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*Attorneys for Defendants.*

**MONTANA FIFTH JUDICIAL DISTRICT COURT  
 MADISON COUNTY**

STATE OF MONTANA

Plaintiff,

vs.

JESSE MICHAEL BOYD, BETHANY  
 GRACE BOYD, CARTER NORMAN  
 PHILLIPS, ERIC ANTHONY TRENT,

Defendant(s).

Cause No(s). DC-29-2022-22  
 DC-29-2022-23  
 DC-29-2022-24  
 DC-29-2022-26

**DEFENDANTS' RESPONSE TO  
 STATE'S FIFTH MOTION IN  
 LIMINE**

COME NOW Defendants Jesse M. Boyd ("Boyd"), Carter N. Phillips ("Phillips"), Bethany Boyd ("Bethany"), and Eric Trent ("Trent"), by and through their undersigned counsel, and submit the following response opposing the State's Fifth Motion in Limine. For the following reasons, the motion should be DENIED:

*Defendants' Response Opposing the State's Fifth Motion in Limine - 1*

## **ARGUMENT**

### **A. This Court should not reward's the State of Montana's sharp practice in this matter.**

Per the State's Exhibit 1 attached to its Fifth Motion in Limine, at 5:53 pm on March 8, 2023, defense counsel sent an email to the attorneys representing the State of Montana in this matter. The email identified four affirmative defenses the defendants would be asserting. The State had already filed a motion in limine regarding the defense of justifiable use of force, and less than 24 hours after the March 8 email from defense counsel, the State had filed its fifth motion in limine to preclude the Defendants from asserting the other three. The motion was electronically served on defense counsel beginning at 4:43 pm on Thursday, March 9, 2023, with the last copy of the motion served at 4:51 pm.

On today's date, March 24, 2023, defense counsel was electronically served with a proposed order from the State that would grant the State's fifth motion in limine based on "the Defendants having failed to respond within the time allotted in Uniform District Court Rule 2(b)." The proposed order was not filed with any explicit request that the order be executed, but the intention behind the filing of the proposed order is unmistakable.

In any other context, the promptness of the State's motion in limine upon receipt of an email from defense counsel, and the promptness of the State's submission of a proposed order granting such motion upon the perceived

expiration of the 14-day deadline, might be admirable. In the present context, the State's proposed order fits into a discouraging pattern of overzealousness that seems to be getting worse as this case progresses. In addition to the proposed order to grant its motion, the State has filed this week a pointless and untrue "Notice Regarding Defendants' Failure to Return Omnibus Conference Order,"<sup>1</sup> as well as a "Notice of Failure to Comply with Order to Compel" (with a proposed order requesting a \$500/day fine against defense counsel).

The *Montana Lawyers' Deskbook & Directory* includes a list of "Standards of Professional Courtesy Among Attorneys" that is stated alongside the Rules of Professional Conduct. Among these standards is the following:

We will not practice by default or by taking advantage of opposing counsel on technicalities. Unless it is necessary for protection of our client's case and is fully justified by the circumstances, we will not seek sanctions or disqualification of counsel.

See, "*Standards of Professional Courtesy Among Attorneys*," p. 289 of the Montana Lawyers' Deskbook and Directory.

To date, the State's prosecution of this matter has scarcely amounted to anything other than claimed waivers or defaults by the Defendants, or claimed violations of purported technicalities. The State has likewise explicitly requested the imposition of sanctions, and its requests to for the disqualification of defense

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<sup>1</sup> Defense counsel was literally scanning the omnibus form to email to the State's attorneys at the moment the State's "Notice" was filed.

counsel are becoming routine. Suffice to say, none of these attempted actions has been “fully justified by the circumstances.” Even the substantive arguments presented by the State are centered around trying to hamstring the Defendants’ ability to defend themselves at trial.

The State cannot plausibly claim a single iota of prejudice stemming from the timing of this brief’s filing. Moreover, under the civil rules, the deadline for filing a response brief is not even expired yet with the three extra days allowed not only for service by mail, but also electronic service. *See Rule 6(d), M.R.Civ.P.* The State cannot claim to be surprised by the Defendants’ opposition to the pending motion. The motion the State seeks to have granted by default was prompted by the Defendants’ very assertion of the affirmative defenses challenged now by the State. To the extent any delay can even be identified here, there is no identifiable harm whatsoever, and the State’s request to deny the Defendants of viable defenses at trial should be rejected.

**B. The State identifies no evidence that it seeks to exclude from trial.**

The purpose of a Motion in Limine is to prevent the introduction of evidence, which is immaterial, irrelevant, or unfairly prejudicial. *State v. Thomas*, 402 Mont. 62 (Mont., 2020). Accordingly, authority to grant or deny a Motion in Limine is part of inherent power of court to admit or exclude evidence necessary to afford a fair trial. *Id.*

With this Fifth Motion in Limine, the State is seeking to prohibit entire affirmative defenses, and not specific evidence. The State does not reference any evidence it wishes to have excluded. Instead, the State misstates law and case holdings in an attempt to persuade the Court that Defendants should not be allowed to present affirmative defenses. But Defendants who are accused of doing identical acts as others but not treated alike in terms of prosecution and enforcement due to their religious beliefs, have the right to assert such affirmative defenses.

The Defendants have a right under the Sixth Amendment and the rules of evidence to inquire into and argue about such facts and to point their finger at the investigating officers and the State for their bad faith failure to conduct an impartial investigation, rather than jumping the gun and assuming the worst of Defendants based on their religious beliefs.

**C. The State misstates the law regarding the assertion of affirmative defenses.**

The State feigns exasperation at the Defendants “having been made repeatedly aware in prior briefing [that] the Montana supreme court has held that affirmative defense is ‘one that admits the doing of the act charged, but seeks to justify, excuse or mitigate it.’” *State’s Brief*, p. 7 (citations omitted). In the same paragraph, the State twists this proposition into a rule that the Defendants “must first admit the crime” before they may assert an affirmative defense.

None of the cases cited by the State contains any requirement that a

defendant must “admit the crime” before asserting a particular defense. The actual principle outlined in these cases is that a defendant must lay a foundation to support their affirmative defense or defenses. If an affirmative defense is valid, then no crime has been committed at all; there is no logic to the claim by the State that a defendant must admit the crime charged.

**D. The State’s argument that the affirmative defenses disclosed by the Defendants are not affirmative defenses is premature.**

The State is asking the Court to preclude arguments before the evidence has been heard. The State’s motion is premature, and any ruling on whether the affirmative defenses asserted by the Defendants qualify as “affirmative defenses” under Montana law should be reserved until the Court has had an opportunity to hear the relevant evidence.

**E. The State has presented no authority to support its position that the Defendants’ affirmative defenses are inconsistent.**

The State contends that the Defendants’ assertion of justified use of force precludes the Defendants from asserting their other defenses, in particular the defense of authority to make a citizens’ arrest. Yet none of the cases cited by the State contains any such statement of the law, or any prohibition of any kind on the assertion of multiple affirmative defenses.

## **CONCLUSION**

For all the above stated reasons, the State's fifth Motion in Limine should be DENIED.

Respectfully submitted this 24<sup>th</sup> day of March, 2023.

/s/ John M. Pierce

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## **CERTIFICATE OF SERVICE**

I, Alexander Louis Roots, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 03-25-2023:

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Electronically Signed By: Alexander Louis Roots  
Dated: 03-25-2023