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IN THE FOURTH JUDICIAL DISTRICT COURT, PROVO DEPARTMENT
IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON, Defendant.	**DEFENDANT TYLER JAMES ROBINSON'S MOTION *IN LIMINE* TO:** **1) CLOSE THOSE PORTIONS OF THE PRELIMINARY HEARING TESTIMONY WHICH WOULD BE INADMISSIBLE AT TRIAL OR WHICH, IF PUBLICLY DISCLOSED PRIOR TO TRIAL, MAY PREJUDICE MR. ROBINSON'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL, AND** **2) SEALING PRELIMINARY HEARING EXHIBITS WHICH WOULD NOT BE ADMISSIBLE AT TRIAL OR WHICH, IF PUBLICLY DISCLOSED PRIOR TO TRIAL, MAY PREJUDICE MR. ROBINSON'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL;** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Case No. 251403576 Honorable Tony F. Graf, Jr.

MOTION

Defendant, Tyler James Robinson, by and through his counsel of record, hereby moves this Honorable Court for an Order:

1) closing those portions of the preliminary hearing testimony which would not be admissible at trial or which, if publicly disclosed prior to trial, may prejudice Mr. Robinson's constitutional right to a fair trial, and

2) sealing exhibits presented at the preliminary hearing which would not be admissible at trial or which, if publicly disclosed prior to trial, may jeopardize Mr. Robinson's constitutional right to a fair trial.

Closure and sealing are necessary in order to protect Mr. Robinson's right to a fair trial under article 1, section 12 of the Utah Constitution, and his rights under the Fifth, Sixth and Eighth Amendments to the United States Constitution.

APPLICABLE UTAH SUPREME COURT LAW

The Utah Supreme Court has clearly set forth the standards for closure and sealing related to a preliminary hearing.

Closure of Portions of a Preliminary Hearing

In *Kearns-Tribune Corp. v. Lewis*, 685 P.2d 515 (Utah 1984), the Court held that closure is appropriate where there is "a 'realistic likelihood of prejudice' as a result of adverse publicity traceable to the open hearing." *Kearns-Tribune Corp*., 685 P.2d at 523 (adopting the standard set forth in and quoting from the New Jersey Supreme Court decision in *State v. Williams,* 93 N.J. 39, 69, 459 A.2d 641, 656 (1983)).

The *Kearns-Tribune* opinion directs a court to decide the need for closure based upon the following showings: 1) the evidence relevant to the nature and extent of the

adverse publicity that may be generated by the open pretrial proceeding, including any inferences as to its potential for prejudice against a fair trial by an impartial jury, and 2) the evidence relating to the availability, feasibility, and efficacy of alternative means of selecting jurors and conducting the trial to assure the integrity and impartiality of the jury. *Kearns-Tribune Corp*., 685 P.2d at 523.

The concurrence and dissent by District Judge Daniels, who sat by assignment for that case, provides a thoughtful explanation as to *why* preliminary hearings were traditionally closed proceedings as a matter of right until a change in Utah law in 1980. He explains that "[b]ecause the preliminary examination occurs *prior* to the time that the defendant may properly raise the issue of ultimate admissibility, it *is* inevitable that some prejudicial information will be presented in many hearings." *Kearns-Tribune Corp*., 685 P.2d at 526 (District Judge Daniels, concurring and dissenting) (emphasis in original). He explains further:

> It is true that persons who hear or read prejudicial information thus disseminated can be excluded from the jury. But at the very least, dissemination of such information into the community biases the jury panel in that it becomes necessary to exclude citizens who carefully read news reports or who are interested in following current events.

Id.

Sealing of Preliminary Hearing Exhibits

Approximately one decade after the Utah Supreme Court decision in *Kearns-Tribune*, that Court had the opportunity to establish standards for the sealing of exhibits filed in connection with a preliminary hearing. *State v. Archuleta*, 857 P.2d 234 (Utah 1993). The Court thoroughly analyzed the scope of an asserted public right of access to preliminary hearing exhibits under the United States Constitution, the Utah Constitution

and common law, as juxtaposed with what it referred to in *Kearns-Tribune* as the "higher value" of protecting a defendant's right to a fair trial. *Kearns-Tribune Corp*., 685 P.2d at 523 (citing *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 508 (1984), which observed that "[n]o right ranks higher than the right of the accused to a fair trial.")

In *State v. Archuleta*, the Court held, first, that "the First Amendment provides no presumptive right of public access to exhibits used at a preliminary hearing." 857 P.2d at 241. Second, it held that there is no presumptive right of access under the Utah Constitution, explaining that "allowing blanket inspection of exhibits [] will hinder, not further, the interests of the criminal process." *Id.* Third, it held that while courts generally recognize a common law *qualified* right to copy trial exhibits, providing public access to preliminary hearing exhibits "could very well jeopardize defendants' right to a fair trial." *Id.* at 242. In *Archuleta*, the intervening media entities sought to inspect and copy all preliminary hearing exhibits, including an autopsy report, photographs taken by the medical examiner, instrumentalities, bloody clothing, and other forensic evidence. *Id.* at 241. The Supreme Court held that "providing public access to the exhibits requested would not serve the administration of justice." *Id.* The Supreme Court relied, in part, on federal court decisions denying access to audio and video recordings. *Id.* at 241, n. 45.

THE STATE INTENDS TO OFFER INTO EVIDENCE AT MR. ROBINSON'S PRELIMINARY HEARING BOTH TESTIMONY AND EXHIBITS WHICH WOULD NOT BE ADMISSIBLE AT TRIAL AND WHICH, IF DISCLOSED TO THE PUBLIC BEFORE TRIAL, WOULD JEOPARDIZE HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL

On April 3, 2026, the State provided Mr. Robinson with a tentative list of witnesses it may call to testify at the preliminary hearing and a tentative list of exhibits it may offer into evidence. As recently as April 28, the State indicated it would provide Mr. Robinson with updates to those lists as decisions are made. While this disclosure was not filed with the Court, the Court has been apprised of much of the State's intentions both during argument on other motions on April 17, 2026, and in the pleadings associated with those motions.

In light of the State's decision to rely heavily on the provisions of Rule 1102 of the Utah Rules of Evidence, which permits "reliable hearsay" to be utilized during a preliminary hearing, it is very likely that significant portions of the testimony offered by the State at the preliminary hearing would not be admissible at trial. It is also very likely that many of the exhibits it offers would not be admissible at trial.

By way of example, the State intends to present written or otherwise recorded witness statements pursuant to Rule 1102(b)(8), without calling the declarants as witnesses at the hearing. It also intends to present numerous expert reports pursuant to Rule 1102(b)(4), without calling the authors of those reports as witnesses at the hearing. Neither recorded witness statements nor written expert reports would generally be admissible at trial, as they are quintessential hearsay. One of those expert reports very well may be the precise type of report deemed appropriate for sealing in *Archuleta*.

Additionally, the State intends to present as exhibits numerous videos which clearly cannot become public in advance of trial, given the well-established quantum of highly inflammatory media and social media coverage of this case, without further impairing Mr. Robinson's constitutional right to a fair trial.

Given the tentative nature of the State's witness and exhibit lists, as disclosed to Mr. Robinson one month ago, Mr. Robinson will be prepared to address the specific witnesses and exhibits that require closure and sealing at the outset of the first day of the preliminary hearing. Presumably the State will provide Mr. Robinson and the Court with "final" witness and exhibit lists prior to the date on which the preliminary hearing ultimately begins.

CONCLUSION

Prior to this Court beginning the preliminary hearing and after the State's witness list and exhibit list have been finalized, this Court should first convene a closure hearing in order to determine which portions of the State's proposed testimony should be taken in closed session and thereafter sealed and which of its proposed exhibits should be sealed. The Supreme Court opinion in *Kearns-Tribune* provides this Court with guidance as to how that closure hearing should be managed. *Kearns-Tribune,* 685 P.2d at 524.

RESPECTFULLY SUBMITTED this 1st day of May, 2026.

/s/ Kathryn N. Nester
Kathryn N. Nester

/s/Richard G. Novak
Richard G. Novak

/s/ Michael N. Burt
Michael N. Burt

/s/ Staci Visser
Staci Visser

Attorneys for Defendant, Tyler James Robinson

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via the Court's electronic filing system on the 1st day of May 2026, which served all attorneys of record.

I also certify that on the 1st day of May, 2026, a copy of the foregoing was emailed to the following counsel for their respective media entities:

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