

Verified Correct Copy of Original 12/2/2021

FILED
2021 DEC -2 AM 10:27
CLERK OF COURT
JAMES L. BUCHAL

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
DEFENDANTS JOSEPH GIBSON'S
MOTION TO RECONSIDER RULING**

James Buchal declares:

1. I am counsel to defendant Joseph Gibson in this action. I make this Declaration in support of Joseph Gibson's motion to reconsider (or dismiss in the interests of justice), his motion *in limine*, and his motion to present a transcript of grand jury testimony to the Court.

2. Attached as Exhibit 1 hereto is a copy of the State's Exhibit list, which identifies seven videos. By e-mail of September 28, 2021 to the State, a true copy of which is attached hereto as Exhibit 2, I sought to confirm the electronic files associated with these videos, and the file names were not identical in some cases. By e-mail of November 15, 2021, a true copy of which (not including attachments) is attached hereto as Exhibit 3, I renewed that request. The State has refused to respond; we assume that we have identified the correct videos, and are conventionally filing

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

19CR53042
DD
Jam: Declaration
1 14624592



Fax: 503-573-1939

herein a thumb drive containing the videos identified in Exhibit 2. The Court may wish to ask the State to confirm the identification to avoid further motion practice. The videos are:

State Ex. No. File Name and Size

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

That thumb drive is designated as Exhibit 4 to this Supplemental Declaration.

3. For the convenience of the Court, a copy of the July 23, 2021 Order denying defendant Gibson's motion to dismiss for selective prosecution, or in the alternative for discovery in further support of the claim, is attached hereto as Exhibit 5.

4. Attached as Exhibit 6 is a true copy of a *Washington Post* article downloaded from the *Post*'s website. Attached as Exhibit 7 is a true copy of an e-mail produced by the Multnomah County District Attorney in which officials within the office transmit that article to each other.

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

Dated this 24th day of November 2021.

s/James L. Buchal

James L. Buchal, OSB No. 921618
MURPHY & BUCHAL LLP

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

THE STATE OF OREGON,

Plaintiff,

v.

JOSEPH GIBSON,

Defendant.

No. 19CR53042

DA 2407866-1

EXHIBIT LIST

1. Facebook Joey Gibson live feed May 1 DISC 16
2. Unedited Version – Millsap Stumptown Matters – Disc 14
3. Saupe footage 1 DISC 16
4. YouTube RewoundNews1
5. YouTube RewoundNews2
6. YouTube RewoundNews3
7. YouTube RewoundNews4

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@mcda.us>
Sent: Tuesday, September 28, 2021 8:46 AM
To: James Buchal <jbuchal@mbllp.com>
Cc: HUGHEY Sean <sean.hughey@mcda.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
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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

Confidentiality: This e-mail transmission may contain confidential and/or privileged information. The information contained herein is intended for the addressee only. If you are not the addressee, please do not review, disclose, copy or distribute this transmission. If you have received this transmission in error, please contact the sender immediately.

James Buchal

From: James Buchal
Sent: Monday, November 15, 2021 2:16 PM
To: KALBAUGH Brad; HUGHEY Sean
Cc: Carole Caldwell; D. Angus Lee
Subject: Disclosures in State v. Gibson
Attachments: Proposed Witness list Joseph Gibson 11-15-21.pdf; Combined 11-15-21 production.pdf

Dear Mr. Kalbaugh,

Transmitted herewith is a 117-page .pdf document containing materials being produced in response to the Court's October 7, 2021, order and ORS 135.835(3). At this juncture, defendant Gibson has not yet procured any reports of experts intended to be utilized at trial, but reserves the right to do so. Defendant Gibson also reserves the right to utilize any of the discovery materials produced by the State as exhibits at trial, and, because trial preparation is at a very early phase, expects that the actual exhibits will vary from the materials attached hereto.

Also transmitted herewith is a witness list pursuant to the Court's Order and ORS 135.735(1).

I have not had the favor of a reply to my September 28th e-mail to you seeking to confirm the identity of the computer video files on the State's Exhibit list. Will a motion be required to resolve that issue?

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

SUPPLEMENTAL DECLARATION OF JAMES L. BUCHAL IN SUPPORT OF
DEFENDANT JOSEPH GIBSON'S MOTION TO RECONSIDER RULING

Conventionally filed

EXHIBIT 4

The videos are:

<u>State Ex. No.</u>	<u>File Name and Size</u>
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2.	Saupe footage 1, 178,211 KB
3.	Stumptown-Unedited Version, 1,347,655 KB
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7.	YouTube RewoundNews 4, 125,643 KB

State v. Gibson # 19C053042
Exhibit 4 to the Declaration
of Buchal & Filed 11/24/2021
[State's Ex. 1-7 Videos]

EXHIBIT 4

Verified Correct Copy of Original 12/2/2021.

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

STATE OF OREGON,

Plaintiff,

v.

JOSEPH GIBSON & RUSSELL SCHULTZ

Defendants.

Case No. 19CR53042; 19CR53035

**ORDER DENYING MOTION OF
DEFENDANTS JOSEPH GIBSON AND
RUSSELL SCHULTZ TO DISMISS FOR
SELECTIVE PROSECUTION**

THIS MATTER came before the Court for hearing on June 11, 2021, for decision on Motion of Defendants Joseph Gibson and Russell Schultz (collectively, "Defendants") to Dismiss for Selective Prosecution. Plaintiff appeared through its attorneys Brad Kalbaugh and Sean Hughey. Defendant Joseph Gibson appeared through his attorneys James Buchal and D. Angus Lee. Defendant Russell Schultz appeared through his attorney Aubrey Hoffman.

1. Introduction

Defendants argue that the indictments filed against them in these matters should be dismissed, because they violate each Defendant's rights under the United States Constitution and the Constitution of Oregon. In the alternative, Defendants move for leave to conduct discovery in further support of the present Motion.

The substantive argument made by Defendants in support of their Motion is that they have been unlawfully charged because they are being selectively prosecuted due to their expression of their well-known political beliefs. That is, Defendants argue that they are being prosecuted in this case because of their protected exercise of their First Amendment rights.

Defendants are each charged with one count of “Riot,” which arises out of an incident that occurred on May 1, 2019 (“May 1 Incident”), when people spouting opposing political views engaged vigorously with one another outside of a Portland bar. Defendants argue that their conduct does not satisfy the elements of Riot provided by ORS 166.015. Defendants argue further that their behavior at the incident giving rise to their criminal charges was no different from many other actors at that incident (including those expressing opposing views). Defendants argue that the fact that they were charged, while similarly acting participants in the May 1 Incident who were espousing contrary political views were *not* charged, demonstrates that Defendants were charged on the basis of the content of their constitutionally protected speech, and not their actual conduct. This type of arbitrary selective prosecution, Defendants argue, is prohibited.

Defendants also point to the Policy Regarding Protest Related Cases (the “Policy”) issued by the Multnomah County District Attorney’s Office on August 11, 2020. That Policy discussed specifically the protests that were occurring in the wake of George Floyd’s murder. Among other things, the Policy announced that the Multnomah County District Attorney’s Office would “presumptively decline to charge” the crime of Riot unless the person’s conduct involved deliberate damage, theft, or the use or threat of force against another person, or unless the person was *also* charged with another (qualifying) charge. Defendants note that their charges do not involve conduct that is alleged to include deliberate damage, theft, or the use or threat of force against another person, and are not accompanied by any other charge.

Defendants urge that the Policy makes patent the State’s discriminatory purpose in this case. That is because, they argue, the Policy preemptively declares that those engaged in certain kinds of First Amendment Activity (attending protests related to the murder of George Floyd)

will not be charged even if they have committed the crime of Riot, while Defendants, who were engaged in a different kind of First Amendment Activity (expressing their political views at the May 1 Incident) *have* been charged with Riot.

In support of their Motion, Defendants have submitted a substantial quantity of exhibits. Of most immediate significance to the Motion, Defendants have submitted 156 minutes of video evidence that appears to capture the entirety of the event giving rise to the filed charges.¹ The Court has reviewed this video evidence multiple times. The Court has also reviewed carefully the several hundred pages of additional evidence presented by Defendants, with particular attention paid to the April 21, 2021, Declaration of D. Angus Lee, which relates decisions by the Multnomah County District Attorney's Office in cases where a charge of "Riot" was contemplated and then issued or not-issued.

2. Applicable Legal Standards

Defendants are correct that "selective prosecution" based on capricious categorization is unlawful. The United States Supreme Court has explained that prosecutorial discretion, while broad, is constrained by the United States Constitution:

One of these constraints, imposed by the equal protection component of the Due Process Clause of the Fifth Amendment * * * is that the decision whether to prosecute may not be based on an unjustifiable standard such as race, religion, or other arbitrary classification.

United States v. Armstrong, 517 U.S. 456, 464, 116 S Ct 1480, 1486 (1996) (quoting *Oyler v. Boles*, 368 U.S. 448, 456, 82 S Ct 501, 506 (1962) (citing *Bolling v. Sharpe*, 347 U.S. 497, 500, 74 S Ct 693, 694-95 (1954)) (internal citations and quotations omitted).

¹ The video evidence includes some portions of the relevant events recorded by different people from different angles.

The United States Supreme Court has also made clear that when a defendant seeks a constitutionally mandated dismissal of criminal charges on the basis of selective prosecution, the “standard is a demanding one.” *Armstrong*, 517 U.S. at 463, 116 S Ct 1480 at 1486. That is because a “selective-prosecution claim asks a court to exercise judicial power over a ‘special province’ of the Executive.” *Id.* at 464, 1486. It has therefore been long established that “in order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present ‘clear evidence to the contrary.’” *Id.* at 465, 1486 (quoting *United States v. Chem Found*, 272 US. 1, 14–15, 47 S Ct 1, 6 (1926)). In view of these considerations, the defendant must demonstrate by clear evidence that the prosecutor’s decision both “had a discriminatory effect and that it was motivated by a discriminatory purpose.” *Id.* at 465, 1487 (citing cases).²

With respect to Defendants’ alternative request for discovery, the United States Supreme Court has stated that the “justifications for a rigorous standard for the elements of a selective-prosecution claim * * * require a correspondingly rigorous standard for discovery in aid of such a claim. *Armstrong*, 517 U.S. at 468. The Court has explained that there must be “evidence that the Government has failed to prosecute others who are similarly situated to the defendant.” *Id.* at 469. That is, a moving defendant in these circumstances must make “a credible showing of different treatment of similarly situated persons.” *Id.* at 470.

3. Application of Legal Standards to This Case

Having reviewed the entire record in this case, the Court finds that Defendants have not met the “demanding” standard of demonstrating both that the charging decision in this case had a

² Defendants also move under the Oregon State Constitution. To the extent Oregon’s appellate courts have discussed these issues, they have cited to these same federal standards and/or applied federal constitutional law. *E.g.*, *State v. Kadderly*, 176 Or App 396, 400–01, 31 P3d 1108, 1111 (2001) (citing, *inter alia*, *Armstrong*, *supra*).

discriminatory effect and that it was motivated by a discriminatory purpose. As to the fact that Defendants are the only people charged pursuant to the May 1 Incident, this outcome is “discriminatory” only if one assumes that Defendants’ speculation about the State’s motivation was correct. There is no evidence in the record of such discriminatory intent.³

Turning to Defendants’ alternative request for discovery, the Court finds that the record does not reveal a “credible showing of different treatment of similarly situated persons.” Defendants’ principle argument is that “similarly situated” people at the May 1 Incident, who were espousing views contrary to Defendants’ and who were engaged in similar (and in Defendants’ views, worse⁴) behavior, were not charged. But the fact that others were present at the event and engaged in broadly similar conduct does not necessarily equate to those others being “similarly situated” with Defendants.

The evidentiary record in this case reveals the May 1 Incident to be a free-wheeling, chaotic scene with individual, independent actors engaged in widely varying individual, independent actions. It was not an occasion where one “side” of a political argument acted as any kind of organized bloc while “the other side” did likewise, and where only one “side” was criminally charged for conduct that the other “side” engaged in equally.⁵ The May 1 Incident is marked by people with opposing views engaging loudly with one another and at times engaged

³ Regarding the August 11, 2020, Policy promulgated by the Multnomah County District Attorney, the State has taken the position that this Policy was only ever intended to be forward-looking. Defendants were charged in these cases a year before the Policy was promulgated. The Court cannot infer from this record a discriminatory intent by the State not making the Policy retroactive. Had Defendants been charged after the promulgation of the Policy, the analysis would be very different.

⁴ Defendants are certainly correct that the video evidence reveals participants in the May 1 Incident who engage in affirmatively violent physical behavior. None of the evidence presented on this motion reveals Defendants engaging in such behavior.

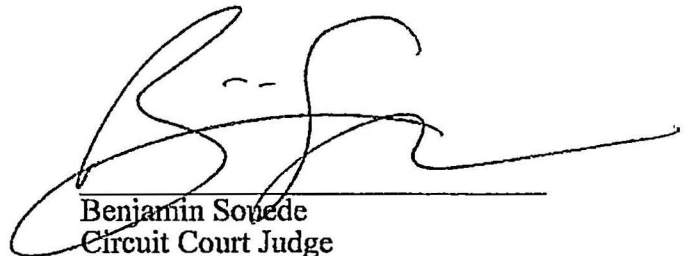
⁵ It is worth noting that many of those at the May 1 Incident were espousing views aligned with Defendants, and also were not charged.

in physical violence and/or physical touching; the range of individual actions is wide. The beliefs and motivations of the various actors on the scene at the May 1 Incident may fall into the “First Amendment” categories suggested by Defendants, but the individuality of their disparate *actions* in the May 1 Incident renders it essentially impossible to make a “similarly situated” finding that merits the discovery that Defendants seek here. This Court has found no cases in which another court has found selective prosecution arising out of a scene as chaotic and disorganized as the May 1 Incident. The general tumult of the incident renders futile any attempt to categorize the participants into two similarly situated camps distinguished solely by their expressed beliefs for the purpose of evaluating a request for discovery based on selective prosecution. The actors at the May 1 Incident acted so particularly individually that they could only be evaluated on their individual behavior. It is therefore impossible to conclude that Defendants were “similarly situated” with other, non-charged individuals.⁶

4. Conclusion

Defendants’ Motion is DENIED.

DATED: July 23, 2021



Benjamin Souede
Circuit Court Judge

⁶ To be clear, the Court takes no position on the merits of whether either Defendant committed the crime of Riot. In finding that the record does not establish that the charges against Defendants were filed selectively on unlawful bases, the Court makes no findings as to whether either Defendant actually committed that (or any) crime.

Liberal prosecutors face backlash over lenient charges following civil unrest and looting

By Katie Shepherd and Mark Guarino

August 12, 2020



Mass arrests following nights of tumultuous unrest in Chicago and Portland, Ore., have pitted liberal prosecutors against police and even Democratic allies over concerns that lenient charges will lead to further property damage and violence.

The newly seated top prosecutor in Portland's Multnomah County said his office will not prosecute cases of disorderly conduct, interfering with a peace officer or rioting, unless those charges are accompanied by more serious charges involving property damage or injury to another person.

In Chicago, where police arrested more than 100 people after rampant looting early Monday devastated the city's central business district, some local officials have blamed liberal policy changes by top prosecutor Kim Foxx for the shattered windows and raided shelves.

Her changes lower penalties for theft and shoplifting, and even local politicians who have broadly supported criminal justice reform have criticized Foxx for choosing not to pursue felony charges against some of the people arrested for looting.

"Our Cook County Prosecutor's Office and the Cook County Judicial system are failing us like never before. We expect prosecutors to enforce all of our laws with equal vigor — City and State laws are not a 'buffet' for prosecutors to selectively enforce — they must all be enforced," Alderman Brendan Reilly (D), whose ward encompasses the areas where the looting took place, said in a Monday letter to residents. "When there are no consequences for these criminal acts — large or small — it only serves as further incentive for these criminals to repeat these crimes over and over."

Foxx, who was elected in late 2016 on a platform to improve a criminal justice system that disproportionately affects poor people and racial minorities, has told reporters she stands by the reforms she has put in place, which include raising the standard for felony theft charges from a minimum of \$300 to \$1,000 in stolen goods.

Her office said the police department sought felony charges in 25 cases of the more than 100 arrests made Monday, and 24 have been approved. The charges include aggravated battery of a police officer, criminal damage to property, unlawful use of a weapon, and burglary/looting. The number of misdemeanor cases stemming from Monday is not yet known.

Foxx's raised bar for felonies has frustrated Chicago Police Superintendent David Brown, who, since the unrest following protests spurred by the killing of George Floyd in May, has complained that repeat offenders are cycling through the court system due to reduced charges, low bail amounts and an inefficient electronic monitoring system.

EXHIBIT 6, pg. 1 of 3

Foxx countered that the police department has been slow to bring her office felony cases. Of the 5,000 arrests made

...countered that the police department has been slow to bring her case forward. About 3,000 arrests have followed Floyd's killing through late June, only 29 percent were felony cases, she said.

"Our office is not in the arresting business," she said. "We get cases when they are brought to us."

Chicago Mayor Lori Lightfoot (D), who supported Foxx's reelection this year, said Tuesday that she talked with the top prosecutor about the importance of charging the looters with felonies.

"I know every police officer wants everything to be a felony, but it is up to the prosecutor to determine that," Lightfoot said.

She said police are scanning hundreds of hours of video from city-owned and store-operated cameras to strengthen the cases they present to Foxx.

"We are doing everything we can, sparing no resource, to bring [the looters] to justice," she added.

But Reilly and a handful of other aldermen who represent downtown wards or wards in wealthy districts said Wednesday that they were hesitant to support Foxx in November. Alderman Raymond Lopez (D) said he has "no intention — on this day — of doing anything except not helping Kim Foxx" win reelection.

"She's clearly not doing her job," Lopez told Chicago business publication Crain's on Wednesday. "She's a bad candidate, and she's giving our whole party a black eye."

In Portland, officers arrested dozens of people over three nights of raucous protests this past weekend. Some protesters lit fires in the street, a few threw projectiles at police, and a small group broke into the police union building on Saturday night. Scores of others shouted at the police and blocked traffic but otherwise remained peaceful. Most of those who were arrested, for disorderly conduct or interfering with a peace officer, will not be charged with a crime, according to a statement from Multnomah County District Attorney Mike Schmidt.

Schmidt said his policy makes a clear distinction between a small number of agitators who engage in violence and destruction and the otherwise peaceful protesters who sometimes get swept up in mass arrests as police move to quell unwieldy demonstrations.

"This policy acknowledges that the factors that lead to the commission of criminal activity during a protest are incredibly complex," Schmidt said at a news conference Tuesday. "Some of those violations are impermissible by any standard, resulting in physical violence, injury and worse. Others represent the instinctive reactions of people who have been gassed repeatedly, who have been struck with kinetic projectile weapons, and who have seen other protesters arrested in ways that they deeply disapprove of."

He said the new policy will be retroactive for hundreds of people who have been arrested in protests following Floyd's killing in late May. Schmidt's office has received about 550 cases related to protests that have occurred every night since May 29. About 410 cases are misdemeanors or violations, and many of those will likely be rejected under the new policy.

"I want to make it very clear, though, this is not a free pass," Schmidt said. "I will not tolerate deliberate acts of violence against police or anyone else. Engage in that type of conduct and you should expect to be prosecuted."

The decision opposes a recent call for harsher penalties from the police union.

"The people committing arson and assault are not peaceful protestors; they are criminals," Portland Police Association President Daryl Turner said in an open letter to Schmidt last week. "Step up and do your job; hold the rioters accountable. If there is no consequence for crimes from the District Attorney's office, there is no reason for criminals to stop the chaos."

Portland Police Chief Chuck Lovell said his officers will continue to make arrests when they witness crimes.

"As always, whether the District Attorney decides to charge cases we send to his office is up to him," Lovell said in a statement. "The Portland Police Bureau will continue to do the job the community expects of us."

One of the first activists to publicly benefit from Schmidt's leniency was Demetria Hester, a well-known Black organizer with the Wall of Moms who was the victim of a hate crime in 2017. Hester, 46, was arrested Sunday night on charges of disorderly conduct and interfering with a peace officer, which Schmidt's office dropped Monday.

"It's a step in the right direction," Hester said. "We need to keep pushing on so that we can get the police defunded and not waste all this money on cases that don't need to be pursued."

Original 12/2/2021
Verified Correct Copy

Date : 8/13/2020 2:10:24 PM

From : "REES Donald"

To : "WEISBERG Brent"

Subject : Re: Progressive prosecutors in Chicago and Portland face pushback over lenient charges for looters and protesters - The Washington Post

Thanks

Sent from my iPhone

On Aug 13, 2020, at 6:30 AM, WEISBERG Brent wrote:

Liberal prosecutors face backlash over lenient charges following civil unrest and looting.

By Katie Shepherd and Mark Guarino August 12 at 16:22 PT

A woman looks through the shattered window of the Jonathan Adler interior design store that was looted on Monday in Chicago. Police made more than 100 arrests during the night. (Scott Olson/Getty Images)

Mass arrests following nights of tumultuous unrest in Chicago and Portland, Ore., have pitted liberal prosecutors against police and even Democratic allies over concerns that lenient charges will lead to further property damage and violence.

The newly seated top prosecutor in Portland's Multnomah County said his office will not prosecute cases of disorderly conduct, interfering with a peace officer or rioting, unless those charges are accompanied by more serious charges involving property damage or injury to another person.

In Chicago, where police arrested more than 100 people after rampant looting early Monday devastated the city's central business district, some local officials have blamed liberal policy changes by top prosecutor Kim Foxx for the shattered windows and raided shelves.

Her changes lower penalties for theft and shoplifting, and even local politicians who have broadly supported criminal justice reform have criticized Foxx for choosing not to pursue felony charges against some of the people arrested for looting.

Our Cook County Prosecutor's Office and the Cook County Judicial system are failing us like never before. We expect prosecutors to enforce all of our laws with equal vigor — City and State laws are not a 'buffet' for prosecutors to selectively enforce — they must all be enforced," Alderman Brendan Reilly (D), whose ward encompasses the areas where the looting took place, said in a Monday letter to residents.

"When there are no consequences for these criminal acts — large or small — it only serves as further incentive for these criminals to repeat these crimes over and over."

Foxx, who was elected in late 2016 on a platform to improve a criminal justice system that disproportionately affects poor people and racial minorities, has told reporters she stands by the reforms she has put in place, which include raising the standard for felony theft charges from a minimum of \$300 to \$1,000 in stolen goods.

Her office said the police department sought felony charges in 25 cases of the more than 100 arrests made Monday, and 24 have been approved. The charges include aggravated battery of a police officer, criminal damage to property, unlawful use of a weapon, and burglary/looting.

The number of misdemeanor cases stemming from Monday is not yet known. Foxx's raised bar for felonies has frustrated Chicago Police Superintendent David Brown, who, since the unrest following protests spurred by the killing of George Floyd in May, has complained that repeat offenders are cycling through the court system due to reduced charges, low bail amounts and an inefficient electronic monitoring system.

Foxx countered that the police department has been slow to bring her office felony cases. Of the 5,000 arrests made following Floyd's killing through late June, only 29 percent were felony cases, she said.

Our office is not in the arresting business," she said. "We get cases when they are brought to us."

Chicago Mayor Lori Lightfoot (D), who supported Foxx's reelection this year, said Tuesday that she talked with the top prosecutor about the importance of charging the looters with felonies.

they present to Foxx.^{[P] [SEP]}

We are doing everything we can, sparing no resource, to bring [the looters] to justice,” she added.^{[P] [SEP]} But Reilly and a handful of other aldermen who represent downtown wards or wards in wealthy districts said Wednesday that they were hesitant to support Foxx in November.

Alderman Raymond Lopez (D) said he has “no intention — on this day — of doing anything except not helping Kim Foxx” win reelection.^{[P] [SEP]} “She’s clearly not doing her job,” Lopez told Chicago business publication Crain’s on Wednesday.

“She’s a bad candidate, and she’s giving our whole party a black eye.”^{[P] [SEP]} Unrest in Chicago and Portland shows America’s summer of protest is far from over.^{[P] [SEP]}

In Portland, officers arrested dozens of people over three nights of raucous protests this past weekend. Some protesters lit fires in the street, a few threw projectiles at police, and a small group broke into the police union building on Saturday night.

Scores of others shouted at the police and blocked traffic but otherwise remained peaceful. Most of those who were arrested, for disorderly conduct or interfering with a peace officer, will not be charged with a crime, according to a statement from Multnomah County District Attorney Mike Schmidt.^{[P] [SEP]}

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“This policy acknowledges that the factors that lead to the commission of criminal activity during a protest are incredibly complex,” Schmidt said at a news conference Tuesday.

“Some of those violations are impermissible by any standard, resulting in physical violence, injury and worse.

Others represent the instinctive reactions of people who have been gassed repeatedly, who have been struck with kinetic projectile weapons, and who have seen other protesters arrested in ways that they deeply disapprove of.”^{[P] [SEP]}

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Schmidt’s office has received about 550 cases related to protests that have occurred every night since May 29.

About 410 cases are misdemeanors or violations, and many of those will likely be rejected under the new policy.^{[P] [SEP]}

I want to make it very clear, though, this is not a free pass,” Schmidt said. “I will not tolerate deliberate acts of violence against police or anyone else.

Engage in that type of conduct and you should expect to be prosecuted.”^{[P] [SEP]}

The decision opposes a recent call for harsher penalties from the police union.^{[P] [SEP]}

The people committing arson and assault are not peaceful protestors; they are criminals,” Portland Police Association President Daryl Turner said in an open letter to Schmidt last week.

“Step up and do your job; hold the rioters accountable. If there is no consequence for crimes from the District Attorney’s office, there is no reason for criminals to stop the chaos.”^{[P] [SEP]}

[Portland police arrest a hate crime survivor and Wall of Moms organizer in crackdown]

^{[P] [SEP]}Portland Police Chief Chuck Lovell said his officers will continue to make arrests when they witness crimes.^{[P] [SEP]}

“As always, whether the District Attorney decides to charge cases we send to his office is up to him,” Lovell said in a statement.

“The Portland Police Bureau will continue to do the job the community expects of us.”^{[P] [SEP] [SEP] [SEP] [SEP]}

One of the first activists to publicly benefit from Schmidt’s leniency was Demetria Hester, a well-known Black organizer with the Wall of Moms who was the victim of a hate crime in 2017.

Hester, 46, was arrested Sunday night on charges of disorderly conduct and interfering with a peace officer, which Schmidt’s office dropped Monday.

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 November 24, 2021, I caused the following document to be served:

SUPPLEMENTAL DECLARATION OF JAMES L. BUCHAL IN SUPPORT OF
DEFENDANTS JOSEPH GIBSON'S MOTION TO RECONSIDER RULING

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		
<i>Attorney for Plaintiff</i>		

s/ Carole Caldwell