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

STATE OF UTAH, Plaintiff, v. TYLER JAMES ROBINSON, Defendant.	**STATE'S REPLY IN SUPPORT OF MOTION TO AMEND OR CLARIFY COURT'S PRE-TRIAL AND TRIAL PUBLICITY ORDER (Dkt. #23)** Case No. 251403576 Judge Tony F. Graf, Jr.

INTRODUCTION

The Court's September 16, 2025, Protection Order Re: Pre-Trial and Trial Publicity (Dkt. 23) (the Order) requires clarification and amendment. The Order's use of the term "witnesses" is vague and ambiguous. If the Court meant "witnesses" to include only those who are members of the prosecution or defense teams, then that clarification would resolve the State's concerns. But if the Court meant "witnesses" to include additional individuals, then the Order is flawed because it is not supported by the proper analysis and findings, it

is vague and overbroad, and it imposes an unreasonable and essentially impossible burden on the State (and the defense). Defendant has not demonstrated otherwise.

ARGUMENT

I. The Order's use of "witnesses" is vague and ambiguous.

The Order's use of the term "witnesses" requires clarification because it is not clear exactly who qualifies as a witness in the context of the order. The term could be read to refer only to "witnesses … who are members of the prosecution or defense teams." Order at 2. As explained, this is the meaning the State believes that the Court intended. *See* Mot. at 6.

Applying the series-qualifier cannon supports this reading. The Court included the term "witnesses" in a list of nouns followed by the modifier "other members of the prosecution or defense teams":

> lawyers participating in the investigation or litigation of this case shall inform *all witnesses*, investigators, consultants, staff members, or *other members of the prosecution or defense teams* about the prohibitions contained in this order.

Order at 2 (emphasis added). When a postpositive modifier like "other members of the prosecution or defense teams" follows a series of nouns like "witnesses, investigators, consultants …," *id.*, and there is a "'straightforward, parallel construction that involves all nouns … in a series,'" then "'a postpositive … modifier normally applies to the entire series,'" *Williamson v. Farrell*, 2024 UT App 111, ¶ 36, 557 P.3d 214 (quoting *Downs v. Thompson*, 2019 UT 63, ¶ 17, 452 P.3d 1101) in turn quoting (Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012)). Thus, the phrase "or

other members of the prosecution or defense teams" modifies all the preceding nouns, including "witnesses." Order at 2.

But the term "witnesses" can be also reasonably read to apply to any member of the public who was present when the murder occurred, or who has any other personal or specialized knowledge relevant to this case but will never be called to testify. Those individuals number in the several thousand. The term can also mean only those lay or civilian witnesses who, while not members of the prosecution or defense teams, will testify at trial.

Defendant's suggestion that "a witness is someone who has personal or specialized information that may be presented in court by them … or that may be relied upon by another person" who testifies, if correct, renders the Order improper for the reasons explained below. *See* Obj. at 9. The Order should not, and cannot as written, apply beyond members of the prosecution or defense teams. The Court must therefore clarify who is included in the category of "witnesses."

II. There is no basis for extending the State's ethical responsibilities to witnesses beyond those who are part of the prosecution team.

The Court should not extend the term "witnesses" to apply beyond members of the prosecution team, because there is no basis or justification for doing so. A prosecutor's ethical duties regarding extrajudicial statements by others extend only to members of the prosecution team. As explained, Rule 3.6 applies only to lawyers. *See* Utah R. Prof. Resp. 3.6(a). And Rule 3.8 addresses only a prosecutor's responsibility for members of her team. *See id.* R. 3.8(3) (requiring prosecutors to "[e]xercise reasonable care to prevent

investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement" the prosecutor should not make). Witnesses who are not part of the prosecution team are not "assisting or associated with the prosecutor." *See id.* Rather, they are independent, objective witnesses who are participating merely because they have personal knowledge relevant to the trial.

Defendant cites no statute, rule, or caselaw that extends a prosecutor's ethical responsibilities to "witnesses" beyond members of the prosecution team. *See* Def.'s Obj. at 2-4. Nor has the State located any such authority.

As explained in the State's motion, limiting the prosecutor's responsibility to those on her team makes sense because the prosecutor has no basis for exerting any authority over those beyond that team. *See* State's Mem. at 3-7. The Court should therefore clarify that for purposes of the Order, "witnesses" includes only those on the prosecution or defense teams.

III. If "witnesses" include persons beyond the prosecution team, then the Order lacks the required analysis and findings to justify a prior restraint on those individuals.

Besides the lack of any legal authority to extend the parties' responsibilities for others beyond those on their respective teams, the Order is insufficient to apply any further than that. If the Court intends "witnesses" to apply beyond those on the prosecution team, then the Court must vacate that portion of the Order, hold a hearing after receiving briefing, conduct the proper analysis, enter detailed findings justifying the prior restraint on non-prosecution team witnesses and explaining why it is the prosecution's duty to inform those

witnesses of the prohibitions in the Court's order, and further clarify when and how the prosecution is to fulfill that duty.

A. The Order is a prior restraint.

The Court's Order is a prior restraint. *See State ex rel. L.M.*, 2001 UT App 314, ¶ 24, 37 P.3d 1188 (defining prior restraint as an order that "forbids certain communications in advance of the time that such communications are to occur") (citing *Lawson v. Murray*, 515 U.S. 110, 1113 (1995)). As explained, "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights" and therefore require proper analysis and findings to be valid. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

If "witnesses" means anyone who has relevant information about this case, or even if it means only those who will testify at trial, the Court's Order is not supported by the proper analysis and findings to justify a prior restraint on those individuals. As explained, to be justified, prior restraints on "non-attorney trial participants" and "non-witness members of the public" require a demanding analysis and the surmounting of high legal standards. *See* Mot. at 4-7 (citing *Spencer v. State*, 712 S.W.3d 296, 305-07 (Ark. 2025) and *Nebraska Press Ass'n*, 427 U.S. at 562). The Court has not engaged in either of these analyses, nor has it entered findings that would justify a prior restraint on these individuals.

B. Extensive media coverage alone neither justifies a prior restraint, nor creates a likelihood of an unfair trial.

Defendant ignores controlling precedent in asserting that the Court's recognition of the extensive media interest in this case alone suffices to justify a prior restraint. *See* Obj.

at 5-8. A mere finding that a case has garnered even extensive media interest is not sufficient to justify a prior restraint. *See Nebraska Press Ass'n*, 427 U.S. at 562; *Spencer*, 712 S.W.3d at 305-07.

"Widespread publicity … does not necessarily lead to an unfair trial." *CBS, Inc. v. United States District Court*, 729 F.2d 1174, 1179 (9th Cir. 1984). The Supreme Court observed in *Nebraska Press* that "pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." 427 U.S. at 565.

Indeed, the court in one of the Watergate prosecutions observed that, "despite perhaps the most pervasive publicity accorded any trial in American history, 'without undue effort, it would be possible to empanel a jury whose members had never even heard the [Watergate] tapes.'" *CBS*, 729 F.2d at 1180 (quoting *United States v. Mitchell,* 551 F.2d 1252, 1262 n.46 (D.C. Cir. 1976), *rev'd on other grounds sub nom. Nixon v. Warner Communications, Inc.,* 435 U.S. 589, (1978)). "The court justified this conclusion by noting that in a previous Watergate prosecution ten of the twelve jurors selected 'claimed to have followed Watergate casually, if at all.'" *Id.* (quoting *Mitchell*, 551 F.2d at 1262 n.46).

The Ninth Circuit has similarly recognized that extensive pretrial publicity is not necessarily prejudicial, nor sufficient to justify a prior restraint. *See CBS*, 729 F.2d at 1180. The *CBS* case concerned the broadcast of government surveillance tapes in John DeLorean's federal cocaine trafficking prosecution. *See id.* at 1176. The Ninth Circuit held that "[e]ven if we assume *arguendo* that a prospective juror who has viewed all or some of

the investigation tapes is likely to harbor preconceptions that would threaten Mr. DeLorean's right to trial by an impartial jury, the test enunciated in *Nebraska Press* requires *much more* to justify prior restraint." *Id.* at 1180 (emphasis added). As the *Nebraska Press* court held, a prior restraint cannot issue unless it is "clear that further publicity, unchecked, would so distort the views of potential jurors that *12 could not be found* who would … fulfill their sworn duty." 427 U.S. at 569.

A prior restraint therefore requires more than the existence of even extensive pre-trial publicity. *See* Mot. at 4-7. Rather, a prior restraint on "non-attorney trial participants" requires, among other things, a finding that the restrained speech would pose "a serious and imminent threat of material prejudice to an ongoing criminal proceeding." *Spencer*, 712 S.W.3d at 306-07. And a prior restraint on witnesses who will not testify at trial is likely unjustifiable under any circumstance. *See id.*

The Order reflects none of the required analysis or findings sufficient to impose a prior restraint on witnesses who are not members of the prosecution or defense teams. The Court should therefore clarify, consistent with the State's proposed understanding, that "witnesses" means only those who are a part of counsels' respective teams.

C. The State is not attempting to assert the rights of third parties.

Defendant's assertion that the State is improperly asserting the rights of third parties is unfounded. *See* Obj. at 4 n.3. The Order requires the State (and defense counsel) to take certain actions and therefore exposes the State's attorneys, and this prosecution, to sanctions for noncompliance. *See* Order at 2 (requiring counsel to "inform all witnesses …about the prohibitions contained in this order"). The Order further requires the State to

inform individuals of what the State believes is an unjustified prior restraint on their First Amendment rights. Because these issues directly affect the State, its attorneys, and this prosecution, the State properly raises these issues.

IV. The Order is vague and overbroad if it applies beyond members of the prosecution and defense teams.

As demonstrated, the Order is vague because it does not explain whether it applies to any possible witness, may-call and will-call witnesses, or only will-call witnesses. It also does not explain when or how the parties must notify those witnesses. It also fails to specify whether the parties are equally responsible for notifying all witnesses, or whether the prosecution is required to notify the witnesses that it may or will call, while the defense must notify the witnesses it may or will call.

If "witnesses" means what Defendant asserts—anyone with personal or specialized knowledge about the relevant events, *see* Obj. at 9—then the Order is also overbroad, because it would apply to thousands of members of the public who were present during the murder, but will not be trial participants. Again, "it is difficult to foresee any circumstance in which a prior restraint on the speech of a member of the public … could be constitutional." *Spencer*, 712 S.W.3d at 307. The Court must therefore clarify and, if necessary, amend the Order.

V. The Order imposes an unreasonable and essentially impossible burden on the State.

Finally, if "witnesses" means anyone with personal knowledge about the relevant events, as Defendant contends, then it imposes an unreasonable and potentially impossible burden on the State (and the defense for that matter) to notify those "witnesses … about

the prohibitions contained in [the] order." *See* Order at 2. Again, those individuals number in the several thousand and many are unidentified. Certainly, the Court could not have intended the parties to do what is essentially impossible.

CONCLUSION

The Court should clarify that its Order is limited to members and witnesses on the prosecution or defense teams and does not apply to all potential lay or civilian witnesses.

Dated November 28, 2025.

Utah County Attorney's Office

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CERTIFICATE OF SERVICE

I certify that on November 28, 2025, I filed the foregoing **STATE'S REPLY IN SUPPORT OF MOTION TO AMEND OR CLARIFY COURT'S PRE-TRIAL AND TRIAL PUBLICITY ORDER (Dkt. #23)** through the court's electronic filing system, which served a copy on all counsel of record. I also emailed a copy to counsel for the interested news media as follows:

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