

THORIN A. GEIST  
 Assistant Attorney General  
 Special Deputy Madison County Attorney  
 DAVID A. BUCHLER  
 Madison County Attorney  
 P.O. Box 201401  
 Helena, MT 59620-1401  
 Telephone: (406) 444-2026  
 Email: [thorin.geist@mt.gov](mailto:thorin.geist@mt.gov)  
[dbuchler@madisoncountymt.gov](mailto:dbuchler@madisoncountymt.gov)

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).	<b>STATE'S REPLY TO        DEFENDANT'S RESPONSE TO        STATE'S SECOND MOTION IN        LIMINE</b>

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 Defendant's *Response to State's Second Motion in Limine* (Ct. Doc. #46)<sup>1</sup>.

<sup>1</sup> 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 District Court should preclude the Defendants from discussing their religious beliefs or opinions at trial.**

The State argues that the Defendants should be precluded from discussing their religious beliefs or opinions at trial. *2<sup>nd</sup> MIL* at pp. 5-9 (Citing M. R. Evid. 610; F. R. Evid 610; 4 Weinstein’s Federal Evidence § 610.02 (2021); *United States v. Sampol*, 636 F.2d 621, 666 (D.C. Cir. 1980). In response, the Defendants state that they “do not intend to make religion any part of their defense” but that they should be permitted to discuss their religious beliefs: (1) to explain how they got to Madison County; and (2) to explain the motive of Brad Terrell and the Madison County Sheriff’s Office in the context of their self-defense claim. *2<sup>nd</sup> Response* at pp. 11-12. Each argument is addressed in turn.

### **i. Limited testimony about how the Defendants came to be in Madison County should be admissible.**

The State is not seeking to exclude testimony that the Defendants are Christian missionaries, or that they were walking across the United States in support of their beliefs. The State agrees that those facts are necessary to explain how the Defendants came to be in Madison County on November 12, 2022. The State is seeking to preclude testimony about the specific nature of their beliefs and/or why those beliefs prompted their walk across the United States. Such testimony is not relevant to the crimes charged, and as the

Defendants have now conceded, it is similarly not a part of their defense.

**ii. The Defendants are not entitled to introduce evidence of their religious beliefs to speculate on the motives of Brad Terrell or the Madison County Sheriff's Office.**

Despite acknowledging that the Defendants “do not intend to make religion any part of their defense” they nevertheless argue that their religious beliefs were “likely the motivation behind Bradley Terrell’s raging aggression against the [D]efendants” and by the Madison County Sheriff’s Office to “coverup civil rights violations and possible hate crimes.” *2<sup>nd</sup> Response* at p. 11 (Citing *State v. Blatz*, 2017 MT 164, ¶ 14, 388 Mont. 105, 398 P.3d 247).

**1. Bradley Terrell - Rule 404(a).**

Generally, “[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion,” M. R. Evid. 404(a), with an exception for “[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused.” When character evidence is admissible, Rule 405 provides the methods of proving character. Rule 405 provides:

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or where the character of the victim relates to the reasonableness of force used by the accused in self-defense, proof may also be made of specific instances of that person's conduct.

*State v. Daniels*, 2011 MT 278, ¶ 23, 362 Mont. 426, 265 P.3d 623 (Internal citations omitted).

The Defendants may not introduce evidence that their religious beliefs were “likely the motivation” behind Mr. Terrell’s “raging aggression” under Rule 404(a) because they **admitted** that they had never met Terrell before November 12, 2022. *Body Camera Footage*<sup>2</sup> at 18:20-18:30, 27:00 to 27:10. The Montana Supreme Court has made clear that evidence of the victim's past is “irrelevant and inadmissible,” where the defendants can’t establish that their knowledge led them to use the force that they employed. *Daniels* at ¶ 26 (Citing *State v. Montgomery*, 2005 MT 120, ¶¶ 19-20, 327 Mont. 138, 112 P.3d 1014).

## **2. Bradley Terrell - Rule 404(b).**

Rule 404 generally excludes evidence of a person's character or character trait when its purpose is to prove the person acted in conformity with that trait on a particular occasion. M. R. Evid. 404(a). Under Rule 404(b), however, “[e]vidence of other crimes, wrongs, or acts” may be admissible for non-propensity purposes, such as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Rule 404(b) aims to “ensure jurors do not impermissibly infer that a defendant's prior bad acts make that person a bad person, and therefore, a guilty person.” A defendant may introduce “reverse 404(b) evidence” of another witness's crimes or conduct to inculcate another person, thus exculpating himself.

*State v. James*, 2022 MT 177, ¶ 12, 410 Mont. 55, 517 P.3d 170 (citing *State v. Clifford*, 2005 MT 219, ¶ 44, 328 Mont. 300, 121 P.3d 489).

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<sup>2</sup> Attached to State’s *1<sup>st</sup> MIL* as Exhibit 1.

However, the Montana Supreme Court has also held:

Other acts evidence is admissible for a permissible Rule 404(b) purpose only if the proponent can clearly articulate how that evidence fits into a chain of logical inferences, no link of which may be the inference that the defendant has the propensity to commit the crime charged. A defendant may not introduce reverse 404(b) evidence where it lacks connection with the crime, is **speculative** or remote, or does not tend to prove or disprove a material fact in issue at the defendant's trial.

*James* at ¶ 13 (Internal quotes omitted; emphasis supplied).

The Defendants may not introduce evidence that their religious beliefs were the “likely the motivation” behind Terrell’s “raging aggression” because such evidence is speculative. As noted above, the Defendants had never met Terrell, and Boyd specifically confirmed that he did **not** know if the altercation was religiously motivated. *Body Camera Footage*<sup>3</sup> at 29:00 to 29:15. The Defendants cannot show that their religious beliefs were what motivated Terrell’s actions on November 12, 2022. To suggest otherwise is beyond disingenuous.

### **3. Madison County Sheriff’s Office.**

The Defendants fail to cite any authority to suggest that their religious beliefs were the basis for their belief that the Madison County Sheriff’s Office attempted to “cover up civil rights violations and possible hate crimes.” *2<sup>nd</sup> Response* at p. 11. At best, the Defendants argument is speculative and would

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<sup>3</sup> Attached to State’s *1<sup>st</sup> MIL* as Exhibit 1.

constitute a clear violation of Rule 610.

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

The State argues that the Defendants should be precluded from inquiring into the religious beliefs and opinions of prospective jurors during voir dire. *2<sup>nd</sup> MIL* at pp. 10-11 (Citing *State v. Poncelet*, 187 Mont. 528, 541, 610 P.2d 698, 706 (1980); *State v. Davis*, 504 N.W.2d 767, 771, 772 (Minn. 1993); *Davis v. Minn.*, 511 U.S. 1115, 1115-1116, 114 S. Ct. 2120, 128 L. Ed. 2d 679 (1994)). In response, the Defendants concede that they “do not intend to make religion or religious beliefs a part of their defense,” but that they are entitled to wide latitude during voir dire to ask such questions. *2<sup>nd</sup> Response* at pp. 12-13 (Citing *Bockman v. Fryberg*, 2018 MT 202, 392 Mont. 350, 424 P.3d 600).

Specifically, the Defendants state that they will inquire whether the prospective jurors “hold any biases against missionaries that might hinder or prevent them from judging the evidence fairly.” *2<sup>nd</sup> Response* at p.12. The State does not take issue with this question, as it falls within the permissible scope of voir dire. However, the Defendants also state that they intend to inquire: (1) about the jurors own religious experiences; and (2) whether they can set aside those religious views and experiences. *Id.* Such questions are improper given the Defendants’ concession that they do not intend to make religion a part of

their defense. *Davis*, 504 N.W.2.d at 771-772 (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 District Court is well within its discretion to limit inquiry into the religious beliefs and opinions of prospective jurors during voir dire.

DATED this 27 day of February 2023.

By: \_\_\_\_\_

  
THORIN A. GEIST

DAVID BUCHLER

*Attorney for the State of Montana*

## **CERTIFICATE OF SERVICE**

I, Thorin Aidan Geist, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply to the following on 02-27-2023:

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

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