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FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, *Plaintiff,* *v.* TYLER JAMES ROBINSON, *Defendant.*	Opposition to Defendant's Motion to Disqualify the Utah County Attorney's Office Case No. 251403576 Judge Tony F. Graf, Jr.

The State of Utah, through its attorney Jeffrey S. Gray, submits this Memorandum Opposing Defendant's Motion to Disqualify the Utah County Attorney's Office.

I.
Requested Disposition

Defendant argues that a member of the prosecution team—[Deputy County Attorney (Dpty Atty)]—has a personal conflict of interest, that the conflict of interest extends to the entire Utah County Attorney's Office (Office), and that disqualification of both [Dpty Atty] and the Office is thereby required. The Court should deny Defendant's motion because Mr. [Dpty Atty] does not

have a personal conflict of interest requiring his disqualification. And *even if* such a personal conflict were to exist, it does not extend to the entire Office.

Any testimony Mr. [Dpty Atty's adult child (AC)] could give would be merely cumulative of testimony available from literally thousands of other witnesses and would relate solely to uncontested issues because [AC] has no personal knowledge of the actual murder. Moreover, [AC's] comparatively minor emotional reaction could not have had a greater on Mr. [Dpty Atty] and the prosecution team than the significantly more harrowing experiences of many others at the event, like those described in the witness statements Defendant relies on. Prosecutors may properly consider these more distressing witness reactions. Finally, the filing of the notice of intent to seek the death penalty had nothing to do with any particular individual's attendance at the event.

II.

Statement of Relevant Facts[1]

1. On September 10, 2025, Charlie Kirk hosted an outdoor forum sponsored by Turning Point USA (TPUSA), on the campus of Utah Valley University (UVU). The event began several minutes after noon at UVU's quad—a semicircular amphitheater at the heart of UVU. Charlie Kirk sat on a stool under a tent at the bottom of the amphitheater, facing the quad's center where a microphone was set up a few feet away for attendees to debate him.

2. Some 3,000 people attended the forum, sitting or standing above Charlie Kirk in and around the amphitheater's tiered seating. Among the attendees was [Dpty Atty's] 18-year-old [child (AC)], a college student at UVU.[2]

3. [AC] was standing on the far-right side of the amphitheater (as you look down from the top) on it's upper edge[3]—some 85 feet from where Charlie Kirk was seated.

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[1] Factual assertions of County Attorney Jeff Gray and [Dpty Atty] will be supported by their proffer or, if necessary, their testimony, at the hearing on this matter.

[2] [AC] Aff. at ¶ 1.

[3] [AC] Aff. at ¶ 4.

4. There was no line of sight between [AC] from [AC's] position at the amphitheater and the shooter from his position on the Losee Center's roof because the Sorensen Center stood between them. [AC] would have had to move 75 feet to the southeast before establishing a line of sight with the shooter.[4]

5. At 12:23 PM, Charlie Kirk was fatally shot and killed while answering a question posed by the second questioner from the audience.

6. [AC] "did not see Charlie get shot." Before the shot was fired, [AC] had turned [redacted] gaze away from Charlie Kirk and was "look[ing] around" at the audience. As [AC] was looking at the audience, AC "heard a loud sound, like a pop," and then "[s]omeone yell[ ], 'he's been shot.'"[5]

7. When everyone realized there had been a shooting, attendees "crouched down" and "[a]fter a few seconds[,] people started running" away. [AC] followed suit—[AC] ran into the building behind [AC], entering through the building's doors just to the northwest of [AC].[6]

8. [AC] never looked back at Charlie Kirk and thus [AC] "did not see him get carried away or see his wound." [AC] also "did not see anyone [in the crowd or elsewhere] with a gun" and "did not see anything that made [AC] believe anyone [AC] saw was involved in the shooting."[7]

9. Even after running into the building, [AC] "did not know what really happened." [AC] heard that someone had been shot, so at 12:25 PM, [AC] sent two text messages to [AC's] family about the shooting on [AC's] family's chat group, which included [AC's] parents, siblings and their spouses. Those two text messages to [AC's] family read, "SOMEONE GOT SHOT," and "I'm okay, everyone is going inside."[8]

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[4] AC Aff. at ¶¶ 2-9.
[5] [AC] Aff. at ¶¶ 6, 11-12.
[6] [AC] Aff. at ¶ 7.
[7] [AC] Aff. at ¶¶ 11-12.
[8] [AC] Aff. at ¶ 8.

10. After someone in the building told [AC] that Charlie Kirk had been shot, [AC] sent a third text message to [AC's] family: "CHARLIE GOT SHOT."[9] Screen shots of those text messages and the text exchanges among family members in the minutes that followed are attached (blue background texts are from [AC]).

11. When Charlie Kirk was shot, [Dpty Atty] was with County Attorney Jeff Gray at a conference in Ogden. [Dpty Atty] first learned of the shooting when he read [AC's] text that "Charlie got shot" and he shared that text message with Gray.

12. [Dpty Atty] left the conference ten to fifteen minutes later and drove to the law enforcement command post that had been set up at UVU. Gray did the same about twenty minutes later. What is more, as in other murder cases, other county deputy attorneys would be making their way to the UVU command post. Over the next two and a half days, deputy county attorneys Ryan McBride and David Sturgill spent most of their days (and some nights) at the command post, assisting with search warrants and providing other legal counsel.

13. Although [AC] "was scared at the time," [AC] has "not had any lasting trauma from the event" and has "been able to continue with all of [AC's] normal activities without any emotional problems." [AC] has not needed counseling or therapy; [AC] has not missed classes; [AC] has not missed work; and [AC] has not missed "any other normal activities."[10]

14. Gray's decision to file a death-penalty notice on the same day he filed the Information had nothing to do with [AC's] presence at the TPUSA event. He filed the notice immediately because (1) Gray determined that the evidence of aggravated murder is substantial; (2) Gray ran for elected office almost three years earlier on a commitment to seek the death penalty in appropriate cases; (3) Gray learned in *State v. Jayne*, a pending aggravated murder case, that waiting to

[9] [AC] Aff. at ¶ 9.
[10] [AC] Aff. at ¶ 13.

file notice when the evidence is substantial only fuels speculation and misinformation; and (4) Gray wanted to minimize the speculation and misinformation in this case.

III.

Argument[11]

Defendant asks this court to disqualify [Dpty Atty] and the entire Utah County Attorney's Office from this case based on an alleged conflict of interest. Defendant argues that (1) Mr. [Dpty Atty] has a concurrent personal conflict of interest in the case because his 18-year-old [child] attended the TPUSA event at UVU (MDQ at 6-9); and (2) the conflict extends to the entire Office because it took no measures to screen Mr. [Dpty Atty] from the case (MDQ at 10-14). Defendant's claims lack merit. First, Mr. [Dpty Atty] has no personal conflict of interest because his [child] is neither a material witness nor a victim in the case. In fact, nearly everything [AC] knows about the actual homicide is hearsay. And because Mr. [Dpty Atty] has no conflict of interest, the County Attorney's Office also has no conflict of interest requiring disqualification. Second, even *if* Mr. [Dpty Atty] were to have a conflict of interest, the nature of his conflict is unlike those cases requiring screening—where a prosecutor may be privy to a defendant's communications and trial strategies.

A. Defendant has failed to demonstrate that there is a significant risk that [Dpty Atty's] representation of the State will be materially limited by a personal interest in his [child].

The first half of Defendant's argument that Mr. [Dpty Atty] must be disqualified due to an alleged personal conflict of interest consists of general legal principles with which the State does not disagree. (MDQ at 5-6). A public prosecutor is empowered to act on behalf of the State, Utah Code § 17-18a-401 (2025); individual prosecutors have a duty to ensure that "the defendant is

[11] Citations to Defendant's Motion to Disqualify will appear as MDQ followed by the page number, e.g., MDQ at 8; citations to [AC's] affidavit will appear as [AC] Aff. followed by the paragraph number, e.g., [AC] Aff. at ¶ 4; citations to other affidavits will follow a similar pattern. Any italicized language from an affidavit or text is added for purposes of emphasis in the State's argument.

accorded procedural justice and that guilt is decided upon the basis of sufficient evidence," URPC 3.8, Comment 1; a prosecutor may not "inject[] a personal interest … into the enforcement process [that] may bring irrelevant or impermissible factors into the prosecutorial decision and in some cases raise serious [due process] questions," *Marshall v. Jerrico, Inc.*, 466 U.S. 238, 249-50 (1980); and prosecutors may not serve two masters, i.e., they may not represent the State if they have a concurrent, personal conflict of interest where the prosecutor "may make choices advancing [personal] interests to the detriment" of the State, *State v. Balfour*, 2008 UT App 410, ¶ 33, 198 P.3d 471; URPC 1.7. Accordingly, the disagreement between the parties is not about the broad legal principles cited by Defendant in the first two pages of his argument. It is whether the application of those legal precepts to the facts here requires Mr. [Dpty Atty's] disqualification, as Defendant argues in the last two pages of his argument. (MDQ at 8-9).

* * *

Under Rule 1.7 of Utah's Rules of Professional Conduct, "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." URPC 1.7(a). As relevant here, a concurrent conflict of interest exists only when "[t]here is a *significant risk* that the representation of [the State of Utah] will be *materially limited … by a personal interest of the lawyer*." URPC § 1.7. (emphasis added). Defendant must therefore demonstrate that there is a "significant risk" that Mr. [Dpty Atty's] representation of the State of Utah "will be materially limited by his "personal interest" in his [child]. Defendant has not, and cannot, make that showing.

Defendant argues that there is a "significant risk" that Mr. [Dpty Atty's] relationship with his [child] will "materially limit" his ability to represent the State in two ways: (1) how he approaches his [child] as a potential witness; and (2) how his relationship with his [child] might improperly impact Defendant. He has not made the necessary showing on either account.

1. Any risk that Mr. [Dpty Atty] will be materially limited in his approach to his [child] as a potential witness is remote at best, if any risk exists at all, because his [child] could testify to only generic, uncontested details available from literally thousands of other witnesses.

Defendant contends that because Mr. [Dpty Atty's] [child] could be called as a witness in the case, there is a significant risk that he will be materially limited in his representation of the State, to wit: how he will treat his [child] as a potential witness for either the prosecution or the defense. He claims, for example, that Mr. [Dpty Atty] "may be less inclined to believe a witness whose observations are not consistent with those of his [child]," or "he may make specific strategic decisions to avoid his [child] having to testify." MDQ at 9. But Mr. [Dpty Atty's] [child] is *not a material witness*, i.e., someone who can provide relevant testimony that no one else or few others can. As a result, any risk that Mr. [Dpty Atty's] representation of the State will be materially limited because of his relationship with his [child] is slim to none.

On this point, rule 3.7—which governs when a lawyer handling a case may or may not testify in that same case—informs the analysis here. That rule prohibits a lawyer from "act[ing] as advocate at a trial in which the lawyer is likely to be *a necessary witness unless …the testimony relates to an uncontested issue*.…" URPC 3.7(a) (emphasis added). Accordingly, disqualification is not required if the potential testimony is *either* unnecessary *or* relates to an uncontested issue. Defendant has not demonstrated that [AC's] potential testimony is either necessary or related to a contested issue.

a. The matters personally known to [AC] are generic and contextual only.

Under our Rules of Evidence, "[a] witness may testify to a matter only if … that witness has personal knowledge of the matter." Utah R. Evid. 602. Thus, before deciding whether [AC's] potential testimony is necessary or relates to a contested matter, this Court must first determine those matters of which [AC] has personal knowledge, and those matters that [AC] heard about only from others (hearsay).

[AC's] personal observations at UVU to which [AC] could testify are generic and provide only background information that is available from literally thousands of other witnesses. Those observations are set forth in both [AC's] attached affidavit and the text messages [AC] sent to [AC's] family shortly after Charlie Kirk's assassination (which are attached to [AC's] affidavit):

- [AC] "arrived at the courtyard where the event took place at approximately 11:15 a.m." ([AC] Aff. at ¶ 3).
- "Before and after the shot, [AC] looked around [and] saw students and [other] people who were there to watch the debate"—"[m]ost people there were students," "[s]ome were older," and [t]here were a lot of people there from Turning Point USA who were wearing Turning Point hats or shirts." ([AC] Aff. at ¶ 12);
- "Charlie [Kirk] arrived at the event between 12:05 p.m. and 12:10 p.m.," then "he sat down and took questions." ([AC] Aff. at ¶ 5).
- "During [Charlie Kirk's exchange with] the second questioner," [AC] "*was looking around the crowd when [AC] heard a loud sound, like a pop*" and "someone yelled, 'He's been shot.'" ([AC] Aff. at ¶ 6).
- In response to the only question posed by [AC's] father on a family chat group, [AC] texted that [AC] "for sure heard" the gunshot. (Text at 12:38 PM). Two minutes later, [AC] texted [AC's] family that "weird[ly]", the questioner "in the moment was talking about shootings in the US I think." (Text at 12:40).
- After the shot, "[e]veryone crouched down" and "[a]fter a few seconds people started running"; [AC] ran into a building through "the doors to the northwest of where [AC] was standing" ([AC] Aff. at ¶ 7).
- [AC] "was scared at the time." ([AC] Aff. at ¶ 13).

[AC's] personal knowledge of the event begins and ends there. As [AC] attests in [AC's] attached affidavit, other than hearing the gunshot and the question being posed when [AC] heard the shot, [AC] had no personal knowledge about the shooting itself or its consequences to the victim. Instead [AC's] knowledge of those matters is based entirely on hearsay:

- [AC] "*did not really know what had happened* ([AC] Aff. at ¶ 8).
- [AC] "*had heard* [that] someone had been shot from the person in the crowd" ([AC] Aff. at ¶ 8).
- After entering the building, [AC] "*spoke to someone* in the building with [AC] *who told [AC] that Charlie got shot* ([AC] Aff. at ¶ 9).

- The "last time" [AC] saw Charlie Kirk was "before [AC] looked away before [AC] heard the gunshot"; [AC] "did not see Charlie get shot"and [AC] "did not see him get carried away or see his wound." ([AC] Aff. at ¶ 11).

- "[T]he only time [[AC] has] seen the actual shooting of Charlie Kirk was when [AC] saw a post on social media [later that day] that recorded it." ([AC] Aff. at ¶ 14).

- [AC] "did not see anyone with a gun" and "did not see anything that made [AC] believe anyone [AC] saw was involved in the shooting" ([AC] Aff. at ¶ 12).

That [AC] knew almost nothing about the shooting other than what ■ had heard from others is also evidenced by the texts [AC] sent to [AC's] family after [AC] ran into the building behind [AC]. [AC] first texted, "SOMEONE GOT SHOT," adding that [AC] was "okay, everyone [was] going inside." (Text at 12:25 PM). About a minute later, after someone *told* [AC] that Charlie Kirk had been shot ([AC] Aff. at ¶ 9), [AC] texted [AC's] family, "CHARLIE GOT SHOT." (Text at 12:26 PM). Four minutes later, [AC] texted, "*People say* he was shot in the neck and his head like tilted or something." (Text at 12:30 PM). Eight minutes after that, [AC] again texted that "[a] few *people said they saw* the shot hit his neck … *not sure*." (Text at 12:38 PM). When a family member related a report that the "[s]hooter was on the roof," [AC] texted, "Doesn't surprise me." (Texts at 12:39 PM). When another family member relayed a report that the shot was "from way far away," [AC] texted, "Yeah *that's what people were saying*." (Texts at 12:51 PM and 12:52 PM).

Defendant argues that because "the production of discovery in this case has only recently begun[,] … there is no way to say with absolute certainty that Mr. [Dpty Atty's] [child] will not be a witness in this case." MDQ at 8. But "absolute certainty" is not the standard. What is more, and as demonstrated below, a comparison of [AC's] texts and affidavit with the five witness statements attached to Defendant's motion demonstrate that any risk that [AC] is a necessary witness who will testify on a contested issue is remote at best. Better said, that risk is better characterized as "slim to none." Defendant also claims that it "is in no position to make [an] assessment [of the importance of [AC's] testimony] and should not be required to do so. But that burden rests with Defendant and may be accomplished at an evidentiary hearing.

b. [AC's] potential testimony is neither necessary nor related to a contested issue.

As explained, a witness who is unnecessary to the case is generally not a basis for disqualification. Testimony is unnecessary if it is "duplicative and obtainable from other sources." *State v. Melancon*, 2014 UT App 260, ¶ 15, 339 P.3d 151; *see also State v. Worthen*, 765 P.2d 839, 849 (Utah 1988) ("[I]f the prosecutor's testimony is cumulative or could be easily obtained from an alternative source or if calling the prosecutor is simply a ploy to disrupt the prosecution, a trial court need not allow the prosecutor to be called when the consequence would be his disqualification."). A comparison of [AC's] potential testimony with that of the five witnesses whose witness statements Defendant attached to his motion demonstrates just how unnecessary [AC] is in the case. Like [AC], at least four of the five witnesses arrived at the event early, even earlier than [AC]. *See* DEx A, at 1; DEx C, at 1; DEx D, at 1; DEx E, at 1. Like [AC], three of those witnesses said that Charlie Kirk began the event by throwing out hats. DEx. A, at 2; DEx D, at 1; DEx E, at 2. Like [AC], all five of those witnesses said that the shot came as Charlie Kirk spoke with the second questioner at the event. DEx A, at 2-3; DEx B, at 1; DEx C, at 1; DEx D, at 1; DEx E, at 2. Like [AC], witnesses said that Charlie Kirk was talking about shootings when the shot was fired, but those witnesses provided more detail in describing the discussion. *See* DEx A, at 2-3; DEx C, at 1; DEx D, at 1-2; DEx E, at 2. Like [AC], all five of those witnesses said that after the shot, the crowd dropped to the ground and after a few moments fled the area. DEx A, at 3; DEx B, at 1-2; DEx C, at 1; DEx D, at 2; DEx E, at 2-3. And because there were some three thousand people at the event, there are surely many more that could testify likewise.

Accordingly, the testimony that [AC] could provide as a witness is both duplicative and obtainable from many other sources. What is more, the five witnesses whose witness statements Defendant attached to his motion had personal knowledge of many more facts than [AC]. Unlike [AC], all five of the witnesses Defendant identifies were much closer to Charlie Kirk when he was

shot than was [AC], and all five saw the consequences of the shot, describing Charlie Kirk's death in gruesome detail. *See* DEx A, at 1, 3; DEx B, at 1; DEx C, at 1; DEx D, at 2; DEx E, at 2.

Additionally, any potential testimony from [AC] relates only to uncontested facts. There can be no dispute that Charlie Kirk was shot and killed at the UVU event (which, except for hearing the shot, are details that even [AC] has no personal knowledge of and thus cannot even testify to); there can be no dispute that he was shot while responding to a question about shootings posed by the second questioner at the event; and there can be no dispute that in response to hearing the shot, the crowd first dropped low to the ground then ran away in a panic. Nor can there be any dispute that those attending the event consisted of students and others, both old and young, including people representing Turning Point USA. What is more, any potential testimony from [AC] and most others at the UVU event is only marginally relevant, providing context only.

In sum, any potential testimony from [AC] is duplicative, obtainable from literally thousands of others at the event and, in any event, relates entirely to uncontested issues. Accordingly, there is *little to no risk*, let alone a "significant risk," that [Dpty Atty's] relationship to [AC] would materially limit his representation of the State.

2. There is no risk, let alone a significant risk, that Mr. [Dpty Atty's] loyalties to [AC] as [AC's] father will materially limit, or has materially limited, his ability to represent the State's interests in promoting justice.

As discussed above, because [AC] is not a necessary witness and any potential testimony from [AC] is uncontested, there is little to no risk, let alone a significant risk, that Mr. [Dpty Atty's] relationship with [AC] will materially limit his prosecutorial role. But Defendant alleges an additional risk. He argues that because of Mr. [Dpty Atty's] "wholly natural instinct to protect and shield his [child] from past and future harm," he may "use the awesome powers of government" to prosecute Defendant not in the interests of justice, but "with an axe to grind" against Defendant for the trauma [AC] experienced from the shooting. MDQ at 8-9. Defendant's argument here also lacks merit.

a. Defendant grossly overstates the fierce and irrational loyalty that is likely to arise in a father whose [child] is in a situation like that of [AC].

In support of his claim that the shooting caused so much trauma to his [child] that Mr. [Dpty Atty] cannot be expected to approach the case objectively with due regard to Defendant's rights, Defendant cites to several witness statements and social media postings describing the "harrowing" experience of those on campus at the time of the shooting, "even for those that did not see the shooting as it happened." MDQ at 8-9. Defendant overstates the likelihood that [AC's] experience would elicit such strong, negative emotions that a prosecutor-father in Mr. [Dpty Atty's] shoes could not be trusted to fairly prosecute the case for two primary reasons.

First, the State does not suggest that [AC] did not suffer any emotional stress. [AC] dropped to the ground with the rest of the crowd and, after a few seconds, ran away from the amphitheater and through the doors of a building just northwest of AC. [AC] Aff. at ¶ 7. And [AC] acknowledges "being scared at the time." [AC] Aff. at ¶ 13. But [AC] did not experience the trauma described by the witnesses identified in Defendant's motion. Unlike many others, [AC's] understanding of what happened was largely based on what others told [AC]. And within two minutes after Charlie Kirk was shot, [AC] had run to the safety of a building and texted [AC's] family that [AC] was "okay." (Text at 12:25 PM). Furthermore, [AC] attests that [AC] has "not had any lasting trauma from the event"—[AC] has "not needed to get counseling or therapy," [AC] "did not have to miss classes or work or any other normal activities after the shooting," and [AC] has "been able to continue with all [AC's] normal activities without any emotional problems." ([AC] Aff. at ¶ 13).

Aware of these circumstances, Mr. [Dpty Atty's] feelings for his [child] did not elicit any unusually intense negative reaction about the case or Defendant. [AC] was not in the shooter's line of sight. (Christensen Aff. at ¶¶ 2-9). [AC] was in the rough vicinity of the shooting but saw nothing relevant to that shooting. Other than being scared at the time, [AC] experienced no lasting trauma. Under these circumstances, there is virtually no risk, let alone a significant risk, that it

would arouse such emotions in any father-prosecutor as to render him unable to fairly prosecute the case, and it did not in Mr. [Dpty Atty].

Second, to the extent that the comparatively minor emotional impact on [AC] elicited the protective instincts of Mr. [Dpty Atty] as [AC's] father, [AC's] experience could not have had a greater impact on him and the prosecution team than the significantly more "harrowing" experiences of so many others at the event, like those described in the witness statements and social media posts attached to Defendant's motion. Defendant argues that Mr. [Dpty Atty's] personal interest in the well-being of his [child] conflicts with his prosecutorial duty as a minister of justice to "serve the public interest," free of a personal interest that may bring "'irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.'" MDQ at 7-9 (quoting *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249-50 (1980)). But consideration of the impact on witnesses is neither irrelevant nor improper. As explained in the American Bar Association's Standards for Criminal Justice, in exercising prosecutorial discretion, a prosecutor "may properly consider … the potential collateral impact on third parties, *including witnesses* or victims." ABA Standards for Criminal Justice § 3-44(x) (emphasis added), located at https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/ (last visited Jan. 5, 2026).

In sum, because so many others at the UVU event suffered far greater emotional trauma than [AC] did, and even if [AC] had suffered comparable trauma, there is again no risk, let alone a significant risk, that Mr. [Dpty Atty's] role as [AC's] father, would materially limit his ability to fairly and impartially prosecute the case.

b. The timing of the County Attorney's filing of the death-penalty notice does not evidence an improper influence flowing from Mr. [Dpty Atty's] relationship with [AC].

As evidence that [AC's] presence at UVU on the day of Charlie Kirk's assassination inappropriately prompted "strong emotional reactions by Mr. [Dpty Atty], the County Attorney, and

the entire prosecution team," Defendant points to the County Attorney's filing of a notice of intent to seek the death penalty on the same day he filed the criminal information. MDQ at 9. Filing on day one, Defendant contends, demonstrates a "rush to judgment" because State law provides that a death-penalty notice is not required to be filed until 60 days after arraignment following the preliminary hearing. MDQ at 9. Not so. There is nothing unusual or untoward about filing a death-penalty notice before a preliminary hearing or even on the same date the information is filed.

First, State law permits a prosecutor to seek the death penalty in all cases where the evidence supports a finding of an aggravated circumstance. *See* Utah Code § 76-5-202 (2025). And as the court of appeals in *Balfour* explained, "a criminal defendant has no right to favorable treatment." 2008 UT App 410, ¶ 38.

Second, Section 76-5-202 permits the prosecutor to file a death-penalty notice "*[w]ithin* 60 days after arraignment," Utah Code § 76-5-202(3)(c)(i) (2025), that is, "no later than" 60 days after arraignment. And importantly, there is no date (other than the filing of the information) before which notice may not be filed. The death-penalty notice may be filed before or after the preliminary hearing but no later than 60 days after the arraignment.

Third, while some prosecutors may well choose, as a matter of practice, not to file a death-penalty notice until after the preliminary hearing, there are many instances where prosecutors have filed before the preliminary hearing and even, as here, on the day charges are filed. For example, the current Utah County Attorney filed a death-penalty notice in *State v. Jayne*, Fourth Dist. Ct. Case No. 241401620, less than five months after filing the information and six weeks before the court first set a preliminary hearing date. *Jayne*, Dckt. No. 1 (information filed on 05/14/24); Dckt. No. 142 (death-penalty notice filed 10/02/24); Dckt. No. 153 (11/13/24 status hearing scheduling preliminary hearing). Moreover, less than one month before the charges and death-penalty notice were filed in this case, the Box Elder County Attorney filed a death-penalty notice on the same day aggravated murder charges were filed in *State v. Bate*, First Dist. Ct. No. 25110343, Dckt.

Nos. 1 & 3 (filed both information and death-penalty notice on 08/20/25). Other prosecutors have done the same over the years. *See, e.g.*, *State v. Roman*, Fourth Dist. Ct. No. 101700001 (Millard County Attorney filed both the information and death-penalty notice on 01/05/10).

Fourth, the Utah County Attorney's decision to file the death-penalty notice immediately was the result of lessons learned in *State v. Jayne*. As in this case, the Utah County Attorney concluded from the outset that he would seek the death penalty in *Jayne*. But choosing to follow the convention of some, the County Attorney initially opted to wait until after the preliminary hearing to file a death-penalty notice. But a few months later, this delay spawned rumors that the County Attorney would not seek the death penalty. A member of the press then contacted the Office indicating that he intended to air a story that evening that a "source" had told him that the County Attorney was not seeking the death penalty. The County Attorney immediately contacted the reporter, informing him that the report was not accurate, and thereby averted the airing of a false report.

Speculation and misinformation in aggravated murder cases are extremely unsettling and hurtful to the families and loved ones of murder victims. The County Attorney makes every effort to minimize that hardship in whatever way he can. The national and worldwide interest in this case has generated a tremendous amount of speculation and misinformation, and that has been apparent from the moment Charlie Kirk was assassinated. Having reviewed the evidence and concluded that the evidence and circumstances of the case justify the death penalty, the County Attorney determined that there was no reason to delay making that election. Filing delay would only result in further misinformation, speculation, and conspiracy theories which were already mounting before charges were even filed. The County Attorney has concluded that under the circumstances of this case, delaying the filing of a death-penalty notice is unnecessarily unsettling and painful to Charlie Kirk's loved ones and does not promote justice for anyone. For these reasons, the County Attorney chose to file a notice of intent to seek the death penalty on the same day charges were filed.

In sum, the County Attorney's filing of the death-penalty notice is not evidence that Mr. [Dpty Atty's] relationship as [AC's] father jeopardized Defendant's right to a fair trial process.

2. Because Mr. [Dpty Atty] has no conflict of interest that requires disqualification, there is no basis to disqualify the County Attorney's Office.

Defendant also argues that because Mr. [Dpty Atty] has a personal conflict of interest that requires disqualification, the personal conflict of interest must be imputed to the entire Utah County Attorney's Office because it took no steps to screen Mr. [Dpty Atty] from the case and because he exercises supervisory authority over the Office as [a supervisor]. MDQ at 10-12.

First, Defendant's argument fails at the outset because, as explained above, *supra*, at 8-16, Mr. [Dpty Atty] has no personal conflict of interest in the case requiring disqualification. Accordingly, there is no personal conflict of interest to impute to the Office.

Second, even if Mr. [Dpty Atty] were to have a personal conflict of interest requiring his disqualification, imputing that personal conflict of interest to the entire County Attorney's Office is not supported under the law.

In *State v. Balfour*, the Utah Court of Appeals explained that "[w]hen disqualification [of a prosecutor] is appropriate, it is usually sufficient to disqualify the particular attorney with a conflict rather than the entire office." 2008 UT App 410, ¶ 34, 198 P.3d 471. In support of that holding, the court of appeals cited to *United States v. Bolden*, 353 F.3d 870, 879 (10th Cir. 2003). In that case, the Tenth Circuit Court of Appeals observed that "[t]he disqualification of [individual government attorneys] is a drastic measure and a court should hesitate to impose it except where necessary." *Id*. at 879 (cleaned up). And the court held that "because disqualifying government attorneys implicates separation of powers issues, the generally accepted remedy is to disqualify a specific [government attorney], not all the attorneys in the office." *Id*. (cleaned up).[12]

[12] *Bolden* further observed that "[i]n light of these principles, every circuit court that has considered the disqualification of an entire United States Attorney's office has reversed the disqualification." 353 F.3d at 870.

In support of his claim that the entire County Attorney's Office should be disqualified, Defendant cites *State v. McClellan*, 2009 UT 50, 216 P.3d 956. MDQ at 10. But that case has no application here. In *McClellan*, the defendant's criminal defense attorney at the preliminary and arraignment withdrew from the case and joined the county attorney's office prosecuting the case. *Id*. at ¶ 4. The Utah Supreme Court held that when a defense attorney joins a prosecutor's office which is prosecuting that attorney's former client, there is a "rebuttable presumption of shared confidences"—i.e., that knowledge gained by the attorney while representing the defendant has been shared with the entire office. *Id*. at ¶¶ 19-23. That presumption may be rebutted if the county attorney's office "implemented sufficient measures to screen former defense counsel and that it has consistently followed through with those measures." *Id*. at ¶ 23.

Defendant also argues that because Mr. [Dpty Atty] has a supervisory role in the County Attorney's Office, no attorney in the Office can be expected to fairly prosecute the case. MDQ at 12. In support, he relies on *State v. Tate*, 925 S.W.548, 555 (Tenn. 1995). But in that case, the district attorney prosecuting the case against the defendant had presided as judge over cases prosecuted by the Office which were still pending, including several ex parte hearings involving defense counsel. *Id*. at 549. The Tennessee Court of Appeals held that disqualification of the entire office was appropriate under the "unique circumstances" of the case—"[b]ecause the district attorney here had heard and ruled upon several motions as judge, because certain of the motions were of a confidential nature (even though the information discussed has apparently come into the hands of the state by other means), and because at least one hearing included questions addressed directly to the defendant by the trial judge." *Id*. at 549, 555-56. Again, the alleged conflict of interest at issue here bears no resemblance to the "unique circumstances" in *Tate*.

The alleged conflict of interest in this case does not involve the shared-confidence concerns of a former client that were addressed in *McClellan* or of a former judge that were addressed in *Tate*: that a defendant's confidential communications will be used against that defendant by

prosecutors in the case. Nor does this case implicate the same concerns at issue in *Balfour*, where the district attorney prosecuted a defendant whose business she used, free of charge, during her election campaign. 2008 UT App 410, ¶ 8.

Mr. [Dpty Atty's] alleged conflict of interest does not implicate like concerns—they are of a personal nature for which there is no basis to believe will have a similar affect on other attorneys in the office. No matter what the relationship of other attorneys in the Office is to Mr. [Dpty Atty], his paternal concern for his [child] is not shared by others in the Office, even if those attorneys are aware of the circumstances. While other attorneys in the Office who have children may very well empathize with Mr. [Dpty Atty], just as they may empathize with other parents who had children who were at the UVU event, that empathy ultimately does not arouse the degree of emotion that occurs with their own children. For this reason, courts have refused to impute personal conflicts of interest to an entire firm.

Nor is the alleged personal conflict of interest like that in *People v. Connor*, 666 P.2d 5 (Cal. 1983), upon which Defendant relies in his motion. MDQ at 11. There, the prosecutor was "a witness to, and potential victim of," the defendant's armed robbery in a courtroom, where a deputy had been stabbed and the defendant had swung his arm toward the fleeing prosecutor and fired his gun. *Connor*, 666 P.2d at 6-7, 9. In that case, the conflict was "of such gravity as to render it unlikely" that the defendant would "receive a fair trial" absent recusal. *Id*. at 9. As explained above, [AC's] experience was nowhere near that of the prosecutor in *Connor*.

Conclusion

For these reasons, the Court should deny Defendant's motion to disqualify the Deputy County Attorney and the Utah County Attorney's Office.

Dated January 5, 2026.

JEFFREY S. GRAY
Utah County Attorney

/s/ Jeffrey S. Gray

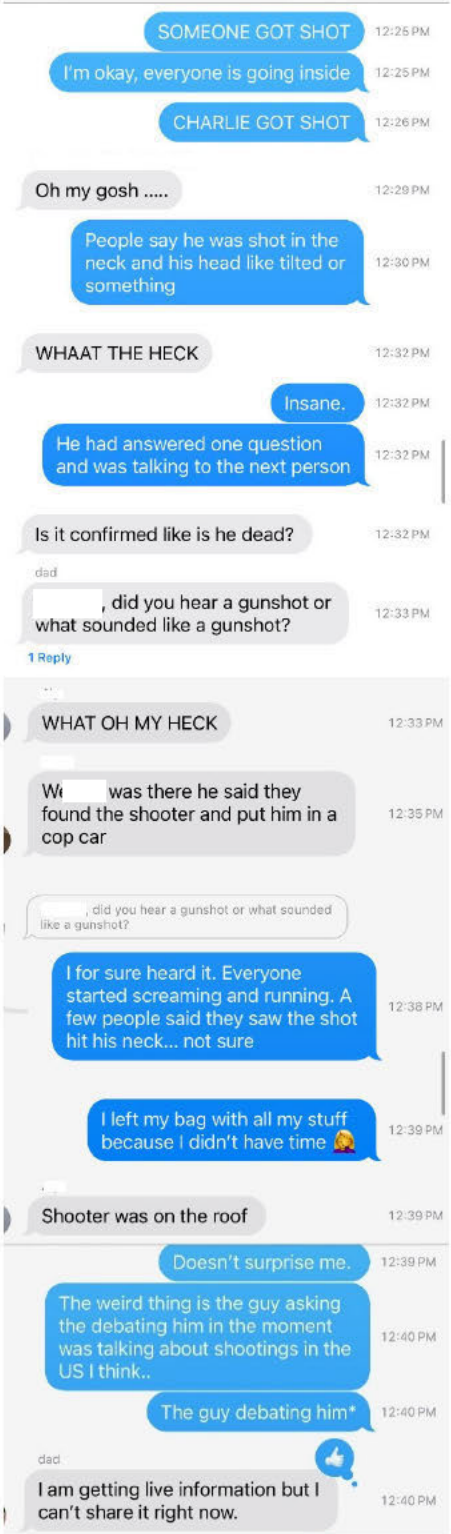
CERTIFICATE OF SERVICE

I certify that on January 5, 2026, I filed the foregoing **Opposition to Defendant's Motion to Disqualify the Utah County Attorney's Office** through the Court's electronic filing system, which served a copy on all counsel of record.

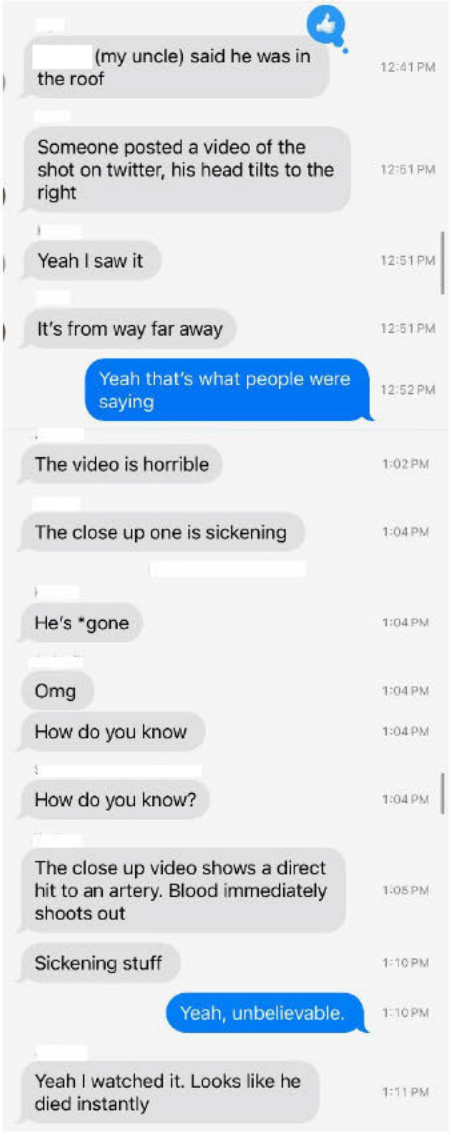
/s/ Tammy Paynter

Addendum A

1


SOMEONE GOT SHOT
12:25 PM
I'm okay, everyone is going inside
12:25 PM
CHARLIE GOT SHOT
12:26 PM
Oh my gosh .....
12:29 PM
People say he was shot in the neck and his head like tilted or something
12:30 PM
WHAAT THE HECK
12:32 PM
Insane.
12:32 PM
He had answered one question and was talking to the next person
12:32 PM
Is it confirmed like is he dead?
12:32 PM
dad
, did you hear a gunshot or what sounded like a gunshot?
12:33 PM
1 Reply
WHAT OH MY HECK
12:33 PM
W was there he said they found the shooter and put him in a cop car
12:35 PM
, did you hear a gunshot or what sounded like a gunshot?
I for sure heard it. Everyone started screaming and running. A few people said they saw the shot hit his neck... not sure
12:38 PM
I left my bag with all my stuff because I didn't have time
12:39 PM
Shooter was on the roof
12:39 PM
Doesn't surprise me.
12:39 PM
The weird thing is the guy asking the debating him in the moment was talking about shootings in the US I think..
12:40 PM
The guy debating him*
12:40 PM
dad
I am getting live information but I can't share it right now.
12:40 PM

2


(my uncle) said he was in the roof
12:41 PM
Someone posted a video of the shot on twitter, his head tilts to the right
12:51 PM
Yeah I saw it
12:51 PM
It's from way far away
12:51 PM
Yeah that's what people were saying
12:52 PM
The video is horrible
1:02 PM
The close up one is sickening
1:04 PM
He's *gone
1:04 PM
Omg
1:04 PM
How do you know
1:04 PM
How do you know?
1:04 PM
The close up video shows a direct hit to an artery. Blood immediately shoots out
1:05 PM
Sickening stuff
1:10 PM
Yeah, unbelievable.
1:10 PM
Yeah I watched it. Looks like he died instantly
1:11 PM

Addendum B

JEFFREY S. GRAY # 5852
Utah County Attorney
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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON Defendant.	AFFIDAVIT OF Case No. 251403576 JUDGE TONY F. GRAF

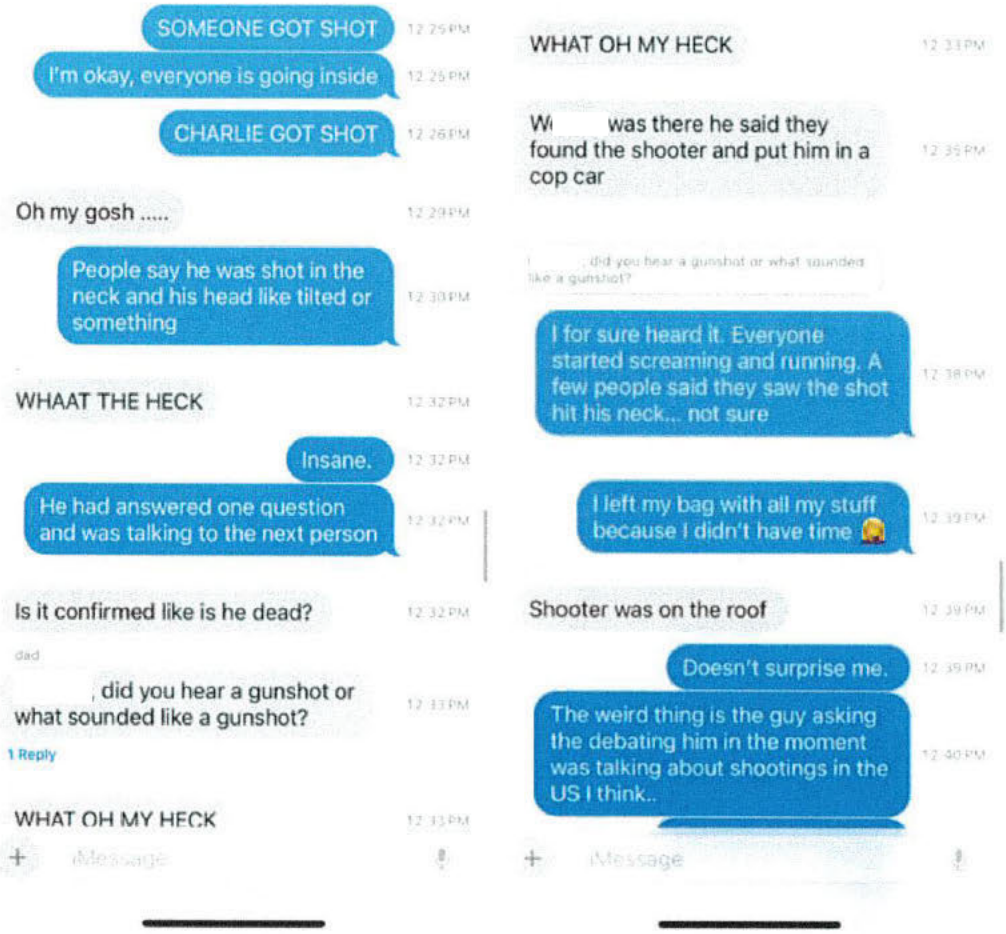
While under oath or affirmation, I swear to the truthfulness of the following facts:

1. My name is] . I am eighteen years old. , who works at the Utah County Attorney's Office is my father.
2. I was present at Utah Valley University, where I am a student, on September 10, 2025, when Charlie Kirk was shot.
3. I attended a class before the Charlie Kirk event and arrived at the courtyard where the event took place at approximately 11:15 a.m.
4. I watched the event from the far-right side of the amphitheater. I have marked my location (with an x) and Charlie Kirk's location (with an xx) on the image below. I was

sitting until Charlie arrived. Then I stood up and remained standing until the shot was fired. I placed my bag at my feet, against the step I was standing on and was standing above it during the event.

5. Charlie arrived between 12:05 p.m. and 12:10 p.m. He threw out hats and then sat down and took questions.
6. While the second person in line was speaking with Charlie, I was looking around the crowd when I heard a loud sound, like a pop. Someone yelled, "he's been shot."
7. Everyone crouched down. After a few seconds people started running. I ran to the doors to the northwest of where I was. I entered a building near where the "HF" is on the image.
8. As I was in the building I did not really know what had happened. I had heard someone had been shot from the person in the crowd. At 12:25 p.m., I texted a family group chat, which included me, my mom, my dad, my brothers and my sisters-in-law, "SOMEONE GOT SHOT I'm okay, everyone is going inside."
9. After I sent those messages, I spoke to someone in the building with me who told me that Charlie had been shot. I then texted the family group chat, "CHARLIE GOT SHOT". Screenshots of the messages are included below.
10. I then walked through the building to the north and eventually met a friend elsewhere on campus. My friend gave me a ride home.
11. I did not see Charlie get shot. The last time I saw him was before I looked away before I heard the gunshot. I did not see him get carried away or see his wound.

12. Both before and after the shot, as I looked around, I saw students and people who were there to watch the debate. Most were students. Some were older. There were a lot of people there from Turning Point USA who were wearing Turning Point hats or shirts. I did not see anyone with a gun. During the entire time I was at UVU on September 10, 2025, I did not see anything that made me believe anyone I saw was involved in the shooting.
13. Aside from being scared at the time, I have not had any lasting trauma from the event. I have not needed to get counseling or therapy. I did not have to miss classes or work or any other normal activities after the shooting. I have been able to continue with all my normal activities without any emotional problems.
14. The only time I have seen the actual shooting of Charlie Kirk was when I saw a post on social media that recorded it. I saw that post later that day, September 10, at my home.
15. I was not contacted by law enforcement about the shooting.



Date: January 5, 2026,

Signed: _____

On this date, I certify that , who presented satisfactory identification in the form of a driver's license, has, while in my presence and while under oath or affirmation, voluntarily signed this document and declared that it is true.

January 5, 2026, Signed: _____

Name of Notary Public: Sarah Varner

Notary Seal:

SARAH MICHAELA VARNER
NOTARY PUBLIC - STATE OF UTAH
My Commission Expires May 27, 2029
COMMISSION NUMBER 743323

Addendum C

JEFFREY S. GRAY # 5852
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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON Defendant.	AFFIDAVIT OF COLE CHRISTENSEN Case No. 251403576 JUDGE TONY F. GRAF

Special Agent Cole Christensen hereby represents as follows:

1. I am currently a Special Agent with the Utah County Attorney's Office, Bureau of Investigations. I have graduated from Utah Valley University with a Bachelor's degree in Behavioral Science with a major in Criminal Justice and a corrections emphasis. I am also a graduate from the Utah State Peace Officer Standards and Training and have been employed as a law enforcement officer in the State of Utah since 1996. Prior to my employment with the Utah County Attorney's Office, I was employed with the Utah Transit Authority Police Department where I worked as a law enforcement officer. Prior to my employment with UTA I was employed with the Utah County Sheriff's Office where I served and worked as a Judicial Facilities Deputy, Patrol Deputy and Detective in the Investigations Division. I was promoted to the rank of Sergeant in 2014. I supervised a patrol team in the city of Eagle Mountain, Traffic Enforcement Team, K9 Team and was appointed Utah County Metro SWAT Tactical Commander. I ended my career with the Utah County Sheriff's Office after working as the Administrative Sergeant where I oversaw many of the patrol division administrative duties. Throughout my employment, I have received training in cognitive interviewing and Interrogation, forensic interviewing,

use of force, homicide/violent crimes, death investigations and child abuse. I have also served as a firearms instructor and am CIT certified. I have experience with investigating traffic laws, narcotics, property crimes, theft, white collar crimes, homicides and officer involved critical incidents.

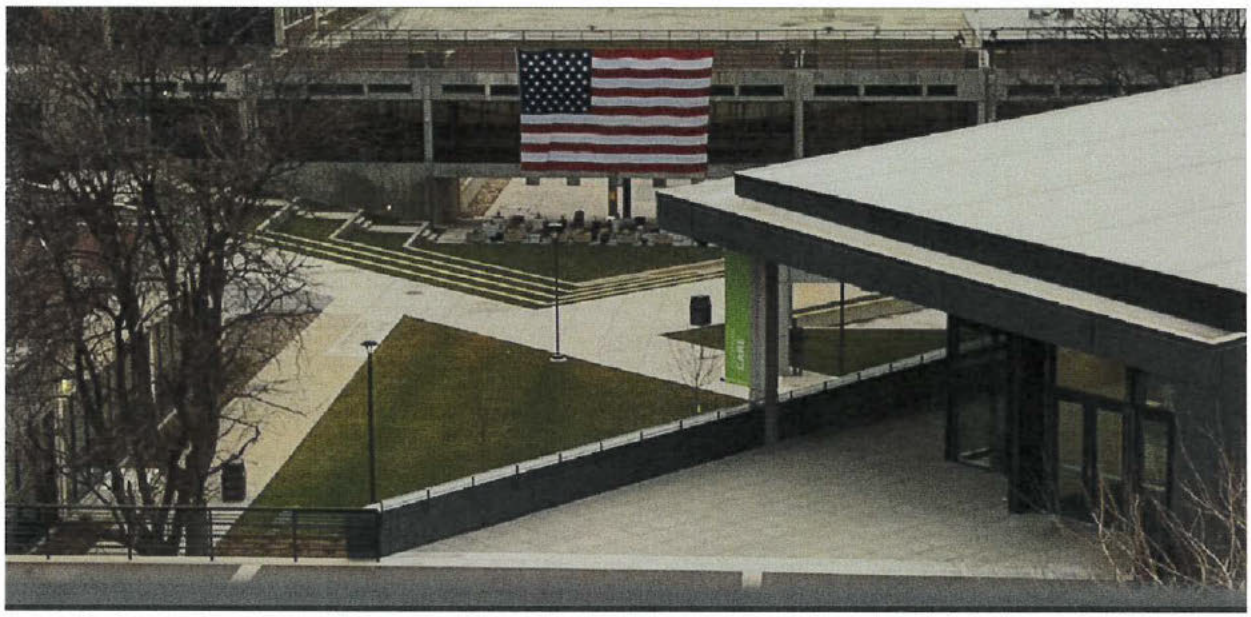
2. On 09/29/2025, I was contacted by Deputy County Attorney regarding some assistance he needed relating to the Charlie Kirk shooting. Mr. informed me his , was at the scene when Mr. Kirk was shot and he further explained that he intended to disclose that fact to the defense counsel. Mr. advised me that his was there at the event with bag and once Mr. Kirk had been shot left bag where was located and fled the scene. Mr. asked if I could assist him in collecting an approximate measurement of his 's location to the approximate location where Mr. Kirk was shot.

   On 9/30/2025, Mr. and I traveled to UVU and I advised UVU dispatch that we would be in the crime scene area collecting a measurement.

   Using photographs of 's bag, I was able to locate the approximate location of during the event. I ran a tape measure from Mr. Kirk's approximate location to where 's bag was. That distance was approximately 85 feet.

   I have reviewed the affidavit of , which includes an image on which marked position. location is consistent with the location I used for my measurements.

3. On 12/18/2025, Jeff Gray and I went to UVU to investigate whether was in the shooter's field of view. I went to the rooftop where Mr. Robinson was positioned when Mr. Kirk was shot, the southwest corner of the Losee Center. In that location I laid down in a prone position overlooking the courtyard where the event took place. Mr. Gray then positioned himself in the location where Mr. 's was located. We communicated back and forth via cell phone. I took the following photograph memorializing my field of view.



4. I had no visual of Mr. Gray and communicated that to him. My view of him was obstructed by the roof of the Sorensen Center on the right side of my field of view. Mr. Gray then began to walk towards the center of the courtyard on the top tier from where Mr. 's was located. Maintaining cell phone communication, I immediately notified Mr. Gray of when I could see him after leaving his initial position. We did this several times from both a prone and standing position noting the locations of when he became visible.

5. I then made another observation noting the field of view from where Mr. Kirk was approximately seated when he was shot, to where I would lose the view of an individual if walking from Mr. Kirk's left towards the location of Mr. 's and noted those locations.

6. Upon noting those locations of visibility, I then left the rooftop and went to the courtyard where Mr. Gray had been. Officer Cambell then took up my position on the rooftop, and I confirmed with him the locations of visibility I had learned from being on the rooftop.

7. After noting the positions of visibility, Mr. Gray and I ran a tape measure to measure the distance from where Mr. 's was located to where I became visible when walking from position. That distance was approximately 75 feet.

8. I then measured the distance of visibility from where Mr. Kirk had been seated to the location where the field of view would be lost if walking from his left. That distance was approximately 8 feet.

9. The final measurement I took was from the edge of the roof of the Sorensen Center (which inhibited the visibility from the elevated position) to a lamp post next to a tree. This would be identified as the field of view Mr. Robinson could see through prior to shooting. The measurement was approximately 18 feet.

DATED this 5 day of January 2026.

Sgt. Cole Christensen
Utah County Attorney's Office

SUBSCRIBED and sworn to before me this 5th day of January 2026.

CHELSEA HARVEY
NOTARY PUBLIC · STATE OF UTAH
My Commission Expires September 23, 2026
COMMISSION NUMBER 726834

NOTARY