid.

23 MR. LEIGH: Yeah. But--but we don't know if any
24 transaction ever--ever--

25 THE COURT: Well, the officer said Luke wrote "yes"

1 on Exhibit 2. Luke says he can't recall even doing Exhibit 2.

2 MR. LEIGH: So--

3 THE COURT: So, I've got a--but go ahead, I'm
4 interrupting you.

5 MR. LEIGH: Well, he--he said that a transaction
6 didn't take place--on Exhibit 2, well, whoops, that's the
7 wrong one.

8 THE COURT: Do you want to look at Exhibit 2--

9 MR. LEIGH: Yeah, I--I--

10 THE COURT: --so we're sure that--'cause I want to
11 make sure that you're looking at the same thing that I'm
12 looking at.

13 MR. LEIGH: Yes, I'm--yeah, I've got the same one.
14 10--for 10-1?

15 THE COURT: Yes, sir.

16 MR. LEIGH: Now, his--his testimony today, I--is
17 just that he couldn't recall whether a transaction took place
18 or not, I believe he said, so, now, you've got--well, credi--
19 credibility of the witness himself, I think, and I--and I
20 think that when you're dealing with beyond a reasonable doubt,
21 you know, if you've got clear and convincing evidence that
22 there--there was a transaction, I think, knowing what has been
23 presented--been presented today before the Court and I--I go
24 back to that that there's--there's noth--no testimony that
25 there was actually a drug there, that there was in fact, a

drug. I think they don't get there with possession either,
and I realize your Honor may disagree with me on that--

THE COURT: Okay.

MR. LEIGH: --but I think there is a real--I think
that's real problematic.

THE COURT: Thank you.

In this case, I'm going to find the State did meet
its burden. It appears that he knew who C.P.B. was, that
C.P.B.'s boyfriend was a co--he described him as a co-
defendant of his own, although Luke said he doesn't recall
dealing drugs with her, he--he did believe that they had dis--
he did acknowledge that he filled out Exhibit 2. Exhibit 2
says a drug transaction did take place, he writes that it was
for weed, which he defined as marijuana. In the conversation
with her, or the ex--exchange of text messages with her on
Exhibit 1, Got any bud? He defined that as drugs, as
marijuana and the Court can conclude that a ten sack is a
small amount of marijuana, consequently, it wouldn't be
anything more than a Class B. And it occurred in Kanab.
Consequently, I'm going to find that the State has met its
burden with regard to Allegation 2.

With regard to Allegation 1, the Court will not find
that you've met your burden because you simply haven't proven
any location and with no location, I'm not going to convict
her of it. Okay?