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

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON, Defendant.	**DEFENDANT TYLER JAMES ROBINSON'S MOTION TO VACATE OR CONTINUE PRELIMINARY HEARING PENDING DISCOVERY AND TO PERMIT CONSTITUTONALLY ADEQUATE AND REASONABLE TIME FOR PREPARATION; MEMORANDUM IN SUPPORT** Case No. 251403576 Honorable Tony F. Graf, Jr.

Defendant, Tyler James Robinson, by and through his counsel of record, hereby moves this Honorable Court to vacate or continue the May 2026 preliminary hearing dates in this matter pending completion of relevant aspects of the State's discovery obligations and to permit Mr. Robinson a constitutionally adequate and reasonable time for preparation thereafter. This motion is grounded in myriad legal authority, namely, the Sixth and Eighth Amendments to the United States Constitution; Article I, sections 12 and 13 of the Utah Constitution; Utah Rule of Criminal Procedure 7B; Utah Rule of Civil Procedure 40(b); Utah Rule of Evidence 1102; and other authorities set forth in the attached memorandum of points authorities. It is also based upon the attached declarations and exhibits thereto.

INTRODUCTION

Mr. Robinson seeks to continue the preliminary hearing scheduled for May 2026 to a setting that allows him and his counsel to receive discovery necessary for preliminary hearing preparations. Under Utah Rule of Criminal Procedure 7B(a) and both the United States and Utah Constitutions, Mr. Robinson has the right at a preliminary hearing to present evidence, to call his own witnesses, and to have a meaningful opportunity to cross-examine the State's witnesses through the effective assistance of counsel. Under the circumstances that presently exist, Mr. Robinson is unable to exercise those rights in a constitutionally adequate and meaningful manner until the relevant, yet missing, discovery is: (1) provided to his counsel; *and* (2) counsel has a reasonable opportunity for defense experts to review those materials and consult with defense counsel concerning their own findings.

The following memorandum demonstrates why there is good cause for this Court to continue the preliminary hearing dates. First, Mr. Robinson summarizes the discovery received thus far and the diligent efforts being made to process the discovery by the defense. Next, Mr.

Robinson engages with the five-factor analysis described in *Layton City v. Longcrier*, 943 P.2d 655, 659 (1997), to demonstrate how each factor weighs in favor of granting a continuance.

MR. ROBINSON'S DEFENSE TEAM AND UCAO HAVE BEEN DILIGENT IN REQUESTING AND PROCESSING THE VOLUMINOUS DISCOVERY IN THIS, YET ADDITIONAL MATERIALS ARE NECESSARY FOR DEFENSE PREPARATION FOR THE PRELIMINARY HEARING

On March 12, 2026, counsel for the parties met and conferred regarding discovery issues and the evidence the State intends to present at the preliminary hearing. Based upon the State's representations at this meeting, the State intends to present discrete "buckets" of evidence through three identified law enforcement witnesses. This includes conclusory forensic DNA and ballistics reports authored by the FBI and the ATF, phone and social media data, testimony by law enforcement officials about the crime scene and search locations, and testimony by Mr. Robinson's parents and roommate. The State intends to offer a significant amount of hearsay identified in Utah Rule of Evidence 1102 for use at a preliminary hearing, namely, "scientific, laboratory, or forensic reports and records" pursuant to Rule 1102(b)(4); presumably the statements of non-testifying peace officers to the testifying peace officers pursuant to Rule 1102(b)(6); and as yet unidentified (or currently unavailable) lay witness statements pursuant to Rule 1102(b)(8). The State may also present one to three lay witnesses.

Discovery in this case is incomplete, voluminous, and the processing of it is complex. *See generally*, Addendum 1 (*Declaration of Richard G. Novak and Exhibits*) ("*Novak Decl.*"). Materials from the numerous local, state, and federal agencies identified thus far as involved in this case are filtered through the Utah State Bureau of Investigations ("SBI"). *Id*. ¶¶ 11, 17, Exs. B, C. SBI then sends materials to UCAO where they are reviewed, Bates numbered, and redacted (if appropriate) prior to being produced to the defense. *See id*. ¶ 11. Due to how materials are provided to UCAO, the defense paralegal must "devote a significant amount of time to their processing, error-checking, and organizing *before* it can be reviewed and otherwise utilized by counsel." *Id*. ¶ 18.

In total, the defense has received approximately 20,000 files, excluding digital electronic discovery provided on a hard drive during the March 12, 2026 meeting. *Id*. ¶ 15, Ex. C. Of these, "[t]he document and image files contain approximately 61,500 pages. The audio files are approximately 31 hours in total length. More than 5,000 video files contain more than 700 hours of video." *Id*. ¶ 16, Exs. C, D. The digital electronic discovery received on March 12, 2026, amounts to approximately 12 terabytes of data and over 600,000 files. *Id*. ¶ 25. The *initial* review of the digital electronic discovery is anticipated to take sixty days to complete, after which time it can be determined if the downloads are complete, or if additional time is necessary to obtain complete downloads. *Id*. ¶ 26.

The defense team has devoted, and will continue to devote, significant resources to processing discovery, including identifying materials not yet received to inform readiness for the preliminary hearing. *See id*. ¶ 19. However, the defense team is realistic and the comprehensive review required to determine what is missing will take hundreds of hours.[1]

What is known at present is that Mr. Robinson has not received the forensic case files and data necessary to investigate, through the use of qualified experts, the scientific reports the State intends to introduce at the preliminary hearing. Mr. Robinson has diligently requested the disclosure of forensic case files and data underlying laboratory reports in an effort to get these materials to defense experts. In his initial request for discovery, filed September 30, 2025, Mr.

[1] Mr. Robinson recognizes that not all of the discovery is necessary for the preliminary hearing. However, having a clear evidentiary picture such that the defense may determine what evidence should be presented on Mr. Robinson's behalf is fundamental to rendering effective assistance of counsel to Mr. Robinson. *See infra*, Part III(B).

Robinson requested the materials specific to forensic testing. *See* Doc. 61, ¶¶ 24–31 (*Formal Request for Discovery Pursuant to URCP 16 and Request for 404(b) Notice*). During the hearing held January 16, 2026, counsel for the parties discussed the status of the laboratory files and UCAO informed the defense that they too were awaiting the files. This was memorialized in a letter from defense counsel to the State on February 3, 2026, wherein Mr. Robinson's counsel also sought specific information regarding the forensic downloads of seized electronic devices.

During the meet and confer on March 12, 2026, counsel again discussed the status of the laboratory files. UCAO indicated that the ATF intended to provide their casefiles to SBI the following week but offered the caveat that this did not mean SBI would immediately provide it to UCAO. After the meeting, defense counsel also sent the UCAO an informal discovery request detailing what is missing regarding the scientific testing in this case. *See Novak Decl*., Exhibit F. As of this filing, Mr. Robinson's team have not received these materials.

BOTH UTAH LAW AND CONSTITUTIONAL PRINCIPLES ESTABLISH THAT THERE IS GOOD CAUSE TO CONTINUE THE PRELIMINARY HEARING TO ENSURE MR. ROBINSON RECEIVES ADEQUATE DISCOVERY RELATIVE TO THE ANTICIPATED PRELIMINARY HEARING EVIDENCE AND TO PROTECT MR. ROBINSON'S RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN PREPARING FOR AND AT THE PRELIMINARY HEARING.

Rule 40(b) of the Utah Rules of Civil Procedure provides that a court may grant a continuance based upon a showing of good cause. *See also* Utah R. Civ. P. 81(f) (rules of civil procedure govern "in any aspect of criminal proceedings where there is no other applicable statute, or rule" so long as it does not conflict with statutory or constitutional requirements). As recently as 2021, the Utah Supreme Court reiterated that a district court abuses its discretion "in the denial of a motion for continuance when a party 'has made timely objections, given necessary notice, and has made a reasonable effort to have the . . . date changed for good cause."

Steffensen v. Office of Prof'l Conduct, 2021 UT 1, ¶ 27, 481 P.3d 468 (quoting *Griffiths v. Hammon*, 560 P.2d 1375, 1376 (Utah 1977)).

In *Layton City v. Longcrier*, the Utah Court of Appeals identified a multi-factor test for assessing whether the denial of a motion to continue is an abuse of discretion that inform the issue here. These factors are:

> [1] whether other continuances have been requested and granted; [2] the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; [3] whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived, and [4] whether the defendant contributed to the circumstance which gives rise to the request for a continuance; . . . [and 5] whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature.

943 P.2d 655, 659 (1997) (quoting *United States v. Burton*, 584 F.2d 485 (D.C. Cir. 1978)). The five factors identified in *Longcrier*, each and in combination, compel the conclusion that there is good cause for a continuance of the preliminary hearing.

I. There Has Not Been a Prior Request to Continue the Preliminary Hearing.

This is the first setting of the preliminary examination in this capital case.

On December 11, 2025, the Court "tentatively" scheduled the preliminary hearing in this capital prosecution for the week of May 18-22, 2026, at the request of the State. In response to defense counsel's stated concerns that it was, at that time, premature to do so, the Court stated:

> I do not find there is any prejudice in setting a date for a preliminary hearing. *It is not set in stone, and it certainly can be moved*. I recognize that the parties have a lot of obligations, but I also recognize the importance of this case moving forward, and if nothing more than this is a goal for the preliminary hearing. *If it needs to be changed, the Court understands that.* That is what happens a lot in the criminal calendars and criminal dockets.
> …
> Again, this is a goal. *This is not a date that if we can't meet there is -- there is any prejudice that will be attached to a party.* In regards to May 18th, how does that tentatively look for counsel?

Doc. 454, at 50–51 (Hearing Transcript 12-11-2025) (emphases added). The setting of the preliminary hearing occurred less than 90 days after proceedings commenced.

Ms. Nester advised this Court in December 2025 that it was likely premature to set a preliminary hearing, even one set for six months later, and her warning was prescient. *Id*. at 47–48, 50. Notwithstanding the UCAO's apparent best efforts, two federal law enforcement agencies, ATF and FBI, and SBI have not been able to produce discovery in time for the May 2026 preliminary hearing to occur. Hence, the Court was also prescient in clearly stating that the date as set was "not set in stone" and that no party would be prejudiced by the setting.

This factor weighs in favor of granting the continuance.

II. The Balancing of Convenience and Inconvenience of a Continuance Weighs in Favor of Granting a Continuance.

With respect to the second factor identified in *Longcrier,* the balanced convenience and inconvenience to the litigants, witnesses, counsel and the Court, there is no material inconvenience to the litigants, witnesses, or counsel.

The testifying witnesses identified by the State are a very small number of locally-employed law enforcement officers associated with Utah Valley University (UVU) and SBI. The State identified potential lay witnesses who *may* testify but this is not yet confirmed. While the State intends to make very liberal use of its authority to present evidence through sworn statements obtained in compliance with Rule 1102(b)(8), it has not yet identified all of the lay witnesses whose statements will be offered, although it has promised to do so in the coming days. Therefore, the inconvenience, if any, of a continuance of the preliminary hearing, if Mr. Robinson were to call one or more of the Rule 1102 declarants as witnesses, is unknown but given that the majority of the lay witnesses appear to be based in Utah, it is unlikely that the continuance will present an insurmountable inconvenience. Moreover, given this Court's statement in December that the date was "not set in stone" and was being set "tentatively," there is no reason for the State to have promised any witness that the only dates on which they need to be available to testify are the week of May 18-22, 2026.

This motion to continue comes well in advance of the scheduled date, as did Mr. Robinson's notice in open court on March 13, 2026 of his intention to so move, so any logistical inconvenience to witnesses arising from a change in scheduling should be *de minimis*. Nor is there any evidence at this time that a continuance would be an inconvenience on any witnesses Mr. Robinson may call to testify at the preliminary hearing pursuant to Utah Rule of Criminal Procedure 7B(a).

While Mr. Robinson may seek to examine one or more of the forensic examiners who are employed by the federal law enforcement agencies that have taken the lead on the evaluation of forensic evidence, the ATF and the FBI, Mr. Robinson's requests of their agencies that these federal employees be made available to testify pursuant to the *Touhy* protocol are still pending and the level of cooperation in this regard that this Court and the parties can anticipate from federal authorities is presently unknown. *Novak Decl.* ¶¶ 5–7.

There is likely no inconvenience to *counsel* for either of the two parties to this action, the State is represented by six capable, experienced prosecutors. Mr. Robinson's counsel are available to conduct the preliminary hearing once the relevant evidence has been produced by the State and the defense and its experts have had a meaningful and reasonable opportunity to review it; and they will ensure that their schedules will not be a cause for unreasonable delay.

The Court has expressed concern about its own calendar. Defense counsel acknowledged this concern at the most recent hearing and suggested that the Court may wish to set aside future dates now rather than search for them later. It may have already done so.

Overall, this second factor favors granting a continuance.

III. The Request for a Continuance Is Legitimate and Not Contrived Where Mr. Robinson Has Not Received Adequate Discovery Relative to Known Preliminary Examination Evidence and Proceeding Without Adequate Discovery Will Result in the Denial of Mr. Robinson's Right to Effective Assistance of Counsel.

The third factor looks to whether the request for a continuance is legitimate or contrived. Mr. Robinson's request for continuance is legitimate for three reasons. First, Mr. Robinson has yet to receive the "appropriate discovery" described in Utah Constitution, article I, section 12 that is necessary for the State to proceed at the preliminary hearing with reliable hearsay, namely, the complete forensic files and data necessary for defense experts to review the evidence and consult with defense counsel. Second, Mr. Robinson will be denied his constitutional rights to the effective assistance of counsel in preparing for and at the preliminary hearing if defense counsel is unable to investigate the evidence upon which the State intends to rely. Finally, the appropriate discovery being requested is complex and requires more time than is presently afforded before the preliminary hearing.

A. <u>Mr. Robinson Has a Fundamental Right to a Preliminary Hearing; Allowing the State to Proceed with "Reliable Hearsay" Before the Completion of "Appropriate Discovery" Violates the Utah Constitution.</u>

"The preliminary hearing is a fundamental procedural right guaranteed by article I, section 13 of the Utah Constitution" to a defendant charged with any felony or any class A misdemeanor. *State v. Prisbrey*, 2020 UT App 172, ¶ 19, 479 P.3d 1126 (citing authority). "In Utah, the preliminary hearing is used to determine whether there is sufficient cause to believe a crime has been committed to warrant further proceedings." *State v. Zahn*, 2008 UT App 56, ¶ 3, 180 P.3d 186 (quoting *State v. Brickey*, 714 P.2d 644, 646 (Utah 1986)). At a preliminary hearing, the State must establish "a factual and legal basis for binding the defendant over for trial[.]" *Brickey*, 714 P.2d at 646. The preliminary hearing is supposed to provide a meaningful opportunity for magistrates to ferret out groundless and improvident prosecutions. *E.g., State v. Clyde*, 2019 UT App 101, ¶ 35; *State v. Jones*, 2016 UT 4, ¶ 11; *State v. Schmidt*, 2015 UT 65, ¶ 19, 356 P.3d 1204.[2]

As related to evidence and discovery in anticipation of a preliminary hearing, Utah Constitution article I, § 12 declares, "Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant *if appropriate discovery is allowed as defined by statute or rule.*" (emphasis added). In other words, the State's right to use reliable hearsay, as defined by Utah Rule of Evidence 1102, at a preliminary hearing hinges on first providing "appropriate discovery" under Utah Rule of Criminal Procedure 16.

Prior to a preliminary hearing, Utah Rule of Criminal Procedure 16 requires the prosecution to disclose "[i]n every case, all material or information listed under paragraph (a)(1) that is presently and reasonably available to the prosecutor" prior to the preliminary examination. The categories of evidence listed in paragraph (a)(1) are "the following material or information directly related to the case of which the prosecution team has knowledge and control:"

> (A) written or recorded statements of the defendant and any codefendants, and the substance of any unrecorded oral statements made by the defendant and any codefendants to law enforcement officials;
>
> (B) reports and results of any physical or mental examination, of any identification procedure, and of any scientific test or experiment;
>
> (C) physical and electronic evidence, including any warrants, warrant affidavits, books, papers, documents, photographs, and digital media recordings;

[2] *Also e.g., State v. Virgin*, 2006 UT 29, ¶ 19; *State v. Ingram*, 2006 UT App 237, ¶ 13; *Brickey*, 714 P.2d at 646; *State v. Anderson*, 612 P.2d 778, 783–84 (Utah 1980).

> (D) written or recorded statements of witnesses;
>
> (E) reports prepared by law enforcement officials and any notes that are not incorporated into such a report; and
>
> (F) evidence that must be disclosed under the United States and Utah constitutions, including all evidence favorable to the defendant that is material to guilt or punishment.

Utah R. Crim. P. 16(a)(1). Notably, the "prosecution team" includes law enforcement officers working on the case. *See State v. Shabata*, 678 P.2d 785, 788 (Utah 1984) ("Information known to police officers working on a case is charged to the prosecution since the officers are part of the prosecution team."); *State v. Knight*, 734 P.2d 913, 918 & n.5 (Utah 1987) (prosecution must go beyond their own files to determine "whether others 'involved in the prosecution or the investigation'" have responsive materials).

Here, there are materials known to the police-prosecution team that have not yet been provided.[3] While it is anticipated that discovery in this case will be ongoing throughout the duration, the defense is seeking the materials known to be "reasonably available" to the prosecution, that is, materials known to be in the possession of the law enforcement partners identified by the State. Both UCAO and Mr. Robinson continue to await a vast amount of information relevant to a review of the FBI's and the ATF's DNA analysis, including but not limited to validation studies and crucial electronic data files, the report and case file for a comparative bullet analysis and bullet lead analysis that is still in progress at the FBI, and the casefile and protocols for a comparative bullet analysis conducted by the ATF. *See Novak Decl.*, Exhibit F. In addition, as outlined in the letter, there are various other areas of forensic science

[3] Identifying what is "missing" is an amorphous task however as information continues to filter in through SBI. As such, this motion focuses on the materials known to be absent and known to be critical to preliminary hearing preparation.

discovery that are not yet complete and that must be completed so that defense counsel may decide whether to proffer any exculpatory evidence relating to these areas of forensic evidence.

A continuance is necessary both to ensure Mr. Robinson receives the discovery to which he is constitutionally and statutorily entitled and because under Utah Constitution, article I, Section 12, the providing of appropriate discovery is a precondition to the State introducing any hearsay reports. This is a legitimate reason to continue the preliminary hearing.

B. A Continuance Is Necessary to Ensure Mr. Robinson Receives His Constitutional Right to the Effective Assistance of Counsel in Preparation for and During His Preliminary Hearing.

The United States Supreme Court observed long ago that the "most critical period" of a criminal proceeding may be "from the time of ... arraignment until the beginning of ... trial, when consultation, thoroughgoing investigation and preparation [are] vitally important." *Powell v. Alabama,* 287 U.S. 45, 57 (1932). Effective assistance of counsel at the earliest stages of a criminal proceeding is therefore necessary to bulwark the defendant against constitutional deprivations that would inevitably occur without counsel's assistance. One such early, critical stage is the preliminary hearing. *See Coleman v. Alabama,* 399 U.S. 1, 9 (1970) ("Plainly the guiding hand of counsel at the preliminary hearing is essential to protect the indigent accused against an erroneous or improper prosecution.").

The Utah Supreme Court has acknowledged that a preliminary hearing is a critical stage at which the constitutional right to counsel attaches:

> A prosecutor who files a criminal information commences adversary litigation. The defendant then has a right to be informed of the charges and to be represented by counsel. *See* U.S. Const. amend. VI; [*Coleman*, 399 U.S. at 9–10] (holding that preliminary hearings are a "critical stage" of the criminal process). The defendant must be allowed to present evidence in her defense, to challenge the admissibility of the prosecution's evidence, and to cross-examine the prosecution's witnesses. She also has a right to discovery, and the prosecution must give her all the exculpatory evidence in its possession even if

> she fails to request it. *Strickler v. Greene*, 527 U.S. 263, 280-81, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (summarizing prosecutors' disclosure duties).

State v. Christiansen, 2015 UT 74, ¶ 25, 365 P.3d 1189; *also* Utah Const. art. I, § 12. The Utah Court of Appeals thereafter explained more fully:

> The examination and cross-examination of witnesses also constitutes a critical stage of the criminal process. The United States Supreme Court has stated that a preliminary hearing is a "critical stage" in the criminal process precisely because it involves the examination and cross-examination of witnesses: "[T]he lawyer's skilled examination and cross-examination of witnesses [during a preliminary hearing] may expose fatal weaknesses in the State's case . . . . [T]he skilled interrogation of witnesses by an experienced lawyer can fashion a vital impeachment tool for use in cross-examination of the State's witnesses at the trial . . . ." [*Coleman*, 399 U.S. at 9]; *see also* [*Schneckloth v. Bustamonte*, 412 U.S. 218, 239 (1973)] (The "right of cross-examination . . . is an essential safeguard to [a defendant's] right to confront the witnesses against him."). The inability of an accused to realize the advantages of effective examination and cross-examination absent a lawyer's assistance makes a preliminary hearing "a critical stage of the State's criminal process at which the accused is as much entitled to such aid of counsel as at the trial itself." [*Coleman*, 399 U.S. at 10] (cleaned up). Part of a lawyer's value is assisting the accused by making informed and experienced judgment calls about when and to what extent, if at all, to engage in examination and cross-examination of witnesses. Thus, where courts have recognized the critical nature of examination and cross-examination of witnesses at preliminary proceedings, it follows, *a fortiori*, that the examination of witnesses marks a critical stage of the trial itself.

State v. Montes, 2019 UT App 74, ¶ 38, 442 P.3d 1247.

For counsel to be able to effectively vindicate the above rights, at minimum, counsel must be provided with the evidence against his client and a reasonable opportunity to investigate and prepare for the preliminary hearing. The American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* provide that "[b]ecause counsel faces what are effectively two different trials – one regarding whether the defendant is guilty of a capital crime, and the other concerning whether the defendant should be sentenced to death – providing quality representation in capital cases requires counsel to undertake correspondingly broad investigation and preparation." *ABA Guidelines*, 31 Hofstra L. Rev. 913, 925 (Rev. ed. 2003) ("*ABA Guidelines*").[4] "With respect to the guilt/innocence phase, defense counsel must independently investigate the circumstances of the crime and all evidence – whether testimonial, forensic, or otherwise-purporting to inculpate the client. To assume the accuracy of whatever information the client may initially offer or the prosecutor may choose or be compelled to disclose is to render ineffective assistance of counsel." *Id*. at 926. This obligation "includes not only finding, interviewing, and, scrutinizing the backgrounds of potential prosecution witnesses, but also searching for any other potential witnesses who might challenge the prosecution's version of events, and subjecting all forensic evidence to rigorous independent scrutiny." *Id*. "In addition to investigating the alleged offense, counsel must also thoroughly investigate all events surrounding the arrest, particularly if the prosecution intends to introduce evidence obtained pursuant to alleged waivers by the defendant (e.g., inculpatory statements or items recovered in searches of the accused's home)." *Id*.

As the United States Supreme Court has stated, "[A] myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." *Ungar v. Sarafite,* 376 U.S. 575, 589 (1964).

The Sixth Amendment entitles a criminal defendant to more than mere legal representation; an accused has the right to the *effective* assistance of competent counsel. *Powell,*

[4] *Available at* https://scholarlycommons.law.hofstra.edu/hlr/vol31/iss4/2/. *See also Archuleta v. Galetka,* 2011 UT 73, ¶ 121, 267 P.3d 232 ("The United States Supreme Court has on multiple occasions indicated that the ABA Guidelines extant at the time of challenged attorney performance form the baseline for what constitutes reasonable investigation."); *Menzies v. Galetka*, 2006 UT 81, ¶ 90, 150 P.3d 480 ("Courts frequently rely on the professional standards established by the ABA when determining the relevant professional norms under the first prong of the *Strickland* analysis."; the ABA guidelines "represent 'well-defined norms' that provide guidance to courts").

287 U.S. at 58. In order to fulfill that Constitutional guarantee and render effective assistance of counsel, counsel must be given adequate time to prepare for each critical stage. *See id*. at 71 (inadequate case preparation can jeopardize an accused's right to effective assistance of counsel). While "the Constitution nowhere specifies any period which must intervene between the required appointment of counsel and trial, the denial of adequate time for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel." *Avery v. Alabama,* 308 U.S. 444, 446 (1940). "The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense." *Powell,* 287 U.S. at 59. Obtaining adequate time to properly prepare for representing a person facing death is essential. These fundamental Sixth Amendment principles apply to the preliminary hearing, as the Utah Supreme Court and Utah Court of Appeals explain above.

The ABA Guidelines codify the expectations of the profession concerning the obligations of counsel in capital cases. Of particular note, Guideline 10.7 states the following:

> Counsel *at every stage* have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty.
>
> …
>
> The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.
>
> The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.

ABA Guidelines, at 1015 (emphasis added).

Here, counsel have been diligent in attempting to fulfill their responsibilities as outlined by the ABA Standards and Guidelines "to which [the Supreme Court] long [has] referred as 'guides to determining what is reasonable."' *Wiggins v. Smith,* 539 U.S. 510, 524 (2003). The Guidelines upgrade the minimum standard from "quality" legal representation to "high quality" legal representation. *ABA Guidelines*, at 939 (outlining the 2003 revisions to the Guidelines). Included in the Guidelines is the requirement that the capital defendant "receive the assistance of all expert, investigative, and other ancillary professional services ... appropriate ... *at all stages of the proceedings." Id.* at 952 (emphasis added).

In *Strickland v. Washington,* (which involved three capital murder charges), the Supreme Court explained that to satisfy the requirements of the Sixth Amendment: "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. 668, 688 (1984). It is evident, given the number of decisions that have followed *Strickland* that by ''investigations" the United States Supreme Court was referencing investigation in the sense of preparation that may involve locating and interviewing witnesses, the acquisition of information, or the preparation of aspects of the case so as to demonstrate that the defense engaged in reasonable decision making. *See also Gregg v. State*, 2012 UT 32, ¶ 25, 279 P.3d 396 ("Trial counsel's failure to conduct a reasonable investigation into the underlying facts of a case constitutes deficient performance under the first *Strickland* prong.").

Capital cases are fundamentally different than any other criminal case, not only in the severity of the potential penalty but in the nature of the evidence and information which must be developed and, where appropriate, confronted and challenged by both parties. This is a legitimate reason to continue the preliminary hearing.

C. The Receipt of Discovery Is Not Enough. The Defense Must Be Permitted Sufficient Time to Consult with Necessary Experts and Determine What Evidence the Defense Intends to Challenge and Present.

As indicated above, under the ABA Guidelines, "[t]he defense lawyer's obligation includes … subjecting all forensic evidence to rigorous independent scrutiny." *ABA Guidelines,* at 926. To discharge this obligation, defense counsel must necessarily rely upon skilled experts in each of the areas of forensic evidence being offered by the state. *See id.* at 955 ("The defense must both subject the prosecution's evidence to searching scrutiny and build an affirmative case of its own. Yet investigating a homicide is uniquely complex and often involves evidence of many different types. Analyzing and interpreting such evidence is impossible without consulting experts – whether pathologists, serologists, microanalysts, DNA analysts, ballistics specialists, translators, or others.").

Neither defense counsel nor their experts can discharge their obligations without full and complete discovery of all information underlying any forensic analysis. For this reason, the ABA Guidelines mandate: "Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports, autopsy reports, photos, video or audio tape recordings, and crime scene and crime lab reports *together with the underlying data therefor.* Where necessary, counsel should pursue such efforts through formal and informal discovery"; and, "Counsel should make a prompt request to the relevant government agencies for any physical evidence or expert reports relevant to the offense or sentencing, *as well as the underlying materials*. With the assistance of appropriate experts, counsel should then aggressively re-examine all of the government's forensic evidence, and conduct appropriate analyses of all other available forensic evidence." *Id*. at 1020 (emphasis added).

Defense counsel in this case have *begun* the multi-step process of requesting and reviewing forensic discovery, locating and retaining appropriate experts, providing the experts with all necessary materials, performing the aggressive expert re-examination mandated by the Guidelines, and consulting with experts after the re-examination has been completed, but this process is far from complete and in some instances has just begun.

For instance, at the March 12, 2026 meeting, the State indicated that it intended to introduce the autopsy report into evidence without any supporting expert testimony. The autopsy report, completed on September 16, 2025, was not produced to the defense until November 13, 2025. The autopsy photographs, taken on September 10, 2025, were not produced to the defense until March 18, 2026. With the report and photographs, the defense is now in a position to provide an independent pathologist with some of the discovery tools necessary to conduct an independent evaluation of the autopsy. But it is anticipated that in the course of that evaluation, the expert will identify additional information that must be requested from the State. For example, competent forensic pathologists typically request that tissue samples be prepared and examined as part of a thorough forensic autopsy.

As is indicated in the attached March 25, 2026 informal discovery request by the defense, which was made after a complete review of all discovery produced as of March 18, 2026, even more substantial discovery issues exist with respect to the DNA and ballistics reports that the State has indicated it intends to offer at the preliminary hearing without any supporting expert testimony. *See Novak Decl.*, Exhibit F.

The summary DNA reports produced to date by the FBI and ATF indicate that both agencies recovered minute quantities of DNA on various items of evidence, which the reports opine consist of mixtures of up to "five or more" individuals. Both agencies employed a commercial software product called "STR mix" in an attempt to sort out the various contributors to the DNA sample. Courts have excluded "STR mix" and similar genotyping software analysis when appropriate validation and the use of reliable procedures have not been demonstrated. *See, e.g. United States v. Russell,* 2024 WL 4054382, at *2 (9th Cir. Sept. 5, 2024) (remanding the case for a *Daubert* hearing because "it is not clear whether STRmix had been properly validated for use with three- and four-person mixtures containing the miniscule amounts of DNA at issue here", and "the district court's failure to make a reliability finding is particularly concerning in light of the questions raised in the record about STRmix and its application here."); *United States v. Ortiz*, 736 F. Supp. 3d 895 (S.D. Cal. 2024) (granting motion to exclude DNA evidence analyzed by STR mix due to concerns over the number of assumed contributors and the lab's lack of validation for a higher number of contributors); *United States v. Williams*, 382 F. Supp. 3d 928, 929, 936–38 (N.D. Cal. 2019) (granting motion to exclude DNA evidence analyzed by probabilistic genotyping program due to questions about the number of assumed contributors, the lab's lack of validation for a higher number of contributors, and the amount of DNA); *United States v. Johnston*, 2025 WL 964073, at *1 (E.D.N.Y. Mar. 30, 2025) (granting the defendant's motion to exclude STR mix analysis as unreliable because the government has failed to demonstrate that its laboratory "internally validated the available feature of its probabilistic-genotyping software (STRmix) that is applicable to cases where, as here, the defense contends that biological relatives of the persons tested are potential donors of the DNA" and " the government has not demonstrated the reliability of [the laboratory's] methods for determining the number of contributors in complex DNA mixtures in cases like this one, in which the potential for DNA allele-sharing with biological relatives is high, and in which the analyst was not provided with key information needed to make that determination.").

As these cases indicate, determining the number of contributors to a DNA mixture, and determining whether the FBI and the ATF reliably applied validated and correct scientific procedures in conducting its STR DNA analysis and its "STR mix" interpretations is a complicated process which requires the assistance of various types of experts, including forensic biologists, geneticists, system engineers, and statisticians, all of whom must review and evaluate the several categories of discovery requested in the defense's initial discovery request (Dkt. 61), and in its March 25, 2026 informal discovery request. *See Novak Decl.*, Exhibit F. As that request documents, there are several areas of critical DNA discovery that have yet to be provided, including but not limited to validation studies and electronic data files from both agencies, and the case file and protocols relating to the ATF's DNA analysis.

In the attached declaration of the defense's retained forensic biologist Dr. Libby Johnson, she indicates that:

> 1. I have been retained by attorney Michael Burt in the matter of State of Utah v. Tyler James Robinson, case 251403576 as an expert to review materials related to DNA testing in this case and consult with defense counsel.
>
> 2. There are two federal agencies testing DNA evidence in this case. I have received a large amount of discovery to date, and I expect to receive more discovery for some time to come. Additionally, I will be coordinating my review with other defense experts.
>
> 3. Given the complexity of the case, the need to coordinate with other experts, and my existing schedule, it is my professional opinion that in order to perform a complete and reliable review I will need approximately six months after all discovery material has been produced.
>
> 4. I have reviewed defense counsel's March 25, 2025 discovery request to the state and agree that the DNA material requested therein is necessary for my

> complete independent review of the FBI's and the ATF's DNA laboratory

See Addendum 2 (*Declaration of Dr. Elizabeth Johnson*).

As indicated in the letter from Forensic Bioinformatics' C.E.O. and Chief Analysist Dr. Dan Krane, his firm requires certain information to conduct their independent analysis:

> Those materials include full case files ("bench notes"), chain of custody records, and electronic data files generated during testing. We also routinely request non-case-specific materials that describe a laboratory's ability to effectively conduct its testing, including laboratory standard operating procedure (SOP) manuals, laboratory method validation study summary documents, and proficiency testing records. All of these materials are necessary for a competent, comprehensive review.

Novak Decl., Exhibit G. Dr. Krane's letter also outlines the general time frame needed:

> Following receipt of the necessary materials, we typically request two to three weeks to conduct an initial review and to have discussions with attorneys such as yourself about our findings. I understand that a larger than usual number of samples were tested In Mr. Robinson's case by at least two different laboratories and that much of the testing has involved the use of probabilistic genotyping to assist with the interpretation of results that are not suitable for conventional analyses. In circumstances like these, three to four weeks are likely to be necessary for an initial review.
>
> Because it is difficult to predict what, if any, issues will be identified during an initial review is completed, it is not possible to guarantee that that work will be completed in only three to four weeks. For instance, given the potential complexity of the issues in Mr. Robinson's case, an additional two weeks might be needed to complete a formal written report.

Id. Dr. Krane adds:

> Our reviews sometimes identify concerns regarding the reliability of a laboratory's method as it was applied in a given investigation. This can then merit request and review of the data produced during the testing laboratory's internal validation of the methods they have used. Reviews of some laboratory internal validation studies have involved thousands of pages of documentation and gigabytes of data. Negotiating the terms associated with the disclosure of such data has, unfortunately, occasionally taken weeks or months. Review and reanalysis of such voluminous materials can take several weeks once it's received. If these additional efforts are determined to be necessary in your case, it could take another month for our work to be concluded, beyond any delays associated with the disclosure of laboratory documentation.

Id. It is evident from the foregoing that the defense has been diligent in seeking available DNA discovery, in retaining needed experts and providing them with discovery, and in formulating a reasonable work plan for completion of the defense independent analysis of the State's DNA evidence. What is preventing that plan from going forward is the incomplete status of the DNA discovery, as outlined in the defense's March 25, 2026 informal discovery request. *Novak Decl.*, Exhibit F.

Regarding the firearm evidence, the defense has been provided with an ATF summary report which indicates that the ATF was unable to identify the bullet recovered at autopsy to the rifle allegedly tied to Mr. Robinson. Although the State has not indicated an intent to produce this report at the preliminary hearing, the defense may very well decide to offer the testimony of the ATF firearm analyst as exculpatory evidence. In order to make this determination, it is necessary for the defense and its firearm expert to review the ATF case file and protocols relating to this examination, which have not yet been provided. The State has also indicated that the FBI is in the process of conducting a second comparative bullet analysis, as well as a bullet lead analysis, but that these analyses are not yet complete. Again, until the defense receives the case files and protocols relating to these analyses, and has them independently evaluated by its expert, they will not be in a position to assess the reliability of this evidence if either the State or the defense decides to proffer it.

There are also several other categories of incomplete forensic discovery outlined in the defense's informal discovery request. *Id*. Until the defense receives the case files and protocols relating to these analyses, and has them independently evaluated, they will not be in a position to assess the reliability of this evidence if either the State or the defense decides to offer it.

Importantly, in a capital case a State cannot, consistent with Federal Due Process, the Fourth and Eighth Amendments, and separation of powers principles, declare that hearsay reports, used as the basis to justify the continued detention of a suspect, are entitled to an irrebuttable presumption of reliability that neither the defense nor the magistrate can challenge. *See Gerstein v. Pugh*, 420 U.S. 103, 119–124 (1975) (for purposes of Fourth Amendment analysis in determining whether probable cause exists to detain an arrestee for a significant time pending trial, a full adversarial hearing, together with confrontation and cross-examination of witnesses, need not be afforded so long as a "timely *judicial* determination" of probable cause is made as a prerequisite to continued detention). The Court expressly held in *Gerstein* that "[w]hatever procedure a State may adopt, it must provide a fair and *reliable* determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Id.* at 124-25 (emphasis added).

A State cannot avoid this federal constitutional requirement by mandating that without any procedural safeguards all expert and lay hearsay reports offered by the prosecution admissible and conclusively reliable, which in effect shifts the determination of probable cause solely to the prosecutor and allows for a finding of probable cause based solely on hearsay. *See Commonwealth v. McClelland*, 233 A.3d 717, 736 (Penn. 2020) (a preliminary hearing is "a critical stage of the proceedings and is intended . . . to be more than a mere formality. Due process clearly attaches, but due process is a flexible concept, incapable of precise definition . . . at the hearing afforded appellant, the Commonwealth relied exclusively and only on evidence that could not be presented at a trial. This is precisely the circumstance and rationale upon which five Justices in *Verbonitz* determined Buchanan's right to due process was violated.").[5]

The requirement that a Utah criminal defendant not be held in prolonged custody unless a probable cause finding is made after a preliminary hearing gives effect to a vital constitutional right—the determination of probable cause required by the Fourth Amendment as a prerequisite to extended restraint of liberty following arrest. *See Gerstein* 420 U.S. at 124-25. Whatever procedure a state may employ, be it grand jury, adversarial hearing or other judicial determination, and whatever specific time period in which the state requires this be done the state "must provide *a fair and reliable* determination of probable cause as a condition for any significant pretrial restraint." *Id*. at 125. To achieve that goal, Article I, section 12 of the Utah Constitution provides that forensic and other hearsay reports are admissible at a preliminary hearing only after appropriate discovery has been provided. Because that process is not yet complete, the defense will not be in a position by May 18 to perform its critical role of independently assessing the reliability of the State's evidence.

As demonstrated, the request for a continuance to obtain and fully investigate appropriate discovery is legitimate.

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[5] *Cf. Whitman v. Superior Ct.*, 820 P.2d 262, 274 (Cal 1991) (en banc) ("[W]e discern no separation of powers violation here. Although the prosecutor is allowed to rely on hearsay evidence. . . at the preliminary hearing, and may require the defendant to make a satisfactory proof offer before the defendant may call any defense witnesses . . . the magistrate retains full authority and discretion to rule on the sufficiency of the defendant's proof offer, to allow the admission of relevant defense evidence, and ultimately to determine whether the proffered evidence demonstrates probable cause"); *Hosek v. Superior Ct.*, 12 Cal. Rptr. 2d 650, 652 (Cal. 5th 1992) ("The underlying presumption of the statute is that the experienced or trained investigating officer will do more than passively listen to the expert witness. The investigating officer presumably will know enough about the use in court of the particular variety of expert testimony and will ask the right questions of the expert to establish a substantial degree of reliability of the expert's statement for preliminary examination purposes.").

IV. Mr. Robinson Did Not Contribute to the Delay Resulting in the Request for a Continuance.

As described on pages 3 to 5 above, the defense is diligently processing and reviewing the voluminous discovery received in this case. The defense has also made efforts from the outset of the case to procure not only the reports from forensic testing but also the underlying materials necessary for expert review. *See, e.g.*, Doc. 61. The defense and UCAO have communicated verbally and in writing concerning these materials over the last several months. The delay here does not lie at the feet of the defense, nor the UCAO, but with the law enforcement agencies that have delayed providing the requested materials.

This factor weighs in favor of granting the requested continuance.

V. Prejudice Would Result from Proceeding to a Preliminary Hearing Before the Relevant Evidence Has Been Produced to Mr. Robinson and His Counsel Have Had a Meaningful and Reasonable Opportunity to Review It and Consult with Experts.

The fifth factor identified in *Longcrier*, a case which reviewed, after trial and conviction, the propriety of the trial court's denial of a continuance, looks at whether the denial resulted in "identifiable prejudice." While this factor is only relevant retrospectively, it suggests that denial of Mr. Robinson's motion to continue the preliminary hearing until the relevant discovery has been produced and his defense team and their experts have had a meaningful and reasonable opportunity to review it would be prejudicial. *See, e.g., State v. Arellano*, 964 P.2d 1167, 1171 (Utah Ct. App. 1998) (reversible error to deny motion for continuance after late notice of expert because "defendant needed the continuance to prepare … A continuance would have both provided defendant more time to prepare to challenge [the expert] testimony and allowed him to consult with his own expert and then incorporate any new information into the defense strategy."). As examined in Part III, Mr. Robinson has a constitutional right to the receipt of appropriate discovery and to have counsel effectively and competently cross-examine witnesses and present his own witnesses and exhibits. Moreover, in a capital proceeding, the Eighth Amendment requires a heightened standard of reliability at every stage of the proceeding. "In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a heightened standard of reliability." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986).

Where the evidence that has not yet been produced is both highly technical and scientific, and is the basis for expert opinions that will be proffered only through reports deemed reliable hearsay under Utah Rule of Evidence 1102(b)(4) for purposes of the preliminary hearing, Mr. Robinson's counsel have no means by which they can test the reliability of those opinions, let alone ensure that the State meets the constitutionally mandated heightened standard of reliability.

The likelihood of prejudice to Mr. Robinson by proceeding to a preliminary hearing without necessary discovery and the opportunity for counsel to fully investigate that discovery favors a continuance.

VI. All Five Factors Establish Good Cause for a Continuance.

None of the five factors described leave room for any basis to deny the instant motion to continue. Good cause to continue is present here, and abundantly so. It is the State which, in the first instance, defines the scope of the preliminary hearing. The State's decision to proceed with forensic evidence, through reports admissible under URE 1102(b)(4), is its own, but it cannot do so prior to providing Mr. Robinson with the data and materials that underly the conclusions in those reports without violating his rights guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Utah Constitution, article I, sections 12 and 13, and violating Utah Rule of Criminal Procedure 7B, designed to protect these constitutional rights by allowing meaningful examination, if he wishes, of the witnesses who prepared those reports, or to present his own witnesses on those subject matters.

Unless the materials at issue have been produced to Mr. Robinson by April 17, 2026, the date on which this motion is set for hearing, the preliminary hearing should be *vacated* until they have been. If they have been produced by that time, then the preliminary hearing needs to be postponed by no less than six months in order to permit Mr. Robinson's counsel and experts a meaningful and reasonable period of time to review those materials and prepare to address them through direct examination, cross-examination, submission of documentary evidence, or a combination of these forms of proof, as guaranteed to him by Utah Constitution, article I, sections 12 and 13, Utah Rule of Criminal Procedure 7B, and Utah Rule of Evidence 1102.

CONCLUSION

Based upon the foregoing, Mr. Robinson respectfully requests that this Court continue or vacate the currently scheduled preliminary hearing dates.

RESPECTFULLY SUBMITTED this 27th of March, 2026.

/s/ Kathryn N. Nester
Kathryn N. Nester

/s/Richard G. Novak
Richard G. Novak

/s/ Michael N. Burt
Michael N. Burt

/s/ Staci Visser
Staci Visser

Attorneys for Defendant, Tyler James Robinson

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via the Court's electronic filing system on the 27th day of March, 2026, which served all attorneys of record.

/s/ Staci Visser

CERTIFICATE OF COMPLIANCE

In compliance with Utah Rule of Civil Procedure 7(q), I certify that the foregoing pleading contains 8,537 words excluding the caption, signature block, certificate of service, certification, and attachments.

/s/ Staci Visser

ADDENDUM 1

Declaration of Richard G. Novak with Exhibits A-G

DECLARATION OF RICHARD G. NOVAK

I, Richard G. Novak, declare as follows:

1. Along with attorneys Kathryn Nester, Michael Burt, and Staci Visser, I am counsel for defendant Tyler James Robinson in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. This declaration is submitted in support of Mr. Robinson's motion to continue the preliminary hearing ("the motion") currently scheduled for the week of May 18, 2026. It covers three discrete topics, as set forth below.

EXPERT FORENSIC EVIDENCE AT THE PRELIMING HEARING

3. As set forth in the motion, counsel for Mr. Robinson and counsel for the State met in person on March 12, 2026, to discuss the contours of the preliminary hearing. Counsel for the State informed Mr. Robinson's counsel that the State does *not* intend to call as live witnesses at the preliminary hearing any of the forensic examiners who have conducted forensic examinations on collected evidence but instead intends to proceed by way of Utah Evidence Code section 1102(b)(4), which purports to authorize the prosecution to proffer reports of these examinations in lieu of live testimony.

4. In light of the Eighth Amendment's requirement of "heightened reliability" in all aspects of a capital proceeding, Mr. Robinson presently intends to exercise his right under Rule 7B of the Utah Rules of Criminal Procedure to call as witnesses at the preliminary hearing one or more of the forensic examiners whose reports the State intends to offer into evidence through Rule 1102(b)(4), as well as one or more forensic examiners whose reports have been received in discovery but which the State may *not* offer into evidence.

5. Importantly, most of the forensic examiners are employed by two federal law enforcement agencies which have performed the vast majority of the forensic examinations of evidence collected in connection with this prosecution. The two

federal agencies are the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI), both of which are branches of the United States Department of Justice (DOJ).

6. On Mr. Robinson's behalf, I have transmitted letters to the leadership authorities at ATF and FBI whose staff are responsible for approving requests for testimony by federal employees pursuant to the federal regulations generally known as the "*Touhy*" regulations, codified at 28 C.F.R. § 16.21 et seq. Copies of those letters have also been sent to the forensic examiners whose testimony Mr. Robinson seeks and, of course, to counsel at the Utah County Attorney's Office. Those letters are attached to this declaration at Exhibit A. They set forth with specificity the subject matter of their proposed testimony, as required by the applicable federal regulations.

7. Mr. Robinson's counsel have asked the appropriate authorities at the ATF and the FBI to respond to these requests no later than April 15, 2026, so that Mr. Robinson can determine if further steps are necessary to secure the presence and testimony of these witnesses, or if it is necessary for Mr. Robinson's counsel to seek other forms of relief concerning the admissibility of forensic evidence at the preliminary hearing.

<u>THE OVERALL DISCOVERY PICTURE</u>

8. A second purpose of this declaration is to provide this Court with additional information concerning the discovery that has been produced to the defense in this matter, including the timing, volume, and nature, of those disclosures so that this Court has a more complete understanding about the overall discovery picture than has been provided by the State in response to queries from this Court during recent proceedings. Mr. Robinson provides these details in order to address any concerns the Court may have that counsel and other members of the defense team have not been diligent in preparation for the preliminary hearing and other proceedings in this matter.

9. One of my responsibilities as counsel for Mr. Robinson is to supervise, consult with, support, and provide direction to other members of the defense team who

assist counsel in their work, including those members of the defense team who have primary responsibility for receiving, processing, error checking, organizing, and synthesizing the discovery produced to Mr. Robinson by the Utah County Attorney's Office. Two of those members of the defense are a paralegal with whom I have worked for many years on many complex cases, including other capital cases, and a licensed attorney (and their own in-house staff) who specializes in the management and analysis of complex *electronic* discovery, with whom I have also worked for many years on many complex cases, including other capital cases. For purpose of this declaration, I refer to these members of the defense team, respectively, as "Paralegal 1" and Electronic Discovery Coordinating Attorney ("EDCA") 1.

10. Over the course of the past six months, I have communicated on a regular basis with Paralegal 1 and with EDCA 1 concerning the discovery in this matter, and they are in regular contact with staff within the Utah County Attorney's Office (UCAO) concerning discovery productions, protocols for those productions, glitches in the production process, and other issues. In my opinion, there is a highly professional rapport among all of these professionals.

11. Importantly, discovery cannot be produced to the defense team by the UCAO until after the UCAO has received it from the Utah State Bureau of Investigation (SBI), which I understand to be the law enforcement agency to which *all* discovery is sent by all other local, state, and federal law enforcement agencies who have engaged in any investigative activities related to this matter. The defense team does *not* receive discovery directly from SBI, nor does the defense team receive discovery directly from any other local, state, or federal law enforcement agency. Therefore, of course, the defense has no control over when it receives discovery in this matter, and has no ability to influence how expeditiously local, state, and federal agencies produce discoverable materials and information within their possession to SBI, nor any ability to influence how expeditiously SBI produces those materials to the UCAO.

12. On a regular basis over the past six months and in connection with my preparation of this declaration, Paralegal 1 has provided me with materials concerning the discovery productions the defense has received from UCAO since the beginning of this case.

13. Attached to this declaration as Exhibits B through E are four charts which Paralegal 1 prepared based upon their receipt, review, error-checking, and processing of the discovery produced by the UCAO over the past six months. As these exhibits demonstrate, the UCAO produces new batches of discovery on a regular basis, and the discovery is voluminous, multi-faceted and complex.

14. Exhibit B depicts the dates on which UCAO has made discovery productions and the number of "files" in each of those productions. There were four productions in October 2025, five productions in November 2025, five productions in December 2025, six productions in January 2026, two productions in February 2026, and three productions in March 2026. These discovery productions have included approximately 20,000 separate files.

15. Exhibit C depicts the types of discovery that have been produced to Mr. Robinson by UCAO in those 20,000 files, *excluding the digital electronic discovery* which is separately discussed below. Exhibit C shows that the approximately 49 percent (9,180) of the 20,000 files produced by UCAO are document files. Approximately 24% (4,852) are image files, another 24% (5,068) are video files, and the balance of approximately 500 files are compressed files, audio files and other miscellaneous types of files.

16. Exhibit D provides some general information about the size and content of these files, by type. The document and image files contain approximately 61,500 pages. The audio files are approximately 31 hours in total length. More than 5,000 video files contain more than 700 hours of video.

17. Exhibit E identifies the 28 local, state, and federal law enforcement agencies which had or still have some role in the investigation of this matter, based

upon Paralegal 1's review of discovery received to date. We have either received discovery originating from these agencies, or an agency's involvement is referenced in a report by another agency. Paralegal 1 informs me that the manner in which discovery is produced by some agencies to SBI and by SBI to the UCAO does not permit them to easily identify which agency has initially generated and produced those materials. This creates significant delays in the processing and organization of discovery. Other delays are created by the production by SBI of *duplicate* discovery already produced at an earlier time, as both UCAO and Paralegal 1 spend significant time attempting to identify and "de-duplicate" discovery productions.

18. Notwithstanding UCAO's efforts to make the discovery production process as efficient as possible, the manner in which discovery is produced to the UCAO by SBI requires Paralegal 1 to devote a significant amount of time to their processing, error-checking, and organizing *before* it can be reviewed by counsel, shared with experts, or utilized in connection with motions practice or in connection with court proceedings.

19. Paralegal 1 has also informed me on a regular basis that they are aware from their review of the discovery that there are significant numbers of document, video, and other types of files which do exist and are in the possession of law enforcement agencies but which we have *not* received from UCAO, and which, presumably, UCAO has not received from SBI. One significant source of reports and documents and other files Paralegal 1 has determined do exist which we have not received is the FBI. Paralegal 1 has been identifying and cataloging those missing documents and other files so that we are able to inform UCAO of these missing materials, but that project itself is very time consuming and delays the processing of the discovery that we have received.

20. I am also aware based upon my own communications with counsel for certain Utah government agencies which have responded to GRAMA requests related

to this matter that there are image files and documents in the possession of those Utah government agencies which have not yet been produced to SBI.

ELECTRONIC DEVICE AND OTHER DIGITAL DISCOVERY

21. A separate and important "bucket" of discovery in this matter relates to the content of electronic devices seized and other digital discovery obtained by law enforcement agencies. Generally speaking, electronic devices seized in any criminal investigation may include cellular telephones, pagers, desktop computers, laptop computers, electronic tablets, external hard drives, thumb drives, electronic devices mounted in vehicles. Other digital discovery frequently encountered in criminal investigation would also include cell tower data, call detail records, and social media files obtained from social media entities such as X, Facebook, Google, YouTube, and others. EDCA 1 and their in-house team are responsible for the defense review of these types of materials and informing defense counsel about their significance.

22. As I have learned from my professional experience, including my work with EDCA 1, generally speaking, law enforcement agencies and defense experts utilize proprietary and other software to analyze seized electronic devices and other digital discovery. Significant training and expertise is often necessary to meaningfully access, examine, review, organize and analyze these types of discovery.

23. With respect to this matter, Mr. Robinson's defense counsel are aware that a large number of electronic devices were seized by law enforcement in September 2025, and that UCAO has endeavored to collect from third parties additional sources of digital discovery.

24. With respect to the digital devices seized in this matter, Mr. Robinson did not receive until just days ago any "images" of or extractions from the seized devices which had earlier been analyzed by law enforcement and, therefore, Mr. Robinson has not yet had any opportunity to review those portions of the electronic device or digital discovery which have been collected by law enforcement.

25. More specifically, on March 13, 2026, the defense received approximately 12 terabytes of data, with 6,425 folders and 613,023 files. This includes extractions of mobile devices, other digital evidence, and reports generated by forensic examiners. Of concern, the extractions of digital evidence appear to have been completed in *September 2025*. For example, the extraction of a cellular telephone associated with Mr. Robinson was completed on September 13, 2025, approximately six months before it was provided to his defense. This delay is corroborated by other information and is consistent with the data provided for other digital evidence contained on the hard drive. One report provided in a recent discovery production indicated that Mr. Robinson's cellphone had been reviewed by September 14, 2025. The same is true for other digital forensic data produced in March 2026. For instance, one index received by the defense indicates that nearly all 38 digital items listed had been completely reviewed by law enforcement by September 25, 2025, yet the digital images of these devices and the extractions were not produced to the defense until March 2026.

26. EDCA 1 informs me that they and their staff are now, finally, able to begin to review each extraction, reports based upon those extractions, and the associated examiner notes. Based upon the volume of data produced on March 13 only, it is anticipated that it will take approximately 60 days to complete the *initial* review and processing of the recently produced digital forensic data. Once that initial review and processing is completed EDCA 1 can advise defense counsel concerning the quality and completeness of the extractions and the amount of time that is required to conduct further forensic examination of these digital devices.

27. Until these steps are completed with respect to the digital devices included in this production, Mr. Robinson is wholly unable to evaluate the completeness, accuracy, or reliability of any of the digital device evidence the State may offer at the preliminary hearing.

DNA AND OTHER FORENSIC DISCOVERY

28. Attached to this declaration as Exhibit F is a true and correct copy of a letter to the Utah County Attorney's Office prepared by counsel Michael Burt, dated March 25, 2026, requesting DNA and other forensic discovery.

29. Attached to this declaration as Exhibit G is a true and correct copy of a letter to counsel prepared by Dan E. Krane, Ph.D., dated March 27, 2026.

I declare under penalty of perjury under the laws of the State of Utah that the foregoing is true and correct.

Executed on this 27th day of March 2026.

/s/ Richard G. Novak
Richard G. Novak

EXHIBIT A

LAW OFFICES OF
RICHARD G. NOVAK

P.O. Box 5549
Berkeley, CA 94705

March 27, 2026

Mr. Robert Leider, Chief Counsel
Office of Chief Counsel
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice
99 New York Avenue, N.E.
Washington, DC 20226

Re: *State of Utah v. Tyler James Robinson*, Case No. 251403576
Fourth Judicial District Court, Utah County, State of Utah

Mr. Leider,

Pursuant to 28 C.F.R. § 16.21 et seq., and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), we write to request that the appropriate ATF or DOJ official approve the provision of sworn testimony by the current ATF employees listed below, at a preliminary hearing in the pending prosecution captioned above, which is currently scheduled to occur during the week of May 18, 2026, in Provo, Utah.

The ATF employees whose sworn testimony we seek are:

1) Laura Caitlin Oliver, Forensic Biologist, and
2) Samantha E.A. Karner, Firearm and Toolmark Examiner
3) Vickie Paiz, Fingerprint Specialist

Ms. Oliver, Ms. Karner and Ms. Paiz are all stationed, according to their reports, at the ATF's Forensic Science Laboratory in Beltsville, Maryland.

<u>Testimony by Forensic Biologist Laura Caitlin Oliver</u>

The general subject matters that Ms. Oliver will testify relate to the information set forth in her single report dated September 15, 2025, and two reports dated December 11, 2025, in Case Number 2025-W-000401 (Reference: 25-24969; Title: Homicide of Charlie Kirk).

More specifically, Ms. Oliver will testify concerning her training and experience in forensic biology and other forensic areas, her training and experience in DNA and other biological analyses, the methodologies she employed in conducting the analyses summarized in her report, the equipment, software, and hardware utilized to conduct her analyses, decisions made by her and other members of her analytical team concerning how to conduct the DNA analyses, statistical and other variables and assumptions utilized during her analyses, standard operating procedures required and employed in connection with her biological analyses, databases utilized in connection with her biological analyses, her conclusions based upon the analyses addressed in her report, and the technical review of her analyses which, according to her report, was undertaken by Forensic Biologist Glenn P. Fahrig.

Testimony by Firearm and Toolmark Examiner Samantha E.A. Karner

The general subject matters that Ms. Karner will testify about relate to the information set forth in her report dated September 17, 2025, in Case Number 2025-W-000401 (Reference: 25-24969; Title: Homicide of Charlie Kirk).

More specifically, Ms. Karner will testify concerning her training and experience in firearms and ballistics examinations, toolmark examinations, and other forensic areas, the methodologies she employed in conducting the analyses summarized in her report, the equipment, software, and hardware utilized to conduct her analyses, decisions made by her and other members of her analytical team concerning how to conduct the analyses, standard operating procedures required and employed in connection with her analyses, databases utilized in connection with her analyses, her conclusions based upon the analyses addressed in her report, and the technical review of her analyses which, according to her report, was undertaken by Firearm and Toolmark Examiner Sean T. Tokay.

Testimony by Fingerprint Specialist Vickie Paiz

The general subject matters that Ms. Paiz will testify about relate to the information set forth in her report dated December 22, 2025, in Case Number 2025-W-000401 (Reference: 25-24969; Title: Homicide of Charlie Kirk).

More specifically, Ms. Paiz will testify concerning her training and experience in latent print examination, and other forensic areas, the methodologies she employed in conducting the analyses summarized in her report, the equipment, software, and hardware utilized to conduct her analyses, decisions made by her and other members of her analytical team concerning how to conduct the analyses, standard operating procedures required and employed in connection with her analyses, databases utilized in connection with her analyses, her conclusions based upon the analyses addressed in her report, and the technical review of her analyses which, according to her report, was undertaken by Derrick Weems.

We are, of course, happy to coordinate with Ms. Oliver, Ms. Karner and Ms. Paiz concerning the precise timing of their testimony so that they are able to minimize the amount of time they need to be physically available in Provo Utah during the week of May 18, 2026. With authorization from the appropriate ATF official, they are welcome to contact me directly concerning that coordination. I am best contacted by email, at richard@rgnlaw.com or on my cellular telephone, 626-808-7908.

If the ATF declines to approve the provision of testimony by these ATF employees on these narrowly drawn areas of anticipated testimony, we intend to seek to seek appropriate relief from the appropriate court(s) in advance of the preliminary examination. Therefore, we need a definitive response to this letter no later than April 15, 2026.

Very truly yours,

/s/ Richard G. Novak
Counsel for Tyler James Robinson

cc: Ryan McBride, Deputy Utah County Attorney (ryanm@utahcounty.gov)

LAW OFFICES OF
RICHARD G. NOVAK

P.O. Box 5549
Berkeley, CA 94705

March 27, 2026

Mr. Samuel Ramer, General Counsel
Office of the General Counsel
Federal Bureau of Investigation
FBI Headquarters
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Re: *State of Utah v. Tyler James Robinson*, Case No. 251403576
Fourth Judicial District Court, Utah County, State of Utah

Mr. Ramer,

Pursuant to 28 C.F.R. § 16.21 et seq., and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), we write to request that the appropriate FBI or DOJ official approve the provision of sworn testimony by the current FBI employees listed below, at a preliminary hearing in the pending prosecution captioned above, which is currently scheduled to occur during the week of May 18, 2026, in Provo, Utah.

The FBI employees whose sworn testimony we seek are:

1) Amanda N. Bakker, Forensic Examiner
2) Monte Swank, Forensic Examiner

Both Ms. Bakker and Mr. Swank are stationed, according to their reports, at the FBI Laboratory in Quantico, Virginia.

<u>Testimony by Forensic Examiner Amanda N. Bakker</u>

The general subject matters that Ms. Bakker will testify relate to the information set forth in her reports dated September 15, 2025 and September 17, 2025, in Case ID No. SU-4130859, Lab Nos. 2025-01779-2 and 2025-01779-12. One report refers to the "Subject" as Tyler James Robinson and the other refers to the "Victim" as Charles James Kirk.

More specifically, Ms. Bakker will testify concerning her training and experience in forensic biology and other forensic areas, her training and experience in DNA and other biological analyses, the methodologies she employed in conducting the analyses summarized in her reports, the equipment, software, and hardware utilized to conduct her analyses, decisions made by her and other members of her analytical team concerning how to conduct the DNA analyses, statistical and other variables and assumptions utilized during her analyses, standard operating procedures required and employed in connection with her biological analyses, databases utilized in connection with her

P.O. Box 5549
Berkeley, CA 94705

biological analyses, and her conclusions based upon the analyses addressed in her reports.

Testimony by Forensic Examiner Monte Swank

The general subject matters that Mr. Swank will testify about relate to the information set forth in his Laboratory Report dated September 15, 2025, in Case ID No. SU-4130859; Lab No. 2025-01779-5; Victim(s): Charles James Kirk

More specifically, Mr. Swank will testify concerning his training and experience in latent print examination, and other forensic areas, the methodologies he employed in conducting the analyses summarized in his report, the equipment, software, and hardware utilized to conduct his analyses, decisions made by him and other members of his analytical team concerning how to conduct the analyses, standard operating procedures required and employed in connection with his analyses, databases utilized in connection with his analyses, his conclusions based upon the analyses addressed in his report, and the verification and/or blind verification of his analyses which, according to his report, was undertaken by Michelle A. Howard.

We are, of course, happy to coordinate with Ms. Bakker and Mr. Swank concerning the precise timing of their testimony so that they are able to minimize the amount of time they need to be physically available in Provo Utah during the week of May 18, 2026. With authorization from the appropriate FBI official, they are welcome to contact me directly concerning that coordination. I am best contacted by email, at richard@rgnlaw.com or on my cellular telephone, 626-808-7908.

If the FBI declines to approve the provision of testimony by these FBI employees on these narrowly drawn areas of anticipated testimony, we intend to seek to seek appropriate relief from the appropriate court(s) in advance of the preliminary examination. Therefore, we need a definitive response to this letter no later than April 15, 2026.

Very truly yours,

/s/ Richard G. Novak
Counsel for Tyler James Robinson

cc: Ryan McBride, Deputy Utah County Attorney (ryanm@utahcounty.gov)

EXHIBIT B

Exhibit B

Number of Discovery Files Produced to Defense, By Date

Date of Production	Number of Files Produced
2025.10.10	83
2025.10.15	783
2025.10.23	581
2025.10.29	101
2025.11.06	111
2025.11.13	72
2025.11.17	817
2025.11.19	1,289
2025.11.25	226
2025.12.02	1,260
2025.12.05	833
2025.12.09	1,795
2025.12.16	2,570
2025.12.18	1,338
2026.01.08	1,892
2026.01.09	1,239
2026.01.13	65
2026.01.14	1
2026.01.21	830
2026.01.27	6
2026.02.17	339
2026.02.25	117
2026.03.05	1,600
2026.03.12	1,316
2026.03.18	348
Total	19,612

EXHIBIT C

Exhibit C

Number of Discovery Files Produced to Defense, By File Type

Type of File	Number of Files
Document files	9,180
Image files	4,852
Video files	5,068
Compressed files	321
Audio files	61
Other types of files	130
Total Number of Files	19,612

EXHIBIT D

Exhibit D

**Content of Discovery Files Produced to Defense,
By Type and Length**

Type of File	**Number of Files**	**Approx. Number of Pages/ Duration**
Document & Image Files *(pdf, txt, xlsx, docx, html, image files)*	14,032	61,500 pages
Audio Files	61	31 hours
Video Files **Includes 66 compressed video files of unknown duration*	5,134	>698 hours*
Other Types of Files *(non-video compressed files, csv, xlsm.)*	385	

EXHIBIT E

Exhibit E

List of Law Enforcement Agencies Producing Discovery to Utah State Bureau of Investigation (as of March 26, 2026)

1. American Fork Police Department
2. ATF
3. BYU Police Department
4. Cottonwood Heights Police Department
5. FBI
6. Lehi Police Department
7. Lindon City Police Department
8. Lone Peak Police Department
9. Orem Police Department
10. Payson Police Department
11. Provo Police Department
12. Salem City Police Department
13. Salt Lake City Police Department
14. Salt Lake County Sheriff's Office
15. Santaquin Police Department
16. Saratoga Springs Police Department
17. Spanish Fork Police Department
18. Springville Police Department
19. St. George Police Department
20. State Bureau of Investigation (SBI)
21. Statewide Information & Analysis Center (SIAC)
22. UCAO Investigations
23. University of Utah Police Department
24. UT Crime Lab - Utah Bureau Forensic Science (UBFS)
25. Utah County Sheriff's Office
26. Utah State University Police Department
27. Utah Valley University Police Department
28. Washington County Sheriff's Office

EXHIBIT F

Law Office of Michael Burt
1000 Brannan Street, Suite 400
San Francisco, California 94103
415-522-1508 phone; 415-522-1506 fax
mb@michaelburtlaw.com

March 25, 2026

Ryan McBride
Deputy Utah County Attorney
100 East Center, Suite 2100
Provo, Utah 84606

Re: Second Request for DNA and Other Forensic Discovery

Dear Ryan

Hope you are well. At our last meeting, I indicated I would be sending you a letter outlining what I thought we were missing in terms of electronic DNA discovery. I have now had the chance to carefully review all of the forensic discovery provided by your Office through the latest production on March 18, 2026. In light of that review, I set forth in Part One of this lewtter what the defense will need in the way of standard DNA discovery above and beyond what we have already specifically requested in our initial discovery motion (Dkt. 61), and I also note for each category of discovery what we have already received and what we have not received. In Part Two of this letter, I address outstanding discovery issue with respect to the other areas of forensic evidence. will address the other areas of forensic discovery.

PART ONE: SECOND REQUEST FOR DNA DISCOVERY

INTRODUCTION

This request applies to all DNA testing, serological testing, presumptive testing and any other biological testing that has been, is currently being, or will be performed in this case. The request is ongoing. In the event that new materials responsive to this request are produced, discovered, or otherwise come into the possession of the prosecution or its agents, said materials should be provided to the defendant without delay. For cases involving multiple agencies or testing laboratories, the prosecution is requested to direct this request to all agencies and/or laboratories that handled items or undertook DNA testing, serological testing, presumptive testing and/or any other kind of biological testing in this case. Relevant laboratories include, but are not limited to, crime labs, commercial DNA testing facilities, and government DNA testing facilities.

THE REQUESTS

It is requested that copies of the following materials be provided to the defendant. The defendant also requests that the original materials be made available for inspection in order to compare the copies with the original materials that are in the possession of the prosecution or its agents.

In the event that there is a charge for reproducing any of these materials, please include an itemized list indicating the number of items (for example, number of pages of documents, number of photographs, number of CD-ROMS, etc.), and the cost of copying per item.

Note: Requests #6-# 8 pertain to computer data files, software programs, and other software-related materials, such as macros, templates, etc. For commercially available software which was used unmodified in this case, a sufficient response is to indicate the name of the software item (program, macro, or other item being claimed as proprietary), the manufacturer and the version used in this case. In the event that any commercial software item was modified in any way in the testing undertaken in this case, please provide either (i) a copy of the modified software item or, (ii) a detailed list of the changes or modifications which were made with regard to the software item as used in this case.

1. **Case file:** Please provide a legible copy of the complete case file in this case, including all notes of any analyst or peer reviewer, and all records reflecting any DNA, serological, quantitation, and/or statistical testing or analysis in the instant case . For materials that are represented in any format other than black and white paper copies, please provide copies which are equivalent in content and quality (that is, photographic quality copies of

photographs, CD-ROM or ZIP disc copies of computerized data). *(To date, we have been provided case files for FBI Lab Nos. 2025-01779-2, and 2025-01779-12. We have not been provided with case files for ATF DNA Lab Reports dated September 15, 2015 (2025-W-000401, submission 1), September 15, 2015 (2025-W-000401, submissions 1 and 2), December 11, 2025 (2025-W-000401, submissions 3 and 5), or December 11, 2025 (2025-W-000401, submission 4)).*

2. **Documents relied upon in performing testing:** Please provide legible copies of all documents which were, or are claimed to have been, followed or relied upon in executing, interpreting and/or reporting the DNA tests performed in the instant case, including:

(2.1) Standard operating protocols (SOPs) of the DNA testing laboratory.
(2.2) Instructions provided by manufacturers of commercial test kits ('package inserts' and 'user's guides').
(2.3) Protocols and manuals relating to instruments and/or software.

(We have been provided with the FBI's DNA SOP testing protocols. We have not been provided the ATF DNA SOP testing protocols, or any of the items requested in (2.2) and (2.3) for either agency.)

3. **STR database:** Please provide copies of the following materials for STR databases which were used or relied upon in performing the statistical analysis in this case or in performing CODIS searches:

(3.1) Complete database or databases on a computer disc in a format such that the multi-probe genotype is given for each sample tested.
(3.2) Copies of all documents related to the source or origin of samples in any such databases, including (i) the method by which samples were collected, (ii) the background and/or characteristics of the individuals who were the source of the samples, (iii) the choice of populations and sub-populations which were sampled, and (iv) the nature of the sampling procedure which was used to collect the

samples.

(3.3) Laboratory notes and computer data files for all samples in the database.

(We have not been provided with any of this material)

4. **STR frequency tables:** Please provide copies of any STR frequency tables relied upon in performing the statistical analysis or CODIS searching in this case.

(We have not been provided with any of this material)

5. **Chain of custody and current disposition of evidence:** Please provide copies of all chain of custody documents for each item of evidence subjected to DNA testing starting with the first description or 'log entry' for each item through to the current disposition of that item of evidence. This information should include documentation which indicates where and how the materials were stored (temperature and type of container), the amount of evidence material which was consumed in testing, the amount of material which remains, and where and how the remaining evidence is stored (temperature and type of container).

(We have not been provided with any of this material, except for basic chain of custody reports that indicate nothing about storage conditions, etc.))

6. **Data files:** Please provide copies of all computer data files created in the course of performing the DNA testing and analyzing the data in this case (i.e., both raw data and processed data). These data files should include all sample files (".fsa" and/or ".hid"), project files (".ser"), matrix files, size standard files and analysis method files. In the event that a particular data file cannot be produced, please provide name of said file with explanation for non-production.

(We have not been provided with any of this material)

7. **Probabilistic genotyping output:** Please provide copies of all computer folders and data files used or created in the course of probabilistic genotyping analysis in this case, referred to as "results" or "analysis output" folders. These folders and files should include all timestamped folders outputted by a probabilistic genotyping system and the folders' contents, including files with the following file extensions: .xls(x), .pdf, .csv, .txt, .ini, or .html. Please provide all files in their native file format (e.g. digitally on CD, DVD, or flash drive or made available for an internet file transfer).

(We have not been provided with any of this material)

8. **Software and macros:** Please provide a list of all commercial software programs used in the DNA testing in this case, including name of software program, manufacturer, and version used in this case. In addition, please identify any commercial macros used to analyze data in this case. In the event that any programs and/or macros written by the testing laboratory were used in the analysis of STR data in this case, please provide copies of these materials.

(We have not been provided with any of this material)

9. **STR mix data**: Please provide copies of:

(8.1) The STRmix™ source code.

(8.2) The Extended Output for the compiled STRmix™ software.

(8.3) developmental validation records for STRmix™

(8.4) internal validation records for STRmix™

(8.5) The STRmix™ User's Manual.

(We have not been provided with any of this material)

10. **Records of trouble-shooting or problems during testing:** Please provide copies of any laboratories records or other materials which document any trouble-shooting, repairs, modifications, or changes which were made to the genetic analyzer instrument used in the instant case. These materials should include:

(10.1) Copies of any notes, or records of communications, relating to trouble-shooting which had to be done on the instrument, including calls to technical support lines and visits by field technicians to repair instrument.

(10.2) Records of any changes that were made to the instrument in the course of testing samples in this case, including replacement of parts such as a laser or CCD virtual camera.

(10.3) Records of all computer resets or reboots which had to be done during the testing in the instant case, including soft reset, cold boot, and/or clear memory reset.

(10.4) Records of all incidents in which manual control was used to override genetic analyzer presets.

(We have not been provided with any of this material)

11. **Developmental validation:** Please provide copies of any developmental validation studies on any instrument, procedure, process, statistical technique, or mixture analysis undertaken by any laboratory which performed the STR DNA testing in this case. These materials should include copies of internal validation study summaries, laboratory notebooks, and computer data files.

(We have not been provided with any of this material)

12. **Internal validation:** Please provide copies of any internal validation studies on any instrument, procedure, process, statistical technique, or mixture analysis undertaken by any laboratory which performed the STR DNA testing in this case. These materials should include copies of internal validation study summaries, laboratory notebooks, and computer data files.

(We have not been provided with any of this material)

13. **Unexpected results and corrective actions**: For each laboratory that performed DNA testing in the instant case, please provide copies of the laboratory's log of unexpected results and corrective actions. The logs should be provided for the time period beginning six months before the start of testing and ending six months after the completion of testing. Documentation should be provided for unexpected result events that arose due to mechanical, chemical and analyst operations, including; contamination, the presence of extraneous DNA, sample handling errors or any other reason. The logs should be provided for all laboratory personnel not just the analyst(s) who performed the testing in the instant case. Please note, this is a request for the logs themselves, not just for entries within the logs that pertain to the instant case.

(We have not been provided with any of this material)

14. **Information on the uniqueness of genetic profiles**: Please provide copies of the following:

(14.1) Records and documentation of any nine (9) locus or more matches between individuals in the convicted offender database whose DNA profiles were typed using any STR typing kit, which resulted from searches of unknown evidence samples against the convicted offender database;

(14.2) Records and documentation of any nine (9) locus or more matches between individuals whose DNA profiles were typed using using any STR typing kit, which resulted from searches of convicted offender samples for quality control/quality assurance or research purposes;

(14.3) All records and documents of matches between individuals with nine (9) or more loci that were determined to be different individuals, regardless of their source including reports from local and county crime labs, or any other laboratory or facility besides the CODIS lab. No identifying information need be provided;

(14.4) All records and documents of matches made between evidence and a convicted offender profile, where, after investigation, it was determined that it was impossible or unlikely for the convicted offender to be the perpetrator of the crime which resulted in the databank hit; and

(14.5) All standard operating procedures, policy manuals and quality control/quality assurance manuals for convicted offender database sampling, including but not limited to the reporting of multiple hits to one profile and documentation of multiple hits to one profile; or

(14.6) In the alternative, please provide a copy of all convicted offender samples, absent identifying information in a searchable format. This database should be provided as an electronic file consisting of the complete genetic profiles (multilocus genotypes) of every individual in the convicted offender database. Explanatory material such as the order of loci on the file and the characters used for missing data should also be indicated.

(We have not been provided with any of this material)

15. **Proficiency tests:** Please provide copies of all STR proficiency tests which have been undertaken by any analyst and/or peer reviewer who performed the STR testing, interpretative or statistical analysis or review in this case. These materials should include for each proficiency test (i) the complete proficiency test case file, (ii) computer data files, (iii) evaluations and/or reports by the testing agency, and (iv) records maintained pursuant to STANDARD 13.4 of the FBI's *Quality Assurance Standards for Forensic DNA Testing Laboratories* (2025).

(We have not been provided with any of this material)

16. **Accreditation:** Please provide copies of all licenses or other certificates of accreditation held by any DNA testing laboratory that performed DNA testing in this case.

(We have not been provided with any of this material)

17. **Audits:** Please provide copies of any internal or external audits of any DNA testing laboratory that performed DNA testing in this case conducted for purposes of acquiring or maintaining accreditation or for any other purpose.
(We have not been provided with any of this material)

18. **Laboratory personnel:** Please provide a current resumé and job description for each person involved in conducting or reviewing the DNA testing performed in this case, as well as any *Brady* material relevant to impeaching the credibility of such person or of the laboratory in which such person works, including, but not limited to, any internal or external documentation relating to investigations by any Inspector General.
(*We have not been provided with any of this material, except for the CV of Amanda N. Bakker)*

PART TWO: SECOND REQUEST FOR DISCOVERY WITH RESPECT TO OTHER AREAS OF FORENSIC DISCOVERY

1. Firearms and Toolmarks

(1.1) We have no reports, case files, protocols, proficiency tests of analysts or reviewers, CV's of analysts or reviewers, or developmental/ internal validation data regarding the FBI's anticipated comparative bullet analyis or its anticipated lead composition analysis. When and if this work is completed we request that these categories of discovery be provided.

(1.2) We have been provided a summary FBI report dated September 14, 2025 (Bates # 8) which references "information provided by the Domestic Strategic Unit" regarding the writing on the bullet casings found on the Utah Valley University campus. We request copies of all information and documents provided by this Unit.

(1.3) We have received three bullet/toolmark examination reports from the ATF: September 17, 2025 report (2025-W-000401-submission 1), October 6, 2025 report (2025-W-000401-submission 1), and February 25, 2026 report (2025-W-000401-submission 1, 4, 6). We have no case files, protocols, proficiency tests of analysts or reviewers, CV's of analysts or reviewers, or developmental/ internal validation data regarding these reports. We request that this material be provided.

2. Latent Fingerprint Examinations

(2.1) We have received: one latent fingerprint report from the FBI dated September 15, 2025 (Lab. No. 2025-01779-5); cover page to the case file for Lab. No. 2025-01779-5 (Bates # 121), case notes (Bates # 122), a document entitled "Asset Details" (Bates # 123), copies of known prints of Tyler Robinson (Bates # 124), photos of Item 11-1 (Bates # 758), 51 (Bates # 763), 9-10 (Bates # 766), Photoshop Action Description (Bates # 796), document entitled "Asset Details-Blind Verification (Bates # 799), and additional photographs of latents and known prints (Bates # 800). In addition, we have received the FBI's latent print protocols (Bates # 817-824), and the CV's of latent print examiners Kuznetsova and Swank (Bates ##119-120). It is unclear whether we have received the entirety of the case file, as there is no indication in the materials provided what points of comparison the examiners were relying on to make their identification. We request the entire case file for this examination, and identification of the points of comparison being relied upon to make an identification. See, *United States v. Robinson*, 44 F. Supp. 2d 1345 (N.D. Ga. 1997). We also request proficiency tests of all analysts or reviewers (including Michelle Howard), CV's of all analysts and reviewers (including Michelle Howrad), and the developmental/ internal validation data for the ACE-V methodology detailed in the report and protocols. Lastly, we request any photographic or documentary output, including the list of any potential candidates and that resulted from the "automated searches of appropriate prints" referenced in the reports.

(2.2) We have received two latent fingerprint reports from the ATF dated September 15, 2025 (2025-W-000401-submission 1) and December 22, 2025 (2025-W-000401-submissions 4, 10, 11, 12). We have no case files, protocols, proficiency tests of analysts or reviewers, CV's of analysts or reviewers, or developmental/ internal validation data for the ACE-V methodology detailed in the reports . We request that this material be provided. We also request any photographic or documentary output, including the list of any potential candidates and that resulted from the "automated searches of appropriate prints" referenced in the reports.

(2.3) We have received one latent fingerprint report from the Utah Bureau of Forensic Services dated September 25, 2025 (Bates # 1506). We have no case files, protocols, proficiency tests of analysts or reviewers, CV's of analysts or reviewers, or developmental/ internal validation data regarding these reports. We request that this material be provided.

3. Shoe Impression Evidence

(3.1) We have received one shoe impression report from the ATF dated October 6, 2025 (2025-W-000401-submission 7, 8, 9). We have no case files, protocols, proficiency tests of analysts or reviewers, CV's of analysts or reviewers, or developmental/ internal validation data regarding these reports. We request that this material be provided.

4. Questioned Documents

(4.1) We have received one questioned document report from the FBI dated November 7, 2025 (Lab. No. 2025-01779-5). We have no case files, protocols, proficiency tests of analysts or reviewers, CV's of analysts or reviewers, or developmental/ internal validation data regarding these reports. We request that this material be provided.

5. Other Forensic Evidence

A cover letter from the FBI dated September 23, 2025 (Bates # 96) states: "Our records reflect additional materials from Kirsten Knapp (Questioned Documents Unit), Sara Nedley (Questioned Documents Unit), and Brittany Swisher (Evidence Management Unit) will be produced in supplemental discovery productions as ongoing examinations are completed." We request that this material be provided as soon as it is available.

I hope that the foregoing will be helpful in moving things along. Please let me know if you need anything more from us.

Sincerely,

Michael N. Burt
Michael N. Burt
Attorney for Tyler Robinson

cced by email to: Jeffrey S. Gray; Chad E. Grunander; Lauren Hunt; David Sturgill; Christopher D. Ballard

EXHIBIT G

27 March 2026

To: Michael Burt
Law Office of Michael Burt PC
1000 Brannan Street
Suite 400
San Francisco, California 94103

RE: *State v. Tyler Robinson*

forensic bioinformatics

Dan E. Krane, Ph. D., CEO

2850 Presidential Drive

Suite 160

Fairborn, Ohio 45324

ph. 937.426.9270

fx. 937.426.9271

www.bioforensics.com

Dear Mr. Burt:

I am writing in response to your inquiry about our availability to assist with a review of forensic DNA testing performed in *State v. Tyler Robinson.*

I have separately provided you a list of materials we request at the onset of any case for which we review DNA test results. Those materials include full case files ("bench notes"), chain of custody records, and electronic data files generated during testing. We also routinely request non-case-specific materials that describe a laboratory's ability to effectively conduct its testing, including laboratory standard operating procedure (SOP) manuals, laboratory method validation study summary documents, and proficiency testing records. All of these materials are necessary for a competent, comprehensive review.

Following receipt of the necessary materials, we typically request two to three weeks to conduct an initial review and to have discussions with attorneys such as yourself about our findings. I understand that a larger than usual number of samples were tested In Mr. Robinson's case by at least two different laboratories and that much of the testing has involved the use of probabilistic genotyping to assist with the interpretation of results that are not suitable for conventional analyses. In circumstances like these, three to four weeks are likely to be necessary for an initial review.

Because it is difficult to predict what, if any, issues will be identified during an initial review is completed, it is not possible to guarantee that that work will be completed in only three to four weeks. For instance, given the potential complexity of the issues in Mr. Robinson's case, an additional two weeks might be needed to complete a formal written report.

Our reviews sometimes identify concerns regarding the reliability of a laboratory's method as it was applied in a given investigation. This can then merit request and review of the data produced during the testing laboratory's internal validation of the methods they have used. Reviews of some laboratory internal validation studies have involved thousands of pages of documentation and gigabytes of data. Negotiating the terms associated with the disclosure of such data has, unfortunately, occasionally taken weeks or months. Review and reanalysis of such voluminous materials can take several weeks once it's received. If these additional efforts are determined to be necessary in your case, it could take another month for our work to be concluded, beyond any delays associated with the disclosure of laboratory documentation.

Please let us know if you have any further questions or if we can be of help in any other way.

Sincerely,

Dan Krane

ADDENDUM 2

Declaration of Elizabeth A. Johnson, Ph.D.

DECLARATION OF ELIZABETH A. JOHNSON, PH.D.

I, Elizabeth A. Johnson, Ph.D. declare:

I received a B.S. degree in chemistry in 1982 from Wofford College in Spartanburg, SC and a Ph.D. degree in immunology in 1987 from the Medical University of South Carolina. My formal education also includes four years of post-doctoral training in the field of molecular biology and DNA analysis at the Medical University of SC and at MD Anderson Cancer Center in Houston, Texas. I have been a forensic scientist since 1991. I was hired to establish the DNA laboratory within the Harris County Medical Examiner's Office in Houston, Texas in 1991, and I became the director of that laboratory. I was a Senior Forensic Scientist at Technical Associates, Inc., Ventura, California for six years. I have been in private practice since 2003 providing review and consultation on forensic biology and DNA cases. A copy of my full resume is attached hereto.

1. I have been retained by attorney Michael Burt in the matter of *State of Utah v. Tyler James Robinson,* case 251403576 as an expert to review materials related to DNA testing in this case and consult with defense counsel.
2. There are two federal agencies testing DNA evidence in this case. I have received a large amount of discovery to date, and I expect to receive more discovery for some time to come. Additionally, I will be coordinating my review with other defense experts.
3. Given the complexity of the case, the need to coordinate with other experts, and my existing schedule, it is my professional opinion that in order to perform a complete and reliable review I will need approximately six months after all discovery material has been produced.
4. I have reviewed defense counsel's March 25, 2025 discovery request to the state and agree that the DNA material requested therein is necessary for my complete independent review of the FBI's and the ATF's DNA laboratory

work in this case.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 27, 2026 at Ventura County, California.

Elizabeth A. Johnson, Ph.D.