

2015

State of Utah v. Debbra Jo Clark : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee :
v. :
DEBBRA JO CLARK, : Case No. 20140955-CA
Defendant/Appellant. : Appellant is not incarcerated.

BRIEF OF APPELLANT

Appeal from a conviction for one count of Retail Theft, a third degree felony, in violation of Utah Code §76-6-602 (2012), and one count of Criminal Trespass, a class B misdemeanor, in violation of Utah Code §76-6-206(2)(b) (2012), in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Terry L. Christiansen presiding.

LORI J. SEPPI (9428)
HEATHER J. CHESNUT (6934)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 200
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

SEAN D. REYES (7969)
Utah Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

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LORI J. SEPPI (9428)
HEATHER J. CHESNUT (6934)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 200
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

SEAN D. REYES (7969)
Utah Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iv
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF ISSUES, STANDARDS OF REVIEW, PRESERVATION.....	1
RELEVANT STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS.....	2
STATEMENT OF FACTS AND CASE.....	2
a. Procedural History	2
b. The State’s Evidence.....	4
c. The Defense Evidence.....	7
d. The State’s Cross-Examination of Larsen and Rebuttal Evidence.....	8
SUMMARY OF ARGUMENT.....	10
ARGUMENT.....	12
I. THIS COURT SHOULD REVERSE BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING STATE’S EXHIBIT 2 INTO EVIDENCE.....	12
A. State’s Exhibit 2 Was Not Admissible under Rule 402 Because It Was Irrelevant.....	14
1. State’s Exhibit 2 Was Inadmissible Because the State Failed to Establish a Foundation of Relevancy.....	16
2. State’s Exhibit 2 Was Irrelevant Because the State Failed to Show that the Evidence Related to a Matter that Was Material and Relevant at Trial.....	19
B. State’s Exhibit 2 Was Not Admissible under Rule 403 Because Its Probative Value, If Any, Was Substantially Outweighed by the Danger of Unfair Prejudice	23

C.	State’s Exhibit 2 Was Not Admissible Because It Was Not Certified, as Required by Rules 901 and 902 of the Utah Rules of Evidence	26
D.	State’s Exhibit 2 Was Not Admissible Because It Was Hearsay and It Did Not Qualify under Any Exceptions to the Rule against Hearsay	29
E.	State’s Exhibit 2 Was Not Admissible Because It Violated Clark’s Right to Confrontation	33
F.	This Court Should Reverse Because the Admission of State’s Exhibit 2 Prejudiced Clark.....	36
G.	This Issue Is Preserved or It Should Be Addressed for Plain Error.....	42
1.	Clark Preserved Her Claims that State’s Exhibit 2 Violated Rules 402 and 403, the Hearsay Rules, and the Confrontation Clause	42
2.	Alternatively, this Court Should Review the Issues for Plain Error	46
CONCLUSION		49
CERTIFICATE OF COMPLIANCE		50

ADDENDA

Addendum A: Sentence, Judgment, Commitment

Addendum B: Debbie Larsen’s trial testimony

Addendum C: Relevant Statutes, Rules, and Constitutional Provisions

Addendum D: Redacted copy of State’s Exhibit 2

Addendum E: District Court Dockets for *State v. Larsen*

Addendum F: District Court Docket for *State v. Hale*

TABLE OF AUTHORITIES

Cases

<i>Baird v. Baird</i> , 2014 UT 8, 322 P.3d 728.....	44
<i>Bingham Mines Co. v. Bianco</i> , 246 F. 936 (8th Cir. 1917).....	15
<i>Carter v. Carter</i> , 563 P.2d 177 (Utah 1977)	18
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004).....	33, 34, 35, 48, 49
<i>Davenport v. State</i> , 519 P.2d 452 (Alaska 1974)	15, 19
<i>Davis v. Washington</i> , 547 U.S. 813 (2006).....	34, 35
<i>In re Adoption of J.M.S.</i> , 2015 UT 35, 345 P.3d 709	43
<i>In re Baby Girl T.</i> , 2012 UT 78, 298 P.3d 1251.....	43, 46
<i>In re K.D.S.</i> , 578 P.2d 9 (Utah 1978)	29
<i>In re N.A.D.</i> , 2014 UT App 249, 338 P.3d 226.....	46, 47
<i>Layton City v. Peronek</i> , 803 P.2d 1294 (Utah Ct.App. 1990).....	32, 48
<i>Melendez-Diaz v. Massachusetts</i> , 129 S.Ct. 2527 (2009).....	32, 33, 34, 35
<i>Nielsen v. Pioneer Valley Hosp.</i> , 830 P.2d 270 (Utah 1992)	44, 46
<i>Patterson v. Patterson</i> , 2011 UT 68, 266 P.3d 828.....	42, 43
<i>Salt Lake City v. George</i> , 2008 UT App 257, 189 P.3d 1284	33, 34, 35, 36, 48
<i>Salt Lake City v. Williams</i> , 2005 UT App 493, 128 P.3d 47.....	33, 34, 35, 36, 48, 49
<i>State v. Angus</i> , 581 P.2d 992 (Utah 1978).....	33
<i>State v. Ashe</i> , 745 P.2d 1255 (Utah 1987).....	39
<i>State v. Barela</i> , 2015 UT 22, ---P.3d---	36, 37
<i>State v. Bartley</i> , 784 P.2d 1231 (Utah Ct.App. 1989)	24, 47
<i>State v. Bertul</i> , 664 P.2d 1181 (Utah 1983).....	32, 33, 48
<i>State v. Bird</i> , 2015 UT 7, 345 P.3d 1141.....	42, 43, 44, 45, 46

<i>State v. Burk</i> , 839 P.2d 880 (Utah Ct.App. 1992)	47
<i>State v. Ewell</i> , 883 P.2d 1360 (Utah Ct.App. 1993).....	18
<i>State v. Finlayson</i> , 956 P.2d 283 (Utah Ct.App. 1998).....	15, 16, 19, 47
<i>State v. Garcia</i> , 2007 UT App 228, 164 P.3d 1264	43, 46
<i>State v. Gonzalez</i> , 2015 UT 10, 345 P.3d 1168	26, 44, 46
<i>State v. Gonzalez-Camargo</i> , 2012 UT App 366, 293 P.3d 1121	32, 48
<i>State v. Green</i> , 578 P.2d 512 (Utah 1978).....	41
<i>State v. Hales</i> , 2007 UT 14, 152 P.3d 321	36
<i>State v. Higginbotham</i> , 917 P.2d 545 (Utah 1996).....	27, 28, 48
<i>State v. Holgate</i> , 2000 UT 74, 10 P.3d 346.....	42, 45
<i>State v. Jones</i> , 2015 UT 19, 345 P.3d 1195.....	23, 46
<i>State v. Kamrowski</i> , 2015 UT App 75, ---P.3d---.....	13
<i>State v. Lamorie</i> , 610 P.2d 342 (Utah 1980)	26, 28, 48
<i>State v. Levin</i> , 2004 UT App 396, 101 P.3d 846.....	41
<i>State v. Long</i> , 721 P.2d 483 (Utah 1986)	28, 48
<i>State v. McCullar</i> , 2014 UT App 215, 335 P.3d 900	24
<i>State v. Mitchell</i> , 571 P.2d 1351 (Utah 1977)	19, 20, 22, 23, 37, 47
<i>State v. Mora</i> , 558 P.2d 1335 (Utah 1977).....	15
<i>State v. Morrell</i> , 803 P.2d 292 (Utah Ct.App. 1990)	32, 48
<i>State v. Murphy</i> , 674 P.2d 1220 (Utah 1983).....	26
<i>State v. Smedley</i> , 2003 UT App 79, 67 P.3d 1005.....	1, 2, 14, 47
<i>State v. Stewart</i> , 925 P.2d 598 (Utah Ct.App. 1996).....	15, 16, 19, 47
<i>State v. Thompson</i> , 2014 UT App 14, 318 P.3d 1221	12, 13, 14, 15
<i>State v. Toki</i> , 2011 UT App 293, 263 P.3d 481	23, 36, 47

<i>State v. Troy</i> , 688 P.2d 483 (Utah 1984)	26
<i>State v. Verde</i> , 2012 UT 60, 296 P.3d 673	24
<i>State v. Washington</i> , 476 P.2d 1019 (Utah 1970).....	41
<i>Torian v. Craig</i> , 2012 UT 63, 289 P.3d 479.....	43, 46
<i>United States v. Barletta</i> , 652 F.2d 218 (1st Cir. 1981)	26
<i>United States v. Lipscomb</i> , 539 F.3d 32 (1st Cir. 2008).....	19, 20, 21, 23
<i>United States v. Warledo</i> , 557 F.2d 721 (10th Cir. 1977)	21, 22, 23, 47

Statutes

Utah Code §76-6-412 (2014).....	2
Utah Code §76-6-602 (2012).....	2
Utah Code §77-1-3 (2012).....	33, 35
Utah Code §77-2-2 (2012).....	33, 35
Utah Code §78A-4-103 (2012).....	1

Constitutional Provisions

U.S. Const. amend. VI.....	2, 13, 33
----------------------------	-----------

Rules

Utah R.Crim.P. 4	33, 35
Utah R.Crim.P. 5	33, 35
Utah R.Crim.P. 6	32, 36
Utah R.Evid. 101	12, 13
Utah R.Evid. 1101	12, 13
Utah R.Evid. 201	18
Utah R.Evid. 401	2, 14, 15
Utah R.Evid. 402	2, 11, 13, 14, 23, 42, 44, 46, 47

Utah R.Evid. 403	2, 11, 13, 14, 23, 24, 26, 42, 44, 45, 46, 47
Utah R.Evid. 404	13
Utah R.Evid. 607	13
Utah R.Evid. 608	13
Utah R.Evid. 609	13
Utah R.Evid. 611	2, 14, 15
Utah R.Evid. 801	2, 29, 48
Utah R.Evid. 802	2, 29, 48
Utah R.Evid. 803	2, 29, 30, 31, 32, 48
Utah R.Evid. 804	2, 29, 30, 48
Utah R.Evid. 807	2, 29, 30, 48
Utah R.Evid. 901	2, 11, 14, 26, 27, 42, 48
Utah R.Evid. 902	2, 11, 14, 26, 27, 28, 30, 31, 42, 48

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STATE OF UTAH, :
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DEBBRA JO CLARK, : Case No. 20140955-CA
Defendant/Appellant. :

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Utah Code §78A-4-103(2)(e) (2012). *See* Addendum A (Sentence, Judgment, Commitment).

STATEMENT OF ISSUES, STANDARDS OF REVIEW, PRESERVATION

Issue I: The defense witness admitted during cross-examination that she had been convicted of a crime and that Clark's boyfriend was listed on the Information as her co-defendant. Despite this, the court admitted the witness's Information and Arrest Warrant as impeachment evidence for the purpose of showing that Clark's boyfriend was listed on the Information as a co-defendant. The question on appeal is whether the court abused its discretion by admitting the Information and Arrest Warrant.

Standard of Review and Preservation: A trial court's decision admitting evidence is reviewed for an abuse of discretion. *See State v. Smedley*, 2003 UT App 79, ¶8, 67 P.3d

1005. This issue is preserved by objection. R.174:150; *see infra* Part I.G.1; Addendum B.

Alternatively, this issue may be addressed for plain error. *See infra* Part I.G.2.

RELEVANT STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

The text of the following are in Addendum C: U.S. Const. amend. VI; Utah R.Evid. 401, 402, 403, 611, 801, 802, 803, 804, 807, 901, 902.

STATEMENT OF THE FACTS AND THE CASE

a. Procedural History.

Following Clark's arrest at a Smith's grocery store on November 30, 2013, she was charged by Information with one count of Retail Theft, third degree felony, in violation of Utah Code §76-6-602 (2012) and §76-6-412(1)(b)(ii) (2014),¹ and one count of Criminal Trespass, a class B misdemeanor, in violation of Utah Code §76-6-206(2)(b) (2012). R.1-2. Following a preliminary hearing, Clark was bound over as charged. R.41-42; 67-83. Before trial, Clark filed a motion to bifurcate, requesting a bench trial on the Retail Theft enhancement and on the Criminal Trespass count. R.100-03. Following a hearing, the trial court granted Clark's motion. R.109-10; 174:4-5; 193:31-33.

A jury trial was held on August 27, 2014. R.146-49; 174. Before the jury, each party called one witness to testify: The State called Bobbie Davis, a loss prevention officer for Smith's, and the defense called Debbie Larsen. R.174. The State originally objected to Larsen's testimony because Clark did not provide a witness list. R.85-87;

¹ The State conceded below that the 2014 version of section 76-6-412 applies in this case. R.174:194-202.

174:6-8, 52-54. After talking to Larsen, however, the prosecutor withdrew the objection. R.174:122-23.

On cross-examination, the State questioned Larsen about her conviction for Theft by Deception. R.174:141-47. Larsen admitted the conviction and admitted that Clark's boyfriend, Christian Hale, was listed as her co-defendant on the Information. R.174:145-49. Larsen explained, however, that she believed there was a mix-up on the Information and that Hale was not actually her co-defendant because his name did not appear on her court paperwork and he was not present at her court hearings. R.174:145-49. Over objection, the trial court admitted State's Exhibit 2 as impeachment evidence for the purpose of showing that Hale was listed on the Information as Larsen's co-defendant. R.174:149-50. State's Exhibit 2 was a complete copy of the Information and Arrest Warrant related to Larsen's Theft by Deception conviction.² R.174:149-50.

The jury returned a verdict of guilty on Retail Theft. R.144; 174:196. Outside the presence of the jury, the trial court heard evidence and argument on the Retail Theft enhancement. R.174:200-02. The court then found Clark guilty of Retail Theft, a third degree felony, and of Criminal Trespass. R.174:193, 200-02. Thereafter, the court sentenced Clark to serve a prison term of zero-to-five years for Retail Theft and a jail term of 180 days for Criminal Trespass. R.162-64; 194:12-13. The court suspended the sentences, placed Clark on probation for 36 months, and ordered Clark to serve 365 days in jail. R.162-64; 194:12-16. Clark filed a timely notice of appeal. R.168.

² A redacted copy of State's Exhibit 2 is located at Addendum D. The original State's Exhibit 2 is not redacted and is located at R.175.

b. The State's Evidence.

Davis, the loss prevention officer, described the alleged offense as follows. On November 30, 2013, Clark and Larsen arrived at Smith's grocery store together but entered the store separately. R.174:109. Clark entered first. R.174:109. Davis had met Clark before. R.174:75-76. During the prior meeting, Davis had "trespassed" Clark and "asked her to never come back into any Smith's again." R.174:76.

When Davis saw Clark, she called the police and "maintained visual on" Clark. R.174:75-76. According to Davis, this meant that she followed Clark and "maintained visual" on Clark even if she "had to get down on [her] knees" to do it. R.174:76, 101. Though Davis denied concealing herself, she admitted that she positioned herself in a way that Clark could not see her and watched Clark through wire racks. R.174:98-99, 101.

Clark, who was carrying a large purse, walked down the home improvement aisle to the Command hooks area. R.174:77-79, 91, 95-98. Davis watched Clark from the front of the aisle, 60 to 70 feet away, and saw Clark select two to three items from the shelf. R.174:77. Clark then walked along the aisle at the back of the store to the seasonal department. R.174:78, 99-100. Davis followed Clark by walking along the aisle at the front of the store. R.174:78.

The seasonal department contained "big displays." R.174:78-79. According to Davis, it is an area "free from view of other customers or employees." R.174:78-79. In Davis's opinion, Clark did not appear to be shopping in the seasonal department. R.174:79. "Her eyes were darting" around, and she went behind a "blow-up snowman," where there was no "small merchandise" to look at. R.174:79, 113. Davis concluded that

Clark went behind the snowman so “she couldn’t be seen.” R.174:79. While in the seasonal department, Clark put the items she had taken from the shelf into her purse. R.174:78-79, 114-15. Davis could not see Clark’s whole body at that time, but she could see Clark’s hands and mid-torso. R.174:79, 102.

Clark then walked back along the aisle at the back of the store and turned up an aisle that led to the front of the store and the exit. R.174:80-81, 86, 103-04. Davis again followed Clark by walking along the aisle at the front of the store. R.174:80-81.

At trial, Davis described Clark’s movements as deliberate, saying that Clark walked “straight down” the home improvement aisle to the Command hooks area, “quickly walked” to and from the seasonal department, and headed “straight for the exit” without “looking for anything else.” R.174:77-81, 91, 95-100, 103-04. At the preliminary hearing, however, Davis testified that Clark “wandered” to the Command hooks area, “wandered” to the seasonal department, and “wandered down an aisle” toward the exit. R.174:96-98, 100, 103-04. When confronted about her inconsistent testimony, Davis said that she “misspoke” at the preliminary hearing. R.174:96-98, 100, 103-04, 111-13.

Davis testified that Clark saw her as Clark neared the floral department at the front of the store, which was “mere feet from the exit.” R.174:87, 105, 116. Clark “made full-on eye contact with” Davis. R.174:88. According to Davis, Clark registered “shock” and “panic.” R.174:88. Clark then “quickly spun around and went” back into the aisles. R.174:88, 118. Davis again followed Clark and, from fifteen feet away, observed Clark remove items from her purse and “ditch[]” them on a shelf. R.174:88-89, 117. According to Davis, Clark also watched “to see if [Davis] was still following her.” R.174:89.

Clark then went down one aisle and up the next toward the exit. R.174:90. Davis and two assistants stopped Clark before she exited and told Clark that the police were coming. R.174:90. Clark asked Davis why she was stopping her, and Davis "informed her of the criminal trespass." R.174:91. Clark said, "I didn't steal anything" and opened her purse. R.174:91. The purse was "completely empty." R.174:91.

Davis took Clark to the loss prevention office. R.174:90. After the police arrived, Davis said to Clark, "'What are you doing in my store? You had been trespassed.'" R.174:91. Clark responded that she "knew that she was trespassed" and said that "she didn't know why she was there." R.174:91. Davis asked Clark if she had come to the store with anyone else, and Clark responded that she had come with Larsen. R.174:92.

After receiving a call from the service desk and reviewing security footage, Davis determined that Larsen was at the service desk attempting to return Command hooks without a receipt. R.174:92-93, 107. Davis stopped Larsen at the service desk. R.174:92-93. According to Davis, Larsen "willingly handed" the hooks to Davis, saying that "she did not want them" and that she did not want to complete the return. R.174:108, 117. Larsen was permitted to leave the store. R.174:108. Davis then retrieved the items that Clark had "ditched" on a shelf, and the police arrested Clark. R.174:93-94.

Davis claimed that the items she retrieved from the shelf were hooks like those that Larsen had been trying to return without a receipt. R.174:93-94, 107. The State did not produce the items from the shelf or the hooks that Larsen attempted to return. R.174:107-08, 117. Davis testified that all of the items, including the hooks that Larsen attempted to return, had been "put back into stock" and sold. R.174:107-08.

c. The Defense Evidence.

Larsen testified as follows. Larsen and Clark are friends. R.174:126. They went to Smith's together on November 30 because Larsen had items to return and Clark was shopping for "stuff for dinner." R.174:127. They had decided to have dinner together, and Clark was going to cook. R.174:136.

Larsen planned to return three medications, for which she had receipts, and "two hooks," for which she did not. R.174:127. Her boyfriend had purchased the hooks for her, and "he never keeps his receipts." R.174:128, 133, 135. She returned the hooks because they were too wide for the wall where she planned to use them. R.174:128, 130, 135.

Clark entered the store first because Larsen had to settle her dog in the car before going in. R.174:128, 137. When Larsen entered the store, she went to the service desk. R.174:128-29. There, after waiting her turn, she approached the desk to return the items and explained that she did not have receipts for the hooks because her boyfriend does not keep receipts. R.174:129, 133-34. The clerk said that was fine and that Larsen would receive a gift card for the return. R.174:133-34.

When the transaction was nearly complete, Davis approached Larsen and asked if she was with Clark. R.174:128-29. Larsen responded that she was, and Davis accused her of having Clark hand off stolen items to her. R.174:128-31. Davis then took Larsen's photograph and told Larsen "not to come in their store ever again." R.174:129-31.

Larsen testified that she "begged" Davis to review the security footage because it would show that she had not even passed Clark in the store. R.174:131-32. Davis "started just screaming at me and wouldn't listen to me." R.174:131-32. Larsen was not charged

with a crime. R.174:132. She left the store with the medication and the hooks and returned the items at a different Smith's store. R.174:131-32.

d. The State's Cross-Examination of Larsen and Rebuttal Evidence.

During cross-examination, the State asked Larsen when she had last seen Clark's boyfriend, Christian Hale. R.174:139-41. Larsen responded that she had seen Hale about a month before November 30. R.174:141. The State asked if that was the time Larsen and Hale "were passing forged checks." R.174:141. Defense counsel objected. R.174:141. After hearing argument, the trial court permitted the State to admit evidence that Larsen had been convicted of Theft by Deception, a class A misdemeanor. R.174:141-44.

Although the State misstated the conviction as forgery, a third-degree felony, Larsen readily admitted the conviction. R.174:145. Defense counsel objected because the State had misstated the conviction, and the court corrected the record: "Members of the jury, you are instructed that Ms. Larsen was not convicted of a third-degree felony forgery. She was convicted of a class A misdemeanor theft by deception." R.174:146. Defense counsel also corrected the record. R.174:151. Counsel stipulated to the conviction, and the Judgment was not admitted into evidence. R.174:155-56.

In questioning Larsen about the conviction, the State asked Larsen if she was charged with Hale. R.174:145. Larsen responded, "[W]e weren't charged together. We never went [to court] together." R.174:145. When the State showed Larsen the Information, which contained both her name and Hale's name, Larsen admitted that Hale's name was on the Information but explained, "There was some mix-up in my court

case, because they said that for some reason he is tacked on the end of mine, when we never had trial together, never had court together or nothing at all.” R.174:145-46.

Larsen testified that she and Hale both received forged checks from the same person, J.D. Cook, and that they both cashed the forged checks, but that they did not do it together. R.174:146-49. She explained that Cook made a check out in her name and that she took it to Wells Fargo and cashed it. R.174:146-47. She did not know it was forged at the time, but she learned it was forged after she cashed it. R.174:147-49. She pleaded guilty because she wanted to avoid a felony conviction and because she kept the money even after she learned that the check was forged. R.174:149, 153-56.

Larsen testified that she did not “know why” she and Hale were listed on the same Information. R.174:146. She stated that “Hale was not in my court papers.” R.174:149. She and Hale received forged checks from the same person, but they did not cash the checks together or go to court together. R.174:149-50. Larsen did not even know when Hale cashed his check. R.174:148. Larsen said that her probation officer told her that Hale’s name being on same Information as hers was “a mix-up.” R.174:150.

The State moved to admit State’s Exhibit 2, which contained the complete Information and Arrest Warrant from Larsen’s Theft by Deception case, arguing that it impeached Larsen because the Information listed Hale as a co-defendant and Larsen “stated that Christian Hale was never on her court documents.” R.174:149-50.

Defense counsel objected that State’s Exhibit 2 could not be used to impeach since it contained allegations, not convictions: “[A]n Information is allegations not a conviction. And ... I’m not sure how ... allegations [are] impeachment material.”

R.174:150. Counsel also objected because the line of questioning was not relevant and, even if it was, State's Exhibit 2 contained additional evidence that was not relevant: "[I]t is not just going to whether [Larsen and Hale] were charged together, which, by the way, I don't think is relevant here." R.174:150. Additionally, counsel objected because State's Exhibit 2 did not actually impeach Larsen: Larsen "is not an attorney. She doesn't know how court dockets work, how people are charged." R.174:150. The trial court overruled defense counsel's objections and admitted State's Exhibit 2. R.174:150.

The State also called Davis back to the stand to provide rebuttal testimony. Davis testified that when she asked Larsen whether Larsen knew Clark, Larsen acted confused and said that she came to the store alone. R.174:158-59. Davis then confronted Larsen, saying, "Are you sure you didn't arrive here with somebody? Because I just watched on video you arriving in a vehicle with a woman that I have upstairs.... And she admitted that she came here with you." R.174:158. Larsen responded, "Oh, well, she asked me to do this return." R.174:158. Davis said, "Okay, well, we are going to keep this merchandise, and you are free to leave." R.174:158. Larsen responded, "Okay, I don't want nothing to do with this," and left. R.174:158. Davis recalled that she spoke to Larsen calmly but that Larsen was agitated. R.174:159-60. Davis could not recall whether Larsen had merchandise with her other than the hooks, but Davis recalled that Larsen did not take the hooks with her when she left the store. R.174:160-61.

SUMMARY OF ARGUMENT

The trial court abused its discretion by admitting State's Exhibit 2 because the exhibit was irrelevant, its probative value, if any, was substantially outweighed by the

danger of unfair prejudice, it was not authenticated, it was inadmissible hearsay, and it violated Clark's right to confrontation.

First, State's Exhibit 2 was irrelevant. Rule 402 excludes irrelevant evidence. Contradiction evidence is irrelevant if it does not contradict the witness's testimony or if it is offered in response to a collateral matter brought up during cross-examination. Here, State's Exhibit 2 was irrelevant because it did not contradict Larsen's testimony and it was offered to impeach a collateral matter raised during cross-examination.

Second, State's Exhibit 2 was inadmissible under rule 403 because its probative value, if any, was substantially outweighed by the danger of unfair prejudice. Evidence is unfairly prejudicial if it tends to encourage the jury to find guilt from improper reasoning. Here, State's Exhibit 2 had no probative value or, if it did, the value was substantially outweighed by the danger that it would unfairly undermine Larsen's credibility and encourage the jury to convict based on improper reasoning such as guilt by association.

Third, State's Exhibit 2 was not authenticated. To be received in evidence, a document must be authenticated. Here, State's Exhibit 2 was inadmissible because it did not meet the authentication requirements of rules 901 and 902.

Fourth, State's Exhibit 2 was inadmissible under the hearsay rules. To be admissible, testimony must not be hearsay or must qualify for an exception to the hearsay rule. Here, State's Exhibit 2 was hearsay and did not qualify under the business records exception, the public records exception, or any other exception to the hearsay rule.

Finally, State's Exhibit 2 violated the Confrontation Clause. Testimonial hearsay is admissible only if the declarant is unavailable and there has been a prior opportunity to

cross-examine. State's Exhibit 2 was testimonial because it was made with an eye toward prosecution, and it was inadmissible because the State made no showing that the declarants were unavailable or that there was a prior opportunity to cross-examine.

This Court should reverse because State's Exhibit 2 prejudiced Clark. There was no physical evidence to support the State's case for Retail Theft. The question for the jury was whether to believe Davis's claim that Clark engaged in retail theft or Larsen's claim that Davis was overly suspicious and jumped to the wrong conclusion. There is a reasonable likelihood that the jury would have believed Larsen had State's Exhibit 2 not been admitted. First, Larsen offered a compelling reason to believe her testimony despite her friendship with Clark and her conviction for Theft by Deception. Second, there was evidence to support a finding that Davis's testimony was unreliable because she prejudged Clark and her memory had been colored by her desire to see Clark convicted. Third, the record suggests that the jury found Larsen's testimony persuasive despite the improper impeachment. Finally, the court did not give a limiting instruction, meaning the jury was free to consider State's Exhibit 2 for improper purposes.

This issue is preserved or can be reviewed for plain error.

ARGUMENT

I. THIS COURT SHOULD REVERSE BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING STATE'S EXHIBIT 2 INTO EVIDENCE

The admissibility of evidence at trial is governed by the Utah Rules of Evidence. *See* Utah R.Evid. 101(a), 1101(a). “Character evidence is evidence of a person's general propensity, such as the propensity to be honest or truthful. It refers to *broad, cross-*

situational traits—propensities that supposedly influence a wide range of conduct.”

State v. Thompson, 2014 UT App 14, ¶28, 318 P.3d 1221 (emphasis in original).

Character evidence is governed by the character evidence rules, such as rules 404, 607, 608, and 609 of the Utah Rules of Evidence. *See Thompson*, 2014 UT App 14, ¶27. But if impeachment evidence is not “offered to establish [a witness’s] character or character trait,” it is not character evidence. *Id.* ¶¶27-29. “[E]xtrinsic evidence offered for other grounds of impeachment (such as contradiction, prior inconsistent statement, bias and mental capacity)” is not governed by the character evidence rules. *Id.* ¶29. The same is true of “evidence used to directly rebut a witness’s testimony or other evidence.” *Id.* The admissibility of such evidence is governed by “Rules 402 and 403.” *Id.*; *see State v. Kamrowski*, 2015 UT App 75, ¶8, ---P.3d---. Such evidence is also subject to the authentication rules, the hearsay rules, and the Confrontation Clause. *See* U.S. Const. amend. VI; Utah R.Evid. 101(a), 1101(a).

State’s Exhibit 2 was the complete Information and Arrest Warrant filed against Larsen in a separate criminal action pertaining to an unrelated matter. R.174:150. The trial court did not admit State’s Exhibit 2 to impeach Larsen’s character. R.174:145-50. Rather, the court admitted the exhibit to impeach Larsen by contradicting her cross-examination testimony. R.174:145-50. Thus, State’s Exhibit 2 was not character evidence governed by the character evidence rules. *See Thompson*, 2014 UT App 14, ¶27. Rather, it was contradiction evidence governed by “Rules 402 and 403.” *Id.* ¶29. It was also governed by the authentication rules, the hearsay rules, and the Confrontation Clause. *See* U.S. Const. amend. VI; Utah R.Evid. 101(a), 1101(a).

This Court should reverse because the trial court abused its discretion by admitting State's Exhibit 2 into evidence. First, State's Exhibit 2 was inadmissible under rule 402 because it was irrelevant. *See infra* Part I.A. Second, it was inadmissible under rule 403 because its probative value, if any, was substantially outweighed by a danger of unfair prejudice, confusing the issues, or misleading the jury. *See infra* Part I.B. Third, it was inadmissible under rules 901 and 902 because it was not authenticated. *See infra* Part I.C. Fourth, it was inadmissible under the hearsay rules because it was hearsay and did not qualify for any exception to the hearsay rule. *See infra* Part I.D. Finally, it was inadmissible because it violated Clark's right to confrontation. *See infra* Part I.E. This Court should reverse because the exhibit prejudiced Clark. *See infra* Part I.F. Finally, this issue is preserved or should be reviewed for plain error. *See infra* Part I.G.

A. State's Exhibit 2 Was Not Admissible under Rule 402 Because It Was Irrelevant.

Rule 402 states that "[r]elevant evidence is admissible" and "[i]rrelevant evidence is not admissible." Utah R.Evid. 402. Rule 401 says that "[e]vidence is relevant if (a) it has any tendency to make a fact more or less probable that it would be without the evidence; and (b) the fact is of consequence in determining the action." Utah R.Evid. 401. "Where evidence 'has no probative value to a fact at issue, it is irrelevant and is inadmissible under rule 402.'" *State v. Smedley*, 2003 UT App 79, ¶15, 67 P.3d 1005.

On cross-examination, a party may inquire into "matters affecting the witness's credibility." Utah R.Evid. 611(b). "[O]nce [a witness] offers evidence or makes an assertion as to any fact, the State may cross-examine or introduce on rebuttal any

testimony or evidence ‘which would tend to contradict, explain or cast doubt upon the credibility of [the witness’s] testimony.’” *Thompson*, 2014 UT App 14, ¶30; *see State v. Mora*, 558 P.2d 1335, 1336-37 (Utah 1977) (same).

But “[c]ross-examination should not go beyond ... matters affecting the witness’s credibility.” Utah R.Evid. 611(b). “Relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case.” Fed. R.Evid. 401, Adv. Committee Note. The rule permitting a party to cross-examine or introduce on rebuttal any evidence which tends to cast doubt on the credibility of the witness’s testimony “cannot be employed as a pretext for the admission of evidence that is in itself incompetent and prejudicial.” *Bingham Mines Co. v. Bianco*, 246 F. 936, 937 (8th Cir. 1917).

In this case, State’s Exhibit 2 was not relevant “to any elements of the crime [allegedly] committed by [Clark].” *State v. Finlayson*, 956 P.2d 283, 291 (Utah Ct.App. 1998), *aff’d on other grounds*, 2000 UT 10, 994 P.2d 1243. Its only potential relevance “was to cast doubt on the credibility of [Larsen], the ground upon which [the State] sought to have it admitted.” *State v. Stewart*, 925 P.2d 598, 600 (Utah Ct.App. 1996).

“For this kind of evidence to be admissible, the party offering the evidence must lay a sufficient foundation to show the evidence is relevant.” *Id.* Further, when the evidence is offered to contradict a statement made by the witness during cross-examination, the party must also show that the evidence relates to a matter that is “‘material and relevant.’” *Davenport v. State*, 519 P.2d 452, 454 (Alaska 1974).

Here, State's Exhibit 2 was irrelevant because the State (a) failed to lay a sufficient foundation of relevancy, and (b) failed to show that the evidence related to a matter that was material and relevant at trial.

1. State's Exhibit 2 Was Inadmissible Because the State Failed to Establish a Foundation of Relevancy.

The State offered State's Exhibit 2 "to cast doubt on" Larsen's credibility. *Stewart*, 925 P.2d at 600. "For this kind of evidence to be admissible, the party offering the evidence must lay a sufficient foundation to show the evidence is relevant." *Id.* To lay a sufficient foundation of relevancy, the party must show that the evidence actually casts doubt on the witness's credibility. *See id.*; *Finlayson*, 956 P.2d at 291.

In *Finlayson*, for instance, this Court held that expert testimony "was irrelevant and therefore inadmissible" because "defendant did not lay a proper foundation" of relevancy. *Finlayson*, 956 P.2d at 292. There, defendant was charged with raping a Japanese student. *Id.* at 286. Defendant proposed to present expert testimony that "Japanese cultural values" require a Japanese woman to "save face" by manufacturing a rape after premarital sexual intercourse. *Id.* at 291. The trial court excluded the evidence, and this Court affirmed. This Court held that the evidence was irrelevant because defendant failed to establish a proper foundation of relevancy by "show[ing] that the victim was aware of such Japanese cultural values" and "was likely to act in conformity with these values." *Id.* at 291; *see Stewart*, 925 P.2d at 600-03 (defendant failed to lay foundation of relevancy for evidence of witness's mental illness where defendant failed to show that the illness (1) "affect[ed] the witness's ability to accurately perceive, recall,

and relate events” and (2) “existed either at the time of the event regarding which the witness ha[d] been called to testify, or at the time testimony [wa]s given”).

Here, the State failed to establish a foundation of relevancy for State’s Exhibit 2 because the exhibit did not cast doubt on Larsen’s credibility. Larsen admitted that she was convicted of Theft by Deception for her role in the check-cashing scheme.

R.174:141-45. She also admitted that Hale cashed a similar check, was charged for his involvement in the same check-cashing scheme, and was listed on the same Information.

R.174:145-50. The testimony that the State proposed to impeach was Larsen’s statement that she believed there was “some mix-up” in listing her and Hale as co-defendants on the same Information. R.174:145-46. Larsen explained that she believed there was a mix up because she and Hale “weren’t charged together,” they “never went [to court] together,” Hale’s name “was not in [her] court papers,” and her probation officer told her that it was “a mix-up.” R.174:145, 149-50.

But Larsen’s testimony that she believed there was a “mix-up” in listing her and Hale on the same Information was not a lie to be impeached. R.174:145-50. Rather, it was simply her understanding of how her case proceeded through the criminal justice system. R.174:145-50. It is evident that Larsen did not have legal training and that her understanding of the criminal justice system was imperfect. For example, though the State misstated Larsen’s conviction as forgery, a third-degree felony, Larsen still admitted the conviction. R.174:145. In short, as stated by defense counsel, Larsen’s statement was not a lie to be impeached because Larsen “is not an attorney. She doesn’t know how court dockets work, how people are charged.” R.174:150.

Besides, even if Larsen's testimony regarding a possible "mix-up" on the Information was the type of testimony that could be impeached, State's Exhibit 2 did not impeach it. State's Exhibit 2 did not undermine the accuracy of Larsen's testimony that Hale's name was on the Information but was not on her other court papers. *See* R.175. Nor did it undermine the accuracy of Larsen's testimony that Hale was not present at her initial appearance, where the charges were read, or at any of her other court hearings. *See id.* On the contrary, it corroborated Larsen's testimony that she was convicted due to her involvement in the check-cashing scheme, that Hale was involved in the same scheme, and that her name and Hale's were on the same Information. *See id.*

In fact, though unnecessary to the decision, this Court may take judicial notice from the court dockets in Larsen's and Hale's criminal cases that Larsen's understanding of the court proceedings in her case was reasonable, if not accurate. *See* Utah R.Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *State v. Ewell*, 883 P.2d 1360, 1361-62 (Utah Ct.App. 1993) (taking judicial notice of a transcript from a different case where the parties did not dispute the contents of the transcript); *Carter v. Carter*, 563 P.2d 177, 178 (Utah 1977) ("notice may be taken of the record of another case").

The court dockets show that Larsen's and Hale's cases proceeded separately under different case numbers. *See* Addenda E, F. Hale's case was resolved in ECR (Early Case Resolution)—He made his initial appearance on June 4, 2013, and pleaded guilty and was sentenced two days later. *See* Addendum F. By contrast, Larsen's case began in ECR but

was transferred to district court, where it received a new case number—Larsen made her initial appearance on June 19, 2013, pleaded guilty on December 5, 2013, and was sentenced on February 11, 2014. *See* Addendum E. In short, the court dockets confirm Larsen’s testimony that Hale was listed on the Information with her, but Hale was not on her other court papers, present at her initial appearance, where the charges were read, or present at any of her other court hearings. *See* Addenda E, F.

Given the court dockets, it is doubtful whether a document exists that could have cast doubt on the credibility of Larsen’s testimony that she believed there was a “mix-up” on the Information. *See* Addenda E, F. Regardless, if there was such a document, it was not State’s Exhibit 2. As explained above, State’s Exhibit 2 corroborated rather than impeached Larsen’s testimony. Thus, State’s Exhibit 2 was irrelevant for impeachment because the State failed to show that the exhibit actually cast doubt on Larsen’s credibility. *See Finlayson*, 956 P.2d at 291; *Stewart*, 925 P.2d at 600.

2. *State’s Exhibit 2 Was Irrelevant Because the State Failed to Show that the Evidence Related to a Matter that Was Material and Relevant at Trial.*

When evidence is offered to contradict a statement made by a witness during cross-examination, the offering party must show that the evidence relates to a matter that is “material and relevant.” *Davenport*, 519 P.2d at 454. “[T]he answers of a witness upon cross-examination on any irrelevant or collateral matter are conclusive and binding, and the witness may not be contradicted or impeached upon an immaterial or collateral matter of issue.” *State v. Mitchell*, 571 P.2d 1351, 1355 (Utah 1977). In other words, “a

party is barred from impeaching a witness on a collateral matter through the use of extrinsic evidence.” *United States v. Lipscomb*, 539 F.3d 32, 39 (1st Cir. 2008).

“It is generally stated that facts which would be independently provable are not collateral.” *Mitchell*, 571 P.2d at 1355. Stated another way, “[t]he determination of whether an issue is collateral or not turns on whether it is ‘relevant for a purpose other than mere contradiction of the in-court testimony of the witness.’” *Lipscomb*, 539 F.3d at 39. “Specifically, the ‘offered testimony must not only contradict a statement of [the witness], but must also be material to [the defendant’s] guilt or innocence.’” *Id.*

For instance, “facts which are relevant to the issue of the case” are not collateral. *Mitchell*, 571 P.2d at 1355. Nor are “facts independently provable to impeach or disqualify the witness,” such as evidence “to show bias, interest, conviction of a crime or lack of capacity or opportunity for knowledge of the facts related.” *Id.* A “third type of allowable contradiction” evidence is “the contradiction of any part of the witness’s account of the background and circumstances of a material transaction, which as a matter of human experience he would not have been mistaken about if his story were true.” *Id.* This “third kind of fact” does not permit a party “to prove [a witness] wrong in some trivial detail of time, place, or circumstance.” *Id.* But if the “witness has told a story of a transaction crucial to the controversy” and the opposing party proposes evidence “to prove untrue some facts recited by the witness that if he were really there and saw what he claims to have seen, he could not have been mistaken about,” such evidence may be admitted. *Id.*

Thus, in *Lipscomb*, the district court correctly prevented the defendant from introducing contradiction evidence. At trial in that case, “two detectives testified that they observed [defendant] driving a green Jaguar with the license plate ‘XM-82.’” *Lipscomb*, 539 F.3d at 39. Defendant proposed to impeach the detectives with evidence that his “green Jaguar was registered under a vanity license plate, ‘SOVRN.’” *Id.* The district court denied defendant’s request because the proposed line of impeachment was “a collateral issue on which extrinsic evidence is inadmissible.” *Id.* The appellate court affirmed because defendant “failed to establish any independent and material ground for admitting the ... evidence.” *Id.* Rather, the evidence “was only relevant to impeaching the detectives’ credibility on a topic immaterial to [defendant]’s guilt.” *Id.* Thus, “[t]he district court did not abuse its discretion” by excluding the evidence. *Id.*

For similar reasons, the district court abused its discretion by admitting the Government’s proposed contradiction evidence in *United States v. Warledo*, 557 F.2d 721 (10th Cir. 1977). During cross-examination in that case, the Government asked one of the defendants whether he had “ever possessed any automatic weapons.” *Id.* at 725. When the defendant said he had not, the district court permitted the Government to introduce a rifle found in the trunk of the defendant’s car “purportedly to impeach the testimony of [the] defendant [] after he had denied possessing any automatic weapon.” *Id.* at 724. The appellate court reversed, holding that “[i]t is not possible to justify the receipt in evidence of this rifle on the basis of its being relevant.” *Id.* at 725. The rifle was not independently relevant because it “was never a part of this charge.” *Id.* Further, the rifle was not relevant for impeachment because “it is not permissible to impeach a witness on

a collateral or irrelevant matter elicited on cross-examination.” *Id.* at 726. Thus, the appellate court remanded each defendant’s case for a new trial. *Id.* at 730.

Whereas, in *Mitchell*, our supreme court held that defendant’s contradiction evidence should have been admitted because it “was not impeachment ... on a collateral issue.” *Mitchell*, 571 P.2d at 1355. In that case, complainant took the stand and denied that “she had ever sold heroin.” *Id.* The trial court denied defendant’s request to impeach complainant’s testimony with evidence that an undercover agent had twice bought heroin from her. *Id.* On appeal, our supreme court reversed. *Id.* “There were two versions as to what occurred at the [complainants’] residence.” *Id.* The State claimed that “[n]arcotics were not present or involved” in the incident. *Id.* Rather, “two armed robbers charged into the home, terrorized the occupants, and took cash from [the complainants].” *Id.* On the other hand, the defendant claimed that “no weapons were involved” and “no cash was taken.” *Id.* Rather, he was a “dissatisfied customer” who argued with complainant “over the quality of the [narcotics] purchased” from her and stole a bag of narcotics. *Id.* Thus, defendant’s proposed impeachment evidence “was not a collateral issue” because “[w]hether [complainant] in fact, distributed narcotics from her residence was, indeed, a relevant issue in the case, which defendant was entitled to prove for a purpose independent of impeaching [complainant’s] testimony.” *Id.*

Here, State’s Exhibit 2 was not relevant because it was extrinsic evidence offered to impeach Larsen on a collateral matter. *See Mitchell*, 571 P.2d at 1355. The question of whether Larsen and Hale were co-defendants in the check-cashing case “was not independently relevant” to Clark’s guilt or innocence. *Warledo*, 557 F.2d at 725; *see*

Mitchell, 571 P.2d at 1355. Nor did Clark “voluntarily create any such issue” at trial. *Warledo*, 557 F.2d at 726. “Rather, the [prosecutor] injected the issue himself by asking” Larsen during cross-examination whether Hale was her co-defendant. *Id.* When Larsen acknowledged that Hale was listed on the Information as her co-defendant but stated that she believed listing Hale as her co-defendant was a “mix-up,” the State offered State’s Exhibit 2 for impeachment. R.174:149-50. As explained above, State’s Exhibit 2 did not impeach Larsen’s testimony. *See supra* Part I.A.1. But, even if it did, it was not relevant because “it is not permissible to impeach a witness on a collateral or irrelevant matter elicited on cross-examination.” *Warledo*, 557 F.2d at 725.

In sum, as in *Warledo* and *Lipscomb*, State’s Exhibit 2 was not relevant because it was extrinsic evidence offered to “impeach[] a witness on a collateral matter.” *Lipscomb*, 539 F.3d at 39. Thus, State’s Exhibit 2 was inadmissible under rule 402.

B. State’s Exhibit 2 Was Not Admissible under Rule 403 Because Its Probative Value, If Any, Was Substantially Outweighed by the Danger of Unfair Prejudice.

Even if State’s Exhibit 2 contained some relevance for impeachment, it was inadmissible under rule 403 because its probative value, if any, was substantially outweighed by a danger of unfair prejudice, confusing the issues, or misleading the jury.

Rule 403 says that a “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, [or] misleading the jury.” Utah R.Evid. 403. Evidence is unfairly prejudicial if “it tends to encourage the jury to find guilt from improper reasoning.” *State v. Jones*, 2015 UT 19, ¶30, 345 P.3d 1195; *see State v. Toki*, 2011 UT App 293, ¶44, 263 P.3d 481.

Rule 403 creates a “balancing framework.” *State v. Verde*, 2012 UT 60, ¶31, 296 P.3d 673. When applying rule 403, a court will balance the probative value of the evidence against its prejudicial effect to ensure that matters of “scant or cumulative probative force” are not “dragged in by the heels for the sake of [their] prejudicial effect.” *State v. Bartley*, 784 P.2d 1231, 1237 (Utah Ct.App. 1989); *cf. Verde*, 2012 UT 60, ¶18. “In short,” a trial court applying “rule 403 seeks to balance two competing concerns: ‘excluding the ... evidence if its tendency to sustain a proper inference is outweighed by its propensity for an improper inference or for jury confusion about its real purpose.’” *State v. McCullar*, 2014 UT App 215, ¶45, 335 P.3d 900.

Here, State’s Exhibit 2 was inadmissible under rule 403. As explained above, Clark’s position is that State’s Exhibit 2 had no probative value. *See supra* Part I.A. Its only potential relevance and the purpose for which it was offered was to cast doubt on Larsen’s credibility. *See id.*; R.174:149-50. But it was not relevant for that purpose because it did not impeach Larsen’s testimony and, even if it did, it was impeachment on an irrelevant and collateral matter. *See supra* Part I.A.

Even if State’s Exhibit 2 has some scant probative value for impeachment, it was inadmissible under rule 403 because the probative value, if any, was substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury. To the extent that any part of State’s Exhibit 2 was relevant to impeach Larsen’s testimony, it was the portion of the Information’s caption that listed Larsen and Hale as co-defendants. *See* R.175. The remainder was irrelevant to impeachment. *See supra* Part I.A. In fact, it corroborated rather than impeached Larsen’s testimony. *See id.*

On the other hand, State's Exhibit 2 was highly prejudicial. The evidence showed that Larsen was Clark's close friend and that Hale was Clark's boyfriend. R.174:126, 139. State's Exhibit 2 unfairly prejudiced Clark because it unfairly undermined Larsen's credibility and created a danger that the jury would convict Clark based on a finding of guilt by association.

State's Exhibit 2 was an official court document that painted Clark's good friend Larsen and boyfriend Hale as dishonest thieves and repeat criminals, who had stolen not just inexpensive retail items but large amounts of cash. The Information provided Larsen's full name, birth date, address, driver's license number, and social security number. *See* R.175. It listed four aliases for her. *See id.* It charged her with forgery, a third degree felony, and listed the elements of forgery, including that she acted "with the purpose to defraud." *Id.* It informed the jury that the check Larsen cashed was for nearly \$1,000 and gave a detailed account of the check-cashing scheme, the investigation, and Larsen's admissions. *See id.* Further, the Arrest Warrant informed the jury that the magistrate had found probable cause to support Larsen's arrest and "reasonable grounds to believe" that Larsen could not be trusted to "appear upon a summons" and, therefore, should be arrested "forthwith" at any time "day or night," pursued "into any other county" if she had "fled justice," and required to post \$5,000 bail. *Id.* Additionally, the Information told the jury that the check Hale cashed was for nearly \$1,000, that Hale would be held under \$5,000 bail, and that Hale was subject to enhanced penalties because he had "been twice before convicted of Theft." *Id.*

Such evidence was unfairly prejudicial and created a danger of confusing the issues and misleading the jury because it encouraged the jury to find guilt from improper reasoning. *See, e.g., State v. Gonzalez*, 2015 UT 10, ¶37, 345 P.3d 1168 (noting the danger of unfair prejudice in gang evidence due “to the potential prejudice of ‘guilt by association’”); *State v. Troy*, 688 P.2d 483, 486-87 (Utah 1984) (reversing for misconduct where, among other things, prosecutor’s reference to an alias “served no valid purpose” and “very likely may have led the jury to speculate as to defendant’s reason for using an alias”); *State v. Murphy*, 674 P.2d 1220, 1224 (Utah 1983) (“Conviction ... cannot be had on the basis of ... guilt by association.”); *United States v. Barletta*, 652 F.2d 218, 220 (1st Cir. 1981) (upholding exclusion of conversation between defendant and informant even though relevant because “could legitimately be found prejudicial by virtue of its tendency to suggest a kind of ‘guilt by association’”). Thus, even if State’s Exhibit 2 had some scant relevance, it was inadmissible under rule 403.

C. State’s Exhibit 2 Was Not Admissible Because It Was Not Certified, as Required by Rules 901 and 902 of the Utah Rules of Evidence.

“By Utah law, any document, to be received in evidence, must be authenticated.” *State v. Lamorie*, 610 P.2d 342, 346 (Utah 1980). “Absent such authentication, no competent evidence is before the court that the document is what it purports to be.” *Id.*

“To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Utah R.Evid. 901(a). For public records, the authentication requirement may be satisfied by “[e]vidence that ... (A) a document was recorded or filed

in a public office as authorized by law; or ... (B) a purported public record or statement is from the office where items of this kind are kept.” Utah R.Evid. 901(b)(7).

A copy of a public record is “self-authenticating,” meaning it “require[s] no extrinsic evidence of authenticity in order to be admitted,”

if the copy is certified as correct by:

(4)(A) the custodian or another person authorized to make the certification;
or

(4)(B) a certificate that complies with Rule 902(1), (2), or (3), or any law of the United States or of this state.

Utah R.Evid. 902(4).

State’s Exhibit 2 did not “satisfy the requirement of authenticating or identifying an item of evidence” outlined in rule 901. Utah R.Evid. 901(a). The State did not even attempt to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Utah R.Evid. 901(a). In particular, it did not produce evidence that the exhibit “was recorded or filed in a public office as authorized by law” or that it was “from the office where items of this kind are kept.” Utah R.Evid. 901(b)(7). Thus, the exhibit failed to satisfy the authenticity requirements of rule 901.

Nor was State’s Exhibit 2 “self-authenticating” under rule 902. Utah R.Evid. 902. “Rule 902 provides for the admissibility of *certified* copies of public records.” *State v. Higginbotham*, 917 P.2d 545, 550 (Utah 1996) (emphasis in original). Utah courts have held that a court record that has not been certified is not self-authenticating. *See, e.g., Higginbotham*, 917 P.2d at 549-51 (reversing for lack of authentication where the State offered into evidence a motion filed in the district court, signed by the prosecuting

attorney, and stamped with the judge's name, because it "was not certified by any official"); *State v. Long*, 721 P.2d 483, 485-86 (Utah 1986) (reversing for lack of authentication where the State, relying on defendant's parole officer, "offered into evidence copies of certified copies of documents" showing prior convictions because (1) parole officer, "not the Utah state prison warden, certified the copies," and (2) "[t]here is no evidence to show how the copies got in [parole officer's] file, that the copies in [parole officer's] file constituted official documents of the Division of Corrections, or that [parole officer] was their official custodian or deputy custodian"); *Lamorie*, 610 P.2d at 346 (reversing for lack of authentication where "the State produced copies of ... court records, certified by a duly authorized notary public," because the notary "had no custody of the documents"; the notary was not "a deputy of the court clerk, the official custodian of the documents"; and "[n]owhere in the certification of the copy presented in court does the clerk's signature appear").

State's Exhibit 2 was not self-authenticating under rule 902(4)(A) because it was not "certified as correct by ... the custodian or another person authorized to make the certification." Utah R.Evid. 902(4)(A). It was also not self-authenticating under rule 902(4)(B) because it was not "certified as correct by ... a certificate that complies with Rule 902(1), (2), or (3), or any law of the United States or of this state." Utah R.Evid. 902(4)(B). Indeed, it was not certified at all. *See* R.175. Thus, as in *Higginbotham*, *Long*, and *Lamorie*, State's Exhibit 2 should have been excluded because it was an uncertified court record that lacked authentication. *See Higginbotham*, 917 P.2d at 549-51; *Long*, 721 P.2d at 485-86; *Lamorie*, 610 P.2d at 346.

D. State's Exhibit 2 Was Not Admissible Because It Was Hearsay and It Did Not Qualify under Any Exceptions to the Rule against Hearsay.

Hearsay is "a statement that ... the declarant does not make while testifying at the current trial or hearing; and ... a party offers in evidence to prove the truth of the matter asserted in the statement." Utah R.Evid. 801(c). "Hearsay statements have been generally discredited because they ... lack trustworthiness' and also because 'the person purporting to know the facts is not stating them under oath.'" *In re K.D.S.*, 578 P.2d 9, 12 (Utah 1978). "Hearsay is not admissible except as provided by law or by [the rules of evidence]." Utah R.Evid. 802; *see* Utah R.Evid. 803, 804, 807.

Here, State's Exhibit 2 was inadmissible because it was hearsay and it did not qualify under an exception to the hearsay rule. State's Exhibit 2 was hearsay because it was a statement that the declarant did not make while testifying at trial and that the State offered to prove the truth of the matter asserted. *See* Utah R.Evid. 801(c). First, State's Exhibit 2 was a statement that the declarant did not make while testifying at trial. The declarant of the Information was either "Pat Mount" or "M Falkner," who crossed out the name "Pat Mount" and signed in Pat Mount's place. R.175. The Arrest Warrant was signed by a magistrate judge. R.175. None of these people testified at trial. R.174. Moreover, at least parts of State's Exhibit 2 were double or triple hearsay, *see* Utah R.Evid. 805, because the declarant recounts statements made by "Pat Mount," "Troy Hyde," and "David Timmerman." R.175. Second, the State offered State's Exhibit 2 to prove the truth of the matter asserted. The State offered the exhibit in order to impeach

Larsen by proving that Hale was Larsen's co-defendant in her Theft by Deception case.³

R.174:149-50. Thus, State's Exhibit 2 was hearsay.

State's Exhibit 2 did not qualify under an exception to the hearsay rule. The rules of evidence allow the admission of hearsay evidence under certain limited circumstances. *See* Utah R.Evid. 803, 804, 807. The only exceptions that could apply here are the exceptions for records of a regularly conducted activity and public records. *See* Utah R.Evid. 803(6), 803(8). But State's Exhibit 2 did not satisfy either of these exceptions.

The exception for records of a regularly conducted activity provides that the following is "not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness":

(6) A record of an act, event, condition, opinion, or diagnosis if:

(6)(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(6)(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(6)(C) making the record was a regular practice of that activity;

(6)(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(6)(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

Utah R.Evid. 803(6).

This exception was inapplicable because there is no evidence that State's Exhibit 2 met any of the necessary conditions. *See* Utah R.Evid. 803(6)(A)-(C). The State did not

³ As explained in Part I.A.1., State's Exhibit 2 it did not impeach Larsen's testimony.

call “the custodian or another qualified witness” to testify that the conditions were met. Utah R.Evid. 803(6)(D); *see* R.174. Nor was State’s Exhibit 2 certified in a way “that complie[d] with Rule 902(11) or (12).” Utah R.Evid. 803(6)(D). Rule 902(11), the rule that applies to domestic records, such as State’s Exhibit 2, requires “the custodian or another qualified person” to certify that the document “meets the requirements of Rule 803(6)(A)-(C).” Utah R.Evid. 902(11). Here, as explained above, State’s Exhibit 2 was not certified at all, let alone certified that the document met “the requirements of Rule 803(6)(A)-(C).” Utah R.Evid. 902(11); *see supra* Part I.C.

The public records exception provides that the following is “not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness”:

(8) A record or statement of a public office if:

(8)(A) it sets out:

(8)(A)(i) the office’s activities;

(8)(A)(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(8)(A)(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(8)(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Utah R.Evid. 803(8). This exception was inapplicable because the State failed to establish that State’s Exhibit 2 was a public record under the rule. R.174. The exception is also inapplicable because State’s Exhibit 2 contained “matter[s] observed by law-enforcement personnel,” which rule 803(8) excludes in criminal cases. Utah R.Evid. 803(8)(A)(ii).

Moreover, as recognized by this Court and our supreme court, police reports offered by the State in support of its prosecution are too unreliable to qualify under the business or public records exceptions of rule 803. *See, e.g., State v. Bertul*, 664 P.2d 1181, 1185-86 (Utah 1983); *State v. Gonzalez-Camargo*, 2012 UT App 366, ¶27, 293 P.3d 1121; *Layton City v. Peronek*, 803 P.2d 1294, 1297-98 (Utah Ct.App. 1990); *State v. Morrell*, 803 P.2d 292, 298 (Utah Ct.App. 1990). As recognized in *Bertul*, *Peronek*, *Morrell*, and *Gonzalez-Camargo*, “police reports made for the purpose of prosecuting an offense and offered by the prosecution lack sufficient reliability so as to be admissible under the business records exception” or the public records exception. *Peronek*, 803 P.2d at 1297; *see Bertul*, 664 P.2d at 1184; *Gonzalez-Camargo*, 2012 UT App 366, ¶27 (“The State concedes that the admission of the incident report was prejudicial error.”); *Morrell*, 803 P.2d at 298 (stating general rule that “[p]olice reports are not eligible for admission” under the business or public records exceptions of rule 803). This is because such reports are not made as part of regularly conducted business and are made with an eye toward prosecution, thereby undermining their reliability. *See Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 2538 (2009) (indicating that documents do not qualify for federal business records exception where “the regularly conducted business activity is the production of evidence for use at trial”).

Like a police report, State’s Exhibit 2, which contained an Information and the accompanying Arrest Warrant, *see Utah R.Crim.P. 6*, was “made for the purpose of prosecuting an offense.” *Peronek*, 803 P.2d at 1297. An Information does not record “simple routine matters” that “are based on first-hand knowledge of the maker of the

report and do not involve conclusions”; nor are Informations prepared under circumstances that “‘indicate their trustworthiness.’” *Bertul*, 664 P.2d at 1185-86. On the contrary, an Information is “an accusation in writing ... charging a person with a public offense.” Utah Code §77-1-3(3) (2012). It is prepared by police officers based on police investigation and witness interviews with an eye toward prosecution. *See* Utah R.Crim.P. 4(b), (j). Indeed, the Information commences the prosecution. *See* Utah Code §77-2-2(3) (2012); Utah R.Crim.P. 5(a). It also gives “notice of the charge,” *State v. Angus*, 581 P.2d 992, 995 n.8 (Utah 1978), and states allegations “sufficient to make out probable cause.” Utah R.Crim.P. 4(b). Thus, State’s Exhibit 2 should have been excluded because it was hearsay that did not qualify under any exceptions to the rule against hearsay.

E. State’s Exhibit 2 Was Not Admissible Because It Violated Clark’s Right to Confrontation.

The right to confrontation is a “bedrock procedural guarantee [that] applies to both federal and state prosecutions.” *Crawford v. Washington*, 541 U.S. 36, 42 (2004); *see* U.S. Const. amend. VI. Regardless of whether evidence is admissible under the rules of evidence, it may violate a defendant’s right to confrontation. *Id.* at 50-51.

“*Crawford* provides that, in accordance with the Sixth Amendment, testimonial statements may be admitted only if the declarant is unavailable and if there has been a prior opportunity for cross-examination.” *Salt Lake City v. George*, 2008 UT App 257, ¶8, 189 P.3d 1284; *see Crawford*, 541 U.S. at 53-54. “The focus of the Confrontation Clause is on witnesses who bear testimony against the accused.” *Salt Lake City v. Williams*, 2005 UT App 493, ¶15, 128 P.3d 47. ““Testimony,” in turn, is typically “[a] solemn

declaration or affirmation made for the purpose of establishing or proving some fact.””

Id. “A witness’s testimony against a defendant is ... inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had the prior opportunity for cross-examination.” *Melendez-Diaz*, 129 S.Ct. at 2531.

Although “*Crawford* did not provide a comprehensive definition of ‘testimonial,’” *George*, 2008 UT App 257, ¶10, it made clear that “testimonial” “applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.” *Crawford*, 541 U.S. at 66. Indeed, “[s]tatements taken by police officers in the course of interrogations” “qualify as testimonial under any definition.” *Williams*, 2005 UT App 493, ¶16 (quoting *Crawford*, 541 U.S. at 1354).

In *Davis v. Washington*, the Supreme Court further clarified that police reports made with an eye toward prosecution are testimonial. *Davis*, 547 U.S. 813, 822 & n.1 (2006). To be testimonial, statements do not have to be made in response to police interrogation. *Id.* They may be “volunteered testimony or answers to open-ended questions.” *Id.* Nor do statements have to be “reduced to a writing signed by the declarant.” *Id.* at 826. They may be “embedded in memory (and perhaps notes) of the interrogating officer.” *Id.* The test is whether the statements were made to the officer primarily “to establish or prove past events potentially relevant to later criminal investigation.” *Id.* at 823, 826-27.

In short, “[s]tatements taken by police officers in the course of” an investigation are testimonial in nature. *Crawford*, 541 U.S. at 52. Likewise, statements made to police in order to establish events relevant to a criminal prosecution are testimonial. *See Davis*,

547 U.S. at 822; *George*, 2008 UT App 257, ¶¶11-13 (calibration certificates are not testimonial because they are “prepared on a routine basis” using “preprinted language” and they are “not accusatory as against any particular defendant”); *Salt Lake City v. Williams*, 2005 UT App 493, ¶17, 128 P.3d 47 (recognizing that “testimonial” includes statements where “a reasonable person ... would objectively foresee that his statement might be used in the investigation or prosecution of a crime”).

“There is little doubt” that State’s Exhibit 2 “fall[s] within ‘the core class of testimonial statements’” outlined in *Crawford. Melendez-Diaz*, 129 S.Ct. at 2532. As explained above, an Information is not a “routine” document prepared using “preprinted language” and “not accusatory as against any particular defendant.” *George*, 2008 UT App 257, ¶¶11-13; *see supra* Part I.D. On the contrary, it is “an accusation in writing” that charges a particular defendant with a particular offense. Utah Code §77-1-3(3) (2012). It is prepared by police officers with an eye toward prosecution. *See* Utah R.Crim.P. 4(b), (j). It contains a statement of probable cause that repeats statements made to police officers primarily “to establish or prove past events potentially relevant to later criminal investigation.” *Davis*, 547 U.S. at 823, 826-27. And it relies on those statements to draw conclusions about the charges to be brought against a particular defendant. *See* Utah R.Crim.P. 4(b). Indeed, it commences the prosecution. *See* Utah Code §77-2-2(3) (2012); Utah R.Crim.P. 5(a). Further, the accompanying Arrest Warrant is a signed declaration that the magistrate believes there is probable cause to charge a particular person with a particular offense, and, in this case, that the magistrate believes “defendant will not

appear upon a summons” and that bail and an order to pursue if defendant flees are warranted. *See* Utah R.Crim.P. 6; R.175.

In sum, “a reasonable person ... would objectively foresee” that an Information and its accompanying Arrest Warrant would be used as part of a criminal prosecution. *Williams*, 2005 UT App 493, ¶17. Thus, State’s Exhibit 2 was testimonial and its admission violated the Confrontation Clause because the State made no showing that the declarants—the officers who prepared the Information, the witnesses who made statements in support of the Information, and the magistrate who signed the Arrest Warrant—were unavailable, or that Clark had been given “a prior opportunity for cross-examination.” *George*, 2008 UT App 257, ¶8.

F. This Court Should Reverse Because the Admission of State’s Exhibit 2 Prejudiced Clark.

This Court will “overturn a jury verdict for the admission of improper evidence ‘if the admission of the evidence ... reasonably [a]ffect[ed] the likelihood of a different verdict.’” *Toki*, 2011 UT App 293, ¶46. To show prejudice, a defendant need not show “that the jury would have more likely than not” returned a different verdict but for the error; rather, error is prejudicial if there is “a probability sufficient to undermine confidence in the outcome.” *State v. Hales*, 2007 UT 14, ¶92, 152 P.3d 321.

When assessing prejudice, the appellate court will view the case “in light of the ‘totality of the evidence,’ not just the evidence supporting the verdict.” *State v. Barela*, 2015 UT 22, ¶31, ---P.3d--- (citation omitted). Even where the evidence suggests that “it is highly probable that a properly instructed jury would have” convicted, the appellate

court will reverse if “a properly instructed jury might still have” acquitted. *Id.* ¶¶28, 30 n.6. This is because the appellate court has “no way of knowing” what a properly instructed jury would have done. *Id.* ¶30 n.6; *see also State v. Mitchell*, 779 P.2d 1116, 1121-22 (Utah 1989) (explaining that the prejudice analysis is different than the sufficiency of the evidence analysis because it considers “all the evidence” and “focuses on the taint caused by the error” rather than on the sufficiency of the untainted evidence).

Accordingly, in *Barela*, our supreme court reversed a rape conviction even though the verdict suggested that the jury rejected defendant’s testimony that complainant instigated the sexual contact and accepted complainant’s testimony that she did not consent. *Barela*, 2015 UT 22, ¶¶28-32. Despite the telling verdict, the court had “no way of knowing how the jury processed the[] two stories.” *Id.* ¶30. A properly instructed jury “could have acquitted” based on a finding that even though defendant was the instigator and complainant did not consent, defendant “had neither knowledge nor recklessness as to [complainant]’s nonconsent.” *Id.* ¶32. Because “a properly instructed jury might still have rendered a verdict in [defendant’s] favor” even though it rejected his testimony, the error was “reasonably likely to have affected the verdict.” *Id.* ¶28.

In this case, this Court should reverse because there is a reasonable likelihood that the result would have been different but for the improper admission of State’s Exhibit 2. There was no physical evidence or video evidence to support the State’s case for retail theft. R.174. For example, the State did not produce the hooks that Davis claimed she took from Larsen and retained after Larsen left store. R.174:107-08, 117. If the State had been able to produce those hooks, it would have produced physical evidence to contradict

Larsen's claim that she took the hooks with her when she left the store. But the State did not produce any physical evidence to support its case. R.174.

Rather, the jury's decision came down to a weighing of credibility. The State's case rested on Davis's claim that she saw Clark attempt to steal hooks from the Smith's store. R.174. Whereas the defense case rested on Larsen's testimony that Clark was simply shopping for items she needed to cook dinner that night and that Davis was overly suspicious and jumped to the wrong conclusion. R.174.

But for the unfair prejudice of State's Exhibit 2, there is a reasonable likelihood that the jury would have accepted Larsen's testimony. Larsen admitted that she was Clark's friend and that she had been convicted of Theft by Deception. R.174:126, 145. But these admissions did not necessarily impeach her testimony. On the contrary, a reasonable jury could have believed Larsen's testimony despite these admissions. Larsen was forthright about her criminal behavior, explaining what she had done and why. R.174:139-56. Larsen also provided a compelling reason to believe her testimony despite her friendship with Clark and her criminal conviction. Larsen testified that she would not lie for Clark because she believes people "should own their own ... problems." R.174:154. Larsen explained that she took responsibility for her criminal conduct by pleading guilty, and she would expect Clark to do the same if she were guilty. R.174:154.

Larsen testified that Davis jumped to conclusions about her and Clark. According to Larsen, Davis approached her, immediately accused her of helping Clark steal items, and "wouldn't listen to" her. R.174:128-32. Then she took Larsen's photograph and told Larsen "not to come in their store ever again." R.174:129-31. Despite the potential

problems with Larsen's credibility, the jury could have believed Larsen's claim that Davis was overly suspicious and jumped to conclusions. R.174:128-32.

This is particularly true given that there was evidence outside of Larsen's testimony to support the defense claim that Davis was overly suspicious and jumped to the wrong conclusion about Clark. Davis herself admitted that she targeted Clark as a shoplifter as soon as Clark entered the store. R.174:75-76. As soon as she saw Clark, she called the police and started following Clark around the store. R.174:75-76. Davis's testimony further suggested that she went to great lengths to keep an eye on Clark. R.174:98-99, 101. She "maintained visual" on Clark the entire time Clark was in the store even getting "down on [her] knees" when she had to. R.174:76, 101. Though Davis denied concealing herself from Clark, she admitted that she positioned herself in a way that Clark could not see her and that she spied on Clark through wire racks. R.174:98-99, 101. The jury could have viewed Davis's testimony as the testimony of someone who pre-judged Clark and whose interpretations of Clark's movements were unreliable.

Further, Davis provided inconsistent testimony that suggested her memory might have been affected by her desire to see Clark convicted. *See State v. Ashe*, 745 P.2d 1255, 1270 (Utah 1987) (officers "'engaged in the often competitive enterprise of ferreting out crime'" may fail to objectively assess a case). At the preliminary hearing, Davis testified that Clark "wandered" through the store. R.174:96-98, 100, 103-04. But, at trial, Davis testified that Clark's movements were deliberate—she walked "straight down" the home improvement aisle to the Command hooks area, "quickly walked" to and from the seasonal department, and headed "straight for the exit." R.174:77-81, 91, 95-100, 103-04.

When confronted with her inconsistent testimony, Davis claimed that she “misspoke” at the preliminary hearing. R.174:96-98, 100, 103-04, 111-13.

Indeed, the record suggests that the jury continued to consider Larsen’s version of the events despite the State’s attempts to discredit her. After the State cross-examined Larsen, the jury asked two additional questions of Larsen. First, it asked Larsen why she would “knowingly cash a forged check for someone else.” R.174:156. Larsen responded that she “didn’t know it was forged until [she] cashed it.” R.174:156. The jury followed up with a second question: “[I]f someone else’s payroll was not intended for you, ... why would you then spend the cash that you received from that check?” R.174:156. Larsen responded that she spent the money because “I thought, ooh, money, you know, and I spent it. So that’s why I pled guilty.” R.174:156. After Davis’s rebuttal testimony the jury asked yet another question related to Larsen’s credibility. R.174:165. The jury asked Davis if the surveillance video showed whether there was a dog in Larsen’s vehicle, apparently to assess whether Larsen had been telling the truth about entering the store after Clark because she was settling her dog in the car. *Compare* R.174:128; *with* R.174:165. Davis was unable to answer the question, saying it was too dark outside to tell whether there was a dog in the vehicle. R.174:165.

State’s Exhibit 2, however, unfairly undermined Larsen’s credibility. The exhibit was an official-looking, highly persuasive piece of evidence. *See* R.175. The Information was signed by a police officer under oath that the information contained therein was “true and correct to the best of my belief and knowledge.” *Id.* It was authorized by the Deputy District Attorney. *See id.* And it was accompanied by an Arrest Warrant signed by a

magistrate judge. *See id.* As explained above, State's Exhibit 2 unfairly undermined Larsen's credibility by painting her as a dishonest person that even the magistrate distrusted. It also created an unfair danger that the jury would return a guilty verdict based on a finding of guilt by association. *See supra* Part I.B.

Moreover, the court did not give the jury a limiting instruction. R.174. Even when contradiction evidence is admissible, a trial court should admonish the jury to consider the evidence "only as it may bear on the ... credibility of the testimony." *State v. Green*, 578 P.2d 512, 513 (Utah 1978); *see State v. Levin*, 2004 UT App 396, ¶27, 101 P.3d 846.

In *State v. Washington*, therefore, our supreme court upheld the admission of contradiction evidence because the evidence was admissible and the trial court provided a limiting instruction. 476 P.2d 1019, 1021 (Utah 1970). During direct examination, "defendant denied having possession of the [stolen] property or knowledge that the same had been stolen." *Id.* at 1020. On cross-examination, the trial court permitted the State to impeach defendant's testimony with evidence that he possessed and used credit cards stolen at the same time as the charged items. *Id.* Where the trial court instructed the jury that the evidence was admitted "solely for the purpose of impeachment of the defendant and not to in any way prove or tend to prove the defendant's guilt of the charge," our supreme court held that there was "no prejudicial error in the action of the court." *Id.* at 1021; *see also Levin*, 2004 UT App 396, ¶¶24-26 (affirming admission of contradiction evidence where the evidence was admissible for impeachment and the trial court provided a limiting instruction); *Green*, 578 P.2d at 513 (same).

By contrast, in this case, State's Exhibit 2 was inadmissible and the trial court did not give a limiting instruction. R.174. This failure left the jury free to consider State's Exhibit 2 in whatever way it saw fit, including as evidence of Larsen's bad character and as evidence that Clark was guilty by association. Thus, there is a reasonable likelihood that but for the erroneous admission of State's Exhibit 2 the jury would have acquitted.

G. This Issue Is Preserved or It Should Be Addressed for Plain Error.

Clark preserved her argument that admitting State's Exhibit 2 violated rules 402 and 403, the hearsay rules, and the Confrontation Clause. Alternatively, this Court should reverse for plain error. Clark did not preserve her argument that State's Exhibit 2 was inadmissible under rules 901 and 902, but that issue should be reversed for plain error.

1. Clark Preserved Her Claims that State's Exhibit 2 Violated Rules 402 and 403, the Hearsay Rules, and the Confrontation Clause.

The "preservation requirement is self-imposed and is therefore one of prudence rather than jurisdiction." *Patterson v. Patterson*, 2011 UT 68, ¶13, 266 P.3d 828. It "serve[s] two important policies"—efficiency and fairness. *State v. Holgate*, 2000 UT 74, ¶11, 10 P.3d 346. "[R]equiring a party to raise an issue or argument in the trial court gives the trial court an opportunity to address the claimed error, and if appropriate, correct it," which "avoid[s] unnecessary appeals and retrials." *Patterson*, 2011 UT 68, ¶15. To preserve an issue for appeal, "counsel must raise the issue in the trial court 'in such a way that the trial court has an opportunity to rule on that issue.'" *State v. Bird*, 2015 UT 7, ¶10, 345 P.3d 1141. An appellate court will "look to three factors to determine whether the trial court had such an opportunity: (1) whether the issue was

raised in a timely fashion, (2) whether it was raised specifically, (3) and whether the party ‘introduce[d] supporting evidence or relevant legal authority.’” *Id.*

But the preservation requirement imposes “no obligation to ‘preserve’ ... citation to legal authority” or to fully flesh out the issue. *Torian v. Craig*, 2012 UT 63, ¶20, 289 P.3d 479. Once “the foundation of a claim or argument is presented in a manner that allows the district court to rule on it, a party challenging the lower court’s resolution of that matter is free to marshal any legal authority that may be relevant to its consideration on appeal.” *Id.*; see *In re Adoption of J.M.S.*, 2015 UT 35, ¶9, 345 P.3d 709 (statutory and constitutional arguments preserved even though arguments below “were relatively superficial” because “the statutory and constitutional aspects of [the] case were presented to the district court”); *Patterson*, 2011 UT 68, ¶18 (appellate courts “routinely consider new authority relevant to issues that have properly been preserved”).

Nor does preservation “turn on the use of magic words or phrases.” *In re Baby Girl T.*, 2012 UT 78, ¶38, 298 P.3d 1251. An issue will be deemed preserved even if it was raised indirectly so long as it was “raised to a level of consciousness such that the trial judge [could] consider it.” *Id.* ¶34. Thus, in *Baby Girl T.*, our supreme court held that the due process issue was preserved even though appellant “failed to expressly articulate the due process clause as the basis of his constitutional claim” because “the record clearly demonstrate[d] his argument was founded in the due process clause.” *Id.* ¶33; see, e.g., *State v. Garcia*, 2007 UT App 228, ¶10, 164 P.3d 1264 (State’s argument relying on *Franks* doctrine was preserved even though “the State did not formally cite the *Franks* case below” because it “argued the underlying premise of the *Franks* doctrine”

and this Court had “no doubt the trial court was on notice of the State’s legal argument”); *Nielsen v. Pioneer Valley Hosp.*, 830 P.2d 270, 272 (Utah 1992) (although “[defendant’s] objections were not textbook examples of specificity,” they nonetheless “adequately directed the trial judge’s attention to the claimed error” such that “they were sufficient”).

When deciding whether an issue is preserved, the appellate court will consider the context of the objection. *See Gonzalez*, 2015 UT 10, ¶26. In *Gonzalez*, therefore, our supreme court held that the issue was preserved even though the objection did not specifically raise the issue because the “specific ground for [the] objection [wa]s clear from” the context of the trial. *Id.* Likewise, in *Baird v. Baird*, our supreme court held that the issue was preserved even though appellant did not specifically raise the issue because “the district court necessarily had to consider” the issue as part of its decision to enter the stalking injunction. 2014 UT 8, ¶¶18-20, 322 P.3d 728.

The appellate court will also consider the circumstances in which the objection was made. *See Bird*, 2015 UT 7, ¶11. Thus, in *Bird*, our supreme court held that the issue was preserved even though “defense counsel did not introduce relevant legal authority” because the issue came up at trial and “counsel was given only a brief moment to review the ... instructions and make her objection.” 2015 UT 7, ¶¶4, 11.

Here, Clark preserved her claims regarding rules 402 and 403, the hearsay rules, and the Confrontation Clause. Regarding rule 402, Clark argues that State’s Exhibit 2 was irrelevant for the stated purpose of impeachment because it did not impeach Larsen’s testimony and, even if it did, it was impeachment on an irrelevant and collateral matter. Regarding rule 403, Clark argues that even if State’s Exhibit 2 contained some scant

probative value for impeachment it was still inadmissible because the probative value, if any, was limited to the portion of the Information's caption that listed Larsen and Hale as co-defendants and was substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury created by the remainder of the exhibit. Finally, regarding the hearsay rules and the Confrontation Clause, Clark argues that State's Exhibit 2 was created with an eye toward prosecution and, as such, constituted testimonial hearsay that violated the hearsay rules and the right to confrontation.

These issues are preserved because Clark raised a timely, specific objection and identified relevant legal authority. *Bird*, 2015 UT 7, ¶10. First, Clark's objection to State's Exhibit 2 was timely because she objected at the first opportunity and before the exhibit was admitted into evidence, thus giving "the court 'an opportunity to address [the] claimed error and, if appropriate, correct it.'" *Holgate*, 2000 UT 74, ¶11; *see* R.174:150.

Second, Clark's objection was specific and identified relevant legal authority. Clark objected to State's Exhibit 2 below for the same reasons she now raises on appeal. Clark objected to the exhibit's relevancy because (1) the exhibit did not impeach Larsen because Larsen "is not an attorney. She doesn't know how court dockets work, how people are charged"; and (2) the proposed line of impeachment was irrelevant because "whether [Larsen and Hale] were charged together" was not "relevant here." R.174:150. Clark objected to the exhibit's admissibility even if it contained some probative value for impeachment because it was "not just going to whether [Larsen and Hale] were charged together." R.174:150. And Clark objected to the hearsay nature of the exhibit by arguing that "an Information is allegations not a conviction." R.174:150.

Clark did not specifically cite rules 402 and 403, the hearsay rules, or the Confrontation Clause, but such specific references were not necessary. As explained above, Clark was under “no obligation to ‘preserve’ ... citation to legal authority” or to fully flesh out the issue. *Torian*, 2012 UT 63, ¶20. Her objection raised the issues “to a level of consciousness such that the trial judge [could] consider [them].” *Baby Girl T.*, 2012 UT 78, ¶34. Moreover, she made her objection during the heat of trial when she had “only a brief moment to review” the exhibit “and make her objection.” *Bird*, 2015 UT 7, ¶¶4, 11. Thus, as in *Bird*, *Gonzalez*, *Baby Girl T*, *Garcia*, and *Nielsen*, Clark’s objection was adequate to preserve Clark’s claims that admitting State’s Exhibit 2 violated rules 402 and 403, the hearsay rules, and the Confrontation Clause.

2. *Alternatively, this Court Should Review the Issues for Plain Error.*

If this Court concludes that any portion of Clark’s argument is not preserved, this Court should reverse because admitting State’s Exhibit 2 into evidence was plain error. “The plain error doctrine is an exception to the general rule of preservation—its ‘purpose is to permit [the appellate court] to avoid injustice.’” *Jones*, 2015 UT 19, ¶49. To show plain error, a defendant must “establish that: ‘(i) [an] error exists; (ii) the error should have been obvious to the trial court, and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant.’” *Id.*

In this case, as explained above, the trial court abused its discretion by admitting State’s Exhibit 2. *See supra* Parts I.A.-I.E. Moreover, for the reasons stated above, the error was harmful. *See supra* Part I.F. Finally, as explained below, the error should have been obvious to the trial court. “When a jury hears a case, the court is required to conduct

the trial ‘so that inadmissible evidence is not suggested to the jury by any means.’” *In re N.A.D.*, 2014 UT App 249, ¶5, 338 P.3d 226 (quoting Utah R.Evid. 103(d)).

In this case, it should have been obvious to the trial court that State’s Exhibit 2 was inadmissible under rule 402. It is well-settled that “[i]rrelevant evidence is not admissible,” Utah R.Evid. 402, and that evidence is irrelevant if it “‘has no probative value to a fact at issue.’” *Smedley*, 2003 UT App 79, ¶15; *see* Utah R.Evid. 401. In particular, it is well-settled that evidence offered for the purpose of impeachment is not relevant unless it casts doubt on the witness’s credibility. *See, e.g., Finlayson*, 956 P.2d at 291; *Stewart*, 925 P.2d at 600. As well, it is well-settled that evidence offered to contradict a statement made by the witness during cross-examination is not admissible if it is irrelevant or collateral. *See, e.g., Mitchell*, 571 P.2d at 1355. Indeed, the collateral rule is “fundamental” and predates the rules of evidence. *Warledo*, 557 F.2d at 725.

It should also have been obvious to the trial court that State’s Exhibit 2 was inadmissible under rule 403. It is well-settled that evidence is inadmissible “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, [or] misleading the jury.” Utah R.Evid. 403. It is also well-settled that evidence is unfairly prejudicial if “‘it has a tendency to influence the outcome of the trial by improper means.’” *Toki*, 2011 UT App 293, ¶44 (citing *State v. Burk*, 839 P.2d 880, 883 (Utah Ct.App. 1992)). Finally, it is well-settled that a trial court applying the rule 403 analysis should balance the probative value of the evidence against its prejudicial effect to ensure that matters of “‘scant”” probative force are not “‘dragged in by the heels for the sake of [their] prejudicial effect.’” *Bartley*, 784 P.2d at 1237.

In this case, the trial court heard Larsen testify and saw State's Exhibit 2. It should have been obvious to the court that State's Exhibit 2 was irrelevant for the stated purpose of impeachment because it did not impeach Larsen's testimony and, even if it did, it was impeachment on an irrelevant and collateral matter. Additionally, it should have been obvious to the court that even if State's Exhibit 2 contained some scant probative value for impeachment it was still inadmissible because the probative value, if any, was limited to the portion of the Information's caption that listed Larsen and Hale as co-defendants and was substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury created by the remainder of the exhibit.

Additionally, it should have been obvious to the trial court that State's Exhibit 2 was inadmissible under rules 901 and 902, the hearsay rules, and the Confrontation Clause. It is well-settled that "any document, to be received in evidence, must be authenticated." *Lamorie*, 610 P.2d at 346; *see, e.g., Higginbotham*, 917 P.2d at 549-51; *Long*, 721 P.2d at 485-86; Utah R.Evid. 901, 902. It is well-settled that hearsay is inadmissible unless it qualifies for an exception to the rule against hearsay. *See* Utah R.Evid. 801-802. The qualifications for the hearsay exceptions are also well-settled. *See* Utah R.Evid. 803-804, 807. Moreover, it is well-settled that items like police reports are inadmissible when offered by the prosecution. *See, e.g., Bertul*, 664 P.2d at 1185-86; *Gonzalez-Camargo*, 2012 UT App 366, ¶27; *Peronek*, 803 P.2d at 1297-98; *Morrell*, 803 P.2d at 298. Additionally, it is well-settled that testimonial statements are not admissible unless the declarant is unavailable and there has been a prior opportunity to cross-examine. *See, e.g., Crawford*, 541 U.S. at 53-54; *George*, 2008 UT App 257, ¶8. Finally,


it is well-settled that statements are testimonial when “a reasonable person ... would objectively foresee that his statement might be used in the investigation or prosecution of a crime.”” *Williams*, 2005 UT App 493, ¶17; *see Crawford*, 541 U.S. at 52.

Indeed, the error should have been particularly obvious because defense counsel objected to the evidence and explained why the evidence was inadmissible. R.174:150. Thus, even if any portion of Clark’s argument is not preserved, this Court should reverse because admitting State’s Exhibit 2 constituted plain error.

CONCLUSION

Clark asks this Court to reverse the conviction for Retail Theft and remand for a new trial.

SUBMITTED this 29 day of May, 2015.



LORI J. SEPPI
Attorney for Appellant

CERTIFICATE OF DELIVERY

I, LORI J. SEPPI, certify that I have caused to be hand-delivered the original and seven copies of the foregoing brief to the Utah Court of Appeals, 450 South State, 5th Floor, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorneys General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 29 day of May, 2015.




CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 13,801 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. App. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Times New Roman 13 point.


LORI J. SEPPI

DELIVERED this 29 day of May, 2015.



Addendum A

Tab A

3RD DIST. COURT - WEST JORDAN
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT
vs. :
DEBBRA JO CLARK, : Case No: 131401488 FS
Defendant. : Judge: TERRY CHRISTIANSEN
Custody: Salt Lake County Jail : Date: September 29, 2014

PRESENT

Clerk: loriaw
Prosecutor: LOPRESTO II, THOMAS V
Defendant
Defendant's Attorney(s): CHESNUT, HEATHER J

DEFENDANT INFORMATION

Date of birth: October 31, 1960
Sheriff Office#: 220472
Audio
Tape Number: 37 Tape Count: 9.55-10.13

CHARGES

1. RETAIL THEFT (SHOPLIFTING) - 3rd Degree Felony
Plea: Not Guilty - Disposition: 08/27/2014 Guilty
2. CRIMINAL TRESPASS KNOWING ENTRY UNLAWFUL - Class B Misdemeanor
Plea: Not Guilty - Disposition: 08/27/2014 Guilty

SENTENCE PRISON

Based on the defendant's conviction of RETAIL THEFT (SHOPLIFTING) a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison. The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of CRIMINAL TRESPASS KNOWING ENTRY UNLAWFUL a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 180 day(s).
Credit is granted for 121 day(s) previously served.

SENTENCE FINE

Charge # 1 Fine: \$5000.00
 Suspended: \$4750.00
 Surcharge: \$135.79
 Due: \$250.00

Charge # 2 Fine: \$1000.00
 Suspended: \$750.00
 Surcharge: \$135.79
 Due: \$250.00

 Total Fine: \$6000.00
 Total Suspended: \$5500.00
 Total Surcharge: \$271.58
 Total Principal Due: \$500.00
 Plus Interest

SENTENCE FINE PAYMENT NOTE

Pay a fine in the amount of \$500.00 Rate to be determined by ap&p.
Attorney Fees Amount: \$250.00 Plus Interest
Pay in behalf of: SALT LAKE COUNTY TREASURER

ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).
Probation is to be supervised by Adult Probation and Parole.
The imposition of sentence is stayed and the defendant is placed on probation.
Defendant to serve 365 day(s) jail.

Defendant is to pay a fine of 500.00 which includes the surcharge.
Interest may increase the final amount due.

PROBATION CONDITIONS

No other violations.
Report to AP&P within 24 hours of release from jail.
Enter into and complete any treatment recommended by AP&P.
Notify the court of any address change.
Timely payments on all fines, attorney fees and restitution.
Dollar for dollar credit towards the fine for treatment expenses excluding urinalysis charges.
Not to possess or consume alcohol or non prescribed control substances.
Random urinalysis and drug testing as requested.
Submit to search of self or property by probation agent.
Not to associate with persons or frequent places where drugs or alcohol are sold.
Enroll and complete CATS Program and aftercare.
Court will consider early release upon successful completion of CATS.
Obtain High School diploma or GED.

Case No: 131401488 Date: Sep 29, 2014

Maintain fulltime verifiable employment/education.

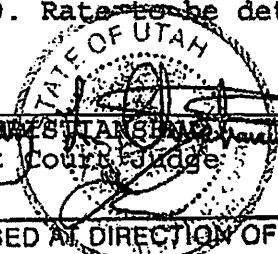
\$ for \$ credit towards any education.

No contact with Debbie Larsen

This is a ZERO TOLERANCE probation

Pay attorney fees in the amount for \$250.00. Rate to be determined by ap&p.

Date: 9-29-14


TERRY CHRISTIANSON
District Court Judge

By _____
STAMP USED AT DIRECTION OF JUDGE

Tab B

IN THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

DEBBRA JO CLARK,

Defendant.

)
)
) Case No. 131401488

) Transcript of:

) JURY TRIAL
)
)
)

BEFORE THE HONORABLE TERRY L. CHRISTIANSEN

WEST JORDAN COURTHOUSE
8080 SOUTH REDWOOD ROAD
WEST JORDAN, UTAH 84088

AUGUST 27, 2014

TRANSCRIBED BY: BRAD YOUNG

FILED
UTAH APPELLATE COURTS

DEC 18 2014

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1 * * *

2 (State's Exhibit 1 was received into evidence.)

3 * * *

4 MR. LOPRESTO: Thank you. If I could mark that, your
5 Honor.

6 THE COURT: Please.

7 MR. LOPRESTO: Thank you, your Honor. The State
8 rests.

9 THE COURT: All right. The State has rested.

10 Ms. Chesnut, do you anticipate calling any witnesses
11 today?

12 MS. CHESNUT: Yes, your Honor. The Defense would
13 call Debbie Clark -- or, pardon me, Debbie Larsen.

14 THE COURT: Ms. Larsen, why don't you come forward
15 and be sworn.

16 (The witness was sworn.)

17 THE COURT: Just have a seat.

18 * * *

19 DEBBIE LARSEN,

20 called as a witness by the Defendant, having been duly sworn,
21 was examined and testified as follows:

22 * * *

23 DIRECT EXAMINATION

24 BY MS. CHESNUT:

25 Q. Ms. Larsen, will you state your full name and spell

1 your last name for the record?

2 A. Debbie Larsen, L-a-r-s-e-n.

3 Q. And, um, do you know a person Debbra Clark?

4 A. Yes.

5 Q. And do you see her in the courtroom?

6 A. Yes.

7 Q. And where is she?

8 A. Right there.

9 Q. Sitting at the Defense counsel table?

10 A. Yeah.

11 THE COURT: The record will reflect the

12 identification by Ms. Larsen of Ms. Clark.

13 Q. And how do you know her?

14 A. I've known her for about five years. She has been a

15 friend for quite awhile.

16 Q. Okay. Now, do you remember going to a Smith's store

17 with her back on November 30th of last year?

18 A. Yes.

19 Q. Okay. Now, was anyone else with the two of you?

20 A. No, just my dog.

21 Q. How did you get to the store?

22 A. Drive.

23 Q. Whose car?

24 A. Mine.

25 Q. Did you drive?

1 A. I drove, yeah.

2 Q. Now, in your mind, what were the two of you doing at
3 the store?

4 A. We were -- well, I was taking some things, some items
5 back that I had purchased, and she was supposed to go get stuff
6 for dinner, because we were going to have dinner, and that was
7 what we was there for.

8 Q. Okay. Now, you said you were taking things back to
9 the store. What were you taking back?

10 A. Some Mirilax, Fleet and Gas-Ex and then two hooks.
11 And I had a receipt for everything but the two hooks.

12 Q. Okay. So you had a receipt for the Mirilax and the
13 Gas-Ex?

14 A. Yeah.

15 Q. What was the other item?

16 A. Two hooks.

17 Q. Okay. So Mirilax, Gas-Ex and two hooks?

18 A. And Fleet, yeah.

19 Q. Fleet? Oh, okay, is that a medication?

20 A. Yeah.

21 Q. Okay. So you had a receipt for the medications but
22 not the hooks?

23 A. Yeah.

24 Q. Okay. Um, did you purchase the medications?

25 A. Yeah.

1 Q. Okay. And where did you purchase those?

2 A. Um, on, what is it, 4100 South and Redwood Road.

3 Q. Okay. Is that the same Smith's store where you were

4 returning them on November 30th?

5 A. No. I was returning them on the one that we went to.

6 Q. Okay. What about the -- the two hooks? You say you

7 didn't have a receipt for them?

8 A. No, I didn't have a receipt for them. They were my

9 boyfriend's, and he never keeps his receipts for anything, and

10 so he told me to take them back, and so I took them back with

11 my stuff, and they came up to me and accused me of having her

12 hand them off to me in the store.

13 Q. Okay, let's take it one step at a time.

14 A. Okay.

15 Q. So you -- you went into the store. Did you go in the

16 store with Debbra Clark?

17 A. Yeah -- well, not right with her. I had to settle my

18 dog and roll the windows down a little, so I was probably three

19 to five minutes behind her.

20 Q. Okay. And did you go into the store?

21 A. Yeah.

22 Q. What's the first thing you did when you went into the

23 store?

24 A. Turned to the service booth. It was right inside the

25 door.

1 Q. Okay. And what did you do there?

2 A. I proceeded to return the items. There was one
3 person ahead of me, so I just waited for them, and then it was
4 my turn, and they were giving me back my money.

5 Q. Okay. And this was for all five items, the Fleet,
6 the Mirilax, the Gas-Ex and the two hooks?

7 A. Yeah.

8 Q. Okay. Did you actually get the money?

9 A. No.

10 Q. Why not?

11 A. Because they came and asked if I knew a Debbie Clark
12 and if I was with her, and I said yes, and they told me that --
13 that not to come in their store ever again, that she was
14 stealing, and I had like items to what she was stealing.

15 Q. Okay. Let's talk about the items. So how -- so
16 these hooks, um, about -- do you remember about how much you
17 were receiving on a return for them?

18 A. Like they were like \$9 apiece.

19 Q. Okay. Do you remember the amount on the other three
20 items, the medications?

21 A. It was I believe 68.

22 Q. Okay. Um, is that -- was that the total amount you
23 were receiving back or --

24 A. Yeah.

25 Q. -- just for the medications?

1 A. No, they were giving it all back to me.

2 Q. So you were receiving about \$68 back from all of
3 that?

4 A. Uh-huh.

5 Q. Okay. Do you remember what these hooks looked like?

6 A. Yeah. They were just white hooks that you stick on
7 your wall and hang things, but they were too thick for my wall.

8 Q. Okay.

9 A. The ones that show on TV where they stick to your
10 wall and you don't ruin your wall.

11 Q. What do you mean they were too thick for your wall?

12 A. They were too wide, I guess you would say, for my
13 wall, for -- it looked funny with the picture, so I didn't put
14 it up.

15 Q. Okay, now, you said that you were interrupted,
16 someone came and talked to you about Debbra Clark?

17 A. Yes.

18 Q. Um, was the return completed ever?

19 A. It was done to where they -- he had out the money and
20 everything to hand me back, and they was giving me a gift card
21 for the two clamps and had everything ready, and then they came
22 over and asked if I knew her, and they stopped everything and
23 just said -- they didn't give me nothing back.

24 Q. You said they were giving you a gift card for the two
25 clamps?

1 A. Yeah. Because I didn't have a receipt for them.
2 They was going to give me a Smith's gift card.
3 Q. Do you mean the hooks?
4 A. Yeah.
5 Q. So the same thing?
6 A. Yeah.
7 Q. Okay. So, um, now, what happened at that point when
8 they stopped you and talked to you about Debbbra? Did you stay
9 there, go somewhere?
10 A. We stayed there. And they took a picture of me and
11 told me that Debbie Clark was stealing items, and that she
12 passed it off, them hooks off to me in the store. And I begged
13 them to go look at their camera, because they would see I
14 didn't even pass her in the store. And the lady started just
15 screaming at me and wouldn't listen to me to go look at her
16 cameras or anything.
17 Q. What lady was that?
18 A. She is the blonde lady that was here earlier.
19 Q. Okay. And whatever happened to these hooks and
20 medications?
21 A. Um, I took them back to Smith's by where I live.
22 Q. All five items?
23 A. Yeah.
24 Q. So the medications and the hooks?
25 A. Uh-huh.

1 Q. And did you get a return there?

2 A. Yeah.

3 Q. Okay. So they wouldn't complete the return at the

4 store --

5 A. No.

6 Q. -- where you were with Debbie Clark?

7 A. Nope.

8 Q. Okay. You said that you asked them to look at

9 surveillance video?

10 A. Yeah.

11 Q. Did you ever see whether they did that?

12 A. No, I didn't. But I begged them to do that so they

13 would see that she didn't pass me anything.

14 Q. Okay. And were you ever charged with anything?

15 A. No. But they told me if I ever went back to Smith's

16 again I would be trespassing. And I had a receipt for my

17 stuff. I never stole nothing. And I was trying to talk to

18 this lady rationally and tell her hey, but she was hysterical.

19 Q. Okay.

20 A. She just, you know, took a picture of me and said

21 never come back here.

22 Q. Okay. Um, what about the receipt you had for these

23 medications?

24 A. Yeah, I tried to talk to them about that, too, and

25 still she was -- she wouldn't listen to me.

1 Q. What happened -- do you still have the receipt?
2 A. No. When I -- when I took it back to the other
3 Smith's I gave them the receipt.
4 Q. Okay. Um, all right. Did you, um, ever attempt to
5 tell this woman or anybody else about where you got these
6 medications or hooks or show them the receipt? Did you ever
7 tell them about that?
8 A. I told them that I got them on Smith's on 41st, on
9 4100 South and Redwood.
10 Q. Okay.
11 A. And that's -- that's all I told them.
12 Q. Okay. Um, did you tell them where you got these
13 hooks?
14 A. What do you mean?
15 Q. The hooks you were trying to return?
16 A. Oh, yeah. I just told them my boyfriend don't keep
17 receipts, and I don't have the receipts for these two items.
18 Q. Okay. Did you --
19 A. And they said, "That's fine. We will give you a gift
20 card for that and we will give you your cash back for the
21 other."
22 Q. Okay. So you were getting a gift card for the hooks
23 because you didn't have a receipt?
24 A. Yeah.
25 Q. Okay. Um, did you ever see Debbra Clark, um, at any

1 point after attempting to make this return that day?

2 A. No, I never saw her.

3 MS. CHESNUT: Okay. That's all I have.

4 THE COURT: Mr. Lopresto, cross-examination?

5 MR. LOPRESTO: Yes, your Honor.

6 * * *

7 CROSS-EXAMINATION

8 BY MR. LOPRESTO:

9 Q. Good afternoon, Ms. Larsen.

10 A. Hi.

11 Q. Hi. Um, what is your full name?

12 A. Debbie Larsen.

13 Q. Is your -- do you go by Debbie Child Larsen?

14 A. Yeah.

15 Q. Is Child a previous last name of yours?

16 A. That's my maiden name.

17 Q. Okay. And your birth date is March 8th, 1967?

18 A. Uh-huh.

19 Q. Okay. And you live at 3810 South Redwood Road; is
20 that right?

21 A. Yes.

22 Q. Okay. And so tell me if I'm wrong, but it sounds
23 like you purchased the items, except for the hooks --

24 A. Yeah.

25 Q. -- at the Smith's right down the street from where

1 you live?

2 A. Yeah.

3 Q. Okay. Um, but the two hooks, you didn't purchase
4 those?

5 A. No. My boyfriend did.

6 Q. Okay. And your boyfriend's name is J.D. Cook?

7 A. No, it's Jeff.

8 Q. Okay. And he asked you to take those back, right?

9 A. Yeah -- well, no, he didn't ask me. They didn't work
10 with the pictures that I have, so I took them back, because
11 they were the wrong size for my wall.

12 Q. Okay. What's your boyfriend's last name?

13 A. Knowles, K-n-o-w-l-e-s.

14 Q. Um, so he bought the hooks for you, just didn't keep
15 the receipt?

16 A. He just bought the wrong ones, yeah.

17 Q. Okay. And when did he buy those for you?

18 A. Um, like the week previously before I went to take
19 them back.

20 Q. Okay.

21 A. They had been sitting in my car along with the stuff
22 in the back, and I hadn't -- I hadn't got to the store to take
23 them back yet, so it was probably a couple of weeks, maybe, at
24 the most.

25 Q. Okay. And so you had them in your car when you went

1 to go pick up Ms. Clark?

2 A. Yeah.

3 Q. Okay. And did Ms. Clark tell you that she wanted you
4 to take her to Smith's?

5 A. Yeah -- well, no, we just decided we were going to
6 have dinner, and she was going to cook dinner for us, and so we
7 went to Smith's to get stuff for dinner.

8 Q. Okay. So who -- who is the other person? You said
9 that Ms. Clark was going to cook dinner for us. Was that just
10 you and Ms. Clark or were there other people involved?

11 A. There was Jeff and -- I think just me and Jeff.

12 Q. Okay. So you and Ms. Clark and Jeff?

13 A. Yeah.

14 Q. So were all of you over at your house?

15 A. My house, yeah. But she lived by that Smith's.
16 That's why we stopped there.

17 Q. Okay. So you live at about 3800 South Redwood?

18 A. Yeah.

19 Q. And you were at that location, correct, when
20 Ms. Clark said she wanted to make dinner for you?

21 A. We were at my house.

22 Q. Where is your house?

23 A. 3810 South.

24 Q. Okay. And Ms. Clark was there with you?

25 A. Yeah.

1 Q. Okay. And -- okay. So you drove to the store?
2 A. Uh-huh.
3 Q. And the store that you drove to was at 4500 South and
4 9th East; is that correct?
5 A. Yeah.
6 Q. Okay. But you said that it took you about five
7 minutes or so after Mr. Clark entered the store before you did,
8 right?
9 A. Yeah. I had my dog in the car, so I settled him
10 down, and then I -- I won't leave him in there for long. So --
11 Q. But this was in November, right?
12 A. Yeah.
13 Q. Was it cold at that point?
14 A. Yeah. That's why I got him settled down and stuff.
15 Q. Now, you said that after a couple of minutes, after
16 about five minutes or so you entered the store and went to do
17 this return; is that right?
18 A. Uh-huh.
19 Q. And at some point loss prevention came up to you,
20 correct?
21 A. Yes.
22 Q. And you had been standing there for, what, 10
23 minutes?
24 A. Ten minutes about.
25 Q. And, all of a sudden, these people just show up,

1 correct?

2 A. Yeah, out of nowhere.

3 Q. All right. And they -- they asked you if you were
4 there with Debbra Clark, didn't they?

5 A. Yeah. Yeah.

6 Q. But your testimony is that you said you were there
7 with Debbra Clark?

8 A. Yeah.

9 Q. You didn't tell them that you weren't there with
10 Debbra Clark?

11 A. No.

12 Q. You didn't tell them that you didn't know who Debbra
13 Clark was?

14 A. No.

15 Q. Now, you have known Debbra Clark for a long time,
16 right? You are good friends?

17 THE COURT: You need to answer out loud, ma'am.

18 THE WITNESS: What?

19 THE COURT: You were nodding your head. We are on
20 the record. The record doesn't reflect the nods.

21 THE WITNESS: Okay. Yes.

22 Q. You are good friends?

23 A. Yes.

24 Q. How often would you say, uh, you get together with
25 Ms. Clark?

1 A. Probably once a week.

2 Q. So once a week for the past five years?

3 A. Yeah.

4 Q. Okay. So that would be --

5 A. Sometimes longer, but mostly we see each other once a

6 week.

7 Q. Do you see each other more frequently than once a

8 week?

9 A. No, not really.

10 Q. Okay. So it is generally once a week, sometimes a

11 little bit more time?

12 A. Yeah.

13 Q. Is that right?

14 A. Yeah.

15 Q. And when you see Ms. Clark, do you see her alone or

16 do you see her with other friends?

17 A. Um, I see her with one other friend sometimes.

18 Q. And who is that?

19 A. Wanda. Which she is my friend too, now. I was

20 introduced through Debbie to her. She is a good lady.

21 Q. So you never see Ms. Clark with Christian Hale?

22 A. Yes.

23 Q. Okay. And what is Mr. Hale's relationship to

24 Ms. Clark?

25 A. They were boyfriend and girlfriend.

1 Q. Okay. And so on these times that you got together
2 with Ms. Clark was Mr. Hale with you or --

3 MS. CHESNUT: Objection to relevance, your Honor.

4 THE COURT: Overruled.

5 Q. So these times that you were together with Mr. Clark,
6 Mr. Hale is with her?

7 A. Sometimes he was with her but not all the time. He
8 wasn't there this time.

9 Q. Okay. These times that you have gotten together with
10 Ms. Clark and Mr. Hale, has it been like the same type of
11 scenario, though, like having dinner together, that type of
12 stuff?

13 A. Yeah, stuff like that.

14 Q. Okay. So you know Mr. Hale?

15 A. Yeah.

16 Q. Okay. And you know Mr. Hale and Ms. Clark were
17 boyfriend and girlfriend, right?

18 A. Yeah.

19 Q. Okay. Do you know about when they were boyfriend and
20 girlfriend?

21 MS. CHESNUT: Your Honor, again, objection to
22 relevance. I don't see how this is relevant to the charge.

23 MR. LOPRESTO: Your Honor, this is Defendant's
24 witness.

25 THE COURT: I'm going to give a little leeway, but

1 make it quick.

2 MR. LOPRESTO: Thank you.

3 Q. Do you know about when Mr. Hale and Ms. Clark were
4 boyfriend and girlfriend?

5 A. No. I know it had been years, but I don't know how
6 many.

7 Q. Okay. When is the last time you had seen Mr. Hale?

8 A. It had probably been a month or so before then.

9 Q. Okay. And is that the time when you and Mr. Hale
10 were passing forged checks?

11 MS. CHESNUT: Objection, your Honor.

12 THE WITNESS: No, we --

13 THE COURT: Wait, wait, wait, wait. Counsel, if
14 there is a 609 issue, I think you simply have to ask her if she
15 has been --

16 MR. LOPRESTO: It's a 608 issue, your Honor. 608
17 specifically allows me to go into the instances of conduct that
18 the defendant -- or that the witness has engaged in, with
19 regards to her truthfulness.

20 THE COURT: Ms. Chesnut, the rule does say in
21 subsection (b) that the Court may on cross-examination allow
22 them to be inquired into if they are probative of the character
23 for truthfulness or untruthfulness of the witness.

24 MS. CHESNUT: All right, well, your Honor, I don't
25 have any information about what Mr. Lopresto is delving in here

1 to. I would ask to have a chance to examine it so I can
2 properly respond.

3 **THE COURT:** Do you have evidence of a conviction for
4 that?

5 **MR. LOPRESTO:** Your Honor, I have an Information and
6 I have a docket from this court that I plan on presenting to
7 Ms. Larsen during cross-examination. I would also remind the
8 Court that the State was only made aware of this witness --

9 **THE COURT:** I understand.

10 **MR. LOPRESTO:** I found out about this information
11 during the lunch hour. And if this is Defendant's witness, I
12 would certainly think that Defendant would know about this
13 particular issue.

14 **THE COURT:** I'm going to allow you to proceed under
15 Rule 608(b).

16 **MR. LOPRESTO:** Thank you.

17 **MS. CHESNUT:** Your Honor, I still would like the
18 chance to examine what he is using. I haven't seen that.

19 **THE COURT:** Why don't you show Ms. Chesnut.

20 **MS. CHESNUT:** Well, your Honor, I base -- I object
21 based on that this is -- appears to be a conviction, which is
22 governed by Rule 609, regardless of 608. It is not a felony.
23 It is not a -- let's see -- I would argue it's not a crime of
24 truthfulness, without more information, and, um, certainly, I
25 think we would have to have the plea paperwork to see exactly

1 what the plea was to --

2 THE COURT: Let me see the document.

3 MS. CHESNUT: -- especially if Mr. Lopresto is
4 offering this as a specific instance, which I would -- you
5 know, I think it has to be governed by Rule 609.

6 THE COURT: Um, I'm going to allow you to proceed.

7 MR. LOPRESTO: Thank you, your Honor.

8 MS. CHESNUT: Your Honor, I would like to make
9 further argument for the record as well as a motion for
10 mistrial.

11 THE COURT: Go ahead.

12 MS. CHESNUT: Your Honor, um, to be a little bit more
13 clear, Mr. Lopresto is attempting to enter this under Rule
14 608(b) without regard to Rule 609. Um, as the Court is aware,
15 the rules have to be read in conjunction with, in harmony with
16 each other. Um, this is something that we don't have specific
17 information about with regard to what exactly specific conduct
18 was underlying this plea. It also, um, involves somebody who
19 was not involved in this case, according to the State's own
20 evidence. And I would also make a motion for a mistrial on the
21 basis that it is improper evidence under both Rule 608 and 609,
22 and that, yet, it has been entered without an in limine motion.

23 THE COURT: Well, Ms. Chesnut, it's your witness.
24 You only gave notice to Mr. Lopresto this morning. This is a
25 plea to a theft by deception, which in this Court's opinion is

1 admissible under Rule 609, and Rule 608 specifically indicates
2 that the Court may on cross-examination allow them to be
3 inquired into if they are probative of the character for
4 truthfulness or untruthfulness. I find that it is. You may
5 proceed. The motion for mistrial is denied. Although, I'm
6 going to require that a certified copy -- is that a certified
7 copy?

8 **MR. LOPRESTO:** It isn't, your Honor. And again, I
9 only asked her about her passing bad checks with the
10 defendant's boyfriend. I did not offer into evidence a
11 certified copy of a conviction. I was going under 608 and
12 speaking about prior instances of conduct.

13 Moreover, I would ask the Court to take judicial
14 notice of the case number that's being inquired into. This is
15 something that's available to the Court and I think the Court
16 can divine from its own information that there is a conviction,
17 but because the State only received notice of this witness this
18 morning I didn't have the opportunity to get a certified copy
19 of the conviction. Now, if the Court would allow me, I could
20 do that before this case is rested. I can go to the clerk's
21 office and ask them to stamp the certified copy of the
22 conviction.

23 **THE COURT:** I'm going to allow you to do that.
24 That's the proper way to have it done.

25 **MR. LOPRESTO:** Thank you.

1 Q. Now, Ms. Larsen, uh, you pled guilty about five days
2 after this incident at Smith's to forgery as a third-degree
3 felony?

4 A. Yeah.

5 Q. And in that case you admitted that your boyfriend was
6 the individual who had been purchasing payroll checks; is that
7 correct?

8 A. It wasn't my boyfriend that was doing it.

9 Q. Post-Miranda, you didn't admit to --

10 A. No, it was J.D. Cook. It was J.D. Cook.

11 Q. Let me please answer -- or ask the question. From a
12 long-time friend J.D. Cook?

13 A. My boyfriend wasn't it. She gave it to me
14 personally.

15 Q. Okay. And you were charged with the defendant's
16 boyfriend, Christian Hale?

17 A. No, we didn't have -- we weren't charged together.
18 We never went together.

19 Q. I'm going to show you what has been marked State's
20 Exhibit No. 2. Do you recognize that document?

21 A. Yeah. There was some mix-up in my court case,
22 because they said that for some reason he is tacked on the end
23 of mine, when we never had trial together, never had court
24 together or nothing at all.

25 Q. Is Mr. Hale's name on that Information?

1 A. Yes. But he -- we didn't go to court together or any
2 of that stuff.

3 Q. It's because you pled guilty; isn't that right?

4 A. No.

5 Q. You didn't have trial, did you?

6 A. No. I don't know why they didn't -- I don't know why
7 they did it like that. I have no idea. But I never went with
8 him to cash a check. I went with J.D. Cook.

9 MS. CHESNUT: Your Honor, I would like -- I would ask
10 for a correction on the record. She is not -- was not
11 convicted of a third-degree felony.

12 MR. LOPRESTO: And that's correct, your Honor. I
13 apologize.

14 THE WITNESS: No, I'm not.

15 MR. LOPRESTO: It was a theft by deception.

16 THE COURT: I understand. That was what I said
17 before. Members of the jury, you are instructed that
18 Ms. Larsen was not convicted of a third-degree felony forgery.
19 She was convicted of a class A misdemeanor theft by deception,
20 as I previously indicated, based upon my review of the docket.
21 Okay?

22 Q. So your friend supplied you with payroll checks that
23 you attempted --

24 A. No, she made the check.

25 Q. Okay. And then you went into Wells Fargo and you

1 tried to cash that check?

2 A. And I didn't -- yeah, I did not know that check
3 was -- I thought it was regular check.

4 Q. But you pled guilty to theft by deception?

5 A. I know. I went to my bank first, and they wouldn't
6 let me do it, because I didn't have funds in it. So I went to
7 Wells Fargo, she took me to Wells Fargo, and when I got out of
8 Wells Fargo, after putting my fingerprint and my phone number
9 and my name, everything on this check, she told me she had made
10 the check.

11 Q. So you pled guilty to theft by deception?

12 A. Yeah.

13 Q. Theft by deception means that you attempt to obtain
14 property from another by deceiving them; isn't that right?

15 A. Yeah. But I didn't know until after.

16 Q. You attempted to get property from Wells Fargo by
17 deception?

18 A. After -- after I found out, yes.

19 Q. And you entered that bank on February 4th, 2013?

20 A. Yeah.

21 Q. Right?

22 A. Yes.

23 Q. And the check number that you attempted to cash was
24 102548, correct?

25 A. I have no idea.

1 Q. And on February 4th, 2013, Christian Hale also
2 entered the Wells Fargo Bank and attempted to a cash a check --
3 A. I don't know --
4 Q. -- check No. 102552; isn't that correct?
5 MS. CHESNUT: Objection to --
6 THE WITNESS: Not with me.
7 THE COURT: Wait, wait, wait. He asked if she knew
8 if that was correct, so I will allow her to respond.
9 THE WITNESS: No, he -- not with me he didn't. I
10 don't know.
11 Q. Did you ever work for LG Warehousing in Salt Lake
12 County?
13 A. No. It's in Davis County.
14 Q. But a check written on a payroll check from LG
15 Warehousing had your name on it, correct?
16 A. Yeah. It was made out to me like a regular check,
17 like any check you would see.
18 Q. And you thought that you could cash a payroll --
19 payroll check from LG Warehousing?
20 A. Yeah. I thought it was her job, J.D. Cook's job,
21 because she cleans houses and stuff. I didn't know what it was
22 under.
23 Q. So it was everybody else lying not you lying? Is
24 that what you are trying to say?
25 A. No, I'm not saying I'm -- I'm not lying. I'm just

1 telling you the truth. Chris Hale was not in my court papers.
2 He -- we did not go to court together. We never cashed a check
3 together, ever; but met through the same person, we got the
4 checks, but I didn't know that it was -- what was going on
5 until after I had cashed that check at Wells Fargo, and they
6 were going to charge me with a third-degree felony, and I pled
7 guilty to a misdemeanor.

8 **MR. LOPRESTO:** Your Honor, I would like to offer into
9 evidence what has been marked as State's Exhibit No. 2.

10 **THE COURT:** Is that the docket?

11 **MR. LOPRESTO:** That is the Information, your Honor.

12 **THE WITNESS:** He was never in the courtroom with me
13 ever.

14 **THE COURT:** I think you are entitled to -- to
15 introduce the conviction. I don't think you are entitled to
16 introduce -- or to admit the Information. So I will allow you
17 to introduce as an exhibit the conviction for theft by
18 deception, but I'm not going to allow the Information.

19 **MR. LOPRESTO:** And I would argue, your Honor, the
20 reason why it is being offered is because the witness has
21 stated that Christian Hale was never on her court documents,
22 and the State has --

23 **THE WITNESS:** He was not.

24 **MR. LOPRESTO:** -- an Information with Christian
25 Hale's name on it, with Ms. Larsen's name on it. The jury

1 should be entitled to see that documentation.

2 **THE WITNESS:** My probation officer told me they made
3 a mix-up. We have never been to court together. We have never
4 been hooked together. We just got a check from the same
5 person.

6 **THE COURT:** What is your position, Ms. Chesnut?

7 **MS. CHESNUT:** Um, well, obviously, an Information is
8 allegations not a conviction. And, um, I'm not sure how
9 this -- how allegations is impeachment material.

10 **THE COURT:** Were you jointly charged with Mr. Hale?

11 **THE WITNESS:** No.

12 **THE COURT:** All right. I will allow the admission.

13 * * *

14 (State's Exhibit 2 was received into evidence.)

15 * * *

16 **MR. LOPRESTO:** Thank you, your Honor.

17 **MS. CHESNUT:** And, your Honor, I will object, because
18 it is not just going to whether they were charged together,
19 which, by the way, I don't think is relevant here.

20 **THE COURT:** It impeaches her testimony, Ms. Chesnut.

21 **MS. CHESNUT:** Well, obviously, she is not an
22 attorney. She doesn't know how court dockets work, how people
23 are charged.

24 **THE COURT:** I'm going to allow it. You can argue the
25 weight. You may publish.

1 MR. LOPRESTO: Thank you.

2 THE WITNESS: And just because I did that don't mean
3 I'm not an honest person.

4 THE COURT: There is no question for you, ma'am.
5 Do you have any redirect? _____

6 MS. CHESNUT: Yeah.

7 THE COURT: Go ahead.

8 * * *

9 REDIRECT EXAMINATION

10 BY MS. CHESNUT:

11 Q. Okay, Ms. Larsen, now, the Prosecution has talked to
12 you about a conviction that you had earlier this year.

13 A. Uh-huh.

14 Q. And that was for a class A theft by deception; is
15 that right?

16 A. Yes.

17 Q. So you were not convicted of the forgery count, were
18 you?

19 A. No.

20 Q. Okay. Now, um, the Prosecution has also talked to
21 you about a person Christian Hale.

22 A. Yeah.

23 Q. Now -- and has talked to you about whether you were
24 involved in this with him; is that right?

25 A. Not with him but just involved in the circle -- there

1 was a circle of people, and they showed me pictures and asked
2 me who I knew and who I didn't. It was a detective.

3 Q. Okay. And, um, was that on this theft by deception
4 count that you have been talking about?

5 A. Yes.

6 Q. Okay. Now, um --

7 A. But why they run me and him together, I don't know.

8 Q. Okay. Did, um -- did you know that he received a
9 check as well?

10 A. Yes.

11 Q. When did you find that out?

12 A. Um, after I cashed mine.

13 Q. After you cashed yours?

14 A. Uh-huh.

15 Q. But not before?

16 A. Probably like a day later or so. Huh-uh. I hadn't
17 seen him at all.

18 Q. Okay. But you didn't know before?

19 A. No.

20 Q. Okay. This person you got the check from, how did
21 you know her?

22 A. I had known her for two years. I thought she was
23 great. She was my -- one of my best friends. She helped me
24 pack my house when I had some problems and needed to move. And
25 she -- she was a great person. And she called me up to cash a

1 check for her, because she lost her ID, and I heard someone, a
2 man in the background telling -- saying, um, well, we can just
3 put it in her name, because it's -- you know, it's easier for
4 her to cash that way. So they -- I said okay. They put it in
5 my name. And I went and cashed it. I honestly did not know
6 that was not a real check. I mean I put my real name, I put my
7 real phone number, but I -- I was looking at a third-degree
8 felony. I pled guilty to a class A misdemeanor before I could
9 get a felony charge.

10 Q. Okay. Okay.

11 A. And just because this happened, it -- it doesn't mean
12 I'm a liar, I'm not telling the truth today.

13 Q. Does any of that circumstance with the check have
14 anything to do with this case we are talking about today?

15 A. Nothing.

16 Q. Okay. Um, is anyone who was involved with that check
17 involved in this case?

18 A. No.

19 Q. Um, was any of the -- did you receive any money from
20 that check from that case --

21 A. Yes, she did give me some money afterwards.

22 Q. Okay. And what happened to that?

23 A. I spent it.

24 Q. Okay. Is any of that money involved in this case
25 today?

1 A. No.

2 Q. Okay. Um, okay, now, you say you have been friends
3 with Debbie Clark, who is here today?

4 A. Uh-huh.

5 Q. Now, would you come into court and lie for her about
6 something?

7 A. No, I would not.

8 Q. Why wouldn't you do that?

9 A. Because it's not right. It's -- I'm -- I can admit
10 to what I did, and I expect everyone else to be the same way.
11 They should own their own, you know, problems or whatever. But
12 I would never lie for her.

13 Q. And is that why you pled to that check is because you
14 did go cash it?

15 A. Yeah, I did cash it.

16 Q. So you took responsibility for that?

17 A. Yeah.

18 Q. Okay. So, um, so are you saying you would expect
19 Debbra Clark to do the same thing?

20 A. Yeah, if she had done this, yes.

21 Q. So, again, expecting that, would you come into court
22 and lie for her?

23 A. No.

24 MS. CHESNUT: I have no further questions.

25 THE COURT: Any redirect?

1 **MR. LOPRESTO:** No, your Honor.

2 **THE COURT:** Any questions from the jury for
3 Ms. Larsen? All right, write it down on a piece of paper and
4 hand it to my bailiff, and I will review it with counsel.

5 **JUROR:** It will take a second to write it down.

6 **THE COURT:** Oh, you are fine. Take your time. While
7 we are waiting for that to be done, um, there was an indication
8 that the State was going to introduce a certified copy of the
9 conviction for theft by deception. Um, is that the State's
10 intention, or do you want to stipulate that that is a fact?
11 It's up to you.

12 **MS. CHESNUT:** The docket, you mean?

13 **THE COURT:** Well, the judgment, commitment, whatever
14 is in the court's file.

15 **MS. CHESNUT:** Well, I think she has admitted it.

16 **THE COURT:** So you are willing to -- to waive the
17 actual judgment and conviction and will stipulate that she was
18 convicted of a class A misdemeanor theft by deception?

19 **MS. CHESNUT:** Yes.

20 **THE COURT:** All right. So, members of the jury, we
21 are not going to introduce a certified copy of the judgment
22 wherein Ms. Larsen was convicted of theft by deception. The
23 State -- or the Defense has indicated that they will stipulate
24 that is a fact without taking the time to go down to the
25 clerk's office and have a certified copy of that conviction.

1 So you can take that as evidence in the case. Okay?
2 All right, counsel, please approach.
3 (A discussion at the bench.)
4 **THE COURT:** Do you have a problem?
5 **MS. CHESNUT:** I haven't seen this. I don't have a
6 problem with that.
7 **MR. LOPRESTO:** Thank you.
8 **THE COURT:** Okay.
9 (Proceedings held in open court.)
10 **THE COURT:** All right. Ms. Larsen, why would you
11 knowingly cash a forged check for someone else?
12 **THE WITNESS:** I didn't know it was forged until I
13 cashed it.
14 **THE COURT:** The second question, if someone else's
15 payroll was not intended for you, why would -- why would you
16 then spend the cash that you received from that check?
17 **THE WITNESS:** Because she told me after I cashed the
18 check that it was a check she had made, and I thought, ooh,
19 money, you know, and I spent it. So that's why I pled guilty.
20 **THE COURT:** All right. Any other questions from the
21 jury? Any follow-up questions from counsel?
22 **MR. LOPRESTO:** No, your Honor.
23 **MS. CHESNUT:** No, your Honor.
24 **THE COURT:** All right. You may step down. Thank
25 you, Ms. Larsen.

Addendum C

Tab C

Utah R. Evid. 401

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule is the federal rule, verbatim, and is comparable in substance to Rule 1(2), Utah Rules of Evidence (1971), but the former rule defined relevant evidence as that having a tendency to prove or disprove the existence of any "material fact." Avoiding the use of the term "material fact" accords with the application given to former Rule 1(2) by the Utah Supreme Court. *State v. Peterson*, 560 P.2d 1387 (Utah 1977).

Utah R. Evid. 402

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- the Utah Constitution;
- a statute; or
- rules applicable in courts of this state.

Irrelevant evidence is not admissible.

Irrelevant evidence is not admissible.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ADVISORY COMMITTEE NOTE

The text of this rule is Rule 402, Uniform Rules of Evidence (1974) except that prior to the word "statute" the words "Constitution of the United States" have been added.

Utah R. Evid. 403

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule is the federal rule, verbatim, and is substantively comparable to Rule 45, Utah Rules of Evidence (1971) except that "surprise" is not included as a basis for exclusion of relevant evidence. The change in language is not one of substance, since "surprise" would be within the concept of "unfair prejudice" as contained in Rule 403. See also Advisory Committee Note to Federal Rule 403 indicating that a continuance in most instances would be a more appropriate method of dealing with "surprise." See also *Smith v. Estelle*, 445 F. Supp. 647 (N.D. Tex. 1977) (surprise use of psychiatric testimony in capital case ruled prejudicial and violation of due process). See the following Utah cases to the same effect. *Terry v. Zions Coop. Mercantile Inst.*, 605 P.2d 314 (Utah 1979); *State v. Johns*, 615 P.2d 1260 (Utah 1980); *Reiser v. Lohner*, 641 P.2d 93 (Utah 1982).

Utah R. Evid. 611

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

2011 Advisory Committee Note. — The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule is the federal rule, verbatim, and restates the inherent power of the court to control the judicial process. Cf. *Vanderpool v. Hargis*, 23 Utah 2d 210, 461 P.2d 56 (1969). There was no comparable provision to Subsection (b) in Utah Rules of Evidence (1971), but it is comparable to current Utah case law and practice. *Degnan*, Non-Rules Evidence Law: Cross-Examination, 6 Utah L. Rev. 323 (1959). Subsection (c) is comparable to current Utah practice. Cf. Rule 43(b), Utah Rules of Civil Procedure.

Utah R. Evid. 801

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

- (a) **Statement.** "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** "Declarant" means the person who made the statement.
- (c) **Hearsay.** "Hearsay" means a statement that:
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
 - (1) **A Declarant-Witness's Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - (A) is inconsistent with the declarant's testimony or the declarant denies having made the statement or has forgotten, or
 - (B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
 - (C) identifies a person as someone the declarant perceived earlier.
 - (2) **An Opposing Party's Statement.** The statement is offered against an opposing party and:
 - (A) was made by the party in an individual or representative capacity;
 - (B) is one the party manifested that it adopted or believed to be true;
 - (C) was made by a person whom the party authorized to make a statement on the subject;
 - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ADVISORY COMMITTEE NOTE

Subsection (a) is in accord with Rule 62(1), Utah Rules of Evidence (1971).

Subsection (b) is in accord with Rule 62(2), Utah Rules of Evidence (1971). The hearsay rule is not applicable in declarations of devices and machines, e.g., radar. The definition of "hearsay" in subdivision (c) is substantially the same as Rule 63, Utah Rules of Evidence (1971).

Subdivision (d)(1) is similar to Rule 63(1), Utah Rules of Evidence (1971). It deviates from the federal rule in that it allows use of prior statements as substantive evidence if (1) inconsistent or (2) the witness has forgotten, and does not require the prior statement to have been given under oath or subject to perjury. The former Utah rules admitted such statements as an exception to the hearsay rule. See *California v. Green*, 399 U.S. 149 (1970), with respect to confrontation problems under the Sixth Amendment to the United States Constitution. Subdivision (d)(1) is as originally promulgated by the United States Supreme Court with the addition of the language "or the witness denies having made the statement or has forgotten" and is in keeping with the prior Utah rule and the actual effect on most juries.

Subdivision (d)(1)(B) is in substance the same as Rule 63(1), Utah Rules of Evidence (1971). The Utah court has been liberal in its interpretation of the applicable rule in this general area. *State v. Sibert*, 6 Utah 2d 198, 310 P.2d 388 (1957).

Subdivision (d)(1)(C) comports with prior Utah case law. *State v. Owens*, 15 Utah 2d 123, 388 P.2d 797 (1964); *State v. Vasquez*, 22 Utah 2d 277, 451 P.2d 786 (1969).

The substance of subdivision (d)(2)(A) was contained in Rules 63(6) and (7), Utah Rules of Evidence (1971), as an exception to the hearsay rule.

Similar provisions to subdivisions (d)(2)(B) and (C) were contained in Rule 63(8), Utah Rules of Evidence (1971), as an exception to the hearsay rule.

Rule 63(9), Utah Rules of Evidence (1971), was of similar substance and scope to subdivision (d)(2)(D), except that Rule 63(9) required that the declarant be unavailable

before such admissions are received. Adoptive and vicarious admissions have been recognized as admissible in criminal as well as civil cases. State v. Kerekes, 622 P.2d 1161 (Utah 1980).

Statements by a coconspirator of a party made during the course and in furtherance of the conspiracy, admissible as non-hearsay under subdivision (d)(2)(E), have traditionally been admitted as exceptions to the hearsay rule. State v. Erwin, 101 Utah 365, 120 P.2d 285 (1941). Rule 63(9)(b), Utah Rules of Evidence (1971), was broader than this rule in that it provided for the admission of statements made while the party and declarant were participating in a plan to commit a crime or a civil wrong if the statement was relevant to the plan or its subject matter and made while the plan was in existence and before its complete execution or other termination.

Utah R. Evid. 802

Rule 802. The Rule Against Hearsay

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

2011 Advisory Committee Note. — The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule is Rule 802 of the Uniform Rules of Evidence (1974), and is the same as the first paragraph of Rule 63, Utah Rules of Evidence (1971).

Utah R. Evid. 803

Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

- (1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- (2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:
 - (A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
 - (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) **Recorded Recollection.** A record that:
 - (A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - (B) was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - (C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.
- (6) **Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(9) Public Records of Vital Statistics. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) Absence of a Public Record. Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) Records of Religious Organizations Concerning Personal or Family History. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) Family Records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) Records of Documents That Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

(15) Statements in Documents That Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter

stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.

(17) Market Reports and Similar Commercial Publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) Reputation Concerning Personal or Family History. A reputation among a person's family by blood, adoption, or marriage — or among a person's associates or in the community — concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) Reputation Concerning Boundaries or General History. A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) Reputation Concerning Character. A reputation among a person's associates or in the community concerning the person's character.

(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments Involving Personal, Family, or General History or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) [Other exceptions.] [Transferred to Rule 807.]

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule is the federal rule verbatim. The 2001 amendment adopts changes made to Federal Rule of Evidence 803(6) effective December 1, 2000.

Utah R. Evid. 804

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Statement Under the Belief of Imminent Death. In a civil or criminal case, a statement made by the declarant while believing the declarant's death to be imminent, if the judge finds it was made in good faith.

(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) Statement of Personal or Family History. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ADVISORY COMMITTEE NOTE

Subdivision (a) is comparable to Rule 63(7), Utah Rules of Evidence (1971). Rule 62(7)[(e)], Utah Rules of Evidence (1971), seems to be encompassed in Rule 804(a)(5). Subdivision (a)(5) is a modification of the federal rule which permits judicial discretion to be applied in determining unavailability of a witness.

Subdivision (b)(1) is comparable to Rule 63(3), Utah Rules of Evidence (1971), but the former rule is broader to the extent that it did not limit the admission of the testimony to a situation where the party to the action had the interest and opportunity to develop the testimony. *Condas v. Condas*, 618 P.2d 491 (Utah 1980); *State v. Brooks*, 638 P.2d 537 (Utah 1981).

Subdivision (b)(2) is comparable to Rule 63(5), Utah Rules of Evidence (1971), but the former rule was not limited to declarations concerning the cause or circumstances of the impending death nor did it limit dying declarations in criminal prosecutions to homicide cases. The rule has been modified by making it applicable to any civil or criminal

proceeding, subject to the qualification that the judge finds the statement to have been made in good faith.

Subdivision (b)(3) is comparable to Rule 63(10), Utah Rules of Evidence (1971), though it does not extend merely to social interests.

Subdivision (b)(4) is similar to Rule 63(24), Utah Rules of Evidence (1971).

Subdivision (b)(5) had no counterpart in Utah Rules of Evidence (1971).

Utah R. Evid. 807

Rule 807. Residual Exception

(a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
- (2) it is offered as evidence of a material fact;
- (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
- (4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule transfers identical provisions Rule 803(24) and Rule 804(b)(5) to a new Rule 807 to reflect the organization found in the Federal Rules of Evidence. No substantive change is intended. This rule is the federal rule, verbatim.

Utah R. Evid. 901

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only — not a complete list — of evidence that satisfies the requirement:

(1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.

(2) Nonexpert Opinion About Handwriting. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) Opinion About a Voice. An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence About Public Records. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by court rule or statute of this state.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

Subdivision (b)(2) is in accord with *State v. Freshwater*, 30 Utah 442, 85 Pac. 447 (1906). Subdivision (b)(8) is comparable with Rule 67, Utah Rules of Evidence (1971), except that the former rule imposed a 30-year requirement. Subdivision (b)(10) is an adaptation of subdivision (10) in the comparable federal rules to conform to state practice.

Utah R. Evid. 902

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents That Are Sealed and Signed. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) Domestic Public Documents That Are Not Sealed But Are Signed and Certified. A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records. A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), or any law of the United States or of this state.

(5) Official publications. Books, pamphlet, or other publication purporting to be issued by public authority.

(6) Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

(7) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) Acknowledged Documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) Presumptions Under a Federal Statute. A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that must be signed in a manner that, if falsely made, would subject the signer to criminal penalty under the laws where the certification was signed. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) Certified Foreign Records of a Regularly Conducted Activity. The original or a copy of a foreign record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that must be signed in a manner that, if falsely made, would subject the signer to criminal penalty under the laws where the certification was signed. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make

the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

2011 Advisory Committee Note. — The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

The amendment to Rule 803(6) and the addition of Rules 902(11) and 902(12) were made to track the changes made to Federal Rule of Evidence 803(6) and the adoption of Federal Rules 902(11) and 902(12), effective December 1, 2000. The changes to the federal rules benefit from a federal statute allowing the use of declarations without notarization. Utah has no comparable statute, so the requirements for declarations used under the rule are included within the rule itself.

U.S. Const. amend VI

Amendment VI

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

Addendum D

Tab D

SIM GILL, Bar No. 6389
District Attorney for Salt Lake County
JAMES COPE, Bar No. 0726
Deputy District Attorney
111 EAST BROADWAY, SUITE #400
SALT LAKE CITY, UT 84111
Telephone: (801)363-7900



FILED DISTRICT COURT
Third Judicial District
MAY 10 2013
SALT LAKE COUNTY
By Deputy Clerk

IN THE THIRD DISTRICT COURT, WEST JORDAN DEPARTMENT

IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH

Plaintiff,

vs.

DEBBIE CHILD LARSEN

DOB: [REDACTED]

AKA: Debbi Child, Debbie Cox Child,
Debbie Cox, Debbi Larsen

[REDACTED]

[REDACTED]

D.L.# [REDACTED]

OTN

SO#

CHRISTIAN PAUL HALE

DOB: [REDACTED]

Defendant(s).

Screened by: JAMES COPE
Assigned to: STEVEN GREEN

INFORMATION

DAO # 13009014

ECR Status: ECR
Initial Appearance:

Bail: \$5,000

Warrant/Release: NOT BOOKED

Case No.

131904477

Co-Def't DAO #13009015

The undersigned Pat Mount - Salt Lake City Police Department, Agency Case No. 13-27621, upon a written declaration states on information and belief that the defendant, DEBBIE CHILD LARSEN, committed the crime(s) of:

COUNT 1

FORGERY, 76-6-501(2) UCA, Third Degree Felony, as follows: That on or about February 04, 2013 at 1710 South Redwood Road, in Salt Lake County, State of Utah, the defendant did, with purpose to defraud anyone, or with knowledge that he was facilitating a fraud to be perpetrated by anyone,

- (a) alter any writing of another without his authority or uttered the altered writing; or
- (b) make, complete, execute, authenticate, issue, transfer, publish, or utter any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance:

STATE vs DEBBIE CHILD LARSEN

DAO # 13009014

Page 2

- (i) purported to be the act of another, whether the person was existent or nonexistent;
- (ii) purported to be an act on behalf of another party without the authority of that other party; or
- (iii) purported to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

COUNT 2

THEFT BY DECEPTION, 76-6-405 UCA, Class A Misdemeanor, as follows: That on or about February 04, 2013 at 1710 South Redwood Road, in Salt Lake County, State of Utah, the defendant did obtain or exercise control over the property of another by deception, with the purpose to deprive the owner thereof, and the value of said property was or exceeded \$500, but was less than \$1,500.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

Pat Mount, Troy Hyde, David Timmerman.

DECLARATION OF PROBABLE CAUSE:

Your declarant bases the Information upon the following:

The statement of Troy Hyde, owner of LG Warehousing located in Salt Lake County that while reviewing his company finances he noticed four checks that appeared to be payroll checks were cashed at different Wells Fargo Bank branches. Mr. Hyde stated that his company payroll is managed through a different company and not Wells Fargo. Mr. Hyde stated that one of the checks had a telephone number on it for one suspect, Defendant DEBBIE LARSEN. Mr. Hyde made contact with the defendant who admitted that she cashed a check and asked Hyde if she could pay him back.

On February 4, 2013, Defendant DEBBIE CHILD LARSEN entered the Wells Fargo Bank branch located at 1710 South Redwood Road, Salt Lake County, and presented check number [REDACTED] to be cashed. The check was made payable to the defendant, drawn on Wells Fargo Bank account [REDACTED], and issued to LG Warehousing for the amount of \$971.48.

On February 4, 2013, Defendant CHRISTIAN PAUL HALE entered the Wells Fargo Bank branch located at 1095 East 2100 South, Salt Lake County, and presented check number [REDACTED] to be cashed. The check was made payable to the defendant, drawn on Wells Fargo Bank account [REDACTED], and issued to LG Warehousing for the amount of \$987.05.

STATE vs DEBBIE CHILD LARSEN

DAO # 13009014

Page 3

The statement of Salt Lake City Police Officer P. Mount that he compared both defendants booking photos with the Wells Fargo Bank video surveillance photos and determined that they are the same individuals. Officer Mount showed a video surveillance photo of Defendant HALE to Defendant LARSEN and she positively identified CHRIS as the person in the surveillance photo.

Post-Miranda, Defendant LARSEN admitted to Officer Mount she got the check from her long-time friend, JD Cook, and that Cook bought a sheet of LG Warehousing checks from "Berta" and is using the sheet of checks to reproduce the checks and cash all over the Salt Lake Valley.

The Court is notified that Defendant HALE is subject to enhanced penalties in that he has been twice before convicted of Theft in the Third District Court, Salt Lake Department, under #131902001, and in the Third District Court, West Jordan Department, under #131400403.

Pursuant to Utah Code Annotated § 78B-5-705 (2008) I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge.

Executed on: 5-9-13

PAT MOUNT
Declarant

[Signature]
J64

Authorized for presentment and filing

SIM GILL, District Attorney

[Signature: James M. Cope]
Deputy District Attorney
9th day of May, 2013
DM/SRB/DAO #13009014

SO # OTN
DAO # 13009014

IN THE THIRD DISTRICT COURT, WEST JORDAN DEPARTMENT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

DEBBIE CHILD LARSEN

DOB: [REDACTED]

[REDACTED]

[REDACTED]

AKA: Debbi Child, Debbie Cox Child,
Debbie Cox, Debbi Larsen

SS# [REDACTED]

Defendant.

Before: _____

Magistrate

WARRANT OF ARREST

Case No.

131904477

THE STATE OF UTAH;

To any Peace Officer in the State of Utah, Greetings:

An Information, based upon a written declaration having been declared by Pat Mount - SALT LAKE CITY POLICE DEPARTMENT, Agency Case No. 13-27621, and it appears from the Information or Declaration filed with the Information, that there is probable cause to believe that the public offense(s) of;


FORGERY, Third Degree Felony, THEFT BY DECEPTION, Class A Misdemeanor, has been committed, and that DEBBIE CHILD LARSEN has committed them.

YOU ARE THEREFORE COMMANDED to arrest the above-named defendant forthwith and bring the defendant before this Court, or before the nearest or most accessible magistrate for setting bail. If the defendant has fled justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The Court finds reasonable grounds to believe defendant will not appear upon a summons.

Bail is set in the amount of \$5,000.

Dated this 10 day of May A.D. 2013

This Warrant may be served day or night.


MAGISTRATE

SERVED DATE: _____

BY _____

Addendum E

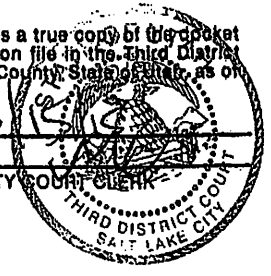
Tab E

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

I certify that this is a true copy of the packet
text in this case on file in the Third District
Court, Salt Lake County, State of Utah, as of
this date.

DATE: 5/15/15

DEPUTY COURT CLERK



STATE OF UTAH vs. DEBBIE CHILD LARSEN
CASE NUMBER 131904477 State Felony

Defendants CHRISTIAN PAUL HALE, DEBBIE CHILD LARSEN, are
linked.

CHARGES

Charge 1 - 76-6-501(2) - FORGERY 3rd Degree Felony

Offense Date: February 04, 2013

Disposition: June 21, 2013 Transferred

Charge 2 - 76-6-405 - THEFT BY DECEPTION Class A Misdemeanor

Offense Date: February 04, 2013

Disposition: June 21, 2013 Transferred

CURRENT ASSIGNED JUDGE

JUDGE ECR

PARTIES

Defendant - DEBBIE CHILD LARSEN

Plaintiff - STATE OF UTAH

Also Known As - DEBBI CHILD (LARSEN, DEBBIE CHILD)

Also Known As - DEBBIE COX CHILD (LARSEN, DEBBIE CHILD)

DEFENDANT INFORMATION

Defendant Name: DEBBIE CHILD LARSEN

Date of Birth: March 08, 1967

Jail Booking Number:

Law Enforcement Agency: SALT LAKE POLICE

LEA Case Number: 13-27621

Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number: 13009014

Sheriff Office Number:

ACCOUNT SUMMARY

CASE NOTE

DAO 13009014 / ECR / West Jordan/LDA APPOINTED

PROCEEDINGS

05-10-13 Case filed

05-10-13 Filed: From an Information

05-10-13 Filed: Information

05-10-13 Note: Case filed by Pat Mount - SLC Police Dept. Deft not
booked -- warrant issued.

05-10-13 Warrant ordered on: May 10, 2013 Warrant Num: 985306629 Bail
Allowed

Bail amount: 5000.00

05-10-13 Warrant issued on: May 10, 2013 Warrant Num: 985306629 Bail
Allowed

Bail amount: 5000.00

Judge: SU CHON

Issue reason: Based on the probable cause statement.

06-03-13 INITIAL APPEARANCE/DEFT. SET scheduled on June 10, 2013 at
08:30 AM in ECR - S31 with Judge BLANCH.

06-03-13 Judge JAMES BLANCH assigned.

06-03-13 Note: Deft. called to set court date

06-10-13 Minute Entry - Minutes for INITIAL APPEARANCE

Judge: SU CHON

PRESENT

Clerk: cyndiav

Prosecutor: TAN, PATRICK S

Defendant

Defendant's Attorney(s): MCDOUGALL IV, ISAAC E

Audio

Tape Number: CR S31 Tape Count: 11:43-44

HEARING

This matter is before the court for an Initial Appearance, which
the defendant scheduled. The defendant is not present. The court
orders the outstanding warrant be recalled and reissued in the
amount of \$10,000.

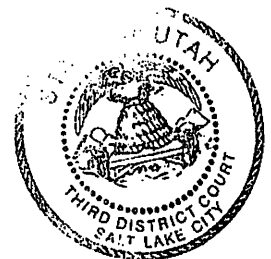
06-10-13 Warrant recalled on: June 10, 2013 Warrant num: 985306629

Recall reason: Based upon Court Order.

06-10-13 Notice - WARRANT for Case 131904477 ID 15278002

06-10-13 Warrant ordered on: June 10, 2013 Warrant Num: 985309395 Bail
Allowed

Bail amount: 5000.00



06-10-13 Warrant issued on: June 10, 2013 Warrant Num: 985309395 Bail
Allowed

Bail amount: 5000.00

Judge: SU CHON

Issue reason: Failure to appear for mandatory court
appearance

06-14-13 INITIAL APP/WARRANT/DEFT SET scheduled on June 19, 2013 at
08:30 AM in ECR - S31 with Judge BLANCH.

06-14-13 Note: DEBBIE CHILD LARSEN called to schedule a court date.
Advised defendant the warrant remains outstanding until
she appears.

06-19-13 Filed: Affidavit Requesting Appointment of Legal Defender
(Appointed)

06-19-13 Minute Entry - Minutes for Initial Appearance

Judge: JAMES BLANCH

PRESENT

Clerk: anthonyh

Prosecutor: APLIN, AARON M

Defendant

Defendant's Attorney(s): MCDOUGALL IV, ISAAC E

Audio

Tape Number: S31 Tape Count: 9:34

INITIAL APPEARANCE

A copy of the Information is given to the defendant.

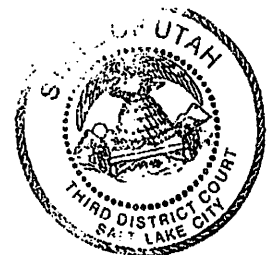
Defendant waives reading of Information.

HEARING

Defendant has decided to opt out of ECR. State withdraws the
offer. Court orders the bail reduced to \$5000. The Defendant is to
be booked and Pretrial is to evaluate the Defendant for
supervision. Judge Christiansen is assigned.

APPOINTMENT OF COUNSEL

Court finds the defendant indigent and appoints Salt Lake Legal



Defenders to represent the defendant.

Appointed Counsel:

Name: Salt Lake Legal Defenders
Address: 424 East 500 South Suite #300
City: Salt Lake City UT 84111
Phone: 801-532-5444

Affidavit of indigency has been completed by the defendant

06-19-13 Note: Bail Amount Changed from \$10000.00 to \$5000.00

06-19-13 Case Closed

Disposition Judge is SU CHON

06-21-13 Warrant recalled on: June 21, 2013 Warrant num: 985309395

Recall reason: Based upon Court Order.

06-21-13 Note: Case Transferred to West Jordan District Case # 131400723

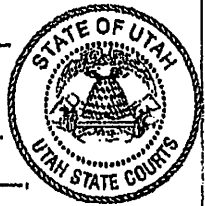
07-19-13 Judge JUDGE ECR assigned.



3RD DIST. COURT - WEST JORDAN
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. DEBBIE CHILD LARSEN
CASE NUMBER 131400723 State Felony

STATE OF UTAH *Salt Lake*
COUNTY OF *Salt Lake*
I hereby certify that the document to
which this certificate is attached is a
full, true and correct copy of the
original filed in the Utah State Courts.
WITNESS my hand and seal
this *18* day of *May*
20 *15*
DISTRICT/JUVENILE COURT *Salt Lake*



CLERK

CHARGES

Charge 1 - 76-6-501(2) - FORGERY 3rd Degree Felony (amended) to
3rd Degree Felony

Offense Date: February 04, 2013

Plea: September 24, 2013 Not Guilty

Disposition: December 05, 2013 Dismissed (w/o prej)

Charge 2 - 76-6-405 - THEFT BY DECEPTION Class A Misdemeanor

Offense Date: February 04, 2013

Plea: December 05, 2013 Guilty

Disposition: December 05, 2013 Guilty

CURRENT ASSIGNED JUDGE

L DOUGLAS HOGAN

PARTIES

Defendant - DEBBIE CHILD LARSEN

Represented by: PETER D GOODALL

Also Known As - DEBBI CHILD

Also Known As - DEBBIE COX CHILD

Plaintiff - STATE OF UTAH

Bondsman - B & B BAIL BONDS

DEFENDANT INFORMATION

Defendant Name: DEBBIE CHILD LARSEN

Offense tracking number: 43075761

Date of Birth: March 08, 1967

Jail Booking Number:

Law Enforcement Agency: SALT LAKE POLICE

LEA Case Number: 13-27621

Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number: 13009014

Sheriff Office Number: 367851

ACCOUNT SUMMARY

PAPER BOND TOTALS Posted: 5,000.00

	Forfeited:	0.00
	Exonerated:	5,000.00
	Balance:	0.00
TRUST TOTALS	Trust Due:	1,000.00
	Amount Paid:	1,000.00
	Credit:	0.00
	Trust Balance Due:	0.00
	Balance Payable:	0.00

NONMONETARY BOND DETAIL - TYPE: Surety

	Posted By:	B & B BAIL BONDS (#K340)
	Posted:	5,000.00
	Forfeited:	0.00
	Exonerated:	5,000.00
	Balance:	0.00

TRUST DETAIL

Trust Description: Other Trust
Recipient: DEBBIE CHILD LARSEN

Amount Due:	28.52
Paid In:	28.52
Paid Out:	28.52

TRUST DETAIL

Trust Description: Restitution
Recipient: WELLS FARGO BANK NA

Amount Due:	971.48
Paid In:	971.48
Paid Out:	971.48

Account Adjustments

Date	Amount	Reason
Apr 04, 2014	971.48	Court Ordered
Apr 04, 2014	-1,871.48	Court Ordered
Apr 17, 2014	-28.52	Adjustment down due to Account Transfer.

CASE NOTE

Prob 18 months SLCP begin 2/11/14

PROCEEDINGS

05-10-13 Case filed by carola
05-10-13 Filed: Information
05-10-13 Warrant Ordered

TRANSFERRED
TRANSFERRED
TRANSFERRED

05-10-13 Warrant Issued	TRANSFERRED
06-03-13 INITIAL APPEARANCE/DEFT. SET 06/10/2013	TRANSFERRED
06-10-13 Minutes for INITIAL APPEARANCE	TRANSFERRED
06-10-13 Warrant Recalled	TRANSFERRED
06-10-13 WARRANT for Case 131904477 ID 15278002	TRANSFERRED
06-10-13 Warrant Ordered	TRANSFERRED
06-10-13 Warrant Issued	TRANSFERRED
06-14-13 INITIAL APP/WARRANT/DEFT SET 06/19/2013	TRANSFERRED
06-19-13 Filed: Affidavit Requesting Appointment	TRANSFERRED
06-19-13 Minutes for Initial Appearance	TRANSFERRED
06-21-13 Warrant Recalled	TRANSFERRED
06-21-13 Case filed	
06-21-13 Filed: From an Information	
06-21-13 Note: Case transferred from Salt Lake City District. Case 131904477	
06-21-13 Judge BRUCE LUBECK assigned.	
06-21-13 Notice - WARRANT for Case 131400723 ID 15303158	
06-21-13 Warrant ordered on: June 21, 2013 Warrant Num: 985310699 Bail Allowed	
Bail amount: 5000.00	
06-21-13 Warrant issued on: June 21, 2013 Warrant Num: 985310699 Bail Allowed	
Bail amount: 5000.00	
Judge: TERRY CHRISTIANSEN	
Issue reason: Based on Court Order	
06-21-13 Judge TERRY CHRISTIANSEN assigned.	
06-21-13 SCHEDULING 1 scheduled on July 09, 2013 at 08:45 AM in WJ Courtroom 37 with Judge CHRISTIANSEN.	
06-21-13 SCHEDULING 1 scheduled on July 09, 2013 at 08:30 AM in WJ Courtroom 37 with Judge CHRISTIANSEN.	
06-27-13 Filed: Appearance of Counsel	
06-27-13 Filed: Request for Discovery	
06-27-13 Filed: Other Demand that the State Produce the Preparers of all Reports and Chain of Custody Witnesses at Trial	
06-27-13 Filed: Return of Electronic Notification	
07-02-13 Filed: Substitution of Counsel	
07-02-13 Filed: Request for Discovery	
07-02-13 Filed: Return of Electronic Notification	
07-02-13 Filed: Return of Electronic Notification	

07-05-13 Warrant recalled on: July 05, 2013 Warrant num: 985310699

Recall reason: Warrant recalled because defendant was booked.

07-09-13 2 SCHEDULING CONFERENCE scheduled on July 23, 2013 at 08:30 AM in WJ Courtroom 37 with Judge CHRISTIANSEN.

07-09-13 Minute Entry - Minutes for 1 SCHEDULING CONFERENCE

Judge: TERRY CHRISTIANSEN

PRESENT

Clerk: caseyh

Prosecutor: BOEHM, MICHAEL P

Defendant

Defendant's Attorney(s): MASSE, MICHAEL J

Audio

Tape Number: 37 Tape Count: 9:40-41

HEARING

The parties stipulate to continue this matter for additional review of the case. The court so orders.

2 SCHEDULING CONFERENCE is scheduled.

Date: 07/23/2013

Time: 08:30 a.m.

Location: WJ Courtroom 37

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: TERRY CHRISTIANSEN

07-09-13 Filed: B & B BAIL BONDS 5000.00

07-09-13 Bond Account created Total Due: 5000.00

07-09-13 Bond Posted Non-Monetary Bond: 5,000.00

07-17-13 Filed: Motion to withdraw as court appointed counsel by Michael Masse

07-17-13 Note: Paperwork sent to Judge for signature

07-23-13 3 SCHEDULING CONFERENCE scheduled on August 05, 2013 at 01:30 PM in WJ Courtroom 37 with Judge CHRISTIANSEN.

07-23-13 Minute Entry - Minutes for 2 SCHEDULING CONFERENCE

Judge: TERRY CHRISTIANSEN

PRESENT

Clerk: caseyh
Prosecutor: LOPRESTO II, THOMAS V
Defendant
Defendant's Attorney(s): GOODALL, PETER D

Audio
Tape Number: 37 Tape Count: 8:56-57

HEARING

The parties stipulate to continue this matter for additional review of the case. The court so orders.

3 SCHEDULING CONFERENCE is scheduled.

Date: 08/05/2013

Time: 01:30 p.m.

Location: WJ Courtroom 37

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: TERRY CHRISTIANSEN

07-23-13 Filed order: Order of withdraw as court appointed counsel

Judge TERRY CHRISTIANSEN

Signed July 22, 2013

07-30-13 Filed: First Supplemental Response to Request for Discovery

08-05-13 4 SCHEDULING CONFERENCE scheduled on August 19, 2013 at 08:30

AM in WJ Courtroom 37 with Judge CHRISTIANSEN.

08-05-13 Minute Entry - Minutes for 3 SCHEDULING CONFERENCE

Judge: TERRY CHRISTIANSEN

PRESENT

Clerk: caseyh
Prosecutor: HANSEN, MATTHEW J
Defendant
Defendant's Attorney(s): GOODALL, PETER D

Audio
Tape Number: 37 Tape Count: 2:14-15

HEARING

The parties stipulate to continue this matter for additional review of the case. The court so orders.

4 SCHEDULING CONFERENCE is scheduled.

Date: 08/19/2013

Time: 08:30 a.m.

Location: WJ Courtroom 37

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: TERRY CHRISTIANSEN

08-09-13 Filed: First Supplemental Response to Request for Discovery

08-19-13 PRELIMINARY HEARING scheduled on September 17, 2013 at 01:30 PM
in WJ Courtroom 37 with Judge CHRISTIANSEN.

08-19-13 Minute Entry - Minutes for 4 SCHEDULING CONFERENCE

Judge: TERRY CHRISTIANSEN

PRESENT

Clerk: caseyh

Prosecutor: HAMILTON, TYSON V

Defendant

Defendant's Attorney(s): GOODALL, PETER D

Audio

Tape Number: 37 Tape Count: 8:45-46

HEARING

Counsel requests this matter be set for a preliminary hearing.
The state does not object. The court so orders.

PRELIMINARY HEARING is scheduled.

Date: 09/17/2013

Time: 01:30 p.m.

Location: WJ Courtroom 37

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: TERRY CHRISTIANSEN

09-17-13 Minute Entry - Minutes for Preliminary Hearing

Judge: TERRY CHRISTIANSEN

PRESENT

Clerk: caseyh
Prosecutor: HANSEN, MATTHEW J
Defendant
Defendant's Attorney(s): GOODALL, PETER D

Audio
Tape Number: 37 Tape Count: 1:55-56

HEARING

Counsel advises that the defendant would like to waive their right to a preliminary hearing. The state consents to the waiver. The court reviews the rights the defendant would be giving up and accepts the waiver. Matter is bound over.
PTC/BO/ARR is scheduled.

Date: 09/24/2013
Time: 08:30 a.m.
Location: WJ Courtroom 31
8080 S REDWOOD ROAD
SUITE 1701
WEST JORDAN, UT 84088

Before Judge: MARK KOURIS

09-17-13 PTC/BO/ARR scheduled on September 24, 2013 at 08:30 AM in WJ Courtroom 31 with Judge KOURIS.

09-17-13 Judge MARK KOURIS assigned.

09-24-13 Charge 1 Plea is Not Guilty

09-24-13 Charge 2 Plea is Not Guilty

09-24-13 Minute Entry - Minutes for PRETRIAL

Judge: MARK KOURIS
PRESENT
Clerk: salomet
Prosecutor: GREEN, STEVEN J
Defendant
Defendant's Attorney(s): GOODALL, PETER D

Audio
Tape Number: 31 Tape Count: 8:50

HEARING

Defendant waive time.

PRETRIAL CONFERENCE is scheduled.

Date: 10/22/2013

Time: 01:30 p.m.

Location: WJ Courtroom 31

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: MARK KOURIS

09-24-13 PRETRIAL CONFERENCE scheduled on October 22, 2013 at 01:30 PM
in WJ Courtroom 31 with Judge KOURIS.

10-23-13 Minute Entry - Minutes for PRETRIAL CONFERENCE continue

Judge: MARK KOURIS

PRESENT

Clerk: salomet

Prosecutor: HANSEN, MATTHEW J

Defendant

Defendant's Attorney(s): GOODALL, PETER D

Video

Tape Number: 31 Tape Count: 2:17

CONTINUANCE

Whose Motion:

The Defendant's counsel PETER D GOODALL.

Reason for continuance:

Request of counsel

The motion is granted.

FINAL DISPO is scheduled.

Date: 12/05/2013

Time: 08:30 a.m.

Location: WJ Courtroom 31

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: MARK KOURIS

10-23-13 FINAL DISPO continued to December 05, 2013 at 08:30 AM in WJ

Courtroom 31 with Judge KOURIS.

12-05-13 Filed: PSR requested from SLCP

12-05-13 Charge 76-6-501(2) Sev F3 was amended to 76-6-501(2) Sev F3

12-05-13 Charge 76-6-405 Sev MA was amended to 76-6-405 Sev MA

12-05-13 Charge 1 Disposition is Dismissed

12-05-13 Charge 2 Disposition is Guilty

12-05-13 Minute Entry - Minutes for Change of Plea

Judge: MARK KOURIS

PRESENT

Clerk: salomet

Prosecutor: HANSEN, MATTHEW J

Defendant

Defendant's Attorney(s): GOODALL, PETER D

Audio

Tape Number: 31 Tape Count: 9:47

A copy of the Information is given to the defendant.

The Information is read.

Court advises defendant of rights and penalties.

A pre-sentence investigation was ordered.

The Judge orders S.L. County Probation Services to prepare a Pre-sentence report.

The defendant is advised that this offense may be used as an enhancement to the penalties for a subsequent offense.

SENT/SLCPS is scheduled.

Date: 01/28/2014

Time: 08:30 a.m.

Location: WJ Courtroom 31

8080 S REDWOOD ROAD

SUITE 1701

WEST JORDAN, UT 84088

Before Judge: MARK KOURIS

12-05-13 SENT/SLCPS scheduled on January 28, 2014 at 08:30 AM in WJ Courtroom 31 with Judge KOURIS.

12-05-13 Charge 1 amended to 3rd Degree Felony

12-06-13 Filed order: Statement of Defendant in advance of Guilty Plea.

Judge MARK KOURIS

Signed December 05, 2013

01-21-14 **** PROTECTED **** Filed: Pre Sentence Investigation Report
01-28-14 SENT/SLCPS 2 continued to February 11, 2014 at 08:30 AM in WJ
Courtroom 31 with Judge KOURIS.
01-28-14 Minute Entry - Minutes for SENTENCING continued
Judge: MARK KOURIS
PRESENT
Clerk: melisses
Prosecutor: WAYMENT, DAVID H T
Defendant
Defendant's Attorney(s): GOODALL, PETER D

Audio

Tape Number: 31 Tape Count: 8.41

CONTINUANCE

Whose Motion:
The Defendant.
Reason for continuance:
Defendant's request
The motion is granted.
SENT/SLCPS 2 is scheduled.

Date: 02/11/2014

Time: 08:30 a.m.

Location: WJ Courtroom 31
8080 S REDWOOD ROAD
SUITE 1701
WEST JORDAN, UT 84088

Before Judge: MARK KOURIS

02-11-14 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME
Judge: MARK KOURIS
PRESENT
Clerk: salomet
Prosecutor: WAYMENT, DAVID H T
Defendant
Defendant's Attorney(s): GOODALL, PETER D

Sheriff Office#: 367851

Audio

Tape Number: 31 Tape Count: 9:31

ALSO KNOWN AS (AKA) NOTE

DEBBI CHILD

DEBBIE COX CHILD

SENTENCE JAIL

Based on the defendant's conviction of THEFT BY DECEPTION a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)

The total time suspended for this charge is 365 day(s).

COMMUNITY SERVICE

Complete 50 hour(s) of community service.

Community service to be completed through S.L. County Probation Services.

SENTENCE COMMUNITY SERVICE NOTE

Complete 50 hours of community service at the rate of 5 hours per month. The first 5 hours due in May 1, 2014. Thereafter, due on the first of each month.

ORDER OF PROBATION

The defendant is placed on probation for 18 month(s).

Probation is to be supervised by S.L. County Probation Services.

The imposition of sentence is stayed and the defendant is placed on probation.

PROBATION CONDITIONS

No other violations.

Report to Salt Lake County Probation within 24 hours.

Enter into and complete any treatment recommended by Salt Lake County Probation.

Notify the court of any address change.

Not to possess or consume alcohol or non prescribed control substances.

Random urinalysis and drug testing as requested.

Submit to search of self or property by probation agent.

Not to associate with persons or frequent places where drugs or alcohol are sold.

Complete a substance abuse evaluation and comply with all recommended treatment.

Defendant probation with Salt Lake Probation Service for a period of 18 months.

Successfully complete a dual focus substance abuse and follow through with any treatment recommended.

All of the drugs and alcohol condition will be in place.

Any prescribed medication notify SLCP Agnet.

No alcohol entire time on probation.

Submit to random urine analysis testing.

Pay a restitution of \$1,900 in the amount of \$50 per month. The first \$50 due in May 1, 2014. Thereafter, due on the first of each month.

Restitution will remain open for 90 days.

All of the standard and ordinary conditions from AP&P will apply.

02-11-14 Filed: SLC Probation Referral

02-12-14 Bond Exonerated -5,000.00

02-12-14 Trust Account created Total Due: 1900.00

02-12-14 Filed: Letters Re: Defendant

02-12-14 Note: Added to payment schedule 1060089334

02-12-14 Filed: Sentence, Judgment, Commitment.

02-14-14 Filed: Motion for Restitution

Filed by: STATE OF UTAH,

02-14-14 **** PROTECTED **** Filed: Protected Victim Information

02-21-14 Restitution Payment Received: 1,000.00

Note: Mail Payment;

03-25-14 Note: emailed Barbara @ DA's office regarding Order on Restitution.

03-27-14 Filed: State's Request to Submit for Decision

03-27-14 Note: E-filing to Judge

04-04-14 Filed order: Order for Restitution

Judge MARK KOURIS

Signed April 04, 2014

04-04-14 Restitution adjusted to \$2871.48 Total Due: 971.48

Reason: Court Ordered

04-04-14 Restitution adjusted to \$1000.00 Total Due: 971.48

Reason: Court Ordered

04-08-14 Restitution Check # 45245 Trust Payout: 971.48

04-08-14 Note: Defendant paid \$1,000.00 prior to sentencing, Order of

04-10-14 Note: Trust Check Mailed Out

Judge MARK KOURIS

04-17-14 Trust Account created	Total Due:	28.52
--------------------------------	------------	-------

04-17-14 Other Trust	Transfer In:	28.52
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04-22-14 Note: Other trust check mailed

05-06-14 Note: Called Mr. Goodall, ATD - He requested that the check be mailed to him and he will get it to his client. Check #45299 for \$28.52 remailed this date.

02-13-15 Judge L DOUGLAS HOGAN assigned.

Addendum F

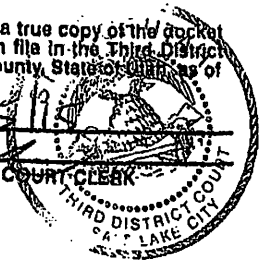
Tab F

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

I certify that this is a true copy of the docket
text in this case on file in the Third District
Court, Salt Lake County, State of Utah as of
this date.

DATE: 5/15/15

DEPUTY COURT CLERK



STATE OF UTAH vs. CHRISTIAN PAUL HALE

CASE NUMBER 131904476 State Felony

Defendants CHRISTIAN PAUL HALE, DEBBIE CHILD LARSEN, are
linked.

CHARGES

Charge 1 - 76-6-501(2) - FORGERY 3rd Degree Felony

Offense Date: February 04, 2013

Plea: June 06, 2013 Guilty

Disposition: June 06, 2013 Guilty

Charge 2 - 76-6-405 - THEFT BY DECEPTION 3rd Degree Felony

Offense Date: February 04, 2013

Disposition: June 06, 2013 Dismissed (w/o prej)

CURRENT ASSIGNED JUDGE

JUDGE ECR

PARTIES

Defendant - CHRISTIAN PAUL HALE

Represented by: KIMBERLY A CLARK

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: CHRISTIAN PAUL HALE

Offense tracking number: 43043553

Date of Birth: January 31, 1967

Jail Booking Number: 13026841

Law Enforcement Agency: SALT LAKE POLICE

LEA Case Number: 13-27621

Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number: 13009015

Sheriff Office Number: 155467

ACCOUNT SUMMARY

TRUST TOTALS	Trust Due:	0.00
	Amount Paid:	0.00
	Credit:	0.00
	Trust Balance Due:	0.00

Balance Payable: 0.00

TRUST DETAIL

Trust Description: Interest on Rstitutn

Recipient: 119-9957613459-DDA WELLS FARGO FRAUD DEPT.

Amount Due: 0.00

Paid In: 0.00

Paid Out: 0.00

Account Adjustments

Date	Amount	Reason
Jun 07, 2013	0.06	Interest Posted to Date
Jun 07, 2013	-0.06	Adjusted to zero and set to

State Debt Collection

TRUST DETAIL

Trust Description: Restitution

Recipient: 119-9957613459-DDA WELLS FARGO FRAUD DEPT.

Amount Due: 0.00

Paid In: 0.00

Paid Out: 0.00

Account Adjustments

Date	Amount	Reason
Jun 07, 2013	-987.05	Adjusted to zero and set to

State Debt Collection

CASE NOTE

DAO 13009015 / ECR / West Jordan/LDA APPOINTED

PROCEEDINGS

05-10-13 Case filed

05-10-13 Filed: From an Information

05-10-13 Filed: Information

05-10-13 Note: Case filed by Pat Mount - SLC Police Dept. Deft not booked -- warrant issued.

05-10-13 Warrant ordered on: May 10, 2013 Warrant Num: 985306628 Bail Allowed

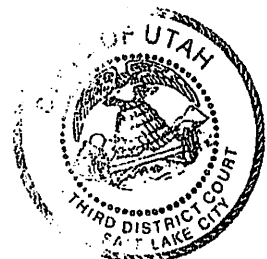
Bail amount: 5000.00

05-10-13 Warrant issued on: May 10, 2013 Warrant Num: 985306628 Bail Allowed

Bail amount: 5000.00

Judge: SU CHON

Issue reason: Based on the probable cause statement.



05-31-13 INITIAL APPEARANCE/JAIL scheduled on June 04, 2013 at 01:30 PM
in ECR - S31 with Judge BLANCH.

05-31-13 Warrant recalled on: May 31, 2013 Warrant num: 985306628
Recall reason: Warrant recalled because defendant was
booked.

05-31-13 Judge JAMES BLANCH assigned.

06-03-13 Filed order: Declaration - LDA Appointed
Judge SU CHON
Signed June 03, 2013

06-04-13 Minute Entry - Minutes for Appointment of Counsel
Judge: JAMES BLANCH
PRESENT
Clerk: katiem
Prosecutor: SHUMAN, JON D
Defendant
Defendant's Attorney(s): CLARK, KIMBERLY A

Sheriff Office#: 155467

Audio

Tape Number: S31 Tape Count: 3:20

INITIAL APPEARANCE

A copy of the Information is given to the defendant.
Defendant waives reading of Information.
Advised of charges and penalties.
HEARING

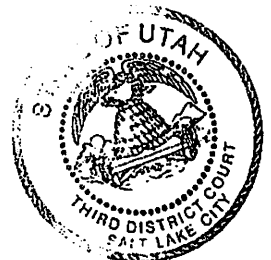
TIME: 3:20 PM Defendant present from ADC. Defense requests to
continue the matter for two days and gives basis.

APPOINTMENT OF COUNSEL

Court finds the defendant indigent and appoints Salt Lake Legal
Defenders to represent the defendant.

Appointed Counsel:

Name: Salt Lake Legal Defenders



Address: 424 East 500 South Suite #101
City: Salt Lake City UT 84111
Phone: 532-5444

Affidavit of indigency has been completed by the defendant
ECR STATUS CONF #1/JAIL is scheduled.

Date: 06/06/2013

Time: 01:30 p.m.

Location: Arraignment - S31

Third District Court
450 South State Street
Salt Lake City, UT 84111-1860

Before Judge: JAMES BLANCH

06-04-13 ECR STATUS CONF #1/JAIL scheduled on June 06, 2013 at 01:30 PM
in ECR - S31 with Judge BLANCH.

06-06-13 Charge 1 Disposition is Guilty

06-06-13 Charge 2 Disposition is Dismissed

06-06-13 Minute Entry - Minutes for Change of Plea

Judge: JAMES BLANCH

PRESENT

Clerk: katiem

Prosecutor: APLIN, AARON M

Defendant

Defendant's Attorney(s): CLARK, KIMBERLY A

Sheriff Office#: 155467

Audio

Tape Number: S31 Tape Count: 3:30

A copy of the Information is given to the defendant.

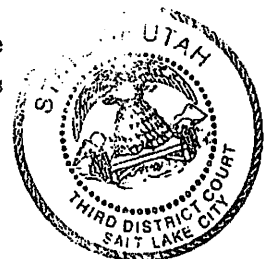
Defendant waives the reading of the Information.

Court advises defendant of rights and penalties.

Defendant waives time for sentence.

HEARING

TIME: 3:30 PM Defendant present from ADC. Defense informs the Court that the defendant will enter a guilty plea to count one as charged with count two to be dismissed. Defense addresses the Court regarding the recommendations.



Defendant waives the right to preliminary hearing and the Court binds the matter over to the District Court.

Court orders the defendant to serve 270 day jail with credit granted for 8 days time served and to run concurrent with any other sentence serving. Court orders case to be closed. Court orders restitution be sent to the Office of State Debt Collection.

SENTENCE JAIL

Based on the defendant's conviction of FORGERY a 3rd Degree Felony, the defendant is sentenced to a term of 270 day(s)

Credit is granted for time served.

Credit is granted for 8 day(s) previously served.

SENTENCE JAIL SERVICE NOTE

Court orders the defendant to serve 270 day jail with credit granted for 8 days time served and to run concurrent with any other sentence serving.

Restitution Amount: \$987.05 Plus Interest

Pay in behalf of: 119-9957613459-DDA WELLS FARGO FRAUD DEPT.

06-06-13 Trust Account created Total Due: 987.05

06-06-13 Filed order: Signed Minutes - Sentence, Judgment, Commitment

Judge JAMES BLANCH

Signed June 06, 2013

06-06-13 Filed order: Statement of Defendant in Support of Guilty Plea and Certificate of Counsel

Judge JAMES BLANCH

Signed June 06, 2013

06-07-13 Trust Account created Total Due: 0.00

06-07-13 Note: Case sent to State Debt Collection

06-07-13 Judgment #1 Entered \$ 987.11

Creditor: STATE DEBT COLLECTION

Creditor: 119-9957613459-DDA WELLS FARGO FRAUD DEPT.

Debtor: CHRISTIAN PAUL HALE

987.05 Restitution

Creditor: STATE DEBT COLLECTION

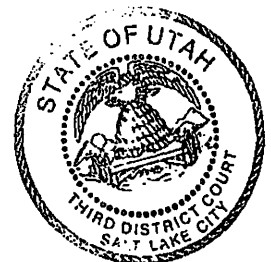
Creditor: 119-9957613459-DDA WELLS FARGO FRAUD DEPT.

Debtor: CHRISTIAN PAUL HALE

0.06 Interest on Rstitutn

987.11 Judgment Grand Total

06-24-13 Filed: Appearance of Counsel



06-24-13 Filed: Return of Electronic Notification
07-19-13 Judge JUDGE ECR assigned.
11-20-13 Filed: Motion FOR CATS REVIEW
Filed by: HALE, CHRISTIAN PAUL
11-20-13 Filed: Order (Proposed) FOR CATS REVIEW
11-20-13 Filed: Return of Electronic Notification
11-21-13 Filed: Other - Declined to Sign Order (Proposed) FOR CATS
REVIEW
11-21-13 Note: CATS review denied. Sentence does not mention CATS or
early release, and the Court lacks jurisdiction to modify
it.
11-21-13 Filed: Return of Electronic Notification

