IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Brent William Nisonger, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20070416-CA F I L E D (October 9, 2008) 2008 UT App 359

Fourth District, Nephi Department, 061600171
The Honorable Donald J. Eyre Jr.

Attorneys: James K. Slavens, Fillmore, for Appellant
Mark Shurtleff and Christine F. Soltis, Salt Lake City, for Appellee

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Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Brent William Nisonger appeals from his convictions on two counts of possession of a dangerous weapon by a restricted person. We affirm.

Nisonger first argues that the officers had no justification to seize him. He asserts that the officers did not know of the arrest warrant issued from the Board of Pardons and Parole (the Board), and, further, that the State did not show that the Board had probable cause to issue the warrant. We disagree.

On appeal, the evidence is reviewed in the light most favorable to the jury verdict. See State v. Holgate, 2000 UT 74, ¶ 2, 10 P.3d 346. Additionally, when an appellant challenges matters of fact, the appellant must first marshal the evidence supporting the challenged fact. See Utah R. App. P. 24(a)(9); State v. Larsen, 2000 UT App 106, ¶ 11, 999 P.2d 1252. An appellant must then demonstrate that the evidence, including reasonable inferences to be drawn from the evidence, is insufficient to support the challenged fact. See Larsen, 2000 UT App 106, ¶ 11.

Nisonger has failed to marshal the evidence regarding the warrant, dispatch, and arrest. He argues that only one of the two officers testified that there was an arrest warrant and that the evidence is therefore insufficient to establish they knew of the warrant. This is contrary to the marshaling requirement and standard of review. There is sufficient evidence to establish that the stop and arrest of Nisonger was justified.

One officer testified specifically that the dispatch noted that the Board had issued an arrest warrant for Nisonger. This alone supports that the officers knew of the arrest warrant. Additionally, the second officer testified that Nisonger was to be placed in custody, i.e., arrested, based on the dispatch. The officers' testimony was not inconsistent and supported that they knew of the Board warrant.

Nisonger also asserts for the first time on appeal that the State failed to show that the Board had probable cause for issuing the arrest warrant. Generally, this court will not address issues raised for the first time on appeal. See State v. Dean, 2004 UT 63, ¶ 13, 95 P.3d 276. The validity of the warrant was not challenged below. Regardless, the record shows that the warrant was issued after Nisonger absconded from parole, and it was therefore supported.

Next, Nisonger asserts that there was insufficient evidence to find that he possessed dangerous weapons. He argues without support that the State had to show that he intended to use the items as weapons. However, the specific intent to use an item as a weapon is beyond the elements of the statute. The statute prohibits a category 1 restricted person from possessing a dangerous weapon. See Utah Code Ann. § 76-10-503(2) (2003). A dangerous weapon means "any item capable of causing death or serious bodily injury." Id. § 76-1-601(5)(a) (Supp. 2008). The items in Nisonger's possession clearly were capable of, and actually designed for, causing serious bodily injury. His intent to use the items is not part of the possession offense, and the evidence was sufficient to support that he possessed dangerous weapons.

Nisonger also argues that the trial court erred in failing to suppress Nisonger's admission that he had the items because he had not yet been given his rights as required under Miranda v. Arizona, 384 U.S. 436 (1966). We find that the error, if any, is harmless and, thus, does not warrant reversal. See State v. Workman, 2005 UT 66, ¶ 23, 122 P.3d 639. Nisonger was arrested pursuant to a warrant and searched incident to that arrest. The frisk upon arrest would have resulted in finding the weapons even absent Nisonger's statement. The evidence was sufficient to

support each element of the charged crime even without the statement. The objects were clearly weapons; Nisonger was a category 1 restricted person; and the weapons were in his possession and control as established by finding them on his person. Accordingly, the admission of Nisonger's statement that he had the items in his pockets is, at most, harmless error.

Nisonger additionally argues that the trial court erred in failing to sua sponte strike a juror or question the juror further to determine bias. However, given that trial counsel passed the jury, Nisonger has not shown that the trial court committed plain error.

> Where a facial question of partiality is raised, but counsel does not object to the juror or request additional questioning, the trial court does not abuse its discretion by failing to sua sponte remove the prospective juror for cause unless the juror has expressed a 'bias . . . so strong or unequivocal as to inevitably taint the trial process.' State v. King, 2006 UT 3, ¶ 23, 131 P.3d 202 (quoting State v. Litherland, 2000 UT 76, ¶ 32, 12 P.3d 92).

Nisonger has not shown that the juror's response constituted a strong bias which would taint the trial process. On the contrary, the juror noted only that he would "probably" give more weight to an officer's testimony over a lay person's testimony. This rather ambiguous response does not rise to the level of a strong or unequivocal bias. Accordingly, the trial court did not err in failing to sua sponte strike the juror.

Nisonger next argues that the trial court failed to properly inquire into his dissatisfaction with his trial attorney. When a defendant expresses dissatisfaction with appointed counsel, "the trial court must make some reasonable, non-suggestive efforts to determine the nature of the defendant's complaints and to apprise itself of the facts necessary to determine whether defendant's relationship with his or her appointed attorney has deteriorated to the point that" substitute counsel should be appointed. State v. Pursifell, 746 P.2d 270, 273 (Utah Ct. App. 1987). On appeal, Nisonger asserts that the trial court did not appropriately handle his request for a new attorney. However, the record does not support that he requested substitute counsel. Rather, the record shows that Nisonger had a specific and rather limited complaint that his attorney had not filed pretrial motions that Nisonger desired. The trial court permitted these motions to be heard at trial, thereby resolving the complaint. There is no

indication that Nisonger's dissatisfaction went any further than what was addressed. Accordingly, we find no error.

Nisonger has raised additional issues which we find to be without merit. We do not address them further. See Beehive Brick Co. v. Robinson Brick Co., 780 P.2d 827, 833 (Utah Ct. App. 1989) (noting that the court need not analyze and address each issue in writing).

Affirmed.

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Judith M. Billings, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge