

2005

Utah v. Jason Paul Meyer : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Utah v. Meyer*, No. 20050567 (Utah Court of Appeals, 2005).
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IN THE UTAH COURT OF APPEALS

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| STATE OF UTAH |) | |
| |) | |
| Appellee, |) | |
| |) | |
| vs. |) | |
| |) | |
| JASON PAUL MEYER |) | CASE NO. 20050567-CA |
| |) | |
| Defendant/Appellant. |) | District No. 051900197 |

APPEAL FROM THE DISTRICT COURT
OF WEBER COUNTY, UTAH

The Honorable Michael D. Lyon, District Judge

BRIEF OF APPELLEE

**AN APPEAL FROM A JUDGEMENT OF CONVICTION FOR ASSAULT IN
VIOLATION OF UTAH CODE ANN. §76-5-102, A CLASS A MISDEMEANOR,
IN THE SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY, THE
STATE OF UTAH, THE HONORABLE MICHAEL D. LYON PRESIDING.**

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The Honorable Michael D. Lyon, District Judge

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IN THE UTAH COURT OF APPEALS

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| | : | |
| Defendant/Appellant | : | |

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

The Appellee answers the Appellant's appeal from a Judgment, Sentence and Commitment in the Second District Court for Weber County, Utah, dated May 23, 2005. The Defendant was convicted by a jury of Assault, a Class A misdemeanor, on April 4, 2005. He was sentenced by the Honorable Michael D. Lyon of the Second Judicial District Court for Weber County to serve 365 days in the Weber County Jail. Jurisdiction for the appeal is conferred upon the Utah Court of Appeals pursuant to U.C.A. § 78-2a-3(2)(e).

ISSUE ON APPEAL AND STANDARD OF REVIEW

WHETHER THE TRIAL COURT’S DECISION TO ALLOW THE STATE TO ADMIT EVIDENCE THAT THE DEFENDANT HAD BEEN CONVICTED OF FELONIES WAS HARMLESS ERROR?

Standard of Review: This issue should be reviewed under the manifest and prejudicial error standard. “An erroneous decision by a trial court ‘cannot result in reversible error unless the error is harmful.’” *State v. Lafferty*, 20 P.3d 342, 356 (Utah 2001)(quoting *State v. Hamilton*, 827 P.2d 232, 240 (1992)). “An error is harmful if it undermines our confidence in the verdict; if, minus that error, there is a sufficiently high likelihood of a different outcome.” *State v. Honie*, 57 P.3d 977, 992 (Utah 2002). “‘The burden of showing harmfulness...rests on the complaining party.’” *Lafferty*, 20 P.3d at 356 (quoting *Hamilton*, 827 P.2d at 240)).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UTAH CODE ANNOTATED

U.C.A. § 76-5-102- **Assault**

(1) Assault is:

- a. An attempt, with unlawful force or violence, to do bodily injury to another;
- b. A threat, accompanied by a show of immediate force or violence, to do bodily injury to another or;
- c. An act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

(3) Assault is a class A misdemeanor if:

- a. the person causes substantial bodily injury to another;

U.C.A. § 76-2-402 – **Force in Defense of Person**

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. . . .

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not by themselves constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).

U.C.A. § 78-2a-3(2)(e) – **Court of Appeals Jurisdiction**

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(e) appeals from a court of record in criminal cases, except those involving conviction or charge of first degree felony or capital felony; . . .

Utah Rule of Evidence 609 – **Impeachment by evidence of conviction of crime.**

(a) *General Rule.* For the purpose of attacking the credibility of a witness,

(a)(1) evidence that . . . an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused: and

(a)(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statements, regardless of the punishment.

STATEMENT OF THE CASE

The Defendant was charged by Information with Assault, a class A misdemeanor in violation of U.C.A. § 76-5-102 (2005). The Defendant pleaded not guilty to the charge and waived his right to be represented by legal counsel. The Defendant signed a waiver of counsel in open court. (R. 21, 22-23). On April 4, 2005, a jury trial was held, and the Defendant represented himself at trial. The jury found him guilty of Assault, a class A misdemeanor. (R. 30-32). On May 12, 2005, the Defendant was sentenced to serve 365 days in the Weber County Jail. (R. 90-92). On May 23, 2005, Judge Michael D. Lyon signed the Sentence, Judgment and Commitment. (R. 90-92). A notice of Appeal was filed on June 20, 2005. (R. 106).

STATEMENT OF THE FACTS

On December 26, 2004, the Defendant, Jason Paul Meyer, along with Matt Griffin and Rodney Hachmeister, picked up Travis Haven, the Victim, in Roy, and they traveled in a van together to an apartment complex in Ogden. (R. 41). A few weeks prior to this date, the Victim had incurred a one-to-two hundred dollar debt with the Defendant when the Defendant provided the Victim with some methamphetamine. (R. 40).

According to the Victim, during the car ride the Defendant and he did not engage in much if any conversation. (R. 42). Another witness, Rodney Hachmeister, who was also present in the car, stated that there was a little conversation about the money the Victim owed the Defendant, but there was not arguing between the two. (R. 58). The Defendant admitted that he was experiencing great personal difficulties with having no

money, being evicted from his apartment, and losing his girlfriend. (R. 93-94). The Defendant stated that he became more upset when the Victim told him that he would not pay him. (R. 95-96).

When they all arrived at the apartment complex, the Victim and the Defendant both exited the vehicle. The Victim walked for approximately twenty feet before stopping near a pond surrounded by wooden pillars. (R. 44). The Defendant was standing about 15-20 feet away from the victim. (R. 44). Matt Griffin was back in the van and Rodney Hachmeister was standing next to the Victim.

According to the Victim, neither the Defendant nor he said anything to each other while they were standing there. (R. 44). He was not prepared or preparing to fight the Defendant. (R. 44). The Victim also stated that he had not done anything aggressive towards the Defendant like bump him or raise his arms. (R. 44). The next thing the Victim remembers is waking up in the hospital. (R. 44-45).

Rodney Hachmeister, a witness who testified, stated that he was standing 3-6 feet away from the Victim's right side when the assault happened. (R.58-60). Mr. Hachmeister stated that although he was looking away initially, he heard a scuffle sound and when he turned his head the Defendant was connecting with a punch on the Victim's chin. (R. 61-63). Mr. Hachmeister stated that the scuffle sound he heard was about a second long before he turned his head. (R. 63). In the instant that Mr. Hachmeister turned to look the Defendant had already thrown his punch and was hitting the Victim. (R. 61). The prosecutor asked Mr. Hachmeister if he heard the Defendant or the Victim

say anything or argue by the pond. (R. 62-63). Mr. Hachmeister stated, “Not a word that I heard and I’m sure they didn’t.” (R. 62-63). Finally, Mr. Hachmeister testified that he never saw the victim push or swing at the Defendant. (R. 62).

Mr. Hachmeister then saw the Victim fall and hit his head on a wall surrounding the pond. (R. 61-63). According to Mr. Hachmeister, who attended to the Victim, the Victim’s mouth was bloody and he was unconscious. (R. 63). After the Victim was transported to the hospital, medical staff observed that the Victim had sustained multiple injuries, including lacerations to his lip where his teeth had punctured his lip, along with swelling and bruising on the back of his head. (R. 72). The Victim was in a coma for several days because the front lobes of his brain were severely bruised. (R. 45).

The hospital staff reported the incident to the Ogden Police Department and Detective Reaves of the Department investigated the case. (R. 77). Eventually the Defendant was named as a suspect and Detective Reaves phoned the Defendant to ask him about the altercation. (R. 79). The Defendant reported to the Detective that the incident was “only a fistfight.” (R. 80). At Detective Reaves’ request, the Defendant appeared at the police station the next day to discuss the incident where he told the Detective that the Victim owed him two hundred dollars for stereo equipment. (R. 82). According to the Defendant, when he and the Victim exited the vehicle they both “bounced at each other.” (R. 83). The Defendant then reported that he swung at and punched the Victim first, and that the Victim fell and hit his head on a log. (R. 83). When Detective Reaves asked the Defendant what his intent was when he hit the Victim

the Defendant stated, “Just to fight. We were friends. You get into fight with friends, with your friends all the time.” (R. 84). The Defendant further stated, “Partly ‘cause I thought he was going to swing on me first.” (R. 84). The Defendant then showed the Detective some swelling and marks on his left hand, which he indicated were the result of punching the Victim. (R. 85).

At trial, the Defendant opted to testify in his own behalf. Testifying that he had an altercation with the Victim, he explained that he probably threw the first punch because he was concerned that the Victim might hit him. The Defendant testified that “he probably threw the first punch ‘cause I was, you know, he might hit me first.” (R. 93-94, 96-97). The Defendant also stated that “I’m saying I know I’m guilty for assault, yes, I am—you know what I’m saying—but not to the fact that...cuz it was an altercation.” (R. 94).

The prosecutor cross examined the Defendant. On cross examination, the Defendant admitted he was made more upset by the fact the Victim would not pay him any money. (R. 96). The Defendant claimed both he and the victim “pumped up” to each other and then the Victim pushed him. (R. 96-97). He then stated that he was talking to the Victim and pushed him back. (R. 97). It was after these events that the Defendant claimed the Victim came at him again and then he punched the victim. (R. 97). The Defendant admitted that he did direct his punch at the Victim’s face. (R. 97).

Also during the State’s cross-examination of the Defendant, the prosecutor asked him, “[i]sn’t it true you’ve been convicted of a felony before?” The Defendant replied

that he wished to plead the Fifth, but the trial judge instructed the Defendant to answer the question. (R. 99). The Defendant answered that he had been convicted of a felony. (R. 99). The State then said that the conviction occurred in October of 2001, and the Defendant again attempted to plead the Fifth. (R. 99). When the trial judge told the Defendant that he was required to answer the question, the Defendant affirmed that the conviction occurred at that time. (R. 99). The State then asked, “[a]nd you [were] also convicted in May of 1999?” When the Defendant answered in the affirmative, the State said, “[y]ou were sent to prison for these?” (R. 99). The Defendant replied, “Yes, I have.” (R. 99).

During the Defendant’s redirect testimony, he volunteered the additional facts that he was addicted to methamphetamine. He stated, “. . . I was addicted to methamphetamine” (R. 100). He also stated, “. . . it’s hard to get off drugs.” (R. 100). Finally, he stated, “I’ve been clean now for five days” (R. 100).

On recross examination, the prosecutor and the Defendant had the following exchange:

- Q: Your intent when you hit the defendant (sic) though was to fight? Didn’t you tell the detective –
A: I guess yes, ‘cause I figured I was gonna hit first cuz –
Q: You fight with your friends all the time?
A: Sometimes yeah, sometimes we do get in a fight. Not all the time, no.
Q: Couldn’t you have walked away?
A: Yes, I could have.
Q: But you didn’t?
A: No, I wasn’t thinking about it at the time.

(R. 101)

SUMMARY OF ARGUMENT

The State concedes that the prosecutor committed error and trial court erred in allowing the State to question the Defendant about his prior convictions. However, any error was harmless because it was not prejudicial to the Defendant in the sense that there would have been a reasonable likelihood of a different result absent that error. The Defendant admitted in open court that he was guilty of assault, and that he threw the first and only punch because of the claimed possibility that the Victim might hit him first. (R. 93-94, 96-97). But contrary to the Defendant's assertions, the jury had credible and admissible evidence to believe the Defendant was not acting in self defense. Therefore, there is not a reasonable likelihood that, but for any error committed by the trial court, there would have been a result more favorable to the Defendant.

ARGUMENT

THE TRIAL COURT COMMITTED ERROR WHEN IT ALLOWED THE STATE TO QUESTION THE DEFENDANT ABOUT HIS PRIOR CONVICTIONS, BUT ANY ERROR WAS HARMLESS BECAUSE IT DID NOT INCREASE THE REASONABLE LIKELIHOOD OF A MORE FAVORABLE RESULT FOR THE DEFENDANT

The State concedes that the prosecution committed error when it asked the Defendant about his criminal record and the trial court erred in allowing the prosecutor to do the same. No inquiry was made by the trial court under Utah Rule of Evidence 609(a) concerning the factors set forth in *State v. Banner*. 717 P.2d 1325, 1334-35 (Utah 1986). The failure to conduct the inquiry and balancing required under the *Banner* criteria renders the prior conviction evidence inadmissible and thus erroneously admitted. *State*

v. Wight, 765 P.2d 12, 18-21 (Utah App. 1988) (stating that the trial court's failure to make this inquiry and balance the competing considerations made the evidence of prior crimes inadmissible).

Though the prosecution and the trial court may have erred when it allowed the State to question the Defendant about his prior felony convictions, any such error was harmless because there is not a reasonable likelihood that, but for the error, a different outcome would have resulted for the Defendant. As the Utah Supreme Court has held, "An erroneous decision by a trial court 'cannot result in reversible error unless the error is harmful.'" *State v. Lafferty*, 20 P.3d 342, 356 (Utah 2001)(quoting *State v. Hamilton*, 827 P.2d 232, 240 (1992)). "An error is harmful if it undermines our confidence in the verdict; if, minus that error, there is a sufficiently high likelihood of a different outcome." *State v. Honie*, 57 P.3d 977, 992 (Utah 2002). Moreover, "The burden of showing harmfulness...rests on the complaining party." *Lafferty*, 20 P.3d at 356 (quoting *Hamilton*, 827 P.2d at 240)).

The Utah Supreme Court has explained that "[t]he standard for reversal in cases involving an erroneous failure to exclude prior convictions is whether absent the error, there was a reasonable likelihood of a more favorable result for the defendant." *State v. Bruce, Jr.* 779 P.2d 646, 656 (Utah 1989). In *Bruce*, the Court upheld the armed robbery conviction of the defendant despite the improper discussion of the defendant's prior convictions during trial. Explaining why it upheld the conviction under the manifest and prejudicial error standard, the Court said: "Under this standard, a majority of this Court

concludes that the erroneous admission of defendant's prior convictions was harmless. It is clear to us that the State presented sufficient evidence and eyewitness testimony to prove that defendant robbed the Corner Mart convenience store.” *Id.* Since the State proved every element necessary to convict the defendant, the Court explained that “[e]rroneous admission of evidence is harmless if there is convincing, properly admitted evidence of all essential elements of the case.” *Id.* (quoting *United States v. Baker*, 693 F.2d 183, 189 (D.C. Cir. 1982)). See also *State v. Wight*, 765 P.2d 12 (Utah App. 1988) (holding that the since the trial court did not conduct an inquiry under *State v. Banner*, the admission of a defendant’s prior criminal record was error, but any error was harmless because there was adequate evidence in the record to convince the Court that there was not a reasonable likelihood of a more favorable result); *State v. Cravens*, 15 P.3d 635 (Utah App. 2000) (holding that admission of prior burglary and robbery convictions in a case where the defendant was charged with threatening or using a dangerous weapon in a fight or quarrel and threats against life or property was harmless error because the other evidence demonstrated that the result would not have likely been more favorable to the defendant absent the error).

In this case, the jury would almost certainly have convicted the Defendant regardless of whether the State asked questions about the Defendant’s prior criminal record. The Defendant attempts to carry his burden of proving harmfulness by relying on the Victim’s admitted use of methamphetamine, on the jury’s uncertainties about why the Victim and Defendant were standing around the pond, why another witness did not

testify, and why the Defendant picked up the Victim in the first place. BRIEF OF APPELLANT AT 14-15. According to the Defendant, these issues somehow created doubt in the jurors' minds about whether the Victim's or the Defendant's side of the story was true. Therefore, according to the Defendant, in a question about whose version of events was more believable, the revelation to the jurors of the Defendant's previous convictions miraculously tipped the balance in the State's favor by diminishing the Defendant's credibility. This is pure speculation because we do not know whether and to what extent the jury considered this evidence.

The juror's questions related to other evidence, some that was and some that was not presented in the case, but nothing referred to the Defendant's criminal history. *See State v. Cravens*, 15 P.3d at 638 (stating that the Court was uncertain to what degree the trial judge considered the defendant's convictions and there was no indication that the trial judge in fact consider them). The Defendant himself volunteered the fact that he was a methamphetamine addict and used it as recently as five days before trial! (R. 100). From a credibility standpoint, the fact that the Victim used drugs puts him on no worse or better footing than the Defendant himself. Finally, the State did not even argue the fact of the Defendant's felony convictions to the jury during closing argument. *See State v. Bruce, Jr.*, 779 P.2d at 657 (stating that the Court was not convinced the defendant's credibility was so damaged as to justify a reversal where the State did not bring up the prior convictions during closing argument).

The Defendant's theory is one of speculation at best, especially since the State proved every element necessary to convict the Defendant. Indeed, the existence of these issues is unrelated to the elements of the crime that the State proved at trial. There was never any dispute about who hit whom first. The only person to throw and land a punch was the Defendant, who admitted at trial that he "probably threw the first punch, 'cause I was, you know, he might hit me first." (R. 93-94, 96-97). There is no serious dispute that the Defendant's actions caused the Victim to suffer substantial bodily injury. The Defendant went on to admit on the witness stand that "I'm guilty of assault, yes I am—you know what I'm saying—but not to the fact that...cuz it was an altercation." (R. 94). Clearly the Defendant's testimony and the other evidence proved he committed an assault that caused substantial bodily injury.

Thus, the Defendant's claim must stand or fall on his theory of self defense that he presented at trial. The real issue is whether the jury, absent the evidence of the Defendant's convictions, the jury would have found his self-defense claim more credible and thus found him not guilty.

In addressing that claim, there is ample evidence in the record that the Defendant did not reasonably act in self defense. The Defendant claimed that he and the Victim argued in the van on the way to the apartments. (R. 94). He stated that after they got out and stood near the pond, he and the victim began arguing more when they both pumped up their chests and the Victim pushed him. (R. 96). The Defendant claimed that he pushed the Victim back. (R. 97). The Defendant claimed that the Victim began

advancing toward him again and he feared being struck, so he hit the Victim first in the face. (R. 93, 97). But the Defendant's version was not supported by both the Victim and Rodney Hachmeister.

The Victim testified that he never made any threatening movements toward the Defendant and he and the Defendant never argued by the pond. (R. 44, 52). Rodney Hachmeister supported the Victim's version of events when he testified that he heard a small discussion in the van about the money, but no argument. (R. 57-58). He also stated that he was only about three to six feet away from the Victim by the pond and he did not see the Victim push or get pushed by the Defendant. (R. 58-62). He testified that he was sure neither the Victim nor the Defendant said anything prior to the scuffle sound he heard before instantly turning his head. (R. 62). By the time he turned the Defendant was already connecting with his punch to the Travis Haven's face. (R. 61). Mr. Hachmeister estimated that the sound lasted about a second before he witnessed the assault. (R. 63). Thus, the Defendant's version of events is not credible because it all could not have happened in the one second that Rodney Hachmeister said it did. The evidence showed the jury that the only thing that could have happened to cause the sound Mr. Hachmeister heard in that one second was the Defendant rearing back and punching the Victim. Otherwise, the scuffle sound would have been much longer. Thus, there is convincing evidence, other than the fact of the Defendant's convictions, by which the jury could have found against the Defendant and his self defense argument. Therefore,

the Defendant has failed to meet his burden of proving a likelihood of a more favorable result.

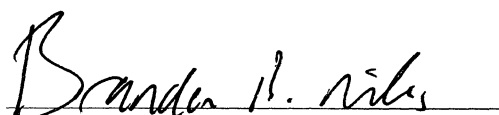
Furthermore, as the prosecutor argued in his closing summation there are other reasons the Defendant did not act in reasonable self defense. (R. 123-24). First, the Defendant is the person who provoked this confrontation with the victim. (R.123). The Defendant was upset with the victim because he had not been paid and admitted that he became more upset when the victim refused to pay him the full amount. (R. 123). The Defendant pumped himself up to the victim and they each pushed each other. (R. 125). The Defendant stated numerous times that he fights with friends. (R. 93-94, 120). The jury could reasonably believe that the evidence supported the assertion that the Defendant provoked this confrontation because he was upset about not being paid. Additionally, the jury could also reasonably believe that the Defendant and victim were engaged in combat by agreement based on the Defendant's version of the facts because he said he feared that the victim would swing on him first. Because of this fact, the Defendant would have had to attempt withdrawal, effectively communicate that to the Victim, and still be threatened with imminent force by the other party before he regained the ability to use self defense. Clearly, the Defendant indicated he did not do this when he said that he could have walked away, but did not. (R. 101).

For these reasons, any error the trial court committed in allowing the State to question the Defendant about his prior convictions was harmless, because his credibility was not at issue in deciding whether he assaulted the Victim.

CONCLUSION

The State recognizes that the prosecutor and the trial court committed error in allowing the State to question the Defendant about his prior convictions without engaging in the balancing test stated in *Banners*. However, the error was harmless because there is no credible possibility that but for the error, the jury would have decided that the Defendant was not guilty of assault. The jury had ample evidence from which to convict the Defendant regardless of the error because he admitted that he hit the Victim first and that he committed assault. The jury still had ample evidence to reject the Defendant's claim of self defense. The jury could have believed every word of the Defendant's testimony and still have almost certainly convicted him. For these reasons, the State respectfully requests this Court to affirm the Defendant's conviction.

DATED this 6th day of April 2006.

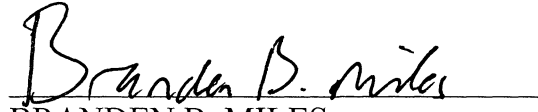

BRANDEN B. MILES
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CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief for Appellee, postage prepaid to:

Dee W. Smith
Weber County Public Defender's Association
2550 Washington Blvd, Suite 300
Ogden, UT 84401

DATED this 6th day of April 2006.



BRANDEN B. MILES
Attorney for Appellee

Addendum

1 because, you know, it wasn't intentional to hurt the man.

2 THE COURT: All right, thank you.

3 Mr. Miles, you may call your first witness.

4 MR. MILES: State calls Travis Haven to the stand,
5 Your Honor.

6 TRAVIS DALLIN HAVEN,
7 having been first duly sworn, testified
8 upon his oath as follows:

9 THE COURT: You may proceed.

10 DIRECT EXAMINATION

11 BY MR. MILES:

12 Q Could you state your name for the Court please?

13 A Travis Dallin Haven.

14 Q Can you spell the last name please?

15 A H-A-V-E-N.

16 Q Mr. Haven, do you know the defendant?

17 A Yes.

18 Q How do you know the defendant?

19 A Acquaintance of a friend.

20 Q Can you describe that in more detail? What do you
21 mean acquaintance of a friend?

22 A Met him through another friend.

23 Q Did you know him back on December 26th of 2004?

24 A Yes.

25 Q Okay, did you know him prior to that?

1 Q Okay. You went with them?

2 A Yeah.

3 Q Where did you go?

4 A To the Riverview Apartments.

5 Q Is that on Park Boulevard?

6 A Yeah.

7 Q During the ride over to the Riverview Apartments,
8 did the defendant say anything to you?

9 A No.

10 Q Did you converse with any of the other occupants of
11 the vehicle?

12 A Just Matt.

13 Q What happened when you arrived at the Riverview
14 Apartments?

15 A Me and the defendant got out and I just walked
16 probably 20 feet from the van up onto the grass. Matt was
17 still in the van and I talked to nobody or nothin'. Jason
18 was probably 15 or 20 feet away from me and then that's about
19 all I can remember.

20 Q Okay. I'm going to show you a photo. At this
21 point it's been marked State's Exhibit 3.

22 Permission to approach the witness, Your Honor.

23 THE COURT: You may.

24 Q (BY MR. MILES) I'm going show you what's marked
25 State's Exhibit 3. It's a photograph. Can you describe

1 THE COURT: It's received. Do you want to show it
2 to the jury?

3 (Plaintiff's Exhibit 3 received)

4 Q (BY MR. MILES) Okay, so you were standing near the
5 pond. The defendant was standing 15 to 20 feet away from
6 you. What would be I guess the left in that picture,
7 correct?

8 A Right.

9 Q Okay, and at this point in time, between the time
10 you had arrived at the apartments and got out of the vehicle
11 and then went to stand near the pond had you said anything to
12 the defendant?

13 A No.

14 Q Had he said anything to you?

15 A No.

16 Q Had you argued over money at this point?

17 A No.

18 Q Did you have an idea or did you think that you were
19 there to fight the defendant?

20 A No.

21 Q At this point in time had you done anything
22 aggressive toward the defendant like bump up against him,
23 raise your arms?

24 A No.

25 Q And you stated earlier that that was the last thing

1 you can remember. Do you remember being struck by the
2 defendant at all?

3 A No.

4 Q Do you remember anything after that point where you
5 were standing near a pond?

6 A No.

7 Q Okay. What's the first thing you remember after
8 this?

9 A Waking up in a bed in the hospital.

10 Q Do you remember why you were in the hospital?

11 A For about a half an hour before everybody come and
12 talk to me I didn't even really know exactly where I was.

13 Q Okay. Can you describe the injuries you were being
14 treated for?

15 A The front two lobes of my brain were severely
16 bruised.

17 Q Anything else?

18 A Not really.

19 Q Do you recall whether or not you were missing any
20 teeth?

21 A Just one.

22 Q Okay, and where is that tooth?

23 A On the bottom right here.

24 Q Were you missing that tooth at the point in time
25 before December 26th, around that date?

1 Q So you don't remember being picked up at Del Taco
2 parking lot and leaving your bike there with your brother?

3 A No.

4 Q And so you don't remember Rodney Hachmeister being
5 the one that was sitting next to you in the van [inaudible]
6 was sitting up front?

7 A Nope.

8 Q So you don't remember the conversation where you
9 were, indecent kind of things, swearing, and saying that you
10 ain't gonna pay shit cuz -

11 THE COURT: Can you just ask one, ask one part of
12 the question and let him answer.

13 THE WITNESS: No.

14 Q (BY MR. MEYERS) So when we got to, when you arrived
15 at the apartment building do you remember telling, you know,
16 saying that I'll give you 26 bucks but that's about all
17 you'll get from me?

18 A No.

19 Q You don't remember someone telling you that you
20 were losing [inaudible] tattoos on you because of that,
21 because you lied?

22 A No.

23 Q You don't remember pushing me?

24 A No.

25 Q You don't remember me pushing you?

1 A No.

2 Q So you say Matthew Griffin didn't see the fight,
3 that he was still in the van, right?

4 A Right.

5 Q How long were you, were we at the apartments before
6 this occurred?

7 A I'd say probably less than five minutes, probably
8 less than three minutes.

9 Q If I remember right -

10 THE COURT: Don't testify. You're not the witness.

11 Q (BY MR. MEYERS) Didn't you get out and talk to
12 another person that was at the apartment by the name of T.J.,
13 along with Matthew Griffin?

14 A Not that I remember.

15 Q You don't remember talking with Rodney Hachmeister
16 about saying that you feel you shouldn't have to pay me due
17 to the fact that -you know what I'm saying? - you haven't
18 been around me or anything? That attack that (inaudible)?

19 A I don't remember it, no.

20 Q So how can you remember me assaulting or
21 threatening you?

22 A I don't. I just remember that you come and picked
23 us up and where you were when I got out of the van.

24 MR. MEYER: That's all I have.

25 THE COURT: All right, thank you.

1 Any redirect examination?

2 MR. MILES: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MILES:

5 Q You don't remember exactly where you were picked up
6 [inaudible], correct?

7 A No. Well, me, I thought it was Common sense.

8 Q You just understand that it was Roy at this point?

9 A Yeah.

10 Q Okay. At the point in time when you get out of the
11 van to where you were standing in the pond area there, do you
12 recall that period of time?

13 A I just recall getting out and walking over there
14 and waiting for Matt to get out of the van.

15 Q At any point in time do you recall arguing with the
16 defendant?

17 A No.

18 Q Do you recall bumping up against him and pushing
19 him?

20 A No.

21 Q And you don't recall him at any point in time him
22 doing the same to you?

23 A No.

24 MR. MILES: No further questions.

25 THE COURT: All right, thank you.

1 Do you have any further cross examination?

2 MR. MEYER: No, I don't.

3 THE COURT: Thank you, you may step down.

4 Do you want him excused or would you like him to

5 remain?

6 MR. MILES: Remain for now, Your Honor.

7 THE COURT: Okay, you're to stay until you're

8 released by the bailiff.

9 MR. MILES: Your Honor, State calls Rodney

10 Hachmeister to the stand.

11 RODNEY HACHMEISTER,

12 having been first duly sworn, testified

13 upon his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. MILES:

16 Q Would you state your name for the Court please?

17 A Rodney Hachmeister.

18 Q Okay, would you spell the last?

19 A H-A-C-H-M-E-I-S-T-E-R.

20 THE COURT: Mr. Hachmeister, I'm going to ask that

21 you sit forward in your chair and speak directly into the

22 microphone and elevate your voice just a little bit so the

23 jury can hear you.

24 THE WITNESS: You bet.

25 Q (BY MR. MILES) Are you familiar with the defendant?

1 Q You went to Roy. Do you recall where in Roy you
2 went to?

3 A No, I think it was some, I think it was a
4 McDonald's or something, some kind of a restaurant I think it
5 was.

6 Q You went, Mr. Haven was there?

7 A Uh-huh (affirmative).

8 Q Did he get in the vehicle with you all?

9 A Yeah.

10 Q Where was he seated?

11 A In the back with Matt.

12 Q Okay, and what happened after he got in the
13 vehicle, where did you go?

14 A We came back, went back to the Riverview
15 Apartments.

16 Q You went back to the Riverview Apartments that you
17 had picked Matt up from?

18 A Yeah.

19 Q Okay, during the drive over to the Riverview
20 Apartments the defendant was still driving at that point,
21 correct?

22 A Yes.

23 Q Okay. Did the defendant and Travis Haven converse
24 at all?

25 A Just a few words were exchanged. Jason just asked

1 him why he hasn't paid him or something like that and that
2 was about it. Other than that, there wasn't nothing really
3 said.

4 Q Did they argue at all at that point?

5 A No.

6 Q You go and arrive at the Riverview Apartments. I'm
7 going to show you what's been admitted as State's Exhibit 3.
8 Are you familiar with what's depicted in the picture?

9 A Yeah, it's Jason pointing where, where he was - we
10 was parked right in front of that, about right there.

11 Q You were parked right here.

12 A I'm sure.

13 Q Where, did you all get out of the vehicle?

14 A Uh-huh (affirmative).

15 Q Okay, where did the victim [inaudible]?

16 A We was up, we was up there right about where Jason
17 is.

18 Q So where the defendant is depicted in this picture
19 is where Travis Haven was standing?

20 A He was probably, I think over this way a little
21 more and I was - yeah.

22 Q And where were you standing in relation to that?

23 A I was on the, the left of him. Right, probably a
24 little bit in front of him.

25 Q Here?

1 A Yeah, I was over, I was probably up here, right
2 here and then Travis probably about right here.

3 Q Oh, okay, you were both in the picture?

4 A Yeah, kind of, we just passed the - yeah.

5 Q Where was the defendant? Did he get out of the
6 vehicle?

7 A Yeah.

8 Q Where was he?

9 A He was probably about - he was over right here, by
10 here.

11 Q He was over -

12 A About right here, yeah, right there.

13 Q On the grass?

14 A Yeah, on the grass, yeah.

15 Q Okay.

16 A Yeah, just before the pond.

17 Q When you got out of the vehicle and you were
18 walking to this area, did you see any confrontation between
19 the defendant and the victim at that point?

20 A None.

21 Q Were they arguing or saying anything to each other?

22 A No, no, they wasn't.

23 Q Okay, what were you doing at this point in time?
24 You walked up and stood -

25 A Yeah, and I walked up and stood and I was, you

1 know, kind of stop and wait, was waiting for everybody,
2 'cause I think I was ahead of everybody and I stopped and I
3 was looking forward.

4 Q When you say forward were you looking -

5 A Towards -

6 Q - towards the direction of the apartment?

7 A Yeah.

8 Q Okay.

9 A Yeah.

10 Q You were looking in the direction of the apartment?

11 A Uh-huh (affirmative).

12 Q Were they both behind you at that time?

13 A Yeah.

14 Q Okay.

15 A Well, Travis I think was kind of, kind of standing
16 next to me on the, to the right there -

17 Q Okay.

18 A - but kind of behind me.

19 Q - [inaudible] apartment and Travis was like here.

20 A Yeah, about -

21 Q And the defendant [inaudible] here?

22 A Yeah, I don't know where, yeah, Travis was right,
23 he was, I know Travis was by me. I didn't know where -

24 Q How far away was Travis from you?

25 A Two, three feet, or maybe about five feet, six

1 feet. Not very far.

2 Q Okay, in relation to the flag pole do you recall?

3 A A little, little closer than that.

4 Q Okay. You're looking in the direction of the
5 apartments not at those two, correct?

6 A Yeah.

7 Q Did you hear anything that called your attention to
8 them?

9 A I heard a little, you know, it was an instant
10 second. You know, I didn't really hear nothing but a little,
11 but some noise and I looked, I looked over and that's when I
12 seen Jason getting, connecting with a punch and that's when
13 Travis fell.

14 Q You turned around and that's when you saw the
15 defendant punching -

16 A Yeah, I looked over, I looked over, yeah, and
17 that's, yeah.

18 Q Okay.

19 A Heard a little bit of a scuffle and then that's -

20 Q At the point in time where you saw, the first
21 second you turned around was the defendant already punching
22 at the victim or was he rearing back or how was -

23 A The punch was already thrown and then, yeah cuz it,
24 yeah.

25 Q Where did he hit the victim?

1 A Right in the, right in the, probably in the mouth,
2 'cause his mouth was bloody.

3 Q What happened after that?

4 A After that I was a, I seen Jason or Travis go down
5 and I could tell he was hurt so I paid more of, my attention
6 was on Travis, getting him up and seeing if he's okay and I
7 don't know where Matt or Jason went at that point.

8 Q Did you ever see Travis push or take a swing at the
9 defendant?

10 A No, I didn't.

11 Q Did you ever hear anything that would be, them
12 scuffling?

13 A This was that, that got my attention I'm sure.

14 THE COURT: I didn't hear that response and I'm not
15 sure the jury did. Would you repeat that please?

16 THE WITNESS: Which, which -

17 Q (BY MR. MILES) Did you hear them, we're talking
18 about you heard them, what draw your attention, did you hear
19 them scuffling or what did you hear?

20 A That's kind of, yeah, I heard a little bit of a
21 noise it was - well, you know, that wasn't, you know, out of
22 the ordinary, and that's what made me look and that's when I
23 seen the punch -

24 Q Did they say anything to each other at this point?

25 A Not a word that I heard and I'm sure they didn't.

1 Q How long, I mean had you heard this noise, I mean
2 was it a second, was it ten seconds?

3 A It was -

4 Q Longer?

5 A - a, as a, it was about as quick as a turn of my
6 head and then when I heard it and then I looked over and
7 that's when -

8 Q So about a second?

9 A Yeah. Second or two, yeah.

10 Q When Mr. Haven fell, he hit his head on the wall;
11 is that correct?

12 A Uh-huh (affirmative).

13 Q Okay. You said you focused your attention on him.
14 Can you describe to the jury what you saw as far as his
15 physical condition at the time he hit his head on the wall.

16 A Well, he was, he was knocked, he was knocked out.
17 He was unconscious.

18 Q Okay, did you see any physical injuries on him?

19 A No, no, I just seen a little blood on his mouth.
20 But when I finally got him up and I seen the big old knot on
21 the back of his head and that, and that's when I told them
22 that they should get him to a hospital.

23 Q Okay.

24 A I would have took him but I didn't have a vehicle.

25 Q Do you recall the defendant during this point in

1 CROSS EXAMINATION

2 BY MR. MEYER:

3 Q You said that, I'm sorry [inaudible] you said that
4 you didn't hear no argument [inaudible] during the drive back
5 [inaudible]?

6 A Yeah.

7 Q So you never heard Jason and Travis threaten each
8 other, kind of, and saying that the money was supposed to be
9 paid?

10 A Well, you had your music on, and you know how that
11 is. I can't hear as it is.

12 Q So like when we got to the apartments did anybody
13 wait for Meathead to get out of the van?

14 A Not that I know of. I think I was about one of the
15 first one's out.

16 MR. MILES: Can you clarify who Meathead is?

17 MR. MEYER: Matthew Griffin.

18 THE WITNESS: Yeah, I think I was the first one out,
19 I'm sure.

20 Q (BY MR. MEYERS) So Matthew and I stayed back in the
21 van?

22 A I, I didn't see Matt until, until afterwards.
23 Until I seen him, after he got hit he jumped in the pond and
24 picked up Travis' phone and the money he had in his hand.

25 Q Did, did Travis and Matthew Griffin talk to a

1 RE-DIRECT EXAMINATION

2 BY MR. MILES:

3 Q You've indicated you don't think the defendant
4 intentionally hurt Travis Haven, correct?

5 A I don't, I don't think he, I don't, I've not, no,
6 I'm not sure, yeah, I don't understand, kind of.

7 Q Okay, you don't think that he intentionally wanted
8 or tried to hurt him is what you just previously said,
9 correct?

10 A I don't think he, I don't know if he tried or not.
11 Yeah, I don't think if he tried.

12 Q Well, let me ask you this question, do you think
13 the defendant intentionally hit Travis Haven?

14 A I know they was, I know they had a little fight I
15 guess.

16 Q Do you think it was the defendant, based on the way
17 you saw him swinging, it was his intent to hit Mr. Haven on
18 the chin?

19 A Yeah, or protect himself, yeah, something, one of
20 the two.

21 Q Well, to protect himself from, did you see anything
22 he needed to protect -

23 A No, no, no.

24 Q - himself from at that point?

25 A No, but I don't, that's what I mean. I don't know

1 if, you know, if they was gonna, you know, for all I know
2 they was exchanged some words when they first got in, you
3 know, where's my money, blah, blah, and -

4 Q That's when they first - okay, you're saying they
5 exchanged words. Was that when they first got in the van?

6 A Yeah.

7 Q Okay, and did they say anything during the ride
8 after that?

9 A Not that I recall.

10 Q Okay, did you hear anything once they got out near
11 the pond area?

12 A No, I sure didn't.

13 Q The first thing you did was turn around and saw -

14 A Yeah.

15 Q - the point where the defendant was connecting with
16 the victim -

17 A Yeah, that's when, that's when he went down.

18 MR. MILES: No further questions.

19 THE COURT: Thank you, do you have any further
20 questions?

21 MR. MEYER: Yeah.

22 RECROSS EXAMINATION

23 BY MR. MEYER:

24 Q Did you have a Walkman with you that night?

25 A I'm not, I can't remember for sure. I usually do

1 THE COURT: You may step down. Thank you.

2 MR. MILES: May we excuse this witness?

3 THE COURT: Yes, you're excused as well.

4 MR. MILES: State calls Detective Steve Reaves to
5 the stand.

6 THE COURT: Okay.

7 STEVE REAVES,
8 having been first duly sworn, testified
9 upon his oath as follows:

10 DIRECT EXAMINATION

11 BY MR. MILES:

12 Q Would you state your name for the court, please?

13 A My name's Steve Reaves.

14 Q And where do you work?

15 A I'm a detective with the Ogden City Police
16 Department.

17 Q How long have you been with the Ogden City Police
18 Department?

19 A Eleven years this May.

20 Q Were you assigned to investigate the case of an
21 assault that occurred against Mr. Travis Haven?

22 A I was.

23 Q Okay, when were you first assigned to this case?

24 A This had been a Monday, the 27th of December, just
25 before 6:00 at night I got a call [inaudible].

1 Q Okay, did any of those interviews lead you to
2 suspect the defendant?

3 A Yes.

4 Q Turning you and focusing in on, did you ever
5 receive contact from the defendant?

6 A Well, I went to his house that, that evening. I
7 received no answer at his door. I left a message on his cell
8 phone and his home phone for him to call me.

9 Q Okay. Did he call you?

10 A Yes, he did.

11 Q When did he first call?

12 A It was 12:30 that night. So that would have been
13 the morning of the 28th now about 12:30 in the morning he
14 called me.

15 Q Called you on your cell phone?

16 A Yes, he did.

17 Q Okay. Tell us what happened there in that
18 telephone conversation.

19 A I called, when he, when he called me on the phone I
20 told him who I was and that I was investigating an incident
21 involving Travis Haven. At first Jason Meyer's says he
22 didn't know what I was talking about. I then told him that I
23 knew that he'd gotten, that he was over at the apartments and
24 he was in a fight with Travis Haven. There was a pause on
25 the line and then Jason asked how Travis was doing and I told

1 him that Travis was currently on life support and then he
2 hung up on me.

3 Q Did he call back?

4 A He did call back a few minutes later. He
5 apologized for the disconnection saying that he had a power
6 problem or something was going on with his phone.

7 Q How did he sound during this conversation?

8 A Oh, he sounded upset.

9 Q Did you discuss with him what had happened at the
10 Park Boulevard?

11 A Exactly. He told me that this was only a
12 fistfight, did not mean for it to go this bad. I offered Mr.
13 Meyers a chance to come in and explain his side of the story
14 the next morning when I came into work and so we set the time
15 for him to come in the next morning at my office.

16 Q Okay, did he describe why he was fighting with Mr.
17 Haven?

18 A It was over a debt.

19 Q He agreed to come in and do a formal statement
20 later that morning?

21 A He did.

22 Q What time did he come in, or did he come in?

23 A It was scheduled for 10:00 and he showed up
24 probably about five or ten minutes late.

25 Q Was he alone?

1 said he, did he know you would be at the apartments and he
2 wrote in here Matt called and said he, referring to Travis,
3 needed a ride to pick him up. I gave him the ride.

4 We then went on to that he went with Matt, which is
5 referring to meet him or Matt reference and I'll pick up a
6 quote of when I asked him what happened then. He said "We
7 picked him up at Harmon's in Roy. I asked Travis what was up
8 with my money. Travis said he did not have either. I told
9 him he needs to pay me something. He then said that he could
10 give me \$26 and that was all he could give me. I told him to
11 give me back my shit, my stereo equipment. He says he sold
12 it. Then we argued from there and at the apartments at
13 Riverview. When I stepped out of the van we both bounced at
14 each other, up on each other and I swung and hit him and he
15 fell and hit his head on the log. Hachmeister said that he
16 hit his head really good. I went over and tried to wake
17 Travis, wake up Travis and I ran upstairs to Scotty to get
18 some water so I could pour it on him and wake him up. By the
19 time I got downstairs Matt and Rodney Hachmeister had him up
20 already and Travis was talking. He was saying, 'Oh God,'
21 mumbling, and still needed a little support for walking.
22 Matt said he was all right, he had just had a big bump on the
23 back of his head. I said to call 9-1-1 or an ambulance or
24 something. Matt said that he did not need it. So I left."

25 Q Did you ask the defendant how many times he hit the

1 victim?

2 A Yes.

3 Q And what did he say?

4 A He said he hit him once.

5 Q Did you ask him where he hit the victim?

6 A Well, I asked him how many times that he hit
7 Travis. He replied once. I asked him where on Travis' body
8 did you hit him and he said in his chin.

9 Q Did you ask him what his intent was when he hit
10 Travis?

11 A Yes.

12 Q What did he say?

13 A I asked, my question was in quotes "What was your
14 intent when you hit Travis?" He replied, "Just to fight. We
15 were friends. You get into fight with friends, with your
16 friends all the time. Partly 'cause I thought he was going
17 to swing on me first."

18 Q Did you observe anything as far as the Defendant's
19 hands the day he came in for the formal statement?

20 A Yes, on his left hand, in the webbing of his hand
21 he had some swelling and then on the inside of, swelling in
22 the slight mark right about here on his, on the web of his
23 hand and then on the inside of his middle finger right here
24 he had a mark and that's where Mr. Meyer told me those
25 particular injuries were a result of hitting Travis Haven.

1 here that he's controverting. I'm go, not going to admit it.
2 I think it's part of the police report so it's not
3 admissible.

4 MR. MILES: Okay. No further questions.

5 THE COURT: And do you have any further questions
6 you'd like to ask of this witness?

7 MR. MEYER: No, I don't.

8 THE COURT: All right, you may step down.

9 MR. MILES: At this point in time, Your Honor, the
10 State rests.

11 THE COURT: Okay. Let's at this time the State has
12 rested, Mr. Meyer. You have the right in this case to remain
13 silent if you wish. No one can compel you to give testimony
14 against yourself. The jury may not make any inference
15 adverse to you if you elect to remain silent. You may also
16 testify. That is also your right. With that in mind, do you
17 wish to make a statement to the jury under oath?

18 MR. MEYER: Yeah, I would.

19 THE COURT: All right, step forward please and be
20 sworn.

21 JASON PAUL MEYER,
22 having been first duly sworn, testified
23 upon his oath as follows:

24 THE COURT: All right, tell the jury what happened.

25 DIRECT EXAMINATION

1 BY JASON PAUL MEYER:

2 Well yeah, you know, my name is Jason Meyer. I did
3 have an altercation Travis Haven -

4 THE COURT: Can you pull the microphone down just a
5 little closer to you.

6 MR. MEYER: I did have an altercation with Travis
7 Haven. I didn't go there to hurt the person. [inaudible]
8 like I said there was, [inaudible] saying we did scuffle kind
9 of thing. There was one punch thrown, you know what I'm
10 sayin', yeah, I probably threw the first punch 'cause I was,
11 you know, he might hit me first. It was just my left hand.
12 I'm a right hand fighter. You know what I'm sayin'. It's
13 not like I meant to, you know go out and beat him to a pulp.
14 It was one hit. He fell. Chance, you know what I'm sayin',
15 unlucky circumstances that he fell and hit his head. You
16 know what I'm sayin'? If that would have happened I believe,
17 you know what I'm sayin', I would have picked him up, hugged
18 him, gave him back, you know what I'm sayin', friendship and
19 things that I like to dude, you know what I'm sayin', the
20 little time I've known him, the four months, four and a half
21 months I've known him, you know what I'm sayin', I thought we
22 were all right friends until, you know what I'm sayin', I
23 told him I needed rent, needed the money and he didn't come
24 through with it.

25 I lost my house right after Christmas, right after

1 New Years, you know what I'm sayin', lost the house, I lost
2 my car, lost my job, lost my girlfriend, you know what I'm
3 sayin', it's just a big circumstance, you know what I'm
4 sayin', it's bad luck at my time. You know what I'm sayin',
5 I don't have no problem with the dude. I had, didn't know I
6 was gonna hurt him that night, didn't know I was gonna fight
7 him that night. I was just going in quick and say, hey - you
8 know what I'm sayin' - can I get the money cuz my rent was
9 due, you know what I'm sayin', I was three months back. I've
10 said course anybody be upset. Especially when it was your
11 friend, you know what I'm sayin', he kept telling me well I
12 ain't got it, I ain't got it, I ain't got it. You know what
13 I'm saying? I've got 26 bucks, but I ain't got it, you know
14 what I'm sayin', [inaudible] happened I threw a punch - you
15 know what I'm saying - I didn't mean to hit the dude. You
16 know what I'm saying I'm saying I know I'm guilty for
17 assault, yes, I am - you know what I'm saying - but not to
18 the fact that - you know what I'm saying - cuz it was an
19 altercation. Someone pushes you, push you back, someone
20 gonna throw a punch, do something, you know what I'm sayin',
21 or at least try to wrap him up, do something. And I just
22 don't think that is as severe as these guys are trying to
23 make it out to be. Yeah, I threw a punch, but you know what
24 I'm sayin' when two friends fight they punch. Two brothers
25 fight they punch. You know what I'm saying? It's not like I

1 went out to hurt him and make him fall and start slamming him
2 against the log or anything. That's all I got to say.

3 THE COURT: Okay, thank you, Mr. Miles, you may
4 cross examine.

5 CROSS EXAMINATION

6 BY MR. MILES:

7 Q Mr. Meyer, you indicated that you were upset with
8 the victim [inaudible] right? And that's because he owed you
9 money?

10 A Yes.

11 Q And you wanted to collect on that money?

12 A I wanted to see if he had some, yes.

13 Q And this was the day after Christmas?

14 A Yes.

15 Q As you testified, [inaudible] house and you were
16 suffering a lot of financial problems?

17 A Yes.

18 Q So you met with him because you wanted to get some
19 money out of him?

20 A Yes.

21 Q But he didn't have any money to give you?

22 A No, he had \$225 to purchase methamphetamine from a
23 friend.

24 Q He had that money on him that night?

25 A Yes, he did.

1 Q You're say, so it's your testimony that he had
2 that, but he wouldn't give it to you?

3 A No, it wasn't the fact [inaudible] give to me. It
4 was the fact he said, you know what I'm sayin', he wasn't
5 gonna pay me.

6 Q He wasn't going to pay you that night?

7 A Yeah.

8 Q Did that make you more upset?

9 A A little bit, yes.

10 Q Okay, you went to these apartments in Ogden. You
11 got out of the van, correct?

12 A Yes.

13 Q He got out of the van and walked up near the pond
14 area?

15 A Yes.

16 Q Okay, and it's your testimony that you both, I
17 guess the word is boosted, or bousted up against each other,
18 is that sort of bumped up, or -

19 A Yeah, pumped up, you know what I'm sayin'?

20 Q Oh, pumped up?

21 A You know just like, what? You know what I'm
22 sayin', what the heck, you know what I'm sayin'?

23 Q Okay. He did that also?

24 A Well, he was lookin, what? You know what I'm
25 sayin', saying pretty much the same thing.

1 Q Okay, but he didn't push you then?
2 A Yeah, he pushed me.
3 Q Oh, so he did push you?
4 A When I, when I walked towards him and was talking
5 to him, yeah.
6 Q You pushed him back?
7 A Yes, I did.
8 Q And then you punched him?
9 A Yeah, he came at me again and I swung.
10 Q You hit him in the chin?
11 A Yes.
12 Q Okay, did he swing at you?
13 A I wasn't really paying attention. I was more
14 worried about he started coming back at me, so -
15 Q But it was your intent when you raised your fist
16 and swung it to hit him in the chin, correct?
17 A Uh -
18 Q Or to try to hit him?
19 A I can't say if it was my intent or not because it
20 was a split [inaudible] decision.
21 Q You didn't swing your arm wildly, you swung it as
22 his face, isn't that true?
23 A Well, yes.
24 Q Okay, so then would you reasonably infer that you
25 wanted to hit him when you were swinging your fist?

1 A Like I said it was natural, it was instinct.

2 Q Okay.

3 A I didn't intentionally aim there. I boxed for seven

4 years and when you fight you usually aim for something.

5 Q You indicate you were concerned with his condition

6 after you'd hit him and he fell off the wall.

7 A Yes, I was.

8 Q You didn't transport him to the hospital?

9 A No, I didn't.

10 Q Did you go see him in the hospital?

11 A No, I didn't, but I called his family. I wasn't

12 allowed to go there. Mr. Reaves told me I wasn't.

13 Q That was after [inaudible] 28th.

14 A The day after.

15 Q Two days later?

16 A Yeah, and I called his mom and his old lady during

17 that time.

18 Q But you didn't take it upon yourself to have the

19 responsibility to transport him to the hospital?

20 A I asked them if they wanted me to take him to the

21 hospital, they said he didn't need it.

22 Q Did you say call 9-1-1?

23 A Yeah, I said if he's hurt call 9-1-1.

24 Q [inaudible]?

25 A Yes, I have.

1 Q Isn't it true you've been convicted of a felony
2 before?

3 A I plead the Fifth on that. It has nothing to do
4 with this.

5 MR. MILES: Your Honor, direct the witness to answer
6 the question.

7 THE COURT: Answer the question, please.

8 THE WITNESS: Yes, I have.

9 Q (BY MR. MILES) Okay, and that was in October of
10 2001?

11 A I plead the Fifth.

12 THE COURT: You can't just, once you've taken the
13 stand you must answer all questions.

14 MR. MEYER: Yes, I have.

15 THE COURT: You can't selectively take the Fifth
16 Amendment.

17 Q (BY MR. MILES) And you also convicted in May of
18 1999?

19 A Yes, I have.

20 Q You were sent to the prison for these?

21 A Yes, I have.

22 MR. MILES: No further questions.

23 THE COURT: Is there anything else that you'd like
24 to add to your testimony -

25 MR. MEYER: Yeah.

1 THE COURT: - in light of any questions that have
2 been asked of you?

3 REDIRECT EXAMINATION

4 MR. MEYER: Yeah, I'd like, as my prison record has
5 nothing to do with even any assault or nothing. They're both
6 drug charges 'cause I was a drug user and - you know what I'm
7 saying - I don't know why this has anything to do with this
8 case except for I was a young kid being stupid. I stole a
9 car, you know what I'm sayin', I was a drug user. I don't
10 know why they even brought this up on an assault charge,
11 because I've never been assault, charged with assault, except
12 when I was juvenile and you know how juveniles always play
13 around and get stupid, with stupid people. You know what I'm
14 sayin', I got involved with the wrong crowd and did a lot of
15 stupid things and I was addicted to methamphetamine
16 [inaudible], you know what I'm sayin', I've been working
17 lately to try and get off that. You know what I'm sayin' a
18 hard road. I have occasionally used, you know what I'm
19 sayin', but, you know what I'm sayin', an addict, you know
20 what I'm sayin', it's hard to get off of drugs. Yes, you
21 know what I'm sayin', it's a bad thing to do. I've been
22 clean now for five days, you know what I'm sayin', I have
23 used prior, you know what I'm sayin', but I think it's, you
24 know what I'm sayin', it has nothing to do with this crime,
25 you know, the assault has, I feel that was unfair that him

1 bringing up my criminal record due to the fact I was a drug
2 addict that he [inaudible] brought that with the case has
3 nothing to do with it. That's it.

4 THE COURT: Anything further?

5 MR. MILES: Yes, Your Honor.

6 RE CROSS EXAMINATION

7 BY MR. MILES:

8 Q The whole basis of this debt was drugs; isn't that
9 correct?

10 A No, it wasn't.

11 Q Okay, it's your contention that that was a stereo?

12 A Yes, there was a stereo and amp speakers and the
13 whole wiring kit.

14 Q Your intent when you hit the defendant (sic) though
15 was to fight? Didn't you tell the detective -

16 A I guess yes, 'cause I figured I was gonna hit first
17 cuz --

18 Q You fight with your friends all the time?

19 A Sometimes yeah, sometimes we do get in a fight.
20 Not all the time, no.

21 Q Couldn't you have walked away?

22 A Yes, I could have.

23 Q But you didn't?

24 A No, I wasn't thinking about it at the time.

25 MR. MILES: No further questions.

1 exercised with sincere judgment, sound discretion and honest
2 deliberation. The defendant is charged with the following
3 crime: assault, a Class A Misdemeanor. To this charge the
4 defendant has entered a plea of not guilty. This plea casts
5 upon the State the burden of proving beyond a reasonable
6 doubt all of the elements of the crime charged. These
7 elements are set forth in the following instruction.

8 Before you can convict the defendant of assault on
9 or about December 26th, 2004 in Weber County, State of Utah,
10 you must find from the evidence beyond a reasonable doubt all
11 of the following elements of the crime: (1) that the
12 defendant, Jason Paul Meyer, (2) intentionally or knowingly
13 or recklessly (3) committed an act with unlawful force or
14 violence and (4) caused substantial bodily injury to another.
15 If you find from the evidence all of the elements defined
16 above beyond a reasonable doubt, then you must find the
17 defendant guilty of assault, a Class A Misdemeanor. If,
18 however, you are unable to find one or more of the elements
19 beyond a reasonable doubt, then you must find the defendant
20 not guilty.

21 In these instructions certain words and phrases are
22 used which require definition to properly understand the
23 nature of the crimes charged and to properly apply the law as
24 contained in these instructions to the facts as you find them
25 from the evidence. These definitions are as follows: assault

1 conduct or to circumstances surrounding a person's conduct
2 when the person is aware of the nature of the person's
3 conduct or the existing circumstances. A person acts
4 knowingly or with knowledge with respect to a result of the
5 person's conduct when the person is aware that the person's
6 conduct is reasonably certain to cause the result. A person
7 engages in conduct recklessly or with malice or maliciously
8 with respect to circumstances surrounding his conduct, as a
9 result of his conduct, when the person is aware but
10 consciously disregards a substantial and unjustifiable risk
11 that the circumstances exist or the result will occur. The
12 risk must be of such a nature and degree that it's disregard
13 constitutes a gross deviation from the standard of care that
14 an ordinary person would exercise under all the circumstances
15 is viewed from the actor's standpoint.

16 A person is justified in threatening or using force
17 against another when and to the extent that he or she
18 reasonably believes that force is necessary to defend himself
19 or a third person against such others imminent use of
20 unlawful force. A person is not justified in using force
21 under the circumstances defined above if he initially
22 provokes the use of force against himself with the use - with
23 the intent to use force or an excuse to inflict bodily harm
24 upon the assailant, is attempting to commit, committing or
25 fleeing after the commission, or attempted commission of a

1 felony or was the aggressor or was engaged in combat by
2 agreement, unless he withdraws from the encounter and
3 effectively communicates to the other person his intent to do
4 so and, notwithstanding, the other person continues or
5 threatens to continue the use of unlawful force. A person
6 does not have a duty to retreat from force or threatened
7 force described above where that person has lawfully entered
8 or remain. If you find the defendant acted in self defense,
9 then the State has the burden to prove beyond a reasonable
10 doubt that the crime of assault was not in self-defense.
11 Therefore, if there is a reasonable doubt as to whether the
12 defendant did or did not act in self-defense, you must find
13 the defendant not guilty.

14 Our laws and constitution require you to presume
15 the innocence of a person accused of a crime. You must
16 persevere in this presumption unless and until the prosecutor
17 has proved the defendant guilty beyond a reasonable doubt.
18 So long as a reasonable doubt exists you must find the
19 defendant not guilty. This presumption of innocence is
20 binding upon you. It may not be disregarded by you, but may
21 be overcome only by proof beyond a reasonable doubt. The
22 presumption is intended to guard against the danger of
23 innocent person being punished.

24 The burden is on the State to prove the defendant
25 is guilty beyond a reasonable doubt. Proof beyond a

1 saw the picture, to have a serious bruise on the back of his
2 head, which also was related to brain swelling from the fall
3 and hitting the log. He was then put into a coma for several
4 days and did not wake up til six days later. All from one
5 punch by this defendant. The defendant admitted that when he
6 threw that punch he was intending to hit the victim. He
7 testified he was a boxer for seven years and that when he
8 threw the punch he was taught to aim at a target. He didn't
9 throw a punch out wildly and happen to connect with the
10 victim. He directed that punch right at the victim's face
11 and connected with the chin. Indeed, you have pictures
12 before you in evidence which showed the injury to the
13 defendant's hand, the mark was probably connected when it
14 broke off the victim's tooth. That is a forceful punch.
15 Many of you are probably aware your teeth are perhaps some of
16 the strongest bone in your body. A punch delivered that hard
17 to the victim could not have been anything other than a
18 directed forceful blow to the victim and because this
19 defendant committed an act, which caused substantial bodily
20 injury to Travis Haven, he is guilty of assault.

21 The defendant only claimed during this period of
22 time is that he didn't intend to hurt the victim as bad as he
23 did and he was concerned with his welfare. Well, being
24 concerned with the welfare and not intending to hurt the
25 victim as bad as you did is not a defense to the crime of

1 assault and it is because this defendant committed the act
2 which caused substantial bodily injury to Travis Haven on
3 December 26th that I ask you to return a verdict of guilty.
4 Thank you.

5 THE COURT: Thank you.

6 Mr. Meyers, you may argue your case.

7 MR. MEYER: Yeah, he says that I admitted saying
8 that I intentionally went to hurt [inaudible]. I did not go
9 over there to, you know, hurt the dude at all. I didn't know
10 we were going to fight. [inaudible] money, you know what I'm
11 sayin', I'm saying people get upset over gas prices, you
12 know, five cents, [inaudible] for my rent, you know what I'm
13 sayin', I have five kids I take care of at the time. Yeah I
14 upset. But I didn't go there to [inaudible] hurt the person.
15 You know what I'm sayin', I thought he was my friend and I
16 said yeah, you know what I'm sayin', [inaudible] I punched
17 him, yes. I admit that I did do that. He's saying that I
18 intentionally go there to assault the dude, you know what I'm
19 sayin'? It's like, why would I want to just go over there
20 and beat some dude up over some money then I would never get
21 paid anyway, you know what I'm sayin'? It's like, hey, man,
22 what the heck? He pushed me. I pushed him back. He came at
23 me again. I thought that he was gonna punch me instead of
24 push me so I swung first.

25 I said yeah, I feel bad that [inaudible] happen,

1 MR. MILES: Yes, Your Honor.

2 The defendant keeps saying he didn't intentionally
3 go there to hurt him. He didn't intentionally go there to
4 fight him. It wasn't his intention when he went there to
5 fight him because he only wanted to get his money. That may
6 be true, but at the point in time when they got out of the
7 vehicle and he confronted the victim, the simple fact of the
8 matter is all he had to intend to do is throw that punch and
9 we submit to you that evidence to you is ample. He intended
10 to throw that punch and once he committed himself to that
11 act, he is guilty of the crime of assault.

12 Now he is sort of by way of indirectly sort of
13 raised self-defense argument, he bumped up against me and I
14 pushed him back and then he came at me so I punched him. He
15 sort of raised that as a claim. I'm going to tell you why he
16 is not justified in using self-defense. You got the
17 instruction, instruction number 21, telling you when a person
18 is and is not entitled to use self-defense and I'm going to
19 tell you why this defendant is not entitled to use self-
20 defense. I told you before the person who arranged the
21 meeting was the defendant himself. He wanted to collect on
22 his debt. He was upset, in his own words, that the victim
23 had not paid him any money for the debt that he owed. He
24 became, in his own words, more upset when the victim said he
25 would not pay him any additional money.

1 The first part of the self-defense instruction
2 tells you when a person is justified in using force against
3 another, reason to believe force is necessary to prevent
4 [inaudible] or a third person (inaudible) imminent to use
5 unlawful force. But it also tells you when he's not
6 justified in using force and the first part of this
7 paragraph, the second one on instruction 21 says a person is
8 not justified in using force under circumstances defined
9 above if he initially provokes the use of force against
10 himself with the intent to use force as an excuse to inflict
11 bodily harm on the assailant. This defendant was the one
12 that provoked this encounter. He's the one that arranged it.
13 He's the one that transported the victim to the [inaudible].
14 He -

15 MR. MEYER: [inaudible] I didn't arrange nothing.
16 The victim called and he and Matt to ask for a ride.

17 THE COURT: Well that's -

18 MR. MEYER: He instructed I arranged everything, and
19 I didn't arrange -

20 MR. MILES: The defendant transported him to the
21 scene. The defendant, the victim got out, both the victim,
22 Rodney Hachmeister testified that the victim walked up, stood
23 near the pond, the defendant was standing some 15, 20 feet
24 away. Rodney Hachmeister testified that the second he heard
25 some scuffling he turned and in that period of time he saw

1 the point in time that the defendant was connecting with the
2 victim's chin and the victim then fell down after.

3 This defendant provoked the use of force against
4 himself with pushing. He admitted. He went there, we bumped
5 up to each other. But even if he didn't, we get to the third
6 part here where it says was the aggressor or was engaged in
7 conduct by agreement unless he withdraws from the encounter
8 and effectively communicates to the other person his intent
9 to do so, notwithstanding the other person continues to
10 threaten continued use of unlawful force. He is not justified
11 in using self-defense if he engaged in conduct by agreement.

12 Even accepting the defendant's version of the
13 event. Even accepting the fact that the victim bumped up
14 against him. He then bumps up against the victim. The
15 victim then approaches him again and he pops the victim in
16 the jaw. This defendant was engaged in combat by consent.
17 Both he and the victim, if you believe his version, were
18 intending to fight at that point in time. He had no
19 justifiable right to claim self-defense for the actions he
20 committed on that day. It's because he committed an act that
21 caused substantial bodily injury to this victim that he's
22 guilty of the crime of assault. It does not matter the fact
23 that he did not intend to hurt the victim as bad as he did,
24 or that he did not initially go there with the intent to
25 fight the victim, but only to collect on a debt. None of