Kathryn N. Nester (UT #13967)
NESTER LEWIS PLLC
40 S 600 E
Salt Lake City, UT 84102
Telephone: 801-535-4375
Email: kathy@nesterlewis.com

Richard G. Novak, *pro hac vice*
RICHARD G. NOVAK, APLC
65 North Raymond Avenue, Suite 320
Pasadena, CA 91103
Telephone: 626-578-1175
Email: richard@rgnlaw.com

Michael N. Burt, *pro hac vice*
LAW OFFICE OF MICHAEL BURT PC
1000 Brannan Street Suite 400
San Francisco, California 94103
Telephone: 415-522-1508
Email: MB@michaelburtlaw.com

Staci Visser (UT #14358)
BROWN, BRADSHAW & MOFFAT
422 N 300 W
Salt Lake City, UT 84103
Telephone: 801-532-5297
Email: staci@brownbradshaw.com

Attorneys for Tyler James Robinson

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 REPLY IN SUPPORT OF HIS APPLICATION FOR CERTIFICATE FOR ATTENDANCE OF OUT-OF-STATE WITNESS (Utah Code § 77-21-3)** Case No. 251403576 Honorable Tony F. Graf, Jr.

I.

INTRODUCTION

Defendant, Tyler James Robinson, by and through undersigned counsel, hereby files his reply in support of, and response to the State's opposition to, his application to this Court for the issuance of a Certificate of Requesting State for Attendance of Witness Located Outside Utah.

Contrary to the State's assertions, Mr. Twiggs[1] is a material witness under any definition of that term. The State's expansive view of the "reliable hearsay" concept essentially eviscerates any role for the Court in the preliminary hearing and purports to make the Court even more of a rubber stamp than a grand jury is commonly viewed to be. This is an assertion of prosecutorial power and judicial powerlessness that cannot be consistent with the separation of powers.

Mr. Robinson does have, at a preliminary hearing, constitutional rights which include the right to compulsory process and the right to confront and cross-examine witnesses whose testimony is presented by the State. The State's interpretation of the Utah Supreme Court's decision in *State v. Lopez*, 2020 UT 61 improperly expands state law specifically designed to protect alleged victim-witnesses to non-victim witnesses, in violation of Mr. Robinson's Sixth Amendment rights and his rights under article I, section 12 of the Utah Constitution.

The Court should grant the Certification requested by Mr. Robinson.

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[1] It is important to note that Mr. Robinson's motion was filed privately along with the appropriate motion to classify. That was done in order to protect Mr. Twiggs' privacy rights, which in Mr. Robinson's view are fundamental, at least until he testifies in open court. The State's decision to publicly file its opposition and identify Mr. Twiggs by name may or may not have been based upon Mr. Twiggs' consent but the State's opposition does not say so either way, and it effectively moots that aspect of Mr. Robinson's motion to classify which is still pending before this Court. It very well may be, again, that the State is using *public* court filings as a stalking horse for its extrajudicial messaging to the public, a supposed loophole in Utah Rule of Professional Conduct 3.6 which it asserted only days ago allows it to make extrajudicial statements about matters it has unilaterally decided should be part of the public record.

II.

MR. TWIGGS IS A MATERIAL WITNESS UNDER ANY LEGAL OR COMMON DEFINITION OF THAT TERM

The State acknowledges, as it must, that Mr. Twiggs, whose wide-ranging sworn "testimony" was obtained and preserved through a video-recorded interview with the State's attorneys and which it intends to offer this Court as evidence admissible under Rule 1102, has evidence that supports counts 1, 2, 3, 4, and 5. (Opp'n at 2) While the State asserts that "most of these statements were through electronic messages" and "a handwritten note," the State's 1102 statement (a transcript of which is already lodged with this Court) contains far more. If the State were only interested in using Mr. Twiggs to authenticate alleged electronic communications between Mr. Robinson and Mr. Twiggs, the State's 1102 statement would be a far different animal. While it is largely a recording of Mr. McBride testifying to facts with which Mr. Twiggs expresses agreement (a form of examination that would certainly be deemed improperly "leading" if attempted with one's own witness in open court[2]), the 1102 statement covers many topics that go far beyond the authentication of electronic communications and physical evidence. It opens the door to many topics which the State clearly thinks are important for this Court (and apparently the public) to receive evidence about, yet the State seeks to foreclose any further examination on those topics beyond the questions it asked.

Given the State's assertion that Mr. Robinson made inculpatory statements to Mr. Twiggs, statements that the State believes establish sufficient evidence to seek the death penalty against Mr. Robsinson, it is difficult to imagine a witness whose testimony could be more material. The State's other anticipated witnesses at the preliminary hearing are all local law

[2] *See* Utah Rule of Evidence 611(c).

enforcement officers, none of whom had any communications with Mr. Robinson on September 10 or 11 of 2025.

The State's materiality argument, if carried to its logical conclusion, is that no single fact witness in any criminal investigation could be deemed "material" unless, *in the State's view*, that witness has reliable and admissible evidence that completely exonerates a defendant. Of course, if that were the case, no charges would have been filed in the first place.

In the State's view, a preliminary hearing is not an adversarial proceeding. It is far more akin to a grand jury proceeding where the State presents only the facts it chooses to present and while the fact finder may have questions about those facts, the defendant has no right to present any facts and no right to examine the State's witnesses so that the factfinder can make determinations about how much weight to give the testimony of the State's witnesses. While Rule 1102 does imbue certain statements offered at the prelim with a gloss of reliability, that does not turn this Court into a rubber stamp for the State. *See State v. Clark*, 2001 UT 9, ¶ 10. Reliability and probative value are viewed on a continuum. Where on the reliability and probative value continuum Mr. Twiggs' recorded testimony falls, *in the Court's eyes*, may only be judged through the adversarial process.

III.

THE UTAH SUPREME COURT DECISION IN *STATE V. LOPEZ* SUPPORTS MR. ROBINSON'S SIXTH AMENDMENT ARGUMENT WHERE, AS HERE, THE WITNESS AT ISSUE IS NOT A VICTIM AND THERE IS NOTHING UNREASONABLE ABOUT THE REQUESTED SUBPOENA

The State's opposition to Mr. Robinson's certification request unsurprisingly attempts to take refuge in the Utah Supreme Court's 2020 decision in *State v. Lopez*, 2020 UT 61. While the State acknowledges, as its attorneys ethically must do, that the Supreme Court *did not hold* there that there is no constitutional right to compulsory process at a preliminary hearing, the State fails

to address what the Supreme Court said about that in a context in which the witness at issue is *not* an alleged victim. This distinction is critical to understanding and applying the Supreme Court's guidance in *Lopez* where the witness at issue was a victim of the charged sex offenses. Here, Mr. Twiggs is not a victim and the State does not in its opposition even suggest that he is. A close reading of *Lopez* is that the only limitation on a defendant's compulsory process right under the Utah Constitution where the proposed witness is not a victim is the "reasonableness" criteria set forth in Rule 14(a)(2) of the Utah Rules of Criminal Procedure. *State v. Lopez*, 2020 UT 61, ¶¶ 34-42. The limitations imposed by the Victim's Rights Amendments to the Utah Constitution are wholly inapplicable here.

There is nothing unreasonable about the proposed subpoena. Mr. Twiggs is a material witness whose wide-ranging recorded statement concerning admissions allegedly made by Mr. Robinson is being used by the State to establish probable cause for a capital offense.

IV.

CONCLUSION

The Court should issue the proposed certification forthwith.

RESPECTFULLY SUBMITTED this 18th day of June, 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 18th day of June 2026, which served all attorneys of record.

/s/ Staci Visser
Staci Visser