IN THE UTAH COURT OF APPEALS

OREM CITY / STATE OF UTAH, Plaintiff/Appellee, v. **DAVID AMMON JAKEMAN,** Defendant/Appellant.	Lead Appellate Case No: 20260699-CA ____ Consolidated with Nos: 20260701-CA, 20260703-CA, 20260705-CA, and 20260707-CA ____ District Court Nos: 221300408, 221300553, 231300069, 231300079, and 231300162

REPLY BRIEF OF APPELLANT

This Appeal is from the September 2, 2025 *Ruling and Order on Motion to Disqualify Judge* and 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* by Honorable Kraig Powell, the reviewing judge on the orders under review, of the Fourth Judicial District Court in and for Utah County, State of Utah

Appellant is not presently incarcerated in connection with the case on appeal. This is not an *Anders* brief.

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INTRODUCTION

The Court should vacate the September 2 and October 7, 2025 orders and remand for a new determination under rule 29 of the Utah Rules of Criminal Procedure applying the complete legal standard. One narrow ground supports that relief. The September 2 order relies on the in-court source of the allegations as dispositive, and it does not mention how those allegations, assumed true and taken together, would appear to a reasonable person knowing all the circumstances. In the terms this Court later used in *Paulson v. Paulson*, 2026 UT App 108, the order relies on the steps restated in paragraph 65 and does not mention the inquiry restated in paragraph 66.

The City's brief confirms that ground. The City states the right rule and defends a different one. It agrees that the question is one of law, reviewed for correctness. City Br. 4 (quoting *Paulson*, 2026 UT App 108, ¶ 34). It quotes the governing formulation: bias "must usually stem from an extrajudicial source." *Id.* at 11 (quoting *State v. Munguia*, 2011 UT 5, ¶ 17). It then defends the order because, every allegation having arisen in the proceedings, "the reviewing court properly held that Jakeman's motion was legally insufficient under *Dahl*." *Id.* at 17. The objective standard, whether "the judge's impartiality might reasonably be questioned" when viewed "through the eyes of a reasonable person, knowing all the circumstances," appears nowhere in the City's brief. *Paulson*, 2026 UT App 108, ¶ 66 (cleaned up).

The City measures prejudice by the test for reversing judgments rather than against the decision under review. And it asks this Court to decide timeliness, which rule

29 commits to a reviewing judge who "may deny" an untimely motion and made no timeliness determination.

ARGUMENT

I. The City states the right rule and defends a different one.

Responds to City Br. 9–11, 16–21; supports Opening Br. Part I, 26–40.

A. The City quotes "must usually," then defends a rule without exceptions.

Responds to City Br. 11, 17; supports Opening Br. Part I.B, 36–37.

The City quotes the governing rule: bias "must usually stem from an extrajudicial source, not from occurrences in the proceedings before the judge." City Br. 11 (quoting *Munguia*, 2011 UT 5, ¶ 17). Its defense of the order applies a different one. Because "every single allegation" arose from in-court conduct, it argues, and "[b]ecause 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*." *Id.* at 17. That is the stopping rule the opening brief described. Four times, the order holds that an intrajudicial source ends the inquiry "even if Defendant's allegations were true." 408 R.4053–55; *see* Opening Br. 36–37.

The City does not explain how a rule without exceptions can be reconciled with "usually," the formulation this Court restated after *Dahl v. Dahl*, 2015 UT 79: "to require recusal, 'the bias or prejudice must usually stem from an extrajudicial source, not from occurrences in the proceedings before the judge.'" *State v. Boyer*, 2020 UT App 23, ¶ 73 (quoting *Munguia*, 2011 UT 5, ¶ 17). Usually is not always.

B. *Dahl* already states the objective standard, and *Liteky*'s benchmark is part of Utah practice.

Responds to City Br. 18–20; supports Opening Br. Part I.A, 26–35.

The City says Appellant "asks this Court to set aside Utah's established extrajudicial source principle" and that this Court "is bound by stare decisis." City Br. 18. The opening brief agrees that *Liteky v. United States*, 510 U.S. 540 (1994), is "persuasive rather than binding here," and that "[i]f *Dahl* forecloses that step, this Court is bound, and Appellant preserves the issue for certiorari review." Opening Br. 7–8. The question is what *Dahl*'s source sentence, which quotes *Munguia*'s "usually" in the same breath, requires a reviewing judge to do with intrajudicial allegations assumed true. 2015 UT 79, ¶ 49.

The City adds that *Liteky* interpreted a federal statute. City Br. 18. The operative words of that statute are that a judge must step aside when "his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Utah's Code of Judicial Conduct uses the same operative words. Utah Code Jud. Conduct r. 2.11(A). So does *Dahl*. 2015 UT 79, ¶ 49.

Footnote 14 of *Dahl* does not decide the question. The City quotes the footnote's closing clause. City Br. 18. The full sentence gives the reason: "However, the manifestation of bias alleged by Ms. Dahl would not establish judicial bias under that rule either, and we decline Ms. Dahl's invitation to adopt a new standard for judicial disqualification." 2015 UT 79, ¶ 54 n.14. That disposition rested on the insufficiency of what Ms. Dahl alleged, chiefly a potential professional relationship the record refuted. *Id.*

¶¶ 54–56. The court separately rejected the claims based on adverse rulings and a one-time statement of frustration directed to all counsel. *Id.* ¶¶ 48, 51–52. Its statement that "there is no evidence in the record of extrajudicial bias," *id.* ¶ 52, followed its examination of those allegations' content and context, *id.* ¶¶ 48, 51; *see id.* ¶¶ 55–61. The opinion describes a record that failed on every axis, not a rule that source alone ends the inquiry. The City does not respond to the opening brief's showing that the allegations here are of a different kind. Opening Br. 33–34.

Liteky's benchmark is already part of this Court's practice, as the City's own authorities show. City Br. 11, 16, 18–20. *State v. Kucharski* set *Munguia*'s "usually" beside a "[b]ut see" citation to *Liteky*'s explanation that source is "more of an 'extrajudicial source' factor." 2012 UT App 50, ¶ 4 (cleaned up). After *Dahl*, this Court held, quoting *Liteky*, that the comments in *Boyer* "fall well short of 'reveal[ing] such a high degree of favoritism or antagonism as to make fair judgment impossible.'" *Boyer*, 2020 UT App 23, ¶ 76 (quoting *Liteky*, 510 U.S. at 555). The City says that, under *Kucharski*, the judge's assessment "was" "necessary to completion of the judge's task." City Br. 20. *Kucharski* said such judgment "may be" necessary. 2012 UT App 50, ¶ 6 (citing *Liteky*, 510 U.S. at 551). The City's block quotation from *Liteky* ends with the words "successive trials involving the same defendant." City Br. 19. The next sentence on the same page reads: "It is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that 'extrajudicial source' is the only basis for establishing disqualifying bias or prejudice. It is the only common basis, but not the exclusive one . . . ." 510 U.S. at 551 (emphasis omitted).

C. *Dahl*, *Boyer*, and *Paulson* each state the objective inquiry, and the order does not mention it.

Responds to City Br. 11, 17–18, 22; supports Opening Br. Part I.B, 36–37.

The City's authorities confirm the second track. *Dahl*'s disqualification analysis opens with it: "A judge should be disqualified when circumstances arise in which the judge's 'impartiality might reasonably be questioned.'" 2015 UT 79, ¶ 49 (quoting *State v. Gardner*, 789 P.2d 273, 278 (Utah 1989)). The City cites that paragraph only for the presumption of qualification and the source rule. City Br. 11, 17. So does the order. Its block quotation of paragraph 49 begins with the second sentence; the first does not appear. 408 R.4051–52. That is the framework the City calls the "controlling legal framework." City Br. 11.

Boyer applies the same structure. At page 18, the City cites it for its due-process discussion. City Br. 18 (citing *Boyer*, 2020 UT App 23, ¶¶ 72–73). Having found no actual bias, *Boyer* separately took up the argument that the trial judge's comments "created an appearance of bias," and applied the test of how the matter would appear "through the eyes of a reasonable person, knowing all the circumstances." 2020 UT App 23, ¶¶ 77–78 (cleaned up). The City's due-process point does not respond to that inquiry. In drafting its rules of judicial conduct, Utah "imposed higher standards on judges than the Constitution requires to protect the rights of defendants." *Munguia*, 2011 UT 5, ¶ 16. Appellant's claim proceeds under the rules-based standard that governs a determination under rule 29 of the Utah Rules of Criminal Procedure. Opening Br. 44–45.

Paulson repeats the structure. Paragraph 65, after quoting *Dahl*'s opening sentence, states the presumption, the burden, and the source rule; paragraph 66 turns, with "[b]ut even," to the objective appearance inquiry. 2026 UT App 108, ¶¶ 65–66. The City cites paragraph 65 for the source rule and paragraph 66 only for harmlessness. City Br. 17, 22. It does not address paragraph 66's statement that a judge "should be disqualified based on an appearance of bias whenever 'the judge's impartiality might reasonably be questioned,'" a question determined "through the eyes of a reasonable person, knowing all the circumstances." 2026 UT App 108, ¶ 66 (cleaned up). The September 2 order relies on the steps *Paulson* restates in paragraph 65 and does not mention the inquiry *Paulson* restates in paragraph 66. Opening Br. 37.

D. The order relies on the source rule in every section, and "direct appeal" is no answer to a non-ruling.

Responds to City Br. 19–21; supports Opening Br. Part I.C, 37–40.

The City's fallback is that the reviewing judge, "[s]etting aside the extrajudicial source rule," examined each allegation on its merits. City Br. 19. The order did not set the source rule aside. Each of its seven sections ends with that rule. 408 R.4053–57. Three sections state whether the conduct "manifests bias," would "show bias," or is "evidence of bias"; the others treat it as an adverse ruling, as appropriate, or as unsupported by authority. 408 R.4053–57. Each section addresses its category alone. Neither the order nor the City's brief mentions how the acts, taken together, would appear to a reasonable person, which is the theory the motion presented: the conduct "independently and when aggregated." 408 R.3492.

The City calls the allegations "routine judicial administration, in-court observations, and adverse legal rulings." City Br. 20. The order's own statements are more specific. It states that "the judge often took more time to hear the arguments of the City than he gave to Defendant to make arguments." 408 R.4053. It states that a judge may end argument "even if that means cutting off a party whom the judge has decided to rule against on a particular issue." 408 R.4054. And the motion alleged a sequence the City does not engage:

- an unopposed correction motion left undecided for months, then granted in relevant part on June 30, 2025, thirteen days after this Court requested a response to a petition seeking a ruling on it (Opening Br. 14 & n.3);
- a ruling, in that same instrument, that Appellant's filing titled "Defendant's Response to Statements Made During the Hearing on 3/28/2025" was "effectively Defendant's first of three instances of vexatious litigation";
- a filing arrangement under which documents Appellant needed for a pending appeal went unfiled; and
- the denial of the probation officer's termination request on the day it was submitted, set against months of silence on Appellant's own motions.

408 R.2812–16; 408 R.2896–2902; 408 R.3283 & n.1; 408 R.3456–57, 3460–63, 3478–80. The transcript of the March 28, 2025 hearing confirms the filing arrangement. The court stated its understanding that "the instruction was any documents that he was wanting to file needed to go through counsel," and counsel stated that, once Appellant's bar complaint came through, "I haven't filed anything that he sent me." 408 R.3517; *see* 408 R.3519. Allegations of disparate handling describe "favoritism toward one of the parties." *Munguia*, 2011 UT 5, ¶ 17 (cleaned up). Whether they suffice under the correct

standard is for the reviewing judge in the first instance, Opening Br. 40, who "may consider any part of the record of the action." Utah R. Crim. P. 29(b)(2)(C).

The City also says Appellant's "remedy was to seek direct appellate review of those specific orders." City Br. 21. The order states the same rationale. 408 R.4054–55. That is usually true of rulings. *Liteky*, 510 U.S. at 555 (judicial rulings "[a]lmost invariably . . . are proper grounds for appeal, not for recusal"). But several of the motion's central allegations concern orders that were never entered. The motion alleged that Appellant asked the court in November 2023 to sign orders denying his unadjudicated motions so that he could appeal them, and that the request was never acted on. 408 R.3460 n.9, 3474–75. When the correction motion went unruled for months, Appellant petitioned this Court for extraordinary relief, which this Court denied as moot only after the district court ruled. 408 R.2812–16; 408 R.3283 & n.1. A non-ruling leaves no order to appeal. It is one of the circumstances a reasonable observer would weigh.

The Court need not adopt *Liteky*'s rule to vacate the orders. Under *Paulson* as it stands, the objective inquiry follows the source rule, 2026 UT App 108, ¶¶ 65–66, and the order does not mention it. That omission alone requires a new determination under the complete standard.

II. The City's prejudice argument applies the wrong test to the wrong decision.

Responds to City Br. 5–6, 21–23; supports Opening Br. Part I.D, 42–46.

A. Appellant proceeds on the reviewing-judge route that the City's own authorities recognize.

Responds to City Br. 5–6, 11; supports Opening Br. 22, 44.

The City agrees that when the procedures of rule 29 of the Utah Rules of Criminal Procedure are followed, the appellant "bears the heightened burden of demonstrating either actual bias or abuse of discretion." City Br. 5, 11 (quoting *State v. Asta*, 2018 UT App 220, ¶ 20, and *Boyer*, 2020 UT App 23, ¶ 71). Its prejudice argument addresses only the first alternative. Because Appellant does not challenge later merits rulings, the City reasons, "he necessarily fails to establish actual bias." City Br. 6. The opening brief proceeds on the second route: whether the reviewing judge applied the correct standard. Opening Br. 22, 44.

This Court treats that route as distinct. When the trial judge follows rule 29, "a defendant must ordinarily establish actual bias on the part of the trial judge or an abuse of discretion on the part of the reviewing judge." *Boyer*, 2020 UT App 23, ¶ 77. In *Boyer* itself, an argument about the trial judge's own discretion was "not the relevant inquiry," because the appellant did not argue "that the reviewing judge abused his discretion in denying the motion for disqualification." *Id.* ¶ 71 n.12. In *Asta*, the case the City cites, the Court first evaluated, on its own terms, the argument that "the reviewing judge abused his discretion in denying the motion." 2018 UT App 220, ¶¶ 20–21. Only then did it turn to the separate contention that the appellant "sustained actual prejudice as a result of the

sentencing judge's participation in the case." *Id.* ¶ 22. The reviewing-judge route asks whether the reviewing judge erred. It does not require a separate showing that the assigned judge's later rulings were wrong.

The City also casts the appeal as a claim that the reviewing judge "abused his discretion by following binding Utah precedent." City Br. 11. The opening brief argues that the order relies on an incomplete legal standard, Opening Br. 36–40, a question reviewed "for correctness, giving no deference to the decision below." *Dahl*, 2015 UT 79, ¶ 47; *see* Opening Br. 11. To the extent any part of the ruling involved discretion, a court "abuses its discretion when it relies on an erroneous conclusion of law to come to its decision." *Taylor-West Weber Water Improvement District v. Olds*, 2009 UT 86, ¶ 3.

B. Measured against the decision under review, the error was not harmless.

Responds to City Br. 21–23; supports Opening Br. 42–44.

The actual-prejudice showing the City invokes comes from *Gardner* and *Alonzo*. City Br. 21–22. That showing is the condition for reversing an underlying judgment because the trial judge failed to recuse on appearance grounds. *Gardner*, 789 P.2d at 278; *State v. Alonzo*, 973 P.2d 975, 979 (Utah 1998). The relief sought here is vacatur of the rule 29 determination and a new determination under the complete standard. Opening Br. 46–47. And even on the reversal path, this Court reaches prejudice after it has assessed appearance. *Boyer*, 2020 UT App 23, ¶ 77 ("Here, we need not examine whether Boyer was prejudiced because he has not established an appearance of bias."); *Paulson*, 2026 UT App 108, ¶ 67. The September 2 order does not mention appearance.

If rule 30 of the Utah Rules of Criminal Procedure governs, the City measures prejudice against the wrong result. *Gardner* asks whether there was "a reasonable likelihood of a more favorable result for the defendant." 789 P.2d at 278 (cleaned up). The decision under review is the rule 29 sufficiency determination, so the more favorable result is a favorable determination and the assignment of another judge under rule 29(b)(2)(B). Opening Br. 42–45. The City describes that argument, City Br. 22, but does not engage it.

Nor does the City address the motion's allegation, made under penalty of perjury, that the assigned judge had "demonstrated by his own comments his inability to be neutral." 408 R.3490. On rule 29 review, that allegation is assumed true, and it distinguishes *Gardner*, where the defendant did "not allege any actual bias" and "[n]o allegation of actual prejudice was made." 789 P.2d at 278. And the City answers the showing that the motion's central allegations fit recognized categories, rather than the adverse-rulings category the order relies on, only with a label. City Br. 20; *see* Opening Br. 42.

The City says Appellant's position reduces to complaining of "the mere continuation of Judge Eldridge presiding over his cases." City Br. 23. The substantial right at stake is the one rule 29 confers: a determination, under the correct standard, of whether the motion required that another judge preside. Utah R. Crim. P. 29(b)(2)(B). Instead, the same judge decided the deferred motions and conducted the proceeding under rule 83 of the Utah Rules of Civil Procedure. 408 R.4912–23, 5301–09. Those later

proceedings measure the stakes of the rule 29 determination, Opening Br. 43–44; their merits are before this Court in separate Appeal No. 20260698-CA. *See id.* at 19 n.5.

C. The City's rule would make an erroneous rule 29 determination unreviewable.

Responds to City Br. 10, 21–23; supports Opening Br. 45–47.

The City insists that "[f]rustration with adverse legal outcomes must be challenged through direct appeal, not disqualification motions." City Br. 10; *see id.* at 21. It then argues that Appellant cannot show prejudice because he has not shown, in this disqualification appeal, that the assigned judge's later merits rulings were wrong. *Id.* at 22–23. On that view, a reviewing judge's use of the wrong legal standard could never be corrected unless the movant also proved those later rulings erroneous. That would turn disqualification review into merits review, the conflation the adverse-rulings principle exists to prevent. *See Liteky*, 510 U.S. at 555; *Dahl*, 2015 UT 79, ¶ 52.

The one-motion rule makes the point concrete. "No party may file more than one motion to disqualify in an action." Utah R. Crim. P. 29(b)(1)(C). *Dahl* rests the parallel civil limit on the premise that "[a] single motion to disqualify is sufficient in most cases." 2015 UT 79, ¶ 54 n.14. A single motion is sufficient only if the single determination is made under the correct standard, and is reviewable when it is not. The City does not contest those stakes, the reviewing judge's authority on remand to "consider any part of the record of the action," Utah R. Crim. P. 29(b)(2)(C), or the opening brief's reading of rule 63(b)(5)–(6) of the Utah Rules of Civil Procedure. Opening Br. 45–47.

The Court need not decide whether actual-prejudice review ever applies to a rule 29 sufficiency determination. Measured against that determination, with the motion's allegations assumed true, the reasonable likelihood *Gardner* describes is present. Opening Br. 42–44.

III. Untimeliness is not an alternative ground for affirmance.

Responds to City Br. 3–4, 12–17, 23; supports Opening Br. 10–11, 41.

The City's lead argument asks this Court to hold, for the first time on appeal, that the July 29, 2025 motion was untimely under rule 29(b)(1)(B) of the Utah Rules of Criminal Procedure, and to affirm "without reaching the merits." City Br. 15–16.

A. Rule 29 commits timeliness, and its consequence, to the reviewing judge, who made no timeliness determination.

Responds to City Br. 3, 10, 15–16, 23; supports Opening Br. 41.

Rule 29 measures timeliness from "the last of" several events, including "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." Utah R. Crim. P. 29(b)(1)(B), (b)(1)(B)(iii). The rule assigns the determination to the reviewing judge: "If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient," another judge must be assigned. *Id.* 29(b)(2)(B). And the consequence of untimeliness is discretionary: "The reviewing judge may deny a motion not filed in a timely manner." *Id.* 29(b)(2)(D). The City calls the deadline "mandatory" five times. City Br. 3, 10, 15, 23. It never quotes paragraph (b)(2)(D), and it does not answer the opening brief's reliance on it. Opening Br. 41.

The reviewing judge made no timeliness finding and exercised no such discretion. The September 2 order denies the motion because it "identifies no valid grounds on which to disqualify the judge." 408 R.4057. Its only use of the word "timely" is its statement that the assigned judge's vexatious-litigant warning was "appropriate and timely." *Id.* The October 7 order relies on the absence of "any valid basis to disturb the Court's previous ruling that the trial judge should not be disqualified based on alleged bias." 408 R.4493.

The City answers that an appellate court may affirm on any ground "apparent on the record." City Br. 15 (quoting *Bailey v. Bayles*, 2002 UT 58, ¶ 10). That power is discretionary, and "[p]rudence counsels against considering an alternative ground if that ground was not ruled on by the lower court . . . ." *McCaffrey v. Anderson*, 2026 UT 14, ¶ 43. *Bailey* itself states the limit. In affirming on an alternate ground, an appellate court "is limited to the findings of fact made by the trial court and may not find new facts or reweigh the evidence in light of the new legal theory or alternate ground." 2002 UT 58, ¶ 20. The record "must contain sufficient and uncontroverted evidence supporting the ground or theory." *Francis v. State*, 2010 UT 62, ¶ 10 (cleaned up). And "it falls to the party seeking the benefit of the rule to explain why it is eligible to have the alternative arguments considered." *Id.* ¶ 21.

Those limits decide this issue. When Appellant "learn[ed] or with the exercise of reasonable diligence should have learned" of each ground is a question of fact, and no finding on it exists. Even a finding of untimeliness would not compel denial, because

paragraph (b)(2)(D) says the reviewing judge "may" deny. This Court cannot both find the facts and exercise a discretion the rule commits to the reviewing judge.

B. The record does not establish untimeliness as a matter of law.

Responds to City Br. 3, 7, 12–14, 17; supports Opening Br. 41.

The City's premise is that the motion "relied exclusively" on events outside the window. City Br. 3. Four pages later, the City says the "vast majority" of the events were older. *Id.* at 7.

First, the City acknowledges that, "[a]t most," the assigned judge's July 25, 2025 ruling, issued four days before the motion, would supply "a timely basis for his Motion to Disqualify." City Br. 14. A motion with a timely basis is not untimely on the face of the record. The City responds that the motion did not explain "with any specificity" how that ruling showed bias. *Id.* That is an argument about sufficiency, not timeliness, and under the correct standard it belongs to the reviewing judge. The motion listed the ruling among its grounds, 408 R.3456 & n.6, dated it correctly in its chronology, 408 R.3483, named it among "three recent decisions," and argued that "the timing of the three orders also provides informative context," because they followed this Court's order in Appellant's petition for extraordinary relief. 408 R.3482, 3490, 3492.[1]

Second, the motion's introduction listed the denial, on the day it was submitted, of the probation officer's request to terminate Appellant's probation. 408 R.3456–57. The motion stated that Appellant learned from his probation officer at their last check-in that

[1]The City notes that the motion misdated that ruling as "June 25, 2025." City Br. 14. The passage the City quotes appears at 408 R.3490, not 408 R.3482.

the request had been denied the day it was submitted, 408 R.3456–57; an earlier filing quoted in the motion dates that check-in to July 23, 2025, six days before filing. 408 R.3460–61. Rule 29 runs from the date the movant "learns or with the exercise of reasonable diligence should have learned" of the grounds. Utah R. Crim. P. 29(b)(1)(B)(iii). The City's timeline does not mention it.

Third, the City dates each of the order's seven categories by one or two examples. City Br. 12–14. But those categories are the order's groupings, not the motion's grounds, and they mix older events with newer ones. The City dates the category concerning the speed of rulings on Appellant's motions, 408 R.4054, by "motions and orders in August and September 2024." City Br. 13 (citing 408 R.3486). The page it cites lists "motions by Orem City Eldridge adjudicated quickly," offered as examples of preferential treatment. 408 R.3486. The motion's complaint about the speed of rulings on Appellant's own motions concerned the three recent orders, including the July 25 ruling, "the first of Jakeman's motions Eldridge has ever ruled on so quickly." 408 R.3490, 3492. The preferential-treatment category, for example, included the contention "that the judge decided the City's motions quickly but delayed in ruling on Defendant's motions." 408 R.4053. Dating that whole category by a hearing the City places in September 2023, City Br. 13, does not establish when Appellant learned of each instance within it. And the same-day probation denial fits none of the City's dates. *See* Opening Br. 15.

Fourth, the City extends its argument to the motion to reconsider. City Br. 14, 17. The core of that motion was that the September 2 order relies on an incomplete legal

standard. 408 R.4452–57, 4461–66. That argument could not have been made before the order issued.

C. The issue was preserved, and filing a motion does not invite the error it asks the court to avoid.

Responds to City Br. 3–4, 12 n.2, 15; supports Opening Br. 10–11.

The City recasts untimeliness as a failure of preservation and as invited error. City Br. 3–4, 15. Neither doctrine fits.

Preservation asks whether "the party asserting error" raised the issue below "in a timely manner." *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶ 27 (cleaned up). The issue on appeal is the legal standard the reviewing judge applied. The motion invoked that standard in terms: "A reasonable person knowing all of the circumstances outlined above would reasonably question [the assigned judge's] impartiality." 408 R.3492. The motion to reconsider pressed it again. 408 R.4452–57, 4461–66. The reviewing judge ruled on both motions. 408 R.4051–57, 4493. The City concedes that the legal-standard argument "was presented below," contesting only timeliness. City Br. 4. When a court "addressed . . . and ruled on the issue," that "is sufficient to preserve the issue for [appellate] review." *Paulson*, 2026 UT App 108, ¶ 53.

This Court has rejected a similar argument in a rule 29 case. In *State v. Gavette*, where the trial judge never certified the motion, the State argued that the defendant had invited the disqualification error or failed to preserve it, pointing in part to counsel's acknowledgment that the motion might be deemed untimely. 2019 UT App 73, ¶ 10. The Court held that "[t]he requirements of rule 29(b) are automatically triggered when a

disqualification motion is filed," and that "the motion itself functioned as the objection . . . and preserved the issue for appeal." *Id.* ¶ 11.

Invited error is narrower still. It applies when a party "led the trial court into committing the error." *Pratt v. Nelson*, 2007 UT 41, ¶ 17 (cleaned up). The City quotes that sentence, City Br. 15, but not the holding six paragraphs later: "We have yet to apply the invited error doctrine in a situation, such as here, where a party files an untimely responsive memorandum concerning an issue in the case. We are disinclined to do so now." *Pratt*, 2007 UT 41, ¶ 23. Invited error "generally occurs in a more affirmative manner, such as where counsel stipulates to the court's instruction, states directly that there is no objection to a specific ruling of the court, or provides the court with erroneous authority upon which the court relies." *Id.* Like the argument rejected in *Fort Pierce Industrial Park Phases II, III & IV Owners Ass'n v. Shakespeare*, the City's theory "confuses the concepts of preservation and invited error." 2016 UT 28, ¶ 14. Appellant argued against the error he now challenges. 408 R.3492; 408 R.4452–57, 4461–66.

Finally, rule 29(b)(1)(D) does not help the City. It provides that the other parties "may not file an opposition to the motion." The City says that, but for that rule, it "would have raised this issue with the reviewing court." City Br. 12 n.2. The rule's design confirms Appellant's point. Because the reviewing judge decides without opposition, raising and deciding timeliness falls to that judge, and the reviewing judge did not decide

it. That is a reason to leave the question for remand, not a reason for this Court to decide it first.[2]

The Court need not decide timeliness. Rule 29(b)(2)(B) and (D) commit that determination, and its consequence, to the reviewing judge, who has not made it. Whether, and to what extent, the motion's grounds were timely is for the reviewing judge on remand. Opening Br. 41, 46.

IV. The City does not contest jurisdiction, and the order it cites for November 20, 2025 confirms that finality came later.

Responds to City Br. 1–2, 8–9; supports Opening Br. 22–25.

The City says Appellant "now seeks to re-litigate the previous appeal." City Br. 2. It makes no jurisdictional argument, and it identifies the May 25, 2026 notice as the one "from which this appeal proceeds." *Id.* at 9. Under *Ross v. Barnett*, the denial of a motion to disqualify a judge from pending postjudgment proceedings "also became appealable" when the final order resolving those proceedings issued. 2018 UT App 179, ¶ 22; *see* Opening Br. 22–25.

The City also says that on November 20, 2025, the district court "terminated the Court's jurisdiction, terminated probation and closed the case." City Br. 8 (citing 408 R.5309). The order it cites is narrower: "The criminal portion of these cases were closed successfully on November 20, 2025, upon the termination of Defendant's probation, thus

[2]Because the City raises untimeliness as an alternative ground for affirmance, and preservation and invited error as threshold defenses, Appellant may properly respond to those arguments here. *Brown v. Glover*, 2000 UT 89, ¶ 24 ("[I]f an appellant responds in the reply brief to a new issue raised by the appellee in its opposing brief, the issue is not waived."); *see* Utah R. App. P. 24(b); City Br. 5 (citing *Allen v. Friel*, 2008 UT 56, ¶ 8).

terminating the Court's jurisdiction as to criminal sanctions." 408 R.5309. Appellant's postjudgment motions, deferred on September 25, 2025 "until the Court of Appeals issues a decision as to Defendant's appeals," 408 R.4384, remained pending after November 20. They were decided on April 15, 2026, in the same instrument that opened a proceeding under rule 83 of the Utah Rules of Civil Procedure. 408 R.4912–23. The order resolving that proceeding is dated May 20, 2026, not May 21. 408 R.5309; *see* City Br. 9. The notice followed five days later. Opening Br. 20.

The Court need not choose between the opening brief's two routes to jurisdiction. The City contests neither, and each independently makes the May 25 notice timely. Opening Br. 23–25.

CONCLUSION

The City states the right rule and defends a different one. For these reasons and those stated in the opening brief, the Court should hold that the consolidated appeals are reviewable; harmonize *Munguia*, *Dahl*, and *Paulson* with—and, to the fullest extent *Dahl* permits, adopt—*Liteky*'s narrow source-as-a-factor rule; vacate the September 2 and October 7, 2025 disqualification orders; and remand for a new determination under rule 29 of the Utah Rules of Criminal Procedure applying the complete legal standard. If this Court concludes that *Dahl* forecloses adoption, Appellant acknowledges that this Court is bound and expressly preserves the issue for certiorari review by the Utah Supreme Court.

Dated: October 11, 2026

/s/ David Ammon Jakeman
DAVID AMMON JAKEMAN, pro se

CERTIFICATE OF COMPLIANCE

I certify that this reply brief complies with Utah Rule of Appellate Procedure 24(g). The counted portions of the brief, from the Introduction through the Conclusion, including headings, quotations, and footnotes, contain 5,598 words, as counted by the software used to prepare the brief. The cover, table of contents, table of authorities, signature blocks, and certificates are excluded.

I further certify that this public brief complies with Utah Rule of Appellate Procedure 21. It does not contain material classified as private, controlled, protected, safeguarded, sealed, juvenile-court legal, or juvenile-court social. It complies with the form requirements of Utah Rule of Appellate Procedure 27, including 13-point type, double-spaced text, and margins of at least one inch.

Dated: October 11, 2026

/s/ David Ammon Jakeman
DAVID AMMON JAKEMAN, pro se

CERTIFICATE OF SERVICE

I, Appellant David Ammon Jakeman, hereby certify that on October 11, 2026, I emailed a true and correct copy of the foregoing Reply Brief of Appellant to the following counsel for Appellee Orem City, and that six paper copies will be delivered to the Court in accordance with Utah Rule of Appellate Procedure 26(d) unless the Court directs otherwise:

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