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

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON Defendant.	STATE'S MEMORANDUM IN RESPONSE TO DEFENANT'S OBJECTION TO STATE'S EXHIBIT 4.1. Case No. 251403576 JUDGE TONY F. GRAF

Unless Defendant stipulates that Prosecutor A's Adult Child (AC) is not a necessary witness, the State must prove that fact with evidence. Such evidence includes video recordings from witnesses who personally saw Charlie Kirk get shot, who personally saw or recorded the shooter exposing others to a great risk of death, *see* Utah Code Ann. 76-5-202(2)(a)(iii), and observations and recordings of the shooter on the roof of the Losee Center at Utah Valley University.

1. The State's evidence includes video and still frames of the murder of Charlie Kirk.

In preparation for the evidentiary hearing on Defendant's motion to disqualify the Utah County Attorney's Office (UCAO), the State compiled exhibits it may offer and provided those exhibits to the defense in advance of the hearing. The exhibits include the following:

Ex. 1: Video taken just as the event was starting, showing Mr. Kirk's arrival.

Ex. 2: Video taken by an attendee who recorded a person in a shooting position on the Losee Center just moments before the shot.

Ex. 3: Still frame of a video which recorded the area behind Mr. Kirk's booth just before and after the shot. The still frame and the video show that others could have been hit if the shot had missed Mr. Kirk.

Ex. 3.1: The video from which Ex. 3 is taken.

Ex. 4: Still frame of a video capturing Mr. Kirk's shooting taken from in front of Mr. Kirk.

Ex. 4.1: Video from which Ex. 4 is taken, which includes the impact of the bullet on Mr. Kirk, as well as blood coming from his neck and him falling from his chair.

Ex. 5. Screenshot of video of Mr. Kirk's shooting from directly behind and above him which shows Mr. Kirk, members of his security team, the questioner, and the crowd.

Ex. 5.1. Video from which Ex. 5.1. is taken, which shows the questioner and the crowd before the shot, when the shot hits Mr. Kirk, and afterwards.

The State included both video and screenshots from the videos which show the moments before and after the shooting in its exhibit list. However, the State intended to offer only the screenshots unless the defense objected or failed to acknowledge that there are, in fact, some 3,000 witnesses

to the shooting, that the shooting, its setting, and its aftermath were recorded by multiple witnesses from multiple angles, and that because the material facts were so broadly witnessed and recorded, AC is not a necessary witness to the murder.

As long as Defendant maintains that AC is a material witness, the State must prove otherwise. To date, defense counsel has not been satisfied with accepting proffers or even affidavits. Instead, defense counsel has subpoenaed two of the attorneys on the prosecution team, AC, and communications regarding AC made by two of the prosecutors. Defense counsel asserts in its objection that it must "assert all legal claims potentially available 'as forcefully as possible,'" Def. Obj. 4, n.1,[1] and he is doing just that. Should defense counsel interpret this duty to object to all evidence at all stages of the proceeding, reject proffers and affidavits as inadequate, and make best evidence objections to testimony about the contents of evidence collected, the State must present the evidence.

On the other hand, should defense counsel conclude that he can make reasonable stipulations and accommodations based on undisputed facts, the State is content to offer the still

[1] Defense counsel mischaracterizes Mr. Gray's argument at the January 16, 2026, hearing. Mr. Gray's argument was addressed to defense counsel's oral motion, made for the first time at the outset of the hearing, to continue the hearing and appoint the Attorney General's office to litigate the Motion to Disqualify. The Court noted, as did the State, that this motion could have been raised far in advance of the hearing to allow full briefing and avoid delay and inconvenience.

The State also pointed to authority that notes that motions to disqualify can be used as tactics to disqualify an unfavorable prosecutor. This tactic has been discussed repeatedly in the law. Utah State Bar Ethics Advisory Opinion No. 04-02 ¶ 7, ("Calling opposing counsel as a witness has been used as a bad-faith trial tactic to create a disqualification of the client's lawyer to the disadvantage of one of the parties in the proceeding."); *State v. Arguelles*, 2003 UT 1, ¶ 91 ("[A]dverse counsel should not be called as a witness to offer insignificant testimony or as a ruse to disqualify counsel"); *LeaseAmerica Corp. v. Stewart*, 19 Kan. App. 2d 740, 750, 876 P.2d 184, 191 (1994) ("The power to call opposing counsel as a witness could be employed in a manipulative way to foist upon that lawyer the role of advocate-witness and thereby drive the lawyer from the case.") Accordingly, "motions to disqualify 'should be reviewed with extreme caution for they can be misused as a technique of harassment.'" *Chapman Engineers v. Natural Gas Sales Co*., 766 F. Supp. 949, 954 (D. Kan. 1991). "Such motions are often simply 'common tools of the litigation process, . . . used . . . for purely strategic purposes.'" *Lumbard v. Maglia, Inc*., 621 F. Supp. 1529, 1539 (S.D.N.Y. 1985).

images of the videos and allow the Sgt. to describe the videos in his testimony. The State interprets Defendant's objection as a stipulation to the still images of the videos (Exhibits 3, 4, and 5), *see* Def. Obj. 6, and, accordingly, will reserve offering the videos pending objections or other need for them. Because some uncertainty remains, the State addresses the admissibility of the evidence below.

2. The evidence is admissible at this hearing

Defendant couches his objection in terms of relevance and probative value versus a danger of unfair prejudice *as those concepts apply to the motion at hand*. In this respect, the Court's inquiry is best considered under Utah Rule of Evidence 104. That is, the question to be decided here is not one of guilt, but rather whether a conflict exists. This question requires an analysis of CA's value and qualification as a witness. The question brings the motion within the province of rule 104.

2.1.The evidence is relevant.

Defense counsel frames his rule 401 and 403 objections on grounds of relevance to the motion to disqualify, rather than on terms of relevance to the elements of the crimes charged. But the two issues are tied together. If AC is a necessary witness, the argument that a conflict exists has more merit. On the other hand, if AC is not a necessary witness, the conflict claim fails.

The exhibits listed, including Ex. 4.1, are relevant because they demonstrate that AC is not a necessary witness: AC did not see the most important events of that day while others did. For example, AC did not see Mr. Kirk get shot, his wound, Mr. Kirk get carried away, the shooter, or any other number of facts important to prove the elements of the charges. There were hundreds, if not thousands, of other witnesses who did. There are many recordings of the shooting, of the

wounds, of Mr. Kirk's emergency transport, and of people in the zone of danger, including the man speaking with Mr. Kirk at the time of the shooting, his security detail, and people behind his booth. But so far, proffers and affidavits have not satisfied Defendant. As a result, the State will produce evidence, including exhibit 4.1., rather than proffer. The videos are relevant because they demonstrate that there is evidence far better than AC's testimony of the material facts and circumstances of the case.

2.2.The Evidence is highly probative with no danger of unfair prejudice.

The videos are probative because they show the elements of aggravated murder which AC did not witness: Mr. Kirks's killing and many others in the zone of danger. While the videos have a high probative value that Mr. Kirk was murdered and that the shooter placed others at great risk of death, they have no danger of unfair prejudice, particularly at this stage of the proceeding. First, there is no jury present so there is no danger of prejudicing them. Second, the State cannot see how watching the video would prejudice the Court as it makes its determination of whether the UCAO or Prosecutor A has a conflict. To the contrary, the videos show the key facts of the offense *to which CA was not a witness.*

3. Closing the hearing is a separate issue.

Defendant's real concern appears to be that publishing exhibit 4.1 may taint the jury pool, rather than admissibility under the rules of evidence. This is a separate issue which should be decided on its merits. The State makes no argument regarding closure of the hearing or publication of the exhibits to the gallery here.[2]

[2] Defendant's motion to close the proceedings is pending. However, due to the timing of the filing, briefing on that motion probably will not be complete by February 3.

CONCLUSION

The State is content to use the still frames from the videos if Defendant stipulates that there were thousands of people present when Charlie Kirk was shot, many of them witnessed Mr. Kirk's shooting, his wound and emergency removal, that many of them witnessed that others were near Mr. Kirk when he was shot, and that there are many recordings of these facts. Otherwise, the State is entitled to prove these points with evidence, including Exhibit 4.1.

Exhibit 4.1 is relevant because it shows the existence of a recording of Mr. Kirk's death, independent of AC. While it is highly probative, in fact dispositive, of that fact, it carries no danger of unfairly prejudicing a jury because a jury is not present. The facts demonstrated by the exhibits, including exhibit 4.1, make clear that AC is not a necessary witness. This conclusion undermines Defendant's motion to disqualify Prosecutor A and the UCAO.

Signed this 29th day of January, 2026,

/s/ Ryan McBride
Deputy Utah County Attorney

CERTIFICATE OF SERVICE

A copy of this filing was served on all counsel of record via the Court's electronic filing system on January 29, 2026.

/s/ Ryan McBride