

2015

**State of Utah, Plaintiff/Appellee v. Alex L. Lambrose, Defendant/
Appellant**

Utah Court of Appeals

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Case No. 20150398-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

ALEX L. LAMBROSE,
Defendant/Appellant.

Brief of Appellee

Appeal from sentence for aggravated robbery, a first degree felony, in the Second Judicial District, Weber County, the Honorable Scott M. Hadley presiding

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Oral Argument NOT Requested

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UTAH APPELLATE COURTS

OCT 16 2015

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUES	1
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	2
STATEMENT OF THE CASE	2
A. Summary of facts.....	2
B. Summary of proceedings.	3
SUMMARY OF ARGUMENT	6
ARGUMENT	7
THE TRIAL COURT WAS FULLY WITHIN ITS DISCRETION TO SENTENCE DEFENDANT TO PRISON INSTEAD OF PROBATION	7
CONCLUSION	11
ADDENDA	
Addendum A: Sentencing Hearing Transcript	
Addendum B: Plea Hearing Transcript	

TABLE OF AUTHORITIES

STATE CASES

<i>State v. Do</i> , 2015 UT App 147, 353 P.3d 172	10
<i>State v. Gerrard</i> , 584 P.2d 885 (Utah 1978)	8
<i>State v. Helms</i> , 2002 UT 12, 40 P.3d 626	7, 8
<i>State v. Patience</i> , 944 P.2d 381 (Utah App. 1997)	<i>passim</i>
<i>State v. Rhodes</i> , 818 P.2d 1048 (Utah App. 1991)	7, 8, 9
<i>State v. Russell</i> , 791 P.2d 188 (Utah 1990)	9
<i>State v. Sibert</i> , 310 P.2d 388 (Utah 1957)	8
<i>State v. Sotolongo</i> , 2003 UT App 214, 73 P.3d 991	7
<i>State v. Thorkelson</i> , 2004 UT App 9, 84 P.3d 854	8
<i>State v. Valdovinos</i> , 2003 UT App 432, 82 P.3d 1167	8, 10
<i>State v. Woodland</i> , 945 P.2d 665 (Utah 1997)	7

STATE STATUTES

Utah Code Ann. § 78A-4-103	1
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Case No. 20150398-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

ALEX L. LAMBROSE,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from his sentence for aggravated robbery, a first degree felony. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(j) (West Supp. 2012)(pour-over provision).

STATEMENT OF THE ISSUES

Defendant and his brother stole a Cadillac from its owner at knife-point. At the time, Defendant was a probationer who had absconded from supervision.

Was it an abuse of discretion to give Defendant prison instead of probation?

Standard of Review. A trial court's sentencing decision is reviewed for an abuse of discretion. *State v. Patience*, 944 P.2d 381, 389 (Utah App. 1997).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

There are no relevant constitutional provisions, statutes, or rules.

STATEMENT OF THE CASE

A. Summary of facts.¹

Gabriel Gomez listed his 2007 Cadillac for sale in November 2014.

R82:11 (Add. B). Defendant, his brother Timothy Lambrose, and someone else arrived at Gomez's house in a white Nissan Titan to check it out. *Id.* Mr. Gomez agreed to go with Defendant on a test drive of the Cadillac. *Id.*

Defendant drove for a while, but then pulled over after telling Mr. Gomez that the police were following them. *Id.* Mr. Gomez turned to see instead the white Nissan Titan behind them. R82:11-12.

Defendant unlocked the Cadillac and Defendant's brother hopped out of the Nissan and into the backseat, wielding a bayonet-looking knife, with an eight- to ten-inch blade. R82:12. The brother began "punching" and ordering Mr. Gomez out of the car. *Id.* Mr. Gomez tried to pull out his own "little pocket knife," but he could not get it open and was ultimately forced out of his car. *Id.*

¹Because Defendant pleaded guilty, the facts are taken from the factual basis proffered at the plea hearing and in his written plea statement and from his pre-sentence investigation report (PSI). A copy of the plea hearing transcript is in Addendum B.

Defendant and his brother sped off in the Cadillac with the Nissan Titan following. *Id.*

Mr. Gomez identified both Defendant and his brother from separate photo arrays. R51 (PSI). The Cadillac was eventually found in Defendant's father's driveway, with the keys in the Nissan Titan.² R51. The Cadillac had been wrecked and was undriveable. R82:13; R51.

Both Defendant and his brother initially denied any involvement in the robbery, but later jailhouse phone recordings found the two plotting to concoct an alibi for Defendant and to let the brother take the fall for the robbery. R51;R82:12-13.

B. Summary of proceedings.

Guilty plea. Defendant and his brother were both charged with aggravated robbery, a first degree felony. R1; R82:4. Defendant pleaded guilty to the charge and the prosecution agreed to not refer the case to federal prosecutors and to remain silent at sentencing. R36; R82:5-6.

PSI report. AP&P recommended prison. Although AP&P called Defendant's juvenile and adult criminal history "moderate," his criminal history score placed him well within a recommended prison sentence on the sentencing matrix. R49, 50, 55.

²Defendant's brother told police that he had rented the white Nissan truck from a friend who later reported it stolen. R51.

Defendant's juvenile record began at age 11 and ended at 18. See R49, 52-53. His juvenile offenses were all class B misdemeanors, ranging from destruction of property, shoplifting, assault, and possession of paraphernalia. R52.

His adult record began in 2013, at age 22, and includes possession of stolen property, forgery, burglary, and possession of a controlled substance. R53. In April 2014, Defendant was placed on probation in two separate cases, one for third-degree felony forgery, the other for misdemeanor possession of a controlled substance. R53. He "absconded" from supervision and within seven months committed new crimes, including possession of a controlled substance and the aggravated robbery. R53.

Defendant reported that he began using methamphetamines at age 13 and marijuana at age 14. R54. Defendant had never been in treatment for substance abuse, "although"—as the PSI put it—"he was given the opportunity for it while on probation." R54.

Defendant's letter. While awaiting sentencing on this case, Defendant wrote a letter to the court reporting that he had used his time in jail well: although he had no children, he had completed a parenting course, an addiction recovery class, and a life skills program; he had also attended some anger management classes. R46; R53. Defendant expressed his

commitment to being a "better man" and to leaving "this so called life behind." R47.

Victim statement. The victim submitted a written statement to the court, asking that Defendant get "the maximum prison time." R19. He also asked for restitution and an order restraining Defendant from ever coming to his house again. *Id.* The victim expressed concern for his and his family's physical and emotional safety "because if they don't get convicted we will be fearing for our life." *Id.*

Sentencing hearing. The sentencing court began the hearing with announcing that it had read both the PSI and Defendant's letter. R83:3.

Defense counsel asked for probation. He emphasized that Defendant's "moderate" criminal history was mostly drug-related. R83:3. He talked about Defendant's accomplishments in jail, such as completing the parenting program and the L.D.S. Addiction Recovery program. R83:4. Counsel acknowledged the seriousness of the charged crime and that a first degree felony made it "more difficult to place someone on probation." *Id.* But counsel still asked the court to deviate from the prison recommendation and to place Defendant on "zero tolerance probation" so that he could try to "correct course" and get treatment for his drug problem. *Id.*

Defendant had nothing to add, other than he just wanted "to get on with" his life and to "[l]eave this behind" him. *Id.*

True to his promise, the prosecutor remained silent on sentencing. R83:4-5.

The trial court praised Defendant's letter as "well done," and hoped that Defendant would "continue on doing good things." R83:5-6. "Unfortunately, though," the court did not "think this is a case for probation because of the violent nature of the offense." R83:6. The court thus followed AP&P's recommendation and sentenced Defendant to the statutory prison term of five years to life, to run concurrently with any other sentence that Defendant might be serving. *Id.*

Defendant timely appealed his sentence. R62, 68.

SUMMARY OF ARGUMENT

The sentencing court did not abuse its discretion when it gave Defendant prison instead of probation. Defendant committed the aggravated robbery in this case while he was on probation in two separate cases. Indeed, Defendant had absconded from his supervised probation. Given the violent nature of the crime, Defendant's active participation in it, and his previous failure at probation, the sentencing court could reasonably conclude that Defendant was not a good candidate for continuing on

probation. Certainly, it cannot be said that no reasonable sentencer would have taken the view adopted by the trial court here.

ARGUMENT

THE TRIAL COURT WAS FULLY WITHIN ITS DISCRETION TO SENTENCE DEFENDANT TO PRISON INSTEAD OF PROBATION

Defendant asserts that the sentencing court abused its discretion in sending him to prison “when his crime was committed when he was high on narcotics, when he was not the violent offender and when he had never been through serious drug treatment.” Br. Aplt. 5. Essentially, Defendant complains that the sentencing court placed too much weight on the violent nature of his crime and not enough on his need for drug treatment. *See generally* Br. Aplt. 6-11.

Sentencing courts traditionally have “wide latitude and discretion in sentencing.” *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997). A sentence will not be overturned “unless it exceeds statutory or constitutional limits, the judge failed to consider all the legally relevant factors, or the actions of the judge were so inherently unfair as to constitute abuse of discretion.” *State v. Sotolongo*, 2003 UT App 214, ¶3, 73 P.3d 991 (internal quotation marks and citations omitted). *See also State v. Helms*, 2002 UT 12, ¶8, 40 P.3d 626; *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah App. 1991). A sentencing

court abuses its discretion only when “no reasonable [person] would take the view adopted by the trial court.” *State v. Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167 (alteration in original) (internal quotation marks and citations omitted); accord *State v. Thorkelson*, 2004 UT App 9, ¶12, 84 P.3d 854.

A court’s sentencing discretion is at its broadest when deciding whether to grant probation. This is because “granting or withholding” probation involves balancing “intangibles of character, personality and attitude, of which the cold record gives little inkling.” *Rhodes*, 818 P.2d at 1049 (quoting *State v. Sibert*, 310 P.2d 388, 393 (Utah 1957)). Thus, “whether to grant probation is within the complete discretion of the trial court.” *Id.* A reviewing court may overturn the denial of probation only when it is “clear that the actions of the judge were so *inherently unfair* as to constitute abuse of discretion.” *Id.* (quoting *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978)).

A sentencing court does not abuse its discretion merely because it views a defendant’s situation differently than the defendant does. *Helms*, 2002 UT 12, ¶14. Yet that is the crux of Defendant’s complaint here. Defendant does not contend that his sentence exceeds statutory or constitutional limits. He complains only that the sentencing court placed

too much emphasis on the violent nature of his crime, while giving insufficient weight to his need for drug treatment. Br. Aplt. 6-10.

But choosing which factors matter most in sentencing is entirely within the sentencer's discretion. *See State v. Russell*, 791 P.2d 188, 192 (Utah 1990) (trial courts have discretion in weighing minimum-mandatory sentences because "one factor in mitigation or aggravation may weigh more than several factors on the opposite scale"); *see also Rhodes*, 818 P.2d at 1049 (recognizing that "subtleties" of sentencing are often not apparent on "face of a cold record"). Here, the sentencing court found that the violent nature of the crime outweighed Defendant's late bid for one more chance at drug treatment outside prison.

On this record, there was nothing "inherently unfair" about that call. When Defendant committed this violent crime, he was already on probation in two separate cases. He quickly violated his probation by absconding from supervision and then committing new crimes—some just two weeks before this one. The sentencing court could have reasonably concluded that Defendant's criminal behavior was escalating and that he was not a good candidate for continuing on probation.

Defendant downplays his role in the robbery, asserting that it was his knife-wielding brother, not he, "who engaged in the act of violence." Br.

Aplt. 9. But if Defendant means that he should have gotten probation because he was less culpable than his brother, he never argued that below. He instead chose to acknowledge that his crime was the “most serious” of his criminal career to date and that he was earnestly trying to “correct course.” R83:3-4; R46-48.

And contrary to his new argument, Defendant was every bit as culpable as his brother. While Defendant may not have wielded the knife, it was only his intentional conduct that made it possible for his brother to do so. Defendant therefore has not shown that no reasonable jurist would not have placed the same weight on the nature of the crime as the sentencing court did here. *See Valdovinos*, 2003 UT App 432, ¶14.

Nor was the sentencing court here obliged to give Defendant probation based only on his perceived need for drug treatment. *See State v. Do*, 2015 UT App 147, ¶7 (sentencing court did not abuse discretion in failing to “treat Do’s drug addiction solely as a mitigating factor”). In arguing otherwise, Defendant cites several academic articles and the fact that the Legislature has recently reduced the penalties for drug offenses. Br. Aplt. 6-11. Significantly, Defendant never cited these articles to the sentencing court. *See Do*, 2015 UT App 147, ¶7 (noting Do’s failure to cite to sentencing court the articles that he relied on in his appeal). And while the

Legislature has reduced the penalties for drug offenses, it has not reduced the penalty for aggravated robbery, the crime for which Defendant was sentenced.

More importantly, Defendant overlooks that he had the opportunity to get treatment for his drug addiction while he was on probation. *See* R53. He squandered that opportunity when he absconded from supervision and committed new crimes. He thus cannot show that sentencing him to prison instead of probation was an unreasonable choice.


In sum, Defendant has not shown that no reasonable person would agree with the sentencing decision in this case.

CONCLUSION

Defendant has not shown that no reasonable sentencer would have given him prison instead of probation. His sentence therefore must be affirmed.

Respectfully submitted on October 16, 2015.

SEAN D. REYES
Utah Attorney General

for 
LAURA B. DUPAIX
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF SERVICE

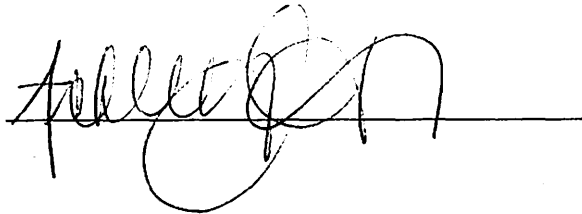
I certify that on October 16, 2015, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

Samuel P. Newton
1267 Quarter Horse Lane
Kalispell, MT 59901-2514

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.

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

ADDENDUM A

Sentencing Hearing Transcript

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT, OGDEN, UT

WEBER COUNTY, STATE OF UTAH

-o0o-

STATE OF UTAH,

Plaintiff,

vs.

ALEX L. LAMBROSE,

Defendant.

Case No. 141902453

SENTENCING

-o0o-

BE IT REMEMBERED that on the 7th day of April, 2015, commencing at the hour of 10:51 a.m., the above-entitled matter came on for hearing before the HONORABLE SCOTT M. HADLEY, sitting as Judge in the above-named Court for the purpose of this cause and that the following proceedings were had.

-o0o-

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UTAH APPELLATE COURTS

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P R O C E E D I N G S

(Transcriber's Note: Speaker identification
may not be accurate with audio recordings.)

MR. GAGE: Alex Lambrose.

THE COURT: Okay. State of Utah vs. Alex L.
Lambrose, Case No. 141902453. Time set for A P & P
sentencing.

Okay. Mr. Lambrose is present. I've read through
the pre-sentence and I had a nice letter, frankly, from Mr.
Lambrose, which I've also read.

Any legal reason why we cannot proceed with
sentencing?

MR. BOUWHUIS: No, your Honor.

THE COURT: Okay. Go ahead.

MR. BOUWHUIS: Thank you. We received a copy of the
report and reviewed it. The report indicates that he has a
moderate adult and juvenile criminal history, most of the
crimes being drug-related. I noticed that there were some
forgeries on his adult record, among some others, particularly
this--obviously this--this crime here for which he's being
sentenced today is--is the most serious and we recognize it is
a serious crime.

He's got a couple of certificates that he completed

1 while he was jail, so he wasn't just sitting around; completed
2 a Parenting with Love and Logic, that's dated February 3rd of
3 this year, and also completed the L.D.S. Addiction Recovery
4 program, completed February 27th of this year.

5 This sentence does not carry a minimum-mandatory.
6 We recognize that with a first-degree felony, you know, it--it
7 is more difficult to place someone on probation. We are
8 asking the Court to consider deviating from the
9 recommendation, after an appropriate period of time, placing
10 him on a zero tolerance probation, allowing him a chance to
11 try and correct course.

12 He does have a--he has a drug history, he's got to
13 take care of that one way or the other and we're asking the
14 Court to give him a chance to do that, through probation.

15 THE COURT: Okay. Thank you.

16 Mr. Lambrose, anything you would like to say before
17 sentence is imposed?

18 MR. LAMBROSE: No, your Honor. I just want to get
19 on with my life.

20 THE COURT: Okay.

21 MR. LAMBROSE: Leave this behind me.

22 THE COURT: Mr. Arnold?

23 MR. ARNOLD: I've agreed to remain silent in
24 exchange for his plea.

25 THE COURT: Okay.

1 MR. ARNOLD: The restitution figures, we would just
2 request a review of that. I--I know that the victim impact
3 statement that has been submitted to the Court, that actually
4 encapsulated the entire amount of the vehicle because it
5 hadn't been located at that time. The vehicle has been
6 located, but there was damage to it and--and so we just need
7 to get a new figure for the Court.

8 THE COURT: Okay. Do we need to set it for a
9 hearing or can we just--

10 MR. ARNOLD: Let's set it for a review.

11 THE COURT: --leave it open?

12 MR. ARNOLD: I think that we have most of the
13 documentation that we can provide to counsel and to Mr.
14 Lambrose, through counsel, in regard to a figure.

15 THE COURT: And then how much time do you need?

16 MR. BOUWHUIS: How long before you get that to me?

17 MR. ARNOLD: Give me 30 days.

18 MR. BOUWHUIS: We probably ought to set a review out
19 60 days, 'cause I'll need to get it to him.

20 THE COURT: Okay. Okay.

21 Mr. Lambrose, then, I'll do the following in
22 connection with your conviction of a first-degree felony. I
23 do appreciate both your letter, which I thought was very well
24 done, I see a lot of letters and yours was well done, and I
25 appreciate that you spent your time well while you're in

1 custody and I hope you'll continue to do it. Unfortunately,
2 though, I--I just don't think this is a case for probation
3 because of the violent nature of the offense, so I am
4 following the recommendation, but I hope you'll continue on
5 doing good things that you've been doing in the--in the recent
6 months.

7 So it will be the sentence of this Court in
8 connection with your conviction of a first-degree felony,
9 aggravated robbery, that you be sentenced as follows:

10 That you be sentenced to the Utah State Prison for
11 one indeterminate term of five years to life. You may have
12 credit for all of the time that you have served.

13 And you are to pay restitution, if any, in an amount
14 to be determined. And we'll set this for review of
15 restitution on June 16th at 9:00.

16 And that is to run concurrent with any other
17 sentence that you may be serving. Okay.

18 Thank you, Mr. Lambrose. We'll see you back here on
19 June 16th, then.

20 MR. GAGE: Thank you, your Honor.

21 (Whereupon, this hearing was concluded.)

22 * * *

ADDENDUM B

Plea Hearing Transcript

IN THE SECOND JUDICIAL DISTRICT COURT, OGDEN

WEBER COUNTY, STATE OF UTAH

-o0o-

STATE OF UTAH,

Plaintiff,

vs.

ALEX L. LAMBROSE and
TIMOTHY LAMBROSE,

Defendants.

)
)
) Case No. 141902453
) Case No. 141901635
) Case No. 141902452
)
)
)

-o0o-

BE IT REMEMBERED that on the 9th day of February,
2015, commencing at the hour of 10:25 a.m., the above-entitled
matter came on for hearing before the HONORABLE SCOTT M.
HADLEY, sitting as Judge in the above-named Court for the
purpose of this cause and that the following proceedings were
had.

-o0o-

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* * *

P R O C E E D I N G S

(Transcriber's Note: Speaker identification
may not be accurate with audio recordings.)

THE CLERK: State of Utah vs. Alex L. Lambrose, Case
No. 141902453 on for a preliminary hearing, State of Utah vs.
Timothy Lambrose, Case No. 141901635 for sentencing and case
ending in 2452 (inaudible) preliminary hearing.

THE COURT: Okay. Good morning, everybody. Let's
see, we have attorney Gage Arnold appearing on behalf of the
State on all three cases and we have, let's see, attorney
Logan Bushell appearing on behalf of and with, I'm assuming,
Timothy Lambrose. Is that you, sir?

MR. BUSHELL: Yes, sir.

THE COURT: Okay. And that's on Cases 1635 and
2452.

And then we have attorney--wait, did I get that
wrong--we have attorney Michael Bouwhuis appearing on behalf
of and with Alex Lambrose; correct?

MR. BOUWHUIS: Yes, sir.

THE COURT: Okay. Okay. And you'll have to educate
me as to where we're at. I've got a statement of--of--in ad--
of defendant in advance of plea here as well. So, where are
we at?

1 MR. BOUWHUIS: Yes, Judge. Unless things have
2 changed, I understand that there will be a waiver on the--the
3 aggravated robbery case on both of the defendant's parts, Tim
4 Lambrose and also Alex Lambrose. We--we do not have a
5 resolution on Timothy Lambrose's aggravated robbery case, but
6 I understand that we have a resolution for Alex Lambrose's
7 part of that.

8 THE COURT: Okay. And then--

9 MR. BOUWHUIS: And then on the third case, we
10 anticipate that prelim being held.

11 THE COURT: Correct. Okay. On the second-degree
12 felony theft?

13 MR. BOUWHUIS: Yes, Judge.

14 THE COURT: Okay. Okay. So then should we proceed
15 in taking the waivers first? Is that the easiest way?

16 MR. BOUWHUIS: I think so if that's--if that's okay.

17 THE COURT: Okay. Why don't we start with Timothy
18 Lambrose then. Let me start with your waiver of your right to
19 a preliminary hearing on case ending 2452, that's the first-
20 degree felony, aggravated robbery.

21 MR. BUSHELL: It is, your Honor.

22 THE COURT: Is that your understanding, Mr.
23 Lambrose? You're going to waive your right to a preliminary
24 hearing on that case?

25 MR. TIMOTHY LAMBROSE: Yes, it is, your Honor.

1 THE COURT: Okay. And have you gone over that right
2 with your attorney?

3 MR. TIMOTHY LAMBROSE: Yes. I have.

4 THE COURT: And do you feel like you understand that
5 right?

6 MR. TIMOTHY LAMBROSE: Yes.

7 THE COURT: And is it true you're waiving that right
8 at this time?

9 MR. TIMOTHY LAMBROSE: Yes.

10 THE COURT: Okay. I'll accept that as your waiver
11 of your right to a preliminary hearing on case ending 2452.

12 Then the other case I have with you, Mr. Timothy
13 Lambrose, you're going forward with the preliminary hearing
14 here today; correct?

15 MR. TIMOTHY LAMBROSE: Yes, your Honor.

16 THE COURT: Okay.

17 And then turning to you, Mr. Alex Lambrose, on case
18 ending 2453, looks like you're going to waive your right to a
19 preliminary hearing on that case and is that one being pled as
20 well?

21 MR. BOUWHUIS: Yes.

22 THE COURT: Okay. And--and Mr. Bouwhuis, what are
23 the terms of the agreement then?

24 MR. BOUWHUIS: Your Honor, the State has agreed not
25 to refer that case to the Federal Government and also they've

1 agreed to remain silent in sentencing.

2 THE COURT: Okay. But other than that, it's
3 pleading then as charged; correct?

4 MR. BOUWHUIS: That's correct.

5 THE COURT: Excuse me. Okay.

6 Mr. Alex Lambrose then on that case, is that what
7 you intend to do on that case?

8 MR. ALEX LAMBROSE: Yes, your Honor.

9 THE COURT: Okay. Now, let's start with the
10 preliminary hearing first. You understand on that case, you
11 still have a right to a preliminary hearing?

12 MR. ALEX LAMBROSE: Yes, sir.

13 THE COURT: And have you gone over that right with
14 your attorney?

15 MR. ALEX LAMBROSE: I have, your Honor.

16 THE COURT: And do you feel like you understand that
17 right?

18 MR. ALEX LAMBROSE: Yes, sir.

19 THE COURT: And is it true you're waiving that right
20 at this time?

21 MR. ALEX LAMBROSE: Yes.

22 THE COURT: Okay. I'll accept that as your waiver
23 of your right to a preliminary hearing. And then I'm told
24 you're going to be pleading guilty to that charge, which is a
25 first-degree felony, aggravated robbery; is that correct?

1 MR. ALEX LAMBROSE: Yes, sir.

2 THE COURT: Okay. Now, you understand that a first-

3 degree felony is punishable by a maximum fine of up to \$10,000

4 and/or five years to life in the Utah State Prison?

5 MR. ALEX LAMBROSE: Yes, sir.

6 THE COURT: And do you understand that could run

7 consecutive to any other sentence?

8 MR. ALEX LAMBROSE: I do, your Honor.

9 THE COURT: And do you understand that even though

10 there may be a recommendation that the punishment be less than

11 that, I could ignore that recommendation and you could be

12 sentenced up to that maximum?

13 MR. BOUWHUIS: Might be 20.

14 MR. ALEX LAMBROSE: Yes, sir.

15 THE COURT: Are you under the influence of any

16 alcohol or drugs?

17 MR. ALEX LAMBROSE: No.

18 THE COURT: Do you have any mental or physical

19 condition that would impair your ability to understand these

20 proceedings?

21 MR. ALEX LAMBROSE: No, sir.

22 THE COURT: Are you thinking clearly then?

23 MR. ALEX LAMBROSE: Yes.

24 THE COURT: Do you understand that by pleading

25 guilty, you would be admitting to each of the elements that

1 make up this offense?

2 MR. ALEX LAMBROSE: Yes, I do, your Honor.

3 THE COURT: And did you have a chance to read

4 through this written plea agreement?

5 MR. ALEX LAMBROSE: Yes. I have.

6 THE COURT: Did you understand what you read?

7 MR. ALEX LAMBROSE: Yes.

8 THE COURT: Do you understand that by signing it,

9 you're telling me you do understand it and that you understand

10 all of these rights and you're waiving these rights and that

11 everything in this document is true?

12 MR. ALEX LAMBROSE: Yes, sir.

13 THE COURT: And it looks like you've already signed

14 it; is that correct?

15 MR. ALEX LAMBROSE: Yes, your Honor.

16 THE COURT: And did you sign it with those things in

17 mind that I've asked you about?

18 MR. ALEX LAMBROSE: Yes. I have.

19 THE COURT: And did you sign it voluntarily?

20 MR. ALEX LAMBROSE: Yes.

21 THE COURT: Okay. Does the State have a factual

22 basis then?

23 MR. ARNOLD: Yes.

24 MR. BOUWHUIS: Before we do that--

25 MR. ARNOLD: Oh. Go ahead.

1 MR. BOUWHUIS: --just need a clarification. I wrote
2 on there, it has been certainly, historically, that first-
3 degree felonies carry a--an ultimate maximum fine of \$20,000.
4 Did that change?

5 THE COURT: Oh. I see that on there. I'm not aware
6 of the change, so I didn't know; in fact, I meant to ask if
7 there's any mandatory minimum penalties.

8 MR. BOUWHUIS: There are not, but I--it used to be
9 that the second-degree felony carried a potential fine of ten
10 thousand, the first-degree carried a potential fine of twenty.
11 And--and I wrote twenty on there, I didn't--we didn't know if
12 that had changed.

13 THE COURT: Let me see if I can--

14 MR. BOUWHUIS: Obviously, that's not a fine that's
15 ever been imposed, shortly no (inaudible)

16 THE COURT: Do you--do you think there was a recent
17 change?

18 MR. BOUWHUIS: Well, I don't know. It used to be
19 \$20,000 and that's--so I don't know if that was changed. But
20 you stated on the record that it was 10,000.

21 THE COURT: Yeah. Right. I show it was \$10,000,
22 but--in the statute going back to 1995, so unless it was very
23 recently changed--

24 MR. BOUWHUIS: Okay.

25 THE COURT: It says a person convicted of an offense

1 may be sentenced to pay a fine not exceeding \$10,000 for a
2 felony conviction of the first degree or second degree.

3 MR. BOUWHUIS: Okay.

4 THE COURT: Now, is twen--

5 MR. BUSHELL: Are you reading from the statute?

6 THE COURT: Uh-huh (affirmative).

7 MR. BUSHELL: Okay.

8 MR. BOUWHUIS: Yeah. If you could make that change
9 on that plea agreement on the first page.

10 THE COURT: Okay. And then I'll have you both
11 initial it.

12 I show for entities, it's 20,000, so if it was a
13 corporation defendant.

14 MR. BOUWHUIS: Are you incorporated? I think we're--
15 -you're fine. I don't think you're incorporated.

16 MR. ALEX LAMBROSE: I don't know that.

17 THE COURT: Here, I'll hand it back then and let you
18 modify that.

19 While they're looking at that, on Timothy Lambrose,
20 Mr. Bushell, I didn't ask if he wanted to waive the second
21 reading of the information on that case that--

22 MR. BUSHELL: He would, your Honor. Yes.

23 THE COURT: And then enter his not guilty plea on
24 that case?

25 MR. BUSHELL: Yes.

1 THE COURT: Okay. Okay. And then back to you, Mr.
2 Alex Lambrose, you've initialed that change then?

3 MR. ALEX LAMBROSE: Yes. I have, your Honor.

4 THE COURT: It's in your favor, so that's a good
5 one.

6 MR. ALEX LAMBROSE: That's good.

7 THE COURT: Okay. And then a--a factual basis, Mr.
8 Arnold?

9 MR. ARNOLD: Yes, Judge.

10 On November 15th, 2014, the victim in this case,
11 Gabriel Gomez, was listing his 2007 black Cadillac CTS for
12 sale. He did that in two different ways, one on KSL and the
13 other by listing his number in the back window.

14 He received a phone call from a--a male with a phone
15 number starting with 385.

16 He was then contacted about the vehicle and a--I
17 guess a group of individuals showed up at his house to--to
18 check out the vehicle. A man exited the--a white Nissan Titan
19 and began speaking with Gabriel Gomez about the car, they
20 agreed to test drive that car. That man is Alex Lambrose.

21 And he--they began a test drive. They drove in and
22 around Ogden for some time, up until the point in which Alex
23 Lambrose pulled off into a neighborhood, in which he pulled
24 the car over off the side of the road and indicated something
25 as far as the--the police were following them. And when the

1 victim in the case, Gabriel Gomez, turned around, he noticed
2 the--a white Nissan Titan that had dropped off Mr. Lambrose at
3 his house was actually behind them.

4 Alex Lambrose, at that point, unlocked the car doors
5 to the Cadillac, being the driver of the vehicle. Gabriel
6 Gomez turned around and saw who he would identify as his
7 brother, Timothy Lambrose, exiting the--the Nissan Titan,
8 coming up along the side of the car, getting in the back seat
9 of that car and Timothy Lambrose had a knife. Gabriel Gomez
10 described that as eight to ten inches long and looked like--
11 looking somewhat like a bayonet.

12 At that point, his brother, Timothy Lambrose, gets
13 in the back seat of the--of the Cadillac and begins punching
14 and speaking with the victim in the case saying, get out, you
15 have insurance. And Mr. Gomez then tried to pull out his own
16 little pocket knife, but he couldn't get the blade out to--to
17 protect himself. And he was crammed up against the--the front
18 part of the Cadillac while Mr. Lambrose, Alex Lambrose was--
19 was the driver. Ultimately Timothy Lambrose was--was able to,
20 you know, force the--the victim out of the car.

21 And then at that point, he got out of the vehicle,
22 Alex Lambrose sped off with the car and then another person
23 who was driving the Nissan Titan followed suit.

24 Mr. Gomez called the police. He then, through
25 Detective Flint's investigation here, he spoke with numerous

1 people in regards to the case. Mr. Alex Lambrose was
2 identified as--as the driver of that vehicle. Mr. Flint
3 attempted to interview Alex Lambrose, he invoked his rights to
4 remain silent; however, during the course of the
5 investigation, Detective Flint was also monitoring Alex
6 Lambrose's jailhouse phone calls and in--one in which he
7 states that he played stupid or dumb in regards to the
8 Cadillac.

9 He also was monitoring his brother's phone calls and
10 in which the Cadillac is mentioned in--in some of those phone
11 calls and so that tipped off Detective Flint as far as the--
12 where the location of that Cadillac was and it was actually
13 located at Tim Lambrose, Sr.'s house, the father to Timothy
14 Lambrose and also Alex Lambrose.

15 In an interview with Timothy Lambrose, Sr., Timothy
16 Lambrose, Sr. indicated that he had asked Alex Lambrose about
17 the Cadillac because the boys had--had taken the key and he
18 didn't have the key to move a Cadillac and it was blocking his
19 garage and he wanted it moved.

20 And he went to--and visited Alex at the Salt Lake
21 County jail and asked him where the key to the Cadillac was
22 and according to Timothy Lambrose, Sr.'s interview, Alex said
23 that the key was in the Nissan Titan.

24 And then--think of anything else on Alex?

25 MR. ARNOLD: That's about it, Judge.

1 THE COURT: Okay. Thank you.

2 And Mr. Alex Lambrose, do you understand that by
3 pleading guilty, you would be admitting to that conduct?

4 MR. BOUWHUIS: Your Honor, let me just explain
5 something on the record just briefly.

6 He's--Mr. Lambrose is admitting that he was involved
7 in this to the extent necessary to constitute a crime, but the
8 description by Mr. Arnold involved other people's actions that
9 he's not going to be speaking to. And we recognize the
10 Court's not going to ask him to testify, but by asking him to
11 verify the statement that was given by Mr. Arnold as the basis
12 for the offense, we just want to clarify, he's admitting that
13 he was involved as described. And that's it.

14 THE COURT: Okay. Is that correct, Mr. Lambrose?

15 MR. ALEX LAMBROSE: Yes, your Honor.

16 THE COURT: Okay. Are you pleading guilty then
17 because you are guilty of this crime?

18 MR. ALEX LAMBROSE: Yes, sir.

19 THE COURT: Okay. Have any other promises been made
20 to you in connection with your pleading guilty?

21 MR. ALEX LAMBROSE: No, your Honor.

22 THE COURT: Has anybody threatened you or forced you
23 to plead guilty?

24 MR. ALEX LAMBROSE: No, sir.

25 THE COURT: Do you have any questions you'd like to

1 ask your attorney, Mr. Bouwhuis, before I ask you for your
2 plea?

3 MR. ALEX LAMBROSE: No.

4 THE COURT: Okay. Do you feel like you know what
5 you're doing?

6 MR. ALEX LAMBROSE: Yes, sir.

7 THE COURT: Okay. Mr. Alex Lambrose, then, on case
8 ending 2453, to Count 1, a first-degree felony, aggravated
9 robbery, to that charge, how do you plead?

10 MR. ALEX LAMBROSE: Guilty.

11 THE COURT: Okay. I'll accept that guilty plea then
12 and I'll find that you have entered into that knowingly,
13 voluntarily, intentionally and intelligently. And I'll
14 incorporate into those findings the written and verbal
15 statements that you've made here today and I've just now
16 signed your written statement.

17 And then is this being referred to A P & P?

18 MR. BOUWHUIS: Yes.

19 THE COURT: Okay. And can we do that from here
20 then, Laurie, or--

21 THE CLERK: (Inaudible)

22 THE COURT: Okay. And we're going out, what, about
23 six weeks?

24 THE CLERK: The 24th--

25 THE COURT: March 24th? Okay. March 24th at 9:00.

1 Mr. Arnold, do you know if there is any restitution
2 owing?

3 MR. ARNOLD: There will be, Judge. There's--I've
4 received a number of statements, the--the vehicle was damaged
5 and there--there's a lot of body work that needs to take
6 place, tune-ups, I believe wheels have been damaged. I mean,
7 it's--it's--we're talking over \$10,000.

8 THE COURT: Okay. So Mr. Alex Lambrose, then, we'll
9 be handing you a document entitled financial declaration. You
10 need to fill that out and hand that in when they come to
11 interview you. Okay?

12 MR. ALEX LAMBROSE: Right.

13 THE COURT: Okay. Anything else then on Mr. Alex
14 Lambrose?

15 MR. BOUWHUIS: Let me just indicate, I had a
16 conversation with Mr. Lambrose, I will be at the tail end of
17 the Lovell case and will not be available. I told him we
18 could--we could continue it out probably two weeks, but he's
19 indicated to me he'd rather proceed as scheduled.

20 Is that correct?

21 MR. ALEX LAMBROSE: Yes. (Inaudible)

22 MR. BOUWHUIS: Well, we'll do that--we can do that
23 at sentencing.

24 Just I want to get on the record, there--you're--you
25 want to proceed on that date and not bump it out two weeks for

1 me to be here?

2 MR. ALEX LAMBROSE: Yes.

3 MR. BOUWHUIS: Okay.

4 MR. ALEX LAMBROSE: Or what (inaudible)

5 MR. BOUWHUIS: Well, I've been your attorney. A
6 lot--most clients want the attorney who's been on the case to
7 be here for sentencing, but that's--

8 MR. ALEX LAMBROSE: All right.

9 MR. BOUWHUIS: Do you want to do that?

10 MR. ALEX LAMBROSE: Yeah.

11 MR. BOUWHUIS: What we would have to do is bump it
12 out two--

13 THE COURT: To April 7th then?

14 MR. BOUWHUIS: Yeah.

15 THE COURT: Okay. And will he waive his right to be
16 sentenced within the 45 days then in order to do that?

17 MR. BOUWHUIS: He would have to, yeah.

18 THE COURT: Okay. Okay. We'll set it for April 7th
19 then at 9:00.

20 Are you all right with that, Mr. Arnold?

21 MR. ARNOLD: That's fine. I'll be here but I--I'll
22 keep my mouth shut on that.

23 THE COURT: Oh, you're prohibited from speaking on
24 it, aren't you?

25 MR. ARNOLD: Yeah.

1 THE COURT: Okay. Thank you, Mr. Alex Lambrose
2 then.

3 Now, the three remaining cases all deal with Mr.
4 Timothy Lambrose; right?

5 MR. ARNOLD: They do.

6 THE COURT: And we're going forward on case ending
7 2721 at this time with the preliminary hearing?

8 MR. BUSHELL: Correct, your Honor.

9 MR. ARNOLD: Yes, Judge.

10 THE COURT: Okay. And is the State ready to proceed
11 on that?

12 (Whereupon, this hearing was concluded.)

13 * * *