STATE OF WYOMING	)	**IN THE CIRCUIT COURT**
	: ss.	
COUNTY OF CARBON	)	**SECOND JUDICIAL DISTRICT**

THE STATE OF WYOMING,
Plaintiff,

vs.

JOEY CORRENTI, IV,
Defendant.

Docket No.: CR-2021-0800

Y.O.B.: 1979

FILED
JAN 04 2022
CLERK OF CIRCUIT COURT
2nd JUDICIAL DISTRICT
CARBON COUNTY, WYOMING
BY

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

The State of Wyoming by and through Jason C. Gay, Deputy Carbon County and Prosecuting Attorney in and for Carbon County, Wyoming, and respectfully responds to Defendant's *Motion to Dismiss* as follows:

1. Defendant was the victim of a battery the evening of October 13, 2021.

2. Nicholas Chadwick was charged with Simple Battery in violation of W.S. § 6-2-501, Docket Number CT-2021-6084.

3. When speaking with SGT Christen, Defendant stated after he was struck by Chadwick once: "That's when I pulled out my pistol; brandished it at him. I told him, 'I don't want to put you down. You're going to fucking leave. But I will do it if I fucking have to.'" Defendant stated he and Chadwick briefly struggled over the pistol Defendant "brandished" then Defendant "aimed it up at [an angle of] forty-five [degrees]" fired in the direction of a streetlight and buildings across the street and Chadwick "ran off like a deer."

4. Defendant provided an audio recording of the altercation. Chadwick confronted Defendant and Chadwick's wife because Chadwick suspected Chadwick's wife of being engaged in an extra-marital affair with Defendant. Chadwick and his wife argued about a car and marital issues. According to Defendant, Chadwick attempted to grab Chadwick's wife's phone three times,

the third time Chadwick grabbed his wife's arm while reaching for the phone. On the recording, a scuffle is heard. After which, Defendant states "Get the fuck out of here Nick. You hit me again, I will fucking put you down. I don't want .. I don't want to. I don't fucking want ..." There is another brief sound of a scuffle and yelling before a single shot is fired. Chadwick's wife exclaims "Oh my God," before Defendant says, "Call the police right now Shannon."

5. Defendant's first claim is the State and, more specifically, Jason C. Gay, Deputy Carbon County and Prosecuting Attorney, represented Defendant in CT-2021-6084. This claim has no basis in law or fact. Defendant is a victim in CT-2021-6084. The State does not represent victims, although the State is charged with ensuring victims have an opportunity to be heard and must contact victims to determine restitution when appropriate. It is not uncommon for the State to prosecute mutual combatants while they are both victims and defendants in simultaneous cases.

6. Defendant incorrectly asserts, without any source, "a successful prosecution of Nicholas Chadwick on the pending charge of battery, would make the current charge … a conflict, not only for Mr. Gay, but also to the States (sic) evidence in the aforementioned case." The bald assertion of a conflict in hopes the assertion will require dismissal of a case is not sufficient to establish a conflict. Defendant's assertion has no basis in law or fact.

7. Defendant also relies on W.S. § 6-2-602. Defendant has not alleged, and have never alleged in any of his recorded statements an "imminent peril of death or serious bodily injury to another", nor has Defendant alleged in his Motion or any of his recorded statement an unlawful forcible entry was or would occur. Defendant's statements at the time were all confrontations, both between Defendant and Chadwick and Chadwick and Chadwick's wife, occurred on a front porch. Further, Defendant has not alleged any theory of self defense against the person or person(s) who occupied or may have occupied the various structures and/or residences in the direction of the shot

Defendant fired. Defendant stated he believed Chadwick to be intoxicated and he believed Chadwick to be attempting to take a phone, not injury anyone, before Defendant intervened.

8. In *Smith v. State*, 480 P.3d 532 (Wyo. 2021), the Supreme Court examined the "Defense of Others and Alter Ego Rule". Defendant's claim of self-defense fails this analysis. The Supreme Court abandoned the alter ego rule and adopted the following rule: "Defense of another takes its form and content from defense of self. The defender is not justified in using force unless he or she reasonably believes the person defended is in immediate danger of unlawful bodily harm, and that the force is reasonable and necessary to prevent that threat." *Smith* at 541. During his recorded statement at the time of the events, Defendant indicated all threats to Chadwick's wife ended when Defendant intervened and physically came between them. From that point forward, according to Defendant, Chadwick's wife was no longer in danger thanks to Defendant's intervention. Therefore, after intervening Defendant was no longer acting in the Defense of others.

9. Defendant's response to a single blow from an unarmed assailant was to "brandish" a firearm and threaten to "put him down". Defendant's actions escalated the situation from a simple battery to a potentially lethal conflict, with Defendant threatening to use deadly force against his unarmed assailant. As the Supreme Court stated in *Drennan v. State*, 311 P.3d 116 (Wyo. 2013), "the right to defend oneself in Wyoming, together with the amount and type of force used, depends upon what is reasonably necessary under the circumstances." *Drennan* at 122. Defendant exceeded the amount and type of force reasonably necessary to repel an unarmed assailant. Not only did Defendant "brandish" a firearm, point it at Chadwick, and threaten to "put him down", Defendant knowingly and intentionally discharged the firearm in the direction of potentially occupied structures without concern for who might be in the impact area.

WHEREFORE the State of Wyoming prays Defendant's *Motion to Dismiss* be denied or in the alternative, that this matter be set for further hearing at the earliest convenience of the Court.

DATED this 4th day of January, 2022.

Respectfully Submitted,

Jason C. Gay, Deputy Carbon
County and Prosecuting Attorney
P.O. Box 1146
Rawlins, WY 82301
Attorney No.: 7-5316

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2022 I served a copy of the above *State's Response to Defendant's Motion to Dismiss* by mailing a true copy thereof, by depositing the same in the U.S. Postal Service, duly enveloped and postage prepaid, or hand delivered, and addressed to:

Joey Correnti, IV
P.O. Box 1776
Rawlins, WY 82301

Jason C. Gay