IN THE UTAH COURT OF APPEALS

OREM CITY, Plaintiff / Appellee, **v.** **DAVID AMMON JAKEMAN,** Defendant / Appellant	Appellate Court Case No. 20260699 Criminal Case No. 221300408, 221300553, 231300069, 231300079, and 231300162

BRIEF OF APPELLEE

ON APPEAL FROM A *RULING AND ORDER ON A MOTION TO DISQUALIFY JUDGE ELDRIDGE* ENTERED ON SEPTEMBER 2, 2025 AND A *RULING AND ORDER ON DEFENDANT'S MOTION TO RECONSIDER THE DENIAL OF THE MOTION TO DISQUALIFY* ENTERED ON OCTOBER 7, 2025 BY THE HONORABLE JUDGE KRAIG POWELL OF THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH.

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ORAL ARGUMENTS AND PUBLISHED OPINION NOT REQUESTED

LIST OF ALL PARTIES

This is an appeal from a criminal proceeding. The Appellant/Defendant is David Ammon Jakeman ("Jakeman"), and throughout this criminal case has been represented by multiple attorneys, but now appears *Pro Se*.

The City of Orem, by and for the State of Utah, is the Appellee/Plaintiff and is represented by D. Jacob Summers and Aliisa Leon. There are no other parties to the proceeding.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION. 1

STATEMENT OF ISSUES. 3

ISSUE 1. 3

ISSUE 2. 4

ISSUE 3. 5

STATEMENT OF CASE. 6

STATEMENT OF FACTS. 6

PROCEDURAL HISTORY. 7

SUMMARY OF ARGUMENT. 9

ARGUMENT. 11

A. JAKEMAN'S MOTION TO DISQUALIFY WAS UNTIMELY. 12

B. THE LOWER COURT CORRECTLY FOLLOWED UTAH RULE OF CRIMINAL PROCEDURE RULE 29 AND APPLIED THE CORRECT LEGAL STANDARD. 16

1. The *Dahl* Extrajudicial Source Rule Controls. 17

2. The Court of Appeals Should Not Adopt *Liteky* to "Overrule" *Dahl*. . . 18

3. The Reviewing Court Independently Analyzed the Merits of Each Allegation and Correctly Found No Basis for Bias. 19

C. APPELLANT SUFFERED NO ACTUAL PREJUDICE. 21

CONCLUSION. 23

TABLE OF AUTHORITIES

UTAH SUPREME COURT CASES

Allen v. Friel, 2008 UT 56 5

Bailey v. Bayles, 2002 UT 58 15

Brown v. Glover, 2000 UT 89 5

Dahl v. Dahl, 2015 UT 79 ..... 4, 10, 11, 17, 18, 19

Dipoma v. McPhie, 2001 UT 61 15

Pratt v. Nelson, 2007 UT 41 15

Salt Lake City Corp. v. Jordan River Restoration Network, 2012 UT 84 ..... 3, 12

State v. Alonzo, 973 P.2d 975 (Utah 1998) 5, 22

State v. Gardner, 789 P.2d 273 (Utah 1989) 21

State v. Gonzalez, 2015 UT 10 12

State v. Munguia, 2011 UT 5 ..... 10, 11, 17

UTAH COURT OF APPEALS CASES

Paulson v. Paulson, 2026 UT App 108 ..... 4, 17, 22

State v. Asta, 2018 UT App 220 5

State v. Boyer, 2020 UT App 23 ..... 11, 16, 18, 19

State v. Kucharski, 2012 UT App 50 ..... 19, 20

UNITED STATES SUPREME COURT CASES

Liteky v. United States, 510 U.S. 540 (1994) 10, 18, 19

STATUTES & CODES

28 U.S.C. § 455 18

UTAH RULES OF CRIMINAL PROCEDURE

Rule 29 ..... 1, 2, 3, 4, 9, 12, 15, 16

Rule 30 ..... 5, 10, 21

INTRODUCTION

This appeal arises from a criminal proceeding in which Appellant David Jakeman ("Jakeman") was convicted of Child Abuse and Violation of a Protective Order. Throughout the course of the criminal trial and subsequent post-judgment proceedings, Jakeman has filed countless motions and other filings, often times these filings are voluminous – at times exceeding 300 pages. Jakeman sought appellate review for several adverse rulings in the criminal proceedings, including review of the underlying conviction, issuance of a continuous protective order, and other post-judgment decisions. Jakeman has not prevailed, on the merits, of any appellate review or extraordinary writ.

Amongst the numerous filings, Jakeman submitted a Motion to Disqualify Judge Eldridge. This disqualification motion alleged judicial bias based entirely on Judge Eldridge's adverse rulings, routine docket management, and in-court statements. Following the procedures outlined in Utah Rule of Criminal Procedure 29, Judge Eldridge certified the disqualification motion and Fourth District Presiding Judge Powell independently reviewed the allegations. After review, Presiding Judge Powell denied both the Motion to Disqualify and a subsequent Motion to Reconsider.

Jakeman sought appeal of Presiding Judge Powell's decisions in October 2025. In that Notice of Appeal, Jakeman sought review of the September 2, 2025 "Ruling and Order on Motion to Disqualify Judge". Then, in a separate Notice of Appeal, Jakeman sought review of the October 7, 2025 "Ruling and Order on Defendant's Rules 54, 59, & 60 Motion to Reconsider…" The separate Notice of Appeal was added to the first, as an

amended Notice of Appeal. Ultimately, this appeal was denied by summary disposition, as the Court determined that it lacked jurisdiction due to no final appealable order.

Jakeman now seeks to re-litigate the previous appeal. On May 25, 2026, Jakeman filed his Notice of Appeal, therein Jakeman appeals the rulings and orders of two motions: (1) the September 2, 2025 "Ruling and Order on Motion to Disqualify Judge", and (2) the October 7, 2025 "Ruling and Order on Defendant's Rules 54, 59, & 60 Motion to Reconsider, Alter, and Amend the Denial of His Request to Disqualify Judge." In his opening brief, Jakeman clearly states that this appeal "does not challenge the April 15 or May 20, 2026 orders; it cites them only as the dispositions relevant to appellate jurisdiction". Appellant's Opening Brief at p.19. Now, Jakeman seeks appellate review of the orders issued well over 6 months prior, using rulings and orders that he does not challenge in this appeal, in order to invoke appellate jurisdiction.

The Court of Appeals should affirm Presiding Judge Powell's orders. First, Jakeman's motion is procedurally barred as untimely. Under Utah Rule of Criminal Procedure 29(b)(1)(B), a motion to disqualify must be filed within 21 days of learning of the grounds for the motion, yet Jakeman waited months, and in some cases years, to aggregate a list of routine, adverse courtroom events into his motion. Second, Utah law firmly establishes that judicial bias must stem from an extrajudicial source, not from occurrences, management decisions, or adverse rulings formed during judicial proceedings. Jakeman failed to identify any extrajudicial source of bias. Finally, Jakeman cannot establish actual prejudice. Because Jakeman explicitly disclaims any challenge to the substantive merits or correctness of the underlying criminal convictions, continuous

protective orders, or vexatious litigant orders in this appeal, any alleged procedural flaw or appearance of bias is completely harmless as a matter of law.

STATEMENT OF ISSUES

ISSUE 1:

Whether Appellant failed to preserve his judicial disqualification claims, and subsequently invited error, by filing an untimely Motion to Disqualify that aggregated months and years-old routine judicial actions well outside the mandatory 21-day window of Utah Rule of Criminal Procedure 29(b)(1)(B), particularly where Jakeman uses these stale claims to anchor appellate jurisdiction without challenging the substantive merits of the underlying rulings.

STANDARD OF APPELLATE REVIEW:

In general, to properly preserve an issue for appeal, "the party asserting error must (1) specifically raise the issue, (2) in a timely manner, and (3) support the claim with evidence and relevant legal authority." *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶ 27, 299 P.3d 990 (internal quotations omitted).

PRESERVATION OF ISSUE:

The City asserts this issue was ***not*** preserved. Jakeman filed his Motion to Disqualify on July 29, 2025 (R-003453-003493). Because Utah Rule of Criminal Procedure 29(b)(1)(D) prohibits opposing parties from responding to a disqualification motion, the City was precluded from raising a timeliness objection in the lower court. However, the face of the record establishes that the motion relied exclusively on rulings, docket management, and in-court statements that occurred far beyond the 21-day window

required by Rule 29(b)(1)(B) (e.g., a March 28, 2025 waiver of counsel; a September 27, 2024 continuous protective order; and a July 14, 2022 decision regarding library access). Consequently, Jakeman's claims are procedurally barred, and filing an untimely motion to disqualify should be treated as invited error, rather than allowing an untimely motion to revive stale claims.

ISSUE 2:

Assuming *arguendo* that the claims were preserved, whether the reviewing court correctly applied binding Utah Supreme Court precedent (*Dahl v. Dahl*, 2015 UT 79, 459 P.3d 276) by requiring allegations of judicial bias to stem from an extrajudicial source, rather than an intrajudicial source or routine adverse rulings.

STANDARD OF APPELLATE REVIEW

"Whether the district court erred in declining to disqualify the trial judge on the basis of bias is a question of law", which the Court reviews for correctness. *Paulson v. Paulson*, 2026 UT App 108, ¶ 34, ---P.3d.---.

PRESERVATION OF ISSUE:

Jakeman argued for the application of a non-binding federal standard in his untimely Motion to Disqualify (R-003453-003493) and subsequent Motion to Reconsider (R-004448-004471). The City maintains that while the argument was presented below, the motions containing them were procedurally barred and unpreserved due to their untimely filing.

ISSUE 3:

Whether Jakeman can establish actual prejudice under Utah Rule of Criminal Procedure 30, where he explicitly disclaims any challenge to the substantive merits or legal correctness of the underlying criminal convictions, continuous protective orders, and vexatious litigant orders from which his bias claims arise.

STANDARD OF APPELLATE REVIEW

If the procedures of Utah Rule of Criminal Procedure 29 are followed, "then a judge's decision not to recuse does not constitute reversible error absent a showing of actual bias or abuse of discretion." *State v. Asta*, 2018 UT App 220, ¶ 20, 437 P.3d 664. When those procedures are followed the Appellant "bears the heightened burden of demonstrating either actual bias or abuse of discretion." *Id.* "Actual prejudice can be shown when there exists a reasonable likelihood that the result would have been more favorable for the defendants absent the trial judge's appearance of bias." *State v. Alonzo*, 973 P.2d 975, 979 (Utah 1998). "[I]ssues raised by an appellant in the reply brief that were not presented in the opening brief are considered waived and will not be considered by the appellate court." *Allen v. Friel*, 2008 UT 56, ¶ 8, 194 P.3d 903 *quoting* *Brown v. Glover*, 2000 UT 89, ¶ 23, 16 P.3d 540.

PRESERVATION OF ISSUE:

Jakeman asserts prejudice in his appellate briefing but explicitly disclaims any challenge to the underlying legal rulings themselves. Because Jakeman has not challenged the substantive correctness of the orders forming the basis of appellate

jurisdiction, he necessarily fails to establish actual bias. As such, he cannot demonstrate that any alleged appearance of bias altered the result of the proceedings.

STATEMENT OF CASE

STATEMENT OF FACTS

On May 21, 2022, Appellant David Ammon Jakeman ("Jakeman") was arrested for Child Abuse and Violation of a Protective Order (R-000011–000012)[1]. Following an August 22, 2023 bench trial, Judge Jared Eldridge found Jakeman guilty on both counts (R-000194–000202). On November 3, 2023, the trial court sentenced Jakeman and entered a Sentencing Protective Order (R-000355–000367). On September 27, 2024, the court issued a Continuous Protective Order against Jakeman (R-001842–001849).

During a post-judgment hearing on March 28, 2025, Judge Eldridge accepted Jakeman's waiver of his right to counsel and permitted him to represent himself (R-002186–002189). During this same hearing, Judge Eldridge warned Jakeman about potential vexatious litigant findings due to his litigation conduct (R-003510–003536). Following the March 28, 2025 warning, Appellant filed a "Response to Statements Made During the Hearing," which exceeded 300 pages (R-002465–002786). Judge Eldridge subsequently issued a "Ruling on Various Motions Raised by Defendant" on June 30, 2025 (R-002896–002902).

[1] For purposes of clarity and to reduce redundancy, where this appeal handles the same issues for multiple concurrent criminal cases, Appellee will cite only to the Public Record in Criminal Case 221300408.

Appellant continued to file post-judgment motions, including a Request for Hearing to Modify Continuous Protective Orders, which Judge Eldridge denied in a ruling issued on July 25, 2025 (R-003286–003288).

On July 29, 2025, Appellant filed a "Motion to Disqualify Judge Eldridge From All Pending And Future Matters Involving Jakeman" (R-003453–003493). The motion alleged bias based exclusively on Judge Eldridge's adverse rulings, docket management, and in-court statements—the vast majority of which occurred months or years prior to the July 29, 2025 filing.

PROCEDURAL HISTORY

- May 27, 2022: The City of Orem filed an Information charging Appellant with Child Abuse and Violation of a Protective Order (R-000004).
- August 22, 2023: Judge Eldridge presided over a bench trial, finding Appellant guilty of both misdemeanor charges (R-000194–000195, R-000197–000202).
- November 3, 2023: Appellant was sentenced, and a Sentencing Protective Order was entered (R-000355–000367).
- September 27, 2024: The trial court entered a Continuous Protective Order (R-001842–001849).
- July 25, 2025: Judge Eldridge issued a Ruling denying Appellant's Request for Hearing to Modify Continuous Protective Orders (R-003286–003288).
- July 29, 2025: Appellant filed a Motion to Disqualify Judge Eldridge (R-003453–003493).

- August 1, 2025: Judge Eldridge entered an Order Referring Defendant's Motion to Disqualify Judge Eldridge to the Presiding Judge for Decision (R-003567–003568).
- September 2, 2025: Presiding Judge Powell issued a Ruling and Order Denying the Motion to Disqualify Judge (R-004051–004057).
- September 30, 2025: Appellant filed a Rules 54, 59, & 60 Motion to Reconsider, Alter, and Amend the Denial of His Request to Disqualify Judge Eldridge (R-004448–004471).
- October 7, 2025: Presiding Judge Powell issued a Ruling and Order denying Appellant's Motion to Reconsider (R-004493–004495).
- October 8, 2025: Appellant filed a Notice of Appeal challenging the denial of the Motion to Disqualify Judge Eldridge. (R-004499–004504).
- November 14, 2025: Utah Court of Appeals dismisses Jakeman's Appeal, because there was no final appealable order. (R-004516-004517).
- November 20, 2025: The district court terminated the Court's jurisdiction, terminated probation and closed the case. (R-005309).
- January 2026-April 2026: Appellant files numerous filings and other requests with the district court. (R-004912).
- April 15, 2026: Judge Eldridge issues "Ruling on Various Requests by Defendant and Vexatious Litigant Findings". (R-004912-004923).

- May 21, 2026: Judge Eldridge, after holding an Order to Show Cause, issued "Ruling on Order to Show Cause Regarding Vexatious Litigant Findings". (R-005301-005309).
- Specifically, the Court noted that since the Court terminated Appellant's probation, Appellant's conduct was responsible for the majority of the 88 docket entries over the 6 months. (R-005303).
- May 25, 2026: Appellant files a Notice of Appeal challenging the denial of the Motion to Disqualify Judge Eldrige and the Ruling and Order on Defendant's Motion to Reconsider His Request to Disqualify Judge, from which this appeal proceeds. (R-005354-005361).

SUMMARY OF ARGUMENT

The Court of Appeals should affirm Presiding Judge Powell's orders denying Appellant Jakeman's Motion to Disqualify Judge Eldridge and Motion to Reconsider. Under Utah law, judges are presumed qualified, unbiased, and impartial, and the party seeking disqualification bears a heavy burden to prove otherwise. Jakeman fails to meet this burden for various reasons.

First, Jakeman's disqualification claims are procedurally barred as untimely. Utah Rule of Criminal Procedure 29(b)(1)(B) mandates that a motion to disqualify be filed within 21 days of when the moving party learned or should have learned of the underlying grounds. Rather than filing timely motions, Jakeman waited months—and in some

instances, years—to aggregate a ledger of routine, adverse courtroom events into his July 29, 2025 motion. Because Jakeman failed to meet this mandatory 21-day threshold, his claims are unpreserved, procedurally barred, and Presiding Judge Powell's rulings should be affirmed on this alone.

Second, Utah law requires bias to stem from an extrajudicial source. Under *Dahl v. Dahl*, 2015 UT 79, and *State v. Munguia*, 2011 UT 5, 253 P.3d 1082, alleged judicial bias must stem from an extrajudicial source, not from occurrences during judicial proceedings. Every grievance raised by Jakeman derives exclusively from Judge Eldridge's courtroom management, evidentiary evaluation, and legal rulings. Furthermore, this Court is bound by stare decisis to apply *Dahl* and must reject Jakeman's invitation to adopt the federal standard in *Liteky v. United States*, 510 U.S. 540, 114 S. Ct. 1147, 127 L.Ed.2d 474 (1994), which the Utah Supreme Court declined to adopt. *See Dahl*, 2015 UT at ¶54, n.14.

Third, adverse rulings and routine case management do not demonstrate bias. Even on the merits, adverse rulings alone do not establish judicial bias as a matter of law. Presiding Judge Powell independently examined Jakeman's factual allegations and correctly concluded that Judge Eldridge's observations, warnings, and rulings were properly formed entirely within the performance of his judicial duties. Frustration with adverse legal outcomes must be challenged through direct appeal, not disqualification motions.

Fourth, Jakeman suffered no actual prejudice. Under Utah Rule of Criminal Procedure 30, a failure to recuse is harmless error unless the moving party proves actual bias that affected substantial rights and altered the outcome of the case. Jakeman explicitly

disclaims any challenge to the substantive correctness or merits of the underlying ruling or rulings providing appellate jurisdiction. Having disclaimed any substantive error, Jakeman cannot establish actual bias or prejudice as a matter of law.

ARGUMENT

Utah law firmly establishes that judges are presumed to be qualified, unbiased, and impartial. *Dahl v. Dahl,* 2015 UT 79, ¶ 49. The party seeking disqualification bears the heavy burden of demonstrating that the judge is not qualified. *Id.* Utah courts have routinely held that this demonstration of alleged bias "must usually stem from an extrajudicial source, not from occurrences in the proceedings before the judge." *State v. Munguia*, 2011 UT 5, ¶ 17; *cited* in *Dahl*, 2015 UT at ¶ 49. As Judge Eldridge and Presiding Judge Powell followed the Utah Rules of Criminal Procedure Rule 29, Jakeman "bears the heightened burden of demonstrating either actual bias or abuse of discretion." *State v. Boyer*, 2020 UT App 23, ¶ 71, 460 P.3d 569. On appeal, Jakeman argues that Presiding Judge Powell abused his discretion by following binding Utah precedent when the court denied Jakeman's Motion to Disqualify Judge Eldridge and Jakeman's Motion to Reconsider the Order to Disqualify Judge Eldridge. Presiding Judge Powell correctly identified and applied the controlling legal framework governing judicial disqualification under Utah law in his September 2, 2025 and October 7, 2025 orders. This Court should deny Jakeman's appeal and affirm Presiding Judge Powell's decisions.

A. JAKEMAN'S MOTION TO DISQUALIFY WAS UNTIMELY.

A motion to disqualify shall be filed no later than twenty-one (21) days after the date the moving party learned or should have learned of the grounds for the motion. UT. R. Crim. P. 29(b)(1)(B). In general, the Court does not reach the merits of an argument, unless the appellant "(1) specifically raised the issue in the trial court, (2) in a timely manner, and (3) supported the claim with evidence and relevant legal authority." State v. Gonzalez, 2015 UT 10, ¶53 (Lee, A.C.J., concurring), *citing* Salt Lake City Corp. v. Jordan River Restoration Network, 2012 UT 84, ¶ 27, 299 P.3d 990. This Court should not reach the merits of Jakeman's Motion to Disqualify, as it was filed well past the 21-day time requirement[2].

Jakeman's Motion to Disqualify asserted various grounds for the disqualification of Judge Eldridge. (R-003453-003493). Presiding Judge Powell categorized the grounds as follows: (1) Refusal to Allow Defendant to Represent Himself; (2) Preferential Treatment to Opposing Party; (3) Judge Eldridge Ruled Too Quickly on Some of Defendant's Motions; (4) *De Facto* Termination of Defendant's Parental Rights by Issuing a Continuous Protective Order; (5) Judge Eldridge's Warning Regarding Potential Stalking Behavior; (6) Judge Eldridge Failed to Order that Defendant Be Given Access to County Jail Law Library; (7) Judge Eldridge's Warning Regarding Vexatious Litigant Finding. (R-004052-

[2] At the trial court level, the City was not a party to this motion or review. Pursuant to Rule 29(B)(1)(D), the City was precluded from filing any opposition to Jakeman's motion and subsequent motion to reconsider. Absent such prohibition, the City would have raised this issue with the reviewing court.

004057). A quick review of the record establishes that these grounds fall well outside of the 21-day window required for a timely Rule 29 motion.

First, on March 28, 2025, Judge Eldridge accepted Jakeman's waiver of his right to an attorney, accepted Jakeman's desire to represent himself, and provided a colloquy about the waiver of counsel and self-representation. (R-002186). Second, Jakeman ambiguously posits that the trial court "[r]epeatedly treated the opposing party preferentially". (R-003454). When Jakeman later provides examples of the alleged preferential treatment, it comes from a September 27, 2023 hearing. (R-003485). Third, Jakeman's examples of Judge Eldridge adjudicating too quickly stem from motions and orders in August and September 2024. (R-003486). Fourth, the claim of a *De Facto* Parental Rights termination stems from the imposition of a continuous protective order. (R-003488-003489). That continuous protective order was imposed on the defendant on September 27, 2024. (R-001860). Fifth, Judge Eldridge's comment warning Jakeman about potential stalking behavior occurred on September 27, 2024, during the hearing where the continuous protective order was issued. (R-003490). Sixth, Jakeman alleges that on July 14, 2022 Judge Eldridge failed to Order the County Jail to provide him access to the law library. (R-003465). Seventh, the Vexatious Litigant warning came during the March 28, 2025 hearing. (R-003529). After receiving this warning, Jakeman filed "Defendant's Response to Statements During the Hearing on 03/28/2025". (R-002465-002786). As the record shows, this filing exceeded 300 pages. *Id.* On June 30, 2025, Judge Eldridge issued Ruling on Various Motions Raised by Defendant. (R-002896-002902). Each of these categories

of alleged biased conduct occurred more than 21 days prior to the filing of Jakeman's July 29, 2025 Motion to Disqualify, some occurring years prior to filing.

This Court should not entertain Jakeman's continued use of lawfare to relitigate perceived errors[3] which were not timely preserved or have already been resolved by one of Jakeman's numerous other appeals. At most, Jakeman would only have Judge Eldridge's July 25, 2025 ruling denying Jakeman's Request for Hearing to Modify Continuous Protective Orders as a timely basis for his Motion to Disqualify. (R-003286-003288). However, Jakeman never argues with any specificity how the July 25, 2025 ruling provides any basis for Judge Eldridge's bias, except for making a blanket reference to the "June 25, 2025 denial of Jakeman's first ever request for hearing to modify continuous protective orders." [*sic*] (R-03482). It should be noted that Jakeman's reference included an erroneous date and provided no argument for how that order established bias. (*Id.*) Moreover, Jakeman's Motion to Reconsider simply relitigated issues that occurred well outside of the 21 day window. Last, Jakeman's Motion to Reconsider alleged "newly discovered material evidence". (R-004448). However, this "newly discovered material evidence" is nothing more than a reference to Jakeman's continued appeals. (R-004470). Therein, Jakeman

[3] Here, the record speaks for itself. In criminal case 221300408 (20260698-CA) the record is over 5,000 pages, due to the numerous and voluminous filings of Jakeman. Moreover, the record shows Jakeman has sought the following appeals in this case: 20231059-CA (Convictions Affirmed, Petition for Rehearing Denied), 20241042-CA (Affirming Issuance of Continuous Protective Order, Cert. Denied), 20250896-CA (Affirming Post-Judgment Rulings raised in his Motion to Disqualify, Petition for Rehearing pending), 20251197-CA (Summary Disposal of Appeal Regarding his Motion to Disqualify and Motion to Reconsider), 20260698-CA (Pending Appeal Challenging the Vexatious Litigant Finding), 20260699-CA (This Appeal). *See* R000438, R-001875, R-003847, R-004496, R-005373, R-005377

references 20251170-CA, 20241042-CA, and 20251122-SC claiming that imminent victories in those cases will provide "further proof of Judge Eldridge's bias-induced incompetence." (*Id.*) The courts have denied Jakeman relief in each appeal listed.

In sum, Appellant's Motion to Disqualify was procedurally barred and untimely under Utah Rule of Criminal Procedure 29(b)(1)(B). Rather than filing a motion within 21 days of learning of any alleged grounds, Appellant waited months—and in some instances, years—to aggregate a list of routine, adverse judicial rulings into a single disqualification motion. To allow Appellant to file an untimely motion, where the opposing party is precluded from raising issues of timeliness under Rule 29(b)(1)(D), and use the court's ruling as a basis to then claim preservation of stale issues amounts to nothing more than invited error. Invited error "arises from the principle that a party cannot take advantage of an error committed at trial when that party led the trial court into committing the error." *Pratt v. Nelson*, 2007 UT 41, ¶ 17, 164 P.3d 366. Appellant cannot build a multi-year ledger of trial events, sit on them past the mandatory 21-day bar, and then attempt to manufacture a timely aggregate challenge out of stale proceedings. Moreover, "[i]t is well settled that an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action . . . was not raised in the lower court, and was not considered or passed on by the lower court." *Bailey v. Bayles*, 2002 UT 58, ¶ 10, 52 P.3d 1158 (quoting *Dipoma v. McPhie*, 2001 UT 61, ¶ 18, 29 P.3d 1225). Because the face of the record conclusively establishes that Appellant failed to satisfy the mandatory 21-day deadline, this Court can and should affirm the denial of

Appellant's Motion to Disqualify on the threshold ground of untimeliness without reaching the merits.

B. THE LOWER COURT CORRECTLY FOLLOWED UTAH RULE OF CRIMINAL PROCEDURE RULE 29 AND APPLIED THE CORRECT LEGAL STANDARD.

Utah Rules of Criminal Procedure Rule 29 protects a criminal defendant's right to a fair trial. *State v. Boyer*, 2020 UT App 23, ¶ 70. Rule 29 sets for the procedure for judicial disqualification, when a party believes that the impartiality of a judge is compromised. *Id.* This procedure allows for the certification of motion and review of the motion by another judge. *Id.* The presiding judge of the district may act as the reviewing judge. UT. R. Crim. P. 29(b)(2)(A). Other parties to the case may not file any response to the motion to disqualify. UT. R. Crim. P. 29(b)(1)(D). In reviewing the motion, the reviewing judge may "consider any part of the record" of the case. UT. R. Crim. P. 29(b)(2)(C). Finally, the motion to disqualify must also be timely, in other words a party must file the motion to disqualify within 21 days of "the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based." UT. R. Crim. P. 29(b)(1)(B)(iii).

On July 29, 2025, Jakeman filed his Motion to Disqualify Judge Eldridge. (R-003453-003493). On August 1, 2025, Judge Eldridge certified the Motion for Review by the Fourth District Court's Presiding Judge. (R-003567). On September 2, 2025, Presiding Judge Powell issued his Order and Ruling Denying Jakeman's Motion. (R-004051-004057). Judge Eldridge and Presiding Judge Powell followed procedure outlined in Rule 29. On Appeal, Jakeman attempts to argue that the reviewing court abused its discretion,

when it applied well settled precedent and principles to its review of Jakeman's Motion to Disqualify. Jakeman's argument should not prevail. Rather, this Court should affirm Presiding Judge Powell's decisions. Further, the City re-asserts that these Motions are untimely under Utah Rule of Criminal Procedure 29(b)(1)(B)(iii) and as such the issues are unpreserved.

1. The *Dahl* Extrajudicial Source Rule Controls.

Under Utah Rule of Criminal Procedure 29, at the trial court level, a party seeking to disqualify a judge based on judicial bias must demonstrate that the potential bias comes from an extrajudicial source. Paulson v. Paulson, 2026 UT App 108, ¶ 65, *quoting* Dahl v. Dahl, 2015 UT 79, ¶ 49. This rule seeks to prevent a judge using personal bias in adjudicating the merits of a dispute. State v. Munguia, 2011 UT 5, ¶ 17. The rule does not preclude a judge from developing an opinion, expressing frustration or anger about a defendant's behavior, when those opinions are developed during the proceedings. Dahl, 2015 UT at ¶ 50, Munguia, 2011 UT at ¶ 20.

Here, every single allegation raised in Jakeman's Motion to Disqualify derives exclusively from Judge Eldridge's courtroom actions, docket management decisions, and legal rulings during the criminal and post-judgment proceedings. Because Jakeman failed to allege any extrajudicial source of bias or conflict, the reviewing court properly held that Jakeman's motion was legally insufficient under *Dahl*.

2. The Court of Appeals Should Not Adopt *Liteky* to "Overrule" *Dahl.*

Jakeman asks this Court to set aside Utah's established extrajudicial source principle and adopt a persuasive, non-binding, federal standard set forth in Liteky v. United States, 510 U.S. 540 (1994). Appellant's argument fails for two fundamental reasons.

First, Liteky is a federal decision interpreting a federal recusal statute, 28 U.S.C. § 455. As such, it is merely persuasive authority, not binding on Utah state courts. When the Utah Supreme Court was presented in Dahl, with the proposition to adopt the Liteky "deep-seated favoritism or antagonism" federal rule, the Supreme Court "declin[ed] Ms. Dahl's invitation to adopt a new standard for judicial disqualification." Dahl, 2015 UT at ¶ 54 n.14. Where the Supreme Court previously declined to adopt the rule Jakeman now asserts, this Court is bound by stare decisis.

Second, Jakeman's request to graft Liteky into Utah law is unnecessary because Utah courts already integrate due process analysis into the judicial disqualification framework. Constitutional due process guarantees an absence of actual bias, such as where a judge has a direct financial interest or personal conflict. State v. Boyer, 2020 UT App 23, ¶72-73. Because Utah's existing due process and disqualification jurisprudence fully protects criminal defendants against actual partiality, there is no legal basis or authority for this Court to depart from Dahl.

3. The Reviewing Court Independently Analyzed the Merits of Each Allegation and Correctly Found No Basis For Bias.

Setting aside the extrajudicial source rule, Presiding Judge Powell independently examined the merits of each factual assertion raised in Jakeman's motion and correctly concluded that the alleged facts failed to establish judicial bias.

"Adverse rulings alone are insufficient to establish the existence of judicial bias." *Dahl*, 2015 UT at ¶ 52. Holding otherwise "would expose judges to accusations of bias in every case because every case necessarily requires ruling adverse to one party or the other." *Id.* When a trial judge learns facts or forms impressions during proceedings from a party's actions, pleadings, or courtroom temperament, those impressions are properly acquired in the performance of judicial duties *Boyer*, 2020 UT App at ¶ 73. Even the United States Supreme Court noted in *Liteky*,

> Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions. Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

Liteky v. United States, 510 U.S. 540, 551, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). A party's disagreement or dissatisfaction with an adverse legal outcome, the timing of a decision, or the terms of a continuous protective order must be challenged through a direct appeal of that order, not through a motion to disqualify the trial judge.

In *State v. Kucharski*, a defendant appealed his sentencing, arguing his counsel was ineffective for failing to move for disqualification of the sentencing judge. *Kucharski*,

2012 UT App 50, ¶ 1, 272 P.3d 791. In particular, the defendant alleged that the trial court was biased due to "the trial judge's previous experiences" with him in court. *Id.* at ¶ 6. There, the trial court had interacted with the defendant and noted that the defendant "had committed similar crimes on multiple occasions". *Id.* The trial judge stated that the defendant "deserved to go to prison because of the continued behavior. Probation hadn't changed him in the past under supervised probation, and he continued to commit crimes." *Id.* These interactions spanned previous criminal cases and were not held within concurrent criminal matters. The *Kucharski* court specifically held that "[i]t was not inappropriate for the trial judge to rely on what he had learned about Kucharski by dealing with him in the current and prior proceedings, or to make a judgment based on those dealings." *Id.* Rather, it was "necessary to completion of the judge's task". *Id.*

Here, every single allegation raised in Jakeman's Motion to Disqualify falls squarely into the category of routine judicial administration, in-court observations, and adverse legal rulings. Jakeman's grievances stem entirely from Judge Eldridge's management of his heavy district court docket, making evidentiary evaluations, issuing statutory protective orders, setting argument limits, and ruling on post-judgment motions. Much like the trial judge in *Kucharski*, who properly evaluated a defendant's character and recidivism based on prior in-court interactions, Judge Eldridge was required to make ongoing judicial judgments about Jakeman's conduct and his voluminous post-judgment filings. Judge Eldridge's observations regarding Jakeman's demeanor, his hearing statements, and his litigation tactics were formed exclusively during the performance of his judicial duties.

Furthermore, Jakeman's frustration with the timing or outcome of specific decisions – such as the issuance of continuous protective orders, the denial of motions to withdraw guilty pleas, or warning regarding vexatious litigation – reflects nothing more than dissatisfaction with adverse rulings. Under *Dahl*, an adverse ruling does not evidence personal bias simply because a party loses. If Jakeman believed any of Judge Eldridge's substantive rulings were legally erroneous, his remedy was to seek direct appellate review of those specific orders. As noted above, Jakeman has not prevailed, on the merits, in any appeal of Judge Eldridge's pre-trial, trial, or post-trial rulings and orders despite numerous attempts.

In conclusion, Jakeman cannot transform routine case management and adverse judicial rulings into a claim of disqualifying personal bias. Judge Eldridge's rulings, observations, and courtroom management decisions were properly formed entirely within the context of judicial proceedings. Because adverse rulings and in-court judicial impressions do not constitute bias as a matter of law, Presiding Judge Powell correctly held that Jakeman's motion identified no valid grounds for disqualification. This Court should accordingly affirm the reviewing court's order.

C. APPELLANT SUFFERED NO ACTUAL PREJUDICE.

Assuming *arguendo*, that Jakeman could establish a procedural flaw or an appearance of bias in the disqualification proceedings below, his appeal fails because he fails to establish any actual prejudice. "Failure of a trial judge to recuse even where he should have, based on the appearance of possible bias or prejudice, does not require reversal unless the substantial rights of the party are affected." *State v. Gardner*, 789 P.2d

273, 278 (Utah 1989) (internal quotations omitted) *quoting* Utah R. Crim. P. 30. Utah R. Crim. P. 30 provides that "[a]ny error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded." This principle has been reaffirmed in State v. Alonzo, 973 P.2d 975, 979 (Utah 1998) and again most recently in 2026 in Paulson v. Paulson, 2026 UT App 108, ¶ 66. Where the lower court complies with Rule 29, "the burden shift[s] to the petitioners to show actual bias or abuse of discretion." Alonzo, 973 P.2d at 979. "Actual prejudice can be shown when there exists a reasonable likelihood that the result would have been more favorable for the defendants absent the trial judge's appearance of bias." Id.

Crucially, Jakeman explicitly disclaims any challenge to the substantive merits or correctness of the rulings that form the basis of appellate jurisdiction. Jakeman provides that "[t]his appeal . . . does not ask this Court to decide whether any underlying criminal ruling, continuous-protective-order ruling, or vexatious-litigant ruling under rule 83 . . . was correct". Appellant's Opening Brief p. 7. Moreover, Jakeman states that this brief "does not challenge, the merits of any ruling in the five cases." Id. at p.12, fn 2. Further, Jakeman continues in providing that "[a]ppellant does not contend that any of those subsequent rulings was erroneous – that question is not presented in this appeal, and this brief does not rely on it." Id. at p. 43-44. Jakeman concludes that "[t]he Court need not decide actual bias or grant independent relief from any order assigned to separate Appeal No. 20260698-CA." Id. at p.48. Rather, Jakeman attempts to argue that the prejudice is Presiding Judge Powell's Rule 29 sufficiency denial of the Motion to Disqualify and Motion to Reconsider. See Id. at p.42, 44-45.

In conclusion, Jakeman cannot establish actual prejudice because he explicitly disclaims any error or challenge to the substantive outcomes of his criminal cases, protective orders, or vexatious litigant proceedings. Under Utah law, a failure to recuse is harmless unless an appellant demonstrates that an appearance of bias affected substantial rights and altered the result of the proceedings. By asserting that the mere continuation of Judge Eldridge presiding over his cases constitutes harm—without showing or even alleging that any underlying ruling on the merits was erroneous—Jakeman fails as a matter of law to prove actual bias or prejudice. Because any alleged procedural flaw or appearance of bias was completely harmless, this Court should affirm the orders of the reviewing court.

CONCLUSION

For the foregoing reasons, Appellee respectfully requests that this Court affirm Presiding Judge Powell's orders denying Appellant Jakeman's Motion to Disqualify Judge Eldridge and Motion to Reconsider. Jakeman's disqualification claims are procedurally barred as untimely under Utah Rule of Criminal Procedure 29(b)(1)(B) because he failed to file within the mandatory 21-day window. On the merits, Jakeman fails to establish judicial bias under *Dahl v. Dahl*, as his grievances stem exclusively from routine courtroom management and adverse legal rulings rather than an extrajudicial source. Finally, because Jakeman explicitly disclaims any challenge to the substantive merits of the underlying rulings, he cannot establish actual prejudice as a matter of law. Accordingly, this Court should reject Appellant's appeal and affirm the reviewing court's decisions in their entirety.

DATED this 7th day of October, 2026.

/s/ D. Jacob Summers

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CERTIFICATE OF COMPLIANCE

Counsel hereby certifies pursuant to Ut. R. App. P. 24(a)(11)(A) and (B) that the Brief of Appellee complies with the following:

1. UT. R. App. P. 24(g)(1) and (2) in that the brief contains 5,804 words as determined by Microsoft Word used to prepare the *Brief of Appellee*, excluding the table of contents, table of authorities, certificates, and addendum.

2. UT. R. App. P. 24(a)(11) and UT. R. App. P. 21 in that the filing herein and addenda do not contain any non-public "information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal or juvenile court social, or other information to which the right of public access is restricted by statute, rule, order or case law."

DATED this 7th day of October, 2026

/s/ D. Jacob Summers
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Deputy City Attorney, Orem City
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I e-filed, and emailed, a true and correct copy of the forgoing *Brief of Appellee* on this 7th day of October 2026, to the following, with hard copies to follow in accordance with UT. R. App. P. 26(d):

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