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Recommended Citation
Reply Brief, *Savely v. Utah Highway Patrol*, No. 20170266 (Utah Supreme Court, 2017).
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IN THE UTAH SUPREME COURT

KYLE SAVELY, Claimant-Appellant, v. UTAH HIGHWAY PATROL and UTAH DEPARTMENT OF PUBLIC SAFETY, Defendant-Appellee.	PUBLIC Case No. 20170266-SC

REPLY BRIEF OF APPELLANT

APPEAL FROM DISMISSAL OF PETITION FOR RETURN OF PROPERTY, IN THE THIRD DISTRICT COURT– SUMMIT COUNTY, STATE OF UTAH, THE HONORABLE KARA PETTIT PRESIDING

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UTAH APPELLATE COURTS

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Case No. 20170266-SC

IN THE UTAH SUPREME COURT

KYLE SAVELY,
Claimant-Appellant,
v.
UTAH HIGHWAY PATROL and
UTAH DEPARTMENT OF PUBLIC SAFETY,

Defendant-Appellee.

REPLY BRIEF OF APPELLANT

Appellant Kyle Savely ("Savely") hereby replies to the Brief of Appellees ("BrAplee"), as well as the Brief for the United States as Amicus Curiae in support of the Appellees ("FedAmicus").

ARGUMENT

I.
UNDER THE PLAIN LANGUAGE AND STRUCTURE OF THE ACT, IN REM JURISDICTION LIES WITH THE STATE DISTRICT COURT UPON SEIZURE AND NOTICE

Under the plain language of the Utah Forfeiture Act (the "Act"), the state district court is granted in rem jurisdiction over property seized for forfeiture by operation of law upon seizure of the property and notice of intent for forfeiture under Utah law. (SavelyBr:17).

Buried as the last argument in their brief, Appellees UHP and DPS (collectively "UHP") contend that Savely's plain language argument "runs counter to traditional jurisdiction-invoking principles and isn't clearly expressed in the statute." (BrAplee:14).

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UHP contends that properly invoked in rem jurisdiction requires "a complaint, petition, or application," and ultimately concludes that Utah Code § 24-4-108(4), which provides that property held for forfeiture is "in the custody" of the district court and subject only to the orders and decrees of the court having jurisdiction, does not grant in rem jurisdiction to the district court – the simple argument being a grant of "custody" does not equate to a grant of "jurisdiction". (*Id.*:15-17).

The Federal Amicus similarly maintains that "a filing" is required for a court to assume in rem jurisdiction. (FedAmicus:2-4). Acknowledging that interpretation of the statute requires fidelity to the plain language, the Federal Amicus suggests that the Act's opening section contains "an unambiguous statement" that links jurisdiction to a requirement of filing in the state district court. (*Id.*:6-7). The Federal Amicus also reasons that because the Act lists the various filings that a state prosecutor must submit within 75 days of the seizure, if none of these filing are made, no in rem jurisdiction in the state court ever lies. (*Id.*:7-8).

The arguments should be rejected.

A. In Rem Jurisdiction Is Conferred To The State District Court Without Any Filings Necessary

As noted in Savely's Opening Brief, when property is seized for forfeiture under the authority of Utah law, the Act details strict procedures and limitations on how the seized property must be handled. (SavelyBr:7-9,13-14). By design, and in order to enforce the Act's provisions, the state district court is given authority over the res – or, in rem jurisdiction – by bringing the property into the "custody" of the district court

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immediately upon seizure and notice of intent to forfeit under Utah law. While in the court's custody, *the property is subject only to orders of the court* or other agency action *consistent with the Act* as set forth in Title 24, Chapter 4. *See* Utah Code § 24-4-108(4). In clear and plain terms, the Act further precludes any alienation, conveyance, or sequestration of the property *"until the court* issues a final order of dismissal or an order of forfeiture regarding the property." *Id.* § 24-4-108(1) (emphasis added). It should go without saying that property subject to a court's orders is subject to that same court's jurisdiction.

The Act's grant of in rem jurisdiction to the state district court is further solidified by a thorough review of the Act's other provisions. A fair reading of Title 24 reveals a consistent directive granting in rem jurisdiction to the state district court before any "filing" occurs. For example:

- **§ 24-4-114(1)(a)**
  Seizing agencies[1] . . . may not directly or indirectly transfer property held for forfeiture and not already named in a criminal indictment to any federal agency or any governmental entity not created under and subject to state law *unless the court enters an order*, upon petition of the prosecuting attorney, authorizing the property to be transferred. (emphasis added).

- **§ 24-4-104(1)(a)**
  The law enforcement agency shall promptly return seized property, and the prosecuting attorney may take no further action to effect the forfeiture of the property, unless within 75 days after the property is seized the prosecuting attorney: (i) files a criminal

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[1] "'Agency' means any agency of municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multijurisdictional task forces." Utah Code § 24-1-102(3).

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indictment or information . . . ; (ii) obtains a restraining order . . .; (iii) files a petition [for transfer] under Subsection 24-4-114(1); or (iv) files a civil forfeiture complaint.

These two provisions form an unmistakable and clear directive from Utah's legislative branch limiting the permissible actions of both the seizing agency and the prosecuting entities. Equally clear, the state district court is granted exclusive authority to insure compliance and to consider any proposed transfer of the property outside of Utah authority. Indeed, under these provisions, *the court is obligated to order the return of the property when required actions are not taken.* Thus, the court's authority and jurisidcition are not borne from a filing, but rather, exist to enforce the Act's provisions and grant relief to property owners when there is the very absence of such filings.

- **§ 24-2-103(3)**
  Property seized under this title is not recoverable by replevin, but is considered in the agency's custody subject only to the orders of the court . . . having jurisdiction.

When property is forcibly taken from one person by another, one has available all common law remedies to seek recovery. Indeed, the denial of such an opportunity would violate the constitutionally guaranteed right of access to courts and to due process of law. When it is the government forcibly taking property, the necessity for meaningful due process is even greater.[2] Although the Act allows the seizure of property without a right of replevin, the Act expressly provides an alternative form of meaningful access to the courts and due process based upon the grant of jurisdiction to the state district court.

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[2] *E.g.*, *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972); *Bank of Ephraim v. Davis*, 581 P.2d 1001, 1005 (Utah 1978).

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And, a number of provisions in § 24-4-108, titled "Release of property held for forfeiture on certain grounds", detail:

- **§24-4-108(3)**
  With the *consent of a court of competent jurisdiction*, the prosecuting attorney may discontinue forfeiture proceedings and transfer the action to another state or federal agency that has initiated forfeiture proceedings involving the same property. (emphasis added).

- **§24-4-108(4)**
  Property held for forfeiture is considered to be *in the custody of the district court* and subject only to: (a) the orders and decrees *of the court having jurisdiction over the property* *or* *the forfeiture proceedings*; . . . (emphasis and underline added).

In these provisions, the Act acknowledges that a court has jurisdiction over the property irrespective of any forfeiture proceedings. This makes sense since it is necessary for the state court having custody and control over the property to be able to make orders regarding it, well before a forfeiture complaint or a criminal information are filed, since citizens have rights concerning their property that may need to be redressed immediately upon seizure.

Overall, these provisions speak specifically to, and plainly grant, a state district court in rem jurisdiction without any filing required.

B. The Structure Of The Act Also Contemplates Immediate In Rem Jurisdiction

UHP and the Federal Amicus ignore the Act's plain grant of in rem jurisdiction. The Federal Amicus maintains that § 24-1-103(1) is the only jurisdictional provision of the Act, and one that requires a filing. The Federal Amicus also reasons that it seems

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unlikely that the legislature would add an additional form of jurisdiction in a stray phrase buried within the act. (FedAmicus:9-10,14). UHP similarly argues that the absence of what they characterize as "jurisdiction invoking norms" indicate that the legislature, and presumably the voters passing Initiative B, could not have meant what they said. Relying on old and inapposite cases, UHP argues that jurisdiction simply does not exist until a complaint in the traditional sense is filed. (BrAplee:8-9,14-15-18).

To the contrary, the language and structure of the Act are consistent and clear, and vest in rem jurisdiction with the state district court before any case is filed. As set out by Amicus Libertas, § 24-1-103 is merely a grant of "subject matter jurisdiction" over the subset of civil forfeiture cases. (LibertasAmicus:21-22). Under the Act's statutory scheme, it is generally not known whether a forfeiture will be pursued in a criminal or a civil proceeding during the first 75 days following a seizure. During that time period, the property is in procedural limbo while the prosecuting agency makes that determination. Depending upon the facts of a particular case, the property might end-up as a criminal forfeiture and named in the criminal charging document filed in either district or justice court. Hence, the "subject matter jurisdiction" outlined in § 24-1-103 is entirely irrelevant to the court's in rem jurisdiction under such a scenario.

Critically, regardless of *the type of case* potentially filed, the Act clearly empowers the state district court to act and issue orders concerning the property in the absence of a complaint or any other action. This grant of jurisdiction is designed to provide a citizen *some means of redress* and applies to all forms of forfeitures. For instance, under

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§ 24-4-108(5)(a), a claimant may obtain release of property held for forfeiture by posting with the district court a surety bond or cash in an amount determined by the court or by the parties' stipulation. Under § 24-4-108(7), a claimant may file a motion for hardship release "in any district court having jurisdiction over the property, if forfeiture proceedings have not yet commenced." Under § 24-4-108(3), and only with the consent of a court of competent jurisdiction, may the prosecuting attorney "discontinue forfeiture proceedings and transfer the action to another state or federal agency that has initiated forfeiture proceedings involving the same property." Section 24-4-114(1)(a) directs prosecutors further, requiring that if a transfer of the property to a federal agency is desired, prosecutors must file a petition and seek permission from the district court. The petition must make a number of showings, including in a signed declaration the basis "for relinquishing jurisdiction to a federal agency." *Id.* at (1)(c)(v)(A) & (C). This provision begs the fundamental question – if the district court does not hold in rem jurisdiction over the property before a petition for forfeiture is filed, then why must jurisdiction be relinqished?

All of these provisions explicitly contemplate a situation where a district court has jurisdiction over property even when there are no pending forfeiture proceedings. If the arguments posed by the UHP and the Federal Amicus were correct – that no jurisdiction exists before a complaint is filed – then no protection of the citizen property owner exists and there is no means to insure compliance with the Act's strict provisions. The contention is absurd. Each of these provisions plainly grant the district court authority to

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take action upon the res, something which the court couldn't do without in rem jurisdiction.

II.
LEGISLATIVE INTENT SUPPORTS THE STATE JURISDICTIONAL PARADIGM

The Utah legislature has been given multiple opportunities to change the Act's foundational provisions, but instead, has repeatedly put their stamp of approval on the jurisdictional paradigm created by Initiative B. Careful consideration of the Act as a whole, as well as its history, reveals what was intended – priority state jurisdiction over property seized for forfeiture.

A. *Kennard* Is A Canard

UHP's primary argument focuses on the federal district court's decision in *Kennard v. Leavitt*, 246 F.Supp.2d 1177 (D. Utah 2002). In *Kennard*, various law enforcement groups challenged the constitutionality of the then-newly-enacted Initiative B. One of law enforcement's claims was that the requirement for a transfer order conflicted with federal law, and therefore, the forfeiture statute was facially invalid under the Supremacy Clause. *See id.* at 1182. After the Utah Supreme Court refused to certify the question, the federal district court ultimately upheld the constitutionality of Utah's forfeiture statute, stating that it "believe[d]" that no state transfer order was required "when the seizing agency or prosecuting attorney is already under a federal forfeiture order." *Id.*

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After *Kennard*, the Utah legislature made amendments to the forfeiture provisions in 2004, but did not make any changes to the transfer provisions. Relying on this perceived inaction, UHP argues that the legislature implicitly ratified the federal court's interpretation of the transfer provisions by its acquiescence. (BrAplee:7-8,12-14). There are numerous problems with the argument.

Initially, UHP fails to provide any authority for the proposition that the acquiescence canon is even applicable when a court's interpretation is not binding. Although it is certainly questionable whether *Kennard* amounts to "persuasive authority", the decision certainly did not "bind" the Utah legislature any more than it bound this Court or any other state court. This detail is especially pertinent given the broad recognition that while the acquiescence canon has some substance, legislative inaction is "a weak reed upon which to lean in determining legislative intent," *see McKenna v. Ortho Pharm. Corp.*, 622 F.2d 657, 665 (3rd Cir. 1980), and "a poor beacon to follow in discerning the proper statutory route." *Zuber v. Allen*, 396 U.S. 168, 185 (1969). Nor does UHP show that *Kennard* had such an impact on the legal landscape that the legislature can be presumed to have known of it and endorsed it. *Jama v. I.C.E.*, 543 US 335, 349 (2005).

UHP's argument also fails to account for context. The issue before the federal district court in *Kennard* was the facial constitutionality of Utah's forfeiture law. In this context, the only way the law enforcement plaintiffs could prevail was if they showed "that no set of circumstances exist under which" the forfeiture law was valid. *E.g.,*

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United States v. Salerno, 481 U.S. 739, 745 (1987). The court needed only to determine whether there was *any* interpretation that rendered the law valid. The federal court did indeed find the Utah law valid, but expressly hedged its interpretation, stating only what it "believe[d]" the statute to mean.

While these procedural issues are sufficient to render UHP's *Kennard* argument toothless, they are insignificant compared to the substantive problems with their arguments. Under UHP's reading, the Act's grant of in rem jurisdiction to the state courts and the restrictions on transfers are ambiguous. However, trekking down this path of "legislative intent" does not support UHP's cause.

B. Initiative B Evinced A Clear Intent To Restrict Transfers And To Keep Property Within State Court Jurisdiction

The genesis of the current Act is Initiative B, passed by voters in 2000. Under the initiative, property was "deemed to be 'seized' whenever any agency takes possession . . . or exercises any degree of control over the property." Utah Code § 24-1-15(1) (2001). Once seized, state agencies and officers were prohibited from transferring, "directly or indirectly," without a court order. *Id.* § 24-1-15(2)(a) (2001). Utah courts were given the discretion to decline a transfer "to the federal government if such transfer would circumvent the protections of the Utah Constitution or" those otherwise provided by the initiative. *Id.* § 24-1-15(2)(b) (2001). Failure to heed this restriction was a Class B misdemeanor. *Id.* § 24-1-15(4)(c) (2001).

Though these provisions are plain by their terms, any ostensible doubt is expressly dispelled by the explanation of the law as presented by the initiative's proponents, who

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sought to appear as amicus curiae in *Kennard*.[3] In their memorandum seeking leave to participate, the proponents explained that the transfer provisions were specifically added to keep state law enforcement agencies from circumventing state forfeiture laws "by handing seized property to federal agencies to be forfeited pursuant to federal law, even where seizures are accomplished exclusively by state and local agents." *Memo. Support of Motion for Leave to Participate as Amicus Curiae*, *Kennard v. Leavitt*, 01-cv-171 (June 28, 2001), at 7. They also made clear that "jurisdiction of the seized property or res [is] in state court as soon as state or local agencies take custody of the res to pursue forfeiture." *Memo. Amicus Curiae in Opp. to Plaintiff's Request for Declaratory and Injunctive Relief*, *Kennard v. Leavitt*, *supra.*, at 12-13. Because jurisdiction was automatically extended over property seized for forfeiture, the transfer procedures were mandatory and federal efforts to seize that property – or state law enforcement efforts to transfer that property – would succumb to "common law principle of prior exclusive jurisdiction [which] vests jurisdiction in 'the court first assuming jurisdiction over the property . . . to the exclusion of the other." *Id.* at 12-15 (quoting *Penn General Casualty Co. v. Schnader*, 294 U.S. 189, 195 (1935)).

Thus, according to its authors, Initiative B was designed to vest in rem jurisdiction over any seized property in the state district court at the time it was seized, a mechanism

[3] In *Kennard*, Utahns for Properly Protection ("UPP") was granted leave to participate as amicus in the case. Their pleadings outline the history of Initiative B and detail the two year process in which they researched and drafted the law with the assistance of national organizations involved in forfeiture reform.

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calculatingly employed as a means to defeat any attempt to exercise federal power over the same property. Even the pleadings filed by the Utah Attorney General in *Kennard* are revealing:

> The state judicial gate keeping function is rationally related to a legitimate governmental purpose. Before a law enforcement agent runs off and transfers seized assets to the federal authorities, all [the provision] asks is that a state court judge be given the opportunity to first ascertain the existence of an undue burden compelling the agent to do so. If the state judge finds the existence of a valid federal forfeiture order, it is axiomatic the judge will also find the agent faces a huge "undue burden" if he does not comply with it. Without this simple gate-keeping function there is nothing to stop a state law enforcement official from transferring seized assets into the lap of federal authorities . . .

Def. Initial Trial Memorandum, *Kennard v. Leavitt*, 01-cv-171 (August 20, 2001), at 11.

C. Legislative Amendments After *Kennard* Maintained A Clear Intent To Restrict Transfers And To Keep Seized Property Within State Court Jurisdiction

Of course, UHP and the Federal Amicus claim that because the legislature didn't address *Kennard*'s interpretation of the transfer provisions in the 2004 amendments to the forfeiture law, the legislature implicitly recognized the federal court's interpretation. As shown, the contention is without merit. However, any plausible argument that *Kennard* was somehow ratified by the Utah legislature is put to rest by the 2007 amendments.

1. 2007 Amendments

In 2007, the legislature made two changes to the transfer provisions. The legislature added a subsection stating: "When property is seized pursuant to the order of a state district court *or state statute*, the *state has priority jurisdiction.*" Laws of Utah 2007, ch. 180, § 2 (emphasis added). It also required courts "to determine whether the state

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may relinquish priority jurisdiction by a preponderance of the evidence by considering hardship, complexity, judicial and law enforcement resources, and any other matter the court determines to be relevant." *Id.* In other words, the legislature said that if something is seized under state law, state courts have first priority to decide how to handle the seizure, and they can only give up jurisdiction for a really good reason.

But while the actual 2007 legislative amendments contradict *Kennard*, the associated legislative history shows that *Kennard* wasn't even on the legislature's radar. Not once was the case mentioned during proceedings. The 2007 amendments came into existence via a bill first offered in the senate. It was assigned to the Senate Judiciary Committee and the bill's sponsor had a representative of the Statewide Association of Prosecutors describe what changes the bill would make. The testimony from the prosecutor representative was that this bill "clarifies that the state has priority jurisdiction over any property that is seized by state authority." *Hearing on S.B. 55 Before the S. Judiciary Comm.* (testimony of Mr. Chad Platt), 57th Leg. Gen. Ses. 1:38:15 (Jan. 23, 2007). It was reiterated that state court jurisdiction "is the priority jurisdiction" and the bill "sends that message" to the state agencies that seize property as well as to federal officers and the courts. *Id.* (1:39:00). The same prosecutor representative presented similar testimony to the House committee, testifying that the bill "makes it even more clear that the state has priority jurisdiction, and spells it out that we have priority over any federal agency or the federal government when it comes to these cases." *Hearing on S.B. 55 Before the H. Natural Resources Comm.*, 57th Leg. Gen. Ses. 31:15 (Jan. 23, 2007).

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The 2007 amendments leave no doubt that the legislature never intended to adopt the *Kennard* interpretation by implication. In light of more recent legislative enactments, it is clear that the legislature still very strongly holds to that view.

2. 2013 and 2014 Amendments

Five years later in 2013, the forfeiture provisions underwent a purported "recodification". During the only committee hearing on the bill, the committee was told that "the bill contains the same procedures and protections that [were] previously contained in the forfeiture statute." *Hearing on H.B. 384 Before the H. Law Enforcement Comm.,* 60th Leg. Gen. Ses. 18:10 (March 4, 2013). During the floor presentation, the bill was again presented as a recodification with non-substantive changes that only increased protections for those against whom forfeiture might be sought. *House floor debate on H.B. 384*, 60th Leg. Gen. Ses. (March 5, 2013). The reality of the situation was something quite different. Relevant here, the 2013 bill made substantive changes that watered-down the transfer provisions, making it easier for state agencies to pass seized property to federal agencies. These changes did not last long. Clearly feeling duped,[4] a new bill was passed in 2014, with the specific aim to "restore[] most of the property rights in forfeiture law that were altered" the previous year. *Hearing on S.B. 256 Before the S. Judiciary Comm.,* 60th Leg. Gen. Ses. 4:10 (March 3, 2014). *See also*, Laws of

[4] *See*, Nick Sibilla, *Utah Made It Easier For Cops To Seize Innocent People's Property And Not A Single Lawmaker Voted Against It* (Forbes December 23, 2013) (available at https://www.forbes.com/sites/instituteforjustice/2013/12/23/utah-made-it-easier-for-cops-to-seize-innocent-peoples-property-and-not-a-single-lawmaker-voted-against-it/#3a0d54a747a5) (last visited 3/6/2018).

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Utah 2014, ch. 112, §§ 2 & 5 (enacting § 24-4-104(1)(a)(iii) & § 24-4-114(1)).

Thus, the legislative intent is clear: the Utah legislature has *never* shown any interest in making a transfer order optional and has always intended that the state courts have priority jurisdiction over any property seized for forfeiture.

D. Any "Inartful" Language Does Not Equate To A Lack Of Jurisdiction

Referring to § 24-4-108(4) – which states that "[p]roperty held for forfeiture is considered to be in the custody of the district court" – UHP argues that "custody" must mean something other than in rem jurisdiction, although never explaining what other meaning it must have. (BrAplee:16–17). The truth is that although the use of the term "custody" may appear inartful, the intention is clear. In fact, prior to the 2013 "recodification," there were a number of statutes spread throughout the Utah code that said that property held for forfeiture was "considered in custody of the law enforcement agency making the seizure subject only to the orders of the court or the official having jurisdiction." *E.g.*, Utah Code § 32A-13-103(5) (2007). This language was specifically used and relied upon by the drafters of Initiative B because other courts had concluded that this same language was sufficient to secure in rem jurisdiction over property by operation of law. *See Memo. Amicus Curiae in Opp. to Platintiff's Request for Declaratory and Injunctive Relief*, *Kennard v. Leavitt*, 01-cv-171 (Sept. 4, 2001) at 11-13. When a set phrase is copied over from another legal source, it brings with it the original understanding. *See, e.g., Maxfield v. Herbert*, 2012 UT 44, ¶ 31, 284 P.3d 647. Viewed in that light, the phrase and its purpose make sense.

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Also with this in mind, it becomes clear that the Federal Amicus conflates subject matter jurisdiction with in rem jurisdiction as it argues that it is odd for one stray jurisdictional provision to be found in § 24-4-108 while the rest are found near the front of Title 24. (FedAmicus:9-10). Subject matter jurisdiction and in rem jurisdiction are two very different things. Subject matter jurisdiction "is the authority and competency of the court to decide the case." *Dep't of Social Servs. v. Vijil*, 784 P.2d 1130, 1132 (Utah 1989). In contrast, in rem jurisdiction "is the court's ability to exercise its power over" a piece property so that it can adjudicate "the interests of all persons in designated property." *See id.*; *also Aequitas Enters. v. Interstate Inv. Grp.*, 2011 UT 82, ¶ 10, 267 P.3d 923. In rem jurisdiction is to property what personal jurisdiction is to people. *See Carlson v. Bos*, 740 P. 2d 1269, 1272 n.7 & n.8 (Utah 1987). And like it addresses in rem jurisdiction in Title 24, the legislature frequently addresses subject matter jurisdiction separate from personal jurisdiction.[5] There is simply nothing unusual about defining different types of jurisdiction in different statutes or even different titles.

Moreover, and in looking at the purpose of § 24-4-108, it is understandable why the in rem provision was lodged there. This specific section delineates the different ways that seized property can be handled. Seized property may be returned to the person from

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[5] For example, Utah Code § 78A-5-102 defines what subject matter jurisdiction a district court has over criminal cases as § 76-1-201, a statute in a completely different title, defines what personal jurisdiction district courts have over criminal defendants. Similarly, Utah Code § 78A-5-102 describes what subject matter jurisdiction a court has over litigants in civil complaints as § 78B-3-205, another section in a different title, delineates when personal jurisdiction is appropriate over people outside that state.

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whom it was seized if it might cause hardship; it may be returned because the person offers a bond to secure its value; or it may be returned simply because the prosecutor sees no further need to hold it in the interim. *See* Utah Code §§ 24-4-108(2),(5)-(11). Under subsections (12) and (13), the property may even be sold or leased to avoid a loss in value. In other words, section 108 includes a collection of different ways in which seized property may be handled while the threat of forfeiture hangs over it. This same section is as good a place as any to direct that however the property is handled, legal custody and jurisdiction remains with the district court.

III.
THE STATE DISTRICT COURT DOES NOT LOSE IN REM JURISDICTION UPON THE STATE'S FAILURE TO COMPLY WITH THE ACT'S STRICTURES

The last significant argument posed by the Federal Amicus is that because state prosecutors did not file any petition for forfeiture or transfer, the district court lost any in rem jurisdiction it might have had over the property. (FedAmicus:16-17). The proposition is wrong for several reasons.

First, the Act could not be more clear about what must happen when a prosecutor fails to take one of four necessary actions within 75 days after seizure: "The law enforcement agency *shall promptly return seized property*, and *the prosecuting attorney may take no further action to effect the forfeiture of the property*." Utah Code § 24-4-104 (1)(a) (emphasis added). What does *not* happen is that the state district court loses its in rem jurisdiction. Nor does the citizen forfeit his rights because the prosecutor has been derelict in performing his duties. Instead, *what the court must do* after 75 days without an

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action being filed is to order the immediate return of the property, including an award of attorneys fees for the citizen. The legislature very clearly provided the state district court with the authority and the jurisdiction to enter such an order. And of note, the advocacy and actions of the State of Utah in this case are arguably estopped by this very provision.

Second, the Federal Amicus cites a series of federal cases in support of their argument, but they are not on point or distinguishable on their facts. (FedAmicus:17).[6] The case most relevant here is *United States v. One 1979 Chevrolet C-20 Van,* where the Seventh Circuit concluded that an Illinois state court had not lost jurisdiction, even though the state forfeiture petition had been dismissed. *See* 924 F.2d 120, 123 (7th Cir. 1991). The appellate court specifically explained that the existence of a pending state petition was not determinative:

> Both parties dance around the real issue. This case does not turn upon who won the forfeiture "foot race" in the courts, but rather upon the fact that there is no authority for the type of transfer between executives of agencies that took place here. To the contrary, such a transfer circumvents disposition of the res by the circuit court, as required by both Illinois statutes that authorize actions for forfeiture.[7] *Id.* at 122.

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[6] Two of the cited cases provide that the state courts lost any in rem jurisdiction they held when they ordered the property at issue returned to the property owners. *See United States v. $174,206*, 320 F.3d 658, 661 (6th Cir. 2003); *United States v. One Black 1999 Ford Crown Victoria LX*, 118 F.Supp.2d 115, 118-19 (D. Mass. 2000)). That is hardly remarkable.

The remaining case is similarly unhelpful. In *United States v. $57,960*, and without any analysis of state law requirements, the court rejected a collateral attack lodged by a pro se inmate defendant who had failed to answer the forfeiture complaint. *See* 58 F.Supp.2d 660, 667 (D. S.C. 1999)).

[7] It is noteworthy that Utah and Illinois use similar language in their statutes: "[p]roperty taken or detained under this Section shall not be subject to replevin, but is

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IV.
RESPONSE TO POLICY ARGUMENTS

UHP and the Federal Amicus also pose a number of justifications concerning their conduct in this case, as well as make broader policy arguments as to their need to be able to act outside the constraints of Utah law. Although this Court is able to decide this matter without reaching these issues, policy considerations are presented that merit some response.

A. The Interpretation Posed By UHP And The Federal Amicus Gut The Act

As an overall general principle, the practical consequence of adopting the arguments posed by UHP and the Federal Amicus would be to allow transfers at will and would effectively gut any enforcement provisions of the Act. If Utah state courts do not obtain in rem jurisdiction immediately upon seizure and notice under Title 24, then all of the protections and restrictions in the same title are easily avoided. State agencies will be incentivized to leave local prosecutors out of the loop entirely with an anticipatory eye to obtaining an ex-parte federal warrant which effectively removes all state protections. The situation is little better if state courts gain in rem jurisdiction at seizure only to lose that jurisdiction automatically when no timely action is taken or petition is filed. State police agencies would acquire the same unbounded discretion, the only difference being that the state and federal agencies would have to wait 75 days before they could make their move.

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deemed to be in the custody of the Director *subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings.*" 924 F.2d at 122 (quoting Ill. Rev. Stat. 1971, ch. 5612 § 712(d) & (f)(3)) (emphasis in original); *cf.* Utah Code § 24-2-103(3).

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B. UHP And The Federal Amicus Wish To Operate In The Back Room Rather Than The Courtroom

With specific regard to the property at issue here, UHP characterizes its position as one "between a rock and a hard place", suggesting that they come to this matter with clean hands and are not taking sides in this dispute. (BrAplee:1). Likewise, the Federal Amicus entered this case with the stated purpose of trying to understand "when Utah court jurisdiction arises to ensure the integrity of its investigations and cooperation with the state." They continue to assert that what happened here was not yet an "adoptive forfeiture" so any real or perceived flaws with adoptive forfeitures should not cause the Court concern. (FedAmicus:5-6).

However, there is ample reason to treat these proclamations of good intention with a healthy dose of skepticism. This matter has been pending for over one year and there has yet to be offered any tenable explanation as to how this state seizure was adopted by federal agents. At the time the Federal Amicus sought to participate in this appeal, it twice claimed that at the time of the seizure, there existed both a federal component and an active federal investigation.[8] Thereafter, the Federal Amicus represented to this Court

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[8] In its motion to file an amicus brief, the Federal Amicus represented that: "The DEA requested the assistance of the Utah Highway Patrol in stopping Mr. Savely's vehicle because the DEA believed based on its investigation that the vehicle contained the proceeds of drug trafficking." *Motion for Leave to File Amicus Brief*, at 1-2. It also represented that "this case involves a common scenario: state authorities assisting federal authorities with a federal investigation" and therefore, "[b]ecause this money is implicated in federal crimes and is subject to federal forfeiture, the United States has a direct interest in the disposition of those funds." *Id.* at 2-3. Thereafter, in response to Savely's objection to federal participation, the Federal Amicus again represented that the "genesis of [this] case [was] a federal investigation" and argues that because the traffic

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for a third time that the property at issue "was involved in a multi-state, federal anti-drug trafficking and anti-money laundering investigation" and thus, the federal government has an interest in these funds. (FedAmicus:1,5). The Federal Amicus has since conceded that this is not true. In an Errata signed February 7, 2017, the Federal Amicus confessed that its amicus brief "left the incorrect impression that this case originated with a federal investigation. It did not." (Errata, at 1). The Federal Amicus justified: "We mistakenly conflated the facts of this case with those of another, contemporaneous case." (*Id.*). The timing of the concession is curious, however, as it was made only one day after the UHP Trooper who seized these funds testified that, in fact, there had been no federal involvement.[9] It must also not be lost that it has been 15 months since this property was taken and there has been no form of criminal federal filing.

Aware of the temptations presented by the practice of federal equitable sharing, the drafters of Utah's forfeiture laws made it illegal to *directly or indirectly* transfer such property. Initiative B actually made it a crime. There is simply no form of backroom transfers allowed. In reality, the likely explanation for what happened here is that UHP delivered this case to the DEA with an eye toward a later share in the bounty. But

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stop "was initiated by the U.S. Drug enforcement Agency as part of a Federal investigation . . . this case did not arise from a Federal adoption of a state seizure." *United States' Resp. to Appellant's Objection to Motion for Leave to File Amicus Brief*, at 2-3.

[9] On February 6, 2018, Savely went to trial on the charge of "following to close" which was the basis for the roadside detention and search. He was acquitted by the Summit County Justice Court, case no. 161204385 (Judgment and Docket attached collectively in Addendum A).

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regardless of why or how the DEA became involved, there is simply *no scenario* under which UHP is relieved of its obligation to follow Utah law. *If* UHP supported federal intervention, then it had an obligation to seek a transfer under the procedures set forth under Utah law. *If* UHP was indifferent towards federal intervention, they were under the very same obligation. And, *even if* UHP truly felt lodged between a rock and a hard place, they were still obligated to plead their dilemma to the state court in a transfer proceeding, thereby allowing all impacted parties – including the State of Utah and Mr. Savely – a meaningful opportunity to participate.

Compliance with Utah law would have moved things out of the backroom and into the courtroom where the issues could be addressed. As a part of the required court proceedings, some scrutiny of the history of events would presumably occur.[10] At a minimum, the state court judge needed to conduct an in-camera review of the affidavit in support of the seizure warrant submitted to the federal magistrate. It appears that the entirety of the argument posed for primary federal jurisdiction is built upon this federal seizure warrant that was granted in response to that ex-parte application, and yet there is nothing known about what it states. (FedAmicus:2,6-7;BrAplee:3,4-5). UHP and the Federal Amicus ask that the federal magistrate's warrant serve as the all powerful trump

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[10] If any party had concerns about shielding portions of the case from the public or from Savely, those aspects could be considered under seal or in-camera. Meaningful judicial review would have also revealed that any plausible federal claim would run contrary to the United States' Department of Justice's own guidelines, which states: a "state forfeiture [is] appropriate," – meaning federal forfeiture should not proceed – if "the asset was seized by a state or local agency and state law requires a turnover order." Department of Justice US Attorneys' Manual § 9-112.170

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card, but it is a card they insist must remain face down. And, the recent concession by the Federal Amicus that it conflated this case with another raises questions as to what was actually contained in the ex-parte application for the warrant. It is logical to assume that misrepresentations made to this Court due to the "conflating of cases" were likewise part of the affidavit presented to the federal court.

The transfer proceeding required by the Act, where the state judge is called upon to ensure due process and to act as the gatekeeper, would have developed the actual facts and history as to how any federal interest in this seizure developed. If the federal government indeed had a superior claim for jurisdiction, and the federal magistrate had received accurate and complete information, the State judge would, after review, have likely ordered the transfer to the federal agency as Utah law envisions. Conversely, if it was revealed that a state notice was served on Mr. Savely which outlined state law procedures, and that by operation of fact and law this property had at all times been within the jurisdiction of the state court, the state court would have simply denied the motion for transfer to the federal court. This result seems likely insofar as the record here suggests that the federal magistrate had not been properly or fully apprised of the relevant events and had not been informed that the property was already in the state court's custody.[11]

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[11] A fully informed federal magistrate would have issued something less intrusive like a restraining order–perfectly reasonable given that the property was in the custody of the State court and already out of Savely's control. *See* 21 U.S.C. 853(e) (court may issue "a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property . . . for forfeiture");

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Critically, because UHP opted to operate outside of the requirements of Utah law, no transfer proceeding took place. Regardless of what may have been revealed as a part of that process, they now have a legal obligation to promptly return the seized property.

C. Any Additional Concerns Do Not Justify Non-Compliance With Utah Law

Also unpersuasive and troubling are the self-serving arguments made that the expense, time, and resources expended in having to comply with Utah law might "deter the state from assisting federal authorities in the first place." (FedAmicus:13, n.8). While the federal system is surely easier and more lucrative for law enforcement, the history behind Title 24 makes crystal clear that it was passed into law precisely to cut off the attractiveness of such an option. To now advocate without pause that state officers might not cooperate without some financial benefit speaks loudly to the need for the very restrictions the Act imposes.

Finally, the suggestion is made that there could be "harm to the investigation" if federal law enforcement is required to reveal details as part of a state transfer proceeding. (FedAmicus:5-6). The contention is insulting, and implies that state judges are less trustworthy than federal judicial officers. They are not. If sensitive information needs to be filed under seal, or even presented *in camera*, state courts routinely and sensitively accommodate and balance the needs of law enforcement with both constitutional and statutory requirements.

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id. at (f) (seizure warrant only available if court determines other restraints would be insufficient).

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CONCLUSION

The UHP and the Federal Amicus approach these issues purely from the point of view of what *the government needs* and with utter disregard as to how the process impacts the citizen whose property has been taken.

Although discounting Savely's plea to this Court as hyperbole and an unjustified rendition of a "parade of horribles" (BrApplee:1-2), this case marches front and center in that parade. A citizen's funds have been seized with no hearing, no showings made as to the propriety of the seizure, no due process, no ability afforded for that property's timely return, and one year later, no end in sight. These collaborating state and federal agencies have engaged in all manner of contortion and mental gymnastics in an attempt to make this clear injustice muddy.

This Court must now make clear that the desire of voters and our legislature to protect *the citizen's needs* will be honored by the Utah courts.

DATED this 7th day of March 2018.

/s/ *James C. Bradshaw*
/s/ *Ann Marie Taliaferro*

JAMES C. BRADSHAW
ANN MARIE TALIAFERRO
Attorneys for Appellant Savely

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CERTIFICATE OF DELIVERY

I hereby certify that on the 7th day of March, 2018, a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT was mailed, postage prepaid, emailed, or hand-delivered to:

Stanford Purser
Deputy Solicitor General
160 East 300 South, 6th Floor
Salt Lake City, Utah 84111
spurser@utah.gov

A courtesy copy was also emailed, mailed or hand-delivered to:

Adam R. Pomeroy
785 E 200 S, Ste 2
Lehi, UT 84043
Attorney for Libertas Institute
legal@libertasutah.org

Adam Elggren
Assistant United States Attorney
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Attorneys for the Federal amicus
adam.elggren@usdoj.gov

/s/ *Ann Marie Taliaferro*

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CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I, Ann Marie Taliaferro, certify that this brief contains **6,936 words**, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery.

In compliance with the typeface requirements of Utah R. App. P. 27(b), I also certify that this brief has been prepared in a proportionally spaced font using WordPerfect X6 in Times New Roman 13 point.

/s/ *Ann Marie Taliaferro*

____

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ADDENDUM A

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The Order of the Court is stated below:
Dated: February 23, 2018 /s/ SHAUNA L KERR
06:22:44 AM Justice Court Judge

SUMMIT COUNTY JUSTICE COURT
SUMMIT COUNTY, STATE OF UTAH

STATE OF UTAH,	:	RULING
Plaintiff,	:	JUDGEMENT OF NOT GUILTY
	:	
vs.	:	Case No: 165204385
KYLE ADAM SAVELY,	:	Judge: KERR, SHAUNA L
Defendant.	:	Date: February 21, 2018

This matter was set for bench trial on February 6, 2018. The State was represented by Ms. Ivy Telles, the Defendant was excused from the trial but represented by James Bradshaw. At the conclusion of all evidence the parties requested that the Court take this matter under advisement to allow the Court to review the DVD provided by the Summit County Attorney's Office and entered into evidence as Exhibit # 1. The Court having reviewed said DVD and having heard and considered all testimony and other evidence presented does not find beyond a reasonable doubt that the defendant was following to close on the date and time as charged. Therefore, the Court finds the defendant, Kyle A Savely, Not Guilty of the offense of following too close.

End Of Order - Signature at the Top of the First Page

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 165204385 by the method and on the date specified.

EMAIL: STATE OF UTAH chortin@summitcounty.org
EMAIL: JIM C BRADSHAW jim@brownbradshaw.com
EMAIL: IVY TELLES itelles@summitcounty.org

Date: 02/23/2018 /s/ NICI CRYSTAL

Justice Court Clerk

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SUMMIT COUNTY JUSTICE COURT
SUMMIT COUNTY, STATE OF UTAH

STATE OF UTAH vs. KYLE ADAM SAVELY
CASE NUMBER 165204385 Traffic Court Case

CHARGES
Charge 1 - 41-6A-711 - FOLLOWING ANOTHER VEHICLE TOO CLOSE
Infraction
Offense Date: November 27, 2016
Disposition: February 22, 2018 Not Guilty - Bench

CURRENT ASSIGNED JUDGE
SHAUNA L KERR

PARTIES
Defendant - KYLE ADAM SAVELY
Represented by: JIM C BRADSHAW
Plaintiff - STATE OF UTAH
Represented by: IVY TELLES

DEFENDANT INFORMATION
Defendant Name: KYLE ADAM SAVELY
Date of Birth: March 21, 1986
Law Enforcement Agency: UHP - ALL
LEA Case Number: 071601684
Officer Name: KADE LOVELAND
Prosecuting Agency: SUMMIT COUNTY
Citation Number: C149491987

ACCOUNT SUMMARY

CASE NOTE
Cit. Issued:11/27/2016 Reported:11/29/2016 J2204 #6 KADE LOVELAND

PROCEEDINGS
11-29-16 Case filed
11-29-16 Judge SHAUNA L KERR assigned.
12-20-16 Filed: Appearance of Counsel/Notice of Limited Appearance and Entry of Plea
12-20-16 Filed: Request for Discovery

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12-20-16 Filed: Demand for Jury Trial - Criminal
12-20-16 Filed: Return of Electronic Notification
01-03-17 Issued: Delinquent Notice
Judge SHAUNA L KERR
01-03-17 Notice - NOTICE for Case 165204385 ID 12128805
PRETRIAL CONFERENCE is scheduled.
Date: 02/21/2017
Time: 08:30 a.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER RD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
01-03-17 PRETRIAL CONFERENCE scheduled on February 21, 2017 at 08:30 AM
in SUMMIT CTY COURTROOM with Judge KERR.
01-03-17 Filed: Notice for Case 165204385 ID 12128805
01-19-17 Filed: INFORMATION/INDICTMENT
01-19-17 Charge 41-6A-711(1) Sev IN was amended to 41-6A-711 Sev IN
01-25-17 Filed: Def's notice was returned attempted not known
02-21-17 SUPPRESSION HEARING scheduled on June 08, 2017 at 09:00 AM in
SUMMIT CTY COURTROOM with Judge KERR.
02-21-17 Minute Entry - PRETRIAL CONFERENCE
Judge: SHAUNA L KERR
PRESENT
Clerk: nicic
Prosecutor: TELLES, IVY
Defendant not present
Defendant's Attorney(s): BRADSHAW, JIM C

Audio

No resolution. Case set for motion hearing.

SUPPRESSION HEARING is scheduled.
Date: 06/08/2017
Time: 09:00 a.m.
Location: SUMMIT CTY COURTROOM

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6300 JUSTICE CENTER RD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
05-30-17 Filed: Motion to Strike Suppression Hearing and Convert to
Pretrial Conference
Filed by: STATE OF UTAH,
05-30-17 Filed: Order (Proposed) Striking Suppression Hearing and
Converting to a Pretrial Conference
05-30-17 Filed: Return of Electronic Notification
05-31-17 Filed order: Order Striking Suppression Hearing and Converting
to a Pretrial Conference
Judge SHAUNA L KERR
Signed May 31, 2017
05-31-17 Filed: Return of Electronic Notification
06-01-17 Notice - NOTICE for Case 165204385 ID 12580320
PRE-TRIAL HEARING.
Date: 06/08/2017
Time: 09:00 a.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER RD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
The reason for the change is Court Ordered
06-01-17 SUPPRESSION HEARING Modified.
Reason: Court Ordered
06-01-17 PRE-TRIAL HEARING scheduled on June 08, 2017 at 09:00 AM in
SUMMIT CTY COURTROOM with Judge KERR.
06-01-17 Filed: Notice for Case 165204385 TC: Judge SHAUNA L KERR
06-08-17 Note: Ann Taliaferro appeared today for a pretrial, case
continued to another pretrial in August.
06-08-17 PRE-TRIAL HEARING continued to August 01, 2017 at 08:30 AM in
SUMMIT CTY COURTROOM with Judge KERR.
06-08-17 Notice - NOTICE for Case 165204385 ID 12602020
PRE-TRIAL HEARING is scheduled.
Date: 08/01/2017
Time: 08:30 a.m.
Location: SUMMIT CTY COURTROOM

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6300 JUSTICE CENTER RD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
06-08-17 Note: Reason: Discovery problems Stipulation of parties motion.
06-08-17 PRE-TRIAL HEARING Modified.
06-08-17 Filed: Notice for Case 165204385 TC: Judge SHAUNA L KERR
06-08-17 PRE-TRIAL HEARING scheduled on August 01, 2017 at 08:30 AM in
SUMMIT CTY COURTROOM with Judge KERR.
06-08-17 Filed: Notice for Case 165204385 TC: Judge SHAUNA L KERR
06-20-17 Note: Def's pretrial notice was returned, due to attorney
involved no attempt to send was made.
08-01-17 PRE-TRIAL HEARING continued to November 14, 2017 at 08:30 AM in
SUMMIT CTY COURTROOM with Judge KERR.
08-01-17 Minute Entry - CONTINUANCE
Judge: SHAUNA L KERR
PRESENT
Clerk: nicic
Prosecutor: TELLES, IVY
Defendant not present
Defendant's Attorney(s): ANN MARIE TALIAFERRO

Audio

CONTINUANCE

Whose Motion:
The Defendant.
Reason for continuance:
Correct calendar
PRE-TRIAL HEARING is scheduled.
Date: 11/14/2017
Time: 08:30 a.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER RD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR

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11-14-17 PRE-TRIAL HEARING continued to January 23, 2018 at 08:30 AM in
SUMMIT CTY COURTROOM with Judge KERR.
11-14-17 Minute Entry - CONTINUANCE
Judge: SHAUNA L KERR
PRESENT
Clerk: nicic
Prosecutor: TELLES, IVY
Defendant not present
Defendant's Attorney(s): BRADSHAW, JIM C

Audio

CONTINUANCE

Whose Motion:
The Defendant's counsel JIM C BRADSHAW.
Reason for continuance:
Settlement negotiations
PRE-TRIAL HEARING is scheduled.
Date: 01/23/2018
Time: 08:30 a.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER RD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
01-23-18 PRE-TRIAL HEARING continued to April 17, 2018 at 08:30 AM in
SUMMIT CTY COURTROOM with Judge KERR.
01-23-18 Minute Entry - CONTINUANCE
Judge: SHAUNA L KERR
PRESENT
Clerk: nicic
Prosecutor: TELLES, IVY
Defendant not present
Defendant's Attorney(s): BRADSHAW, JIM C

Audio

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CONTINUANCE

Whose Motion:
The Defendant's counsel JIM C BRADSHAW.
Reason for continuance:
Correct calendar
PRE-TRIAL HEARING is scheduled.
Date: 04/17/2018
Time: 08:30 a.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER ROAD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
01-23-18 Notice - NOTICE for Case 165204385 ID 13290838
HEARING is scheduled.
Date: 02/06/2018
Time: 02:00 p.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER ROAD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
01-23-18 Filed: Notice for Case 165204385 TC: Judge SHAUNA L KERR
01-23-18 Notice - NOTICE for Case 165204385 ID 13291078
PRE-TRIAL HEARING.
Date: 02/06/2018
Time: 02:00 p.m.
Location: SUMMIT CTY COURTROOM
6300 JUSTICE CENTER ROAD

PARK CITY, UT 84098
Before Judge: SHAUNA L KERR
The reason for the change is Correct calendar
01-23-18 PRE-TRIAL HEARING Modified.
Reason: Correct calendar
01-23-18 Filed: Notice for Case 165204385 TC: Judge SHAUNA L KERR
02-01-18 TRIAL-BENCH scheduled on February 06, 2018 at 02:00 PM in

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SUMMIT CTY COURTROOM with Judge KERR.
02-06-18 Filed: Waiver of Defendants Appearance at Bench Trial
02-06-18 Filed: Return of Electronic Notification
02-06-18 Notice - Final Exhibit List
02-06-18 Minute Entry - TRIAL-BENCH
Judge: SHAUNA L KERR
PRESENT
Clerk: nicic
Prosecutor: TELLES, IVY
Defendant not present
Defendant's Attorney(s): BRADSHAW, JIM C

Audio
Tape Number: 2:21

Def waived appearance at trial
2:25 Trooper Loveland called as state witness
2:33 Cross by defense
2:51 Redirect by state
2:54 Cross by defense
2:57 State rests
3:06 Closing by state
3:13 Closing by defense
3:23 Rebuttal by state
3:26 Judge takes case under advisement

02-07-18 Filed order: TRIAL-BENCH
Judge SHAUNA L KERR
Signed February 07, 2018
02-21-18 Ruling Entry - JUDGEMENT OF NOT GUILTY
Judge: KERR, SHAUNA L
This matter was set for bench trial on February 6, 2018. The State was represented by Ms. Ivy Telles, the Defendant was excused from the trial but represented by James Bradshaw. At the conclusion of all evidence the parties requested that the Court take this matter

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under advisement to allow the Court to review the DVD provided by the Summit County Attorney's Office and entered into evidence as Exhibit # 1. The Court having reviewed said DVD and having heard and considered all testimony and other evidence presented does not find beyond a reasonable doubt that the defendant was following to close on the date and time as charged. Therefore, the Court finds the defendant, Kyle A Savely, Not Guilty of the offense of following too close.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 165204385 by the method and on the date specified.

EMAIL: STATE OF UTAH chortin@summitcounty.org
EMAIL: JIM C BRADSHAW jim@brownbradshaw.com
EMAIL: IVY TELLES itelles@summitcounty.org

Date: 02/23/2018 /s/ NICI CRYSTAL

Justice Court Clerk

02-22-18 Charge 1 Disposition is Not Guilty - Be
02-23-18 Filed order: JUDGEMENT OF NOT GUILTY
Judge SHAUNA L KERR
Signed February 23, 2018

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