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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 RESPONSE TO DEFENDANT'S SUPPLEMENTAL MEMORANDUM, MOTION, AND PROFFER REGARDING JUSTIFIABLE USE OF FORCE

COMES NOW the State of Montana, by and through Assistant Attorney General Thorin A. Geist and Madison County Attorney David Buchler, and hereby responds to the Defendants' *Supplemental Memorandum, Motion, and Proffer Regarding Justifiable Use of Force*. (Ct. Doc. #59)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. 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. #1²). 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).
3. On January 20, 2023, the State filed its *First Motion in Limine and Brief in Support* (Ct. Doc. #22) on the applicability of Justifiable Use of Force (hereinafter “JUOF”). The Defendants filed their *Response to State’s First Motion in Limine* (Ct. Doc. #45) on February 17, 2023.

² 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.

The State's *Reply to Defendant's Response to State's First Motion in Limine* (Ct. Doc. #50) was filed on February 27, 2023.

4. On March 13, 2023, the Defendants filed their *Supplemental Memorandum, Motion, and Proffer Regarding Justifiable Use of Force* requesting a hearing on the *State's First Motion in Limine*.

II. Discussion.

- a. **The District Court should deny the Defendants' request for an "evidentiary hearing."**

- i. **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.

ii. Legal standard – Hearings.

The Montana Supreme Court will review a district court's denial of an evidentiary hearing for a clear abuse of discretion. *State v. Terronez*, 2017 MT 296, ¶ 19, 389 Mont. 421, 406 P.3d 947. A court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *Id.*

iii. The “renowned” Gary Marbut.

The Defendants argue that they believe that it would be helpful for the District Court to hear from the “renowned” Gary Marbut on the issues set forth in the State’s *First Motion in Limine. Supplement* at pp. 2-3. Specifically, the Defendants argue that Mr. Marbut can “testify regarding the thinking and legislative intent behind each of the concepts” in Montana’s JUOF statutes and to give his opinion on how “Montana needs to restore the burden shifting requirement” to the State. *Id.*

Mr. Marbut’s opinion on what the Legislature was “thinking” is irrelevant. *State v. Cooksey*, 2012 MT 226, ¶¶ 89-91, 366 Mont. 346, 286 P.3d 1174 (Justice Nelson, dissenting). More importantly, the Montana Supreme

Court has already interpreted the legislative intent behind Montana's JUOF statutes clearly. See *Daniels* at ¶¶ 13-16. No matter how renowned or infamous Mr. Marbut may be, his opinion matters naught.

iv. Attorney General Austin Knudsen.

The Defendants also argue that they “may call Attorney General Austin Knudsen as a witness.” *Supplement* at p. 3. The Defendants argue that “[a]s Speaker of the House of Representatives, Knudsen shepherded numerous pieces of legislation on self-defense through that house of the Legislature.” *Id.* However, Montana's self-defense statutes were enacted in 2009 during the 61st Regular Session of the Montana Legislature³ approximately two years **before** Attorney General Knudsen was elected to serve in the Montana Legislature⁴. Even if he had been in office, the Speech and Debate Privilege of the Montana Constitution prohibits him from being called to testify. Mont. Const. Art. V. § 8; See generally *Cooper v. Glasier*, 2010 MT 55, ¶¶ 10-11, 355 Mont. 342, 355 Mont. 342, 228 P.3d 443, *United States v. Johnson*, 383 U.S. 169, 177-80, 86 S. Ct. 749, 15 L. Ed. 2d 681 (1966).

III. Conclusion.

Based on the foregoing, the State of Montana respectfully requests that

³ HB 228.

⁴ Attorney General Knudsen was served as a Member of the Montana House of Representatives from January 3, 2011 through January 8, 2019, and was Speaker of the House from January 5, 2015 through January 7, 2019.

the District Court deny the Defendants' request for an evidentiary hearing as set forth in their *Supplemental Memorandum, Motion, and Proffer Regarding Justifiable Use of Force*.

DATED this 16 day of March, 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 - Answer to the following on 03-16-2023:

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