

MULTNOMAH COUNTY CIRCUIT COURT
IN AND FOR THE STATE OF WASHINGTON

STATE OF OREGON,

PLAINTIFF,

vs.

JOSEPH GIBSON,

DEFENDANT.

No. 19CR53042

JOSEPH GIBSON'S
MOTION TO COMPEL DISCOVERY

[ORAL ARGUMENT REQUESTED]
[UTCRC 4.050]

I. MOTION

COMES NOW Mr. Joseph Gibson, by and through the Angus Lee Law Firm, PLLC, and moves the Multnomah County Circuit Court for an order to compel the State of Oregon to provide material designated in part II of this memorandum and/or make sufficient efforts to cause the same to be made available to Mr. Gibson by a date certain set by this court.

II. DESIGNATED MATERIAL

1. Any video showing or establishing violent conduct committed by Russell Schultz.
2. Any video showing or establishing tumultuous conduct committed by Russell Schultz.

III. LAW

"The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously." ORS 135.845; see also *State v. Warren*, 304 Or 428, 430, 746 P2d 711 (1987) ("A criminal defendant's "right" to discover evidence available to the prosecution is premised on both constitutional and statutory principles. The due process clause of

1 the federal constitution prohibits a prosecutor from withholding evidence favorable to the defense
2 and material to the question of guilt or punishment.”).

3 “The policy underlying the right to criminal discovery is the same as that which the right
4 to civil discovery supports.” 12 Wash. Prac., Criminal Practice & Procedure § 1303 (3d ed.). In
5 an adversarial system, the quest for truth is better served if the evidence of one party does not come
6 as a surprise to the other party. *Id.* Thus, rules of discovery are designed to enhance the search for
7 truth by giving the defendant notice of the evidence and to enable him to prepare his defense as
8 well as to safeguard the state against surprise. *Id.* In order to provide adequate information for
9 informed pleas, expedite trials, minimize surprise, afford opportunity for effective cross-
10 examination, and meet the requirements of due process, pretrial discovery should be as full and
11 free as possible. *Id.*¹ For this reason the trial court is granted wide discretion in determining the
12 scope of discoverable information.

13 Due process imposes certain duties on law enforcement and investigative agencies to
14 ensure that every criminal trial is a “search for truth, not an adversary game.” *Id.*, at 1302.² Due
15 process is denied an accused if the prosecution withholds material exculpatory evidence or
16 destroys any evidence prior to trial. *Id.*³

¹ Citing *State v. Pawlyk*, 115 Wn.2d 457, 800 P.2d 338 (1990); *State v. Norby*, 122 Wn.2d 258, 858 P.2d 210 (1993) (trial court granted defendant's motion to compel the state to answer detailed interrogatories about police and prosecutorial investigative and charging practices, as well as interrogatories about individual cases; the trial court did not enter a finding that the information the defendant sought was material or that his discovery request was reasonable; the court did not decide whether the use of interrogatories in a criminal case may never be deemed appropriate); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

² See also *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (the adversary system of trial is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played); *Wardius v. Oregon*, 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973) (discovery must be a two-way street; the state may not insist that trials be run as a “search for truth” so far as defense witnesses are concerned, while maintaining “poker game” secrecy for its own witnesses).

³ Citing inter alia *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (failure to grant meaningful discovery); *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) (non-disclosure of evidence); *Wearry v. Cain*, 136 S. Ct. 1002, 194 L. Ed. 2d 78 (2016) (capital case; prosecution withheld police records showing

1 A criminal defendant's right to counsel is protected by the Sixth Amendment and applied
2 to the states through the Fourteenth Amendment. *Id.* The right to counsel assures “effective aid in
3 the preparation and trial of the case” as well as the right to a lawyer. *Id.* The Supreme Court has
4 held that the constitutional guarantee of effective assistance of counsel includes the right to pretrial
5 gathering of information. *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970).

6 The Sixth Amendment confrontation clause, also incorporated by the Fourteenth
7 Amendment, may be violated by a refusal to provide the defense with pretrial discovery. *Id.*⁴

8 IV. ARGUMENT

9 The State has charged Mr. Gibson, Mr. Schultz, and three others with Riot. ORS 166.015.
10 For a Riot charge to stand, each of the five individuals must engage in violent or tumultuous
11 conduct.⁵ Yet the State of Oregon has not disclosed any video or witness establishing an allegedly
12 violent or tumultuous act by Mr. Schultz.

13 Videos of the May 1st protest of Antifa and Cider Riot that has been provided in discovery
14 show the involvement of both Mr. Gibson and Mr. Schultz.⁶ Decl. D. Angus Lee. The video
15 provided in discovery appears completely devoid of any apparent act of “violence” or “tumultuous
16 conduct” committed by Mr. Schultz personally. *Id.* Police reports and witness statements provided
17 in discovery also do not appear to contain any reference to violent or tumultuous conduct by Mr.
18 Schultz. *Id.*

that inmate snitch had made statements that cast doubt on his credibility; prosecution's failure to disclose material evidence supporting Weary's innocence violated his due process rights).

⁴ Citing *Pointer v. Texas*, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965); *Douglas v. Alabama*, 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965).

⁵ The Oregon Supreme Court wrote plainly in *State v. Chakerian* that “[i]t is clear under the statute that a person does not commit the crime of riot if he or she merely is part of a group and five *other* members of that group engage in tumultuous and violent conduct that intentionally or recklessly creates a grave risk of causing public alarm.” 325 Ore. 370, 375 n 8 (1997) (emphasis original). “Under the statute, the state must prove that the person charged actually ‘engage[d] in violent and tumultuous conduct.’” *Id.*

⁶ Much of such video is publicly available online here: <https://youtu.be/HzId89utLys?t=1142>

1 Keeping in mind that for charges of Riot against Mr. Gibson to stand, there must be
2 evidence that 5 separate individuals, participating *with* Mr. Gibson, engaged in violence. Mr.
3 Schultz, the fifth man, is hardly mentioned in the police reports and the video shows zero physical
4 interaction between him and any other individual.

5 If the State is prosecuting Mr. Schultz for “taunting” Antifa it should make this clear. But
6 if the State has video showing or a witness establishing that Mr. Schultz engaged in violent or
7 tumultuous conduct then the State should provide said video or witness statement.

8 V. CONCLUSION

9 Joseph Gibson moves the Multnomah County Circuit Court for an order to compel the
10 State of Oregon to provide material or information as designated in part II of this memorandum,
11 and/or make sufficient efforts to cause the same to be made available to counsel for Mr. Gibson.

12 Respectfully submitted this Friday, January 3, 2020.

/s/ D. Angus Lee

D. Angus Lee, WSBA# 36473 ***Pro Hoc Vice***
Angus Lee Law Firm, PLLC
9105A NE HWY 99 Suite 200
Vancouver, WA 98665
Phone: 360.635.6464
Fax: 888.509.8268
E-mail: Angus@AngusLeeLaw.com
Attorney for Defendant JOSEPH “JOEY”
GIBSON

/s/James L. Buchal

James L. Buchal, OSB No. 921618
MURPHY & BUCHAL LLP
3425 SE Yamhill Street, Suite 100
Portland, OR 97214
Tel: 503-227-1011
Fax: 503-573-1939
E-mail: jrbuchal@mbllp.com
Attorney for Defendant JOSEPH “JOEY”
GIBSON

13 14 15 16 DECLARATION OF COUNSEL

17 I, D. Angus Lee, declare under the penalty of perjury that the following is true and correct
18 to the best of my knowledge. I am over the age of eighteen, and I am competent to testify to the
19 matters herein. I have personal knowledge of the matters stated herein, or as indicated, have

1 information concerning those matters. I am the attorney of record for Joseph Gibson, in the above
2 captioned matter.

3 1. I have reviewed all discovery made available to me thus far in this matter.

4 2. Based on that review, I do not see evidence of any act that I believe is, or could reasonably
5 be interpreted as, tumultuous and violent that is committed by Mr. Gibson.

6 3. Based on that review, I do not see evidence of any act that I believe is, or could reasonably
7 be interpreted as, tumultuous and violent that is committed by Mr. Schultz.

8 4. What is clear from the discovery is that Mr. Gibson and Mr. Schultz were in a public
9 location exercising their rights of free expression when they were assaulted by patrons of Cider
10 Riot.

11 5. Attached to this declaration/motion are previous written requests or demands for discovery,
12 if any, that have been sent to the prosecutor for the State of Oregon in this matter.

13 I hereby declare that the above statement is true to the best of my knowledge and belief,
14 and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

15 Signed at Vancouver, Washington, this Friday, January 3, 2020.

16 S// D. Angus Lee

17 D. Angus Lee, WSBA# 36473

18 Attorneys for Joseph Gibson

19 Angus Lee Law Firm, PLLC

20 9105A NE HWY 99 Suite 200

21 Vancouver, WA 98665

22 Phone: 360.635.6464 Fax: 888.509.8268

23 E-mail: Angus@AngusLeeLaw.com
24

CERTIFICATE OF SERVICE

I, D. Angus Lee, hereby declare under penalty of perjury under the laws of the State of Oregon that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years.

On Friday, January 3, 2020, I caused this document to be served in the following manner on the parties listed below:

Brad Kalbaugh	()	(BY FIRST CLASS US MAIL)
Multnomah County District Attorney's Office	(X)	(BY E-MAIL)
600 Multnomah County Courthouse	()	(BY FAX)
1021 SW 4th Ave	()	(BY HAND)
Portland OR 97204		
E-mail: brad.kalbaugh@mcdca.us		

/s/ D. Angus Lee

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

STATE OF OREGON,

PLAINTIFF,

vs.

JOEY GIBSON,

DEFENDANT.

No. 19CR53042

JOSEPH GIBSON'S
DEMAND FOR DISCOVERY
SUPPLEMENTAL NUMBER 3

SUPPLEMENTAL DEMAND FOR DISCOVERY

The defendant, Mr. Joseph Gibson, by and through the Angus Lee Law Firm, PLLC having previously requested discovery, makes the following supplemental demands for discovery:

1. Any video showing or establishing violent conduct committed by Russell Schultz.

2. Any video showing or establishing tumultuous conduct committed by Russell Schultz.

YOU ARE HEREBY NOTIFIED that failure to comply with the demands contained herein will result in defendant, Joey Gibson moving for appropriate relief at time of hearing or trial.

Respectfully submitted this Monday, December 30, 2019.

/s/ D. Angus Lee

D. Angus Lee, WSBA# 36473 *Pro Hoc Vice*
Angus Lee Law Firm, PLLC
9105A NE HWY 99 Suite 200
Vancouver, WA 98665
Phone: 360.635.6464

/s/James L. Buchal

James L. Buchal, OSB No. 921618
MURPHY & BUCHAL LLP
3425 SE Yamhill Street, Suite 100
Portland, OR 97214
Tel: 503-227-1011

DEMAND FOR DISCOVERY (SUPP 3)

No. 19CR53042

Monday, December 30, 2019

Fax: 888.509.8268

E-mail: Angus@AngusLeeLaw.com

Attorney for Defendant JOSEPH "JOEY"
GIBSON

Fax: 503-573-1939

E-mail: jbuchal@mbllp.com

Attorney for Defendant JOSEPH "JOEY"
GIBSON

1

2

CERTIFICATE OF SERVICE

I, D. Angus Lee, hereby declare under penalty of perjury under the laws of the State of Oregon that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years.

On Monday, December 30, 2019, I caused this document to be served in the following manner on the parties listed below:

Brad Kalbaugh	()	(BY FIRST CLASS US MAIL)
Multnomah County District Attorney's Office	(X)	(BY E-MAIL)
600 Multnomah County Courthouse	()	(BY FAX)
1021 SW 4th Ave	()	(BY HAND)
Portland OR 97204		
E-mail: brad.kalbaugh@mcda.us		

/s/ D. Angus Lee