

2014

State of Utah, Plaintiff/ Appellee, v. Cooper John Anthony Van Huizen, Defendant/ Appellant.

Utah Court of Appeals

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IN THE
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STATE OF UTAH,
Plaintiff/Appellee,

v.

COOPER JOHN ANTHONY VAN HUIZEN,
Defendant/Appellant.

Brief of Appellee

Appeal from the juvenile court's decision under the Serious Youth Offender Act to bind Defendant over for trial in the district court on charges of aggravated robbery and aggravated burglary, in the Second Judicial District Juvenile Court, Weber County, the Honorable Michelle M. Heward presiding

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Case No. 20140602-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

COOPER JOHN ANTHONY VAN HUIZEN,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from the juvenile court's decision under the Serious Youth Offender Act (SYOA) to bind him over to district court on charges of aggravated robbery, Utah Code Ann. §76-6-302, and aggravated burglary, Utah Code Ann. §76-6-203, first degree felonies. This Court has jurisdiction under Utah Code Ann. §78A-4-103(2)(c) (West Supp. 2014).

INTRODUCTION

Defendant, who was 16 years old, knowingly supplied guns for a home-invasion robbery to steal drugs, and then participated in that robbery. After analyzing the SYOA factors, the juvenile court bound him over for trial in district court because of his age and the seriousness of his crimes. Defendant challenges that ruling on several grounds.

STATEMENT OF THE ISSUES

1. For the first time on appeal, Defendant argues that the 2013 SYOA amendments made evidence about his rehabilitative potential and his mental condition relevant considerations for the juvenile court.

Was Defendant's counsel ineffective for not arguing, or did the juvenile court plainly err by not interpreting, the 2013 SYOA amendments as Defendant now does?

Standard of Review. Ineffective assistance of counsel claims raised for the first time on appeal are reviewed for correctness. *State v. Isom*, 2015 UT App 160, ¶34, 789 Utah Adv. Rep. 21. Plain error requires a showing of obvious, prejudicial error. *Id.* ¶28.

2. Did the juvenile court clearly error in making its findings under the SYOA factors, or did it abuse its discretion in concluding that Defendant had not carried his burden to show that it should retain his case?

Standard of Review. Factual findings under the SYOA factors are reviewed for clear error. *In re M.E.P.*, 2005 UT App 227, ¶15, 114 P.3d 596. Because the juvenile court's ultimate decision involved a "best interests" determination based on a weighing of factors, it should be reviewed for abuse of discretion. *See Doyle v. Doyle*, 2011 UT 42, ¶40, 258 P.3d 553 (applying abuse of discretion standard in child custody "best interests" determinations).

3. Was Defendant's trial counsel ineffective in arguing the evidence before the juvenile court and in agreeing to allow the hearing to be held jointly with a codefendant?

Standard of Review. See issue 1.

4. Was the juvenile court judge required to recuse herself sua sponte because she was a former prosecutor and was married to the chief criminal deputy in the prosecutor's office?

Standard of Review. See issue 1.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Addendum A contains:

Utah Code Ann. §78A-6-701 (West Supp. 2013) (automatic waiver);

Utah Code Ann. §78A-6-702 (West Supp. 2013) (SYOA);

Utah Code Ann. §78A-6-703 (West Supp. 2013) (certification);

Utah Code Ann. §78A-2-222 (West 2009) (disqualification);

Utah R. Juv. P. 22 (preliminary hearing in SYOA cases);

Utah R. Juv. P. 23A (SYOA hearings);

Utah R. Jud. Conduct 2.11 (disqualification).

STATEMENT OF THE CASE

A. Summary of facts.

Defendant supplies guns for, and participates in, a home-invasion robbery

Defendant and Joshua Dutson were good friends. R161,293-94. Dutson introduced Defendant to Wesley Brown, Dexter Skinner, and Tomek Perkins.

R263,266,282-88,363. Brown, Skinner, and Perkins were all 18 years old; Dutson was 17; Defendant was 16. R160-63,165,363.

The group had run out of marijuana and planned to get more by robbing Christian Davidson. R237,282-88. Wesley Brown had previously lived with Davidson and knew that he would have marijuana. R247-48,282-83. Brown planned the robbery and the others, including Defendant, agreed to the plan. R282-83,288,306-07.

The group first drove to Defendant's house and Defendant took two of his father's guns. R237,295. The group then drove to Davidson's home. R237,283.

Davidson was expecting a visit from friends when he heard a "loud knock." R246-47.¹ He opened the door and found a stranger holding "a large revolver." R247-49,251. Davidson tried to close the door, but the intruder put his foot in the door and said, "Open the door, I'm going to pop (inaudible)." R247,260. The intruder added, "'We're coming in,'" and commanded Davidson to go downstairs. R247. The armed intruder was Dexter Skinner. R251. Wesley Brown, Joshua Dutson, and Defendant followed Skinner into

¹ An unbound copy of the juvenile court preliminary hearing transcript is R240-401. The record contains a separate bound copy, but that copy did not receive a record page number. Like Defendant, the State cites to the unbound, record-paginated copy.

Davidson's home while Tomek Perkins waited outside in a car. R276,278. The intruders were armed with the two handguns Defendant had supplied and an air-soft gun that looked like a real handgun. R283-84,302-03.

One of the intruders asked who else was home. R248. Davidson replied that his mother was, but did not mention his friend Ryan Golding who was also there. R248,264. Hearing a noise in the laundry room, Skinner tucked his pistol into the waistband of his pants. R248,251. But when Golding emerged from the laundry room, Skinner lifted his shirt to show him the butt of the gun. R248,251-52. Apparently confused, Golding remarked that the gun was "cool," and reached to touch it, but Davidson warned his friend not to. R248,251-52. Skinner then pulled the gun out of his waistband, pointed it at the ground, and remarked, "Yeah, man, his body is on this." R252.

Skinner then "quickly" pointed the gun at Davidson's face and demanded that Davidson "give him everything." R248,252. Shocked, Davidson "laughed" and said, "'Seriously, over pot?'" R252. Brown and a third intruder then drew their guns. R252-53,310.

The evidence of who held the third gun was conflicting. Davidson testified that Defendant did. R253. And Dutson wrote in his initial police statement that Defendant had brandished a gun. R286-87. But in his police interview, Dutson said that he, Brown, and Skinner were the only ones who

held guns and that Defendant instead held a switchblade knife. R284,287. Defendant denied holding a gun or knife during the robbery. R299.

With their guns drawn, the intruders told Davidson to “get everything” he had and “lay on the floor.” R254. When Davidson said he only had the “tiny” bag of “weed” on the table, Skinner remarked that he had seen Davidson slip a larger bag of marijuana into his pocket. R254. Davidson surrendered the larger bag. R254.

Skinner then directed someone to take Davidson’s wallet and phone. R254. Davidson testified that he did not see who took them. R254-55. During an earlier photo lineup, however, Davidson identified Defendant as the person who took them. R311-12.

Ryan Golding, Davidson’s friend, told police that the intruders ordered him and Davidson to the ground and stole their phones and money. R264-65. Golding also reported that the intruders threatened to kill him and Davidson if they tried to interfere or report the crimes. R265.

One of the intruders told Davidson to stay on the floor and Brown, who had previously lived with Davidson, said he was going to “pay” Davidson’s mother “a visit.” R255. The others “rushed” up the stairs and out of the house. R255. Meanwhile, Brown pointed his gun at Davidson, hesitated, and mentioned an earlier altercation between the two when they had briefly lived

together. R255. Davidson feared for his life. R255. Luckily, however, Brown ultimately fled. R255. After the robbery, the group shared the stolen marijuana. R288.

Davidson's mother reported the crimes. R263-64. When police initially approached Davidson and Golding, Golding fled but was quickly apprehended and told police what happened. R264.

Defendant admitted to police that he supplied the two real guns used in the robbery. R295-96. He took them from his father's gun safe. R296. Defendant also admitted that he entered Davidson's home with the rest of the intruders. R294-95.

Defendant's text messages discussing armed robbery

Police searched Defendant's cellphone but could not retrieve any text messages from it. R267,305. A search of Dutson's cellphone, however, revealed his text-message conversations with both Defendant and Skinner. R267-68; State's Exhibit #1 (SE1) (Addendum G is the texts verbatim).²

The evening before the robbery, Dutson asked Defendant in a text if he wanted to participate in a robbery and promised Defendant "a cut of it." R268;SE1. Defendant replied "for sure," and said he had to get his gun back from "anddrew." R268;SE1. Dutson then said he "was kidding," but quickly

² State's Exhibit 1 is in the juvenile court's pleadings files.

retracted that statement and texted that he was not kidding. R268;SE1. When Defendant replied that he was confused, Dutson explained that Defendant could participate in the robbery as long as he kept it a secret: "you can be apart [sic] of it but you gotta keep it on the down low" and "trust no nigga." R268-69;SE1.

When Defendant then asked about leaving "early," Dutson replied, "Yeah ... so we can get the lick." R269-70;SE1. "Lick" is a slang term for a robbery or a robbery victim. R270,272. Thus, to "hit up a lick is to ... rob somebody." R272,305-06.

Dutson had a simultaneous text conversation with Skinner discussing the upcoming robbery. R269-70;SE1. Skinner told Dutson "[t]omorrow we grab them straps and hit up niggas." R269;SE1. "Strap" is a slang term for a gun. See www.urbandictionary.com/define.php?term=strap; see also Br.Aplt. 7 (recognizing that the "straps" Skinner referred to "were apparently [Defendant's] father's guns").

The day after the robbery, Dutson asked Defendant in a text if he wanted to participate in another robbery ("hit up a lick"). R271;SE1. Defendant replied "Maybe." R271;SE1. Dutson initially said the robbery would involve "[t]he little white boys we hit up," but followed up with "Hahah." R271;SE1. When

Defendant asked about "hitting them again" Dutson responded, "Jk Haha Imhigh." R272;SE1. "Jk" is an abbreviation for "just kidding." R272.

B. Summary of proceedings.

The State charged Defendant under the SYOA in the juvenile court with two counts of aggravated robbery and one count of aggravated burglary, all first degree felonies. JR1-3.³ The juvenile court found that the State had established probable cause that Defendant had committed those crimes and that Defendant had not carried his burden to show that the juvenile court should retain his case. JR.28-31. It therefore bound him over to district court. JR31. Defendant did not appeal that final order.

Defendant pled guilty in district court to two reduced counts of robbery, second degree felonies. R16-21. The court sentenced him to 1-15 years in prison. R52-53.

Defendant obtained new counsel and moved to quash the juvenile court's bindover order and to reinstate his right to appeal that order. R93-101,414-34. The district court denied the motion to quash because it lacked jurisdiction to consider it. R587-89 (Addendum F is a copy of the ruling). The district court granted Defendant's motion to reinstate his right to appeal the bindover order, however, after Defendant alleged that his trial counsel was ineffective for not

³ The State cites the juvenile court record as "JR" and the district court record as "R."

notifying him of his right to appeal the order or the deadline for doing so, and after the State stipulated to Defendant's motion. R589-91,612 (Add. F). Defendant timely appeals. R599.

SUMMARY OF ARGUMENT

I. Defendant argues that the 2013 SYOA amendments made his mental condition and his amenability to rehabilitation using juvenile court resources relevant to the juvenile court's bindover decision. He argues that his counsel was ineffective for not arguing these factors and presenting evidence to support them, and that the juvenile court plainly erred for not sua sponte considering these factors and requiring a psychological evaluation of Defendant.

Defendant has not shown that his trial counsel or the juvenile court erred, because he misinterprets 2013 SYOA amendments. Those amendments did not make a defendant's rehabilitative potential or mental condition relevant, because the amendments did not include those considerations in the exclusive list of factors that a juvenile court may consider in making a SYOA determination. By including those factors in the related certification statute, but excluding them from the SYOA, the legislature made it clear that those factors were not relevant to SYOA determinations. The fact that 2015 amendments added rehabilitative potential to the SYOA factors further supports the conclusion that the 2013 amendments did not include that consideration.

But even if rehabilitative potential and mental condition were arguably relevant considerations under the 2013 SYOA amendments, that fact would not have been so obvious that trial counsel was ineffective, or the trial court plainly erred, for not recognizing it.

In any event, Defendant cannot show the prejudice required for either claim. The juvenile court considered his rehabilitative potential and found it unpersuasive. And Defendant's newly proffered psychological evaluation would not have likely convinced the juvenile court to retain his case, because the evaluation did not undermine the findings that Defendant facilitated violent crimes by providing guns to his friends and then participated in those crimes. Those findings were the primary reasons for the juvenile court's decision.

II. Defendant argues that the juvenile court misapplied the SYOA to the facts and erroneously concluded that he had not carried his heavy burden to show that it should retain his case. But Defendant does not even allege, let alone demonstrate, that any of the juvenile court's factual findings were clearly erroneous. Those findings established that he knowingly facilitated violent crimes by providing guns to his friends and participated in those crimes.

Given those findings, Defendant has not shown that the juvenile court abused its discretion in concluding that he did not prove by clear and convincing evidence that it should retain his case. This Court should review the

juvenile court's order only for abuse of discretion because that order required a "best interests" determination based on a weighing of various factors by a court with specialized experience in dealing with juveniles.

III. Defendant argues that his trial counsel was ineffective in arguing the various pieces of evidence in the juvenile court and for allowing Defendant's hearing to proceed jointly with a codefendant's hearing. The fact that trial counsel did not argue the evidence as Defendant's appellate counsel would have does not show that trial counsel was deficient. The record also discloses a reasonable tactical basis for holding a joint hearing where the juvenile court was required to compare Defendant's culpability with that of his codefendant, and the evidence showed that Defendant was less involved at the crime scene. Regardless, Defendant has not shown prejudice where none of his new arguments would have undermined his admissions that he facilitated violent crimes by providing guns and participated in those crimes, and none of the allegedly inadmissible evidence that he now identifies affected the juvenile court's decision.

IV. Defendant argues that the juvenile court plainly erred by not sua sponte recusing herself where (1) she was married to a supervising prosecutor in the office prosecuting Defendant and (2) the judge was a former prosecutor. But no controlling authority plainly established that the judge's marriage to a

prosecutor who was not involved in the case required recusal. Controlling authority did establish, however, that the judge's former employment as a prosecutor did not require recusal. Moreover, Defendant has not alleged, let alone demonstrated, that the judge was actually biased. Thus, Defendant has not shown that the juvenile court plainly erred by not sua sponte recusing herself.

ARGUMENT

I.

DEFENDANT HAS NOT SHOWN THAT HIS TRIAL COUNSEL WAS INEFFECTIVE FOR NOT ARGUING, OR THAT THE JUVENILE COURT PLAINLY ERRED BY NOT SUA SPONTE ADOPTING, HIS INCORRECT INTERPRETATION OF THE 2013 SYOA AMENDMENTS

In his Point I(A)-(C), Defendant argues that his trial counsel was ineffective for not: (1) arguing that the 2013 SYOA amendments required the juvenile court to consider his potential for rehabilitation in the juvenile system, and (2) providing the court with a psychological evaluation of Defendant, expert testimony from the evaluator, and psychological studies and caselaw generally addressing juvenile psychological development. Br.Aplt. 15-24. In his Point II, Defendant argues that the juvenile court plainly erred by not interpreting the 2013 SYOA amendments to require consideration of Defendant's rehabilitative potential and mental condition. Br.Aplt. 31-44.

Defendant has not shown that his counsel was ineffective, or that the juvenile court plainly erred, because he is the one who misinterprets the 2013 SYOA amendments. The amendments did not make a defendant's rehabilitative potential or mental condition relevant factors.

A. While the legislature has determined that most juvenile offenders should be adjudicated in juvenile court, it has created a statutory presumption in favor of trying the oldest juveniles who commit the most serious crimes in adult court.

The people of Utah, through their elected representatives, have determined that while most juvenile offenders should be adjudicated in the juvenile court, the adult system is usually better equipped to address older juveniles who commit the most serious crimes. The statutory scheme nevertheless grants juvenile courts discretion to retain some older juveniles who commit serious crimes. This discretion increases as the juvenile's age and seriousness of his crime decreases.

The legislature has given juvenile courts "exclusive original jurisdiction in proceedings concerning" most minors and those under 21 who have "violated any law or ordinance before becoming 18 years of age." Utah Code Ann. §78A-6-103(1)(a) (West Supp. 2013). The chief purpose of Utah's juvenile justice system is to ensure "public safety and individual accountability" by imposing "appropriate sanctions" on juvenile offenders. Utah Code Ann. §78A-6-102(5)(a) (West 2009).

Because juveniles generally commit less serious crimes and are less responsible than adults, the legislature has equipped juvenile courts to provide a broad array of services, but a limited array of criminal-like sanctions. *See State v. Schofield*, 2002 UT 132, ¶16, 63 P.3d 667 (recognizing that juvenile offenders “are still in their formative years”); Utah Code Ann. §78A-6-117 (West Supp. 2013) (listing juvenile court services and sanctions). Juvenile court sanctions focus primarily “on the education, rehabilitation, and treatment of minors.” *Schofield*, 2002 UT 132, ¶16. Thus, while a juvenile court can adjudicate an offender “delinquent,” it cannot impose a criminal conviction that will be reflected in a permanent criminal record. *See* Utah Code Ann. §78A-6-116(1) to (3) (West Supp. 2014); *Schofield*, 2002 UT 132, ¶16. And while a juvenile court can detain a youth offender if the need for public safety and individual accountability warrants it, it can do so only until the offender turns 21. Utah Code Ann. §§62A-7-404(1) (West 2012); 78A-6-117(d); 78A-6-120.

Given a juvenile court’s limited jurisdiction and array of sanctions, the juvenile system is ill-equipped to deal with older offenders who commit the most serious crimes. The legislature therefore enacted three interrelated statutes to address these offenders: sections 701, 702, and 703 of the Juvenile Court Act. *See* Utah Code Ann. §§78A-6-701 to -703 (West Supp. 2013).

The first statute—previously called the “direct-file” statute but more correctly termed the “automatic waiver” statute—applies to 16- or 17-year-olds who commit murder or aggravated murder. *See* Utah Code Ann. §78A-6-701 (West Supp. 2013); *State v. Angilau*, 2011 UT 3, ¶1 n.1, 245 P.3d 745. This statute automatically waives juvenile court jurisdiction over these offenders and vests jurisdiction exclusively in the district court. *See id.*

The second statute, the SYOA, applies to 16- or 17-year-olds who commit one of nine “inherently violent and aggressive offenses,” such as aggravated robbery or burglary. *See* Utah Code Ann. §78A-6-702 (West Supp. 2013); *Housekeeper v. State*, 2008 UT 78, ¶7, 197 P.3d 636 (quotation and citation omitted). The SYOA creates “a strong presumption” that such offenders will be tried in the district court. *See Housekeeper*, 2008 UT 78, ¶7 (quotation and citation omitted).

Under the SYOA, a prosecutor files a criminal information in juvenile court charging an enumerated offense. Utah Code Ann. §78A-6-702(1) (West Supp. 2013). The prosecutor then has the burden to show probable cause that the defendant committed that offense. *Id.* §78A-6-702(3)(a). If the prosecutor carries that burden, the juvenile court “shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult,” unless the offender can successfully carry a “heavy burden” to show that the

juvenile court should retain him. *Id.* §78A-6-702(3)(b); *In re F.L.R.*, 2006 UT App 294, ¶4, 141 P.3d 601.

When the juvenile court heard Defendant's case in 2013, the SYOA allowed the juvenile court to retain Defendant's case only if he showed by "clear and convincing evidence" that "it would be contrary to the best interest of the minor and to the public" to bind him over to the district court. *Id.* §78A-6-702(3)(b) & (d). In evaluating whether Defendant had made that showing, the SYOA limited the juvenile court to considering "only the following" factors:

- (i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
- (ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;
- (iii) the extent to which the minor's role in the offense was committed in a violent, aggressive, or premeditated manner;
- (iv) the number and nature of the minor's prior adjudications in the juvenile court; and
- (v) whether public safety is better served by adjudicating the minor in the juvenile court or in the district court.

Utah Code Ann. §78A-6-702(3)(c).

The third statute, known as the certification statute, applies to youth offenders under 16 who commit serious crimes. *See* Utah Code Ann. §78A-6-703 (West Supp. 2013). This statute allows a prosecutor to file a criminal

information charging a minor 14 or older with any crime that would be a felony if committed by an adult, and ask that the juvenile court certify the offender to district court. *Id.* §§78A-6-602(3); 78A-6-703(1). The prosecutor then has the burden of showing both: (1) probable cause that the juvenile committed the charged offense; and (2) “by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.” *Id.* §78A-6-703(2).

In making this second determination, the certification statute requires a juvenile court to consider ten factors, and allows the court to base its finding on any one or more of those factors. *Id.* §78A-6-703(3). The statute also allows the court to consider “[w]ritten reports and other materials relating to the minor’s mental, physical, educational, and social history.” *Id.* §78A-6-703(5)(a).

Thus, the SYOA creates a presumption in favor of district court and limits the factors that a juvenile court may consider in deciding whether the offender has shown that retention is appropriate. The certification statute, which deals with younger offenders, creates a presumption in favor of juvenile court and enlarges the factors and evidence that a court may consider in deciding whether the prosecution has shown that certification is appropriate.

B. The juvenile court bound Defendant over to district court because he knowingly supplied guns for a home-invasion robbery, participated in that robbery, and was 16 years old.

The juvenile court here found that Defendant had not rebutted the SYOA's presumption that he should be tried in district court. The court first found probable cause that Defendant committed two counts of aggravated robbery and one count of aggravated burglary. JR28 (Addendum D is the court's written order and Addendum E is the court's oral ruling). Defendant does not challenge those findings.

The juvenile court then considered whether Defendant had shown "by clear and convincing evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court," based on the five statutory factors detailed above. *See* Utah Code Ann. §§78A-6-702(3)(c), (d) & (e); JR28-31. After analyzing each factor, the court concluded that he had not. JR.31.

As to the first factor—whether Defendant had any prior dangerous-weapon offenses in juvenile court—the prosecutor stipulated, and the juvenile court found, that Defendant had "no prior record in juvenile court." JR28;R320-21,362,371.

The court then compared Defendant's culpability to that of his codefendants and found "that his culpability was significant." JR29. The court

initially found that Defendant's "involvement was less at the scene of the crime than others," because there was insufficient evidence to show "that he brandished a gun or switchblade knife." JR29.

The court nevertheless found Defendant's relative culpability "significant" because he "provided the guns" used in the crimes and did so "knowing they would be used in the burglary and robberies." JR29. The court noted that Defendant's "assistance in the robbery ensured that the other codefendant's would have guns to use when breaking into the home and robbing the persons therein." JR29. The court also found that Defendant was "present and assisted in the forced entrance into the home." JR29.

Under the third factor, the court found that Defendant's "role in the offense was committed in a violent, aggressive, or premeditated manner," primarily because he knowingly supplied the guns. JR29. The court found that the crimes were planned "over a period of time" and were not "a spur of the moment decision." JR29-30. The court also found that Defendant and his cohorts "forced their way at gun point into one of the most protected and sacred areas in our society, the home." JR29. The court further found that although Defendant did not wield a weapon, his "presence in the home, by itself, was a threat to the victims and to others who were in or could have come into the home." JR30.

Regarding the fourth factor—prior adjudications in juvenile court—the court restated that this was Defendant’s first offense. JR30.

Finally, regarding the fifth factor, the court found several reasons that public safety would be best served by sending Defendant to district court:

- Defendant was already 16 and the court would have jurisdiction over him only until he reached 21, while the district court’s jurisdiction was unlimited;
- the offenses were “among the most serious in our community” because they involved “drugs, violence, firearms, and forcing entry into a home to commit robberies”;
- the crimes involved “acts of aggression” in a home and therefore presented a significant “likelihood of harm to others,” including law enforcement and other members of the public;
- “[p]ublic safety requires a strong response and longer correctional period than is available in the juvenile court” given the seriousness of the crimes; and
- a strong response was necessary because, although Defendant “provided evidence of a loving family and good home,” Defendant nevertheless “chose to engage in violent and irresponsible acts that put the safety of members of the public at grave risk.”

JR30.

Regarding the ultimate inquiry, the juvenile court found that although Defendant had shown that retention was in his best interest, he had not shown by clear and convincing evidence that retention was also in the public’s best interest. JR31. Regarding Defendant’s best interests, the court recognized that

"[t]here are more rehabilitative services ... available in the juvenile system than in the adult system." R374-75. But because Defendant had not shown that retention was in the public's best interest, the court bound Defendant over to the district court. JR31.

C. The 2013 SYOA amendments did not make a defendant's rehabilitative potential or mental condition relevant considerations.

Defendant argues that the 2013 amendments allowed juvenile courts to consider a youth offender's potential for rehabilitation using juvenile court resources, and his individual mental condition. Br.Aplt.16-24, 38-41. Relying entirely on the legislative history of the 2013 amendments, rather than on the actual statutory language, Defendant argues that the amendments were intended to "reduce the number of juveniles" transferred to the adult system "without first exhausting the resources of the juvenile system." Br.Aplt.17-19.

Defendant also argues that the amendments increased the scope of relevant evidence at a serious youth offender preliminary hearing to include information about the juvenile's mental condition, his amenability to rehabilitation in the juvenile system, and evidence that juveniles who are sentenced in the adult system generally have a higher recidivism rate. Br.Aplt. 16-24. He contends that evidence about his "stage of development [and] intellectual and emotional functioning" in the form of a psychological

evaluation “was key to the court’s accurate assessment of the retention factors.” Br.Aplt. 20, 24. He proffers a psychological evaluation that his appellate counsel obtained after Defendant pled guilty and was sentenced. R406. Defendant reasons that had the juvenile court understood the statute in this light and received evidence about his rehabilitative potential and mental condition in the form of a psychological evaluation, there is a reasonable likelihood that the juvenile court would have struck the balance in favor of retaining his case. Br.Aplt. 16-24, 31-43.

The 2013 SYOA amendments did give juvenile courts greater discretion in determining whether to retain charged offenders. But the amendments did not make rehabilitative potential or a defendant’s mental condition relevant considerations.

Before 2013, the SYOA gave juvenile courts only limited discretion to retain offenders because it included only three retention factors and made those factors determinative, rather than considerations in a larger “best interests” determination. If the prosecution established probable cause that the defendant had committed an enumerated crime, then the Act required the court to bind the defendant over to the district court unless the defendant proved the three retention factors by clear and convincing evidence. Utah Code Ann. §78A-6-107(3) (West Supp. 2012). These three factors are essentially the first three

factors in the amended statute. The Defendant had to show that: (1) he had no prior adjudications for a dangerous-weapon offense that would have been a felony if committed by an adult; (2) he had a lesser degree of culpability if the offense was committed with others; and (3) his role in the offense was not violent, aggressive, or premeditated. *See* Utah Code Ann. §78A-6-702(3)(c) (West Supp. 2012).

The 2013 amendments retained much of the prior statute. As explained, a juvenile court must still bind a defendant over to district court upon a finding of probable cause, absent a showing that retention is appropriate. *See* Utah Code Ann. §78A-6-702(3)(b) (Addendum B is the enrolled copy of H.B. 105, the 2013 amendments). The amendments also leave the burden on the defendant to satisfy the retention standard “by clear and convincing evidence.” *See id.* §§78A-6-702(3)(d) & (e).

But two features of the 2013 amendments granted juvenile courts greater discretion to retain serious youth offenders. First, the amendments allowed the juvenile court to consider two more factors:

- (iv) the number and nature of the minor’s prior adjudications in the juvenile court; and
- (v) whether public safety is better served by adjudicating the minor in the juvenile court or in the district court.

Utah Code Ann. §78A-6-702(3)(c)(iv) & (v).

Second, and most significantly, the amendments changed the test for determining whether retention was appropriate. Rather than making that test dependent on the offender's ability to prove each of the factors, the amendments designated those factors as the exclusive components of a determination based on a weighing of the "best interests" of the offender and the public. *See id.* §78A-6-702(3).

But the plain language of the 2013 amendments shows that they did not modify the SYOA to the extent that Defendant now claims. Although the legislature increased a juvenile court's discretion by adding the "best interest" determination, the legislature limited that discretion to considering "only" the five factors in subsection (c) in making that determination. *Id.* §78A-6-702(3)(c). Amended subsection (d) reiterated that the "best interest" determination must be made "in light of the [five] considerations listed in Subsection (3)(c)." *Id.* §78A-6-702(3)(d).

None of the five factors that a juvenile court must consider include a youth offender's mental condition or amenability to rehabilitation in the juvenile system. *Id.* §78A-6-702(c). Nor do those factors include evidence that minors generally lack emotional maturity or evidence of the recidivism rates for minors incarcerated in the adult system. *Id.* Thus, the plain language of the

statute did not allow the juvenile court to consider the additional factors and evidence that Defendant now proffers.

The certification statute further demonstrates that the legislature did not intend the juvenile court to consider Defendant's potential for rehabilitation or mental condition in making a determination under the SYOA. When construing the SYOA, this Court must "interpret its provisions in harmony with other statutes in the same chapter and related chapters," like the certification statute. *See State in Interest of A.T.*, 2015 UT 41, ¶16, 783 Utah Adv. Rep. 22 (quotation and citation omitted).

As mentioned, the certification statute lists ten factors that a juvenile court must consider in deciding whether to certify and offender to district court. Utah Code Ann. §78A-6-703(3). Those factors include:

"(e) the maturity of the minor as determined by consideration of the minor's home, environment, emotional attitude, and pattern of living;" and

"(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court."

Utah Code Ann. §§78A-6-703(3)(e) & (g). The certification statute also allows a juvenile court to consider [w]ritten reports and other materials relating to the minor's mental, physical, educational, and social history." *Id.* §78A-6-703(5)(a). By including these factors and evidence supporting them in the certification

statute, but omitting them from the SYOA, the legislature underscored its intent that juvenile courts not consider these factors and evidence under the SYOA.

This Court confirmed this conclusion in *In re A.B.*, 936 P.2d 1091, 1097-98 (Utah App. 1997). Like Defendant here, *A.B.* argued that the legislative history of the SYOA indicated “that the Legislature intended to apply adult sanctions only to juvenile offenders unamenable to rehabilitation in the juvenile system.” *Id.* at 1096. This Court disagreed however, noting that the plain language of the SYOA did not include consideration of an offender’s potential for rehabilitation, while the related certification statute did. *Id.* at 1097-98. This Court therefore explained that “the Utah Legislature clearly knew how to make rehabilitation a consideration in determining whether to waive jurisdiction over a youth offender; had the Legislature intended it to be considered in the serious youth offender statute, the Legislature would have so stated.” *Id.* at 1098. The court further explained that the “isolated remarks” of a few legislators could not “trump the plain language and context of the statute,” which did not include consideration of an offenders rehabilitative potential. *Id.*

Like *A.B.*, Defendant also relies on statements from the bill’s sponsors to support his interpretation of the 2013 amendments. Br.Aplt. 17-18. Some of those remarks do mention the rehabilitative services available in juvenile court.

But as in *A.B.*, those remarks cannot “trump the plain language and context of the statute.” 936 P.2d at 1098.

Defendant contends that evidence about his rehabilitative potential and mental condition is relevant to considerations of public safety, one of the listed factors. Br.Aplt. 17-19. He argues that “public safety interests coincide with the juvenile’s interests in retaining juveniles in the juvenile courts” because youth offenders who stay in the juvenile system are more likely to be rehabilitated, while those treated as adults are more likely to reoffend. Br.Aplt. 18.

Defendant may well be correct that the juvenile system is generally more effective in rehabilitating most youth offenders than the adult system. And he may also be correct that, generally speaking, it would be good policy to consider a youthful offender’s rehabilitative potential. But that does not mean that the legislature intended juvenile courts to consider a juvenile’s likelihood of rehabilitation and mental condition as factors under the 2013 SYOA. Rather, the statutory language evidences a reasonable policy decision that when the oldest minors commit the most serious crimes, public safety is best served by emphasizing accountability and punishment over rehabilitation. Indeed, the SYOA applies only to 16-or 17-year-olds who commit one of nine “inherently violent and aggressive offenses.” *Housekeeper*, 2008 UT 78, ¶7.

This Court has repeatedly recognized the reasonableness of this policy decision. See *In re A.B.*, 936 P.2d at 1097-99; *In re M.E.P.*, 2005 UT App 227, ¶14 n.4, 114 P.3d 596. In *M.E.P.*, this Court acknowledged that while the SYOA's presumption in favor of the adult system "may, at times, thrust juveniles who would benefit from the rehabilitative nature of the juvenile system into the world of adult criminal sanctions, it implements the legislative goals of emphasizing public safety, accountability, and punishment for certain violent juvenile offenders, with a lesser goal of rehabilitation." 2005 UT App 227, ¶14 n.4.

Defendant argues that the 2013 amendments undermine *A.B.* Br.Aplt. 18. But as explained, the 2013 amendments did not add a juvenile's rehabilitative potential or mental condition to the list of factors in the SYOA. Rather, those amendments expressly state that a SYOA determination is to be based "only" on the listed factors. See Utah Code Ann. §78A-6-702(3)(c). *A.B.* therefore still controls.

Finally, the 2015 amendments to the SYOA settle any doubt about the relevancy of an offender's rehabilitative potential and mental condition. Effective May 2015, the legislature amended the SYOA's fifth factor to include an offender's rehabilitative potential as a consideration. As amended, the statute now reads that a juvenile court "shall consider only the following:

...

(v) whether public safety *and the interests of the minor are* better served by adjudicating the minor in the juvenile court or in the district court, *including whether the resources of the adult system or juvenile system are more likely to assist in rehabilitating the minor and reducing the threat which the minor presents to the public.*

Utah Code Ann. §78A-6-702(3)(c)(v) (West Supp. 2015) (emphasis added) (Addendum C is an enrolled copy of S.B. 167, the 2015 amendments). Thus, the legislature did not include a juvenile's rehabilitative potential as a relevant consideration under the SYOA until 2015.

Whether previous versions of the SYOA were well-crafted or furthered good policy is not at issue. Rather, the issue is the scope of what the SYOA allowed the juvenile court to consider at Defendant's hearing. As the plain language of the then-effective SYOA, the language of the certification statute, the holding in *A.B.*, and the 2015 SYOA amendments all demonstrate, the SYOA did not allow the juvenile court to consider Defendant's mental condition or his amenability to rehabilitation in the juvenile system. *See* Utah Code Ann. §78A-6-702(3)(c).

D. Because Defendant misinterprets the SYOA, he has not shown that his trial counsel was ineffective, or that the juvenile court plainly erred, in interpreting the statute.

As mentioned, Defendant asserts that his trial counsel was ineffective for not (1) asking the juvenile court to consider his rehabilitative potential using

juvenile court services, and (2) presenting evidence of his rehabilitative potential in the form of a psychological evaluation and research and caselaw on the mental condition of juveniles generally. Br.Aplt. 20-24. Defendant also argues that the juvenile court plainly erred by not sua sponte considering his rehabilitative potential, the "reformatory benefits available to [him] in the juvenile court," and requiring "a professional evaluation" of his mental condition. Br.Aplt. 38-42. Defendant has not shown, however, that his counsel was ineffective or that the juvenile court plainly erred, because his arguments are all based on his misinterpretation of the 2013 SYOA amendments.

To prove that his counsel was ineffective, Defendant must show that his counsel's performance was deficient and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687-88, 691-94 (1984). Counsel performs deficiently only when his actions "f[a]ll below an objective standard of reasonableness" as measured by the "prevailing professional norms." *Id.* 688; *Wiggins v. Smith*, 539 U.S. 510, 521 (2003). Prejudice results only when there is "'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* at 694.

To prove that the juvenile court plainly erred, Defendant must show that the court committed an error that was both obvious and prejudicial. *State v.*

Isom, 2015 UT App 160, ¶28, 789 Utah Adv. Rep. 21. An error is obvious if it “contravenes settled appellate law or the plain language of the relevant statute.” *Id.* (quotations and citations omitted). “An error is prejudicial if absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant.” *Id.* (quotation and citation omitted).

As explained, the 2013 amendments did not allow the juvenile court to consider Defendant’s rehabilitative potential or mental condition. Because none of this evidence was relevant under the statute, Defendant cannot show that his counsel acted unreasonably when he did not present it. Nor can Defendant show that the trial court plainly erred by not considering it.

But even if this evidence were arguably relevant under the 2013 amendments, Defendant still could not show that his counsel performed deficiently. To be objectively unreasonable, “trial counsel’s error must be so egregious that no reasonably competent attorney would have acted similarly.” *Harvey v. Warden, Union Corr. Inst.*, 629 F.3d 1228, 1239 (11th Cir. 2011) (citing *Wood v. Allen*, 542 F.3d 1281, 1309 (11th Cir. 2008)); see also *Rompilla v. Beard*, 545 U.S. 374, 389 (2005) (counsel’s performance was objectively unreasonable because “[n]o reasonable lawyer” would have acted as counsel did); *State v. Larrabee*, 2013 UT 70, ¶53, 321 P.3d 1136 (forgoing an objection would be objectively unreasonable only where “no reasonable defense lawyer” would do

so); *State v. Curtis*, 2013 UT App 287, ¶35, 317 P.3d 968 (no showing of deficient performance where defendant failed to show that evidence was so compelling “that no reasonable attorney would have failed to introduce it”).

Defendant has not shown that all reasonable attorneys would have interpreted the 2013 SYOA amendments as making a juvenile’s rehabilitative potential and mental condition relevant. As explained, controlling caselaw established that by excluding rehabilitative potential from an earlier version of the SYOA, but including it in the certification statute, the legislature clearly signaled its intent to exclude this consideration from SYOA determinations. *See In re A.B.*, 936 P.2d at 1097-98. The 2013 amendments did not explicitly add rehabilitative potential to the exclusive list of SYOA factors. Nor did any caselaw establish that the amendments made rehabilitative potential relevant. Thus, even if the amendments arguably made rehabilitative potential relevant, that result was not so obvious that Defendant’s trial counsel was objectively unreasonable for not recognizing it.

For these same reasons, Defendant cannot show that the juvenile court plainly erred. Neither the plain language of the amendments, nor any controlling caselaw, established that rehabilitative potential and mental condition were relevant factors. Thus, any error in interpreting the amendments not to include these considerations could not have been obvious.

See *Isom*, 2015 UT App 160, ¶28 (“obvious” error contravenes settled appellate law or plain statutory language).

E. Defendant has not shown prejudice, because the juvenile court considered his rehabilitative potential, and a psychological evaluation would not have likely made a difference.

Even if Defendant could show deficient performance or obvious error, he cannot shown that he was prejudiced. The ineffective assistance of counsel and plain error standards share a “common standard” of prejudice. *State v. Litherland*, 2000 UT 76, ¶31 n.14, 12 P.3d 92. “Under either theory, a defendant must demonstrate that, absent the error or deficient performance, ‘there is a reasonable probability of a more favorable result.’” *State v. McNeil*, 2013 UT App 134, ¶42, 302 P.3d 844 (quoting *State v. King*, 2010 UT App 396, ¶ 20, 248 P.3d 984). Defendant has not made that showing.

Defendant has not shown that any lack of evidence or argument regarding his rehabilitative potential prejudiced him because the juvenile court not only heard evidence and argument on that issue, but it also considered it and found that it would be in his best interests to remain in juvenile court. Defendant’s father testified that he believed it would be in Defendant’s best interest to stay in juvenile court, where he would have an opportunity for rehabilitation, because Defendant was “a motivated child.” R349. Defendant’s mother likewise testified that she believed Defendant was “fully rehabilitatable

and reformable.” R353. And Defendant’s trial counsel argued that Defendant could be rehabilitated in the juvenile system. R361-62,369-70.

Even though the SYOA did not allow the juvenile court to consider Defendant’s rehabilitative potential, the juvenile court nevertheless considered it. R374-75. As explained, the juvenile court recognized that “[t]here are more rehabilitative services ... available in the juvenile system than in the adult system.” R374-75. The court therefore found that Defendant had shown that it was in his best interests to stay in juvenile court. JR31. As explained, however, the juvenile court nevertheless bound Defendant over to district court because he had not shown that keeping him in juvenile court was in the public’s best interest. JR31.

The juvenile court made its decision after receiving and considering evidence about Defendant’s rehabilitative potential. Defendant therefore has not shown that he was prejudiced by any lack of evidence or argument on that consideration.

Nor has Defendant shown that the lack of a psychological evaluation prejudiced him. The juvenile court bound Defendant over to district court because it was concerned that he knowingly facilitated violent crimes by providing guns, he participated in those crimes, and, at 16, he would be under its jurisdiction for only a limited time. JR28-31. The psychological evaluation

that Defendant now proffers does not undermine any of those facts. R406-413. Rather, it confirms that Defendant's description of the crimes "was generally consistent" with the information in the police reports, witness statements, suspect statements, and charging documents. R406,411. The evaluation attempts to explain why Defendant should be viewed as less culpable despite his participation. R406-13. But Defendant has not shown that the evaluation would have likely made a difference given the juvenile court's focus on Defendant's age and on his facilitation of, and participation in, violent crimes. JR28-31. Because the psychological evaluation did not refute or even undermine those facts, Defendant has not shown that it likely would have made a difference.

II.

DEFENDANT HAS NOT SHOWN THAT THE JUVENILE COURT ABUSED ITS DISCRETION IN BINDING HIM OVER TO DISTRICT COURT

Defendant also argues in his Point II that the juvenile court misapplied the SYOA factors to the evidence and erroneously found that he had not carried his burden to rebut the presumption that he should be bound over to district court. Br.Aplt. 31-44. Defendant has not shown that the juvenile court clearly erred in making findings under the SYOA factors, or that the court abused its discretion in ultimately binding Defendant over to district court.

A. This Court should review the juvenile court's order for abuse of discretion.

This Court has yet to review a juvenile court's decision to bind a defendant over to adult court under the 2013 SYOA amendments.⁴ Under the previous version of the statute, a juvenile court's decision was entitled to only "limited deference." *In re I.R.C.*, 2010 UT 41, ¶12, 232 P.3d 1040. But as explained, juvenile courts previously had only limited discretion under the SYOA. A juvenile court now has greater discretion because its decision is a best-interest determination based on its weighing of enumerated factors.

Decisions requiring balancing traditionally invoke an abuse of discretion standard. *See, e.g., State v. Moa*, 2012 UT 28, ¶34, 282 P.3d 985 ("When evaluating a sentencing determination, we traditionally afford the district court wide latitude and discretion.") (citation, alterations, and quotations omitted); *State v. Ruiz*, 2014 UT App 143, ¶39, 329 P.3d 836 (reviewing for abuse of discretion trial court decision on balancing test under rule 403, Utah Rules of Evidence). Balancing is afforded great deference because—like highly fact-dependent administrative decisions—it does not lend itself "to consistent resolution by a uniform body of appellate precedent" and the lower court "is in

⁴ *In re F.L.*, 20140130-CA, which has been argued but not yet decided, presents the question of the proper standard of review for post-2013 SYOA determinations.

a superior position to decide” it. *Jex v. Labor Comm’n*, 2013 UT 40, ¶15, 306 P.3d 799.

The new “best interests” standard is quintessentially a balancing test—and therefore discretionary. *See, e.g., Doyle v. Doyle*, 2011 UT 42, ¶40, 258 P.3d 553 (applying abuse of discretion standard in child custody proceedings involving “best interests” standard). A juvenile’s “best interests” will depend on the facts of each case and the juvenile court’s personal observations and specialized experience.

Juvenile courts have “special training, experience, and interest” in dealing with minors. *In re R.B.*, 2012 UT App 37, ¶9, 271 P.3d 827; *see also In re N.A.D.*, 2014 UT App 249, ¶10, 772 Utah Adv. Rep. 29 (same); *In re J.N.*, 2011 UT App 413, ¶2, 267 P.3d 787 (same). This further justifies deference to their decisions. As explained, juvenile systems exist because of the general understanding that minors are less culpable and have greater prospects of rehabilitation than adults. *Cf. State v. Schofield*, 2002 UT 132, ¶16, 63 P.3d 667 (discussing reasonable legislative distinction in creating juvenile court for youth offenders “who are still in their formative years”). But there are exceptions to the general rule. Because juvenile courts consistently work with all kinds of youth, those courts are in the best position to evaluate the best interests of the youth and the public.

This Court should therefore apply an abuse of discretion standard to the juvenile court's ultimate decision to bind Defendant over to the district court. An appellate court "can properly find abuse only if no reasonable person would take the view adopted by the trial court." *Goggin v. Goggin*, 2011 UT 76, ¶26, 267 P.3d 885.

A juvenile court also makes factual findings in applying the SYOA factors to the evidence before it. See *In re M.E.P.*, 2005 UT App 227, ¶15, 114 P.3d 596 (citing *State v. Lara*, 2003 UT App 318, ¶9, 79 P.3d 951). Those "'underlying factual findings ... are reviewed for clear error.'" See *id.* (quoting *Laura*, 2003 UT App 318, ¶9).

B. Defendant's relative culpability was significant.

Defendant argues that the juvenile court erred by finding that the relative culpability factor weighed against him. Br.Aplt. 31-35. He argues that the court "did not articulate the culpability" of the codefendants and "did not actually find whether [Defendant] had a greater or lesser degree of culpability" as compared to his codefendants. Br.Aplt. 31. He argues that based on the facts of the crimes, and the fact that he was the youngest and smallest of the assailants, the juvenile court should have found that his "relative culpability was the lowest among the defendants'." Br.Aplt. 31 (capitalization omitted). Defendant demonstrates no error in the juvenile court's analysis, however, because he does

not demonstrate, or even allege, that the juvenile court clearly erred in making its findings under this factor.

As explained, Defendant must show that the juvenile court's findings under the SYOA factors here were clearly erroneous. *In re M.E.P.*, 2005 UT App 227, ¶15. This is a weighty burden. "A finding of fact is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence." *In re J.Q.*, 2014 UT App 84, ¶2, 325 P.3d 114 (citing *In re E.R.*, 2001 UT App 66, ¶11, 21 P.3d 680). As mentioned, appellate courts afford a juvenile court's findings substantial deference because that court has "specialized experience and training" and the "ability to judge credibility firsthand." *Id.* Thus, when reviewing a juvenile court's factual findings, an appellate court may not reweigh the evidence. Rather, it must ask only whether "'a foundation for the court's decision exists in the evidence.'" *Id.* (quoting *In re B.R.*, 2007 UT 82, ¶12, 171 P.3d 435).

The juvenile court's findings on this factor were not clearly erroneous. As explained, the court expressly compared Defendant's culpability to his codefendants' and found that "his culpability was significant." JR29. The court specifically found that his involvement at the crime scene was "less ... than others" because he did not wield a weapon. JR29. But it nevertheless found that his overall culpability was "significant" because:

- Defendant was involved in planning the robberies;
- this “planning occurred over a period of time and was not a spur of the moment decision”;
- Defendant “provided the guns knowing they would be used in the burglary and robberies”; and
- Defendant “was present and assisted in the forced entrance into the home.”

JR29.

These findings had ample support in the evidence. In text messages the day before the crimes, Defendant agreed to participate in a robbery and to bring his gun. R268;SE1. The juvenile court also heard evidence that everyone in the group agreed to the plan to rob the victim of marijuana. R288. Defendant admitted that he supplied two of the guns used in the robberies and participated in the robberies. R294,295-96.

Defendant does not even acknowledge his burden to show that the juvenile court’s findings were clearly erroneous. Instead, he merely reargues the evidence before the juvenile court in the light most favorable to him. Br.Aplt. 31-35. He emphasizes his statement to police in which he claimed that he thought his friends wanted him to bring his guns only for target shooting. Br.Aplt. 32-33 (citing R295-96,450). He also argues that the text messages the day before the crimes discussing guns and robberies were just jokes and did not

refer to these crimes because they were not actually planned until the next day. Br.Aplt. 32-34.

The juvenile court was not required to adopt Defendant's view of the evidence. As the factfinder, the juvenile court was "in the best position to weigh conflicting testimony, to assess credibility, and from such determinations, render findings of fact," especially given its specialized expertise in dealing with juveniles. *In re Z.H.*, 2013 UT App 195, ¶2, 307 P.3d 691. Indeed, the juvenile court was "the exclusive judge of both the credibility of witnesses and the weight to be given [to] particular evidence" because it was the factfinder here. *Cf. State v. Black*, 2015 UT App 30, ¶19, 344 P.3d 644 (jury, as factfinder, is exclusive judge of credibility and weight to be given evidence).

The juvenile court was free to disregard Defendant's self-serving statement and his interpretation of the text messages. It was also free to credit the evidence that Defendant knew that his friends wanted the guns to commit a home-invasion robbery. This evidence included: (1) text messages the day before the crimes in which Defendant agreed to participate in a robbery and bring a gun, R268-70;SE1; (2) text messages the day after the crimes in which Defendant expressed interest in possibly committing another robbery, R271-72;SE1; (3) the fact that one of the guns Defendant brought would have been useless for target practice because it did not have a firing pin, and therefore

could not fire bullets, R296; and (4) evidence that everyone agreed to the planned robbery, R288.

The evidence amply supported the juvenile court's finding that Defendant's relative culpability was "significant" and that this factor weighed against him, even though he was the youngest and smallest of the assailants, and did not wield a weapon. JR29. Defendant therefore has not shown that the juvenile court's findings on relative culpability were clearly erroneous.

Nor has Defendant shown that the juvenile court erred by not expressly finding "whether [he] had a greater or lesser degree of culpability in comparison" to his codefendants. Br.Aplt. 31. The statute did not require such express findings. *See* Utah Code Ann. §78A-6-702(3)(c)(ii). Rather, it required only that the court "consider" relative culpability. *See id.* The juvenile court did so and, as mentioned, found that Defendant's relative culpability was "significant." JR29.

Defendant also argues that the juvenile court should have sua sponte required a psychological evaluation of Defendant. Br.Aplt. 35. He claims that such an evaluation would have shown that his immaturity made him "susceptible to peer pressure." *Id.* But as explained, the statute did not plainly require or even allow consideration of a psychological evaluation. *See* Utah

Code Ann. §78A-6-702(3)(c). The juvenile court therefore did not err by not sua sponte ordering a psychological evaluation.

C. Defendant's role was violent, aggressive, and premeditated.

Defendant argues that the juvenile court erred in finding that his role in the offence was violent, aggressive, or premeditated. Br.Aplt. 35-38. He contends that he did not threaten anyone, that the codefendants did most of the planning, and that the juvenile court improperly attributed the codefendants' actions to him. Br.Aplt. 35-38. Defendant has not shown that the juvenile court clearly erred because he again merely reargues the evidence in a light most favorable to him.

The juvenile court's findings on this factor were not clearly erroneous. As explained, the juvenile court found that Defendant knowingly facilitated violent crimes by providing guns to his friends, and then participated in those crimes himself. JR29-30. The court also found that even though Defendant may not have wielded a weapon in the victim's home, his uninvited presence "by itself, was a threat to the victims and a danger to others who were in or could have come into the home." JR29-30. Again, these findings were supported by Defendant's admissions, text messages, and the other evidence detailed above. R268,288,294,295-96;SE1.

Defendant complains that the juvenile court improperly imputed his codefendants' violent actions to him, in violation of *State v. Lara*, 2003 UT App 318, ¶28, 79 P.3d 951. Br.Aplt. 36-38. In *Lara*, the juvenile court bound the defendant over to district court under the SYOA to face a charge of aggravated robbery after finding that he was an accomplice to a violent carjacking. 2003 UT App 318, ¶27. But Lara's only role was to drive the stolen truck away. *Id.* ¶¶26, 32. Lara became involved only after his friends had forced the driver from the truck at gunpoint and then ordered Lara to drive the truck because neither of them could operate a standard transmission. *See id.* This Court reversed the juvenile court's bindover order, because the juvenile court erroneously focused "on the actions of the other participants." *Id.* ¶28.

The juvenile court here did not make the same mistake. Rather, it focused on Defendant's actions, not his codefendants'. JR29-30. The juvenile court recognized that Defendant did not have a weapon in the home and that it was the codefendants who forced their way at gun point into the victim's home. JR29. The court nevertheless found that Defendant's role was violent, aggressive, and premeditated because he "facilitated" the violence in the home by supplying guns, knowing that they "were intended to be used in a burglary and robbery for drugs." JR30. The court further found that Defendant's uninvited presence in the home was "itself ... a threat to the victims." JR30.

Thus, unlike the court in *Lara*, the juvenile court here based its findings on Defendant's actions.

Defendant points out that the guns he supplied were not loaded. Br.Aplt. 40. But he does not explain why this reduces his culpability where he provided the guns knowing that the group would use them as if they were loaded to commit a home-invasion robbery. Defendant therefore has not shown that the trial court clearly erred in making its findings under this factor.

D. The juvenile court did not abuse its discretion in weighing Defendant's lack of a juvenile court record.

Defendant complains about how the juvenile court phrased findings that it made in his favor regarding his lack of any history of delinquency. Br.Aplt. 42. He argues that in finding that he had proven the first factor—no prior weapons-related offenses in juvenile court—the juvenile court merely stated that Defendant had no prior juvenile record, without expressly recognizing that he had no prior weapons-related offenses. Br.Aplt. 42. Defendant argues that recognizing the full nature of this factor “demonstrates the egregious type of juvenile history that might normally justify transferring a minor into adult court.” Br.Aplt. 42. In other words, Defendant argues that the juvenile court did not weigh this factor more heavily in his favor.

Defendant has not shown that the juvenile court abused its discretion. The court found that the first and fourth factors—both involving Defendant's

history of delinquency – weighed in Defendant’s favor. JR28,30. It nevertheless found that those factors did not outweigh Defendant’s having knowingly facilitated violent crimes by supplying guns, and then participating in those crimes. JR28-31. Defendant’s disagreement with the juvenile court’s weighing of the SYOA factors does not show that the juvenile court abused its discretion in ultimately finding that the combined factors weighed in favor of binding him over to district court.

E. Defendant did not show that public safety was better served by retaining his case in juvenile court.

Defendant’s argument on this factor rests primarily on his contention that public safety required the juvenile court to consider his rehabilitative potential and mental condition. Br.Aplt. 16-24, 38-44. As shown, however, the 2013 SYOA amendments did not. Rather, in determining what would best serve public safety, the juvenile court considered Defendant’s age, juvenile court history, role in the offense and relative culpability, and the longer incarceration and supervision terms available in the adult system. JR28-31.

Defendant argues that his counsel should have argued, and the juvenile court should have recognized, that incarcerating him in the adult system would jeopardize his safety. Br.Aplt. 22-24. He argues that juveniles incarcerated in the adult system “are more likely to be physically and sexually abused while incarcerated.” Br.Aplt. 22. He also contends that placing juveniles in solitary

confinement for their safety increases their likelihood of suicide and psychosis. Br.Aplt. 24. The Utah Juvenile Defender Attorneys have filed an amicus curiae brief contending that the adult correctional system cannot meet youth offenders' needs and is a dangerous place for them. Amicus Br. 5-23. But the relevant inquiry under the SYOA's fifth factor was the public's safety, not Defendant's. Thus, Defendant's and Amicus's arguments are misplaced.

In any event, the juvenile court considered Defendant's interests and vulnerabilities and concluded that remaining in juvenile court was in his best interests. JR31. Thus, the juvenile court did not ignore Defendant's interests. Rather, it found that the public's interests outweighed Defendant's interests given the seriousness of his crimes, his age, and the limited sanctions available in juvenile court.

Given the facts here, the juvenile court reasonably concluded that "[p]ublic safety requires a strong[er] response and longer correctional period than is available in the juvenile court." JR30. Defendant therefore has not shown that the juvenile court abused its discretion in concluding that he did not show by clear and convincing evidence that it was in the public's best interest for his case to remain in juvenile court. *See Goggin v. Goggin*, 2011 UT 76, ¶26, 267 P.3d 885 (an appellate court "can properly find abuse only if no reasonable person would take the view adopted by the trial court").

III.

DEFENDANT HAS NOT SHOWN THAT HIS TRIAL COUNSEL WAS INEFFECTIVE AT THE SYOA HEARING

In his point II(D), Defendant argues that his counsel was ineffective in handling the evidence at the SYOA hearing and in allowing his hearing to be conducted jointly with his codefendant Joshua Dutson. Br.Aplt. 25-31. Defendant has not shown that his counsel was deficient in handling the evidence, because he asserts only that his trial counsel could have made different arguments. Nor has he shown prejudice, because none of the arguments that he now contends his counsel should have made would have likely caused the juvenile court to change its mind. As for holding a joint hearing, the record discloses a reasonable tactical basis for doing so, and Defendant has not shown that he was prejudiced by any of the evidence that he now complains was erroneously admitted because of his codefendant's participation.

A. Defendant has not shown that trial counsel performed deficiently in arguing the evidence.

Defendant argues that his counsel should have made several different arguments about the evidence before the juvenile court. But the fact that trial counsel could have employed "another, possibly more reasonable or effective strategy" does not prove that trial counsel was deficient. *State v. Lucero*, 2014 UT 15, ¶42, 328 P.3d 841.

Defendant argues that his counsel should have emphasized that Defendant was the youngest of the intruders, the second smallest, and had no criminal history. Br.Aplt. 25. But counsel could have reasonably decided that this was unnecessary where the juvenile court knew Defendant's age, knew the codefendants' ages, and could see Defendant's size. R242,363. The prosecution also stipulated, and the juvenile court found, that Defendant had no history of delinquency. JR28-30;R320-21,362,371.

Defendant argues that his counsel should have argued that the oldest of the codefendants "had multiple felony cases pending." Br.Aplt. 25. But counsel could have reasonably decided not to make this argument because none of the SYOA factors involve a codefendant's criminal history. See Utah Code Ann. §78A-6-702(3)(c). Rather, they focus only on the codefendant's involvement in the crime as compared to the defendant's. *Id.* §78A-6-702(3)(c)(ii).

Defendant argues that his counsel should have reminded the juvenile court that under *Lara*, 2003 UT App 318, the court could not attribute the misconduct of codefendants to juvenile accomplices. Br.Aplt. 26. But as explained, the juvenile court based its decision on Defendant's actions, not on his codefendants' actions. The court found that Defendant facilitated the violent crimes by providing the guns and being present. JR29-30. Arguing that the court's findings were erroneous under *Lara* would have therefore been

futile. Counsel's omission of a futile objection is not deficient performance. *State v. Isom*, 2015 UT App 160, ¶36, 789 Utah Adv. Rep. 21.

Defendant argues that his counsel should have elicited testimony that Defendant "wanted the police to agree to protect him before he was willing to acknowledge Wesley Brown's participation." Br.Aplt. 25. But the only record evidence that Defendant cites to support this proposition is a "Declaration" from his appellate counsel stating that she had reviewed Defendant's recorded interrogation and that Defendant requested protection before discussing Brown. Br.Aplt. 25 (citing R427, which in turn references R664). The record does not contain a recording or transcript of Defendant's interrogation, or an affidavit from Defendant establishing this fact.

Regardless, even assuming that Defendant could establish that he wanted police protection before revealing Brown's participation, Defendant cannot show that his counsel was ineffective for not eliciting this fact. Defendant does not explain why this fact was so crucial that all reasonable counsel would have elicited it. Br.Aplt. 25. Instead, he leaves this Court to speculate about its relevancy.

The relevance of this alleged fact is not so obvious that all reasonable counsel would have recognized and exploited it. Defendant's alleged hesitancy to reveal Brown's participation does not establish that Brown intimidated

Defendant into participating in the crimes. On the contrary, Defendant's text messages and his agreement with Brown's plan demonstrate that Defendant was a willing participant. Defendant therefore has not shown deficient performance.

Defendant argues that his counsel should have introduced Dexter Skinner's comments during his arrest and interrogation expressing shock and regret that sixteen-year-olds were arrested and that Defendant, "a good kid," had been involved. Br.Aplt. 25. But counsel could reasonably decide not to affirmatively introduce evidence that Defendant was involved in the robberies. Counsel could also have reasonably decided that the juvenile court would place little, if any weight, on a codefendant's assessment of Defendant's character.

Defendant argues that his counsel should have challenged victim Christian Davidson's claim that this was a home-invasion robbery. Br.Aplt. 26-28. Defendant argues that Davidson gave inconsistent statements about the initial entry and that there was some evidence that the group did not forcefully enter the home. Br.Aplt. 26-28.

Defendant proffers no evidence to contradict the victims' statements that once inside the home, the intruders robbed the victims at gunpoint. In fact, Dexter Skinner confessed that he and Brown drew their guns, commanded the victims "to get down on the ground and told them they were taking their

weed.” R237. Defendant likewise confessed that the group robbed the victims at gunpoint. R295. Given this evidence, counsel could have reasonably concluded that the juvenile court would find that the group robbed the victims at gunpoint in Davidson’s home, regardless of how the group initially entered that home. Given that reality, counsel could have reasonably decided not to nitpick Davidson’s testimony about the initial forced entry.

In sum, Defendant has not shown that his counsel’s arguing of the evidence was objectively unreasonable.

B. Defendant has not shown that he was prejudiced because none of the arguments he now makes would have undermined the basis for the juvenile court’s ruling.

Even if Defendant had shown that his trial counsel should have argued the evidence differently, Defendant has not shown that he was prejudiced. As explained, the juvenile court based its decision on the fact that Defendant knowingly facilitated violent crimes and also participated in those crimes. JR28-31. Defendant admitted these facts and none of the arguments that Defendant now claims his trial counsel should have made undermine his admissions. Defendant therefore has not shown prejudice. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984) (prejudice requires reasonable probability of different result).

C. Defendant has not shown that his counsel was ineffective for agreeing to a joint hearing.

Defendant argues that his counsel should have objected to holding his SYOA bindover hearing jointly with codefendant Joshua Dutson. Br.Aplt. 28-30. Defendant argues that this allowed the juvenile court to hear otherwise inadmissible hearsay that (1) the group allegedly committed other robberies, (2) the group all agreed on Brown's plan to rob the victims, and (3) Defendant held a gun or a switchblade during the robberies. Br.Aplt. 28-30.

Defendant has not shown that his counsel was ineffective, because the record discloses a reasonable strategic explanation for holding a joint hearing. As mentioned, the SYOA required the juvenile court to compare Defendant's conduct with that of his codefendants. *See* Utah Code Ann. §78A-6-702(3)(c)(ii). The evidence demonstrated, and the juvenile court ultimately found, that Defendant's participation at the crime scene was "less ... than others" because he did not wield a weapon while others, including Dutson, did. R284,287,299;JR29. Dutson confessed to wielding a gun during the robberies. R284,287. The evidence was conflicting, however, as to whether Defendant did. R253,284,287,299. Trial counsel could have therefore reasonably concluded that juxtaposing Defendant's participation with Dutson's would benefit Defendant. Indeed, that strategy was partially successful because it produced a finding that

Defendant's participation at the crime scene was less than that of his codefendants. JR29.

As mentioned, to prove that his trial counsel's performance was objectively unreasonable, Defendant must prove that "there was no conceivable tactical basis" for his counsel's actions. *State v. Clark*, 2004 UT 25, ¶6, 89 P.3d 162 (quotation and citation omitted). The record here discloses a tactical—and partially successful—basis for holding Defendant's SYOA hearing together with Dutson's. The fact that this strategy was not completely successful does not undermine its reasonableness. *See State v. Tyler*, 850 P.2d 1250, 1258 (Utah 1993) ("A defendant is not guaranteed successful assistance of counsel, and competency of counsel is not measured by the result.") (quotations and citations omitted).

Moreover, Defendant has not shown that it was objectively unreasonable for his counsel not to object to the hearsay evidence that he now identifies. Defendant recognizes that, under rule 22(j), Utah Rules of Juvenile Procedure, hearsay is admissible in a SYOA preliminary hearing. Br.Aplt. 28. Defendant nevertheless argues that hearsay is not admissible in the portion of the hearing addressing the SYOA factors, because rule 23A(d), Utah Rules of Juvenile Procedure, gives a Defendant the right to cross-examine adverse witnesses at the hearing. Br.Aplt. 28. But the fact that a defendant has the right to cross-

examine adverse witnesses at a hearing does not mean that hearsay is inadmissible. On the contrary, hearsay is admissible at preliminary hearings in adult court even though defendants have the right to cross-examine the prosecution's witnesses. *See* Utah R. Evid. 1102(a) ("Reliable hearsay is admissible at criminal preliminary examinations"); Utah R. Crim. P. 7(i)(1) (granting a defendant the opportunity to "cross-examine adverse witnesses" at a preliminary hearing in district court). Because Defendant has not shown that hearsay is obviously inadmissible at a SYOA preliminary hearing, he has not shown that his counsel was deficient for not objecting to the hearsay he now challenges.

Nor has Defendant proven prejudice. Defendant complains that because of the joint hearing, the juvenile court heard evidence that Dutson told police about other robberies Defendant and his cohorts committed. Br.Aplt. 29-30. But Defendant points to nothing in the record that even suggests that this evidence affected the juvenile court's decision, especially where the detective admitted that Defendant was not involved in any other robberies.

Detective Barker admitted that he received conflicting accounts about other robberies. R285-86. He ultimately agreed on cross-examination that "there were no other incidents" that Defendant and Dutson were involved in. R307. The prosecution did not rely on the allegations of other robberies, nor did

the juvenile court mention those allegations in making its decision. R362-67,370-75;JR28-31.

Defendant also complains about Dutson's statement that everyone agreed to the robbery plan. Br.Aplt. 30. But Defendant's own text messages established that a robbery was planned and that he would participate and provide guns. R268-72;SE1. Defendant argues that the text messages were jokes and that the robbery here was not planned until the day after the texts. Br.Aplt. 34. But as explained, the juvenile court was not required to accept Defendant's interpretation of the evidence.

Finally, Defendant complains that the juvenile court heard Dutson's statement that Defendant wielded a gun or a knife during the robberies. Br.Aplt. 30. But the juvenile court found that Defendant did not wield any weapon. JR29.

Defendant has not proven that any of the hearsay evidence effected the juvenile court's decision. Defendant therefore has not proven prejudice. *See Strickland*, 466 U.S. at 694.

IV.

DEFENDANT HAS NOT SHOWN THAT THE JUVENILE COURT JUDGE PLAINLY ERRED BY NOT SUA SPONTE RECUSING HERSELF WHERE NO CONTROLLING AUTHORITY REQUIRED RECUSAL

In his point III, Defendant argues that the juvenile court judge plainly erred by not recusing herself. Br.Aplt. 44-52. Defendant asserts that recusal

was appropriate because: (1) the judge is married to the Chief Criminal Deputy in the Weber County Attorney's Office, the prosecuting entity; and (2) the judge was a former prosecutor who worked in that office. Br.Aplt. 45. Defendant has not shown that the juvenile court plainly erred because no controlling authority plainly required the judge to recuse herself.

A. The judge's marriage did not plainly require recusal.

Defendant argues that rule 2.11 of the Code of Judicial Conduct "tacitly recognizes" that the judge should have recused herself. Br.Aplt. 46-48. That rule requires a judge to "disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including" when the judge's spouse is "a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party." Utah R. Jud. Conduct 2.11(A)(2)(a).

As Defendant recognizes, the plain language of this rule did not require recusal. Defendant argues only that the rule "tacitly" recognized that the judge's marriage to a supervisor in the prosecutor's office required recusal. Br.Aplt. 47. But an error is obvious only when it violates "the plain language of the relevant statute," not its "tacit" implications. *Isom*, 2015 UT App 160, ¶28.

Regardless, the language did not even "tacitly" require recusal here. A prosecutor is not a party to a criminal action, nor is he an "officer, director,

general partner, managing member, or trustee” of the State of Utah in the sense that those terms are used in rule 2.11. *See* Utah R. Jud. Conduct 2.11(A)(2)(a). Rather, the rule requires recusal only when the judge’s spouse is an actual party, or so closely aligned with a party, that the spouse has a direct interest in the litigation.

Prosecutors have no direct interest in criminal cases, and especially not in cases where they are not representing the State. Defendant cites no controlling authority interpreting rule 2.11 as he now does.

Based on a footnote in *Regional Sales Agency, Inc. v. Reichert*, 830 P.2d 252, 255 n.1 (Utah 1992), Defendant argues that an attorney for a party can be considered to be “the party itself.” Br.Aplt. 47. That was not *Reichert’s* holding. On the contrary, the Utah Supreme Court expressly declined to consider “whether an attorney is a ‘party’” because that issue was “not essential to the determination” there. *Reichert*, 830 P.2d at 255 n.1. Thus, *Reichert* does not establish that the juvenile court judge should have plainly recognized that by being married to a prosecutor, she was actually married to the State of Utah.

Defendant argues that recusal was required because even if the judge’s husband was not a party, he became involved in Defendant’s case “after [Defendant] went to prison” and Defendant’s appellate counsel began requesting documents. Br.Aplt. 47-48. But even if the judge’s husband’s later

involvement with appellate counsel's post-sentencing document requests in district court could be enough to require the juvenile court judge to disqualify herself, it cannot establish that the judge plainly erred by not doing so. The involvement that Defendant identifies occurred long after his case was transferred to adult court, and even after he was convicted and sentenced. Br.Aplt. 47-48. The prosecutor who did handle the case explained that although the judge's husband was the Chief Criminal Deputy in the Weber County Attorney's Office, he had nothing to do with this case in juvenile court, did not supervise juvenile court attorneys, and was not involved in any juvenile court matters. R504-05. Because her spouse was not involved in Defendant's case while it was before her, the juvenile court judge's marriage did not require her sua sponte recusal.

Non-controlling authority supports that conclusion. In *State v. Harrell*, 546 N.W.2d 115, 116-18 (Wis. 1996), the Wisconsin Supreme Court rejected the argument that a judge's marriage to a prosecutor in the office prosecuting the defendant required the judge to recuse himself. The court observed that "the special characteristics of government attorneys make it unlikely that a judge's relationship with one would affect his or her impartiality." *Id.* at 118. Prosecutors do "not have the same type of interest in the outcome of a trial as does a member of a private law firm" because a prosecutor "has no financial

interest in the outcome of the case and any reputational interest ‘without the financial interest, is not enough to create [even] an appearance of partiality [in the judge].’” *Id.* (quoting *State v. Logan*, 689 P.2d 778, 785 (Kan. 1984)). The court found the “thought that a judge would have an increased propensity to convict criminals because of such a relationship” to be “preposterous.” *Id.* (quotation and citation omitted).

Defendant relies on a Colorado case, *Smith v. Beckman*, 683 P.2d 1214 (Colo. 1984), to support his claim that a judge’s marriage to a prosecutor creates an appearance of impropriety, even when the prosecutor-spouse is not involved in the case before the judge. Br.Aplt. 45, 51-52. But his non-binding precedent cannot show that the juvenile court plainly erred. *See Isom*, 2015 UT App 160, ¶28 (to be plain, error must contravene settled appellate law).

Even if *Beckman* were relevant to Defendant’s claim of plain error, it would not be persuasive. As the Minnesota Court of Appeals has observed, the “the reasoning of *Beckman*, a 1984 decision, runs counter to that of the great majority of subsequent cases.” *In re Jacobs*, 791 N.W.2d 300, 302 (Minn. App. 2010). Like those subsequent cases, the Minnesota Court of Appeals refused to hold “that the institutional loyalty of a prosecutor-spouse could reasonably appear to affect the impartiality of the judge-spouse.” *Id.* at 303. Thus,

Defendant has not shown that the juvenile court judge's marriage obviously required her to sua sponte recuse herself.

B. The judge's former employment as a prosecutor did not plainly require recusal.

Defendant also argues that section 78A-2-222 plainly required the judge to either obtain the consent of the parties to preside over the case or recuse herself. Br.Aplt. 48-51. Subsection (1)(b) of that statute prohibits a judge from hearing a case in which she "is related to either party by consanguinity or affinity within the third degree" unless the parties consent. Utah Code Ann. §78A-2-222(1)(b) (West 2009). Subsection (1)(c) prohibits a judge from hearing a case "when he has been attorney or counsel for either party in the action or proceeding" unless the parties consent. *Id.* §78A-2-222(1)(c). Defendant argues that recusal was plainly required under both subsections. Br.Aplt. 45-52.

Defendant again argues that because *Reichert* defined "party" to include the party's attorneys, the juvenile court judge here was married to a party: the State of Utah. Br.Aplt. 48. As explained, however, that was not *Reichert's* holding. Thus, Defendant has not shown that subsection (1)(b) plainly required recusal.

Nor did subsection (1)(c) require recusal, even though the judge had previously worked as a prosecutor. On the contrary, this Court has held that this subsection does not require a judge to "recuse herself in every case ...

where her former employer participates as counsel in the proceeding on a matter in which the judge herself never participated.” See *Kunej v. Labor Commission*, 2013 UT App 172, ¶19, 306 P.3d 855 (citing *In re Affidavit of Bias*, 947 P.2d 1152, 1155 (Utah 1997)).

Kunej brought an employment discrimination claim against the University of Utah. *Id.* at ¶1. The Utah Attorney General’s Office represented the University. *Id.* ¶18. The administrative law judge who heard the case had previously worked for both the University and the Attorney General’s Office. *Id.* ¶18. But her former employment did not require the judge to recuse herself under section 78A-2-222(1)(c) where nothing suggested “any connection between the present litigation and any matters” the judge was involved in during her previous employment. *Id.* ¶19.

Likewise, nothing in this record shows, or even suggests, that the judge had any involvement in Defendant’s case when she worked as a prosecutor. According to her online biography, the judge left the prosecutor’s office in 1995, two years before Defendant was born. See Second District Juvenile Court Judges’ Biographies, (www.utcourts.gov/judgesbios/showGallery.asp?dist=2&ct_type=J). Defendant therefore has not shown that the judge erred, let alone plainly erred, by not recusing herself.

C. Defendant has not shown prejudice.

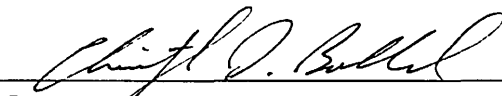
Even if Defendant had shown that recusal was plainly required, he has not shown prejudice, as he must to establish plain error. Defendant does not allege that the juvenile court here was biased. Br.Aplt. 44-52. Rather, he asserts that the judge's marriage created only an "appearance of impropriety" and a "reasonable inference" of bias. Br.Aplt. 45, 51. But appearances and inferences do not establish actual bias. *See State v. Alonzo*, 932 P.2d 606, 611-12 (Utah App. 1997) (affidavits showing appearance of bias insufficient to show actual bias). Defendant therefore has not carried his burden to show plain error. *See Isom*, 2015 UT App 160, ¶28.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on August 5, 2015.

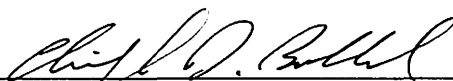
SEAN D. REYES
Utah Attorney General



CHRISTOPHER D. BALLARD
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 13,724 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.



CHRISTOPHER D. BALLARD
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that on August 5, 2015, two copies of the Brief of Appellee were

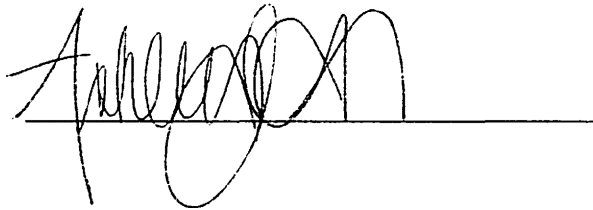
☒ mailed ☐ hand-delivered to:

Elizabeth Hunt
ELIZABETH HUNT LLC
569 Browning Ave.
Salt Lake City, UT 84105

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.



Addenda

ADDENDA

- Addendum A: Statutes & Rules
- Addendum B: 2013 H.B. 105 (2013 SYOA amendments)
- Addendum C: 2015 S.B. 167 (2015 SYOA amendments)
- Addendum D: Juvenile Court's bindover order (JR28-31)
- Addendum E: Juvenile Court's oral bindover decision (R370-79)
- Addendum F: Omnibus Ruling & Order on Defendant's Post-Sentence Motions (R586-97)
- Addendum G: Chart of text messages (from State's Exhibit 1)

Addendum A

ADDENDUM A

- Utah Code Ann. §78A-6-701 (West Supp. 2014) (automatic waiver)
- Utah Code Ann. §78A-6-702 (West Supp. 2014) (SYOA)
- Utah Code Ann. §78A-6-703 (West Supp. 2014) (certification)
- Utah Code Ann. §78A-2-222 (West 2009) (disqualification)
- Utah R. Juv. P. 22 (preliminary hearing in SYOA cases)
- Utah R. Juv. P. 23A (SYOA hearings)
- Utah R. Jud. Conduct 2.11 (disqualification)

UTAH CODE ANN.

§78A-6-701 (West Supp 2013). Jurisdiction of district court

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

(a) an offense which would be murder or aggravated murder if committed by an adult; or

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3)(a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

Credits

Laws 2008, c. 3, § 445, eff. Feb. 7, 2008; Laws 2010, c. 38, § 6, eff. March 22, 2010.

HISTORICAL AND STATUTORY NOTES

Laws 2010, c. 38, § 6, in subsec. (1), substituted "has" for "shall have" and deleted "by information or indictment" following "charged".

§ 78A-6-702 (West Supp. 2013). Serious youth offender--Procedure

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

- (i) Section 76-6-103, aggravated arson;
- (ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
- (iii) Section 76-5-302, aggravated kidnapping;
- (iv) Section 76-6-203, aggravated burglary;
- (v) Section 76-6-302, aggravated robbery;
- (vi) Section 76-5-405, aggravated sexual assault;
- (vii) Section 76-10-508.1, felony discharge of a firearm;
- (viii) Section 76-5-202, attempted aggravated murder; or
- (ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3)(a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that it would be contrary to the best interest of the minor and to the public to bind over the defendant to the jurisdiction of the district court.

(c) In making the bind over determination in Subsection (3)(b), the judge shall consider only the following:

- (i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

- (ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;

- (iii) the extent to which the minor's role in the offense was committed in a violent, aggressive, or premeditated manner;

- (iv) the number and nature of the minor's prior adjudications in the juvenile court; and

- (v) whether public safety is better served by adjudicating the minor in the juvenile court or in the district court.

(d) Once the state has met its burden under Subsection (3)(a) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court.

(e) If the juvenile court judge finds by clear and convincing evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (12).

(9) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(10) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(11) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(12) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Credits

Laws 2008, c. 3, § 446, eff. Feb. 7, 2008; Laws 2010, c. 38, § 7, eff. March 22, 2010; Laws 2010, c. 218, § 39, eff. May 11, 2010; Laws 2012, c. 118, § 1, eff. May 8, 2012; Laws 2013, c. 186, § 1, eff. May 14, 2013.

HISTORICAL AND STATUTORY NOTES

Laws 2010, c. 38, § 7, inserted subsec. (8) and renumbered former subsecs. (8) to (11) as subsecs. (9) to (12).

Laws 2010, c. 218, § 39, in subsec. (1)(a)(vii), substituted "76-10-508.1" for "76-10-508", inserted "felony" and deleted "from a vehicle" following "firearm".

Composite section by the Office of Legislative Research and General Counsel of Laws 2010, c. 38, § 7 and Laws 2010, c. 218, § 39.

Laws 2012, c. 118, § 1, in subsec. (1)(a)(ii), substituted "Section 76-5-103, aggravated assault resulting in" for "Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing".

Laws 2013, c. 186, § 1, in subsec. (1)(a)(iii), substituted "kidnapping" for "kidnaping"; and rewrote subsec. (3), which formerly read:

"(3)(a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

"(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

"(i) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

"(ii) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; and

“(iii) that the minor’s role in the offense was not committed in a violent, aggressive, or premeditated manner.

“(c) Once the state has met its burden under this Subsection (3) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

“(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.”

§ 78A-6-703 (West Supp. 2013). Certification hearings--Juvenile court to hold preliminary hearing--Factors considered by juvenile court for waiver of jurisdiction to district court

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:

(i) in concert with two or more persons;

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

- (f) the record and previous history of the minor;
 - (g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;
 - (h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;
 - (i) whether the minor used a firearm in the commission of an offense; and
 - (j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.
- (4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.
- (5)(a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.
- (b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.
- (6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).
- (7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:
- (a) certifying that finding; and
 - (b) directing that the minor be held for criminal proceedings in the district court.
- (8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).
- (9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.
- (10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Credits

Laws 2008, c. 3, § 447, eff. Feb. 7, 2008; Laws 2010, c. 38, § 8, eff. March 22, 2010; Laws 2010, c. 193, § 22, eff. Nov. 1, 2010.

HISTORICAL AND STATUTORY NOTES

Laws 2010, c. 38, § 8, in subsec. (12), deleted "or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78A-6-702" following "section,".

Laws 2010, c. 193, § 22, rewrote subsec. (3)(b), in subsec. (3)(e), substituted "the minor's" for "his" and in subsec. (12), substituted "the minor" for "him". Former subsec. (3)(b) read:

"(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;"

Composite section by the Office of Legislative Research and General Counsel of Laws 2010, c. 38, § 8 and Laws 2010, c. 193, § 22.

§ 78A-2-222 (West 2009). Disqualification for interest or relation to parties

(1) Except by consent of all parties, a justice, judge, or justice court judge may not sit or act in any action or proceeding:

(a) to which he is a party, or in which he is interested;

(b) when he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of the common law; or

(c) when he has been attorney or counsel for either party in the action or proceeding.

(2) The provisions of this section do not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the action or proceeding to some other court.

Credits

Laws 2008, c. 3, § 312, eff. Feb. 7, 2008.

Utah Rules of Juvenile Procedure

Rule 22. Initial appearance and preliminary examination in cases under Section 78A-6-702 and Section 78A-6-703.

- (a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.
- (b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a detention center pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.
- (c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.
- (d) The court shall, upon the minor's first appearance, inform the minor:
 - (d)(1) of the charge in the information or indictment and furnish the minor with a copy;
 - (d)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;
 - (d)(3) of the right to retain counsel or have counsel appointed by the court without expense if the minor is unable to obtain counsel;
 - (d)(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and
 - (d)(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.
- (e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.
- (f)(1) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary examination and, as applicable, to a certification hearing pursuant to Section 78A-6-703 or to the right to present evidence regarding the conditions established by Section 78A-6-702. If the minor waives the right to a preliminary examination and, if

applicable, a certification hearing, and if the prosecuting attorney consents, the court shall order the minor bound over to answer in the district court.

(f)(2) If the minor does not waive a preliminary examination, the court shall schedule the preliminary examination. The time periods of this rule may be extended by the court for good cause shown. The preliminary examination shall be held within a reasonable time, but not later than ten days after the initial appearance if the minor is in custody for the offense charged and the information is filed under Section 78A-6-702. The preliminary examination shall be held within a reasonable time, but not later than 30 days after the initial appearance if:

(f)(2)(A) the minor is in custody for the offense charged and the information is filed under Section 78A-6-703; or

(f)(2)(B) the minor is not in custody.

(f)(3) A preliminary examination may not be held if the minor is indicted. If the indictment is filed under 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and certification, unless the hearing is waived. If the indictment is filed under Section 78A-6-702, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section 78A-6-702, if requested.

(g) A preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(h) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and certification.

(i) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section 78A-6-702, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section 78A-6-702.

(j) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(k) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(l) At a preliminary examination, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(l)(1) exclude witnesses from the courtroom;

(l)(2) require witnesses not to converse with each other until the preliminary examination is concluded; and

(l)(3) exclude spectators from the courtroom.

Rule 23A. Hearing on conditions of Section 78A-6-702; bind over to district court.

(a) If a criminal indictment under Section 78A-6-702 alleges the commission of a felony, the court shall, upon the request of the minor, hear evidence and consider the conditions in paragraph (c).

(b) If a criminal information under Section 78A-6-702 alleges the commission of a felony, after a finding of probable cause in accordance with Rule 22, the court shall hear evidence and determine whether the conditions of paragraph (c) exist.

(c) The minor shall have the burden of going forward and presenting evidence of the following conditions as provided in Section 78A-6-702:

(c)(1) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(c)(2) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants;

(c)(3) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner;

(c)(4) the number and nature of the minor's prior adjudications in the juvenile court; and

(c)(5) that public safety is better served by adjudicating the minor in the juvenile court or in the district court.

(d) At the conclusion of the minor's case, the state may call witnesses and present evidence on the conditions required by Section 78A-6-702. The minor may cross-examine adverse witnesses.

(e) If the court does not find by clear and convincing evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the minor over to the jurisdiction of the district court, the court shall enter an order directing the minor to answer the charges in district court.

(f)(1) Upon entry of an order directing the minor to answer the charges in district court, the court shall comply with the requirements of Title 77, Chapter 20, Bail. By issuance of a warrant of arrest or continuance of an existing warrant, the court may order the minor committed to jail in accordance with Section 62A-7-201. The court shall enter the appropriate written order.

(f)(2) Once the minor is bound over to district court, a determination regarding where the minor is held shall be made pursuant to Section 78A-6-702.

(f)(3) The clerk of the juvenile court shall transmit to the clerk of the district court all pleadings in and records made of the proceedings in the juvenile court.

(f)(4) The jurisdiction of the court shall terminate as provided by statute.

(g) If the court finds probable cause to believe that a felony has been committed and that the minor committed it and also finds that all of the conditions of Section 78A-6-702 are present, the court shall proceed upon the information as if it were a petition. The court may order the minor held in a detention center or released in accordance with Rule 9.

Utah Code of Judicial Conduct

RULE 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
- (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
 - (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
 - (b) acting as a lawyer in the proceeding;
 - (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
 - (d) likely to be a material witness in the proceeding.
- (3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.
- (4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous three years made aggregate contributions to the judge's retention in an amount that is greater than \$50.
- (5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (6) The judge:
 - (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
 - (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the

proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court and is now acting as a judge who would hear the appeal or trial de novo.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A trial court judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) An appellate court judge or justice subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may send notice to the parties disclosing the basis for the judge or justice's disqualification and asking them to consider whether to waive disqualification. With respect to paragraphs (A)(2) or (A)(3), the judge or justice may participate in the decision of the case if all parties, other than the party presumably benefitted by the apparent bias constituting the disqualifying circumstance, waive the disqualification. With respect to paragraphs (A)(4) through (A)(6), the judge or justice may participate in the decision of the case if all parties waive the disqualification. The responses to a notice of a disqualifying circumstance shall be included in the appellate file pertaining to the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary

statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] A judge is disqualified in proceedings involving a law firm that employs the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household as an equity holder in the law firm. A judge is not disqualified in other situations unless the judge's impartiality might reasonably be questioned under paragraph (A), or a relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c).

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

Addendum B

ADDENDUM B

2013 H.B. 105
(2013 SYOA Amendments)

SERIOUS YOUTH OFFENDER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill amends the procedure to transfer jurisdiction for a serious youth offender from a juvenile court to a district court.

Highlighted Provisions:

This bill:

- provides for a juvenile court judge to consider a minor's prior adjudications in juvenile court, a minor's best interest, and the public's safety when determining a jurisdiction transfer from a juvenile court to a district court; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-702, as last amended by Laws of Utah 2012, Chapter 118

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78A-6-702** is amended to read:

78A-6-702. Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the

juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

(i) Section 76-6-103, aggravated arson;

(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(iii) Section 76-5-302, aggravated ~~[kidnaping]~~ kidnapping;

(iv) Section 76-6-203, aggravated burglary;

(v) Section 76-6-302, aggravated robbery;

(vi) Section 76-5-405, aggravated sexual assault;

(vii) Section 76-10-508.1, felony discharge of a firearm;

(viii) Section 76-5-202, attempted aggravated murder; or

(ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that ~~[all of the following conditions exist:]~~ it would be contrary to the best interest of the minor and to the

public to bind over the defendant to the jurisdiction of the district court.

(c) In making the bind over determination in Subsection (3)(b), the judge shall consider only the following:

(i) whether the minor has ~~[not]~~ been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(ii) ~~[that]~~ if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants; ~~[and]~~

(iii) ~~[that]~~ the extent to which the minor's role in the offense was ~~[not]~~ committed in a violent, aggressive, or premeditated manner[-];

(iv) the number and nature of the minor's prior adjudications in the juvenile court; and

(v) whether public safety is better served by adjudicating the minor in the juvenile court or in the district court.

~~[(c)]~~ (d) Once the state has met its burden under ~~[this]~~ Subsection (3)(a) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence ~~[as to the existence of the above conditions]~~ that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court.

~~[(d)]~~ (e) If the juvenile court judge finds by clear and convincing evidence that ~~[all the above conditions are satisfied,]~~ it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue.

86 The defendant shall have the same right to bail as any other criminal defendant and shall be
87 advised of that right by the juvenile court judge. The juvenile court shall set initial bail in
88 accordance with Title 77, Chapter 20, Bail.

89 (6) If an indictment is returned by a grand jury charging a violation under this section,
90 the preliminary examination held by the juvenile court judge need not include a finding of
91 probable cause that the crime alleged in the indictment was committed and that the defendant
92 committed it, but the juvenile court shall proceed in accordance with this section regarding the
93 additional considerations listed in Subsection (3)(b).

94 (7) When a defendant is charged with multiple criminal offenses in the same
95 information or indictment and is bound over to answer in the district court for one or more
96 charges under this section, other offenses arising from the same criminal episode and any
97 subsequent misdemeanors or felonies charged against him shall be considered together with
98 those charges, and where the court finds probable cause to believe that those crimes have been
99 committed and that the defendant committed them, the defendant shall also be bound over to
100 the district court to answer for those charges.

101 (8) When a minor has been bound over to the district court under this section, the
102 jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is
103 terminated regarding that offense, any other offenses arising from the same criminal episode,
104 and any subsequent misdemeanors or felonies charged against the minor, except as provided in
105 Subsection (12).

106 (9) A minor who is bound over to answer as an adult in the district court under this
107 section or on whom an indictment has been returned by a grand jury is not entitled to a
108 preliminary examination in the district court.

109 (10) Allegations contained in the indictment or information that the defendant has
110 previously been adjudicated or convicted of an offense involving the use of a dangerous
111 weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need
112 to be proven at trial in the district court.

113 (11) If a minor enters a plea to, or is found guilty of, any of the charges filed or any

114 other offense arising from the same criminal episode, the district court retains jurisdiction over
115 the minor for all purposes, including sentencing.

116 (12) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice
117 Services regain jurisdiction and any authority previously exercised over the minor when there
118 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Addendum C

ADDENDUM C

2015 S.B. 167
(2015 SYOA Amendments)

JUVENILE OFFENDER AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Osmond

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill makes changes to statutes regarding minors and courts.

Highlighted Provisions:

This bill:

- ▶ adds a specific list of previous offenses and conditions to the statute that allows for the direct filing of charges in district court;
- ▶ adds a new option to the serious youth offender statute;
- ▶ creates guidelines for housing a minor convicted in district court in a juvenile secure facility;
- ▶ requires that the court determine that a minor is knowingly and intentionally waiving counsel; and
- ▶ sets a presumption that juveniles are not to be shackled when appearing in court unless ordered by the court.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 62A-7-201, as last amended by Laws of Utah 2010, Chapter 38
- 78A-6-701, as last amended by Laws of Utah 2014, Chapter 234
- 78A-6-702, as last amended by Laws of Utah 2014, Chapter 234

78A-6-703, as last amended by Laws of Utah 2014, Chapter 234

78A-6-1111, as repealed and reenacted by Laws of Utah 2014, Chapter 275

ENACTS:

78A-6-122, Utah Code Annotated 1953

78A-6-705, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 62A-7-201 is amended to read:

62A-7-201. Confinement -- Facilities -- Restrictions.

(1) Children under 18 years of age, who are apprehended by any officer or brought before any court for examination under any provision of state law, may not be confined in jails, lockups, or cells used for persons 18 years of age or older who are charged with crime, or in secure postadjudication correctional facilities operated by the division, except as provided in Subsection (2), other specific statute, or in conformance with standards approved by the board.

(2) (a) Children charged with crimes under Section 78A-6-701, as a serious youth offender under Section 78A-6-702 and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained ~~[in a jail or other place of detention used for adults]~~ as provided in these sections.

(b) Children detained in adult facilities under Section 78A-6-702 or 78A-6-703 prior to a hearing before a magistrate, or under Subsection 78A-6-113(3), may only be held in certified juvenile detention accommodations in accordance with rules promulgated by the division. Those rules shall include standards for acceptable sight and sound separation from adult inmates. The division certifies facilities that are in compliance with the division's standards. The provisions of this Subsection (2)(b) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(3) In areas of low density population, the division may, by rule, approve juvenile holding accommodations within adult facilities that have acceptable sight and sound separation. Those facilities shall be used only for short-term holding purposes, with a

maximum confinement of six hours, for children alleged to have committed an act which would be a criminal offense if committed by an adult. Acceptable short-term holding purposes are: identification, notification of juvenile court officials, processing, and allowance of adequate time for evaluation of needs and circumstances regarding release or transfer to a shelter or detention facility. The provisions of this Subsection (3) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(4) Children who are alleged to have committed an act which would be a criminal offense if committed by an adult, may be detained in holding rooms in local law enforcement agency facilities for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. Those rooms shall be certified by the division, according to the division's rules. Those rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with any of the provisions of this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of children under 18 years of age who require detention care prior to trial or examination, or while awaiting assignment to a home or facility, as a dispositional placement under Subsection 78A-6-117(2)(f)(i) or 78A-6-1101(3)(a), and of youth offenders under Subsection 62A-7-504(8). The provisions of this Subsection (6)(a) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(b) The division shall provide standards for custody or detention under Subsections (2)(b), (3), and (4), and shall determine and set standards for conditions of care and confinement of children in detention facilities.

(c) All other custody or detention shall be provided by the division, or by contract with a public or private agency willing to undertake temporary custody or detention upon agreed terms, or in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems. The provisions of this Subsection (6)(c) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

Section 2. Section 78A-6-122 is enacted to read:

78A-6-122. Restraint of juveniles.

(1) As used in this section, "restrained" means the use of handcuffs, chains, shackles, zip ties, irons, straightjackets, and any other device or method which may be used to immobilize a juvenile.

(2) The Judicial Council shall adopt rules that address the circumstances under which a juvenile may be restrained while appearing in court. The Judicial Council shall ensure that the rules consider both the welfare of the juvenile and the safety of the court. A juvenile may not be restrained during a court proceeding unless restraint is authorized by rules of the Judicial Council.

Section 3. Section 78A-6-701 is amended to read:

78A-6-701. Jurisdiction of district court.

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

(a) an offense which would be murder or aggravated murder if committed by an adult;
[or]

(b) ~~[an offense which would be a felony if committed by an adult]~~ if the minor has been previously committed to a secure facility as defined in Section 62A-7-101~~[-This Subsection (1)(b) shall not apply if the offense is committed in a secure facility-]~~, a felony violation of:

(i) Section 76-6-103, aggravated arson;

(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-6-203, aggravated burglary;

(v) Section 76-6-302, aggravated robbery;

(vi) Section 76-5-405, aggravated sexual assault;

(vii) Section 76-10-508.1, felony discharge of a firearm;

(viii) Section 76-5-202, attempted aggravated murder; or

114 (ix) Section 76-5-203, attempted murder; or
115 (c) an offense other than those listed in Subsection (1)(b) involving the use of a
116 dangerous weapon, which would be a felony if committed by an adult, and the minor has been
117 previously adjudicated or convicted of an offense involving the use of a dangerous weapon,
118 which also would have been a felony if committed by an adult.

119 (2) When the district court has exclusive original jurisdiction over a minor under this
120 section, it also has exclusive original jurisdiction over the minor regarding all offenses joined
121 with the qualifying offense, and any other offenses, including misdemeanors, arising from the
122 same criminal episode. The district court is not divested of jurisdiction by virtue of the fact
123 that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

124 (3) (a) Any felony, misdemeanor, or infraction committed after the offense over which
125 the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the
126 defendant as an adult in the district court or justice court having jurisdiction.

127 (b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not
128 guilty, or a dismissal of the charge in the district court, the juvenile court under Section
129 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority
130 previously exercised over the minor.

131 (4) A minor arrested under this section shall be held in a juvenile detention facility
132 until the district court determines where the minor shall be held until the time of trial, except
133 for defendants who are otherwise subject to the authority of the Board of Pardons and Parole.

134 (5) The district court shall consider the following when determining where the minor
135 will be held until the time of trial:

- 136 (a) the age of the minor;
137 (b) the nature, seriousness, and circumstances of the alleged offense;
138 (c) the minor's history of prior criminal acts;
139 (d) whether detention in a juvenile detention facility will adequately serve the need for
140 community protection pending the outcome of any criminal proceedings;
141 (e) whether the minor's placement in a juvenile detention facility will negatively impact

the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.

(6) A minor ordered to a juvenile detention facility under Subsection (5) shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(7) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.

(8) If the minor ordered to a juvenile detention facility under Subsection (5) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(9) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of pretrial confinement for adults.

Section 4. Section 78A-6-702 is amended to read:

78A-6-702. Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony ~~shall~~ may be by criminal information and filed in the juvenile court if the minor was a principal actor in the offense and the information charges any of the following offenses:

(a) any felony violation of:

- (i) Section 76-6-103, aggravated arson;
(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
(iii) Section 76-5-302, aggravated kidnapping;
(iv) Section 76-6-203, aggravated burglary;
(v) Section 76-6-302, aggravated robbery;
(vi) Section 76-5-405, aggravated sexual assault;
(vii) Section 76-10-508.1, felony discharge of a firearm;
(viii) Section 76-5-202, attempted aggravated murder; or
(ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that it would be contrary to the best interest of the minor and to the public to bind over the defendant to the jurisdiction of the district court.

(c) In making the bind over determination in Subsection (3)(b), the judge shall consider

only the following:

- (i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
- (ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;
- (iii) the extent to which the minor's role in the offense was committed in a violent, aggressive, or premeditated manner;
- (iv) the number and nature of the minor's prior adjudications in the juvenile court; and
- (v) whether public safety ~~[is]~~ and the interests of the minor are better served by adjudicating the minor in the juvenile court or in the district court, including whether the resources of the adult system or juvenile system are more likely to assist in rehabilitating the minor and reducing the threat which the minor presents to the public.

(d) Once the state has met its burden under Subsection (3)(a) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court.

(e) If the juvenile court judge finds by ~~[clear and convincing]~~ a preponderance of evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be

226 advised of that right by the juvenile court judge. The juvenile court shall set initial bail in
227 accordance with Title 77, Chapter 20, Bail.

228 (6) At the time the minor is bound over to the district court, the juvenile court shall
229 make the initial determination on where the minor shall be held.

230 (7) The juvenile court shall consider the following when determining where the minor
231 shall be held until the time of trial:

232 (a) the age of the minor;

233 (b) the nature, seriousness, and circumstances of the alleged offense;

234 (c) the minor's history of prior criminal acts;

235 (d) whether detention in a juvenile detention facility will adequately serve the need for
236 community protection pending the outcome of any criminal proceedings;

237 (e) whether the minor's placement in a juvenile detention facility will negatively impact
238 the functioning of the facility by compromising the goals of the facility to maintain a safe,
239 positive, and secure environment for all minors within the facility;

240 (f) the relative ability of the facility to meet the needs of the minor and protect the
241 public;

242 (g) whether the minor presents an imminent risk of harm to the minor or others within
243 the facility;

244 (h) the physical maturity of the minor;

245 (i) the current mental state of the minor as evidenced by relevant mental health or
246 psychological assessments or screenings that are made available to the court; and

247 (j) any other factors the court considers relevant.

248 (8) If a minor is ordered to a juvenile detention facility under Subsection (7), the minor
249 shall remain in the facility until released by a district court judge, or if convicted, until
250 sentencing.

251 (9) A minor held in a juvenile detention facility under this section shall have the same
252 right to bail as any other criminal defendant.

253 (10) If the minor ordered to a juvenile detention facility under Subsection (7) attains

the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(11) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of pretrial confinement considered appropriate by the court, including jail or other place of confinement for adults.

(12) The district court may reconsider the decision on where the minor will be held pursuant to Subsection (6).

(13) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(14) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(15) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (19) or Section 78A-6-705.

(16) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(17) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(18) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(19) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 5. Section **78A-6-703** is amended to read:

78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances

which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:

(i) in concert with two or more persons;

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5) (a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and

be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.

(8) The juvenile court shall consider the following when determining where the minor will be held until the time of trial:

- (a) the age of the minor;
- (b) the nature, seriousness, and circumstances of the alleged offense;
- (c) the minor's history of prior criminal acts;
- (d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;
- (e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;
- (f) the relative ability of the facility to meet the needs of the minor and protect the public;
- (g) whether the minor presents an imminent risk of harm to the minor or others within the facility;
- (h) the physical maturity of the minor;
- (i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and
- (j) any other factors the court considers relevant.

(9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(10) A minor held in a juvenile detention facility under this section shall have the same

right to bail as any other criminal defendant.

(11) If the minor ordered to a juvenile detention facility under Subsection (8) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(12) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of confinement for adults.

(13) The district court may reconsider the decision on where the minor shall be held pursuant to Subsection (7).

(14) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(15) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(16) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(17) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(18) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(19) When a minor has been certified to the district court under this section, the

jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (21) or Section 78A-6-705.

(20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(21) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 6. Section **78A-6-705** is enacted to read:

78A-6-705. Youth prison commitment.

(1) Before sentencing a minor who is under the jurisdiction of the district court under Section 78A-6-701, 78A-6-702, or 78A-6-703, to prison the court shall request a report from the Division of Juvenile Justice Services regarding the potential risk to other juveniles if the minor were to be committed to the custody of the division. The division shall submit the requested report to the court as part of the pre-sentence report or as a separate report.

(2) If, after receiving the report described in Subsection (1), the court determines that probation is not appropriate and commitment to prison is an appropriate sentence, the court shall order the minor committed to prison and the minor shall be provisionally housed in a secure facility operated by the Division of Juvenile Justice Services until the minor reaches 18 years of age, unless released earlier from incarceration by the Board of Pardons and Parole.

(3) The court may order the minor committed directly to the custody of the Department of Corrections if the court finds that:

(a) the minor would present an unreasonable risk to others while in the division's custody;

(b) the minor has previously been committed to a prison for adult offenders; or

(c) housing the minor in a secure facility operated by the Division of Juvenile Justice

422 Services would be contrary to the interests of justice.

423 (4) The Division of Juvenile Justice Services shall adopt procedures by rule, pursuant
424 to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the transfer of a
425 minor provisionally housed in a division facility under Subsection (2) to the custody of the
426 Department of Corrections. If, in accordance with those rules, the division determines that
427 housing the minor in a division facility presents an unreasonable risk to others or that it is not
428 in the best interest of the minor, it shall transfer the physical custody of the minor to the
429 Department of Corrections.

430 (5) When a minor is committed to prison but ordered by a court to be housed in a
431 Division of Juvenile Justice Services facility under this section, the court and the division shall
432 immediately notify the Board of Pardons and Parole so that the minor may be scheduled for a
433 hearing according to board procedures. If a minor who is provisionally housed in a division
434 facility under this section has not been paroled or otherwise released from incarceration by the
435 time the minor reaches 18 years of age, the division shall as soon as reasonably possible, but
436 not later than when the minor reaches 18 years and 6 months of age, transfer the minor to the
437 physical custody of the Department of Corrections.

438 (6) Upon the commitment of a minor to the custody of the Division of Juvenile Justice
439 Services or the Department of Corrections under this section, the Board of Pardons and Parole
440 has authority over the minor for purposes of parole, pardon, commutation, termination of
441 sentence, remission of fines or forfeitures, orders of restitution, and all other purposes
442 authorized by law.

443 (7) The Youth Parole Authority may hold hearings, receive reports, or otherwise keep
444 informed of the progress of a minor in the custody of the Division of Juvenile Justice Services
445 under this section and may forward to the Board of Pardons and Parole any information or
446 recommendations concerning the minor.

447 (8) Commitment of a minor under this section is a prison commitment for all
448 sentencing purposes.

449 Section 7. Section 78A-6-1111 is amended to read:

78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.

(1) (a) In any action in juvenile court initiated by the state, a political subdivision of the state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be informed that they may be represented by counsel at every stage of the proceedings.

(b) In any action initiated by a private party, the parents or legal guardian shall have the right to employ counsel of their own choice at their own expense.

(c) If, in any action initiated by the state or a political subdivision of the state under Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights Act; or Part 10, Adult Offenses, of this chapter or under Section 78A-6-1101, a parent or legal guardian requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court to represent the parent or legal guardian in all proceedings directly related to the petition or motion filed by the state, or a political subdivision of the state, subject to the provisions of this section.

(d) In any action initiated by the state, a political subdivision of the state, or a private party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an attorney guardian ad litem in other actions initiated under this chapter when appointed by the court under Section 78A-6-902 or as otherwise provided by law.

(e) In any action initiated by the state or a political subdivision of the state under Part 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be informed that the minor ~~[may]~~ has the right to be represented by counsel at every stage of the proceedings ~~[and that if]~~.

(i) In cases where a minor is facing a felony level offense, the court shall appoint counsel, who shall appear until counsel is retained on the minor's behalf. The minor may not waive counsel unless the minor has had a meaningful opportunity to consult with a defense attorney. The court shall make findings on the record, taking into consideration the minor's

478 unique circumstances and attributes, that the waiver is knowing and voluntary and the minor
479 understands the consequences of waiving the right to counsel.

480 (ii) In all other situations the right to counsel may not be waived by a minor unless
481 there has been a finding on the record, taking into consideration the minor's unique
482 circumstances and attributes, that the waiver is knowing and voluntary, and the minor
483 understands the consequences of waiving the right to counsel.

484 (iii) If the minor is found to be indigent, counsel shall be appointed by the court to
485 represent the minor in all proceedings directly related to the petition or motion filed by the state
486 or a political subdivision of the state, subject to the provisions of this section.

487 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance
488 with the process and procedure defined in Section 77-32-202. The court shall take into account
489 the income and financial ability of the parent or legal guardian to retain counsel in determining
490 the indigency of the minor.

491 (g) The cost of appointed counsel for a party found to be indigent, including the cost of
492 counsel and expense of the first appeal, shall be paid by the county in which the trial court
493 proceedings are held. Counties may levy and collect taxes for these purposes.

494 (2) Counsel appointed by the court may not provide representation as court-appointed
495 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify
496 court orders in a proceeding initiated by, a private party.

497 (3) If the county responsible to provide legal counsel for an indigent under Subsection
498 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting
499 attorney as legal counsel to represent that indigent.

500 (4) The court may order a parent or legal guardian for whom counsel is appointed, and
501 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
502 county for the cost of appointed counsel.

503 (5) The state, or an agency of the state, may not be ordered to reimburse the county for
504 expenses incurred under Subsection (1)(g).

505 Section 8. **Effective date.**

506

Section 78A-6-122 takes effect October 1, 2015.

Addendum D

ADDENDUM D

Juvenile Court's bindover order
(JR28-31)

**IN THE SECOND DISTRICT JUVENILE COURT
FOR WEBER COUNTY, STATE OF UTAH**

STATE OF UTAH, Plaintiff, vs. COOPER VAN HUIZEN, Defendant.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON BIND OVER Case Number: 1003447 Judge: Michelle E Heward
---	--

This matter came before the court for a preliminary hearing/examination and a subsequent best interest hearing, on December 20, 2013. The State was present and represented by Brody E. Flint, Deputy Weber County Attorney. The Defendant was present and represented by his attorney, Rex Bray; co-defendant Josh Parley Dutson was present and represented by counsel, Mary Ann Ellis. The Court heard evidence from all parties and being fully apprised, now makes the following:

FINDINGS OF FACT

1. The State met its burden and the court finds probable cause to believe that the crimes listed in the Information, two aggravated robberies and one aggravated burglary, occurred as alleged.
2. Further, there is probable cause to believe that Cooper Van Huizen committed the offenses alleged in the Information.
3. The Defendant has no prior record in the juvenile court.

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JAN 21 2014
JUVENILE COURT
SECOND JUDICIAL DISTRICT

4. These offenses were committed with other co-defendants. The Court therefore considers the Defendant's degree of culpability in comparison to the other co-defendants, and finds that his culpability was significant.

a. Mr. Van Huizen's involvement was less at the scene of the crime than others. There is insufficient evidence that he brandished a gun or switchblade knife during the commission of the burglary or robberies although he was present and assisted in the forced entrance into the home with co-defendants.

b. Mr. Van Huizen's involvement was to plan and facilitate the robberies. Specifically the guns used were guns from Mr. Van Huizen's home. Mr. Van Huizen provided the guns knowing they would be used in the burglary and robberies.

c. Mr. Van Huizen's assistance in the robbery ensured that the other co-defendants would have guns to use when breaking into the home and robbing the persons therein.

5. Mr. Van Huizen's role in the offense was committed in a violent, aggressive, or premeditated manner.

a. These offenses were committed with guns and threats of violence. The guns belonged to Mr. Van Huizen and were provided knowing they would be used in the burglary and robberies. This planning occurred over a period of time and was not a spur of the moment decision.

b. Mr. Van Huizen was with co-defendants who forced their way at gun point into one of the most protected and sacred areas in our society, the home.

c. The violence committed in the home was facilitated by Mr. Van Huizen's planning and preparation. Mr. Van Huizen knew that the guns were intended to be used in a burglary and robbery for drugs.

d. Mr. Van Huizen's presence in the home, by itself, was a threat to the victims and a danger to others who were in or could have come into the home.

6. This is Mr. Van Huizen's first offense in juvenile court.

7. Public safety is better served by adjudicating the minor in the district court.

a. Mr. Van Huizen is 16 years old and juvenile court jurisdiction is limited until the age of 21; the district court's jurisdiction is not limited.

b. The involvement of drugs, violence, firearms, and forcing entry into a home to commit robberies places these offenses among the most serious in our community.

c. The likelihood of harm to others was great given the facts of this case. People understandably react violently to such acts of aggression, particularly when they occur in the home. Acts of this nature are extremely volatile and can easily lead to even fatal harm to law enforcement and other members of the public.

d. Public safety requires a strong response and longer correctional period than is available in the juvenile court.

e. The defense provided evidence of a loving family and good home. The court finds that will help the Defendant in terms of his long term rehabilitation, but it also works against him in this case. Despite the benefits of that home he chose to engage in violent and irresponsible acts that put the safety of members of the public at grave risk.

8. The Court finds by clear and convincing evidence that it would be contrary to the best interest of the Defendant to bind him over to the jurisdiction of the district court.

9. The defense has not shown, however, by clear and convincing evidence, that it is in the best interest of the public for this case to be adjudicated in juvenile court. The court finds that it is contrary to the best interests of the public to allow the case to remain in juvenile court.


Based upon the foregoing Findings of Fact, the Court enters the following

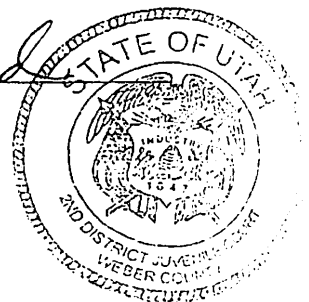
CONCLUSIONS OF LAW & ORDER

The Defendant should be and hereby is bound over to the district court for further proceedings on the Information. An arrest warrant has issued and bail has been set.

DATED this 21 day of January, 2014.

BY THE COURT:


MICHELLE E. HEWARD
JUVENILE COURT JUDGE



Addendum E

ADDENDUM E

Juvenile Court's oral bindover decision
(R370-79)

IN THE SECOND DISTRICT JUVENILE COURT
OF WEBER COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

COOPER VANHUIZEN,

Defendant.

)
)
)
)
) Case No. 1003447
)
)
)
)
)

Preliminary Hearing
Electronically Recorded on
December 20, 2013

BEFORE: THE HONORABLE MICHELLE HEWARD
Second District Juvenile Court Judge

APPEARANCES

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1 I think in my meeting with CVH there at the detention
2 center, I believe this has worked as an example of scaring kids
3 straight. It is a first offense, but it's egregious. I -- it is
4 a first -- 1st Degree Felonies, yet I still believe in him that he
5 can in fact be treated and rehabilitated, that he can in fact be
6 a productive member of society, your Honor, and we would once
7 again ask the Court to please keep them in the juvenile court
8 system rather than transferring this case to district court.
9 Thank you.

10 THE COURT: Thank you. The Court is going to take a
11 break. I will rule today so that you will have my decision
12 today. I'm going to shoot for 20 minutes, about a quarter to 3.
13 We'll be back at that time. All right. Thank you.

14 MS. ELLIS: Thank you.

15 (Short recess taken)

16 THE COURT: Do I have the record?

17 COURT CLERK: Yes.

18 THE COURT: Thank you. We're back on the record in the
19 CVH and JPD matters. I appreciate the -- your patience with the
20 extra time. I figured it's better for me to take a few more
21 minutes now and get this taken care of as opposed to having you
22 come back next week sometime to make the decision.

23 The defense has had the burden in the second portion of
24 this hearing today proving by clear and convincing evidence that
25 it is contrary to the best interest of the minor and the best

1 interest of the public to bind the defendants over to the
2 jurisdiction of the district court.

3 The Court wants to make sure that I'm making a record
4 that is clear for both of the defendants individually and not
5 placing them together. Counsel, I'll ask if there are any
6 questions with regard to the findings as I go through here that
7 you ask questions if I'm not clear with regard to each of your
8 clients and to the State's interest so that I can make sure that
9 that record is clear, and I'll attempt to do that.

10 The Court has considered the five statutory factors that
11 are set forth in 78A-6-702(3)(c). The first of those factors by
12 stipulation has been found to go in favor of each of the
13 defendants. Neither one of them have prior records here in the
14 juvenile court that are of any significance here.

15 The second factor is whether the offenses were committed
16 with one or more persons -- I'm sorry, these offenses were
17 committed with one or more persons, so the Court considers
18 whether each of the minor's involvement, whether each of them
19 had a greater or lesser degree of culpability than their co-
20 defendants.

21 With regard to Mr. JPD, the Court finds that his role
22 in carrying out the offenses was one of planning and pulling
23 people together. The evidence before the Court shows that the
24 culpability of Mr. JPD both before and during the actual offense
25 shows that he had culpability.

1 He was involved in acquiring guns prior to the robbery,
2 with the knowledge that they would be used in the robbery. He
3 was in a place to use those weapons to gain entry. I'm sorry,
4 he was in on the plan to use the weapons to gain entry into the
5 home, and to take what he and his co-defendants wanted from the
6 people within the home.

7 While the Court does not find that he pointed a gun at
8 either of the victims -- I'm just not sure what happened there --
9 but I do find that that was done by two of the -- the two adults
10 that were involved. Mr. JPD's involvement had a high degree of
11 culpability in insuring that that would happen, that the people
12 that he was with would pull guns and use them after breaking into
13 the home.

14 With regard to Mr. CVH, the Court finds that his
15 involvement was less in terms of his physical involvement at the
16 scene. I don't have evidence that he brandished a gun, and I
17 have insufficient evidence to determine whether he had a
18 switch -- the switchblade that had been referred to by others
19 that have testified here today.

20 His involvement was in planning and facilitating the
21 offenses. His involvement was actually greater than that of
22 Mr. JPD's. These were his guns from his home, and this was well
23 planned out in terms of how the guns would be used. So in terms
24 of the second factor, the Court finds that the involvement of
25 each of the -- each of these defendants was significant in terms

1 of the offenses.

2 Whether the role -- the third factor as the extent of
3 the minor's role in -- was it committed in a violent, aggressive
4 or premeditated manner. The premeditation in these offenses has
5 been -- already been referred to by the Court. This was not a
6 spur of the moment, a dumb or a childish decision, a quick
7 reaction. Both defendants were involved in planning the
8 robberies and the burglary.

9 There were multiple steps that were carried out prior to
10 actually going out to the home. This took place over a period of
11 time, giving both of the defendants ample opportunity to retract
12 themselves from the offenses, but they chose not to do so. These
13 were violent and aggressive offenses with the use of guns and
14 threats, going inside one of the most protected and sacred places
15 in our society, the home.

16 The violence that was employed, albeit by others in
17 terms of pulling the guns, was made possible by Mr. CVH and
18 facilitated by Mr. JPD. In addition to providing the guns by
19 Mr. CVH and the planning or pulling together of the parties and
20 facilitation by Mr. JPD, they both -- both of these defendants
21 forced their way into a home with the assistance of friends
22 that they were with who were using guns, and their physical
23 presence -- I'm talking about the defendant's physical presence
24 was a threat when the offense took place. The Court finds that
25 the roles of both JPD and CVH to have been involved involved

1 violence, aggression and were premeditated.

2 The number and nature -- the next factor is the number
3 and nature of prior adjudications in the juvenile court. The
4 Court finds that those again go in favor of the defendants here.
5 They do not have violent -- or they do not have records of any
6 significance here in the juvenile court.

7 The fifth factor is whether public safety is better
8 served by adjudicating the minors in the juvenile court or in the
9 district court. The Court believes that public safety would be
10 better served in both of these cases by adjudicating them in the
11 district court.

12 They are older juveniles, 16 and 17-years of age.
13 The extent of the juvenile court's involvement is limited until
14 the age -- is limited to the age of 21. The district court's
15 jurisdiction is not limited. While these were first offenses,
16 the involvement of drugs, violence, particularly the use of
17 firearms and forcibly entering into a home where people therein
18 were robbed places the offense amongst the most serious in our
19 community. The likelihood of further injury and harm is great
20 when given the facts of this case. Society deserves to be
21 strongly protected against this activity.

22 The Court does find that the defense has shown that it
23 is contrary to the best interest of the minors to bind them over
24 to the jurisdiction of the district court. There are more
25 rehabilitative services that are available in the juvenile system

1 than in the adult system. Both of the minors, both of the
2 defendants appear to have loving families and homes that they
3 have come from. They have had opportunities in the past to
4 succeed, and they have skill sets that show that they have many
5 capabilities. They chose not to use those. Either the support
6 nor the positive skill sets that I think both of them have, they
7 chose not to use those in this situation.

8 So the Court finds that the defense has not met its
9 burden of proving that it is contrary to the best interest of the
10 minor and the best interest of the public to bind the defendants
11 over to the jurisdiction of the juvenile court. Let me make sure
12 that I've said that right. While the defense has met the burden
13 of proving it is contrary to the minor's best interest, neither
14 defense has met its burden of showing that it's in the best
15 interest of the public in this inter -- in this instance, and the
16 matter is bound over to the district court.

17 On a personal note, this is not the way that I would
18 want any young man to start his majority with serious offenses
19 in the adult system. It's tough to be held accountable for
20 your actions, but I also think that it's necessary -- that
21 accountability is necessary. You still both have a lot of years
22 in front of you, and it is the Court's hope that you use this
23 experience to do -- make better decisions and choices in the
24 future as you move forward.

25 That being said, I need arrest warrants here. Does the

1 State -- has the State prepared those?

2 MR. FLINT: I have it prepared right here, your Honor.

3 THE COURT: You do have them prepared?

4 MR. FLINT: I'm just signing it.

5 THE COURT: Okay. The Court does need to address the
6 issue of bail. Does the State have a request with regard to
7 bail?

8 MR. FLINT: No, your Honor. I just think the standard
9 bail is appropriate here.

10 THE COURT: I don't know what the standard bail is for
11 an adult. May I?

12 MR. FLINT: Standard bail is I'm told for 1st Degree
13 Felonies, is 20,000 bondable. So 20,000 for each charge would be
14 \$60,000 bail would be standard.

15 THE COURT: So 60,000?

16 MR. FLINT: Uh-huh.

17 THE COURT: Ms. Ellis, do you wish to be heard on the
18 issue of bail?

19 MS. ELLIS: Your Honor, we would ask for a reduced bail
20 for JPD. His family does have limited means. He's already been
21 incarcerated for two months at the detention center, and so we
22 would ask the Court to consider lowering his bail amount.

23 It is going to take some time for this issue to be
24 addressed in the district court. He'll be assigned a new
25 attorney over there. I don't know how long that will take for

1 him, so I would like to have his family have the ability to
2 potentially bail him out, and I think \$60,000 is very, very
3 exclusive for them. They're not going to be able to do that.

4 THE COURT: Do you have a request?

5 MS. ELLIS: I would request 20,000.

6 THE COURT: Thank you. Counsel?

7 MR. BRAY: Your Honor, similar to Ms. Ellis's argument,
8 CVH has been held for quite some time. The issue -- I wasn't
9 sure we were going to address the bail here. I would ask the
10 Court to consider a reduction of bail at this time as well. I do
11 know that in the district court there's opportunities. I don't
12 think it's a case of being released on own recognizance, but we
13 do have other resources. We have pre-trial services or a
14 probation officer that would monitor them until we get to that
15 point.

16 Your Honor, we'd ask the Court if the Court would
17 consider reducing it to 20,000 just for the one count -- or
18 (inaudible) 20,000 bail at this time, your Honor. I'm not sure
19 (inaudible) we can get in even with the arrest warrant. They're
20 going to be transferred to the county jail, is my understanding,
21 and there's no case number. It hasn't been filed yet into the
22 district court, so as to addressing a release to pre-trial
23 services or bail, we would ask the Court to reduce -- or reduce
24 the bail to 20,000 in this case, your Honor.

25 THE COURT: Thank you. Does anyone from the county

1 attorney's office know when this would be heard by a district
2 court judge?

3 MS. TOOMBS: Yes, your Honor. The two adult defendants
4 are assigned to me. They are assigned to Judge Jones, and the
5 next calendar date for them is January 8th. Judge Jones is
6 holding a calendar on December 30th at 2 o'clock, but of course
7 our preference would be to have all five of the co-defendants
8 together on January 8th.

9 THE COURT: Okay. In terms of being able to get in
10 front of the district court judge for purposes of bail, would
11 there be a video arraignment or some opportunity to get in front
12 of a district court judge?

13 MS. TOOMBS: Your Honor, I would believe that when they
14 are booked into the Weber County Jail that they do appear on
15 videos because the district court will first hear of them that
16 way.

17 THE COURT: Okay. That was my thought, but I wasn't
18 sure what the procedure was. Thank you. All right. I'm setting
19 \$40,000 bail in this matter. We'll set it over to the district
20 court. My guess is that you're going to be in front -- at least
21 by video that you'd be in front of the district court judge
22 Monday or Tuesday of next week, but I don't know for certain.
23 All right. Is there anything else -- are there any questions
24 that Counsel have with regard to clarification of my order?

25 MR. FLINT: I don't have any, your Honor.

1 MS. ELLIS: No, your Honor.

2 MR. BRAY: No, your Honor.

3 THE COURT: Thank you. Mr. Flint, I'm instructing the
4 county attorney's office to prepare the findings and the order in
5 this matter, since you were the prevailing party. Good luck to
6 all of you. Thank you.

7 MR. BRAY: Thank you, your Honor.

8 MS. ELLIS: Your Honor, with the arrest warrants, are
9 they now going to be transferred to the Weber County Jail?

10 THE COURT: They are.

11 MS. ELLIS: Okay.

12 (Hearing concluded)

0379

Addendum F

ADDENDUM F

Omnibus Ruling & Order on Defendant's Post-Sentence Motions
(R586-97)

**IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

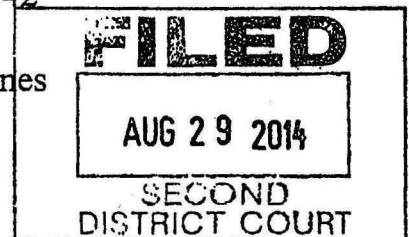
COOPER JOHN ANTHONY VAN
HUIZEN.

Defendant.

**OMNIBUS RULING AND
ORDER ON DEFENDANT'S
POST-SENTENCE MOTIONS** AUG 29 2014

Case No. 131902542

Judge Ernie W. Jones



This matter is before the Court on Defendant's several post-sentence motions. In order, Defendant has presented the Court with the following motions: 1) the "Motion to Correct Sentence Imposed Illegally as a Result of Ineffective Assistance of Counsel"; 2) the "Motion to Reinstate Appeal of Right from Serious Youth Offender Bindover Order"; 3) the "Motion to Declare Misdemeanor or Nullify Pleas"; 4) the "Motion to Quash Bindover Order from Juvenile Court"; and 5) a "Motion for Stay of Sentence Pending Appeal" combined with an "Application for Certificate of Probable Cause." Counsel for both the State and Defendant have fully briefed these motions and the Court has carefully considered the arguments and law cited therein. In the interest of judicial efficiency, and as these motions touch on similar themes and legal questions, the Court will address these motions in this single omnibus ruling and order.

BACKGROUND

Defendant, following his participation in a violent home invasion, was charged with two counts of aggravated robbery and one count of aggravated burglary. Defendant, a 16-year-old minor, was then bound over from juvenile court to this Court to face the charges as an adult. The bind over process was conducted in accordance with the Juvenile Court Act, specifically its provisions relating to serious youth offenders *See* Utah Code Ann. §78A-6-702. In March of this year, Defendant entered guilty pleas to two reduced, second-degree felony robbery charges. On May 7, 2014, Defendant was sentenced to two concurrent 1- to 15-year terms in the Utah State Prison.

Defendant, by raising several alleged deficiencies, now seeks to challenge the process by which Defendant was bound over into district court from juvenile court, entered his plea of guilty, and a sentence was imposed. In deciding these motions, the Court will address each motion according to its chronological relation to Defendant's proceedings, rather than in the order that Defendant filed the motion with the Court. Following the Court's analysis and ruling, the Court will specify its respective orders.

ANALYSIS

I. Motion to Quash Bind Over Order from Juvenile Court

First, the Court addresses Defendant's motion to quash the bind over order from juvenile court. Defendant argues that he was prejudiced by several alleged

legal and structural errors that occurred during the process by which the juvenile court bound him over to this Court. The statutory mechanisms establishing this bind over process are outlined below.

The Juvenile Court Act, specifically in its provisions relating to transferring serious youth offenders to district court, provides that juveniles may be bound over and held to answer to as adults in district court if the criminal information filed against those juveniles charges them with certain types of violent offenses. *See* Utah Code Ann. §78A-6-702. This process is not automatic and is subject to the state meeting its burden to establish probable cause that the violent offense has been committed and that the juvenile defendant committed said violent offense. Utah Code Ann. §78A-6-702(3). If the state met this burden, the juvenile court “shall order that the defendant be bound over [to the district court] . . . unless the juvenile court judge finds that it would be contrary to the best interest of the minor and to the public” *Id.*

The factors that a juvenile court judge may rely upon in making the determination to bind over the defendant are very specific, and the Juvenile Court Act provides that a juvenile defendant may appeal a bind over order. *See* Utah Code Ann. 78A-6-702(3)(c), 78A-6-704(a). On appeal, the Utah Court of Appeals then reviews the bind over order and the “underlying factual findings made by the juvenile judge” for “clear error” in order to determine whether to affirm or reverse the bind over order. State ex rel. M.E.P., 114 P.3d 596, 598 (Utah Ct. App. 2005).

This process illustrates that it is only the *appellate* court that is vested with the authority to consider and potentially quash juvenile bind over orders.

Defendant has offered sundry arguments as to why this Court should quash the bind over order, but such arguments to *this* Court are unavailing, as it possesses no jurisdiction to issue the particular relief sought. Only the appellate court may consider these arguments and order the bind over order quashed if that court determines that such action is appropriate. For lack of jurisdiction, this Court cannot grant such a motion.

II. Motion to Reinstate Appeal of Right from Serious Youth Bindover Order

The Court now turns to Defendant's motion to reinstate the timeframe to appeal the bind over order. Defendant argues that he was prejudiced by the failure of then-serving counsel to timely file an appeal of the bind over order and the failure of same counsel to inform Defendant of the availability of such an appeal. Defendant cites the Utah Supreme Court case *State v. Manning* in support of the proposition that it is appropriate to reinstate appellate time when appeals of right are defaulted by counsel and through no fault of the defendant. *See State v. Manning*, 122 P.3d 628, 636 (Utah 2005). The State agreed in its opposing memorandum that under *Manning*, Defendant should have his time to appeal the bind over order reinstated.

Manning provides that it is appropriate to reinstate a Defendant's direct appeal right if it can be determined that the defendant "been prevented in some meaningful way from proceeding with a first appeal of right." *Id.* at 635. One of the outlined circumstances of *Manning* leading to reinstatement of the direct appeal right is that the defendant can demonstrate that "the court or the defendant's attorney failed to properly advise defendant of the right to appeal." *Id.* While the State points out that the juvenile court bind over order clearly specified the 30-day right to appeal that order, Defendant maintains that his counsel neither informed the Defendant of this fact nor provided the Defendant with a copy of the bind over order.

Normally a guilty plea, such as Defendant's here, would serve as a waiver of any alleged procedural defects with the bind over. *See State v. Rhinehart*, 167 P.3d 1046, 1049 (Utah 2007). However, our Supreme Court has specified that this waiver does apply to alleged errors of a jurisdictional nature. *Id.* Here, had Defendant timely appealed the bind over order, he would have been challenging the decision of the juvenile court to confer jurisdiction over the Defendant to this Court. This question, combined with the fact that Defendant has offered evidence supporting the application of the *Manning* circumstances (namely that counsel failed to advise Defendant of his right to appeal and failed to provide him with the juvenile court order specifying the available relief) leads the Court to conclude that reinstating Defendant's time to appeal the bind over order is appropriate.

The Court, however, must stress that granting Defendant's motion here does not affect Defendant's present incarceration, as the Court's decision cannot unwind all proceedings post-bind over order. When this Court heard the case, accepted the plea, and announced a sentence, it did so with the understanding that it held proper jurisdiction via bind over order. Barring an appellate court decision as to the validity of that bind over order and its effect on this Court's sentence, the Court lacks the authority to stay the sentence in conjunction with reinstating the time to appeal the bind over order. The appropriate procedural mechanism to stay a sentence pending appeal is found in Rule 27 of the Utah Rules of Criminal Procedure. As mentioned in the outset of this ruling, Defendant has made a motion invoking that rule, and the Court will address the merits of that motion later in this ruling.

III. Motion to Declare Misples or Nullify Pleas

Next the Court addresses Defendant's motion that this Court recognize Defendant's guilty pleas as mispleas or alternatively to nullify those guilty pleas. Defendant asserts that this Court retains the authority to declare a misplea here or to nullify his pleas because the guilty pleas were not knowing or voluntary. While it is true that a trial court may withdraw a plea of guilty upon a showing that the plea was not knowingly or voluntarily made, such motions *must* be made prior to the announcement of sentence. Utah Code Ann. §77-13-6(2)(a)-(b). Any

challenge to a guilty plea "not made within the [specified] time period" can only be pursued via request for post-conviction relief. Utah Code Ann. §77-13-6(2)(c).

Here, the Court has announced its sentence regarding the Defendant's conviction. Accordingly, the Court possesses neither the authority to hear such a motion nor the ability to grant the requested remedy. Defendant's arguments regarding knowledge, volition, and their relation to his guilty pleas may only be offered in a separate, civil petition for post-conviction relief. The Court therefore cannot grant this motion.

IV. Motion to Correct Sentence Imposed Illegally as a Result of Ineffective Assistance of Counsel

Defendant also moves this Court, pursuant to Utah Rule of Criminal Procedure 22(e), to correct Defendant's sentence on the basis that the sentence was illegal. In support of this motion, Defendant offers that the sentence was illegal due to trial counsel's ineffective assistance at the sentencing hearing. Specifically, Defendant argues that the assistance was ineffective because trial counsel failed at the sentencing hearing to distinguish Defendant's culpability from that of his co-defendants', and failed to provide the Court (for purposes of presentence reporting) with information that Defendant alleges was essential to consider. Despite Defendant's strenuous argument, ineffective assistance of counsel does not serve as grounds for declaring a sentence illegal.

Regarding illegal sentences, the Utah Supreme Court has adopted the definition promulgated by the 10th Circuit Court of Appeals. State v. Yazzie, 203 P.3d 984, 988 (Utah 2009). Under that definition, a sentence is illegal if it “is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.” United States v. Dougherty, 106 F.3d 1514, 1515 (10th Cir.1997) (internal quotation marks omitted). As the State points out, a sentence is also illegal if the imposing court lacks subject matter jurisdiction. State v. Thorkelson, 84 P.3d 854, 857 (Utah Ct. App. 2004).

As the Court cannot consider Defendant's arguments of ineffective assistance of counsel as a proper basis for declaring the sentence here illegal, it must determine whether the any of the aforementioned, recognized grounds apply. The Court determines that they do not. Defendant pled guilty to two counts of robbery. Robbery is classified under Utah Code Annotated §76-6-301 as a second-degree felony. Pursuant to Utah Code Annotated §76-3-203, the appropriate sentence that may be levied against a person convicted of a second degree felony is an indeterminate term of imprisonment “not less than one year nor more than 15 years.” Utah Code Ann. §76-3-203(2). Defendant's sentence here was not ambiguous with respect to time or manner. It was not internally contradictory. It did not omit a required term imposed by statute. It was not uncertain as to the

substance of the sentence. It was precisely the sort of sentence authorized by the conviction of a second-degree felony. As previously established, the Court had jurisdiction subsequent to the issuance of the bind over order from juvenile court. None of the established grounds that would render a sentence illegal and require correction under Rule 22(e) of the Utah Rules of Criminal Procedure exist here. Accordingly, the Court can find no basis to properly grant Defendant's motion.

V. Motion to Stay Sentence Pending Appeal and Issue a Certificate of Probable Cause

Finally, the Court addresses Defendant's petition for a certificate of probable cause motion to his Motion to stay his sentence pending appeal. In order to release a currently incarcerated defendant during the pendency of his appeal, Rule 27 of the Utah Rule of Criminal Procedure requires that that this Court first issue a certificate of probable cause and determine by clear and convincing evidence that the defendant is not likely to flee and does not pose a danger to the community. Utah R. Crim. P. 27(b)(1). In order to properly issue a certificate of probable cause, the Court must find that the Defendant's appeal is not taken for the purpose of delay and raises substantial issues of law or fact reasonably likely to result in reversal. Id. at (b)(3).

Out of the myriad arguments Defendant has made, the Court has recognized only one as cognizant: that the Defendant *may* appeal the juvenile Court bind over order due to the failure of trial counsel to apprise him of his right to appeal the

order. However, this Court is not convinced by Defendant's arguments that it is reasonably likely that the Court of Appeals will quash the bind over order.

Furthermore, on the basis of the clearly delineated jurisprudence that informs the Court's analysis of Defendant's other motions, the Court is not convinced that Defendant has raised any substantial issues of law and fact that make it reasonably likely that the Court of Appeals will overturn the Court's other determinations.

Specifically as to the bind over order, Defendant's argument challenges the juvenile court judge's qualifications to hear his case and only collaterally attacks the juvenile court's consideration of the five factors that must be analyzed when deciding to bind over a defendant to district court. As stated previously, the statutory provisions of Utah Code Annotated 78A-6-702(3)(c) require that juvenile court judges only consider five specific factors when making bind over determinations. Nothing in Defendant's arguments suggests that the juvenile court deviated from those factors and none of Defendant's proffered alternative conclusions to each of those factors is legally or factually significant enough to call the court's decision into question.

Furthermore, this Court is not convinced that Defendant's arguments regarding the juvenile court judge (specifically her personal and professional background) raise an issue of fact or law significant enough to make reversal of the bind over reasonably certain. As the Court can find no adequate ground on this issue, or as to the arguments supporting Defendant's other post-sentence motions,

that would warrant the issuance of a certificate of probable cause, the Court will refrain from issuing such a certificate.

Even if the Court were to find a basis to issue the certificate of probable cause, the circumstances forming the basis of Defendant's conviction demonstrate that it is not in the community's best interest to release him from incarceration. The Defendant is serving his current sentence because he pled guilty to robbery—a robbery accomplished through home invasion and through Defendant's provision of firearms. These are actions and the sort of behavior that can only be characterized as absolutely contrary to the societal interests of peace and safety.

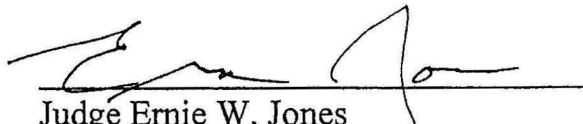
Defendant's age does not mitigate the gravity of these actions. Indeed, the severity of his behavior warranted charging him in district court as an adult. It would be antithetical to the interests—even safety—of the community to suspend the operation of his sentence. Absent grounds to issue a certificate of probable cause, and in light of the circumstances of the offense, the Court is not convinced that it is appropriate to release defendant from incarceration.

ORDER

On the basis of the foregoing rulings, Defendant's Motion to Reinstate Appeal of Right from Serious Youth Bindover Order is GRANTED. All other motions captioned and discussed herein are hereby DENIED. In accordance with granting Defendant's Motion to Reinstate Appeal of Right from Serious Youth Bindover Order, the 30-day period to appeal the bind over order is reinstated.

Pursuant to Rule 4(f) of the Utah Rules of Appellate Procedure, any such appeal of that bind over order must be filed within 30 days of the entry of this Order.

Dated this 29 day of August 2014.



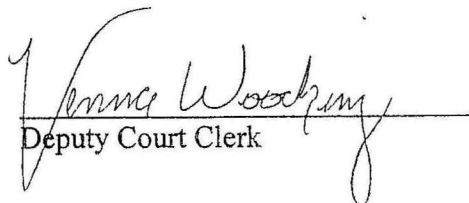
Judge Ernie W. Jones
Utah Second District Court

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of August 2014, I sent a true and correct copy of the foregoing ruling to the parties as follows:

Dee W. Smith
Brody E. Flint
Attorneys for Plaintiff
Weber County Attorney's Office
2380 Washington Blvd., Ste 230
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Elizabeth Hunt
Attorney for Defendant
Elizabeth Hunt LLC
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Salt Lake City, Utah 84105


Deputy Court Clerk

Addendum G

ADDENDUM G

Chart of text messages
(from State's Exhibit 1)

Text Messages Recovered From
Joshua Dutson's Phone

3 November 2013

Time	Defendant & Dutson		Skinner & Dutson	
	Incoming (from Defendant)	Outgoing (to Defendant)	Incoming (from Skinner)	Outgoing (to Skinner)
10:03		Rob some niggas Hahahahah no what I'm saying? Want in you'll get a cut of it? Hahahaha		
10:04	Then we take that. But yeah I'll do that for sure I just gotta get my gun back from anddrew.			
		That's hella chill nigga but I was kidding		
10:06		JK I'm mot		
		Not*		
10:07	Not what? Ha ur confusing the shit outa me			
10:08			Take that shit! gimme hid number!	

Time	Defendant & Dutson	
	Incoming (from Defendant)	Outgoing (to Defendant)
		Im high hahaHaha you can be apart of it but you gotta keep it on the down low.. an trust no nigga
10:09	About what? Robbing or driving the mustang?	
10:10	I know I'm not dumb hahaaha!	
10:12		Haha
10:14		
		What time we leaving
10:15		

Skinner & Dutson	
Incoming (from Skinner)	Outgoing (to Skinner)
	He want to help rob nigga
Tomorrow we grab them straps and hit up niggas	
Fasho ¹	

¹ "Fasho" is slang for "for sure." R269.

Time	Defendant & Dutson	
	Incoming (from Defendant)	Outgoing (to Defendant)
10:16	Like 11 or when ever Dexter [Skinner] wants us to.. But I have to bring the car home at 2:15 cause I'm not supposed to chill with anyone tomorrow	
		Okay that's chill. An Kyra says 7:45
10:18	She wants to got to Dexters that early	
10:19		Yeah Haha so we can get the lick
10:20		
10:21		
10:22	tho.. My dad's not gunna leave tell almost 8	
		Well shit.. Haha okau

Skinner & Dutson	
Incoming (from Skinner)	Outgoing (to Skinner)
	We going through nigga ha
Say wah?	
	We gonna go through?

Time	Defendant & Dutson	
	Incoming (from Defendant)	Outgoing (to Defendant)
10:23		
10:25		

Skinner & Dutson	
Incoming (from Skinner)	Outgoing (to Skinner)
	That's what's up ma nigga much love fam hum tomorrow
Fasho much love family	

5 November 2013

Time	Dutson & Defendant	
	Incoming (from Defendant)	Outgoing (to Defendant)
1:44		Wanna hit up a lick today
1:45	No I can't anymore my dad is coming home	
1:46		Later? Not now
	How later?	
1:47		Idk like 7-8
1:48	Maybe.. I'll hit u up later	
		Cool
2:07		The little white boys we hit up
		Hahah
2:08	He hitting them again	
	Ur	
		Jk Haha Imhigh