IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0257

STATE OF MONTANA,

Plaintiff and Appellee,

v.

PAUL KERMIT GYSLER,

Defendant and Appellant.

REDACTED BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Robert B. Allison, Presiding

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STATEMENT OF THE ISSUES

1. Whether the State violated Appellant's constitutional right to a speedy trial after institutional delays, including delay caused by legitimate concerns about Appellant's mental fitness.

2. Whether the district court abused its discretion when it instructed the jury that Appellant was not legally entitled to resist an arrest.

3. Whether the district court abused its discretion when it instructed the jury that the justifiable use of force (JUOF) defense was not available to a person who purposely or knowingly provoked the use of force against himself.

STATEMENT OF THE CASE

On July 20, 2021, the State filed an Information charging Paul Kermit Gysler (Gysler) with felony assault on a peace officer in violation of Mont. Code Ann. § 45-5-210(1)(a). (Doc. 3.) The State alleged that on July 17, 2021, at about 2:26 a.m., Whitefish Police Officer Chase Garner (Officer Garner) approached Gysler after he observed him urinating in public. (Doc. 1 at 3.) Gysler became agitated, resisted arrest, and eventually assaulted Officer Garner, causing bodily injury. (*Id.*)

The district court issued a warrant and set bail at $50,000. (Doc. 4.) The same day, defense attorney Toby Cook (Cook) filed a notice of appearance and a discovery request. (Doc. 6.)

Also on July 20, 2021, a justice of the peace released Gysler on conditions, including that he post $10,000 bail, remain law abiding, and he not consume alcoholic beverages. (Doc. 7.) Gysler posted the $10,000 bond on July 22, 2021. (Doc. 10.)

On July 27, 2021, the State filed a petition to revoke Gysler's bond. (Doc. 11.) Police reports attached to the petition documented that on July 26, 2021, Gysler's family contacted law enforcement. (*Id.*, attached reports [Att.] at 2.)[1] Gysler's parents had informed responding officers that Gysler was having a "mental breakdown" and refused to go into treatment, and that they no longer wanted him in their home. (*Id.*)

On July 28, 2021, the district court issued a warrant and set bail at $100,000. (Doc. 12.) On July 29, 2021, Gysler appeared before the district court and clarified that he was represented by a public defender and not Cook. (Doc. 13.) The district

[1] Attached to the 2-page petition to revoke were 11 pages of police reports. The first 8 pages included reports by Officer Levi Read (Att. at 2-3) and Officer Glen Miller (Att. at 6-7.)

court left bail at $100,000. (*Id.*) The court set an omnibus hearing for January 5, 2022, and a jury trial for February 14, 2022. (Doc. 17.)

On August 10, 2021, Cook resumed legal representation of Gysler and filed a notice of substitution of counsel. (Doc. 19.) On September 8, 2021, Cook filed an unopposed motion for the release of Gysler to receive treatment in Billings.[2] (Doc. 20.) On September 9, 2021, the district court granted the motion, releasing Gysler to the custody of his parents. (Doc. 21.)

On December 16, 2021, the State filed another petition to revoke Gysler's release, attaching a two-page police report. (Doc. 22.) On December 13, 2021, a Wolf Point police officer had responded to a motor vehicle accident. (*Id.*, Att. at 1.) At the scene, the officer identified Gysler, who admitted to "driving around [t]own while intoxicated." (*Id.*, Att. at 2.)

The district court issued a warrant and set bail at $50,000. (Doc. 23.) Gysler appeared before the district court on January 4, 2022. (Doc. 24.)

In an omnibus memorandum filed on January 6, 2022, Gysler indicated that he would be relying on the defense of mental disease or defect at the time of the offense. (Doc. 26 at 3.)

[2] According to the presentence investigation, Gysler claimed this was chemical dependency treatment, which he entered in October 2021. (Doc. 82 at 4.) Gysler indicated he was kicked out of treatment after six days. (*Id.*)

On January 24, 2022, the district court set the matter for a jury trial on February 22, 2022. (Doc. 31.) At a February 7, 2022 status hearing, Cook informed the district court that Gysler had terminated his representation. (Doc. 36.)

On February 11, 2022, the district court ordered a competency evaluation of Gysler at the Montana State Hospital (MSH). (Doc. 39.) The district court documented:

> At the status hearing on February 7, 2022, Defendant fired his lawyer, Tobias Cook. Mr. Cook subsequently filed a notice of withdrawal. Thus, Defendant is presently pro se. However, his conduct and behavior at the status hearing gives rise to grave concerns on the part of the Court, as to the Defendant's fitness to proceed, not only from the standpoint that it is obvious that Defendant does not have the skills required to competently defend himself at trial, but that he suffers from mental health issues which additionally deprive him of those skills, as well as the simple ability to comprehend matters before him in general.

(*Id.*)

On February 22, 2022, a public defender (Gallagher) assumed representation of Gysler. (Doc. 41.) On February 28, 2022, Gallagher filed a motion to set aside the fitness issue and set a jury trial. (Doc. 42.) In the motion, Gallagher represented:

> This Defense Attorney attended the [February 7, 2022] Status Hearing and did not see any indication of unfitness. This Defense Attorney has since consulted with Defendant who seems competent and rational. Defendant and his counsel further assert that demanding a trial, arguing that police be punished for lying, and that the Deputy County Attorney be punished for supporting a bad prosecution in order to

> cover up police brutality also does not make someone unfit. Perhaps, it makes one brave or noble but not unfit.

(*Id.*)

On April 28, 2022, Gallagher indicated he had "gotten a doctor" to examine Gysler. (4/28/22 Tr. at 7.) Gallagher identified the doctor as "Dr. River." (*Id.* at 11.) Dr. River was scheduled to meet with Gysler on May 6, 2022. (*Id.* at 12.) The district court indicated it was willing to vacate the order for a competency evaluation at MSH if Dr. River found Gysler fit to proceed. (*Id.*) However, neither Dr. River nor his examination of Gysler were mentioned again for the duration of the proceedings.

[redacted]

On July 26, 2022, Gysler filed an unopposed motion to set a jury trial "as soon as possible." (Doc. 46.) The district court ordered a jury trial for September 12, 2022. (Doc. 47.)

On August 10, 2022, Gysler posted the $50,000 bond. (Doc. 50.) Prior to his release, the district court set conditions and reminded Gysler that his trial was set to begin on September 12, 2022. (Doc. 51.) The district court warned Gysler that since his trial was third in priority, there was a possibility that it could be rescheduled to the December jury trial term. (*Id.*)

On September 9, 2022, the State moved to vacate the September 12, 2022 jury trial setting and set the matter for the next available term. (Doc. 53.) The State believed that a case with higher priority was going proceed to trial on September 12, 2022, and wanted to release its officers, who were scheduled to be out of town for training. (*Id.*) The district court granted the motion. (Doc. 55.) The court rescheduled the jury trial for December 12, 2022. (Doc. 60.)

On December 9, 2022, Gysler moved to dismiss the charge based on a violation of his right to a speedy trial. (Doc. 66.) On December 12, 2022, the State filed its response (Doc. 67), and the district court filed its order denying Gysler's motion to dismiss (Doc. 68).

The trial began on December 12, 2022. (Doc. 69.) The jury convicted Gysler on December 13, 2022. (Doc. 71.) The district court ordered a presentence investigation. (*Id.* at 2.)

At the March 9, 2023 sentencing hearing, the district court sentenced Gysler to 5 years to the Department of Corrections, and suspended 3 of those years. (Doc. 86.) The district court ordered jail credit of 357 days and recommended that Gysler be screened for mental health and chemical dependency treatment programs (*Id.* at 2).

STATEMENT OF THE FACTS

I. Events relevant to the district court's order for a competency evaluation

A. Violations of conditions of release

Prior to ordering the competency evaluation on February 11, 2022, the district court had issued two warrants for Gysler, both based on erratic criminal behavior that violated his conditions of release. (Docs. 12, 23.)

The district court issued the first warrant on July 28, 2021. (Doc. 12.) The police reports attached to the State's petition to revoke revealed that on July 27, 2021, Lake County deputies responded to the home of Gysler's parents. (Doc 11, Att. at 2.) Gysler's mother informed the deputies that they had bonded Gysler out of jail to get him some mental health help. (*Id.*)

Gysler's father told the deputies that Gysler had been "having a mental breakdown," and refused to go into treatment. (*Id.*) Gysler had been verbally abusive to his parents and was confrontational with police. (*Id.*, Att. at 3.) Eventually, the deputies had to chase Gysler on foot and use pepper spray to subdue him. (*Id.*)

On December 16, 2021, the district court issued another warrant for Gysler's arrest for violating his conditions of release. (Doc. 23.) On December 13, 2021, a Wolf Point police officer had responded to a vehicle accident and identified Gysler, who was drinking an alcoholic beverage and arguing with two other males. (Doc. 22, Att. at 2.) Gysler admitted to driving while intoxicated. (*Id.*) He "began to yell and take his clothes off while sitting." (*Id.*)

After his arrest, Gysler began kicking the partition in the back of the officer's squad vehicle. (*Id.*) Notably, the officer documented, "Gysler reported he assaulted a previous officer in another jurisdiction and wanted to do the same to Officer Jones and myself." (*Id.*)

B. Gysler's behavior in court

At a February 7, 2022 status hearing, Gysler fired Cook as his attorney. (Doc. 36.) After reading a bizarre statement into the record, Gysler added,

> I thought under the status hearing that it was needed that whether we needed to continue to that trial because of these conflicts. And I think that there is—it could be perjury if [Officer Garner's]

> statements with—the prosecutor was present during [Officer Garner's] statements, the prosecutor did watch the cameras.
>
> And so moving this further puts her job at risk for perjury because she's seen the video, these are conflicts of interest that are in the video, she was there for the interview. We don't need to go to trial, those—these—this reasonable doubt should be enough.

(2/7/22 Tr. at 6.)

Citing Gysler's behavior in court and his initial notice to rely on the defense of mental disease or defect, the State expressed "serious concern" about whether Gysler was fit to proceed to trial. (*Id.* at 8.)

The district court responded, "Well, a defendant does have the right to represent himself." (*Id*.) After informing Gysler he had a right to counsel, but also the right to represent himself, the district court added, "[I]t's possible that the State may petition for a competency evaluation." (*Id.* at 9.)

Although the State did not file a petition, on February 11, 2022, the district court ordered a competency evaluation for Gysler. (Doc. 39.) The court noted, "[Gysler] was arrested but subsequently released on posted bond and conditions on July 22, 2021, but promptly violated his conditions in disturbing fashion on

/ / /

July 26, 2021, and was returned to custody where he has remained since."[3] (*Id.*) The district court also vacated the February 22, 2022 jury trial date. (*Id.*)

On February 28, 2022, Gysler's new attorney, Gallagher, filed a motion to set aside the fitness issue and asked the district court to schedule a jury trial as soon as possible. (Doc. 42.)

On April 28, 2022, the district court held a hearing and denied that motion. (Doc. 44.) The district court indicated that at the previous hearing in February,

> [Gysler] struck the Court as not tracking, as being confused, muddled, getting into discussion of issues that probably were contrary to his best interest while at the same time firing his attorney, Mr. Cook. To the point that I became, and I think [the State] might have too, although I didn't discuss it with her, but I believe that there was a mental competency issue . . . .

(4/28/22 Tr. at 5-6.)

The State shared the district court's concerns regarding Gysler's fitness to proceed. (*Id.* at 6.) The State conveyed that MSH anticipated Gysler would be transported there for the fitness evaluation within the next two to four weeks. (*Id.* at 7.)

Gallagher stood by his motion and represented that he had obtained an independent doctor to meet with Gysler "very soon so we can show the Court that

[3] The district court did not reference the December 13, 2021 motor vehicle accident in Wolf Point, where Gysler admitted to driving while intoxicated, spontaneously started removing his clothes, and bragged about his prior assault on a peace officer. (*See* Doc. 22.)

he is indeed fit." (*Id.* at 7-8.) Gallagher asked for an expedited trial "in the next two weeks." (*Id.* at 10.) He identified the doctor as "Dr. River," and informed the district court that he was scheduled to examine Gysler on May 6, 2022. (*Id.* at 11-12.)

While repeatedly interrupting the district court, Gysler stated, "I have multiple kites and grievances as I've had multiple mental health therapists over the years and I gave them the phone numbers at the jail to contact my mental therapists." (*Id.* at 10.)

Eventually, the district court responded, "Hold it. Please, please don't say anything. You're causing me to wish to reaffirm my earlier order, so you might want to just sit tight for now." (*Id.* at 11.) The district court then indicated to Gallagher that if Dr. River found Gysler fit to proceed, "maybe I'd back out of that February 11[, 2022] order." (*Id.*)

Gysler then instigated the following exchange:

> MR. GYSLER: About this Status Hearing, about the last two months how you have—you put yourself at the position of vacating my right to a speedy trial. Now, you could have contested my mental fitness in the third month after the charges, but you decided to contest it in the seventh month.
>
> THE COURT: That's because you started talking.
>
> MR. GYSLER: And I have free speech. You do not get to tell—
>
> THE COURT: You also have the right to remain silent.

> MR. GYSLER: You do not get to say who—can I make my statement? Am I allow[ed] to represent my side of things?

(*Id.* at 13-14.)

The district court acceded and Gysler went on a lengthy rant, none of which would tend to alleviate concerns about his mental fitness. (*Id.* at 14-19.) Gysler's comments affirmed that the district court's concerns about his mental fitness were shared by others in the legal community. Gysler stated, "While I was detained in Roosevelt County Jail, they had a psychiatric evaluation done via video conference and I passed through Hinsdale." (*Id*. at 16.)

After being told that he would be allowed about 60 additional seconds to complete his statement, Gysler continued,

> I make a Motion to Dismiss. Causes include, but not limited to, right to a speedy trial, collusion and racketeering, coercion, obstruction of justice, prejudice, denial of right to represent self, libel, pretextual arrest, false arrest and imprisonment, abuse of process, malicious prosecution—
>
> THE COURT: Okay.
>
> MR. GYSLER: —entrapment—
>
> THE COURT: That's enough.
>
> MR. GYSLER: false—I got a—I can keep on speaking here because I only have one more page. Police misconduct, escalation, and brutality. Objections to my release will be viewed through the scope of foul play and investigated. My case is damaging to the police state nationally.

(*Id.* at 19.)

The district court denied Gysler's motion, and informed Gallagher that "if you wish to go ahead and make the arrangements to have Dr. River[] see him, provide that to counsel and the Court if you see fit. Then we will proceed accordingly." (*Id.* at 20.) Gallagher responded, "We'll do it, Judge. Thank you." Neither Dr. River nor his examination of Gysler's fitness were mentioned again.

II. The trial

Officer Garner was originally from Kalispell and had been a member of the Whitefish Police Department for about eight and a half years. (12/12/22-12/13/22 Tr. [Trial Tr.] at 165.) Prior to that, he had served five years in the U.S. Marine Corps. (*Id.*)

On July 17, 2021, Officer Garner was working an overtime shift that lasted until 3 a.m., due to a concert. (*Id.* at 167.) At about 2:30 a.m., numerous people had congregated around a food truck in downtown Whitefish. (*Id.* at 168.) At that time, Officer Garner observed Gysler urinating on a bush at the northeast corner of the parking garage. (*Id.* at 169.) He later testified that Gysler was "[v]ery standoffish" when he approached him and asked for his identification. (*Id.* at 170.) Gysler would only identify himself by his first name. (*Id.* at 170-71.)

Almost immediately, Gysler began to back away from Officer Garner, raised his voice, and questioned Officer Garner's intentions. (*Id.* at 171.) Gysler appeared to be "ramping up emotionally." (*Id.*) Officer Garner directed Gysler to place his hands behind his back, but Gysler refused and began to physically resist Officer Garner. (*Id.*)

When asked why he directed Gysler to place his hands behind his back, Officer Garner explained:

> I could tell he was getting agitated, and he started to tense his muscles. And there's several things that could happen a lot of times when subjects do that. They attempt to flee the scene, they attempt to fight right there on the scene. So in order to avoid any further escalation I [tried] to put his hands behind his back so he couldn't do that.

(*Id.* at 171-72.)

The State introduced Officer Garner's body worn camera (BWC) recording into evidence as State's Exhibit 1 and published it to the jury. (*Id.* at 174.) State's Exhibit 1 captured the following conversation:

> OFFICER: Hey partner, come here. [Officer Garner exits squad car] Do you think that was a good idea to piss there?
>
> GYSLER: Well, it was a bush. And I think they drink water.
>
> OFFICER: Okay, do you got your ID on you?
>
> GYSLER: I don't.
>
> OFFICER: Okay.

GYSLER Is there a problem?

OFFICER: Yeah.

GYSLER: What's the problem?

OFFICER: You were urinating in public.

GYSLER: You know, I, I, I checked the situation, and I saw that there was no observers, and then I . . .

OFFICER: Dispatch [inaubible] I'll be out with an intoxicated pedestrian. Parking garage. Alright, so do you got your ID on ya?

GYSLER: No I don't. Like, I didn't, I didn't know that I was like, having a problem. I mean it's, it's, it's grass.

OFFICER: Alright, what's your name?

GYSLER: [Backing up] Uh, Paul. I don't, I don't, I don't like this situation.

OFFICER: Well, Paul, I . . .

GYSLER: Like you were watching me like take a piss? [Raises voice] Or did you have your lights on?

OFFICER: [Reaches for Gysler] Alright, go ahead and put your hands behind your—

GYSLER: [Screaming] No, stop! Stop! Don't touch me! Don't touch me! Don't touch me! Why are you touching me?!

OFFICER: Paul, stop.

GYSLER: Why are you touching me?!

OFFICER: You're under arrest.

GYSLER: Why are you touching me?!

OFFICER: You're under arrest.

GYSLER: Why are you touching me?!

OFFICER: Could I get another unit here?

GYSLER: Why are you touching me?!

OFFICER: Stop it.

GYSLER: Why are you touching me?!

(State's Ex. 1.) Officer Garner's BWC accidentally turned off at that point. (Trial Tr. at 174.) While he was screaming, Gysler appeared to forcefully push and/or slap Officer Garner's hands away. (State's Ex. 1.)

As he was attempting to place handcuffs on Gysler, Officer Garner was able to take him to the ground. (Trial Tr. at 174.) Officer Garner testified, "[W]hen after we went to the ground I was on top of him, and then the next thing I knew he was on top of me and I was staring up at the ceiling of the parking garage." (*Id.* at 175.)

Officer Garner was concerned that Gysler was going to get possession of his firearm. (*Id.* at 176.) Officer Garner was able to remove his taser and administered a "drive stun" to Gysler's rib cage. (*Id.* at 177.) Gysler then "became compliant," and a citizen bystander removed Gysler from Officer Garner. (*Id.* at 178.)

Officer Garner obtained surveillance video of the incident from the parking garage. (*Id.* at 183.) The State introduced it into evidence as State's Exhibit 2. (*Id.* at 184.) After publishing the first 3 minutes and 24 seconds the State

republished various segments, and asked Officer Garner explain what was occurring.[4] (*Id.* at 185-89.)

Officer Garner testified that by the time his BWC turned off, it appeared that he and Gysler were visible on State's Exhibit 2. (*Id.* at 185-86.) Once he realized he could not roll Gysler off of him, Officer Garner's priority became making sure his firearm was secured. (*Id.* at 186.) When asked if he was scared at that point, Officer Garner responded, "Yes, absolutely." (*Id.*)

At about 45 seconds into State's Exhibit 2, Gysler appeared to quit moving. (*Id.* at 187.) Officer Garner explained that this occurred when he administered the drive stun, and Gysler's response of going limp was consistent with "the typical reaction" when a suspect is tased. (*Id.*)

After the drive stun, Officer Garner continued to instruct Gysler to turn around and place his hands behind his back. (*Id.* at 188.) Gysler did not comply and continued to scream. (*Id.*)

At 2 minutes and 22 seconds into State's Exhibit 2, two additional officers arrive and assist Officer Garner in attempting to place Gysler in handcuffs. (*Id.*) Officer Garner testified that it took a great deal of strength and force by all three officers to get the handcuffs onto Gysler. (*Id.*)

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[4] By 3 minutes and 24 seconds of the garage surveillance, which did not record audio, officers had handcuffed Gysler and placed him in Officer Garner's squad car, which was out of the camera's view. (State's Ex. 2.)

Gysler's assault caused Officer Garner physical pain. (*Id.* at 190.) The State introduced Exhibits 3, 4, and 5 into evidence. (*Id.*) These were photographs of the injuries Officer Garner sustained during the fight with Gysler. (*Id.*)

Finally, the State asked Officer Garner if he had wanted to engage in a physical fight with Gysler. (*Id.* at 193.) Officer Garner responded, "That's the last thing I wanted to do. No." (*Id.*)

The State's next witness was Sergeant Tim Schuch (Sergeant Schuch). (*Id*. at 286.) The State introduced Sergeant Schuch's BWC recording of Gysler's arrest as State's Exhibit 6. (*Id.* at 294-95.)

Following Sergeant Schuch's testimony, Samuel Johnson (Johnson), a cell tower technician from Eureka and the civilian who had pulled Gysler off of Officer Garner, was asked to describe Gysler's demeanor. (*Id*. at 315, 321.) Johnson said he was, "Just drunk and violent a little bit." (*Id.* at 322.) After Johnson's testimony, the State rested. (*Id.* at 325.)

Gallagher moved for a directed verdict and argued that he had met the burden to warrant an instruction on self-defense. (*Id.* at 326-27.) The district court denied the motion for a directed verdict and determined:

> With respect to the justifiable use of force instructions, I don't feel they are justified at this point in time. I feel that—I'm not saying the Defendant has to testify, but I do believe the Defense has to produce some evidence that would trigger those instructions. And I

> don't think you get around 45-3-108 at this point in time, so I think more is needed.

(*Id.* at 328.)

Gysler testified for the defense. (*Id.* at 336.) Gysler explained his thought process for urinating in public, stating, "You're in Montana, and you can pee here in Montana because there's no restrooms available at 2:30 in the morning." (*Id.* at 339.)

Gysler described his initial interaction with Officer Garner:

> I didn't want to touch anyone, I didn't want anyone to touch me, and I just didn't want to deal with anyone. I was going home to go to bed, not to continue to talk to someone.
>
> And this car just rolls up just super aggressive—and I know what aggressive driving is, that's what I do when I travel with the [remote control] cars, I run that car aggressively. So I know when he's coming in at apex (indicating), and opens the door before he even stops, you know, I hear the door click, click, and then he slams on brakes, rams it in the parking—like I can hear all those sounds and know exactly what they are.
>
> And boom, he pops out and he's already fronting me. You know, I'm an experienced wrestler from high school, like I know when someone's coming at me with their demeanor saying, hey, I'm coming at you, we're going to get physical. Right from the start I knew that's what his idea was. And I let him, I let him come at me.

(*Id.* at 342.)

When asked about the physical contact that caused him to scream, Gysler explained:

> It was something that I do understand about the legal system, and other states call it all the time, stand your ground. You can stand your ground in self-defense if like, hey, if someone is coming at you, and they're going to try to rough you up, you get to use force against them. There's states that that's a regular thing, like Texas, stand your ground, doesn't matter who it is.

(*Id.* at 346-47.)

During his cross-examination, Gysler described the wrestling move he used on Officer Garner as a fireman's carry. (*Id.* at 364.) He explained what happened after he executed the fireman's carry:

> I was—my body just automatically went towards what's called stacking. And you roll them over on top of their shoulders for a pin scenario, and if I would have got him in that spot it would have totally disabled him and I would have been safe.
>
> Then I thought, like, halfway through it, you know, that's a bad idea, let's just hold him down on the ground and not do the sort of submission-type wrestling pins that is our favorite thing to do with the new freshmen wrestlers.

(*Id.* at 366.)

Gysler added:

> So I really am wonderful at—I have a really good skill at being emotional, and singing my karaoke songs, and wrestling on the mat, and so even though I'm trying to be as scientific and literate as I can on the scenario, when somebody comes at me, being from the reservation, the gloves are off; and, you know, sorry for what I did while I was tired, and late at night, and someone throwing me. So I'm communicating with that guy.

(*Id.* at 366-67.)

Gysler's cross-examination ended as follows:

> Q. Do you think you could have just given him your name, looking back?
>
> A. Oh, I'm sure I could have done a lot of different things if I wasn't tired and exhausted and just wanting to go home.
>
> Q. Do you agree with me that you assaulted Officer Garner?
>
> A. No, I didn't assault an officer.
>
> Q. Okay. Thank you—
>
> A. I stood my ground.

(*Id.* at 376.)

After the testimony was complete, the parties agreed upon the jury instructions for both the definition and the elements of the offense. (*Id.* at 389.) The district court granted Gysler's motion to instruct the jury on JUOF, reasoning that Gysler "did testify at some length about [a] forceful act." (*Id.* at 393.)

Over Gysler's objection, the district court gave Jury Instruction 25, which stated:

> The use of force in defense of a person is not available to a person who purposely or knowingly provokes the use of force against himself unless such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant.

(Trial Tr. at 457-58; Appellant's App. C.) Gysler also objected to Jury Instruction 26, which read:

> A person is not authorized to use force to resist an arrest that the person knows is being made by a peace officer, even if the person believes that the arrest is unlawful and the arrest in fact is unlawful.

(Trial Tr. at 458; App. C.)

The jury rejected Gysler's claim of self-defense and found him guilty of assault on a peace officer. (Trial Tr. at 402.)

SUMMARY OF THE ARGUMENT

The district court correctly denied Gysler's motion to dismiss when it concluded that the State had not violated Gysler's constitutional right to a speedy trial. The district court properly determined that the delays in this case were mostly institutional and attributable to legitimate concerns about Gysler's mental fitness to proceed to trial.

Gysler was not prejudiced by the delays. Rather, his defense was disproven by overwhelming evidence of his guilt. Moreover, Gysler's recitation of the facts mischaracterizes the evidence at trial, and his arguments are couched in subjective post-trial characterizations that are not consistent with the record.

The district court did not abuse its discretion when it instructed the jury that a person is not authorized to use force to resist an arrest and that JUOF is not

available to a person who knowingly provokes the use of force against himself. The instructions were accurate statements of law that were relevant to the facts of this case. Even if the instructions were given in error, they did not prejudicially affect Gysler's substantial rights. The jury determined there was no credible evidence that Officer Garner acted unlawfully.

ARGUMENT

I. Standard of review

This Court reviews the denial of a motion to dismiss for lack of speedy trial to determine whether the district court's findings of fact are clearly erroneous. *State v. Heath*, 2018 MT 318, ¶ 11, 394 Mont. 14, 432 P.3d 141. Whether factual circumstances establish a speedy trial violation presents a question of law, which this Court reviews de novo. *Id.*

This Court reviews a district court's decisions regarding jury instructions for an abuse of discretion. *State v. Wienke*, 2022 MT 116, ¶ 16, 409 Mont. 52, 511 P.3d 990. To constitute reversible error, any mistake in instructing the jury must prejudicially affect the defendant's substantial rights. *State v. Ragner*, 2022 MT 211, ¶ 13, 410 Mont. 361, 521 P.3d 29 (citation omitted).

II. The district court correctly denied Gysler's motion to dismiss for a violation of his constitutional right to a speedy trial.

When a defendant alleges his right to a speedy trial has been violated in a felony case, Montana courts apply the four-factor speedy trial analysis set forth in *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815. These four factors are: (1) the length of the delay; (2) the reasons for the delay; (3) the accused's response to the delay; and (4) prejudice to the accused as a result of the delay. *State v. Burnette*, 2022 MT 10, ¶ 17, 407 Mont. 189, 502 P.3d 703 (citing *Ariegwe*, ¶ 112).

A. Factor one—length of delay

Delay in bringing a defendant to trial is measured from the date of formal accusation to the date of trial. *Ariegwe*, ¶¶ 43, 113. Relevant to a speedy trial analysis is the "extent to which the delay stretches beyond" the 200-day trigger threshold. *Ariegwe*, ¶¶ 44, 107. "[T]he presumption that pretrial delay has prejudiced the accused intensifies over time, and . . . the State's burden under Factor Two to justify the delay likewise increases with the length of the delay." *Ariegwe*, ¶ 62.

There is no set standard as to what constitutes a "long extension" past the trigger date. For example, a 278-day delay in *State v. Billman*, 2008 MT 326, 346 Mont. 118, 194 P.3d 58, amounted to a speedy trial violation, while a 924-day delay in *State v. Couture*, 2010 MT 201, 357 Mont. 398, 240 P.3d 987, did not.

These variations occur because the right to a speedy trial is "necessarily relative" and "depend[ent] upon circumstances." *State v. Morrisey*, 2009 MT 201, ¶ 53, 351 Mont. 144, 214 P.3d 708.

Here, the parties agree that the length of the delay was 511 days. (Appellant's Br. at 16.) This is measured from Gysler's July 17, 2021 arrest to his December 12, 2022 trial date. The delay was 311 days past the trigger date, meriting further analysis. However, the overwhelming majority of the delay in this case was institutional and caused by legitimate concerns about Gysler's mental fitness.

B. Factor two—reasons for delay

This factor requires the court to first "identify each period of delay in bringing the accused to trial." *Burnett*, ¶ 21. Second, each period of delay must be attributed to either the defense or the State. *Id*. "Finally, after identifying and assigning each period of delay, [the court] assign[s] weight to each delay based on the specific cause and motive for the delay." *Id.*

This Court has identified four potential causes of delay, along with a corresponding culpability scale. *Burnett*, ¶ 22. Delay caused by the prosecution in bad faith weighs most heavily against the State. *Id.* "Delay caused by negligence or lack of diligence falls in the middle," though it is still an "unacceptable" reason for delay. *Id.* Institutional delay, which is inherent in the criminal justice system, is

attributable to the State, but weighs less heavily. *Id.* "Finally, 'valid' reasons for delay, such as a missing witness, are weighed least heavily against the State." *Id.*

The district court's findings are not "clearly erroneous" if they are "supported by substantial credible evidence" that the court did not misapprehend. *State v. Chambers*, 2020 MT 271, ¶ 6, 402 Mont. 25, 474 P.3d 1268. "Substantial evidence is evidence that a reasonable person might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance." *State v. Velasquez*, 2016 MT 216, ¶ 32, 384 Mont. 447, 377 P.3d 1235 (citation omitted).

1. First period: 207 days (7/19/21 to 2/11/22)

The district court identified this period as "the time from the day of charging, July 19, 2022, to the Court's order committing Defendant to the State hospital on February 11, 2022, three days before the [first] trial setting." (Doc. 68 at 2.) The district court determined this was institutional delay "beyond the control of the State." (*Id.*) Gysler does not contend otherwise. (*See* Appellant's Br. at 19.)

2. Second period: 213 days (2/11/22 to 9/12/22)

This delay was due to legitimate concerns about Gysler's mental fitness to proceed to trial. The district court broke this period into two segments: 140 days from February 11, 2022, when it ordered the competency evaluation at MSH

(Doc. 39), until Gysler returned to the Flathead County Detention Center (FCDC).[5] (Doc. 68 at 2-3.) The district court considered the additional 73 days from when Gysler returned to FCDC until his September 12, 2022 trial to also be part of this period. (*Id.*) The district court noted that, when it was scheduled, the September 12, 2022 trial setting was its next available date. (*Id.* at 3.)

This Court has stated, "The trial court has a *sua sponte* duty to order a fitness determination 'if the court has reasonable grounds for concluding that there is a good faith doubt as to a defendant's competency.'" *State v. White*, 2014 MT 335, ¶ 18, 377 Mont. 332, 339 P.3d 1243 (quoting *State v. Bartlett*, 282 Mont. 114, 120, 935 P.2d 1114, 1117 (1997)). Further,

> if the issue of the defendant's fitness to proceed is raised by the court, prosecution, or defense counsel, *the court shall appoint* at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse . . . to examine and report upon the defendant's mental condition.

Mont. Code Ann. § 46-14-202(1) (emphasis added). Interpreting this statute, this Court has stated:

> Section 46-14-202, MCA, does not require that the defendant must agree to a mental examination. If one of the listed persons files a written motion, or if the issue of the defendant's fitness to proceed is raised by one of the listed persons, the court "*shall*" arrange for such an examination. The word "shall" is compulsory.

[5] Both Gysler and the State agreed that Gysler was returned to FCDC on July 1, 2022. (Doc. 66 at 2; Doc. 67 at 5.)

State v. Bartlett, 271 Mont. 429, 432, 898 P.2d 98, 100 (1995) (emphasis and quotations in original).

In other words, when the district court ordered an evaluation of Gysler's mental fitness, it did not have a choice. The State first voiced concerns about Gysler's mental fitness on February 7, 2022. (2/7/22 Tr. at 7.) At the April 28, 2022 hearing, the State indicated it had spoken with Gysler's family members, who shared those concerns. (4/28/22 Tr. at 6; *see also*, Doc. 11, Att. at 2-3.)

Further, the district court had issued two warrants for Gysler's arrest based on his bizarre, erratic, and illegal behavior. (Docs. 12, 23.) The district court had multiple personal interactions with Gysler, and found that "[Gysler] had more control over this period of delay by engaging in inappropriate behavior in order to control the Court proceedings to serve his narcissistic purposes." (Doc. 68 at 3.)

In its response to Gysler's motion to dismiss, the State revealed that Gysler's previous lawyer, Cook, had e-mailed the State on February 1, 2022, writing, "I am not confident that [Gysler] is fit to proceed (though he did seem better this morning)." (Doc. 67, attached State's Ex. 1.)

The district court had reasonable grounds to question Gysler's fitness to proceed and was legally required to order a competency evaluation. The State had no authority to control that sequence of events. Therefore, the district court

correctly found that this period of time was institutional delay that was "beyond the control of the State." (*Id.* at 3.)

3. Third period: 91 days (9/12/22 to 12/12/22)

With respect to this segment of delay, the district court found:

> The final period of delay from September 12, 2022, until the trial date of December 12, 2022, is 91 days. The State did request that the Court vacate[] the September 12, 2022, trial setting but it was because this matter was a second setting and it was believed the first setting, *State v. Moskaloff*, would go to trial. *Moskaloff* ultimately did not go to trial but there was a genuine belief that it would at the time the State made its motion and the officers involved in this case wanted to travel for training if this matter was not going to trial. The fact that this matter was a second setting for trial is institutional delay and *the State's motion to take this matter out of the September 12, 2022, term was not an intentional attempt to delay.*

(Doc. 68 at 3 (emphasis added).)

The district court, presumably familiar with its own calendar, shared the State's "genuine belief" that the *Moskaloff* case would proceed to trial. (*Id.*) During this 91-day delay, Gysler was not incarcerated, as he had posted the $50,000 bond on August 10, 2022. (Doc. 50.) Further, Gysler had been warned more than a month in advance that his case was "priority three" on the September trial calendar, so there was a possibility that his trial would be moved to December. (Doc. 51.)

While this brief delay is attributable to the State, there is no credible evidence to support Gysler's assertion that this was "intentional delay." (Appellant's Br. at 21.)

C. Factor three—Gysler's response to the delay

A court should consider a defendant's various responses to delays "based on the surrounding circumstances—such as the timeliness, persistence, and sincerity of the objections, [and] the reasons for [any] acquiescence." *Ariegwe*, ¶¶ 80, 85, 110. "[W]hether the accused actually wanted to be brought to trial promptly is an 'important' consideration in ascertaining whether his or her right to a speedy trial has been violated." *Ariegwe*, ¶ 76.

Gysler alleges that he "complained throughout the 511-day delay that his constitutional right to a speedy trial was being violated." (Appellant's Br. at 22). The record demonstrates otherwise.

Gysler first moved to dismiss based on a violation of his speedy trial rights on April 28, 2022. (4/28/22 Tr. at 19.) This was 283 days after he was charged, and couched in a nonsensical rant that included a motion to dismiss based upon "collusion and racketeering, coercion, obstruction of justice, prejudice, denial of right to present self, libel, pretextual arrest, false arrest and imprisonment, abuse of process, malicious prosecution . . . [and] entrapment . . . ." (*Id.*)

On December 9, 2022, the Friday before his jury trial began, Gysler filed a written motion to dismiss for lack of speedy trial. (Doc. 66.) Filing such a motion "in the late afternoon" (Doc. 68 at 3) on the Friday prior to trial would appear to be inviting another delay, and not consistent with a genuine concern with proceeding to trial on the following Monday. The district court noted the odd timing of this motion, stating, "the Defendant could have asserted the right at some earlier time permitting the substance of the motion to be fully addressed." (*Id.*)

D. Factor four—prejudice resulting from delay

When evaluating an accused's claim of prejudice, courts consider three sub-factors: (1) oppressive pretrial incarceration; (2) unduly prolonged disruption of the defendant's life and/or aggravated anxiety and concern; and (3) whether the ability to present an effective defense has been impaired. *Ariegwe*, ¶¶ 88, 111.

1. Pretrial Incarceration

"The right to a speedy trial is not intended to prevent all pretrial incarceration. It is designed to prevent oppressive pretrial incarceration." *State v. Spang*, 2007 MT 54, ¶ 14, 336 Mont. 184, 153 P.3d 646 (citations omitted). When considering whether pretrial incarceration was oppressive, this Court considers the duration, the "complexity of the charged offense, *any misconduct by the accused directly related to the pretrial incarceration*, and conditions of the incarceration."

State v. Kurtz, 2019 MT 127, ¶ 32, 396 Mont. 80, 443 P.3d 479 (citing *Ariegwe*, ¶ 113 (emphasis added).)

Here, the district court found that "[Gysler] was given two opportunities to remain in the community on pretrial conditions of supervision and both times was found to have violated those conditions by engaging in new criminal conduct." (Doc. 68 at 3.) There was substantial credible evidence in the record to support this finding. (*See* Docs. 11, 22.)

Gysler's pretrial incarceration was necessary to protect Gysler, his family, and the community at large. Gysler has not cited any evidence to support the contention that his pretrial incarceration was oppressive.

2. Anxiety/concern

This Court has identified deprivation of employment or income, public scorn, damage to reputation, curtailment of associations, and anxiety/stress as means by which unresolved charges may disrupt a defendant's life. *Ariegwe*, ¶¶ 96, 113. The critical inquiry is "whether the delay in bringing the accused to trial has unduly prolonged the disruption of his or her life or aggravated the anxiety and concern that are inherent in being accused of a crime." *Id.* ¶ 97.

There is no evidence that Gysler's pretrial incarceration resulted in any of the factors identified as unduly disruptive or aggravating in *Ariegwe*. As the district court noted, Gysler told MSH staff that he "intentionally sought to be rearrested

after his initial release because it would make him safer." (Doc. 68 at 3; *see also* Doc. 45 at 3.)

3. Impairment of defense

The third type of interest protected under Factor Four of the *Ariegwe* test is in "limit[ing] the possibility that the defense will be impaired by dimming memories and loss of exculpatory evidence." *Ariegwe*, ¶ 88. "The impairment of the accused's defense from a speedy trial violation constitutes the most important factor in our prejudice analysis." *State v. Steigelman*, 2013 MT 153, ¶ 29, 370 Mont. 352, 302 P.3d 396 (citing *Doggett v. United States*, 505 U.S. 647, 654 (1992)).

This incident was captured on BWC and surveillance video. Gysler can point to no loss of evidence, nor can he claim that the delay prejudiced his claim of JUOF. Gysler was the only witness to testify that he acted in self-defense, and he had no issues with his recollection of standing his ground and executing a fireman's carry on Officer Garner.

Gysler cites to no evidence that his defense was impaired by delays because there is none. The district court correctly found, "There is no indication or evidence that any evidence has been lost or impaired." (Doc. 68 at 3.)

E. Balancing

The above "factors must be considered together and with such other circumstances as may be relevant." *Ariegwe*, ¶ 102. "[E]ach factor's significance will vary from case to case, and a court assessing a speedy trial claim must weigh the four factors accordingly—i.e., based on the facts and circumstances of the particular case." *Ariegwe*, ¶ 105.

Here, the district court determined:

> Upon consideration and balancing of all the relevant factors the Court determines that Defendant's right to a speedy trial has not been violated. The majority of delay was institutional, and *no delay was due to bad faith or a lack of diligence on behalf of the State*. The Defendant has suffered not prejudice. His general claim of pre-trial incarceration prejudice is an insufficient basis to dismiss a violent felony charge.

(Doc. 68 at 3 (emphasis added).)

Finally, this Court should decline to entertain Gysler's argument that the fitness evaluation violated his "privacy rights and right to dignity." (Appellant's Br. at 29.) He did not make this argument before the district court. Gysler's objection to the mental health evaluation was grounded solely on his attorney's assertion that Gysler seemed "competent and rational." (Doc. 42 at 1.)

"The rule is well established that this Court will not address an issue raised for the first time on appeal." *State v. Martinez*, 2003 MT 65, ¶ 17, 314 Mont. 434, 67 P.3d 207. Allowing a party to raise new arguments or change its legal theory on

appeal is "fundamentally unfair" to the district court, which would be faulted for failing to rule on an issue it never had the opportunity to consider. *Id*.

III. The district court did not abuse its discretion when it accurately instructed the jury on resisting arrest and JUOF.

A. Instruction No. 26, resisting arrest

Instruction No. 26 stated, "A person is not authorized to use force to resist an arrest that the person knows is being made by a peace officer, even if the person believes that the arrest is unlawful and the arrest in fact is unlawful." (App. C; Trial Tr. at 458.) This is an accurate paraphrasing of Mont. Code Ann. § 45-3-108. Interpreting this statute, this Court has stated, "[the statute's] purpose and effect are evident from the plain language of the statute. An individual is not entitled to resist regardless of the legality of an arrest." *State v. Laughlin*, 281 Mont. 179, 182, 933 P.2d 813, 815 (1997).

Gysler claims that "his actions against Garner were not to resist arrest." (Appellant's Br. at 35.) This assertion does not align with the evidence.

When Officer Garner observed a "giant red flag" (Trial Tr. at 206) in Gysler's escalating behavior and instructed him to place his hands behind his back, it is axiomatic that there was only one legal way for Gysler to respond. However, Gysler had already determined that "the gloves [were] off" (*id*. at 367), and later testified, "I stood my ground" (*id.* at 376).

BWC and surveillance video demonstrated unequivocally that Gysler intended to resist arrest and did resist arrest, which led directly to his assault on Officer Garner. (*See* State's Exs. 1, 2, and 6.) This instruction was legally accurate and relevant to the facts of this case.

This Court addressed the same jury instruction under similar circumstances in *State v. Courville*, 2002 MT 330, 313 Mont. 218, 61 P.3d 749. In affirming the instruction for the charge of assault on a peace officer, this Court reasoned, "Where the claim is that a peace officer used unlawful force in executing an arrest and the person subject to the restraint reasonably believed that he must defend himself against the imminent use of this unlawful force, then the resolution of those conflicting claims is properly left to a jury." *Courville*, ¶ 39.

This Court continued:

> As this case illustrates, the claim of self defense in justification of one's conduct is always considered within context and circumstances of the specific event at issue so that the fact-finder may determine whether the accused's belief is reasonable. In this case, Courville's testimony and affirmative defense of self defense were submitted to the jury along with the video tape, [Deputy] Kirby's testimony, photographs and other evidence. *See* § 45-3-115, MCA. Based on this evidence, the jury chose not to believe Courville. In other words, the jury did not believe that, in effecting Courville's arrest, Kirby was using unlawful force that would have justified Courville's reasonable belief that he needed to defend himself from imminent harm. It was the province of the jury to decide whether Courville's belief was reasonable. The jury's verdict reflected their contrary determination.

Courville, ¶ 40.

This analysis applies directly to the facts of this case. Gysler's testimony and the affirmative defense of self-defense were submitted to the jury along with video of the incident, Officer Garner's testimony, photographs, and other evidence. Based on this evidence, the jury chose not to believe Gysler. In other words, the jury did not believe that, in effecting Gysler's arrest, Officer Garner was using unlawful force that would have justified Gysler's reasonable belief that he needed to defend himself from imminent harm. It was the exclusive province of the jury to decide whether Gysler's belief that he could legally "stand his ground" and execute a fireman's carry on Officer Garner was reasonable. The jury's verdict reflected their contrary determination.

"The weight to give evidence and the assessment of witness credibility are 'exclusively the province' of the jury, which determines what evidence to believe." *State v. Sanchez*, 2017 MT 192, ¶ 19, 388 Mont. 262, 399 P.3d 886 (quoting *State v. Vandersloot*, 2003 MT 179, ¶ 18, 316 Mont. 405, 73 P.3d 174).

Further, this instruction did not nullify Gysler's ability to argue he was justified to use force against Officer Garner. Gysler explicitly testified he believed he was entitled to stand his ground, and that is what he did. (Trial Tr. at 346-47, 376.)

In his closing argument, Gysler's attorney stated:

> Because if somebody is afraid, whether it's a peace officer or not, there is—we've not [] been stripped of all of our rights, and there are

> still certain scenarios and situations where a person can be justified in the use of force even though the other individual on the other side of it is a peace officer.

(*Id*. at 469.)

The jury, who observed the offense exactly as it occurred, concluded that this was not a scenario or situation that justified Gysler's use of force. As in *Courville*, by rejecting Gysler's JUOF theory, the jury necessarily determined that Officer Garner acted lawfully.

B. Instruction No. 25, JUOF

The district court instructed the jury that:

> The use of force in defense of a person is not available to a person who purposely or knowingly provokes the use of force against himself unless such force is so great he reasonably believes that he's in imminent danger of death or serious bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant.

(Trial Tr. at 457-58; App. C.)

With respect to this instruction, this Court has determined, "If a rational trier of fact could find from the evidence that a defendant purposely or knowingly provoked force, a district court may give a 'first-aggressor' instruction." *State v. Polak*, 2018 MT 174, ¶ 27, 392 Mont. 90, 422 P.3d 112 (citation omitted).

Gysler's objection to the instruction was two-fold: first, he asserted that there was no evidence that he "provoked the amount of force that Officer Garner

chose to use, [] that it was excessive," and second, he objected to labeling Officer Garner as "an assailant." (Trial Tr. at 401.)

The district court responded, "Well, I like it because I think that there was a lot of testimony on the part of Mr. Gysler wherein he considered Officer Garner his assailant, I think it fits the circumstances, I think its great grist for closing argument, so [25] will be given." (*Id.*)

Attempting to distinguish this case from *State v. Bingman*, 229 Mont. 101, 745 P.2d 342 (1987), Gysler now argues that this instruction was irrelevant because "no conflicting evidence exists as to what occurred before Garner knocked [Gysler] to the ground, as the incident was captured on video." (Appellant's Br. at 40.) However, Gysler's testimony frequently contradicted other evidence, including Officer Garner's testimony.

For example, Gysler testified:

> And this car just rolls up just super aggressive—and I know what aggressive driving is, that's what I do when I travel with the [remote control] cars, I run that car aggressively. So I know when he's coming in at apex (indicating), and opens the door before he even stops, you know, I hear the door click, click, and then he slams on brakes, rams it in the parking—like I can hear all those sounds and know exactly what they are.

(Trial Tr. at 342; *see also*, Appellant's Br. at 3 ("Out of nowhere, a police car sped in front of him and slammed on its brakes.").)

This was not and is not an accurate description of what the jury observed. (*See* State's Ex. 1.) Officer Garner approached Gysler at a speed that was appropriate for driving in a parking garage with pedestrians present. Officer Garner slowed to a complete stop and did not slam on his brakes. As Gysler was eventually forced to admit, Officer Garner did not open his car door while his squad car was still moving. (*See* Trial Tr. at 356.) Further, Officer Garner initiated contact with Gysler using a professional demeanor, which he maintained throughout their encounter.

Gysler also testified:

> And boom, he pops out and he's already fronting me. You know, I'm an experienced wrestler from high school, like I know when someone's coming at me with their demeanor saying, hey, I'm coming at you, we're going to get physical. Right from the start I knew that's what his idea was. And I let him, I let him come at me.

(*Id*. at 342.)

Again, this directly contradicted what the jury saw and heard. (*See* State's Exs. 1, 2, and 6.) The State explicitly asked Officer Garner, "did you want to engage in this fight with the Defendant? (Trial Tr. at 193.) Officer Garner responded, "That's the last thing I wanted to do. No." (*Id.*) As was their exclusive province, the jury found Officer Garner credible and chose not to believe Gysler.

Based on the facts of this case, which included conflicting testimony about whether Gysler's use of force on a peace officer was reasonable, the district court did not abuse its discretion when it gave Instruction Number 25.

CONCLUSION

The district court correctly denied Gysler's motion to dismiss for a speedy trial violation, and did not abuse its discretion when it accurately instructed the jury on resisting arrest and whether an aggressor can claim JUOF. The verdict was supported by overwhelming evidence and should be affirmed.

Respectfully submitted this 8th day of October, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,443 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Thad Tudor
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CERTIFICATE OF SERVICE

I, Thad Nathan Tudor, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-08-2024:

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