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FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, *Plaintiff,* *v.* TYLER JAMES ROBINSON, *Defendant.*	Objection to Defendant's Request to Remove the Death Penalty as a Sanction in the Event the Court Grants the Contempt Motion Case No. 251403576 Judge Tony F. Graf, Jr.

The State of Utah, through its attorney, Ryan McBride, submits this Objection to Defendant's oral request at the evidentiary hearing on June 12, 2026, to remove the death penalty, as a remedy should the Court find that the State was in contempt of the Court's publicity order. Defense counsel's request and argument was made for the first time at the evidentiary hearing, before any contempt finding by this Court, and notwithstanding the defense's express statement in its reply to the State's opposition that the Court should "hear from the parties as to what the appropriate remedies should be" imposed "[o]nly upon a finding that all elements [of contempt] have been proven by clear and convincing evidence." Reply at 11.

I.

By objecting to Defendant's premature request to remove the death penalty, the State does not suggest that the prosecution violated the publicity order.

By objecting to Defendant's proposed remedy, the State does not suggest that it violated this Court's publicity order or intended to violate the order. Simply put, and as demonstrated by the testimony at the evidentiary hearing, the prosecution did not engage in contemptuous behavior but diligently strove to strictly comply with the Court's order.

II.

Removing the possibility of the death penalty is not an appropriate remedy for civil contempt, or any other form of contempt.

As a remedy for civil contempt, Defendant asks the Court to dismiss the death penalty as a possible punishment should he be convicted. The Court should reject this request outright for several reasons.

First, reducing the charge of aggravated murder from a capital felony to a first-degree felony would directly infringe upon the prosecution's exclusive executive branch powers to decide whether and what charges to bring. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."); *United States v. Redondo-Lemos*, 955 F.2d 1296, 1300 (9th Cir. 1992) (holding that "judicial entanglement in the core decisions of another branch of government—especially as to those bearing directly and substantially on matters litigated in federal court—is inconsistent with the division of responsibilities assigned to each branch by the Constitution"), *overruled on other grounds by United States v. Armstrong*, 48 F.3d 1508 (9th Cir. 1995).

Second, Defendant has alleged civil contempt, not criminal contempt. But an order reducing criminal charges would constitute a criminal-contempt remedy, not a civil-contempt

remedy. As the Utah Supreme Court explained, the "distinguishing factor" between criminal and civil contempt "is whether the fine or sentence is conditional." *Von Hake v. Thomas*, 759 P.2d 1162, 1168 (Utah 1988) (adopting the analysis set forth in *Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 630-41). "[A] contempt order is criminal if the fine or sentence imposed is fixed and unconditional." *Id*. at 1168 n.5. A contempt order "is civil if the fine or imprisonment is conditional such that the contemner can obtain relief from the contempt order merely by doing some act as ordered by the court." *Id*. For example, in the injunction context (like the publicity order here), a contempt order is civil when the court's penalty is "stayed to allow the contemner an opportunity to purge his contempt by having no further [prohibited] contact." *TKS Co-Pack Manufacturing, LLC v. Wilson*, 2024 UT App 87, ¶70, 552 P.3d 258 (cleaned up) (discussing a stalking injunction). A contempt order is also civil "if the order is to pay a fine to the other party rather than to the court" to compensate the aggrieved party. *Id*. An order reducing the aggravated murder charge from a capital felony to a first-degree felony would clearly be a criminal-contempt remedy because it is fixed and unconditional.

Third, a reduction in the aggravated-murder charge from a capital felony to a first-degree felony is dramatically disproportionate to the alleged misconduct. The testimony and evidence before this Court show:

(1) the press reported that the ATF's toolmark analysis showed that the bullet jacket fragment removed from Charlie Kirk did not match the rifle recovered by police and, as a result, the State's case had been gutted;

(2) these press reports were prompted by the defense's statement in a public pleading that the ATF was "unable to identify the bullet … to the rifle" and the defense's assertion that it "may very well decide to offer the testimony of the ATF firearm analyst as exculpatory evidence," Motion to Vacate or Continue Preliminary Hearing, p. 22;

(3) the ATF toolmark analysis in fact stated that the fragment "could not be identified *or excluded*" as having been fired from the rifle and that the test was thus "*inconclusive*," Report, p.2 (emphasis added); *see also Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (holding that "test results might prove exculpatory, … [or] "might prove *inconclusive* or … incriminat[ory]").

(4) before responding to media inquiries, the prosecutors referred to this Court's publicity order and carefully considered Rule 3.6 before responding;

(5) the Court's publicity order "does not prohibit lawyers from making statements permitted by [subparagraphs (b) and (c) of] Rule 3.6," Publicity Order at 2;

(6) Rule 3.6(c) expressly allows attorneys to make "statements that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer," URPC 3.6(c);

(7) the prosecutors reasonably concluded that unless corrected, the false reporting on the ATF analysis created a "substantial undue prejudicial effect" on a fair trial because prospective jurors would be misled about what the report actually said; and

(8) the prosecution's statements to press inquiries were measured: (a) clarifying that the ATF report said the toolmark analysis was "inconclusive," and (2) reasserting the State's belief that it had evidence to prove its case to the jury.

As argued at the evidentiary hearing, the foregoing establishes that the prosecution did not violate the Court's publicity order—the statements did not create a "substantial likelihood of materially prejudicing" a fair trial. To the contrary, the statements were made, in accordance with Rule 3.6(c), to prevent the "substantial undue prejudicial effect" on a fair trial that the false media reports generated. And certainly, the prosecution *did not intend* to violate the Court's publicity order—*a necessary element to any contempt finding*. *Von Hake*, 759 P.2d at 1172 (holding that "intentionally fail[ing] or refus[ing]" to comply with a court order is a necessary element for a

finding of contempt); *accord Wilson*, 2024 UT App 87, at ¶75 (same).[1] Moreover, but for the defense's incomplete and thus misleading characterization of the ATF report in a public pleading, the prosecution would have had no need to correct false media reports.

But even *assuming for the sake of argument* that the prosecution's clarifying statements were contemptuous, a contempt order reducing the aggravated murder charge from a capital felony to a first-degree felony is grossly disproportionate to the alleged misconduct. As the evidence showed, the purpose of the prosecution's statements to the media was to clarify false reports about the toolmark analysis. And the prosecution did not suggest that the analysis revealed incriminating evidence. It simply clarified what the report said—that the analysis was "inconclusive." And the prosecution's stated belief that the evidence was sufficient to prove the case beyond a reasonable doubt was consistent with its ethical obligation to only bring charges it believes are supported by the evidence. What is more, the prosecution was careful to point out that Defendant is presumed innocent and the State has the burden to prove otherwise. These are not statements indicative of bad faith and certainly not that the prosecution had contempt for this Court. To the extent the Court finds that the prosecution could have made a better statement, it certainly is not a misstep that warrants the drastic and never-before-imposed remedy of reducing the aggravated murder charge to a first-degree felony.

Conclusion

For these reasons, the Court should reject Defendant's request to reduce his aggravated murder charge from a capital felony to a first-degree felony as a civil-contempt remedy.

[1] Defendant relies on Justice Zimmerman's dissent in *Gill v. Gill*, 718 P.2d 779, 781 (Utah 1986), for the proposition that no intent is required. That dissent, however, has not carried the day in Utah.

Dated June 17, 2026.

JEFFREY S. GRAY
Utah County Attorney

/s/ Ryan McBride
RYAN MCBRIDE
Deputy Utah County Attorney

CERTIFICATE OF SERVICE

I certify that on January 5, 2026, I filed the foregoing **Objection to Defendant's Request to Remove the Death Penalty as a Sanction in the Event the Court Grants the Contempt Motion** through the Court's electronic filing system, which served a copy on all counsel of record.

/s/ Tammy Paynter