

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY**

THE STATE OF OREGON,

Plaintiff,

v.

ALAN SWINNEY,

Defendant.

No. 20-CR-50067
DA# 2426200-1

STATE'S MOTION IN LIMINE TO
EXCLUDE UNRELATED OTHER-ACTS
EVIDENCE

Comes now the State of Oregon and Mike Schmidt, District Attorney for Multnomah County, by and through Reid C. Schweitzer, Deputy District Attorney for Multnomah County, and presents the following state's motion in limine and points of authorities in support of the request that this Court exclude the admission of other-acts evidence that is not directly related to the events at issue in this case.

I. INTRODUCTION

Defendant is charged by indictment with various crimes, including two counts of Assault in the Second Degree and three counts of Unlawful Use of a Weapon, all stemming from events that occurred on August 15, 2020 and August 22, 2020. On each of those dates, the Defendant and a crowd of like-minded people engaged in a rally outside the Justice Center in Portland, Oregon. At both events, he and his companions came clad in militaristic body armor and armed with weapons including paintball guns, bear mace, batons, knives, and firearms. On both days, Defendant and his group engaged in heated and unruly arguments with the crowd of counter-protesters. These arguments devolved into physical altercations on both days. On August 15, Defendant deployed mace and fired his paintball gun at close range against several unarmed individuals. On August 22,

1 Defendant again deployed mace and fired his paintball gun at counter-protesters and eventually
2 brandished a firearm, pointing it at the crowd with the hammer cocked and his finger on the trigger.

3 Notwithstanding the lack of any written notice of self-defense by the Defendant, the State has
4 reason to believe that he will assert self-defense or defense of others at trial. Based on some of the
5 evidence in discovery, the State further has reason to believe that in support of his claim of self-
6 defense the Defendant will seek to present evidence of other acts by the broad group of people whom
7 he attacked and/or other persons not present on the dates in question. In particular, the State is aware
8 that one of the individuals who accompanied Defendant on August 15 – Andrew Duncomb – had
9 been stabbed by someone at a rally several weeks prior. As far as the State is aware, Defendant was
10 not present for or witness to that crime. Furthermore, based on a review of recordings from the
11 events, the State does not believe that the person charged with that assault was present on August 15
12 or August 22.
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15 **II. LAW AND ARGUMENT**

16 The Oregon Court of Appeals faced a similar question in State v. Strickland, 303 Or. App.
17 240 (2021), in which the defendant attended a demonstration in downtown Portland – in fact the very
18 same spot in front of the Justice Center – wherein he brandished a firearm at the crowd whom he
19 believed threatened him. That defendant sought to introduce evidence that he had been involved in an
20 altercation a year prior in which a person he was surreptitiously filming broke the defendant’s arm.
21 Id. at 243. The Court of Appeals explained:
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23 [t]he legal standard for assessing the reasonableness of a person's belief about the need
24 for force or the extent of force necessary turns on an objective evaluation of the
25 circumstances in which physical force has been used or threatened, and not on the
26 personal perceptions of the individual defendant. State v. Bassett, 234 Or. App. 259
27 (2010) (“A defendant's subjective ‘honest belief’ that a perceived threat is great or
28 imminent is not enough to justify” the use of self-defense.). See also State v. Oneill,
256 Or. App. 537, 545-46 (2013) (in assessing a defendant's reasonable belief in a
choice-of-evils defense, “reasonableness” is an objective standard that is measured
from the perspective of “a person of ordinary intelligence and understanding” and

1 does not take into account “the unique history or mental characteristics of any
2 particular defendant”). That objective standard requires that we assess how a
3 reasonable person would have assessed the circumstances in which defendant found
4 himself at the time that he brandished the weapon. Defendant's evidence of his past
5 experience was offered to show how he, personally, might have perceived the events
6 and why he, personally, felt fearful, but it was not relevant to the defense of self-
7 defense.

8 Id. at 244 (citations cleaned up).

9 The court ultimately determined that his proffered evidence was relevant not to his self-defense claim
10 and was therefore inadmissible. Id. at 245.

11 As in Strickland, evidence of an assault against Defendant’s companion occurred in a
12 different time and place from the crime at issue and was committed by a person with no apparent ties
13 or similarity to Defendant’s victims. An even more compelling fact here that was not present in
14 Strickland is that the prior traumatic event was not experienced or witnessed by Defendant. As such,
15 it cannot be found to be legally relevant to proving that Defendant *reasonably* believed the violence
16 he engaged in was necessary to prevent imminent harm from his victims.

17 The State has reason to believe that Defendant may seek to introduce evidence of bad acts or
18 acts of violence by members of the crowd he attacked in furtherance of his self-defense claim¹. As
19 with incident described above, acts of counter-protestors that were not committed in his presence and
20 acts committed by parties unrelated to the victims would not be relevant to his claim of self-defense
21 as they cannot form the basis of a *reasonable belief* that the assaults were necessary to repel or
22 prevent imminent use of force against him or another person. Because the State has not been
23 informed what such evidence Defendant intends to introduce, the State requests that the Court order
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25 ¹ The State cannot be more certain because (despite several requests) the Defendant has provided
26 little reciprocal discovery. At the time of this filing, Defendant has only provided a witness list,
27 several pages of handwritten notes by defense investigators, and approximately 5 short videos
28 that were not already in the State’s possession. Defendant has not provided copies of any
intended video/audio exhibits or a list of exhibits to the State.

1 Defendant proffer any such evidence to allow full and fair litigation of its admissibility prior to being
2 heard by the jury.

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4 **III. CONCLUSION**

5 For the reasons stated above, the State respectfully requests this Court GRANT the State's
6 Motion in Limine and exclude improper and irrelevant other-acts evidence offered by Defendant.

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8 Dated this 27th day of September, 2021.

9 **Mike Schmidt**
10 District Attorney
Multnomah County, Oregon

11 By: /s/ Reid C. Schweitzer
12 Reid C. Schweitzer, OSB No. 191962
13 Deputy District Attorney
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Certificate of Service

I hereby certify that I served the within State's Motion in Limine in the matter of *State of Oregon v. Alan Swinney* case 20-CR-50067 on the 27th of September, 2021, by electronic filing and email service addressed to:

Joe Westover and Megha Desai
Defense counsel for Defendant
Via email

/s/ Reid C. Schweitzer
Reid C. Schweitzer, OSB #191962
Deputy District Attorney