

MULTNOMAH COUNTY CIRCUIT COURT
IN AND FOR THE STATE OF OREGON

STATE OF OREGON,

PLAINTIFF,

vs.

JOSEPH GIBSON,

DEFENDANT.

No. 19CR53042

**JOSEPH GIBSON'S RENEWED
MOTION TO COMPEL DISCOVERY OF
ANY EVIDENCE OF
VIOLENT/TUMULTUOUS CONDUCT**

**[ORAL ARGUMENT REQUESTED]
[UTCR 4.050]**

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 any evidence, particularly video, showing or establishing violent or tumultuous conduct committed personally by Joseph Gibson.

None of the discovery to date establishes violent or tumultuous conduct committed by Mr. Gibson, yet the State has preceded in this matter, and in prior motion hearings, in a manner suggesting (if not outright claiming) that such a video or other evidence exists.

The State even agreed to provide an exhibit list. But no exhibit list was ever provided, nor was any exhibit showing the alleged misconduct ever produced. If there is such an exhibit evidencing violent or tumultuous conduct it has not been provided, and the discovery rules

1 therefore violated and this court should compel production. If there is no evidence of violent or
2 tumultuous conduct by Mr. Gibson personally, this court should grant the *Robertson* Category
3 Three motion that is being filed in conjunction with this motion.

4 **FACTS**

5 “Defendants are each charged with one count of ‘Riot,’ which arises out of an incident
6 that occurred on May 1, 2019 (“May 1 Incident”), when people spouting opposing political
7 views engaged vigorously with one another outside of a Portland bar.” Order Denying Motion to
8 Dismiss for Joseph Gibson & Russell Schultz Selective Prosecution, p. 2, July 3, 2021
9 (emphasis added).

10 The court record contains video that the court has found “appears to capture the entirety
11 of the event giving rise to the filed charges.” *Id.* at 3 (emphasis added). “The Court has
12 reviewed this video evidence multiple times.” *Id.*

13 The evidentiary record in this case reveals the May 1 Incident to be a free-
14 wheeling, chaotic scene with individual, independent actors engaged in widely
15 varying individual, independent actions.... The May 1 Incident is marked by
16 people with opposing views engaging loudly with one another and at times
17 engaged in physical violence and/or physical touching; **the range of individual**
18 **actions is wide.**

19 *Id.* at 5-6 (emphasis added).

20 “The actors at the May 1 Incident acted **so particularly individually** that they could only
21 be evaluated on their **individual behavior.**” *Id.* at 6 (emphasis added).

22 “Defendants are certainly correct that the video evidence reveals participants in the
23 May 1 Incident who engage in affirmatively violent physical behavior. **None of the evidence**

1 **presented on this motion reveals Defendants engaging in such behavior.”** *Id.* at n. 4
2 (emphasis added).¹

3 There is no other evidence (particularly no other video evidence) provided in discovery
4 that captures any act by Mr. Gibson that could even arguably be considered violent or
5 tumultuous. Declaration of D. Angus Lee in Support of Joseph Gibson’s Motion to Compel
6 Discovery filed herewith.

7 **ARGUMENT**

8 As this court rightly noted, after repeated viewing of the available video of the event,
9 none of the evidence presented reveals Mr. Gibson engaging in violent or tumultuous conduct.
10 No other evidence has been disclosed to the defense and the State provided no other evidence to
11 the court. This leaves only two possibilities. The first is that the State is withholding discovery
12 in the form of evidence showing violent or tumultuous conduct by Mr. Gibson personally. The
13 only other possible alternative is that no such evidence exists.

14 Here, the State has charged Mr. Gibson with Riot. ORS 166.015. The Oregon Supreme
15 Court wrote plainly in *State v. Chakerian* that “[u]nder the statute, the state must prove that the
16 person charged actually ‘engage[d] in violent and tumultuous conduct.’” 325 Ore. 370, 375 n 8
17 (1997).

¹ The federal court concluded that defendants Gibson and Schultz made “*compelling arguments that their conduct does not rise to the level of ‘tumultuous and violent’ conduct under O.R.S. 166.015.*” *Gibson v. Schmidt*, No. 3:20-cv-01580-IM, 2021 U.S. Dist. LEXIS 36497, at *26 (D. Or. Feb. 26, 2021) (emphasis added). The Court, however, held that *Younger v. Harris*, 401 U.S. 37 (1971), required the federal court to abstain from exercising federal jurisdiction to avoid interference in the state criminal proceedings.

The State should be ordered to disclose the withheld evidence or stipulate that no such evidence exists.

“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 the federal constitution prohibits a prosecutor from withholding evidence favorable to the defense and material to the question of guilt or punishment.”). A criminal defendant's right to counsel, protected by the Sixth Amendment and applied to the states through the Fourteenth Amendment, makes clear that the constitutional guarantee of effective assistance of counsel includes the right to pretrial gathering of information. *Coleman v. Alabama*, 399 U.S. 1 (1970). The Sixth Amendment confrontation clause also entitled the defense to pretrial discovery. *Pointer v. Texas*, 380 U.S. 400 (1965); *Douglas v. Alabama*, 380 U.S. 415 (1965). If there is evidence of violent or tumultuous conduct by Mr. Gibson, then the defense is entitled to it.

CONCLUSION

Joseph Gibson moves the Multnomah County Circuit Court for an order to compel the State of Oregon to provide the withheld evidence, or stipulate that there is no evidence of violent or tumultuous conduct by Mr. Gibson.

Respectfully submitted this Tuesday, September 7, 2021.

/s/ D. Angus Lee

D. Angus Lee, WSB No. 36473 ***Pro Hac Vice***
Angus Lee Law Firm, PLLC
9105A NE HWY 99 Suite 200
Vancouver, WA 98665
Tel: 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
P.O. Box 86620
Portland, OR 97286
Tel: 503-227-1011
Fax: 503-573-1939
E-mail: jbuchal@mbllp.com
Attorney for Defendant JOSEPH "JOEY"
GIBSON

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 P.O. Box 86620, Portland, Oregon 97286.

On September 7, 2021, I caused the following document to be served:

JOSEPH GIBSON'S RENEWED MOTION TO COMPEL DISCOVERY OF ANY EVIDENCE OF VIOLENT/TUMULTUOUS CONDUCT

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		

Counsel for Russell Schultz	()	(BY FIRST CLASS US MAIL)
Clackamas Indigent Defense Corporation	(X)	(BY E-MAIL)
707 Main St., Ste. 400	()	(BY FAX)
Oregon City, OR 97045	()	(BY HAND)
E-mail: CIDCdefense@gmail.com		

Counsel for Mackenzie Lewis	()	(BY FIRST CLASS US MAIL)
Kelly Michael Doyle, Attorney	(X)	(BY E-MAIL)
117 Sixth Street	()	(BY FAX)
Oregon City, OR 97045	()	(BY HAND)
E-mail: kdoyleatty@aol.com		

/s/ Carole Caldwell