

2015

## State of Utah Plaintiff/Appellee vs. Chadley Keith Calvert Defendant/Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

### Recommended Citation

Reply Brief, *Utah v Calvert*, No. 20150213 (Utah Court of Appeals, 2015).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/3364](https://digitalcommons.law.byu.edu/byu_ca3/3364)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

Case No. 20150213-CA

---

IN THE  
UTAH COURT OF APPEALS

---

State of Utah  
Plaintiff/Appellee

vs.

CHADLEY KEITH CALVERT  
Defendant/Appellant

---

REPLY BRIEF OF APPELLANT

---

APPEAL FROM A CONVICTION OF  
THREATENING WITH A DANGEROUS WEAPON AND AGGRAVATED  
ASSAULT IN THE THIRD DISTRICT COURT

---

HERSCHEL BULLEN (0482)  
Attorney at Law  
369 East 900 South, No. 302  
Salt Lake City, Utah 84111  
Telephone: (801) 583-1880

Counsel for Appellant

JOHN J. NIELSEN, ESQ.  
Utah Attorney General  
Criminal Division  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84114  
Telephone: (801) 366-0180

Counsel for Appellee

FILED  
UTAH APPELLATE COURTS

APR 14 2016

Appellant Is Not Incarcerated

Case No. 20150213-CA

---

IN THE  
UTAH COURT OF APPEALS

---

State of Utah  
Plaintiff/Appellee

vs.

CHADLEY KEITH CALVERT  
Defendant/Appellant

---

REPLY BRIEF OF APPELLANT

---

APPEAL FROM A CONVICTION OF  
THREATENING WITH A DANGEROUS WEAPON AND AGGRAVATED  
ASSAULT IN THE THIRD DISTRICT COURT

---

HERSCHEL BULLEN (0482)  
Attorney at Law  
369 East 900 South, No. 302  
Salt Lake City, Utah 84111  
Telephone: (801) 583-1880

Counsel for Appellant

JOHN J. NIELSEN, ESQ.  
Utah Attorney General  
Criminal Division  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84114  
Telephone: (801) 366-0180

Counsel for Appellee

Appellant Is Not Incarcerated

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
POINT I - THE JURY DID NOT FIND THE AGGRAVATED ASSAULT AND BRANDISHING COUNTS TO BE BASED UPON “DIFFERENT CONDUCT.” COUNSEL WAS THEREFORE INEFFECTIVE FOR NOT SEEKING TO DISMISS OR MERGE THE BRANDISHING COUNT .....	1
POINT II - THE CONVICTION FOR THREATENING WITH A DANGEROUS WEAPON MERGES WITH AGGRAVATED ASSAULT. COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO MERGE AND THE DEFENDANT WAS PREJUDICED .....	8
POINT III - THE TRIAL COURT ERRED IN ADMITTING EVIDENCE UNDER RULE 404(B) .....	10
POINT IV - CALVERT’S INEFFECTIVE ASSISTANCE CLAIM THAT THE JURY MIGHT HAVE BEEN EXPOSED TO IMPROPER MATERIAL DURING DELIBERATIONS BECAUSE THEY HAD ACCESS TO A PROSECUTION LAPTOP TO LISTEN TO A 911 CALL IS WELL TAKEN .....	19
CONCLUSION .....	19
CERTIFICATE OF RULE 24 COMPLIANCE .....	20
CERTIFICATE OF SERVICE .....	20
ADDENDUM A - INFORMATION	
ADDENDUM B - JURY INSTRUCTIONS	
ADDENDUM C - VERDICT FORMS	
ADDENDUM D - HOLLADAY JUSTICE COURT DOCKET	

## TABLE OF AUTHORITIES

### **Federal Cases**

<i>United States v. Commanche</i> , 577 F.3d 1261 (10th Cir. 2009) .....	11
<i>United States v. Curley</i> , 639 F.3d 50 (2.d Cir. 2011) .....	14
<i>United States v. Klebig</i> , 600 F.3d 700 (7th Cir. 2009).....	11
<i>United States v. Temple</i> , 862 F.2d 821 (10th Cir. 1988) .....	11

### **State Cases**

<i>Angel Investors, LLC v. Garrity</i> , 2009 UT 40, 216 P.3d 944.....	11
<i>Menzies v. State</i> , 2014 UT 40, 344 P.3d 581 .....	7
<i>State v. Baker</i> , 671 P.2d 152 (Utah 1983).....	2
<i>State v. Candedo</i> , 2010 UT 32, 232 P.3d 1008 .....	10
<i>State v. Chukes</i> , 2003 UT App 155, 71 P.3d 624 .....	3
<i>State v. Cravens</i> , 2000 UT App 344, 15 P.3d 635 .....	2
<i>State v. Cuttler</i> , 2015 UT 95 (Sup.Ct.) .....	15, 16, 17
<i>State v. Dunn</i> , 850 P.2d 1201 (Utah Sup.Ct. 1993) .....	13
<i>State v. Finlayson</i> , 2000 UT 10, 994 P.2d 1243 .....	8
<i>State v. Garrido</i> , 2013 UT App 245, 314 P.3d 1014 .....	6
<i>State v. Hattrich</i> , 2013 UT App 177, 317 P.3d 433.....	4, 5
<i>State v. Houskeeper</i> , 2002 UT 118, 62 P.3d 444.....	2
<i>State v. Labrum</i> , 2014 UT App 5, 318 P.3d 1151 .....	17
<i>State v. Lee</i> , 2006 UT 5, 128 P.3d 1179 .....	9
<i>State v. Lowther</i> , 2015 UT App 180, 356 P.3d 173 .....	17, 18

<i>State v. Lucero</i> , 2014 UT 15, 328 P.3d 841 .....	12, 13
<i>State v. Oldroyd</i> , 685 P.2d 551 (Utah 1984) .....	3, 5, 6
<i>State v. Perea</i> , 2013 UT 68, ¶ 97, 322 P.3d 624, 646 (Sup.Ct.) .....	19
<i>State v. Phelps</i> , 2005 UT App 451 .....	2
<i>State v. Rasabout</i> , 2013 UT App 71, 299 P.3d 625 .....	4, 5
<i>State v. Reece</i> , 2015 UT 45, 349 P.3d 712, 720 (Sup.Ct.) .....	8, 12, 14
<i>State v. Ross</i> , 2007 UT 89, 174 P.3d 628 .....	8
<i>State v. Roth</i> , 2001 UT 103, 37 P.3d 1099 .....	3, 4
<i>State v. Shickles</i> ," 2014 UT 15, P 32, 328 P.3d 841 .....	13, 14, 15, 16, 17, 18
<i>State v. Smith</i> , 2003 UT App 52, 65 P.3d 648 .....	6, 7
<i>State v. Sommerville</i> , 2013 UT App 40, 297 P.3d 665 .....	19
<i>State v. Tillman</i> , 750 P.2d 546 (Utah 1987) .....	8
<i>State v. Verde</i> , 2012 UT 60, ¶ 296 P.3d 67 .....	17, 18

### **Statutes and Rules**

Utah Code Ann. § 76-1-402(1) .....	2, 3, 9
Utah Code Ann. § 76-5-202 .....	8, 9
Utah R.Crim. P. 22(e) .....	10
Utah R. Evid. Rule 104(b) .....	12
Utah R. Evid. Rule 403 .....	17
Utah R. Evid. Rule 404(b) .....	10, 11, 18
Utah R. Evid. Rule 606 .....	5, 6

## POINT I

### **THE JURY DID NOT FIND THE AGGRAVATED ASSAULT AND BRANDISHING COUNTS TO BE BASED UPON “DIFFERENT CONDUCT.” COUNSEL WAS THEREFORE INEFFECTIVE FOR NOT SEEKING TO DISMISS OR MERGE THE BRANDISHING COUNT.**

The State is wedded to the proposition that the charges were based on separate conduct. See, e.g., Br. Resp., 24. There is, however, no support for this in the charging document. The Information in this case mentions no specific victim in either the third degree felony Aggravated Assault (Dangerous Weapon) count or the class A misdemeanor Threatening with or Using a Dangerous Weapon in a Fight or Quarrel count. R.1-3. The Information is included in Addendum A. The defendant was found guilty of both counts. R.166-167. The verdict forms are included in Addendum C. No particular victim is mentioned in the verdict forms. Neither is there any guidance from the jury instruction, R.199, Addendum B.

The State accurately states that the Aggravated Assault elements instruction specifically names Hugo Holguin as a victim. R.196. The Threatening elements instruction, however, names no particular victim. R.199. So while, factually, it may be true that Holguin was the primary victim of the Aggravated Assault charge, the State’s argument that such a verdict precludes a finding by the jury that those same facts also formed the basis of the Threatening conviction is inaccurate.

The State seeks to limit the Threatening charge to the concept that it must be based upon the same conduct as the Aggravated Assault in order to be subject to

dismissal or a lesser included offense. Br. Resp. 14-24. But the "more restrictive standard," the "necessarily-included standard," is "limited to cases where the prosecution requests the instruction." Br. Aplt., 16, citing *State v. Baker*, 671 P.2d 152, 156 (Utah 1983); *State v. Houskeeper*, 2002 UT 118, ¶12-13, 62 P.3d 444. That did not occur and the defendant conceded that it is not a statutorily lesser included offense, and should not be analyzed under that rubric. Br. Aplt. at 16.

The defendant concurs that, "The (threatening) offense requires proof that the defendant drew or exhibited any dangerous weapon in an angry and threatening manner, and did not do so in necessary self-defense." *State v. Phelps*, 2005 UT App 451, cited Br. Resp., 17. The State's further reference to *State v. Cravens*, 2000 UT App 344, 15 P.3d 635, Br. Resp., 17, is of little value and unhelpful.

There can be little dispute, under whatever view of the various versions of the testimony of the witnesses, that Mr. Calvert's actions were part of a single criminal episode. "A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions of this code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision." Utah Code Ann. § 76-1-402(1).



In order for a charge to be deemed a lesser included offense, “there must be some overlapping of the statutory elements of the offenses. If that overlapping exists and the evidence is ambiguous and susceptible to alternative interpretations, the trial court must give a lesser included offense instruction if any one of the alternative interpretations provides both a “rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.” *State v. Oldroyd*, 685 P.2d 551, 553-54 (Utah 1984). That language applies squarely to this case and is one reason that counsel should have moved to dismiss or later merge the Threatening charge into the Aggravated Assault. It is not intended that a defendant be punished for both the greater and the lesser charge, “when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions . . .” § 76-1-402(1).

It is well established that, “acts are separate if they are not necessary to each other or are sufficiently separated by time and space.” Br. Resp., 17, citing *State v. Chukes*, 2003 UT App 155, ¶ 21, 71 P.3d 624, 629. Certainly, here, the incident occurred within a brief period of time and all within the same space, Mr. Calvert’s home. To say the least the evidence was ambiguous, warranting the threatening charge to be treated as a lesser included offense. *Chukes* and the cases it relies upon support Calvert’s argument. Br. Resp., 19. The State’s reference to *State v.*

*Roth*, 2001 UT 103, 37 P.3d 1099, involving convictions of possession of methamphetamine and operating a clandestine laboratory, is sufficiently attenuated from the instant matter that it provides no guidance. Br. Resp., 19.

The State argues that there was a “clear break” in time between the offenses, and that counsel did not argue that pointing the gun at Hugo was also the basis of the Threatening charge. Br. Resp. 20. It is no surprise that defense counsel failed in this regard, as he missed altogether the dismissal/lesser included/merger argument which is made here on appeal. Such a failure is the essence of ineffective assistance of counsel.

Discussing the issue of multiplicity, *State v. Rasabout*, 2013 UT App 71, 299 P.3d 625 and *State v. Hattrich*, 2013 UT App 177, ¶ 33, 317 P.3d 433, cited by the State, Br. Resp., 21, were discussed extensively in defendant’s opening brief. Br. Aplt., 19-21. The State’s position, citing those cases as authority, is that “multiplicity forbids the State from charging a single offense as multiple offenses – that is, from charging multiple counts of the same offense. Br. Resp., 21. To that the defendant reiterates that the statutes themselves must be analyzed to determine, under the facts of the case, whether a charge is multiplicitous, specifically, “the ‘course of conduct’ as opposed to individual acts’ is what is prohibited.” There can be “but one penalty,” even though different statutes may be involved. Br.

Aplt., 20, citing *Rasabout*, *Hattrick*, as well as *State v. Oldroyd*, 685 P.2d at 554.

Br. Aplt., 19-21.

It is virtually impossible to second-guess what evidence the jury chose to underpin its Threatening verdict. Utah R. Evid. Rule 606 states, *inter alia*, as follows:

(b) During an inquiry into the validity of a verdict or indictment.

(1) Prohibited testimony or other evidence. -- During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) Exceptions. -- A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention; or

(B) an outside influence was improperly brought to bear on any juror.

As the State points out, there was a single criminal episode in which, depending upon the witness, the Threatening charge could well have been founded upon pointing of the gun at Hugo Holguin in the presence of others. Br. Resp., 22. Indeed, it is as likely that was the case as any other scenario. Consequently counsel was remiss in failing to bring the multiplicity issue to the attention of the court, so that the Threatening charge could either be clarified by instruction to the

jury, dismissed as multiplicitous, or a determination made as to whether to deem it a lesser offense.

The fact that the State indicates there were “multiple variants.” Agreed. This fact simply supports the defendant’s argument that the evidence was sufficiently ambiguous to warrant the Threatening charge to be treated as a lesser included offense. Br. Resp., 22, citing *State v. Garrido*, 2013 UT App 245, 314 P.3d 1014. No attempt was made by counsel to capitalize on the single criminal episode nature of the circumstances, let alone the other possible scenarios which might have been argued. So it cannot be assumed that the court would not have taken some action consistent with counsel’s requests, depending upon the option chosen. Inasmuch as the jury verdict cannot be impeached, Utah R. Evid. Rule 606, it is prudent to conclude not only that the jury based its verdicts on the same facts, but that, in any event, the Threatening charge was lesser or should have merged under that doctrine.

The State’s reliance on *State v. Smith*, 2003 UT App 52, ¶ 28, 65 P.3d 648, Br. Resp., 22-23, is also misplaced. *Smith* relied on *State v. Oldroyd, supra*, to support a claim of plain error. In *Oldroyd*, it was held that the defendant's use of a weapon could have constituted either aggravated assault or threatening with a dangerous weapon and that the failure of the trial court to instruct the jury on this lesser included offense, after the defendant requested such an instruction, was

reversible error. Id., 685 P.2d, ¶ 29. The problem for the State with *Smith* is that, unlike the present matter, “Smith never requested such an instruction and maintained his innocence throughout the trial.” ¶ 29. But here, the State’s reference to an “all or nothing” defense, Br. Resp., 24 n.4, is inapposite as that was not exploited by Calvert. He affirmatively contended that he did obtain and use a gun. R.284:61-62. Consequently, *Smith* is not of relevance.

The State’s reason for its reference to *Menzies v. State*, 2014 UT 40, ¶ 222, 344 P.3d 581, Br. Resp., 24, is unclear. In the paragraph referenced, the Supreme Court discusses the efficacy of the reasonable doubt instruction, having nothing to do with the instant matter. It is not otherwise apparent what this case establishes.

The Utah Supreme Court has recently laid the matter of when a lesser included offense instruction must be given:

Even if the statutory elements of a lesser included offense overlap with those of the charged offense, “a defendant’s right to a lesser included offense instruction is limited by the evidence and only justified where there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.” In making that determination, *trial courts must “view the evidence in the light most favorable to the defendant” and cannot “weigh the evidence.”* Rather, “*when the evidence is ambiguous and therefore susceptible to alternative interpretations, and one alternative would permit acquittal of the greater offense and conviction of the lesser, a jury question exists and the court must give a lesser included offense instruction at the request of the defendant.*” This standard assures that lesser-included-offense instructions serve their intended purpose of safeguarding defendant’s constitutional right to a fair trial without “allow[ing] the jury to return a compromise, or other unwarranted verdict.”

*State v. Reece*, 2015 UT 45, ¶ 22, 349 P.3d 712, 720 (Sup.Ct.) (emphasis added; internal citations omitted). Thus, for the reasons set forth herein, a lesser included offense was appropriate in lieu of a second count (as well as a motion to merge).

For the reasons set forth in defendant's opening brief and above, counsel was ineffective in failing to move to dismiss, delineate as a lesser included offense, or merge the Threatening charge. The defendant was prejudiced by the failure.

## POINT II

### **THE CONVICTION FOR THREATENING WITH A DANGEROUS WEAPON MERGES WITH AGGRAVATED ASSAULT. COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO MERGE AND THE DEFENDANT WAS PREJUDICED.**

The State incorrectly asserts that merger can only occur in kidnapping or detention situations such as described in *State v. Finlayson*, 2000 UT 10, 994 P.2d 1243. Br. Resp., 25. This is inaccurate. The merger proposition was considered and rejected, but for reasons not pertaining to its inherent applicability or because it did not involve some form of detention, in a case involving burglary and homicide. *State v. Tillman*, 750 P.2d 546, 568-72 (Utah 1987)(affirming the death penalty); *State v. Ross*, 2007 UT 89, ¶ 61, 174 P.3d 628 (“an underlying felony that constitutes the aggravating circumstance merges with the conviction for aggravated murder pursuant to Utah Code section 76-5-202”)(In 2008 this statute was amended to state, “(a) Any aggravating circumstance described in Subsection

(1) or (2) that constitutes a separate offense does not merge with the crime of aggravated murder.” Utah Code Ann. § 76-5-202(5)(a)&(b). In any event the State’s premise, that merger can only be statutory or confined to detention cases, is inaccurate. “We recognized, however, that "section 76-1-402 . . . is not the only basis for finding that one set of facts may give rise to a merger of two or more separate crimes so as to preclude a multitude of convictions for essentially the same conduct." *State v. Lee*, 2006 UT 5, ¶ 30, 128 P.3d 1179. As the Court stated in *Lee*:

In other words, we recognized that, in some factual scenarios, crimes may be so related that they must merge even though neither is a lesser included offense of the other under section 76-1-402. Where two crimes are defined narrowly enough that proof of one does not constitute proof of the other, but broadly enough that both may arise from the same facts, merger may be appropriate. Otherwise, a criminal defendant could be punished twice for conduct that amounts to only one offense, a result contrary to protections against double jeopardy in general, see *State v. Harris*, 2004 UT 103, P22, 104 P.3d 1250, and the merger doctrine in particular, see *State v. Lopez*, 2004 UT App 410, P8, 103 P.3d 153 ("Courts apply the merger doctrine as one means of alleviating the concern of double jeopardy that a defendant should not be punished twice for the same crime.").

*Id.*, ¶31. Thus, the State’s position that merger can only apply to kidnapping/detention situations is completely erroneous.

The merger issue, both statutory and otherwise, is discussed at great length in defendant’s opening brief. See Br. Appt. Point II, 23-27. Counsel’s failure to move to merge was ineffective and prejudicial, for which reversal and remand is

appropriate. Also, as noted, this Court, however, has authority to effectuate the merger based upon Utah R.Crim. P. 22(e). See *State v. Candedo*, 2010 UT 32, ¶ 9, 232 P.3d 1008, 1011. Br. Aplt., 27.

### **POINT III**

#### **THE TRIAL COURT ERRED IN ADMITTING EVIDENCE UNDER RULE 404(b).**

As explained in defendant's opening brief, the extraneous bad act evidence allowed by the trial had a little tendency to substantiate the facts of the case at hand, and may simply have served to make the defendant look either weird, just a bad neighbor, or both. "The police report indicated that on October 28, 2008, Mr. Calvert called the police to report that he approached Little, told her to move, that she pushed and punched him, but she was drunk and fell on the ground. Br. Aplt. 28; R.95. No gun was employed. Ms. "Little reported that he was taking pictures of her house, that she went outside he yelled at her, calling her names and "made threats at my life like always." Id. He then attacked her, pushing her and hitting her twice in the head. Id." The charges never went to court and verifying which neighbor was the accurate reporter of the facts as they actually occurred would be an impossible task at the present time. The evidence, being the only other evidence not directly related to the instant offense, and therefore being likely to assume an exaggerated importance, should not have been admitted. It is error to admit evidence of which the only real value is to cause the jury to see Calvert as an



odd man and perhaps a dangerous one. See *United States v. Klebig*, 600 F.3d 700, 722 (7th Cir. 2009). Such evidence is “propensity” evidence which is improper. Likewise, “a prior assault or battery conviction is immaterial to a self defense claim in a separate incident except to suggest conformity,” and therefore improper. *United States v. Commanche*, 577 F.3d 1261, 1268 (10th Cir. 2009). The Tenth Circuit Court of Appeals has also stated regarding such equivocal evidence,

If weak circumstantial evidence of prior bad acts is admitted under Rule 404(b), there is an inherent danger of prejudice to the defendant. The government cannot conduct a mini-trial on acts the defendant was never charged with under the guise of Rule 404(b). The particular evidence at issue here may be relevant under Rule 401, but the probative value of such precarious evidence is substantially outweighed by the danger of unfair prejudice to the defendant under Rule 403.

*United States v. Temple*, 862 F.2d 821, 824 (10th Cir. 1988).<sup>1</sup> The danger of the Little evidence is very clear. It simply demonstrated an unsubstantiated scenario showing “propensity” or “conformity,” making him look odd, perhaps dangerous.

Recently the Utah Supreme Court Stated this about Utah R. Evid., Rule 404(b):

“Rule 404(b) allows evidence of prior bad acts for noncharacter purposes, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” But the evidence “must clear several evidentiary hurdles before

---

<sup>1</sup> As the State acknowledges, “Utah courts consider sources interpreting a similar or identical federal rule as persuasive authority of the meaning of Utah’s rule. See, e.g., *Angel Investors, LLC v. Garrity*, 2009 UT 40, ¶25, 216 P.3d 944.” Br. Resp. at 33.

admission—rules 404(b), 402, and 403." These requirements can be distilled into a three-part test: the prior bad-act evidence (1) must be "offered for a genuine, noncharacter purpose," (2) "must be relevant" to that noncharacter purpose, and (3) the "probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice." Additionally, as we recently clarified in *State v. Lucero*, "matters of conditional relevance must also meet the preponderance of the evidence standard under" rule 104(b)."

*State v. Reece*, 2015 UT 45, ¶ 57, 349 P.3d 712, 731 citing *State v. Lucero*, 2014 UT 15, ¶ 13, 328 P.3d 841. Rule 104(b) states:

(b) Relevance that depends on a fact. -- When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) Conducting a hearing so that the jury cannot hear it. -- The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (1) the hearing involves the admissibility of a confession;
- (2) a defendant in a criminal case is a witness and so requests;
- or
- (3) justice so requires.

Utah R. Evid. Rule 104. *Lucero* is clear that, "evidence of prior bad acts must be relevant and offered for a genuine, noncharacter purpose; furthermore, the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice. *Lucero* at ¶ 13. Further, "matters of conditional relevance must also meet the preponderance of the evidence standard under Utah Rule of Evidence 104(b)." *Id.*

In this case, given the inapplicability of the doctrine of chances, as discussed in defendant's opening brief, Point III, and below, the particular isolated extraneous offense evidence being relatively ordinary in the realm of human affairs, and the requirement that the Court give appropriate consideration to the factors set forth in *State v. Shickles*<sup>2</sup>, justice required that the court hold a hearing outside the presence of the jury to appropriately scrutinize those factors. Contrary to the State's assertion that courts no longer consider the *Schickles* factors, "(T)he court may consider a number of factors, including those the Supreme Court of Utah identified in *State v. Shickles*: the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence probably will rouse the jury to overmastering hostility." *Lucero* at ¶ 31(the Supreme Court has subsequently disavowed the "overmastering hostility" factor. See below).

The 403 test is traditionally treated under a burden shifting analysis. If the evidence has no unusual propensity to unfairly prejudice, or mislead, it is presumably admissible. *State v. Dunn*, 850 P.2d 1201, 1221-22 (Utah Sup.Ct. 1993). If, however, the evidence does have an unusual propensity to be unfairly prejudicial, the evidence's potential for unfair prejudice is presumed to outweigh its

---

<sup>2</sup> *State v. Shickles*, 2014 UT 15, P 32, 328 P.3d 841.

probativeness, and the burden is on the proponent to show that the evidence has unusual probative value. *Id.* “We reverse the presumption in favor of admissibility because these categories of evidence are “uniquely subject to being used to distort the deliberative process and skew a trial’s outcome.” *Id.* (internal citations omitted). Here, the evidence was obviously prejudicial, therefore the burden shifted to the State to establish that its probative value outweighed the risk of unfair prejudice. The State was and is unable to do that. Prejudice is defined well as follows:

Evidence is unfairly prejudicial when “it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence.” *United States v. Massino*, 546 F.3d 123, 132 (2d Cir. 2008) (internal quotation marks omitted)). If the other acts tend to prove a fact not in issue or “to excite emotions against the defendant,” they create a prejudicial effect. *United States v. Figueroa*, 618 F.2d 934, 943 (2d Cir. 1980). The district court abuses its discretion when it admits “other act” evidence with a high possibility of jury misuse but with only slightly more probative value than other evidence on the same issue. See *McCallum*, 584 F.3d at 477.

*United States v. Curley*, 639 F.3d 50, 57 (2d Cir. 2011).

The State accurately notes that in assessing the Rule 403 factors in isolation, the *Shickles* factors are not an appropriate measure. In other words, *State v. Reece*’s statement that, “Weighing the probative value and potentially unfair prejudicial effect of evidence involves a variety of considerations, including the factors we identified in *State v. Shickles*,” *id.* ¶ 69, is at least, in part, incorrect.

The Utah Supreme Court ruled that,

As we explained in *State v. Lucero*, albeit in a slightly different context, "courts are bound by the text of rule 403, *not the limited list of considerations outlined in Shickles*." 2014 UT 15, P 32, 328 P.3d 841. Thus, the governing legal standard for evaluating whether evidence satisfies rule 403 is the plain language of the rule, nothing more and nothing less. And while the district court's adherence in this case to the *Shickles* factors is understandable given our prior pronouncements on this subject, it nevertheless represents an application of the wrong legal standard and, therefore, an abuse of discretion.

*State v. Cuttler*, 2015 UT 95, ¶ 2 (Sup.Ct.). Furthermore, the *Cuttler* Court wisely noted, with respect to the standard previously used, "overmastering hostility," that it was far too strong a standard,

Finally, it is inappropriate for a district court to ever consider whether evidence will lead a jury to "overmastering hostility." The language of rule 403 requires only that evidence not lead to unfair prejudice. Overmastering hostility is both a stricter and looser metric by which to judge evidence under rule 403. Evidence may lead to prejudice in ways other than by rousing a jury to overmastering hostility. Also, *overmastering hostility is much stronger language than the "unfair" language actually used in rule 403*. Since the overmastering hostility factor under *Shickles* is at best judicial gloss and at worst a substitute test for evidence's admissibility under rule 403, we now make clear that it is inappropriate for a court to consider the overmastering hostility factor in a rule 403 analysis.

*State v. Cuttler*, 2015 UT 95, ¶ 20 (Sup.Ct.) (Emphasis added).

The question that must be answered is whether the extraneous offense evidence is so probative as to outweigh the risk of unfair prejudice. Nevertheless, the *Shickles* factors have not been totally abandoned. "Again, this is not to say that

the *Shickles* factors, taken individually, have no place in a rule 403 analysis.”  
*Cuttler* at ¶ 19.

In the instant case, it is difficult to understand how the extraneous evidence presented tended to show that in the instance for which Mr. Calvert was charged he did or did not fabricate a story or that he did or did not act in self-defense. Contrary to the State’s position that it is a rarity, a prior altercation with a neighbor is a great deal more common than “brides in bathtubs.” See Br. Resp., 36, 38.<sup>3</sup> Likewise, the evidence cannot be justified on the basis that *State v. Cuttler*, 2015 UT 95 did away with the *Shickles* factors. It did not. On the contrary the Supreme Court specifically stated as follows:

With respect to the first assigned error—the use of the wrong legal standard—rule 403 instructs courts to exclude evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." *While weighing the evidence under this rule, courts may consider many factors, including some of those we identified in Shickles. However, as we noted in State v. Lucero, in the context of rule 404(b), the Shickles factors should not limit the*

---

<sup>3</sup> The State maintains that, “It is not often that one is falsely accused by one’s neighbors of assaults and threats over trivial matters.” Counsel for the State has no doubt been fortunate to have lived amongst highly evolved, civilized and genteel neighbors. The fact of the matter is that its assertion is sheer nonsense. Neighborhood disputes, often very heated, are extremely common. Defendant’s counsel has tried numerous neighborhood dispute cases over the years, including disputes over water rights, boundaries, domestic, and many more mundane issues. It is not uncommon for people to become extremely feverish and resentful over the most trivial slight, to make extremely inflammatory threats, to resort to violence in these cases, and to commit serious assaults. It is far from a unique circumstance.

*considerations of a court when making a determination of evidence's admissibility under rule 403.* 2014 UT 15, P 32, 328 P.3d 841. Instead, courts are "bound by the text of rule 403," and it is "unnecessary for courts to evaluate each and every [*Shickles*] factor" in every context. *Id.*

*Cuttler* at ¶ 18. The *Shickles* factors are relevant and helpful in the vast majority of cases, but they are not a substitute for the analysis required by Rule 403. *Id.* at ¶ 19 ("Again, this is not to say that the *Shickles* factors, taken individually, have no place in a rule 403 analysis."). The problem in *Cuttler* was similar to but also very different from the problem in the instant matter. "Here, the district court relied exclusively on the *Shickles* factors when determining the admissibility of the previous child molestation evidence under rule 403." *Id.* ¶ 21.

In the instant matter the court relied entirely upon the doctrine of chances. As indicated in Appellant's opening brief, and by the complete lack of "brides in the bathtub" uniqueness previously discussed, a single commonplace and isolated instance, not by any means identical, simply cannot satisfy the doctrine of chances. Under *State v. Lowther*, 2015 UT App 180, 356 P.3d 173, the same four factors, materiality, similarity, independence, and frequency are utilized to discern both the relevance of the proposed bad acts evidence and to weigh the evidence's probative value against its prejudicial effect. *Lowther* at ¶ 19 n.3, referencing *State v. Labrum*, 2014 UT App 5, ¶ 28, 318 P.3d 1151 (explaining that for a rule 403 analysis in cases relying on the doctrine of chances, *Verde* displaces the *Shickles*

factors, but also noting that one of the *Shickles* factors involves weighing the similarities in the evidence).

The Supreme Court defined the doctrine of chances as a theory of relevance under which rule 404(b) "evidence of prior similar tragedies or accusations" may be admitted to support an "inference that the chance of multiple similar occurrences arising by coincidence is improbable" as well as "a conclusion that one or some of the occurrences were not accidents or false accusations." *State v. Verde*, 2012 UT 60, ¶¶ 50-51, 296 P.3d 67. In *Lowther*, three other women alleged that *Lowther* had "raped them under similar circumstances: they had attended a social gathering where they consumed alcohol; they went to sleep either drunk or tipsy; and they awakened to find [Lowther] forcefully penetrating them." *Lowther*, at ¶ 2. *Verde* involved the State's introduction testimony of three men who claimed that Verde had sexually assaulted them when they were eighteen years old. *Verde* at ¶ 3. These courts relied on the doctrine of chances to establish an "inference that the chance of multiple similar occurrences arising by coincidence is improbable" as well as that they were not accidents or false accusations. *Verde* at ¶¶ 50-51. The single extraneous incident in the instant matter fails to establish the necessary factors: materiality, similarity, independence, and frequency. The doctrine of chances test used by the district court simply fails this test. Admission of this evidence was an abuse of discretion. *State v. Lowther* at ¶ 8. It was unreasonably



prejudicial as well. Absent the error, there is a reasonable likelihood of a more favorable outcome and confidence in the verdict is undermined. *State v. Perea*, 2013 UT 68, ¶ 97, 322 P.3d 624, 646 (Sup.Ct.).

Finally, while the dismissal of the justice court case in Holladay Justice Court, Case # 081000542, may not be a judgment on the merits, as having not been “completely, fully, and fairly litigated,” as required by *State v. Sommerville*, 2013 UT App 40, ¶ 33, 297 P.3d 665, it is a reflection of the essential equivocal and weak nature of the witness, who failed to participate in the prior litigation, and the frailty of the evidence presented. See Holladay Justice Court docket, Addendum .

D. Its prejudicial effect was substantially outweighed by its prejudicial value. The error was harmful and the case should be reversed.

#### **POINT IV**

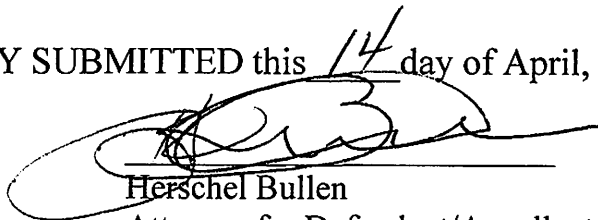
#### **CALVERT’S INEFFECTIVE ASSISTANCE CLAIM THAT THE JURY MIGHT HAVE BEEN EXPOSED TO IMPROPER MATERIAL DURING DELIBERATIONS BECAUSE THEY HAD ACCESS TO A PROSECUTION LAPTOP TO LISTEN TO A 911 CALL IS WELL TAKEN.**

This issue was thoroughly briefed in Point IV of the defendant’s opening brief. The defendant is satisfied that it is sufficiently responsive to the State’s argument that no further argument is required. The Court is referred to Point IV of the defendant’s opening brief.

#### **CONCLUSION**

For the foregoing reasons the defendant respectfully requests that this Court reverse his convictions.


RESPECTFULLY SUBMITTED this 14 day of April, 2016.



Herschel Bullen  
Attorney for Defendant/Appellant

### **CERTIFICATE OF RULE 24 COMPLIANCE**

Appellant certifies pursuant to Rule 24(f)(1)(C) Utah R. App. P. that the foregoing reply brief of appellant contains 5,255 words.

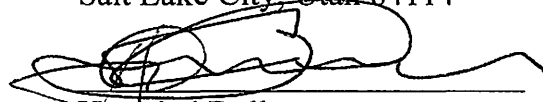


HERSCHEL BULLEN  
Attorney for Defendant/ Appellant

### **CERTIFICATE OF SERVICE**

I, Herschel Bullen, hereby certify that this 14 day of April, 2016 I caused to be hand-delivered an original and 7 copies of the foregoing to the Utah Court of Appeals and a searchable pdf CD, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and 2 copies along with a searchable pdf CD mailed, United States Postal Service, postage prepaid to the following:

JOHN J. NIELSEN, Esq.  
Attorney General's Office  
Heber M. Wells Building  
160 East 300 South, 6th Floor  
Salt Lake City, Utah 84114



Herschel Bullen

Tab A

SIM GILL, Bar No. 6389  
District Attorney for Salt Lake County  
JENNIFER VALENCIA, Bar No. 8008  
Deputy District Attorney  
111 E. BROADWAY, SUITE 400  
SALT LAKE CITY, UT 84111  
Telephone: (801)363-7900

**FILED DISTRICT COURT**  
Third Judicial District

**JUL 25 2012**

SALT LAKE COUNTY

By \_\_\_\_\_ Deputy Clerk

IN THE THIRD DISTRICT COURT, WEST JORDAN DEPARTMENT

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

THE STATE OF UTAH

Plaintiff,

vs.

CHADLEY KEITH CALVERT

DOB: 09/04/1969

AKA: Jeff Burton

6656 South 5500 West

West Jordan, UT 84084

D.L.# 149605204

OTN 40492852

SO# 156710

Defendant.

Screened by: JENNIFER VALENCIA  
Assigned to: WEST JORDAN TO BE  
ASSIGNED

DAO # 12014605

ECR Status: Non-ECR

Initial Appearance: August 1, 2012 at 8:30 AM

Warrant/Release: Sportsman's Bail Bonds

**NO ADDITIONAL WARRANT  
OR SUMMONS REQUESTED**

INFORMATION

Case No. 121906839

The undersigned Detective C. Hahn - WEST JORDAN POLICE DEPARTMENT, Agency Case No. 12H009833, upon a written affidavit states on information and belief that the defendant, CHADLEY KEITH CALVERT, committed the crime of:

COUNT 1

AGGRAVATED ASSAULT F3 (DANGEROUS WEAPON), 76-5-103(1) UCA, THIRD DEGREE FELONY, as follows: That on or about July 16, 2012 at 6656 South 5500 West, in Salt Lake County, State of Utah, the defendant did commit assault as defined in Utah Code Section 76-5-102 and used

- (a) a dangerous weapon as defined in Utah Code Section 76-1-601; or
- (b) other means or force likely to produce death or serious bodily injury, with the use of a dangerous weapon in the commission or furtherance of the crime.

COUNT 2

THREATENING WITH OR USING DANGEROUS WEAPON IN A FIGHT OR QUARREL (DANGEROUS WEAPON), 76-10-506 UCA, CLASS A MISDEMEANOR, as follows: That on or about July 16, 2012 at 6674 South 5500 West, in Salt Lake County, State of Utah, the defendant did, in the presence of two or more persons, draw or exhibit a dangerous weapon in an angry or threatening manner or unlawfully use a dangerous weapon in any fight or quarrel when such an act was not necessary for self defense or defense of another, with the use of a dangerous weapon in the commission or furtherance of the crime.

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

Detective C. Hahn, A.C., K.H., A.H., A.H., Hugo Holguin, Officer B. Jex, Officer T. McBride, K.P., A.R., Officer D. Saunders, Yolanda Trujillo

AFFIDAVIT OF PROBABLE CAUSE:

Your declarant bases this Information upon the following:

The statement of Officer Jex, West Jordan Police Department that on July 16, 2012 he responded to a man with a gun call at a location in Salt Lake County. That he spoke with the defendant, CHADLEY KEITH CALVERT, who admitted to having a gun with a laser in his garage and gave permission to retrieve it. That Officer McBride retrieved the gun from the garage and it had one round in the chamber. That he collected witness statements from the children and adults who were threatened with the gun.

The statement of A.C., age 13, that while he was walking with his friends at a location in Salt Lake County, CALVERT got mad at him for walking on his property. That CALVERT pulled out a gun and threatened to beat them up.

The statement of A. H., age 15, that while he and his cousins were walking to get their bikes, CALVERT was yelling at them, telling them to get out of here and screaming that he was going to kick all of their "assess." That A.H. left to go get their parents and when he returned, CALVERT had a gun with a laser on it and was aiming it at his uncle, Hugo Holguin.

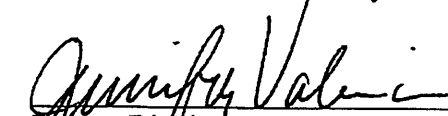
The statement of Hugo Holguin, that he approached CALVERT and asked him what was going on. That CALVERT was very mad and yelling at everyone. That CALVERT told Holguin that he needed to shut up, go back to his house and mind his own business. That CALVERT had a gun the whole time he was yelling and pointed it at Holguin.

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

Executed on: July 23, 2012

  
~~DETECTIVE C. HAHN~~ Sgt. T. Rees  
Declarant

Authorized for presentment and filing  
SIM GILL, District Attorney

  
Deputy District Attorney  
19th day of July, 2012  
KCS / KB / DAO # 12014605

Tab B

INSTRUCTION NO. 27

Before you can convict the defendant, Chadley Keith Calvert, of the offense of Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, as charged in Count II of the information, you must find from all of the evidence and beyond a reasonable doubt each and every one of the following elements of that offense, occurring on or about the 16<sup>th</sup> day of July, 2012, in Salt Lake County, State of Utah;

1. That the defendant, Chadley Keith Calvert was in the presence of two or more people; and
2. Drew or exhibited any dangerous weapon, to wit: a handgun; and
3. (a) Did so in an angry or threatening manner, or (b) unlawfully used the same in any fight or quarrel.

If, after careful consideration of all of the evidence in this case, you are convinced of the truth of each and every one of the foregoing elements beyond a reasonable doubt, then you must find the defendant guilty of Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, as charged in Count II of the information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant not guilty of Count II.



INSTRUCTION NO. 24

Before you can convict the defendant, Chadley Keith Calvert, of the crime of Aggravated Assault, as charged in Count I of the information, you must find from all of the evidence and beyond a reasonable doubt, each and every one of the following elements of that offense occurring on or before the 16<sup>th</sup> day of July, 2012, in Salt Lake County, State of Utah;

1. That the defendant, Chadley Keith Calvert committed an act of assault upon Hugo Holguin; and
2. That such attempt or act was committed intentionally or knowingly; and
3. That the defendant used a dangerous weapon.

If, after careful consideration of all of the evidence in this case, you are convinced of the truth of each and every one of the foregoing elements beyond a reasonable doubt, then you must find the defendant guilty of Aggravated Assault as charged in Count I of the information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant not guilty of Count I.

Tab C

---

**THIRD JUDICIAL DISTRICT COURT**  
SALT LAKE COUNTY, STATE OF UTAH  
WEST JORDAN DEPARTMENT

---

**State of Utah,**  
Plaintiff,

**Chadley Keith Calvert,**  
Defendant.

**VERDICT**  
COUNT 1

Case No. 121400830

We, the jurors in the above case, unanimously find the defendant, Chadley Keith Calvert:

☒

Guilty beyond a reasonable doubt of Aggravated Assault;

☐

Not guilty of Aggravated Assault.

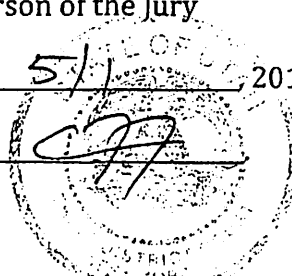
Dated this 1 day of MAY, 2014.

RANDY GEORGE

Foreperson of the Jury

Filed 5/1, 2014.

By CFJ



0000166

**THIRD JUDICIAL DISTRICT COURT**  
SALT LAKE COUNTY, STATE OF UTAH  
WEST JORDAN DEPARTMENT

State of Utah,  
Plaintiff,

Chadley Keith Calvert,  
Defendant.

**VERDICT**  
COUNT 2

Case No. 121400830

We, the jurors in the above case, unanimously find the defendant, Chadley Keith Calvert:

☒ Guilty beyond a reasonable doubt of Threatening with a Dangerous Weapon in a Fight or Quarrel;

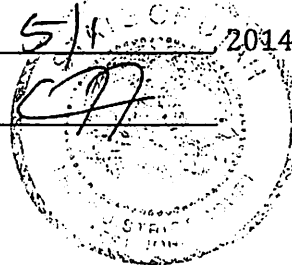
☐ Not guilty of Threatening with a Dangerous Weapon in a Fight or Quarrel.

Dated this 1 day of MAY, 2014.

RANDY GEORGE  
Foreperson of the Jury

Filed 5/14 2014.

By CA



0000167

Tab D

HOLLADAY JUSTICE COURT  
SALT LAKE COUNTY, STATE OF UTAH

HOLLADAY CITY vs. CHADLEY K CALVERT

CASE NUMBER 081000542 Other Misdemeanor

---

CHARGES

Charge 1 - 76-5-102 - SIMPLE ASSAULT Class B Misdemeanor  
Offense Date: October 26, 2008  
Plea: November 26, 2008 Not Guilty  
Disposition: February 02, 2009 Dismissed (w/o prej)

CURRENT ASSIGNED JUDGE

DANIEL BAY GIBBONS

PARTIES

Defendant - CHADLEY K CALVERT  
Plaintiff - HOLLADAY CITY

DEFENDANT INFORMATION

Defendant Name: CHADLEY K CALVERT  
Date of Birth: September 04, 1969  
Law Enforcement Agency: SL SHERIFF / UNIF PD  
Prosecuting Agency: HOLLADAY CITY  
Citation Number: 1169675

ACCOUNT SUMMARY

PROCEEDINGS

11-03-08 ARRAIGNMENT scheduled on November 26, 2008 at 10:00 AM in  
HOLLADAY COURT with Judge GIBBONS.

11-03-08 Notice - NOTICE for Case 081000542 ID 2473360  
ARRAIGNMENT is scheduled.

Date: 11/26/2008  
Time: 10:00 a.m.  
Location: HOLLADAY COURT  
4580 SOUTH 2300 EAST

HOLLADAY, UT 84117

Before Judge: DANIEL BAY GIBBONS

11-03-08 Case filed

Printed: 04/11/16 15:03:38

Page 1

11-03-08 Judge DANIEL BAY GIBBONS assigned.

11-10-08 Note: CHADLEY K CALVERT called to verify court time and date

11-26-08 PRETRIAL CONFERENCE scheduled on January 09, 2009 at 11:00 AM  
in HOLLADAY COURT with Judge GIBBONS.

11-26-08 Minute Entry - Minutes for Arraignment

Judge: DANIEL BAY GIBBONS

PRESENT

Clerk: clopez

Defendant

Defendant pro se

#### ARRAIGNMENT

The Information is read.

Advised of rights and penalties.

The defendant is advised of right to counsel.

Defendant is arraigned.

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

PRETRIAL CONFERENCE is scheduled.

Date: 01/09/2009

Time: 11:00 a.m.

Location: HOLLADAY COURT

4580 SOUTH 2300 EAST

HOLLADAY, UT 84117

Before Judge: DANIEL BAY GIBBONS

01-09-09 BENCH TRIAL scheduled on February 06, 2009 at 10:00 AM in  
HOLLADAY COURT with Judge GIBBONS.

01-09-09 Minute Entry - Minutes for Pretrial Conference

Judge: DANIEL BAY GIBBONS

PRESENT

Clerk: candicel

Prosecutor: LOPRESTO II, THOMAS V

Defendant

Defendant pro se

HEARING

Deft appeared and no resolution reached.  
BENCH TRIAL is scheduled.

Date: 02/06/2009

Time: 10:00 a.m.

Location: HOLLADAY COURT  
4580 SOUTH 2300 EAST

HOLLADAY, UT 84117

Before Judge: DANIEL BAY GIBBONS

01-26-09 Filed return: Subpoena; Camille Little

Party Served: Jessica Martinez-Niece

Service Type: Personal

Service Date: January 21, 2009

01-26-09 Filed: information

01-26-09 Issued: Subpoena Deputy Child, Camille Little

Clerk candicel

Hearing Date: February 06, 2009 Time: 10:00

02-02-09 Charge 1 Disposition is Dismissed

02-06-09 Minute Entry - Minutes for Pretrial Conference

Judge: DANIEL BAY GIBBONS

PRESENT

Clerk: candicel

Prosecutor: MILLER, LORENZO K

Defendant

Defendant pro se

Defendant's Attorney(s): MIKE LARENCE

HEARING

Companion case upon motion from prosecution case dismissed.

02-09-09 Case Closed

Disposition Judge is DANIEL BAY GIBBONS

02-09-09 Charge 1 Disposition is Dismissed



## TIME SHEETS

[illegible]