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

THE STATE OF UTAH,

Plaintiff,

v.

PETERSON DREW MATHESON,

Defendant,

**MEMORANDUM IN OPPOSITION TO
BINDOVER**

Case No. 231402248

Hon. Judge Lund

Mr. Matheson, through his attorney, opposes bind over in this matter and moves the Court to dismiss the case.

STATEMENT OF FACTS

Mr. Matheson is charged in an amended information with two counts of manslaughter in violation of UCA §76-5-205; two counts of negligently operating a vehicle resulting in death in violation of UCA §76-5-207; one count of reckless driving in violation of UCA §41-6a-528; one count of following too close in violation of UCA §41-6a-711; and one count of failure to stay in one lane in violation of UCA §41-6a-710(1).

A preliminary hearing was held in this matter on September 29, 2023. For the purpose of this memorandum and given the standards of a preliminary hearing, Mr.

Matheson will concede that the State has established probable cause that he was operating a motor vehicle, probable cause that he had a measurable amount of THC in his system at that time, probable cause to believe that there was an accident wherein his truck collided with another vehicle, and probable cause to believe that the accident caused the death of R.S. and M.H. Mr. Matheson contends that the State did not establish probable cause that he “recklessly caused the death of another” as required by counts 1 and 2, the manslaughter counts. The State also failed to establish probable cause that he “operated a motor vehicle in a criminally negligent manner causing the death of another” as required by counts 3 and 4, negligently operating a motor vehicle resulting in death. This memorandum will focus on the evidence relative to those issues.

The sole witness to testify to the foregoing standards at the preliminary hearing was one Adam Nott. Mr. Nott was traveling on the same road as Mr. Matheson and a white Nissan in Utah County on June 4, 2023. As Mr. Nott turned right onto State Route 73, he saw a white Nissan car in his rear view mirror, (PH Transcript p.65). He was driving in the one quarter mile long lane that is provided to merge into SR 73 as was the Nissan,(Id.). He then noticed a white truck, Mr. Matheson’s truck as evidence established, swing around the merger lane directly onto SR 73. He had seen this many times and did not think there was anything unusual about that driving pattern, (PHT 65).

What he saw next was not so usual. The white Nissan “immediately” sped up and swerved into the travel lane of SR73 to cut off the Peterson truck. The truck then returned to the merge lane to avoid the Nissan “but the Nissan sped up so as to not allow the truck to pass”, (PHT 65). “The Nissan was trying to keep the truck from passing,” “they were kind of neck and neck”, and then “the merging lane ended so the

truck stayed on the shoulder lane,” (PHT 66). The Nissan made it impossible for the truck to pass and forced it onto the shoulder where two of the truck’s tires were off of the road surface (PHT 66-67, 76). The three vehicles, he estimated, were traveling at some point near 75 mph in a 65 mph zone (PHT 75,78), “At this point...I can’t say who initiated it but the vehicles did collide into each other,” “I could not say for sure who made contact first”, (PHT 68, 77). The Nissan continues to take up the entire travel lane, the truck separates after the second time it and the car came together, loses control, slows down, the Nissan passes ahead, and the truck swerves behind the Nissan into the opposite lane of travel where the fatal collision occurs (PHT 70). According to Mr. Nott, the Nissan could have ended the situation, or even prevented it entirely, by simply letting the truck pass (PHT 80).

ARGUMENT

“[T]he appropriate legal standard to be applied at a preliminary hearing - is probable cause.” *State v. Virgin*, 2006 UT 29, ¶17, 137, P.3d 787. “[T]o establish probable cause, the prosecution must produce evidence sufficient to support a reasonable belief that the defendant committed the charged crime.” *Id.* “Under the probable cause standard, the prosecution has the burden of producing believable evidence of all the elements of the crime charged, but this evidence does not need to be capable of supporting a finding of guilty beyond a reasonable doubt.” *Id.* ¶ 20 (cleaned up). “Properly construed and applied, the probable cause standard does not constitute a rubber stamp for the prosecution, but, rather, provides a meaningful opportunity for magistrates to ferret out groundless and improvident prosecutions.” *Id.* ¶ 19.

The “primary purpose” of a preliminary hearing is to “ferret out groundless

and improvident prosecutions without usurping the jury's role as the principal fact-finder. *State v. Schmidt*, 2015 UT 65, 119, 365, 356 P.3d 1204. (cleaned up). To that end, "the evidentiary threshold at [a preliminary] hearing is relatively low." *State v. Ramirez*, 2012 UT 59, ¶9, 289 P.3d 444. And the burden on the State is "light." *State v. Jones*, 2016 UT 4, 112, P.3d 1212. The State need only show probable cause - "a reasonable belief that an offense has been committed and that the defendant committed it." *Schmidt*, 2015 UT 65, ¶17 (quoting *State v. Clark*, 2001 UT 9, 116, 20 P.3d 300); see also *Illinois v. Gates*, 462 U.S. 213, 244 n. 13 (6983) ("probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity"). This is "the substance of all the definitions of probable cause" - "a reasonable ground for belief of guilt" particular to the person arrested. *Maryland v. Pringle*, 540 U.S. 366, 371 (2023) (cleaned up). It requires magistrates to "view all evidence...and draw all reasonable inferences in favor of the prosecution." *Schmidt*, 2015 UT 65, ¶4 (cleaned up). Thus, a magistrate may "decline bindover 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." *Schmidt*, 2015 UT 65, ¶18. Here, because the State did not produce "believable" evidence as to each element of the crimes charged in counts 1, 2, 3, and 4, the court should not bind over the pending charges in spite of the very slight quantum of evidence required to send charges on for trial.

There is a dearth of evidence, even under the limited standard of probable cause, to conclude that Mr. Matheson was reckless, as required by counts 1 and 2, or criminally negligent, as required by counts 3 and 4, and that those behaviors caused the deaths charged in those counts. At the outset, Mr. Matheson was operating his vehicle

in a lawful manner. In the words of Mr. Nott, there was nothing unusual about his swinging his truck out of the merger lane onto SR 73. It was at that point the Nissan driver chose to speed up and impede his lawful progress onto SR 73. Mr. Matheson then returned to the merger lane. Again, the Nissan driver intentionally sped up and blocked his lawful travel, forcing Mr. Matheson partially off the road surface. He intentionally kept his position on the road so that Mr. Matheson could not return to the surface in spite of the fact that, as Mr. Nott testified, he could have chosen to let him back in at any time. It is at this point that the two vehicles came in contact and separated twice. Mr. Nott could shed no light on who initiated the contact but what is clear is that after the second contact, Mr. Matheson, in rapid sequence, separated from the Nissan, slowed, lost control, veered into oncoming traffic, and the fatal collision occurred. Mr. Matheson was neither reckless nor criminally negligent, he was driving his truck in a lawful manner when according to Mr. Nott he was assaulted by the Nissan driver. He attempted to evade that driver and continue on his path. There is no evidence he initiated the collision that caused him to lose control of his truck and veer into the other lane. There certainly is evidence that if he had not been attacked by the Nissan driver there would have been no accident. In the absence of any evidence that he was criminally negligent or reckless, the first four counts must be dismissed. In the absence of any evidence that his conduct caused the fatal collision, whether negligent or not, the first four charges must be dismissed. The causation evidence is lacking because Mr. Nott, who did say that when the vehicles separated after the second collision the truck lost control and veered into traffic, was unable to say who initiated that collision. If the Nissan crashed into the truck and propelled it into the other lanes, Mr. Matheson was

not the cause of the accident. As the foregoing cases teach, the Court may not speculate as to the cause of the accident.

CONCLUSION

Counts 1, 2, 3, and 4 should be dismissed.

DATED this 27th day of October, 2023.

/s/Edward Brass
EDWARD BRASS
Attorney for the Defendant

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Memorandum in Opposition to bindover was efiled with notice to Ms. Rachelle Shumway, Deputy Utah County Attorney, this 27th day of October, 2023.

/s/Sandra Barron