
**STATE OF MINNESOTA
COURT OF APPEALS**

**OFFICE OF
APPELLATE COURTS**

MATTHEW D. HARDIN,

Intervenor-Appellant,

v.

STATE OF MINNESOTA,

Plaintiff-Appellee,

and

NICHOLAS REKIETA,

Defendant-Appellee.

Appeal from the Kandiyohi County District Court

APPELLANT MATTHEW D. HARDIN'S OPENING BRIEF

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LEGAL ISSUES

I. Whether Mr. Hardin is entitled to view the records submitted by Nicholas Rekieta and referenced in his brief in the District Court, pursuant to the Constitution or the Common Law Right of Access.

Trial court held: No (Order dated 6/16/2025). Mr. Hardin preserved this issue by written Motion filed May 30, 2025 and June 1, 2025.

II. Whether Mr. Hardin is entitled to be heard and present evidence before the trial court makes adverse factual findings which affect his substantial rights.

Trial court held: Mr. Hardin's written motion to intervene was granted in pertinent part in an Order dated June 16, 2025, but the trial court held that "no further briefing or hearing on this limited intervention is required." This effectively denied Mr. Hardin the relief sought in a written Motion filed May 30, 2025 and June 1, 2025.

STATEMENT OF FACTS

1. Nicholas Rekieta filed a Motion to Dismiss his criminal case on August 18, 2024. Addendum at 1. In that Motion, Mr. Rekieta cited two body camera videos he believed supported his arguments: one from Kandiyohi Sheriff's Deputy Braness, and one from Deputy Pomplun. *Id.* Both of those videos were filed with the Court via MNDES contemporaneously with Mr. Rekieta's motion. *Id.* at n. 2.

2. The trial court held a hearing on Mr. Rekieta's Motion to Dismiss on August 21, 2024, *id.* at 37 *et seq.*, and denied that Motion on September 24, 2024. *Id.* at 24.
3. On April 22, 2025, Mr. Hardin filed a "Minnesota Judicial Branch Copy Request Form," in which he requested "Evidence submitted through MNDES by Defendant Nicholas Rekieta, including but not limited to a file entitled "RobbieBraness_202405230911_BWC2120177-0.mp4" and a file entitled "QuinPomplun_202405230914_BWC2120153-0.mp4." *Id.* at 18.
4. On May 1, 2025, the Kandiyohi District Court approved Mr. Hardin's request for access to the requested records. *Id.* at 20-21. Specifically, the Court noted that it had reviewed the evidence and was aware of the contents of the evidence, stating that "[t]he two body camera exhibits requested display unredacted displays of children who were present during the search warrant, along with a viewing of all rooms and spaces of Defendant's residence." *Id.* at 21. Due to what the Court deemed the sensitive nature of the contents of the video footage, the Court allowed Mr. Hardin only to view the evidence in person, rather than to view the evidence remotely through MNDES. *Id.*
5. Without any notice to Mr. Hardin or any opportunity for him to be heard, and apparently in an intentional effort to circumvent a Minnesota

Government Data Practices Act request filed by Mr. Hardin with the Kandiyohi County Sheriff's Department, the Kandiyohi County Attorney filed a purported "consent" Motion on May 29, 2025 (at 2:17 p.m.), in which the County Attorney and the Criminal Defendant asserted for the first time that the evidence submitted via MNDES and cited in Nicholas Rekieta's briefing was not actually admitted into evidence. *Id.* at 22.

6. Mere minutes after the Courthouse opened on May 30, 2025, the trial Court granted the "consent" motion from the Kandiyohi County Attorney, without providing Mr. Hardin any opportunity to be heard. *Id.* at 51.
7. Immediately upon becoming aware of the County's Motion (through checking the public docket, and not because he was served), Mr. Hardin sought leave to intervene in the criminal case for the purpose of preserving the access he had previously been granted to the evidence at issue. *Id.* at 52.
8. Specifically, in Mr. Hardin's Motion to Intervene, he requested two forms of relief: First, that Mr. Hardin be permitted to intervene for the purpose of filing a motion to vacate the order the State and Nicholas Rekieta had collusively obtained without notice to him on May 30, 2025. *Id.* at 56. Second, that Mr. Hardin be permitted to file a brief in opposition to the

“consent” motion, and to present evidence and argument in opposition to the “consent” motion at a hearing. *Id.* at 59.

9. On June 16, 2025, the trial Court entered an order in which it purported to grant Mr. Hardin’s limited request for intervention. *Id.* at 68. However, the trial court made 16 separate enumerated “findings of fact” without Mr. Hardin’s participation. *Id.* at 66-68. And the trial court stated that it would not allow further briefing or a hearing. *Id.* at 74.

SUMMARY OF ARGUMENT

In this case, a criminal Defendant (Nicholas Rekieta) submitted certain body camera footage through the MNDES system in support of a Motion to Dismiss his case, and cited extensively to that body camera footage in his brief. Addendum at 1. After the Motion to Dismiss was denied, Mr. Hardin requested access to that footage. *Id.* at 18. The trial court initially granted Mr. Hardin’s request in pertinent part and issued a written opinion in which the District Judge expressly noted the content of the body camera footage, confirming that the Court has indeed watched the relevant videos. *Id.* at 20-21.

The trial court quickly reversed itself, inexplicably, when the criminal Defendant in the underlying case and the County Attorney rushed to Court, without notifying Mr. Hardin, seeking a “correction” of the records in a way that would circumvent Mr. Hardin’s request for access to judicial records and a related Government Data Practices Act request. *Id.* at 22. In response to a

Motion presented by the Kandiyohi County Attorney with the apparent consent of the criminal Defendant, the Court suddenly revoked Mr. Hardin's access to the evidence that the Court had previously viewed and issued written findings explaining. *Id.* at 51. Remarkably, the Court now held that it had not reviewed the records at all. *Id.* at 67. Mr. Hardin later formally moved to intervene in the criminal case for the limited purpose of seeking access to court records, specifically noting that he sought leave to file a brief in opposition to a "consent" motion filed by the State of Minnesota, and "set a hearing at which he [Mr. Hardin] can present evidence and argument regarding his rights to access the records." *Id.* at 59.

The trial court purported to grant Mr. Hardin's motion to intervene in the underlying criminal case to a limited extent. *Id.* at 68. But the trial court did not allow Mr. Hardin to file a brief, nor did it set a hearing at which Mr. Hardin could present the evidence he proffered. Instead, the trial court made sixteen separate "findings of fact," all without affording Mr. Hardin any opportunity to participate or challenge such findings. *Id.* at 66-68. The trial court then denied Mr. Hardin access to the records in their entirety. *Id.* at 68-69.

This was error for two reasons. First, the records are plainly judicial records, and the Court's own May 1, 2025 order demonstrates that the Court had viewed such records and made findings as to the content of such records.

Second, the trial court was not permitted to make factual findings adverse to Mr. Hardin without permitting Mr. Hardin an opportunity to be heard, especially when the trial court purported to have granted Mr. Hardin limited status as an intervening party.

STANDARD OF REVIEW

Whether a record is a judicial document which is open to public inspection under the Constitution or the common law right of access is a pure question of law subject to de novo review. *Star Tribune v. Minn. Twins P'ship*, 659 N.W.2d 287, 296 (Minn. Ct. App. 2003).

When the trial Court has denied a party the opportunity to develop its evidence, this Court cannot uphold the trial court's judgment and should remand for the development of an appropriate factual record. *State v. Her*, 781 N.W.2d 869, 873 (Minn. 2010) (remanding to trial court so that state could develop a factual record which it was not previously required to develop), *State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2011) (holding that although appellate courts do not ordinarily consider arguments not presented to the trial court, exceptions can be made where new issues do not unfairly surprise a party to the litigation). Alternatively, this Court might view the trial court's denial of an opportunity to be heard, including but not limited to the opportunity to present proffered evidence, as a violation of procedural due process, in which case such a denial would be subject to de novo review. *Plocher*

v. Comm'r of Pub. Safety, 681 N.W.2d 698, 702 (Minn. App. 2004) (denial of procedural due process reviewed *de novo*).

ARGUMENT

1. Mr. Hardin was entitled to view the records he requested and which the Court previously ordered he could review.

The records Mr. Hardin requested to view were submitted to the Court by a criminal Defendant, and cited by that Defendant repeatedly in a Motion to Dismiss very serious felony charges. The Motion to Dismiss was denied, and Mr. Rekieta ultimately entered a plea of guilty. The Court unquestionably viewed the video footage submitted by the criminal Defendant, because the Court's initial order granting Mr. Hardin limited access to those records explained the substantive content of the videos. The records are therefore inarguably judicial records, and there is a presumption of public access to those records stemming from at least three sources: the U.S. and Minnesota constitutions, and the common law. The presumption of access has not been rebutted, and the trial Court has only claimed that the records were never judicial records to begin with. That was error.

First, this Court must determine whether the records Mr. Hardin requested are judicial records. According to the trial court, the answer is no. Addendum at 72. That was error.

“There is a common-law right of access to judicial records.” *IDT Corp v. eBay, Inc.*, 709 F.3d 1220, 1222 (8th Cir. 2013) (internal citations omitted). But the common law is not the only source of this right; the constitutions of both Minnesota and the United States also protect the right of access. *Star Tribune v. Minn. Twins P'ship*, 659 N.W.2d 287, 296 (Minn. Ct. App. 2003), citing *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 204 (Minn. 1986). As the Eighth Circuit has explained, “[t]his right of access bolsters public confidence in the judicial system by allowing citizens to evaluate the reasonableness and fairness of judicial proceedings.” *IDT Corp.*, 709 F.3d at 1222 (internal citations omitted).

“The status of a document as a ‘judicial record’... depends on whether a document has been filed with the court, or otherwise somehow incorporated or integrated into a district court's adjudicatory proceedings. *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 192-93 (3d Cir. 2001) citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 780 (3d Cir. 1994). “[A]ll documents properly filed by a litigant seeking a judicial decision are judicial records and are entitled to a presumption of public access.” *Marden's Ark, Inc. v. UnitedHealth Grp., Inc.*, 534 F. Supp. 3d 1038, 1044 (D. Minn. 2021). The mere act of filing a document with a Court clearly establishes that a document is a judicial record, but even when a document is not filed it may still be a judicial record “if a court interprets or enforces the terms of that document, or requires

that it be submitted to the court under seal.” *Goldstein*, citing *Enprotech Corp. v. Renda*, 983 F.2d 17, 20 (3d Cir. 1993). “[T]here is a presumptive right of public access to pretrial motions of a nondiscovery nature, whether preliminary or dispositive, *and the material filed in connection therewith.*” *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (emphasis added).

Here, the criminal Defendant inarguably filed certain evidence accompanying his Motion to Dismiss, which he apparently believed would support that motion. The evidence that was submitted was video footage and so was naturally not attached to the motion as an exhibit might otherwise have been, but was instead filed and served via MNDES. Regardless, however, the court “require[d]” the material to be submitted, and the criminal Defendant’s brief cannot be fairly read or understood if the material to which it publicly cites is itself unavailable. Even if the material cited in a brief were somehow not part of the brief itself, the evidence Mr. Rekieta submitted to the court was clearly filed “in connection with” his underlying Motion within the meaning of *Leucadia*. Further, unlike unfiled documents such as discovery requests, the Court actually viewed Mr. Rekieta’s proffered evidence and commented on its substance. Addendum at 21.

The trial court candidly conceded that items relevant to the performance of a judicial function are judicial documents. *Id.* at 72. The criminal defendant

certainly thought the two body camera videos at issue here were relevant for purposes of a judicial function, because he cited those videos repeatedly in arguing that all criminal charges against him should be dismissed. See, e.g., *id.* at 15-16 (Mr. Rekieta makes six separate citations to two items of evidence in support of an argument as to hearsay). It was error for the trial court to somehow determine, after having received the criminal Defendant’s briefing citing to evidence, and after having inarguably watched the relevant footage and commented on its content, that the records at issue were somehow not judicial records or not therefore presumptively public.

Because the records at issue are judicial records, a presumption of public access applies. That presumption may occasionally be rebutted. Federal “courts in the District of Minnesota have utilized the six-factor balancing test outlined in *United States v. Hubbard*, 650 F.2d 293, 317-22, 208 U.S. App. D.C. 399 (D.C. Cir. 1980).” *Seamon v. Midwest Bonding, LLC*, No. 24-cv-00082 (NEB/ECW), 2025 U.S. Dist. LEXIS 48611, at *5 (D. Minn. Mar. 18, 2025). The six factors a court can use to evaluate whether the presumption of public access has been rebutted are:

- (1) the need for public access to the documents at issue;
- (2) the extent of previous public access to the documents;
- (3) the fact that someone has objected to disclosure, and the identity of that person;

- (4) the strength of any property and privacy interests asserted;
- (5) the possibility of prejudice to those opposing disclosure; and
- (6) the purposes for which the documents were introduced during the judicial proceedings.

Seamon, 2025 U.S. Dist. LEXIS 48611, at *5-6.

Here, the District Court did not apply the *Hubbard* factors at all, possibly because that court proceeded to adjudicate Mr. Hardin's entire claim without the benefit of any briefing and possibly because of that court's earlier error in determining that the records at issue were not judicial records at all. Regardless, the *Hubbard* factors weigh in favor of public access to the documents at issue in this case.

First, there is a need for public access to the documents at issue in order to understand the criminal Defendant's briefing, which argued that his substantial rights were violated at that police officers had committed serious misconduct. Specifically, the criminal Defendant argued that two officers had violated a third party's *Miranda* rights, after that party expressly requested an attorney. Addendum at 15-16. If the State were to attempt to present evidence obtained in violation of a defendant's *Miranda* rights, as Mr. Rekieta alleged the State was attempting to do, that could be prosecutorial misconduct. *State v. VanWagner*, C2-92-247, 1992 Minn. App. LEXIS 1116, at *1 (Ct. App. Nov. 10, 1992). Civil litigation is also a possible consequence when *Miranda*

rights are violated. *Estes v. Lederle*, No. 4:07 CV 274 DDN, 2008 U.S. Dist. LEXIS 82131, at *19 (E.D. Mo. Oct. 15, 2008) (collecting cases in which plaintiffs have sought relief under 42 U.S.C. § 1983 for ostensible *Miranda* violations). It is impossible to understand Mr. Rekieta's argument—and whether he was correct that two Kandiyohi County deputies violated *Miranda*—if the Defendant's own evidence in support of that proposition is hidden from view.

Second, the documents at issue in this case were previously made open for public access, although the Court later termed that an error which it sought to correct. Regardless, as a result of Mr. Hardin's original request for public access to the records at issue, at least two individuals were able to visit the Kandiyohi County courthouse and view the video footage at issue. Unfortunately, Mr. Hardin himself was not able to travel to Minnesota and view the footage himself before his access to that footage was revoked. Previous public access to documents weighs in favor of future access to those same documents. *Hubbard*, 650 F.2d 293, 318 (1980) (“previous access has been considered relevant to a determination whether more liberal access should be granted to materials formerly properly accessible on a limited basis through legitimate public channels.”). After all, once documents have been made public, sealing those documents or removing their accessibility “cannot unring a bell.”

Lopez v. JP Morgan Chase, No. 2:24-CV-10990, 2025 U.S. Dist. LEXIS 137445, at *6 (E.D. Mich. Apr. 28, 2025).

Third, the trial court should have considered whether any party objected to disclosure, and the identity of that party. Here, the State and the criminal defendant joined together, without notice to Mr. Hardin, to “correct” the trial court’s records in a way that made clear their objection to disclosure. Addendum at 22. The irony of a criminal defendant and his prosecutor agreeing that evidence should be kept secret should not be lost on this Court. The Minnesota Supreme Court and the United States Supreme Court both agree that the need for public access to evidence is particularly strong in the criminal context. *Schumacher*, 392 N.W.2d at 204, citing *Richmond Newspapers v. Virginia*, 448 U.S. 555, 571, (1980) (“the crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is done in a corner or in any covert manner.”). In a criminal case, the community *must* have the ability to understand the truth, including whether a criminal defendant’s very serious allegations of governmental wrongdoing are true or not. The video footage at issue in this case will serve exactly that prophylactic purpose.

Fourth, this Court must consider the strength of any property or privacy interests. Here, to be sure, the trial court recognized some privacy interests. Specifically, the trial court commented that the footage the criminal Defendant

had filed with the court showed the interior of the home at which a search warrant was executed and certain minor children present at the time the warrant was executed. Addendum at 21. “[O]nly the most compelling reasons can justify non-disclosure of judicial records.” *Neal v. Kan. City Star (In re Neal)*, 461 F.3d 1048, 1053 (8th Cir. 2006), citing *Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 6 (1st Cir. 2005).¹ Even then, however, the remedy is not wholesale withholding of entire documents or records. “[E]ven where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason.” *Shane Grp., Inc. v. Blue Cross Blue Shield*, 825 F.3d 299, 305 (6th Cir. 2016). And it is not enough for a party to simply point to privacy concerns in a general manner and demand sealing. Instead, “[t]he proponent of sealing... must analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Id.* (internal quotations omitted).²

¹ The standard may be less rigorous for non-dispositive pleadings. But “dispositive materials” are subject to greater public interest. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010). Here, the materials at issue were intended to be dispositive because the criminal Defendant relied upon them in support of a Motion to Dismiss.

² Even if a party had attempted to show a privacy interest in the underlying records, that privacy interest would likely be insufficient as a matter of law. A party's fear of embarrassment or harm to reputation, or a fear of a negative impact on future employment, does not provide grounds for sealing a public record. *Ossoski v. Carespring Healthcare Holdings*, 2020 U.S. Dist. LEXIS

Fifth, this Court must consider the possibility of prejudice to those opposing disclosure. Here, there is no possibility of prejudice because the criminal Defendant has already entered a guilty plea after his Motion to Dismiss was denied, and the time for any appeal has passed. It therefore matters not whether the evidence he submitted becomes public because no jury can possibly be influenced by evidence he alleges the police obtained improperly. Indeed, if the criminal Defendant is correct that the evidence demonstrates police misconduct, release of that footage may benefit him as the public rises up to demand reforms and redress.

Sixth, this Court must consider the purposes for which the records were introduced during the judicial proceedings. Here, the criminal Defendant himself submitted the evidence at issue because he believed it would show police misconduct and result in the dismissal of very serious felony charges. The Defendant thus invoked the judicial power to seek a remedy, and the trial court exercised its power to adjudicate his dispute. The public now must be permitted to exercise its right of oversight, and to form its own view of whether

202123, 2020 WL 6334463, at *1, citing *Mann v. Boatright*, 477 F.3d 1140 (10th Cir. 2007); *Zurich American Ins. Co. v. Rite Aid Corp.*, 345 F.Supp.2d 497 (E.D. Pa. 2004); *see also U.S. v. Bon Secours Cottage Health Services*, 665 F.Supp.2d 782, 786 (E.D. Mich. 2008) (holding that fears of retaliation insufficient basis to seal record). In short, “a record may not be sealed merely because it could lead to a litigant's embarrassment.” *8Fig, Inc. v. Stepup Funny LLC*, 2025 WL 1144570 at *4 (April 18, 2025).

the police acted appropriately or inappropriately in Mr. Rekieta's case. *Nixon v. Warner Commc'ns*, 435 U.S. 589, 598 (1978) (noting the "citizen's desire to keep a watchful eye on the workings of public agencies").

In short, the trial Court erred here in two fundamental ways. First, it purported to determine that the records at issue in this case were not judicial records at all, because they were not truly received into evidence, despite that they were submitted via MNDES. But once filed, records in connection with a motion are presumptively public and cannot simply be un-filed or removed from public view. The trial court should have therefore applied the six *Hubbard* factors to determine whether the presumption of public access had been rebutted. The trial court did not do so, but the six Hubbard factors weigh in favor of access regardless. This Court should therefore reverse the trial court's order and hold that Mr. Hardin should be entitled to view the evidence the criminal Defendant filed in support of his Motion to Dismiss.

2. Alternatively, Mr. Hardin was entitled to be heard before the District Court entered factual findings which were adverse to him.

Mr. Hardin was initially granted access to judicial records, but that access was suddenly revoked without any notice to Mr. Hardin or an opportunity for him to be heard prior to such revocation. Then, when Mr. Hardin took it upon himself to file a formal motion to intervene and present evidence as to why the records at issue were properly public, the trial Court

purportedly granted limited intervention, but again denied Mr. Hardin any opportunity to be heard or to present evidence in support of his claims. Instead, the trial court made numerous findings of material fact which were adverse to Mr. Hardin, all without allowing Mr. Hardin to challenge such factual findings. This would be error in any event, but it is doubly erroneous insofar as the Court had recognized Mr. Hardin as a party to the case. Parties before the Court necessarily must be permitted to be heard and to present evidence to the Court. This is a separate and independent ground for reversal.

“[A]llowing the intervention of a non-party in a lawsuit has significant implications, because an intervenor essentially has the same rights as the parties.” *Doe v. Governor of Minnesota*, 2023 Minn. Dist. LEXIS 4731, *2, citing *Diamond v. Charles*, 476 U.S. 54, 68 (1986) and Tobias, *Intervention After Webster*, 38 Kan. L. Rev. 731, 739-40 (1990). Here, Mr. Hardin specifically requested *limited* intervention, which the trial court purported to grant, “for the sole purpose of considering the issue of access to records.” Addendum at 68. But even in the context of his limited intervention, Mr. Hardin made plain that he was requesting two specific forms of relief: First, that he be permitted to file a brief in opposition to the State’s “consent” motion to correct records that were not erroneous. *Id.* at 57. Second, that he be permitted to adduce evidence in support of his right to access the records, and present that evidence at a hearing. *Id.* at 59.

The trial court effectively denied Mr. Hardin’s right to present evidence and to be heard—despite that it had granted Mr. Hardin limited status as an intervenor—but it did enter not less than 16 separate “findings of fact” without the benefit of any adversarial presentation. *Id.* at 66-68. “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is ‘against logic and the facts on record.’” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022), citing *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Here, the trial court erred precisely because it made findings of fact without affording an intervening party to present any evidence at all, and because failing to allow a party to develop and present evidence in support of their position is per se a misapplication of the law that allows intervenors essentially the same rights as parties. *Doe*, 2023 Minn. Dist. LEXIS 4731 at *2.

If this Court does not reverse outright and grant Mr. Hardin access to the records he sought the court should at a minimum remand to the Kandiyohi County District Court so that Mr. Hardin can present evidence which backs up his position. Specifically, Mr. Hardin proffers here that he would have presented evidence to the District Court that the material filed via MNDES was received into evidence and that the transcript does not reflect evidence was withdrawn. Additionally, Mr. Hardin would have presented evidence that

members of the public did access the documents in question, and disseminate notes regarding the content of those records, before access was revoked.

CONCLUSION

This Court should reverse the June 16, 2025 order of the Kandiyohi County District Court to the extent that it held Mr. Hardin is not entitled to access the judicial records he requested. Alternatively, this Court should vacate that order because it was entered without providing Mr. Hardin the opportunity to be heard or present evidence in support of his claims, and should remand this matter to the Kandiyohi County District Court so that Mr. Hardin can develop the factual record which will further support his claims.

Respectfully submitted this the 11th day of August, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document conforms to the requirements of Minn. R. Civ. App. P. 132.01, is produced with a proportional 13-point font, and the length of this document is less than 45 pages. This document was prepared using Microsoft Word.

Dated: August 11, 2025

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I certify that on August 11, 2025, I filed and served the foregoing via the electronic appellate filing system.

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