

COURT OF APPEALS, STATE OF COLORADO Address: 2 E. 14th Ave. Denver, Colorado 80203 El Paso County District Court The Honorable Jill M. Brady, District Judge Case No. 23CR5603	DATE FILED September 16, 2025 3:38 PM
THE PEOPLE OF THE STATE OF COLORADO, <i>Plaintiffs-Appellee,</i> v. BRANDON BURNS, <i>Defendant-Appellant</i>	▲ COURT USE ONLY ▲ Case No.: 2024CA2231
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OPENING BRIEF	

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Included Sections: In the Argument section, before addressing each issue on appeal, I included the following separately titled sub-sections:

1. **The Standard of Review:** I state the standard of review applicable to the issue and cite supporting authority.
2. **Preservation:** I state whether the issue was preserved in the district court and, if so, cite to the location in the Record on Appeal where the issue was raised and ruled upon.

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Dated and respectfully submitted this Tuesday, September 16, 2025.

/s/ 
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Issues on Appeal

1. The Search Incident to Arrest Violated *Arizona v. Gant*
2. The Automobile Exception Did Not Justify the Warrantless Search
3. The Search of Closed Containers Exceeded Constitutional Limits
4. All Evidence Obtained Must Be Suppressed as Fruit of the Unlawful Search

Statement of the Case

This appeal challenges the denial of Mr. Burns's motion to suppress evidence seized during a warrantless search of his vehicle following his arrest for alleged felony menacing. After a brief, high-intensity stop in a Kum & Go parking lot, Deputy Fleckenstein handcuffed Mr. Burns, frisked him, and separated him from the car, all within minutes. While the frisk was still underway, officers used Mr. Burns's keys to unlock and open multiple doors and began searching the passenger compartment. Body-worn camera (BWC) shows the search in progress by 5:20¹ and the recovery of a handgun from beneath the driver's seat at 6:54.

¹ All citations to "5:10," "12:45," etc. in this brief are not references to clock time (a.m. or p.m.) but to the *minute:second markers* in the admitted body-worn camera recordings contained in the Record on Appeal. See Record Citation Policy (Aug. 4, 2017) (requiring clarity in record references).

Officers then continued searching the vehicle, opening closed containers (including a lunchbox inside a bag) and inventorying drugs and paraphernalia.

Mr. Burns moved to suppress “all evidence obtained by police officers during [the] warrantless motor vehicle search,” arguing the search could not be justified as incident to arrest or under the automobile exception and that the container searches exceeded constitutional limits. (CF, pp. 34–36.) At the motions hearing on August 19, 2024, Deputy Fleckenstein testified; the court denied suppression, holding the search was lawful under *Arizona v. Gant* both to recover the gun and to continue searching for additional items potentially related to menacing (TR 8/19/24, pp. 56–59). The court admitted the challenged evidence. Mr. Burns was subsequently convicted based on the admitted evidence [insert precise disposition and citations], and this timely appeal followed.

Issues on appeal are limited to the Fourth Amendment questions preserved below: (1) whether the vehicle search incident to arrest satisfied *Gant*; (2) whether the State proved the automobile exception; (3) whether opening closed containers exceeded constitutional limits; and (4) whether all fruits must be suppressed.

Argument Summary

Issue 1 (Gant). The search incident to arrest was unlawful. The BWC and hearing testimony establish that by the time officers opened the doors and began searching, Mr. Burns was handcuffed, frisked, and separated from the car (BWC 0:10–5:20; TR 8/19/24, pp. 28:23–29:14; 34:7–16). *Gant*’s “arrestee access” prong does not apply. Nor did officers have a reasonable basis to believe the vehicle still contained evidence of menacing once the handgun was recovered at 6:54; their subsequent rummaging pivoted to narcotics and “distribution” items, untethered to the arrest offense. See *Arizona v. Gant*, 556 U.S. 332, 343 (2009); *People v. Kessler*, 2018 COA 60, ¶¶ 63–64.

Issue 2 (Automobile Exception). The State failed to prove probable cause to search beyond the handgun—or exigency. Any probable cause was limited to locating a firearm allegedly brandished at a local nightclub. After officers secured the gun, they expanded the search without facts suggesting additional menacing evidence; indeed, they debated whether to get a warrant while the car was immobilized and Mr. Burns was cuffed. See *People v. Zuniga*, 2016 CO 52, ¶ 20; *California v. Acevedo*, 500 U.S. 565, 580 (1991); *Coolidge v. New Hampshire*, 403 U.S. 443, 462 (1971). The trial court’s reliance on speculative items (“identity

evidence,” “maybe ... another gun”) (TR 8/19/24, pp. 58–59) cannot supply pre-search probable cause.

Issue 3 (Closed Containers). Even if an exception permitted entry, officers exceeded constitutional limits by unzipping and searching closed personal containers—e.g., a lunchbox inside a bag—after the gun was secured, without container-specific probable cause and with no exigency. The BWC (15:04–15:28) and testimony (TR 8/19/24, pp. 24–25, 35:7–25) confirm the narcotics were found only after that unlawful expansion. See *United States v. Chadwick*, 433 U.S. 1, 15 (1977); *People v. Ortiz*, 2016 CO 73, ¶ 17; *People v. Minor*, 222 P.3d 952, 956 (Colo. 2010).

Issue 4 (Fruits). Because the initial entry and scope were unconstitutional, all derivative evidence—including the gun, narcotics, paraphernalia, and statements—must be suppressed absent attenuation, independent source, or inevitable discovery, none of which applies. See *Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *People v. Null*, 233 P.3d 670, 675–76 (Colo. 2010).

Argument

Issue 1: The Search Incident to Arrest Violated *Arizona v. Gant*

A. **Standard of Review:** Whether a warrantless vehicle search is valid under the search-incident-to-arrest exception is a question of law reviewed de novo. *People v. Taylor*, 296 P.3d 317, 322 (Colo. App. 2012). In reviewing suppression rulings, the Court defers to historical facts if supported by the record but independently assesses whether those facts satisfy the Fourth Amendment. *People v. Brown*, 2022 CO 11, ¶ 13, 505 P.3d 1131, 1135.

B. **Preservation on Appeal:** Defense counsel preserved this claim by filing a “Motion to Suppress All Evidence Obtained by Police Officers During Warrantless Motor Vehicle Search in Violation of Mr. Burns’ Fourth and Fifth Amendment Rights” (CF, pp. 34–36). Counsel argued at the suppression hearing that the search violated *Arizona v. Gant* because Burns was handcuffed and secured before the vehicle search, and there was no reasonable basis to believe the Chrysler contained evidence of menacing beyond the firearm (TR 8/19/24, pp. 11:20–25, 12:1–9, 27–36). The trial court denied the motion, expressly applying *Gant* and upholding the search both to find the gun and to continue beyond it (TR 8/19/24, pp. 56–59).

C. **Discussion:** Under *Arizona v. Gant*, officers may search a vehicle incident to arrest only if (1) the arrestee is within reaching distance of the passenger compartment at the time of the search, or (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest. 556 U.S. 332, 343 (2009). Neither condition is met on this record. The timing documented by Deputy Fleckenstein’s body-worn camera (BWC) and his own motions-hearing testimony shows (a) Mr. Burns was cuffed and separated from the car before officers opened doors and began searching, and (b) once the firearm was recovered, officers expanded the search untethered to menacing. See *People v. Kessler*, 2018 COA 60, ¶¶ 24, 63–64, 436 P.3d 550, 558, 563 (search incident to arrest must remain connected to evidence of the arrest offense).

Mr. Burns was secured and lacked access when officers opened the car and began searching (Gant prong 1 fails). The BWC shows a high-intensity initial encounter but immediate compliance: at 0:10, Fleckenstein exits with his firearm raised; Burns steps out with hands up (Supp. Ex. Motions (Fleckenstein BWC – 29 min), 0:10). At 1:08, Burns asks to close the trunk; Fleckenstein permits it; all doors and trunk are closed thereafter (1:08; 1:47). By 2:50, Fleckenstein announces he will handcuff to “deescalate,” and at 3:12 he handcuffs Burns. During the frisk, and before it is finished, Fleckenstein uses Burns’s keys and

opens the vehicle: at 4:10 he manipulates the keys, and by 4:32 both driver-side doors and the rear passenger-side door are open—while the frisk is still ongoing. See also TR 9/11/24, pp. 19–20, 26 (frisk, items removed, then doors opened). At 5:00, Burns is walked to and secured in the patrol car. As Burns was being put into the back of the patrol car another officer can be seen inside the vehicle searching. At 5:20, Fleckenstein is already inside Burns’s vehicle with all doors open and an actively searching (Supp. Ex. Motions (Fleckenstein BWC – 29 min), 5:20). The handgun is located under the driver’s seat at 6:54.

These visuals square with Fleckenstein’s concessions at the motions hearing: within “a couple of minutes” of initial contact, Burns was handcuffed and taken away from the vehicle; he was not free to move or leave (TR 8/19/24, pp. 28:23–29:14; 29:15–30:7). He acknowledged the purpose was to prevent Burns from re-entering the car (TR 8/19/24, p. 34:7–16). Critically, when asked whether the door was open when the search began, he answered: “I don’t recall, and I don’t believe that’s in my report.” (TR 8/19/24, p. 34:21–25.) And when asked whether the gun was visible from outside the car, he testified: “I believe I saw the firearm after I opened the door of the vehicle.” (TR 8/19/24, p. 35:1–6.) That admission forecloses any claim that the weapon was in “plain view” from outside; any view

was created only after officers opened the door themselves—at a time when Burns was already cuffed and separated.

This timing defeats *Gant*'s first prong. By the time doors were opened and the search began, Burns was handcuffed, compliant, and either still being frisked or already seated in the patrol car. He had no access to the passenger compartment. See *Gant*, 556 U.S. at 343. The trial court agreed prong one did not apply here (TR 8/19/24, p. 56), yet erroneously upheld the search under prong two.

There was no reasonable basis to believe the vehicle contained additional evidence of menacing; after the firearm was recovered, any arguable justification ended (Gant prong 2 fails). On direct examination, Fleckenstein testified he searched to “make sure there was [a] weapon inside the vehicle that had been used” (TR 8/19/24, p. 24:13–21). But the BWC shows the search began at 5:20, before any gun was found (6:54), and that officers then continued rummaging after the gun was recovered. The recorded conversation from 11:56 to 15:28 confirms the search morphed from locating a firearm into a general evidentiary sweep for narcotics and “distribution” items. At 11:56, an officer says, “I don’t know what I’m going to do. If I’m going to just search this car. I think they might have PC for menacing.” At 14:22, during a discussion about whether to get a search warrant, another officer states, “we already searched it,”

and the conversation turns to “driving around ... distributing drugs” and whether to “take it.” By 15:04–15:28, they have inventoried “cocaine, weed, scales, ziplocks, baggies,” and are discussing towing/impound as a punitive measure. That is precisely what *Gant* and *Kessler* forbid. *Gant* allows a limited, offense-related evidence search. 556 U.S. at 343. *Kessler* emphasizes tethering: the search must remain connected to evidence of the offense of arrest. 2018 COA 60, ¶¶ 63–64. Here, any reasonable basis to believe evidence of menacing remained in the vehicle evaporated once the firearm was recovered under the seat at 6:54. Continuing to unzip pouches, open a lunchbox, and catalog “distribution” items was not tied to menacing at all. Moreover, nothing in the information available to officers suggested more than one weapon, ammunition, or other menacing evidence would be found after the gun was secured; the trial court’s speculation that “identity evidence, clothing, bullets, [or] maybe ... another gun” might be present (TR 8/19/24, pp. 58–59) cannot substitute for the particularized, offense-specific “reasonable to believe” showing *Gant* requires.

The “plain view” rationale is defeated by the record. On direct, Fleckenstein suggested he could see the handgun “in plain view” after “looking inside the driver door” (TR 8/19/24, pp. 24:22–25:8). But on cross he clarified that he saw it “after I opened the door of the vehicle.” (TR 8/19/24, p. 35:1–6.) The

BWC corroborates that the doors were closed until officers opened them during the frisk (4:10–4:32). Where officers themselves create the vantage point by opening a closed vehicle (while the arrestee is already cuffed and away), “plain view” does not justify the initial intrusion. See, e.g., *Kessler*, 2018 COA 60, ¶¶ 63–64 (requiring nexus between scope of intrusion and offense-of-arrest justification).

The record shows no safety exigency to justify a broader search incident to arrest. Fleckenstein described this as a “high-risk situation,” and he prudently waited for cover (TR 8/19/24, pp. 13:1–25; 14:1–25; 15:1–25; 16:1–11). But by the time doors were opened, multiple officers were on scene, Burns had been frisked (no weapons on his person) and was handcuffed and secured (TR 8/19/24, pp. 20:21–25; 21:1–8; 28:23–29:14). Officers themselves discussed uncertainty about what to do next and whether to seek a warrant (11:56; 16:20–16:45). No one articulated an immediate safety threat requiring opening all doors and conducting a full search mid-frisk. Prong one addresses arrestee access; it is not satisfied by generalized safety concerns once the arrestee is secured. See *Gant*, 556 U.S. at 343. Because prong two was not met either, the trial court’s contrary conclusion (TR 8/19/24, 56–59) was error.

Issue 2: The Automobile Exception Did Not Justify the Warrantless

Search

A. **Standard of Review:** The applicability of the automobile exception presents a question of law reviewed de novo. *People v. Zuniga*, 2016 CO 52, ¶ 20, 372 P.3d 1052, 1058. Whether probable cause existed and whether the scope of the search was reasonable are legal questions this Court assesses independently. *People v. Mills*, 2025 CO 47, ¶ 15.

B. **Preservation on Appeal:** Preserved by written motion (CF, pp. 34–36) and argument that the automobile exception did not apply absent probable cause beyond menacing and absent exigency (TR 8/19/24, pp. 15:1–6, 16:1–14). The trial court denied the motion, finding probable cause existed and ruling the continued search was lawful (TR 8/19/24, pp. 56–59)

C. **Discussion:** The automobile exception requires probable cause that contraband or evidence of a crime is inside the vehicle. *Carroll v. United States*, 267 U.S. 132, 153–54 (1925). Probable cause must be particularized and tethered to the object sought. *California v. Acevedo*, 500 U.S. 565, 580 (1991).

Here, Deputy Fleckenstein had—at most—probable cause to believe Mr. Burns’s Chrysler contained the handgun allegedly brandished at a local nightclub. The BWC shows Burns immediately exited the parked vehicle with his hands up,

closing the trunk at Fleckenstein’s request (BWC 0:22, 1:08). Within three minutes, Burns was handcuffed (3:12) and frisked (4:05). Officers found no weapons on his person. Yet before finishing the frisk, Fleckenstein unlocked the Chrysler and opened multiple doors (4:32). By 5:20, the active vehicle search was underway while Burns was already in custody. A handgun was recovered at 6:54 under the driver’s seat. That discovery exhausted any basis to search further. As captured on BWC, Fleckenstein later explained he had “secured [the gun] in my vehicle ... [and] haven’t touched anything else in here” (13:00). Despite this, officers rummaged through consoles, compartments, bags, and a lunchbox, ultimately uncovering narcotics (15:04–15:28). Nothing about the menacing report suggested the Chrysler contained drugs or distribution paraphernalia. (See TR 8/19/24, 30:1–31:25 (Fleckenstein conceding there was no narcotics investigation at the time)). On cross, he admitted no witness or dispatch information linked Mr. Burns to drug crimes, and that drugs were found only after opening a closed lunchbox inside the car (TR 8/19/24, p. 35:1–6, 35:7–25).

The State cannot bootstrap a fishing expedition into the automobile exception. The trial court held that officers could keep searching after the gun because they might find “identity evidence, clothing, bullets, [or] maybe ... another gun” (TR 8/19/24, pp. 58–59). That reasoning misreads *Zuniga*, which

emphasizes that probable cause is judged by the totality of the circumstances known before the search, not by post-hoc discoveries. 2016 CO 52, ¶ 20. See also *People v. Dinh Pham*, 2025 CO 4 (suppression required where officers facilitated a warrantless entry absent probable cause). Probable cause must rest on concrete, pre-search facts—not speculative “maybe” items. See *Coolidge v. New Hampshire*, 403 U.S. 443, 462 (1971). Here, officers had no information suggesting multiple weapons, ammunition, or identity evidence beyond Burns himself. By the time Fleckenstein expanded the search beyond the driver’s seat, probable cause was exhausted.

Nor were there exigent circumstances. The Chrysler was parked legally in a well-lit lot, surrounded by multiple officers with the keys in hand. Burns was secured in the patrol car. Officers had every opportunity to impound the vehicle and seek a warrant. See *Coolidge v. New Hampshire*, 403 U.S. 443, 462 (1971) (rejecting automobile exception where no exigency exists). The BWC confirms the absence of urgency: at 16:20–16:45, officers discussed whether to seek a warrant; by that point the scene was controlled, the gun secured, and there was no risk of flight or destruction. Exigency is absent when police can obtain a warrant without risk of loss. *Id.*

The trial court's reliance on *People v. Kessler*, 2018 COA 60, ¶ 24, is also misplaced. *Kessler* upheld a limited continuation of a DUI search after discovering an open container because additional alcohol evidence was still likely—i.e., a direct tether to the DUI offense. Here, once the gun was seized, no further evidence of menacing was reasonably believed to be present. Instead, officers pivoted to rummaging for drugs: at 15:04 they inventoried cocaine, marijuana, scales, and baggies. That pivot was not tethered to menacing. Nor was it supported by independent probable cause separate from what officers discovered only after they had already begun searching the vehicle. See *Kessler*, ¶ 64; *California v. Acevedo*, 500 U.S. at 580; *People v. Minor*, 222 P.3d 952, 956 (Colo. 2010) (invalidating warrantless search of a backpack within a vehicle absent container-specific probable cause). Once the gun was seized, the rationale for a warrantless search ended.

Because probable cause evaporated after the firearm was secured—and no exigent circumstances excused a warrant—the automobile exception fails. The trial court's contrary conclusion (TR 8/19/24, 56–59) was error. All narcotics and paraphernalia subsequently seized must be suppressed as fruits of the unlawful search.

Issue 3: The Search of Closed Containers Exceeded Constitutional Limits

A. Standard of Review: Whether a warrantless search of closed containers within a vehicle is permissible is a question of law reviewed de novo. *People v. Ortiz*, 2016 CO 73, ¶ 17.

B. Preservation on Appeal: This issue was preserved through the defense motion to suppress (CF, pp. 34–36) and argument at the suppression hearing that officers exceeded any lawful scope when they opened Mr. Burns’s personal containers inside the Chrysler (TR 9/10/24, pp. 15:1–6, 16:1–14). The trial court denied suppression, holding that continued searching into a lunchbox and baggies was constitutional (TR 8/19/24, pp. 58–59).

C. Discussion: Even when officers may search a vehicle under an exception, their authority extends only to areas where the object of the search may reasonably be found. *California v. Acevedo*, 500 U.S. 565, 580 (1991). Probable cause directed at a vehicle does not authorize indiscriminate searching of every closed container; it must be tethered to the object sought. See *People v. Minor*, 222 P.3d 952, 956 (Colo. 2010). If the object is a firearm related to menacing, the lawful scope includes places a gun could reasonably be located. It does not extend to unzipping personal lunchboxes and small containers once the firearm has been recovered and secured.

Deputy Fleckenstein's BWC shows that after the firearm was recovered under the driver's seat at 6:54, officers did not stop. At 13:00, Fleckenstein acknowledged he had secured the gun and "hadn't touched anything else." Minutes later, at 15:04, officers inventoried cocaine, marijuana, baggies, and scales—items that could only have been found by rummaging through closed personal effects, including a lunchbox and bags. This pivot from seizing the suspected menacing weapon to rifling through personal containers demonstrates the search was no longer tied to the offense of arrest. Fleckenstein admitted as much at the hearing: the narcotics were discovered only after he unzipped the closed lunchbox (TR 8/19/24, pp. 24–25, 35:7–25). The BWC corroborates that officers expanded their search after the gun was already recovered and even paused to debate whether to seek a warrant (BWC 11:56; 16:20–16:45; 17:09) before pressing ahead.

The trial court nevertheless upheld the expansion on the ground that officers could continue looking for "identity evidence, clothing, bullets, [or] maybe another gun" (TR 8/19/24, p. 59). But that rationale is speculative and not supported by facts known before the search expanded. No information suggested Burns carried multiple firearms, ammunition, or identity materials connected to menacing. The actual fruits—drugs, baggies, scales—were wholly unrelated to the arrest offense. Allowing officers to unzip and search all containers in the vehicle based on what

“maybe” might be inside contradicts the tethering requirement in *Gant* and *Kessler*.

The Supreme Court has long held that once personal effects are under police control, further intrusion requires a warrant. *United States v. Chadwick*, 433 U.S. 1, 15 (1977). Colorado follows the same rule. In *People v. Ortiz*, 2016 CO 73, ¶ 17, the Court reaffirmed that warrantless searches of backpacks and similar items are unreasonable absent container-specific probable cause. Here, once Burns was secured and the Chrysler immobilized, no exigency justified opening his lunchbox (inside a zipped bag in the back seat), his wallet, or other closed personal containers.

Because probable cause was limited to a firearm, the search into closed containers exceeded constitutional bounds. The narcotics and paraphernalia flowed only from this unlawful expansion. The trial court erred in refusing suppression. The BWC and Fleckenstein’s testimony prove the narcotics were found only after expanding the search into closed containers unrelated to menacing. That exceeded constitutional limits. All narcotics, paraphernalia, and other items discovered inside closed containers must be suppressed as fruits of the unconstitutional search.

Issue 4: All Evidence Obtained Must Be Suppressed as Fruit of the
Unlawful Search

A. **Standard of Review:** Whether evidence must be suppressed as the product of an unlawful search is a question of law reviewed de novo. *People v. Null*, 233 P.3d 670, 675 (Colo. 2010).

B. **Preservation on Appeal:** Defense counsel moved to suppress all evidence seized from the Chrysler and from Mr. Burns’s person, arguing it was the fruit of an unconstitutional vehicle search (CF, pp. 34–36). Counsel pressed this claim throughout the motions hearing, and the court denied the motion (TR 8/19/24, pp. 56–59).

C. **Discussion:** The exclusionary rule bars not only primary evidence obtained in violation of the Fourth Amendment but also all derivative evidence acquired “by exploitation of that illegality.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Colorado courts apply this doctrine broadly: once the initial intrusion is unlawful, all evidence flowing from it must be suppressed absent attenuation, independent source, or inevitable discovery. *Null*, 233 P.3d at 675–76.

Here, the handgun, narcotics, paraphernalia, and Mr. Burns’s statements were all direct products of the unconstitutional search of his Chrysler. As demonstrated above, the warrantless entry into the vehicle violated *Gant* and

exceeded the bounds of the automobile exception. Officers then expanded their search into closed containers, discovering narcotics and paraphernalia only by exploiting that illegality. None of the recognized exceptions applies: the Chrysler was immobilized, Burns was in custody, and police could easily have sought a warrant. Because the unlawful search supplied the sole basis for the State's drug evidence, suppression is required. Without this evidence, the convictions cannot stand.

Conclusion

This case turns on a fundamental Fourth Amendment principle: when police officers disregard the constitutional limits on warrantless searches, the remedy must be suppression. The record here is undeniable. Mr. Burns complied fully with officers' commands, was handcuffed and separated from his vehicle within minutes, and posed no threat. Yet officers opened all of his car doors, created their own "plain view," rummaged through his belongings, and converted a menacing stop into a fishing expedition for drugs. The trial court's ruling that this broad search was constitutional not only contravenes *Gant*, *Acevedo*, and *Ortiz*, it erodes the protections that safeguard every Coloradan from government overreach.

Upholding such a search would license officers to turn every arrest into an unlimited warrantless search.

For these reasons, the Court of Appeals should reverse the district court's order denying suppression, grant Mr. Burns's motions to suppress the firearm, narcotics, and other evidence seized from his Chrysler, vacate his convictions and sentence, and remand to the district court for further proceedings consistent with this Court's ruling.

Dated and respectfully submitted this Tuesday, September 16, 2025.

ROBINSON AND HENRY, P.C.

/s/  _____

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on Tuesday, September 16, 2025, a true and correct copy of the foregoing was presented to the Court via Colorado Court E-Filing System, and served on the following as follows:

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