

2015

**The State of Utah, Plaintiff/ Appellee, v. Matthew James Hinmon,
Defendant/ Appellant.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 MATTHEW JAMES HINMON, : Case No. 20150015-CA
 :
 Defendant/Appellant. : Appellant is not incarcerated.

BRIEF OF APPELLANT

Appeal from a judgment of conviction for Possession of a Controlled Substance, a third degree felony, in violation of Utah Code §58-37-8(2)(a)(i), (b)(ii), and Interference with Arresting Officer, a class B misdemeanor, in violation of Utah Code §76-8-305, in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Charlene Barlow presiding.

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IN THE UTAH COURT OF APPEALS

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INTRODUCTION

The State charged Matthew Hinmon (Matthew) with possession of a controlled substance and interference with an arresting officer. Matthew moved to suppress the evidence that he possessed a controlled substance on the ground that it was the fruit of unreasonable seizure of his person in violation of the Fourth Amendment of the United States Constitution. The trial court denied the motion, concluding that there was no Fourth Amendment violation. As a result, Matthew pleaded guilty as charged, reserving the right to challenge the denial of his motion to suppress on appeal.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Utah Code Ann. §78A-4-103 (2)(e). *See* Addendum A (Sentence, Judgment, Commitment); R.224-26.

STATEMENT OF THE ISSUES, STANDARD OF REVIEW, & PRESERVATION

Issue I: Whether the trial court erred when it denied Matthew's motion to suppress evidence that was the fruit of an unconstitutional seizure.

Standard of Review: The Court reviews “a trial court’s decision to grant or deny a motion to suppress for an alleged Fourth Amendment violation as a mixed question of law and fact.” *State v. Fuller*, 2014 UT 29, ¶ 17, 332 P.3d 937. “While the [trial] court’s factual findings are reviewed for clear error, its legal conclusions are reviewed for correctness, including its application of law to the facts of the case.” *Id.*

Preservation: This issue is preserved. R.31-33, 64-77, 143-53, 156-63, 170-93, 283, 284.

DETERMINATIVE CONSTITUTIONAL PROVISIONS

The following are attached at Addendum B: U.S. Const. amends. IV, XIV.

STATEMENT OF THE CASE

The State charged Matthew with possession of a controlled substance (possession) and interference with an arresting officer (interference). R.1-3. Matthew moved to suppress the evidence that he possessed a controlled substance on the ground that it was the fruit of an unreasonable seizure in violation of the Fourth Amendment. R.31-33, 64-77; 283:3-7. The trial court denied the motion, concluding that there was no Fourth Amendment violation. R.170-93. As a result, Matthew pleaded guilty to possession and interference, reserving the right to challenge the trial court’s denial of his motion to suppress on appeal. R.194-95, 204, 211-12, 224-26. He timely appeals. R.238-39.

STATEMENT OF FACTS

A. Background

On September 19, 2013, Raymond Loken was working as a security guard at a Harmon’s grocery store in Draper. R.284:28-29, 36; 285:3. Loken worked security for

Harmon's part-time; he was also a full-time peace officer with the Utah Division of Wildlife Resources. R.284:28-29; 285:2-3. The Harmon's was located in a "reasonably nice" part of town. R.284:36. Loken's uniform and utility belt gave him the appearance of a police officer. R.284:31; 285:6, 12.

The manager at Harmon's, Craig Worthington, asked Loken to meet with him and an employee, Mark Raines, who "had reported some suspicious activity on the west side of the store." R.284:29; *see also* R.284:15; 285:3. Loken met with Worthington and Raines near the west entrance of the store. R.284:15, 24, 29.

There, Raines told Loken and Worthington that he thought there might be a drug deal occurring on the west side of the parking lot. R.284:6, 29, 37; 285:3. He said he saw two people in a green car that was backed into a parking space adjacent to a sidewalk running along the west side of the store. R.284:15, 24, 29-30. He said he stared at the people because he thought they appeared suspicious. R.177; 285:4. Raines said that when the passenger noticed him staring, he gave Raines a "'what are you looking at' kind of a look" or actually said something to the effect of, "'what are you looking at?'" R.177; 284:29; 285:4. Raines said he saw a towel on the passenger's lap with pink balloons on it and the passenger was "fiddling" with the balloons. R.177; 284:29. Loken said, "[W]ell, let's go out and see what's going on." R.177; 285:4.

Loken approached the car from the rear on the passenger side. R.284:15-16, 30. Worthington was close behind, and Raines was behind Worthington. R.284:17-18, 30. The front passenger window of the car was down. R.284:30; 285:11. As Loken looked into the car over the passenger's shoulder, he saw a towel on the passenger's lap.

R.284:31; 285:5, 10. The passenger was fiddling with something over the towel, but Loken couldn't see exactly what he was doing, and he couldn't see any balloons.

R.284:31; 285:5, 10. As he leaned in to get a closer look, the driver noticed him.

R.284:31; 285:5. The passenger then looked back at him "with a real deer in the headlights look." R.284:31. At that point, Loken said something to the effect of, "Police officer. Don't move." R.284:31-32; cf. R.284:15-16, 19-20, 34; 285:11.

There was a momentary hesitation. R.284:32. Then the passenger bent forward and pushed everything in his lap to the floor of the car. R.284:16, 20, 32; 285:6. Loken's immediate thought was that the passenger was either hiding contraband or retrieving a weapon. R.284:32; 285:6. Loken dove halfway into the car through the window, tried to get ahold of the passenger's hands down near the floor, and repeatedly told the passenger that he was under arrest and to stop resisting. R.284:16, 20, 33; 285:6-8, 14. Loken restrained the passenger's left hand, but the passenger was able to free his right hand. R.284:33; 285:7-8. The passenger said "start the car," "drive," and "take off," and he appeared to be reaching for the gearshift. R.284:16, 21, 33; 285:7. Loken told the driver not to start the car. R.284:33; 285:7. The driver put her hands up, signaling that she would not try to drive. R.284:21, 33; 285:7-8. Worthington came around to the driver's side and removed the keys from the ignition. R.284:16, 21; 285:7-8.

The passenger door of the car was damaged and couldn't be opened. R.284:16, 21; 285:6-7. As Loken continued to struggle to restrain the passenger through the window, the passenger reached toward the driver with a clenched fist and said, "Eat this." R.284:33; 285:8. Loken told the driver not to eat it, and she complied. R.284:33; 285:8.

The passenger then used his legs to push the upper half of his body in between the front seats and into the backseat area. R.284:22, 33-34; 285:8. Worthington noticed the passenger trying to put something in his mouth, and then he saw a pink balloon drop onto the backseat. R.284:16-17, 22. Worthington picked it up and held onto it. R.284:22, 25. Worthington then helped Loken put handcuffs on the passenger. R.284:17, 23, 34, 36; 285:8-9.

The police arrived ten or fifteen minutes later. R.284:34. The contents of the balloon field-tested positive for heroin. R.285:15. The passenger was identified as Matthew. *See* R.285:18-19.

B. Procedural History

The State charged Matthew with possession and interference. R.1-3. Matthew moved to suppress the evidence that he possessed heroin on the ground that it was the fruit of an unreasonable seizure of his person in violation of the Fourth Amendment of the United States Constitution. R.31-33, 64-77; 283:3-7.

The trial court denied Matthew's motion to suppress. R.170-93. Based on the State's stipulation, the trial court concluded that Loken and Worthington were government actors such that the Fourth Amendment applied to their conduct. R.146, 183. It also concluded that Raines was merely a citizen-informant and not a government actor, so the Fourth Amendment did not apply to his conduct. R.183. The court went on to conclude that Loken's initial seizure of Matthew—when Loken said, “don't move”—was an investigatory detention that was supported by reasonable articulable suspicion. R.185-88, 192. It concluded that Loken's physical restraint of Matthew—when Loken dove into

the car window to grab Matthew's hands and told him he was under arrest—constituted an arrest that was supported by probable cause. R.188-90, 192. Thus, the court ruled that both of Loken's seizures of Matthew were reasonable and the evidence of the heroin was therefore not the fruit of a Fourth Amendment violation. R.192.

Based on the trial court's ruling, Matthew entered *Sery* pleas to possession and interference, reserving the right to challenge the trial court's denial of his motion to suppress on appeal. R.194-95, 204, 211-12, 224-26; *see also* Utah R. Crim. P. 11(j) ("a defendant may enter conditional plea of guilty . . . reserving in the record the right, on appeal from the judgment, to a review of the adverse determination of any specified pre-trial motion"); *State v. Lopes*, 2001 UT 85, ¶7 n.3, 34 P.3d 762 (explaining that conditional guilty pleas are sometimes called "*Sery* pleas"). He timely appeals. R.238-39.

SUMMARY OF ARGUMENT

The Fourth Amendment prohibits unreasonable searches and seizures. Loken performed an investigatory detention of Matthew when he said, "Police, don't move." He arrested Matthew when he attempted to restrain Matthew's hands and told him he was under arrest. Neither the investigatory detention nor the arrest were reasonable.

Under the Fourth Amendment, an investigatory detention is not justified unless the officer has reasonable suspicion that the detainee is engaged in criminal activity. Reasonable suspicion can be based on an informant's tip if the tip is sufficiently reliable and detailed and the officer confirms it. Ultimately, an investigatory detention is justified if the tip, together with the officer's observations, creates reasonable suspicion. The State bears the burden of proving reasonable suspicion.

Loken performed an investigatory detention of Matthew when he said, "Police, don't move," but he did not have the requisite reasonable suspicion. Loken's basis for temporarily detaining Matthew was primarily Raines's tip. Raines had reported that Matthew was sitting in the car with the driver; that the car was backed into the parking stall; that when Raines stared at Matthew and the driver, Matthew gave him a "what are you looking at?" kind of look or actually said, "what are you looking at?"; that Matthew had a towel on his lap; that there were pink balloons on the towel; that Matthew was manipulating the balloons; and that Raines believed that Matthew and the driver were engaged in a drug transaction.

Raines's tip was unreliable because there was no evidence that he had a sufficient basis of knowledge for concluding that the occupants of the car were engaged in drug activity. Raines's tip was insufficiently detailed because there was no evidence he told Loken that the balloons appeared to contain anything and there was no evidence that Loken knew that balloons are associated with drugs. Given that Raines's tip was insufficiently reliable and insufficiently detailed, whether Loken confirmed it is irrelevant.

The only fact Loken observed that added to Raines's tip was that the driver and Matthew gave Loken, who resembled a police officer, startled looks when they noticed him sneaking up behind them. This fact cannot contribute at all to reasonable suspicion. On numerous occasions, the Utah Supreme Court and this Court have held that turning to look at an officer and acting nervously or excitedly does not contribute to reasonable suspicion even when the person is expecting the officer to approach. A startled look is

even less suspicious when the person is surprised by an officer sneaking up from behind. Indeed, the natural reaction to anyone sneaking up from behind—let alone a stranger who appears to be a police officer—is a startled look. Because Raines's tip did not supply Loken with reasonable suspicion and Loken's observations contributed nothing to reasonable suspicion, Loken did not have reasonable suspicion to temporarily detain Matthew.

Under the Fourth Amendment, an arrest is not justified unless the arresting officer has probable cause to believe that the arrestee is engaged in criminal activity. As with reasonable suspicion, probable cause can be based on an informant's tip. Ultimately, an arrest is justified if the tip, together with the officer's observations, creates probable cause. The State bears the burden of proving probable cause.

Loken arrested Matthew when he attempted to restrain Matthew's hands and told him he was under arrest. As already explained, Raines's tip and the startled looks from the driver and Matthew did not even give Loken reasonable suspicion, let alone probable cause, by the time Loken told Matthew not to move. Between telling Matthew not to move and arresting him, Loken's only observation was that Matthew pushed the towel that was on his lap down towards the floor of the car. Utah appellate courts have repeatedly held that such movements do not create probable cause or even reasonable suspicion. Loken's belief that Matthew was hiding contraband or reaching for a weapon was a mere hunch or inchoate suspicion, not a particular fact or particular inference that created probable cause to arrest. Therefore, Loken did not have probable cause to arrest Matthew.

ARGUMENT

I. The trial court erred when it denied Matthew’s motion to suppress evidence that was the fruit of an unconstitutional seizure.

The Fourth Amendment of the United States Constitution prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. It applies to the states through the Due Process Clause of the Fourteenth Amendment. U.S. Const. amend. XIV; *State v. Talbot*, 2010 UT App 352, ¶6, 246 P.3d 112 (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)). Generally, “evidence obtained in unreasonable searches and seizures in violation of the Fourth Amendment is excluded from criminal proceedings.” *State v. Harker*, 2010 UT 56, ¶17, 240 P.3d 780; *see also State v. Worwood*, 2007 UT 47, ¶42, 164 P.3d 397 (“When applicable, the exclusionary rule keeps out of trial evidence primarily or derivatively obtained through a violation of an individual’s constitutional rights (the ‘fruit’ of unconstitutional police conduct).”).

A “‘seizure’ triggering the Fourth Amendment’s protections occurs only when government actors have, ‘by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen.’” *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). The Fourth Amendment contemplates three types of encounter between peace officers and citizens. *See State v. Applegate*, 2008 UT 63, ¶8, 194 P.3d 925. “‘A level one encounter occurs when a [peace] officer approaches a citizen and asks questions, but the person is not detained against his will and remains free to leave.’” *Id.* A “‘level two encounter’” occurs when a peace officer “‘temporarily seizes an individual.’” *Id.* A level two encounter is sometimes called an “investigative detention.” *See Worwood*, 2007 UT

47, ¶¶23-24. “Finally, a level three stop occurs when a [peace] officer . . . effects an arrest of the suspect.” *Applegate*, 2008 UT 63, ¶8.

Of these three types of encounter, only investigative detentions and arrests constitute seizures that must be reasonable to survive Fourth Amendment scrutiny. *State v. Hansen*, 2002 UT 125, ¶34, 63 P.3d 650. For an investigative detention to be reasonable, the officer must have “*reasonable, articulable suspicion* that the [detainee] has been, is, or is about to be engaged in criminal activity.” *Worwood*, 2007 UT 47, ¶23 (internal quotation marks omitted) (emphasis added). A reasonable arrest, on the other hand, requires that the officer have “*probable cause to believe*” that the arrestee is engaged in criminal activity. *State v. Alvarez*, 2006 UT 61, ¶10, 147 P.3d 425 (emphasis added).

“It has long been the law that once a defendant adequately challenges a warrantless seizure, the State bears the burden of proving the reasonableness of law enforcement’s action.” *Worwood*, 2007 UT 47, ¶39. “In order to meet his initial burden of production, a defendant seeking to suppress evidence must articulate how law enforcement’s action infringed the Fourth Amendment.” *Id.* “Once a valid constitutional challenge is made, the burden shifts to the State to prove that its warrantless action was justified.” *Id.* ¶40.

In a Fourth Amendment case, an appellate court reviews the trial court’s factual findings for clear error. *State v. Fuller*, 2014 UT 29, ¶17, 332 P.3d 937. It reviews the trial court’s legal conclusions, including its application of law to the facts of the case, for correctness. *Id.*

In this case, the trial court incorrectly concluded that Loken had reasonable suspicion to temporarily detain Matthew when Loken said something to the effect of, “Police, don’t move.” It also incorrectly concluded that Loken had probable cause to arrest Matthew when Loken reached into the car to restrain Matthew’s hands and told Matthew that he was under arrest. As a preliminary matter, however, the trial court’s written ruling contains four clearly erroneous findings of fact that should be corrected.¹

A. The trial court’s ruling contains four clearly erroneous findings of fact.

An appellate court will set aside a trial court’s factual finding as “clearly erroneous” if the finding is “against the clear weight of the evidence” or if the appellate court otherwise reaches “a definite and firm conviction that a mistake has been made.” *Brown v. State*, 2013 UT 42, ¶37, 308 P.3d 486 (internal quotation marks omitted). Here, the trial court’s ruling contains four findings of fact that are against the clear weight of the evidence.

First, the trial court found that Raines told Loken and Worthington that he believed the car Matthew was in was backed into the parking stall “for a quick get-away.” R.186-87. While there was evidence that Raines said the car was backed into the parking stall, there was no evidence that he said anything about it being for “a quick get-away.” R.284:15, 24, 30. In fact, outside of the trial court’s ruling, there is no mention of “a

¹ Matthew doesn’t challenge the trial court’s conclusion that Raines was not a government actor subject to the Fourth Amendment. *See* R.183. Nor does he challenge the trial court’s conclusion that Loken performed an investigatory detention—not an arrest—when he initially ordered Matthew not to move. R.185.

quick get-away” or anything of the sort anywhere in the record. Thus, the trial court’s “quick get-away” finding is clearly erroneous and this Court should disregard it.

Second, the trial court found that Raines told Loken and Worthington that he believed the balloons contained drugs and that a drug transaction was occurring “based upon his experience.” R.186-87. There was no evidence that Raines said anything about his experience to Loken and Worthington. There was some evidence that Raines told Loken and Worthington that he “assumed” the balloons contained heroin, but he never said that assumption was based on his experience. R.284:24-25. Notably, Raines testified that his only experience with narcotics came from “TV” and an incident “many years ago” in which he was cited for “marijuana paraphernalia.” R.284:4. He expressly testified that he believed a drug transaction was occurring even though he didn’t “have much experience in that or anything.” R.284:10. The most important point here, however, is that there was no evidence that Raines ever mentioned his experience to Loken and Worthington. Therefore, the trial court clearly erred when it found that Raines told Loken and Worthington that he believed drug activity was occurring “based upon his experience.” R.186-87.

Third, the trial court found that Loken did not identify himself as a police officer when he commanded Matthew not to move immediately after Matthew noticed him. R.174-75. At the preliminary hearing, Loken testified, “I told him, there was two things I said; one was don’t move and don’t do anything stupid. And I was in uniform, the Harmon’s uniform, it’s not the uniform I wear now—,” at which point Loken was interrupted by the prosecutor asking how the Harmon’s uniform looked. R.285:6.

Additionally, Worthington wrote in his written statement to police that Loken said, “don’t move your hands.” Defendant’s Ex. B. However, in neither instance did Loken or Worthington say that Loken did not identify himself as a police officer. R.285:6; Defendant’s Ex. B. And at the evidentiary hearing they both emphatically testified that Loken did identify himself as a police officer. R.284:16 (Worthington testifying that Loken “said something like, Stop, put your hands down, police, or police, put your hands down”), 18-20 (Worthington’s testimony clarifying that Loken did identify himself as a police officer), 31-32 (Loken’s testimony clarifying that he said, “Police,” just before he said, “don’t move”). Thus, the evidence is clear that Loken identified himself as a police officer, saying something to the effect of, “Police, don’t move.” R.284:16, 18-20, 31-32. Therefore, the trial court clearly erred when it found that Loken did not identify himself as a police officer when he initially told Matthew not to move. R.174-75.

The trial court’s fourth and final clearly erroneous finding pertained to the timing of events. The trial court found that Matthew reached for the gearshift and told the driver to “take off” and “just drive” *before* Loken went into the car to restrain Matthew’s hands and effect an arrest. R.178, 189-90. In support of this finding, the court evidently relied on the following testimony from Worthington:

A: At that point the passenger moved forward, shoved everything that was in his lap to the ground and started yelling to the driver to take off, take off.

...

Q: Okay. So what happened next?

A: He started screaming, Take off, take off, and it looked like he was reaching for the gearshift or whatever. So I ran around to the driver's side, removed the keys from the ignition, put them in my pocket.

R.284:16. But Worthington then clarified, "At this time Mr. Loken was basically halfway in the car, him and the passenger were down towards the passenger's feet wrestling around with whatever was in the passenger's hand." R.284:16. He later testified that when Matthew "lurched forward," "Loken kept telling him to stop, I'm police, stop, you need to quit resisting, quit resisting," and that Loken was "struggling" with Matthew and telling him to "stop resisting arrest" while Worthington was "going back and forth from the driver's side of the car." R.284:20. Furthermore, in Worthington's written statement to police, he said that Loken stated, "your [*sic*] under arrest give me your hands," before Matthew "turned to the Driver and said 'eat it, eat it' [and] 'start your car, go, go.'" Defendant's Ex. B.

Moreover, Loken's own testimony was clear and unambiguous that he reached into the car to restrain Matthew's hands before Matthew said things like "take off" and "just drive." R.284:32-33; 285:6-8, 12-15. At the preliminary hearing, Loken testified that he "went to grab" Matthew's hands and said, "'Police, you are under arrest,' 'right . . . when [Matthew] shoved his hands down between his knees.'" R.285:14-15; *see also* R.284:6-8 (Loken testifying that he reached in to control Matthew's hands "as soon as" Matthew "went to the floor"). And at the evidentiary hearing, Loken testified that when Matthew drove his hands towards the floor, Loken "almost instantaneously" "reached in to grab them." R.284:32-33. It wasn't until after Loken and Matthew struggled for a

moment near the floor of the car that Matthew reached up and told the driver to “eat this” and “start the car.” R.284:33.

Tellingly, the trial court itself found that Loken reached into the car to grab Matthew “[a]s soon as [Matthew] lunged for the floor, pushing everything off his lap.” R.178. It found that Matthew said to the driver, ““Start the car! Start the car! Go! Go!””, while Matthew and Loken were already struggling. R.178-79. Thus, the trial court’s own factual findings on the timing of events appear to be inconsistent. The trial court also found that Matthew simultaneously shoved his hands toward the floor *and* reached for the gearshift, which would have been impossible to do. R.178. Thus, the clear weight of the evidence shows that Matthew told the driver to “just drive” and “take off” and reached towards the gearshift *after* Loken reached into the car to restrain Matthew’s hands and told him he was under arrest. R.284:16, 20, 32-33; 285:6-8, 12-15; Defendant’s Ex. B. The trial court’s finding to the contrary is clearly erroneous.

In sum, the following factual findings are clearly erroneous:

1. Raines told Loken and Worthington that he believed the car Matthew was in was backed into the parking stall “for a quick get-away.” R.186-87.
2. Raines told Loken and Worthington that he believed the balloons contained drugs and that a drug transaction was occurring “based upon his experience.” R.186-87.
3. Loken did not identify himself as a police officer when he told Matthew “don’t move” immediately after Matthew noticed him. R.174-75.
4. Matthew reached for the gearshift and told the driver to “take off” and “just drive” *before* Loken went into the car to restrain Matthew’s hands and effect an arrest. R.178, 189-90.

Therefore, this Court should disregard them.

B. Loken lacked reasonable suspicion when he performed an investigatory detention of Matthew by identifying himself as a police officer and ordering Matthew not to move.

An investigatory detention occurs when a peace officer “temporarily seizes an individual.” *Applegate*, 2008 UT 63, ¶8; *Worwood*, 2007 UT 47, ¶¶23-24. Under the Fourth Amendment, an investigatory detention “is justified only if there is a reasonable suspicion that [the person detained] is involved in criminal activity.” *State v. Kohl*, 2000 UT 35, ¶11, 999 P.2d 7. “Police must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *Id.* (internal quotation marks omitted). “[A] police officer’s subjective intent and thoughts are irrelevant to the reasonable suspicion inquiry” *Applegate*, 2008 UT 63, ¶17. Instead, “whether reasonable suspicion exists [is] based upon the facts known to the police officer at the time of the” detention. *Id.* “Evidence discovered after the [detention] cannot be considered.” *State v. Lopez*, 873 P.2d 1127, 1138 n.6 (Utah 1994).

“To determine reasonableness, a court should question whether the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate.” *State v. Warren*, 2003 UT 36, ¶14, 78 P.3d 590 (internal quotation marks omitted). “[D]ue weight must be given, not to an officer’s inchoate and unparticularized suspicion or hunch, but to specific reasonable inferences which an officer is entitled to draw from the facts in light of his experience.” *Id.* (internal quotation marks and alterations omitted). Courts look to the “totality of facts and circumstances . . . to determine if there are sufficient specific and articulable facts to support reasonable suspicion.” *Kohl*, 2000 UT 35, ¶11 (internal quotation marks omitted).

“The burden of establishing those articulable facts falls on the State.” *Id.*; *see also* *Worwood*, 2007 UT 47, ¶23 (“When challenged, the state has the burden of proving the reasonableness of the officer’s actions during an investigative detention.”).

“Reasonable suspicion may be based upon a[n informant’s] tip.” *State v. Rose*, 2015 UT App 49, ¶10, 345 P.3d 757. “An informant’s tip creates reasonable suspicion if the information (1) is reliable, (2) provides sufficient detail of the criminal activity, and (3) is confirmed by the investigating officer.” *Id.*

Here, Loken effected an investigatory detention of Matthew when he said, “Police, don’t move,” just after Matthew noticed him approaching from behind. Loken’s basis for temporarily detaining Matthew was primarily Raines’s tip. Raines had reported that Matthew was sitting in the car with the driver; that the car was backed into the parking stall; that when Raines stared at Matthew and the driver, Matthew gave him a “what are you looking at?” kind of look or actually said, “what are you looking at?”; that Matthew had a towel on his lap; that there were pink balloons on the towel; that Matthew was manipulating the balloons; and that Raines believed that Matthew and the driver were engaged in a drug transaction. R.177; 284:6, 15, 24, 29-30, 37; 285:3-4.

Raines’s tip was unreliable. In determining whether an informant’s tip is sufficiently reliable to support reasonable suspicion, the Court looks to “the indicia of veracity, reliability, and basis of knowledge as nonexclusive elements to be evaluated in reaching the practical, common-sense decision whether, given all the circumstances, reasonable suspicion . . . exists.” *State v. Lloyd*, 2011 UT App 323, ¶15, 263 P.3d 557 (internal quotation marks omitted). In *Lloyd*, this Court assessed the reliability of an

informant's tip that the occupants of a car were "smoking drugs." *Id.* ¶¶15-17. The Court noted that the informant was an identified and disinterested citizen, so her tip bore some indicia of reliability. *Id.* ¶16. Nevertheless, the Court concluded that the tip was unreliable because the Court "simply d[id] not have enough information before [it] to determine whether the informant had a sufficient basis of knowledge for concluding that the occupants of the car were 'smoking drugs.'" *Id.* ¶17. The Court reasoned that "whether a person is 'smoking drugs' does not seem to fall within the realm of knowledge common to members of the public, unlike the ability to recognize the behavior or driving pattern of someone who is intoxicated." *Id.*

As in *Lloyd*, Raines's tip was unreliable because there was no evidence that he "had a sufficient basis of knowledge for concluding that the occupants of the car" were engaged in drug activity. *Id.* ¶17. There was no evidence that the balloons Raines saw appeared to contain anything—he described the balloons only as being "pink" and "little." R.284:4, 6, 8-10, 24-25, 29, 37. Moreover, there was no evidence that Raines had any knowledge of an association between balloons and drugs. Indeed, Raines testified that he didn't "have much experience" with drugs, only what he saw on "TV" and an incident "many years ago" in which he was cited for "marijuana paraphernalia." R.284:4, 10. There was no evidence that this paucity of experience taught Raines anything about an association between balloons and drugs. And any such association "does not seem to fall within the realm of knowledge common to members of the public." *Lloyd*, 2011 UT App 323, ¶17; *cf. DeLao v. State*, 550 S.W.2d 289, 291 (rejecting the state's claim that "it is a well known fact that heroin is kept in balloons"). Balloons are typically associated

with licit uses, such filling them with various legal substances (e.g., air, helium gas, water, flour, or sand) or otherwise using them for arts and crafts. There is “no indication in the record as to why [Raines] believed that” the balloons contained anything at all, let alone drugs. *Lloyd*, 2011 UT App 323, ¶17. In short, the State failed to prove that Raines’s report of criminal activity was reliable. *See Kohl*, 2000 UT 35, ¶11; *Lloyd*, 2011 UT App 323, ¶17.

Not only was Raines’s tip unreliable, it was also not sufficiently detailed to support reasonable suspicion of criminal activity. The fact that Matthew responded to Raines’s stare with a “what are you looking at?” kind of look or by actually saying “what are you looking at?” cannot support reasonable suspicion of criminal activity. That is a normal response to a stare from a stranger. The fact that the car was backed into the parking stall is completely innocuous; people often back their cars into parking stalls because it makes pulling out of the stall easier. Although Raines told Loken he saw balloons on a towel on Matthew’s lap, Raines didn’t tell Loken anything about the characteristics of the balloons other than that they were “pink” and “little.” R.284:4, 6, 8-10, 24-25, 29, 37. Raines didn’t tell Loken whether the balloons were inflated or uninflated, whether they were empty or contained something. And there was no evidence that Loken knew—from training and experience or otherwise—that balloons or towels are indicative of criminal activity. *See DeLao*, 550 S.W.2d at 291 (holding that seeing a balloon did not provide an officer with probable cause because the officer’s testimony did not demonstrate that he knew that “heroin is kept in balloons” or that he was “immediately aware that heroin was in the balloon at the time of the seizure”); *Flores v.*

State, 756 S.W.2d 86, 88 (Tex. Ct. App. 1988) (“Heroin inside of a balloon is not within plain view so as to warrant its seizure by police without a warrant absent testimony that the officer knew that heroin was in the balloon or that balloons frequently are used to carry narcotics.”); *cf. People v. Lingo*, 806 P.2d 949, 952 (Colo. 1991) (holding that seeing a balloon provided a correctional officer with reasonable suspicion where the officer “testified that he knew from his fourteen years of work experience at the correctional facility that balloons were commonly used to carry contraband into the facility”). Indeed, Loken was a peace officer with the Utah Division of Wildlife Resources, and there was no evidence that he had ever investigated or been trained in investigating drug crimes. *See* R.284:28-29; 285:2-3. In sum, the State failed to prove that Raines’s tip was sufficiently detailed to give Loken reasonable suspicion that Matthew was engaged in criminal activity. *See Kohl*, 2000 UT 35, ¶11.

Raines’s tip was insufficiently reliable and insufficiently detailed to support reasonable suspicion, so Loken’s corroboration of it is irrelevant. *See Salt Lake City v. Street*, 2011 UT App 111, ¶14, 251 P.3d 862 (explaining that officer corroboration “is relevant to the extent that it strengthens or weakens either the reliability of the tipster or the content of the tipster’s information”). But it’s important to note that Loken did not see any balloons before he detained Matthew. *See* R.284:31; 285:5, 10. Instead, he saw only that Matthew was fiddling with something—Loken couldn’t see what—over a towel on his lap. R.284:31; 285:5, 10. Thus, Loken could not determine for himself whether there were any balloons at all.

Raines's tip did not provide Loken with reasonable suspicion, so the question becomes whether Loken personally observed anything that, combined with Raines's tip, gave him reasonable suspicion. *See Lloyd*, 2011 UT App 323, ¶17. He did not. Up until the point when the driver noticed him, everything Loken observed as he approached the car was consistent with Raines's tip. He saw Matthew fiddling with something over a towel in his lap. R.284:31; 285:5. But, again, Loken couldn't see what Matthew was fiddling with, so he was unable to confirm whether or not there were balloons. R.284:31; 285:5. As Loken leaned in for a closer look, he "caught the eye of the driver[,] who looked up" at him and "seemed startled." R.284:31; 285:5. This caused Matthew to turn to look at Loken. R.284:31; 285:5. As Matthew did so, he "got a real deer in the headlights look, big eyes, froze for a second." R.284:31. It was at that point that Loken effected the investigatory detention by saying, "'Police officer. Don't move.'" R.284:31.

Hence, the only fact Loken observed that added to Raines's tip was that the driver and Matthew gave Loken, who resembled a police officer, startled looks when they noticed him sneaking up behind them. R.284:30-31; 285:5. This fact cannot contribute at all to reasonable suspicion. On numerous occasions, the Utah Supreme Court and this Court have held that turning to look at an officer and acting nervously or excitedly does not contribute to reasonable suspicion *even when the person is expecting the officer to approach*. *State v. Gurule*, 2013 UT 58, ¶37, 321 P.3d 1039; *State v. Schlosser*, 774 P.2d 1132, 1138 (Utah 1989); *State v. Duhaime*, 2011 UT App 209, ¶18, 258 P.3d 649; *State v. Lowe*, 2010 UT App 156, ¶13, 234 P.3d 160; *State v. Parke*, 2009 UT App 50, ¶ 11, 205 P.3d 104; *State v. Lafond*, 2003 UT App 101, ¶15 n.8, 68 P.3d 1043. A startled look

is even less suspicious when the person is surprised by an officer sneaking up from behind. Indeed, the natural reaction to *anyone* sneaking up from behind—let alone a stranger who appears to be a police officer—is a startled look. Because Raines’s tip did not supply Loken with reasonable suspicion and Loken’s observations contributed nothing to reasonable suspicion, Loken did not have reasonable suspicion to temporarily detain Matthew.

On the facts of this case, whether Loken had reasonable suspicion may turn on whether Raines’s report of seeing balloons provided him with reasonable suspicion. No other information known to Loken or Raines could plausibly give rise to reasonable suspicion. But Raines’s report of seeing balloons did not give Loken reasonable suspicion because there was no evidence that Loken had any knowledge of a link between balloons and drugs.² *See DeLao*, 550 S.W.2d at 291. “Had the State produced any evidence on this issue,” it might have been able to prove reasonable suspicion. *Id.* But it didn’t. Therefore, the State failed to carry its burden to prove that Loken had reasonable suspicion to temporarily detain Matthew. *See id.*

C. Loken lacked probable cause when he arrested Matthew by trying to physically restrain Matthew’s hands and telling Matthew that he was under arrest.

“[T]he mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, [is] sufficient” to constitute an arrest, which is “the quintessential ‘seizure of the person’” under the Fourth Amendment. *California v. Hodari D.*, 499 U.S. 621, 624 (1991). A police officer is not justified in

² There was also no evidence that Raines or Worthington knew of a connection between balloons and drugs.

effecting an arrest unless the officer has probable cause to believe that the arrestee is engaged in criminal activity. *Alvarez*, 2006 UT 61, ¶10.

“[P]robable cause to justify an arrest means facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” *State v. Hansen*, 2011 UT App 242, ¶10, 262 P.3d 448 (internal quotation marks omitted). “Probable cause is more than suspicion but less than certainty.” *State v. Spurgeon*, 904 P.2d 220, 226 (Utah Ct. App. 1995); *see also Kohl*, 2000 UT 35, ¶11 (reasonable suspicion is a lower standard than probable cause). It requires a rational conclusion that there is a fair probability the arrestee is engaged in criminal activity. *State v. Anderson*, 910 P.2d 1229, 1233 (Utah 1996); *Spurgeon*, 904 P.2d at 226-27. “[W]hether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest.” *Hansen*, 2011 UT App 242, ¶10 (internal quotation marks omitted). The State bears the burden of proving that an arresting officer acted with probable cause. *See Worwood*, 2007 UT 47, ¶¶39-40.

As with reasonable suspicion, probable cause may be based on an informant’s tip. *See State v. Valenzuela*, 2001 UT App 332, ¶11, 37 P.3d 260. Ultimately, the Court must look to the totality of the circumstances to determine whether the informant’s tip, together with police observations, generated probable cause to arrest. *Id.*

Loken arrested Matthew when he attempted to restrain Matthew’s hands and told him he was under arrest. As already explained, Raines’s tip and the startled looks from

the driver and Matthew did not even give Loken reasonable suspicion, let alone probable cause, by the time Loken told Matthew not to move. The question, then, is whether Loken observed anything after he told Matthew not to move that, combined with Raines's tip and the startled looks, gave him probable cause to arrest Matthew. He didn't.

Between telling Matthew not to move and arresting him, Loken's only observation was that Matthew pushed the towel that was on his lap down towards the floor of the car. R.284:16, 20, 32; 285:6. Utah appellate courts have repeatedly held that such movements do not create probable cause or even reasonable suspicion. *See Schlosser*, 774 P.2d at 1138; *Parke*, 2009 UT App 50, ¶¶10-11; *State v. Martinez*, 2008 UT App 90, ¶2 n.3, 182 P.3d 385; *State v. Holmes*, 774 P.2d 506, 511-12 (Utah Ct. App. 1989).

In *Schlosser*, the Utah Supreme Court held that, during a valid traffic stop of a car in which the defendant was a passenger, the defendant's "movements, turning to the left and to the right, appearing fidgety, *bending forward*, and *turning to look at the officer*, do not, without more, show a reasonable possibility that criminal conduct had occurred or was about to occur." *Schlosser*, 774 P.2d at 1138 (emphasis added).

In *Parke*, an officer initiated a valid traffic stop of a car in which the defendant was the only occupant. *Parke*, 2009 UT App 50, ¶2. As the officer exited his vehicle, he observed the defendant make a shoulder movement, which the officer interpreted as the defendant reaching towards his waistband. *Id.* The officer testified that, in his experience, such movements often indicate concealment of contraband or weapons. *Id.* When the officer ordered the defendant to put his hands out of the window, the defendant became somewhat agitated, but he nevertheless complied. *Id.* A backup officer arrived. *Id.* Both

officers ordered the defendant out of the car for a protective frisk, as a result of which they found a knife on the defendant and drugs in the car. *Id.* ¶¶2-3. On appeal, this Court held that the protective frisk was unjustified, as the officers did not have reasonable suspicion that the defendant was armed and dangerous. *Id.* ¶18. Regarding the defendant's shoulder movement, the Court concluded that the officer's belief that the defendant may have been concealing contraband or a weapon "was a 'hunch' or an 'inchoate suspicion,' not a 'particular fact' or 'particular inference' that justified the protective frisk." *Id.* ¶10. The Court stated, "[W]hile an officer's interpretation of a suspect's movements is a subjective factor we consider, when it is impossible to draw a clear inference regarding the nature of the movement, any interpretation of criminality or danger in such a movement by a police officer is just a 'hunch' or 'inchoate suspicion.'" *Id.* ¶11.

In *Martinez*, the officer who performed the challenged traffic stop testified that, "at the time he was pulling over the car, [the defendant] and the other backseat passenger were 'moving their arms around and *bending forward . . . like they were putting something down at their feet on the floorboard.*'" *Martinez*, 2008 UT App 90, ¶2 n.3 (emphasis added). The Court held that "[s]uch conduct alone . . . does not establish reasonable, articulable suspicion." *Id.*

In *Holmes*, an officer performing a valid traffic stop witnessed the passenger move her purse from her lap to the floor, remove a roll of paper towels from it, and then try to stuff the roll of paper towels down between the car seat and the center console. *Holmes*,

774 P.2d at 510-12. The Court held that the officer did not have probable cause to seize the roll of paper towels. *Id.* at 511-12.

Just as in *Schlosser*, *Parke*, *Martinez*, and *Holmes*, Matthew pushing the towel to the floor did not give Loken probable cause. Loken's belief that Matthew was hiding contraband or reaching for a weapon was a mere hunch or inchoate suspicion, not a particular fact or particular inference that created probable cause to arrest. *Cf. Parke*, 2009 UT App 50, ¶10. Thus, Loken's arrest of Matthew violated the Fourth Amendment.

In the trial court, the prosecutor argued that Loken had probable cause to arrest Matthew for interfering with a lawful detention because Matthew moved after Loken ordered him not to. R.151-52; 283:9-10. The trial court did not address this argument in its ruling. But the argument fails because there was no evidence that Loken knew or reasonably believed that Matthew committed a crime by moving after Loken told him not to. A justified arrest requires probable cause to believe that the arrestee was or is engaged in criminal activity. *Alvarez*, 2006 UT 61, ¶10. Hence, at the time of the arrest, the arresting officer must possess a reasonable belief that the arrestee's conduct constitutes a crime. *See Heien v. N. Carolina*, 135 S. Ct. 530, 539 (2014) (determining whether an officer was justified in conducting an investigatory detention involves "the antecedent question of whether it was reasonable for [the] officer to suspect that the defendant's conduct was illegal"); *United States v. Hughes*, 606 F.3d 311, 316-17 (6th Cir. 2010) ("In order for a stop based on a moving or parking violation to be permissible under the Fourth Amendment, it is not sufficient for a police officer to know the facts that give rise to probable cause or reasonable suspicion; the officer must also, at the time of the stop,

know or reasonably believe that those facts actually give rise to probable cause or reasonable suspicion. In other words, in order for traffic stop to be permissible under the Fourth Amendment, a police officer must know or reasonably believe that the driver of the car is doing something that represents a violation of law.”). The burden is on the State to show that the officer possessed such a reasonable belief. *Worwood*, 2007 UT 47, ¶¶39-40. In this case, Loken never testified that he believed Matthew committed a crime by moving after Loken had ordered him not to. Loken testified only that he believed Matthew was hiding contraband or retrieving a weapon. R.284:32; 285:6. And, as explained above, Loken did not have probable cause to believe Matthew was hiding contraband or retrieving a weapon. Thus, the State failed to prove that Matthew pushing the towel towards the floor gave Loken probable cause to arrest.

The prosecutor also argued that “exigent circumstances justifying a warrantless search” were created when Matthew pushed the towel to the floor. R.146-47; 149-51. (The trial court’s ruling did not address this argument, either.) The prosecutor seemed to believe that “exigent circumstances” can justify a warrantless search even in the absence of probable cause. R.146-47; 149-51. But this isn’t true. Exigent circumstances cannot justify a warrantless search unless there is also probable cause. *Anderson*, 910 P.2d at 1236 (explaining that “probable cause and exigent circumstances” are both required for “a valid warrantless search of an automobile”). And, for the reasons given above, Loken did not have probable cause to arrest Matthew or search him or the car.

In sum, Raines’s tip, the startled looks from the driver and Matthew, and Matthew pushing the towel to the floor did not give Loken probable cause to arrest Matthew or

search him or the car. Therefore, the trial court erred in denying Matthew's motion to suppress.

CONCLUSION

For the foregoing reasons, Matthew asks the Court to reverse and remand for further proceedings.

SUBMITTED this 2nd day of June, 2015.

A handwritten signature in black ink, appearing to read 'John B. Plimpton', is written over a horizontal line.

JOHN B. PLIMPTON
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, JOHN B. PLIMPTON, hereby certify that I have caused to be hand-delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and 4 copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114, this 2nd day of June, 2015.



JOHN B. PLIMPTON

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 7,673 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.



JOHN B. PLIMPTON

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals as indicated above this 2 day of June, 2015.



INDEX TO ADDENDA

Addendum A: R. 224-26.

Addendum B: U.S. Const. amends. IV, XIV.

Addendum C: R.283:1-14; 284:1-14; 285:1-21; Defendant's Exhibits. A, B.

ADDENDUM A

Tab A

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

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 131401457 FS
MATTHEW JAMES HINMON,	:	Judge: CHARLENE BARLOW
Defendant.	:	Date: November 25, 2014

PRESENT

Clerk: loriaw
Prosecutor: CARLSON, WILLIAM J
Defendant
Defendant's Attorney(s): CHESNUT, HEATHER J

DEFENDANT INFORMATION

Date of birth: September 28, 1983
Sheriff Office#: 292319
Audio
Tape Number: 37 Tape Count: 10.12-19

CHARGES

1. POSSESSION OR USE OF A CONTROLLED SUBSTANCE - 3rd Degree Felony
Plea: Not Guilty - Disposition: 09/02/2014 Guilty
2. INTERFERENCE WITH ARRESTING OFFICER - Class B Misdemeanor
Plea: Not Guilty - Disposition: 09/02/2014 Guilty

SENTENCE PRISON

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE 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 INTERFERENCE WITH ARRESTING OFFICER a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 178 day(s).
Credit is granted for 2 day(s) previously served.

Case No: 131401457 Date: Nov 25, 2014

SENTENCE FINE

Charge # 1 Fine: \$5000.00
 Suspended: \$4700.00
 Surcharge: \$159.47
 Due: \$300.00

Charge # 2 Fine: \$1000.00
 Suspended: \$700.00
 Surcharge: \$159.47
 Due: \$300.00

 Total Fine: \$6000.00
 Total Suspended: \$5400.00
 Total Surcharge: \$318.94
Total Principal Due: \$600.00
 Plus Interest

SENTENCE COMMUNITY SERVICE NOTE

Complete 50 hours of community service. Rate to be determined by ap&p.

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 2 day(s) jail.

Defendant is to pay a fine of 600.00 which includes the surcharge.
Interest may increase the final amount due.

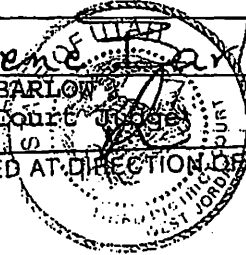
PROBATION CONDITIONS

No other violations.
Report to AP&P within 24 hours
Notify the court of any address change.
Timely payments on all fines, attorney fees and restitution.
Not to possess or consume alcohol or non prescribed control substances.
Not to associate with persons or frequent places where drugs or alcohol are sold.
Continue treatment and ua's with tranquility place.
Taper of methadone.

Case No: 131401457 Date: Nov 25, 2014

Date: 11-25-14

Charlene Barlow
CHARLENE BARLOW
District Court Judge
By
STAMP USED AT DIRECTION OF JUDGE



ADDENDUM B

Tab B

U. S. Constitution Amendment IV

Amendment IV

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

U. S. Constitution Amendment XIV

Amendment 14 - Citizenship Rights. Ratified 7/9/1868.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ADDENDUM C

Tab C

IN THE THIRD DISTRICT COURT - WEST JORDAN

SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

v

MATTHEW JAMES HINMON,

Defendant.

: Case No. 131401457 FS

: Appellate Case No. 20150015

: With Keyword Index

MOTION TO SUPPRESS JUNE 24, 2014

BEFORE

THE HONORABLE CHARLENE BARLOW

FILED
THIRD DISTRICT COURT
2015 FEB 19 PM 3:52
WEST JORDAN, UTAH

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER

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ORIGINAL

1 WEST JORDAN, UTAH; JUNE 24, 2014

2 JUDGE CHARLENE BARLOW

3 (Transcriber's note: Identification of speakers
4 may not be accurate with the audio recordings.)

5 PROCEEDINGS

6 THE COURT: Okay, now we are here on the Matthew
7 Hinmon matter. Ms. Chesnut is here with Mr. Hinmon and Mr.
8 Carlson is here. We have a motion to suppress. I've read
9 the motion and the memorandum. I've read the responsive
10 memorandum. We're here for oral argument.

11 Okay, Ms. Chesnut.

12 MS. CHESNUT: Your Honor, I'd just like to make
13 sure the Court has all of the pleadings that have been
14 entered. We have a defense motion and memorandum and then a
15 State response and then a defense reply to the response.

16 THE COURT: Let me see. I didn't -

17 MS. CHESNUT: The reply was only filed yesterday.

18 THE COURT: Okay. So let me pull it up here if my
19 computer will wake up. Something else is opened, it's
20 loading. Okay, there is the reply. Let me have a moment, I
21 will read through it.

22 Why don't you go ahead and argue?

23 MS. CHESNUT: Thank you, Your Honor. Oh, I should
24 add, besides those pleadings, also what should have been
25 attached, either that or entered into evidence at the

1 evidentiary hearing is the witness statements of Raymond
2 Loken, Craig Worthington and Mark Raines and then also the
3 evidentiary hearing transcript and the preliminary hearing
4 transcript.

5 THE COURT: Okay, I have the two transcripts. Did
6 the State withdraw the statements?

7 MS. CHESNUT: I think the defense submitted those.

8 MR. CARLSON: I believe so, Your Honor.

9 THE COURT: I do not see them. Let me see the
10 minutes for the preliminary hearing. Exhibits 1 and 2 were
11 admitted for the purpose of this preliminary hearing. They
12 were returned to the State.

13 MS. CHESNUT: Okay, I think also at the evidentiary
14 hearing they were submitted.

15 THE COURT: Okay, let me make sure that I have them
16 because I don't see them in here. Okay. There's the
17 evidentiary hearing transcript. Let me see if they're - I
18 don't see that they are in the docket anywhere. So I
19 probably -

20 MR. CARLSON: I do have State's Exhibit 1 and 2
21 from the preliminary hearing which were returned. That's
22 Craig Worthington and Mark Raines.

23 THE COURT: So if you'll return them to me and then
24 I'll use them as we're dealing with this.

25 MS. CHESNUT: Okay.

1 (Inaudible conversation)

2 THE COURT: Okay. Did you want to also submit
3 Officer Loken's statement?

4 MS. CHESNUT: I do, Your Honor. As I recall I
5 asked that that be submitted into evidence at the evidentiary
6 hearing. So if I may approach?

7 THE COURT: Okay. Yeah, if you'll approach with
8 that. All right, okay, thank you. Okay, I think I have
9 everything in front of me now.

10 MS. CHESNUT: Okay. And Your Honor, generally
11 we've submitted already in writing the arguments that we have
12 of the defense on this motion. I would just add to that that
13 essentially what we're arguing is that this stop was
14 problematic from the very beginning. The immediate action
15 that Officer Loken took was to issue invasive commands,
16 "Stop. This is the police. Don't move. Don't do anything
17 stupid. Put your hands up." These are classic indicia of
18 arrest, of at least taking control of a person and indicating
19 that there's authority for that person to be taken control
20 of, they must do what the officer says and that they cannot
21 do anything he does not say.

22 Now, there's been, of course, arguments in the
23 pleadings. We're of course arguing this as an arrest. The
24 state has argued this is a level 2 stop, an investigatory
25 detention. But, the truth is here that whichever one this

1 is, there was no justification either way and as I've said,
2 we maintain that this was an arrest because of the
3 invasiveness of the commands. I don't know how any
4 reasonable citizen would interpret this any other way other
5 than he is being arrested.

6 But, regardless of which it is, there was not
7 either probable cause or even reasonable suspicion to support
8 this kind of an action by the police. Officer Loken did not
9 see a crime. He came up behind the car. He was looking but
10 he didn't see anything that would constitute a crime.

11 Now before that he had talked to, of course, one of
12 the employees of the store and he was questioned closely,
13 pardon me, at both the preliminary hearing and the
14 evidentiary hearing about what he knew as he approached this
15 car and Officer Loken said both times that, well, he was told
16 there's a suspicious person out there, there's potentially
17 some kind of drug activity going on. And that's basically
18 what he remembered. He was specifically asked, well, were
19 you told about balloons? And he said - hopefully I'm quoting
20 this as accurately as possible - Well, I don't recall
21 anything like that.

22 So as we've argued in the reply, what is crucial
23 here is what Officer Loken knew as the officer that took
24 charge and conducted this activity with Mr. Hinmon. And
25 that's what he said is he said he had information there was a

1 suspicious person, possibly drug activity. Well, this
2 certainly isn't probably cause and it's not even reasonable
3 suspicion without more.

4 Now, there is some testimony from the employee that
5 he said he went past the car, he saw a bunch of balloons, he
6 saw maybe over 20 balloons he says. Well, as I've already
7 said, regardless of what he says he saw, it's what Officer
8 Loken knew or believed that's at issue here and not the
9 employee.

10 Also, I would ask that the employee's factual
11 representations don't appear to be reliable. He's saying, Oh
12 I saw over 20 balloons. When the situation was completely
13 concluded, only one was found and there's no indication from
14 anyone that any balloons were disposed of in any way. So it
15 doesn't appear to be sound.

16 Now, the State has argued that regardless there
17 were exigent circumstances here but in this case there's no
18 indication that any evidence was about to be disposed of or
19 destroyed. The State has cited a test which basically is a
20 test having to do with searches and whether they are
21 appropriate under the exigent circumstances exception. I
22 don't, as I've argued, I don't think this applies because as
23 we said, this was an arrest, this was an immediate command
24 similar to what would happen if the police observed a felony
25 or was conducting a felony stop. But in this case there

1 wasn't anything like that. But even if that test is applied,
2 it requires that there be a clear indication that there's
3 evidence and that there's eminent destruction of that
4 evidence. Well, in this case, Mr. Hinmon was a passenger in
5 a car and he had Officer Loken on one side and the driver on
6 the other side and all of the testimony is is that he took
7 his hands and shoved them towards the floor. Well, this
8 wouldn't result in a destruction of evidence. At most it
9 could be said to be a rather feeble attempt, really to hide
10 evidence. But that's not what meets the standard.

11 Now, also, there has to be a clear indication of
12 evidence and even though Officer Loken had heard from an
13 employee, well, I think there's a suspicious guy out there,
14 maybe doing drug activity, that's not enough to indicate
15 there is evidence here.

16 The State has also brought up the potential of a
17 safety issue here. Now, we addressed that in our original
18 memorandum basically in terms of a Terry Frisk body of law,
19 not that that necessarily applies but it demonstrates there
20 has to be an objective standard for thinking there's some
21 kind of a risk.

22 Now, Officer Loken testified he didn't have any
23 information there was a weapon, he didn't have any
24 indications there was a weapon. It wasn't a high crime area,
25 it wasn't a dark time of the day, he had no objective

1 indications there was a weapon here and so, you know, Your
2 Honor, the safety issue just really isn't in play here and at
3 any rate, even if it was, the Fourth Amendment Violation
4 started prior to that.

5 As I understand it, the State's arguing that well,
6 when he pushed this towel between his knees, this was a
7 potential safety issue. But, the police began their seizure
8 of Mr. Hinmon, their illegal seizure of Mr. Hinmon prior to
9 that when they issued these invasive commands, required that
10 he conform to what they were commanding.

11 That's basically our argument in a nutshell unless
12 the Court has further questions.

13 THE COURT: No, that's fine, thank you.

14 Mr. Carlson?

15 MR. CARLSON: The State's position is that Mr.
16 Raines' testimony is very relevant because as the citizen
17 informant, what he observed and what he reported to Officer
18 Loken goes to whether or not he had a reasonable, articulable
19 suspicion to detain the defendant at the time in question.
20 Now Mr. Raines did testify that he saw the balloons and that
21 he described the balloons. The fact that at the evidentiary
22 hearing the officer said, well, today I don't recall, does
23 not mean that the officer did not have that information at
24 the time. Mr. Raines is a highly reliable informant. He
25 described and directed the officer specifically to the

1 defendant's vehicle and what Officer Loken observed matched
2 everything that Mr. Raines had reported up until that point.

3 Beyond that, the State's argument is that first
4 there was articulable suspicion for the detention and that's
5 all it was at that point. When Officer Loken said, Stop,
6 don't move, he was doing the equivalent of when a police
7 officer turns on emergency lights and a siren. He was giving
8 an order to a person suspected of committing a crime. That
9 is not an arrest, it is a detention and it's not consensual.
10 The State does agree that it was not a consensual stop, it
11 wasn't level 1, it was a level 2. But under the law the
12 officer could perform a detention long enough to confirm or
13 dispel his suspicions.

14 When the defendant responded by shoving his arms to
15 the ground, there are two different arguments that the state
16 has that would say Officer Loken was justified in reaching
17 after him. The first is just as Officer Loken had reasonable
18 articulable suspicion to detain the defendant, he was able to
19 maintain that detention and by reaching in just to grab his
20 arms, all he was trying to do was to maintain control during
21 that detention long enough to confirm or dispel. The
22 defendant's actions created exigent circumstances that
23 justified that.

24 And the State really does believe that State v.
25 Alvarez is dispositive in this case because in State v.

1 Alvarez, officers relied on two separate anonymous reports
2 and based on that confronted the defendant in that case and
3 even though they had no reason to believe there was anything
4 in the defendant's mouth up until the point they asked to
5 check his mouth, when they said they wanted to check his
6 mouth, they saw him swallow and that swallowing motion was
7 enough, according to the court, to bend the defendant over
8 and force him to spit and then resulting in several heroin
9 cocaine balloons coming out in that case. If the officer
10 without any suspicion in Alvarez is able to bend a defendant
11 over during an investigative detention to confirm or dispel
12 his suspicions, certainly Officer Loken was justified in
13 reaching for the defendant's arms after he shoved them down
14 towards the floor.

15 Separate from that, the State's argument is that
16 once he was under detention, and once Officer Loken gave him
17 an order to not move, the defendant's action of shoving his
18 hands forward after being ordered not to move, immediately
19 gave Officer Loken probable cause to arrest the defendant for
20 resisting a detention which is a whole separate violation of
21 the state code. So under either philosophy the State would
22 argue that this balloon that popped up as a result of the
23 struggle should not be suppressed.

24 As far as the reliability of Mr. Raines' testimony
25 because 20 balloons were not found, it's very clear during

1 the exchange that happened during the struggle, the defendant
2 was trying to swallow the heroin balloons and again, the
3 State would refer to Alvarez where officers found more than
4 10 balloons in the defendant's mouth. So the fact that, that
5 where weren't several balloons found after we know the
6 defendant was trying to hide the balloons, doesn't say that
7 Mr. Raines' testimony was not reliable. In fact, it confirms
8 and accordingly we would ask that you deny the defendant's
9 motion.

10 THE COURT: Thank you.

11 Your response Ms. Chesnut?

12 MS. CHESNUT: Yes, just briefly.

13 First of all, the State's arguing this was an
14 investigatory stop. I'll point out typically the way this
15 kind of an investigatory stop takes place is police operate
16 lights and sirens, they require a person to stop their car,
17 they can ask a person to show a license or a registration,
18 they can ask them to step out of the car. They can even ask
19 them to put their hands perhaps on the dash. But what we're
20 talking about here is a lot more invasive. It was, Police.
21 Stop, don't move, put your hands up. These were much more
22 particularized commands than what is going to be taking place
23 during an investigatory detention. That is why we argue that
24 this is an arrest. That is what an arrest is, is to be taken
25 into custody, taken complete control of by the police and

1 that is what was happening here.

2 Now, as far as Alvarez goes - and we've argued this
3 in our reply, but in that case the police had much more
4 information than Officer Loken had about Mr. Hinmon here. In
5 Alvarez the police had been watching what they had been
6 informed was a potential drug house. They were conducting
7 surveillance. They saw the defendant come to the area, go
8 inside the condominium complex, stay a short time, come out.
9 In their training and experience they knew that drug dealers
10 will often return to the same place at the same time the next
11 day. So they waited for him the next day and indeed he did
12 come at the some time, same place the next day. When he went
13 into the condominium complex officers simply walked past his
14 car, they peered into the window and they see a
15 representation of the patrons saint of drug dealers which I
16 didn't know there was such a thing but it says so in this
17 case. They see this representation and they also see a small
18 bottle of water that they say from their training and
19 experience is commonly kept on hand in order to swallow
20 balloons.

21 Now, then they see the defendant coming towards his
22 car, they approach him. They actually see swallowing motions
23 as well as he's working his jaws. That's much more than what
24 we have in this case. In this case all we have is suspicious
25 person, potential drug activity and when Officer Loken made

1 this stop based only this evidence, he had looked in the car
2 but he didn't see anything, not anything illegal, immediately
3 then he seized the defendant by issuing these commands.
4 That's much more than - Alvarez had much more than what we
5 have in this case.

6 And just briefly, with regard to the reliability of
7 the grocery employee's representation he saw some 20 or more
8 balloons, the reason that we say it's not reliable is that in
9 this case he said he saw 20 or more balloons, he went into
10 the store. No one approached the defendant until Officer
11 Loken came and tried to peer over his shoulder and started
12 issuing these commands. If there had been some 20 balloons,
13 the most logical thing to happen is that they would still be
14 there because there was no reason for these balloons to be
15 swallowed or otherwise disposed of if no one was stopping
16 these individuals in the car. And the only time that kind of
17 situation arose is when Officer Loken came, issued his
18 commands and from that point on, they had continual
19 interaction with the defendant and as I said, there were not
20 20 balloons found, but only one and so it casts serious doubt
21 on the reliability of that testimony.

22 But at any rate, that is not what officer Loken
23 understood from the employee as he testified both at the
24 evidentiary hearing and the preliminary hearing. And we'd
25 submit with that.

1 THE COURT: Okay. Thank you, Ms. Chesnut.

2 Well, since I didn't get a chance to review the
3 reply memorandum before the hearing and based upon the fact
4 that I think this is a, not an easy decision, I am going to
5 take the matter under advisement. Are we set for any further
6 hearing at this point? We are not. Let's go ahead and set
7 if for a scheduling conference in two weeks. Do you want
8 Monday, Tuesday or Thursday?

9 MS. CHESNUT: Thursday if we could.

10 THE COURT: Okay, let's set if for another
11 scheduling conference or pretrial. We've had the prelim in
12 this so it would be a pretrial, excuse me. So a pretrial
13 conference on July 10th at 8:30 in the morning. In the
14 meantime, let's see, Mr. Hinmon is out on bond; is that
15 correct?

16 DEFENDANT HINMON: Yes.

17 THE COURT: I am a little concerned. I would like
18 to do a drug test. So Mr. Hinmon if you'll step in with
19 Officer Green, we'll have you do a draw test.

20 DEFENDANT HINMON: Your Honor, I do take methadone,
21 I have my prescription with me.

22 THE COURT: Okay, well let's -

23 DEFENDANT HINMON: I've been under treatment with
24 methadone.

25 THE COURT: - let's have you do a drug test and see

1 what shows up if anything. Well, the methadone should show
2 up.

3 (Whereupon a recess was taken)

4 THE COURT: You have a prescription for methadone
5 which would show heroin, we understand that or - but you did
6 test positive for cocaine.

7 DEFENDANT HINMON: There is no way possible. Can
8 you please do another test with the same urine? I vow that
9 that's not anything - I've been in treatment on my own since
10 November. I've not had one dirty UA. I get UA'd there very
11 often at Tranquility Place. I pay it myself and I've never
12 had one dirty drug test and I definitely would not use and
13 come to court and you can call my counselor there, I've never
14 had a dirty - that's preposterous. That never even was a
15 drug that I chose to take.

16 (Inaudible conversation)

17 THE COURT: Oh, okay. I'm sorry, there was a
18 miscommunication here and we just gave Mr. Hinmon a heart
19 attack. So...okay, then you can remain out on bond. So we
20 will plan on seeing everybody back here on the 10th.

21 Okay, thank you very much.

22 (Whereupon the hearing was concluded)

23

24

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IN THE THIRD DISTRICT COURT - WEST JORDAN

SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

v

MATTHEW JAMES HINMON,

Defendant.

: Case No. 131401457 FS

: Appellate Case No. 20150015

: With Keyword Index

EVIDENTIARY HEARING APRIL 3, 2014

BEFORE

THE HONORABLE CHARLENE BARLOW

FILED
THIRD DISTRICT COURT
2015 FEB 19 PM 3:52
WEST JORDAN DEPT.

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER

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WEST JORDAN, UTAH; APRIL 3, 2014

JUDGE CHARLENE BARLOW

(Transcriber's note: Identification of speakers
may not be accurate with the audio recordings.)

PROCEEDINGS

MS. CHESNUT: And I also have Matthew Hinmon.

THE COURT: Yes.

MS. CHESNUT: And that's an evidentiary hearing,
Your Honor.

MR. CARLSON: I don't know where Mr. Torrance went.
I think Ms. (inaudible) and the interpreter had a chance to
interact.

(Whereupon a recess was taken)

THE COURT: Okay, go ahead.

MR. CARLSON: The State has three witnesses -

THE COURT: Okay.

MR. CARLSON: - that will be testifying today. The
first witness we call is Mark Raines.

THE COURT: What was that last name again?

MR. CARLSON: Raines, R-A-I-N-E-S.

THE COURT: Thank you. If you will step right up
here and be sworn in please first.

WALTER MARK RAINES

having been first duly sworn, testified
upon his oath as follows:

1 THE COURT: Okay, if you will have a seat up here
2 in the witness chair and pull it up until you're comfortable
3 and then if you'll pull the microphone - well, yeah, you
4 don't have to be very close to it but we record as well as
5 amplify.

6 So go ahead, Mr. Carlson.

7 MR. CARLSON: And for the Court's information all
8 the witnesses are present in the courtroom.

9 THE COURT: Okay, thank you.

10 DIRECT EXAMINATION

11 BY MR. CARLSON:

12 Q Mr. Raines, will you please state and spell your
13 name for the record?

14 A Sure. My full name is Walter Mark Raines,
15 R-A-I-N-E-S.

16 Q And what is your occupation?

17 MS. CHESNUT: Your Honor, we would ask the Court to
18 invoke the exclusionary rule.

19 THE COURT: Okay.

20 MR. CARLSON: I thought that might be coming.

21 THE COURT: He gave you a heads up so it took you a
22 minute. So okay, the other people that are here to testify,
23 if you'll step outside.

24 MR. CARLSON: Your Honor, Officer Loken is the case
25 manager.

1 THE COURT: Okay. Officer, if you'll step up here
2 and then we'll proceed.

3 Go ahead.

4 Q (BY MR. CARLSON) Sorry about that.

5 A No problem.

6 Q So Mr. Raines, where do you work?

7 A I work at Harmon's Grocery Store, it's located on
8 700 East and 11400 South.

9 Q Is that in Salt Lake County?

10 A I believe so, yes.

11 THE COURT: I'll take judicial notice it is. If
12 it's inside point of the mountain, it's Salt lake.

13 THE WITNESS: Okay.

14 THE COURT: And if it's inside of those mountains
15 it's Salt Lake.

16 Q (BY MR. CARLSON) How long have you worked there?

17 A Coming up on eight years this summer.

18 Q And were you working there on September 19th of
19 last year?

20 A Yes, I was.

21 Q And while you were at Harmon's that day did
22 anything unusual happen in the parking lot?

23 A Yes, there did. I was coming, leaving to my
24 vehicle and -

25 Q Leaving to go to work or leaving work?

1 A No, I was walking out of the building to go to my
2 car. I wasn't leaving work just yet, I just happened to be
3 going to my car on break.

4 Q Okay, well, what happened next?

5 A I (inaudible) green vehicle. I'm guessing it was a
6 Geo Metro, I'm not sure, but it caught my eye because the
7 door frame almost seemed like it had been welded upon the
8 car. So it caught my attention. I looked in and I saw a
9 young man on the passenger side and he became very suspicious
10 as soon as I looked over, kind of -

11 Q What do you mean by suspicious?

12 A He lurched forward and almost kind of covered up
13 what was going on and, you know, I walk around to the other
14 side, they had pulled in backwards and I was pulled forward
15 so I'm looking at their driver side at this point and I look
16 inside the vehicle and saw a towel over the gentleman's lap
17 with a bunch of pink balloons sitting on top of that and what
18 appeared to me to be a transaction between the driver and the
19 passenger.

20 Q What kind of experience, if any, do you have with
21 drugs?

22 A With drugs themselves, I have been cited before
23 many years ago for marijuana paraphernalia. Other than that,
24 other than that just watching TV, court TV, anything like
25 that.

1 Q And based on your, your background, what did you
2 think was going on in the car?

3 A I looked at it and had to think that this was a
4 drug transaction, that the gentleman was selling narcotics to
5 the driver.

6 Q So what did you do at that point?

7 A Right then I radioed into my grocery manager, Craig
8 Worthington and told him that I would need him and our
9 security guard to come out and handle this, to take a look at
10 it.

11 Q Did you see, just for clarification, do you see
12 anyone in the courtroom today that was in that Geo that day?

13 A Yes, I do, sir.

14 Q Will you describe where that person is and what
15 that person is wearing?

16 A This person is sitting at the defense table wearing
17 a black shirt with a blue tie.

18 THE COURT: The record will reflect he's indicated
19 the defendant.

20 MR. CARLSON: Thank you, Your Honor.

21 Q (BY MR. CARLSON) So what specifically did you say
22 over the radio?

23 A I said, "Craig, you need to come out here, there's
24 a transaction going on right in our parking lot on the
25 employee side," which is, that's just kind of where most

1 employees park, on that one end.

2 Q Did you describe what type of transaction?

3 A No, I did not over the radio. No, I did not.

4 Q Okay. So what happened next?

5 A So I moved my vehicle away because as I explained I

6 was parked right next to them. I moved my vehicle maybe

7 about 30 feet and as they were coming out of, our security

8 guard and Craig were coming out, I said things like, Yeah,

9 they're just over there and he's got - right on his lap he's

10 got a bunch of pink balloons going right there. They then

11 walked over and I stayed behind just a minute and I mean,

12 maybe second afterwards I was radioed to come over and assist

13 them.

14 Q All right. Did you say anything else to them when

15 you, when you saw them coming out of the store?

16 A Ummm, just that I said the description of the car

17 and that he was on the one side, that the person that seemed

18 to be selling it was on the passenger side and other than

19 that, just that I saw pink balloons.

20 Q Did you know Officer Ray Loken at that time?

21 A Yes, I did. I had known him for a couple of years.

22 Q And does Harmon's have a policy of giving bonuses

23 or incentives to people who report things?

24 A Not at all, quite the opposite. It just took time

25 out of my day.

1 Q Have you ever been a criminal informant before?

2 A No, I have not.

3 MR. CARLSON: Thank you..I have no further
4 questions.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 Cross examination?

8 MS. CHESNUT: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. CHESNUT:

11 Q Now, you work in what department at the Harmon's?

12 A The produce section.

13 Q Okay, do you manage the produce section or just
14 work there?

15 A I work there. I'm what's known as a journeyman.
16 So I'm kind of, I help with managerial work but it's not my
17 official duties.

18 Q Okay, and how long have you been working there?

19 A Almost eight years.

20 Q Okay. Now, you said that you saw a passenger lurch
21 forward when you went past, correct?

22 A Uh-huh (affirmative).

23 Q Now before he lurched forward what did you see?

24 A I saw just kind of them talking and I believe they
25 were smoking cigarettes at the time. So when I had first

1 come upon I just saw him lurch forward and kind of look over
2 to me in a manner that struck me as suspicious.

3 Q How close did you get to the car?

4 A Within - I was at their tail end so within four
5 feet, whatever it is from bumper to door.

6 Q So you were behind the car?

7 A Like I said, they had pulled in backwards, so yes,
8 I was walking behind there.

9 Q And after he lurched forward did you stay around
10 and watch more or did you go into the store?

11 A No, no, what I said was I had come upon to my
12 driver's side of my vehicle and that's when I had looked
13 through the window of their driver's window and looked and
14 actually saw the balloons across his lap.

15 Q Okay, you actually saw pink balloons at that time?

16 A Yes, I did.

17 Q How many did you see?

18 A An estimate I would have to say would be over 20.

19 Q Over 20?

20 A Again an estimate.

21 Q They were all on his lap?

22 A Yes.

23 Q Did the driver have any of these balloons?

24 A She was kind of looking at them but, no, she did
25 not have any in her possession.

1 Q Did you see balloons anywhere other than on the
2 passenger's lap?
3 A No. No, I did not.
4 Q Now, you remember writing a witness statement for
5 the police about this incident, correct?
6 A Of course, yes.
7 Q Now, do you recall whether you told them that you
8 saw pink balloons at the time you first noticed the car?
9 A Yes, yes, I believe I did.
10 Q Okay, if I could show you your statement would that
11 help?
12 A Absolutely.
13 MS. CHESNUT: May I approach, Your Honor?
14 THE COURT: You may.
15 Q (BY MS. CHESNUT) Does this look like a copy of
16 your witness statement?
17 A Yes, it does.
18 Q And would you please review that?
19 A Sure. Okay.
20 Q So, now (inaudible) in your witness statement you
21 didn't write that you saw pink balloons before going into the
22 store, did you?
23 A No I did not on this statement.
24 Q In fact you specifically said that you saw
25 something that the passenger had in his hands, correct?

1 A It is saying that he rearranged something as in to
2 me he was kind of trying to hide it right at first but then I
3 did see the balloons.

4 Q Okay, but you didn't put that in your statement
5 that you wrote?

6 A No, I did not.

7 Q Okay, now, so 20 pink balloons, so you view that as
8 kind of a lot of balloons?

9 A Yes, I don't have much experience in that or
10 anything but I thought that was - to me it was obvious that
11 it was someone selling. It wasn't just something that he had
12 for just personal use.

13 Q Okay. Now, if you view this as a lot of balloons
14 why would you have not put this in your police statement?

15 A The only thing is at that point I had already been
16 about an hour and half out of work and dealing with this
17 situation and I seemed to be a little too brief.

18 Q Okay. That seems like a pretty significant
19 omission, doesn't it, that you didn't put in your witness
20 statement, you saw 20 pink balloons?

21 A Would you restate the question? I'm not sure what
22 you're saying.

23 Q Doesn't that seem like a significant omission?

24 A It definitely seems like something I should have
25 mentioned that I saw the balloons themselves but I did see

1 something that brought it in.

2 Q Okay. Now, did you ever, did you ever see any pink
3 balloons later in this incident?

4 A Yes, I did.

5 Q And when was that?

6 A That's after I was called back to assist. I
7 witnessed him trying to swallow the balloons. So he was
8 really grabbing balloons that kind of got scattered and were
9 trying to swallow them.

10 Q Okay. And who was there at the time?

11 A Officer Ray and my grocery manager, Craig.

12 Q Okay. Now what were Craig and Ray doing at the
13 time you saw him try and swallow these balloons?

14 A Trying to stop him from swallowing the balloons.

15 Q And you specifically saw these balloons?

16 A Yes, I did.

17 Q Did he appear to have all 20 in his hands?

18 A No, no, I wouldn't say - like I said I had left for
19 just that second so by the time I showed back up I had just
20 seen the couple that he had started to swallow and I know
21 that my grocery manager had actually confiscated a few at
22 that time 'cause I did see some in the backseat that were
23 scattered. Other than that though, I didn't see anything
24 past that.

25 Q Okay. You saw some in the backseat after you came

1 back out of the store?

2 A Yes, I did.

3 Q So after that initial viewing of the car?

4 A Uh-huh (affirmative).

5 Q Did you ever go inside of the vehicle at any point?

6 A Inside the vehicle? Ummm, I leaned in a little bit

7 to kind of help stop him from swallowing balloons.

8 Q Okay, did you ever take anything out of the

9 vehicle?

10 A Did I take - no, no, I did not.

11 Q Did you ever receive something from someone else

12 who had taken anything out of the vehicle?

13 A No.

14 MS. CHESNUT: Okay. If I could have just a minute,

15 Your Honor?

16 THE COURT: Sure.

17 MS. CHESNUT: And Your Honor, we would move to have

18 admitted into evidence Mr. Raines' witness statement as

19 Defense Exhibit A.

20 THE COURT: Any objection?

21 MR. CARLSON: No.

22 THE COURT: Okay, we will mark it as Defense

23 Exhibit A and it will be admitted.

24 (Defendant's Exhibit No. A received)

25 MS. CHESNUT: If I could approach?

1 THE COURT: You may. Thank you.

2 MS. CHESNUT: That's all I have, Your Honor.

3 THE COURT: Okay, any redirect?

4 MR. CARLSON: The State has no further questions

5 and with leave from the Court would like to excuse this

6 witness.

7 THE COURT: May he be excused, Ms. Chesnut?

8 MS. CHESNUT: Yes, Your Honor.

9 THE COURT: You may be excused, Mr. Raines.

10 THE WITNESS: Thank you.

11 THE COURT: Before we start the next one why don't

12 we recall Mr. Torrence's case.

13 (Whereupon another case was heard)

14 THE COURT: Let's go back to the Hinmon case.

15 MR. CARLSON: Next witness is Craig Worthington,

16 Your Honor.

17 THE COURT: Okay. If you'll step out and bring him

18 in please.

19 MR. CARLSON: If I may step out to retrieve him.

20 THE COURT: Or Mr. LaPresto, one or the other, if

21 you'll send him in?

22 MR. CARLSON: Yes.

23 THE COURT: Okay sir, if you'll step right up here

24 in front of my clerk and she will swear you in please.

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CRAIG WORTHINGTON

having been first duly sworn, testified
upon his oath as follows:

THE COURT: Okay, if you'll have a seat up here in
the witness chair and once you get comfortable we record as
well as amplify. You don't need to get very close to the
microphone but at least - yeah, that looks good.

Okay, go ahead, Mr. Carlson.

DIRECT EXAMINATION

BY MR. CARLSON:

Q Will you please state and spell your name for the
recording?

A It's Craig Stephen Worthington II, last name is
spelled W-O-R-T-H-I-N-G-T-O-N.

Q And what is your occupation, Mr. Worthington?

A I'm the grocery manager over at Harmon's currently
at the Draper store.

Q Is that where you were working last year?

A Yes, it is.

Q And were you on duty on September 19th of last
year?

A Yes, I was.

Q While on duty that day did you receive a radio
transmission from Mark Raines?

A Yes, I did.

IN THE THIRD DISTRICT COURT - WEST JORDAN

SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

v

MATTHEW JAMES HINMON,

Defendant.

: Case No. 131401457 FS

: Appellate Case No. 20150015

: With Keyword Index

PRELIMINARY HEARING FEBRUARY 11, 2014

BEFORE

THE HONORABLE MARK KOURIS

FILED
THIRD DISTRICT COURT
2015 FEB 19 PM 3:53
WEST JORDAN, DEPT.

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

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UTAH APPELLATE COURTS

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WEST JORDAN, UTAH; FEBRUARY 11, 2014

JUDGE MARK KOURIS

(Transcriber's note: Identification of speakers
may not be accurate with the audio recordings.)

PROCEEDINGS

THE COURT: Good afternoon, Ms. Chesnut. We ready
to proceed?

MS. CHESNUT: Yes, Your Honor.

THE COURT: This is Mr. Matthew Hinmon; is that
correct?

MS. CHESNUT: That's right.

THE COURT: Good afternoon, Mr. Hinmon.

DEFENDANT HINMON: Good afternoon.

THE COURT: Counsel, you may begin.

MR. CARLSON: Your Honor, the State has two
witnesses. Do you want to swear them both in at once or one
at a time?

THE COURT: One at a time is fine.

MR. CARLSON: All right, the State would call
Officer Raymond Loken to the stand.

MS. CHESNUT: And the defense would ask the Court
to invoke the exclusionary rule.

THE COURT: Very good. And I would ask both side to
go ahead and police that.

Officer, if you'll come right over here please and

1 raise your right hand.

2 RAYMOND LOKEN

3 having been first duly sworn, testified

4 upon his oath as follows:

5 THE COURT: Sir, if you'll be seated right at the
6 witness stand. It looks like somebody pushed that chair out
7 of the way over there. You can kind of center that chair if
8 you'd like. Once you're comfortably seated, pull yourself up
9 there and that microphone is flexible so bend it however it's
10 comfortable for you. If you'll please state your name and
11 spell your last name for the record.

12 THE WITNESS: My name is Raymond Loken, L-O-K-E-N.

13 THE COURT: Thank you, officer.

14 Counsel?

15 DIRECT EXAMINATION

16 BY MR. CARLSON:

17 Q Officer Loken, what's your main occupation?

18 A I'm a conservation officer with the Utah Division
19 of Wildlife Resources.

20 Q And what does a conservation officer do?

21 A It's a full-time peace officer position where I
22 mainly go out and enforce wildlife laws throughout the state.

23 Q Do you have the power to make arrests as a
24 conservation officer?

25 A Yes, sir.

1 Q Do you have any other occupation?

2 A I am, I have a part-time job as a security officer
3 for Harmon's Grocery.

4 Q Is that the Harmon's at 11400 South 700 East?

5 A Yes, sir.

6 Q Is that in Salt Lake County?

7 A Yes.

8 Q Were you working at the Harmon's on September 19th
9 of last year?

10 A Yes, I was.

11 Q And while working there that day were you called
12 out to the parking lot?

13 A Yes. One of the store employees came inside the
14 store and contacted me and said he'd observed something in
15 the parking lot that appeared to be suspicious that he
16 thought possibly drug related.

17 Q So what did you do?

18 A Ummm, I had with me at the time the grocery manager
19 and the individual who had come in and I asked him what
20 happened.

21 Q What are the names of those people?

22 A I only know their first names, not really that
23 familiar with everybody. Craig is the grocery manager and
24 Mark is one of the guys that works in produce.

25 Q Okay. So sorry, didn't mean to interrupt.

1 A I had asked Mark who was the individual who came in
2 the store what he had observed and he told me he was getting
3 ready to leave, he had walked out to his vehicle and in the
4 course of going out, passed by a car that was parked on the
5 west side of the store. When he glanced in the car it was
6 occupied by two people and he said they were doing something
7 that to him appeared suspicious, so he kind of stared and
8 then the male that was in the car looked at him and either
9 gave him a look or said something to the effect of what are
10 you looking at and Mark just got in his car and drove around
11 to the front of the store.

12 At that point he parked in front and came inside to
13 tell me what he had just seen.

14 Q So after you heard that what did you do?

15 A I talked to - Craig is a grocery manager and he's
16 well versed in stopping shoplifters and so I said, well,
17 let's go out and see what's going on. So the three of us
18 walked back out to the parking lot.

19 Q Do you see anyone in the courtroom today that you
20 saw in the parking lot that day?

21 A Yes, sir.

22 Q Will you describe where that person is and what
23 they're wearing?

24 A It's Mr. Hinmon, he's there with the dark striped
25 shirt and a blue patterned tie.

1 THE COURT: The record reflects identification of
2 the defendant.

3 Q (BY MR. CARLSON) What did you see the defendant
4 do?

5 A I approached the car because Mark, the employee,
6 pointed it out and said that's the car there. I walked up to
7 the rear of the car and was able to walk up on the passenger
8 side of it because the car had been backed into a parking
9 stall along the sidewalk and so I was able to get right up
10 without being noticed and able to look in over the shoulder
11 of the passenger into the passenger compartment of the car.

12 Q Okay, what did you see?

13 A I noticed a male who was Mr. Hinmon sitting in the
14 passenger seat and an unknown female sitting in the driver
15 seat and from my vantage point, it wasn't real clear, Mr.
16 Hinmon was sitting there with like a towel across his lap and
17 he was doing something, manipulating something down there
18 that I really couldn't see. So I bent down closer to try to
19 get a gooder, a better view of what was going on.

20 Q What happened next?

21 A At that point the female noticed that I was leaning
22 down and looking in the car because she was looking over
23 towards him and she seemed startled and he turned and looked
24 at me at the same time.

25 Q What did you do then?

1 A At that point, I told him, there was two things I
2 said; one was don't move and don't do anything stupid. And I
3 was in uniform, the Harmon's uniform, it's not the uniform I
4 wear now -

5 Q How does the Harmon's uniform look?

6 A It's a navy blue short sleeved shirt, it's a
7 uniform shirt. It's got patches on the sleeves that say
8 public safety. It's got a 6-pointed gold star on the chest,
9 same position as this and a gold name badge on the other
10 side. I was also wearing dark blue tactical trousers, the
11 same gun belt I'm wearing now and black boots.

12 Q And so after you said don't move, don't do anything
13 stupid, what happened next?

14 A Well, I could see the startled look on Mr. Hinmon's
15 face and at that point he grabbed for whatever was in the
16 center of the towel and I still hadn't seen it and shoved his
17 hands towards the floorboards between his legs in the car and
18 at that point my thought was either (a) he's hiding
19 contraband; or he's going for a weapon.

20 Q So what did you do at that point?

21 A So I reached in to try to control his hands because
22 that's what I would do, you know, to protect myself. And
23 once I got in there and got ahold of him, it was a very
24 awkward position to be in and the two guys that were with me
25 tried to open the car door but it was welded shut or somehow

1 secured so that you couldn't open the passenger door.

2 Q Were you saying anything at the time?

3 A At that point, as soon as Mr. Hinmon went to the
4 floor and I grabbed him, I said, "Police officer, you're
5 under arrest," and he continued to struggle. So then I told
6 him just give me your hands and - anyway - so, but he
7 continued to struggle and he wasn't combative and trying to
8 punch me or anything but trying to struggle to keep out of my
9 control.

10 Q So when you said give me your hands, did he give
11 you his hands?

12 A No, he would not.

13 Q So what happened next?

14 A So, we continued in that position for a moment and
15 he was struggling to keep his hands down and I was trying to
16 get hold of him to control him. But it was like I said, a
17 very awkward position and at that time he broke, he got his
18 right hand free. Let's see, just before that we were
19 struggling and he was, he said, Start the car, and I assumed
20 to the girl who was sitting there.

21 Q And what did you do at that point?

22 A He was head down, I was on top of him trying to
23 hold his hands. When he said that I looked over at her
24 because we were like eye to eye at that point and I said, Don't
25 start that car, and she put her hands up and indicated she

1 wasn't going to start the car.

2 So then we struggled again for a moment and he got
3 his right hand free and he reached up towards her with a
4 clenched fist and he said, Eat this. And I looked over at
5 her and I said don't eat that and she was still - at that
6 point she started to cry and Craig who was with me, ran
7 around to the passenger side and opened the passenger door
8 and was getting her out of the car when at that point Mr.
9 Hinmon struggled pretty hard and twisted up over to where his
10 head was basically in the back of the car, his feet were down
11 in the passenger side and I no longer had control of his
12 right hand but I had ahold of his left hand and I heard Craig
13 say that he's trying to swallow something.

14 Q So what did you do?

15 A And I was - he was resisting us, you know, give me
16 your hands, you're under arrest. Those are the kind of
17 things I kept saying to him, those exact words. Craig was
18 trying to get ahold of his right hand and I was trying to
19 maintain control of his left hand and I eventually got his
20 left hand freed from kind of underneath him, pulled that back
21 but then I couldn't reach my handcuffs. So I said to Mark
22 who was behind me, I said, Would you grab my handcuffs? And
23 so he pulled those out and put them in through the window
24 and we were able to get a cuff onto this left hand. In the
25 meantime Craig had been fighting to get control of his right

1 hand and eventually got control of his right hand and pulled
2 it to the back and we were able to get him handcuffed at that
3 point.

4 Q Did you call the police?

5 A Yeah, once we - at that point Mr. Hinmon basically
6 quit struggling. I came around to the driver's side and we
7 brought him out through the driver's side of the car as I
8 recall and, ummm, we ahhh, took him over to the sidewalk. And
9 Craig had seen him - he told me this - he's seen him trying
10 to throw things in his mouth and he recovered one of the
11 items off of the backseat.

12 Q Did you seize this item?

13 A It was a small little balloon is what it was and so
14 he gave that to me and we had removed Mr. Hinmon and put him
15 out on the sidewalk. I just did a quick cursory search to
16 make sure he didn't have any weapons on him and sat him down.
17 He was just wearing a pair of shorts and a tee shirt and his
18 tennis shoes and socks and I pulled his shoes off to make
19 sure he didn't have any like handcuff keys or anything hidden
20 in his socks or in his shoes and sat him down on the sidewalk
21 and at that point we called for the Draper Police Department.

22 MR. CARLSON: Thank you, I have no further
23 questions at this time.

24 THE COURT: Ms. Chesnut.

25 MS. CHESNUT: Just a few questions, Your Honor.

CROSS EXAMINATION

BY MS. CHESNUT:

Q Now, you've talked about a Craig that was with you during this whole incident, do you mean Craig the grocery manager that you talked about?

A Yes.

Q Do you know his last name?

A Off the top of my head, no.

Q And is he any kind of security at Harmon's or is he simply a store employee?

A He's a store employee whose worked at Harmon's for many years and he's had numerous incidences where he's had to help with shoplifters.

Q Okay. Now, when you approached this car was he by your side; behind you; not there yet? Where was he?

A He was behind me. Both he and the other employee whose name is Mark, they were kind of behind me watching to see what I was going to do.

Q Okay. Now, when you first came up you said you saw a towel in Mr. Hinmon's lap.

A Yeah, I believe it was a towel. It was a white covered piece of cloth across his lap.

Q And where were his hands?

A His hands were down manipulating something that was in the towel or on top of the towel.

1 Q Okay, could you tell whether it was under or over
2 the towel?

3 A It appeared to me he was doing something that was
4 on top of the towel that was on his lap.

5 Q Okay. And could you see what the something was?

6 A I could not.

7 Q Now, you said that it was at that point you said
8 don't move and don't do anything stupid?

9 A Yes.

10 Q And was the window down?

11 A The window was down.

12 Q The passenger window?

13 A Passenger window, yes.

14 Q And when you said that you said he shoved the towel
15 down between his knees?

16 A He appeared to grasp it and shove it down like
17 that.

18 Q When he did that did you see any other object other
19 than the towel?

20 A No, no, but his actions prompted me to believe that
21 he had contraband or something in there that he didn't want
22 me to see.

23 Q Okay. Okay, so you believed he probably had
24 contraband in the towel?

25 A Yeah.

1 Q Now you said that you were - you described what you
2 were wearing at the time, the navy shirt with the star and
3 the patches and the name tag. Now you said you were also
4 wearing the gun belt you're wearing now. Now, what gun belt
5 is that?

6 A It's this one.

7 Q Okay. Now is that your DWR uniform you're wearing
8 right now?

9 A This is the DWR uniform, yes.

10 Q Okay. So you were actually wearing the gun belt
11 for your DWR uniform on that day with Mr. Hinmon?

12 A Yes.

13 Q And I assume there's a gun in that belt, right?

14 A Yes, there is.

15 Q Is there also a nightstick?

16 A Yes. Well, there's a baton; there's pepper spray;
17 ummm, extra magazines; two sets of handcuffs; pocket knife; a
18 radio holder, several things.

19 Q Okay. Okay, now, you said that - you mentioned you
20 thought he might have contraband. You also said something
21 about safety. Now what did you mean by that?

22 A Well, as soon as he drove his hands to the floor,
23 and I can't see what he's doing with his hands, my immediate
24 concern is for my safety or anybody else's for that matter,
25 that he might be reaching for a weapon and so at that point

1 my first instinct is to - I've got to get control of his
2 hands just in case he has a weapon.

3 Q Okay. Now is this sort of general law enforcement
4 training that you need to see somebody's hands or they may
5 have a weapon or was there something specific about this
6 situation; you were told he had a weapon, you know, something
7 like -

8 A No one told me that but it is standard training for
9 police officers to maintain either visual or physical contact
10 with someone's hands for your own safety, yeah, because
11 that's what they use usually to grab weapons and hurt you.

12 Q Okay, so in this case because you couldn't see his
13 hands, due to your training you need to see those, that's why
14 you were worried about safety?

15 A That's, yeah, that was one of my concerns. The
16 other one was that he had contraband that he was trying to
17 hide or get rid of or do something with.

18 Q Okay. Yeah, I understand about the contraband but
19 just to clarify, so you hadn't seen any kind of a weapon in
20 the car or with him?

21 A No, but a common place would be to hide it under
22 the seat or by his feet somewhere where he could just reach
23 and get it. So...

24 Q Right, right. But you hadn't seen anything -

25 A No.

1 Q - up to that point?

2 A No.

3 Q And someone hadn't told you they saw a weapon?

4 A No.

5 Q Had you ever met him before?

6 A Not that I'm aware.

7 Q So you had no prior experience with him?

8 A No.

9 Q Okay, now you said that after, after he drove his

10 hands down, you went to grab his hands, right?

11 A Yes.

12 Q Now at that time did you also say, "Police, you are

13 under arrest"?

14 A Yes.

15 Q Okay, it was right then when he shoved his hands

16 down between his knees?

17 A Right.

18 Q Okay. And did you say that just one time or several

19 times?

20 A I said that several times.

21 Q Okay. And did you say that while you were trying to

22 grab his hands?

23 A Yes.

24 Q Okay. Now, now you said that at one point this

25 Craig came to help you; is that right?

1 A Yes.

2 Q Okay. And had you struggled for a minute before
3 Craig came to help you?

4 A Yeah, because there was no room on the passenger
5 side for more than one person and we found shortly into this
6 struggle that the door wouldn't open. So Craig had to leave
7 the passenger side and walk around to the driver's side.

8 Q Now was it Craig or Mark who got the female out of
9 the -

10 A It was Craig.

11 Q Okay, now you said that Mr. Hinmon was handcuffed.

12 A Uh-huh (affirmative).

13 Q Was that before or after he, you removed him from
14 the car?

15 A He was handcuffed in the car and then removed from
16 the car and put on the sidewalk.

17 Q Okay. And you used your handcuffs to do that I
18 assume?

19 A Yes.

20 Q Had police arrived by that point?

21 A No.

22 Q Did you ever see whether Mr. Hinmon had any object
23 other than the towel?

24 A No.

25 Q Okay, so after you got Mr. Hinmon out of the car

1 and set him on the curb, what did you do after that?

2 A Well, I spoke with Craig, for one thing, and asked
3 him what he had seen and he told me that he saw Mr. Hinmon
4 trying to throw items into his mouth, one of them had bounced
5 off and was laying on the seat and Craig had recovered that
6 and he handed it to me and it was a small balloon. But he
7 said, he told me that he thought he'd gotten some of it in
8 his mouth and swallowed it, so...

9 Q Okay, so Craig handed you this balloon -

10 A Yes.

11 Q - it was after Mr. Hinmon was handcuffed on the
12 sidewalk?

13 A Yes, uh-huh (affirmative).

14 MS. CHESNUT: I have no further questions.

15 THE COURT: Thank you.

16 Any followup counsel?

17 MR. CARLSON: No, Your Honor.

18 THE COURT: Officer, you may step down. Thank you
19 very much.

20 THE WITNESS: Thank you.

21 THE COURT: You may call your next witness.

22 MR. CARLSON: Yes, Your Honor, the State calls
23 Officer Willie and while he's coming the State would present
24 State's Exhibits 1 and 2 which are two 1102 sworn statements
25 for the Court.

1 THE COURT: Okay. Any objection to those?

2 MS. CHESNUT: No, no objection.

3 THE COURT: Very good. Plaintiff's Exhibits 1 and
4 2 will be entered.

5 (Plaintiff's Exhibits 1 and 2 received)

6 MR. CARLSON: Thank you.

7 THE COURT: Sir, if you'll come right up here
8 please and raise your right hand.

9 DUSTIN WILLIE

10 having been first duly sworn, testified
11 upon his oath as follows:

12 THE COURT: Sir, if you'll be seated right at the
13 witness stand.

14 And once you're comfortably seated, go ahead and
15 pull yourself up to that microphone there and that microphone
16 is flexible so bend it however it's comfortable for you. If
17 you'd please state your name and spell your last name for the
18 record.

19 THE WITNESS: Officer Dustin Willie, W-I-L-L-I-E.

20 THE COURT: Thank you.

21 Counsel?

22 DIRECT EXAMINATION

23 BY MR. CARLSON:

24 Q How long have you been a police officer?

25 A Since 2005.

1 Q Were you - what jurisdiction are you a police
2 officer for?

3 A I'm a Draper City Police Officer.

4 Q Were you on duty on September 19th of last year?

5 A Yes, I was.

6 Q And while on duty that day were you called to 11400
7 South 700 East?

8 A Yes.

9 Q Was that in Salt Lake County?

10 A Yes, it is.

11 Q Were you given a balloon?

12 A Yes, I was.

13 Q What did you do with that balloon?

14 A I field tested it for drugs.

15 Q And what was the result of that field test?

16 A Tested positive for heroin.

17 MR. CARLSON: Thank you. I have no further
18 questions.

19 THE COURT: Ms. Chesnut?

20 CROSS EXAMINATION

21 BY MS. CHESNUT:

22 Q When you arrived at the scene did you see Mr.
23 Hinmon there?

24 A Yes, I did.

25 Q And what was he doing when you arrived?

1 A He was seated on the sidewalk, handcuffed.

2 Q Was anyone with him?

3 A Officer Loken was with him. There were three other
4 Draper employee officers that arrived before me, so they were
5 all somewhere close by also.

6 Q Okay. And you said Officer Loken, are you familiar
7 with Officer Loken?

8 A Only from this incident.

9 Q No other situations you've handled with him?

10 A No.

11 Q Now, did you have any kind of interaction with Mr.
12 Hinmon that day?

13 A Yes, I did.

14 Q Did you take him to jail?

15 A Yes, I did.

16 Q Did he, did he resist you in any way in taking him
17 to jail?

18 A No.

19 MS. CHESNUT: I have no further questions.

20 THE COURT: Anything else, counsel?

21 MR. CARLSON: No, Your Honor.

22 THE COURT: Officer, you may step down, thank you
23 very much.

24 THE WITNESS: Thank you.

25 MR. CARLSON: The State has no further witnesses.

1 THE COURT: Very good. Ms. Chesnut, do you plan to
2 call any witnesses today?

3 MS. CHESNUT: If I could have just a minute?

4 THE COURT: Go ahead.

5 MS. CHESNUT: I've advised Mr. Hinmon of his right
6 to testify, advised he not testify and he's taking that
7 advice.

8 THE COURT: Is that true, sir?

9 DEFENDANT HINMON: Yes, Your Honor.

10 THE COURT: All right. If that's the case,
11 counsel, any argument?

12 MR. CARLSON: Briefly, Your Honor. It's fairly
13 clear that the balloon that came out of the defendant's hand
14 was heroin, field tested positive for heroin and that he
15 attempted to have his companion swallow it, attempted to
16 swallow it himself, so for Count 1 the State would argue
17 there is probable cause to go forward.

18 For Count 2 I'd ask the Court to specifically focus
19 not on the defendant's behavior toward Officer Willie but
20 towards Officer Loken. Officer Loken is a peace officer, he
21 made it clear that he was an officer by stating so and the
22 defendant was under arrest. So a reasonable person would
23 know that the officer was attempting to perform a detention.
24 The officer also told him to give him his hands which he
25 refused to do.

1 THE COURT: Very good.

2 Any argument Ms. Chesnut?

3 MS. CHESNUT: Your Honor, we'll submit.

4 THE COURT: All right. I find there's probable
5 cause to believe the crimes were committed and further that
6 the defendant committed the crime. I'm going to bind this
7 case over to Judge Charlene Barlow.

8 Ms. Chesnut, would you prefer one or three weeks?

9 MS. CHESNUT: Three weeks if we could.

10 THE COURT: Three weeks. Let's set it for the 3rd
11 of March at 8:30 in the morning in front of Judge Charlene
12 Barlow, not guilty pleas will be entered on behalf of your
13 client.

14 Now, Mr. Carlson, you may come and retrieve your
15 exhibits.

16 MR. CARLSON: Thank you, Your Honor. That was the
17 3rd of March at 8:30?

18 THE COURT: Third of March at 8:30, yes.

19 MR. CARLSON: Thank you.

20 (Whereupon the hearing was concluded)

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City Police Department			Case Number
WITNESS STATEMENT			2913-007248
Name	Date of Birth	Home Phone	
Mark Raines	07-19-82		
Street Address	Mobile Phone		
12062 Heron Ridge Circle	801-673-7539		
City	State	Zip Code	Work Phone
Draper	UT	84020	801-576-9911
Driver's License/ID Number	E-mail Address		
166507582	spidercaine@yahoo.com		

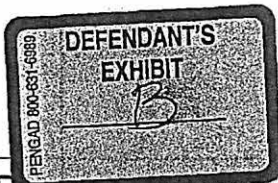
Details of Events:

I approached the vehicle that was parked next to mine, when the male passenger looked back then rearranged something with his hands. I got into my car when I looked into the car I saw a towel across his lap that he was holding onto. I drove around the corner and radioed my grocery manager Craig. I told him that I thought there was an illegal transaction going on in our parking lot. Craig and our security guard Ray came out and I informed them where the car was and went to park my vehicle. I was then radioed over to help. When I approached I saw both Ray and Craig trying to detain the suspect. He was screaming "Eat it, Eat it." I saw him trying to put pink balloons into his mouth. I tried grasping one of his arms to help. Ray was telling him to stop resisting. Ray asked me to get his handcuffs and help him. Ray held one hand I handcuffed him until Craig and Ray were able to pull his other hand back and finish cuffing him. He then was able to get himself out of the vehicle while we walked him to the side of the building. He sat down then the police were called. Ray and Craig detained the two suspects until they arrived.

Pursuant to Rule 1102, Utah Rules of Evidence and Section 76-8-504.5, Utah Code Annotated: You are hereby notified that the statements made herein may be presented to a magistrate or judge in lieu of your sworn testimony at a preliminary examination. Any false statement you make and that you do not believe to be true may be subject to criminal punishment as a Class A Misdemeanor.

I have read and understand the statement above: Mark Raines

Date: 7-19-13



Draper City Police Department			Case Number
WITNESS STATEMENT			2013-72418
Name	Date of Birth	Home Phone	
Craig Worthington	12-15-91		
Street Address	Mobile Phone		
14284 E. Daisy Field Dr.	901-859-8903		
City	State	Zip Code	Work Phone
Draper	Ut	84020	801-576-9911
Driver's License/ID Number	E-mail Address		
162886633			

Details of Events:

On Sept 19th, at about 5:20pm we were alerted by Mark in produce about a couple in a green car that looked very suspicious and had what appeared to be heroin on the passengers lap. Officer Loken and I (Worthington) approached the car. Loken stuck his head in and said "Don't move your hands" The suspect showed his hands down into his lap & then down to the floor. Loken then stated "your under arrest give me your hands" The suspect then turned to the driver and said "Eat it, eat it" then "Start your car, go, go" At this time I opened the driver door and removed the key's. The passenger was not complying with Loken at this time I hopped into the car after removing the driver and grabbed one arm of the passenger as he was trying to swallow what was in his hand he dropped one pink balloon on the seat that I was able to grab. Then after a little bit of wrestling we were able to get his hands behind his back and to move him from the car. The driver was co-operative the entire time.

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I have read and understand the statement above:

Date: 9-19-13