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2ND DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH	
STATE OF UTAH, Plaintiff, vs. JASON HALL, Defendant.	MOTION TO QUASH SUBPOENA TO TESTIFY Case No. 221906445 Judge: PAUL PARKER

STATE OF UTAH, through Steven A. Wuthrich, Assistant Attorney General, moves the Court to Quash the Subpoena (Exhibit 1) from the defendant, emailed to the State on November 21, 2022, further demanding the State effectuate service. Exhibit 1 is a subpoena commanding the victim, Jeff Gaston, to appear and testify at the Preliminary Hearing scheduled for December 6, 2022.

The State previously advised the defendant that the State intended to offer multiple witness statements under Rule 1102 of the Utah Rules of Evidence. The State already has an extensive statement signed by the victim to be offered at the Preliminary Hearing in lieu of having the victim testify. Furthermore, the defendant emailed the State a second subpoena to obtain records from the

victim. (Exhibit 2). The State asks the Court to quash Exhibit 1, Exhibit 2 may or will be addressed by the victim and his civil counsel.

ARGUMENT SUPPORTING MOTION TO QUASH

According to *State v. Lopez*, 474 P.3 949 (Utah 2020), if the prosecution has not been able to establish probable cause, defense may, at that point, potentially call a victim to testify. As the State has not yet had the opportunity to present evidence that would establish probable cause, defense cannot anticipate that calling the victim to testify would clarify any ambiguities or shortcomings in the State’s case or defeat any established probable cause.

As established by the Utah Supreme Court in April 2020:

A decision on whether or not to quash [a subpoena for an alleged victim to testify at trial] should come after the prosecution presents its case and the magistrate is able to determine whether the prosecution has presented evidence that at that stage would sustain a determination of probable cause. Utah R. Crim. P. 7B(a); Utah Const. Art. I, §12. If the magistrate determines that is so, the inquiry then turns to whether the subpoena of the alleged victim is unreasonable. Utah R. Crim. P. 14(a)(2). That assessment should be made on the basis of the defendant’s showing that additional, live testimony from the victim is necessary to present evidence on a specific point material to the probable-cause determination, and that is reasonably likely to defeat the State’s prima facie showing of probable cause. *State v. Lopez*, 474 P.3 949 (Utah 2020).

To bind a defendant over for trial, the State must show ‘probable cause’ at a preliminary hearing by ‘present[ing] sufficient evidence to establish that the crime charged has been committed and that the defendant has committed it.’” *State v. Clark*, 2001 UT 9, ¶10, 20 P.3d 300 (citations omitted).

The probable cause standard is “relatively low”—the same as that for obtaining an arrest warrant. *Id.* at ¶¶10, 16 (quotation and citation omitted); *see also State v. Virgin*, 2006 UT 29, ¶18, 137 P.3d 787. Under both standards, the prosecution must present evidence sufficient only to

“support a reasonable belief” that the defendant committed each element of the charged crime. *State v. Ramirez*, 2012 UT 59, ¶9, 289 P.3d 444 (quoting *Virgin*, 2006 UT 29, ¶17). When determining probable cause, a magistrate “must view all the evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution.” *Clark*, 2001 UT 9, ¶10 (quotation and citations omitted); see also *Virgin*, 2006 UT 29, ¶24 (same); *State v. Hawatmeh*, 2001 UT 51, ¶3, 26 P.3d 223 (same).

While the court may consider the entire evidentiary picture at preliminary hearings, this Utah Supreme Court made clear that this is not a license to weigh competing reasonable inferences and to reject those that run in the State’s favor. in *State v. Maughan*, 2013 UT 37, ¶17, 305 P.3d 1058. In making the determination at preliminary hearing as to whether probable cause exists to bind over the defendant for trial, when faced with conflicting evidence, the magistrate may not sift or weigh the evidence but must leave those tasks to the finder of fact at trial. *Clark, supra* at ¶¶ 10 and 14.

For more than a decade, the Supreme Court of Utah has recognized that the State’s burden at a preliminary hearing is probable cause, which is the same evidentiary threshold it must meet to secure an arrest warrant. See *State v. Schmidt*, 2015 UT 65, ¶ 17. “[A]t both the arrest warrant and the preliminary hearing stages, the prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it.” *State v. Clark*, 2001 UT 9, ¶ 16. “[W]e see no principled basis for attempting to maintain a distinction between the arrest warrant probable cause standard and the preliminary hearing probable cause standard.” *Id.*

In *State v. Clark*, the Supreme Court of Utah clarified “what quantum of evidence is

sufficient to support a finding of probable cause at the preliminary hearing stage of a prosecution.” 2001 UT 9, ¶ 11. The Court plainly stated, “[t]o issue an arrest warrant, “the facts presented must be sufficient to establish that an offense has been committed and a *reasonable belief* the defendant committed it.” *Id* (emphasis in original). The Court also noted that facts presented do not have to establish a *prima facie* case against the defendant. *See id*. Further, the Court held that “the prosecution must still produce ““believable evidence of all the elements of the crime charged,”” *See id* at ¶ 15. But “the quantum of evidence necessary to support a bind over is less than that necessary to survive a directed verdict motion.” *Id* at ¶ 16. “Therefore, at both the arrest warrant and the preliminary hearing stages, the prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it.” *Id*.

“In evaluating the evidence presented at a preliminary hearing, the magistrate must draw all reasonable inferences in the prosecution's favor.” *Schmidt* at ¶ 18. At this stage of the proceeding, the evidence required for a bind over is relatively low because it is assumed that the State’s case will only get stronger as investigation continues. *See Clark*, 2001 UT 9 at ¶ 10. Further, *State v. Schmidt* “reaffirm[ed] that the state need only produce sufficient evidence to support a reasonable belief that the defendant committed the crime charged.” 2015 UT 65, ¶ 15. The Supreme Court of Utah also added, “a magistrate has discretion “to *decline* bind over” only “where the facts presented by the prosecution provide no more than a basis for speculation—as opposed to providing a basis for a reasonable belief.” *Id.* at ¶ 18 (emphasis added).

Further, *State v. Clark*, *supra* also noted that applying a preponderance of the evidence standard would be incorrect because that standard may only be met by weighing the evidence. *See id.* at ¶ 14. And, “when faced with conflicting evidence, the magistrate may not sift or weigh the

evidence ... but must leave those tasks ‘to the fact finder at trial.’ ¶ 10 (internal citation omitted).

“[O]ur comparison of the probable cause standard to the preponderance standard was, essentially, a comparison of apples to oranges that could lead magistrates at the preliminary hearing stage of a criminal proceeding to improperly weigh the evidence before them as permitted by the civil preponderance standard.” *Id.*

Defendant here will argue that this Court should consider the victim’s credibility in assessing pointing to *State v. Virgin* 137 P.3d 787 (Utah 2006). While the Utah Supreme Court did grant limited discretion to the magistrate to weigh credibility, it specifically stated:

The key word that elevates magistrates' role beyond that of a mere rubber stamp for the prosecution is “reasonable.” Indeed, the prosecution has not carried its burden if it merely shows belief rather than *reasonable* belief. Inclusion of the word “reasonable” in this standard suggests that, at some level of inconsistency or incredibility, evidence becomes incapable of satisfying the probable cause standard. When that is the case, magistrates are empowered to deny bindover.

Id., at 792. However, the Court went on to caution the magistrate courts that:

Magistrates may make credibility determinations in preliminary hearings, but the extent of those determinations is limited. In *Talbot*, we recognized that assessing “‘the credibility of the witnesses [in a preliminary hearing] is an important element in the determination of probable cause’ ” and that preventing magistrates from making credibility determinations “would undermine the ‘fundamental purpose served by the preliminary examination.’ ” 972 P.2d at 438 (quoting *Anderson*, 612 P.2d at 783–84, 786). Indeed, that the probable cause standard demands “reasonable belief” rather than merely “belief” strongly suggests that magistrates must, to a certain extent, assess the credibility of the evidence presented. *See Clark*, 2001 UT 9, ¶ 16, 20 P.3d 300 (holding that “the prosecution must present sufficient evidence to support a *reasonable* belief that” defendant committed a crime (emphasis added)). Nevertheless, we have also noted that “the magistrate's evaluation of credibility at a preliminary hearing is limited to determining that ‘evidence is wholly lacking and incapable of reasonable inference to prove some issue which supports the [prosecution's] claim.’ ” *Talbot*, 972 P.2d at 438 (quoting *State v. Pledger*, 896 P.2d 1226, 1229 (Utah 1995)) (alteration in original). Essentially, magistrates may only disregard or discredit evidence that is “wholly lacking and incapable of” creating a reasonable inference regarding a portion of the prosecution's claim. *Id.* It is inappropriate for a magistrate to weigh credible but conflicting evidence at

a preliminary hearing as a preliminary hearing “is not a trial on the merits” but “a gateway to the finder of fact.” *Id.* Therefore, magistrates must leave all the weighing of credible but conflicting evidence to the trier of fact¹ and must “view the evidence in a light most favorable to the prosecution[,] resolv[ing] all inferences in favor of the prosecution.” *Id.* (citing *Pledger*, 896 P.2d at 1229).

Virgin, *supra* at 793.

In the present case the defendant seeks to bring the victim to the preliminary hearing without a legal justification. Unless the Defense proffers a reason for the subpoena that does not violate the caselaw cited above, the court should quash the subpoena and prevent the Defense from needlessly requiring the victim to appear.

CONCLUSION

For the foregoing reasons, the subpoena attached as Exhibit 1 should be quashed.

DATED: 22nd day of November , 2022.

SEAN REYES
Utah Attorney General

/s/ Steven A. Wuthrich
STEVEN A. WUTHRICH
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing to defense counsel through the court's E-filing system.

DATED: November 22, 2021

/s/ Jackie Milton
JACKIE MILTON
Legal Assistant