

2015

**Tim Carson, Petitioner/Appellee, v. Tom Barnes, Respondent/  
Appellant**

Utah Court of Appeals

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Case No. 20150211-CA

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IN THE  
UTAH COURT OF APPEALS

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Tim Carson,

*Petitioner/Appellee*

v.

Tom Barnes,

*Respondent/Appellant.*

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OPENING BRIEF

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Appeal from the Third District Court, Tooele County, State of Utah  
The Honorable Robert Adkins

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UTAH APPELLATE COURTS

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## ADDENDA

Addendum A: Civil Stalking Injunction entered on March 5, 2015

Addendum B: Determinative Constitutional Provisions, Statutes,  
Ordinances, Rules and Regulations

Addendum C: Docket Report, Case No: 141300512

## STATEMENT OF JURISDICTION

This Court has jurisdiction under Utah Code § 78A-4-103(j).

## STATEMENT OF ISSUES AND STANDARD OF REVIEW

**First Issue:** Did the district court err in its application of the civil stalking statute by focusing primarily on an incident that was not directed at the Petitioner, and by failing to adequately take into account the parties' business relationship?

**Standard of Review:** The proper interpretation and application of a statute is a question of law that is reviewed for correctness, affording no deference to the district court's legal conclusion. *Baird v. Baird*, 2014 UT 8, ¶ 16, 322 P.3d 728.

**Preservation:** Counsel for Mr. Barnes emphasized the importance of the parties' business relationship at several points during the evidentiary hearing. *See, e.g.*, R. 65:8;7-18; 167:23-24 (explaining that the parties' "had reason and purpose to be in contact with one another" as a result of their "landlord-tenant relationship").

**Second Issue:** Did the district court err by prohibiting Mr. Barnes from owning or possessing a firearm for three years?



**Standard of Review:** Whether a district court has improperly denied a person's constitutional rights is a question of law reviewed for correctness. *See Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177 ("Constitutional issues . . . are questions of law that we review for correctness."), *abrogated on other grounds by State v. Nielsen*, 2014 UT 10, 326 P.3d 645.

**Preservation:** Mr. Barnes preserved this issue during the evidentiary hearing below and in his objections to Mr. Carson's proposed findings of fact and conclusions of law. R. 65:8:22-23; 9:2-4; 134:5-6; R. 38.

**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,  
ORDINANCES, RULES AND REGULATIONS**

The following legal authorities can be found in Addendum B.

Utah Code § 77-3a-101

Utah Code § 76-5-106.5

Utah Const. Art. 1, § 6

Utah Code § 53-5A-102

Utah Code § 76-10-503

U.S. Const. amend. II

18 U.S.C. § 922(g)

## STATEMENT OF THE CASE

### Statement of Facts

In September 2013, Randy Hunt, as landlord, and a company called TCM Bertha, LLC, as tenant, entered into a lease agreement for approximately forty acres of land in Tooele County. Pl. Ex. 1. Tim Carson, Bertha's principal and owner, signed the agreement on Bertha's behalf. *Id.*; R. 65:81:14-15. Under the terms of the agreement, Bertha was required to, among other things, (1) "insure the Premises" and (2) provide an "estoppel certificate" within "ten (10) days" of the "Landlord's request." Pl. Ex. 1, ¶¶ 5, 22. Furthermore, Bertha was required to "permit inspection of the Premises during reasonable business hours by Landlord." Pl. Ex. 1, ¶ 12.

At the time the lease was in effect, Bertha operated as some kind of mining company that would engage in "sampling." R. 65:81:11-13. To support that operation, Mr. Carson set up generators, "crushers," and related equipment on the property. R. 65:82:1-6. Mr. Carson claimed that he had not had an opportunity to get things going before vacating the property, but, upon his departure, thirty buckets of "ore" were left on the property. R. 65:83:4-6; 85:9-12.

In May 2014, Tom Barnes, a 72-year old Navy veteran and landowner of rural properties in Florida, Texas, and Utah, R. 65:114:11-13, purchased the property from Mr. Hunt. Shortly thereafter, Mr. Barnes wrote a letter to Mr. Carson, asking that Mr. Carson provide the proof of insurance and the estoppel certificate required under paragraphs 5 and 22 of the agreement. Resp. Ex. 2. Despite Mr. Barnes' request, Mr. Carson never provided proof of insurance or a proper estoppel certificate. R. 65:80:16-17; 118:9-10.

A gravel road runs from Highway 36 to the leased property. Large gates stand between the gravel road and the leased property, but the gates themselves are not located on the leased property. R. 65:137:14-17. To deal with trespassers, a common problem facing property owners in sparse rural areas, Mr. Barnes frequently emphasized to Mr. Carson the importance of "locking the gates." R. 65:136:9-13. While at the property, however, Mr. Carson refused to lock the gates, insisting that he and Mr. Barnes had reached no such "agreement." R. 65:100:21-24.

Another problem for property owners in sparse rural areas is the lack of protection from wild animals, trespassers, or criminals. R. 65:139:24-140:10. To protect himself and his wife while on his properties, Mr. Barnes carries a pistol. R. 65:130:1-15. While serving in the Navy, Mr. Barnes was

trained in the use of various firearms, and for eight years prior to the entry of this injunction, Mr. Barnes had a concealed-carry permit, which required him to undergo firearms training. R. 65:131:2-18. Fortunately, he has never had to "fire[]" the gun he carries. R. 65:130:25-131:1.

On the night of October 27, 2014, at around 7:00 p.m., Mr. Barnes and his wife drove down to the property. Upon their arrival, they noticed that the gates "were open" and that the locks on the gates had "been removed." R. 65:128:4-6. Concerned, they drove up to the building. They saw a "black sedan" parked out front and two people they did not recognize — a man and a woman — working on a "piece of machinery." R. 65:128:7-12. Mr. Barnes instructed the couple to leave. After doing so, he asked the couple where the locks were, to which they responded, "in the building." R. 65:128:17-18. Mr. Barnes checked the building but did not see the locks to the gates, so he again asked the couple where the locks were. Rather than simply turn over the locks, the couple locked their car (where the locks were located), R. 65:128:24-25, and said they wouldn't turn them over unless Mr. Barnes promised not to lock them in, R. 65:26:24-25.

Mr. Barnes threatened to call the sheriff, at which point the woman returned to the car, unlocked it, and reached inside. R. 65:27:3-4; 129:6-8.

Mr. Barnes, concerned for his own safety and that of his wife, pulled his gun from his car and again asked the couple to turn over the locks. R. 65:129:19-130:5. They finally did so. R. 65:130:5. Mr. Barnes took the locks and the couple left.<sup>1</sup> Throughout this exchange, Mr. Carson never made an appearance. He had left four hours earlier. R. 65:33:12-15. Mr. Barnes attempted several calls to Mr. Carson to report what had happened. R. 65:132:2-6; 133:6-7.

About a week later, Mr. Carson and others started moving equipment off the property. R. 65:46:19-23; 47:5-6. Mr. Barnes came down to the property, got out of his car, and walked toward Mr. Carson. Mr. Carson told Mr. Barnes that if Mr. Barnes was "a younger man," Mr. Carson would "whoop" his "butt." R. 65:29:17-20. The next day, Mr. Barnes drove down to the property to see what was going on, and noticed that Mr. Carson was moving out more equipment. As Mr. Barnes started to leave, he was blocked by a pickup and trailer. R. 65:120:18-20. The police were called, and eventually Mr. Barnes was allowed to leave. R. 65:121:7-9. He drove to the

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<sup>1</sup> In connection with this incident, Mr. Barnes entered pleas in abeyance to two misdemeanor counts of reckless endangerment. Both counts were dismissed on June 19, 2015, and the case was closed. *See* Docket Report, Case No. 141300512, attached at Addendum C.

Hampton Inn, where he was staying. While parked there, he saw two pickups and trailers drive by with equipment that had been removed from the property. R. 65:121:12-16. Mr. Barnes knew that, under the agreement, "[a]ny alterations or improvements to the Premises" could not be removed from the property, Pl. Ex. 1, ¶ 10, R. 65:124:16-18, so, out of "curio[sity]," he and his wife followed the pickups and trailers for about "a mile," R. 65:121:13-15.

Based on Mr. Carson's failure to provide proof of insurance and an estoppel certificate as required by the lease, Mr. Barnes considered Mr. Carson a "noncompliant lessee." R. 65:118:13-14. Prior to November 6, 2014, Mr. Barnes contacted an attorney to assist him with the "process" of evicting Mr. Carson from the property. R. 65:118:23-25. Mr. Barnes had previously sent Mr. Carson a letter, addressing it to a P.O. Box. Resp. Ex. 2. Mr. Carson's rent checks contained a street address in the top left corner. On November 6, Mr. Barnes drove by that address to verify its accuracy. In doing so, he drove right by Mr. Carson. R. 65:119:10-14. Mr. Carson flipped around and followed Mr. Barnes for "20 or 30 minutes" despite repeated requests from a 911 operator to stop. R. 65:119:15-21; 157-63 ("Dispatcher:

Why are you following him?"; "Dispatcher: First of all, I need you to stop following him."; "Dispatcher: I don't want you to follow him any longer.").

### Statement of Proceedings

On November 7, Mr. Carson filed a request for a civil stalking injunction. R. 1. As "stalking events," Mr. Carson identified the events from November 4 and 6. R. 2. Under the request for "other stalking events," Mr. Carson referred to four police reports he had attached. R. 2. Three of the four reports Mr. Carson attached, however, involved *Mr. Barnes'* request for the police to keep the peace. R. 8, 10, 13. The other report did not involve Mr. Carson. R. 11. Mr. Carson also did not mention in his initial filing that Mr. Barnes allegedly "put his finger" in Mr. Carson's chest on November 3. R. 65:86:8-13.

Three days later, on November 10, the court signed and issued a Temporary Civil Stalking Injunction—which constituted an Ex Parte Order—prohibiting Mr. Barnes from "stalking" Mr. Carson, from contacting Mr. Carson, and ordering Mr. Barnes to "stay away" from Mr. Carson. R. 15. In addition, the order stated as follows:

No guns or firearms! It is a federal crime for you to have, possess, transport, ship, or receive any firearm

or ammunition, including hunting weapons, while this civil stalking injunction is in effect.

R. 16. Mr. Barnes requested a hearing on the propriety of the injunction eight days later, on November 18, and on February 11, 2015, an evidentiary hearing was held. R. 17, 23, 65. Several of the events described above were discussed at the hearing.

Whether Mr. Barnes would be able to own and carry firearms was also discussed. Early on in the hearing, counsel for Mr. Barnes informed the district court that it was “imperative that [Mr. Barnes] be allowed to carry a firearm when he’s out in these rural areas.” R. 65:8:22–23. Later on, counsel asked Mr. Barnes why it was “important” to Mr. Barnes that he “be able to keep [his] right to own and possess firearms,” but the court sustained a relevance-based objection to that line of questioning. R. 65:134:5–135:10. In closing arguments, counsel reiterated that Mr. Carson was “simply doing this to try and affect [Mr. Barnes’] right to own and possess a firearm.” R. 65:170:4–6.

At the conclusion of the hearing, the court held that the civil stalking injunction would remain in place for an additional three years, until February 11, 2018. R. 65:171–76. The court referred to several of the



incidents described above, found that Mr. Barnes “engaged in a course of conduct directed at [Mr. Carson],” and ultimately concluded that Mr. Barnes’ conduct would cause “a reasonable person to fear for the safety of” that person’s “wife and minor children.” R. 65:175:15–19.

Other than its finding that Mr. Barnes “displayed” and “brandished” his pistol in the presence of third parties, the court did not mention Mr. Barnes’ ability to own or carry firearms under the terms of the injunction. R. 65:172:21–173:6. Mr. Barnes’ counsel then asked as a “point of clarification” whether the restriction on Mr. Barnes’ ability to own a firearm applied only “in the State of Utah.” R. 65:176:10–13. The court responded as follows:

I, I will tell you, I’m not certain. It certainly does in the State of Utah. I’m not going to opine as to what other states may do, or what the federal government may consider it. And, and so I, I just, I don’t have an answer to that question. And I don’t want to say something that may be proven wrong hereafter.

R. 65:176:14–19.

Shortly after the conclusion of the hearing, Mr. Carson submitted a proposed Civil Stalking Injunction for the district court’s signature. R. 34. The bottom of the proposed injunction warned Mr. Barnes that “[i]t *may* be a federal crime for you to have, possess, transport, ship, or receive any

firearm or ammunition, including hunting weapons, while this civil stalking injunction is in effect.” R. 37 (emphasis added). The body of the injunction, by contrast, left no doubt, stating that the injunction “include[s] a restriction where [Mr. Barnes] shall not be permitted to own or possess a firearm.” R. 36. On the last page, alongside a section entitled “Other Orders,” the injunction reaffirmed that Mr. Barnes “shall not be permitted to own or possess a firearm.” R. 37.

Mr. Barnes objected to the proposed injunction’s blanket restriction on his right to own and possess a firearm. R. 38–39. Nonetheless, the court entered the injunction as it had been proposed. R. 56. Besides its finding that Mr. Barnes’ display of his pistol was “concerning,” the court did not explain its decision to restrict Mr. Barnes’ right to own or possess a firearm.

This appeal followed.

### **SUMMARY OF ARGUMENT**

The district court erred when it entered a civil stalking injunction against Mr. Barnes. To start, the court relied heavily on an incident that occurred on October 27, 2014, but that incident cannot comprise part of the “course of conduct” of which Mr. Barnes is alleged to have engaged because it was not “directed at” Mr. Carson. Mr. Carson had left the property several

hours before the incident occurred. Because the October 27 incident colored the district court's view of the entire case, the injunction should be reversed and the case remanded for that reason alone.

In addition, two of the subsequent incidents between Mr. Barnes and Mr. Carson involved nothing more than a landlord exercising his contractual rights. On November 4, Mr. Barnes was entitled to follow Mr. Carson for "about a mile" to ensure that nothing he was hauling away from the property amounted to "fixtures" that were required, under the parties' agreement, to remain on the property. On November 6, Mr. Barnes was entitled to verify Mr. Carson's residential address to ensure that the process of evicting Mr. Carson was consistent with state law.

Finally, even if the Court upholds the injunction's general terms against Mr. Barnes, it should vacate and remove the injunction's restriction on Mr. Barnes' right to own and carry firearms. An individual's right to own and carry firearms rests on the Second Amendment to the U.S. Constitution and Article 1, Section 6 of the Utah Constitution. Under both provisions, an individual has the right to own and carry firearms for lawful purposes, including self-defense. This right is not unlimited, and both federal and Utah law properly restrict a person's right to own and carry firearms under

certain circumstances. But none of those circumstances are present here. Because there is not a federal or Utah statutory provision that prohibits Mr. Barnes' constitutional right to own and carry a firearm under these circumstances, that right may not be infringed. Thus, even if the injunction was properly entered as a general matter (it was not), the Court should still vacate and remove the injunction's restriction on Mr. Barnes' right to own and carry a firearm.

### ARGUMENT

I. THE INJUNCTION WAS WRONGLY ENTERED BECAUSE AT LEAST ONE OF THE INCIDENTS WAS NOT "DIRECTED AT" MR. CARSON, AND OTHER INCIDENTS WOULD NOT CAUSE A REASONABLE COMMERCIAL TENANT TO BE AFRAID.

Mr. Barnes should not be subject to a permanent injunction involving Mr. Carson for at least two reasons. First, the primary incident concerning the district court was not "directed at" Mr. Carson. Second, two of the acts at issue do not form part of a "course of conduct" that would cause a reasonable commercial tenant to be afraid. Without these acts, the injunction lacks an adequate statutory foundation.

A. The October 27 Incident was not "Directed at" Mr. Carson.

The court's conclusion to the contrary – and the entry of the injunction generally – was based on the incident on October 27. As described in the

Statement of Facts, Mr. Barnes had good reason, given the prevailing circumstances on October 27, to fear for his and his wife's safety. It was dark, the couple refused to turn over the locks to the gates, and the woman reached into her car without declaring her purpose in doing so.

The court's reliance on this incident to enter an injunction against Mr. Barnes is a problem for a more fundamental reason. The incident was not "directed at" Mr. Carson. The first element of Utah's definition of "stalking" is that it be "directed at" the person who is seeking the restraining order. Utah Code § 76-5-106.5(1)(b). To "direct" an act "at" someone requires a person to "aim" his or her conduct toward that someone. Black's Law Dictionary 491 (8th ed. 2004).

As to the events that occurred on October 27, that element remains unsatisfied. All agree that Mr. Carson was not on the property during the incident in question. He had departed four hours earlier. Confirming that Mr. Barnes was not directing his acts at Mr. Carson, Mr. Barnes repeatedly called Mr. Carson after the incident to explain what had happened. R. 65:132:2-6; 133:6-7. The district court never explained how Mr. Barnes' actions could be "directed" or "aimed" at Mr. Carson despite Mr. Carson's absence. In fact, although the court frequently referred to the incident that

occurred on October 27, *see, e.g.*, 65:172:21–25, the court never expressly found that the October 27 incident was “directed at” Mr. Carson. R. 65:173:1.

The court thought the incident important because Mr. Carson was aware of it. Mr. Carson’s awareness of the incident, however, does not transform the incident into one “directed at” Mr. Carson. What is more, relying on knowledge of events in a person’s past—events that are not “directed at” the petitioner—to establish the “fear” required by the statute runs contrary to the statute’s text. The statute states that “acts directed at” the petitioner are what constitute a “course of conduct,” and that the “course of conduct” is what must cause a reasonable person to fear. Utah Code § 76-5-106.5(2). Acts that are not “directed at” a particular petitioner, in other words, may not form part of the “course of conduct” that causes a reasonable person to fear. The district court’s conclusion to the contrary demands reversal.

**B. A Reasonable Commercial Landlord Would Have No Reason to Know that the Events of November 4 and 6 Would Cause a Reasonable Commercial Tenant to Be Afraid.**

The acts of Mr. Barnes’ that were “directed at” Mr. Carson would not have caused a reasonable commercial tenant to fear for himself or for third persons. To qualify for an injunction, a petitioner in Utah “must meet an

objective—not subjective—standard.” *Baird v. Baird*, 2014 UT 8, ¶ 24, 322 P.3d 728. This means that the petitioner must prove that the respondent’s conduct “would cause” fear “to a *reasonable person* in the petitioner’s circumstances.” *Id.* ¶ 25 (emphasis added). As the reference to “petitioner’s circumstances” illustrates, the inquiry is not purely objective. By taking into account a person’s individual circumstances, Utah’s Stalking Statute “provides for” what the Utah Supreme Court calls “an individualized objective standard.” *Id.* ¶ 26 (quoting and discussing Utah Code § 76-5-106.5(e)). In applying this standard, courts take into account, among other things, “the victim’s knowledge of and relationship with the defendant.” *Id.* ¶ 27.

Here, Mr. Barnes was Mr. Carson’s landlord, and the two of them were parties to a lease agreement involving real property. As a result of their business relationship, some level of personal contact was inevitable. Things had not gone smoothly. Mr. Barnes had frequently asked Mr. Carson to lock the gates to the property. Just as frequently, Mr. Carson had refused. Mr. Barnes had asked Mr. Carson to provide proof of insurance and a proper estoppel certificate. Mr. Carson had refused. It is undeniable that Mr. Carson’s refusal to lock the gates and failure to provide proof of insurance

and a proper estoppel certificate produced tension in the parties' relationship. R. 65:172:1-2. But there is no reason for that tension to result in a civil stalking injunction.

In entering the injunction, the Court emphasized events that took place on November 4 and 6, but on both occasions Mr. Barnes was merely carrying out his responsibilities as landlord. As to November 4, Mr. Barnes saw pickup trucks and trailers leaving the property loaded up with equipment. Mr. Barnes knew that, under the agreement, "[a]ny alterations or improvements to the Premises" could not be removed from the property, Pl. Ex. 1, ¶ 10, R. 65:124:16-18, so, out of "curio[sity]," he and his wife followed the pickups and trailers for about "a mile," R. 65:121:13-15. The district court never addressed Mr. Barnes' explanation for the November 4 incident and never explained why Mr. Barnes' actions were concerning in light of the parties' relationship and in light of Mr. Barnes' rights under the agreement. *See Salt Lake City v. Lopez*, 935 P.2d 1259, 1264 (Utah Ct. App. 1997) ("Limited contact during legitimate . . . encounters . . . , without conduct directed at causing physical harm or emotional distress to an intended person, does not fall under the statute's purview.").



The district court did reject Mr. Barnes' explanation for driving by Mr. Carson's residence, noting that he already had Mr. Carson's address "on the check." R. 65:174:16-17. But addresses on checks are often outdated, especially checks belonging to those, like Mr. Carson, who work hard to keep their address secret. In addition, given Mr. Carson's stubbornness and cantankerousness in other areas (gate-locking, insurance-providing), Mr. Barnes had every reason to make sure the process of eviction was done "by the book." Finally, the court never reconciled *Mr. Carson's* decision to follow Mr. Barnes for the next twenty or thirty minutes (despite repeated instructions from dispatch to stop doing so, R. 65:119:15-21; 157-63) with the notion that a reasonable commercial tenant would have feared for his own or his family's safety. In light of the parties' business relationship, the November 4 and 6 incidents would not have caused a reasonable commercial tenant to fear for himself or others.

In sum, the October 27 incident was not "directed at" Mr. Carson and so cannot be included in Mr. Barnes' alleged "course of conduct." In addition, the incidents that occurred on November 4 and 6 would not have caused a reasonable person to fear. As a result, the statute's requirement of

at least two acts directed at a person and likely to cause that person to fear is left unfulfilled, and the injunction should be reversed.

**II. THE INJUNCTION UNLAWFULLY RESTRICTS MR. BARNES' RIGHT – UNDER THE U.S. AND UTAH CONSTITUTIONS – TO OWN AND CARRY A FIREARM.**

The injunction wrongly prohibits Mr. Barnes from owning or possessing a firearm. The Second Amendment to the U.S. Constitution and Article 1, Section 6 of the Utah Constitution protect a person's right to own and carry a firearm. This right, under both constitutions, encompasses a person's ability to defend himself against danger and to own and carry weapons in case of confrontation. The right to own and carry weapons, including firearms, is not without limits, but no such limits apply here. Thus, even if the injunction was properly entered, its restriction on Mr. Barnes' right to own and possess firearms cannot stand.

**A. The U.S. and Utah Constitutions Protect an Individual's Right to Own and Carry a Firearm.**

Mr. Barnes has a right under the U.S. and Utah Constitutions to own and carry firearms.

The U.S. Constitution provides: "A well-regulated militia being necessary to the security of a free State, the right of the People to keep and bear arms shall not be infringed." U.S. Const. Amend. II. As construed by

the U.S. Supreme Court, this language “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). As further described in a later opinion—in which the Second Amendment was held to apply against the States—the “Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.” *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3044 (2010).

On their facts, *Heller* and *McDonald* were limited to weapons restrictions in a person’s abode, and the effect those restrictions had on a person’s right to defend “hearth and home.” *Heller*, 554 U.S. at 635; *McDonald*, 130 S. Ct. at 3044. But of course, “[c]onfrontations are not limited to the home.” *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012). Thus, the right to bear arms for self-defense “is as important outside the home as inside,” and includes a person’s right to carry arms in public. *Id.* at 942.

In Utah, a person’s right to own and carry firearms enjoys a similarly “impressive constitutional . . . pedigree.” *Hansen v. Am. Online, Inc.*, 2004 UT 62, ¶ 13, 96 P.3d 950. According to the Utah Constitution, “[t]he individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes

shall not be infringed.” Utah Const. Art. I, § 6. Thus, like the U.S. Constitution, Utah’s Constitution protects a person’s “right ‘to keep and bear arms’ for self-defense or any other lawful purpose.” *Ray v. Wal-Mart Stores, Inc.*, 2015 UT 83, ¶ 26, 795 Utah Adv. Rep. 64.

**B. Federal and Utah Law Do Not Authorize Restrictions on a Person’s Constitutional Right to Own and Carry a Firearm Under these Circumstances.**

Nothing in Federal or Utah law allows Mr. Barnes’ right to own and carry firearms to be restricted under the circumstances presented here. To be sure, the right protected by the U.S. and Utah Constitutions is not unlimited. Under Federal law, the right is not a right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626. Thus, under federal law, felons, the mentally ill, fugitives, children, illegal aliens, dishonorably-discharged veterans, persons who have renounced their U.S. citizenship, and persons who are subject to restraining orders that involve the person’s “intimate partner,” among others, may not “possess” or “receive” any “firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g).

Likewise, Utah law permits the legislature to “defin[e] the lawful use of arms.” Utah Const. Art. 1, § 6. In accordance with that constitutional authorization, the Utah Legislature has restricted the ability of the same kinds of persons (e.g., felons, illegal aliens, children) to own or carry firearms. Utah Code §§ 76-10-503(1)(a), (b), (2), (3).

Here is the problem: Whether under Federal or Utah law, Mr. Barnes falls within none of these restricted categories. He is not a felon, mentally ill, a child, an illegal alien, or a fugitive from justice. He was not dishonorably discharged from the Navy and he has not renounced his U.S. citizenship. True, for purposes of federal law, Mr. Barnes will be subject to a restraining order if this Court upholds the order’s validity, but because Mr. Barnes and Mr. Carson “are not now and never have been intimate partners, the federal restriction on firearm possession simply does not apply.” *Sheeran v. Thomas*, 2014 UT App 285, ¶ 17, 340 P.3d 797.

It does not matter that one of the incidents described at the hearing involved a firearm. In connection with that incident, Mr. Barnes entered a plea in abeyance to two charges of reckless endangerment—both misdemeanors. But those charges have since been dismissed, *see* Addendum B, and the overarching question remains the same: Even in light of Mr.


Barnes' plea, does any provision of Federal or Utah law "specifically" prohibit Mr. Barnes' constitutional right to own and carry firearms? Utah Code § 53-5a-102(2). The answer also remains the same: No. Because no provision of law "specifically" applies under these circumstances, Mr. Barnes may not be denied his constitutional right to "own[], possess[]," or "keep[] a firearm at" his "residence, property, business, or in any vehicle lawfully in [his] possession or lawfully under [his] control." *Id.* § 102(2)(a).

In sum, even if the Court upholds the injunction's general terms, it should vacate and remove the injunction's restriction on Mr. Barnes' right to own and carry firearms.

### CONCLUSION

For these reasons, the Court should reverse the entry of a civil stalking injunction against Mr. Barnes. In the alternative, the Court should vacate and remove the injunction's restriction on Mr. Barnes's ability to own and carry firearms.

DATED this 19th day of October, 2015.

A handwritten signature in black ink, appearing to read 'Bart J. Johnsen', written over a horizontal line.

BART J. JOHNSEN

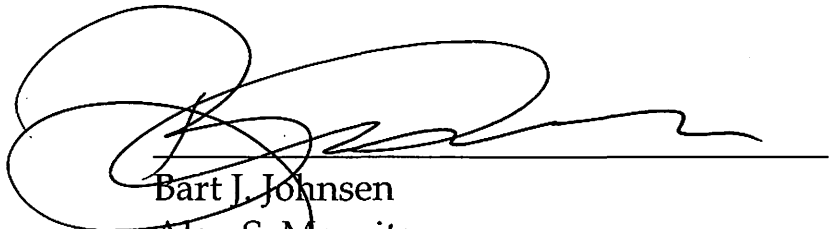
ALAN S. MOURITSEN

Attorneys for

Respondent/ Appellant

### CERTIFICATE OF COMPLIANCE

I hereby certify that in compliance with Rule 24(f)(1) of the Utah Rules of Appellate Procedure, this brief contains 4,819 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with Rule 27(b) of the Utah Rules of Appellate Procedure, this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 14 point.



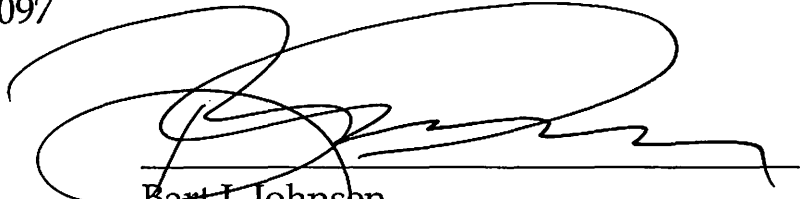
Bart J. Johnsen  
Alan S. Mouritsen  
Attorneys for Defendant/ Appellant



**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of October, 2015, I caused to be served by U.S. mail, postage prepaid, two true and correct copies of the foregoing **OPENING BRIEF** to:

Jeremy M. Shorts, Esq.  
Law Offices of Jeremy M. Shorts, LLC  
766 South 400 East, Suite 205  
Orem, Utah 84097

A large, stylized handwritten signature in black ink, appearing to read 'Bart J. Johnsen', is written over a horizontal line.

Bart J. Johnsen  
Alan S. Mouritsen  
Attorneys for Defendant/ Appellant

# **ADDENDUM A**

01:14:07 PM

Robert Adkins  
District Court Judge



**IN THE THIRD JUDICIAL DISTRICT IN AND FOR  
TOOELE COUNTY, STATE OF UTAH, TOOELE DEPARTMENT**

Judge Robert Adkins

Name	Age	Relationship to Petitioner
<u>Minor children residing</u>	<u>          </u>	<u>          </u>
<u>with Petitioner</u>	<u>          </u>	<u>          </u>
<u>I.C.</u>	<u>12</u>	<u>Child</u>
<u>B.C.</u>	<u>8</u>	<u>Child</u>
<u>          </u>	<u>          </u>	<u>          </u>

**Respondent**

(person who must obey this stalking injunction):

**Describe Respondent**

Tom Barnes  
 First Name Middle Last

Sex Race Date of Birth Height Weight  
 Male White 3/7/1942 \_\_\_\_\_

Other Names Used \_\_\_\_\_

Eye Color Hair Color Social Security Number  
 \_\_\_\_\_ Grey \_\_\_\_\_  
 (last four digits only)

Address  
13303 Kingsride Lane

Distinguishing features (scars, tattoos, limp, etc.) \_\_\_\_\_

Street

Houston, TX 77079

Driver's license issued by  
 (State): \_\_\_\_\_ Expires \_\_\_\_\_

City --- State --- Zip

**Warning! [ X ]** Weapon involved (Box to be marked if applicable).

There was a hearing on (date): February 11, 2015. The Respondent was given notice and an opportunity to be heard in the hearing that gave rise to this order. The following people were present at the hearing:

[ X ] Petitioner [ X ] Petitioner's attorney (name): Jeremy M. Shorts  
 [ X ] Respondent [ X ] Respondent's attorney (name): Richard Tanner  
 [ X ] Other (name) Witnesses Stuart Burgess and Crystal Burgess

The Court reviewed the *Request for Civil Stalking Injunction* and: [ x ] received argument and evidence, [ ] accepted the stipulation of the parties, [ ] entered the default of the Respondent for failure to appear, [ ] other: \_\_\_\_\_, and finds that there is reason to believe that stalking has occurred and that the Respondent is the stalker. (Utah Code Sect77-3a-101)

*The Court finds that Respondent made numerous visits to the leased property. The court understands that the lease gives Respondent some reasonable right to inspect the leased premises. The court finds that Respondent's actions went beyond that reasonable right to inspect under Utah law and/or the right to inspect stated in the Lease (see Lease at ¶12). Respondent had previously seen Mr. & Mrs. Burgess on the leased property, who were legally present as either licensees, permittees or coworkers of Petitioner who were engaged in activity on the leased property for the benefit of the Petitioner. The court finds the testimony of Mr. & Mrs. Burgess more credible than the testimony of Respondent. Court believes that on October 27, 2014 and in the presence of Mr. & Mrs. Burgess, a firearm was*

displayed by Respondent and loaded with a magazine inserted into the pistol. The Court finds at a minimum that this constituted brandishing a weapon, which conduct is concerning.

In reviewing Utah's stalking statute (including Utah Code Ann 77-3a-106.5), the Court finds that Respondent did approach or confront Petitioner at the leased premises and that when the Petitioner was not present he returned to the leased premises and contacted Mr. & Mrs. Burgess. The Court finds that Respondent also appeared, monitored, observed or surveilled Petitioner's residence. After hearing Respondent's explanation, the Court finds there was no real reason to drive by Petitioner's residence.

These actions rightfully caused a concern to the Petitioner where the Respondent had cut a cable for the key to the generator on the property, previously showed a firearm, and had prior confrontations on the leased premises and Petitioner's home.

The Court finds that Petitioner intentionally or knowingly engaged in a course of conduct directed at Petitioner and knew or should have known that the course of conduct would cause a reasonable person to fear for the person's own safety or the safety of a third person (Petitioner himself, his coworkers, his wife and/or his minor children). The Court finds that Petitioner's stalking actions occurred on more than two occasions.

The Court finds that the stalking has been established. The stalking injunction will continue as stated herein for a period of three years. This shall include a restriction where the Respondent shall not be permitted to own or possess a firearm. Service of this Order upon respondent shall be completed and effective through NEF E-Filing Notification to Respondent's counsel.

**The Respondent must obey all orders initialed by the judicial officer.** These orders replace any previous temporary stalking injunction in this case. Violation of these orders is a criminal Class A Misdemeanor, punishable by up to one year in jail and a fine. A second or subsequent violation can result in more severe penalties.

**1 [X] Personal Conduct Order**

Do not stalk the Petitioner. This means you must not follow, threaten, annoy, harass, or cause distress to the Petitioner. For a legal definition of stalking, see Utah Code, sections 76-5-106.5 and 77-3a-101.

**2 [X] No Contact Order**

Do not contact, phone, text, mail, e-mail, or communicate either directly or indirectly in any way with the Petitioner and any person listed on page 1 of this order.

**3 [X] Stay Away Order**

Stay away from:

- ☒ a. The Petitioner's current or future: ☒ Vehicle ☒ Job ☒ Home, premises and property (*list current addresses below*)

Home address: 417 Highland Drive, Tooele, Utah 84074

Shop address: 553 North 7<sup>th</sup> Street, Tooele, Utah 84074

Describe vehicles: 2005 Ford F-350 Truck dark grey; 2013 Ford Edge silver; 1996 Dodge 250 red.

- ☐ b. Other (*specify*): \_\_\_\_\_

**5 [X] Other Orders: Respondent shall not be permitted to own or possess a firearm.**

**Warnings to the Respondent:**

- Attention: This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order.
- This order is valid in all U.S. states and territories, the District of Columbia, and tribal lands. If you go to another U.S. state, territory or tribal land to violate this order, a federal judge can send you to prison.
- It may be a federal crime for you to have, possess, transport, ship, or receive any firearm or ammunition, including hunting weapons, while this civil stalking injunction is in effect.

This order expires in three years on: February 11 2018  
Month Day Year

-----END OF INJUNCTION – SIGNATURE AT TOP-----

## **ADDENDUM B**

## Utah Code § 77-3a-101

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.

(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be issued in the form adopted by the Administrative Office of the Courts.

(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.

(4) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner; however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;



(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

(5)(a) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(i) respondent may be enjoined from committing stalking;

(ii) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(iii) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

(iv) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(b) If the petitioner and respondent have minor children, the court shall follow the provisions of Section 78B-7-106 and take into consideration the respondent's custody and parent-time rights while ensuring the safety of the victim and the minor children. If the court issues a civil stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered.

(6) Within 10 days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within 10 days from the date the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on its face:

(i) that the respondent is entitled to a hearing, upon written request within 10 days of the service of the order;

(ii) the name and address of the district court where the request may be filed;

(iii) that if the respondent fails to request a hearing within 10 days of service, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and that the civil stalking injunction expires three years after service of the ex parte civil stalking injunction; and

(iv) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

(7) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime

you may have committed in disobeying this order."

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within 10 days of service of the ex parte civil stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking injunction without further notice to the respondent and expires three years from the date of service of the ex parte civil stalking injunction.

(10) If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.

(11) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil stalking injunction on the respondent.

(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.

(12) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or modified civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court which granted it.

(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

(15) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The district court shall hear and decide all matters arising pursuant to this section.

(16) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees.

(17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.

## Utah Code § 76-5-106.5

(1) As used in this section:

(a) "Conviction" means:

- (i) a verdict or conviction;
- (ii) a plea of guilty or guilty and mentally ill;
- (iii) a plea of no contest; or
- (iv) the acceptance by the court of a plea in abeyance.

(b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

(A) directly, indirectly, or through any third party; and

(B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

(A) approaches or confronts a person;

(B) appears at the person's workplace or contacts the person's employer or coworkers;

(C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

(D) sends material by any means to the person or for the

purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;

(E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or

(F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(d) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person;  
or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or

(e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d) or (e).

(9)(a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.

(b) A permanent criminal stalking injunction shall be issued by the court at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.



(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (11), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (11), likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

(c) any other orders the court considers necessary to protect the victim and members of the victim's immediate family or household.

(11) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children. If the court issues a permanent criminal stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and that court may modify the injunction to balance the parties' custody and parent-time rights.

(12) Except as provided in Subsection (11), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

(13) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(14) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(15)(a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(16) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

**Utah Const. Art. 1, § 6**

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.

## Utah Code § 53-5a-102

### § 53-5a-102. Uniform firearm laws

(1) The individual right to keep and bear arms being a constitutionally protected right under Article I, Section 6 of the Utah Constitution, the Legislature finds the need to provide uniform civil and criminal firearm laws throughout the state.

(2) Except as specifically provided by state law, a local authority or state entity may not:

(a) prohibit an individual from owning, possessing, purchasing, selling, transferring, transporting, or keeping a firearm at the individual's place of residence, property, business, or in any vehicle lawfully in the individual's possession or lawfully under the individual's control; or

(b) require an individual to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(3) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is uniformly applicable throughout this state and in all its political subdivisions and municipalities.

(4) All authority to regulate firearms is reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities.

(5) Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on either public or private property.

(6) As used in this section:

(a) "firearm" has the same meaning as defined in Section 76-10-501;  
and

(b) "local authority or state entity" includes public school districts, public schools, and state institutions of higher education.

(7) Nothing in this section restricts or expands private property rights.

## Utah Code § 76-10-503

(1) For purposes of this section:

(a) A Category I restricted person is a person who:

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

(iii) is on parole from a secure facility as defined in Section 62A-7-101;

(iv) within the last 10 years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

(v) is an alien who is illegally or unlawfully in the United States; or

(vi) is on probation for a conviction of possessing:

(A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

(B) a controlled substance analog; or

(C) a substance listed in Section 58-37-4.2.

(b) A Category II restricted person is a person who:

(i) has been convicted of any felony;

(ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is in possession of a dangerous weapon and is knowingly

and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993),<sup>1</sup> or has been committed to a mental institution;

(viii) has been dishonorably discharged from the armed forces; or

(ix) has renounced his citizenship after having been a citizen of the United States.

(c) As used in this section, a conviction of a felony or adjudication of delinquency for an offense which would be a felony if committed by an adult does not include:

(i) a conviction or adjudication of delinquency for an offense pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices not involving theft or fraud; or

(ii) a conviction or adjudication of delinquency which, according to the law of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the person's civil rights have been restored unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(d) It is the burden of the defendant in a criminal case to provide evidence that a conviction or adjudication of delinquency is subject to an exception provided in Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or adjudica-

tion of delinquency is not subject to that exception.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a second degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.



(7)(a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under Section 24-3-103;

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

(8)(a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

(b) A person who violates Subsection (8)(a) when the recipient is:

(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

(iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is guilty of a third degree felony; or

(iv) a person described in Subsection (1)(b) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

(9)(a) A person may not knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under circumstances which the person knows would be a violation of the law.

(b) A person may not provide to a dealer or other person any information that the person knows to be materially false information with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

(c) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) A person who violates this Subsection (9) is guilty of:

(i) a third degree felony if the transaction involved a firearm;

or

(ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

## **United States Const. Amend. II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**18 U.S.C.A. § 922(g)**

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or

child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

## **ADDENDUM C**

3RD DISTRICT COURT - TOOELE  
TOOELE COUNTY, STATE OF UTAH

STATE OF UTAH vs. TOM BARNES

CASE NUMBER 141300512 State Felony

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CHARGES

Charge 1 - 76-5-112 - RECKLESS ENDANGERMENT 3rd Degree Felony  
(amended) to Class A Misdemeanor

Offense Date: October 27, 2014

Plea: December 23, 2014 Guilty

Disposition: June 19, 2015 Dismissed (w/o prej)

Charge 2 - 76-5-112 - RECKLESS ENDANGERMENT 3rd Degree Felony  
(amended) to Class A Misdemeanor

Offense Date: October 27, 2014

Plea: December 23, 2014 Guilty

Disposition: June 19, 2015 Dismissed (w/o prej)

CURRENT ASSIGNED JUDGE

ROBERT ADKINS

PARTIES

Defendant - TOM BARNES

Represented by: GARY K SEARLE

Represented by: RICHARD TANNER

Plaintiff - STATE OF UTAH

Represented by: GARY K SEARLE

Bondsman - REBEL BAIL BOND INC

DEFENDANT INFORMATION

Defendant Name: TOM BARNES

Offense tracking number: 46278495

Date of Birth: March 07, 1942

Law Enforcement Agency: TOOELE COUNTY SHERIF

LEA Case Number: 46278495

Prosecuting Agency: TOOELE COUNTY

Agency Case Number: 141408746

ACCOUNT SUMMARY

TOTAL REVENUE Amount Due: 1,000.00

Amount Paid: 1,000.00

Printed: 07/27/15 16:35:01

Page 1

Credit:	0.00
Balance:	0.00
PAPER BOND TOTALS Posted:	8,055.00
Forfeited:	0.00
Exonerated:	8,055.00
Balance:	0.00

REVENUE DETAIL - TYPE: COURT COSTS

Amount Due:	1,000.00
Amount Paid:	1,000.00
Amount Credit:	0.00
Balance:	0.00

NONMONETARY BOND DETAIL - TYPE: Surety

Posted By:	REBEL BAIL BOND INC (#53780)
Posted:	8,055.00
Forfeited:	0.00
Exonerated:	8,055.00
Balance:	0.00

PROCEEDINGS

10-29-14 Filed: INFORMATION/INDICTMENT  
10-29-14 Case filed  
10-29-14 Filed: From an Information  
10-29-14 Judge ROBERT ADKINS assigned.  
10-29-14 Filed: TCSO PC Statement  
10-29-14 Filed: Return of Electronic Notification  
10-29-14 INITIAL APPEARANCE scheduled on November 03, 2014 at 10:28 AM  
in Room 221 with Judge ADKINS.  
11-03-14 Minute Entry - Minutes for INITIAL APPEARANCE  
Judge: ROBERT ADKINS  
PRESENT  
Clerk: nancyw  
Prosecutor: SEARLE, GARY K  
Defendant not present

Audio

Tape Count: 10:50

HEARING



Defendant failed to appear for hearing, he bonded out of the jail, Mr. Searle with verify with the jail the date he was given to appear, and he will notify the court.

11-03-14 Note: \*\*\*The jail gave the defendant the date of 11-17-14 to appear for court, per the county attorney\*\*\*

11-03-14 INITIAL APPEARANCE scheduled on November 17, 2014 at 10:28 AM in Room 221 with Judge ADKINS.

11-11-14 Filed: Appearance of Counsel/Notice of Limited Appearance

11-11-14 Filed: Return of Electronic Notification

11-17-14 ROLL CALL scheduled on December 23, 2014 at 01:30 PM in Room 221 with Judge ADKINS.

11-17-14 Minute Entry - Minutes for Initial Appearance

Judge: ROBERT ADKINS

PRESENT

Clerk: nancyw

Prosecutor: SEARLE, GARY K

Defendant

Defendant's Attorney(s): TANNER, RICHARD

Audio

Tape Count: 11:34

INITIAL APPEARANCE

A copy of the Information is given to the defendant.

The Information is read.

Advised of charges and penalties.

The defendant is advised of right to counsel.

Defendant advised he is not to possess or carry a firearm while this felony case is pending. If he does, he could be charged with another felony.

ROLL CALL is scheduled.

Date: 12/23/2014

Time: 01:30 p.m.

Location: Room 221

TOOELE COURTS COMPLEX

74 SOUTH 100 EAST

TOOELE, UT 84074

Before Judge: ROBERT ADKINS

11-17-14 Filed: notice of hearing

11-25-14 Filed: REBEL BAIL BOND INC 8055.00

11-25-14 Bond Account created Total Due: 8055.00

11-25-14 Bond Posted Non-Monetary Bond: 8,055.00

12-23-14 Filed: amended information

12-23-14 Filed: statement of defendant entering a guilty plea

12-23-14 Bond Exonerated -8,055.00

12-23-14 Charge 1 Disposition is Plea in abeyanc

12-23-14 Charge 1 amended to Class A Misdemeanor

12-23-14 Charge 2 amended to Class A Misdemeanor

12-23-14 Charge 2 Disposition is Guilty

12-23-14 Charge 2 Disposition is Plea in abeyanc

12-23-14 Minute Entry - Plea in abeyance

Judge: ROBERT ADKINS

PRESENT

Clerk: nancyw

Prosecutor: SEARLE, GARY K

Defendant

Defendant's Attorney(s): TANNER, RICHARD

Audio

Tape Count: 2:03

Change of Plea Note

On states motion defendant pled guilty to amended counts 1 and 2 of reckless endangerment, both MA to be held in abeyance rather than agg assault both F3.

PLEA IN ABEYANCE

Defendant's plea is held in abeyance.

PLEA IN ABEYANCE ADDITIONAL CONDITIONS

Guilty plea held in abeyance for 6 months. Conditons: No further violations, pay fees in full

Tracking review date for Plea in Abeyance: 06/23/2015

The defendant is ordered to pay the fee of 1000.00 for COURT COSTS.

CASE NUMBER 141300512 State Felony

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Pay fine to The Court. This can be paid online at:  
[www.utcourts.gov/payments](http://www.utcourts.gov/payments).

12-23-14 Fee Account created	Total Due:	1000.00
12-23-14 COURT COSTS	Payment Received:	1,000.00
01-02-15 Filed order: plea in abeyance, sentence, judgment, commitment		
Judge ROBERT ADKINS		
Signed January 02, 2015		
06-19-15 Charge 1 Disposition is Dismissed (w/o		
06-19-15 Charge 2 Disposition is Dismissed (w/o		
06-19-15 Case Closed		
Disposition Judge is ROBERT ADKINS		