THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR CACHE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. WYATT DEE PACK, Defendant.	MEMORANDUM DECISION Case No. 181100914 Judge Kevin K. Allen

THIS MATTER IS BEFORE THE COURT for a decision on whether to bind the above named Defendant over for trial. In preparation for this Decision, the Court has reviewed the moving papers, examined the applicable legal authorities, and held a preliminary hearing. Having considered the foregoing, the Court issues this Decision.

SUMMARY

On June 24, 2019, the Court held a preliminary hearing on five related cases involving Defendant, Wyatt Dee Pack (case no. 181100914), and Co-defendants, Rikki Jane Durney (case no. 181100913), Samara Lee Nielson (case no. 181100915), Braxton Jade Haderlie (case no. 181100916), and Corey Brian Durney (case no. 181100917). All five co-defendants waived any conflict of having the same attorney to represent them.

Defendant is charged with crimes that occurred in the Left Hand Fork of Blacksmith Fork Canyon, in Cache County, Utah, on May 25, 2018. The State alleges that Defendants engaged in criminal conduct occurred during a dispute with the Caballero family, whose truck had broken down at a campsite where the accused were intending to camp.

The State presented testimony from witnesses: Detective Brian Groves of the St. George Police Department, who investigated the underlying incident while he was a Detective with the

Cache County Sheriff's Office; and Jose Caballero, one of the alleged victims in this case. The State presented a video recording of the incident, *see* Prelim. Hr'g, at 0:11:08–0:17:43, and introduced the following exhibits: the Handwritten Voluntary Statements of Mr. Caballero, his wife Maria Elena Orozco Caballero, and their son Jose Jr. Caballero; the Translated Witness Statements of Mr. and Mrs. Caballero; the Voluntary Statements of Traci Welchman and Adam Nelson; and various still photographs taken from the video recording.

The Court reserved ruling, pending submission of Defendants' written closing arguments. The Court instructed defense counsel to submit written arguments by July 10, 2019. The Court informed the State that it did not have to respond, but that it could respond if it so desires. *See id.* at 1:08:00–1:08:55. Defendant did not file a written closing argument. On July 22, 2019, the State filed its closing argument. On July 22, 2019, the State filed its closing arguments. On August 5, 2019, Defendant filed an Objection and Motion to Strike the State's closing argument on the basis that it was filed twelve days after the July 10 deadline. Defendant argues that the State did not request an opportunity to reply, and that even if the State had made such a request or been granted leave to reply, the Court would not have allowed them more than seven days (or at most ten days) to reply. The State filed a response on August 6, 2019, arguing that the Objection and Motion to Strike should be denied because the July 10 deadline only applied to Defendant and the State was entitled to respond to the Defendant's closing argument after having an opportunity to review it. However, Defendant never filed closing arguments.

The Court indicated at the preliminary hearing that it would allow the State to file closing arguments or a response to Defendants' closing arguments, but did not provide the State with a deadline. All the co-defendants, with the exception of Defendant, filed closing arguments. Thus, the Court cannot construe the State's filing as a response. However, the Court finds that the State

did not waive the right to file closing arguments. The Court is not persuaded to strike the State's filling simply because Defendant chose not to file closing arguments. For these reasons, and other good cause shown, the Court finds that Defendant's Objection and Motion to Strike should be denied.

ANALYSIS

"To bind a defendant over for trial, the prosecution is required only to 'produce believable evidence of all the elements of the crime charged[.]' " *State v. Maughan*, 2013 UT 37, ¶ 14, 305 P.3d 1058 (quoting *State v. Clark*, 2001 UT 9, ¶ 15, 20 P.3d 300 (internal quotation marks omitted)). Accordingly, the State must show probable cause at the preliminary hearing by producing "evidence sufficient to support a reasonable belief that the defendant committed the charged crime." *Maughan*, 2013 UT at ¶ 14 (quoting *State v. Ramirez*, 2012 UT 59, ¶ 9, 289 P.3d 444 (internal quotation marks omitted)); see also *State v. Hawatmeh*, 2001 UT 51, ¶ 14, 26 P.3d 223. At the preliminary hearing stage, the magistrate must "view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." *Clark*, 2001 UT at ¶ 10 (internal quotation marks omitted). "An inference is reasonable unless it falls to a level of inconsistency or incredibility that no reasonable jury could accept it." *Maughan*, 2013 UT at ¶ 14 (internal quotation marks and citation omitted); see also *Ramirez*, 2012 UT at ¶ 10 (explaining that the assessment of whether a reasonable inference exists "does not encompass an assessment of whether such inference is more plausible than an alternative that cuts in favor of the defense" since "[t]hat is a matter of factfinding, which is left for the jury at trial"). The "bind over standard does not call for an evaluation of the totality of the evidence in search of the most reasonable inference to be drawn therefrom." *Maughan*, 2013 UT at ¶ 17. It only asks "whether the evidence could support a reasonable jury's decision to convict,

through a lens that 'view[s] all evidence in the light most favorable to the prosecution.' " *Id.* (quoting *Clark*, 2001 UT at ¶ 10).

Defendant is charged with: (1) one count of Riot, a third-degree felony; (2) one count of Threatening With or Using a Dangerous Weapon in a Fight, a class A misdemeanor; (3) two counts of Assault, a class A misdemeanor and a class B misdemeanor; (4) one count of Theft by Extortion, a class A misdemeanor; and (5) one count of Threat of Violence, a class B misdemeanor. Thus, the Court must determine whether the State presented sufficient evidence to support a reasonable belief that Defendant committed any of the crimes charged.

I. Riot

Defendant is charged with one count of third-degree felony Riot, under Utah Code § 76-9-101(1), which states:

> (1) A person is guilty of riot if:
>
> (a) simultaneously with two or more other persons he engages in tumultuous or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; . . .
>
> . . .
>
> (3) Riot is a felony of the third degree if, in the course of and as a result of the conduct, any person suffers bodily injury, or substantial property damage, arson occurs or the defendant was armed with a dangerous weapon, as defined in Section 76-1-601; otherwise it is a class B misdemeanor.

Utah Code Ann. § 76-9-101(1), (3). In order to bind Defendant over on a class B misdemeanor charge of Riot, the State must produce believable evidence showing Defendant (1) engaged in tumultuous or violent conduct, (2) simultaneously with two or more other persons, and (3) thereby knowingly or recklessly created a substantial risk of causing public alarm. *See id.* § 76-9-101(1)(a). To bind Defendant over on a third degree felony charge of riot the State must also show evidence (A) that someone suffered bodily injury or substantial property damage, in the

course of and as a result of the conduct, (B) that arson occurred, or (C) that Defendant was armed with a dangerous weapon. *See id.* § 76-9-101(3).

The preliminary hearing testimony and evidence indicates that the Caballero's vehicle broke down at the campsite on May 25, 2018. Mr. and Mrs. Durney and a 17-year old female arrived at the campsite in a truck sometime later that day; and Defendant, Ms. Nielsen and Mr. Haderlie arrived in a second truck shortly thereafter. Mr. Caballero stated that Defendant "arrived very mad with me and my family with only bad words he told me to move my truck and the trailer with his hand touching his gun on the upper part about 5-8 inches from my face screaming at me only bad words and the women were laughing." J. Caballero Statement Ex. 2, at 1; *see also* Prelim. Hr'g, at 02:03:55–02:04:50. Mr. Caballero stated that Defendant "said you have 5 minutes to remove your truck and trailer" and "that if in 5 minutes I hadn't removed the trailer and truck he was going to burn them." J. Caballero Statement Ex. 2, at 1; *see also* Prelim. Hr'g, at 02:06:20–02:06:50. Mr. Caballero also testified that Defendant "said that he was going to use his weapon . . . against [Mr. Caballero]." *See id.* Mr. Caballero stated that when he tried to leave with his family, Defendant "came over to me and tried to hit me" and "pulled me by my left ear and I returned and he insisted that I move the trailer and my truck and I explained to him that I couldn't but he insisted with bad words." J. Caballero Statement Ex. 2, at 1; *see also* Prelim. Hr'g, at 02:14:45–02:16:07.

Mr. Caballero's testimony is corroborated by Mrs. Caballero, who stated that Defendant approached her husband and "[told] him to move his "shit" from his property and to do it very fast because if he didn't do it he, himself, would burn everything that he wanted to . . . and he said . . . you only have 5 minutes to leave and he put his face in front of [Mr. Caballero]'s face yelling at him." M. Caballero Statement Ex. 2, at 2-3. Mrs. Caballero also indicated that when

the Caballeros tried to leave, Defendant "walked very quickly towards us to catch up to us and yelling very ugly words said: Where are you going and he told my husband "are you deaf"? and he grabbed him by the ear pulling it very hard. He told us that we couldn't leave from this place that we should take our things from there . . . but the man didn't want us to leave, after he said he wanted money, that if we gave him money he would take the things from here himself." *Id.* at 3.

Traci Welchman and her boyfriend Adam Nelson were driving by the campsite when they decided to stop and check on Mrs. Caballero and her son, who appeared to be in distress. *See* Welchman Statement Ex. 5, at 2. Ms. Welchman stated that, when Mr. Nelson tried to help, "they all started yelling at us and telling us to get the f out of there or they'd beat our ass etc," and "kept yelling at us to "vamanos!, get the f*** out of here!" *Id.* Ms. Welchman described the group's conduct as "very violent behavior." *Id.* Ms. Welchman's testimony was corroborated by Mr. Nelson, who stated that "the group became confrontational with me. And was asking who the fuck am I and what the fuck am I doing here. I replied and said that . . . Mrs. Caballero wanted me to let you guys know that they are leaving. They said yeah we know because we fucking told them to! And they told me that I needed to fucking leave to. . . . And Mr. Pack as his friends started yelling even more for me to fucking leave and to get out of here." Nelson Statement Ex. 6, at 2.

Ms. Welchman stated that when she and Mr. Nelson tried to walk away, Defendant "shoved [Mr. Nelson] backwards toward the camp, away from where we were headed[.]" Welchman Statement Ex. 5, at 2. Mr. Nelson also stated that "Mr. Pack pushed me and said get the fuck out of here." Nelson Statement Ex. 6, at 2. Mr. Caballero similarly stated that Defendant and his group "offended [Mr. Nelson] also with bad words . . . and told him it wasn't his problem and if he didn't leave they would hit him . . . and they wanted to hit him and they threatened to

damage his car." J. Caballero Statement Ex. 2, at 2. Mr. Caballero also indicated that he took Mr. Nelson to his vehicle "because they wanted to hit him and they threatened to damage his car." *Id.*

The preliminary hearing testimony and evidence shows that Defendant and the other co-defendants engaged in simultaneous tumultuous and violent conduct. There is evidence that Defendant used profanity, made threatening remarks or gestures, and yelled at the Caballeros, Ms. Welchman and Mr. Nelson. There is also evidence that Defendant used or attempted to use physical violence and force against Mr. Caballero and Mr. Nelson. According to witnesses, Defendant was visibly angry and upset, and his behavior was threatening and very violent. The evidence further indicates that Defendant knowingly or recklessly created a substantial risk of causing public alarm, as evidence by the apparent alarm and concern manifest by the passing public. The State also presented evidence that Defendant was armed with a firearm (a dangerous weapon as defined by section 76-1-601) at the time of the incident. *See id.* at 1; *see also* Prelim. Hr'g, at 02:03:55–02:04:50, 02:06:20–02:06:50.

Based on this and other evidence presented at the preliminary hearing, the Court finds that the State produced believable evidence showing Defendant (1) engaged in tumultuous or violent conduct, (2) simultaneously with two or more other Co-defendants, and (3) thereby knowingly or recklessly created a substantial risk of causing public alarm. *See id.* § 76-9-101(1)(a). The Court also finds that the State presented evidence showing Defendant was armed with a dangerous weapon as defined by section 76-1-601. *See id.* §§ 76-1-601, 76-9-101(3). Therefore, after viewing the evidence, and drawing all reasonable inferences therefrom, in the light most favorable to the prosecution, the Court finds that the State has shown probable cause that Defendant committed a third degree felony charge of Riot.

II. Threatening with or Using a Dangerous Weapon in a Fight

Defendant is also charged with one count of Threatening With or Using a Dangerous Weapon in a Fight, a class A misdemeanor, under Utah Code § 76-10-506, which states that ". . . an individual who, in the presence of two or more individuals, . . . draws or exhibits a dangerous weapon in an angry and threatening manner or unlawfully uses a dangerous weapon in a fight or quarrel is guilty of a class A misdemeanor." *Id.* § 76-10-506(2). A "dangerous weapon" is defined as "an item that in the manner of its use or intended use is capable of causing death or serious bodily injury." *Id.* § 76-10-506(1)(a). A defendant does not exhibit a dangerous weapon in a threatening manner by mere "possession of a dangerous weapon, whether visible or concealed, without additional behavior which is threatening[.]" *Id.* § 76-10-506(1)(b)(i). Thus, to bind Defendant over on a class A misdemeanor charge of Threatening With or Using a Dangerous Weapon in a Fight, the State must produce evidence showing that Defendant (1) was in the presence of two or more individuals, (2) drew or exhibited a dangerous weapon ("an item that in the manner of its use or intended use is capable of causing death or serious bodily injury") in an angry and threatening manner, or (3) unlawfully used a dangerous weapon in a fight or quarrel. *See id.*

It is undisputed that Defendant possessed a firearm (dangerous weapon as defined by section 76-10-506(1)(a)) at the time of the incident, while he was in the presence of two or more individuals. *See id.* § 76-10-506(1)(a). The State also presented evidence that Defendant not only exhibited the firearm in an angry and threatening manner, but that he also threatened to use the firearm against Mr. Caballero. *See* J. Caballero Statement Ex. 2, at 1 (stating that Defendant was "very mad with me and my family with only bad words he told me to move my truck and the trailer with his hand touching his gun on the upper part about 5-8 inches from my face screaming at me only bad words"); *see also* Prelim. Hr'g, at 02:03:55–02:04:50, 02:06:20–02:06:50 (Mr.

Caballero testified that Defendant "said that he was going to use his weapon . . . against [Mr. Caballero].").

Based on this and other evidence presented at the preliminary hearing, the Court finds that the State produced believable evidence showing Defendant (1) was in the presence of two or more individuals and (2) exhibited a dangerous weapon in an angry and threatening manner. *See* Utah Code Ann. § 76-10-506(2). Therefore, after viewing the evidence, and drawing all reasonable inferences therefrom, in the light most favorable to the prosecution, the Court finds that the State has shown probable cause that Defendant committed a class A misdemeanor charge of Threatening With or Using a Dangerous Weapon in a Fight.

III. Assault

Defendant is also charged with a class A misdemeanor charge of Assault, and a class B misdemeanor charge of Assault. The elements of Assault are found in Utah Code § 76-5-102, which states:

> (1) Assault is:
>
> (a) an attempt, with unlawful force or violence, to do bodily injury to another; or
>
> (b) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.
>
> (2) Assault is a class B misdemeanor.
>
> (3) Assault is a class A misdemeanor if:
>
> (a) the person causes substantial bodily injury to another; or
>
> (b) the victim is pregnant and the person has knowledge of the pregnancy.
>
> (4) It is not a defense against assault, that the accused caused serious bodily injury to another.

Id. § 76-5-102. Assault is typically a class B misdemeanor. *Id.* § 76-5-102(2). However, Assault becomes a class A misdemeanor if the defendant "commit[s the] offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate

or terrorize that person . . .." *Id.* § 76-3-203.3(2)(b). The terms "intimidate or terrorize" refer to "an act which causes the person to fear for his physical safety or damages the property of that person or another. The act that must be accompanied with the intent to cause or ha[ve] the effect of causing a person to reasonably fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States." *Id.* § 76-3-203.3(3). Thus, in order to bind Defendant over on a class B misdemeanor charge of Assault, the State must produce evidence showing that Defendant (1) attempted, with unlawful force or violence, to do bodily injury to another, or (2) committed an act, with unlawful force or violence, that caused or created a substantial risk of bodily injury to another. *See id.* § 76-5-102(a). Moreover, to bind Defendant over on a class A misdemeanor charge of Assault the State must produce evidence showing that Defendant committed the offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person. *See id.* § 76-3-203.3(2)(b).

The preliminary hearing testimony and evidence indicates that Defendant used or attempted to use unlawful force and physical violence against Mr. Caballero and Mr. Nelson. Mr. Caballero stated that when he tried to leave with his family, Defendant "came over to me and tried to hit me" and "pulled me by my left ear and I returned and he insisted that I move the trailer and my truck and I explained to him that I couldn't but he insisted with bad words." J. Caballero Statement Ex. 2, at 1; *see also* Prelim. Hr'g, at 02:14:45–02:16:07. Mrs. Caballero also indicated that when they tried to leave, Defendant "walked very quickly towards us to catch up to us and yelling very ugly words said: Where are you going and he told my husband "are you deaf"? [A]nd he grabbed him by the ear pulling it very hard." M. Caballero Statement Ex. 2, at 3. Similarly, Ms. Welchman stated that when she and Mr. Nelson tried to walk away, Defendant

"shoved [Mr. Nelson] backwards toward the camp, away from where we were headed[.]" Welchman Statement Ex. 5, at 2. Mr. Nelson also stated that "Mr. Pack pushed me and said get the fuck out of here." Nelson Statement Ex. 6, at 2; *see also* J. Caballero Statement Ex. 2, at 2 (stating that Defendant "pushed [Mr. Nelson] and told him it wasn't his problem and if he didn't leave they would hit him," and stated that he took Mr. Nelson to his vehicle "because they wanted to hit him and they threatened to damage his car."). Based on this and other testimony and evidence presented at the preliminary hearing, the Court finds that the State has shown evidence that Defendant attempted, with unlawful force or violence, to do bodily injury to Mr. Caballero and/or Mr. Nelson; and/or committed acts, with unlawful force or violence, that created a substantial risk of bodily injury to Mr. Caballero. S*ee* Utah Code Ann. § 76-5-102(1). Thus, the Court finds that the State has shown probable cause that Defendant committed a class B misdemeanor charge of Assault.

The preliminary hearing testimony and evidence also indicates that Defendant's actions caused Mr. Caballero, his family, Ms. Welchman, and/or Mr. Nelson to fear for their physical safety. *See* Prelim. Hr'g, at 02:06:20–02:06:50 (Mr. Caballero testified that Defendant "said that he was going to use his weapon . . . against him"); *see also* J. Caballero Statement Ex. 2, at 2 (stating that he took Mr. Nelson to his vehicle "because they wanted to hit him and they threatened to damage his car."). There is also evidence that Defendant's actions caused Mr. Caballero and his family to fear that their own property, and/or Mr. Nelson's and Mrs. Chapman's property, might be damaged. *See id.* at 1 (Mr. Caballero stated that Defendant "said you have 5 minutes to remove your truck and trailer" and "that if in 5 minutes I hadn't removed the trailer and truck he was going to burn them"). Moreover, the presented evidence suggests that Defendant acted with the intent to cause or have the effect of causing the Caballeros, Mr. Nelson,

and Ms. Chapman to be reasonably afraid of what would happen if they or their property remained in that public area or campsite. Based on this and other testimony and evidence presented at the preliminary hearing, the Court finds that the State has shown evidence that Defendant acted with the intent to, or with reason to believe that his action would, intimidate or terrorize the Caballeros, Ms. Welchman and/or Mr. Nelson. *See* Utah Code Ann. § 76-3-203.3(2)(b). Thus, the Court also finds that the State has shown probable cause that Defendant committed a class A misdemeanor charge of Assault.

Ultimately, after viewing the evidence, and drawing all reasonable inferences therefrom, in the light most favorable to the prosecution, the Court finds that the State has shown probable cause that Defendant committed a class B misdemeanor charge of Assault and a class A misdemeanor charge of Assault. Therefore, the Court finds that the State presented sufficient evidence to bind Defendant over for trial on both counts of Assault.

IV. Theft by Extortion

Defendant is also charged with one count of Theft by Extortion, a class A misdemeanor, under Utah Code § 76-6-406, which states:

> (1) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.
>
> (2) As used in this section, extortion occurs when a person threatens to:
>
> (a) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or
>
> (b) Subject the person threatened or any other person to physical confinement or restraint; or
>
> (c) Engage in other conduct constituting a crime . . . .

Id. § 76-6-406. Theft is punishable as a class B misdemeanor if the value of the property stolen is less than $500.00. *Id.* § 76-6-412(1)(d). However, section 76-3-203.3 provides that, like Assault, a class B misdemeanor charge of Theft by Extortion becomes a class A misdemeanor if the

defendant "commit[s the] offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person . . .." *Id.* § 76-3-203.3(2)(b).

The preliminary hearing testimony and evidence indicates that Defendant obtained unauthorized control over the Caballeros' property by extortion and with a purpose to deprive them thereof. Mr. Caballero stated and testified that Defendant demanded $200.00 from him to move his truck out of the campsite. *See* J. Caballero Statement Ex. 2, at 2 (stating that Defendant "when he told me that he was going to burn it asked me for $200 to move the things, truck and trailer"); *see also* M. Caballero Statement Ex. 2, at 3 (stating "[Defendant] told us that we couldn't leave from this place that we should take our things from there. I told him that we wanted to leave to look for help that we needed service for the telephone and be able to ask for help, but the man didn't want us to leave, after he said he wanted money, that if we gave him money he would take the things from here himself."). When Mr. Caballero responded that he did not have that amount, Defendant demanded all the money that the Caballeros had, which was $40.00. Ultimately, Defendant took $40.00 from the Caballeros. Based on this and other evidence presented at the preliminary hearing, the Court finds that the State produced believable evidence showing Defendant obtained or exercised control over the Caballeros' property by extortion (by threatening to cause physical harm in the future to the Caballeros and/or their property) and with a purpose to deprive them thereof. *See* Utah Code Ann. § 76-6-406(1), (2)(a).

The preliminary hearing testimony and evidence also indicates that Defendant acted with the intent to intimidate or terrorize the Caballeros or with reason to believe that his action would intimidate or terrorize them. Mr. Caballero stated and testified that Defendant told him that if he did not remove his belongings from the campsite, that he would burn them and use his firearm

against Mr. Caballero. Mr. Caballero also stated that he gave Defendant the money because he was afraid of what would happen if he did not. *See* J. Caballero Statement Ex. 2, at 2 (stating that "[he] was scared and told [Defendant] yes."). The evidence suggests that Defendant acted with the intent to cause or have the effect of causing the Caballeros to fear what would happen if they or their belongings remained in that campsite or did not give Defendant money to move them. *See id.* (stating that Defendant "asked me for $200 to move the things, truck and trailer" "when he told me that he was going to burn it"). Based on this and other testimony and evidence presented at the preliminary hearing, the Court finds that the State has shown evidence that Defendant acted with the intent to, or with reason to believe that his action would, intimidate or terrorize the Caballeros. *See* Utah Code Ann. § 76-3-203.3(2)(b).

Therefore, after viewing the evidence, and drawing all reasonable inferences therefrom, in the light most favorable to the prosecution, the Court finds that the State has shown probable cause that Defendant committed a class A misdemeanor charge of Theft by Extortion.

V. Threat of Violence

Defendant is also charged with Threat of Violence, a class A misdemeanor, under Utah Code § 76-5-107, which states:

> (1) A person commits a threat of violence if:
>
> (a) the person threatens to commit any offense involving bodily injury, death, or substantial property damage, and acts with intent to place a person in fear of imminent serious bodily injury, substantial bodily injury, or death; or
>
> (b) the person makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to another.

Id. § 76-5-107(1). Threat of Violence is typically a class B misdemeanor. *Id.* § 76-5-107(2). However, section 76-3-203.3 provides that a class B misdemeanor charge of Threat of Violence becomes a class A misdemeanor if the defendant "commit[s the] offense with the intent to

intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person . . .." *Id.* § 76-3-203.3(2)(b).

The preliminary hearing testimony and evidence indicates that Defendant threatened to commit an offense involving bodily injury and substantial property damage. Mr. Caballero stated and testified that Defendant threatened to burn the Caballeros' truck and trailer, and use his firearm against Mr. Caballero if he did not remove his property from the campsite. The presented evidence also indicates that Defendant's threat was accompanied by a show of immediate force or violence, to do bodily injury to Mr. Caballero. *See* J. Caballero Statement Ex. 2, at 1 (stating that when the Caballeros tried to leave the campsite, Defendant "came over to me and tried to hit me" and "pulled me by my left ear and I returned and he insisted that I move the trailer and my truck"); *see also* Prelim. Hr'g, at 02:14:45–02:16:07; M. Caballero Statement Ex. 2, at 3. Based on this and other evidence presented at the preliminary hearing, the Court finds that the State produced believable evidence showing Defendant threatened to commit an offense involving bodily injury, death, or substantial property damage, and acted with intent to place Mr. Caballero and his family in fear of imminent serious bodily injury, substantial bodily injury, or death, *see* Utah Code Ann. § 76-5-107(1)(a); or made a threat, accompanied by a show of immediate force or violence, to do bodily injury to Mr. Caballero. *See id.* § 76-5-107(1)(b).

The preliminary hearing testimony and evidence also indicates that Defendant intimidated or terrorized Mr. Caballero and his family, and that his actions caused the Caballeros to fear for their physical safety. The presented evidence suggests that Defendant acted with the intent to cause or have the effect of causing the Caballeros to fear what would happen if they or their belongings remained in that campsite. Thus, the Court also finds that the State has produced

evidence showing that Defendant acted with the intent to, or with reason to believe that his action would, intimidate or terrorize the Caballeros. *See id.* § 76-3-203.3(2)(b).

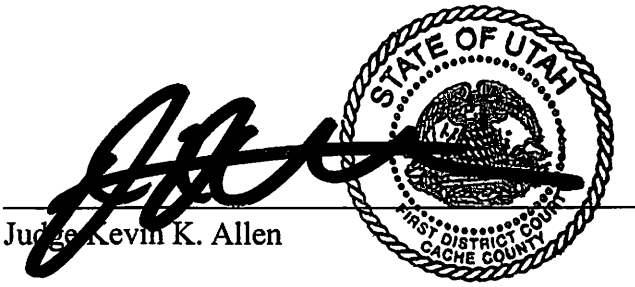
Therefore, after viewing the evidence, and drawing all reasonable inferences therefrom, in the light most favorable to the prosecution, the Court finds that the State has shown probable cause that Defendant committed a class A misdemeanor charge of Threat of Violence.

CONCLUSION

Based on the forgoing, the Court HEREBY ORDERS that Defendant's Objection and Motion to Strike be DENIED. The Court finds the State has met its burden of showing sufficient evidence to bind Defendant over for trial on all charges. This decision represents the order of the Court. No further order is necessary to effectuate this decision.

DATED this 11 day of September, 2019.

BY THE COURT:



Judge Kevin K. Allen

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 181100914 by the method and on the date specified.

MANUAL EMAIL: GRIFFIN HAZARD GHAZARD@CACHEATTORNEY.ORG
MANUAL EMAIL: JOHN WEBSTER JMWEBSTERLAW@HOTMAIL.COM

09/11/2019 /s/ JANET REESE

Date: _____ _____

Signature