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COUNSEL FOR STATE

**MONTANA FIFTH JUDICIAL DISTRICT COURT
 MADISON COUNTY**

STATE OF MONTANA, Plaintiff, v.	Cause No(s). DC-29-2022-23 DC-29-2022-24 DC-29-2022-22 DC-29-2022-26
JESSE MICHAEL BOYD, BETHANY GRACE BOYD, CARTER NORMAN PHILLIPS, ERIC ANTHONY TRENT, Defendant(s).	STATE'S FOURTH MOTION IN LIMINE AND BRIEF IN SUPPORT

MOTION

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 calling affirmative defense witnesses who have no personal knowledge of the events of November 12, 2022.

2. Precluding the Defendants from calling an expert witness to discuss Montana gun laws and/or self-defense statutes.

The undersigned presumes that this *Fourth Motion in Limine* is opposed.

BRIEF IN SUPPORT

I. Procedural background.

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 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. #1¹). 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).
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).

¹ Each of the cases have been consolidated and the document numbers are referenced as they appear in *State of Montana v. Jesse Michael Boyd*, DC-22-23.

3. On January 23, 2023, the Defendants appeared before the District Court and plead not guilty to the charged offenses. *Minutes* at p.1 (Ct. Doc. #38).

4. On February 22, 2023, the Defendants provided *Defendant's Disclosures*, attached hereto as **Exhibit 1**², identifying 81 lay witnesses who they intend to call in support of their affirmative defense of Justifiable Use of Force. The disclosure also included 132 letters of support and AirBnB Reviews.

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

² The disclosures were not filed with the District Court.

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.

b. The District Court should preclude the Defendants from calling affirmative defense witnesses who have no personal knowledge of the events of November 12, 2022.

A witness may not testify as to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

M.R. Evid. 602.

On February 22, 2023, the Defendants provided notice of their intent to rely on the affirmative defense of Justifiable Use of Force in Defense of Person (§ 45-3-102, MCA) in accord with § 46-15-323(2), MCA. The Defendants identified 81 witnesses who will purportedly be called to testify in support of their affirmative defense. Of these witnesses, 9 were present and/or were

involved in the investigation resulting therefrom.³ The 72 remaining witnesses⁴, including bizarrely a legal entity, a family, and a Bozeman business⁵, were not present when the crime occurred and did not actively participate in the investigation. As such, none of the 72 witnesses have personal knowledge and must be excluded pursuant to Rule 602.

c. The District Court should preclude the Defendants from calling any expert witness to discuss “Montana gun laws and/or self-defense statutes.”

Where necessary to assist the jury in understanding specialized matters beyond the realm of common experience and knowledge, a qualified expert may present opinion testimony regarding matters of fact including matters "that embrace the ultimate [factual] issues to be decided by the jury." In contrast, an expert may not testify as to legal conclusions or give testimony applying the law to facts because such testimony invades the separate provinces of the court and jury to respectively determine matters of law and fact.

³ (1) Sheriff Duncan Hedges; (2) Deputy Tim Jurgonski; (3) Deputy Daniel Wyatt; (4) Deputy Alex Winn; (5) Deputy Leah Cox; (6) Officer Brent Fisher; (7) Warden Robbie Pohle; (8) 911 Dispatcher #1; (9) 911 Dispatcher #2.

⁴ (1) Michael Montford; (2) Dave Laclair; (3) Tracy Montford; (4) Joseph Thornock; (5) Nathan Nutter; (6) Bradley Garland; (7) John Christian; (8) Dexter Baker; (9) Stephanie Miller; (10) Dallin Kemp; (11) Jake Thornock; (12) John Thornock; (13) Former Deputy Chris Tenny; (14) Christine Keltner; (15) Jennifer Martens; (16) Trooper Amanda Villa; (17) Robert Baty; (18) Stephanie Merrell; (19) Steve Christian; (20) Linda Stewart; (21) Patricia Nichols; (22) Joyce Michelle; (23) Thomas Gough; (24) John Lawrence Green; (25) Glenn Elder; (26) Cheryl Elder; (27) Bo Collins; (28) Helen Collins; (29) Wanda Bies; (30) David Hoyer; (31) Autumn Hoyer; (32) Paul Straszewski; (33) Julie Straszewski; (34) Cassidy Straszewski; (35) John W. Conner; (36) Daniel Omstead; (37) Francis Murphy; (38) Patricia Murphy; (39) Vickie L. Wrigley; (40) William Hammond; (41) David LaClair; (42) Steven Shiffley; (43) Rachel Holden; (44) Germain Holden; (45) Samuel Robert Broadus; (46) Thomas Hardeman; (47) Paula Hardeman; (48) Samuel Chicol; (49) Harold Chicol; (50) Pamela Sue Chicol; (51) Richard Devito, Jr.; (52) Donald Limes; (53) Charlene Limes; (54) Ronald W. Yates; (55) Richard V. Spielman; (56) Marvin Cutshaw; (57) Laney Cutshaw; (58) Rhonda Cutshaw; (59) Daniel Stewart; (60) Peter J Darus; (61) Deanna G. Darus; (62) Josef Najah; (63) David Hoyer; (64) Autumn Hoyer; (65) Brandon Brooks; (66) Gregory Brooks; (67) Jessa Ann Brooks; (68) Thomas Wehrfritz; (69) Martin Wehrfritz.

⁵ (70) Ohrt Family Trust; (71) Shirley Family; (72) Kenyon Noble Lumber Bozeman.

State v. Mills, 2018 MT 254 ¶ 39, 393 Mont. 121, 428 P.3d 834 (citing M. R. Evid. 704-705; *Perdue v. Gagnon Farms, Inc.*, 2003 MT 47, ¶ 28, 314 Mont. 303, 65 P.3d 570).

The Montana Supreme Court has warned that allowing an expert to testify on a matter of law can be “highly prejudicial.” *Perdue* at ¶ 28 (citing *Hart-Anderson v. Hauck*, 230 Mont. 63, 72, 748 P.2d 937, 943 (1988)). In noting the distinction between “ultimate issues of fact” and “ultimate issue of law” the Montana Supreme has held:

Although the distinction between an ultimate issue of fact and a legal conclusion in some cases may be subtle, the distinction is significant. For example, the question, “Did T have capacity to make a will?” would be excluded, while the question, “Did T have sufficient mental capacity to know the nature and extent of his property and the natural objects of his bounty and to formulate a rational scheme of distribution?” would be allowed. An expert's testimony as to the first question amounts to no more than an expression of the witness's general belief as to how the case should be decided, while an expert's testimony as to the second question embraces an ultimate issue to be decided by the trier of fact.

A review of our case law further elucidates this distinction. We have held the following expert testimony to be inadmissible legal conclusions: whether a defendant had breached the covenant of good faith and fair dealing; whether an insurer breached its statutory obligations under Montana's Unfair Claims Settlement Practices Act; and whether a county commission's growth policy revisions met the legal requirements of Montana statute. In each of these cases, by applying the law to the facts of the case, the experts' testimony did more than assist the trier of fact to understand the evidence or to determine a fact in issue.

On the other hand, we have concluded that the following expert testimony was permissible: an officer's opinions regarding the cause

of an accident; assessment of an employer's actions in the context of accepted human resources practices that did not track the legal elements of wrongful discharge; and testimony on a train crew's obligations and duties while approaching a railroad crossing. Our case law demonstrates that even though testimony on an ultimate issue of fact may implicate legal issues, an expert's testimony is admissible as long as it does not reach a legal conclusion or apply the law to the facts.

Comm.'r of Political Practices for Mont. v. Wittich, 2017 MT 210, ¶ 39-41, 388 Mont. 347, 400 P.3d 735 (internal quotes and citations omitted).

The Defendants indicate that they “may call Gary Marbut of the Montana Shooting Sports Association as an expert regarding Montana gun laws and self-defense statutes.” *Defendants Notice* at p. 3. However, the Defendants cannot call Mr. Marbut for this purpose. An expert witness may not comment on the law, and he may not give an opinion as to whether the Defendants conduct fell within the law. It is for the District Court alone to instruct the jury on the law.

III. Conclusion.

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

1. Precluding the Defendants from calling affirmative defense witnesses who have no personal knowledge of the events of November 12, 2022.
2. Precluding the Defendants from calling an expert witness to discuss “Montana gun laws and/or self-defense statutes.”

//

DATED this 27 day of February, 2023.

By: _____


THORIN A. GEIST

DAVID BUCHLER

Attorney for the State of Montana

EXHIBIT 1

Geist, Thorin

From: John Pierce <jpierce@johnpiercelaw.com>
Sent: Wednesday, February 22, 2023 8:28 PM
To: Geist, Thorin
Subject: [EXTERNAL] Defendant disclosures

Thorin, please see attached disclosures as required, thank you.

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Attorneys for Defendants

MONTANA FIFTH JUDICIAL DISTRICT COURT,
MADISON COUNTY

STATE OF MONTANA,)	Cause Nos. DC-29-2022-022
)	DC-29-2022-023
Plaintiff,)	DC-29-2022-024
vs.)	DC-29-2022-026
JESSE MICHAEL BOYD, BETHANY GRACE BOYD,)	
CARTER NORMAN PHILLIPS, and ERIC ANTOHONY)	
TRENT,)	DEFENDANTS' DISCLOSURES
Defendants.)	

Defendants Jesse M. Boyd ("Boyd"), Carter N. Phillips ("Phillips"), Bethany Boyd ("Bethany"), and Eric Trent ("Trent"), by and through their counsel of record, hereby provide the following disclosures pursuant to [46-15-323, MCA](#).

(2) Defendants assert the defense of justifiable use of force.

(3) Defendants assert **no** mental disease or disorder.

Defense witness list.

Michael Montford
Dave Laclair

Tracy Montford
Joseph Thornock
Nathan Nutter
Bradly Garland
John Christian
Dexter Baker
Stephanie Miller
Dallin Kemp
Jake Thornock
John Thornock
Robbie Pohle, game Warden
Daniel Wyatt, deputy
Alex Winn, sergeant/ deputy
Chris Tenny, ex deputy
Leah cox, deputy
Tim Jurgonski, deputy/ SAR
Duncan Hedges, currently Sheriff
Christine Keltner, sheriff's department
Jennifer Martens, DEC clerk
Amanda Villa , highway patrol
911 dispatcher #1
911 dispatcher #2
Officer Fisher, Ennis police
Robert Baty
Stephanie Merrell
Steve Christian
Linda Stewart
Patricia Nichols
Joyce Michelle
Thomas Gough
John Lawrence Green
Glenn Elder
Cheryl Elder
Bo Collins
Helen Collins
Wanda Bies
David Hoyer
Autumn Hoyer
Ohrt Family Trust
Paul Straszewski
Julie Straszewski
Cassidy Straszewski
John W Conner
Daniel Omstead
Francis Murphy
Patricia Murphy
Vickie L Wrigley
Shirley Family
William Hammond
David LaClair
Steven Shiffley
Rachel Holden

Germain Holden
Samuel Robert Broaddus
Thomas Hardeman
Paula Hardeman
Samuel Chicol
Harold Chicol
Pamela Sue Chicol
Richard Devito, Jr
Donald Limes
Charlene Limes
Ronald W Yates
Richard V Spielman
Marvin Cutshaw
Laney Cutshaw
Rhonda Cutshaw
Daniel Stewart
Peter J Darus
Deanna G Darus
Josef Najah
David Hoyer
Autumn Hoyer
Brandon Brooks
Gregory Brooks
Jessa Ann Brooks
Thomas Wehrfritz
Martin Wehrfritz
Kenyon Noble lumber Bozeman

(6) Expert witnesses. (Note that defendants are in the process of finalizing their expert witnesses. Defendants may call a use-of-force expert, whose name is TBA). Defendants may also call Gary Marbut of the Montana Shooting Sports Association as an expert regarding Montana gun laws and self-defense statutes.

(c) Defendants have several photos of the scene. Additionally, defendants will use all of the photos and videos provided by the State.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

EXHIBITS

Defendants will use all of the evidence provided by the State in discovery, including bodycam, dashcam, 9-1-1 call and other recordings and images.

Defendants will introduce Jesse Boyd's broken eyeglasses as evidence.

Defendants will introduce photographs and video taken at the scene, including photos showing the driving and parking situation on US 287

Defendants will introduce all known cellular phone data regarding the incident.

Defendants will introduce Apple watch data regarding the incident.

Defendants will offer or introduce all police reports gathered by investigators in the case.

Defendants may utilize any exhibits on the prosecution's exhibit list as their own exhibits.

Defendants may call any witness on the prosecution's witness list as their own witnesses.

Sincerely,

John Pierce

Respectfully,

Roger Roots
Partner-John Pierce Law
21550 Oxnard Street
3rd Floor PMB #172
Woodland Hills, CA 91367



JOHN PIERCE LAW

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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 02-27-2023:

Alexander Louis Roots (Attorney)
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Representing: Jesse Michael Boyd
Service Method: eService

David A. Buchler (Govt Attorney)
P.O. Box 73
100 W. Wallace Street
Virginia City MT 59755
Representing: State of Montana
Service Method: eService

John M. Pierce (Attorney)
21550 Oxnard Street, 3rd Floor PMB #172
Woodland Hills 91367
Representing: Jesse Michael Boyd
Service Method: Email

Electronically signed by Maggie Sowisdral on behalf of Thorin Aidan Geist
Dated: 02-27-2023