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FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

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

INTRODUCTION

Defendant does not challenge the substance of the evidence demonstrating that he was the person who crawled to the sniper's perch on the Losee Building rooftop, fired the fatal shot that killed Mr. Charlie Kirk, hid the rifle in a wooded area, got rid of some of the clothing he was wearing, and told his roommate to delete their texts about the shooting. Rather, he merely asserts the repeatedly rejected claim that the overwhelming evidence establishing some of these facts could not be introduced as reliable hearsay at this preliminary hearing. Defendant therefore raises no valid challenge to the evidence supporting Count 1 as at least murder; Count 2, felony discharge of a firearm causing serious bodily injury; Counts 3 and 4, obstruction of justice; or Count 5, tampering with a witness.

Defendant's challenge to the aggravating circumstance for Count 1—that he knowingly created a great risk of death to another—is based on his misrepresentation of both the evidentiary standard at a preliminary hearing and the test for establishing the aggravating circumstance. As for the evidentiary standard, Defendant erroneously asserts that a magistrate engages in speculation when he chooses between a reasonable inference that supports guilt and a competing innocent inference. The Utah Supreme Court has rejected that logic, a fact the Utah Court of Appeals has repeatedly recognized. Defendant's counsel ignore this controlling caselaw and have therefore violated their ethical duty of candor to the Court. Contrary to Defendant's argument, these cases establish that when a factfinder chooses between reasonable inferences at a trial, it is properly fulfilling its factfinding role, not speculating. Thus, even at a trial, a factfinder is free to choose between reasonable inferences.

This is a preliminary hearing where this Court does not sit as a factfinder. Instead, this Court is duty-bound to draw all reasonable inferences in the State's favor. It is therefore even more apparent that in this proceeding there is nothing speculative about viewing all reasonable inferences in the State's favor.

As for the great-risk-of-death aggravating factor, Defendant erroneously maintains that the test for establishing this factor depends on the presence of some minimum number of factors or circumstances. In fact, the Utah Supreme Court has expressly disavowed such an analysis. Instead, the governing test is the one the statute provides—whether a defendant knowingly created a great risk of death to another. The evidence here easily establishes at least probable cause to believe that Defendant did so when he intentionally fired his grandfather's high-powered rifle towards a crowd of thousands, several of whom were in the line of fire between him and Mr. Kirk, while others were in close proximity to Mr. Kirk. Indeed, the evidence is more than sufficient to support a finding beyond a reasonable doubt.

Defendant's challenges to Counts 6 (witness tampering for directing Mr. Twiggs not to talk to police) and 7 (violent offense in a child's presence), likewise improperly draw inferences in Defendant's favor, not the State's, while also ignoring relevant evidence. Defendant's challenge to the victim targeting enhancement on Count 7 similarly ignores the evidence.

Finally, Defendant also misrepresents the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), in arguing that the sentencing enhancements for committing a violent offense in a child's presence and targeting his victim must be proven now. Neither enhancement implicates *Apprendi* because neither increases the maximum statutorily mandated punishment.

ARGUMENT

I.

Defendant misrepresents the governing evidentiary standard because he relies on an erroneous distinction between inferences and speculation that the Utah Supreme Court has rejected.

Defendant misrepresents the evidentiary standard that governs this preliminary hearing because he relies on an erroneous distinction between inferences and speculation from *State v. Cristobal*, 2010 UT App 228, 238 P.3d 1096, that the Utah Supreme Court soundly rejected over a decade ago in *State v. Ashcraft*, 2015 UT 5, ¶¶ 21-24, 349 P.3d 664. The supreme court explained in *Ashcraft* that when a jury chooses between reasonable inferences to reach its verdict, it does not engage in speculation. *See id.* This is even more true at a preliminary hearing where the magistrate must draw all reasonable inferences in the State's favor.

Because he ignores the caselaw that rejects the logic on which his argument depends, Defendant erroneously labels as "speculation" many of the State's arguments about the evidence and the reasonable inferences this Court must draw from that evidence. Def.'s Mem. at 11, 16, 19-22, 29-30, 32-33. For example, although the evidence demonstrates (1) that a clear line of sight existed between Defendant's sniper perch and Mr. Kirk's seat, and (2) that others were near Mr. Kirk when Defendant fired the fatal shot, Defendant asserts that this Court would be

engaging in "speculation" to infer from this evidence that Defendant "actually observed security personnel" or others standing near or directly between him and Mr. Kirk. *Id.* at 20. Similarly, although the evidence shows that Defendant loaded his rifle with four cartridges and had previously done some target practice where he seldom hit the bullseye and sometimes missed the target completely, Defendant asserts that it would be speculative to infer that he knew he could miss his target. *Id.*

Defendant relies on *State v. Cristobal*, 2010 UT App 228, ¶ 16, 238 P.3d 1096, to justify his argument. *Id.* at 11. Quoting *Cristobal*, Defendant asserts that "when 'evidence supports more than one possible conclusion, none more likely than the other, the choice of one possibility over another can be no more than speculation.'" *Id.* (quoting *Cristobal*, 2010 UT App 228, ¶ 16). But the Utah Supreme Court rejected *Cristobal's* logic in *Ashcraft*, 2015 UT 5, ¶¶ 2-10, a fact that the Utah Court of Appeals has expressly and repeatedly recognized. These cases make clear that choosing between competing reasonable inferences is not speculation, but rather exactly what a jury must do.

The defendant in *Ashcraft* argued that the existence of innocent inferences for his presence in a known drug area late at night with a large amount of cash rendered the evidence insufficient to support a jury verdict that he constructively possessed drugs. *See id.* Consistent with the court of appeals' reasoning in *Cristobal*, Ashcraft asserted that his jury engaged in speculation when it credited the inculpatory inferences from the evidence over the exculpatory ones. *See id.* at ¶¶ 23-24.

The supreme court rejected Ashcraft's argument, explaining that "the fact that [a court could] identify an 'equally' plausible alternative inference is not nearly enough to set [a] verdict aside.'" *Id.* ¶ 25. This is because "the law is well established that the existence of one of more alternate reasonable hypotheses does not necessarily prevent the jury from concluding that a defendant is guilty beyond a reasonable doubt." *State v. Cardona-Gueton*, 2012 UT App 336, ¶ 11,

291 P.3d 847. Rather, the jury's "exclusive province" is "to weigh the competing theories of the case in light of the evidence presented and the reasonable inferences drawn therefrom, and to conclude which one they believe." *Id.*

The supreme court's holding in *Ashcraft* therefore necessarily overruled the very logic from *Cristobal* upon which Defendant now relies. The court of appeals has so recognized: "[A]s our supreme court [in *Ashcraft*] has since clarified, 'the fact that we can identify an 'equally' plausible alternative inference is not nearly enough to set [a] verdict aside.'" *State v. Wall*, 2020 UT App 36, ¶ 54, 460 P.3d 1058 (citing *Ashcraft*, 2015 UT 5, ¶ 25) (cleaned up). And citing *Wall*, the court of appeals has repeatedly recognized that *Ashcraft* is a complete repudiation of *Cristobal*: "Indeed, as this court's opinion in *Wall* made clear, *we no longer view Cristobal's statement regarding equally plausible inferences as valid*." *State v. Law*, 2020 UT App 74, ¶ 22, 464 P.3d 1192 (emphasis added); *State v. Oseguera-Lopez*, 2020 UT App 115, ¶ 32, 473 P.3d 196 (same). Defendant completely ignores *Ashcraft* and the court of appeals' decisions recognizing *Ashcraft's* repudiation of *Cristobal*.

If the existence of alternative inferences is not enough to justify setting aside a *jury verdict* of guilt, *see Ashcraft*, 2015 UT 5, ¶¶ 24-25, then it certainly is not enough to justify denying bindover at a preliminary hearing. A jury is free to pick and choose reasonable inferences in reaching its verdict. *See id.* A preliminary hearing magistrate is not. The "magistrate must 'view all evidence in the light most favorable to the prosecution' *and 'draw all reasonable inferences in favor of the prosecution*.'" *State v. Schmidt*, 2015 UT 65, ¶ 4, 356 P.3d 1204 (emphasis added) (quoting *State v. Maughan*, 2013 UT 37, ¶ 14, 305 P.3d 1058)). At a preliminary hearing, the prosecution is not "required to eliminate alternative inferences that could be drawn from the evidence in favor of the defense." *State v. Ramirez*, 2012 UT 59, ¶ 9, 289 P.3d 444. Thus, viewing all reasonable inferences in the State's favor at a preliminary hearing is not speculation, it is precisely what the law requires this Court to do. Defendant's argument otherwise is based on

overruled caselaw that he refuses to acknowledge and bring to this Court's attention. *See* Def.'s Mem. at 11, 20-21 (quoting and citing *Cristobal*, 2010 UT App 228, ¶ 16). This blatant omission violates counsel's duty of candor to the court. *See* Utah R. Prof'l Conduct § 3.3(a)(2) ("A lawyer must not knowingly or recklessly … fail to disclose to the tribunal legal authority in the controlling jurisdiction directly adverse to the position of the client and not disclosed by opposing counsel.").

Moreover, an inference is reasonable, as opposed to speculative, when it is based on evidence. As the Utah Supreme Court has acknowledged, "'there is no black line between inference and speculation.' But 'a reasonable inference exists when there is at least a foundation in the evidence upon which the ultimate conclusion is based, while in the case of speculation, there is no underlying evidence to support the conclusion.'" *State v. Tran*, 2024 UT 7, ¶ 35, 545 P.3d 248 (quoting *Heslop v. Bear River Mut. Ins. Co.*, 2017 UT 5, ¶ 22, 390 P.3d 314) (cleaned up). Thus, "a reasonable inference not amounting to speculation 'is a conclusion reached by considering other facts and deducing a logical consequence from them.'" *Id.* (quoting *Salt Lake City v. Carrera*, 2015 UT 73, ¶ 12, 358 P.3d 1067).

As the State's opening memorandum demonstrated, and as further detailed below, all the inferences the State has identified are grounded in the evidence. They are not speculative, *see id.*, and they support bindover on all counts.

II.

When properly construed, the evidence demonstrates a reasonable belief that Defendant knowingly created a great risk of death to another when he fired a high-powered rifle toward a crowd of thousands, including several who were in the line of fire or otherwise in close proximity to Mr. Kirk.

Just as he misrepresents the legal standard governing this preliminary hearing, Defendant also misrepresents the standard for establishing the great-risk-of-death aggravator. The existence of that aggravator does not require "a minimum set of factual circumstances which must be present," as Defendant claims. Def.'s Mem. at 5. Nor is the test "a multifactor analysis" as Defendant

also claims. *Id.* at 24. When the evidence is properly viewed under the test the Utah Supreme Court has actually endorsed, the evidence demonstrates a reasonable belief that the aggravating circumstance is satisfied here.

A. Defendant misrepresents the applicable test for determining whether he knowingly created a great risk of death to another.

In explaining and applying the great-risk-of-death aggravator in *State v. Sosa-Hurtado*, 2019 UT 65, ¶ 39 n.9, 455 P.3d 63, the Utah Supreme Court expressly stated that it was "not establishing a multifactor balancing test." *Id.* Rather, "[t]he ultimate test is the statutory test." *Id.* And that "test requires that the defendant 'knowingly create[]' the great risk of death." *Id.* (quoting Utah Code § 76-5-202(1)(c)).

The three factors that the *Sosa-Hurtado* court identified to guide the application of the statutory test are simply "a range of factors of *possible relevance* to the statutory inquiry as elaborated in our case law." *Id.* (emphasis added). In fact, the court repeated, "*we are not here establishing a multifactor test*. *Id.* (emphasis added). The "considerations" in *Sosa-Hurtado* "are non-exhaustive. And they are not the test." *Id.* Defendant ignores these portions of *Sosa-Hurtado*.

Defendant also erroneously urges this Court to construe the aggravating circumstance narrowly. Def.'s Mem. at 3-5. The legislature has already narrowed the aggravator by requiring that a defendant "*knowingly* create[] a *great* risk of death to another." Utah Code § 76-2-202(2)(a)(iii). This Court cannot apply its own narrowing gloss to that standard. Again, "[t]he ultimate test is the statutory test." *Sosa-Hurtado*, 2019 UT 65, ¶ 39 n.9.

Nor does Defendant's emphasis on language from other cases—that a defendant must create a "high probability" of death—modify the statutory standard. Def.'s Mem. at 2 (bolding and capitalization omitted). A "high probability" of death is just another way to say a "great risk" of death. Other courts' use of the term "high probability" therefore does not modify the statutory

test that *Soda-Hurtado* endorsed. *See* 2019 UT 65, ¶ 39 n.9 ("The ultimate test is the statutory test.").

It also makes no difference that the facts of other cases do not precisely fit the facts here. Defendant spills much ink detailing the facts of other cases where courts have analyzed the great-risk-of death aggravator. Def.'s Mem. at 5-11, 17-19, 23-27. But the fact that other defendants did more to endanger others (like firing multiple shots) than Defendant did here is not persuasive. The issue is not whether another court has applied the aggravator in a case with identical, or at least highly similar facts. Rather, the issue is whether the evidence, together with the reasonable inferences therefrom, when properly viewed in the light most favorable to the State, supports a reasonable belief that Defendant knowingly created a great risk of death to at least one other person. *See Sosa-Hurtado*, 2019 UT 65, ¶ 39 n.9 ("The ultimate test is the statutory test."). The State has comfortably surmounted that low bar.

This Court must also recognize that while *Sosa-Hurtado* analyzed and applied the great-risk-of-death aggravator, it did so in a different context, and therefore had a different focus. Sosa-Hurtado fired three shots at two different people. *See id.* at ¶¶ 7-8. He fired the third and fatal shot at his victim at close range and *with his back to* the other smoke-shop employee. *Id.* The issue in that case therefore concerned the scope of the relevant circumstances that a jury could consider in determining whether the aggravator was satisfied. *Id.* ¶¶ 26-27. As the court explained, the issue was whether "the relevant circumstances extend beyond the precise act that caused the death of the victim," or whether the aggravator applied "only where the murderous act itself creates a 'great risk of death to a third party,'" *id.* (citing Utah Code § 76-5-201(1)(c)).

The court ultimately held that the relevant circumstances include more than just the murderous act itself. *See id.* "[A] person may be guilty of knowingly creating a 'great risk of death to another person…' if he did so 'within a brief span of time' of the act causing the murder and

the acts together 'formed a concatenating series of events.'" *Id.* (quoting *State v. Pierre*, 572 P.2d 1338, 1355 (Utah 1977)). Unlike *Sosa-Hurtado*, this case involves only the murderous act itself.

B. The evidence supports a reasonable belief that the statutory test for the great-risk-of-death aggravator is satisfied here.

Although *Sosa-Hurtado* was focused on the scope of the relevant circumstances that can support the aggravator, its analysis is nevertheless helpful here because the supreme court recognized that firing a rifle at a murder victim while another is close by creates a great risk of death to that surviving person. *See id.* at ¶ 47. As explained in the State's opening memo, the *Sosa-Hurtado* court recognized that there were "two *separate* acts that created a great risk of death" to the surviving smoke shop employee. *Id.* (emphasis added). The first act was the shot fired towards that surviving employee that missed. *See id.* The other was a shot that hit the murder victim in the hand while the surviving employee "was only a few feet away." *Id.* Thus, contrary to Defendant's contention, Utah has in fact "adopted an interpretation of [the aggravating factor] that would permit its application where the firing of a single shot at an intended victim … hit only the intended victim." Def.'s Mem. at 19.

Here, there were several people close to Mr. Kirk when Defendant shot him dead. Most significantly, the questioner was directly between Defendant and Mr. Kirk, and within a few feet of Mr. Kirk. State's Ex. 8. There were also several people who were near the questioner. *Id.* There were also those with Mr. Kirk who were under or near his tent. State's Exs. 7 & 8. All these people were visible in the clear line of sight between Defendant's perch and Mr. Kirk's seat. Indeed, from a distance of 410 feet from Mr. Kirk, Tr. Day 4 at 91:12–92:10, basic mathematics dictates that an angular shift of even one-eighth of an inch would result in a substantial miss of the intended target (either above, below, or to the right or left, depending on the direction of the shift) placing many others in danger.

Given these facts, two of the three *Sosa-Hurtado* factors support the conclusion that the great-risk-of-death aggravator applies. As explained, the "spatial relationship" between those in the line of fire and/or close to Mr. Kirk supports application of the aggravator. *Id.* at ¶ 39 (cleaned up). Defendant also threatened these people "by indirect means" through "the risk of stray or ricocheting bullets." *Id*. (cleaned up). The other *Sosa-Hurtado* factor—the time between the murderous act and any other acts the defendant may have taken towards third parties—is simply inapplicable here. *See id.* Consideration of the *Sosa-Hurtado* factors therefore supports a reasonable belief that Defendant knowingly created a great risk of death to those who were in Defendant's line of fire, and to those who were close to Mr. Kirk but outside the line of fire, when Defendant pulled the trigger.

1. Defendant knowingly created a great risk of death to those who were within his line of fire.

Defendant attacks the State's line-of-fire argument—which he repeatedly mislabels as a "line-of-sight" argument, Def.'s Mem. at 15, 16, on the basis that Mr. Kirk was seated in an elevated position, *id.* at 16-17. Defendant asserts that "the bullet travelled *above*, not through, the crowd." *Id.* at 17. But in State's Exhibit 8, the questioner's head is visible *above* Mr. Kirk's head. State's Ex. 8. Others standing in the front rows of the crowd are positioned at approximately the same level as the questioner, but slightly farther back from Mr. Kirk. *See id.* And regardless of the precise elevation of the questioner's head and the heads of the others in the crowd in relation to Mr. Kirk's head, any difference is so negligible that it does not place these others outside the line of fire. *See* State's Exs. 7 & 8. The evidence therefore supports a reasonable belief that all these people were in the line of fire, and therefore within the zone of danger, that Defendant created when he fired his rifle. *See e.g.*, *Silvia v. State*, 60 So. 3d 959, 971-73 (Fla. 2011) (defendant "knowingly created a great risk of death' to people who were in his "line of fire");

Commonwealth v. Buck, 709 A.2d 892, 894, 897-98 (Pa. 1998) (single fatal shot at murder victim placed another individual who was in line of fire at grave risk of death).

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

Defendant also knowingly created a great risk of death to those near Mr. Kirk, although not within the line of fire. Two security personnel were directly in front of and on either side of Mr. Kirk (but still within the span of his tent). State's Ex. 8. A third security person was under the tent and just to Mr. Kirk's right. State's Ex. 7. This person had to take only a small step to reach Mr. Kirk as he fell. *Id.* Another person was operating a camera just under the tent's front edge and to Mr. Kirk's left. State's Ex. 8. Defendant had a clear line of sight to view all these people from just 410 feet away. State's Exs. 1, 2, 3, 3.2, 4, 5, 7, 8; Tr. Day 1 at 87:12–88:15; Tr. Day 4 at 91:12–92:10.

The evidence also supports a reasonable inference that Defendant knew that people were in the area behind Mr. Kirk's tent. Defendant visited the amphitheater area at least twice before the shooting. Tr. Day 1 at 212:13-19; Tr. Day 2 at 29:21–30:5, 31:1-17; State's Exs. 1, 2, 3. This evidence supports a reasonable inference that he saw the staging area behind Mr. Kirk's tent. State's Ex. 9. The fact that Defendant had a clear line of sight to Mr. Kirk's tent at the time of the shooting also supports a reasonable inference that Defendant knew people were in that staging area when he fired. State's Exs. 1, 2, 3, 3.2, 4, 5, 7, 8; Tr. Day 1 at 87:12–88:15.

Defendant argues that given the speed with which he had to acquire his target and fire once he got into position in the sniper's nest, the evidence does not support a reasonable inference that he knew that any of these people were present. Def.'s Mem. at 20-21. But this argument again ignores the controlling evidentiary standard because it asks the Court to view the inferences in Defendant's favor rather than the State's. Defendant had a clear line of sight to Mr. Kirk, the crowd, those nearest Mr. Kirk, and those in the staging area behind the tent. 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. The evidence therefore supports a reasonable inference that Defendant knew that all the above-mentioned people were near Mr. Kirk when Defendant fired his rifle. And Defendant had longer than just the "approximately 35-44 seconds" in the prone position to observe these people. Def.'s Mem. at 20. He would have also seen these people as he ran and then crawled towards his rooftop position. State's Exs. 12.1 & 12.4.

Regardless, emphasizing how hastily Defendant had to act to acquire his target and fire his rifle does not help him. It only highlights and increases the likelihood that he would miss his intended target. The speed with which Defendant had to act, coupled with evidence showing that he had to reassemble his rifle, that he loaded four cartridges in his rifle, and that in his earlier target practice he sometimes missed the target entirely, all supports the reasonable inference that Defendant knew he could miss. That inference supports a reasonable belief that he knowingly created a great risk of death to both those in his line of fire and others near Mr. Kirk. Again, "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." *Commonwealth v. Watson*, 565 A.2d 132, 140 (Pa. 1989) (emphasis added).

Common sense also dictates that firing a gun, especially a high-powered rifle, towards others puts them at great risk of death. That is precisely why gun ranges prohibit shooters from even handling a firearm when others are downrange beyond the firing line. *See, e.g.*, Provo Shooting Sports Park Range Safety Rules at 2, item # 23, available at www.provo.gov/DocumentCenter/View/1316/Firearm-Handling-Rules-PDF?bidId= (last visited August 17, 2026).

Defendant highlights cases where other courts did not find that the facts satisfied the great-risk-of-death aggravator. Def.'s Mem. at 25-27 & n.13. But again, the issue is not how closely the facts here resemble those in other cases. The issue is whether the facts here, together with the reasonable inferences therefrom, demonstrate a reasonable belief that Defendant

satisfied the statutory aggravator. *See Sosa-Hurtado*, 2019 UT 65, ¶ 39 n.9. And none of these cases resemble the scenario here.

Moreover, some of these cases support application of the aggravating circumstance in this case. For example, although the defendant in *Littlejohn v. State*, 989 P.2d 901, 912-13 (Okla. Crim. App 1998), fired only one shot in a convenience store that hit his intended victim, the court recognized that the aggravator applies when "the defendant's acts … create [a] risk of death to another which are in *close proximity*, in terms of time, *location* and intent to that act of the killing itself." *Id.* (emphasis added). There was no mention in *Littlejohn* of how close others in the store were to the person who was shot and killed. *See id.*

Similarly, although the court in *Johnson v. State*, 38 S.W.3d 52, 61 (Tenn. 2001), found that the defendant did not create a great risk of death to another when he fired at a store manager "at point-blank range," the court also noted that "no other person was within the *immediate vicinity* or *within the line of fire*," *id.* (emphasis added), as is the case here.

Finally, the court's statement in *United States v. Bin Laden*, 126 F. Supp. 2d 290, 300 n.15 (S.D. New York 2001), about a defendant who might carefully target his victim does not help Defendant here. That court posited that "[a] jury may find there to be a qualitative difference between a defendant who carefully targets an intended victim or victims *without endangering others*, and one who acts with indifference to 'additional persons.'" *Id.* (emphasis added). But Defendant here acted "with indifference" to those in his line of fire and close to Mr. Kirk because his shot endangered them, even though it ended up hitting its intended target.

C. Many of Defendant's arguments depend on ignoring some evidence and improperly viewing the evidentiary inferences in his favor.

Defendant's arguments that the evidence does not establish probable cause to satisfy the great-risk-of-death aggravator are also unpersuasive because they ignore evidence and improperly view other evidence and reasonable inferences in a light most favorable to him. Defendant's

argument that he did not have to reassemble his grandfather's rifle ignores the evidence that the rifle was in at least two pieces because he was both walking with a limp and carrying a backpack as he approached and climbed onto the roof. State's Exs. 12.1, 12.4. It also ignores the fact that Defendant left a screwdriver on the roof near the railing that he flopped over to access the sniper's perch. State's Exs. 3.1, 12.1, 12.4. Defendant omits the screwdriver on the roof from his recitation of the facts. Def.'s Mem. at 11-15. And even if Defendant could have concealed the entire rifle in his pantleg, transporting it that way supports a reasonable inference that the scope would not be in the same position that it occupied when Defendant sighted-in the rifle, assuming that he did so before the shooting.

The targets found in Defendant's apartment and the four engraved cartridges loaded in the rifle likewise support the reasonable inference that Defendant knew he might miss. Defendant's argument that the targets might be completely unrelated to the murder is undermined by their continued presence in his apartment and the discovery of a cartridge in his apartment that he had engraved with the words "test shot." State's Exs. 23, 25. And whether those targets are related to the murder or not, their presence in Defendant's apartment supports a reasonable inference that they record his shots. The targets show that he seldom hit the bullseye and sometimes missed the target altogether.

In sum, 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).

III.

Defendant's argument that he did not obstruct justice by directing his roommate to not talk to police improperly draws the inferences in his favor.

Contrary to Defendant's assertion, his direction to Mr. Twiggs to not talk to police does not unequivocally demonstrate that Defendant meant only to help Mr. Twiggs, rather than

obstruct an investigation. Def.'s Mem. at 27-29. Defendant's argument otherwise improperly draws the inferences in his favor.

Moreover, Defendant ignores that his direction to Mr. Twiggs about the police came in the same conversation in which Defendant also directed Mr. Twiggs to delete their incriminating text messages. State's Ex. 16.1 at 9, 17. The conversation also included Defendant explaining how he concealed his rifle and changed his clothing. State's Ex. 16.1 at 3-8.

Although Defendant claims to "contextualize" his statement to Mr. Twiggs, Def.'s Mem. at 29, he actually ignores the full context of his statement. "Ignoring incriminating evidence does not make it go away." *State v. MacNeill*, 2017 UT App 48, ¶ 69, 397 P.3d 626. Properly viewed, the evidence supports a reasonable inference that Defendant intended to obstruct an investigation when he instructed Mr. Twiggs not to talk to police. The evidence therefore requires binding Defendant over on Count 6, witness tampering.

IV.

The evidence supports a reasonable inference that Defendant knew that at least one child was present when he shot Mr. Kirk, and *Apprendi* does not require the State to establish this aggravating factor, or the victim-targeting sentencing enhancement, at this preliminary hearing.

A. The evidence supports a reasonable inference that Defendant knew a child was present.

Defendant's argument that there is no evidence from which this Court can infer a reasonable belief that he knew a child was present focuses on only the short time that Defendant was on the Losee Building roof. Def's Mem. at 29-30. Defendant ignores the evidence that he was in the amphitheater area at least twice on the morning of the shooting, including eating lunch at the Sorensen Center that borders the amphitheater. Tr. Day 1 at 212:13-19; Tr. Day 2 at 29:21–30:5, 31:1-17; State's Exs. 1, 2, 3. As explained, when all the evidence is considered, it supports a reasonable inference that Defendant saw the attendees that were gathering for the event, including the children who were present.

But even if the evidence was limited to just the time Defendant was on the roof, he could see the entire crowd from that vantage point. That evidence alone supports a reasonable inference that he knew at least one child was present. The evidence therefore requires binding Defendant over on Count 7, committing a violent offense in a child's presence.

B. *Apprendi* does not require the State to prove this aggravating factor, or the victim-targeting enhancement for Counts 1 and 2, at a preliminary hearing.

Defendant also misrepresents the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), in arguing that the State must establish probable cause at this preliminary hearing to support the violent-offense-in-a-child's-presence aggravating factor for Counts 1 and 2, and the victim-targeting sentencing enhancement for those same counts. Def.'s Mem. at 30-31. Contrary to Defendant's representation, *Apprendi* did not hold "that any fact which *increases the potential punishment* in a case … are elements of the offense which must be proven to a jury beyond a reasonable doubt." *Id.* at 30 (emphasis added). Rather, *Apprendi* held that "any fact that increases the penalty for a crime *beyond the prescribed statutory maximum* must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490 (emphasis added).

Neither the violent-offense-in-a-child's-presence aggravating factor, nor the victim-targeting enhancement, implicate *Apprendi* because neither increases the penalty for Counts 1 or 2 "beyond the prescribed statutory maximum." *Id.* The violent-offense aggravator requires only that "[t]he sentencing judge or the Board of Pardons and Parole shall consider as an aggravating factor in their deliberations that the defendant committed the violent criminal offense in the presence of a child." Utah Code § 76-3-203.9(2). It does not increase the statutorily imposed maximum penalty for aggravated murder beyond death, or the penalty for felony discharge of a firearm beyond five years to life in prison. *See id.*

So too for the victim targeting enhancement. Because Counts 1 and 2 charge a capital and first-degree felony respectively, the victim-targeting enhancement does not increase the level of

those offenses or the statutory maximum punishment for those crimes. *See id.* § 76-3-203.14(3)(b). Rather, like the violent-offense aggravator, the victim-targeting enhancement requires only that "the sentencing judge or the Board of Pardons and Parole shall consider the defendant's selection of the victim or property as an aggravating factor." *See id.*

Because neither the aggravating factor nor the sentencing enhancement implicate *Apprendi*, the State is not required to prove their elements at this preliminary hearing. Rather, as explained in the State's opening memorandum, the State is required to prove the victim-targeting enhancement only for Count 7, committing a violent offense in a child's presence, because the enhancement raises that crime from a class B to a class A misdemeanor and therefore increases the statutory maximum penalty. *See* State's Mem. at 22-23, 25-27.

V.

The evidence supports a reasonable inference that Defendant targeted Mr. Kirk because of his perception of Mr. Kirk's political expression.

As with several other of his arguments, Defendant again ignores critical evidence in asserting that the State has not established probable cause to support the victim-targeting enhancement as to Count 7. Most importantly, Defendant ignores that he engraved one of the cartridges in his grandfather's rifle with the overt political reference "Hey fascist, catch." State's Ex. 20. That alone is sufficient to establish a reasonable belief that Defendant targeted Mr. Kirk because of his perception of Mr. Kirk's political expression. Again, "[i]gnoring incriminating evidence does not make it go away." *MacNeill*, 2017 UT App 48, ¶ 69.

Defendant also ignores the evidence that as TPUSA's leader, Mr. Kirk's avowed purposes included promoting and debating political issues, and that his events on college campuses were intended to further political ends. State's Ex. 5.1 at 1. As explained, Mr. Kirk's goals included helping people 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." *Id.* Defendant further ignores the evidence that to

accomplish these aims, Mr. Kirk would hold events like the one at UVU to discuss "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). All this evidence, along with that discussed in the State's opening memorandum, establishes a strong inference that Defendant targeted Mr. Kirk because of Defendant's perception of Mr. Kirk's political expression. This is especially true when this evidence is considered in light of Defendant's admission that he killed Mr. Kirk because Defendant "had enough of [Mr. Kirk's] hatred." State's Ex. 16.1 at 3. The evidence therefore establishes probable cause to support Count 7 as an enhanced class A misdemeanor. And even if *Apprendi* applied to the victim-targeting enhancement as to Counts 1 and 2 (which it does not), the evidence establishes probable cause to support the sentencing enhancement.

CONCLUSION

For these reasons, and those in the State's opening memorandum, the Court should bind Defendant over for trial on all counts charged in the Information.

Dated August 18, 2026.

JEFFREY S. GRAY
Utah County Attorney

/s/ *Christopher D. Ballard*
Christopher D. Ballard
Deputy County Attorney

CERTIFICATE OF SERVICE

I certify that on August 18, 2026, I filed the foregoing REPLY 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