

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

**DEFENDANT'S RESPONSE TO
STATE'S MOTION TO COMPEL
DISCOVERY**

Argument

It is at best misleading for the State to claim that it has "not received any response to [its] repeated requests for discovery". The most pertinent e-mail exchange, containing the response, is attached hereto as Exhibit 1. By all appearances, this case was in an indefinite COVID limbo, being amongst the lowest priorities for holding jury trials. The State had not produced its exhibit list, so that Defendant could not begin to analyze the difficult issue of co-defendant statements, and could not commence detailed planning for trial.

On September 14th, the State finally produced a somewhat ambiguous list of video exhibits (the descriptions were in some cases not consistent with information received in discovery), as part of a disgraceful effort to force Defendant to trial on October 4th. Defendant sought clarification as to which videos were in fact on the list, and with regard to the State's discovery request said:

"... we have not yet reached a state of preparation when that can be provided. Would it make sense to set a date, perhaps in December, on which to agree to exchange witness lists and further documents? With further preparation and consideration, it may also be that the one day estimate to put on the defense is not sufficient."

In short, Defendant has agreed to produce what the State wants, but not before the defense can reach the point of preparation where there is any definite intention of whom to call as a witness,

1 and what exhibits it might offer. At this juncture, with the new counsel for defendant Schultz
2 warning that he intends to file his own motion to sever, we do not even know who the defendants at
3 trial will be; and if he is not severed, we do not know what decisions might be made concerning a
4 joint trial.

5 With trial now set for January 11 to January 21, 2022, the offer to set an agreed-upon
6 deadline for the mutual production of ORS 135.835 materials was and is eminently reasonable.
7 Instead, the State simply responded “No,” and has even continued its refusal to confirm the
8 identification of videos it intends to use, further delaying trial preparation.

9 **Conclusion**

10 By all appearances, the virulent ideological biases that motivate this baseless and unjust
11 prosecution in the first place are also contaminating the State’s pre-trial decision making. If the
12 State cannot cooperate to set a reasonable deadline for production of the ORS 135.835 materials
13 (and a corresponding undertaking to release similar information to Defendant), the Court should do
14 so.

15 Dated this 1st day of October, 2021.

16
17 s/ James L. Buchal

18 James L. Buchal, OSB No. 921618
19 MURPHY & BUCHAL LLP
20 P.O. Box 86620
21 Portland, OR 97286
22 Tel: 503-227-1011
23 E-mail: jbuchal@mbllp.com
24 *Attorney for Defendant Gibson*

25 s/ D. Angus Lee

26 D. Angus Lee, WSB No. 36473 *Pro Hac Vice*
27 ANGUS LEE LAW FIRM, PLLC
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Attorney for Defendant Gibson

James Buchal

From: James Buchal
Sent: Tuesday, September 28, 2021 10:40 AM
To: KALBAUGH Brad
Cc: HUGHEY Sean; D. Angus Lee; Kelly Doyle; oregondefender@gmail.com
Subject: RE: State v. Gibson trial preparation.

Dear Mr. Kalbaugh,

Your e-mail is baffling me, as I did not propose a "third omnibus hearing". I interpret your e-mail as rejecting out of hand the idea of setting an agreed deadline for the exchange of witness lists and any further exhibits. You seem to think that even though we had been waiting nearly two years for you to provide the exhibit list, so we could start the fundamental work on co-defendant statements, we would have somehow fully prepared for trial.

I thought I had made it clear that we were not prepared to go to trial October 4th, and it will be difficult to get prepared even for the week of January 11th. If you think the statute imposes an obligation to provide the witness list long before we decide who the witnesses are going to be, or provide an exhibit list long before we know what the exhibits will be, go ahead make your motion to that effect.

For clarification, are you saying "no" even to confirming precisely what is on the exhibit list you provided? If so, we will be required to prepare our own motion on that.

A failure to resolve these and other matters cooperatively may well lead to a "third omnibus hearing," but that won't be because that is the result we are trying to achieve.

Best wishes,

James L. Buchal
Murphy & Buchal LLP
P.O. Box 86620
Portland, OR 97286

Cell: 503-314-6597
Phone: 503-227-1011
Fax: 503-573-1939

-----Original Message-----

From: KALBAUGH Brad <Brad.KALBAUGH@mcdca.us>
Sent: Tuesday, September 28, 2021 8:46 AM
To: James Buchal <jbuchal@mbllp.com>
Cc: HUGHEY Sean <sean.hughey@mcdca.us>; D. Angus Lee <angus@angusleelaw.com>; Kelly Doyle <kdoyleatty@aol.com>; oregondefender@gmail.com
Subject: Re: State v. Gibson trial preparation.

Mr. Buchal,

No. We will be having our second omnibus hearing on 10/4. The state is not agreeing to a third. This case needs to go to trial. We can litigate motions in limine immediately prior to trial like we do on every other case in this jurisdiction.

To date, you have refused to comply with your statutory discovery obligations. Please reconsider that course of action and provide the state with the names and contact information of the witnesses you intend to call at trial.

Also, please provide the state with an exhibit list. Feel free to use the one I gave you as a template.

Warmly yours,

- Brad Kalbaugh

Sent from my iPad

On Sep 28, 2021, at 8:07 AM, James Buchal <jbuchal@mbllp.com<mailto:jbuchal@mbllp.com>> wrote:

Dear Mr. Kalbaugh,

The identifying information concerning the videos on the Exhibit List you provided September 14th leaves some ambiguity as to which videos are identified, and in particular the first three Exhibits contain disk references not consistent with our records. To remove any doubt that we are playing with the same deck of cards, so to speak, I would ask you to confirm the file lengths involved, which for the Exhibits we have identified are:

1. Facebook Joey Gibson live Feed May 1, 86,833 KB
2. Saupe footage 1, 178,211 KB
3. Stumptown-Unedited Version, 1,347,655 KB
4. YouTube RewoundNews 1, 76,342 KB
5. YouTube RewoundNews 2, 216,666 KB
6. YouTube RewoundNews 3, 25,626 KB
7. YouTube RewoundNews 4, 125,643 KB

With regard to your request for a witness list, we have not yet reached a state of preparation when that can be provided. Would it make sense to set a date, perhaps in December, on which to agree to exchange witness lists and further documents? With further preparation and consideration, it may also be that the one day estimate to put on the defense is not sufficient.

Thank you for your cooperation in this matter.

Sincerely,

James L. Buchal
Murphy & Buchal LLP
P.O. Box 86620
Portland, OR 97286

Cell: 503-314-6597
Phone: 503-227-1011
Fax: 503-573-1939

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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 October 1, 2021, I caused the following document to be served:

DEFENDANT’S RESPONSE TO STATE’S MOTION TO COMPEL DISCOVERY

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	(X)	(E-Service, UTCR 21.100)
E-mail: brad.kalbaugh@mcda.us		

/s/ Carole Caldwell