

2002

# Utah v. Darwin J. Thompson : Reply Brief

Utah Court of Appeals

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## Recommended Citation

Reply Brief, *Utah v. Thompson*, No. 20020144 (Utah Court of Appeals, 2002).  
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**IN THE UTAH COURT OF APPEALS**

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<b>STATE OF UTAH,</b>	<b>:</b>	
<b>Plaintiff/Appellant,</b>	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>Case No. 20020144-CA</b>
<b>DARWIN J. THOMPSON,</b>	<b>:</b>	
<b>Defendant/Appellee.</b>	<b>:</b>	

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**REPLY BRIEF OF APPELLANT**

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**APPEAL FROM A REFUSAL TO BIND OVER ON A CHARGE OF  
TAMPERING WITH A WITNESS, A THIRD DEGREE FELONY, IN  
VIOLATION OF UTAH CODE ANN. § 76-8-508 (1999), IN THE  
FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF  
UTAH, THE HONORABLE GARY D. STOTT, PRESIDING**

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**IN THE UTAH COURT OF APPEALS**

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REPLY BRIEF OF APPELLANT

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In addition to the facts and arguments contained in the State's Brief of Appellant, the State submits the following in reply to the arguments contained in defendant's brief.

**DRAWING ALL REASONABLE INFERENCES IN THE STATE'S FAVOR, THE PRELIMINARY HEARING EVIDENCE ESTABLISHED A REASONABLE BELIEF THAT DEFENDANT INTENTIONALLY SHOVED THE VICTIM IN RETALIATION FOR HER ROLE AS A WITNESS OR INFORMANT AGAINST HIM**

As stated in the State's opening brief, the magistrate found that defendant had assaulted the victim by intentionally shoving her. The magistrate refused to bind over only because he believed that the evidence did not support a probable cause finding that the assault was in retaliation for the victim's role as a witness or informant.

In his responsive brief, defendant challenges the magistrate's conclusion that he assaulted the victim by intentionally shoving her. He also argues that the magistrate properly concluded that the evidence did not support a reasonable belief that the shove was in retaliation for her role as a witness or informant. Br. Aple. 7-8.

As explained below, when viewed in the light most favorable to the prosecution, the evidence and reasonable inferences support the magistrate's conclusion that defendant intentionally shoved Ms. Christensen. Moreover, the reasonable inferences from the evidence, not mere speculation, support a reasonable belief that defendant shoved Ms. Christensen in retaliation for her role as a witness or informant against him.

**A. The evidence supports the magistrate's conclusion that defendant intentionally shoved the victim.**

Defendant contends that it is "more likely that someone accidentally or inadvertently bumped into Christensen," than it is that "someone intentionally bumped" into her. Br. Aple. 6. Defendant supports this contention by pointing to the fact that the "incident occurred at a dance, with about 300 or 400 people in attendance" and that Christensen and her friend were "on the edge of the dance floor" with "at least eight other people nearby." *Id.* at 6-7. Defendant posits that it is "nearly impossible to be at a dance without bumping into someone," and that it is "highly possible that a dancer or someone walking by not paying attention bumped into Christensen accidentally." *Id.* at 6. Defendant finally surmises that even if he did "bump" into Ms. Christensen, "it was more likely an accident." *Id.* at 7.

Defendant's theories rely solely on the inferences drawn in his favor and ignore the reasonable inferences supporting the State's theory (and the magistrate's conclusion), that defendant intentionally shoved Ms. Christensen.

***Bindover standard.*** As explained in the State's opening brief, a magistrate is required to bind a defendant over for trial when the State presents "sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it." *State v. Clark*, 2001 UT 9, ¶ 16. In determining whether the evidence supports a reasonable belief that defendant committed the charged offense, "[t]he magistrate must view all the evidence in the light most favorable to the prosecution and must draw *all* reasonable inferences in favor of the prosecution." *Id.* at ¶ 10 (internal quotation marks and citations omitted) (alteration in original) (emphasis added). *See also State v. Hawatmeh*, 2001 UT 51, ¶ 3, 26 P.3d 223. Thus, when the evidence gives rise to alternative inferences, one supporting guilt and the other innocence, the magistrate must choose the inference supporting guilt and allow a jury to resolve the competing inferences. *See Clark*, 2001 UT 9, ¶ 20.

In other words, "[i]t is not for the [magistrate] at a preliminary hearing to accept the defendant's version of the facts over the legitimate inferences which can be drawn from the [State's] evidence." *People v. District Court of Colorado's Seventeenth Judicial District*, 803 P.2d 193, 196 (Colo. 1990) (*en banc*) (internal quotation marks and citations omitted). Rather, deciding between inferences and conflicting evidence is left for the jury. *See Clark*, 2001 UT 9, ¶ 10. Accordingly, "[a] magistrate errs when he or she chooses an inference resulting in release of a defendant when a reasonable alternative inference" supports the



State's case. *See State v. Dunn*, 117 Wis. 2d 487, 491, 345 N.W.2d 69, 71 (Wis. App.), *aff'd*, 121 Wis. 2d 389, 359 N.W.2d 151 (Wis. 1984).

***This case.*** In concluding that defendant assaulted Ms. Christensen, the magistrate properly ignored the inferences supporting defendant's theories and accepted those reasonable inferences supporting the State's case. Ms. Christensen testified that although she sought to avoid defendant amongst the 300 to 400 people at the dance, he still managed to position himself within two or three couples of her whenever she danced. R. 35:12-13. Ms. Christensen's and Mr. Cook's testimony also rebutted defendant's theory that Ms. Christensen was accidentally bumped. Based on the force with which Ms. Christensen fell forward, both were certain that the shove had to have been intentional and not the result of an accidental bump. R. 35:8-9, 22-23.

Despite defendant's suggestion there were many others near enough to have bumped into Ms. Christensen, she testified that while she stood talking to Mr. Cook, there were no other couples "within three or four feet. There was plenty of room around us. Everybody was spread all over the place. There were no other people talking to [Cook] and I at that time. We were just on the sides." R. 35:8. Mr. Cook testified that there were maybe six people within a ten-foot radius and four or five within a five-foot radius. R. 35:24. Because neither Ms. Christensen nor Mr. Cook had their backs to the dance floor, it was unlikely that she was accidentally bumped by a dancer. R. 35:20.

Ms. Christensen testified that after she was shoved, she “looked to see what had happened, and it was [defendant] walking by with a date or a dance partner.” R. 35:8. She added, “There was not anybody else there at that time, on that side of me.” R. 35:8-9.

Although it is possible that someone else shoved or bumped into Ms. Christensen, the testimony, taken together, gives rise to a reasonable belief that defendant intentionally shoved her. As explained, the magistrate is required to bind the defendant over so long as a reasonable inference can be drawn of defendant’s guilt, even though alternative innocent explanations may also exist. Thus, under the bindover standard set forth in *Clark*, the magistrate properly ignored the innocent explanation and concluded that defendant intentionally shoved Ms. Christensen.

**B. That defendant shoved the victim in retaliation for her role as a witness or informant is not mere speculation; rather it is supported by the reasonable inferences from the evidence.**

Defendant concedes that the magistrate must view the evidence and draw all reasonable inferences in favor of the prosecution, but argues that only speculation, not reasonable inferences, supports the conclusion that defendant shoved Ms. Christensen in retaliation for her role as a witness. Defendant asserts, “The fact that two people are involved in a court proceeding does not mean that one is bound to assault the other.” Br. Aple. 7. Thus, defendant concludes, it is mere speculation to conclude that defendant “bumped” into Ms. Christensen in retaliation for her role as a witness. Br. Aple. 7.

Like the first claim, this argument impermissibly relies on defendant's view of the evidence, while ignoring the evidence that supports the State's position. First, "bump" is defendant's characterization of what happened to Ms. Christensen. However, at the preliminary hearing, the only testimony was that the force with which Ms. Christensen was struck could not have resulted from an accidental "bump." Rather, Ms. Christensen and Mr. Cook were certain that she had been intentionally shoved.

Second, while it is true that people involved in a court proceeding "are not bound to assault the other," when one does so, it is reasonable to infer that the assault was motivated by the high emotions caused by the legal proceedings. Here, as explained in the State's opening brief, the only possible motive presented was that defendant was angry with Ms. Christensen because of her role as a witness or informant in one or both of the legal proceedings against him. As explained in *Clark*, even if another reasonable motive had been presented, the magistrate was required to choose the inference that supported the State's case, *i.e.*, that defendant's motive for shoving Ms. Christensen was to retaliate against her for her role as a witness or informant against him.

## **CONCLUSION**

The magistrate's conclusion that there was probable cause to believe defendant intentionally shoved Ms. Christensen was correct and should be affirmed. The magistrate's conclusion that the evidence did not support a reasonable belief that defendant's action was in retaliation for the victim's role as a witness or informant was incorrect and should be reversed.

Accordingly, the magistrate's order refusing to bind defendant over for trial and dismissing the information should be reversed and the case remanded for reinstatement of the charge and entry of an order binding defendant over for trial.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of October, 2002.

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#### MAILING CERTIFICATE

I hereby certify that on this 28<sup>th</sup> day of October, 2002, I mailed, postage prepaid, two accurate copies of the foregoing Appellant's Brief to:

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