

UTAH COURT OF APPEALS

State v. Camara

2025 UT App 174 · No. 20220502-CA · Decided November 28, 2025

OPINION

PER CURIAM.

2025 UT App 174 THE UTAH COURT OF APPEALS STATE OF UTAH, Appellee, v. CHARLES TRACY CAMARA, Appellant. Opinion No. 20220502-CA Filed November 28, 2025 Fourth District Court, Provo Department The Honorable Thomas Low No. 171401533 Emily Adams, Freyja Johnson, and Rachel Phillips Ainscough, Attorneys for Appellant Derek E. Brown and Daniel Lee Day, Attorneys for Appellee JUDGE RYAN D. TENNEY authored this Opinion, in which JUDGES RYAN M. HARRIS and JOHN D. LUTHY concurred as to Parts I and III.

JUDGE HARRIS authored a separate opinion as to Part II that is joined by JUDGE LUTHY. TENNEY, Judge: ¶1 A jury convicted Charles Tracy Camara of two counts of aggravated sexual abuse of a child, three counts of rape of a child, and five counts of sodomy on a child. Camara challenges his convictions on a number of grounds.

For the reasons set forth below, we need address only two of them. On those issues, we rule as follows: • First, we affirm the district court’s denial of Camara’s motions to dismiss the case relating to law enforcement having made a copy of files from Camara’s retained expert. State v. Camara • Second, we conclude that the presumption of prejudice applies to a mistrial motion that Camara filed after learning that a juror had overheard comments made from the gallery during trial.

Because of this, we reverse the district court’s denial of that motion and remand with instructions for the court to determine whether the presumption of prejudice has been overcome. 1 BACKGROUND Abuse and Charges ¶2 In 2013, Bree 2 moved to Springville with several members of her family. A few months later, she was befriended by Camara, who ran an after-school soccer club that Bree had been attending.

Bree eventually started going over to Camara’s house after school, where he would help her with school projects. ¶3 Over the next year, Bree became very close with Camara and his family. Bree’s mother had significant health issues, and Bree’s father had “never really been in the picture.” As a result, Bree and her brothers had occasionally lived outside of their mother’s home.

When Bree started seventh grade in the fall of 2014, she began living with the Camara family, and she lived there for much of the next two and a half years. Bree moved out of Camara’s house and back into her mother’s house in February 2017, which was during her ninth grade year. ¶4 A

month or two after moving out of Camara's house, Bree reported to law enforcement that Camara had sexually assaulted 1.

As indicated above and below, Judge Tenney has written the lead opinion, which is the controlling opinion as to Parts I and III. The controlling opinion on the mistrial issue is the separate opinion authored by Judge Harris. 2. A pseudonym. 20220502-CA 2 2025 UT App 174 State v. Camara her on several occasions while she lived with him and his family.

In the summer of 2017, the State charged Camara with two counts of aggravated sexual abuse of a child, three counts of rape of a child, and five counts of sodomy on a child. Motions to Dismiss ¶5 In April 2019, Camara provided notice to the State that he intended to call a technology expert (Expert) at trial. Along with this notice, Camara provided a "digital forensic report" that Expert had created.

There, Expert said that he had performed a "physical dump" of the contents of Camara's cell phone, and Expert summarized the "messages between" Camara's phone and a phone that had been identified as belonging to Bree. ¶6 Two weeks later, the State obtained a search warrant from a judge who was not presiding over the case. Though the warrant itself is not in the record of this appeal, it was later described by the parties in various motions.

From those motions, it seems that the State believed that the defense had "unlawfully acquired" or "unlawfully possessed" Camara's phone, and it further seems that Expert's report had alerted the State that Expert was now in possession of Camara's phone.

The warrant application asserted that Camara's phone had been used "to commit or conceal the commission of an offence" and contained evidence "of the crime[s] of Aggravated Sexual Abuse of a Child, Rape of a Child, and Sodomy of a Child." The warrant that the State obtained allowed it to search Expert's residence, vehicle, and person for, among other things, "PCs,... internal and external hard drives, [and] storage devices,... and anywhere else Camara's phone or digital or paper copies of the same might be stored." When officers executed the warrant, they found and seized Camara's cell phone.

Of particular note, the officers also made a copy of files from Expert's computer and put them onto an external hard drive. ¶7 After learning about this search, Camara filed a motion to dismiss the case, arguing that his Sixth Amendment rights had been violated because the State had obtained and accessed 20220502-CA 3 2025 UT App 174 State v. Camara attorney-client communications and work product.

Camara also argued that the State had violated various rules, including rules 16(c) and 40(c) of the Utah Rules of Criminal Procedure, rules 504 and 506 of the Utah Rules of Evidence, and rule 26 of the Utah Rules of Civil Procedure.

The district court later held an evidentiary hearing to assess whether a particular sergeant (Sergeant) had accessed or read the files that were originally on Expert's computer and that had been copied onto the officers' external hard drive. At that hearing, Sergeant testified that neither he nor any other officer had yet "looked at the hard drive." ¶8 The district court issued a ruling denying Camara's motion to dismiss.

There, the court held that the State had violated rules 16(c) and 40(c) of the Utah Rules of Criminal Procedure by "circumvent[ing] the notice requirements that a subpoena would have imposed" and "obtaining a search warrant, ex parte, from a different judge for the work-product of a defense expert," and the court further concluded that the "search warrant... appear[ed] to constitute an attempt to violate" Camara's Sixth Amendment right to the assistance of counsel.

But the court concluded that "the undisputed evidence show[ed] that the reports and work product were never examined by the State." As a result, the court concluded that there was no basis for dismissing the case. The court did, however, order the State "to return all materials obtained from [Expert] except the phone itself." And during the course of proceedings on this motion, the State also agreed to not "present any affirmative evidence... arising from its possession or analysis of the extraction performed" on Camara's phone by Expert that had been "obtained" as part of "the search warrant executed at [Expert's] residence." ¶9 Pursuant to the court's order, the defense obtained the external hard drive onto which officers had copied files from Expert's computer.

After doing so, Expert conducted a forensic examination of the hard drive. In Expert's view, this examination showed that, contrary to Sergeant's testimony, someone had accessed the files that had been copied onto the external hard drive.

In light of this, Camara filed another motion to dismiss. 20220502-CA 4 2025 UT App 174 State v. Camara ¶10 The court held a new evidentiary hearing to determine what had happened. After that hearing, the court issued a written ruling denying this second motion to dismiss.

In that ruling, the court found that while the files that were copied onto the external hard drive contained some "potential work product," there was "no evidence that any work product was accessed" by the State and "no evidence that any attorney-client communications [had] been improperly disclosed." The court also found that, even if the State had accessed other information (i.e., information that was not attorney-client communications or work product), that information had already been "voluntarily disclosed" or, by rule, would be required to be disclosed to the State anyway.

From all this, the court ruled that there had been "no Sixth Amendment violation" and "no appreciable impact on [Camara's] right to effective assistance of counsel," and it further ruled that "any procedural errors can and [had] been corrected by" the court's prior order.

The court clarified that its prior order would “remain in effect,” and it then ordered the State “to destroy the copy of the hard drive provided by [Expert] to the State.” In light of all this, the court concluded that “dismissal [was] an inappropriate sanction in this case.” Trial ¶11 A five-day jury trial was held in the fall of 2021. At that time, the Utah Supreme Court’s administrative orders for court operations during the COVID-19 pandemic were in effect.

3 Pursuant to those orders, jurors were seated in the jury box as well as in the courtroom gallery in order to achieve the required level of social distancing. In an apparent nod to the fact that she was the alleged victim, the court permitted Bree to sit in the gallery during the trial. See Utah R. Evid. 615(a)(4) (creating an exception 3. See Administrative Order for Court Operations During Pandemic, Utah Sup.

Ct. & Utah Jud. Council (Sep. 17, 2021), <https://www.utcourts.gov/content/dam/alerts/docs/20210917%20%20Pandemic%20Administrative%20Order.pdf> [https://perma.cc/B5HL-V3FG]. 20220502-CA 5 2025 UT App 174 State v. Camara to the exclusionary rule for “a victim in a criminal proceeding where the prosecutor agrees with the victim’s presence”). ¶12 The State presented its case through the testimonies of Bree, some of Bree’s friends and family, medical experts, and law enforcement officers.

Of some note for this appeal, one of Bree’s claims was that she and Camara had a sexual encounter while they were driving alone together in a nearby canyon on September 29, 2015. ¶13 In the defense case, Camara presented testimony from Expert and from various family and friends. One of these witnesses was Camara’s wife (Wife), who testified that she and the Camara children were with Camara and Bree during the drive on September 29, 2015—and, thus, that the alleged sexual encounter that Bree had described had not happened. ¶14 During the portion of Wife’s testimony in which she discussed this drive, the prosecutor thought he heard the word “bullshit” coming from the direction of the gallery where Bree was sitting, and the prosecutor also noticed that Juror 10 had “perk[ed] up and looked” toward Bree.

The prosecutor asked for a sidebar and then told the district court what he had heard and seen. After the sidebar, the court “instruct[ed] the jurors that any comments that they may hear from the gallery are not testimony, are not evidence, [and] are not to be considered as such.” The court warned that if there were any further comments, it would “have to clear the gallery.” ¶15 The next witness who testified as part of the defense case was Camara’s daughter.

After her testimony concluded, three jurors informed the bailiff that they had heard “comments from the gallery,” some of which seemed to have come “from the woman in yellow.” Unbeknownst to the jurors, the woman in yellow was Bree’s attorney, who had been sitting next to Bree in the gallery. 20220502-CA 6 2025 UT App 174 State v. Camara ¶16 The court then questioned the three jurors separately about what they had heard.

4 • Juror 7 said that, sometime before the court’s instruction during Wife’s testimony, (s)he had overheard some indistinct chatter, and (s)he also said that at one point, (s)he had heard either Bree or the person “she was talking to” say, “[S]he’s lying.” Juror 7 said that (s)he was not “influenced” by the statement and that (s)he could “focus on what was said... from the stand.” • Juror 9 said that before the court’s instruction during Wife’s testimony, (s)he had overheard “laughing” and indistinct “talking” but “didn’t hear any specific words.” • Juror 10 said that before the court’s instruction, (s)he had overheard Bree “saying that [Wife] was not in the car” and “she’s lying.” Juror 10 also said that after the court’s instruction, and during the testimony in which Wife “was talking about dates when her children were homeschooled,” (s)he had overheard, “I remember the date, it’s 2016, and I wasn’t even there,” which (s)he “believe[d]” came from the woman “wearing the yellow blazer.” ¶17 After questioning these jurors, the court excluded Bree’s counsel from the courtroom for the remainder of trial.

The next day, Camara’s attorney (Counsel) 5 moved for a mistrial, claiming that “the statements from the gallery” evidenced “an intention to thwart the process.” The court denied the motion based on its 4. The record does not indicate the genders of the three jurors in question. When referring to them individually, we’ll use “(s)he” as the singular pronoun.

5. Camara was represented by two attorneys below. We’ll refer to them with the singular “Counsel” for convenience. 20220502-CA 7 2025 UT App 174 State v. Camara conclusion that there had been no “articulation of prejudice.” Before deliberations began, the court excused Jurors 9 and 10 since they were alternates. ¶18 At the close of deliberations, the jury convicted Camara on all counts.

Rule 23B Remand ¶19 Camara appealed, challenging his convictions on several grounds. Camara also filed a motion for a remand under rule 23B of the Utah Rules of Appellate Procedure, asking this court to remand to the district court to create a record regarding seven additional claims of ineffective assistance. Following oral argument, we issued an order granting Camara’s request for a remand as to some (though not all) of these claims.

After an evidentiary hearing, the district court entered findings of fact addressing the claims for which this court had remanded. ISSUES AND STANDARDS OF REVIEW ¶20 Camara raises several issues on appeal. For the reasons set forth below, we need address only two of them. ¶21 First, Camara argues that the district court abused its discretion by not dismissing the case as a “sanction” for the State’s actions relating to Expert’s computer.

We review a district court’s decision on whether to dismiss a case as a discovery sanction for abuse of discretion. See *Chard v. Chard*, 2019 UT App 209, ¶ 30, 456 P.3d 776; see also *Sleepy Holdings LLC v. Mountain West Title*, 2016 UT App 62, ¶ 9, 370 P.3d 963. When an underlying issue presents “a mixed question of law and fact,” “we review the court’s factual findings for clear

error, and we review its legal conclusions, including its application of law to the facts of the case, for correctness.” *State v. Hebeishy*, 2022 UT App 136, ¶ 12, 522 P.3d 952.

20220502-CA 8 2025 UT App 174 *State v. Camara* ¶22 Second, Camara argues that the district court abused its discretion by denying his motion for a mistrial based on jurors hearing comments from the gallery. “We review the denial of a mistrial motion for abuse of discretion.” *State v. Bermejo*, 2020 UT App 142, ¶ 20, 476 P.3d 148.

To the extent that this analysis implicates Camara’s constitutional right to trial by an impartial jury, the “interpretation of the Utah Constitution is a question of law that we review for correctness.” *State v. Soto*, 2022 UT 26, ¶ 13, 513 P.3d 684 (quotation simplified). ANALYSIS I. Motions to Dismiss ¶23 On appeal, Camara first challenges the district court’s decision not to dismiss the case as a sanction for the State having made a copy of Expert’s files and, in his view, “access[ing]” them.

As he did below, Camara argues that the State’s actions violated both his Sixth Amendment rights and various rules of procedure relating to discovery. ¶24 With respect to his Sixth Amendment claim, Camara relies heavily on *Shillinger v. Haworth*, 70 F.3d 1132 (10th Cir. 1995). There, the Tenth Circuit held that “a prosecutor’s intentional intrusion into the attorney-client relationship constitutes... a per se violation of the Sixth Amendment” under which prejudice “must be presumed.” *Id.* at 1142.

Camara asks us to adopt that rule. And with the proposed presumption of prejudice as the backdrop, Camara argues that it was an abuse of discretion for the court to not dismiss the case. In his view, the “sanctions” imposed by the court “did not resolve the underlying damage caused by the State’s actions” and “the only appropriate remedy was dismissal.” With respect to his rules-based claim, Camara likewise 20220502-CA 9 2025 UT App 174 *State v. Camara* argues that the court abused its discretion by not imposing an adequate sanction.

We disagree. 6 ¶25 Starting with the constitutional claim, we note that *Shillinger*’s adoption of a presumption of prejudice was recently overruled by the Tenth Circuit. See *United States v. Hohn*, 123 F.4th 1084 (10th Cir. 2024) (en banc), cert. denied, No. 24-1084, 2025 WL 2906501 (U.S. Oct. 14, 2025). There, the en banc Tenth Circuit held “that a Sixth Amendment violation of the right to confidential communication with an attorney requires the defendant to show prejudice.” *Id.* at 1088.

And the court expressed its view that *Shillinger* had “misinterpreted” and “misappli[ed]” certain “Supreme Court precedents” in holding to the contrary. *Id.* at 1102, 1105–06. ¶26 The precedents bear this out. In *Weatherford v. Bursey*, the United States Supreme Court reversed the Fourth Circuit’s conclusion that a presumption of prejudice applies “whenever the prosecution knowingly

arranges or permits intrusion into the attorney-client relationship.” 429 U.S. 545, 549–51 (1977) (quotation simplified).

The Court instead held that unless there is “at least a realistic possibility of injury to [the defendant] or benefit to the State, there can be no Sixth Amendment violation.” *Id.* at 558; see also 3 Wayne R. LaFare et al., *Criminal Procedure* § 11.8(b) (4th ed. 2024) (explaining that *Weatherford* involved “an invasion of the lawyer-client relationship that had a significant investigative justification,” and it “makes clear that such an invasion will not be deemed to violate the Sixth Amendment in the absence of a realistic likelihood of having adversely impacted the defense at trial”).

And in *United States v. Morrison*, the Supreme Court reversed the dismissal of an indictment based on an alleged Sixth Amendment violation, explaining that “absent demonstrable prejudice, or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation 6.

As noted, Camara filed two motions to dismiss relating to the external hard drive. On appeal, Camara says that he is challenging the denial of both motions. 20220502-CA 10 2025 UT App 174 *State v. Camara* may have been deliberate.” 449 U.S. 361, 363–65 (1981); see also 3 LaFare et al., *Criminal Procedure* § 11.8(b) (explaining that *Morrison* has been understood to require a showing of prejudice for even an “unjustified invasion,” so “only prejudice that is indelible and holds open the possibility of an unjust conviction would justify [a] dismissal with prejudice”). ¶27 In light of these authorities, we disagree with Camara’s suggestion that, just because the State obtained a copy of Expert’s files, a presumption of prejudice applied.

Instead, under precedent from the Supreme Court, Camara still needs to show that the alleged violation of his Sixth Amendment rights prejudiced him. ¶28 This leads to the question of whether the district court acted within its discretion in declining to order the dismissal of the case.

On this front, we note that, even with the presumption of prejudice, *Shillinger* held that dismissal of the case is only appropriate “in extreme circumstances.” 70 F.3d at 1143. And this general reluctance to order dismissal in such circumstances comports with the approach taken by other courts.

For example, the United States Supreme Court has held that “the remedy characteristically imposed” for a Sixth Amendment violation “is not to dismiss the indictment but to suppress the evidence” that was unlawfully obtained or instead “order a new trial if the evidence has been wrongfully admitted and the defendant convicted.” *Morrison*, 449 U.S. at 365.

The Court has also held that Sixth Amendment “remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests.” *Id.* at 364. In another more recent case, the Court held that “a remedy must neutralize the taint of a

constitutional violation, while at the same time not grant a windfall to the defendant or needlessly squander the considerable resources the State properly invested in the criminal prosecution.” *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (quotation simplified).

20220502-CA 11 2025 UT App 174 *State v. Camara* ¶29 As discussed, the district court in this case held two evidentiary hearings to determine what had happened. From the evidence developed at those hearings, the court ruled that the State had indeed acted improperly by making a copy of Expert’s files. But even so, the court ultimately found after the second hearing that there was “no evidence that any work product was accessed” by the State, “no evidence that any attorney-client communications [had] been improperly disclosed,” “no appreciable impact on the defendant’s right to effective assistance of counsel,” and “[n]o ongoing prejudice to the defendant’s case.” Having reviewed the record, we see no basis for overturning those findings. ¶30 Without any evidence that the State had accessed any confidential information, the district court then had discretion to fashion a remedy that was “appropriate in the circumstances,” *Morrison*, 449 U.S. at 365, even if that remedy was something short of outright dismissal.

And this is what the court did. As noted, the State agreed in the course of these proceedings to not “present any affirmative evidence... arising from its possession or analysis of the extraction performed on [Camara’s] cellular phone by [Expert],” and the court ordered the State before trial to “destroy the copy of the hard drive” that it had obtained.

On appeal, Camara points to no evidence that the State used or offered at trial that was obtained from Expert’s computer. Thus, it seems that the court’s orders and the State’s agreement collectively deprived the State of any benefit from the illegality, while still allowing the case to proceed. This was an appropriate exercise of the court’s discretion. ¶31 Camara nevertheless points out that, even “without finding a Sixth Amendment violation, the district court had discretion to dismiss the case” under rule 25 of the Utah Rules of Criminal Procedure.

That rule provides that, “[i]n its discretion, for substantial cause and in furtherance of justice, the court may... order an information or indictment dismissed.” Utah R. Crim. P. 25(a). But this court has explained that, under this rule, “dismissals grounded solely on prosecutorial misconduct are rarely appropriate.” *State v. LoPrinzi*, 2014 UT App 256, ¶ 9, 338 P.3d 253 (quotation simplified). ¶32 While this rule contemplates that a party may be sanctioned, it places the choice of sanction within the discretion of the district court.

And again, the district court chose to sanction the State by preventing it from using any evidence obtained through the seizure of files from Expert’s computer. In these circumstances, we see no basis for concluding that the court abused its discretion by not going further and dismissing the case. II. Mistrial Motion7 ¶33 Camara next claims that the district court abused its discretion when it denied his motion for a mistrial based on outside juror contacts.

In Camara's view, those contacts violated his right to an impartial jury as provided by both the United States and Utah Constitutions. Camara thus argues the district court should have applied a presumption of prejudice under the terms set forth in *State v. Soto*, 2022 UT 26, 513 P.3d 684.

The State disagrees, contending that the presumption of prejudice does not apply. ¶34 In the separate opinion, the majority concludes that the presumption of prejudice does apply, and it accordingly reverses and remands for the district court to determine whether the presumption was rebutted. Contrary to the views set forth in the separate opinion, I don't believe that this case triggers a presumption of prejudice under *Soto*.

I would instead review the 7. As indicated, the separate opinion represents the controlling opinion of this court on this issue. The views set forth in this Part II are Judge Tenney's alone and constitute the dissent as to this issue. 20220502-CA 13 2025 UT App 174 *State v. Camara* court's decision under ordinary mistrial principles, and under those principles, I would affirm the denial of Camara's motion.

8 A. Juror 7 Was Not Exposed to an Outside Contact ¶35 Article I, Section 12 of the Utah Constitution guarantees a criminal defendant the right to trial "by an impartial jury." This right "prohibits undue outside influence on the jury at any point between the jury's empanelment and the rendering of judgment," because "certain outside communications are so apt to consciously or unconsciously influence the judgment of the juror as to likely violate the guarantee of an impartial jury," *Soto*, 2022 UT 26, ¶¶ 18, 25 (quotation simplified).

9 ¶36 Reviewing *Soto*, it seems to me that the case poses something of a threshold question: whether there has been an "outside influence," "outside communication[]," or "improper... contact" with the jury. *Id.* ¶¶ 18, 25, 32. (For simplicity, I'll refer to 8. I agree with the separate opinion that although *State v. Soto*, 2022 UT 26, 513 P.3d 684, was issued after Camara's trial, it's appropriate to assume that *Soto* applies to this appeal.

I also recognize that the interpretations of *Soto* advanced in the two opinions in this appeal differ in some respects from the interpretations offered by the parties in their respective briefs. But the question of what *Soto* means and how it should be applied to the facts of this case was fully briefed and argued by both sides, so, like the separate opinion, I see nothing amiss about the judges on this panel doing their best to set forth a faithful reading of it.

Finally, I agree with the separate opinion that, because Jurors 9 and 10 were alternates and were excused before deliberations, the *Soto* analysis in this case should focus on Juror 7. 9. *Soto* recognized that the "United States Constitution provides the same protection," but it then explained that while it would cite some federal cases as persuasive authority, it would ultimately ground its analysis in the state constitutional right.

2022 UT 26, ¶¶ 14, 20–21. 20220502-CA 14 2025 UT App 174 State v. Camara such an occurrence as an “outside contact” moving forward.) The supreme court in Soto held that if it’s shown that there was an outside contact with a juror, a court should then use a “balancing test” to determine whether the presumption of prejudice should apply. Id. ¶ 39. This balancing test “considers who said what and the circumstances surrounding the contact.” Id. (emphases in original).

If the court concludes that prejudice should be presumed under this three-part test, the burden is then “on the prosecution to prove that the unauthorized contact did not influence the juror.” Id. ¶ 32 (quotation simplified). 10 10.

The separate opinion repeatedly couches its analysis in terms of whether there was an “unauthorized contact.” As will be clear soon enough, I disagree with the separate opinion’s conclusion that what matters here is whether the contact was authorized by the rules of evidence or courtroom procedure. But I think it important to note that I do agree with the separate opinion that, under the terms set forth in Soto, an initial “contact” of some sort must occur to trigger the three-part test that is then used to determine whether the presumption of prejudice applies.

Were it otherwise, it would seem that this three-part test would be applicable whenever anything objectionable was said, even if it was said on the stand during witness testimony, which could potentially upend ordinary mistrial processes entirely. So to get a case into Soto-territory, it seems that there must be some initial triggering contact.

The difference between my opinion and the separate opinion isn’t whether this is so; rather, it’s what that contact looks like. As I explain below, I think that in most cases, what matters is whether that contact occurred outside the courtroom. I’ll go ahead and note here that Soto could at least arguably be read as treating this as something that should be folded into the third part of its test (which, as will be discussed, looks to “special circumstances”).

If this is what Soto intended, I would reach the same result in this appeal by concluding that this circumstance (i.e., that the contacts in question occurred inside the courtroom) (continued...) 20220502-CA 15 2025 UT App 174 State v. Camara ¶37 I don’t believe that there was an outside contact in this case for purposes of the Soto test. And as an initial matter, I note that the word “outside” carries outsized importance in Soto.

The majority opinion used that word twenty-two times, and it relatedly referred to contacts from “outsiders” three more times. So this begs the question: outside of what? ¶38 In an ordinary sense, I think that most people would instinctively assume that an “outside contact” with jurors who are sitting in a trial would refer to a contact that happened outside the trial—and, indeed, outside the courtroom.

As it turns out, that’s exactly how Soto and the past Utah cases that it relied on tend to use that term. Looking at Soto and its supporting Utah cases, I think it’s significant that in almost every case, the communications at issue happened outside the courtroom. See, e.g., *id.* ¶¶ 84–85 (applying a presumption of prejudice based on a conversation that occurred in an elevator between a bailiff, a court IT technician, and jurors); *State v. Erickson*, 749 P.2d 620, 620–21 (Utah 1987) (applying a presumption of prejudice where a juror had a “four or five minute[]” conversation with “a key witness” “in the hall outside the courtroom” “during [a] recess”); *State v. Pike*, 712 P.2d 277, 280–81 (Utah 1985) (applying a presumption of prejudice where “an important prosecution witness... engaged in conversation in the hall of the courthouse during a recess with three jurors regarding a personal incident”); *State v. Anderson*, 65 Utah 415, 237 P. 941, 944 (1925) (applying a presumption of prejudice where a juror rode to and from court with a witness throughout a three-week trial); *State v. Thorne*, 39 Utah 208, 117 P. 58, 66 (1911) (applying a presumption of prejudice where a juror left his lunch table during deliberations and went with an officer of the court to another part of the building, where he spoke on the phone to someone else). is dispositive as to whether a presumption of prejudice should apply in this case, and I would do so for largely the same reasons that I set forth below in the remainder of my opinion on this issue.

20220502-CA 16 2025 UT App 174 *State v. Camara* ¶39 This pattern comports with what I think the phrase “outside contact” with jurors would naturally mean. And there’s also some logic to drawing the line here. In one key passage, Soto stated that the reason a presumption of prejudice might attach when there has been an outside contact with jurors is that it can be “difficult, if not impossible,” at that point “to prove how [the] improper contact may have influenced a juror.” 2022 UT 26, ¶ 36 (quotation simplified).

In this sense, Soto seems to have viewed this as a problem of proof. But as the State pointed out at oral argument in this appeal, when a contact occurs inside the courtroom (even if it occurs off the record), that contact has happened within a decidedly controlled environment. Even if the judge did not personally observe or hear the contact, the judge can still readily determine with precision exactly who was where, who said what, and who heard what.

Everyone in the room can be promptly subjected to on-the-record questioning from the court, and the encounter will in most instances be supported by audio and visual evidence. Put simply, the moment one gets outside the courtroom itself, any number of variables are introduced into the mix, which is why I think the place of the contact matters (or, at least, has mattered in Soto and most of the Utah cases it relied on). ¶40 Reviewing the Utah cases cited by Soto that applied a presumption of prejudice, I do see two that involved communications between jurors and outsiders that may have occurred in the courtroom.

In *State v. Swain*, we applied a presumption of prejudice where defense counsel noticed that, during a “short recess,” one of the jurors approached one of the State’s witnesses, at which point

the juror and the witness had a conversation about their upcoming high school reunion. 835 P.2d 1009, 1010–11 (Utah Ct. App. 1992). And in *Logan City v. Carlsen*, we also applied a presumption of prejudice where the defendant overheard a bailiff “discussing sentencing and jurisdiction with the jury” “during a recess.” 799 P.2d 224, 225–27 (Utah Ct.

App. 1990). So far as I can tell, neither decision explicitly says that the conversations occurred outside the courtroom, and depending on the layout of the respective courthouses, it may have been possible that they did occur outside the courtroom. But it seems reasonable to assume that either or perhaps both of these encounters occurred in the courtroom, given that the defense attorney in *Swain* and the defendant in *Carlsen* might not have been in position to have overheard the relevant conversations if the jury had been taken out of the courtroom and back to a secluded place. ¶41 But even if it is true that *Swain* and *Carlsen* involved communications that occurred in the courtroom (which, again, is at least a touch unclear), I think it’s significant that both of these cases involved direct conversations between jurors and outsiders.

Indeed, as the State points out in its brief, the past Utah cases that have applied a presumption of prejudice have all involved situations where there was “direct extra-judicial communication” between jurors and outsiders. And as indicated by the parentheticals attached to the string cite above, *Soto* and its supporting Utah cases typically involved not just communications that occurred outside the courtroom, but also direct communications between jurors and outsiders.

11 11. Indeed, in *State v. Norton*, the Utah Supreme Court seemed to apply ordinary mistrial rules even though there had been a direct conversation between an outsider and jurors. 675 P.2d 577, 582 (Utah 1983), overruled on other grounds by *State v. Hansen*, 734 P.2d 421 (Utah 1986), and abrogated on other grounds by *State v. Guard*, 2015 UT 96, 371 P.3d 1. There, “an elderly man approached a member of the jury” during a recess of a capital murder trial and “said in a loud voice, ‘I made up my mind a long time ago; any time a guy walks in a bank and shoots two people, he deserves to die.’” *Id.* On appeal, the supreme court affirmed the denial of a mistrial motion that was based on this encounter, and the supreme court did so without purporting to apply a presumption of prejudice.

See *id.* Instead, the court simply said that, “after reviewing the record,” it was “convinced that this event caused no prejudice to the defendant and that the [district] court handled the matter appropriately.” *Id.* (quotation simplified). 20220502-CA 18 2025 UT App 174 *State v. Camara* ¶42 But what happened here does not fit this pattern.

As noted, the conversation that Juror 7 overheard happened in court, not outside of court. And it didn’t involve a direct communication between an outsider and a juror. Rather, Juror 7 simply overheard a portion of a conversation that two other people were having in the gallery. This case therefore falls outside the parameters of the cases relied on by *Soto*.

12 ¶43 True, we’re a common law court, and case-by-case legal development is indeed part of our system. So even though Soto didn’t contemplate this exact scenario, we certainly could conclude that it is covered by Soto’s general principles. And here, the separate opinion concludes that, based on the principles set forth in Soto, the overheard conversation should qualify because it was “unauthorized,” meaning that it was “off the record.” ¶44 Unlike the separate opinion, I would not draw the line in that place.

Before explaining why, let me say up front that I don’t believe that Soto or any past Utah decision clearly answers this 12. To be clear, Soto does say that the presumption of prejudice can apply when there has been “inadvertent conduct and communications directed at a juror.” 2022 UT 26, ¶ 33 n.7 (emphasis added). But Soto didn’t give an example of what kind of “inadvertent” communication would qualify, and I’m not totally sure how a communication could be both “inadvertent” and “directed at a juror.” In my mind, “inadvertent” suggests something accidental, while “directed at” suggests something intentional.

Given the nature of the authorities relied on by Soto— which, as noted, were overwhelmingly based on communications that occurred outside the courtroom—what I think Soto is suggesting in this passage is that if an outsider inadvertently communicates with jurors outside the courtroom, a presumption of prejudice can apply, whereas a more direct conversation between a juror and an outsider that occurs in court could suffice as well.

But on this, further guidance from the supreme court— whether it be in this appeal or some other appeal—would certainly be helpful. 20220502-CA 19 2025 UT App 174 State v. Camara question. As a result, while my colleagues and I see this differently, I see this as a good faith disagreement about a novel question. Regardless, I’m not persuaded that we should extend Soto past the terms set forth in that case or the prior Utah cases, that rule 47(l) of the Utah Rules of Civil Procedure compels us to do so, or that doing so is necessary to protect the interests underlying the right in question, and I’m further concerned about the implications of the separate opinion on future cases. ¶45 First, as explained, neither Soto nor the past Utah cases that applied a presumption of prejudice involved jurors overhearing or seeing something that happened in court during trial proceedings.

Indeed, at oral argument in this appeal, Camara’s appellate counsel was asked if she was aware of any past Utah case in which the appellate courts had applied the presumption of prejudice to a situation where “something... happened in front of the jurors during the trial itself, as opposed to outside of the trial,” and Camara’s appellate counsel could not point to any such case.

I’m not aware of any such case either. ¶46 But in State v. Cardall, 1999 UT 51, 982 P.2d 79, our supreme court expressed some wariness about extending this particular rule to new scenarios. There, the defendant asserted that the presumption of prejudice should apply because jurors had

observed an interaction that occurred during a recess between the victim and her mother on the stand.

Id. ¶¶ 12, 22. But the supreme court rejected this assertion, in part, because the defendant had “failed to cite any Utah case which holds that incidents like the witness stand incident invoke a presumption of prejudice.” Id. ¶ 22. By extending the presumption of prejudice to an overheard conversation that happened in court during the trial, however, the separate opinion is taking Soto to a place that neither Soto nor any past Utah case has previously gone.

Cardall suggests that we should be wary of doing so. ¶47 Second, the separate opinion places great weight on the fact that rule 47(l) of the Utah Rules of Civil Procedure prohibits “off-the-record communication between jurors and lawyers, 20220502-CA 20 2025 UT App 174 State v. Camara parties, witnesses or persons acting on their behalf.” In the separate opinion’s telling, “all five justices agreed that off-the- record contact... implicates the presumption of prejudice.” But I find that hard to square with what the Soto majority actually said. ¶48 The Soto majority noted that the Soto dissent had “relie[d] on Utah Rule of Civil Procedure 47(l) in its analysis.” 2022 UT 26, ¶ 58.

The Soto majority then stated that “while our rules provide useful guidelines for juror behavior, they do not and cannot supplant our case law interpreting the breadth of the constitutional right to trial by an impartial jury.” Id. (quotation simplified). Continuing, the majority said, “Fortunately, rule 47(l)’s limitations on outside communications are broader than our constitutional limits and thus create no constitutional problems.” Id. ¶ 59.

The majority noted that rule 47(l) “prescribes a noble standard of juror behavior, but it does not tell us when a court must presume prejudice from such communication”; instead, in the majority’s view, the “answer” to “that question” must be drawn from “our case law.” Id. Wrapping things up, the majority insisted that “the dissent’s reliance on rule 47(l) [was] misplaced,” and it instead said that “[w]hen deciding whether a juror contact with an outsider triggers the rebuttable presumption of prejudice, we do not apply rule 47(l).” Id. ¶ 61. ¶49 Despite all this, the separate opinion seems to assume that while the Soto majority did not think that rule 47(l) should be used as part of the three-part test, rule 47(l) should be used when assessing the initial question of whether there was an impermissible “contact.” But if this is what the Soto majority meant, it certainly didn’t say that.

This seems to me to be a meaningful omission. Indeed, I also think it significant that with one exception, the only references to rule 47(l) in the Soto majority at all are in paragraphs 58 to 61, which, as evidenced by the statements I’ve just catalogued, are part of a discussion of why rule 47(l) is inapplicable to the constitutional question that was 20220502-CA 21 2025 UT App 174 State v. Camara before the court.

13 And again, as part of the discussion in paragraphs 58 to 61, the Soto majority insisted that rule 47(l) could not “supplant” prior case law “interpreting the breadth of the constitutional right to trial by an impartial jury.” Id. ¶ 58 (quotation simplified). Given that framing, it seems odd to me to suggest that the initial question of whether a triggering “contact” occurred—which, in my mind, would be part of the same constitutional question—is governed by a rule of procedure, rather than the prior cases that interpreted the scope of the same constitutional right in question.

14 ¶50 In short, given the language used by the Soto majority and the development of our cases, I’m not persuaded by the separate opinion’s assertion that rule 47(l)’s on-the-record/off-the-record distinction is controlling here in this constitutional case. ¶51 Third, I recognize that Soto suggests in a few places that what matters is that the jury should not be tainted by receiving 13.

The one additional reference to rule 47(l) is found in Soto, 2022 UT 26, ¶ 14 n.3. There, the majority expressed its view that the “rules of procedure” “can only add to and never diminish or supplant our constitutional requirements of a criminal defendant’s right to trial by an impartial jury.” Id. (quotation simplified).

In my mind, this reiterates that the majority saw rule 47(l) as being distinct from the constitutional right in question. 14. Moreover, as I mentioned above, in Norton, the Utah Supreme Court considered a case in which there was an inflammatory statement made to jurors that was very clearly made “off the record” as that phrase has been defined by the separate opinion in this appeal.

See 675 P.2d at 582. And yet even so, on appeal, the supreme court affirmed the denial of a mistrial motion without highlighting the fact that the communication was off-the-record or purporting to apply a presumption of prejudice. See id. If what’s actually driving the analysis at this initial step is whether there was an off-the-record communication, it seems that Norton’s analysis would have been couched in very different terms.

20220502-CA 22 2025 UT App 174 State v. Camara improper information. See, e.g., id. ¶ 27 (suggesting that what’s important is ensuring that the jury’s consideration is limited to evidence developed on “the witness stand in a public courtroom where there is full judicial protection of the defendant’s right[s]” (quotation simplified)); id. ¶ 30 (suggesting that what’s important is preventing the jury from “being polluted by influences other than that which are produced by the legal evidence and the law governing the case” (quotation simplified)).

And I readily agree that, to the fullest extent possible, jurors should be kept free from outside taint. ¶52 But even so, I’m not sure that the on-the-record/off-the-record line is the one that our past cases have drawn when it comes to the question of whether a defendant’s constitutional right to a fair trial has been violated. Indeed, our supreme court’s decision in Cardall suggests otherwise.

Again, the supreme court there considered a case in which jurors observed an interaction between the victim and her mother that occurred during a recess and outside the presence of the judge, see *Cardall*, 1999 UT 51, ¶¶ 12–13, so it would presumably qualify as an off-the-record moment. And yet on appeal, the supreme court held that this did not trigger a presumption of prejudice because there had been “no conversation between witnesses and jurors, just a quiet exchange between [the victim] and her mother.” *Id.* ¶ 21. ¶53 Perhaps more importantly, viewing the problem from a systemic perspective, I don’t think that a presumption of prejudice needs to apply whenever there’s the possibility that jurors may have been tainted by hearing or seeing something that they shouldn’t have heard or seen.

After all, whenever a witness says something on the stand and a court then sustains an objection to that statement after the fact, the jury has heard something that it shouldn’t have heard. But when that happens, the ordinary course of things is for the court to instruct jurors to disregard what they heard and then move on. ¶54 And this is where the ordinary mistrial standard comes into play.

If the improper testimony was bad enough, an 20220502-CA 23 2025 UT App 174 *State v. Camara* adversely affected party can move for a mistrial. If a party files such a motion, a mistrial “should be granted only where the circumstances are such as to reasonably indicate that a fair trial cannot be had and that a mistrial is necessary to avoid injustice.” *State v. Sorenson*, 2023 UT App 159, ¶ 21, 542 P.3d 529 (quotation simplified).

In any number of cases, Utah’s appellate courts have applied this ordinary standard (i.e., without also applying a presumption of prejudice) to determine whether the defendant could still receive a fair trial even though the jury heard something it shouldn’t have heard.

To pick just a few, these include cases in which jurors heard that that the defendant in a drug prosecution owed \$2,400 to “the State Narcotics and Provo City Police Department,” *State v. Creviston*, 646 P.2d 750, 753 (Utah 1982) (quotation simplified); that one of the alleged victims of sex abuse had recently attempted suicide based on her anguish about the alleged abuse, see *State v. Meraz-Zamorano*, 2025 UT App 110, ¶ 41, 575 P.3d 271, petition for cert. filed, July 29, 2025 (No.

20250846); that the defendant in an assault prosecution had been involved in “a similar situation several years earlier,” *State v. Graydon*, 2023 UT App 4, ¶ 59, 524 P.3d 1034 (quotation simplified); that, at the time of the alleged offense, the defendant was “‘out’ of jail ‘on [an] ankle monitor,’” *State v. Whytock*, 2020 UT App 107, ¶¶ 15–24, 469 P.3d 1150; that the defendant had invoked his right to remain silent after being arrested, see *State v. Sosa-Hurtado*, 2018 UT App 35, ¶¶ 55–58, 424 P.3d 948, *aff’d*, 2019 UT 65, 455 P.3d 63; and that the defendant had a history of “getting violent” with the victim, *State v. Yalowski*, 2017 UT App 177, ¶¶ 17–22, 404 P.3d 53. ¶55 True, what happened in this case involved a juror hearing something from someone who wasn’t on the stand.

This is a difference, but I'm not persuaded that it's a meaningful difference, much less one that transforms something that was objectionable into a problem of constitutional dimension. If Bree (or, somehow, her attorney) had said the same exact thing or even something more inflammatory from the stand instead of from the gallery, no one would blink an eye at evaluating the effects of that statement on jurors through the ordinary mistrial rule.

I don't see 20220502-CA 24 2025 UT App 174 *State v. Camara* why, as a functional matter, the fact that this was said from the gallery makes this so different that an entirely different rubric should now apply. If the ordinary mistrial standard is sufficient to protect a defendant's right to a fair trial when something improper is said on the stand, I'm not sure why it's inadequate to protect that same right if something improper is said from the gallery. ¶56 Again, the parties have not pointed to any past Utah case that evaluated a mistrial motion that was based on something that a juror heard or observed that happened in the gallery, much less in the gallery while the trial was proceeding.

But looking elsewhere, I see several cases in which other courts used ordinary mistrial rules (i.e., without applying a presumption of prejudice) when something happened in the gallery. See, e.g., *Kinnamon v. Scott*, 40 F.3d 731, 734 (5th Cir. 1994) (per curiam) (rejecting a claim that there was a "denial of due process" where the victim's daughter "entered the courtroom" during a recess and "began screaming that [the defendant] had killed her father," with the Fifth Circuit concluding that no "prejudicial error of constitutional magnitude" occurred); *Bruce v. Duckworth*, 659 F.2d 776, 781–82 (7th Cir.

1981) (declining to apply a presumption of prejudice where "a juror informed the court that the jury 'could hear discussion going on in the audience,'" because "[a]ny audience discussion that occurred was in the presence of the trial judge and the parties in open court" and the "trial judge acted swiftly to put an end to the problem"); *State v. Stephenson*, No. 22- 2082, 2024 WL 2317492, at *5–6 (Iowa Ct.

App. May 22, 2024) (affirming denial of a mistrial motion under ordinary mistrial principles where someone "made comments from the courtroom gallery," which the defendant's counsel asserted that the jury heard); *State v. Quinones*, No. 98,877, 2009 WL 311812, at *3–8 (Kan. Ct. App. Feb. 6, 2009) (per curiam) (affirming denial of a mistrial motion under ordinary mistrial principles where gallery members made "threatening gestures" during a confidential informant's testimony that were observed by the bailiff and the jury); *State v. Triebwasser*, No. 97,703, 2008 WL 2423368, at *2–5 (Kan.

Ct. App. June 13, 2008) (per curiam) (affirming denial of a 20220502-CA 25 2025 UT App 174 *State v. Camara* mistrial motion under ordinary mistrial principles where someone from the gallery commented, "That's not true" during the defendant's testimony); *State v. Allen*, 276 So. 2d 868, 871–72 (La. 1973) (affirming denial of a mistrial motion under ordinary mistrial principles

after several jurors overheard “comments of [a] corroborative nature from the spectators, the exact words of which the reporter was unable to discern” (quotation simplified)); *State v. Thompson*, 378 So.

3d 784, 787–89 (La. Ct. App. 2023) (affirming a denial of a mistrial under ordinary mistrial principles where two spectators wore “shirts displaying a photo of the victim and the phrase ‘Justice for [the victim]’”); *State v. Holman*, 570 S.W.3d 157, 160–62 (Mo. Ct. App. 2019) (affirming the denial of a mistrial motion under ordinary mistrial principles “after [the victim’s] daughter lunged toward [the defendant’s] counsel table and said either, ‘[L]et me at him,’ or, ‘I’m going to get him’”); *State v. Dukes*, No. 37324–6–II, 2009 WL 597277, at *5–7 (Wash.

Ct. App. Mar. 10, 2009) (affirming denial of a mistrial motion under ordinary mistrial principles where someone from the gallery called out, “You don’t have to be scared” during a witness’s testimony). ¶57 And this leads to my final point, which is that I’m concerned about the potential implications of extending the presumption of prejudice to this kind of scenario.

Soto said that if the presumption of prejudice applies, the State can only overcome that presumption by “proving that the contact was harmless beyond a reasonable doubt.” 2022 UT 26, ¶ 87. Soto referred to this as a “heavy” burden. *Id.* ¶ 89. Soto suggested that the ordinary processes of questioning the jurors and receiving “averments as to their own lack of bias” would not be sufficient to overcome the presumption, nor would “a curative instruction alone.” *Id.* ¶ 95.

Instead, Soto contemplated a much more involved process involving testimony from the “third-party communicators as testimonial witnesses whom the defendant can confront and cross-examine” or instead one that requires the State to establish “that its evidence of the defendant’s guilt was so strong that the improper contacts made no difference in the jury’s verdict.” *Id.* ¶¶ 96, 98.

Thus, in many cases (including potentially this one), the 20220502-CA 26 2025 UT App 174 *State v. Camara* question of whether the presumption of prejudice applies could be a case-altering question. ¶58 By holding that this presumption can be triggered by something that’s said in the gallery during the trial, I’m worried that the presumption may now apply more often than Soto intended or is necessary to protect a defendant’s right to a fair trial.

I’m worried that this opens the door for outright mischief or, at least, unnecessary reversals and retrials based on occurrences that weren’t nefarious by design. After all, trials are open to the public, and given the high emotional stakes involved in many trials, it’s not hard to imagine someone saying something that they shouldn’t say.

In my mind, if something improper is said from the gallery during the trial, a court should be empowered to do what it would ordinarily do when something improper is said during the trial— instruct the jury to disregard the statement and then evaluate any mistrial motion under ordinary

principles. ¶59 In short, unlike the separate opinion, I’m not persuaded that when Soto referred to “outside” or even “unauthorized” contacts or influences, it meant to include things that were said in the gallery during the trial that jurors overheard.

I would accordingly hold that the initial predicate for Soto’s three-part test did not exist in this case. Because of that, I would hold that the presumption of prejudice does not apply. 15 15. The separate opinion surmises that the “logic” of my opinion “would erase Soto—and all presumption of prejudice cases—from the books.” With respect, this is hyperbole that’s also untrue.

As I’ve explained, the throughline that runs through Soto and most of the past Utah cases in this area is that there was a contact between jurors and someone else outside the courtroom. In two cases, we also applied the presumption of prejudice to direct communications that, though unclear from the opinions themselves, may have occurred inside the courtroom.

See *State v. Swain*, 835 P.2d 1009, 1010–11 (Utah Ct. App. 1992); *Logan City v. (continued...)* 20220502-CA 27 2025 UT App 174 *State v. Camara B. Applying Ordinary Mistrial Principles, I Would Affirm the District Court’s Denial of Camara’s Motion* ¶60 “We review the denial of a motion for a mistrial under an abuse of discretion standard, and we will not reverse the court’s decision unless it is plainly wrong in that the incident so likely *Carlsen*, 799 P.2d 224, 225–27 (Utah Ct.

App. 1990). My approach fully accepts those cases and applies them on their stated terms, so I’m not quite sure how my approach can fairly be said to have “erased” them. The separate opinion’s insistence to the contrary is based on its belief that it would be “somewhat arbitrary” to primarily focus on whether a communication occurred outside the courtroom. But as I’ve explained, I think that there is a reason for drawing that line—namely, it’s reflective of a problem of proof.

In any event, the approach taken by the separate opinion has arbitrariness problems of its own. For example, under the separate opinion’s approach, if a witness blurts out, “She’s a liar!” from the stand, the result might be an objection or even a mistrial motion; but if the same witness is excused from the stand and is then overheard muttering to herself, “She’s a liar,” as she walks out of the courtroom, this would suddenly transform the matter into an entirely different problem that now has constitutional implications.

If drawing the line at the courtroom door is arbitrary, drawing it at the foot of the witness box seems arbitrary too. Regardless, it seems to me that the lack of clarity on all this may well be attributable to the fact that the past Utah cases in this area were uniformly focused on the question of how prejudicial a triggering contact really was, rather than the question presented here of what it even means, for constitutional purposes, to have an outside or unauthorized contact at all.

Again, I regard the differing opinions in this appeal to be good faith attempts to answer a question that Soto and its progenitors were not called upon to directly consider. Whether it be in this case or

some future case, it would be helpful for our supreme court to give further guidance on this important question. 20220502-CA 28 2025 UT App 174 *State v. Camara* influenced the jury that the defendant cannot be said to have had a fair trial.” *State v. Kufrin*, 2024 UT App 86, ¶ 33, 551 P.3d 416 (quotation simplified).

This is because a “mistrial is strong medicine.” *Whytock*, 2020 UT App 107, ¶ 16; see also *State v. Roberts*, 2019 UT App 9, ¶ 15, 438 P.3d 885 (“Declaring a mistrial is a particularly drastic remedy that is warranted only when no reasonable alternatives exist.” (quotation simplified)). Appellate courts accordingly “afford a high level of deference to a trial court’s decision” on such a motion “because trial courts are in an advantaged position to determine the impact of courtroom events on the total proceedings.” *Kufrin*, 2024 UT App 86, ¶ 37 (quotation simplified). “Additionally, our appellate courts have considered the district court’s offers to cure any alleged harm and trial counsel’s response in evaluating whether the court’s mistrial motion decision was an abuse of discretion.” *State v. Bermejo*, 2020 UT App 142, ¶ 77, 476 P.3d 148. ¶61 On this record, I see no basis for concluding that the district court abused its discretion.

As indicated, after the court was advised that some jurors had overheard some conversation from the gallery, the court questioned each of the jurors separately about what they had heard. During this questioning, Juror 7 informed the court that (s)he had overheard some indistinct chatter, during which (s)he had more specifically heard either Bree or the person “she was talking to” say, “[S]he’s lying” during Wife’s testimony.

But Juror 7 then confirmed that (s)he was not “influenced” by the statement and that (s)he could “focus on what was said... from the stand.” After Counsel moved for a mistrial the next day, the court denied that motion based on its conclusion that there had been no meaningful “articulation of prejudice.” And as noted, the court had previously “instruct[ed] the jurors that any comments that they may hear from the gallery are not testimony, are not evidence, [and] are not to be considered as such.” ¶62 In these circumstances, I think the district court did everything right.

The court found out who had heard what and from whom and then received assurances that the juror in 20220502-CA 29 2025 UT App 174 *State v. Camara* question would not be influenced by what (s)he had heard. And as noted, the court had already instructed jurors that statements made by people not on the stand were not evidence.

Moreover, to the extent that mistrial motions turn on the likelihood of prejudice, I also think it’s significant that, while it was clearly improper for Bree or her attorney to have said what was said, the extra information that Juror 7 heard was both brief and unsurprising. According to Juror 7’s account—which we have no reason to disbelieve—the only specific thing that (s)he heard was that either Bree or the woman next to her said, “[S]he’s lying” about something Wife said that was defense-favorable.

But no one would be surprised that Bree or a close companion would disagree with defense-favorable testimony. In *Kinnamon*, the Fifth Circuit rejected a similar claim, in part, because the outburst in question had “communicated nothing new to the jury.” 40 F.3d at 734.

The same is true here too. ¶63 For these reasons, I’m not persuaded that the isolated comment that Juror 7 overheard was so meaningful that, under the ordinary mistrial rule, the court had no choice but to grant a mistrial. I would therefore affirm the denial of the mistrial motion on that basis. III. Remaining Issues and Proceedings on Remand ¶64 In addition to the above issues, Camara has argued that he received ineffective assistance because Counsel (1) did not request a unanimity instruction on two of the counts relating to sodomy on a child and (2) did not move for a directed verdict on several counts relating to rape of a child and sodomy on a child.

In the rule 23B motion that Camara filed contemporaneously with his brief, Camara also asked for a remand on whether Counsel provided ineffective assistance by not introducing several additional types of evidence. Because a majority of this court has reversed the denial of the motion for a mistrial and has remanded for further proceedings on that issue, a decision from this court on these issues may prove unnecessary.

This is so because, if the court ultimately declares a mistrial, Camara would be entitled to 20220502-CA 30 2025 UT App 174 *State v. Camara* a new trial. Given this dynamic, we exercise our discretion to not address these additional issues further. ¶65 In doing so, we acknowledge that, after oral argument and while our deliberations on the above issues were ongoing, we concluded that Camara had met his burden of showing that he was entitled to a remand to create a record on some of the ineffective assistance claims.

We acknowledge the work done by the parties and the court in the remand, but we decline to rule on those issues unless warranted by future developments in the case. ¶66 In terms of the remand that we are now ordering relating to the mistrial issue, the district court should follow the directives set forth more fully in the separate opinion, which, again, is the controlling opinion as to that issue.

As explained more fully there, the district court on remand should (1) apply *Soto* and (2) determine whether the presumption of prejudice has been rebutted. If the court concludes that the State has rebutted the presumption, the case should be returned to this court for further proceedings on the remaining issues. CONCLUSION ¶67 We conclude that the district court did not abuse its discretion when it sanctioned the State for improperly obtaining files from Expert’s hard drive, rather than dismissing the case entirely.

We also conclude that Camara was entitled to a rebuttable presumption of prejudice relating to outside contact with Juror 7, and we remand this case to the district court to decide whether that presumption has been rebutted. HARRIS, Judge (concurring in part and authoring the Opinion of

the Court as to Part II, in which Luthy, J., joined): ¶68 Along with Judge Luthy, I join in paragraphs 1–32 of the lead opinion, including its entire factual recitation and Part I of its 20220502-CA 31 2025 UT App 174 State v. Camara legal analysis.

We also join in Part III, which contains some of the court’s instructions on remand. We part ways with the lead opinion, however, with regard to Part II of its legal analysis. Unlike the lead opinion, we are persuaded that the presumption of prejudice discussed in *State v. Soto*, 2022 UT 26, 513 P.3d 684, applies to the mistrial motion Camara filed after learning that three jurors had overheard comments from the gallery.

16 And because the district court did not have an opportunity to assess whether this presumption had been overcome, we vacate the order denying the motion for mistrial and remand the case to the district court to make that determination in the first instance. 16.

We note that *State v. Soto*, 2022 UT 26, 513 P.3d 684, was issued after Camara’s trial. We also note, however, that *Soto* explained that it was not establishing a new rule but was instead merely synthesizing principles set forth in previous cases. See *id.* ¶ 15 (“A long line of Utah cases dating back to statehood recognizes that improper contacts between juries and third parties may trigger a rebuttable presumption of prejudice, depending on who made the improper contact, what was said, and the circumstances of the contact.”); see also *id.* ¶ 39 n.9 (“[T]he balancing test comes not from our imagination, but from our case law.”).

In his opening brief, Camara invoked *Soto*, asserted that it was controlling, and argued that he was entitled to reversal under it. In its responsive brief, the State did not argue that *Soto* was inapplicable because it was issued after Camara’s trial; rather, accepting *Soto* as controlling authority for purposes of this appeal, the State simply argued that Camara was not entitled to reversal under the test set forth therein.

We follow the parties’ lead in assuming that *Soto* applies here and thus analyze the parties’ arguments under its principles. We acknowledge, like Judge Tenney, see *supra* ¶ 34 n.8, that in doing so, our interpretation of *Soto* is not exactly that advanced by either of the parties, but we echo the principle that it is our obligation “to get the law right” as we see it, *In re B.T.B.*, 2020 UT 60, ¶ 40, 472 P.3d 827.

20220502-CA 32 2025 UT App 174 State v. Camara IV. Under *Soto*, What Happened Here Constitutes Unauthorized Communication Likely to Influence the Jury’s Judgment ¶69 The main point of disagreement between this opinion and the lead opinion concerns whether the comments made by Bree or her attorney in the gallery during trial—and overheard by one non-alternate juror 17—constitute the sort of “unauthorized communications likely to influence the jury’s judgment” that trigger the presumption of prejudice discussed in *Soto*.

Id. ¶ 18. We think they did because—while the comments were made inside the courtroom—they were made by a person who was, at the time, a third party to the constitutionally protected jury process and they were not observed by the district court. ¶70 As noted in the lead opinion’s factual recitation, supra ¶ 13, Wife testified on Camara’s behalf and, among other things, she offered testimony that directly supported Camara’s alibi defense for one of the charges.

At some point during Wife’s testimony, Juror 7 overheard either Bree or the woman sitting next to her say, 17. The comments were apparently at least partially overheard by Jurors 7, 9, and 10. But Jurors 9 and 10 were alternates and were each excused before deliberations began. And at the beginning of the trial, the court instructed jurors to not discuss the case until they had “received all the evidence and all the instructions of law that [would] pertain to [their] deliberations.” Camara has not argued that there is any reason to think that the jurors did not comply with that instruction.

While the comments heard by Jurors 9 and 10 would likely qualify as “improper contacts” for purposes of the Soto analysis, we agree with the State that, on the basis of this record and the arguments presented to us, there’s no basis for concluding that, even with the presumption of prejudice, Camara was prejudiced in any way through the statements overheard by these jurors.

See, e.g., *State v. Miller*, 674 P.2d 130, 131 (Utah 1983) (explaining that since “the alternate juror never even entered jury deliberations,” that juror “had no bearing on the jury’s verdict”). We therefore limit our discussion and analysis to the things that Juror 7 overheard. 20220502-CA 33 2025 UT App 174 *State v. Camara* “[S]he’s lying.” Because Bree had already testified, Juror 7 of course knew who Bree was, and given the setting and context, Juror 7 would have had reason to assume that the woman sitting next to Bree was connected to Bree in some meaningful way.

18 Thus, the situation presented to us is that, during the trial, one of the jurors overheard either the alleged victim or someone associated with her make what was essentially an unsworn factual refutation of testimony being offered from a defense witness.

In our view, this must qualify as an “outside influence” or “unauthorized contact” for purposes of Soto, because this would have exposed Juror 7 to evidentiary “influences other than that which are produced by the legal evidence and the law governing the case.” Id. ¶¶ 18, 30, 40 (quotation simplified). ¶71 Pushing back, the State points out that in past Utah decisions, the presumption of prejudice has been applied only to “cases involving direct extra-judicial communication between jurors and witnesses.” The State then asserts that what occurred here was not a direct contact between an outsider and a juror; instead, it characterizes this event as merely an overheard remark that was not intended to reach any juror’s ears.

It is certainly true that the comments here were not directed at jurors and were likely not intended to be heard by them, but contact with jurors does not have to be intentional to be unauthorized; even overheard conversations can constitute unauthorized juror contact. ¶72 Indeed, we suspect

that the primary reason that Soto only discussed cases involving direct or intentional contact with jurors is that this is what happened in Soto itself.

There, “a uniformed highway patrolman” and “a court IT technician” had made comments directly to jurors in “a nonpublic, court-employee elevator.” Id. ¶ 6. Since this was the scenario at issue, it makes sense that the court’s legal analysis would focus in on language 18.

Although Juror 7 didn’t know this at the time, the woman in question was Bree’s attorney. 20220502-CA 34 2025 UT App 174 State v. Camara from past cases that had also involved direct “contacts” and “communications” between outsiders and jurors. Id. ¶¶ 20, 25. ¶73 But Soto never said that the presumption of prejudice applies only to intentional or targeted communications between outsiders and jurors (as opposed to unintentional or non-targeted communications).

To the contrary, in one key passage, Soto indicated that the opposite is true. While discussing the kinds of circumstances that constitute prohibited “jury ‘conduct’” that could support a presumption of prejudice, the court stated that such conduct “is not limited to affirmative and intentional actions taken by a juror” but “also includes inadvertent conduct and communications directed at a juror.” 19 Id. ¶ 33 n.7.

By referencing “inadvertent conduct,” Soto contemplated that the presumption of prejudice can be triggered even where the speaker did not intend to make contact with a juror. Id. And the clearest way that an outsider could unintentionally communicate with a juror would be by having a conversation in close proximity to the juror, thereby allowing the juror to overhear it. ¶74 Even beyond this guidance from Soto, two other concepts persuade us that the better reading of Soto is that unintentional communications can trigger the presumption of prejudice. ¶75 First, Soto stated that courts should not “obsess[] over the form of the intrusion” and instead directed courts to focus “on the principle guarding against it—safeguarding in every possible way the purity of the stream of justice; to prevent it from in any 19.

The lead opinion attempts to dismiss this language from Soto by reading it to require that the conduct be “both ‘inadvertent’ and ‘directed at a juror.’” See supra note 12. But this misreads Soto’s footnote, which simply said that improper jury conduct “includes” both “inadvertent conduct and communications directed at a juror,” not that it requires both “inadvertent conduct and communications directed at a juror.” 2022 UT 26, ¶ 33 n.7 (emphasis added).

Inadvertent conduct can qualify, and so can direct communications. 20220502-CA 35 2025 UT App 174 State v. Camara manner being polluted by influences other than that which are produced by the legal evidence and the law governing the case.” Id. ¶ 30 (emphasis added) (quotation simplified).

In Soto’s view, the “consistent thread that connects” the past decisions in this area is “the concern for jury purity, alongside the threat to that purity caused when an outsider invades the jury’s

privacy.” *Id.* Whether intentional or not, what happened here was that an outsider provided unauthorized factual information (i.e., “she’s lying”) to a juror during the trial.

This violates the “jury purity” principle that, in Soto’s view, underlies court decisions in this area. ¶76 Second, while Soto relied on a number of past Utah decisions, it also drew from cases from other jurisdictions. See *id.* ¶¶ 28–30. And we note that both the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit have held that a presumption of prejudice can be triggered by indirect non-innocuous contacts and communications with jurors.

See, e.g., *Remmer v. United States*, 347 U.S. 227, 229 (1954) (“In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial.” (emphasis added)); accord *Stouffer v. Duckworth*, 825 F.3d 1167, 1178 (10th Cir.

2016); *Stouffer v. Trammell*, 738 F.3d 1205, 1214 n.5 (10th Cir. 2013). And courts following these principles have held that a presumption of prejudice can arise when jurors overhear comments, even if the comments weren’t aimed at them. See, e.g., *Neal v. John*, 110 F.R.D. 187, 188–89 (D.V.I. 1986) (holding that “the presumption of prejudice must arise” where a juror “overheard a conversation in which a defense witness stated that he had been paid for his testimony,” as well as another comment that “a defense witness had perjured herself”). ¶77 For these reasons, we are unpersuaded by the State’s attempt to distinguish Soto on the basis that the conversation was indirect and not directly intended for jurors’ ears. ¶78 Aside from the State’s assertions, the lead opinion contends that Soto’s presumption of prejudice cannot apply here, 20220502-CA 36 2025 UT App 174 *State v. Camara* as a threshold matter, because the comments made occurred inside the courtroom while the trial was going on.

We read Soto differently. To the extent that Soto has a threshold requirement, the question raised by that requirement is not whether the contact occurred physically inside or outside of the courtroom but, instead, whether the contact was unauthorized. See 2022 UT 26, ¶ 18 (outlining the presumption of prejudice test as the “remedy for unauthorized communications likely to influence the jury’s judgment” (emphasis added)); *id.* ¶ 40 (explaining that “any unauthorized contact during a trial between witnesses, attorneys or court personnel and jurors that goes beyond a mere incidental, unintended, and brief contact will trigger the presumption of prejudice” (emphasis added) (quotation simplified)).

And in our view, what differentiates authorized contact from unauthorized contact is that authorized contact occurs on the record in the run of trial. 20 Unauthorized contact, by contrast, occurs off the record. Drawing this “threshold” line here—at off-the-record versus on- the-record contact, instead of at inside versus outside the courtroom—makes a lot more sense, for two reasons. ¶79 First, this is where our rules of civil procedure have chosen to draw the line: “There

shall be no off-the-record communication between jurors and lawyers, parties, witnesses or persons acting 20.

In this context, by “on the record” contact we mean communications by the attorneys, sworn witnesses on the stand, the court, and court personnel during the official “jury process,” see *Soto*, 2022 UT 26, ¶¶ 18, 27, which is usually designated by the court announcing that the proceedings are on the record.

Under this definition, a communication made during the official jury process is nonetheless “off the record,” for present purposes, if it is made by someone other than the court, court personnel, the attorneys, or a sworn witness on the stand. Additionally, whether a jury contact is “on the record” does not turn on whether it is sufficiently discernable for a court reporter to later include it in a transcript of the proceedings.

It turns on whether the contact was made during the official jury process by one who is permitted to communicate with the jury during that process. 20220502-CA 37 2025 UT App 174 *State v. Camara* on their behalf.” Utah R. Civ. P. 47(l) (emphasis added).

We consider it notable that rule 47(l) was discussed by the majority and dissenting opinions in *Soto*, and all five justices agreed that off-the-record contact with jurors that goes beyond mere incidental communications poses a threat to juror impartiality and implicates the presumption of prejudice. Compare *Soto*, 2022 UT 26, ¶¶ 58–60, with *id.* ¶¶ 113–25 (Petersen, J., dissenting). ¶80 The dissenting opinion in *Soto* stated that it would not have “adopt[ed] the ‘balancing test’ established by the majority” for determining when the presumption of prejudice should attach, in part because the dissent believed that Utah’s “precedent and procedural rules have already established principles for identifying impermissible off-the-record communication with jurors.” *Id.* ¶ 109 (Petersen, J., dissenting).

But even the dissent seemed to accept the principle that the type of communications that might trigger the presumption were off-the-record communications. Indeed, the dissent stated as follows: “A brief and incidental ‘excuse me’ in the hallway, or a ‘gesundheit’ after a sneeze, would not offend this rule. But we do not want jurors and witnesses, the parties, or their lawyers to say much more than that to one another off the record.” *Id.* ¶ 113 (emphasis added). ¶81 In response, the majority in *Soto* agreed that our procedural rules provide “useful guidelines for juror behavior,” but it concluded that those rules do not “prescribe the remedy for their violation.” *Id.* ¶ 58 (majority opinion).

Specifically, the majority explained that “rule 47(l)’s prohibition on all ‘off-the-record communication between jurors and lawyers, parties, witnesses or persons acting on their behalf’ does not tell us when we should presume prejudice for its violation.” *Id.* ¶ 60.

To answer that question, the court stated that prejudice will be presumed “when such a communication goes beyond a mere incidental, unintended, and brief contact.” *Id.* (emphasis added) (quotation simplified). Thus, while the majority did not apply rule 47(l) in formulating its three-part test regarding “when a court must presume prejudice,” *id.* ¶ 59, the majority did appear to acknowledge the underlying principle that the communications to which its newly 20220502-CA 38 2025 UT App 174 *State v. Camara* articulated balancing test would apply would be off-the-record communications between jurors and others. ¶82 To be sure, the specific “threshold” issue identified by the lead opinion was not explicitly articulated or discussed in *Soto*, and the *Soto* opinions address rule 47(l) only in an effort to establish the sufficiency of their respective analytical frameworks.

But both opinions in *Soto* seem unified in acknowledging the relevance of rule 47(l)’s prohibition of off-the-record communications between jurors and trial participants, and both agree that juror impartiality is drawn into question when jurors are exposed to such off-the-record communications. See *id.* ¶ 60; *id.* ¶ 113 (Petersen, J., dissenting). ¶83 Second, statements made on the record are subject to a litany of procedural safeguards that are not applicable to statements made off the record.

Before a witness can offer testimony to the jury, the proponent party must first disclose the witness to the other side. See Utah R. Crim. P. 16(a)(5)(A); Utah R. Civ. P. 26(a)(1)(A). At trial, when a witness takes the stand and communicates with the jury on the record, that testimony must be under oath, Utah R. Evid. 603, is subject to cross-examination, and is subject to our evidentiary rules, such as rule 403’s prohibition on unduly prejudicial evidence, *id.* R. 403, and rule 802’s bar against hearsay statements, *id.* R. 802.

When a witness provides improper testimony, opposing counsel may object and develop the basis for the objection on the record, *id.* R. 103, and the court may choose to remedy the error by striking the testimony and providing a curative instruction to the jury, *id.* R. 103, 105. 21 21. At one point in its analysis, the lead opinion makes it sound as though procedural safeguards would also apply to statements that occur inside the courtroom but off the record.

See *supra* ¶ 39. That’s just simply not the case—statements from the gallery are not subject to disclosure rules, evidentiary rules, or cross-examination, among other things. 20220502-CA 39 2025 UT App 174 *State v. Camara* ¶84 These safeguards are meant to control the stream of evidence the jury receives and to provide real-time recourse to the party adversely affected by the introduction of inadmissible evidence.

See, e.g., *Soto*, 2022 UT 26, ¶ 27 (explaining that the right to an impartial jury under the Sixth Amendment requires that the “evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel” (emphasis added) (quotation simplified));

id. ¶ 30 (explaining that a key principle underlying other jurisdictions’ approaches to improper jury contacts is the need to safeguard the jury from “being polluted by influences other than th[ose] which are produced by the legal evidence and the law governing the case” (quotation simplified)).

By contrast, statements made off the record are not subject to any of these specific safeguards. ¶85 The lead opinion questions why this distinction matters and, specifically, why a presumption of prejudice should be applied to an errant comment from the gallery when witnesses often provide improper or inadmissible testimony from the stand. See supra ¶¶ 53–55.

The lead opinion points out that if a witness offers improper testimony that “was bad enough,” the “adversely affected party can move for a mistrial,” where the ordinary standard for a mistrial applies, not the three-part test set forth in *Soto*. Supra ¶ 54. Given this reality, the lead opinion posits that “[i]f the ordinary mistrial standard is sufficient to protect a defendant’s right to a fair trial when something improper is said on the stand,” the same standard should be adequate “to protect that same right if something improper is said from the gallery.” Supra ¶ 55. ¶86 But this logic would erase *Soto*—and all presumption of prejudice cases—from the books.

If the ordinary mistrial standard is sufficient to protect a defendant’s right to a fair trial when something improper is said off the record but in the courtroom— say, in the gallery—why wouldn’t it also be adequate to protect that same right when something improper is said just outside the courtroom in the hallway?

Or across the street at a restaurant? Or at the accident site or scene of the crime? The lead opinion’s argument here, taken to its logical conclusion, thus appears to take issue with the notion that we should ever apply a presumption of prejudice in jury-contact cases. And that argument, by definition, proves too much, because we are bound to follow *Soto* and its acceptance of the idea that “unauthorized contact during a trial between witnesses, attorneys or court personnel and jurors that goes beyond a mere incidental, unintended, and brief contact will trigger the presumption of prejudice.” See 2022 UT 26, ¶ 40 (quotation simplified). ¶87 Indeed, in our view, the facts of this case highlight exactly why the *Soto* test should be applied to jury contact that occurs in the courtroom but off the record.

After all, the fact that the unauthorized statement was made in the courtroom during a key witness’s testimony on a critical part of Camara’s alibi makes the potential for prejudicial influence worse than if the same statement had been made, say, in the hallway during a recess or in the walk- up lunch restaurant line across the street.

Thus, not only does the line drawn by the lead opinion—inside the courtroom versus outside the courtroom—strike us as somewhat arbitrary, but we also think it is clearly at odds with both the text of rule 47(l) and the purpose of the *Soto* test: to allow a district court to weigh the prejudicial

effect of an unauthorized jury contact based on the “who,” the “what,” and the “circumstances” of the contact, without considering the place of the contact as a categorical threshold limitation. ¶88 On this point, the lead opinion appears to conflate two distinct questions: whether a statement is admissible as evidence and whether the speaker is authorized to communicate with the jury.

Even when testimony is inadmissible, the attorney for the adversely affected party may nevertheless opt not to object to its admission if there are strategic reasons for doing so. In other words, there are instances where evidence that is technically inadmissible can be properly considered by the jury.

However, wholly unauthorized statements—namely, those made off the 20220502-CA 41 2025 UT App 174 *State v. Camara* record—are not subject to this sort of attorney calculus. Again, statements made off the record bypass our procedural, evidentiary, and constitutional safeguards. ¶89 Finally, we disagree with the lead opinion that *State v. Cardall* cautions away from applying the *Soto* test for in-court occurrences.

See 1999 UT 51, 982 P.2d 79. In *Cardall*, the jury observed an interaction between the victim-witness and the witness’s mother during a recess and after the trial judge had retired to chambers. *Id.* ¶ 12. This interaction took place inside the courtroom, but it occurred off the record during a break in the proceedings. *Id.* Yet our supreme court did not apply the presumption of prejudice because there had been “no conversation between witnesses and jurors, just a quiet exchange between [the victim] and her mother.” *Id.* ¶ 21.

According to the lead opinion, this suggests that off-the-record communications in the courtroom do not implicate the presumption of prejudice test. ¶90 We read *Cardall* differently. In that case, the court assessed whether the interaction between the witness and her mother was an “impermissible jury contact,” *id.*, and on this point it seems apparent that this innocuous interaction was not the kind of substantive jury contact that would satisfy the *Soto* test.

Although the *Soto* test had not yet come into being, we suspect that had this contact been rinsed through that test—who said what to whom, and under what circumstances—the court would have concluded that this contact did not trigger a presumption of prejudice. Indeed, the court in *Cardall* provided sufficient reasons to reject the presumption of prejudice under *Soto*’s analytical framework.

Specifically, the court in *Cardall* was unpersuaded that the interaction was problematic regarding juror bias—or the “what” under the *Soto* test. The court explained that “[t]he contact between [the witness] and her mother was a quiet exchange of affection, and there was no discussion regarding the substance of [her] testimony or the case against [the defendant].” *Id.* ¶ 12.

And the court explained that “there was no conversation between witnesses and jurors.” *Id.* ¶ 21. In other words, there were reasons for the *Cardall* court to reject the presumption of prejudice,

even 20220502-CA 42 2025 UT App 174 State v. Camara under the Soto test, that had nothing to do with whether the interaction occurred inside or outside the courtroom. ¶91 For all of these reasons, we conclude that the jury contact at issue here was the sort of contact that calls for application of the Soto balancing test (rather than the ordinary rules governing motions for mistrial).

The contact in question occurred off the record, and it was therefore an “unauthorized communication[] likely to influence the jury’s judgment.” See Soto, 2022 UT 26, ¶ 18. We are unpersuaded by the State’s argument that only direct and intended contact with jurors should count, and we do not read Soto’s balancing test as being applicable only to jury contacts that occur outside the four walls of the courtroom.

Our holding today is that, regardless of whether the jury contact occurred inside or outside the courtroom, if it occurred off the record and outside the observation of the trial judge, then it falls within the ambit of Soto and calls for application of that case’s balancing test. 22 V. Soto’s Three-Part Test ¶92 We accordingly turn to the question of whether, under Soto’s balancing test, a presumption of prejudice applies in this case.

As noted, Soto established a three-part “balancing test” under which courts “consider[] who said what and the circumstances surrounding the contact.” Id. ¶ 39. Soto further held that there are no “categorical rule[s] as to what statements” made by what kind of outsider “necessarily trigger the presumption.” Id. ¶ 40; accord id. ¶ 41; see also id. ¶ 50 n.10 (declining to adopt a 22.

Although Soto’s logic may arguably require application of the Soto balancing test to off-the-record jury contact that occurs within the sensory observation of the judge, that is not the scenario presented here. We therefore need not (and do not) resolve the question of whether an off-the-record jury contact occurring within the sensory observation of everyone in the courtroom—that is, scenarios such as those from the cases listed in paragraph 56 of the lead opinion—would require application of the Soto balancing test.

20220502-CA 43 2025 UT App 174 State v. Camara “brightline rule” in this regard). Instead, Soto held that when conducting this balancing, courts should “look to the rationale” underlying these cases, which is that “unauthorized contact during a trial between witnesses, attorneys or court personnel and jurors that goes beyond a mere incidental, unintended, and brief contact will trigger the presumption of prejudice.” Id. ¶ 40 (quotation simplified). ¶93 Who.

On the who prong, Soto held that the “more important the speaker in the proceedings, or the more authoritative the speaker within the criminal justice system, the more likely” it is that a court should “presume prejudice.” Id. ¶ 41. Soto also held that a court should “more likely” “assume prejudice when a juror contact is made by an individual whose credibility the jury may need to assess.” Id. ¶ 42; see also State v. Erickson, 749 P.2d 620, 621 (Utah 1987); State v. Pike, 712 P.2d

277, 280 (Utah 1985); *State v. Anderson*, 237 P. 941, 944 (Utah 1925); *State v. Swain*, 835 P.2d 1009, 1011 (Utah Ct.

App. 1992). ¶94 Here, Juror 7 wasn't sure "if it was [Bree] or who she was talking to" that made the statement in question. If it was Bree who made the statement, this would strongly favor applying the presumption of prejudice, given that Bree was "an individual whose credibility the jury [would] need to assess." *Soto*, 2022 UT 26, ¶ 42. If it was Bree's companion who made the statement, this factor would not weigh in favor of the presumption quite as strongly.

But even so, as explained, the other person in question was Bree's attorney, and we think it natural to assume that Juror 7 would have understood this person to have been associated with Bree in some way; after all, Bree was the alleged victim in the case, and this person was sitting and conversing with her during the trial.

As a result, in that circumstance, we think the factor would still weigh clearly in favor of applying the presumption. ¶95 What. On the what prong, the "more the communication is directly relevant to the trial, the more likely it is to trigger the presumption of prejudice," while "communications unrelated to the trial are less likely to trigger the presumption." *Id.* ¶ 62.

On 20220502-CA 44 2025 UT App 174 *State v. Camara* one end of the spectrum exist comments in which the "speaker opines on the defendant's guilt" or "touche[s] on the extremely sensitive issue of sentencing." *Id.* ¶¶ 62–63 (quotation simplified); see also *Logan City v. Carlsen*, 799 P.2d 224, 226 (Utah Ct. App. 1990). "On the other end of the spectrum" are "brief and innocent contacts unrelated to the case." *Soto*, 2022 UT 26, ¶ 65; see, e.g., *State v. Maestas*, 2012 UT 46, ¶ 70, 299 P.3d 892 (declining to presume prejudice where the "communication with the jury did not involve any substantive issues" and "the interaction was brief and dealt with the timing of the jury's dismissal for the day"). ¶96 Here, the information communicated was directly relevant to the case.

Whoever made the statement was opining on the truthfulness of Wife's testimony. Camara argues on appeal that Wife was "a key defense witness." Wife provided general, defense-favorable testimony about the relationship between Camara and Bree. Wife also testified that she and the Camara children were with Camara and Bree during the drive on September 29, 2015, and that therefore the alleged encounter Bree described had not happened.

But in the statement in question, either Bree or her attorney said, "[S]he's lying." This statement was directly germane to the credibility of a defense witness. We accordingly conclude that this factor weighs strongly in favor of applying the presumption of prejudice. ¶97 Circumstances.

The circumstances prong is something of a catch-all that allows a court to consider "the fact-intensive nature of the inquiry." *Soto*, 2022 UT 26, ¶ 70. Examples of special circumstances that would weigh in favor of applying the presumption of prejudice include whether the improper

contact occurred during jury deliberations, see *id.* ¶ 68, and whether the defendant faced capital punishment, see *id.* ¶ 69.

The guiding principle is the defendant’s right to trial by an impartial jury, “and the end goal should always be to ensure that [this right] has been maintained above suspicion.” *Id.* ¶ 71 (quotation simplified). ¶98 Here, the State points out that only “one relevant juror” heard the statement in question. And this is true. But even so, *Soto* 20220502-CA 45 2025 UT App 174 *State v. Camara* pointed to a past decision from the United States Supreme Court holding that “the number of jurors potentially influenced by the comments” in question was “of no moment,” given that the defendant there ““was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.”” *Id.* ¶ 47 (quoting *Parker v. Gladden*, 385 U.S. 363, 366 (1966)).

And other cases support the view that the presumption of prejudice can apply even when improper contact was made with just one juror. See, e.g., *Erickson*, 749 P.2d at 621 (applying the presumption of prejudice where one juror had a conversation with a key state witness); *Anderson*, 237 P. at 944 (implying a presumption of prejudice where one juror rode to and from court with a witness); *Swain*, 835 P.2d at 1011 (applying the presumption of prejudice where one juror conversed with a witness about their high school reunion).

Thus, the fact that only one juror heard the comments is not a circumstance that appreciably helps the State here. ¶99 On balance, the *Soto* test counsels in favor of applying the presumption of prejudice. The first two factors—who said what— weigh fairly clearly in favor of applying the presumption, and the third factor is neutral.

Accordingly, prejudice to *Camara* here should have been presumed, and the State should be given an opportunity to attempt to rebut that presumption. VI. Proceedings on Remand ¶100 At the time this issue arose in the district court, *Soto* had not yet been issued, so the district court’s error in not applying a presumption of prejudice based on the *Soto* test is entirely understandable.

Yet this was the procedural posture in *Soto* itself, and in that case the court assigned error to the district court’s actions, and it remanded the case for the district court to allow the State the opportunity to rebut the presumption. See 2022 UT 26, ¶¶ 93–102.

We take the same action here. ¶101 In so doing, we direct the district court to the *Soto* opinion, and we give the same instructions that our supreme court gave in *Soto*. There, the supreme court explained that whether the 20220502-CA 46 2025 UT App 174 *State v. Camara* presumption has been rebutted presents a “fact-specific” inquiry, *id.* ¶ 94, that is “best left to the district court when possible,” *id.* ¶ 102.

Because we have now concluded that the presumption of prejudice applied, we accordingly “remand this matter back to the district court to determine whether the presumption of prejudice has been... rebutted.” *Id.* ¶ 103.

In conducting that examination, the court should apply the principles set forth in *Soto*, id. ¶¶ 93–100. Among other things, the State may attempt to rebut the presumption by “call[ing] to testify the third parties who communicated with the jury,” id. ¶ 96, or by “argu[ing] that its evidence of [Camara’s] guilt was so strong that the improper contact[] made no difference in the jury’s verdict,” id. ¶ 98. “If the district court finds that the State did not rebut the presumption of prejudice beyond a reasonable doubt, [Camara] must be given a new trial.” Id. ¶ 103.

But if the court finds that the State has rebutted the presumption, then the case should be returned to this court for further proceedings. 20220502-CA 47 2025 UT App 174