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FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, *Plaintiff,* *v.* TYLER JAMES ROBINSON, *Defendant.*	**Memorandum in Support of Preliminary Hearing Bindover** Case No. 251403576 Judge Tony F. Graf, Jr.

After taking evidence at the five-day preliminary hearing (July 6-10, 2026), this Court—acting as magistrate—asked the parties to brief the matter.

INTRODUCTION

This is likely as straight-forward a bindover decision as this Court will ever see. After admitting to several friends, including his roommate and romantic partner, that he assassinated Charlie Kirk at Utah Valley University (UVU) on September 10, 2025, in front of approximately 3000 eyewitnesses, Defendant surrendered to law enforcement for that crime. These admissions, along with others, establish probable cause to support most of the elements of the charges. DNA testing, surveillance video, and eyewitness testimony buttress those elements and demonstrate

probable cause to support the remaining elements. The Court should bind Defendant for trial over on all counts.

FACTS

The shooting

On September 10, 2025, Charlie Kirk and his organization, Turning Point USA (TPUSA), were holding an event at Utah Valley University in Orem, Utah. Tr. Day 1 at 36:6–37:3; 65:4–19. Several thousand people attended and filled the amphitheater located near the center of campus and west of the Losee Building. *Id.* at 68:1-12, 33:15–34:10, 35:10-20, 39:14–43:20; State's Exs. 1, 2, 6, 7, 8. After the event began, Mr. Kirk seated himself under a canopy tent positioned on the west side of the amphitheater below the Hall of Flags. Tr. Day 1 at 66:10-19; State's Exs. 1, 2, 6, 7, 8.

At approximately 12:23:28 p.m., an attendee standing directly in front of Mr. Kirk was questioning him when a gunshot rang out and a bullet struck the left side of Mr. Kirk's neck, killing him. Tr. Day 1 at 66:20–67:17; 69:10; Tr. Day 2 at 10-11; State's Exs. 7, 8, 11 at 1. The bullet's trajectory was front to back, slightly left to right, and downward. State's Ex. 11 at 1, 4.

The investigation

The medical examiner concluded the manner of death "to be homicide." State's Ex. 11 at 1. A forensic examination conducted by the ATF revealed that the bullet that killed Mr. Kirk was a .30 caliber class round. State's Ex. 32 at 2. It created a "complex entrance gunshot wound" and fragmented in Mr. Kirk's neck. State's Ex. 11 at 1, 3.

The bullet, or at least parts of it, "sequentially perforated the anterior left side of [Mr. Kirk's] neck, strap muscles of the left side of the neck, [and the] left common carotid and left internal and external jugular veins." State's Ex. 11 st 3. The bullet also "obliterate[ed] the left side of the C2-7 vertebrae and transect[ed] the cervical spinal cord." *Id.* The medical examiner observed that "[a] significant portion of [Mr. Kirk's] cervical spinal cord [was] traumatically

absent." *Id.* at 3-4. Mr. Kirk suffered other severe injuries including "bilateral apical and posterior intercostal hemorrhages, pulmonary apical hemorrhages/hematomas … and multiple disruptions of the thyroid, cricoid, and tracheal cartilages." *Id.* at 3. The medical examiner also observed hemorrhaging around Mr. Kirk's heart ("hemopericardium"), both of his lungs ("left and right hemothorax"), and in the subarachnoid space around "the cerebellar vermis and the parietal regions" of Mr. Kirk's brain. *Id.* at 3-4.

When the bullet struck Mr. Kirk, Officer Christopher Bagley of the UVU police was stationed on the south end of the walkway roof of the Hall of Flags above Mr. Kirk's canopy. Tr. Day 1 at 19:10; 20:19-25; 36:6–38:4; State's Ex. 1. Based on his experience with firearms, Bagley believed that the bullet came from a rifle fired from a position east of Mr. Kirk's canopy. Tr. Day 1 at 66:20–67:17; 69:10, 70:21–71:19.

Recognizing that (1) the Losee Building was east of the amphitheater, and (2) someone on the roof of that building would have a direct line of sight to where Mr. Kirk had been seated, Officer Bagley quickly made his way to that roof. *Id.* at 71:20–72:17. There, he observed a screwdriver about 10 or 15 feet from the guardrail. *Id.* 72:19–73:4; State's Ex. 3.1. He also observed disturbances in the gravel at the southwest edge of the roof that were consistent with a "sniper pad," meaning a place where a person was "laying in a prone position" with a "line of sight" to where Mr. Kirk had been seated. Tr. Day 1 at 87:12–88:15; State's Exs. 3.2, 4, 5.

Officer Bagley reviewed surveillance video of the Losee Building rooftop. Tr. Day 1 at 94:13–95:17, 97:21–98:1. That video shows a male running towards the southwest edge of the roof and then dropping down, crawling, and getting into a prone position at that edge of the roof. *Id.* at 95:2-10, 97:23–98:1; Tr. Day 2 at 35:16–36:7; State's Exs. 12.1, 12.4. The video further shows that at approximately 12:23:28 p.m.—the moment of the gunshot—that individual quickly stood up, ran northeast across the roof carrying a long, skinny, black object, and eventually dropped himself down from the northeast side of the roof to the ground. Tr. Day 1 at 95:9-10,

97:23–98:1; 123:20-22, 124:23–125:17; Tr. Day 2 at 36:8-23; State's Exs. 12.1, 12.4. That individual crossed Campus Drive and entered a wooded area on the north side of Campus Drive. Tr. Day 2 at 37:6-12; State's Exs. 12.1, 12.4.

In that wooded area, police later recovered a rifle wrapped in a black towel. Tr. Day 2 at 126:7–127:16. The rifle was an operable Mauser model 98 30-06 Springfield caliber rifle. State's Ex. 32 at 1. A telescopic sight was mounted on the rifle. *Id.*; State's Exs. 10.3; 32 at 1.

Investigators reviewed hundreds of hours of UVU surveillance video to track forwards and backwards the person that was seen on the Losee Building roof at the time of the shooting. Tr. Day 1 at 208:14–210:5. After Defendant turned himself in, investigators also reviewed the footage searching for someone matching Defendant's description and driving his car. *Id.* at 210:6–212:12. Those efforts revealed that a vehicle registered to Defendant arrived on campus the morning of the shooting. *Id.* at 210:8–212; Tr. Day 2 at 17:3-4, 20:2-7, 28:19–29:19; State's Ex. 12.1, 12.4. The surveillance video also shows an individual believed to be Defendant walking around the UVU campus that morning, going to the railing on the roof of the Losee Building, and then leaving campus. Tr. Day 2 at 29:13–32:7; State's Exs. 12.1, 12.4. Investigators ultimately determined that Defendant visited UVU campus at least four times on September 10-11, 2025—twice before the shooting, a third time just before noon on the 10th, and a fourth time in the early hours of September 11, 2026. Tr. Day 1 at 209:2–210:7; 212:13-19; Tr. Day 2 at 27:3-20.

The surveillance video shows that when Defendant returned to campus just before noon on the 10th, he was wearing different clothing, but his shoes were the same. Tr. Day 2 at 33:7–35:7; State's Exs. 12.1, 12.4. Defendant was also walking with a limp. Tr. Day 2 at 33:7–34:12. Defendant's roommate and romantic partner, Lance Twiggs, confirmed that still images taken from that portion of the surveillance video, and that show front views of the individual's face, "definitely" did "look like [Defendant]." State's Ex. 16 at 29:10–30:20; State's Exs. 12.1, 12.4,

16.4. Given their extensive review of the surveillance footage, investigators concluded that Defendant was the individual who was walking with a limp up to the stairs that accessed the Losee Building roof shortly before noon, who was on that rooftop at the time of the shooting, and who dropped off that rooftop and made his way to the wooded area where the rifle was found. Tr. Day 2 at 26:3–37:8, 51:4–11, 86:5-24.

At approximately 12:36 a.m. on September 11, 2025, Defendant returned to the intersection of Campus Drive and 800 South on the UVU campus. Tr. Day 2 at 37:13–39:23; State's Exs. 12.1, 12.4. He attempted to turn south on Campus Drive but was turned away by an officer stationed at the intersection. Tr. Day 2 at 37:13–39:23; State's Exs. 12.1, 12.4. Campus Drive leads to the wooded area where the rifle was found in the bushes. State's Ex. 35; Tr. Day 1 at 62:8-23; Tr. Day 2 at 37:6-12; 86:5-22.

DNA testing of the screwdriver recovered from the Losee Building roof and the towel wrapped around the rifle provided "very strong support" for including Defendant as having contributed to the DNA samples recovered from those items. State's Ex. 31 at 3. DNA testing on the recovered rifle's trigger, trigger guard, grips, protected underside of the receiver, and other parts, as well as the fired cartridge casing in the rifle, supported including Defendant as having contributed to the DNA samples recovered from those items and areas. State's Ex. 30 at 2-7.

On the evening of September 11, 2025, Defendant surrendered himself to law enforcement in connection with Mr. Kirk's assassination. Tr. Day 1 at 210:6-16; Tr. Day 2 at 62:23–63:4, 77:23–79:6; State's Ex. 15. Defendant also admitted to Mr. Twiggs and other friends that he had shot Mr. Kirk. State's Exs. 16.1 at 1-2, 16.2 at 1-2, 16.3.

The State charged Defendant with:

- Count 1, aggravated murder, a capital felony, in violation of Utah Code § 76-5-202;
- Count 2, felony discharge of a firearm causing serious bodily injury, a first-degree felony in violation of Utah Code § 76-11-210(2) and (3)(c);

- Counts 3 and 4, obstruction of justice, a second-degree felony, in violation of Utah Code § 76-8-302(2) for concealing or removing the firearm he used to shoot Mr. Kirk and for destroying, concealing, or removing the clothing he wore during the shooting;
- Counts 5 and 6, tampering with a witness, a third-degree felony, in violation of Utah Code § 76-8-508, for directing Mr. Twiggs to delete their text messages and to refuse to speak to law enforcement; and
- Count 7, violent offense committed in the presence of a child, in violation of Utah Code § 76-3-203.10(2), enhanced to a class A misdemeanor through the victim targeting enhancement in Utah Code § 76-3-203.14(3)(a)(ii).

Information, Dkt. 1 at 1-3. The State also notified Defendant that counts 1 and 2 were subject to sentencing enhancements for committing a violent offense in the presence of a child, in violation of Utah Code § 76-3-203.9, and victim targeting, in violation of Utah Code § 76-3-203.14.[1]

ARGUMENT

As magistrate, this Court has but one duty left—to determine whether the evidence admitted at the preliminary hearing supports "probable cause to believe that the crime[s] charged" in the Information have "been committed and that [Defendant] has committed" them. Utah R. Crim. P. 7B; Utah Const. art. I, § 12 (stating that the "function" of the preliminary hearing "is limited to determining whether probable cause exists"). This isn't a close case. The State presented more than enough evidence to support a probable cause finding on all seven charges.

[1] Additional facts are included in the relevant argument subsections below.

I.

At this stage, the State must demonstrate only probable cause—a reasonable belief that a crime was committed and that Defendant committed it. In determining whether the State has surmounted this "low bar," this Court must view all the evidence, and all reasonable inferences therefrom, in the light most favorable to the State.

The purpose of a preliminary hearing is not to determine the guilt or innocence of an accused. Rather, its purpose is limited to "ferreting out … groundless and improvident prosecutions," thereby sparing defendants in those circumstances "from the substantial degradation and expense incident to a modern criminal trial." *State v. Anderson*, 612 P.2d 778, 783-84 (Utah 1980).[2] The preliminary hearing is a constitutional safeguard against "unwarranted" prosecutions where "'it manifestly appears, either that no such crime was committed, or that the suspicion entertained of the prisoner [is] wholly groundless.'" *Id*. at 783-84 & n.20 (quoting W. Blackstone, Commentaries on the Laws of England, vol. 4, at p.296 (7th ed.)).

Under the Utah Constitution, the line separating a valid prosecution from a groundless prosecution is probable cause. Utah Const. art. I, § 12 (limiting constitutional function of preliminary hearing to probable cause determination). If the evidence supports "probable cause to believe that the crime charged has been committed and that the defendant has committed it, the magistrate *must order that the defendant be bound over for trial*." Utah R. Crim. P. 7B(b) (emphasis added). This is a "low bar." *State v. Lopez*, 2020 UT 61, ¶ 48, 474 P.3d 949. It does not require proof beyond a reasonable doubt as required for a criminal conviction, and it "is lower, even, than a preponderance of the evidence standard applicable to civil cases." *State v. Clark*, 2001 UT 9, 11, 20 P.3d 300 (cleaned up). Thus, a probable cause showing does "not [even require the prosecution] to eliminate alternative inferences … in favor of the defense." *Lopez*, 2020 UT

[2] *Anderson* was superseded on other grounds by constitutional amendment as stated in *State v. Lopez*, 2020 UT 61, ¶ 44, 474 P.3d 949.

61, at ¶ 46. All that is required is "sufficient evidence to support a reasonable belief" that defendant committed the charged crimes. *State v. Labrum*, 2025 UT 12, ¶ 52, 568 P.3d 1075.

A criminal prosecution is groundless *only if* the evidence presented at the preliminary hearing fails to establish probable cause—i.e., if the evidence is "wholly lacking and incapable" of supporting "a reasonable belief that the defendant committed the charged crime." *State v. Virgin*, 2006 UT 29, ¶¶ 17, 24, 7 P.3d 787; *accord* Utah R. Crim. P. 7B(c). Stated another way, the magistrate may "decline bindover *only where* the facts presented by the prosecution provide no more than a basis for speculation." *Lopez*, 2020 UT 61, at ¶ 48 (cleaned up) (emphasis added).

Importantly, the magistrate at a preliminary hearing "'must view all evidence in the light most favorable to the prosecution and draw all reasonable inferences in favor of the prosecution.'" *Id*. at ¶ 48 (quoting *State v. Schmidt*, 2015 UT 65, ¶ 4, 356 P.3d 1204). The magistrate has only a limited role in judging the credibility of the evidence at a preliminary hearing. *Virgin*, 2006 UT 29, at ¶ 24. A magistrate may disregard or discount the prosecution's evidence *only if* it is "so contradictory, inconsistent, or unbelievable that it is unreasonable to base belief of an element of [the charged offense] on that evidence." *Id*. at ¶ 25. Otherwise, a magistrate "may not accept the defendant's version of the facts over the legitimate inferences that can be drawn from the prosecution's evidence." *People v. Hall*, 999 P.2d 207, 221 (Colo. 2000); *accord Virgin*, 2006 UT 61, at ¶ 25 (holding that magistrate "may not prefer one piece of credible evidence over a conflicting piece of credible evidence in making [the] bindover determination").

II.

The State introduced ample evidence to demonstrate probable cause to believe that Defendant committed all seven crimes charged in the Information.

In this case, the State presented "more than enough evidence so as to sail safely over the bindover standard" on all seven charged offenses. *Labrum*, 2025 UT 12, at ¶ 58.

A. The evidence establishes probable cause that Defendant committed Count 1, aggravated murder.

To establish that Defendant committed aggravated murder, the State must prove that:

1) Defendant;

2) "intentionally or knowingly";

3) "caused the death of [Charlie Kirk]";

4) under circumstances in which Defendant "knowingly created a great risk of death to another individual other than [Charlie Kirk and Defendant]."

Utah Code § 76-5-202(2)(a)(iii).

The evidence readily establishes probable cause to support each element.

Element 3 (death). The evidence establishes, and no one disputes, that Mr. Kirk was killed on September 10, 2025, by a gunshot wound to the neck. State's Exs. 7, 8, 11.

Element 1 (identity). The evidence further demonstrates a reasonable belief that Defendant was the shooter. Defendant repeatedly admitted that he shot Mr. Kirk using Defendant's grandfather's rifle, including:

- "I had the opportunity to take out Charlie Kirk, and I took it." State's Ex. 16.3;
- "I am [the one who did it], I'm sorry." State's Ex. 16.1 at 2.
- "Why did I do it? … I had enough of his hatred. some hate can't be negotiated out." State's Ex. 16.1 at 3.
- "if I am able to grab my rifle unseen, I will have left no evidence. going to attempt to retrieve it again, hopefully they have moved on. I haven't seen anything in the news about them finding it." State's Ex. 16.1 at 3.
- "[I have been planning this] a bit over a week I believe." State's Ex. 16.1 at 3.
- "im wishing I had circled back and grabbed it as soon as I got to my vehicle, because it sounds like the police couldn't get in for a long while because of the traffic." State's Ex. 16.1 at 5.
- "remember how I was engraving bullets? the fuckin messages are mostly a big meme. if I see 'notices bulge uwu' on fox news I might have a stroke." State's Ex. 16.1 at 8.

- "judging from today I'd say grandpas gun does just fine idk." State's Ex. 16.1 at 9.
- "I'm going to turn myself in willingly." State's Ex. 16.1 at 15.
- "Hey guys, I have bad news for you all. it was me at UVU yesterday. im sorry for all of this. im surrendering through a sheriff friend in a few moments." State's Ex. 16.2 at 1.
- "it was [me]. … look at the pictures from the surveillance footage. it was me. … im serious." State's Ex. 16.2 at 2.

Defendant also surrendered to law enforcement in connection with the shooting. Tr. Day 1 at 210:6-16; Tr. Day 2 at 62:23–63:4, 66:7- 77:23–79:6; State's Ex. 15. DNA testing supports the conclusion that Defendant contributed to the DNA samples recovered from the fired cartridge, the trigger and other parts of the rifle, the towel used to conceal the rifle, and the screwdriver recovered from the Losee Building's rooftop. State's Exs. 30 at 2-7; 31 at 3. Defendant's car was at the UVU campus on September 10-11, 2025. Tr. Day 1 at 210:8–212; Tr. Day 2 at 17:3-4, 20:2-7, 28:19–29:19; State's Exs. 12.1, 12.4. And not only did Defendant admit that he was the one depicted in the published screen captures from the UVU surveillance footage, State's Ex. 16.2 at 1, Defendant's roommate and romantic partner confirmed that the individual in those screen captures showing the individuals full face "definitely" looked like Defendant. State's Ex. 16 at 29:10–30:30; State's Exs. 12.1, 12.4, 16.4.

Element 2 (mental state). The State's evidence also demonstrates a reasonable belief that Defendant intentionally or knowingly caused Mr. Kirk's death. A person acts intentionally "with respect to … a result of his conduct, when it is his conscious objective or desire to … cause the result." Utah Code § 76-2-103(1). A person acts knowingly "with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result." *Id.* § 76-2-103(2).

A criminal defendant's mental state is "rarely susceptible of direct proof." *State v. Jennings*, 2025 UT 1, ¶ 39, 565 P.3d 523 (cleaned up). But this case is exceptional because, as shown

above, Defendant repeatedly admitted that he intended to cause Mr. Kirk's death by shooting him with a high-powered rifle. He wrote to Mr. Twiggs that he "had the opportunity to take out Charlie Kirk, and [he] took it." State's Ex. 16.3. He also texted Mr. Twiggs that he had been planning the killing for "a bit over a week," State's Ex. 16.1 at 3, and that he killed Mr. Kirk because Defendant had "had enough of his hatred," *id.* at 3. Defendant also engraved the bullets that he loaded into his 30-06 caliber rifle. State's Exs. 19, 20, 21, 22. He also took some target practice before the shooting and engraved one cartridge found at his home with the words, "test shot." Tr. Day 4 at 8-21; State's Exs. 23, 25.

The circumstances of the shooting itself, when properly viewed in a light most favorable to the State, further demonstrate that Defendant intended to cause Mr. Kirk's death by shooting him. Defendant first surveilled the campus. Tr. Day 1 at 212:13-19; Tr. Day 2 at 27:3-20, 28:23–33:6; State's Exs. 12.1, 12.4. Then he changed his clothes. Tr. Day 2 at 33:9–24; State's Exs. 12.1, 12.4, and returned to campus with a rifle, Tr. Day 2 at 33:20–34:12; State's Exs. 12.1, 12.4. Defendant used a screwdriver to assemble the rifle on the Losee Building roof. Tr. Day 1 at 72:19–73:4; State's Ex. 3.1. With that rifle loaded with four engraved cartridges, Defendant then crawled to a sniper perch on the edge of that roof, took aim at Mr. Kirk, and pulled the trigger, Tr. Day 1 at 87:12–88:15, 95:9-10, 97:23–98:1, 123:20-22, 124:23–125:17; Tr. Day 2 at 35:12–36:23; Tr. Day 4 at 102:17–103:20; 106:5–108:14; State's Exs. 3.2, 4, 5, 12.1, 12.4, 19, 20, 21, 22, 32 at 1. The evidence overwhelmingly demonstrates that Defendant acted with the required mental state.

Element 4, (aggravating circumstance—knowingly creating a great risk of death to another). The State's evidence, properly viewed, also demonstrates a reasonable belief that Defendant knowingly created a great risk of death to another other than himself and Mr. Kirk. Defendant fired a high-powered rifle towards a crowd of thousands. Defendant created a great risk

of death to everyone who was in his line of fire, or who was near Mr. Kirk when Defendant pulled the trigger.

1. Defendant knowingly created a great risk of death to everyone in his line of fire.

The Utah Supreme Court analyzed the "great risk of death" aggravator in *State v. Sosa-Hurtado*, 2019 UT 65, ¶¶ 23-52, 455 P.3d 63. Reviewing its prior caselaw, the court recognized that this aggravating circumstance "is met where another person is placed 'within the "zone of danger" created by' the conduct that caused the victim's death." *Id.* ¶ 26 (quoting *State v. Johnson*, 740 P.2d 1264, 1266-67 (Utah 1987)). Some factors to consider in identifying this zone include:

> '(1) the temporal … relationship between any actions the defendant may have taken towards the third party and the acts constituting the murder;
>
> (2) the spatial relationship … between the third party, the murder victim, and the defendant at the time of the acts constituting the murder; and
>
> (3) whether and to what extent the third party was actually threatened by the assailant, either by direct threats or by indirect means such as the risk of stray or ricocheting bullets.'

Id. at ¶ 39 (quoting *State v. Sosa-Hurtado*, 2018 UT App 35, ¶ 31, 424 P.3d 948).

Applying these factors here, the State's evidence establishes a reasonable belief that Defendant knowingly put several people within the zone of danger he created when he shot Mr. Kirk. Most significantly, everyone in Defendant's line of fire was within that zone of danger. The person questioning Mr. Kirk when Defendant pulled the trigger was within Defendant's line of fire. The questioner was just a few feet in front of Mr. Kirk and directly between the sniper perch on the Losee Building roof and Mr. Kirk. Tr. Day 1 at 71:20-23, 80:21–82:3; State's Exs. 7, 8. Thus, the "spatial relationship" between the questioner and Mr. Kirk put the questioner within the zone of danger. *See Sosa-Hurtado*, 2019 UT 65, ¶ 39 (cleaned up). The questioner's proximity and placement relative to Mr. Kirk also created an "indirect" threat to the questioner

given "the risk of stray or ricocheting bullets." *Id.* (cleaned up). These same factors apply to the several others who were directly behind the questioner, and thus also within Defendant's line of fire. *Id.*

The evidence also demonstrates that Defendant was not certain to hit only his target, Mr. Kirk. Defendant loaded his rifle with four cartridges, creating a reasonable inference that he anticipated that his first shot might miss. Tr. Day 4 at 102:17–103:20; State's Ex. 32 at 1. Moreover, evidence of Defendant's target practice before the shooting shows that he did not always hit the bullseye. State's Ex. 25. Indeed, some of his shots completely missed the paper target. *See id.* And even if Defendant had previously calibrated his rifle and scope, he had disassembled the rifle to transport it to the roof undetected and then reassembled it on the rooftop using the screwdriver he left there. State's Exs. 3.1, 31 at 3. One reasonable inference from these facts is that the reassembled rifle would not be as accurate as it previously was when it was sighted-in while in one piece.

A defendant who shoots another knowingly creates a great risk of death to anyone within his line of fire. *See*, *e.g.*, *Commonwealth v. Watson*, 565 A.2d 132, 140 (Pa. 1989). The Pennsylvania Supreme Court had no trouble finding that the defendant in *Watson* "'knowingly created a grave risk of death to another person in addition to the victim of the offense,'" *id.* at 140, when, while shooting his ex-girlfriend, her child was in a closet and "the closet and [the child] were in [Watson's] line of fire," *id.* at 141; *see also Silvia v. State*, 60 So.3d 959, 971-73 (Fla. 2011) (holding that defendant "knowingly created a great risk of death" to people who were in his "line of fire"); *Commonwealth v. Reid*, 626 A.2d 118, 123 (Pa. 1993) ("The risk to others was established by evidence that twelve to fourteen others were in the line of fire when [the victim] was killed."); *Commonwealth v. Buck*, 709 A.2d 892, 894, 897-98 (Pa. 1998) (holding that evidence that defendant fired a single fatal shot at his victim while another person was in the line of fire could support a finding that the defendant knowingly created a grave risk of death to another);

State v. Wood, 881 P.2d 1158 (Ariz. 1994) (en banc) (recognizing that while "[t]he 'grave risk of death to another' factor applies only if the defendant's murderous act itself put other people in a zone of danger," the Arizona Supreme Court had "never, however, limited this factor to cases in which another person was directly in the line of fire") (cleaned up).

The evidence demonstrates that Defendant here knowingly created a great risk of death to the questioner and all others who were within his line of fire. The distance from Defendant's sniper perch to the tent where Mr. Kirk was sitting was approximately 410 feet with a 68-foot vertical drop. Tr. Day 4 at 91:12–92:10. Four hundred and ten feet is less than the 415-foot distance from home plate to the center-field fence at Coors Field in Denver and, at approximately 137 yards, is just longer than an American football field, including its two endzones.[3] From Defendant's perch, he could see the questioner and those directly behind him, and presumably even hear the questioner because speakers had been set up to amplify the discussion. State's Exs. 1, 2, 3, 3.2, 4, 5, 7, 8; Tr. Day 1 at 87:12–88:15. Defendant could certainly see these individuals through his rifle's scope. State's Exs. 10.3; 32 at 1. Defendant was therefore "aware of the existing circumstances," including all the people in his line of fire, when he fired the fatal shot. Utah Code § 76-2-103(2) (a person acts knowingly "with respect to … circumstances surrounding his conduct when he is aware of … the existing circumstances").

2. Defendant also knowingly created a great risk of death to everyone near Mr. Kirk when Defendant pulled the trigger.

Defendant also knowingly created a great risk of death to all others who were near Mr. Kirk, but not within the line of fire, when Defendant fired the fatal shot. *See Sosa-Hurtado*, 2019 UT 65, ¶¶ 47-52. *Sosa-Hurtado* establishes that firing a gun at one person can create a great risk of death to others who are near, even if they are not within the line of fire. *See id.*

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[3] *See* https://www.mlb.com/news/featured/coors-field-guide-capacity-seating-chart-parking-and-more (last visited July 23, 2026).

Sosa-Hurtado involved a murder in a small smoke shop where a father and son worked. *Id.* ¶ 4. After Sosa-Hurtado repeatedly refused the father's demands to move his car because it was endangering customers, the son intervened and again asked Sosa-Hurtado to move his car. *Id.* Sosa-Hurtado responded by punching the son and starting a fist fight that Sosa-Hurtado ultimately lost. *Id.* ¶¶ 4, 49 & n.12. Sosa-Hurtado left, but later returned with an assault rifle and fired one shot at the father, who was standing behind the counter two to four feet away from his son. *Id.* ¶¶ 5-7. The first shot missed the father and hit a glass case, sending glass and wood into the father's leg and causing him to fall to the floor. *Id.* ¶ 7. Sosa-Hurtado then turned towards the son and fired a second shot that hit the son's hand and caused him to also fall to the floor behind the counter. *Id.* ¶ 8. The father began to get up and move towards his son when, "with his back to [father], Sosa-Hurtado leaned over the counter, positioned the rifle only inches from [son's] chest, and shot him twice more," killing him. *Id.* "The smoke shop consisted of a single room … approximately fifteen feet wide and twenty-four feet long." *Id.* ¶ 6.

After a jury convicted Sosa-Hurtado of aggravated murder, he appealed and challenged the sufficiency of the evidence to support the charged aggravating factor "that he placed another person at 'great risk of death' when he killed his victim." *Id.* ¶ 1 (quoting Utah Code § 76-5-202(1)(c)). The Utah Supreme Court had no trouble rejecting this argument and affirming the aggravated-murder conviction.

The court found that "two separate acts" each "created a great risk of death to [the father]." *Id.* ¶ 47. The first was the first shot directed towards him. *Id.* But "[t]he second was the *initial* shot aimed at [the son]—a shot that hit [the son] in the hand when [the father] was only a few feet away." *Id.* (emphasis added). The court concluded that "[a] reasonable jury could conclude that *both* of these acts created a great risk of death to [the father]." *Id.* (emphasis added). Thus, firing at one person while another is "only a few feet away" knowingly creates a great risk of death for that other person. *See id.*

Here, in addition to those in Defendant's line of fire, several others were in close proximity to Mr. Kirk when Defendant shot him dead. State's Exs. 7, 8, 9. At least two individuals were standing under the tent where Mr. Kirk was seated, and others were near the front, sides, and back of the tent. *Id.* As in *Sosa-Hurtado*, these individuals' proximity to Mr. Kirk when Defendant fired put them in the zone of danger. *See* 2019 UT 65, ¶ 47. Their "proximity and spatial relationship" together with "indirect" threats to them arising from "the risk of stray or ricocheting bullets" put them in the zone of danger, especially where Defendant used a high-powered rifle to kill Mr. Kirk. *See id.* at ¶ 39.

Other courts agree that the risk of stray, ricocheting, and pass-through bullets creates a zone of danger for anyone close to a shooting victim. For example, in *Commonwealth v. Rios*, 684 A.2d 1025, 1036–37 (Pa. 1996), the Pennsylvania Supreme Court found that firing the "fatal bullet at the victim while the victim lay on the floor of an enclosed bedroom," while another "was on the floor close to the victim" and others "were on a bed nearby" created a great risk of death to everyone in that bedroom. The *Rios* court recognized that "an errant bullet could have struck and killed" anyone in the bedroom. *Id.* That "risk of death was not reduced because [Rios] fired only a single bullet." *Id.* (citing *Commonwealth v. Ly,* 599 A.2d 613, 622 (Pa. 1991)). "It is not necessary that the endangered bystander be directly in the line of fire for a grave risk of death to occur." *Id.* at 1036.

Indeed, the Pennsylvania Supreme Court has repeatedly confirmed the conclusion that a zone of danger encompasses everyone near a shooting victim. *See*, *e.g.*, *Commonwealth v. Watson*, 565 A.2d 132, 140 (Pa. 1989). "In a day and age where accidental victims of shootings are prosaic, a jury can infer that an individual is 'knowingly' endangering a person when that individual uses a gun in any area where he knows that the others could be." *Id.*; *see also Commonwealth v. Smith*, 540 A.2d 246, 260 (Pa. 1988) (jury properly found that defendant created a "grave risk of death" where others were in danger of being struck by an errant, ricochet or "pass

through" bullet); *Commonwealth v. Wright*, 961 A.2d 119, 146 (Pa. 2008) ("A grave risk can be found where there is potential for an errant, ricochet or 'pass through' bullet; it is unnecessary the endangered bystander be in the direct line of fire in order to be in grave risk of death.").

As with those in the line of fire, Defendant also acted knowingly in creating a grave risk of death for all those close to Mr. Kirk when Defendant pulled the trigger. Again, Defendant could see, especially through his rifle's scope, those who were in front of and to the sides of Mr. Kirk. State's Exs. 1, 2, 3, 3.2, 4, 5, 7, 8, 10.3, 32 at 1; Tr. Day 1 at 87:12–88:15. It is also reasonable to infer that Defendant could see people in the area behind Mr. Kirk's tent. *Id.* In fact, earlier that morning Defendant had been down to the amphitheater area, interacted with some TPUSA representatives, and would have seen firsthand the staging area behind Mr. Kirk's tent. Tr. Day 2 at 29:21–30:5. Defendant was thus "aware of the existing circumstances," that is, that several people were near Mr. Kirk when Defendant shot him. Utah Code § 76-2-103(2) (a person acts knowingly "with respect to … circumstances surrounding his conduct when he is aware of … the existing circumstances").

And again, *Defendant himself* anticipated that he might miss Mr. Kirk. He loaded his grandpa's rifle with not just one engraved bullet, but with four engraved bullets. Tr. Day 4 at 102:17–103:20; State's Ex. 32 at 1. Had he been certain of his aim, he would have no reason to load it with more than one bullet. But Defendant was well aware that he might miss his target, thereby putting others in danger—both those in the line of fire and others nearby. And he thus came prepared with four bullets in the event his aim was not true—a real possibility as his own target practice had confirmed to him.

The State therefore presented ample evidence of the aggravating circumstance. Because the evidence demonstrates probable cause for each element of Count 1, aggravated murder, the Court "must" bind Defendant over for trial on that count. *See* Utah R. Crim. P. 7B(b).

B. The evidence establishes probable cause that Defendant committed Count 2, felony discharge of a firearm causing serious bodily injury.

To establish that Defendant committed felony discharge of a firearm causing serious bodily injury, the State must show that:

1) Defendant;

2) "discharge[d] a firearm in the direction of an individual";

3) "knowing or having reason to believe that an individual may be endangered by the discharge of the firearm"; and

4) "cause[d] serious bodily injury to [the] individual."

Utah Code § 76-11-210 (2)(a) and (3)(c).

The same evidence that establishes probable cause that Defendant committed aggravated murder also establishes probable cause that he committed each element of felony discharge causing serious bodily injury. As explained, the evidence establishes probable cause that Defendant fired a high-powered rifle in Mr. Kirk's direction. As also explained, the evidence establishes probable cause that Defendant knew that firing a high-powered rifle at Mr. Kirk would endanger Mr. Kirk. Indeed, Defendant admitted that he intended to kill Mr. Kirk. State's Exs. 16.1 at 3, 16.3.

The evidence also establishes probable cause that Defendant inflicted serious bodily injury on Mr. Kirk. "'Serious bodily injury' means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death." Utah Code § 76-1-101.5(17). Defendant did not merely create a "substantial risk of death" when he shot Mr. Kirk, *see id.*, he in fact caused Mr. Kirk's death, State's Ex. 11 at 1. The evidence therefore establishes probable cause that Defendant committed Count 2.

C. The evidence establishes probable cause that Defendant committed Counts 3 and 4, obstruction of justice, by concealing or removing both the firearm he used to shoot Mr. Kirk and the clothing he wore during the shooting.

To establish that Defendant committed obstruction of justice, the State must show that:

> 1) Defendant;
>
> 2) "with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction or punishment of any person regarding conduct that constitutes a criminal offense";
>
> 3) "destroy[ed], conceal[ed] or remove[d] an item or other thing."

Utah Code § 76-8-306(2)(c).

The evidence establishes probable cause to support each element. Defendant admitted to Mr. Twiggs that he had concealed his rifle by leaving "it in a bush where [he] changed outfits." State's Ex. 16.1 at 2-7. UVU surveillance video also shows Defendant moving both towards and away from the wooded area north of campus where investigators found his rifle. Tr. Day 2 at 31:18-24, 37:1-12; State's Exs. 12.1, 12.4.

As for his clothing, consistent with Defendant's admission to Mr. Twiggs, the surveillance footage showed Defendant returning to campus just before the shooting wearing different clothing than he wore during his previous campus visits. Tr. Day 2 at 33:11-21; State's Exs. 12.1, 12.4. Defendant also admitted to Michael Mitchell that he "discarded" the clothes "that he wore during the incident." State's Ex. 14 at 3.

All this evidence establishes a reasonable belief that Defendant both removed and concealed the rifle he used to shoot Mr. Kirk, and destroyed, concealed, or removed the clothing he wore when he fired the fatal shot. *See* Utah Code § 76-8-306(2)(c). This evidence therefore establishes probable cause to support these elements of Count 3 (pertaining to the rifle), and Count 4 (pertaining to the clothing).

The evidence also establishes probable cause that Defendant intended to hinder, delay, or prevent a criminal investigation. Defendant texted Mr. Twiggs that he "had hoped to keep this

secret till [he] died of old age," State's Ex. 16.1 at 2, and that if he were "able to grab [his] rifle unseen, [he] will have left no evidence," *id.* at 3. In the note Defendant left for Mr. Twiggs before driving to UVU, Defendant predicted that by the time Mr. Twiggs read the note, Defendant would be "likely dead, or facing a lengthy prison sentence." State's Ex. 16.3. These admissions demonstrate that Defendant knew a criminal investigation for murder would follow his shooting of Mr. Kirk, and that he intended to obstruct that investigation. At the very least, that is a reasonable inference from Defendant's admissions. The evidence therefore establishes probable cause that Defendant committed both counts of obstruction of justice.

D. The evidence establishes probable cause that Defendant committed Counts 5 and 6, tampering with a witness, by directing Mr. Twiggs to delete incriminating text messages and not to talk to police.

To establish that Defendant committed tampering with a witness, the State must prove that:

> 1) Defendant; either
>
> 2a) "believe[d] that an official proceeding or investigation [was] pending or about to be instituted; or
>
> 2b) "intend[ed] to prevent an official proceeding or investigation"; and
>
> 3) attempted "to induce or otherwise cause another individual to: … withhold testimony, information, a document, or an item."

Utah Code § 76-8-508(2)(a) & (2)(b)(ii).

The evidence establishes probable cause to support each element. After Defendant made several incriminating admissions during a text exchange with Mr. Twiggs, some of which are described above, Defendant directed Mr. Twiggs to "delete this exchange," State's Ex. 16.1 at 9, and not to speak to police, *id.* at 17. Defendant's demand that Mr. Twiggs delete the messages establishes probable cause for the first and third elements of Count 5. Defendant's demand that Mr. Twiggs not speak to police establishes probable cause for those same elements of Count 6.

The evidence also establishes probable cause for the second element of both counts—that Defendant either believed an investigation was pending or intended to prevent an investigation. As explained, in the note Defendant left for Mr. Twiggs before driving to UVU, Defendant predicted that by the time Mr. Twiggs read the note, Defendant would be "likely dead, or facing a lengthy prison sentence." State's Ex. 16.3. As also explained, Defendant texted Mr. Twiggs that he "had hoped to keep this secret till [he] died of old age," State's Ex. 16.1 at 2, and that if he is "able to grab [his] rifle unseen, [he] will have left no evidence," *id.* at 3. When Mr. Twiggs stated that he thought police had "caught the person," Defendant clarified that police had "grabbed some crazy old dude," and "interrogated someone in similar clothing." *Id.* at 2. Defendant also explained that police activity, including an "officer with a k9," was preventing him from retrieving his rifle. *Id.* at 2, 3, 4-5. It was after these additional admissions that Defendant directed Mr. Twiggs to delete their texts and not to speak to police. *Id.* at 9, 17. The evidence therefore establishes probable cause that Defendant knew that an investigation was underway when he gave those directions to Mr. Twiggs. The evidence therefore establishes probable cause that Defendant committed both counts of tampering with a witness.

E. The evidence establishes probable cause that Defendant committed Count 7, violent offense committed in the presence of a child.

To establish that Defendant committed a violent offense in the presence of a child as a class A misdemeanor, the State must prove that:

> 1) Defendant;
>
> 2) "commit[ted] criminal homicide, as defined in Section 76-5-201, against a third party";
>
> 3) "in the physical presence of a child younger than 14 years old";
>
> 4) Defendant "ha[d] knowledge that the child [was] present and may [have seen or heard]" the offense; and
>
> 5) that Defendant targeted Mr. Kirk because of Defendant's perception of Mr. Kirk's political expression.

Utah Code §§ 76-3-203.10; 76-3-203.14(1)(k) & (2)(a).

The evidence establishes probable cause to support each element. As explained, the evidence establishes probable cause to support the first two elements—that Defendant committed criminal homicide. The evidence also establishes probable cause that a child younger than 14 years old was physically present when Defendant killed Mr. Kirk. A video from a mother in the crowd shows that she was there with her children, at least one of which was under 14. State's Ex. 6. Another video shot from behind Mr. Kirk shows two women in the crowd holding infants. State's Ex. 8 at 0:28-0:31. The two women are standing next to each other and can be seen just to the right (south) of the speaker pole that is visible in the right-center of the frame. *See id.* The evidence thus establishes probable cause for the third element.

The evidence also establishes probable cause for the fourth element—that Defendant knew that a child younger than 14 was present. Defendant could see the entire crowd from his rooftop perch. State's Exs. 1, 2, 3, 3.2, 4. Defendant also made at least two visits to campus before the shooting where he walked around the amphitheater area and treated himself to lunch at the Sorensen Center, which borders the amphitheater on the northeast. Tr. Day 1 at 212:13-19; Tr. Day 2 at 29:21–30:5, 31:1-17; State's Exs. 1, 2, 3. One reasonable inference from this evidence is that while walking around this area Defendant would have seen many of the attendees who were gathering for the event, including children who were present. The evidence therefore demonstrates probable cause for each element of Count 7, violent offense committed in the presence of a child.

The evidence also establishes probable cause to support the State's charging Count 7 as an enhanced class A misdemeanor, because Defendant targeted Mr. Kirk based on Defendant's perception of Mr. Kirk's political expression. The victim targeting penalty enhancement enhances the crime of committing a violent offense in the presence of a child from a class B mis-

demeanor to a class A misdemeanor. *See* Utah Code § 76-3-203.14(3)(a)(ii). To establish this enhancement, the State must prove that Defendant:

> 1) "intentionally select[ed]" his victim;
>
> 2) "because of the defendant's belief or perception regarding the victim's personal attribute."

See id. § 76-3-203.14(2)(a). A victim's personal attribute includes the victim's "political expression." *Id.* § 76-3-203.14(1)(k).

The evidence establishes probable cause to support each element of the enhancement. As explained, Defendant admitted to Mr. Twiggs that he targeted Mr. Kirk because Defendant had "had enough of [Mr. Kirk's] hatred. [S]ome hate can't be negotiated out." State's Ex. 16.1 at 3. He also wrote to Mr. Twiggs that he wished they "could have lived in a world where this did not feel necessary." State's Ex. 16.3. Defendant in his message did not identify what he believed to be the specific "hatred" from Mr. Kirk that he needed to stop by killing him. But that is not necessary to prove intent beyond a reasonable doubt, much less to establish probable cause—"'specific intent may be proved by circumstantial, as well as direct, evidence ….'" *State v. Jennings*, 2025 UT 1, ¶ 39, 565 P.2d 523 (quoting *State v. Minousis*, 228 P. 574, 576 (1924)). And the circumstantial evidence that Defendant targeted Mr. Kirk because of Defendant's belief or perception of Mr. Kirk's political beliefs is overwhelming.

The defense would have the Court believe that Mr. Kirk was only a religious evangelist. He was much more. He was the founder, chief executive officer, and board president of TPUSA, whose express purpose is "to *empower informed civic and cultural engagement grounded in American exceptionalism* and a positive spirit of action." State's Ex. 5.1 at ¶ 1 (emphasis added). As TPUSA's leader, Mr. Kirk helped "citizens" develop the "knowledge, skills, values, and motivation, so they can *meaningfully engage in their communities to restore traditional American values like patriotism*, respect for life, liberty, *family*, and fiscal responsibility." State's Ex. 5.1

at 1 (emphasis added). To that end, Mr. Kirk would hold events like the one at UVU on September 10, 2025, to engage "in *civil* debate and discussion on traditional family values; … America's founding principles; [and] political doctrines" and "*to persuade attendees to follow a mindset rooted in … politically-conservative values*." *Id.* at 2 (emphasis added). Those "traditional American values," in Mr. Kirk's view, are synonymous with "the classical orthodox-Christian position on *marriage, family, gender, and sexual being*." *Id*. at ¶ 2 (emphasis added). Mr. Kirk believed that "God determines whether a person is male or female—and that *experimentation with sexual/gender identity* is sinful and, therefore, *should not be* engaged in, accepted in culture, *or allowed under the law*" and that "heterosexuality inside the confines of a marriage is the only virtuous pattern for sexuality." *Id*. at ¶ 2(1)-(2) (emphasis added). The evidence thus establishes that Mr. Kirk represented not only a religious movement, but also a political movement against gay marriage and the accommodation and acceptance of transgenderism, homosexuality, and sexual experimentation.

Defendant's lifestyle, on the other hand, stood in sharp contrast to Mr. Kirk's religious and political views. The evidence establishes that Defendant was in a homosexual relationship with Lance Twiggs. State's Ex. 16 (Tr. at 3). The evidence also establishes that at or near the time of Mr. Kirk's assassination, Mr. Twiggs was exploring transitioning from a man to a woman. State's Ex. 16 (Tr. at 19). And Defendant's texts to Mr. Twiggs demonstrate that he loved and cared deeply for Mr. Twiggs. In other words, Defendant's beliefs and practices pertaining to gender and sexuality were directly contrary to Mr. Kirk's political and religious beliefs and practices.

Against that backdrop, the evidence establishes that Defendant engraved the cartridges in his rifle with several political messages. Tr. Day 4 at 107:13–108:12. The spent 30-06 cartridge was inscribed with the words, "notices bulge OWO"—a furry meme and reference to male genitalia. State's Ex. 19; State's Ex. 16 (Tr. at 20). One of the unspent cartridges found in Defend-

ant's grandfather's rifle contained an inscription referencing homosexuality—"If you read this, you are gay." State's Ex. 22. And another unspent cartridge contained the overt political reference, "Hey fascist, catch." State's Ex. 20.

This evidence supports a strong and eminently reasonable inference that Defendant targeted Mr. Kirk because of Defendant's "belief or perception regarding [Mr. Kirk's]" "political expression." *See* Utah Code § 76-3-203.14(1)(k) and (2)(a). The evidence therefore establishes probable cause to support Count 7 as an enhanced class A misdemeanor.

III.

The Court does not need to bind over on the sentencing enhancements that do not increase the level of offense; but even if the Court did, the evidence demonstrates probable cause to support those enhancements.

As explained, in the charging Information, the State notified Defendant that sentencing enhancements for (1) committing a violent offense in the presence of a child, and (2) targeting the victim because of his political expression, could apply to both Counts 1 and 2. Dkt. 1 at 2. The Court need not bind over on these sentencing enhancements because, unlike the victim-targeting enhancement for Count 7, they do not increase the level of the offense and therefore are not elements of the underlying offense. Rather, they affect only the potential sentence Defendant can receive if convicted of the underlying crime. At a preliminary hearing, the State need only establish probable cause to support each element of the charged offenses, not sentencing enhancements. But even if the State were required to demonstrate probable cause to support the sentencing enhancements, it did so, as already demonstrated.

A. Sentencing enhancements that do not affect the level of offense are not elements of a crime and are therefore irrelevant at a preliminary hearing.

Preliminary hearings are concerned only with the elements of charged crimes, not sentencing enhancements. "[T]o prevail at a preliminary hearing, the prosecution must … produce 'believable evidence of *all the elements of the crime charged*.'" *State v. Clark*, 2001 UT 9, ¶ 15, 20 P.3d 300 (quoting *State v. Emmett*, 839 P.2d 781, 784 (Utah 1992) (emphasis added); *see also*

State v. Ramirez, 2012 UT 59, ¶ 9, 289 P.3d 444 (all that is required at a preliminary hearing "is reasonably believable evidence—as opposed to speculation—sufficient to sustain *each element of the crime(s) in question*.") (emphasis added).

Sentencing enhancements that do not increase the level of an offense are not elements of a crime. The Utah Supreme Court has expressly recognized that sentencing enhancements need not be formally charged in an information. *See State v. Schreuder*, 712 P.2d 264, 272-73 (Utah 1985), *superseded by statute on other grounds as stated in State v. Smith*, 2014 UT 33, ¶ 14 n.14, ¶ 24 n.31, 344 P.3d 573). In his murder prosecution for shooting his grandfather, Schreuder argued that the State was required to allege in "the 'charging' portion of the information" the sentencing enhancement for his use of a firearm. *Id.* at 273. But the Utah Supreme Court rejected that assertion. *See id.* The court explained that "[w]hile such a technical requirement might be appropriate with respect to the *elements of a crime* of which the State seeks to convict a defendant, we see no purpose to be served in applying it to an element of *punishment*." *Id.* (first emphasis added).

"The punishment for a crime is not and has never been considered a part of the pleading charging a crime." *State v. Angus*, 581 P.2d 992, 995 (Utah 1978). "After conviction, the penalty to be imposed is an entirely separate proposition to be determined by the court as a matter of law on the basis of the penalty prescribed by the statutes." *Id.* An information need only *notify* a defendant of a sentencing enhancement that the State intends to rely on if the defendant is convicted. *See id.* The prosecution is not required to *charge* a sentencing enhancement. *See id.* Accordingly, as the *Angus* court explained, an information that charged a crime that could involve a firearm enhancement would be sufficient "if it alleges either: (1) that the defendant is being charged under the enhancement statute, or (2) that a firearm was used in the commission of the offense charged in the information." *Id.*

The Utah Court of Appeals subsequently recognized in *State v. Martinez*, 896 P.2d 38, 41 (Utah App. 1995), that *Angus* "explicitly rejected" any argument that a sentencing enhancement must be specifically "proven at the preliminary hearing." Rather, to satisfy due process, the charging information need only provide a defendant with notice that the State intends to rely on an enhancement at sentencing. *See id.* ("[T]he State need only allege the circumstance necessary to invoke the enhancement statute in order to provide adequate due process."). As the *Martinez* court held, "because the enhancement is a punishment, it is most reasonable to view these requirements as coming into play at the sentencing phase of the prosecution." *Id.* Accordingly, the State was not required to prove, nor is the Court required to bind Defendant over, on the two sentencing enhancements as they relate to Counts 1 and 2. *See Schreuder*, 712 P.2d at 272-73; *Angus*, 581 P.2d at 995; *Martinez*, 896 P.2d at 41.

B. Regardless, the evidence demonstrates probable cause to support both enhancements.

Even if the State were required to demonstrate probable cause as to both sentencing enhancements, it did so. As demonstrated above, the evidence established probable cause to satisfy both the victim-targeting and the violent-offense-in-the-presence-of-a-child enhancements. *See* Point II(E).

CONCLUSION

For these reasons, the Court should bind Defendant over for trial on all counts as charged in the Information.

Dated July 28, 2026.

JEFFREY S. GRAY
Utah County Attorney

/s/ Jeffrey S. Gray

CERTIFICATE OF SERVICE

I certify that on July 28, 2026, I filed the foregoing MEMORANDUM IN SUPPORT OF PRELIMINARY HEARING BINDOVER through the Court's electronic filing system, which served a copy on all counsel of record.

/s/ Christopher D. Ballard