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COUNSEL FOR STATE

**MONTANA FIFTH JUDICIAL DISTRICT COURT
MADISON COUNTY**

<p>STATE OF MONTANA, Plaintiff, v. JESSE MICHAEL BOYD, BETHANY GRACE BOYD, CARTER NORMAN PHILLIPS, ERIC ANTHONY TRENT, Defendant(s).</p>	<p>Cause No(s). DC-29-2022-23 DC-29-2022-24 DC-29-2022-22 DC-29-2022-26 STATE'S SECOND MOTION IN LIMINE AND BRIEF IN SUPPORT</p>
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COMES NOW the State of Montana, by and through Assistant Attorney General Thorin A. Geist and Madison County Attorney David Buchler, and hereby move the District Court for an *Order in Limine*:

1. Precluding the Defendants from discussing their religious beliefs or opinions at trial.
2. Precluding the Defendants from inquiring into the religious beliefs of prospective jurors during voir dire.

The undersigned has attempted to contact counsel for the Defendants and presumes that this *Second Motion in Limine* is opposed.

I. Factual and Procedural background.

- a. *State of Montana v. Jesse Michael Boyd* (DC-29-2022-23).
State of Montana v. Bethany Grace Boyd (DC-29-2022-24).
State of Montana v. Carter Norman Phillips (DC-29-2022-22).
1. On November 28, 2022, the State of Montana filed a *Motion for Leave to File Information and Affidavit in Support* (hereinafter “*MFL*”) seeking to charge the Defendants, Jesse Michael Boyd, Bethany Grace Boyd, and Carter Norman Phillips with Assault with a Weapon, a felony in violation of §§ 45-5-213(1)(a) and (2)(a), MCA. *MFL* at pp. 1-4 (Ct. Doc. #1). The facts which form the basis for the charges are set forth in the *MFL* and are incorporated herein by reference.
2. On November 28, 2022, the District Court reviewed the *MFL* and determined that there was sufficient probable cause to support the charges against each of the Defendants. *Or.* at p. 1 (Ct. Doc. #2). The State’s *Information* was filed the same day. *Info.* at pp. 1-2 (Ct. Doc. #3).

3. On January 3, 2023, the State filed an *Unopposed Motion for Joinder* (Ct. Doc. #12) consolidating each of the Defendants cases. The District Court granted the *Motion for Joinder* on January 4, 2023. *Or.* at pp. 1-5 (Ct. Doc. #13).
- b. ***State of Montana v. Eric Anthony Trent (DC-29-2022-26).***
 1. On January 3, 2023, the State filed an *MFL* seeking to charge the Defendant Eric Anthony Trent with Accountability for Assault with a Weapon, a felony in violation of §§ 45-5-213(1)(a) and (2)(a), 45-2-301 and 302. *MFL* at pp. 1-4 (Ct. Doc. #1). The facts which form the basis for the charges are set forth in the MFL and are incorporated herein by reference.
 2. On January 3, 2023, the District Court reviewed the *MFL* and determined that there was sufficient probable cause to support the charges. *Order* at p. 1 (Ct. Doc. #2). The State's *Information* was filed the same day. *Info.* at pp. 1-2 (Ct. Doc. #3).
 3. On January 3, 2023, the State filed an *Unopposed Motion for Joinder* (Ct. Doc. #7) consolidating each of the Defendants cases. The District Court granted the *Motion for Joinder* on January 4, 2023. *Or.* at pp. 1-5 (Ct. Doc. #9).

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II. Discussion.

a. Legal Standard – Motions in Limine.

A motion in limine is made for the purpose of preventing the introduction of evidence, which is irrelevant, immaterial, or unfairly prejudicial. *City of Helena v. Lewis*, 260 Mont. 421, 425-26, 860 P.2d 698, 700 (1993). “Accordingly, the authority to grant or deny a motion in limine rests in the inherent power of the court to admit or exclude evidence and to take such precautions as are necessary to afford a fair trial for all parties.” *Id.*

A district court has broad discretion to determine whether evidence is relevant and admissible. *State v. Frey*, 2018 MT 238, ¶ 12, 393 Mont. 59, 427 P.3d 86. Evidentiary rulings are reviewed for an abuse of discretion. *Id.* “A district court abuses its discretion ‘if it acts arbitrarily without the employment of conscientious judgement or [if it] exceeds the bounds of reason, resulting in substantial injustice.’” *Id.* (internal citation omitted). Under this standard, there may be more than one correct answer to an evidentiary issue. *Id.* The district court is bound by the rules of evidence or applicable statutes in exercising its discretion. *State v. Daniels*, 2011 MT 278, ¶ 11, 362 Mont. 426, 265 P.3d 623.

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a. The District Court should preclude the Defendants from discussing their religious beliefs or opinions at trial.

i. Montana Rule of Evidence 610.

Montana Rule of Evidence 610 provides that “[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by their nature the witness's credibility is impaired or enhanced.”

The Montana Supreme Court has never addressed Rule 610, which identical to its federal counterpart.

Federal Rule 610 “expressly forecloses inquiry into the witness’s religious beliefs or opinions to show that they affect his or her character for truthfulness.” 4 Weinstein’s Federal Evidence § 610.02 (2021). “For purposes of Rule 610, no distinction exists between a challenge to a witness’s credibility on the ground of his or her religious beliefs and a challenge on the ground of actions relating to those beliefs.” *Id* at § 610.02. Rule 610 exists “to guard against the prejudice which may result from disclosure of a witness's faith.”

United States v. Sampol, 636 F.2d 621, 666 (D.C. Cir. 1980).

However, “[e]vidence probative of something other than veracity is not within the prohibition of the rule.” 3 J. Weinstein and M. Berger, Weinstein's Evidence § 610-2 (1985); See also *United State v. Davis*, 779 F.3d 1305, 1309-1311 (11th Cir. 2015) (Allowing evidence that witness held title of “chaplain” was not abuse of discretion where no evidence of religious beliefs or opinions

was offered); *United States v. Teicher*, 987 F.2d 112, 118-119 (2nd Cir. 1993) (Inquiry into religious beliefs for purposes of showing interest or bias because of them is not within the Rule's prohibition.)

In *Teicher*, the U.S. District Court was asked to determine whether a witness's views were probative of bias. *Id.* The District Court asked the witness about whether anything in his religious views made him feel that he should help in the prosecution. *Id.* The witness:

[O]ffered three reasons for his reluctance: first, it caused him personal disruption and aggravation; second, he considered the [the Defendant's] family his friends; and, third, because "one of the cardinal rules is . . . Jews aren't supposed to turn other Jews over.

Id.

Based on this, the District Court ruled that the witnesses' messianic beliefs were not probative of bias and therefore were inadmissible under Fed. R. Evid. 610. *Id.* The Second Circuit Court of Appeals concluded that the District Court's ruling "was not only proper, it was in fact compelled by Fed. R. Evid. 610." *Id* (citing *United States v. Sampol*, 636 F.2d 621, 666 (D.C. Cir. 1980)).

The State moves the District Court for an order prohibiting the Defendants from discussing their religious beliefs or opinions at trial to impair the credibility of a witness for the State, or to enhance the Defendants' credibility or of a defense witness pursuant to Rule 610. If the Defendants

intend on introducing evidence of interest or bias, any such examination should occur outside the presence of the jury for a Rule 610 determination by the District Court.

ii. Relevance.

Even though Rule 610 does not preclude all forms of evidence with respect to religion, the District Court is not “without tools to control improper use of this kind of evidence.” *Davis*, 779 F.3d at 1309-1311. The Eleventh Circuit Court of Appeals held:

Federal Rule of Evidence 403 allows a court to exclude evidence "if its probative value is substantially outweighed by a danger of . . . unfair prejudice." This is a far better tool for dealing with issues of this kind.

Id.

“Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” M. R. Evid. 401. “Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.” *Id.* “All relevant evidence is admissible, except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state.” M. R. Evid. 402. “Evidence which is not relevant is not admissible.” *Id.* “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of

unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Id.*

"A person's beliefs, superstitions, or affiliation with a religious group is properly admissible where probative of an issue in a criminal prosecution."

United States v. Beasley, 72 F.3d 1518, 1527 (11th. Cir. 1996). Analyzing probative examples, the Hon. Thomas M. McKittrick of the Montana Eighth Judicial District Court stated:

In *State v. Stone*, 151 Ariz.455, 728 P.2d 674 (1986), the defendant filed a petition for post-conviction relief arguing that the interjection of references to religion at trial violated Rule 610 Arizona Rules of Evidence. (Rule 610 Ariz.R.Evid. is identical to Montana's Rule 610 M.R.Evid.) In Stone, the Arizona Supreme Court found that the references to religion were not to enhance a witness's credibility but went directly to the identification of petitioner as the intruder. The Arizona Supreme Court stated that if the admission of religious information is "probative of something other than veracity, it is not inadmissible simply because it may also involve religious subject as well.

In [*Beasley*], a defendant appealed on grounds that the admission of his religious practices and beliefs was a violation of Rule 610, Federal Rule of Evidence. The United States Court of Appeals for the Eleventh Circuit held that a person's beliefs, superstitions, or affiliation with a religious group is properly admitted where probative of an issue in a criminal prosecution. In Beasley the government agreed that it would have been improper to attack [a] witnesses' credibility with their religious beliefs by suggesting that because of those beliefs, their testimony was untrustworthy.

However, in *Beasley* the government was allowed to show the background of the RICO enterprise.¹

State v. Reavley, 2003 ML 821, 135-136, 2003 Mont. Dist. LEXIS 2525²

(Internal citations omitted).

The Defendants' religious beliefs are not on trial. The Defendants have been charged with Assault with a Weapon, and/or Accountability for Assault with a Weapon, which does not contain an element in which the Defendants' religious beliefs would be relevant. Unlike *Stone*, the identity of the Defendants are not at issue. Unlike *Beasley*, the Defendants were not using their religion to commit a criminal act. As such, the Defendants' religious beliefs are not relevant to this case. Even if their beliefs have some relevance, they are more prejudicial than probative. *United States v. Hoffman*, 806 F.2d 703, 716 (1986) (Will, dissenting) ("Religion is a highly emotional issue with a natural tendency to play upon a jury's passions.). As such, the State moves the District Court for an order prohibiting the Defendants from discussing their religious beliefs or opinions at trial.

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¹ The Eleventh Circuit noted that the "evidence admitted was highly relevant to the jury's understanding of the existence, motives, and objectives of the RICO conspiracy and the means by which it was conducted" because the Defendant "used [his] religion as a means of exhorting followers to commit the racketeering acts..."

² The State acknowledges that the *Reavley* is a District Court decision and is not binding, but is nevertheless instructive.

b. The District Court should preclude the Defendants from inquiring into the religious beliefs and opinions of prospective jurors during voir dire.

It has long been held in this state and other jurisdictions that a trial judge has wide discretion in conducting voir dire. We find that the trial court here properly limited inquiry into the jurors' belief in God rather than detailed inquiries into the prospective jurors' secular beliefs. In *Yarborough v. United States* (1956), 230 F.2d 56, cert. denied 351 U.S. 969, 76 S. Ct. 1034, 100 L. Ed. 1487, the court held that a defendant prosecuted for tax evasion was not entitled to voir dire jurors on their religious beliefs. Given the wide discretion allowed a trial judge, the lack of relevancy of religion to the issues at bar, and the permitted inquiry into the jurors' general belief in God, defendant's contention is without merit.

State v. Poncelet, 187 Mont. 528, 541, 610 P.2d 698, 706 (1980) (Internal citations omitted).

The Minnesota Supreme Court addressed the issue of religious inquiry during voir dire in *State v. Davis*, 504 N.W.2.d 767, 771, 772 (Minn. 1993). The Minnesota Court held:

Ordinarily at common law, inquiry on voir dire into a juror's religious affiliation and beliefs is irrelevant and prejudicial and to ask such questions is improper. Questions about religious beliefs are relevant only if pertinent to religious issues involved in the case, or if a religious organization is a party, or if the information is a necessary predicate for a voir dire challenge. The trial court, in the exercise of its discretion, controls the questions that can be asked to keep the voir dire within relevant bounds...proper questioning for a challenge should be limited to asking jurors if they knew of any reason why they could not sit, if they would have any difficulty in following the law as given by the court, or if they would have any difficulty in sitting in judgment.

Id at 772 (Cited with approval in *Davis v. Minn.*, 511 U.S. 1115, 1115-1116,

114 S. Ct. 2120, 128 L. Ed. 2d 679 (1994), Ginsburg, concurring).

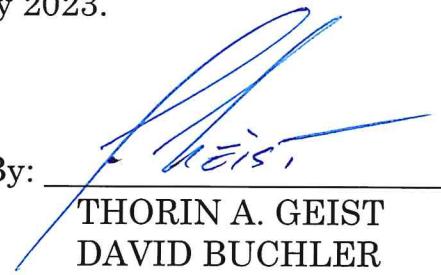
The Defendants' religious beliefs are not on trial, and as noted above they are not elements of the crimes charged. As such, the District Court should exercise its discretion and preclude the Defendants from inquiring into the religious beliefs and opinions of prospective jurors during voir dire.

III. Conclusion.

Based on the foregoing, the State of Montana respectfully requests that the District Court issue and *Order in Limine*:

1. Precluding the Defendants from discussing their religious beliefs or opinions at trial.
2. Precluding the Defendants from inquiring into the religious beliefs of prospective jurors during voir dire.

DATED this 20 day of January 2023.

By: 
THORIN A. GEIST
DAVID BUCHLER
Attorney for the State of Montana

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January 2023, a true and correct copy of the foregoing document was served:

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CERTIFICATE OF SERVICE

I, Thorin Aidan Geist, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion in Limine to the following on 01-20-2023:

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Electronically signed by Maggie Sowisdral on behalf of Thorin Aidan Geist

Dated: 01-20-2023