

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

STATE OF OREGON,

Plaintiff,

v.

JOSEPH OWAN GIBSON,

Defendant.

Case No. 19CR53042

**SUPPLEMENTAL DECLARATION OF
JAMES L. BUCHAL IN SUPPORT OF
JOSEPH GIBSON'S MOTION TO
CHANGE VENUE**

James Buchal declares:

1. I am local counsel to defendant Joseph Gibson in this action. I make this Supplemental Declaration in further support of Joseph Gibson's Motion to Change Venue.

2. Attached hereto as Exhibit 1 is a true copy of an Article by Aimee Green, of The Oregonian/OregonLive, posted June 7, 2019, entitled "2 Portland protesters who doused cops with buckets of glitter mixed with lubricant get 5 days in jail".

3. Attached hereto as Exhibit 2 is a true copy of Article by Jennifer Dowling, of KOIN 6 News, posted October 12, 2019, entitled "Portland activist dies after crash, shooting; death a homicide".

4. Attached hereto as Exhibit 3 is a true copy of the transcript of the November 8, 2019 hearing in the civil matter of *Cider Riot, LLC et al. v. Patriot Prayer USA, LLC et al.*, Case No. 19CV20231. This Exhibit is also relevant to Joseph Gibson's Demurrer filed August 28, 2019 and Joseph Gibson's Motion for Bill of Particulars or Election filed October 25, 2019.

1
SUPPLEMENTAL DECLARATION OF JAMES L. BUCHAL IN
SUPPORT OF JOSEPH GIBSON'S MOTION TO CHANGE VENUE
Case No 19CR53042

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

1 I certify under penalty of perjury that the foregoing is true and correct.

2 Dated this 5th day of March 2020.

3
4 s/James L. Buchal

5 James L. Buchal, OSB No. 921618
6 MURPHY & BUCHAL LLP
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2 Portland protesters who doused cops with buckets of glitter mixed with lubricant get 5 days in jail

Updated Jun 10, 2019; Posted Jun 07, 2019

11

Men convicted of dumping lubricant and glitter on cops

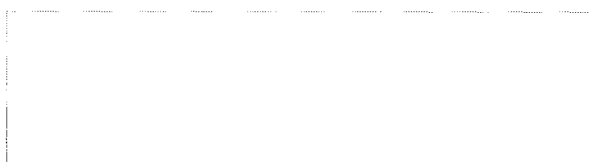
7.6k
shares

EXHIBIT 1
PAGE 1 OF 6

Two protesters who splattered two police officers with buckets full of lubricant and glitter during a Patriot Prayer rally in downtown Portland last summer were sentenced Friday to five days in jail.

Robert "Jonah" Majure, 28, and Tristan Romine-Mann, 29, had attended the rally to demonstrate against what they believe are the right-wing group's racist, chauvinist and violent views. They showed up with four 5-gallon buckets of lubricant used to artificially inseminate horses, gold glitter mixed in, super-soaker-type water guns and a plan to spray Patriot Prayer members.

Advertisement



Majure and Romine-Mann said they hadn't decided whether they'd really go through with it when police walked up to them and told them to dump the buckets.

Police testified that the men purposely threw the slime on them, then tried to fist bump each other in celebration after they were handcuffed and taken into custody.

After a three-day trial in Multnomah County Circuit Court, a six-person jury on Wednesday found both men guilty of misdemeanor harassment for offending and annoying the officers with the slippery goo.

Multnomah County Circuit Judge Kenneth Walker sentenced them to the jail time, plus 32 hours of community service and one year of probation.

Walker said he understands the men's anger at centuries of racism and bigotry in this country -- and the groups that still associate with it.

"I detest their message as well, as an African American man," Walker said.

But he said while he knows younger men can make “foolish and stupid decisions,” he’s never seen anything quite like what Majure and Romine-Mann did during the Aug. 4 rally and counter-protest next to Tom McCall Waterfront Park.

Advertisement

The judge added: “I don’t think you have any out-and-out animosity for the police, but you don’t have the appropriate amount of respect either.”

Judge says protesters who threw slime at cops ...




EXHIBIT 1
PAGE 3 OF 6

The sentencing ^{Set} ~~was~~ ^{was} a closely watched case in Portland’s protest community. ^{Subscribe}
Majure and Romine-Mann highlighted it as another example of what they see as the

Majure and Romine-Mann highlighted it as another example of what they see as the Portland Police Bureau's disproportionate focus on arresting counter-protesters while allowing supporters of right-wing groups such as Patriot Prayer and the Proud Boys to operate unfettered.

Patriot Prayer leader Joey Gibson had encouraged members of his group to bring guns to the tense Aug. 4 rally, and police found what the mayor characterized as a "cache of guns" belonging to supporters who had positioned themselves on a rooftop overlooking the rally.

Counter-protesters criticized police for not arresting the gun owners. But police said the "cache" consisted of three rifles that weren't loaded, although the men had ammunition with them. Police said the men also had concealed gun licenses and hadn't broken any laws.

Majure and Romine-Mann asked why police instead would use their authority to arrest them for what the two men characterized as a "silly and disarming" response to Patriot Prayer.

Advertisement

During the trial, Romine-Mann acknowledged that he brought the mixture to the rally to taunt Patriot Prayer backers. "It was like mocking them, mocking the machismo," he said. "It has a consistency that's very slimy and humiliating to get all over you."

As for the glitter, Romine-Mann said he and Majure stirred it in as a sort of "glitter bomb (for) people who take themselves too seriously."

EXHIBIT 1
PAGE 4 OF 6

Romine-Mann said police exaggerated the trajectory of the bucket's slime. When asked if he ^{Sett} _{Weather} intended to throw the mixture at officers, he responded ^{Submit} _{that} he was just following orders to empty the bucket

Majure said he didn't toss the slime at the officers. Rather, he said, it went everywhere when a sergeant ordered his arrest and a Patriot Prayer member suddenly grabbed him and flung him around.

Jurors found both men not guilty of second-degree disorderly conduct. And while police said Majure flailed and squirmed as they tried to handcuff him, jurors acquitted him of resisting arrest.

Detective Todd Christensen testified that after arresting the two men, four officers had to leave the rally to clean up because they were hit with the slime and glitter.

Advertisement

Christensen, who got the worst of it, said he had to throw away his uniform and a vest because the glitter was impossible to remove. Reminders of that day remain in his service weapon, he said.

"I still have glitter in the side of my handgun that I can't get out," Christensen said.

Portland cop is offended by being doused with sl...



EXHIBIT 1
PAGE 5 OF 6

Set
Weather

Subscribe

At the sentencing hearing, Christensen said he's gotten used to being insulted and mistreated by members of the public over his two-decades-long career and he doesn't let it bother him. But he said he was deeply offended by Majure and Romine-Mann.

"In the ultimate act of disrespect that I have ever been a part of, surrounded by hundreds of people, they decided to ... throw that then-unknown liquid all over me and my coworkers," Christensen said.

"That moment of sheer terror -- not knowing what kind of chemical or substance it could have been, if it was harmful or harmless -- did not matter to them," he said.

"They reveled in glee at what they had done in trying to humiliate us."

-- Aimee Green

agreen@oregonian.com

o_aimee

Visit subscription.oregonlive.com/newsletters to get Oregonian/OregonLive journalism delivered to your email inbox.

Note to readers: if you purchase something through one of our affiliate links we may earn a commission.

Around the web

**ADVANCE
LOCAL**

Registration on or use of this site constitutes acceptance of our [User Agreement](#), [Privacy Policy and Cookie Statement](#), and [Your California Privacy Rights](#) (each updated 1/1/20).

© 2020 Advance Local Media LLC. All rights reserved ([About Us](#)).

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Advance Local.

[Community Rules](#) apply to all content you upload or otherwise submit to this site.

▶ [Ad Choices](#)

50°



MULTNOMAH COUNTY

Portland activist dies after crash, shooting; death a homicide

A Portland man was taken to the hospital where doctors tried to save him

NE Portland SUV crash, gunfire death ruled as homicide

by: Jennifer Dowling, KOIN 6 News Staff

Posted: Oct 12, 2019 / 06:56 AM PDT / Updated: Oct 14, 2019 / 05:55 PM PDT

PORTLAND, Ore. (KOIN) — A man who was dropped off at a local hospital in the early hours of Saturday morning has died, said Portland Police. They are now investigating the violent chain of events that led up to his death.

Authorities have connected his death with a car crash and gunfire that were reported around 12:15 a.m. Saturday at Northeast 8th Avenue and

TAX TIME
\$ALE

Daxton Sectional
\$599

THE FURNITURE
CONNEXION

Current
50°

Tonight
41°

Tomorrow
46°

Broken
Clouds

Showers
Precip: 80%

Chance of
showers
Precip: 70%

TRENDING STORIES

- 1 Crews pause search for missing driver near Wheatland Ferry

EXHIBIT 2
PAGE 1 OF 8

Davis Street. Officers arrived at the scene this morning to find a car that had crashed into a nearby building. They also found evidence of gunfire in and around the SUV. However, the car was abandoned and no one was found in the area.

Shortly after beginning their investigation, police learned that someone had been dropped off at a nearby hospital with traumatic injuries. They believe that after the car crash, friends of the victim brought him to the hospital.



Sean D. Kealiher in an undated photo his family provided police with. October 12, 2019. (Courtesy Portland Police Bureau)

That man has been identified as 23-year-old Sean Kealiher, of Portland.

Doctors attempted to save him, but he did not survive.

The Medical Examiner's Office said that an autopsy indicated he died from blunt force trauma. His death is now

being investigated as a homicide.

Witnesses reported hearing shouting just before Kealiher was injured. A man told KOIN 6 News he was in his tent nearby when he heard what sounded like 2 cars colliding, followed by shouting. Daryl Perez said when he came out of his tent, he saw the SUV hung up on the sidewalk—it had hit a tree outside of the offices of the Democratic Party of Oregon and the driver was trying unsuccessfully to move the car. He also said he heard 4 shots fired, but wasn't sure who had a gun.

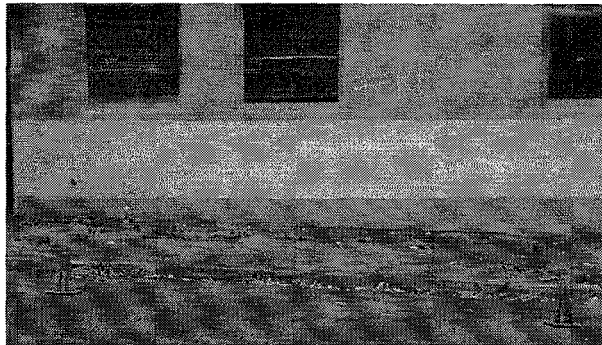
"He was lifeless," said Perez. "It was difficult for them, they were...just trying to get him to get up. He's heavy—he slipped out of their hands a couple times before they got him back to the car."

The Democratic Party offices were closed at the time of the crash, but the damage left from the incident was still visible.

"It's very sad this would happen to someone in our town," said Brad Martin, the

[x Close Ad](#)

Executive
50°
Director of the
Democratic
Party of Oregon.
“He was involved
in progressive
causes and
deeply
committed, and
it makes it all the
more sad and
concerning.”



A message was written on the wall and roses left out on the sidewalk where a crash that killed a 23-year-old Portland man happened. October 12, 2019 (KOIN)

At the crash site, a memorial for Kealiher has begun to form. “Armenio rest in power” and “#Resist” was written on the wall of the building where the SUV crashed. Friends of Kealiher told KOIN 6 News that Armenio was his nickname, and described him as a social justice champion. Roses were also scattered on the sidewalk under the message.

“He was very dedicated to his community and a very solid friend,” said Kealiher’s friend Meagan Vogel. “He was always challenging old lines of thought and trying to be a bigger person. I really appreciated how much he put himself on the line for other people.”

“We loved him and we are all really shaken,” said Vogel. “But we are going to come together because that’s what we are all about.”

Later Saturday evening, Mayor Ted Wheeler reacted to the news of Kealiher’s death on Twitter.



Mayor Ted Wheeler
@tedwheeler

This is alarming and heartbreaking. Our deepest sympathies go out to family and friends of the victim.

Mayor Ted Wheeler commented on the news of Sean Kealiher’s death on Twitter Saturday evening. October 12, 2019 (Twitter)

Investigators are looking to speak with anyone who witnessed the incident, or the chain of events that led up to the crash. No arrests have been made at this time.

× Close Ad

If anyone has information, they're asked to contact Detective Scott
50°
Broughton at 503.823.3774 or Detective Rico Beniga at 503.823.0457.

KOIN 6 News will continue to follow this story.

Follow KOIN 6 for the latest news and weather



Download our **FREE** news and weather apps for **iPhone, iPad and Android**. You can also follow us on Facebook, Twitter and Instagram, and sign up for our email newsletters.

RELATED CONTENT

Girlfriend mourns activist Sean Kealiher: 'World lost a hero'

Graffiti to stay as people mourn Portland activist

Copyright 2020 Nexstar Broadcasting, Inc. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

SHARE THIS STORY

AROUND THE WEB

Ads by Revcontent



**New Nano Tech Face Mask
Selling out Fast in Oregon**

Safe Mask



**Why Did No One Tell Oregon
Drivers About This ?**

CarlLowBill



**Heart Surgeon Boils Weight
Loss Down to One Thing**

Gundry MD



**Americas #1 Futurist George
Gilder's 2020 Prediction Will
Stun You**

Internet Reboot 2020



× Close Ad

EXHIBIT 2
PAGE 4 OF 8

MORE MULTNOMAH COUNTY STORIES



6 Things this weekend, March 6-8

by Nicole DeCosta / Mar 5, 2020

PORTLAND, Ore. (KOIN) — Save me a seat! It's the first weekend in March and Portland Dining Month is underway. This is when Portland's top restaurants offer three-course meals for a great price so get out there and try out some new restaurants.

And what's dinner without a show afterward? "Disney's FROZEN" is at the Keller Auditorium and is already melting hearts, the hip-hop extravaganza "Funkedified" is at the Newmark Theatre, Tony-Award winning "The Curious Incident of the Dog in the Night-Time" is at The Armory, and Men At Work's frontman Colin Hay will be belting out his hits at Revolution Hall.

[Read the Full Article](#) →



✓ Close Ad

50th Previewing the Portland International Film Festival

by KOIN 6 News Staff, Elise Haas, Emily Burris / Mar 5, 2020

PORTLAND, Ore. (KOIN) -- The Portland International Film Festival is returning for it's forty-third year!

The festival spotlights local artists as well as those around the globe. The festival includes films, talks, workshops, visiting artists and parties! The even runs from March 6 through March 15.

[Read the Full Article](#) →



2 arrested while fleeing scene of storage facility burglary

by KOIN 6 News Staff / Mar 5, 2020

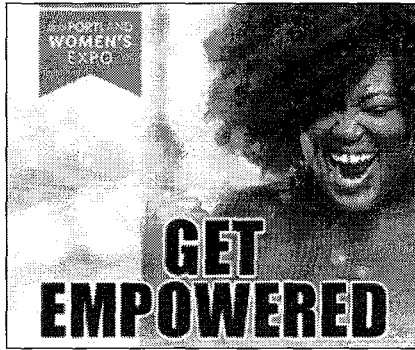
PORTLAND, Ore. (KOIN) -- Two suspects were arrested as they were leaving the scene of a burglary in a stolen car, according to police.

Portland Police officers responded to a burglary in progress at the Public Storage facility on Southeast 105th Avenue just before 3 p.m. on Wednesday. They saw the suspects attempting to leave in the stolen car, who then tried to flee on foot before being captured.

[Read the Full Article](#) →

[x Close Ad](#)

50°



TOP STORIES



Get in the St. Patrick's Day spirit with Dullahan's Irish Pub



6 Things this weekend, March 6-8



2 arrested while fleeing scene of storage facility burglary



103-year-old gears up for annual Shamrock Stride



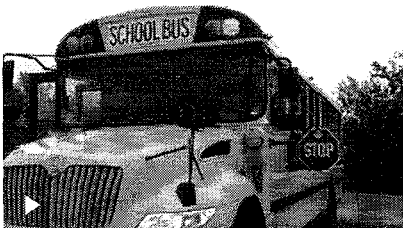
Ask KOIN 6 News your coronavirus questions



Fatal crash shuts down Highway 47 near Buxton



MORE STORIES



[x Close Ad](#)

How Salem-Keizer School District is
keeping students and staff safe

Is Idaho turning a little blue?
Primary might provide clues

10th Annual Washington State
Horse Expo back in town

Forest Hills Elementary reopens
after coronavirus concerns

Read more stories →



FOLLOW US



NEWS APP



WEATHER APP



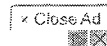
[News](#) [Weather](#) [Special Reports](#) [Traffic](#) [KOIN News AM Extra](#) [Video](#) [Sports](#) [Community](#) [Portland's CW](#) [About Us](#)

[Privacy Policy](#) / [KOIN: FCC Public File](#) / [KRCW: FCC Public File](#) / [KOIN: FCC EEO Report](#) / [KRCW: FCC EEO Report](#) / [Nexstar](#)
[CC Certification](#) / [Terms of Use](#) / [Contact Us](#) / [Advertise with Us](#) / [Do Not Sell My Personal Information](#)

© 1998 - 2020 Nexstar Broadcasting, Inc. | All Rights Reserved

CONTINUE >

- Click Continue
- Add app
- Access Popular TV sites



watchfree.news

EXHIBIT 2
PAGE 8 OF 8

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF MULTNOMAH

3 CIDER RIOT, LLC; and ABRAM)
 4 GOLDMAN-ARMSTRONG,)
)
 5 Plaintiffs,) Multnomah County Circuit
) Court No. 19CV20231
 6 vs.)
) CA A173013
 7 PATRIOT PRAYER USA, LLC; JOSEPH)
 8 "JOEY" GIBSON; IAN KRAMER;) Volume 3 of 3
 9 CHRISTOPHER PONTE; DAVID WILLIS;)
)
 10 MACKENZIE LEWIS; MATTHEW)
)
 11 COOPER; and JOHN DOES 1-25,)
)
 12 Defendants.)

13 TRANSCRIPT OF PROCEEDINGS

14 BE IT REMEMBERED that the above-entitled
 15 matter came on regularly for hearing before the
 16 Honorable Andrew M. Lavin, Judge of the Circuit Court of
 17 the County of Multnomah, State of Oregon, commencing at
 18 the hour of 1:17 p.m. on Friday, November 8, 2019.

19 APPEARANCES

20 Mr. Juan C. Chavez
 21 Mr. Clifford S. Davidson
 22 Attorneys at Law
 23 Appearing on behalf of the Plaintiffs;
 24
 25 Mr. James L. Buchal
 Attorney at Law
 Appearing on behalf of the Defendants.

1 P R O C E E D I N G S

2 THE CLERK: All rise. The Circuit Court
3 of the State of Oregon is now in session, the Honorable
4 Andrew Lavin presiding.

5 THE COURT: Thank you. Please be seated.

6 We're present in Cider Riot, et al. versus
7 Patriot Prayer, et al. It's Case 19CV20231. And we are
8 present for me to rule on defendants' special motion to
9 strike.

10 Counsel are present and I'll have them
11 place their appearances on the record, beginning with
12 plaintiffs' counsel.

13 MR. CHAVEZ: Good morning -- or good
14 afternoon, Your Honor. Juan Chavez, Bar No. 136428. I
15 use he/him pronouns, and I'm here for the plaintiff.

16 MR. DAVIDSON: Good afternoon, Your Honor.
17 Cliff Davidson, Bar No. 125378, for the plaintiff.

18 THE COURT: All right.

19 And for the defense.

20 MR. BUCHAL: James Buchal, Bar No. 921618,
21 for defendants Joseph Gibson and the Patriot Prayer LLC.

22 THE COURT: All right. Good afternoon,
23 everyone.

24 I know that there are several members of
25 the media who are present. I'm inclined to rule the

1 same way that I did two weeks ago with regard to press
2 coverage. Is there anything additional from any counsel
3 regarding that ruling?

4 MR. DAVIDSON: No, Your Honor.

5 MR. BUCHAL: No, Your Honor.

6 THE COURT: All right. So same ruling as
7 before. You're welcome to take as many photographs or
8 videos as you'd like, just as long as it's not
9 distracting or in any way interfering with confidential
10 communications that are taking place at counsel table.

11 All right. Thank you.

12 All right. So I am prepared to rule, and
13 I've finished my review of the briefing, including the
14 post-argument briefs that were filed by counsel.

15 Mr. Buchal, you had something to add.

16 MR. BUCHAL: I did wish to lodge an
17 objection to the post-argument brief of plaintiffs
18 insofar as it contains some additional new evidence that
19 I don't think was within the spirit of Your Honor's
20 briefing offer.

21 THE COURT: I understand. I -- I'll tell
22 you that I didn't think about it too much, but I did
23 sort of have a similar reaction. I think it maybe
24 raised some arguments that were beyond the scope of the
25 additional briefing.

1 I can tell you that my decision today
2 isn't really going to depend on anything that plaintiffs
3 brought up in their additional briefing, though.

4 MR. BUCHAL: May I ask you to rule
5 formally that that evidence is not part of the record.

6 THE COURT: Well, I think that they
7 referred to evidence -- I just want to be clear about
8 what you're asking. I think that they referred to
9 evidence in their post-argument briefing that is in the
10 record.

11 MR. BUCHAL: Yes.

12 THE COURT: But they made arguments about
13 that evidence that goes beyond the scope of the
14 arguments that you raised in your briefing. Is that
15 what you mean?

16 MR. BUCHAL: To be technically nitpicking
17 about it, I was objecting to some hyperlinks in
18 Footnote 2 on Page 8 and Footnote 4 on Page 12 as an
19 attempt to introduce substantive evidence in. I'm
20 seeking a ruling from Your Honor that that substantive
21 evidence is not a part of the record.

22 THE COURT: I see. Okay. Mr. Chavez or
23 Mr. Davidson, any response?

24 MR. CHAVEZ: Yes, Your Honor.

25 I believe that the briefing provided by --

1 by the defendants in that circumstance did open the door
2 to at least some limited explanation of some of our
3 arguments.

4 I don't have the -- if I can have a
5 moment, I can open the briefing so I can address the
6 specific footnotes themselves.

7 But substantively, the -- the briefing
8 spoke again on the issue of prong 2, the evidence that
9 we produced, in which case I believe it was within our
10 authority to then comment on our arguments under prong 2
11 once more.

12 And I will have Footnote 2 open in just
13 one moment.

14 Mr. Buchal, you said Footnote 2 and
15 Footnote 3?

16 MR. BUCHAL: Footnote 2 and Footnote 4,
17 Page 8, Page 12.

18 MR. CHAVEZ: Okay.

19 Footnote 2 refers to a publicly available
20 article that was posted on the *Daily Beast* website. I
21 think that's within the realm of both things that were
22 discussed in our initial briefing, as well as addressing
23 arguments that were raised in the supplemental brief.

24 And the fourth video is a statement and
25 video made by the defendant himself, so I think it's

1 a -- fair to bring in party statements in that manner.

2 THE COURT: Okay. All right.

3 Mr. Buchal, anything further?

4 MR. BUCHAL: Just that it's procedurally
5 improper to bring in new evidence at the last minute
6 without us having an opportunity to respond to it.

7 THE COURT: Okay. I will formally strike
8 the hyperlinks in those footnotes. And I -- I think
9 it's sort of a matter of form me doing that because,
10 like I said, it's not going to affect, those -- those
11 hyperlinks are not going to affect my decision that I'm
12 making today. But I appreciate the clarification,
13 Mr. Buchal.

14 Anything further before I rule? Okay.

15 I have finished my review of the briefing,
16 including the post-argument briefs filed by the parties,
17 and I did appreciate those briefs. I think that they
18 helped clarify some of the questions that I had.

19 Mr. Buchal.

20 MR. BUCHAL: I'm sorry. Technically I
21 didn't know whether Your Honor was going to enter a
22 written decision after this, but I had made some effort
23 to file, with Mr. Chavez's cooperation, an order
24 resolving the earlier motions that technically we would
25 like to have entered before any limited judgment is

1 entered.

2 So I thought I should bring --

3 THE COURT: I understand.

4 MR. BUCHAL: Yeah.

5 THE COURT: I do have -- that -- that does
6 bring up a good point. I do have the proposed order
7 from my earlier ruling. What I had intended to say was
8 that I would sign that as soon as it shows up in my --
9 in my queue for electronic signature, because that
10 usually makes things go more smoothly on our end.

11 But I understand that there is a desire
12 for that to be signed more quickly, perhaps, so that it
13 precedes any limited judgment that's going to result
14 from this ruling. So I will sign that today before all
15 of you leave and we'll file that that way.

16 MR. BUCHAL: Thank you, Your Honor.

17 THE COURT: So we'll make sure. Thank
18 you, Mr. Buchal.

19 I have also reviewed the applicable case
20 law and the evidence submitted by the parties and I am
21 prepared to rule.

22 I respectfully deny defendants' special
23 motion to strike, and I will have counsel for plaintiffs
24 prepare a limited judgment to that effect for my
25 signature. It is a limited judgment pursuant to ORS

1 31.150(1), and I will explain the reasoning for my
2 ruling.

3 Under 31.150(3), the defendants have the
4 initial burden with regard to their special motion to
5 strike. They must show that plaintiffs' claims arise
6 from a statement, document or conduct presented in a
7 public forum regarding an issue of public interest; or
8 they must show that the claims arise from conduct in
9 furtherance of the exercise of a Constitutional right of
10 free speech.

11 I conclude that the defendants have
12 satisfied that burden. Regardless of whether
13 defendants' conduct alleged in plaintiffs' complaint
14 ultimately became tortious or criminal, the conduct at
15 issue in the complaint stems from defendants' exercise
16 of political speech and demonstration regarding a topic
17 of public interest and in a public place.

18 The defendants, having met their burden,
19 the burden then shifts to the plaintiffs under
20 ORS 31.150(3) to establish a probability that the
21 plaintiffs will prevail on the claims in their
22 complaint.

23 That same subsection, along with the
24 applicable case law, tells us that a plaintiff must
25 satisfy that burden by presenting, quote, "substantial

1 evidence to support a prima facie case," end quote.

2 Stated another way, my standard of review
3 is this: From the evidence presented, have the
4 plaintiffs established that a rational trier of fact
5 could find that the plaintiffs have proved their claims
6 against the defendants by a more likely than not
7 standard.

8 I conclude that the plaintiffs have
9 established that, thereby satisfying their prima facie
10 burden of production.

11 In their complaint, plaintiffs allege four
12 claims: Negligence, trespass, intentional infliction of
13 emotional distress, and intentional interference with
14 economic relations.

15 The majority of the facts that the
16 plaintiffs allege in support of those claims occurred on
17 May 1st of this year in an area immediately surrounding
18 the premises of Cider Riot.

19 Both plaintiffs and defendants have
20 submitted affidavits and video evidence that describe
21 and depict those events. No single piece of video
22 evidence or affidavit tells the whole story of what
23 happened outside of Cider Riot on May 1st.

24 And taken together, the evidence as a
25 whole paints a picture that is somewhat ambiguous in

1 certain ways and subject to multiple and competing
2 interpretations, each of which is arguably reasonable.

3 From that evidence, could a reasonable
4 trier of fact conclude that it is more likely than not
5 that certain individuals outside Cider Riot on May 1st
6 engaged in conduct that went beyond Constitutionally
7 protected speech or demonstration and therefore became
8 tortious or criminal?

9 And the answer to that is yes, a
10 reasonable trier of fact could find that. The parties
11 have presented direct evidence that would support such a
12 conclusion; specifically the plaintiffs have presented
13 direct evidence to that effect.

14 Could a reasonable trier of fact conclude
15 that, more likely than not, Joey Gibson personally
16 engaged in physical conduct of that kind? No, I don't
17 think so, not from the evidence that I have seen.

18 Finally, could a reasonable trier of fact
19 conclude, on a more likely than not basis, that Joey
20 Gibson and Patriot Prayer are liable for the tortious
21 and/or criminal conduct of the other individuals outside
22 Cider Riot on May 1st because Gibson and Patriot Prayer
23 somehow ratified, coordinated or directed that conduct?

24 I found that to be a more difficult
25 question to answer than the others. If there is any

1 direct evidence of that ratification, coordination or
2 direction, it is scant at best.

3 However, I conclude that plaintiffs have
4 presented sufficient circumstantial evidence from which
5 a reasonable trier of fact could rationally infer that
6 Gibson and Patriot Prayer ratified, coordinated or
7 directed the tortious and criminal behavior of others at
8 Cider Riot on May 1st, thereby becoming liable for their
9 conduct.

10 On the other hand, could a reasonable
11 trier of fact conclude otherwise? Specifically, could a
12 reasonable trier of fact conclude that it is not more
13 likely that the defendants ratified, coordinated or
14 directed the conduct of others present? Yes, I believe
15 so.

16 Nevertheless, the standard that I am to
17 apply today does not require certainty as to the -- as
18 to an outcome in plaintiffs' favor in order for
19 plaintiffs to defeat defendants' special motion to
20 strike.

21 My ruling today is not a comment on the
22 merits of either side's case, nor is it a conclusion
23 regarding how the case should or will be ultimately
24 decided.

25 Instead, my ruling is an acknowledgment

1 that the plaintiffs have met their burden at this stage
2 of the proceedings and that essentially reasonable minds
3 could differ as to the ultimate outcome of this case.

4 Accordingly, many of the factual disputes among the
5 parties are questions for a jury to resolve rather than
6 for a single judge to decide today.

7 And so for those reasons, the defendants'
8 special motion to strike is respectfully denied.

9 Any questions for clarification?

10 Mr. Buchal.

11 MR. BUCHAL: Yeah. Would -- and this is
12 maybe asking Your Honor to do more than a judge should
13 be required to do, but your standard sounded similar to
14 a summary judgment standard.

15 And I was wondering if you might be
16 willing to elucidate whether you thought your standard
17 was different than a summary judgment effort standard
18 because it might save us work going forward.

19 THE COURT: I -- I think it is different.
20 I think that they are very similar and I think that I
21 captured what ORS 31.150 says that the standard is, and
22 it is as I stated.

23 I think that that is slightly different
24 than a motion for summary judgment standard, but I think
25 that boiling it down, it is the standard that I

1 articulated. And I am basing my -- my decision on the
2 standard that's in ORS 31.150.

3 All right. Any other questions?

4 MR. CHAVEZ: No, Your Honor.

5 THE COURT: All right. Thank you.

6 All right. Again, I will have
7 plaintiffs -- counsel for plaintiffs prepare the limited
8 judgment for my signature. I'll go sign the order on
9 the previous rulings so that that is done.

10 And I just wanted to say again that I
11 appreciate the professionalism of the attorneys and also
12 the parties during the oral arguments that we've had on
13 this case, as well as in the written materials.

14 I found the written materials to be very
15 helpful, and I appreciate that. So thank you very much.

16 Have a good weekend. We'll go off the
17 record.

18 MR. BUCHAL: Thank you, Your Honor.

19 MR. CHAVEZ: Thank you, Your Honor.

20 (End of proceedings, 1:30.)

21

22

23

24

25

1 STATE OF OREGON

ss.

2 County of Multnomah
3

4 I, Susan Bulman, certified shorthand reporter,
5 hereby certify that I reported in stenotype all
6 testimony adduced and other oral proceedings had
7 from a CD recording in the foregoing transcript;
8 that thereafter my notes were reduced to typewriting
9 under my direction; and that the foregoing
10 transcript, pages 1 through 136, both inclusive,
11 contains the full, true, and correct record of all
12 such testimony adduced and oral proceedings had and
13 of the whole thereof to the best of my abilities.

14 Witness my hand at Portland, Oregon, this 3rd
15 day of February, 2020.

16
17 *Susan Bulman*

18 Susan Bulman, RDR, CSR
19 Registered Diplomate Reporter
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Carole A. Caldwell, 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, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

On March 5, 2020, I caused the following document to be served:

SUPPLEMENTAL DECLARATION OF JAMES L. BUCHAL IN SUPPORT OF
JOSEPH GIBSON'S MOTION TO CHANGE VENUE

in the following manner on the parties listed below:

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

Scott Niebling, OSB No. 044943	(X)	(BY FIRST CLASS US MAIL)
516 SE Morrison St Ste 225	()	(BY E-MAIL)
Portland OR 97214	()	(BY FAX)
E-Mail: scottniebling@comcast.net	()	(BY HAND)
<i>Attorney for Defendant Lewis</i>		

Jason A. Steen, OSB No. 993675	(X)	(BY FIRST CLASS US MAIL)
741 SW Lincoln St	()	(BY E-MAIL)
Portland OR 97201	()	(BY FAX)
E-mail: jason@dickisonsteen.com	()	(BY HAND)
<i>Attorney for Defendant Kramer</i>		

s/ Carole Caldwell