

2005

Utah v. Jason Paul Meyer : Brief of Appellant

Utah Court of Appeals

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Dee W. Smith; Weber County Public Def. Assn; Attorney for Appellant.

Branden B. Miles; Weber County Attorney; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	
	:	
vs.	:	
	:	Case No. 20050567-CA
JASON PAUL MEYER,	:	
	:	
	:	District No. 051900197
Defendant/Appellant.	:	

BRIEF OF APPELLANT

**ON APPEAL FROM A FINDING OF GUILTY OF ASSULT, A CLASS
A MISDEMEANOR IN VIOLATION OF U.C.A. SECTION 76-5-102 IN
THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER
COUNTY, STATE OF UTAH, THE HONORABLE JOHN R.
MICHAEL D. LYON PRESIDING.**

BRANDON MILES
Deputy Weber County Attorney
Mark Decaria
Weber County Attorney
2380 Washington Blvd, #200
Salt Lake City, Utah 84114-0854

Telephone: (801) 399-8377

Attorney for Plaintiff/Appellee

DEE W. SMITH (8688)
Weber County Public Defender's
Association
2550 Washington Boulevard, Ste 300
Ogden, Utah 84401

Telephone: (801) 399-4191

Attorney for Defendant/Appellant

FILED
UTAH

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
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vs.	:	
JASON PAUL MEYER,	:	Case No. 20050567-CA
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Association
2550 Washington Boulevard, Ste 300
Ogden, Utah 84401

Telephone: (801) 399-4191

Attorney for Defendant/Appellant

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH	:	
Plaintiff/Appellee	:	
vs.	:	
	:	Case No. 20050567-CA
JASON PAUL MEYER	:	
Defendant/Appellant	:	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

The Appellant is appealing 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

DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT ALLOWED THE STATE TO INTRODUCE EVIDENCE OF THE DEFENDANT’S PRIOR CONVICTIONS AND HIS STAY AT THE PRISON?

Standard of Review: This issue should be reviewed under an abuse of discretion standard of review. “[T]his Court will not reverse the trial court’s ruling on evidentiary issues unless it is manifest that the court so abused its discretion that there is a likelihood that injustice resulted.” *State v. Gentry*, 747 P.2d 1032 (Utah 1987). In addition, this court should “review the record to determine whether the admission of [prior] bad acts evidence was ‘scrupulously examined’ by the trial judge ‘in the proper exercise of that discretion.’” *State v. Nelson-Wagonner*, 6 P.3d 1120 (Utah 2000)(citations omitted).

This issue was preserved for appeal when the Defendant attempted to not answer the prosecutor’s questions concerning his prior convictions. (R. 123/99)

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. §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 a conviction or charge of a first degree felony or capital felony;

Utah Rules of Evidence

Rule 403 – Exclusion of relevant evidence on grounds of prejudice, confusion or waste or time. - Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404(b) *other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 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 a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and 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 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 statement, 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 pled not guilty to the charge. He also waived his right to be represented by an attorney. The Defendant signed a waiver of counsel in open court. (R. 021, 022-23). A jury trial was held on April 4, 2005. The Defendant represented himself at the trial. The jury found the Defendant guilty of Assault, a class A misdemeanor. (R. 30-32). He was sentenced on May 12, 2005 to serve 365 days in the Weber County Jail. (R. 90-92). The Sentence, Judgment and Commitment was signed on May 23, 2005. (R. 90-92). A notice of Appeal was filed on June 20, 2005. (R. 106).

STATEMENT OF THE FACTS

On December 26, 2004, Travis Haven was picked up by the Defendant and Matt Griffin. (R. 123/41). Approximately a week to two weeks prior to this date, the Defendant had fronted Mr. Haven some methamphetamine and Mr. Haven owed the Defendant between one hundred and two hundred dollars. (R. 123/40). After Mr. Haven was picked up in Roy, they drove to some apartments in Ogden. (R. 123/41-42). Mr. Haven went with the Defendant and Mr. Griffin voluntarily. (R. 123/42).

Mr. Haven and the Defendant both exited the vehicle. Mr. Haven remembered walking about twenty feet and that was all he could remember. (R.

123/42). The next thing Mr. Haven remembered was waking up in a bed in the hospital. (R. 123/45). He was missing one tooth. (R. 123/45).

Rodney Hachmeister was present during the altercation. He testified that he heard a little bit of a scuffle. He turned to look and observed the Defendant connect with a punch. He also observed Mr. Haven fall. (R. 123/61). He testified that the punch was to Mr. Haven's mouth and that his mouth was bloody. (R. 123/62). When Mr. Haven fell, he hit his head on a wall. (R. 123/63). Mr. Hachmeister attended to Mr. Haven. He testified that Mr. Haven was unconscious. (R. 123/63).

Mr. Haven was eventually taken to the hospital. He had a number of injuries. He had lacerations to his lip where his teeth had pierced through the skin causing it to open up his lip. He also had bruising and swelling on the back of his head. (R. 123/72).

Detective Reaves from the Ogden Police Department contacted the Defendant on the phone and asked him about the fight. The Defendant told him that it was "only a fistfight" and that he didn't mean for it to be that bad. (R. 123/80). The Defendant went in to the police station the next day to meet with Detective Reaves. The Defendant told Detective Reaves that Mr. Haven owed him two hundred dollars for stereo equipment. (R. 123/82). The Defendant also stated that he and Mr. Haven became involved in an argument because Mr. Haven said

he'd only give him twenty-six dollars. The Defendant wanted his stereo back and Mr. Haven said that he'd sold it. The Defendant also stated that when they got out of the van they both "bounced at each other," and that the Defendant swung and hit him and Mr. Haven fell and hit his head on a log. (R. 123/83).

The Defendant told Detective Reaves that he hit Mr. Haven one time. (R. 123/84). The Defendant had some swelling on his left hand which he indicated was from hitting Mr. Haven. (R. 123/85).

The Defendant testified on his own behalf. He testified that he had an altercation with Mr. Haven. He also testified that he probably threw the first punch because he thought Mr. Haven might hit him. Mr. Haven further testified that it was only one hit and that it was an unlucky circumstance that he fell and hit his head. (R. 123/93). The Defendant also insinuated that the altercation was mutual that involved pushing and that he "probably threw the first punch 'cause I was, you know, he might hit me first." (R. 123/93-94, 96-97). The Defendant went on to state 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. 123/94).

During cross-examination the prosecutor said to the Defendant, "[i]sn't it true you've been convicted of a felony before?" The Defendant plead the Fifth on that question. The trial judge instructed the Defendant to answer the question. The Defendant then answered that he had. (R. 123/99). The prosecutor then stated that

it was in October of 2001. The Defendant pleaded the Fifth and the judge instructed him a second time that he had to answer the question. The Defendant then answered that he had. The prosecutor then said “[a]nd you [were] also convicted in May of 1999?” After the Defendant answered yes, the prosecutor made the statement, “[y]ou were sent to prison for these?” The Defendant answered, “Yes, I have.” (R. 123/99).

SUMMARY OF ARGUMENT

The trial court abused its discretion when it allowed the State to introduce evidence of Defendant’s prior felony convictions and prior sentence. This evidence was improper under Rules 404 and 609 of the Utah Rules of Evidence. Furthermore, the evidence was extremely prejudicial to the Defendant and there’s a reasonable likelihood that the Defendant would have received a more favorable outcome but for the prejudicial evidence.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ALLOWED THE STATE TO CROSS-EXAMINE THE DEFENDANT CONCERNING HIS PRIOR CONVICTIONS AND THE FACT THAT HE HAD BEEN TO PRISON.

The Defendant chose to take the stand and testify on his own behalf. Following his testimony the prosecutor cross-examined him. During the cross examination the prosecutor said to the Defendant, “[i]sn’t it true you’ve been convicted of a felony before?” (R. 123/99). The Defendant answered “I plead the

Fifth on that. It has nothing to do with this.” The prosecutor then asked the trial judge to direct the Defendant to answer the question. The Defendant was instructed by the judge to answer the question. Defendant answered, “[y]es, I have.” The prosecutor responded with “and that was in October of 2001?” The Defendant again plead the Fifth and was instructed by the judge a second time to answer the question. The judge stated to him, “once you’ve taken the stand you must answer all questions.” (R. 123/99).

The Defendant answered, “[y]es, I have.” The prosecutor followed that up with, “[a]nd you also [sic] convicted in May of 1999?” The Defendant answered, “[y]es, I have.” The prosecutor then said, “[y]ou were sent to the prison for these?” The Defendant answered, “[y]es, I have.” (R. 123/99).

The evidence of the Defendant’s prior convictions should be analyzed under Rules 404 and 609 of the Utah Rules of Evidence. Rule 404(b) reads;

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the nature of any such evidence it intends to introduce at trial.

Introducing evidence of Defendant's prior felony convictions and prison sentence is clearly improper under Rule 404(b). It appears that the prosecutor was not attempting to introduce the evidence under this rule as no notice was provided to the Defendant and the prosecutor didn't attempt to show motive, opportunity, intent, etc. However, Rule 404 prohibits the evidence which was elicited during the cross-examination. Rule 404 prohibits evidence of a person's character or a trait of character to prove action in conformity therewith. In *State v. Johnson*, 748 P.2d 1069 (Utah 1987), the Utah Supreme Court stated that "this Court has repeatedly held that evidence of other crimes may not be admitted to prove that the defendant has a bad character or a disposition to commit the crime charged." *Id.* at 1075.

The evidence that Defendant had been to prison served no purpose other than to show that the Defendant has questionable character and has committed crimes so serious that he has been imprisoned for them. In *State v. Jones*, 585 P.2d 445 (Utah 1978), the Utah Supreme Court held that "evidence of other crimes is not admissible if the purpose is to disgrace the defendant as a person of evil character with a propensity to commit crime and thus likely to have committed the crime charged." *Id.* at 446(citations omitted).

In *Johnson*, the Supreme Court held that "[t]o give meaning to the policy embodied in Rule 404(b), evidence of other crimes must be reasonably necessary

and highly probative of a material issue.” *State v. Johnson*, 748 P.2d at 1075. In the case at bar, the prosecutor didn’t make an attempt to show that the Defendant’s prior bad acts were somehow relevant.

It appears that he was introducing the prior convictions under Rule 609 of the Utah Rules of Evidence¹. Rule 609 is broken into two parts, (a)(1) and (a)(2). Subsection (a)(1) states;

Evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and 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;

Subsection (a)(2) allows any witness to be impeached with a prior conviction if the conviction involved dishonesty or a false statement. The prosecutor didn’t introduce any evidence as to what the prior felony convictions were for. Therefore, they could not have been admitted under subsection (a)(2). “Where no inquiry is made about the underlying facts, and the appellate court cannot determine from the record if the prior crime involved dishonesty or false statement, the prior conviction is inadmissible under 609(a)(2).” *State v. Brown*, 771 P.2d 1093, 1094 (Utah Ct. App. 1989)(citation omitted.)

¹ Which still doesn’t explain the question concerning the Defendant having gone to prison.

This means the prior convictions had to have been admitted under subsection (a)(1). There are two different standards outlined in subsection (a)(1). For a regular witness the prior felony convictions appear to be admissible subject to Rule 403. However, the Rule specifically states that “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;” U.R.E. Rule 609(a)(1).

There have been several cases out of Utah’s appellate courts which shed further light on this issue. In *State v. Saunders*, 699 P.2d 738 (Utah 1985), the Utah Supreme Court stated that “[t]he bases of these limitations on the admissibility of evidence of prior crimes is the tendency of a fact finder to convict the accused because of bad character rather than because his is shown to be guilty of the offenses charged. Because of this tendency, such evidence is presumed prejudicial and, absent a reason for the admission of the evidence other than to show criminal disposition, the evidence is excluded.” *Id.* at 741

In *State v. Banner*, 717 P.2d 1325 (Utah 1986), the Utah Supreme Court outlined five factors that a trial court must consider when the State seeks to admit prior convictions under Rule 609(a)(1). These factors are;

[1] the nature of the crime, as bearing on the character for veracity of the witness.

[2] the recentness or remoteness of the prior conviction.

[3] the similarity of the prior crime to the charged crime, insofar as a close resemblance may lead the jury to punish the accused as a bad person.

[4] the importance of credibility issues in determining the truth in a prosecution tried without decisive nontestimonial evidence.

[5] the importance of the accused's testimony, as perhaps warranting the exclusion of convictions probative of the accused's character for veracity.

Id. at 1334. The Supreme Court stated that “[i]t is universally held that the prosecution under Rule 609 (a)(1) has the burden of persuading the court that the probative value of admitting the convictions, as far as shedding light on the defendant's credibility, outweighs the prejudicial effect to the defendant.” *Id.* The Court went on to state “[y]et Mr. Gunnarson offered no evidence that introduction of the convictions was more probative than prejudicial. The crime of assault with intent to commit rape does not inherently reflect on defendant's character for truth and veracity.” *Id.* at 1334-35.

In the case at bar, the trial court didn't even attempt to balance the probative value against the prejudicial effect. The trial court also failed to make the prosecutor carry his burden concerning these convictions. As has been stated, the specific offense were not inquired into. Only the fact that Defendant had been

convicted of felonies on two separate occasions and sent to prison both times was introduced. It was impossible for the trial court (and this court) to engage in a thorough analysis of the five *Banner* factors when the prosecutor didn't indicate what the felony convictions were for. In *State v. Gentry*, 747 P.2d 1032 (Utah 1987), the Utah Supreme Court found that the trial court had abused its discretion when it refused to suppress the defendant's prior convictions for rape and escape.² The Court stated, "[a]pplying the factors we identified in *Banner* to the rape and escape convictions, we conclude that the trial court abused its discretion in refusing to suppress them. The State did not offer any discussion concerning the probative or prejudicial aspects of defendant's prior convictions. However, we find that the prejudicial character of the convictions outweighs their possible probative value and that defendant should have been able to testify in his own behalf without being cross-examined concerning them." *Id.* at 1037.

Concerning the prior rape conviction, the Court stated that the "crime of rape does not inherently reflect on defendant's character for truth and veracity. Instead, it sheds about the same light as any felony involving moral turpitude." *Id.* (quotations omitted). Likewise, pointing out that Defendant had prior felony convictions without a showing that they reflected on the Defendant's character for

² In *State v. Gentry*, the defendant did not take the stand. However, he had filed a pre-trial motion to suppress the prior convictions and his motion was denied. He then chose to not testify. His trial was before the United State

truth and veracity was reversible error. The only point made by introducing that prejudicial evidence was to show that Defendant is a person of bad character.

Once it's established that prior conviction evidence was improperly admitted, it must be determined whether the violation constitutes reversible error. "The 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*, 779 P.2d 646 (Utah 1989).

In the case at bar there is a reasonable likelihood that there would have been a more favorable result for the Defendant but for the introduction of his prior felonies and prison sentence. The victim was an admitted methamphetamine user. (R. 123/40). He also testified that the Defendant had fronted him some meth and that he hadn't paid him back. (R. 123/40). The victim didn't have a recollection of the alleged assault. (R. 123/45).

The only witness to the assault other than the Defendant was Rodney Hachmeister. He didn't observe the events that led up to the assault. He heard "a little bit of a scuffle" and when he looked over he saw the Defendant connecting with a punch to the face of the victim, Mr. Haven. (R. 123/61).

Supreme Court's decision in *Luce v. United States*, 469 U.S. 38 (1984) which requires a defendant to testify in order to preserve a Rule 609(a) claim.

Although the Defendant testified that he hit the Mr. Haven, he also testified that there had been some pushing and he thought Mr. Haven was going to punch him. The Defendant testified, “he came at me again and I swung.” (R. 123/97). With the victim’s admissions to being a methamphetamine user and with his lack of recollection concerning the events in question it is certainly probable that the jury would have believed the Defendant’s version of the incident and found that he acted in self defense. As it was, the jury obviously had some concerns. During their deliberations the jury sent out several questions asking for additional information. They wanted to know (1) what the purpose was in picking up Travis [Haven], (R. 123/126), (2) “why was Travis at Jason’s?” (3) “Why were they standing around the pond in the first place?” and (4) “Where is Matt, his side of the story?”³

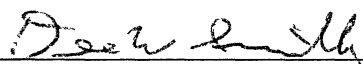
It is evident from these questions that the jury had some concerns about the evidence that was presented. In a case where the jury has obvious concerns, the fact that Defendant is a convicted felon who has been to prison is very prejudicial and likely swayed the jury to find him guilty. For these reasons this Court should find that the error was prejudicial and reverse Defendant’s conviction.

³ Matt Griffin was in the van with the victim and the Defendant just prior to the alleged assault. Matt was not called to testify during the trial. (R. 123/130).

CONCLUSION

The trial court abused its discretion when it allowed the State to introduce evidence of Defendant's prior felony convictions and prior sentence. This evidence was improper under Rules 404 and 609 of the Utah Rules of Evidence. Furthermore, the evidence was extremely prejudicial to the Defendant and there's a reasonable likelihood that the Defendant would have received a more favorable outcome but for the prejudicial evidence. For these reasons, the Defendant respectfully requests this Court to reverse his conviction and remand the matter back to the District Court for a new trial.

DATED this 2nd day of February, 2006.



DEE W. SMITH
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to Mark Shurtleff, Utah Attorney General, Attorney for the Plaintiff, 160 East 300 South, 6th Floor PO Box 140854 SLC, Utah 84114-0180, postage prepaid this ___ day of February, 2006.



DEE W. SMITH
Attorney at Law

ADDENDUM A

SECOND DISTRICT COURT - OGDEN COURT
WEBER COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	APP SENTENCING
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 051900197 MO
	:	
JASON PAUL MEYER,	:	Judge: MICHAEL D. LYON
Defendant.	:	Date: May 12, 2005

PRESENT
Clerk: shannone
Prosecutor: MILES, BRANDEN B
Defendant
Defendant pro se

DEFENDANT INFORMATION
Date of birth: October 10, 1979
Video
Tape Number: L051205 Tape Count: 3:57

CHARGES

1. SIMPLE ASSAULT - Class A Misdemeanor
Plea: Guilty - Disposition: 04/04/2005 Guilty

HEARING

This is time set for sentencing. The defendant is present in custody and is acting pro se.

The Court has received a letter from the defendant dated 4/26/05 requesting that his conviction be arrested.

The defendant addresses the Court. The defendant informs the Court that he was using methamphetamine when he waived counsel and that he was not thinking clearly.

The defendant states that he never received the discovery that he requested from the County Attorney's Office and was therefore not prepared for his trial.

The Court found no evidence that the defendant was not competent at the time the defendant waived his right to counsel. The defendant answered all the inquiries of the Court.

Case No: 051900197
Date: May 12, 2005

Further, the Court urged the defendant to obtain counsel.

The Court denies the defendant's request to arrest the conviction and finds no good cause. The Court further finds that the defendant knowingly and voluntarily waived his right to counsel.

The Court finds that the defendant's assertion that the discovery was not received as requested is not truthful.

The defendant made the same assertion during the pre-trial conference. Mr. Miles was present and informed the defendant that the documents were waiting for him at the County Attorney's Office.

Mr. Miles addresses the Court and confirms the Court's findings.

The defendant responds.

The Court finds that the defendant's assertion that he was disabled and unprepared for trial is not candid.

The defendant has also submitted a written request to the Court to appoint counsel to file an appeal.

Court grants request and appoints the public defender to represent the defendant on his appeal. The public defender's office shall file an appeal.

The Court will continue this matter for one week to allow the public defender to stand with the defendant at the time of sentencing.

The defendant requests to proceed today and waives counsel.

The Court urges the defendant to allow the public defender to represent him. The defendant waives his right to counsel.

The defendant has reviewed the pre-sentence investigation report.

The defendant addresses the Court. The defendant agrees to pay full restitution to the victim.

The State informs the Court that the amount of medical bills for the victim exceeds \$25,000.

The Court will allow restitution to remain open for 30 days. Review of restitution is set for 6/9/05 at 2:00 p.m.

The Court proceeds with sentencing.

The Court finds that the defendant has an extensive juvenile and adult criminal record, has been previously committed to the Utah State Prison, and has previously absconded probation.

Case No: 051900197
Date: May 12, 2005

SENTENCE JAIL

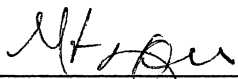
Based on the defendant's conviction of SIMPLE ASSAULT a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)

Credit is granted for time served.

SENTENCE JAIL SERVICE NOTE

The Court will not authorize statutory good time.

Dated this 23 day of May, 2005.



MICHAEL D. LYON
District Court Judge

ADDENDUM B

1 A What's that?

2 Q Did you ever make a purchase from him where
3 essentially you may have owed him money for this purchase?

4 A Yeah.

5 Q Prior to December 26th? Describe that for us.

6 A It was probably a week and a half, two weeks before
7 then.

8 Q Sir, you're gonna need to speak up -

9 A Probably a week and a half, two weeks before then -

10 Q Okay.

11 A - went out there and fronted some meth money.

12 Q Fronted some meth, is that what you said?

13 A Uh-huh (affirmative).

14 Q Can you describe what that means to the jury?

15 A Just give it to me and I had to pay him back for
16 it.

17 Q You agreed to pay him later for that?

18 A Yeah.

19 Q And how much did you agree to pay him later?

20 A I thought it was a hundred dollars. But everybody
21 was telling me two hundred.

22 Q Moving you to December 26th of 2004, where did you
23 first see the defendant? Where did you first meet up with
24 him?

25 A In Roy.

1 Q Okay. How did he get there? How did he arrive?
2 A In a minivan.
3 Q Who was with him?
4 A Another friend, Matt.
5 Q Matt, what's the last name?
6 A Griffin.
7 Q Okay. Where was Mr. Griffin seated?
8 A In the back seat with me.
9 Q Who was driving?
10 A Jason.
11 Q The defendant?
12 A Yeah.
13 Q Do you recall whether there was anybody else in the
14 vehicle?
15 A I don't recall. But I guess there was.
16 Q What happened when they arrived? Where was it in
17 Roy?
18 A I remember, Common Sense from what I remember, but
19 it could have been Common Sense or the Silverado Café.
20 Q They came and picked you up there?
21 A Yeah.
22 Q How were arrangements made to come get you? Did
23 somebody call you or -
24 A No, I called Matt and was gonna go talk to him for
25 a minute and then go to my mom's and they came in that van.

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 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 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 A I was sent there on a suspicious incident that came
2 in. The medical staff had called dispatch and requested an
3 officer to respond.

4 Q Do you recall about what time it was?

5 A It would have been at 23:10 is when the call came
6 in. I arrived at 23:14.

7 Q About 11:10 in the evening?

8 A Yes, sir.

9 Q Okay. What did you learn upon arriving at the
10 hospital?

11 A I learned that a patient by the name of Travis
12 Haven had been brought in with some injuries and in talking,
13 the medical staff and also myself had been advised that he'd
14 crashed on a bicycle. But the injuries and that sustained or
15 didn't represent an accident from a bicycle.

16 Q Okay. Tell me about the injuries that he had
17 sustained at that point in time.

18 A Travis had some lacerations to his lip where it
19 appeared that he had been, something had hit him. The teeth
20 had actually pierced through the skin causing him to open up
21 his lip. He also had a large bruising or swelling on the
22 back of his head.

23 Q Did you call crime scene investigation to come
24 photograph the victim?

25 A I did.

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 Q Did he indicate he understood those?

2 A Yes.

3 Q Okay, and he agreed to talk with you still?

4 A Yes, he did.

5 Q Okay. What happened during this interview? What
6 did the defendant say?

7 A Well, I'm going to paraphrase here and I'm going to
8 refer to this statement here. Basically he told me that he
9 was at the Riverview Apartments on December 26th between
10 about eight and 8:30 p.m. when this occurred. He said he
11 went there to pick up Travis, which was referring to Travis
12 Haven. I asked him how he knew Travis Haven and he told me
13 he used to be one of his Sac brothers and I asked him why he
14 wanted to meet up with Travis that night. He says 'cuz he,
15 referring to Travis, owed him \$200 for stereo equipment and I
16 asked him to tell me about the arrangements that he had about
17 the stereo equipment and I quote "He said about three weeks
18 ago I told Travis that I had some stereo equipment for sale.
19 Travis said he wanted it and I told him to take it and pay
20 me. Travis said he would pay me the next day." I followed
21 up did he ever pay you and he says no he didn't and I asked
22 him is this why you wanted to meet up with him Sunday night
23 and he said yes.

24 Q Sunday night being the 26th?

25 A Yes, the night of the incident. And I asked him I

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 Q Okay, did you photograph those?

2 A I did.

3 MR. MILES: Permission to approach the witness?

4 THE COURT: You may.

5 Q (BY MR. MILES) Would you identify what's depicted
6 in photograph that's State's Exhibit 1?

7 A Okay. This is a photograph that I took of Jason
8 Meyers' left hand. This shows the redness of the area right
9 here and has a little mark that Mr. Meyers said that was a
10 result of hitting Travis.

11 Q I'm showing you what's been marked as State's
12 Exhibit 2, a photograph also.

13 A This would be the, the palm area, the same left
14 hand of Jason Meyers. This is a mark right there in the
15 middle finger, right before the first indentation, which he
16 said was as a result of when he struck Travis Haven.

17 Q Are these fair and accurate photographs of the
18 defendant's hand on day you took them?

19 A Yes sir, they are.

20 MR. MILES: Okay, Your Honor, State moves Exhibit 1
21 and 2 into evidence.

22 THE COURT: Any objections?

23 MR. MEYER: No, Your Honor.

24 THE COURT: They're received. You may publish these
25 to the jury.

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, I hit him with my fist, is that right?
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 Yeah.
12 Q Did he swing at you?
13 A I wasn't really paying attention. I was more
14 worried about him starting coming back at me, so -
15 Q But it was your intent when you raised your fist
16 and swung it to hit him, is that 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 Did he 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 because 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.