No. 20260371-CA

Utah Court of Appeals

David Ammon Jakeman,
Plaintiff-Appellant,

v.

State of Utah, Utah Attorney General's Office, Attorney General Derek Brown, Governor Spencer J. Cox, Commissioner Beau Mason, Utah Department of Public Safety, and Utah County Attorney's Office,
Defendants-Appellees.

State Appellees' Response Brief

On appeal from Fourth Judicial District Court (Provo)
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Current and Former Parties

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Additional parties to the lower court proceedings:

State of Utah Utah State Senate Utah House of Representatives Mike Schultz J. Stuart Adams Administrative Office of the Courts Utah Judicial Council Department of Public Safety Utah Attorney General's Office	These parties were all dismissed from the district court proceeding with Jakeman's consent. R. 336, 389, 439-40, 484. The State was dropped as a defendant when Jakeman amended his complaint. R. 371-72.
Jess L. Anderson	Beau Mason automatically substituted as Commissioner of the Department of Public Safety. Utah R. App. P. 38(d)

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Introduction

Appellant David Ammon Jakeman is subject to multiple continuous protective orders (CPOs) issued under Utah Code § 78B-7-804 (the CPO Statute) for the protection of his children and ex-wife. This Court already upheld his underlying convictions for child abuse and violating a protective order in *Orem City v. Jakeman* (*Jakeman I*), 2025 UT App 107, ¶¶ 1, 3-4, 575 P.3d 257. It has also upheld Jakeman's CPOs against Jakeman's direct attack in *Orem City v. Jakeman* (*Jakeman II*), 2025 UT App 187, ¶¶ 1-2, 583 P.3d 1090. This appeal is Jakeman's collateral attack on those CPOs under the guise of attacking the CPO Statute authorizing them.

In three separate civil proceedings consolidated by the district court, Jakeman asserted a facial challenge to the CPO Statute, claiming it violated his substantive due process rights under the state and federal constitutions and his equal protection rights under the federal constitution.

The district court reached the substance of Jakeman's claims and found them deficient. While that ruling is correct, State Appellees—the Governor, Attorney General, and Commissioner of the Department of Public Safety—also believe the matter is properly disposed on collateral attack grounds, which are apparent from the record.

Statement of the Issues

Jakeman asserts three issues on appeal:

- Whether the district court erred in granting summary judgment on his state constitutional substantive due process claim;
- Whether the district court erred in dismissing his federal substantive due process claim with prejudice; and
- Whether the district court erred in granting summary judgment on his federal equal protection claim.

Am. Aplt. Br. at 2-3. State Appellees do not dispute Jakeman's contention that these issues were preserved and are questions of law reviewed for correctness. But the Court should first consider a threshold fourth issue:

- Whether the collateral attack doctrine precludes consideration of Jakeman's issues.

Standard: Applicability of the collateral attack doctrine is a question of law. *Iota LLC v. Davco Mgmt. Co. LC*, 2016 UT App 231, ¶ 12, 391 P.3d 239. Because the issue was not addressed by the district court, no standard of review applies and the Court addresses it in the first instance. *Tischmak v. Utah State Tax Comm'n*, 2025 UT 24, ¶ 14, 574 P.3d 63.

Preservation: This ground was not raised below, but an appellate court may affirm on any legal ground apparent on the record. *Bailey v. Bayles*, 2002 UT 58, ¶ 13, 52 P.3d 1158.

Statement of the Case

A. Jakeman's Criminal History

In May 2022, while under a protective order, Jakeman physically assaulted his teen daughter AJ in the home as she was attempting to protect the younger children from Jakeman. *Jakeman I*, 2025 UT App 107, ¶¶ 3-4. Jakeman struck AJ in the thigh, intending to hurt her, and he did, causing her to scream and drop to the floor. *Id.* ¶ 8. Jakeman was convicted of eight misdemeanor domestic violence offenses in five separate criminal proceedings. R. 14. These convictions included both child abuse and violation of a protective order. *Jakeman I*, 2025 UT App 107, ¶ 1. His sentence included incarceration served after the sentencing. R. 14. Jakeman appealed his convictions to this Court on multiple grounds, all of which were meritless. *Jakeman I*, 2025 UT App 107, ¶ 1.

In 2024, the State commenced another prosecution against Jakeman for stalking and violation of a protective order arising from incidents in 2024. R. 18, 49-50. That proceeding was pending during much of the district court litigation. R. 368. But ultimately resolved with a jury verdict in Jakeman's favor.[1] *See State v. Jakeman*, Fourth District Court case no. 241404039.

[1] According to Jakeman's filings and district court dockets, the initial case number was 241101220 but changed to 241404039 after a transfer, under which number it went to trial. R. 368; *State v. Jakeman*, Fourth District Court case no. 241404039.

B. The CPOs

The CPO Statute requires a court to consider the safety of domestic violence victims before a convicted perpetrator is released from custody. Utah Code § 78B-7-804(1). Subsection (3) requires a CPO limiting contact between the perpetrator and their victims anytime the perpetrator serves a period of incarceration after sentencing, unless the victims clearly have no reasonable fear of future harm. *Id.* § 78B-7-804(3)(b).

Pursuant to the CPO Statute, after Jakeman's release from incarceration, the district court entered CPOs against Jakeman, protecting his children and ex-spouse.[2] R. 23-47. The CPOs name Jakeman's ex-spouse and each child as a "[v]ictim needing protection," and include a finding that "[t]he defendant represents a credible threat to the physical safety of the protected person." R. 23-24. Jakeman "was afforded both notice and opportunity to be heard in the hearing that gave rise to" the CPOs and advised of "the right to request a hearing to ask the court to change or dismiss" the CPO. R. 26. The CPOs order Jakeman to have "no contact or limited contact" with the protected persons and to "stay away" from their residence, school, workplace, and other areas known to be frequented by

[2] CPOs were entered in each of the five criminal proceedings: case nos. 221300408, 221300553, 231300069, 231300079, and 231300162. Other than the difference in case number, the CPOs are identical, and subsequent references will be made only to the first CPO.

them. R. 24-25. The CPOs do not purport to adjudicate Jakeman's parental rights regarding any of his children. R. 23-36.[3]

Jakeman moved the district court to change or dismiss the CPOs. *Jakeman II*, 2025 UT App 187, ¶ 3. The district court denied that motion. *Id.* ¶ 4; R. 14. Jakeman appealed, asserting an as-applied challenge to the constitutionality of the CPO Statute, arguing it effected "the de facto termination of his parental rights without due process." *Jakeman II*, 2025 UT App 187, ¶ 13 (cleaned up). In his appellate reply brief, he further expanded his contentions to a facial challenge to the statute on equal protection and due process grounds under both the Utah and United States Constitutions. *Id.* ¶ 13 n.3. This Court affirmed, holding that because the constitutional challenge was raised only on appeal, it was subject to only plain-error review, which the statute readily survived, and the Court declined to reach the facial challenges raised in the reply brief. *Id.* ¶¶ 13 & n.3, 15.

[3] Jakeman's allegations construe the CPOs initially as "sentencing protective orders" and then asserts that the district court subsequently "attempted to cure its . . . error" by replacing those orders with CPOs. R. 14. According to *Jakeman II*, this is a distinction without a difference: "While the statute does not explicitly state that a sentencing protective order may be continuous, there is no reason that a sentencing protective order cannot be continuous in nature. Indeed, it appears that there is generally no other option for protective orders issued in domestic violence cases that result in incarceration." *Jakeman II*¸ 2025 UT App 187, ¶ 2, n.2.

C. Jakeman's Civil Proceedings

While his criminal appeals were pending, Jakeman filed three separate civil proceedings asserting facial challenges to the CPO Statute, all of which were ultimately consolidated by the district court and are the subject of this appeal.

1. Case 250401696

Jakeman filed his first civil action in April 2025, case number 250401696, a "class action complaint for declaratory and injunctive relief." R. 1. Jakeman named a panoply of defendants, including the State, the Governor, the Attorney General and Attorney General's Office, the Department of Public Safety and its Commissioner, the State Senate and House, including the Senate President and House Speaker, the Judicial Council, the Administrative Office of the Courts, and the Utah County Attorney's Office. R. 1, 5-6.

That complaint alleges three claims: (1) a facial substantive due process challenge under the Fourteenth Amendment; (2) an equal protection challenge; and (3) a claim for injunctive and declaratory relief to declare subsections (3), (4), and (5) of the CPO Statute unconstitutional and enjoin its enforcement. R. 18-21. The contention underlying the substantive due process claim is that CPOs "completely and permanently severed Jakeman's parental rights" to his five minor "non-victim" "without adherence to the required due

process protections mandated by both the U.S. and Utah Constitutions." R. 15. The equal protection claim is grounded in the contention that the CPO Statute treats criminal defendants differently based on whether they served a post-sentencing period of incarceration. R. 19.

All defendants moved to dismiss on various grounds. R. 130-35, 165-79, 285-92, 295-305. In conjunction with those motions, Jakeman's opening brief in *Jakeman II* was supplied to the district court with a request for the court to take judicial notice. R. 182-214. Jakeman similarly introduced appellees' response brief in *Jakeman II*. R. 524-49.

Jakeman did not oppose the dismissal of the State Senate, Senate President, House, House Speaker, Judicial Council, Administrative Office of the Courts, Attorney General's Office, and Utah County Attorney's Office. R. 336, 439-40.[4] These defendants were all dismissed and are no longer before the Court. R. 483-84. And Jakeman dismissed his class action, damages, and attorney fees demands. R. 337-38.

In his opposition, Jakeman also asserted that his claims "are grounded exclusively in his currently pending prosecution for felony stalking and felony protection order violation charges and the imminent threat they pose to him

[4] Jakeman frequently unilaterally amended his district court filings, often on only minor or technical points. *Compare* R. 335-55 *with* R. 388-410. Record citations are made to at least one version of Jakeman's filing where multiple versions exist.

of application of the challenged statute upon conviction." R. 338-39. But the relief requested in the complaint expressly requests an order directing defendants to inform anyone subject to a CPO with non-victim children that the CPO is no longer enforceable as to those children. R. 21.

After notice and a hearing, the district court dismissed Jakeman's federal substantive due process claim with prejudice. R. 687-88. This is the first ruling Jakeman appeals. *See* Aplt. Br. at 3 (Issue 2). Jakeman moved for reconsideration, which was also denied. R. 565-97, 1061-62. He petitioned for interlocutory review, which was also denied. R. 1154-74, 2600.

Jakeman moved to amend his complaint, which motion was granted without opposition. R. 358-61, 690. The amended complaint asserts claims against the Utah County Attorney, Attorney General, Governor, and Commissioner of the Department of Public Safety. R. 371-72. It also removes class certification and damage allegations but otherwise substantially repeats the same claims and requested relief of the original pleading. R. 366-84.[5]

2. Cases 250403944 and 250403945

In August 2025, while the first civil action was still pending, Jakeman filed a second and third civil action, case numbers 250403944 and 250403945.

[5] Jakeman attempted to amend his complaint at least twice more, but those attempts were rejected by the district court, leaving the amended complaint as the operative pleading in the first action. R. 975-1012, 3102-04, 3242-48, 3263-64.

Defendants to these actions are the Orem City Attorney (Steve Earl) and the Attorney General. R. 772, 789. The allegations of the second and third actions largely mimic those of the first action except as follows:

- The second action asserts the same substantive due process, equal protection, injunctive and declaratory relief claims but limited to subsection (4) of the CPO Statute. R. 766-83. That subsection imposes a clear and convincing standard for modifying or dismissing a CPO. Utah Code § 78B-7-804(4).
- The third action asserts only substantive due process, injunctive and declaratory relief claims (no equal protection claim), and is limited to subsection (5) of the CPO Statute. R. 796-97. That subsection allows a victim to petition the district court for a CPO. Utah Code § 78B-7-804(5).

On the stipulated motion of the parties, the district court consolidated all three actions. R. 908-13, 923.

The parties filed cross-motions for summary judgment on Jakeman's equal protection claims. R. 2521-33, 2638-61. The district court granted defendants' motion and denied Jakeman's. R. 3051-55. Jakeman contended that the CPO Statute improperly distinguishes between domestic violence convicts who serve a period of post-conviction incarceration and those who don't. R. 375. The district court determined that rational basis review was the

appropriate standard for assessing this claim, and the statute survived rational basis review because of the legislature's expressed concerns that the time after a perpetrator's release from imprisonment is particularly fraught for their victims, when the victims feel an increased sense of danger as the perpetrator is finally in a position to retaliate. R. 3053. This is the third issue Jakeman appeals. *See* Am. Aplt. Br. at 3 (Issue 3).

The parties then filed cross-motions for summary judgment on Jakeman's state law substantive due process claim. R. 2791-825, 2851-71, 2905-06. Again, the court granted defendants' and denied Jakeman's motion. R. 3249-54. The district court determined that Jakeman's facial challenge failed as a matter of law, both because the CPO Statute clearly had constitutional application and because the statute was constitutional as applied to Jakeman. R. 3253. This is the second issue Jakeman appeals. *See* Am. Aplt. Br. at 3 (Issue 2).

The district court entered judgment on March 28, 2026. R. 3277-78. Jakeman timely appealed. R. 3280-82.

Summary of the Argument

Jakeman's appeal is, at bottom, a collateral attack on the CPOs this Court already upheld in *Jakeman II*. A litigant who had a direct opportunity to challenge a protective order—and Jakeman had one and used it—cannot relitigate the order's validity by recasting the attack as a facial challenge to

the enabling statute in a separate civil action with the express object to render the order unenforceable. The collateral-attack bar is a threshold question of law the Court should resolve first and disposes of the appeal without reaching the merits.

Should the Court reach the merits, each ruling should be affirmed.

The district court correctly rejected the facial state substantive due process challenge. A facial challenger must establish that no set of circumstances exists under which the statute would be valid. The CPO Statute plainly has valid applications. It governs perpetrators who have no children and those whose children were the direct victims of the abuse. And it nowhere requires an order barring contact with a non-victim child. Because the statute operates constitutionally in a broad run of cases, the facial challenge fails.

The federal substantive-due-process claim fails for the same reasons under the *Salerno* standard the Supreme Court reaffirmed in *Rahimi*. Carefully described, Jakeman's asserted interest is not an unqualified right to unrestricted contact with his children notwithstanding his domestic-violence convictions and a judicial finding that he is a credible threat to their safety. So described, the interest is not fundamental, and the statute readily satisfies rational-basis review. The statute's many constitutional applications independently defeat the claim.

The equal-protection claim fails under rational-basis review. The legislature could reasonably conclude that the period following a perpetrator's release from post-conviction incarceration presents a heightened and identifiable risk to victims, and that judgment supplies a conceivable rational basis for the classification. The Court should affirm.

Argument

I. Jakeman's claims are an improper collateral attack on the CPOs upheld in *Jakeman II*.

As a threshold matter, the Court should consider whether Jakeman's appellate issues are barred by the collateral attack doctrine. His three consolidated cases are an attack on the CPOs this Court already upheld in *Jakeman II*. *See Jakeman II*, 2025 UT App 187, ¶ 1. Although Jakeman has tried to couch his attack as solely forward-looking to prevent future CPOs, his requested relief unequivocally seeks a determination that his existing CPOs are unenforceable. R. 384, 782, 797.

A. A litigant may not collaterally attack a protective order when he has or had the opportunity to challenge that order in the original proceeding.

With "rare exception, when a court with proper jurisdiction enters a final judgment . . . that judgment can only be attacked on direct appeal." *State v. Hamilton*, 2003 UT 22, ¶ 25, 70 P.3d 111. If a party could have

attacked a judgment on direct appeal, even if they failed to do so, they cannot attack that judgment collaterally in another proceeding.

This collateral attack rule applies specifically to protective orders. *State v. Baize*, 2019 UT App 202, ¶ 11, 456 P.3d 770. *Baize* notes an exception for "a proceeding in equity to prevent . . . enforcement" of a judgment or protective order. *Id.* ¶ 10. That exception does not apply to Jakeman's declaratory judgment action. *See McRae & Deland v. Feltch*, 669 P.2d 404, 405 (Utah 1983). The *McRae* plaintiffs sought declaratory relief to declare a DUI statute unconstitutional, much like Jakeman's challenge to the constitutionality of the CPO Statute. *Id.* The Utah Supreme Court upheld dismissal of that claim because the plaintiffs could raise it in their pending criminal proceedings. *Id.* As this Court similarly held in another protective order matter, "We see nothing fundamentally unfair in not allowing a litigant to challenge collaterally a judgment he could have challenged directly had he chosen to do so." *State v. Hegbloom*, 2014 UT App 213, ¶ 22, 362 P.3d 921.

Notably, *Baize*, *Hamilton*, and *Hegbloom* involved protective orders entered in prior proceedings that were final by the time of these decisions while *McRae* involved a declaratory relief challenge that implicated currently-pending criminal proceedings. The salient point of the collateral attack doctrine is not whether a litigant had an opportunity in the past to challenge a protective order but whether past, present, or even future, they

had, have, or will have a *direct* opportunity to challenge the protective order. If so, a collateral attack should not be entertained. This serves "to prohibit piecemeal litigation of the legal issues in multiple suits and to prevent the needless proliferation of litigation." *McRae*, 669 P.2d at 405.

B. Jakeman had—and used—the opportunity to challenge the CPOs in *Jakeman II*.

Jakeman's CPOs were entered in 2024 in a hearing convened under the CPO Statute at Jakeman's request. *Jakeman II*, 2025 UT App 187, ¶¶ 3-4; Am. Aplt. Br. at 7; Utah Code § 78B-7-804(3)(c) (giving perpetrator the right to request hearing). Jakeman subsequently challenged the CPOs in a direct appeal in which he included his present constitutional challenges. *Jakeman II*, 2025 UT App 187, ¶¶ 13-15 & n.3 (discussing Jakeman's facial and as-applied constitutional challenges under both the due process and equal protection provisions of the state and federal constitutions). Jakeman had the opportunity to challenge the constitutionality of the CPO Statute in *Jakeman II*, and he took it, though belatedly and ineffectually.[6] *See* Am. Aplt. Br. at 11-12 (acknowledging facial challenges raised in *Jakeman II*.) This is sufficient to apply the bar of the collateral attack doctrine.

[6] Jakeman didn't raise his constitutional challenges until his appeal, and his current facial substantive due process and equal protection challenges weren't raised until his appellate reply brief. *Jakeman II*, 2025 UT App 187, ¶ 13 & n.3

A litigant who had notice and an appellate forum cannot reserve his constitutional challenge for a later collateral proceeding. *See Baize*, 2019 UT App 202, ¶ 11. Jakeman is in a weaker position than the defendant in *Baize*, who never appealed the original protective order at all. *Id.* ¶ 13. Jakeman *did* appeal and even raised the same facial constitutional challenges he now raises here, showing that those challenges "could have" been litigated in *Jakeman II*. *Hegbloom*¸ 2014 UT App 213, ¶ 22. His current suit asks a different court to declare the CPO Statute unconstitutional to undo the CPOs. The express relief of his complaints in all three consolidated actions is to declare existing CPOs "no longer enforceable" and "prohibiting enforcement" in past as well as future cases.[7] R. 384, 782, 797.

Jakeman's amended opening brief appears to anticipate this argument, asserting that his facial constitutional challenges are "litigated for the first time in this civil declaratory action" and that neither criminal decision "foreclose[d]" it. Am. Aplt. Br. at 12. This misapprehends the collateral attack doctrine. The doctrine does not turn on whether a specific challenge *was* raised in the original proceeding but whether it *could* be. In *Hegbloom*, no challenge to the subject protective orders were raised in the original

[7] This makes Jakeman's protestations that he is not attacking his existing CPOs unavailing. R. 338. He expressly seeks a declaration that they are unenforceable.

proceedings. *Hegbloom*, 2014 UT App 213, ¶ 5. In *Baize*, only a prior-restraint challenge was raised. *Baize*, 2019 UT App 202, ¶¶ 2-5. In *Hamilton*, the defendant defaulted and didn't appear at all in the original proceeding. 2003 UT 22, ¶ 11. Under Jakeman's theory of the law, the litigants' arguments in those cases should not have been barred in their collateral proceedings. That clearly wasn't the case, as the appellate courts applied the collateral attack doctrine in each of those decisions. *Hamilton*, 2003 UT 22, ¶ 26; *Baize*, 2019 UT App 202, ¶14; *Hegbloom*, 2014 UT App 213, ¶ 15.

C. The Court may affirm on collateral attack grounds even though that argument was not raised below.

The collateral attack doctrine argument was not raised before or ruled upon by the district court. Jakeman's criminal appeals were still pending during the district court proceeding. *Jakeman I*, affirming Jakeman's criminal convictions underlying the CPOs, issued on July 10, 2025. *See Jakeman I*, 2025 UT App 107. By then, the district court had already dismissed the federal substantive due process claim. R. 553, 687-88. *Jakeman II*, affirming the CPOs, issued on December 18, 2025. *See Jakeman II*, 2025 UT App 187. By then, the parties had already moved for summary judgment on the equal protection claim. R. 2638-61. *Jakeman II* became final with the denial of Jakeman's certiorari petition on April 7, 2026. *See Orem City v.*

Jakeman, 588 P.3d 308 (table). By then, the district court had already ruled on the remaining state substantive due process claim. R. 3249-54.

Although *McRae* establishes that a collateral attack is improper even while the original proceeding is on-going, 669 P.2d at 405, it was not unreasonable to defer such arguments while the criminal proceedings were not yet final and focus instead on the substance of Jakeman's claims. This does not preclude the collateral attack argument on appeal. The Court may affirm on any ground apparent in the record, even a ground not raised before or ruled upon by the district court. *Bailey v. Bayles*, 2002 UT 58, ¶ 10.

Here, this ground is apparent on the record. Jakeman's own pleadings make repeated reference to the criminal proceedings giving rise to the CPOs and the CPOs themselves. R. 4, 14-15, 18, 23-51, 370-71, 377-78, 772, 775-76, 779, 786, 789, 791-92, 795. Both sides submitted the appellate briefing in *Jakeman II* to the district court. R. 182-214, 524-49. And as noted above, Jakeman expressly requests relief in his current actions to invalidate his CPOs. R. 384, 782, 797. Collectively, this is a sufficient basis for the Court to conclude that Jakeman's claims are an improper collateral attack on his CPOs and the holding of *Jakeman II*, and the Court may affirm the decision without reaching the substantive merits.

II. The district court correctly granted summary judgment on Jakeman's state substantive due process claim.

If the Court elects to reach Jakeman's substantive due process and equal protection claims, the district court's rulings should still be affirmed. State Appellees first address the Utah substantive due process claim.

Jakeman asserts a facial challenge to the CPO Statute under the substantive due process clause of the Utah Constitution, and this constitutes the bulk of his appellate argument. *See* Utah Const. art. I, sec. 7; R. 367, 381-82, Am. Aplt. Br. at 15-39.[8] His due process claim is that the statute terminates his parental rights with non-victim minor children. Am. Aplt. Br. at 34; R. 373, 773, 785. On cross-motions for summary judgment, the district court granted judgment on this claim to defendants. R. 3249-54. The district court was correct, and this is not a close question.

A. Jakeman was required to prove "no set of circumstances exist" under which the CPO Statute is constitutional.

Statutes carry a presumption of constitutionality, and any reasonable doubt is resolved in favor of holding a statute constitutional. *Tischmak*, 2025 UT 24, ¶ 25. A facial challenge is even "more difficult," because a challenger

[8] It's unclear whether Jakeman intended a Utah constitutional substantive due process claim in his second and third actions. Those complaints reference the Utah constitution in prefatory paragraphs but reference only federal substantive due process in the claims themselves. R. 767, 780-81, 785, 796.

must prove that "no set of circumstances exists under which the [statute] would be valid." *Id.* ¶ 27 (alteration in original). This test originates in the Supreme Court's *Salerno* decision, so is frequently referred to as the *Salerno* test. *See United States v. Salerno*, 481 U.S. 739, 745 (1987).

Jakeman spends several pages of his opening brief challenging the *Salerno* test, essentially arguing that is not a test but describing the *result* of a test, and a court must still undertake a process of identifying whatever right is violated and then applying an appropriate level of scrutiny to the subject statute. *See* Am. Aplt. Br. at 15-24. That does not comport with the express language the Utah Supreme Court has adopted, which speaks of what the plaintiff must prove, not what process the court must undertake: "Facial challenges . . . require the challenger to establish that no set of circumstances exists under which the statute would be valid." *Tischmak*, 2025 UT 24, ¶ 27 (cleaned up).

While it is true that the court sometimes undertakes to identify the subject right and the appropriate level of review, it does so in the context of determining whether the challenger carried their burden. In *Tischmak*, the Supreme Court identifies the right Tischmak claimed was violated—the right to travel—along with the recognized components of that right and what it takes for a law to implicate the right to travel. *Id.* ¶¶ 30-32. Then the court points out that Tischmak fails to explain which component of that right is

infringed, "[a]nd ultimately he does not persuade us that the Statute implicates any of the recognized components of the right." *Id.* ¶ 33. The court was not applying the analysis; it was illustrating how Tischmak *failed* to apply the analysis and therefore didn't carry his burden. Jakeman has no controlling decision imposing a particular requirement on Utah courts for how to analyze a facial challenge.

Jakeman also relies on criticism of the "no set of circumstances" requirement in *Utah Public Employees Association v. State*, 2006 UT 9, 131 P.3d 208 (*UPEA*). Am. Aplt. Br. at 21, 23. Jakeman misapprehends *UPEA*, and it does not support his position. First, the court was clear in *UPEA* as to *why* the plaintiffs brought a facial challenge: the subject statute had not yet gone into effect, so an as applied challenge was unavailable. *UPEA*, 2006 UT 9, ¶ 19. The court's discussion of the "no set of circumstances" test was in the context of whether it was *mandatory* or not, concluding that "in this instance," it was not.[9] *Id.* ¶ 25. Moreover, contrary to Jakeman's argument that the "no set of circumstances" language merely describes the result of a

[9] The court noted that "states have the authority to create their own constitutional law when reviewing claims brought under their own state constitution," and the court elected not to follow *Salerno* in the instance of a state-law takings claim. *Id.* This provides no support for Jakeman's argument that the reasoning applies to a state substantive due process claim.

constitutional analysis, in *UPEA*, consistent with other decisions, the court plainly describes this as a "test." *Id.* ¶ 21.

B. Jakeman fails the "no set of circumstances" test because the CPO Statute has constitutional applications and neither terminates parental rights nor bars contact with a perpetrator's non-victim children.

A statute cannot be facially unconstitutional if "it operates constitutionally in at least some circumstances." *In re E.K.S.*, 2016 UT 56, ¶ 19, 387 P.3d 1032. The CPO Statute operates constitutionally in most circumstances even if Jakeman's contention about it impairing parental rights were credited. The district court granted summary judgment on that basis, and its reasoning is sound. R. 3253.

1. The CPO Statute only limits contact between domestic violence perpetrators and their victims.

The CPO Statute mandates issuance of a CPO when a domestic violence perpetrator is released from incarceration. Utah Code § 78B-7-804(3)(b). A CPO "shall . . . limit[] the contact between the perpetrator *and the victim*" unless certain procedures are followed and determinations are made. *Id.* (emphasis added). On its face, the statute requires that a CPO bar contact with victims.

CPOs "may" enjoin a perpetrator from threatening or committing acts against the victim or family members. Utah Code § 78B-7-804(3)(d)(i). They "may" prohibit direct or indirect communication with the victim. *Id.* § 78B-7-

804(3)(d)(ii). They "may" prohibit the perpetrator from visiting the victim's residence or places frequented by other family members. *Id.* § 78B-7-804(3)(d)(iii). Any of these applications might conceivably limit contact with non-victims as well, but the statute does not *require* any of these prohibitions. They are discretionary. As such, the CPO Statute readily has constitutional application with regard to Jakeman's facial challenge: it is constitutional anytime non-victim minor children aren't involved, such as when the perpetrator has no non-victim minor children, or when such children aren't domiciled with the victim, or when the issuing court declines to include these discretionary additional limitations. If a CPO includes discretionary limitations that limit contact with non-victim minor children, that is a function of the CPO, not the CPO Statute.

Jakeman also challenges subsections (4) and (5). R. 373-77, 773-75, 790-91. But these subsections do not dictate any CPO conditions. Subsection (4) imposes limits on modifying or dismissing a CPO issued under subsection (3), but it contains no requirements for the contents of a CPO. *See* Utah Code § 78B-7-804(4). Subsection (5) allows a victim to petition the court for a CPO but contains no requirements for such a CPO. Utah Code § 78B-7-804(5). The content requirements are all in subsection (3), so if it survives analysis, so do the other subsections. *Id.* § 78B-7-804(3)(b), (d).

2. Jakeman has no non-victim children.

It is also worth noting that the record shows Jakeman has no non-victim children. *Jakeman I* details Jakeman's physical assault and battery of his teenage daughter (AJ) as she was attempting to protect his younger children from him. *See Jakeman I*, 2025 UT App 107, ¶¶ 4, 7-10. The tenor of Jakeman's pleadings and argument are that only the child he physically battered—AJ—was a victim of his violence, but that is not consistent with the record or Utah law.

Jakeman alleges he is the father of five impliedly non-victim minor children. R. 371. The CPOs attached to his original complaint demonstrate otherwise. Each CPO identifies by name each of Jakeman's children—including the minor children he labels non-victims—as a "*[v]ictim* needing protection." R. 23 (emphasis added). When documents central to a complaint's claims contradict allegations in the complaint, the documents control, and courts do not give any deference to the allegations. *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶¶ 10, 13, 104 P.3d 1226. Testimony from the CPO hearing considered by the district court when granting summary judgment on this claim indicated that Jakeman's children feared him and "had good reason to be afraid of him." R. 3250.

Child abuse includes psychological as well as physical injury. Utah Code § 76-5-109(1)(a)(iii). This supports why, under Utah law, it is a crime to

commit domestic violence anytime the perpetrator has "knowledge that a child is present and may see or hear an act of domestic violence." *Id.* § 76-5-114(1)(iv)(B), (2). In fact, it is a separate offense for each child present. *Id.* § 76-5-114(5). A child does not need to be the one Jakeman physically struck. If they were present, they were victims of his abuse.

3. The CPO Statute does not terminate parental rights.

Jakeman argues that the CPO Statute permanently and totally severed his parental relationship with his non-victim minor children. *See* Am. Aplt. Br. at 32. "Termination of parental rights means the permanent elimination of all parental rights and duties, including residual rights and duties by court order." *In re D.M.*, 790 P.2d 562, 568 (Utah Ct. App. 1990) (rejecting argument that a custody order was a termination of claimant's parental rights). Jakeman is nowhere near this standard, neither from the CPO Statute nor his specific CPOs.

This Court rejected similar claims in *D.M.* The claimant in *D.M.* contended that a custody disposition stripped him of parental rights such as consenting to his child's counseling and determining the child's religious affiliation, but the court rejected that characterization. *Id.* at 567-68. Jakeman retains those and other parental rights notwithstanding the CPOs.

The CPOs *do* bar Jakeman from contact or communication, directly or indirectly, with his children. R. 33. And Jakeman must stay away from their

residence, schools, workplace, or other places frequented by the children and must leave a place if he encounters them elsewhere. R. 35. But Jakeman still has the responsibility to support his children, the right to consent to adoption, the right to determine his children's religious affiliation, the right to consent to their marriage, enlistment, and major medical, surgical, or psychiatric treatment. Utah Code § 80-1-102(72). Neither the CPO Statute nor the CPOs terminate those rights.

Also, termination is *permanent*. *D.M.*, 790 P.2d. at 568. While CPOs are "continuous" and have no pre-set termination, they remain subject to modification and dismissal. *See* Utah Code § 78B-7-804(4). Jakeman's argument that his parental rights were "terminated" makes for a tempting sound bite, but it lacks any substance. This is not something the CPO Statute does or can do.

In sum, because the CPO Statute has constitutional applications outside the context of non-victim minor children, and because even within that context, it does not "terminate" parental rights, Jakeman's challenge necessarily fails the "no set of circumstances" test.

III. The district court correctly dismissed Jakeman's federal substantive due process claim.

Jakeman also makes a facial challenge to the CPO Statute under the Due Process Clause of the U.S. Constitution. R. 367, 381-82, Am. Aplt. Br. at

39-43. State Appellees moved to dismiss Jakeman's federal substantive due process claim on the same ground that was persuasive on the analogous state claim, that Jakeman could not show "there is *no* set of circumstances under which the statute's application could be valid." R. 298. And the district court granted the motion without leave to amend. R. 687-88. That ruling is also correct and should be affirmed, but because the analysis requires resort to federal law rather than state law, appellees analyze it separately even if the end result is substantially the same.

A. The "no set of circumstances" applies also to Jakeman's federal substantive due process claim.

Federal law substantially agrees with Utah law on this issue, applying the *Salerno* test. *United States v. Rahimi*, 602 U.S. 680, 693 (2024). That test has been critiqued in specific applications in cases such as *Doe v. City of Albuquerque*, which Jakeman heavily relies upon. *See* Am. Aplt. Br. at 16, 25; 667 F.3d 1111, 1122-24 (10th Cir. 2012). *Doe* is limited to its circumstances. The whole context in which the Tenth Circuit was considering the *Salerno* test was the defendant city's position that, because of the test, the city had no obligation to submit evidence opposing Doe's summary judgment motion. *Doe*, 667 F.3d at 1116-17, 1121-22. It was because the city submitted no evidence for a constitutional application of its ordinance that the court was "bound to affirm." *Id.* at 1122. Thus, the holding in *Doe* did not turn on whether the

Salerno test applied or not; it turned on the defendant's failure to submit evidence in opposition to a summary judgment motion to show the plaintiff failed that test. Section I.B. already shows that the CPO Statute has constitutional applications.

B. The CPO Statute is constitutional as applied to Jakeman.

Because the district court dismissed the federal substantive due process claim early in the litigation on a motion to dismiss, there was never occasion to consider whether the CPO Statute would be constitutional as applied to Jakeman. Yet the court made such an analysis in connection with the summary judgment ruling on the substantially similar state claim, and the record supports affirmance on this alternative ground. *See Bailey*, 2002 UT 58, ¶ 13 (court may affirm on any ground apparent in the record); R. 3253.

Where a statute burdens a "fundamental liberty interest," it must be "narrowly tailored to serve a compelling state interest." *Poe v. Drummond*, 149 F.4th 1107, 1127 (10th Cir. 2025) (quoting *Dias v. City & Cnty. of Denver*, 567 F.3d 1169, 1181-82 (10th Cir. 2009)). But if the statute burdens only a "lesser right," it need only "bear a rational relation to a legitimate government interest." *Id.* So the first question is whether Jakeman asserts a fundamental liberty interest or only some lesser right.

Jakeman argues the CPO Statute burdens his fundamental parental right, causing "the permanent, total severance of a parent's relationship with minor children who were not victims of the offense." Am. Aplt. Br. at 32. As noted in section I.B.2, above, it's not apparent Jakeman has any children who were *not* victims of his domestic abuse, and the CPOs identify each child as a "[v]ictim needing protection." R. 23. But even assuming the existence of a non-victim child, Jakeman's assertion of a "permanent, total severance" of his parental relationship is still over-stated.

In considering the alleged rights at issue, the courts do not view them at a broad, general level, such as a parent's relationship with minor children, but a "careful description of the asserted fundamental liberty interest." *Poe*, 149 F.4th at 1127 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). In *Poe*, a case challenging a statute restricting gender-transition procedures for minors, the parents challenging the statute asserted their "right to decide their children's medical care." *Id.* at 1128. This was too broad because the statute at issue had no effect on a vast range of medical care, and parents do not have an "absolute right" to direct a child's medical care. *Id.*

Jakeman cannot assert a general interest in the companionship of his children in the abstract, just as the parents in *Poe* could not assert a general interest in deciding their children's medical care. "Carefully described," as required by *Poe*, Jakeman's interest is in unrestricted, continuing contact

with his minor children notwithstanding his domestic-violence convictions and a judicial finding that he "represents a credible threat to the physical safety" of these children. R. 24.

That is *not* a fundamental right. Government has an established right to intrude on the parent-child relationship when a parent's decisions endanger a child's life or health. *Poe*, 149 F.4th at 1128 (citing *Jensen v. Wagner*, 603 F.3d 1182 (10th Cir. 2010)). In fact, "when a child's life is under immediate threat, a state's interest in protecting the child is at its zenith, and a state has broad authority to intervene." *Jensen*, 603 F.3d at 1198. *Poe* and *Jensen* both concerned a parent's right to direct medical care for a child, but that reasoning is even more compelling in an abuse situation. For medical care decisions, a parent may at least be credited with a good-faith desire—even if potentially misguided—to serve the child's best interest. No such credit applies to the motives of a convicted child abuser. *See Jakeman I*, 2025 UT App 107, ¶ 1 (affirming Jakeman's convictions for child abuse and violation of a protective order).

Because the CPO Statute at worst burdens only a "lesser right," it need only "bear a rational relation to a legitimate government interest." *Poe*, 149 F.4th at 1127 (quoting *Dias*, 567 F.3d at 1181). The statute readily meets this rational basis test. The legislature made express findings about "the serious, unique, and highly traumatic nature of domestic violence crimes, the high

recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of or adjudicated for domestic violence." Utah Code § 78B-7-804(3)(a); *see also* R. 2618-22 (citing multiple findings on domestic violence and recidivism and findings specific to Jakeman's CPOs).

The government has a legitimate interest in protecting the health and well-being of children, even from their own parents. *Jensen*, 603 F.3d at 1198. CPOs prohibiting a convicted child abuser from contact with his children rationally serve that purpose. The record amply supports that the CPO Statute is constitutional as applied to Jakeman.

IV. The district court correctly granted summary judgment on Jakeman's equal protection claim.

Jakeman asserts a facial equal protection challenge to the CPO Statute on the ground that it distinguishes between convicted domestic abusers differently depending on whether they were incarcerated after being sentenced. Am. Aplt. Br. at 44-52; R. 382-83, 781-82. On cross-motions for summary judgment, the district court granted judgment on this claim to defendants, finding a rational basis for the distinction made in the statute. R. 3052-54. Like the other challenged rulings, this ruling too is correct and should be affirmed.

"[A] statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Comm., Inc.*, 508 U.S. 307, 313 (1993). The CPO Statute, as challenged by Jakeman, distinguishes between convicted domestic violence perpetrators who are incarcerated after sentencing and those who are not. Violators who are not incarcerated may be subject to sentencing protective orders that expire with the completion of their sentence. Utah Code § 78B-7-804(2); Am. Aplt. Br. at 45. A violator like Jakeman, who is sentenced to incarceration after conviction, is instead subject to a mandatory CPO that has no fixed expiration. Utah Code § 78B-7-804(3); Am. Aplt. Br. at 44-45. This is not a "suspect line[]," nor does it infringe "fundamental constitutional rights" (as discussed in the previous section) so it need only have a rational basis for the classification. *F.C.C.*, 508 U.S. at 313. Jakeman concedes as much. Am. Aplt. Br. at 45.

In this analysis, the CPO Statute "is accorded a strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993). And a classification need not be perfect to be upheld. "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Id.* (quoting *Metropolis Theatre Co. v. Chicago*, 228

U.S. 61, 69-70 (1913)). Instead, the burden is on Jakeman "to negative every conceivable basis which might support [the statute]." *Id.* (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)). Jakeman fails this burden.

Jakeman argues at length against this classification. He complains that it is based solely on "timing and placement of confinement relative to conviction," not "dangerousness, recidivism risk, the severity of the offense, the identity of the victim, or any finding about the perpetrator's threat to anyone." Am. Aplt. Br. at 45. He contends that other "tools" can address the asserted risk giving rise to the distinction. *Id.* at 48.

These arguments fail for two reasons. First, they are simply argument. Jakeman does no more than point to the language of the statute to support his contentions. *Id.* at 46-50. He identifies no evidence, for instance, to support the contention that there's no difference in danger and threat to past victims between the two categories of offenders. The state and the courts are allowed to speculate and make unsubstantiated claims in support of a statute under an equal protection challenge. *Heller*, 509 U.S. at 320 (holding that a classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification" and the government "has no obligation to produce evidence to sustain the rationality

of a statutory classification" (quoting *Beach Comms.*, 508 U.S. at 313)). Jakeman may not.

Second, "any reasonably conceivable state of facts" is sufficient to sustain the classification. *Id.* The district court gave one:

> [I]mmediately after someone has been released from incarceration, that period of time can be especially fraught and be a risk point where victims feel increased danger. While an offender is incarcerated, the victim feels safe. But as soon as an offender is released from incarceration, the victim's fear is magnified because the offender may retaliate.

R. 3053. That rationale need not be true in every situation, and it is immaterial that the State could address that concern some other way: a perfect fit is not required. *Heller*, 509 U.S. at 321. Neither the State nor the court need produce any evidence for this assertion. *Id.* at 320. It is sufficient to uphold this classification because Jakeman has no evidence that this is *never* true, that victims are *not* more fearful when their incarcerated abuser is released from custody.

Jakeman argues that victims might also fear a perpetrator who was not incarcerated; that a perpetrator who was not incarcerated or who was incarcerated pre-sentencing may have the same incentives to behave (or not) as one incarcerated post-sentencing; that this "release gap rationale" could be addressed by victims petitioning the court for a CPO; that the hearing provided under the statute turns solely on the victim's stated fear of the

perpetrator. Am. Aplt. Br. at 46-48. None of these counter arguments matter under the rational basis test, because it is reasonably conceivable that a victim feels safe while their abuser is incarcerated but their fear and risk of danger increases when their abuser is released because the abuser can then retaliate. That constitutes a rational basis to uphold the classification, so the Court should affirm the district court's ruling.

Conclusion

Jakeman's litigation, including this appeal, is a collateral attack on the CPOs this Court has already upheld, and the Court should reject the appeal and affirm the judgment below on that basis. But even if the Court reaches the merits of the appeal, the district court's rulings were correct and should be affirmed.

Respectfully submitted,

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Certificate of Compliance

1. This brief complies with the total type-volume limitations of Utah Rule of Appellate Procedure 24(g)(1) because this brief contains 8,187 words, excluding the parts of the brief exempted by Rule 24(g)(2).

2. This brief complies with the typeface requirements of Utah Rule of Appellate Procedure 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook font.

3. This brief complies with the non-public information requirements of Utah Rule of Appellate Procedure 21(g) because this brief contains no non-public information.

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Certificate of Service

I hereby certify that on this 3rd day of November 2026, I delivered the foregoing *State Appellees' Response Brief* by electronic filing and/or electronic mail to the following:

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Addendum

1. Utah Code § 78B-7-804 (the CPO Statute)
2. Orem City v. Jakeman (*Jakeman I*), 2025 UT App 107, 575 P.3d 257
3. Orem City v. Jakeman (*Jakeman II*), 2025 UT App 187, 583 P.3d 1090
4. Order Granting in Part and Denying in Part State Defendants' Motion to Dismiss, R. 687-89
5. Order Granting State Defendants' Motion for Summary Judgment on Jakeman's Equal Protection Claim & Order Denying Jakeman's 54(B) Certification Motion, R. 3051-56
6. Ruling and Order on Cross-Motions for Summary Judgment Regarding Facial Utah Substantive Due Process Claim, R. 3249-54

Addendum 1

Utah Code § 78B-7-804

West's Utah Code Annotated
Title 78b. Judicial Code
Chapter 7. Protective Orders and Stalking Injunctions (Refs & Annos)
Part 8. Criminal Protective Orders

U.C.A. 1953 § 78B-7-804

§ 78B-7-804. Sentencing and continuous protective orders for a domestic violence offense--Modification--Expiration

Effective: May 1, 2024
Currentness

(1) Before a perpetrator who has been convicted of or adjudicated for a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with a sentencing protective order that includes:

(a) an order enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(b) an order prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(c) an order requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

(d) an order prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;

(e) an order directing the perpetrator to surrender any weapons the perpetrator owns or possesses; and

(f) an order imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3)(a) Because of the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of or adjudicated for domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the issuance of continuous protective orders under this Subsection (3) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Title 77, Chapter 38, Crime Victims, and Article I, Section 28 of the Utah Constitution.

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(b) Except as provided in Subsection (6), if a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim unless:

(i) the court determines by clear and convincing evidence that the victim does not a have a reasonable fear of future harm or abuse; and

(ii) the court conducts a hearing.

(c)(i) The court shall notify the perpetrator of the right to request a hearing.

(ii) A victim has a right to request a hearing.

(iii) If the perpetrator or the victim requests a hearing under this Subsection (3)(c), the court shall hold the hearing at the time determined by the court.

(iv) The continuous protective order shall be in effect while the hearing is being scheduled and while the hearing is pending.

(v) A prosecutor shall use reasonable efforts to notify a victim of a hearing described in Subsection (3)(b)(ii).

(d) A continuous protective order is permanent in accordance with this Subsection (3) and may include:

(i) an order enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(ii) an order prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(iii) an order prohibiting the perpetrator from going to the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or other household member;

(iv) an order directing the perpetrator to pay restitution to the victim as may apply, and shall be enforced in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act; and

(v) any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member.

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(4) A continuous protective order may be modified or dismissed only if the court determines by clear and convincing evidence that all requirements of Subsection (3) have been met and the victim does not have a reasonable fear of future harm or abuse.

(5) Except as provided in Subsection (6), in addition to the process of issuing a continuous protective order described in Subsection (3), a district court may issue a continuous protective order at any time if the victim files a petition with the court, and after notice and hearing the court finds that a continuous protective order is necessary to protect the victim.

(6)(a) Unless the juvenile court transfers jurisdiction of the offense to the district court under Section 80-6-504, a continuous protective order may not be issued under this section against a perpetrator who is a minor.

(b) Unless the court sets an earlier date for expiration, a sentencing protective order issued under this section against a perpetrator who is a minor expires on the earlier of:

(i) the day on which the juvenile court terminates jurisdiction; or

(ii) in accordance with Section 80-6-807, the day on which the Division of Juvenile Justice and Youth Services discharges the perpetrator.

Credits

Laws 2020, c. 142, § 64, eff. July 1, 2020; Laws 2021, c. 159, § 23, eff. May 5, 2021; Laws 2021, c. 260, § 111, eff. July 1, 2021; Laws 2023, c. 237, § 16, eff. May 3, 2023; Laws 2023, c. 426, § 4, eff. May 3, 2023; Laws 2024, c. 240, § 98, eff. May 1, 2024.

Notes of Decisions (9)

U.C.A. 1953 § 78B-7-804, UT ST § 78B-7-804
Current with laws of the 2026 General Session. Some statutes sections may be more current, see credits for details.

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Addendum 2

Orem City v. Jakeman (*Jakeman I*), 2025 UT App 107

575 P.3d 257
Court of Appeals of Utah.

OREM CITY, Appellee,

v.

David Ammon JAKEMAN, Appellant.

No. 20231059-CA
|
Filed July 10, 2025

Synopsis

Background: Defendant was convicted after bench trial in the Fourth District Court, Spanish Fork Department, Jared W. Eldridge, J., of child abuse and violation of a protective order. Defendant filed a motion for a new trial, which was denied, and defendant appealed.

Holdings: The Court of Appeals, Mortensen, J., held that:

[1] evidence was sufficient to support conviction for child abuse;

[2] the delayed transport of defendant to the courthouse for trial, which deprived defendant of the opportunity to meet in person and conference with his attorney, did not constitute structural error warranting a new trial;

[3] trial counsel's communication efforts with defendant did not constitute deficient performance, even though counsel allegedly only met with defendant face-to-face for one hour before the day of trial;

[4] trial counsel's failure to cross-examine victim with regard to the bruising on her leg was reasonable trial strategy; and

[5] trial counsel's failure to directly examine defendant with regard to the bruising on victim's leg was reasonable trial strategy.

Affirmed.

Procedural Posture(s): Appellate Review.

West Headnotes (21)

[1] **Criminal Law** Review
Criminal Law Presumptions

On appeal from a bench trial, the Court of Appeals views and recites the evidence in the light most favorable to the trial court's findings; the Court of Appeals presents additional evidence only as necessary to understand the issues on appeal.

[2] **Criminal Law** Sufficiency of evidence to convict

The Court of Appeals reviews a claim of insufficient evidence at a bench trial for clear error, meaning it must sustain the district court's judgment unless it is against the clear weight of the evidence, or if it otherwise reaches a definite and firm conviction that a mistake has been made.

[3] **Criminal Law** Questions of Fact

Court of Appeals accords deference to district court's ability and opportunity to evaluate credibility and demeanor, deferring to its findings unless record demonstrates clear error.

[4] **Criminal Law** Constitutional issues in general

Constitutional issues are questions of law that appellate court reviews for correctness.

[5] **Criminal Law** Effective assistance

When district court rules on criminal defendant's claim that he was deprived of his Sixth Amendment right to counsel due to ineffective assistance, district court's determination of whether defendant received constitutionally ineffective assistance is reviewed for correctness. U.S. Const. Amend. 6.

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[6] **Infants** Assault, battery, and physical abuse

Evidence was sufficient to support conviction for child abuse; defendant admitted that he told his daughter that "if she kept on as she was doing [he] would hit her," and he applied his knee to his daughter's thigh, in an area he repeatedly described as a "pressure point," with such force that daughter fell to the ground and screamed in pain, and the contact left a bruise. Utah Code Ann. §§ 76-2-103(1), 76-2-103(2), 76-5-109(1)(a)(ii), 76-5-109(2)(a), 76-5-109(3)(a).

[7] **Criminal Law** Elements of offenses in general

Direct evidence is not required to prove specific intent.

[8] **Criminal Law** Inferences or hypotheses from evidence

Criminal Law Circumstantial evidence

Where factfinder returns verdict that is reasonably sustained by circumstantial evidence and inferences drawn from it, Court of Appeals must uphold that verdict.

1 Case that cites this headnote

[9] **Criminal Law** Circumstantial evidence

When proving intent by circumstantial evidence, the Court of Appeals employs a two-step process; first, it determines whether the prosecution presented any evidence that the defendant possessed the requisite intent, and second, it considers whether the inferences that can be drawn from that evidence have a basis in logic and reasonable human experience sufficient to prove that the defendant possessed the requisite intent.

[10] **Criminal Law** Bodily appearance or condition

Criminal Law Cause and effect

During prosecution for child abuse involving the infliction of physical injury, which includes a bruise, whether a mark constituted a bruise and what caused it does not involve obscure medical factors but were within the common experience of laypersons. Utah Code Ann. §§ 76-5-109(1)(a)(ii), 76-5-109(2)(a).

[11] **Criminal Law** Conflicting Evidence

Contradictory evidence does not make insufficiency of evidence, for the purpose of a challenge to the sufficiency of the evidence.

[12] **Criminal Law** Counsel for Accused

The delayed transport of defendant to the courthouse for trial, which deprived defendant of the opportunity to meet in person and conference with his attorney, did not constitute structural error warranting a new child abuse trial; the delayed transport did not infringe upon any of defendant's constitutional rights as counsel testified that there was no new information from her to defendant on the day of trial, that she had enough time to ask defendant multiple times if he was comfortable with "going forward," and that she did not have to rush her pretrial conversation with defendant.

[13] **Criminal Law** Prejudice to rights of party as ground of review

Some constitutional rights are so basic to a fair trial that their infraction can never be treated as harmless error; these are known as structural errors.

[14] **Criminal Law** Prejudice to rights of party as ground of review

The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial; thus, the defining feature of a structural error is that it affects the framework within which the trial proceeds, rather than being simply an error in the trial process itself.

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[15] **Criminal Law** Strategy and tactics in general

If it appears counsel's actions could have been intended to further reasonable strategy, defendant has necessarily failed to show unreasonable performance, as required to establish ineffective assistance of counsel. U.S. Const. Amend. 6.

[16] **Criminal Law** Prejudice in general

For the purpose of an ineffective assistance of counsel claim, a "reasonable probability" is a probability sufficient to undermine confidence in the outcome. U.S. Const. Amend. 6.

[17] **Criminal Law** Determination

A defendant's inability to establish either element of the *Strickland* in effective assistance of counsel test defeats a claim for ineffective assistance of counsel. U.S. Const. Amend. 6.

[18] **Criminal Law** Preparation for trial

Trial counsel's communication efforts with defendant did not constitute deficient performance, during prosecution for child abuse, even though counsel allegedly only met with defendant face-to-face for one hour before the day of trial; counsel's law firm documented 131 communications with defendant, including phone calls, texts, emails, letters, and meetings, in preparation for her meeting with defendant at the jail, counsel reviewed numerous documents defendant sent her, noting his questions and concerns, she discussed trial strategy, who would be called as witnesses, and defendant's desire to testify with defendant, and counsel was familiar with defendant's account of the incident as defendant had sent at least five packets, each containing anywhere between 20 and 60 pages, to her law firm, which she reviewed. U.S. Const. Amend. 6.

[19] **Criminal Law** Examination of witnesses

Trial counsel's failure to cross-examine victim with regard to the bruising on her leg was reasonable trial strategy, during prosecution for child abuse, and therefore did not constitute ineffective assistance of counsel, even though defendant claimed that counsel's shortcoming resulted in a failure to subject the case against defendant to proper adversarial testing; counsel testified that she deliberately kept cross-examination of victim "brief" because she wanted "to elicit a certain response," "get what [she needed] from the case," and not "leave room for someone on cross-examination to add details that could potentially help the prosecutor," that her strategy in cross-examining victim was to go after her credibility, and that she wanted to avoid questions of victim that would come of as "badgering." U.S. Const. Amend. 6.

[20] **Criminal Law** Strategy and tactics in general

In evaluating reasonableness of attorney's actions, for the purpose of a claim of ineffective assistance of counsel, courts will often look to whether actions attorney took were motivated by trial strategy. U.S. Const. Amend. 6.

[21] **Criminal Law** Defendant as witness

Trial counsel's failure to directly examine defendant with regard to the bruising on victim's leg was reasonable trial strategy, during prosecution for child abuse, and therefore did not constitute ineffective assistance of counsel; direct examination of defendant about the bruise he inflicted on the victim, his daughter, may have led to damaging testimony, such as defendant stating that victim was being deceptive or had fabricated the injury, and counsel was aware that defendant did not present as very sympathetic and could have reasonably wanted to keep defendant from doing further damage by straying off track in his testimony. U.S. Const. Amend. 6.

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Fourth District Court, Spanish Fork Department, The Honorable Jared Eldridge, No. 221300408

Attorneys and Law Firms

David Ammon Jakeman, Appellant Pro Se

D. Jacob Summers, Attorney for Appellee

Judge David N. Mortensen authored this Opinion, in which Judges Michele M. Christiansen Forster and Ryan M. Harris concurred.

Opinion

MORTENSEN, Judge:

***260** ¶1 David Ammon Jakeman was convicted of child abuse and violation of a protective order related to an incident in which he kneed his daughter in the thigh. He had threatened to hit her because she had hurt his feelings by telling him he was being manipulative, and then he made good on his threat. He complains that there was insufficient evidence to support the conviction for child abuse, that the trial was plagued by structural error because his transport to the courthouse from the jail was delayed, and that his trial counsel rendered ineffective assistance by failing to communicate with him and by failing to adequately question witnesses. None of these claims of error have merit, and we therefore affirm Jakeman's convictions.

BACKGROUND[1]

[1] ¶2 Prior to the incident in question, Jakeman had been meeting with multiple therapists on a weekly basis and attending anger management classes. He also had been taking medication to address a psychological condition. When he did not take his medication, he would become "snappy," "impulsive," and "frustrated" with his family. Jakeman's family had a "plan of safety" for when he was "not calm." This involved having a code word that his wife (Wife) and children would use to communicate to Jakeman that they felt unsafe around him. That plan entailed that Jakeman, upon hearing the word, "would get up and walk out" of the vicinity. However, Wife revealed that "whenever it was actually crisis time," Jakeman would refuse to leave when asked to do so: "It always had to be on his terms and when he wanted to go." Indeed, a protective order was imposed on Jakeman in September 2020, preventing him from committing, trying to commit, or threatening "to commit any form of violence," including "threatening, physically hurting, or causing any other form of abuse," against Wife or any of their seven children.

¶3 On a May morning in 2022, Jakeman, who had been sleeping in his car in the driveway of the family home, was awakened by a phone call from Wife. She asked him to come inside and take care of the children because she wanted to get some rest. When Wife noticed that he was being "snappy" with their son, JJ (age ten), she asked Jakeman if he had taken his medication. When he said he hadn't, she asked him to do so because she was concerned about the way he was acting with JJ.

¶4 While Wife was sleeping, one daughter, HJ (age twelve), told her older sister, AJ (age seventeen), that Jakeman was "being really ... mean and scary" and was not listening to her when she told him that she was not feeling "very safe." After listening to Jakeman "being really aggressive," AJ intervened. Standing at the top of some stairs in the house, AJ began arguing with Jakeman, telling him that he was being manipulative. Jakeman responded by telling AJ, "[I]f you don't leave I'm going to come up and hit you." Jakeman then went up the stairs and "cornered" AJ against a wall. AJ testified that Jakeman had "at least one hand on" her, while she tried to "create distance" by putting her hand on his chest and telling him that he needed to back away and leave. When AJ again told Jakeman that he was being manipulative, "he just kind of blew up." Jakeman then "forcibly" moved AJ down the hallway. Jakeman ended the confrontation when he "hit" AJ's leg with his leg. AJ said the blow "hurt really badly" and resulted in debilitating pain: "I know I was on the ground at one point, and I got up, and I was ***261** crying." Jakeman left the house, while Wife attempted to comfort AJ. AJ recalled that she didn't want to be touched because she was in "so much pain." Wife called the police.

¶5 Police then contacted Jakeman, who had taken JJ to a nearby pond to fish. The encounter was recorded on a body camera, and the recording was admitted at trial. Police asked Jakeman what had happened, and Jakeman explained that he and AJ had been involved in an argument about whether he was being manipulative. Unprompted, JJ then interjected, "And you hit her" and "shoved her into the wall." Jakeman initially denied hitting, kicking, or pushing AJ, but he later admitted to police that he and AJ were touching and that there

may have been some "[p]ushing back and forth." Jakeman was arrested and charged with child abuse and violation of the existing protective order, and the case proceeded to trial.

¶6 On the day of his bench trial, Jakeman was apparently late in being transported to the courthouse from the jail. The trial was scheduled to begin at 1:00 p.m., but the trial did not actually begin until 2:15 p.m. Still, Jakeman met with his attorney (Counsel) outside the courtroom before trial. During their meeting, Counsel "seemed really upbeat and confident" and informed Jakeman that she had recently found helpful caselaw. Given her confidence, Jakeman felt comfortable proceeding with the trial.[2]

¶7 At the bench trial, AJ testified consistently with the facts recited above. AJ clarified in her testimony that she initially thought that Jakeman had "kicked" her, but, upon further consideration, she realized that he had "kneed [her] in [her] right thigh." She also testified that the contact to her thigh was "super painful when it happened" and that, in the days following the incident, a bruise developed at the place of impact. She took photos of the bruise, which were admitted into evidence. AJ further testified that she initially thought Jakeman had shoved her head, but she was "a little foggy" about that aspect: "So my head was never hit against the wall, and I didn't claim that it was.... I was trying to say [that] he'd shoved my head and moved me along the wall when I made that report. Then I remember afterwards being like well, my head doesn't hurt, so is that really what happened?" AJ also conceded that some of what she was testifying to at trial was based on what Jakeman had posted online or what others had told her: "Everything is something that someone else told me and I've specifically clarified. So I remember being moved. I remember him hitting me in the leg. I remember being on the other side of the hallway, and I remember ... him [cornering] me and all the events before that."

¶8 Jakeman testified in his own defense at trial. He stated that on the morning of the incident, he and HJ "were being rude to each other." And he "realized" that he "felt emotionally unsafe" because of the way HJ, who was only twelve years old, was talking to him. When he attempted to talk to HJ about how her behavior made him "feel unsafe," Jakeman said that AJ came "charging ... in a totally aggressive manner and in an aggressive tone," saying, "No, you're just being manipulative. You need to leave." Feeling "totally hurt," Jakeman retorted, "No. If anybody's going to leave ..., it's going to be you." Jakeman said he then went up the stairs to where AJ was standing. He testified that they "stood there in a standoff," while he was thinking, "I'm doing a stupid, dumb thing and I'm trying to win because I'm all hurt and now I'm going to be prideful about it or whatever." He said that he then "started to raise [his arms] first," prompting AJ to raise "hers automatically, like subconsciously." Again, Jakeman stated, "I had just had my feelings hurt, and so I'm going to win this little standoff ...." Jakeman testified that he remembered coming to the following realization while his arms were locked with AJ's:

> I notice holy cow, this girl is so thin. I don't know why, but I noticed that. I'm like she is super thin, and she starts ... shaking from side to side in a drastic manner ... and ... I'm like oh, crap. Like I think this girl's afraid, ... and her eyes are ***262** closed, so I don't know if this is intentional or unintentional, but in my mind I'm not even mad anymore. I feel bad because she is ... totally afraid of me, okay? I don't want her to be afraid of me, right? ... [B]ut I'm still going to win this stupid standoff.

Jakeman continued testifying, "At this point I just want to be done. I feel terrible about the whole thing. My daughter's afraid of me, and I want to be done." In an effort to "safely disengage," Jakeman decided to "put [his] knee on her left thigh" and "apply pressure." This move caused AJ to "drop[ ] to the ground." Jakeman said the move worked, but not how he wanted it to. He said AJ "dropped to the floor" and "let out a scream."

¶9 On cross-examination, Jakeman admitted he was "mad at AJ for saying that [he was] being manipulative." And he was asked about a statement he had emailed to friends, family, neighbors, and church members detailing his "side of the story."[3] He was asked if he wrote the following in that email:

1. "I told AJ that if she kept on as she was doing I would hit her."
2. "I knew saying this could get me in trouble."
3. "I placed my right knee on her exposed thigh and slowly applied pressure to her left thigh with my right knee."
4. "She dropped to the floor like a ton of bricks."
5. "She emitted the most blood curdling scream."
6. "Her claim that I slammed her head into the wall is reasonable."
7. "Her claim that I kicked her leg was also reasonable."

Jakeman admitted that he wrote each of these statements.

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¶10 And when asked if "it was obvious to [him] that [AJ] was feeling pain from what [he was] doing," Jakeman testified, "It was obvious once I engage[d] her pressure point that she felt pain, because ... she did drop to the floor and she did emit [a] terrible scream, and that's why I was like great, I'm just going to leave, because anybody who heard that isn't going to believe anything I say." Jakeman further admitted in his testimony to (1) telling police officers that he and AJ may have been "pushing back and forth" during the incident and (2) saying, in a subsequent phone call to Wife, that he and AJ "were pushing each other."

¶11 At the conclusion of the trial, the court found Jakeman guilty on both charges. First, the court stated that it was "persuaded by the testimony ... that AJ's version of events [was] the more accurate version," especially since it was "corroborated by multiple other witnesses," including Jakeman himself. Indeed, the court stated that Jakeman's testimony acknowledged "he intentionally put his knee on a pressure point on [AJ's] thigh ... in such a way that it [left] bruising." Concerning the protective order, the court found that "by his own testimony," Jakeman "threatened to hit AJ," with the evidence showing that he "did much more" when "he actually did assault his daughter and cause injury to her."

¶12 After his conviction, Jakeman filed a pro se motion for a new trial. The motion itself, which consisted of an unfocused series of assertions about errors allegedly committed by Counsel, spans seventy-five pages. It included a lengthy declaration from Jakeman, many pages of Jakeman's journal entries, and letters from two individuals addressing the delayed transport and Jakeman's character. In that motion, he asserted, as relevant here, the following:

1. "The aggregate communication between [Jakeman] and [Counsel], consisting of some letters, two phone calls, and a single hour-long meeting" resulted in a "lack of communication and lack of preparation time" so as to "materially alter the potential outcome of the trial." Moreover, Counsel did not "rehearse" with him the questions she planned to ask on direct examination.

***263** 2. Counsel "failed to cross examine [AJ] about the bruise." A proper cross-examination would have "clearly demonstrated that the cause of the bruise [was] unknown and could not have been the incident in question."

3. The delayed transport to the courthouse "was a sneaky, unfair, and unethical method of hamstringing his right to a fair trial by making it impossible for him and his attorney to prepare for trial." He "was afforded only one in-person meeting with" Counsel, which did not provide "enough time to properly or adequately prepare for trial." The delayed transport resulted in Jakeman having only "about 10 seconds" with Counsel before "being ushered into the courtroom," which wasn't "enough to cure the gigantic deficit in prior communication and preparation." Being transported late "completely and utterly eviscerated [Jakeman's] ability to convey critical information that he had due to his personal involvement in the incident" and that "[Counsel] lacked." This information was "vital to [Counsel] being able to adequately represent him during the trial."

¶13 The court considered Jakeman's motion for a new trial on the child abuse charge at a hearing in March 2024. At the outset of the hearing, the City asked for clarification of the basis of the motion. It noted that Jakeman never used the phrase "ineffective assistance of counsel" in his filings but that ineffective assistance seemed to be the basis of the motion for a new trial. Jakeman, through new counsel, responded, somewhat puzzlingly, "[R]egardless of what it's called, that's largely what we'll be focusing on today." Based on the ineffective assistance claim, Jakeman agreed that he was waiving attorney-client privileges as it related to Counsel.

¶14 Along with Jakeman, Counsel, her co-counsel (Second Chair), and an attorney with Counsel's law firm who had worked on Jakeman's case in the early stages testified at the hearing.

¶15 At the conclusion of the hearing, the court ruled on Jakeman's request for a new trial. As to the delayed transport preventing him from engaging in last-minute trial preparation, the court did not detect "an error or impropriety that had a substantially adverse effect" on Jakeman's rights. The court noted that if Jakeman wanted to fire Counsel and represent himself, he "clearly understood how to do that." The court stated,

> I don't know why he didn't speak up. He obviously could have, and he's had no problem in the past speaking up and letting the Court know his thoughts and desires on certain points.

> If there's an error there, it's [Jakeman's] error for not asserting himself and not letting anybody know that that's what he wanted to do. And I don't see that that's some kind of error that would rise to a level that would demand a new trial.

Based on this analysis, the court concluded that "whether or not [Counsel] met with [Jakeman] just prior to trial didn't really affect her trial preparation."

¶16 As to other deficiencies in representation (e.g., lack of communication and trial strategy), the court noted that the testimony showed there had been "extensive communications" between Jakeman, Counsel, and the other attorneys in her office. In fact, the firm's case management system documented 131 contacts (namely, phone calls, emails, and letters) with Jakeman. Through those communications, Counsel testified that she became informed about Jakeman's version of the events. The court found Counsel's recitation of her trial preparation credible, especially since it was corroborated through evidence from the case management system and the testimony of Second Chair. Given this extensive contact, the court found that Counsel was "very ... familiar with certain defenses that [Jakeman] wanted to raise" and that "they discussed things like strategy," especially about the advisability of Jakeman testifying. Because they "talked about all of those things," the court concluded that there were "plenty of pretrial communications that took place."

¶17 Concerning alleged deficiencies in preparing Jakeman for examination at trial, the court found that Counsel "did try to prepare ***264** [Jakeman] for his testimony," noting, "Whether or not [Jakeman] was going to heed that advice or not was completely up to him, but she did make reasonable efforts to prepare him for his testimony." Concerning the cross-examination of AJ, the court found that Counsel and Jakeman had agreed to a strategy of undermining AJ's "testimony and her credibility by demonstrating that she didn't have a clear memory of the events." Given this strategic aim, the court concluded that it didn't "see anything about [Counsel's] cross-examination of [AJ] that fell below the standard of care that a reasonable defense attorney would apply in performing cross-examination."

¶18 The court concluded, "So after having considered all of the areas that [Jakeman] raised ..., I don't believe that he has met his burden to demonstrate that there are errors or improprieties that are so substantially adverse that it affected his rights and requires a new trial." With that, the court denied his motion for a new trial.

ISSUES AND STANDARDS OF REVIEW

[2] **[3]** ¶19 Jakeman appeals, raising the following issues. He first asserts that the conviction for child abuse was against the clear weight of the evidence. "We review a claim of insufficient evidence at a bench trial for clear error, meaning we must sustain the district court's judgment unless it is against the clear weight of the evidence, or if we otherwise reach a definite and firm conviction that a mistake has been made." *State v. Sparling*, 2024 UT App 59, ¶ 13, 549 P.3d 86 (cleaned up), *cert. denied*, 554 P.3d 1096 (Utah 2024). And we "accord deference to the district court's ability and opportunity to evaluate credibility and demeanor," deferring "to its findings unless the record demonstrates clear error." *Id.* (cleaned up).

[4] ¶20 Jakeman next contends that the court committed "structural error by conducting [the] trial" after the delayed transport to the courthouse, thus "denying him the opportunity to meet in person and conference with his attorney." "Constitutional issues are questions of law that we review for correctness." *State v. Curry*, 2006 UT App 390, ¶ 5, 147 P.3d 483 (cleaned up).

[5] ¶21 Jakeman's final claim is that Counsel rendered ineffective assistance in two ways: (1) by failing to communicate adequately with him and (2) by "directly examining Jakeman and cross-examining" AJ about the bruise "in a way that failed to explore key elements of the crime." "[W]hen a district court rules on a criminal defendant's claim that he was deprived of his Sixth Amendment right to counsel due to ineffective assistance, the district court's determination of whether the defendant received constitutionally ineffective assistance is reviewed for correctness." *State v. Torres-Orellana*, 2024 UT 46, ¶ 6, 562 P.3d 706.

ANALYSIS

I. Sufficiency of the Evidence

[6] ¶22 Jakeman first asserts that the conviction for child abuse was against the clear weight of the evidence, arguing

that the "evidence before the trial court was insufficient to rise to the beyond a reasonable doubt standard to find Jakeman guilty of intentionally and knowingly inflicting upon [AJ] a physical injury." More specifically, Jakeman contends that he "took the stand ... to provide direct evidence" of his mental state by showing that "he lacked intent to harm [AJ] in that moment" and was instead "only [seeking] to disengage." Given that Jakeman testified that he applied pressure to AJ's thigh only "in order to safely disengage without intent to injure in what had risen to a physical encounter," he insists that the "evidence did not support intentional or knowing infliction of a physical injury."

¶23 Jakeman also claims—although his briefing is more than a little convoluted on this point—that his "use of pressure points" did not, in fact, cause AJ "physical harm." To this point, he maintains that "the evidence was insufficient to form a nexus between the bruise that appeared four ... days later and the alleged incident." To support this argument, Jakeman points out that he testified he applied pressure to AJ's left leg, while AJ testified the bruising appeared on her right leg. "Given the disparity in their testimonies," Jakeman insists that "it was necessary ***265** for the City to draw a nexus rather than just hope for an inference to connect the bruise with this alleged incident."

¶24 Under Utah law, an "actor commits child abuse if the actor ... inflicts upon a child physical injury." Utah Code Ann. § 76-5-109(2)(a) (LexisNexis Supp. 2023). "Physical injury" is defined as including "a bruise or other contusion of the skin" and "any other condition which imperils the child's health or welfare and that is not a serious physical injury." *Id.* § 76-5-109(1)(a)(ii). Where, as here, a defendant is charged with a class A misdemeanor, the infliction of physical injury must be "done intentionally or knowingly." *Id.* § 76-5-109(3)(a). Intentionally applying one's knee to a child's thigh with such force that it leaves a bruise obviously meets the elements of child abuse by inflicting physical injury as defined in the statute.

¶25 Jakeman's conviction was supported by ample evidence of both (1) his intent and (2) the actual physical injury he caused when he assaulted AJ.

¶26 Jakeman asserts that he could not have intentionally and knowingly inflicted physical injury on AJ because his purpose for applying his knee to AJ's leg "was to avoid injury and safely disengage from the confrontation." While Jakeman encourages us to credit his testimony on this point, other evidence indicates that Jakeman acted with the requisite intent.

[7] **[8]** **[9]** ¶27 "Proof of a defendant's intent is rarely susceptible of direct proof. Accordingly, circumstantial evidence has long been used to prove specific intent." *State v. Heath*, 2019 UT App 186, ¶ 54, 453 P.3d 955 (cleaned up); *see also State v. James*, 819 P.2d 781, 789 (Utah 1991) ("It is well established that intent can be proven by circumstantial evidence."). "Direct evidence is not required. Sustainable verdicts are entered every day on the sole basis of circumstantial evidence. And where the [factfinder] returns a verdict that is reasonably sustained by circumstantial evidence and the inferences drawn from it, we must uphold [that] verdict." *State v. Kitzmiller*, 2021 UT App 87, ¶ 38, 493 P.3d 1159 (cleaned up). When proving intent by circumstantial evidence, we employ a two-step process. First, we determine "whether the [prosecution] presented any evidence that [the defendant] possessed the requisite intent." *State v. Holgate*, 2000 UT 74, ¶ 21, 10 P.3d 346 (cleaned up). Second, we consider "whether the inferences that can be drawn from that evidence have a basis in logic and reasonable human experience sufficient to prove that [the defendant] possessed the requisite intent." *Id.* (cleaned up).

¶28 The strongest evidence the City presented that Jakeman possessed the requisite intent came from Jakeman's own mouth. He admitted that he told AJ that "if she kept on as she was doing [he] would hit her." And Jakeman also testified that his feelings had been so "totally hurt" that he went up the stairs to engage in a "standoff" that he was determined to "win." Even after Jakeman and AJ had locked arms and he realized how frail and terrified she looked, Jakeman said that he thought to himself, "[B]ut I'm still going to win this stupid standoff."

¶29 And he made sure that he won by striking AJ in the leg in an area that he repeatedly described as a "pressure point." The obvious inference is that he knew enough about human anatomy to know that striking a "pressure point" would cause a person disabling pain. "A person engages in conduct ... with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result." Utah Code Ann. § 76-2-103(1) (LexisNexis 2017). And a "person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result." *Id.* § 76-2-103(2). Thus, because Jakeman knew that striking (or applying significant pressure

to) AJ's leg would cause her pain, his conduct was both intentional and knowing.

¶30 There is simply no doubt that Jakeman intentionally and knowingly meant to apply his knee to a part of her body—"a pressure point"—in such a way to cause AJ severe pain. The inference, based "in logic and reasonable human experience," *Holgate*, 2000 UT 74, ¶ 21, 10 P.3d 346 (cleaned up), is obvious: Jakeman, a grown man, had his ***266** feelings hurt by the words of a child and got so mad that he decided he was going to overpower her and hurt her. After the two locked arms, Jakeman decided he wanted "to be done with" the standoff, and he effected that desire by intentionally applying pressure to AJ's thigh with his knee. He knew this spot on her thigh was a "pressure point" and he knew that forcing his knee into that spot would cause AJ enough pain to make her let go—that was, after all, the reason he bore his weight down at a vulnerable spot on AJ's thigh. And so Jakeman accomplished his goal: AJ let go, dropped to the ground, and screamed in pain. Thus, Jakeman's claim that the City provided insufficient evidence to show he intentionally and knowingly caused physical harm to AJ fails.

[10] **[11]** ¶31 There was also sufficient evidence that Jakeman's act of striking or applying significant pressure to AJ's leg caused her physical injury. After all, there was a photograph admitted into evidence of the bruise AJ claimed to have received after Jakeman's contact with her. The factfinder was well-equipped to come to this conclusion based on the photographic evidence alone. "Whether the mark constituted a bruise and what caused it did not involve obscure medical factors but were within the common experience of laypersons." *State v. Whitchurch*, 2024 UT App 108, ¶ 54, 554 P.3d 1166 (cleaned up), *cert. denied*, 564 P.3d 960 (Utah 2025). And simply because Jakeman insists that he applied force to AJ's left leg while she said the bruise appeared on her right leg does not mean the evidence was insufficient. Contradictory evidence does not insufficiency make. "When reviewing a trial wherein conflicting, competent evidence was presented, we simply assume that the [factfinder] believed the evidence supporting the verdict. Accordingly, the existence of contradictory evidence or of conflicting inferences does not warrant disturbing the ... verdict." *State v. Boyd*, 2001 UT 30, ¶ 14, 25 P.3d 985 (cleaned up). And here, the trial court determined that AJ was the more credible witness to the events. Indeed, the court explicitly stated that it was "persuaded by the testimony ... that AJ's version of events [was] the more accurate version," especially since it was "corroborated by multiple other witnesses."[4]

¶32 Given that Jakeman admitted to applying pressure to AJ's leg, that AJ said the blow happened to her right leg, and that AJ had a bruise to show for Jakeman's conduct, it certainly was not against the clear weight of the evidence that Jakeman's conduct caused physical injury to AJ. Accordingly, this claim of error also fails.

II. Structural Error

[12] ¶33 Jakeman next contends that the court committed "structural error by conducting [the] trial" after the delayed transport to the courthouse, thus "denying him the opportunity to meet in person and conference with his attorney." Jakeman develops this issue as a denial of his Sixth Amendment right to counsel, arguing that "[n]o attorney could provide assistance given the circumstances of the late transport."

[13] **[14]** ¶34 "[S]ome constitutional rights [are] so basic to a fair trial that their infraction can never be treated as harmless error ...." *Chapman v. California*, 386 U.S. 18, 23, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). These are known as "structural errors." *Weaver v. Massachusetts*, 582 U.S. 286, 294, 137 S.Ct. 1899, 198 L.Ed.2d 420 (2017). "The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it affects the framework within which the trial proceeds, rather than being simply an error in the trial process itself." *Id.* at 294–95, 137 S.Ct. 1899 (cleaned up).

¶35 Jakeman has pointed us to no case that supports a delayed arrival infringing on a defendant's additional consultation time with counsel as constituting structural error. Rather, he argues in more general terms, asserting that a structural error occurred in his case because "the breakdown in communication" between him and Counsel was "severe enough to prevent preparation or adequate ***267** representation." *See United States v. Soto Hernandez*, 849 F.2d 1325, 1328 (10th Cir. 1988) ("A complete breakdown in communication between an attorney and client may give rise to [a presumption of ineffectiveness].... [A] breakdown in communication between an attorney and his or her client can be severe enough to prevent even the most able counsel from providing effective assistance."). Jakeman argues that he had "planned to meet with [Counsel] an hour or more before trial so that he could determine whether they were on the same page regarding his defense and possibly represent himself

at trial if necessary," but "when he arrived almost an hour late, [Counsel] was waiting for him outside the courtroom and told him she had found a favorable case that required the [City] prove intent to cause injury for him to be found guilty." He contends that "[b]ased upon the lack of time, the rushed state of the proceedings, ... the favorable case she had found, and her positive outlook, he did not attempt to proceed with the pre-trial meeting they had previously agreed to, fire her, nor discuss the matter in-depth with her." From this, he concludes that the "trial court knew or should have known this late transport caused structural error that weighed against [him]." Jakeman points us to no authority establishing that this circumstance, even if true, would constitute structural error.

¶36 Moreover, Jakeman is mistaken in his reading of the facts of this case. To be clear, there was no error here, structural or otherwise, to serve as a basis for the relief Jakeman seeks. Simply put, the delayed transport did not infringe upon any of Jakeman's constitutional rights. Counsel testified that there "was no new information coming" to her from Jakeman on the day of trial. Counsel said that instead of discussing trial strategy, she and Jakeman spent about fifteen minutes "going over his rights." She further stated that she had "enough time to ask him multiple times" if he was comfortable with "going forward," adding that there were "no stressors or undue pressure with the time." Moreover, no court personnel (e.g., bailiffs or clerks) came into the holding area during their pretrial conversation telling them they had to wrap up. Instead, Counsel said that no sort of restrictive timeframe was communicated to her for the pre-trial consultation, nor was there "any sort of impetus for [her] to rush [her] conversation" with Jakeman.

¶37 Second Chair testified that Jakeman's late arrival, while unanticipated, did not "throw a wrench into things," noting that he was "not aware of any preparation that needed to be done" on the day of the trial: "I don't recall any tension, in my mind, that we weren't prepared, we needed things to be addressed prior to the trial, things like that." Indeed, Second Chair explicitly stated that "there wasn't any issue in [his] mind whether [Counsel] was prepared" on the day of trial. Additionally, Second Chair testified that Counsel was not rushed during her pre-trial conversation with Jakeman, that they were not interrupted by court personnel during that conversation, and that there was no indication from the court that it was anxious to get started. He did say that during the pre-trial conversation, Jakeman expressed that "his method of cross-examination would've been the best because he was there," but Jakeman had the opportunity to ask Counsel questions. Second Chair further testified that Jakeman did not express concerns about "being able to present the trial because of the lateness of his transportation." Instead, Jakeman "wanted to rehash all the things that [they] had [previously] discussed in the jail and about examining the trial ethics."

¶38 In short, there simply was no error here. The evidence indicates that Jakeman had all the time he needed before trial to discuss his case with Counsel. Jakeman was provided with legal representation, and Counsel was prepared for trial. Jakeman had the opportunity to meet with Counsel and express any lingering concerns or reservations he might have had. Accordingly, Jakeman's assertion of structural error fails both legally and factually.

III. Ineffective Assistance of Counsel

¶39 Jakeman's final claim of error is that he received constitutionally ineffective assistance of counsel on two fronts. First, he asserts that Counsel failed to adequately ***268** communicate with him before trial. Second, he maintains that Counsel failed to adequately examine Jakeman and AJ about the bruise.

[15] **[16]** **[17]** ¶40 To succeed on a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): "First, the defendant must show that counsel's performance was deficient.... Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687, 104 S.Ct. 2052. The deficient performance prong requires a defendant to "show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688, 104 S.Ct. 2052. "A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," meaning that a defendant must overcome the presumption that counsel's action "might be considered sound trial strategy." *Id.* at 689, 104 S.Ct. 2052 (cleaned up). Thus, if it "appears counsel's actions could have been intended to further a reasonable strategy, a defendant has necessarily failed to show unreasonable performance." *State v. Ray*, 2020 UT 12, ¶ 34, 469 P.3d 871. "To establish prejudice, the defendant must present sufficient evidence to support a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable

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probability is a probability sufficient to undermine confidence in the outcome." *State v. Torres-Orellana*, 2021 UT App 74, ¶ 29, 493 P.3d 711 (cleaned up), *aff'd*, 2024 UT 46, 562 P.3d 706. Finally, "a defendant's inability to establish either element defeats a claim for ineffective assistance of counsel." *Id.* ¶ 27 (cleaned up).

A. Lack of Communication

[18] ¶41 Jakeman asserts that he met with Counsel for only one hour face-to-face before the day of the trial and very briefly right before trial. And even though there were many remote communications between him and Counsel, he complains that how those communications related to trial preparation was not explored and remained unknown.

¶42 "Under *Strickland*, we must indulge a strong presumption that counsel's conduct *did* fall within the wide range of reasonable professional assistance." *State v. Draper*, 2024 UT App 152, ¶ 99, 560 P.3d 122 (cleaned up). Jakeman fails to meet the burden of overcoming this presumption. Instead, his claim that Counsel didn't adequately communicate with him is almost entirely conclusory; in other words, he asserts that Counsel's communication was deficient, but he doesn't attempt to explain *how* it was deficient. It appears that he believes that Counsel's communication efforts were deficient because he was convicted, but that is not the standard for deficiency. Instead, he needs to show that Counsel's communication "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. He has not done so, and the record indicates that the communication between Counsel and Jakeman was robust.

¶43 While Jakeman met with Counsel in-person only twice, Jakeman does not address all the other preparation Counsel undertook in reading, analyzing, and developing a strategy from the material he submitted to her in his many communications. *Cf. Draper*, 2024 UT App 152, ¶ 99, 560 P.3d 122 (declining to find deficient performance in a case where a defendant "met with [c]ounsel only twice" but said "nothing about how long those meetings were"). The United States Supreme Court has cautioned against retrospective micromanagement of attorney practice in assessing deficient performance. *See Strickland*, 466 U.S. at 690, 104 S.Ct. 2052 ("The availability of intrusive post-trial inquiry into attorney performance or of detailed guidelines for its evaluation would encourage the proliferation of ineffectiveness challenges.... Intensive scrutiny of counsel and rigid requirements for acceptable assistance could dampen the ardor and impair the independence of defense counsel, discourage the acceptance of assigned cases, and undermine the trust between attorney and client."). And we have declined "to determine what amount of time counsel must spend with a defendant to ensure that the representation does not ***269** fall below an objective standard of reasonableness." *State v. Bair*, 2012 UT App 106, ¶ 57, 275 P.3d 1050 (cleaned up); *see also Nicholls v. State*, 2009 UT 12, ¶ 38, 203 P.3d 976 ("We have refused to hold that counsel is ineffective based on the amount of time counsel spent working on the case or consulting with a client."); *Parsons v. Barnes*, 871 P.2d 516, 526 (Utah 1994) (stating that "the time period" required to ensure adequate representation "will vary with every case"). Instead, our caselaw has considered whether an attorney "spent sufficient time" working on a case, *Nicholls*, 2009 UT 12, ¶ 38, 203 P.3d 976, so as to ensure that there was no "overlooked information critical to the defense," *Parsons*, 871 P.2d at 526.

¶44 Here, Jakeman has failed to demonstrate that Counsel spent too little time meeting with him and developing a strategy for the case. In fact, the record points in the other direction, demonstrating that Counsel was well-prepared for the case. Counsel's law firm documented 131 communications with Jakeman, including phone calls, texts, emails, letters, and meetings. These communications concerned how Jakeman "would like to proceed with his" case. In preparation for her meeting with Jakeman at the jail, Counsel had gone through the "numerous documents" Jakeman had sent her, noting his "questions and concerns." She determined it was "more appropriate for [her] to go through them [on her own] time, write down [her] response, and visit him at the jail." Counsel subsequently went "through the letters in detail" during her meeting with Jakeman at the jail. In addition to answering Jakeman's questions during the jail meeting, Counsel discussed trial strategy, who would be called as witnesses, and Jakeman's desire to testify. Counsel noted, "[Jakeman] decided he would like to testify at trial, and we went over what he would testify to, what should be said, and what manner he should answer questions on the stand." Additionally, Counsel had conversations with Jakeman "[m]ultiple times" during which he "relayed ... his version of events." Counsel was also familiar with Jakeman's account of the incident based on letters he had sent. She indicated that Jakeman had sent "at least five packets, each containing anywhere between 20 and 60 pages" to her law firm. She subsequently reviewed those packets and used the information she gleaned from them to review in person with Jakeman trial strategy, admissibility of evidence, and any other questions Jakeman had. Counsel testified that

Jakeman never objected to her proposed strategy during these discussions.

¶45 Counsel also noted that Jakeman "wanted his side of the story to be heard" and "did not care what the outcome was." During their discussions, Counsel advised Jakeman that it would be harmful to his case to state that he said he was going to hit AJ and that he shouldn't "testify to that unless asked directly." In addition, Counsel advised Jakeman "to be honest, ... straightforward, controlled, and direct in his answers and not to get off-topic." Counsel testified that her coaching of Jakeman was part of a strategic decision "[t]o keep it clear, to keep it concise, and to ensure the points that [they] wanted to get across came across in the correct way." In short, there is every indication that Counsel undertook extensive preparation for trial and developed a trial strategy in accord with Jakeman's objectives. There is simply no foundation in the record that Counsel's communication efforts fell short of the standard expected of reasonable counsel in any way.

¶46 Accordingly, the trial court's findings about the extent of communication between Jakeman and Counsel were not clearly in error. And these communications represent the efforts objectively reasonable counsel would take to ensure adequate representation. Thus, this claim of ineffective assistance fails because Jakeman has not shown deficient performance.

B. Testimony About the Bruise

[19] ¶47 Jakeman also asserts that Counsel was ineffective for failing to directly examine him and cross-examine AJ with regard to the bruising on her leg. Jakeman claims that this shortcoming resulted in a failure "to subject the City's case to proper adversarial testing" because it prevented the presentation of "proper and necessary evidence."

***270** **[20]** ¶48 "In evaluating the reasonableness of an attorney's actions, courts will often look to whether the actions the attorney took were motivated by trial strategy." *State v. King*, 2024 UT App 151, ¶ 24, 559 P.3d 96. Here, we have no trouble articulating a reasonable trial strategy for how Counsel handled the bruise testimony.

¶49 Counsel was pursuing a strategic purpose in limiting her cross-examination of AJ. She testified that she deliberately kept cross-examination "brief" because she wanted "to elicit a certain response," "get what [she needed] from the case," and not "leave room for someone on cross-examination to add details that could potentially help the prosecutor." Instead of delving into the bruise, Counsel explained that her strategy in cross-examining AJ was to go after her credibility. Specifically, Counsel focused on AJ's initial report that Jakeman had slammed her head into the wall. By getting AJ to admit that Jakeman never slammed her head against the wall, Counsel aimed to "undercut her testimony." Moreover, Counsel elicited testimony from AJ that her memory of the events was "foggy" and "brought back to her via other people's recollections." Based on these responses, Counsel felt she had established that AJ was "an uncredible witness." Counsel explained, "Her testimony was based on what others had told her, and she had changed her story between the written statement she provided to officers, what she told the officers that day, and what she had stated on the stand."

¶50 And having introduced evidence indicating that AJ was an unreliable witness, Counsel made the strategic decision to stop her cross-examination of AJ, a decision that was also informed by AJ's age. Counsel explicitly stated that she wanted to avoid asking questions of AJ that would come off as "badgering," explaining,

> I do take the time to think out the questions asked, especially when it's a child, and try and phrase it in a non-threatening-type way. It is intimidating for a child to testify, so I asked her everything I wanted to that day. I just made sure I worded it in a way that she would feel more comfortable.

¶51 Moreover, additional questioning of AJ about the bruise could have resulted in more vivid testimony about how painful the blow to her leg had been and how that pain was confirmed by the development of a bruise in the days following the incident; such testimony would certainly not have benefited Jakeman in any way. Thus, given that Counsel articulated a reasonable strategic purpose in limiting her questioning of AJ to issues of credibility, the trial court did not err in rejecting Jakeman's ineffective assistance claim.

[21] ¶52 As to the direct examination of Jakeman about the bruise, Jakeman does little to develop this point in his briefing other than asserting that he should have been directly examined "on this point to effectively establish the discrepancy." But Counsel had good reason not to question Jakeman about the bruise. First, Jakeman testified that he applied pressure to AJ's left thigh, while AJ said the bruise was on her right thigh. We fail to see the value of asking Jakeman specifically about the bruise when his other testimony established that, in his account of the event, he

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could not have caused it since he asserted that he applied pressure to the thigh without the bruise. More importantly, direct examination of Jakeman about the bruise may have led to damaging testimony—such as Jakeman saying that AJ was being deceptive or had fabricated the injury. Counsel —perhaps aware that Jakeman did not present a terribly sympathetic defendant—could reasonably have wanted to keep him from doing damage by straying off track in his testimony. Thus, questioning him about the bruise would have been, at best, pointless and, more likely, counterproductive.

¶53 Thus, since Counsel had a reasonable strategic purpose to limit testimony about the bruise, we conclude that this claim of ineffective assistance fails for lack of deficient performance.

CONCLUSION

¶54 Jakeman's convictions were supported by sufficient evidence, both as to his intent and the fact that he caused physical injury to ***271** AJ. His delayed transport to the courthouse did not result in error, structural or otherwise. And Counsel did not perform deficiently in either respect identified by Jakeman.

¶55 Affirmed.

All Citations

575 P.3d 257, 2025 UT App 107

Footnotes

1 "On appeal from a bench trial, we view and recite the evidence in the light most favorable to the trial court's findings; we present additional evidence only as necessary to understand the issues on appeal." *State v. Jack*, 2018 UT App 18, n.2, 414 P.3d 1063.

2 We will recount other facts relevant to Counsel's pre-trial consultation and contact with Jakeman in the Analysis section below.

3 This email statement does not appear in the trial record, but it does appear in the presentencing report. However, the City explicitly referenced and extensively quoted from the email during Jakeman's cross-examination. All the portions quoted here are taken from the trial transcript.

4 The evidence included the police body camera video in which JJ explicitly stated that Jakeman had "hit" AJ. *See supra* ¶ 5. Jakeman made no objection to the body camera video at trial.

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Addendum 3

Orem City v. Jakeman (*Jakeman II*), 2025 UT App 187

583 P.3d 1090
Court of Appeals of Utah.

OREM CITY, Appellee,

v.

David Ammon JAKEMAN, Appellant.

No. 20241042-CA
|
Filed December 18, 2025

Synopsis

Background: After defendant was convicted on eight domestic violence and violation of protective order charges in five different cases, and five sentencing protective orders (SPOs) were issued, defendant filed pro se motion requesting modification of SPOs, and city moved for continuous protective orders (CPOs) to replace SPOs. The Fourth District Court, Spanish Fork Department, Jared W. Eldridge, J., denied defendant's motion and granted city's motion. Defendant appealed.

Holdings: The Court of Appeals, Mortensen, J., held that:

[1] any error by district court in issuing CPOs under provision of statute requiring CPO at sentencing was invited error;

[2] issuance of CPOs was not plain error because error would not have been obvious as law in this matter was far from settled; and

[3] pro se defendant was not entitled to attorney's fees.

Affirmed.

See also 575 P.3d 257.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (20)

[1] **Criminal Law** Necessity of Objections in General

Court of Appeals reviews issue that was not preserved under the rubric of plain error.

[2] **Criminal Law** Necessity of Objections in General

A claim of plain error presents a question of law that the Court of Appeals addresses in the first instance.

[3] **Criminal Law** Scope and Effect of Objection

Objection by defendant who had been convicted on domestic violence and violation of protective order charges to city's motion to replace five sentencing protective orders (SPOs) against him with continuous protective orders (CPOs) as being "procedurally defective" did not preserve for appeal issue of whether district court complied with statutory requirements, and, thus, Court of Appeals would review issue for plain error; generalized grievance provided no indication of his claim on appeal, there was no suggestion that he ever mentioned applicable statute or its requirements to district court, and it would be logically inconsistent to find he had raised matter such that district court had opportunity to rule on it given his repeated assertions to that court that CPOs already were in place. Utah Code Ann. § 78B-7-804(5).

1 Case that cites this headnote

[4] **Criminal Law** Presentation of questions in general

An issue is preserved for appeal when it has been presented to the district court in such a way that the court has an opportunity to rule on it.

1 Case that cites this headnote

[5] **Criminal Law** Presentation of questions in general

When a party fails to raise and argue an issue in the trial court, it has failed to preserve the issue, and an appellate court will not typically

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reach that issue absent a valid exception to preservation.

1 Case that cites this headnote

[6] **Criminal Law** Estoppel or Waiver

Any error by district court in converting five existing sentencing protective orders (SPOs) against defendant, which had been issued following his conviction on eight domestic violence and violation of protective order charges, to continuous protective orders (CPOs) under provision of CPO statute requiring CPO at sentencing, rather than under statute permitting issuance of CPO at any time upon petition by victim and after notice and hearing, was invited error; defendant had repeatedly insisted to district court that existing protective orders were continuous. Utah Code Ann. §§ 78B-7-804(3)(b), 78B-7-804(5).

[7] **Criminal Law** Necessity of Objections in General

To establish plain error, a defendant must show that (1) an error exists; (2) the error should have been obvious to the trial court; and (3) the error is harmful.

[8] **Criminal Law** Error committed or invited by party complaining in general

By precluding appellate review, the invited error doctrine furthers the principle that a party cannot take advantage of an error committed at trial when that party led the trial court into committing the error by discouraging parties from intentionally misleading the trial court so as to preserve a hidden ground for reversal on appeal.

[9] **Criminal Law** Constitutional questions

Defendant who had been convicted on domestic violence charges and violation of protective order charges failed to preserve, by not raising it before district court, his argument that statute permitting issuance of continuous protective order (CPO) at any time upon petition by victim and after notice and hearing was unconstitutional as applied to him because it resulted in de facto termination of his parental rights without due process, and, thus, Court of Appeals would review issue for plain error. U.S. Const. Amend. 14; Utah Const. art. 1, § 7; Utah Code Ann. § 78B-7-804(5).

[10] **Criminal Law** Reply briefs

Court of Appeals would decline to hear, raised for first time in reply brief, argument by defendant who had been convicted on domestic violence charges and violation of protective order charges that statute permitting issuance of continuous protective order (CPO) at any time upon petition by victim and after notice and hearing was unconstitutional as applied to him under both due process and equal protection doctrines of Utah Constitution and of United States Constitution. U.S. Const. Amend. 14; Utah Const. art. 1, § 2, art. 1, § 7; Utah Code Ann. § 78B-7-804(5).

[11] **Criminal Law** Constitutional questions

Unpreserved federal constitutional claims are not subject to a heightened review standard but are to be reviewed under the plain error doctrine.

[12] **Criminal Law** Constitutional questions
Criminal Law Burden of showing error

For unpreserved state constitutional questions, the burden to prove plain error is that a defendant must demonstrate that an obvious and prejudicial error occurred.

[13] **Criminal Law** Reply briefs

Appellants are not permitted to raise matters for the first time in a reply brief.

[14] **Criminal Law** Reply briefs

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Criminal Law Error Waived in Appellate Court

When party fails to raise and argue issue on appeal, or raises it for first time in reply brief, that issue is waived and will typically not be addressed by appellate court.

[15] **Criminal Law** Sentencing and Punishment

District court's conversion of five existing sentencing protective orders (SPOs) against defendant, which had been issued following his conviction of eight domestic violence and violation of protective order charges, to continuous protective orders (CPOs) was not plain error, even though defendant alleged that statute permitting issuance of CPO at any time upon petition by victim and after notice and hearing was unconstitutional as applied to his case; any error would not have been obvious to district court because law in this matter was far from settled, and nonbinding case law from another jurisdiction on protective orders did not create condition where alleged error would have been obvious. Utah Code Ann. § 78B-7-804(5).

[16] **Criminal Law** Necessity of Objections in General

Relief is not available via the plain-error doctrine unless defendants persuade the Court of Appeals that the error they allege is supported on the basis of settled law.

[17] **Criminal Law** Necessity of Objections in General

To establish that an error should have been obvious to the trial court, for purposes of plain-error review, the appellant must show that the law governing the error was clear at the time the alleged error was made.

[18] **Criminal Law** Necessity of Objections in General

An error is not obvious if there is no settled appellate law to guide the trial court.

[19] **Costs, Fees, and Sanctions** Attorney fees

Pro se defendant who was attorney was not entitled to attorney's fees city would have paid to hire counsel for him if he had not represented himself, in his appeal of denial of his motion requesting modification of sentencing protective orders (SPOs) imposed on him after his conviction on eight domestic violence and violation of protective order charges and of grant of city's motion to replace SPOs with continuous protective orders (CPOs); defendant was losing party in this matter, and he was not entitled as pro se litigant to recover attorney's fees.

[20] **Costs, Fees, and Sanctions** Pro se litigants

Pro se litigants may not recover attorney fees, even if the pro se litigant is an attorney.

Fourth District Court, Spanish Fork Department, The Honorable Jared Eldridge, No. 221300408

Attorneys and Law Firms

David Ammon Jakeman, Appellant Pro Se

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Judge David N. Mortensen authored this Opinion, in which Judges Ryan D. Tenney and John D. Luthy concurred.

Opinion

MORTENSEN, Judge:

***1092** ¶1 In this consolidated appeal, David Ammon Jakeman challenges multiple continuous protective orders entered following his conviction on eight charges in several cases.[1] Jakeman raises arguments that he did not set forth in the proceedings before the district court, instead claiming that the court plainly erred in not anticipating the arguments he now raises on appeal. We affirm, concluding that Jakeman

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either invited the claimed error or otherwise fails to meet the requirements of a plain error claim.

BACKGROUND

¶2 In August 2023, Jakeman was convicted on eight domestic violence and violation of protective order charges in several different cases. Later, five sentencing protective orders (SPOs)—one for each case in which Jakeman was charged—were issued at the request of Orem City.[2]

¶3 In July 2024, Jakeman, acting pro se, filed a motion requesting modification of the SPOs. At a hearing in September, Orem City moved for five continuous protective orders (CPOs) to replace the SPOs, arguing that they should have been entered at the time of sentencing under the relevant statute.

¶4 The court denied Jakeman's requested modification to the existing SPOs. Instead, the district court replaced the SPOs by issuing five CPOs as requested by Orem City. The court noted that section 78B-7-804(3)(b) of the Utah Code indicates that "if a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing." Given this statutory framework, the court agreed "that a continuous protective order could have and probably should have been issued at sentencing in this case, and it wasn't." The court concluded, "It's now being requested, and it appears ... that a continuous protective order should issue ...." Jakeman now appeals.

ISSUES AND STANDARDS OF REVIEW

[1] **[2]** ¶5 Jakeman first argues that the district court erred in issuing the CPOs without complying with section 78B-7-804(5) (Subsection (5)) of the Utah Code. Because this issue was not preserved, we review it under the rubric of plain error. A claim of plain error presents a question of law that we address in the first instance. *State v. Samora*, 2022 UT App 7, ¶ 16, 504 P.3d 195; *accord State v. Popp*, 2019 UT App 173, ¶ 19, 453 P.3d 657.

***1093** ¶6 Jakeman next asserts that Subsection (5) is unconstitutional as applied to his case because the CPOs "resulted in the de facto termination of [his] parental rights without due process." Because this issue was not preserved, we again review it under the plain error doctrine.

ANALYSIS

I. The Applicability of Subsection (5)

[3] ¶7 Jakeman argues that the district court did not comply with the requirements of Subsection (5), which states,

> [A] district court may issue a continuous protective order at any time if the victim files a petition with the court, and after notice and hearing the court finds that a continuous protective order is necessary to protect the victim.

Utah Code § 78B-7-804(5). Jakeman asserts that "the district court issued CPOs even though none of the requirements [identified in Subsection (5)] for doing so had been met."

[4] **[5]** ¶8 Jakeman claims the issue was preserved when he objected to Orem City's request for the CPOs as being "procedurally defective." We disagree. This generalized grievance provided no indication of Jakeman's claim on appeal that the requirements of Subsection (5) were not followed in issuing the CPOs. And in our reading of the record, we find no suggestion that Jakeman ever mentioned Subsection (5) or its requirements to the district court. "An issue is preserved for appeal when it has been presented to the district court in such a way that the court has an opportunity to rule on it." *Patterson v. Patterson*, 2011 UT 68, ¶ 12, 266 P.3d 828 (cleaned up). But "[w]hen a party fails to raise and argue an issue in the trial court, it has failed to preserve the issue, and an appellate court will not typically reach that issue absent a valid exception to preservation." *State v. Johnson*, 2017 UT 76, ¶ 15, 416 P.3d 443. Accordingly, we review this claim under a plain error rubric. *See State v. Flora*, 2020 UT 2, ¶ 9, 459 P.3d 975 (recognizing plain error as an exception to the preservation requirement).

¶9 Utah Code section 78B-7-804(3)(b) (Subsection (3)), which was the statute the district court invoked when it converted the SPOs to CPOs, provides,

> [I]f a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim unless: (i) the court determines

> by clear and convincing evidence that the victim does not ... have a reasonable fear of future harm or abuse; and (ii) the court conducts a hearing.

Utah Code § 78B-7-804(3)(b). Jakeman himself recognized that Subsection (3) controlled the matter when he appeared in court on his motion to modify the SPOs. Indeed, he explicitly stated that the court had already issued CPOs as provided in Subsection (3):

> So [Orem] City has asked the Court to issue a continuous protective order. I just want to point out that that is totally ridiculous, because this Court has already done so. In fact, the proof that the Court has already done so is that the Court had no option .... It had to issue a continuing protective order, which you could also call a continuous sentencing protective order or a sentencing protective order that is continuous.

And later at the same hearing, he doubled down:

> You don't need to issue another protective order. Modify this one if you need; and here's why you don't need to [issue another protective order]. Because what you issue[d], though it says "Sentencing Protective Order," ... *you had no choice but to issue a continuous protective order*, okay? The truth is they're the same.... The continuous protective order never expires, and this does not expire. It is a continuous sentencing protective order. So it's a subset of a sentencing order. It's just one that doesn't end.

(Emphasis added.) Jakeman was correct: the court had no choice but to enter a continuous protective order at the time of sentencing pursuant to Subsection (3). So, whatever the ***1094** court or Orem City may have originally called the protective order, it was a *continuous* protective order. Indeed, after hearing Jakeman's explanation, the court agreed that Subsection (3) controlled the matter, stating that a continuous protective order was "appropriate under the statute" and that "a continuous protective order could have and probably should have been issued at sentencing in this case."

¶10 Moreover, Jakeman's repeated assertions that CPOs were already in place supports our conclusion that the issue related to Subsection (5) was not preserved. Because Subsection (5) provides for the *issuance* of a continuous protective order, it is logically inconsistent to say that Jakeman raised the matter such that the court had the opportunity to rule on it when he insisted that a continuous protective order was *already in place*. Simply put, Subsection (5) does not appear to have been on Jakeman's radar below, and if it wasn't on his radar, he couldn't have expressed its applicability to the district court and thereby preserved it.

[6] **[7]** **[8]** ¶11 Because this issue wasn't preserved, the plain error doctrine is the only avenue available to Jakeman to challenge the court's ruling. To establish plain error, Jakeman "must show that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful." *State v. McNeil*, 2013 UT App 134, ¶ 24, 302 P.3d 844 (cleaned up), *aff'd*, 2016 UT 3, 365 P.3d 699. Given Jakeman's full-throated assertion before the district court that any protective order issued at the time of sentencing was continuous, we cannot say that the district court plainly erred in concluding that it was proper to issue a continuous protective order under the provisions set forth in Subsection (3). Thus, any error here was invited by Jakeman's insistence that the existing protective orders were continuous. *See Pratt v. Nelson*, 2007 UT 41, ¶ 17, 164 P.3d 366 ("Our invited error doctrine arises from the principle that a party cannot take advantage of an error committed at trial when that party led the trial court into committing the error. By precluding appellate review, the doctrine furthers this principle by discouraging parties from intentionally misleading the trial court so as to preserve a hidden ground for reversal on appeal." (cleaned up)); *see also State v. Moa*, 2012 UT 28, ¶ 27, 282 P.3d 985 ("Where a party makes an affirmative representation encouraging the court to proceed without further consideration of an issue, an appellate court need not consider the party's objection to that action on appeal. The doctrine of invited error therefore can preclude even plain error review." (cleaned up)); *McNeil*, 2013 UT App 134, ¶ 24, 302 P.3d 844 (stating that "invited error precludes appellate review of an issue," even under plain error review). And inviting the error—inasmuch as there was error—is exactly what Jakeman did here.

¶12 Given the unavailability of plain error review in this matter, Jakeman's first claim—that the district court failed to comply with Subsection (5)—necessarily misses the mark.

II. The Constitutionality of Subsection (5)

[9] **[10]** **[11]** **[12]** **[13]** **[14]** ¶13 Jakeman next claims that Subsection (5) "is unconstitutional as applied" because it "resulted in the de facto termination of [his] parental rights without due process." As addressed above, Jakeman's Subsection (5) argument was not preserved. Even clearer is that Jakeman never raised the constitutionality of Subsection (5) before the district court.[3] "[U]npreserved federal constitutional claims are not subject to a heightened

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review standard but are to be reviewed under our plain error doctrine." *State v. Bond*, 2015 UT 88, ¶ 44, 361 P.3d 104. Similarly, "for unpreserved state constitutional questions, the burden to prove plain error does not change: a defendant must ***1095** demonstrate that an obvious and prejudicial error occurred." *Id.* ¶ 41 n.14.

[15] **[16]** **[17]** **[18]** ¶14 We are hard pressed to see how any error in this regard—assuming one exists—would have been obvious to the district court because the law in this matter is far from settled. "Relief is not available via the plain-error doctrine unless defendants persuade us that the error they allege is supported on the basis of *settled* law." *State v. Robertson*, 2018 UT App 91, ¶ 24, 427 P.3d 361 (emphasis added) (cleaned up); *see also id.* ("The complexity of this analysis alone indicates that [the defendant] cannot meet the burden of showing plain error, because any alleged error would not have been obvious to the trial court."). Put simply, "to establish that the error should have been obvious to the trial court, the appellant must show that the law governing the error was clear at the time the alleged error was made." *State v. Roman*, 2015 UT App 183, ¶ 9, 356 P.3d 185 (cleaned up). "Thus, an error is not obvious if there is no settled appellate law to guide the trial court." *Id.* (cleaned up). That is precisely the case here—Jakeman has not pointed to any settled law to support his contention that an error was made.[4]

[19] **[20]** ¶15 Given the absence of settled law on this point, the district court did not plainly err in failing to recognize the alleged unconstitutionality of Subsection (5) that Jakeman attempts to identify on appeal.[5]

CONCLUSION

¶16 We affirm, concluding that Jakeman either invited the claimed error or otherwise fails to meet the requirements of a plain error claim.

All Citations

583 P.3d 1090, 2025 UT App 187

Footnotes

1 Five cases involving repeated violations of protective orders were consolidated in this appeal.

2 A sentencing protective order refers to "a written order of the court as part of sentencing in a domestic violence case that limits the contact an individual who is convicted or adjudicated of a domestic violence offense may have with a victim or other specified individuals under Section 78B-7-804." Utah Code § 77-36-1(12). While the statute does not explicitly state that a sentencing protective order may be continuous, there is no reason that a sentencing protective order cannot be continuous in nature. Indeed, it appears that there is generally no other option for protective orders issued in domestic violence cases that result in incarceration. *See id.* § 78B-7-804(3)(b).

3 In his reply brief, Jakeman argues for the first time that Subsection (3) is "facially unconstitutional under both the due process and equal protection doctrines of the Utah Constitution and of the United States Constitution." This will not do. "Appellants are not permitted to raise matters for the first time in a reply brief. Indeed, when a party fails to raise and argue an issue on appeal, or raises it for the first time in a reply brief, that issue is waived and will typically not be addressed by the appellate court." *Chard v. Chard*, 2019 UT App 209, ¶ 34, 456 P.3d 776 (cleaned up). Accordingly, we decline to entertain this new assertion.

4 Jakeman points to a recent case from Texas holding that protective orders banning all communication between a parent and child for more than two years require meeting a standard of clear and convincing evidence because such orders impinge on fundamental rights of parents. *See Stary v. Ethridge*, 712 S.W.3d 584, 595–96 (Tex. 2025). This non-binding caselaw cannot support a conclusion of plain error since it does not create a condition where the alleged error Jakeman now raises would have been obvious to the district court.

5 Jakeman requests attorney fees "in the amount" Orem City "would have paid to hire counsel for [Jakeman] if he had not represented himself." There are at least two problems with this request. First, Jakeman is the losing party in this matter and, second, "pro se litigants may not recover attorney fees, even if the pro se litigant is [an] attorney," as was the case here. *See Griffin v. Cutler*, 2014 UT App 251, ¶ 38, 339 P.3d 100.

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Addendum 4

Order Granting in Part and Denying in Part State Defendants' Motion to Dismiss (August 4, 2025)

The Order of the Court is stated below:
Dated: August 04, 2025 01:49:29 PM **/s/** SHAWN R HOWELL
District Court Judge

IN THE FOURTH JUDICIAL DISTRICT COURT **IN AND FOR UTAH COUNTY, STATE OF UTAH**	
DAVID AMMON JAKEMAN, individually and on behalf of all others similarly situated, *Plaintiff*, v. STATE OF UTAH; UTAH ATTORNEY GENERAL'S OFFICE; ATTORNEY GENERAL DEREK BROWN; GOVERNOR SPENCER J. COX; COMMISSIONER JESS L. ANDERSON, UTAH DEPARTMENT OF PUBLIC SAFETY; UTAH COUNTY ATTORNEY'S OFFICE; and JOHN and JANE DOES 1-10, *Defendants*.	**ORDER GRANTING IN PART AND DENYING IN PART STATE DEFENDANTS' MOTION TO DISMISS** Case No: 250401696 Judge Shawn R. Howell

The Court, having reviewed the Motion to Dismiss (Dkt. 33) filed by Defendants State of Utah, Utah Attorney General's Office, Attorney General Derek Brown, Governor Spencer J. Cox, and Commissioner Jess L. Anderson of the Utah Department of Public Safety (collectively "State Defendants"), along with the Plaintiff's Opposition, the State Defendants' Reply, and having heard oral argument by the parties during the hearing held remotely on July 3, 2025, now issues the following ORDER:

1. The State Defendants' Motion to Dismiss is GRANTED IN PART with respect to Plaintiff's First Claim asserting that Utah Code Section 78B-7-804 (the "CPO Statute")

violates the 14th Amendment's due process guarantee, either as a facial challenge or as an "as-applied" challenge. Accordingly, Plaintiff's First Claim is hereby DISMISSED with prejudice.

2. The State Defendants' Motion to Dismiss is DENIED IN PART with respect to Plaintiff's Second Claim in which Plaintiff asserts that the CPO Statute violates the 14th Amendment's equal protection guarantee. Plaintiff has alleged that the CPO Statute mandates the entry of "continuous protective orders," *i.e.,* protective orders that do not expire and continue in force until vacated, whenever a person convicted of a domestic violence crime is sentenced to serve a period of incarceration after being convicted. Plaintiff further alleges that persons convicted of domestic violence crimes that are either not sentenced to a period of incarceration, or who do serve some period of incarceration, but not *after* being convicted, are subject only to the entry of sentencing protective orders that expire automatically upon completion of the sentence. Plaintiff's Second Claim withstands the liberal pleading standards under Utah R. Civ. P. 12(b)(6) because the Court concludes that the divergent treatment under the CPO Statute of domestic violence perpetrators sentenced to post-conviction incarceration from those perpetrators sentenced to no incarceration or incarceration periods prior to being convicted, is not rationally related to a legitimate state interest. Specifically here the Court believes the desire to provide protection to domestic violence victims is a legitimate state interest. However the timing of when a sentence is served, whether it is prior to sentencing in the form of time served, or after sentencing, is not necessarily a reflection on the harshness or severity of the underlying event. Therefore

there is not a rational tie to the legitimate state interest that warrants the disparate treatment of individuals within the same class.

******Court Seal/Signature Will Appear at Top of First Page******

Addendum 5

Order Granting State Defendants' Motion for Summary Judgment on Jakeman's Equal Protection Claim & Order Denying Jakeman's 54(B) Certification Motion (January 14, 2026)

The Order of the Court is stated below:
Dated: January 14, 2026 08:30:19 PM
/s/ SHAWN R HOWELL
District Court Judge

DAVID N. WOLF (6688)

JASON DUPREE (17509)

JORDEN W. TRUMAN (19718)

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Counsel for State Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

DAVID AMMON JAKEMAN, individually and on behalf of all others similarly situated, *Plaintiff*, v. STATE OF UTAH; UTAH ATTORNEY GENERAL'S OFFICE; ATTORNEY GENERAL DEREK BROWN; GOVERNOR SPENCER J. COX; COMMISSIONER JESS L. ANDERSON, UTAH DEPARTMENT OF PUBLIC SAFETY; UTAH COUNTY ATTORNEY'S OFFICE; JEFFREY S. GRAY, in his official capacity as Utah County Attorney; STEVE EARL, in his official capacity as Orem City Attorney, and JOHN and JANE DOES 1-10, *Defendants*.	**ORDER GRANTING STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON JAKEMAN'S EQUAL PROTECTION CLAIM & ORDER DENYING JAKEMAN'S 54(B) CERTIFICATION MOTION** Case No: 250401696 (Consolidated with Case Nos. 250403944 & 250403954) Judge Shawn R. Howell

The State of Utah, Utah Attorney General's Office, Attorney General Derek Brown, Governor

Spencer J. Cox, and Commissioner Jess L. Anderson of the Utah Department of Public Safety (collectively "State Defendants"), have come before this Court on November 20th, 2025, requesting their Motion for Summary Judgment ("State Defendants' Equal Protection MSJ") be granted concerning Plaintiff Mr. Jakeman's equal protection claim.[1] Mr. Jakeman also appeared before the Court on November 20th, 2025, and requested that his Motion for Summary Judgment on Equal Protection be granted ("Jakeman's Equal Protection MSJ").[2] Also before the Court on November 20th was Mr. Jakeman's Motion for Rule 54(b) Certification of Judgment on Due Process Claim ("54(b) Motion").[3] Counsel for Jeffrey S. Gray, Utah County attorney, and Steve Earl, Orem City attorney, have joined the State Defendants' motions and filings.

Having reviewed the motions, the record, and the arguments of the parties, the Court issues the following Order.

I. The Court GRANTS State Defendants' Equal Protection MSJ

1. Background

This Order stems from Mr. Jakeman's facial federal equal protection challenge to § 78B-7-804, the CPO Statute. That statute allows courts to impose continuous protective orders on individuals convicted of domestic violence and sentenced to post-conviction jail time, to be served. Mr. Jakeman contests this classification, arguing that because it lacks a rational basis, the CPO Statute is facially unconstitutional.[4]

1 State Def.s' Mot. for Summ. J., Dkt. No. 227.

2 Pl.'s Mot. for Summ. J. on Equal Protection, Dkt. No. 207.

3 Pl.'s Mot. for Rule 54(b) Certification of Judgment on Due Process Claim, Dkt. No. 208.

4 Mr. Jakeman confirmed in the hearing that he has not brought an as-applied challenge; he brings only a facial challenge.

The Court finds there are no disputes of material fact, and Mr. Jakeman's challenge presents purely a question of law. As such, the matter is appropriate for resolution as a matter of law.

2. **Rational basis review is the appropriate legal standard**

Mr. Jakeman argues that the Court should apply strict scrutiny to the CPO Statute; the State Defendants counter that rational basis review is the correct approach. The Court concludes that rational basis review, rather than strict scrutiny, is the appropriate standard. And that's because the CPO Statute neither facially burdens a fundamental right nor facially classifies on a suspect class.

Rational basis review is highly deferential. Under that review, a statute will be upheld against an equal protection challenge if the classification bears a rational relationship to a legitimate government interest.

3. **A rational basis exists for the CPO Statute's classification**

The Court concludes that a rational basis exists for the CPO Statute's classification. There's no dispute that protecting domestic abuse victims from further abuse is a legitimate government end. Moreover, the Court fully accepts the Legislature's purpose in seeking to protect domestic violence victims. The Court further appreciates the Legislature's concern that immediately after someone has been released from incarceration, that period of time can be especially fraught and be a risk point where victims feel increased danger. While an offender is incarcerated, the victim feels safe. But as soon as an offender is released from incarceration, the victim's fear is magnified because the offender may retaliate. Accordingly, the Legislature could reasonably distinguish between pre-sentencing and post-sentencing incarceration status to determine when a

continuous protective order should apply.

From the Court's perspective, the distinction is rational. Prior to conviction, an alleged offender has not been adjudicated as a domestic violence abuser, nor has the alleged victim been determined to be a victim. And prior to sentencing, the alleged offender has an incentive to maintain good behavior and avoid threatening or harming the alleged victim. But after sentencing, that incentive diminishes. Furthermore, after conviction and sentencing, the offender has been deemed to be a domestic violence abuser, and the alleged victim becomes an actual victim of domestic violence. These determinations can significantly impact both the perceived danger and the actual risk of danger that the offender poses to victims. Thus, the CPO Statute's classification bears a rational relationship to furthering the safety of domestic abuse victims. Further, the CPO Statute's rationality is supported by allowing for hearings to contest a continuous protective order. These hearings occur at the request of the victim or the domestic abuser and allow a court to evaluate whether the victim has a real fear of harm. These hearings diminish the mandatory nature of a continuous protective order and strengthen the CPO Statute's rationality.

Finally, because Mr. Jakeman brings a facial equal protection challenge, the statute is entitled to deference and presumed constitutional. Mr. Jakeman has not met his burden in showing that the CPO Statute operates unconstitutionally in all its applications.

For these reasons, the Court GRANTS State Defendants' Equal Protection MSJ, and consequently DENIES Mr. Jakeman's Equal Protection MSJ. Therefore, judgment is granted dismissing Mr. Jakeman's equal protection claim against all parties.

II. The Court DENIES Mr. Jakeman's 54(b) Motion

Mr. Jakeman's 54(b) Motion seeks entry of final judgment on his federal due process claim while his other claims remain pending resolution. The Court finds that Mr. Jakeman's claims arise from the same operative facts and present variant constitutional challenges regarding the application of § 78B-7-804. Thus, granting 54(b) certification on the due process claim would require the appellate court to revisit the same record in subsequent appeals over the other constitutional claims, thereby undermining judicial efficiency. The Court further finds that judicial efficiency in this case is better served by an appeal from a single, complete record, rather than multiple piecemeal appeals. For these reasons, the Court finds there is a just reason for delay and DENIES Mr. Jakeman's 54(b) Motion.

CONCLUSION

For the foregoing reasons:

1. State Defendants' Equal Protection MSJ is **GRANTED**;
2. Mr. Jakeman's Equal Protection MSJ is **DENIED**; and
3. Mr. Jakeman's Rule 54(b) Motion is **DENIED**.

/s/ Jorden Truman
JORDEN W. TRUMAN
Counsel for State Defendants

APPROVED AS TO FORM AND CONTENT:

/s/ Matthew Church[5]
Matthew Church
Counsel for Orem City and Utah County Defendants

5 Approval granted by email on January 9, 2026

/s/ *David Jakeman*[6]
David Jakeman
Plaintiff Pro Se

[END OF ORDER]

*****Pursuant to Rule 10(e) of the Utah Rules of Civil Procedure, this Order will be entered by the Court's signature at the top right side of the first page.*****

6 Approval granted by email on January 9, 2026

Addendum 6

Ruling and Order on Cross-Motions for Summary Judgment Regarding Facial Utah Substantive Due Process Claim (March 16, 2026)

FILED
MAR 16 2026
4TH DISTRICT
STATE OF UTAH

Shawn R. Howell
STAMP USED AT DIRECTION OF JUDGE
Kelly Lamb

ORIGINAL IS IN RED INK
STATE OF UTAH
FOURTH DIST. COURT • UTAH COUNTY •

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

DAVID AMMON JAKEMAN, individually and on behalf of all others similarly situated, Plaintiff, v. STATE OF UTAH; UTAH ATTORNEY GENERAL'S OFFICE; ATTORNEY GENERAL DEREK BROWN; GOVERNOR SPENCER J. COX; COMMISSIONER JESS L. ANDERSON, UTAH DEPARTMENT OF PUBLIC SAFETY; UTAH COUNTY ATTORNEY'S OFFICE; and JOHN and JANE DOES 1-10, Defendants.	**RULING AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT REGARDING FACIAL UTAH SUBSTANTIVE DUE PROCESS CLAIM** Judge Shawn R. Howell Case no. 250401696 (Consolidated with Case Nos. 250403944 & 250403945)

On November 18, 2025, Plaintiff David Ammon Jakeman, representing himself pro se, filed his Motion for Summary Judgment on his Utah State Law Substantive Due Process Claim. On December 8, 2025, State Defendants filed their Motion for Summary Judgment on the Facial Utah Substantive Due Process Claim along with their Opposition to Plaintiff's Motion. Plaintiff filed his Memorandum in Opposition to Defendant's Motion on January 9, 2026. Plaintiff filed his Reply Memorandum on January 12, 2026, and the State Defendants filed their Reply Memorandum on January 15, 2026. The Plaintiff filed his Request to Submit on his motion on January 16, 2026, and the Defendants filed their Request to Submit on their motion on January 20, 2026. Having reviewed the pleadings on these cross motions and now being fully apprised of the matter, the Court addresses both motions in the following Ruling and Order.

UNDISPUTED FACTS

Based on the briefing and attachments submitted by the parties, there is no genuine dispute as to the following facts in the summary judgment record:

1. Plaintiff David Ammon Jakeman is the biological father of minor children.
2. Jakeman was convicted of child abuse and violation of a protective order.
3. Utah Code § 78B-7-804(3) requires a court to issue a continuous protective order (CPO) against a perpetrator convicted of domestic violence who is sentenced to a period of post-conviction imprisonment.
4. Following his conviction, a CPO was entered against Jakeman, and he was notified of his right to request a hearing.
5. Jakeman requested and received a hearing regarding the protective order.
6. At the hearing on September 27, 2024, the judge heard evidence and arguments from both sides, including testimony from Jakeman's spouse that the family needed peace and the children needed time to heal without fearing Jakeman's return.
7. The judge found it clear under the evidence, including Jakeman's own admissions, that his family had good reason to be afraid of him.
8. The court maintained the CPO, which included restrictions on Jakeman's contact with his children.
9. Jakeman subsequently filed the present lawsuit, raising a facial substantive due process challenge under Article I, Section 7 of the Utah Constitution to Utah Code § 78B-7-804.
10. Jakeman's operative complaint does not explicitly plead a Uniform Operation of Laws claim.

LEGAL STANDARD

The Court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(a). Whether a dispute is genuine turns on whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Those who challenge a statute or ordinance as unconstitutional bear the burden of demonstrating its unconstitutionality. *Greenwood v. City of N. Salt Lake*, 817 P.2d 816, 819 (Utah 1991). When addressing such a challenge, this Court presumes that the statute is valid and resolves any reasonable doubts in favor of constitutionality. *State v. Lopes*, 1999 UT 24, ¶ 6, 980 P.2d 191.

RULING

I. The Proper Standard for a Facial Constitutional Challenge:

The parties fundamentally disagree on the legal standard applicable to a facial constitutional challenge under the Utah Constitution. Plaintiff argues that the strict "no set of circumstances" test does not strictly govern in Utah. Relying extensively on the Tenth Circuit's decision in *Doe v. City of Albuquerque*, 667 F.3d 1111 (10th Cir. 2012), Plaintiff contends that the test is merely a descriptive conclusion regarding an invalid rule of law rather than a rigid analytical hurdle. Plaintiff additionally cites *Utah Public Employees Ass'n v. State*, 2006 UT 9, 131 P.3d 208, for the proposition that Utah courts have discredited the "no set of circumstances" standard in facial challenges. State Defendants counter that binding Utah Supreme Court precedent establishes a heavy burden for facial challenges, requiring the challenger to prove that the statute is incapable of any valid application.

The Court agrees with State Defendants. In evaluating challenges brought under the Utah Constitution, this Court is bound by the pronouncements of the Utah Supreme Court, not the

Tenth Circuit. The Utah Supreme Court has clearly and repeatedly held that "[i]n asserting a facial challenge, a party avers that the statute is so constitutionally flawed that no set of circumstances exists under which the statute would be valid." *Gillmor v. Summit County*, 2010 UT 69, ¶ 27, 246 P.3d 102 (The Utah Supreme Court in *Gillmor* derived this rule from its earlier decision in *State v. Herrera*, 1999 UT 64, ¶ 4 n.2, 993 P.2d 854, which originally adopted the "no set of circumstances" standard from the United States Supreme Court's ruling in *United States v. Salerno*, 481 U.S. 739, 745 (1987)); *see also Lehi City v. Rickabaugh*, 2021 UT App 36, ¶ 35, 487 P.3d 453 (applying the same standard). This rigorous standard ensures that courts do not prematurely frustrate the intent of the elected representatives based on factually barebones records.

While Plaintiff is correct that the Utah Supreme Court declined to apply the strict "no set of circumstances" standard in *Utah Public Employees Ass'n v. State*, that departure was explicitly limited to the context of constitutional takings claims. In due process cases, the Utah Supreme Court continues to apply the traditional, rigorous facial standard. For instance, in *Tischmak v. Utah State Tax Comm'n*, 2025 UT 24, 574 P.3d 63, the Utah Supreme Court evaluated a facial due process challenge and reaffirmed that the challenger must establish that no set of circumstances exists under which the statute would be valid. Similarly, in *In re E.K.S.*, 2016 UT 56, 387 P.3d 1032, the court evaluated a facial due process challenge involving parental rights and emphasized that "[s]imply showing that the statute may, in certain circumstances, unconstitutionally restrict the court's ability... is insufficient for a facial challenge." *Id.* ¶ 18. Therefore, to prevail, Plaintiff must establish that the CPO statute is unconstitutional in all its applications.

II. Plaintiff Cannot Establish that the CPO Statute is Facially Unconstitutional:

Applying the correct standard, Plaintiff's facial challenge fails as a matter of law. Plaintiff's primary argument is that the CPO statute violates substantive due process because it allows a court to sever a parent's relationship with non-victim minor children without the stringent findings normally required for the termination of parental rights. However, the CPO statute broadly applies to perpetrators of domestic violence, many of whom do not have children, or whose children were the direct victims of the abuse. In situations where a domestic violence offender has no children, the issuance of a CPO in no way burdens fundamental parental rights. Because the statute undoubtedly operates constitutionally in at least some circumstances, it is not facially invalid.

Furthermore, a facial challenge must fail a fortiori if the challenged statute is constitutional as applied to the plaintiff. In this case, the CPO statute operated constitutionally as applied to Plaintiff. Plaintiff was convicted of child abuse and violation of a protective order, convictions which were upheld on appeal due to ample evidence of intent and resulting injury to his daughter. Following his conviction, a judge issued a CPO after providing Plaintiff with a hearing. At the hearing, the court received evidence, heard testimony from Plaintiff's spouse regarding the family's fear, and concluded that the victims had good reason to be afraid of Plaintiff. The CPO issued against Plaintiff was thus grounded in evidence of risk and tailored to protect his family. Because the statute provided Plaintiff with procedural safeguards and the resulting order was supported by objective evidence of danger, the statute was constitutionally applied to him. Consequently, his facial challenge must fail a fortiori.

III. Plaintiff's Unpled Uniform Operation of Laws Claim is Improper:

In his opposition and reply briefing, Plaintiff heavily pivots to an argument that the CPO statute violates the Uniform Operation of Laws provision found in Article I, Section 24 of the

Utah Constitution., State Defendants urge the Court to disregard this argument because it was never pleaded in the operative complaint.

The Court agrees with State Defendants. A plaintiff is the master of his complaint and holds the prerogative of identifying the claims for relief to be submitted to the court for decision. Plaintiff's Amended Complaint expressly asserts claims for federal and state substantive due process and federal equal protection; it does not mention a state Uniform Operation of Laws claim. Under Utah law, a court may not grant judgment for relief that is not within the theory on which the case was tried. Furthermore, Utah's pleading requirements do not allow a party to amend its pleadings by raising novel claims or theories for recovery in later stages of the litigation, such as in summary judgment opposition briefing. Because Plaintiff never pleaded a Uniform Operation of Laws claim, he cannot rely on it to survive summary judgment, and the Court declines to address its merits.

ORDER

For the foregoing reasons, the Court DENIES Plaintiff's Motion for Summary Judgment and GRANTS State Defendants' Motion for Summary Judgment. The undisputed facts establish that the CPO statute is capable of valid application and was constitutionally applied to Plaintiff.

IT IS SO ORDERED.

**** This Order is entered pursuant to the Court's signature and seal at the top of the first page of this Order ****