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COUNSEL FOR STATE

**MONTANA FIFTH JUDICIAL DISTRICT COURT
 MADISON COUNTY**

STATE OF MONTANA, Plaintiff, v. JESSE MICHAEL BOYD, BETHANY GRACE BOYD, CARTER NORMAN PHILLIPS, ERIC ANTHONY TRENT, Defendant(s).	Cause No(s). DC-29-2022-23 DC-29-2022-24 DC-29-2022-22 DC-29-2022-26 STATE'S REPLY TO DEFENDANT'S RESPONSE TO STATE'S FIRST MOTION TO COMPEL
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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 replies to the Defendants' *Response to State's First Motion to Compel* (Ct. Doc. #60).¹

¹ For the convenience of the District Court, the State will reference documents numbers as they appear in *State of Montana v. Jesse Michael Boyd*, DC-22-23.

I. Continued Discussion.

- a. **The Defendants should be ordered to immediately provide contact information for all witnesses that the Defendants intend to call at trial, including those who will be called in support of their affirmative defense.**

The State moved to compel the production of contact information for 72 witnesses that the Defendants intend to call as affirmative defense witnesses. *Motion* at pp. 3-5 (Ct. Doc. #54). In response, the Defense “appreciates the prosecution’s aggressiveness” and indicates that they have now complied with the State’s request “via email exchange” on March 13, 2023. *Response* at pp. 1-4; *Email* attached hereto as **Exhibit 1**. The Defendants also suggest that the State is intimidating defense witnesses and request a protective order. *Id.* Each issue is addressed in turn.

i. **The Defendant still has not complied with § 46-15-323(4), MCA.**

First, while the Defendants have now supplemented most of the contact information for their affirmative defense witnesses, the simple fact is that the State should never have had to file a *Motion to Compel* to begin with. The requirements of § 46-15-323(4), MCA, are clear, and the State notified the Defendants of their omission and the Defendants still refused to comply. *Email* attached hereto as **Exhibit 2**. Even now the Defendants have failed to provide

contact information for five witnesses.² The State is not being “aggressive.” The Defendants are refusing to follow the law and they should be sanctioned accordingly.

Second, in their “supplemental” disclosure the Defendants have also attempted to slip in sixteen previously undisclosed witnesses.³ Montana law provides that “[p]rior to trial, the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section.” § 46-15-323(5), MCA. Much in the same way that the Defendants have refused to comply with § 46-15-323(4), MCA, the Defendants have also failed to comply with § 46-15-323(5), MCA. To date, the Defendants have not filed a motion seeking leave to amend their witness list properly addressing the issue of good cause. Once again, the Defendants have failed to comply with Montana law, the Defendants and/or counsel should be sanctioned accordingly.

ii. The State has not intimidated any witnesses.

The Defendants request a protective order for witnesses that were “previously attacked, threatened, and beaten without provocation by the State’s purported victim in this case.” *Response* at pp. 2-4. However, the

² Laney Cutshaw, Josef Najah, Joseph Thornock, Donald Limes, and Dexter Baker.

³ Julie Trent, Thomas Ferguson, Allison Throop, Brondon Gwaltney, Charles O’Keefe, Donald Sims, Jennifer O’Keefe, Kathy Lee LaClair, Matthew Boyd, Mike Arney, Pauls Boyd, Philip Demas, Randal Throop, Steven E. Shifflett, Terry Phillips, and Tony Trent.

Defendants cannot bootstrap an unrelated and unsupported request into a response brief. If the Defendants have a motion to bring, they should file it and they should take the time to ensure that it is supported **both** by Montana law and sufficient supporting evidence to backup their claim. The arguments of counsel are not evidence. *State v. High Elk*, 2006 MT 6, ¶ 17, 330 Mont. 259, 127 P.3d 432.

Second, the Defendants argue that Robert Baty “is harassing people on defense witness lists.” *Response* at p. 4. However, Mr. Baty is **not** a witness for the State. Mr. Baty is a witness that the **Defendants** have identified as someone who will testify in support of their affirmative defenses. See Exhibit 1 (at p.1); Exhibit 2 (at p.2). If the Defendants have an issue with one of their **own** witnesses, they should pursue whatever legal remedy they feel is appropriate in whatever jurisdiction⁴ has jurisdiction over that witness.

Third, the Defendants suggest that counsel in this case is somehow complicit in the intimidation of defense witnesses. *Id.* Specifically, the Defendants argue:

To some extent, this campaign of harassment and intimidation is fueled in this case by the State’s Attorney General’s [sic] office and members of the investigative team in this case, whose bodycam and dashcam recording exhibit more a half dozen instances of jokes and mocking remarks aimed at defendants’ religious faith and missionary work.

⁴ The State understands that Mr. Baty does not reside in Montana, and the Fifth Judicial District Court therefore does not have personal jurisdiction over him.

Response at p.4.

The Defendants' make a grave accusation that the District Court should not treat lightly. Attorneys owe the District Court a duty of candor and a duty of fairness to opposing counsel. M. R. P. C. 3.3 and 3.4. The State Attorney's General Office has engaged in no such conduct, and the Defendants should be held accountable if they cannot back up their claim. The Defendants should be ordered to immediately provide the District Court with whatever evidence they have to support their claim that the State Attorney's General Office has harassed or intimidated any witness during the pendency of this proceeding. If the Defendants cannot back up their attack on counsel, they should be sanctioned accordingly.

b. The Defendants should be ordered to immediately produce all papers, documents, photographs, and all other tangible objects that the Defendants may use at trial.

The State moved to compel the production of physical evidence that the Defendants claimed to have in their possession pursuant to § 46-15-323(6), MCA. *Motion* at pp. 6-7. Specifically, the Defendants identified that they had the following evidence:

1. Defendants have several photos of the scene.
2. Defendants will introduce Jesse Boyd's broken eyeglasses as evidence.

3. Defendants will introduce photographs and video taken at the scene, including photos showing the driving and parking situation on US 287.
4. Defendants will introduce all known cellular phone data regarding the incident.
5. Defendants will introduce Apple watch data regarding the incident.

Id.

In response, the Defendants indicate that they have now complied with the State's request. *Response* at pp. 1-2. The Defendants also suggest that the State has withheld evidence. *Id.* Once again, the Defendants have only partially complied with the State's request. The Defendants have provided the State with a photograph of Jesse Boyd's glasses and photographs of data from his watch. See *Exhibit 1*. The Defendants have also offered to make the watch and glasses available to the State. *Id.* However, the Defendants have not provided photos of the scene, photographs and video taken at the scene, and/or all known cellular phone data.

Instead, the Defendants suggest that the State is withholding evidence because it has not turned over Eric Trent's iPhone. However, Mr. Trent's iPhone is in evidence and can be inspected by the Defendants at any time. The Defendants were informed how to make such request on January 3, 2023. *Initial Disco. Not.* at p.2 § 1 (Ct. Doc. #11). To date, the Defendants have failed to make such a request. The Defendants' allegation is disingenuous.

//

II. Conclusion.

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

1. Requiring the immediate identification of addresses of all witnesses that the Defendants intent to call at trial, including those who will be called in support of their affirmative defense. pursuant to § 46-15-323, MCA.
2. Requiring the immediate production of the production of all papers, documents, photographs, and all other tangible objects that the Defendants may use at trial pursuant to § 46-15-323, MCA.

DATED this 16 day of March, 2023.

By: 

THORIN A. GEIST
DAVID BUCHLER

Attorney for the State of Montana

EXHIBIT 1

Geist, Thorin


From: John Pierce <jpierce@johnpiercelaw.com>
Sent: Monday, March 13, 2023 8:30 AM
To: Geist, Thorin
Cc: Emily Lambert
Subject: [EXTERNAL] Boyd et al Witness Addresses
Attachments: MicrosoftTeams-image (18).png; MicrosoftTeams-image (17).png; MicrosoftTeams-image (16).png; MicrosoftTeams-image (15).png; MicrosoftTeams-image (14).png; MicrosoftTeams-image (13).png

Thorin:

Attached are the addresses of our witnesses. Also attached are images of Jesse Boyd's Apple watch data and an aerial image of the scene. Additionally, here is an image of Jesse Boyd's glasses. We can provide the watch and glasses for your inspection. Just reach out to me and we can arrange it. Thanks for everything.


Christine Keltner, sheriff's department
Jennifer Martens, DEC clerk
Amanda Villa , highway patrol
911 dispatcher #1
911 dispatcher #2
John Moore, Ennis police

Robert Baty, 


Robbie Pohle, Game Warden
Daniel Wyatt, deputy
Tim Jurgonski
Dennis Crabtree
Thomas Ferguson

Alex Stephen Winn


Chris Tenny


Leah Cox


Duncan Hedges


Stephanie Merrell



Matthew Boyd



Brondon Gwaltney



Mike Arney



Philip Demas



Paul Boyd



Terry Phillips



Tony Trent



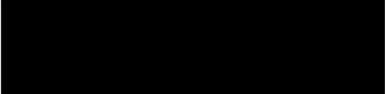
Julie Trent



John Christian



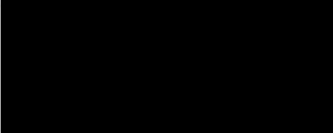
Linda S Stewart



Patricia Nichols



Joyce Michelle



Thomas Gough



Randall Throop



Allison Throop



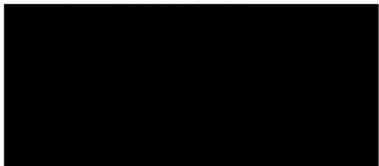
John Lawrence Green



Charles O'Keefe



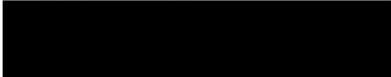
Jennifer A O'Keefe



Glenn Elder



Cheryl Elder



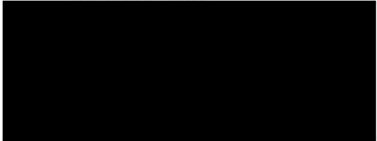
Bo Collins



Helen M Collins



Wanda Bies



Henry Ohrt



Paul S Straszewski



Julie A Straszewski



Cassidy Straszewski



John W Conner

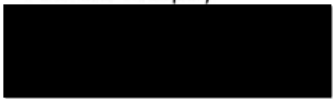


Daniel Omstead



Francis Murphy

Patricia Murphy



Vickie L Wrigley



Shirley Family Trust

Shirley Peterson



William Hammond



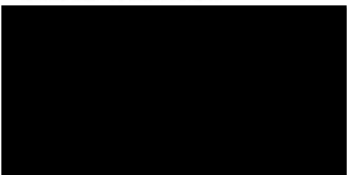
David LaClair



Kathy Lee LaClair



Steven E Shifflett



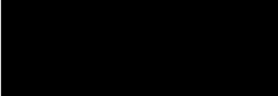
Rachel Holden



Germaine Holden



Samuel Robert Broaddus



Thomas Hardeman

Paula Hardeman



Samuel Harold Chicol



Pamela Sue Chicol



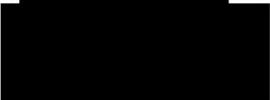
Richard Devito, Jr



Donald L Sims Jr



Charlene M Limes



Ronald W Yates



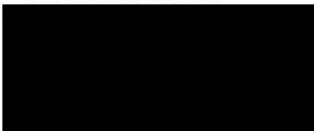
Richard V Spielman



Marvin Laney Cutshaw



Rhonda Cutshaw



Daniel Stewart



Peter J Darus



Deanna G Darus



David Hoyer



Autumn Hoyer



Brandon Gregory Brooks



Jessa Ann Brooks



Thomas Martin Wehrfritz



Kenyon Noble lumber Bozeman

Ron Miller (manager)



Nathan Nutter



Brady S Garland



Michael Montford



Tracy Montford



Jake Thornock



John Thornock



Stephanie Miller



Dallin Kemp



Brad Terrell



Respectfully,
Em Lambert
Client Advocate
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JOHN PIERCE LAW

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EXHIBIT 2

Geist, Thorin

From: Geist, Thorin
Sent: Thursday, February 23, 2023 10:59 AM
To: John Pierce; alex@planalplaw.com
Cc: Sowisdral, Maggie; David Buchler
Subject: RE: Defendant disclosures

John:

Thank you for the email. A couple of issues regarding the disclosure:

1. Typically, the disclosure is filed with the District Court. Perhaps you already did that, but if not, do you intend on filing the disclosure?
2. Respectfully, the disclosure doesn't comply with § 46-15-323, MCA, in two ways. First, the disclosure does not contain addresses/contact information as required by § 46-15-323(2), MCA. Second, you have not provided us with the identified exhibits and evidence as is required by § 46-15-323(6), MCA.

When can we expect to receive this information?

Thanks.

-Thorin

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

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

Alexander L. Roots
PLANALP & ROOTS, P.C.
P.O. Box 1
Bozeman, MT 59771-0001
(406)-586-4351
alex@planalplaw.com

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Woodland Hills, CA 91367
jpierce@johnpiercelaw.com

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.)	DEFENDANTS' DISCLOSURES

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 Answer/Brief - Answer to the following on 03-16-2023:

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

Alexander Louis Roots (Attorney)
27 N Tracy Ave
P.O. Box 1
Bozeman MT 59771
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

Electronically signed by Maggie Sowisdral on behalf of Thorin Aidan Geist
Dated: 03-16-2023