

Billy McBride (#12345)  
Altiorem Legal Services, PLLC  
123 S Legal Aid St.  
Salt Lake City, Utah 84111  
Phone Number: (801) 855-6541  
Facsimile: (801) 234-5678  
*Attorney for Defendant*

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IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE CITY

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**THE STATE OF UTAH,**

Plaintiff,

vs.

**GOOD CLIENT,**

Defendant.

**MOTION FOR DETERMINATION OF  
SELF DEFENSE UNDER UTAH CODE §  
76-2-309**

Case No. 123456789

Judge: Good Judge

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The above-captioned Defendant, Good Client (hereinafter referred to as “Defendant”), by and through his counsel of record, Billy McBride, hereby respectfully files this “Motion for Determination of Self Defense Under Utah Code § 76-2-309” (hereinafter referred to as this “Motion”) to reasonably compel the Court to determine that Defendant acted in self-defense, pursuant to Utah Code § 76-2-309, when he used deadly force against an assailant who Defendant believed was a threat to his life. In support of this Motion, Defendant states the following:

***Procedural Posture***

1. Utah Code § 76-2-309(3)(a) states that “[u]pon motion of Defendant filed in accordance with Rule 12 of the [URCRP], the [C]ourt shall hear evidence on the issue of justification under this section and shall determine as a matter of fact and law whether [D]efendant was justified in the use . . . of force.”

2. Therefore, under the provisions of Utah Code § 76-2-309(3)(a), Defendant is entitled to *proffer* evidence to the Court to fight the case placed against him, and the Court *shall* hear said evidence on the issue of justification of force; thusly, Defendant *proffers* the following:

3. Defendant was taken into custody on May 29, 2021, and is currently confined at the Salt Lake County jail.

4. Defendant is charged with one count of Murder, one count of Obstructing Justice, and two counts of Aggravated Assault.

5. On or about May 29, 2021, Defendant was arrested for alleged offenses allegedly committed on May 28, 2021; the offenses included Aggravated Murder, Failure to Stop at Command of a Law Enforcement Officer, DUI of Alcohol W/BAC at or over .05, and Carrying a Dangerous Weapon Under the Influence of Alcohol/Drugs.

#### ***Case Facts***

6. On or about May 28, 2021, Defendant attended a barbeque at a residence in Magna, Utah.

7. Defendant *proffers* that he had an argument on the telephone with Alleged Victim (hereinafter referred to as “Alleged Victim”), a former coworker, while attending the barbeque.

8. Defendant *proffers* that Alleged Victim contacted him via telephone, accusing Defendant of recently speaking in an insulting manner against Alleged Victim and his character; however, Defendant adamantly denies engaging in any such speech against the Alleged Victim or the Alleged Victim’s character.

9. Defendant *proffers* that the phone conversation continued to escalate in intensity, and Alleged Victim informed Defendant that Alleged Victim was aware of Defendant’s location,

and that Alleged Victim intended to go to Defendant's location to pick up Defendant; this would cause any reasonable person in the same circumstances to be greatly alarmed.

10. Defendant *proffers* that his phone conversation with Alleged Victim concerned him, and that Alleged Victim's threat sparked worry for Defendant's safety and well-being.

11. Defendant *proffers* that shortly after the phone call, a car horn was heard at the front of the residence in Magna, Utah; it was Alleged Victim who engaged the car horn.<sup>1</sup>

12. Defendant *proffers* that he went to the front of the house and was confronted by Alleged Victim.<sup>2</sup>

13. It is unknown what was said between Defendant and Alleged Victim.

14. Defendant *proffers* that, as shown by the video<sup>3</sup> captured by the doorbell of Bengamin Lazaro, Jr.'s home, Alleged Victim had both of his hands in his pockets, and his stance made him appear as if though he was carrying a weapon.

15. Again, Defendant *proffers* that Alleged Victim had his hands in his pockets, and appeared as if though he was carrying a weapon.

16. Defendant *proffers* that, fearing that Alleged Victim had a weapon, which was a reasonable belief at the time, Defendant took action to defend himself, his home, and those around him.

17. This led to the incarceration of Defendant.

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<sup>1</sup> See Ring Video (attached as "Exhibit A" hereto).

<sup>2</sup> See *id.*

<sup>3</sup> See *id.*

18. To reiterate and supplement the aforementioned, Defendant *proffers* that prior to the incident, Defendant had engaged in a heated phone conversation with Alleged Victim, which has been confirmed by the witness of the incident, Mr. Lazaro; Defendant *proffers* that the aftermath of this phone conversation left Defendant flustered, shocked, and with the impression that Alleged Victim intended to appear at Mr. Lazaro's home to cause life-threatening harm to Defendant; as Alleged Victim approached Defendant in a position in which his hands were in his pockets and suggested that he was in possession of a firearm, Defendant acted quickly in self-defense by firing a shot.

19. Regarding firing the shot, Defendant *proffers* that his actions were justified, as he acted reasonably in response to the degree of force that he believed Alleged Victim would cause upon him if he had not taken action to defend himself; Defendant only acted to the extent that he believed was necessary to ensure his safety.

***Application of the Law***

20. Pursuant to Utah Code § 76-2-309, “[a]n individual who uses or threatens to use force as permitted in Section 76-2-402, 76-2-404, 76-2-405, 76-2-406, 76-2-407, or 76-2-408 is justified in that conduct.”<sup>4</sup>

21. Defendant affirmatively *proffers* that he was justified in using deadly force against Alleged Victim under the provisions and protections of Utah Code § 76-2-407, as the code states that,

(1) A person is justified in using force intended or likely to cause death or serious bodily injury against another in his defense of persons on real property other than his habitation if . . . (a) he is in lawful possession of the real property; (b) he reasonably believes

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<sup>4</sup> Utah Code § 76-2-309(1).

that the force is necessary to prevent or terminate the other person's trespass onto the real property; (c) the trespass is made or attempted by use of force or in a violent and tumultuous manner; and (d)(i) the person reasonably believes that the trespass is attempted or made for the purpose of committing violence against any person on the real property and he reasonably believes that the force is necessary to prevent personal violence . . . .<sup>5</sup>

22. It is clear by looking at Exhibit A that Alleged Victim trespassed onto the property that Defendant was visiting; furthermore, Defendant *proffers* that he was in lawful possession of the real property, that he reasonably believed that the force he used against Alleged Victim was necessary to prevent the trespass onto the real property and to protect himself and others from Alleged Victim's assault, and that the trespass was attempted by the use of force and in a violent and tumultuous manner.<sup>6</sup>

23. Furthermore, Defendant *proffers* that he reasonably and justifiably believed that the trespass was attempted for the purpose of "committing violence against any person on the real property,"<sup>7</sup> and Defendant *proffers* that he reasonably and justifiably believed that the force was necessary to prevent personal violence.<sup>8</sup>

24. Defendant *proffers* that Alleged Victim actually travelled, in person, to Defendant's location, and Defendant *proffers* that Alleged Victim did so threateningly, in a manner that would lead any reasonable person to believe that they are in danger; again, as *proffered* by Defendant, with Alleged Victim's hands in his pockets, it appeared as if though he was carrying a firearm, so Defendant took action to protect himself, the home he was visiting, and those around him.

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<sup>5</sup> Utah Code §§ 76-2-407(1), (1)(a), (1)(b), (1)(c), and (1)(d)(i).

<sup>6</sup> *See id.*

<sup>7</sup> *Id.*

<sup>8</sup> *See id.* at (d)(i).

25. Indeed, Defendant *proffers* that, with the prior argument over the phone between Defendant and Alleged Victim, and then with Alleged Victim actually arriving at Defendant's location to confront Defendant, this would lead *any* reasonable person to feel threatened.

26. Defendant *proffers* that it is reasonable to believe that Alleged Victim would have entered the dwelling that Defendant was visiting if given the chance, because his intentions were to confront and threaten Defendant.

27. It is clear that Alleged Victim entered the property that Defendant was visiting—and Alleged Victim would have indubitably entered the habitation that Defendant was visiting if given the chance—in a violent manner, seeking a violent resolution to their prior argument over the phone, and so Defendant was justified in his use of force against Alleged Victim because Alleged Victim arrived at the home that Defendant was visiting clearly for the purpose of assaulting Defendant and possibly those around him; Alleged Victim did not simply pay Defendant a friendly visit; Alleged Victim went to Defendant's location for violent purposes, as is clear to any reasonable person looking at the circumstances of this case.

28. Therefore, Defendant *proffers*, under the provisions of Utah Code § 76-2-309(1), that Defendant was permitted to use deadly force, and such conduct was justified, under the provisions of Utah Code § 76-2-407.

29. Thusly, with Utah Code § 76-2-407 protecting and indemnifying Defendant's use of deadly force against Alleged Victim, the requirements of Utah Code § 76-2-309(1) are amply met, and so Defendant has a strong and clear affirmative defense, pursuant to statute, against the charges placed upon him.

30. Additionally, to further enhance Defendant's defense, Exhibit A clearly shows and affirms, and Defendant *proffers* that, (1) Alleged Victim had his hands in his pockets, that (2) there was a vehicle slowly driving behind Alleged Victim, and that (3) there were two other persons in the car with Alleged Victim.

31. Defendant again *proffers* that with Alleged Victim's hands in his pockets, it appeared as if though he was carrying a firearm; and Defendant *proffers* that the fact that there was a vehicle slowly driving behind Alleged Victim showed that Alleged Victim brought reinforcements for his planned assault against Defendant; and Defendant *proffers* that the fact that there were two other persons in the car with Alleged Victim shows that, again, he brought reinforcements for his planned assault against Defendant.

32. Furthermore, Defendant *proffers* that during the preliminary hearing in this matter, it was well established that someone had disturbed Alleged Victim's body and removed his cellphone from his body—thus showing that it was really likely that a firearm was also removed from Alleged Victim's body between the time of the shooting and the time of the arrival of the police.

### ***Conclusion***

33. To conclude, Defendant affirmatively *proffers* that (1) Alleged Victim arriving at Defendant's home; that (2) Alleged Victim having his hands in his pockets, likely carrying a firearm; that (3) Alleged Victim bringing reinforcements for his planned assault against Defendant; and that (4) Alleged Victim approaching Defendant in a suspicious and aggressive manner, would cause any reasonable person in the same situation to be alarmed, and these factors clearly establish that Defendant, the home he was visiting, and those around him were in a seriously dangerous

situation with Alleged Victim present, and so Defendant took action to protect himself, the home he was visiting, and those around him from the dangerous situation created by Alleged Victim's presence at the scene.

WHEREFORE, Defendant moves the Court as follows:

- A. For an official determination that Defendant acted in self-defense pursuant to Utah Code § 76-2-309.
- B. For an order rescinding Defendant's Murder charge, as it has been amply proven herein that Defendant acted in self-defense when he shot Alleged Victim, and so he has an affirmative defense against the charges placed against him.
- C. Defendant requests a hearing and gives notice of hearing on this matter at next setting.
- D. Defendant also asks that the Court grant any other relief it deems needful, proper, and equitable under the circumstances.

DATED February 7, 2022.

Altioem Legal Services, PLLC

/s/ Billy McBride

Billy McBride

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, I served, via electronic filing, a true and correct copy of the foregoing upon:

Salt Lake County Prosecutor

/s/ Billy McBride