

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ERIN ELLIOT HOLCOMB,

Defendant and Appellant.

---

**BRIEF OF APPELLANT**

---

On Appeal from the Montana Ninth Judicial District Court,  
Teton County, the Honorable Robert Olson, Presiding

---

**APPEARANCES:**

TAMMY A. HINDERMAN  
Division Administrator  
GREGORY HOOD  
Assistant Appellate Defender  
Office of State Public Defender  
Appellate Defender Division  
P.O. Box 200147  
Helena, MT 59620-0147  
Gregory.Hood@mt.gov  
(406) 444-9505

ATTORNEYS FOR DEFENDANT  
AND APPELLANT

AUSTIN KNUDSEN  
Montana Attorney General  
TAMMY K PLUBELL  
Bureau Chief  
Appellate Services Bureau  
P.O. Box 201401  
Helena, MT 59620-1401

DAVID BUCHLER  
County Attorney  
MEGHANN PADDOCK  
Deputy County Attorney  
P.O. Box 73  
Virginia City, MT 59755-0073

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

## **TABLE OF CONTENTS**

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE .....	1
STANDARD OF REVIEW.....	10
SUMMARY OF THE ARGUMENT.....	10
ARGUMENT .....	12
There was sufficient evidence at trial to support a justifiable use of force instruction.....	12
CONCLUSION.....	21
CERTIFICATE OF COMPLIANCE .....	23
APPENDIX.....	24

## **TABLE OF AUTHORITIES**

### **CASES**

<i>State v. Archambault</i> , 2007 MT 26, 336 Mont. 6, 152 P.3d 698 .....	13
<i>State v. Fredericks</i> , 2024 MT 226, 418 Mont. 220, 557 P.3d 32 .....	14
<i>State v. Marquez</i> , 2021 MT 263, 406 Mont. 9, 496 P.3d 963 .....	passim

### **STATUTES**

Mont. Code Ann. § 45-3-102 .....	13, 17
Mont. Code Ann. § 46-16-131 .....	13

## **STATEMENT OF THE ISSUES**

Trial evidence showed that Trystan Fellers angrily yelled at, forcefully yanked out of a truck, and chased Mr. Holcomb in a farm truck. Mr. Holcomb was in full retreat, on foot, and afraid for his life in a dark field. The district court abused its discretion when it denied Mr. Holcomb's request for a justifiable use of force jury instruction.

## **STATEMENT OF THE CASE**

At the end of a night of drinking at the Fellers' house, in the dark with a light spring rain falling, Trystan Fellers, driving a farm pickup truck and angry, pursued Erin Holcomb, who was on foot and panicking, out into a muddy stubble field. 3/1/22 Trial Tr. at 15, 273-274; 3/2/22 Trial Tr. at 9. Trystan circled Mr. Holcomb with the farm truck in the dark as Mr. Holcomb continued to flee on foot. 3/1/22 Trial Tr. at 15, 276. When Trystan caught up to Mr. Holcomb, Mr. Holcomb shot Trystan. 3/1/22 Trial Tr. at 164, 245, 279. Mr. Holcomb was found guilty of deliberate homicide in a jury trial after the district court denied his request to instruct the jury on justifiable use of force. 3/7/22 Trial Tr. at 79-80 (attached as Appendix B), 161; D.C. Doc. 199 (attached at Appendix A).

Mr. Holcomb timely appeals the district court's denial of his request for a justifiable use of force jury instruction. D.C. Doc. 201.

### **FACTS OF THE CASE**

#### **Dinner becomes a party**

Trystan Fellers and his fiancé Josie Moline invited acquaintances Nate Jenkin and Grayce Hayden over for dinner and then went for a drive in the mountains near Augusta at Grace's suggestion. 3/1/22 Trial Tr. at 48. Trystan didn't want to go on a drive but eventually acquiesced. 3/1/22 Trial Tr. at 48. Trystan drank one or two alcoholic seltzers during dinner before driving into the mountains with Grayce and Nate. 3/1/22 Trial Tr. at 51. Trystan had a nine-millimeter pistol stored in the center console of his truck. 3/1/22 Trial Tr. at 53-54. Trystan twice fired off a round while on the drive to startle Grayce as a joke. 3/1/22 Trial Tr. at 54, 56, 113, 163, 165. Trystan drank three or four alcoholic seltzers while driving around. 3/1/22 Trial Tr. at 57.

During the drive, Grayce invited Teigan Kelly, Blake Annis, and Mr. Holcomb to come over to Trystan and Josie's house. 3/1/22 Trial Tr. at 58, 115. Trystan talked to Teigan on Grayce's phone and invited them over as well. 3/1/22 Trial Tr. at 58, 115.

Trystan, Josie, Grayce, and Nate got back to the Feller's house around 11:00 PM. 3/1/22 Trial Tr. at 61. Although Trystan told Grayce that "he didn't want those people over, that we were going to go to bed and we had a long day in the morning, just had to work," he had actually invited them. 3/1/22 Trial Tr. at 62.

Grayce testified that Mr. Holcomb, Blake, and Teigan simply arrived, walked in, and said "hi" to everybody politely. (3/1/22 Trial Tr. at 122.) Josie remembered things differently, testifying that Mr. Holcomb, Blake, and Teigan "barged in" to Trystan and Josie's home. 3/1/22 Trial Tr. at 74. "Their boots were all muddy," they left muddy boot prints all over the house and were rude, not saying hi, yelling and "making a bunch of commotion." 3/1/22 Trial Tr. at 75. Nate testified, "you could tell that they had all been drinking, but it wasn't dysfunctional intoxication of any of them." 3/1/22 Trial Tr. at 168-169. Teigan testified that he took his muddy boots off as soon as he entered the house. 3/1/22 Trial Tr. at 215.

As soon as Mr. Holcomb, Blake, and Teigan arrived, Trysten served alcoholic drinks. 3/1/22 Trial Tr. at 51. Nate testified that

Trystan brought out a bottle of liquor and everyone did shots. 3/1/22 Trial Tr. at 175.

Mr. Holcomb and Nate were comparing guns because they both had the same kind, and they began to trade ammunition. They had unloaded the guns before inspecting them and were handling them safely with no signs of aggression or conflict. 3/1/22 Trial Tr. at 125-126. Grayce testified that Mr. Holcomb had his gun on him in the house but was handling it safely. 3/1/22 Trial Tr. at 133.

### **Conflict arises**

While the others continued to drink and socialize, Josie went into her room to go to bed. 3/1/22 Trial Tr. at 82. Trystan kept coming in to check on her, telling her that he was trying to get all of their guests out of the house so that they could go to bed. 3/1/22 Trial Tr. at 82.

Meanwhile, Trysten had just given Blake a shot of tequila that made Blake have to go outside and vomit. 3/1/22 Trial Tr. at 230. Blake testified that Trysten's demeanor changed all of a sudden after Blake got sick outside: "Trystan was upset and wanted us to leave." 3/1/22 Trial Tr. at 230. Suddenly, Trysten was frustrated because he

wanted everyone to leave the party: “his voice just seemed angry.”

3/1/22 Trial Tr. at 232.

Mr. Holcomb, Teigan, and Blake got the message and left the house. As they were trying to leave the house, Trystan was struggling to put Teigan’s boots on him, and according to Josie, it “wasn’t working because Teigan was very, very, very intoxicated, just falling over, could not stand up.” 3/1/22 Trial Tr. at 83.

As everyone went outside, Nate testified that there was an “altercation about who was going to drive.” 3/1/22 Trial Tr. at 177. It was a “spirited argument.” 3/1/22 Trial Tr. at 178. Mr. Holcomb, meanwhile, began “panicking,” and “pacing,” with his hands above his head. 3/1/22 Trial Tr. at 86.

Mr. Holcomb had entered the driver’s seat of Teigan’s truck to leave in accordance with Trystan’s wishes. Trystan’s frustration mounted trying to get Mr. Holcomb out of the truck because Trystan apparently thought *he* should drive them home despite having been drinking all night. Trystan called his dad Sonny, who lived on the same property minutes away. 3/1/22 Trial Tr. at 13, 179. His mom answered the phone and he told her, “I need dad to come down. There’s some



idiots at the house that are drunk, and I'm trying to give them a ride home, and they're fighting with me." 3/2/22 Trial Tr. at 30. Trystan "sounded frustrated" according to Sonny. 3/1/22 Trial Tr. at 261.

Trystan was clearly very angry with Mr. Holcomb. 3/1/22 Trial Tr. at 135. Trystan "raised his voice" with Mr. Holcomb and was "mad" that Mr. Holcomb "wasn't listening." 3/1/22 Trial Tr. at 135. Trystan was "yelling and screaming" at Mr. Holcomb. 3/7/22 Trial Tr. at 38-39. Trystan outweighed Mr. Holcomb by approximately fifty pounds. 3/1/22 Trial Tr. at 34.

Mr. Holcomb was never threatening to anyone all night, according to Nate. 3/1/22 Trial Tr. at 188.

Grayce was "terrified" of Trystan's dad Sonny Fellers. 3/7/22 Trial Tr. at 32. Grayce saw Trystan getting agitated and sensed things going south. 3/1/22 Trial Tr. at 33. Grayce hurried into the house when Trystan called Sonny to come help because she knew there would be fighting when Sonny arrived. 3/1/22 Trial Tr. at 140.

Trystan drug Mr. Holcomb out of Teigan's truck and threw him on the ground. 3/7/22 Trial Tr. at 37-38, 79; 3/1/22 Trial Tr. at 32-34, 37.

## **Pursuit**

With Trystan “yelling and screaming,” and Sonny on his way over, Mr. Holcomb fled the scene outside Trystan’s house trying to escape what had rapidly become a dangerous situation for him. 3/7/22 Trial Tr. at 38-39.

Sonny began looking for Mr. Holcomb immediately upon arriving at Trystan’s yard. 3/1/22 Trial Tr. at 14, 179, 269, 273. Nate testified that he was in Trystan’s house and “I remember Sonny popping his head in the door and asking, ‘Where’s the kid with the gun?,’ or something to the extent of that.” 3/1/22 Trial Tr. at 179. Sonny opened the door to Teigan’s truck and asked Blake who he was, Blake told him, and he continued his pursuit of Mr. Holcomb. 3/1/22 Trial Tr. at 234.

Trystan also pursued Mr. Holcomb out into the field across the road from his house. The field was not the Fellers’s property. Mr. Holcomb remained on foot and Trystan drove the farm truck through an irrigation ditch and out into the field towards Mr. Holcomb. 3/1/22 Trial Tr. at 15, 273-274; 3/2/22 Trial Tr. at 9. Trystan had an AR-15 military style rifle and another ‘varmint’ rifle with him in the farm truck as he followed Mr. Holcomb around the field. 3/1/22 Trial Tr. at

34, 295; 3/4/22 Trial Tr. at 179. The two rifles were ultimately found covered in blood, laying down in between the front seats in the farm truck. 3/4/22 Trial Tr. at 179. Law enforcement did not seize or inspect the bloody AR-15 or varmint rifle. 3/4/22 Trial Tr. at 179-181.

There was a bullet hole in the door of the farm truck fired from inside the truck toward where Mr. Holcomb would have been standing in the field. 3/1/22 Trial Tr. at 35; 3/4/22 Trial Tr. at 182-187. The bullet hole was not discovered until after the investigation had been completed and charges had been pending for some time, approximately five months after the initial investigation. 3/4/22 Trial Tr. at 198.

Sonny saw Trystan shine the farm truck headlights on Mr. Holcomb standing alone out in the stubble field. 3/1/22 Trial Tr. at 275. Trystan drove the truck toward Mr. Holcomb, then circled him and came to a stop. 3/1/22 Trial Tr. at 276. The farm truck tracks clearly circled around Mr. Holcomb showing Trystan's path of pursuit. 3/1/22 Trial Tr. at 33.

### **Shots and aftermath**

As Trystan circled Mr. Holcomb out in the field and eventually came to a stop, multiple witnesses heard multiple gun shots. Grayce

heard between six and eight shots. 3/1/22 Trial Tr. at 33, 142. Josie testified that she heard three shots. 3/1/22 Trial Tr. at 36. Blake reported hearing two gunshots about one minute apart followed by three consecutive gunshots while he was sitting in Teigan's truck. 3/1/22 Trial Tr. at 234. Blake thought that both Mr. Holcomb and Nate had been killed. 3/7/22 Trial Tr. at 39.

Mr. Holcomb was still scared and trying to call for help. Mr. Holcomb's father testified that Mr. Holcomb called him and "wanted me to come get him because he was scared because there was people trying to kill him." 3/1/22 Trial Tr. at 245. Mr. Holcomb told him he had just shot someone. 3/1/22 Trial Tr. at 245. Sonny also heard Mr. Holcomb say to his father, "I just shot someone," or that "he just killed a guy." 3/1/22 Trial Tr. at 15, 164, 279. Mr. Holcomb's tone of voice was "panicked." 3/1/22 Trial Tr. at 279.

After spending all night out in the field hiding, afraid for his life, Mr. Holcomb was arrested peacefully. His pants were ripped and he had fresh wounds in the booking photograph, but was never asked about it by any investigator. 3/7/22 Trial Tr. at 24. Both Blake and

Teigan confirmed that Mr. Holcomb's pants were not torn before the altercation at Trystan's house. 3/7/22 Trial Tr. at 36, 45.

The district court denied Mr. Holcomb's request for a justifiable use of force jury instruction. 3/7/22 Trial Tr. at 79. It found that the only evidence admitted at trial that would justify a self-defense claim was that Trystan "may have pulled [Mr. Holcomb] out from the vehicle when he was in the driver's side. And I think there may have been testimony that he was agitated." 3/7/22 Trial Tr. at 79. The court ruled that that evidence was simply "insufficient" under *Marquez* to support a justifiable use of force instruction. 3/7/22 Trial Tr. at 79.

### **STANDARD OF REVIEW**

This Court reviews a district court's decisions regarding jury instructions for abuse of discretion. Erroneous jury instructions are reversible error if the error prejudicially affects the defendant's substantive rights. *State v. Marquez*, 2021 MT 263, ¶ 14, 406 Mont. 9, 496 P.3d 963.

### **SUMMARY OF THE ARGUMENT**

The district court abused its discretion when it denied Mr. Holcomb's request to instruct the jury about justifiable use of force on

the basis that there was insufficient evidence presented to support it.

Both the State and Mr. Holcomb presented ample evidence to establish facts sufficient to justify the instruction:

- Trystan was “mad” that Mr. Holcomb “wasn’t listening” to him and was “yelling and screaming” at Mr. Holcomb.
- Trystan outweighed Mr. Holcomb by approximately fifty pounds.
- Mr. Holcomb was “panicking” and “pacing,” with his hands above his head, while Trystan was yelling at him.
- Trystan drug Mr. Holcomb out of Teigan’s truck and threw him on the ground.
- Mr. Holcomb ran away from Trystan’s house and into an empty field.
- Trystan got in his truck, drove through an irrigation ditch, and pursued Mr. Holcomb out into a stubble field in the dark.
- Trystan had an AR-15 military style rifle and another ‘varmint’ rifle laying beside him in the truck.
- There was a bullet hole in the door of the farm truck fired from inside the truck on the driver’s side and toward where Mr. Holcomb would have been standing.

- The farm truck tracks show Trystan circled around Mr. Holcomb in his truck right before Mr. Holcomb fired his weapon.
- Mr. Holcomb told his father in a “panicked” voice on the phone that he was “scared because there was people trying to kill him” and that he “just shot someone.”
- Mr. Holcomb’s pants were ripped and he had fresh wounds in the booking photograph, neither of which were present before Trystan pursued him into the field.

The above testimony heard at trial was more than sufficient to justify a self-defense instruction. Without it, Mr. Holcomb—who did not contest that he purposely shot and killed Trystan—had no defense to the charge. The error prejudiced Mr. Holcomb because he was wrongly denied the use of his only defense at trial.

### **ARGUMENT**

**There was sufficient evidence at trial to support a justifiable use of force instruction.**

The district court found that the only evidence that could have supported a justifiable use of force instruction was that Trystan may have yanked Mr. Holcomb out of Teigan’s truck and been agitated while he did so. 3/7/22 Trial Tr. at 79. That finding was erroneous. There

was ample other evidence supporting a justifiable use of force instruction, and the court's conclusion that the evidence was simply "insufficient" under *Marquez* was an abuse of discretion.

Jury instructions must fully and fairly instruct the jury regarding the applicable law and district courts must instruct the jury on each theory which is supported by the record. *State v. Archambault*, 2007 MT 26, ¶ 25, 336 Mont. 6, 152 P.3d 698.

Montanans are allowed to use force to defend themselves from another's imminent use of unlawful force. Mont. Code Ann. § 45-3-102. When the threat involved is likely to cause death or serious bodily harm, then the threatened person is justified in using force likely to cause death or serious bodily harm. Mont. Code Ann. § 45-3-102. When a defendant presents the affirmative defense of justifiable use of force at trial, the State must prove beyond a reasonable doubt "that the defendant's actions were not justified." Mont. Code Ann. § 46-16-131; *Marquez*, ¶ 17.

To invoke the defense of justifiable use of force and have the jury instructed on it, there must be evidence that would support a justifiable use of force defense presented at trial. *Marquez*, ¶ 17. "If [justifiable



use of force] is supported by evidence presented at trial, even if conflicting evidence is also presented, then the district court must give the instructions.” *Marquez*, ¶ 17 (internal quotations omitted). The evidentiary support for the defense may come from direct evidence or from “some logical inference from the evidence presented.” *Marquez*, ¶ 17 (citations omitted); *State v. Fredericks*, 2024 MT 226, ¶ 14, 418 Mont. 220, 557 P.3d 32. Therefore, when there is evidence presented at trial that shows or creates a logical inference that the defendant reasonably believed he was in imminent danger of having unlawful force used against him, the court must give the jury the justifiable use of force instruction. *Marquez*, ¶ 17.

The district court here abused its discretion by disregarding most of the copious trial evidence supporting a self-defense instruction, misapprehending the effect of the evidence, and depriving Mr. Holcomb of his sole defense at trial.

In *Marquez*, this Court affirmed a district court ruling denying the defendant a justifiable use of force instruction. *Marquez*, ¶ 24.

*Marquez* was charged with assault on a peace officer for a scuffle with detention guards while he was in custody. *Marquez*, ¶¶ 8-9. *Marquez*

relied on a general denial at trial, called no witnesses, and “generally tried to guide the jury to an inference that Marquez acted automatically, squirming to get out of a painful position and not purposefully or knowingly trying to knee Officer Juers.” *Marquez*, ¶ 18. Marquez did not attempt to show the judge or the jury that the officers who were the alleged victims exerted unlawful force. *Marquez*, ¶ 21. The video showed that Marquez was the initial aggressor. *Marquez*, ¶ 23.

The evidence in *Marquez* consisted of a video of the entire incident captured by the jail cameras and the testimony of two officers involved in the scuffle. Here, in contrast, there was no video of the incident, only the conflicting testimony from many different witnesses, both civilians and law enforcement, that covered a broad swath of time. In *Marquez*, the defense made no attempt to show the officer used unlawful force either at trial or during the jury instruction conference. *Marquez*, ¶ 21. Defense counsel in *Marquez* hoped that the jail video entered into evidence by the State would contain all the evidence needed to support a justifiable use of force instruction. *Marquez*, ¶¶ 11-12. It was not sufficient.

In contrast, here there was ample evidence offered by both parties at trial and argument by Mr. Holcomb during the jury instruction conference that Trystan had used or attempted to use unlawful force and that Mr. Holcomb could reasonably think defensive force was necessary in his response.

During the jury instruction conference, Mr. Holcomb's counsel alerted the district court to multiple instances during the trial where the evidence supported a justifiable use of force instruction. 3/7/22 Trial Tr. at 81-83. As counsel argued, contrary to the district court's ruling, there was sufficient evidence presented at trial to support a justifiable use of force jury instruction. While the district court allowed defense counsel to make the argument on the record, it never substantively addressed all the various testimony supporting a justifiable use of force instruction, cursorily finding the evidence to be insufficient. 3/7/22 Trial Tr. at 79. A review of the trial evidence along with the logical inferences from that evidence demonstrates that the district court's finding was erroneous.

According to the trial testimony, Trystan forcibly drug Mr. Holcomb out of Teigan's truck and threw him on the ground before

following him out into the stubble field. 3/7/22 Trial Tr. at 37-38, 79; 3/1/22 Trial Tr. at 32-34, 37. The logical inference from this evidence is that Mr. Holcomb, already having suffered Trystan's use of unlawful force against him, later reasonably believed that he would have to defend himself against Trystan's further use of unlawful force as Trystan pursued Mr. Holcomb through the stubble field. See Mont. Code Ann. § 45-3-102. Such evidence supports a justifiable use of force instruction.

In addition to that evidence, contrary to what the district court found, there was ample additional evidence that supported a justifiable use of force instruction.

There was evidence presented at trial that Trystan pursued Mr. Holcomb out into the neighboring stubble field. 3/1/22 Trial Tr. at 15, 273-274; 3/2/22 Trial Tr. at 9. It was dark and raining and Trystan was driving his farm truck with two rifles right by his side, while Mr. Holcomb was on foot. 3/1/22 Trial Tr. at 34, 295; 3/4/22 Trial Tr. at 179. Trystan was angry and had been yelling at Mr. Holcomb. 3/1/22 Trial Tr. at 135; 3/7/22 Trial Tr. at 38-39. The logical inference here is that

Mr. Holcomb, or any reasonable person, would have been justifiably scared for their life. This supports a justifiable use of force instruction.

Mr. Holcomb's father testified that Mr. Holcomb called him and "wanted me to come get him because he was scared because there was people trying to kill him," and that Mr. Holcomb had just shot someone. 3/1/22 Trial Tr. at 245. Mr. Holcomb's counsel pointed this out to the district court during the jury instruction conference. 3/7/22 Trial Tr. at 81-83. This evidence shows that Mr. Holcomb feared for his life as he tried to escape from Trystan and Sonny, manifestly supporting a justifiable use of force instruction.

Multiple witnesses testified that there were as many as eight shots fired, even though Trystan was killed by a single gunshot wound. 3/1/22 Trial Tr. at 33, 142, 324. Mr. Holcomb's counsel pointed this out to the district court during the jury instruction conference. 3/7/22 Trial Tr. at 81-83. This supports a logical inference that "there was far more shooting went on than the State's case support[ed]," lending support to the theory that there was an exchange of gunfire. 3/7/22 Trial Tr. at 83. An exchange of gunfire would support a justifiable use of force

instruction as that infers that Mr. Holcomb was being fired upon and reasonably feared for his life.

There was a bullet hole in the door of the farm truck fired from inside the truck toward where Mr. Holcomb would have been standing in the field. 3/1/22 Trial Tr. at 35; 3/4/22 Trial Tr. at 182-187. The logical inference from this evidence is that Trystan may have fired upon Mr. Holcomb from inside the farm truck, which would obviously support a justifiable use of force instruction.

Mr. Holcomb offered evidence that both Blake and Teigan thought Mr. Holcomb was the one who had been killed when they heard the shots. 3/7/22 Trial Tr. at 39, 47. These two separate witnesses heard the shots and each independently concluded that it was Mr. Holcomb that had been killed instead of Trystan, inferring that after all they had seen transpire between Trystan and Mr. Holcomb that night, they believed Mr. Holcomb's life was in danger, not Trystan's. The logical inference here is that a reasonable person in Mr. Holcomb's position would have believed his life was in danger, supporting a justifiable use of force instruction.

Michael Siller, who had known Mr. Holcomb for five years, testified both on direct examination and cross examination that Mr. Holcomb called him for help that night and that Mr. Holcomb sounded frightened and spoke with “urgency.” 3/2/22 Trial Tr. at 139-140; 3/7/22 Trial Tr. at 81. Mr. Holcomb’s counsel pointed this out to the district court during the jury instruction conference. 3/7/22 Trial Tr. at 81-83. The logical inference from this evidence is that Mr. Holcomb was, in fact, afraid for his life while he hid in the stubble field, which would support a jury instruction on justifiable use of force.

After hearing all of the above evidence presented at trial and argued during the jury instruction conference, the district court judge ruled, “I don’t have any information in front of me that would indicate that at the time of this incident Mr. Holcomb believed that he was—there was imminent threat of force and that it was necessary for him to use deadly force in order to protect himself. So, based on that, I’m not going to give a justifiable use of force instruction.” 3/7/22 Trial Tr. at 80. The district court either erroneously disregarded or misapprehended the effect of all the trial evidence highlighted above. The evidence, brought forth by both parties throughout trial, indicated

that Trystan physically pulled Mr. Holcomb out of a truck, yelled and screamed at him, chased him through a dark, rainy stubble field while in possession of two rifles, apparently fired a bullet through his truck door, and circled around him with a farm truck, all while Mr. Holcomb was scared because there were people trying to kill him.

The testimony at trial from both the State and Mr. Holcomb provided ample support for a justifiable use of force jury instruction. By refusing to give the instruction, the district court deprived Mr. Holcomb of his sole defense at trial, prejudicing him. *Marquez*, ¶ 17 (“If [justifiable use of force] is supported by evidence presented at trial, even if conflicting evidence is also presented, then the district court must give the instructions.”)

### **CONCLUSION**

Mr. Holcomb respectfully requests this Court reverse the district court’s denial of his request for a justifiable use of force jury instruction and remand for a retrial. *Marquez*, ¶ 14.



Respectfully submitted this 16<sup>th</sup> day of December, 2024.

OFFICE OF STATE PUBLIC DEFENDER  
APPELLATE DEFENDER DIVISION  
P.O. Box 200147  
Helena, MT 59620-0147

By: /s/ Gregory Hood  
Gregory Hood  
Assistant Appellate Defender

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook 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 4,181, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Gregory Hood  
► Gregory Hood

## **APPENDIX**

Sentencing Order, Judgment, and Commitment (D.C. Doc 199.) ...	App. A
3/7/22 Trial Tr. At 79-80 .....	App. B

## **CERTIFICATE OF SERVICE**

I, Gregory Nelson Hood, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 12-16-2024:

Jody (Joe) W. Coble (Govt Attorney)  
PO Box 899  
Choteau MT 59422  
Representing: State of Montana  
Service Method: eService

Austin Miles Knudsen (Govt Attorney)  
215 N. Sanders  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

Electronically signed by Kat J. Hahm on behalf of Gregory Nelson Hood  
Dated: 12-16-2024