

Case No. 20170851-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

KAIN BLACKWING,
Defendant/Appellant.

Brief of Appellee

Appeal from convictions for one count of first-degree felony forcible sodomy, four counts of second-degree felony forcible sexual abuse, and seven counts of third-degree felony rape, in the Third Judicial District, Salt Lake County, the Honorable Bruce Lubeck presiding

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- Utah Code Ann. § 76-1-201 (LexisNexis 2017) (jurisdiction of offenses)
- Utah Code Ann. § 76-5-402 (LexisNexis 2013) (rape)
- Utah Code Ann. § 76-5-406 (LexisNexis 2013) (sexual offenses against victim without consent)
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INTRODUCTION

Seventeen-year-old Victim met forty-four-year-old Kain Blackwing when her boyfriend joined Blackwing's martial arts program. Over the next several months, Blackwing isolated Victim and preyed on her emotions, first as a martial arts instructor and later as a confidante, a protector, a father figure, a landlord, a lover, and a jailer.

Victim began training with Blackwing to impress her boyfriend, but found that she liked it. Training generally occurred at Blackwing's home and, over several weeks, Victim increased the time she spent both training and talking with Blackwing. He portrayed himself as someone with power who could help her with her problems. He listened, offered her advice, gave her

care and comfort, and showered her with praise and compliments. Victim felt protected when Blackwing temporarily banished her boyfriend from training after he physically abused her. She spent increasing amounts of time at his house and viewed him as a father figure. Over time, she was texting, talking, or visiting him daily and spending hours at a time at his home at least five days a week.

By the time Blackwing suggested that she move into his house, he had her believing that he was immortal, he could help her become immortal, he had been an assassin, and he had special abilities that could benefit her. He sealed the deal by convincing her that he and the two women with whom he lived all loved her. He met with Victim's parents and portrayed himself as Victim's potential landlord, explaining that he planned to collect rent, impose a curfew, and ensure Victim went to school. They approved the move.

Victim moved in two days later, bringing only things Blackwing approved. He gave her a bedroom "just for show" and began a sexual relationship with her the night she moved in. He taught her how to satisfy him sexually and introduced her to group sex. He taught her how to do everything in the manner he preferred, and he punished her when she disappointed him. He isolated her from her family and friends and banned her from using social media. When representatives of the Division of Child

and Family Services arrived to check on Victim a month before her eighteenth birthday, Blackwing had two responses: (1) he threatened and intimidated Victim to the point that she lied and told them that the two were not sexually involved; and (2) he ceased having intercourse with Victim in Utah until her eighteenth birthday. Instead, he took her to Texas for the last ten days of the month and had intercourse with her there.

Police arrested Blackwing in July for matters unrelated to Victim and arrested Victim the following September for conduct related to Blackwing's arrest. Once away from Blackwing, Victim confided everything to police and her parents. Consequently, the State charged Blackwing with seven counts of rape, three counts of forcible sexual abuse, and one count of forcible sodomy. A jury convicted him as charged.

Blackwing challenges all eleven of his convictions. Having not preserved a sufficiency challenge, he argues that the State failed to establish the district court's criminal jurisdiction over three of the rape charges because there was no evidence that those acts of intercourse occurred in Utah during the relevant time period. He further argues that his counsel was ineffective for not moving for a directed verdict or to arrest judgment because of that same lack of evidence. Both claims fail because the evidence and the

reasonable inferences therefrom, taken in context, shows that those three separate acts of intercourse timely occurred within Utah.

Blackwing also challenges the trial court's denial of the new trial motion he timely filed within days of sentencing. But this Court lacks jurisdiction to reach his argument. Blackwing timely filed a new trial motion. But before the trial court ruled on that motion, he also filed a timely notice of appeal from his convictions and sentences which started this appeal. Seven months later, he obtained a remand from this Court to get a ruling on his new trial motion. The trial court denied the motion six months later and returned the case to this Court. But Blackwing neither amended his notice of appeal nor filed a new one after entry of the ruling on his new-trial motion, as required by Utah Rule of Appellate Procedure 4(b)(2). Blackwing therefore has appealed only from his convictions and sentences. Accordingly, this Court lacks jurisdiction over his challenge to the denial of his new-trial motion.

STATEMENT OF THE ISSUES

Issue 1A. Utah has jurisdiction to prosecute any person who commits an offense "either wholly or partly within the state." Blackwing narrowly focuses on the victim's descriptions of individual acts of intercourse and interprets her testimony as establishing two, not three, acts of rape between

April 1 and May 13. One of those acts, he claims, occurred during the Texas trip while the other was not tied to any location. Thus, he argues, the State did not establish the district court's jurisdiction over any of the three rape counts he now challenges.

Does Blackwing's incomplete recitation of the evidence demonstrate that the trial court lacked jurisdiction over three of his seven rape convictions?

Standard of Review. Whether the trial court had jurisdiction over the charges presents a question of law which is reviewed for correctness. *State v. Holm*, 2006 UT 31, ¶10, 137 P.3d 726; *State v. Mills*, 2012 UT App 367, ¶13, 293 P.3d 1129.

Issue 1B. Blackwing's trial counsel unsuccessfully moved for a directed verdict on all the rape charges, arguing a lack of proof of nonconsent. For the three rape counts he now challenges on appeal, his counsel did not also seek a directed verdict or an arrest of judgment based on an alleged lack of evidence that he and the victim had intercourse in Utah three times in April.

Has Blackwing proven that trial counsel was constitutionally ineffective for not moving for a directed verdict or an arrest of judgment on the same three rape charges based on insufficiency of the evidence to

establish that he and the victim had intercourse in Utah three times in April?

Standard of Review. “When a criminal defendant raises a claim of ineffective assistance of counsel for the first time on appeal, there is no trial court ruling to examine” and this Court must “decide, as a matter of law, whether [the defendant] received constitutionally ineffective assistance of counsel.” *State v. Baer*, 2019 UT App 15, ¶4, 438 P.3d 979 (citation and quotation marks omitted).

Issue 2. Does this Court have jurisdiction to address Blackwing’s appellate challenge to the denial of his new-trial motion where the ruling was entered 13 months after the notice of appeal, and Blackwing did not thereafter timely file a new or amended notice of appeal?

Standard of Review. No standard of review applies to this issue.

STATEMENT OF THE CASE

A. Summary of relevant facts.

In the fall of 2013, seventeen-year-old Victim had a lot going for her. She had a family and friends, dated, and was progressing in school. R1087-88, 1178, 1254. She attended Itineris Early College High School and took high school and college-level classes that would allow her to graduate at the end of the school year with a high school diploma and an associate’s degree.

R1088, 1194, 1259-61. She was a registered phlebotomist and a certified nursing assistant, and she worked with her mother [Mom] at a medical clinic. R1088-89, 1193-94, 1261. She had a boyfriend, lived at home in West Jordan, read books about vampires, and was interested in immortality. R1114-15.

She also had challenges. She had recently lost two grandparents, and she had a strained relationship with both of her parents. R1117, 1189, 1259, 1269-70, 1301-02. Her parents repeatedly separated, and her father was often absent. R1269-70. Her mother constantly defended Victim's mentally-disabled older brother [Brother], even when he abused Victim. R1123, 1266, 1302. Although her father kicked Brother out when he eventually witnessed the abuse, her mother allowed Brother to return periodically. R1117, 1123, 1266, 1302. Whenever he returned, Victim temporarily stayed with other people. R1117, 1122-23, 1187-89, 1266-67, 1302.

Victim's boyfriend was interested in martial arts and began training that fall with Defendant, Kain Blackwing, at the suggestion of Blackwing's wife Raven, who worked with the boyfriend at McDonald's. R1087, 1089-90, 1178, 1254, 1256, 1263. A few weeks later, Victim accompanied her boyfriend to Blackwing's West Jordan home where she met Blackwing for the first time. R1090-92, 1256. She started training with Blackwing in October to impress her boyfriend. R1093, 1110, 1178, 1195, 1256. But by the end of

October, what had started as a couple of hours of training one or two times a week with her boyfriend, became increasingly personal training without her boyfriend. R1098-99, 1262-63. Training largely occurred at Blackwing's home, and he added hikes and individual and survival training to her training regimen and started doing one-on-one trust exercises to increase her reliance on him. R1096-1100, 1105, 1195. He frequently complimented her looks, her intelligence, and her physical ability during their individual sessions, making her feel like she was important to him. R1103-04.

The two also talked a lot. R1096, 1098-1100. Victim told Blackwing about herself, including her goals and interests, her religion, and her problems. Blackwing listened and offered comfort and advice. R1096-97. He also told her about the Shen Wei philosophy by which he lived. R1096, 1099, 1102. He claimed to be a Shen lord, to have more power or authority than other Shen, and to be able to read people, energies, and emotions. R1102-03. She found his revelations interesting and began to feel more trusting and comfortable toward him as he opened up to her. R1096-98, 1103.

Victim's training grew to include survival and fighting instruction. R1099-1100. As November waned, she increased her training visits to two or three times a week for two or three hours each time. R1105-07. She generally

trained alone with Blackwing, and he supplemented their training with survival shows like “Naked and Afraid[.]” R1105-06, 1274.

Around this time, Victim and her boyfriend fought and he choked her, leaving visible bruising on her throat. R1107, 1281-83. Blackwing temporarily suspended the boyfriend from training, making Victim feel protected and prompting her to further increase her overall contact with Blackwing. R1107-11. She started talking or texting him almost every day and began spending three hours a day at least five times a week at his house. R1108-10.

Through December, they spent less time on training and fitness and more time talking. R1109-12, 1127. She told him about the loved ones who had recently died and about her abusive brother. R1117. He told her that he was immortal. R1112-13. In their on-going discussions of the Shen philosophy and his belief that Shen were “better than everyone else,” Blackwing revealed not only that a Shen lord was allowed multiple women at any given time while maintaining full authority in the household, but contended that he had been alive since biblical times. R1111-13, 1115-19, 1121, 1298. He claimed that he could travel between worlds and could, therefore, tell her whether her recently passed loved ones were safe and happy. R1117-18. He could also help her “get revenge” on her abusive brother. *Id.* And he claimed that he

could make her immortal if she completed her training with him and passed various tests. R1113-16.

Victim found Blackwing's revelations consistent with her readings about vampires and immortality, believed what he said, and spent most of December discussing his beliefs with him. R1113-15, 1118. She felt important because he confided in her. R1115. During those discussions, Blackwing worked to undermine Victim's LDS beliefs specifically and religious beliefs in general, giving her books to reinforce his view. R1113, 1116-17, 1284-85. He also described the Shen belief in the death penalty for those who betrayed Shen practitioners. R1121. He stressed his own past as an assassin, claimed that he had killed many people, and offered documentary proof that he had tried to kill his ex-wife. R1120-22. As with the rest of his disclosures, Victim believed him and realized that he would kill her if he believed she betrayed him. R1122.

At the same time, he continued to shower her with compliments and promise that she would be powerful someday. R1119. And by the end of December, Victim felt "super safe" around Blackwing and viewed him and the two women with whom he lived, Raven and Theresa, as her "best friends in the whole world." R1118-19. She was "astonished" that someone like him

would spend time with her and, like the other women, she finally began to call him by his preferred title: "My Lord." R1104, 1120-21, 1156, 1314, 1323.

By January, Victim viewed Blackwing as a father figure and looked forward to seeing him on a daily basis. R1125, 1269. She visited his home with increasing frequency but trained less, preferring just to spend time with him. R1125-28. She noticed that he ruled the household and that his "wives" asked him for permission to do things. R1112-16, 1120-21. When he suggested that it would be "better" that she not date anyone, she didn't. R1126-27. When the condition of one of her young patients deteriorated, she got comfort from Blackwing. R1286, 1319-20. And she continued to enjoy his compliments about her body, her progress, and her potential. R1119, 1128. Their interaction made her comfortable with Blackwing and feel like she could tell him anything. R1304.

Near February, Victim learned that her brother would be coming home for a while and decided to move out temporarily. 1122-25, 1266. Blackwing volunteered his spare room and proposed that she pay rent and train every day so she could progress faster. R1124-26. Though pleased, Victim felt a bit pressured when both Blackwing and Raven repeatedly told her "how awesome" it would be if she moved in. R1124-26.

Victim did not commit immediately but continued to visit and again increased her texts and calls to Blackwing while he continued to add more pressure. R1126-30. He and his wives took Victim to a nice dinner on Valentine's Day and gave her presents, making the isolated teen feel more special. R1127-28, 1130-32. When Victim later had her wisdom teeth removed, she convalesced at Blackwing's house where he cared for her in such a way that she developed a crush on him. R1132-34.

And in early March, Blackwing kissed Victim and professed his love and that of the other women. R1132-34, 1304-05. He showered her with compliments, told her how excited he was to be with her, and explained how she would become his new wife and how the four of them would become a powerful group. R1134, 1293. Victim was conflicted, knowing it was wrong, but feeling "really special" that he liked her. R1133, 1306.

That was the push she needed to approach her parents about Blackwing's suggestion of moving in with him. They had Blackwing to dinner where they met him for the first time and listened while he explained that Victim could "take all of her stuff[,] and would pay rent, have a curfew, and go to school. R1134-35, 1181-82, 1189-90, 1266. Victim's parents granted permission for the temporary move, emphasizing that she could come home at any time. R1181-84, 1191.

Blackwing's influence over Victim was readily apparent when he helped her move two days later. R1136-37, 1181. They arrived at Victim's house while her parents were at work, and he monitored her packing, letting her pack only the darker-colored clothes because his colors were black and grey, taking only a fraction of her belongings, and leaving things behind that Mom knew Victim liked. R1137, 1182, 1272. Unsurprisingly, Mom rarely saw or spoke with Victim after that. R1192, 1279. One of Victim's friends later contacted Mom to tell her that Victim was no longer on social media, which Mom then verified. R1184. And Mom discovered that Victim had disconnected her phone, curtailing Mom's ability to text or call her. *Id.* Victim only called to get her passport after she turned 18 in May. R1183-84. Mom refused to relinquish it. *Id.*

Victim did not pay rent when she moved into Blackwing's home but was subjected to his authority. R1113, 1120-21, 1279, 1304. And he took control of her life immediately. She quickly discovered that the women who lived in his home were required to serve him and that she was required to do things his way or be punished. R1298, 1325. He taught her how he wanted her to walk, talk, and dress, how to apologize, and how to please him sexually. R1142-46. He required that she write sexually explicit letters to him. R1307-11, 1315. He punished her when she made mistakes, and he required

that she ask his permission for everything. R1161-62, 1323, 1325. He cut off her exposure to people outside the household, encouraged her to shun her mother, ended her social media use except on his demand, and eliminated her iPhone and her parents' phone service, replacing it with a flip phone with purchased minutes which he periodically checked. R1154-55, 1279, 1289-91, 1294, 1296, 1319. He also eliminated her use of deodorant and sunscreen. R1161. When he was gone, Raven and Theresa took charge of Victim. R1324-25. Her training continued but now included how to kill people, how to hide, and how to live the Shen lifestyle. R1156, 1323-24.

Blackwing began a sexual relationship with Victim immediately. She moved in on March 9, and Blackwing surprised her by setting a foam pad on the floor of his office, creating a "bedroom" that was largely for show when others visited. R1136-40, 1272, 1305. Victim discovered she would be staying in Blackwing's room. R1139, 1305. Blackwing banned Raven and Theresa from his bedroom that night so that he could sleep with Victim and proceeded to enjoy intercourse and other sexual activity with her twice that night and again the following day. R1139-42. But Blackwing banned her to her own room the second night for some transgression and slept with Raven and Theresa instead. R1142.

Blackwing left for a trip within a few days and celebrated his return on St. Patrick's Day with drinks and his favorite activity: sex. R1146-48, 1300. This was Victim's introduction to group sex, and it was repeated when the four celebrated his birthday later that same month at a hotel in Salt Lake City. R1147-49, 1173-77. Both celebrations included intercourse and other sexual contact between Blackwing and Victim. R1147-49, 1152-53.

Sexual intercourse between Blackwing and Victim continued into the first part of April and lasted until the Division of Child and Family Services [DCFS] checked on Victim.¹ R1156-57, 1276. Officers visited Blackwing's home, causing him to call Victim to warn her that DCFS would be interviewing her. R1157. He told her what to say to them and warned her about what would happen if she betrayed him. R1157-58. She was "terrified" of him and believed that telling the truth would get her or her family killed. R1157-58, 1277, 1316-17. So she lied when asked if the two were sexually involved. R1157-58, 1277-78.

Victim stayed with Blackwing, but the "scare" prompted him to temporarily stop their sexual contact while in Utah until she turned 18.

¹ Witnesses and counsel at trial used the terms "Child Protective Services" and "Division of Child and Family Services" interchangeably. The State uses the latter term herein.

R1164-65, 1319. Instead, he took her to Texas during the last 10 days of April, where the two again had intercourse.² R1158-62, 1300; State's Exh. 11(c). Victim basked in being alone with Blackwing during the trip, and they talked at length about his dream of moving the group to Belize. R1159-61. But she also endured his irrational rage when, in the middle of the night, he woke her up, yelled at her, called her stupid, threatened to cut her up and leave her in the desert, and threatened her family. R1161-62. She used sex to calm him but was required to do "restitution" upon returning home.³ *Id.*

They resumed intercourse in Utah after the victim's eighteenth birthday in May. R1164-65, 1319. Police arrested Blackwing in July for conduct involving another teen, and he exchanged letters and phone calls with Victim during his incarceration. R1165-70, 1492, 1494. Police arrested Victim and Raven in mid-September for a felony at the other teen's home. R1171-72, 1496. Removed from Blackwing's sphere of influence, Victim voluntarily told officers and her parents of her experiences with him. R1171-72, 1320-21, 1324, 1327-28. She then reached an agreement under which she pled guilty to the felony charge, spent time in jail and received probation in

² The judge instructed the jury during Victim's testimony that the Texas incident was not one of the charged counts. R1165-66.

³ "Restitution" would include performing a sexual act or taking Blackwing on a date. R1162.

exchange for which she agreed to testify truthfully against Blackwing, Raven, and Theresa.⁴ R1171-72, 1287-89.

B. Summary of proceedings and disposition of the court.

The State charged Blackwing with seven counts of first-degree rape, one count of first-degree forcible sodomy, and three counts of second-degree forcible sexual abuse. R516-18 (in Add. C). The nonconsent element was based on proof that Victim was between fourteen and seventeen, that Blackwing was more than three years older than her, and that he occupied a position of special trust. *See* Utah Code Ann. §76-5-406(11) (LexisNexis 2013) (in Add. A). R1408-09.

Only Victim testified concerning the charged sexual offenses, but the State adduced corroborative testimony from other witnesses. Mom explained her understanding of Victim's training with Blackwing, detailed Victim's early behavior changes and the increase in training between November and March, outlined Victim's withdrawal from the family and the increase in her defensive behavior, verified the conversation with Blackwing over dinner, described the communication changes that occurred after Victim moved away, and lamented the additional personality changes in her daughter

⁴ The felony was reduced to a misdemeanor after Victim completed probation. R1171-72, 1289, 1321.

thereafter. R1178, 1180-89, 1192, 1198. A hotel clerk verified the foursome's stay at the Salt Lake City hotel Victim identified. R1173-77. Blackwing's son, Orion, and his fiancé testified that they lived with Blackwing before and after Victim began staying overnight, they both went to high school with the victim, and Orion interrupted what sounded like active sex in Victim's bedroom. R1202, 1204, 1207-11, 1213-17. Orion also verified the marital-like relationship between Blackwing and the other two women, Blackwing's long-term involvement in the Shen lifestyle, his preferred title, his position as a martial arts instructor, the progression of Victim's training from the early days with her boyfriend to the individual sessions, and the fact Victim did not always sleep in her own bedroom. R1202-09. Victim's bank records verified the Texas trip. State's Exh. 11(c). And Blackwing's letters to the victim and the phone calls between the two corroborated the nature of their relationship and the level of authority he developed over her during their time together.⁵ R1165-70, 1307-11. They showed that he directed her movements, that she asked permission of him for things like a drink or going to a job interview, and that he provided positive verbal and emotional

⁵ The CD of phone calls contained in the appellate record at State's Exhibit 7 is empty. The State relies on the descriptions of the exhibit's contents contained in the closing arguments.

reinforcement in terms appealing to a young female. R1307-11, 1411-12; State's Exh. 8-10.

The defense presented no evidence and argued that the State did not establish any relationship of special trust. R1413-20. Following a two-day trial, the jury convicted Blackwing as charged. R845-53. The judge ordered the recently-prepared presentence investigation report to be supplemented, then used the document in sentencing Blackwing to the statutory terms of five-years-to-life for each of the eight first-degree-felony convictions and one-to-fifteen years for each of the three second-degree-felony-forcible-sexual-abuse convictions. R866-68, 1433-34, 1458-74. The judge then ran seven of the first-degree felony counts concurrently to the three second-degree-felony counts, ran the eighth first-degree-felony count consecutive to those counts, and ran all counts in this case consecutive to Blackwing's previously imposed sentences in another case. R867-68.

Blackwing timely filed a new-trial motion fourteen days later and a notice of appeal from his judgment and conviction thirteen days after that. R872-74, 877-82. The Utah Supreme Court transferred the appeal to this Court where it proceeded until May 2018, when Blackwing sought and received a remand to obtain a ruling on his new-trial motion. R1548. The district court heard argument and thereafter denied the motion on November 19, 2018.

R2080-84, 2101-13. Blackwing filed no second or amended notice of appeal. Appellate Record Index (in Add. B).

SUMMARY OF ARGUMENT

Issue I. Blackwing argues that this Court should vacate three of his seven rape convictions because the State failed to establish that the district court had criminal jurisdiction over those offenses. He maintains that the State produced no evidence that he committed any of those three offenses in Utah. Instead, he argues, the evidence supported no more than two of the contested rape charges, showed that one of those occurred in Texas, and failed to tie the other to Utah. Consequently, he claims, the trial court lacked criminal jurisdiction over all three counts, and he is entitled to have those convictions vacated.

But viewed in context, the evidence reveals that at least three acts of intercourse occurred in Utah within the relevant timeframe, establishing the trial court's criminal jurisdiction over those charges. Victim testified that: she discovered that Blackwing's favorite pastime was sex, he instructed her in sexual matters, she was a brand new sexual conquest, intercourse began the night she moved in, they had intercourse at least four times around Blackwing's travels in March, intercourse continued into April until the DCFS visit, Blackwing did not stop having intercourse with Victim thereafter

but took her out of state to do so, and they had intercourse “[m]ore than one time” during the period charged in all three challenged counts. All intercourse occurring before the Texas trip occurred in Utah, as shown by evidence that Blackwing isolated Victim from friends, family, and social media after she moved into his home, insisted that she ask him for permission for everything, imposed numerous other restrictions on her time and conduct, and reigned with an iron fist over the women in his household. Victim could not have left the State without Blackwing’s permission, there was no evidence that she sought or received such permission, and her bank records showed no trip outside the state in April until the couple went to Texas. Taken in its entirety, the evidence and its reasonable inferences established that all acts of intercourse between the two during the charged period occurred within Utah, giving the district court criminal jurisdiction over the challenged rapes.

Second, Blackwing argues that his counsel was ineffective for not moving for a directed verdict or for an arrest of judgment on the same three challenged rape charges. He maintains that the State’s failure to adduce proof of criminal jurisdiction left no evidence to support a conviction on any of the three charges. As a result, he claims, either motion would have been granted, rendering counsel’s inaction both deficient and prejudicial.

But counsel is not necessarily ineffective simply because a foregone motion might have been granted. In any event, the evidence and reasonable inferences that established the district court's criminal jurisdiction over the three charges would permit a reasonable jury to find the challenged elements of the three rapes, allowing counsel to reasonably conclude that the motions would have been denied. Consequently, Blackwing's ineffectiveness claim fails.

Issue II. Blackwing also challenges the trial court's rejection of an issue raised in his motion for new trial. However, this Court lacks jurisdiction to consider his argument because he filed a notice of appeal only from his convictions and sentences. He filed that notice of appeal before the trial court even considered his new-trial motion. After the trial court denied that motion, Blackwing failed to file a new or amended notice of appeal as required by the appellate rules.

ARGUMENT

I.

The evidence established the district court's jurisdiction over the three challenged rape charges and permitted reasonable counsel to forego a motion for directed verdict or to arrest judgment.

Blackwing urges this Court to vacate three of his seven rape convictions due to a lack of evidence that they occurred in Utah. Aplt.Br. 13-

25. Because he did not challenge the sufficiency of the evidence to support the convictions below, he makes two alternative arguments. First, he argues that the district court lacked criminal jurisdiction over the three rape charges because there was no evidence, or insufficient evidence, that any of them occurred in Utah. *Id.* at 11, 20-22. Second, he claims that the same lack of evidence establishes his counsel's ineffective assistance for not moving for a directed verdict or seeking to arrest judgment on the three charges. *Id.* at 22-25.

On the contrary, not only did the evidence and its reasonable inferences establish the trial court's criminal jurisdiction over the three charges, Blackwing does not show that, given that evidence, no reasonable counsel would have foregone a motion for a directed verdict or an arrest of judgment. This defeats both of his claims.⁶

A. Relevant proceedings below.

Pursuant to section 76-5-402, counts 5, 6, and 7 in the Second Amended Information charged that "on or about April 1, 2014, through May 13, 2014,

⁶ Blackwing did not challenge the district court's jurisdiction below as seemingly required under Utah Code section 76-1-201(5)(b). But as explained in *State v. Holm*, "a trial court or an appellate court may dismiss a criminal charge for lack of criminal jurisdiction at any time, regardless of whether the defendant raised the issue before or during trial," because "[c]riminal jurisdiction is a form of subject matter jurisdiction." 2006 UT 31, ¶96, 137 P.3d 726 (issue would not be waived even if Holm had failed to raise it below).

in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent." R516-18.

On direct examination, the prosecutor walked Victim through a chronology of the charged rapes, giving the jury a snapshot of the regularity with which she and Blackwing had intercourse. The chronology began on March 9 when Victim moved into Blackwing's West Jordan house. She described two incidents of intercourse the first night and another the following day. R1139-42. She did not sleep with him the second night because he got mad and banished her to her own room. R1141-42. He then left the state, returning a week later on St. Patrick's Day when all three of his wives welcomed him home with drinks and sex, including intercourse with Victim. R1146-48, 1300. And on March 31, all three women helped Blackwing celebrate his birthday with a memorable evening out and a night of his favorite pastime—sex—at the Crystal Inn Hotel in Salt Lake City, again including intercourse between Victim and Blackwing. R1147-53.

The chronological progress stopped momentarily while the questioning established some of the restrictions Blackwing imposed on the victim after she moved into his home, then proceeded to intercourse in April. R1154-56.

[Prosecutor]: Now, did you have any sexual intercourse with Kain in the month of April of 2014?

A: Yes.

Q. One time, or more than one time?

A. More than one time.

R1156-57. The prosecutor proceeded sequentially to the mid-April visit from DCFS, then to Victim's post-DCFS trip to Texas with Blackwing during which they again had intercourse. R1157-62, 1300. Finally, Victim clarified that Blackwing "didn't have sex with [her] as much" after the "DCFS scare" and specified that their only intercourse between the DCFS scare and her 18th birthday in mid-May was during the Texas trip. R1164-65, 1319.

B. The trial court had criminal jurisdiction over all three challenged rape charges.

Blackwing contends that the district court lacked criminal jurisdiction over counts 5, 6, and 7, charging rapes between April 1 and ay 13, 2014, because the evidence did not establish that any of those three rapes occurred in Utah. Aplt.Br. 15-22. Specifically, he argues that the above evidence showed that, at most, two instances of intercourse occurred during the period charged for each count, that one of the two occurred in Texas, and that the other was not tied to Utah. *Id.* at 20-22. Thus, according to Blackwing, no evidence established that two of the three convictions occurred in Utah, and the location of the third rested on nothing but speculation. *Id.* Absent evidence connecting the three rapes to Utah, he argues, this Court should

vacate those convictions for lack of jurisdiction and dismiss the charges. *Id.* at 21-22. A review of the evidence, however, does not support his claim.

Criminal jurisdiction is governed by Utah Code section 76-1-201, which provides, “[a] person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if ... the offense is committed either wholly or partly within the state.” Utah Code Ann. § 76-1-201(1)(a) (LexisNexis 2017) (in Add. A). Because a preponderance of the evidence standard applies, the State need prove only that it was more likely than not that Blackwing engaged in at least three instances of sexual intercourse with the victim in Utah during the period charged in the three challenged counts. *See State v. Holm*, 2006 UT 31, ¶¶93, 95, 97, 137 P.3d 726; *State v. Mills*, 2012 UT App 367, ¶32, 293 P.3d 1129. *See also* Utah Code Ann. §76-5-402 (LexisNexis 2013) (rape) (in Add. A).

The three charges focus on the period between April 1 and May 13, 2014. R516-18. Blackwing highlights Victim’s assertions that they had intercourse “[m]ore than one time” in April, that they had intercourse in Texas, and that they “didn’t have intercourse” in May. Aplt.Br. 15-17. He correctly argues that this testimony establishes that the three rapes must have occurred in April. *Id.* at 18. He then claims that “logic and math” dictates that

in this case “more than one time” means “at most two” and that the victim “conclusively” put one of those two times in Texas. *Id.* at 18-19, 21. Consequently, he argues, only one count remained over which the trial court could have had jurisdiction, and there was no evidence to permit any reasonable inference whether the count occurred “in Utah, in Texas, or somewhere on the road trip between.” *Id.* at 19-20.

But Blackwing mischaracterizes Victim’s testimony by taking it out of context and interpreting it independently of the remaining evidence. Her testimony, viewed in context with other evidence reflecting on her interactions with Blackwing, demonstrates by a preponderance of the evidence that the trial court had criminal jurisdiction over all three challenged rape charges.

The evidence begins with Victim’s testimony that they had intercourse in April “[m]ore than one time.” R1156-57. Blackwing claims that the phrase is “too vague” to have any meaning but “twice, at most[.]” *Aplt.Br.* 18-19. Although that may be one meaning, the phrase and the context in which it was used below permits a different interpretation.

The phrase is not a specialized term of art, and nothing in its use by Victim suggests that it should be given any but its ordinary meaning. *See, e.g., State v. Bagnes*, 2014 UT 4, ¶13, 322 P.3d 719 (term not defined by statute

required court to “look elsewhere to derive its meaning—to either the ordinary meaning of the word, or to its technical sense as a legal term of art”) (footnote omitted); *Hi-Country Prop. Rights Grp. v. Emmer*, 2013 UT 33, ¶18, 304 P.3d 851 (term not expressly defined by statute and not appearing to be a technical term of art is given its ordinary meaning); *State v. Hendrickson*, 67 Utah 15, 245 P. 375, 378 (1926) (words and phrases other than technical ones “must be construed according to their plain and ordinary meaning”). Here, the ordinary meaning of the phrase is what it says on its face: more than once. In other words, two or more times or multiple times. *See, e.g., State v. Brown*, 694 P.2d 587, 588, 590 (Utah 1984) (Hall, C.J., dissenting) (using the phrase “more than once” to describe an action which occurred four times); *Leger Const., Inc. v. Roberts, Inc.*, 550 P.2d 212, (Utah 1976) (citing to three cases to illustrate assertion that Court has made a particular statement “more than once”); *State v. Speed*, 2017 UT App 76, ¶¶6, 44, 397 P.3d 824 (using the phrase “more than once” to describe an action which occurred twice); *State v. MacNeill*, 2017 UT App 48, ¶19, 397 P.3d 626 (same); *State v. Jadama*, 2010 UT App 107, ¶6 & n.3, 232 P.3d 545 (same). Thus, while the testimony could imply only two occasions, it can, as Blackwing admits, also imply more than two occasions. *See* Aplt.Br. 18 (“it could mean anything”).

Context from other evidence provides further meaning to the phrase. Victim described the frequency with which she and Blackwing had intercourse as well as the fact that sex was a major component of her training and her lifestyle while at Blackwing's home. This testimony permitted the reasonable inference that the rate of their intercourse during March continued unabated into the first weeks of April. Victim lived with Blackwing in his West Jordan home as of March 9, and Blackwing considered her his newest wife. R1134, 1136, 1272, 1293. The intercourse began immediately, occurring twice on the first night and once again the next day. R1139-42. She indicated that Blackwing was gone for several of the twenty-two days she lived at his house that month, but was able to articulate at least five acts of intercourse that occurred when he was home. R1139-42, 1146-49, 1152-53, 1173-77. He did not leave town again until he took her to Texas in April, and she testified that intercourse did not decrease between them until after the DCFS visit in April. R1164-65, 1276, 1300, 1319. But unable to maintain his self-imposed ban on intercourse with Victim while she was only seventeen, Blackwing took her to Texas during the last ten days of April where the two again had intercourse. R1158-62, 1300; State's Exh. 11(c). Victim also stated that sex was Blackwing's favorite pastime, that much of her instruction from Blackwing after she moved in concerned sexual matters that included how to

please Blackwing sexually, and that her training continuing during April. R1146, 1149, 1156, 1307-11, 1315. Moreover, they had ample opportunity during April to continue their frequent intercourse inasmuch as Victim largely stayed in Blackwing's bedroom and used her own room in the office as an occasional "cover" for visitors.⁷ R1142, 1305, 1137-40.

Given this evidence, it could be readily inferred that Victim's admission that the two had intercourse "[m]ore than one time" during April meant more than twice and that those incidents occurred between April 1 and the DCFS visit later that month.

Finally, the evidence also permitted the reasonable inference that all three incidents occurred in Utah. Victim lived with Blackwing in his West Jordan home as of March 9, and all five March incidents occurred at Blackwing's West Jordan home or in a Salt Lake City hotel. R1090-91, 1136, 1139-42, 1146-49, 1152-53, 1173-77, 1272. Blackwing did not leave town between St. Patrick's Day in March and the Texas trip in April. R1300.

Once Victim moved in, Blackwing exercised a tight rein over her, supporting the inference that she too did not leave the State until he took her to Texas. He restricted her movements and outside contacts, minimized her

⁷ Even in her office room the two were heard having sex before Victim turned eighteen. R1209; 1217, 1318-19.

contact with her mother, exchanged her iPhone for a monitored flip phone, required that she deactivate her social media, and even banned her use of deodorant and sunscreen. R1144, 1154-55, 1161, 1291, 1279, 1289-90, 1294, 1296, 1318-19. He decided what she was allowed to bring when she moved in and what she could wear, spent time teaching her what he wanted her to know, and required that she ask his permission for everything. R1137, 1142-46, 1182, 1272, 1323, 1325. And when he was gone, Raven and Theresa took charge of her. R1324-25. Thus, Victim was necessarily in Utah under Blackwing's instruction and would have had to obtain his permission to leave the state. But there was no evidence that she asked for or received any permission to do so, and her bank records show no transactions outside Utah in April except during the Texas trip. *See* State's Exhibits 11(b)-(c). She was in town during Blackwing's birthday celebration between March 31 and April 1, and the subsequent DCFS incident occurred when Victim was in school in Utah. This evidence permits the reasonable inference that all sexual contact between the two in April before the DCFS visit and the Texas trip occurred in Utah.

Thus, viewed in its entirety, Victim's uncontested testimony concerning her continuing sexual relationship with Blackwing during March and April, and the evidence establishing their movements during that time,

their relationship once she moved in, and his controlling conduct toward her, together with the reasonable inferences from that evidence, establishes by a preponderance of the evidence that the trial court had criminal jurisdiction over the three challenged rape charges. *See Holm*, 2006 UT 31, ¶197. The fact that intercourse also occurred during the trip to Texas does not change that assessment as to any of the charges. *See, e.g., id.* This is especially true because the trial court instructed the jury that Blackwing was not charged with the Texas intercourse. R1165-66.

C. Reasonable counsel could conclude not to seek either a directed verdict or an arrest of judgment.

Blackwing also posits that his counsel was ineffective for not moving for a directed verdict or to arrest judgment on counts 5, 6, and 7 on the basis that the State “presented no evidence to support the verdict” on these three counts. Aplt.Br. 22-25. He argues that his counsel’s inaction was objectively deficient because either motion would have been granted for the reasons

argued in subsections IA and B in his brief—that there was insufficient evidence that the three rapes occurred in Utah.⁸ *Id.* at 23.

When reviewing a trial court’s ruling on a preserved directed verdict motion, this Court’s standard of review is “highly deferential.” *State v. Nielsen*, 2014 UT 10, ¶30, 326 P.3d 645. This Court “will uphold the trial court’s decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it,” this Court concludes “that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.” *State v. Montoya*, 2004 UT 5, ¶29, 84 P.3d 1183; *State v. Millerberg*, 2018 UT App 32, ¶12, 414 P.3d 1106, *cert. denied* 425 P.3d 802. A decision to reverse a jury verdict on a motion to arrest judgment is appropriate only when “the evidence is sufficiently inconclusive or inherently improbable such that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime for which he or

⁸ Blackwing does not challenge the nonconsent element. His claim that there was “no evidence” to support the three rape verdicts rests on his argument in subsections IA and B that there was no evidence to establish that Victim “had sex with Blackwing in Utah during April[.]” *Aplt.Br.* 20, 24. Moreover, the same evidence established the lack of consent required for all seven rape charges, his counsel unsuccessfully challenged that evidence below for all seven charges, and Blackwing does not challenge that ruling or four of the rape convictions on appeal. R1358-61, 1408-09.

she was convicted.” *State v. Wells*, 2014 UT App 13, ¶7, 318 P.3d 1251 (quotation simplified).

When a defendant’s sufficiency challenge is unpreserved and his claim on appeal is that defense counsel was ineffective for not raising the challenge below, the defendant’s burden is even greater. His burden increases because to prove ineffective assistance, the defendant “bears the heavy burden” of showing both “that counsel’s performance was deficient” and that counsel’s “deficient performance prejudiced” the outcome of his case. *State v. De la Cruz-Diaz*, 2012 UT App 179, ¶2, 282 P.3d 1041 (quotation simplified); accord *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). That is, the defendant must rebut the “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance,” *Strickland*, 466 U.S. at 689, by showing that “no competent attorney” would have proceeded as his counsel did. *Premo v. Moore*, 562 U.S. 115, 124 (2011). See also *State v. Roberts* 2019 UT App 9, ¶29, 438 P.3d 885.

A defendant’s burden in proving that defense counsel was ineffective for not raising a sufficiency challenge at trial, then, is considerable. He must initially show that the evidence, viewed “in a light most favorable to the verdict,” was “so inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt” such that the defendant

would have prevailed on a sufficiency challenge at trial had one been raised. *Nielsen*, 2014 UT 10, ¶46. And he must further show “that the insufficiency was so obvious and fundamental,” *State v. Holgate*, 2000 UT 74, ¶17, 10 P.3d 346, that “no competent counsel would have” forgone the challenge. *Chandler v. United States*, 218 F.3d 1305, 1315-16 & nn.16-17 (11th Cir. 2000) (quotation simplified); see also *State v. Johnson*, 2015 UT App 312, ¶¶10,15, 265 P.3d 730 (setting forth plain error standard applicable to sufficiency of the evidence claims and stating that “[o]ur analysis under the rubric of ineffective assistance of counsel is similar”).

Blackwing has not met his burden here. He argues that it was not objectively reasonable for his counsel to remain silent and allow him to be convicted of all three rapes without evidence to support “the conclusion that [Victim] had sex with Blackwing in Utah during April[.]” *Aplt.Br.* 20, 23-24. But as explained above, the State adduced sufficient evidence of three incidents of intercourse in Utah during April to establish by a preponderance of the evidence that the district court had jurisdiction over those counts. See Subpoint IB, *supra*. That same evidence and its reasonable inferences, viewed in a light most favorable to the jury’s verdict, represents “some evidence from which a reasonable jury could find” the challenged elements so as to allow counsel to reasonably conclude that a motion for a directed verdict or for an

arrest of judgment for any of the three counts would have been denied, defeating Blackwing's ineffectiveness claim. *See State v. Baer*, 2019 UT App 15, ¶7, 438 P.3d 979 (counsel was not ineffective for not moving for a directed verdict or an arrest of judgment where there was "some evidence from which a reasonable jury could find all the elements" of the charged crime and the motions would have been denied) (quotation simplified); *Millerberg*, 2018 UT App 32, ¶¶11-12 (counsel was not ineffective for foregoing directed verdict motion where evidence was sufficient to survive such a motion).

Moreover, Blackwing's argument presupposes that, had counsel raised the objection, the State could not have elicited more specific testimony from Victim clearly establishing that at least three rapes occurred in Utah on or after April 1st. Blackwing has not made that showing. Given *Strickland's* presumption of reasonable performance, this Court must presume that counsel reasonably chose to forgo the objection because he knew that the State could remedy any defect, real or perceived, in the evidence. *See* 466 U.S. at 689 (recognizing presumption that counsel's actions "might be considered sound trial strategy"); *see also Harrington v. Richter*, 562 U.S. 86, 105 (2011) ("Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge."). As demonstrated, given

Victim's testimony, it was likely that she could have clarified that at least three rapes occurred during the relevant charged timeframe. Blackwing has not provided any evidence that she could not. *Strickland's* presumption of reasonable performance therefore stands un rebutted. See *Burt v. Titlow*, 571 U.S. 12, 23 (2013) ("It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'") (quoting *Strickland*, 466 U.S. at 689).

II.

This Court lacks jurisdiction to reach Blackwing's second issue because he failed to file a notice of appeal from the denial of his new trial motion.

Blackwing also challenges the jury's possession in deliberations of a CD of phone calls between himself and Victim. Aplt.Br. 25-28. The CD is marked as State's Exhibit 7 and sports a label identifying its contents as "Blackwing jail calls." See State's Exh. 7. Blackwing argues that the single written reference to his jail custody was prejudicial and warrants a new trial on all charges. Aplt.Br. 25-28.

This Court lacks jurisdiction to consider Blackwing's challenge. The jury's possession of State's Exhibit 7 was the sole issue Blackwing raised in his post-trial new-trial motion. R872-74. But he did not invoke this Court's jurisdiction to review the denial of that motion by filing, as appellate rules

require, either an amended or a separate notice of appeal from the trial court's order denying the motion.

The district court entered the sentence and judgment on September 19, 2017. R866-70. On October 3, Blackwing filed a new-trial motion arguing that the CD's label revealing his custody status was so prejudicial as to warrant a new trial. R872-74. On October 16, he filed a timely notice of appeal, seeking to appeal from the September 19 final judgment and sentence. R877-78. The State filed its opposition to the new-trial motion on October 17, but no further action occurred on the motion for another year. R885-96; Appellate Record Index.

Meanwhile, the case proceeded on appeal. On May 7, 2018, Blackwing's counsel moved for a remand to permit the trial court to rule on the new-trial motion. R1548. This Court granted the motion on May 16 and remanded the case to the trial court for that limited purpose. *Id.* The judge heard argument on the new-trial motion on November 13 and entered an order denying the motion on November 19. R2077-84, 2101-13. Blackwing did not thereafter amend his prior notice of appeal and did not file a new notice of appeal. Appellate Record Index.

Blackwing's October 2017 notice of appeal became effective upon entry of the order denying the new-trial motion and gave this Court jurisdiction to

reach Blackwing's initial appellate challenge to the evidence upon which three of his convictions rest. *See* Utah R. App. P. 4(b)(2) (a notice of appeal filed after entry of judgment but before entry of an order disposing of a new trial motion "shall be treated as filed after entry of the [new trial] order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment"). *See* Subpoint IB, *supra*. But this Court lacks jurisdiction to review his remaining challenge to the jury's possession of State's Exhibit 7 because that issue was raised and resolved only in Blackwing's new-trial motion, and he did not file the necessary notice of appeal or amended notice of appeal after entry of the order denying that motion. *See* Utah R. App. P. 4(b)(2) (to appeal from a final order disposing of a new-trial motion, "a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order").

Once a court determines that it lacks jurisdiction over arguments raised on appeal, it cannot consider those arguments when deciding the appeal. *Evans v. Huber*, 2016 UT App 17, ¶22, 366 P.3d 862 (court lacked jurisdiction to consider arguments related to a new-trial motion where no new or amended notice of appeal was filed after entry of the order disposing of the new trial motion); *State v. Patrick*, 2009 UT App 226, ¶12, n.2, 217 P.3d 1150 (same). Accordingly, Blackwing's notice of appeal was "effective to appeal

only from the underlying judgment[,]" and this Court is without jurisdiction to address his second issue.⁹ *See Patrick*, 2009 UT App 226, ¶12, n.2.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court affirm Blackwing's convictions.

Respectfully submitted on November 22, 2019.

SEAN D. REYES
Utah Attorney General

/s/ Kris C. Leonard

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Assistant Solicitor General
Counsel for Appellee

⁹ Blackwing's argument would fail in any event because he challenges only one of the three bases upon which the trial court rejected it below. *See State v Lovell*, 758 P.2d 909, 910, 912-13 (Utah 1988) (rejecting challenge to trial court ruling where court had two bases for its ruling and Lovell's appeal focused on only one); *State v. Montiel*, 2004 UT App 242, ¶20, 95 P.3d 1216 (appellant challenging trial court's ruling "must address all of the circumstances upon which the court's decision was based"). The trial court denied Blackwing's new trial motion challenging the jury's possession of the CD because Blackwing: (1) waived the objection; (2) invited any error in admission of the CD; and (3) suffered no prejudice. R2080-83. Blackwing argues on appeal only that the CD label was prejudicial because his conviction of three rapes for which there was no evidence proves that the jury convicted him based on factors other than the State's evidence, of which the CD was the "only likely source[.]" Aplt.Br. 12, 25-28.

CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(g), Utah Rules of Appellate Procedure, this brief contains 8,931 words, excluding the table of contents, table of authorities, addenda, and certificate of counsel. I also certify that in compliance with rule 21(g), Utah Rules of Appellate Procedure, this brief, including the addenda:

does not contain private, controlled, protected, safeguarded, sealed, juvenile court legal, juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law (non-public information).

contains non-public information and is marked accordingly, and that a public copy of the brief has been filed with all non-public information removed.

/s/ Kris C. Leonard

KRIS C. LEONARD

Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that on November 22, 2019, the Brief of Appellee was served upon appellant's counsel of record by mail email hand-delivery at:

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I further certify that an electronic copy of the brief in searchable portable document format (pdf):

was filed with the Court and served on appellant by email, and the appropriate number of hard copies have been or will be mailed or hand-delivered upon the Court and counsel within 7 days.

was filed with the Court on a CD or by email and served on appellant.

will be filed with the Court on a CD or by email and served on appellant within 14 days.

/s/ Melanie Kendrick

Addenda

Addenda

Addendum A

§ 76-1-201. Jurisdiction of offenses

- (1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:
 - (a) the offense is committed either wholly or partly within the state;
 - (b) the conduct outside the state constitutes an attempt to commit an offense within the state;
 - (c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or
 - (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

- (2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is an element, occurs within this state.

- (3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.
 - (a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.
 - (b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the defendant proves by clear and convincing evidence that:
 - (i) the result of the homicide did not occur in this state; and
 - (ii) the defendant did not engage in any conduct in this state which is any element of the offense.

- (4)
 - (a) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.
 - (b) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be

committed:

(i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

- (5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction.
- (b) The defendant may challenge jurisdiction by filing a motion before trial stating which facts exist that deprive the state of jurisdiction.
- (c) The burden is upon the state to initially establish jurisdiction over the offense by a preponderance of the evidence by showing under the provisions of Subsections (1) through (4) that the offense was committed either wholly or partly within the borders of the state.
- (d) If after the prosecution has met its burden of proof under Subsection (5)(c) the defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the burden is upon the defendant to prove by a preponderance of the evidence:
- (i) any facts claimed; and
 - (ii) why those facts deprive the state of jurisdiction.
- (6) Facts that deprive the state of jurisdiction or prohibit the state from exercising jurisdiction include the fact that the:
- (a) defendant is serving in a position that is entitled to diplomatic immunity from prosecution and that the defendant's country has not waived that diplomatic immunity;
 - (b) defendant is a member of the armed forces of another country and that the crime that he is alleged to have committed is one that due to an international agreement, such as a status of forces agreement between his country and the United States, cedes the exercise of jurisdiction over him for that offense to his country;
 - (c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101, and that the Indian tribe has a legal status with the United States or the state that vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of a tribal reservation, and that the facts establish that the crime is one that vests jurisdiction in tribal or federal court; or
 - (d) offense occurred on land that is exclusively within federal jurisdiction.

- (7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.
- (b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.
- (8) The judge shall determine jurisdiction.

Credits

Laws 1973, c. 196, § 76-1-201; Laws 1996, c. 54, § 1, eff. April 29, 1996; Laws 2004, c. 227, § 1, eff. May 3, 2004; Laws 2004, c. 151, § 1, eff. May 3, 2004; Laws 2014, c. 105, § 1, eff. May 13, 2014; Laws 2017, c. 282, § 4, eff. May 9, 2017.

§ 76-5-402. Rape

- (1) A person commits rape when the actor has sexual intercourse with another person without the victim's consent.
- (2) This section applies whether or not the actor is married to the victim.
- (3) Rape is a felony of the first degree, punishable by a term of imprisonment of:
 - (a) except as provided in Subsection (3)(b) or (c), not less than five years and which may be for life;
 - (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that:
 - (i) during the course of the commission of the rape the defendant caused serious bodily injury to another; or
 - (ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or
 - (c) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense.
- (4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (a) 10 years and which may be for life; or
 - (b) six years and which may be for life.
- (5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(a) or (c).
- (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.

Credits: Laws 1977, c. 86, § 1; Laws 1979, c. 73, § 2; Laws 1983, c. 88, § 17; Laws 1991, c. 267, § 1; Laws 2007, c. 339, § 12, eff. April 30, 2007; Laws 2013, c. 81, § 4, eff. May 14, 2013.

§ 76-5-406. Sexual offenses against the victim without consent of victim —

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;
- (3) the actor is able to overcome the victim through concealment or by the element of surprise;
- (4)
 - (a)(i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
 - (ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
 - (b) as used in this Subsection (4), "to retaliate" includes threats of physical force, kidnapping, or extortion;
- (5) the victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;
- (6) the actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;

(7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;

(8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;

(9) the victim is younger than 14 years of age;

(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Subection 76-5-404.1(4)(h);

(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

(a) "health professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and

(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

Credits

Laws 1973, c. 196, § 76-5-406; Laws 1983, c. 88, § 26; Laws 1988, c. 156, § 2; Laws 1989, c. 259, § 1; Laws 1992, c. 64, § 1; Laws 1996, c. 137, § 4, eff. April 29, 1996; Laws 1998, c. 252, § 1, eff. May 4, 1998; Laws 2000, c. 129, § 1, eff. May 1, 2000; Laws 2003, c. 149, § 4, eff. May 5, 2003; Laws 2013, c. 196, § 9, eff. May 14, 2013.

RULE 4. APPEAL AS OF RIGHT: WHEN TAKEN

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Time for appeal extended by certain motions.

(b)(1) If a party timely files in the trial court any of the following, the time for all parties to appeal from the judgment runs from the entry of the dispositive order:

(b)(1)(A) A motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) A motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) A motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(E) A motion for relief under Rule 60(b) of the Utah Rules of Civil Procedure if the motion is filed no later than 28 days after the judgment is entered;

(b)(1)(F) A motion or claim for attorney fees under Rule 73 of the Utah Rules of Civil Procedure; or

(b)(1)(G) A motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in paragraph (b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the

underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) Filing prior to entry of judgment or order. A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(d) Additional or cross-appeal. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) Motion for extension of time.

(e)(1) The trial court, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(e)(2) The trial court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. The court may rule at any time after the filing of the motion. That a movant did not file a notice of appeal to which paragraph (c) would apply is not relevant to the determination of good cause or excusable neglect. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(f) Motion to reinstate period for filing a direct appeal in criminal cases. Upon a showing that a criminal defendant was deprived of the right to appeal, the trial court shall reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement shall file a written motion in the sentencing court and serve the prosecuting entity. If the defendant is not represented and is indigent, the court shall appoint counsel. The prosecutor shall have 30 days after service of the motion to file a written response. If the prosecutor opposes the motion, the trial court shall set a hearing at which the parties may present evidence. If the

trial court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it shall enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the clerk of the trial court within 30 days after the date of entry of the order.

(g) Motion to reinstate period for filing a direct appeal in civil cases.

(g)(1) The trial court shall reinstate the thirty-day period for filing a direct appeal if the trial court finds by a preponderance of the evidence that:

(g)(1)(A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule;

(g)(1)(B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(g)(1)(C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

(g)(2) A party seeking such reinstatement shall file a written motion in the trial court within one year from the entry of judgment. The party shall comply with Rule 7 of the Utah Rules of Civil Procedure and shall serve each of the parties in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(g)(3) If the trial court enters an order reinstating the time for filing a direct appeal, a notice of appeal must be filed within 30 days after the date of entry of the order.

Credits

[Amended effective November 1, 1998; April 1, 1999; November 1, 2002; November 1, 2005; November 1, 2006; April 1, 2012; November 1, 2013; May 1, 2015; November 1, 2016.]

Addendum B

SIM GILL, Bar No. 6389
District Attorney for Salt Lake County
R. JOSH PLAYER, Bar No. 7768
Deputy District Attorney
8080 S Redwood Road, Ste. 1100
West Jordan, UT 84088
Telephone: (385) 468-7550

IN THE THIRD DISTRICT COURT, WEST JORDAN DEPARTMENT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH
Plaintiff,

vs.

KAIN BLACKWING
DOB: 03/21/1969,
AKA:
14425 South Bitterbrush Lane
Draper, UT 84020
D.L.# 148722663
OTN
SO#
Booking#
Defendant.

Screened by: R. JOSH PLAYER
Assigned to: R. JOSH PLAYER

**SECOND
AMENDED
INFORMATION**

DAO # 15013668

Case No. 151401859

The undersigned Deputy District Attorney upon a written declaration states on information and belief that the defendant, KAIN BLACKWING, committed the crime(s) of:

COUNT 1

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about March 09, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 2

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about March 10, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 3

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about March 12, 2014, through March 30, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 4

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about March 30, 2014, through March 31, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 5

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about April 01, 2014, through May 13, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 6

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about April 01, 2014, through May 13, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 7

RAPE, 76-5-402 UCA, First Degree Felony, as follows: That on or about April 01, 2014, through May 13, 2014, in Salt Lake County, State of Utah, the defendant did have sexual intercourse with another person without the victim's consent.

COUNT 8

FORCIBLE SEXUAL ABUSE, 76-5-404 UCA, Second Degree Felony, as follows: That on or about March 09, 2014, in Salt Lake County, State of Utah, the defendant did, where the victim was 14 years of age or older, touch the anus, buttocks, or any part of the genitals of another, or touch the breasts of a female, or otherwise took indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desires of any person, without the consent of the other, regardless of the sex of any participant.

COUNT 9

FORCIBLE SEXUAL ABUSE, 76-5-404 UCA, Second Degree Felony, as follows: That on or about March 12, 2014, through March 30, 2014, in Salt Lake County, State of Utah, the defendant did, where the victim was 14 years of age or older, touch the anus, buttocks, or any part of the genitals of another, or touch the breasts of a female, or otherwise took indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desires of any person, without the consent of the other, regardless of the sex of any participant.

COUNT 10

FORCIBLE SEXUAL ABUSE, 76-5-404 UCA, Second Degree Felony, as follows: That on or about March 12, 2014, through March 31, 2014, in Salt Lake County, State of Utah, the defendant did, where the victim was 14 years of age or older, touch the anus, buttocks, or any part of the genitals of another, or touch the breasts of a female, or otherwise took indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desires of any person, without the consent of the other, regardless of the sex of any participant.

COUNT 11

FORCIBLE SODOMY, 76-5-403(2) UCA, First Degree Felony, as follows: That on or about March 30, 2014, through March 31, 2014, in Salt Lake County, State of Utah, the defendant did engage in any sexual act with a person 14 years of age or older, and without that person's consent, involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

Detective R. Golding, Detective A. Julian, Detective J. Bigelow, Detective M. Herbert, Teresa Baker, J. Beck, O. Blackwing, R. Blackwing, C. Gonzalez, E. Griego, M. Griego, M. Johnson, L. Levingston, E. Roberts, and T. Southwick

Pursuant to Utah Code Annotated § 78B-5-705 (2008) I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge.

Executed on: March 27, 2017

/s/ R. Josh Player

Declarant

Authorized for presentment and filing
SIM GILL, District Attorney

/s/ R. Josh Player

Deputy District Attorney
27th day of March, 2017
RJP / lo / DAO # 15013668

Addendum C

JUL 01 2019

3RD DIST. COURT - WEST JORDAN
STATE OF UTAH

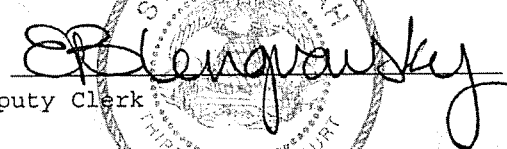
STATE OF UTAH Plaintiff	CLERK'S CERTIFICATE
vs.	Case No: 151401859 FS
KAIN BLACKWING Defendant	Appellate No: 20170851

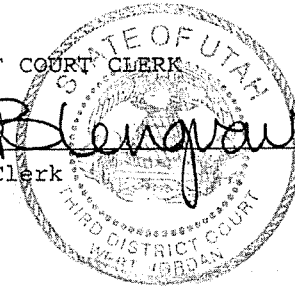
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, ERICA LENGVARSKY, Deputy Clerk of the District Court of the 3RD DIST. COURT - WEST JORDAN, State of Utah, do hereby certify that the foregoing and hereunto attached papers and file constitute all of the original papers filed in the above-entitled Court and cause, including the Notice of Appeal and Minute Entries, and which attached papers constitute the Judgment Roll and other papers filed in the above action.

I further certify that the Judgment Roll and papers contained in said file are by me this day transmitted to the Appellate Court, of the State of Utah, pursuant to said Appeal.

WITNESS MY HAND AND SEAL of said District Court at my office in 3RD DIST. COURT - WEST JORDAN, STATE OF UTAH, this 1 day of July, 2019.

DISTRICT COURT CLERK
By 
Deputy Clerk



Document Title	Entry Date	Page Number
Filed INFORMATIONINDICTMENT	07/14/2015	0001-0005
Filed WARRANT OF ARREST PROPOSED	07/14/2015	0006
Issued Warrant of Arrest	07/14/2015	0007
Filed Return of Electronic Notification	07/14/2015	0008-0009
Minute Minutes for Initial Appearance	07/23/2015	0010-0011
Filed Appearance of CounselNotice of Limited Appearance	07/29/2015	0012-0013
Filed Appearance of CounselNotice of Limited Appearance (1)	07/29/2015	0014
Filed Request for Discovery	07/29/2015	0015-0019
Filed Notice of Hearing	07/29/2015	0020
Filed Return of Electronic Notification (1)	07/29/2015	0021-0022
Filed Return of Electronic Notification (2)	07/29/2015	0023-0024
Minute Minutes for SCHED CONF 1	08/06/2015	0025-0027
Minute Minutes for SCHED CONF 2	09/17/2015	0028-0029
Minute Minutes for SCHED CONF 3	10/29/2015	0030-0031
Filed First Supplemental Discovery	11/04/2015	0032-0033
Filed Return of Electronic Notification (3)	11/04/2015	0034-0035
Filed RequestNotice to Submit	02/05/2016	0036
Filed Motion to Continue Preliminary Hearing set February 18 2016 at 100 pm	02/05/2016	0037-0038
Filed Order Proposed for Continuance	02/05/2016	0039-0040
Filed Return of Electronic Notification (4)	02/05/2016	0041-0042
Filed Order for Continuance	02/09/2016	0043
Filed Order of Continuance	02/09/2016	0044
Filed Return of Electronic Notification (5)	02/09/2016	0045-0046
Filed Third Supplemental Discovery	04/19/2016	0047-0049
Filed Return of Electronic Notification (6)	04/19/2016	0050-0051
Minute PRELIMINARY HEARING	04/22/2016	0052-0055
Filed PRELIMINARY HEARING	04/22/2016	0056-0059
Filed Amended Information	04/22/2016	0060-0064
Filed TRANSCRIPT for Hearing of 04222016	05/12/2016	0065-0152
Minute ARRBO	05/17/2016	0153-0155
Filed RequestNotice to Submit (1)	06/23/2016	0156
Filed Motion to DisqualifyRecuse and Case Authority to Disqualify Rule 63 Utah Rules of Civil Procedure	06/23/2016	0157-0159
Filed Williams v Pennsylvania Case	06/23/2016	0160-0179
Filed Return of Electronic Notification (7)	06/23/2016	0180-0181
Filed Order	06/27/2016	0182-0183
Filed Fourth Supplemental Discovery	06/27/2016	0184-0185
Filed Return of Electronic Notification (8)	06/27/2016	0186-0187
Filed Minute Entry	06/28/2016	0188-0189
Filed Minute Entry (1)	07/05/2016	0190-0193
Filed Substitution of Counsel	07/05/2016	0194-0195

Document Title	Entry Date	Page Number
Filed Return of Electronic Notification (9)	07/05/2016	0196-0197
Filed Motion Stipulated Motion to Excuse Defendants Attendance	07/08/2016	0198-0199
Filed RequestNotice to Submit Notice to Submit	07/08/2016	0200
Filed Order Proposed Granting Motion to Excuse Defendants Attendance	07/08/2016	0201-0202
Filed Return of Electronic Notification (10)	07/08/2016	0203-0204
Filed Order Granting Motion to Excuse Defendants Attendance	07/11/2016	0205
Filed Return of Electronic Notification (11)	07/11/2016	0206-0207
Minute MOTION TO QUASHARGUMENT	07/14/2016	0208-0210
Filed Motion To Quash Bindover and Memorandum in Support	08/04/2016	0211-0303
Filed Return of Electronic Notification (12)	08/04/2016	0304-0305
Minute MOTION STATUS HEARING	08/11/2016	0306-0308
Filed Motion Response to Motion to Quash	08/25/2016	0309-0316
Filed Return of Electronic Notification (13)	08/25/2016	0317-0318
Minute ARGUMENTSMOTION TO QUASH	09/08/2016	0319-0320
Minute ARGUMENTSMOTION TO QUASH (1)	10/04/2016	0321-0323
Filed Fifth Supplemental Discovery	11/21/2016	0324-0325
Filed Return of Electronic Notification (14)	11/21/2016	0326-0327
Filed Seventh Supplemental Discovery	12/12/2016	0328-0329
Filed Return of Electronic Notification (15)	12/12/2016	0330-0331
Filed RequestNotice to Submit (2)	12/23/2016	0332
Filed Motion For Continuance	12/23/2016	0333-0334
Filed Order Proposed	12/23/2016	0335
Filed Return of Electronic Notification (16)	12/23/2016	0336-0337
Filed Other Not Signed Order Proposed	12/23/2016	0338
Filed Return of Electronic Notification (17)	12/23/2016	0339-0340
Filed Motion in Limine Re 404b609a	01/05/2017	0341-0361
Filed Return of Electronic Notification (18)	01/05/2017	0362-0363
Filed Motion Re Continuance	01/05/2017	0364-0366
Filed Return of Electronic Notification (19)	01/05/2017	0365-0368
Filed Eighth Supplemental Discovery	01/19/2017	0369-0370
Filed Ninth Supplemental Discovery	01/19/2017	0371-0372
Filed Return of Electronic Notification (20)	01/19/2017	0373-0374
Filed Objection to States Motion Untimely Filed	01/20/2017	0375-0376
Filed Return of Electronic Notification (21)	01/20/2017	0377-0378
Minute FINAL PRETRIAL CONFERENCE	01/24/2017	0379-0381
Filed Tenth Supplemental Discovery	01/31/2017	0382-0383
Filed Return of Electronic Notification (22)	01/31/2017	0384-0385
Filed Eleventh Supplemental Discovery	02/03/2017	0386-0388
Filed Return of Electronic Notification (23)	02/03/2017	0389-0390
Filed Motion to Transport	02/03/2017	0391
Filed RequestNotice to Submit (3)	02/03/2017	0392

Document Title	Entry Date	Page Number
Filed Order Proposed Order to Transport	02/03/2017	0393
Filed Return of Electronic Notification (24)	02/03/2017	0394-0395
Filed Order to Transport	02/03/2017	0396
Filed Return of Electronic Notification (25)	02/03/2017	0397-0398
Filed Order Proposed To Appoint Advisory Counsel	02/07/2017	0399
Filed Return of Electronic Notification (26)	02/07/2017	0400-0401
Filed Order To Appoint Advisory Counsel	02/07/2017	0402
Filed Return of Electronic Notification (27)	02/07/2017	0403-0404
Minute EVIDENTIARY HEARING	02/13/2017	0405-0407
Filed Motion to Transport (1)	02/23/2017	0408
Filed Order Proposed Order to Transport (1)	02/23/2017	0409
Filed Return of Electronic Notification (28)	02/23/2017	0410-0411
Filed Order to Transport (1)	02/23/2017	0412
Filed Return of Electronic Notification (29)	02/23/2017	0413-0414
Filed Memorandum NOTICE OF WITNESSES 404B	02/24/2017	0415-0418
Filed Return of Electronic Notification (30)	02/24/2017	0419-0420
Minute EVIDENTIARY HEARING (1)	02/28/2017	0421-0423
Filed Final Exhibit List	02/28/2017	0424
Filed Thirteenth Supplemental Discovery	03/03/2017	0425-0426
Filed Return of Electronic Notification (31)	03/03/2017	0427-0428
Filed Fourteenth Supplemental Discovery	03/03/2017	0429-0430
Filed Return of Electronic Notification (32)	03/03/2017	0431-0432
Filed Fifteenth Supplemental Discovery	03/06/2017	0433-0434
Filed Return of Electronic Notification (33)	03/06/2017	0435-0436
Filed Memorandum to Oppose Evidence Under Rule 404b	03/10/2017	0437-0440
Filed Return of Electronic Notification (34)	03/10/2017	0441-0442
Filed Motion to Continue Jury Trial and Memorandum in Support Thereof	03/13/2017	0443-0450
Filed Return of Electronic Notification (35)	03/13/2017	0451-0452
Filed States Response to Defendants Memorandum	03/14/2017	0453-0460
Filed Return of Electronic Notification (36)	03/14/2017	0461-0462
Minute ARGUMENTS	03/15/2017	0463-0464
Filed Motion Objection to Continuance	03/17/2017	0465-0468
Filed Return of Electronic Notification (37)	03/17/2017	0469-0470
Filed Memorandum Decision	03/20/2017	0471-0512
Filed Appearance of Counsel Notice of Limited Appearance of CoCounsel	03/24/2017	0513
Filed Return of Electronic Notification (38)	03/24/2017	0514-0515
Filed Amended Information Second Amended Information	03/27/2017	0516-0518
Filed Return of Electronic Notification (39)	03/27/2017	0519-0520
Filed Proposed Juror Questionnaire	03/27/2017	0521-0540
Filed Return of Electronic Notification (40)	03/27/2017	0541-0542
Filed Motion to Continue	03/27/2017	0543-0549

Document Title	Entry Date	Page Number
Filed Return of Electronic Notification (41)	03/27/2017	0550-0551
Filed Appearance of CounselNotice of Limited Appearance (2)	03/28/2017	0552
Filed Return of Electronic Notification (42)	03/28/2017	0553-0554
Minute FINAL PRETRIALSTATUS REVIEW	03/29/2017	0555-0557
Filed Sixteenth Supplemental Discovery	04/04/2017	0558-0559
Filed Sixteenth Supplemental Discovery (1)	04/04/2017	0560-0561
Filed Return of Electronic Notification (43)	04/04/2017	0562-0563
Minute FINAL PRETRIALSET TRIAL DATE	04/04/2017	0564-0566
Filed Seventeenth Supplemental Discovery	05/31/2017	0567-0568
Filed Return of Electronic Notification (44)	05/31/2017	0569-0570
Filed Eighteenth Supplemental Discovery	06/13/2017	0571-0573
Filed Return of Electronic Notification (45)	06/13/2017	0574-0575
Filed Nineteenth Supplemental Discovery	06/19/2017	0576-0577
Filed Return of Electronic Notification (46)	06/19/2017	0578-0579
Filed Notice of Lodging clarification	07/07/2017	0580-0582
Filed Return of Electronic Notification (47)	07/07/2017	0583-0584
Filed Order Proposed To Transport	07/10/2017	0585
Filed RequestNotice to Submit (4)	07/10/2017	0586
Filed Motion To Transport (2)	07/10/2017	0587
Filed Motion To Transport (3)	07/10/2017	0588
Filed Order Proposed To Transport (1)	07/10/2017	0589
Filed RequestNotice to Submit (5)	07/10/2017	0590
Filed Return of Electronic Notification (48)	07/10/2017	0591-0592
Filed Return of Electronic Notification (49)	07/10/2017	0593-0594
Filed Order To Transport (2)	07/10/2017	0595
Filed Order To Transport (3)	07/10/2017	0596
Filed Return of Electronic Notification (50)	07/10/2017	0597-0598
Filed Return of Electronic Notification (51)	07/10/2017	0599-0600
Filed Twentieth Supplemental Discovery	07/13/2017	0601-0602
Filed Return of Electronic Notification (52)	07/13/2017	0603-0604
Minute FINAL PRETRIAL CONFERENCE (1)	07/13/2017	0605-0606
Filed States Thirteenth Supplemental Discovery	07/14/2017	0607-0608
Filed Return of Electronic Notification (53)	07/14/2017	0609-0610
Filed States Fourteenth Supplemental Discovery	07/14/2017	0611-0612
Filed Return of Electronic Notification (54)	07/14/2017	0613-0614
Filed Exhibit List	07/19/2017	0615-0624
Filed Return of Electronic Notification (55)	07/19/2017	0625-0626
Filed States Fourteenth Supplemental Discovery (1)	07/20/2017	0627-0628
Filed Return of Electronic Notification (56)	07/20/2017	0629-0630
Filed States Fifteenth Supplemental Discovery	07/21/2017	0631-0632
Filed Return of Electronic Notification (57)	07/21/2017	0633-0634

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Filed Witness List	07/21/2017	0635-0638
Filed Return of Electronic Notification (58)	07/21/2017	0639-0640
Filed TRANSCRIPT for Hearing of 02282017	07/24/2017	0641-0722
Filed Jury Instructions	07/27/2017	0723-0744
Filed Return of Electronic Notification (59)	07/27/2017	0745-0746
Filed States Twenty First Supplemental Discovery	07/27/2017	0747-0748
Filed States Twenty Second Supplemental Discovery	07/27/2017	0749-0750
Filed States Twenty Third Supplemental Discovery	07/27/2017	0751-0752
Filed States Twenty Fourth Supplemental Discovery	07/27/2017	0753-0754
Filed Return of Electronic Notification (60)	07/27/2017	0755-0756
Filed Return of Electronic Notification (61)	07/27/2017	0757-0758
Filed Return of Electronic Notification (62)	07/27/2017	0759-0760
Filed Return of Electronic Notification (63)	07/27/2017	0761-0762
Filed States Twenty Fifth Supplemental Discovery	07/27/2017	0763-0764
Filed Return of Electronic Notification (64)	07/27/2017	0765-0766
Filed Memorandum Pre Trial Memorandum	07/28/2017	0767-0769
Filed Return of Electronic Notification (65)	07/28/2017	0770-0771
Filed Preliminary Jury Instructions	08/02/2017	0772-0780
Minute JURY TRIAL	08/02/2017	0781-0784
Filed Jury Questions	08/03/2017	0785-0786
Filed Final Instructions to the Jury	08/03/2017	0787-0836
Filed APP PSR Referral	08/03/2017	0837
Filed Exhibit List (1)	08/03/2017	0838-0839
Minute JURY TRIAL (1)	08/03/2017	0840-0844
Filed Verdict	08/03/2017	0845-0853
Filed JURY TRIAL	08/03/2017	0854-0858
Filed Return of Electronic Notification (66)	09/19/2017	0859-0860
Minute SENTENCE JUDGMENT COMMITMENT	09/19/2017	0861-0865
Filed SENTENCE JUDGMENT COMMITMENT	09/19/2017	0866-0870
Filed Order Proposed Granting Motion for New Trial	10/03/2017	0871
Filed Motion For New Trial	10/03/2017	0872-0874
Filed Return of Electronic Notification (67)	10/03/2017	0875-0876
Filed Notice of Appeal Criminal not Interlocutory	10/16/2017	0877-0882
Filed Return of Electronic Notification (68)	10/16/2017	0883-0884
Filed Motion re Opposition to Motion for New Trial	10/17/2017	0885-0896
Filed Return of Electronic Notification (69)	10/17/2017	0897-0898
Filed Other Not Signed Order Proposed Granting Motion for New Trial	10/18/2017	0899
Filed Return of Electronic Notification (70)	10/18/2017	0900-0901
Filed Utah Court of Appeals Letter dated 103017 Appeal filed Case 20170851 should be indicated on future filings infoetal	10/30/2017	0902-0903
Filed Utah Court of Appeals Order dated 103017 Case assignedtransferred to COA Info et al and Appeals Checklist	10/30/2017	0904-0908

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Filed States Twenty Sixth Supplemental Discovery	11/07/2017	0909-0910
Filed Return of Electronic Notification (71)	11/07/2017	0911-0912
Filed Appellate Court Document Letter by the Utah Court of Appeals the case number is 20170851	11/15/2017	0913-0914
Filed TRANSCRIPT for Hearing of 03152017	11/17/2017	0915-0962
Filed TRANSCRIPT for Hearing of 08022017	11/17/2017	0963-1250
Filed TRANSCRIPT for Hearing of 08032017	11/17/2017	1251-1455
Filed TRANSCRIPT for Hearing of 09192017	11/17/2017	1456-1479
*** PRIVATE *** Filed Jury List	08/02/2017	1480
*** PROTECTED *** Filed Pre Sentence Investigation ReportAddendum	08/03/2017	1481-1499
*** PRIVATE *** Filed Victim Impact Statement	09/19/2017	1500-1501
EXHIBIT: White Envelope		1502
EXHIBIT: Manilla Envelope		1503
EXHIBIT: 3 Large Posters (A, B, & C)		1504
*** SUPPLEMENTAL RECORD 1 ***		
TRANSCRIPT for Hearing of 07-14-2016	02/20/2018	1505 - 1514
TRANSCRIPT for Hearing of 10-04-2016	02/20/2018	1515 - 1524
TRANSCRIPT for Hearing of 07-13-2017	02/20/2018	1524 - 1547
*** SUPPLEMENTAL RECORD 2 ***		
Filed Appellate Court Document Order by the Utah Court of Appeals Appellant seeks a remand to the trial court to rule on a pending motion for new trial	10/09/2018	1548
NOTICE for Case 151401859 ID 19487228	10/09/2018	1549-1550
Filed Notice for Case 151401859 FS Judge KATIE BERNARDSGOODMAN	10/09/2018	1551-1552
Filed Lodging of Affidavits	11/09/2018	1553-1565
Filed Return of Electronic Notification	11/09/2018	1566-1567
Filed Trial Transcripts for Motion for New Trial Hearing	11/09/2018	1568
Filed Trial Transcripts 8217	11/09/2018	1569-1856
Filed Trial Transcript 8317	11/09/2018	1857-2061
Filed Order Proposed Findings Conclusions Order Re Motion for New Trial	11/09/2018	2062-2072
Filed Return of Electronic Notification (1)	11/09/2018	2073-2074
Filed Return of Electronic Notification (2)	11/09/2018	2075-2076
Minute MOTION FOR NEW TRIAL	11/13/2018	2077-2079
Filed RULING Motion for a new trial is DENIED	11/19/2018	2080-2084
Filed Other Not Signed Order Proposed Findings Conclusions Order Re Motion for New Trial	11/19/2018	2085-2096
Filed Return of Electronic Notification (3)	11/19/2018	2097-2098
Minute PRETRIAL CONFERENCE	12/11/2018	2099-2100
Filed TRANSCRIPT for Hearing of 11132018	02/28/2019	2101-2113

July 1, 2019 EBlangarsky

