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**MONTANA FIFTH JUDICIAL DISTRICT COURT
MADISON COUNTY**

STATE OF MONTANA, v. CARTER NORMAN PHILLIPS,	Plaintiff, Defendant.	Cause No. DC-29-2022-22 REPLY TO STATE'S RESPONSE TO MOTION FOR CLARIFICATION
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COMES NOW Carter Norman Phillips, Defendant, by and through counsel of record Samuel L. Martin, III and files this reply to State's response to motion for clarification.

ARGUMENT

The Defendant is aware of the Court's bar on motions for reconsideration and has taken care to ensure that the order sought is one for clarification. Based on the posture of this case, each of the 4 defendants are situated differently. While they are all being charged the same, the foundation for the charge is different for each defendant. As such, the original order referring to the defendants, and the evidence available to them is in the collective and not specific to distill the application for each individual. The facts pertinent to each defendant are not connected to the relevant law in a manner sufficient to allow this specific Defendant to adequately understand the basis for the ruling. As such, the Defendant seeks clarification of that order with facts specific to his case.

While each individual is a co-defendant, the basis for each criminal charge is based on the actions of each own person. It is not defense counsel's obligation to review the sufficiency of

the statements made by other parties as it would relate to their specific situation, it is imperative that Carter is afforded a fair trial and has a right to be tried within the scope of the rules of law. As such, this motion merely seeks clarification of an overbroad order. The objection from the State and inclusion of the other co-defendants goes to the exact issue that Defense is requesting to be resolved. The *Information* filed outlines that Carter struck/and or hit Terrell with a four-foot wooden cross. *Information* p. 2. There are no other allegations of conduct that need to be defended against based on the filings.

I. The Defendant's interview establishes the required foundation for the affirmative defense of justifiable use of force.

The State argues that the Defendant should be required to testify because the recorded interview with the Defendant is not sufficient to establish the foundation for JUOF. The State does not contend that this interview is not testimony but, instead, bases its argument on the fact that the testimony itself does not reference the conduct the Defendant engaged in with the cross and is currently being prosecuted for. While this is true that the cross and any associated actions are not explicitly referenced, that absence still does not preclude a jury from having sufficient evidence available to support a finding that the Defendant admits and attempts to justify the offense charged.

The State primarily cites to *State v. Marquez*, 2021 MT 263, 406 Mont. 9, 496 P.3d 963, as being analogous. In *Marquez*, the court gave examples of steps the defendant could have taken to “articulate this defense” to the jury including “admit[ting] to the violence *or* point out evidence indicating why his actions were justified.” *State v. Marquez*, 406 Mont. 9, 13 (2021) (emphasis added). The court then proceeds to focus on the fact that the evidence presented by the state supported the argument that the defendant was the aggressor as opposed to merely being a

defending party. This combination prompted the court to hold that the Defendant had not provided enough evidence to support his theory of JUOF and was not entitled to a jury instruction on that theory.

Here, the facts at hand are distinguishable, and the Defense still argues that there is sufficient evidence in the record to support the theory and requests clarification of the original order. An affirmative JUOF defense includes the defense of others. § 45-3-102, MCA. A jury could reasonably conclude from Carter's unchallenged statement to police provided after he was given warnings per *Miranda* about Mr. Boyd being in fear of his life that Carter would be compelled to engage in conduct, including that with the cross, that would constitute a justifiable use of force defense instruction. Similarly, Carter tells Sheriff's deputies what he observed from a distance prior to springing into action. He very clearly explains that his friend, Jesse Boyd, was on the ground and the other man was on top of him. He explains to Officers that he observed his friend getting beat up and engaged to help his friend. As an additional set of statements, Carter explains that while he had a gun on him at the time he engaged in the scuffle, he did not draw his gun because he did not need to do so. This shows both restraint and an active awareness of the situation.

While Carter did not make a direct mention of his own actions with the cross in the testimony with the officer, this was not a question asked of him. As such, the absence of such testimony from this transcript would not preclude a jury from determining that he was involved in the altercation. The people of Madison County are not devoid of common sense.

Further, the transcript provides explicit reference to why Carter thought all of his actions were justified. On pg. 16 of the transcript attached to the State's response, the Defendant states, "I was in fear for my friend's life" and "I think that he was probably in fear for his life" and goes

on to explain that the entire altercation “escalated very quickly.” Transcript at 16, 19. These statements are ample evidence provided by Carter that he believed any actions taken were justified. This is all sufficient evidence for the Defendant to have met the burden of introducing evidence of JUOF and to not only shift the burden to the State to show that Carter Phillips was not justified in his behavior, but to also require a JUOF jury instruction.

II. Conclusion.

Based on the arguments, and the applicable facts and law, the Defendant requests that the Motion for Clarification be granted and the Court provide further ruling and explanations on whether the Defendant, Carter Phillips, is able to assert the affirmative defense of JUOF without providing any further testimony.

RESPECTFULLY SUBMITTED this __11__ day of March, 2024.

/s/ Samuel L. Martin, III

Samuel Martin, III
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Samuel Loveridge Martin, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 03-11-2024:

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