

MULTNOMAH COUNTY CIRCUIT COURT  
IN AND FOR THE STATE OF OREGON

STATE OF OREGON,

PLAINTIFF,

vs.

JOSEPH GIBSON,

DEFENDANT.

No. 19CR53042

JOSEPH GIBSON'S  
MOTIONS *IN LIMINE*  
[THIRD SET]  
[29-63]

[ORAL ARGUMENT REQUESTED]  
[UTCRC 4.050]

Comes now Joseph Gibson, by and through the Angus Lee Law Firm, and respectfully makes the below motions *in limine* (third set).

**Background**

By order of March 16, 2022, this Court entered a ruling on three motions *in limine* filed by defendant Gibson. The first motion *in limine* sought to exclude testimony characterizing defendant Gibson's political beliefs. Defendant Gibson demonstrated an enormous effort to fabricate a false narrative painting him as violent, racist, white supremacist, extreme right wing individual, which the jury questionnaires now reveal was successful in contaminating most of the venire. Defendant Gibson moved to exclude such testimony as both irrelevant and unfairly prejudicial.

The Court reserved ruling on that motion, stating it would require an OEC 104 hearing "for any witness intending to describe the understood "background" of any defendant or the Patriot



1 Prayer Group”. 3/16/22 Order ¶ 2. The motions below refine the previous motion, raising more  
2 specific issues that should be addressable without the need for an OEC 104 hearing.

3 The second motion *in limine* was to exclude evidence that individuals other than defendant  
4 Gibson, whom an officer observed and believed to be associated with a group commonly known  
5 as Patriot Prayer, were planning violence. The Court ruled that no witness would be permitted to  
6 testify regarding overhearing a conversation purported with Defendant Gibson, but that it would  
7 require an OEC 104 hearing for any witness anticipated to testify as to any plans of violence.  
8 3/16/22 Order ¶ 2. The motions below address this question in the context of particular witnesses.

9 The third motion *in limine* sought to exclude opinion testimony concerning the video  
10 recordings. The Court ruled that “witnesses may not narrate a video when their only basis for their  
11 knowledge is the video itself” and also that witnesses may not use the terms of art “violent or  
12 tumultuous”. 3/16/22 Order ¶ 2. The motions below address this question in the context of  
13 particular witnesses.

## 14 MOTIONS

15 29. Motion to compel the State of Oregon to immediately provide all statements from  
16 co-defendants to the court, or, in the alternative, to bar the State from admitting exhibits not  
17 identified in its previously provided exhibit list. The Defense previously moved for such relief,  
18 but the Court reserved ruling because the State agreed to prepare an exhibit list in which it would  
19 specify all video clips it intended to introduce into evidence “well in advance of trial.” Ruling  
20 August 25<sup>th</sup>, 2020. While the State eventually provided a short list of videos the State has recently  
21 indicated to the defense that the previously provided exhibit list was not final and that the real final  
22 exhibit list would be forth coming.



30. Motion to bar the State of Oregon from introducing guilty plea statements or evidence of convictions for prior co-defendants. ER 402; ER 403.

31. Motion to bar the State of Oregon from introducing testimony from any witness that one or more extreme right groups typically align themselves with a group called the Patriot Prayer. ER 403, ER 701; ER 702. This motion relates to the more general first motion *in limine* discussed above.

32. Motion to bar the State of Oregon from introducing the first ten minutes of video exhibit “Unedited Version - Millsap Stumptown Matters.” The first ten minutes of this video show individuals at a separate location, does not show Mr. Gibson or Mr. Schulz, contain hearsay, and are irrelevant and prejudicial. ER 403, ER 801; ER 802.

JERRY CIOETA<sup>1</sup>

33. Motion to bar the State of Oregon from introducing testimony or argument regarding that *in the past there's been violent tendencies* between the two groups. ER 404. Such evidence is inherently violative of individual civil rights because it removes the focus from specific information about the character of a specific person, promoting a guilty-by-association verdict. *See, e.g., United States v. Kane*, No. 2:13-cr-250-JAD-VCF, 2015 U.S. Dist. LEXIS 81570, at \*6 (D. Nev. June 19, 2015) (general group testimony excluded “because (1) it is irrelevant to this case, or any marginal relevance is substantially outweighed by the unfairly prejudicial risk of painting a defendant guilty by mere association or (2) it is organizational character and bad-acts evidence that must be excluded under Rule 404.”)

Properly understood, the State's effort to introduce evidence of group background of this nature is barred by the free speech provisions of the Oregon and U.S. Constitution, as mere

<sup>1</sup> Section headings are to assist the court and parties in understanding the primary application of certain motions, but should not be understood as limiting any motion, or subsequent ruling, to a witness identified by a section hearing.



1 association or identification with a group, some of whose members engage in criminal conduct,  
2 cannot be the basis for criminal liability. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886,  
3 918-19, 102 S. Ct. 3409, 3429, 73 L. Ed. 2d 1215, 1240 (1982); *Scales v. United States*, 367 U.S.  
4 203, 224-25, 81 S. Ct. 1469, 1484, 6 L. Ed. 2d 782, 799 (1961) (finding unconstitutional a statute  
5 making it unlawful to be a knowing member in any organization that advocated the violent  
6 overthrow of the United States because. "in our jurisprudence guilt is personal" and "membership  
7 without more, in an organization engaged in illegal advocacy" is insufficient to satisfy personal  
8 guilt). Under this principle, an individual cannot be punished for mere membership in an  
9 organization, even if that organization has legal and illegal goals. *See Scales*, 367 U.S. at 229, 81  
10 S. Ct. at 1486, 6 L. Ed. 2d at 802 (a "blanket prohibition of association with a group having both  
11 legal and illegal aims ... [would pose] a real danger that legitimate political expression or  
12 association would be impaired").

13 34. Motion to bar the State of Oregon from introducing testimony, or asking any  
14 witness if there's a chance for hostility to break out from either side. This type of questioning  
15 again strays into improper group prejudice and prior bad acts testimony. ER 403; ER 404.

16 35. Motion to bar the State of Oregon from introducing testimony, or asking Officer  
17 Cioeta, if when he was in a park earlier that day he observed a group of men that he later observed  
18 at the Cider Riot protest, and specifically if he overheard a conversation amongst them that they  
19 wanted to find the Antifa group for the purpose of fighting them. This is hearsay. ER 801. Officer  
20 Cioeta has already admitted under oath that he was not able to identify any of the individuals in  
21 that group at the park. He cannot identify any of the defendants as the individuals he overheard at  
22 the park. Accordingly, such testimony would be irrelevant and unduly prejudicial. ER 403.



1 More generally, that other individuals might intend to come to Cider Riot and commit  
2 violence has no bearing on whether or not defendant Gibson engaged in riot that day. Again, as  
3 this Court has already held, “[t]he actors at the May 1 incident acted so particularly individually  
4 that they could only be evaluated on their individual behavior”. (Order, July 23, 2021, at 6.)

5 In fact, the State knows full well, as one of the police reports documents, that “Gibson liked  
6 to show he was exercising his First Amendment rights and was attacked . . . a fight or a ‘riot’ by  
7 the [Patriot Prayer] group destroyed Gibson’s ‘narrative’”. (4/21/21 Decl. Ex. 5, at 32.) Evidence  
8 at trial will confirm that defendant Gibson was highly displeased that some individuals outside  
9 Cider Riot had committed acts of violence.

10 36. Motion to bar the State of Oregon from introducing testimony, or asking Officer  
11 Cioeta what he heard on the police radio. ER 801; ER 802.

12 JUSTIN ALLEN

13 Under the Court’s ruling on the First and Second Motions *in limine*, an OEC 104 hearing  
14 is required for Justin Allen, an Antifa agent working undercover and videotaping the events.  
15 Some of his testimony, however, can and should be excluded outright.

16 37. Motion to bar the State of Oregon from introducing testimony that Justin Allen, or  
17 any defendants, were at the ICE demonstration near the ICE facility or on the bridge. Bringing  
18 immigration issues into this case is highly prejudicial as has been made clear by the responses of  
19 the prospective jurors, and it has no relevance. ER 403.

20 38. Motion to bar the State of Oregon from introducing testimony from Justin Allen  
21 that the group he was a part of was waiting for reinforcements, specifically Joey Gibson to show  
22 up, before going to Cider Riot to protest. First, Allen did not speak to Gibson at any point prior to  
23 Gibson showing up to protests. Accordingly, this is hearsay. ER 801; ER 802. Second, as



1 explained above, what the other persons at the protest were waiting for is irrelevant to the question  
2 before the jury in this matter. ER 402; ER 403. Again, this is an attempt to destroy the individual  
3 civil rights of defendant Gibson by assertions of associations with others.

4 39. Motion to bar the State of Oregon from introducing testimony from Justin Allen  
5 that the bridge group were hoping that Gibson would have a bunch of large men with him, like he  
6 used to have. What the bridge group was hoping is irrelevant, speculation, and hearsay. ER 402;  
7 ER 403; ER801; ER802. Further, reference to what Gibson previously did at protests is in violation  
8 of ER 404 and irrelevant. This is also time-wasting testimony as it is clear Gibson showed up with  
9 only Mr. Schultz.

10 40. Motion to bar the State of Oregon from introducing the following testimony from  
11 Justin Allen for the same reasons as addressed above:

- 12 a. Guys waiting for reinforcements.
- 13 b. There may have been a scouting mission or something already happening.
- 14 c. They sent a few people to Cider Riot to like see how many people were present. At  
15 some point in the video one of the guys comes back saying how many people are present,  
16 how outnumbered they are.

17 41. Motion to bar the State of Oregon from introducing testimony from Justin Allen  
18 that the “intention” at the protest is to get someone to throw a punch, and then that justifies  
19 everything else that happens. As Mr. Allen does not allege he heard any of the defendants  
20 announce this intention, such testimony is either irrelevant hearsay from a third party, or Mr. Allen  
21 is simply speculating as to defendants’ intentions. Either way, such testimony would violate the  
22 rules against hearsay or speculation, is irrelevant, and should be barred. It is, in substance, an



1 attempt to make an end run around the Court's ruling on the third motion *in limine* preventing  
2 opinion testimony concerning what the jury can easily evaluate on the video.

3 42. Motion to bar the State of Oregon from introducing testimony from Justin Allen,  
4 or any argument, that Gibson and other defendants were "taunting", "provoking" or the like. Such  
5 testimony would be irrelevant speculation. One man's provocation is another truthful speech  
6 designed to make the listener see the wrongs of their ways. Argument regarding provocation or  
7 taunting would also be a violation of defendant's First Amendment right as it would be a clear  
8 attempt to hold him criminally accountable for the violent conduct of the person who opposed his  
9 protected speech. This too is, in substance, an attempt to make an end run around the Court's  
10 ruling on the third motion *in limine* preventing opinion testimony concerning what the jury can  
11 easily evaluate on the video.

12 43. Motion to bar the State of Oregon from introducing testimony from Justin Allen  
13 that Mr. Gibson is the leader of Patriot Prayer, or any other group. Such testimony has no relevance  
14 and would be introduced only to hold Gibson to account for the actions of others simply because  
15 he was associated with them at a protest. Likewise, this court has already found "the May 1  
16 Incident to be a free-wheeling, chaotic scene with individual, independent actors engaged in widely  
17 varying individual, independent actions. It was not an occasion where one 'side' of a political  
18 argument acted as any kind of organized bloc while 'the other side' did likewise..." Accordingly,  
19 such testimony is not relevant, prejudicial, and a violation of the First Amendment freedom of  
20 association and freedom of speech rights.

21 44. Motion to bar the State of Oregon from introducing testimony from Justin Allen  
22 that the bald-headed male who engaged in a mutually agreed boxing match with the Cider bar door



1 man was somehow “associated” with Gibson or the Patriot Prayer group. Irrelevant, prejudicial,  
2 and violation of freedom of association. ER 402; ER 403; U.S. Const. Am. 1<sup>st</sup>.

3 DETECTIVE TRAYNOR

4 45. Consistent with the Court’s ruling on the third motion *in limine*, the Court should  
5 bar the State of Oregon from introducing testimony from Detective Traynor about the Cider Riot  
6 events beyond what can be observed in the video exhibits to be shown to the jury. Det. Traynor  
7 was not present at the event, so he has no personal knowledge beyond what can be observed in the  
8 video. As such, any testimony from him about video exhibits beyond what is needed for  
9 authentication and admission of the exhibit is not needed for the jury and is only opinion and  
10 speculation.

11 Defendant Gibson is particularly concerned about the conduct of the prosecution here,  
12 because the State has previously and falsely asserted that there is additional video viewed by  
13 Detective Traynor to support a claim of riotous conduct by defendants, which video has never been  
14 identified. *Gibson v. Schmidt*, 522 F. Supp. 3d 804, 810-11 (D. Or. 2021) (“Schultz’s actions at  
15 Cider Riot are not fully documented on video submitted to this Court. However, an affidavit  
16 submitted in support of Schultz’s arrest claims detectives observed video of Schultz ‘taunting and  
17 physically threatening members of the Antifa group in an effort clearly designed to provoke a  
18 physical altercation,’ and helping to form a circle around the men engaged in a fist fight”). Given  
19 the staggering pre-existing biases in the venire, all that the State needs for conviction is officer  
20 testimony that they saw riotous conduct somewhere on some video that somehow has never been  
21 identified—the precise misconduct that got this case over the grand jury hump in the first place.

22 46. Motion to bar the State of Oregon from introducing testimony from Detective  
23 Traynor about statements from past co-defendants (who pleaded out) to Det. Traynor. Such





1 statements are hearsay, not relevant, time wasting, and have not been identified in advance by the  
2 State. The Court previously reserved ruling on defendant Gibson's motions to provide all  
3 statements of co-defendants to the Court, on the basis that the State had volunteered to prepare an  
4 exhibit list which "would identify the specific video clips it intends to introduce into evidence  
5 thereby making it possible to identify specific co-defendant statements at issue well in advance of  
6 trial". (8/25/20 Order ¶ V.)

7 47. Motion to bar the State of Oregon from introducing testimony from Detective  
8 Traynor about any conclusions he has come to from review of the video. His conclusions are not  
9 relevant in any way. The jury can view the same video and make their own conclusions. The  
10 Court's Order on the third motion *in limine* forbids "narration" and using the "terms of art 'violent  
11 or tumultuous'" but does not address opinions or conclusions more generally. In particular, Det.  
12 Traynor should not be permitted to testify that the people in the video were engaging in acts of riot  
13 (or "violent and tumultuous"), or that particular defendants such as Gibson were "participating  
14 with five or more other persons in the events," or were "intentionally or recklessly create[ing] a  
15 grave risk of causing public alarm" (additional terms of art from ORS 166.015).

16 This motion would also bar testimony from Detective Traynor that statement on the video  
17 that "Watch out, it's about to go down" indicates that there is a methodology or plan of some sort.  
18 This is pure speculation and totally irrelevant. ER 402; ER 403.

19 48. Motion to bar the State of Oregon from introducing testimony from Detective  
20 Traynor that the injury sustained by a Cider Riot patron was the result of Christopher Ponte  
21 throwing an object into the crowd at bar. ER 402; ER 403.

22 49. Motion to bar the State of Oregon from introducing exhibits prepared by Detective  
23 Traynor not previously listed on the exhibit list. See prior rulings. Also, Detective Traynor



1 selectively pulled screen shots from videos to show what he believes happened. He then added  
2 written opinion commentary in the screen shots, use of which would be contrary to the Court's  
3 ruling on the Third Motion *in limine*. Those screen shots are not the best evidence, are time  
4 wasting, and duplicative of the video evidence.

5 50. Motion to bar the State of Oregon from introducing testimony from Detective  
6 Traynor that people at Cider Riot wouldn't be able to drink inside if they had a mask on or a helmet  
7 on. Such testimony is not relevant and calls for a legal conclusion.

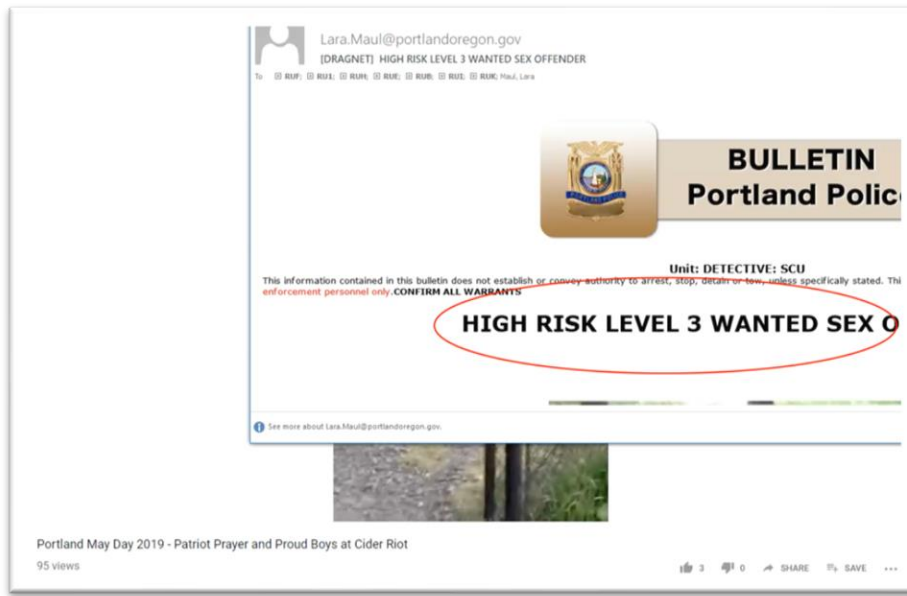
8 FREDRICK SAUPE

9 51. Motion to compel production of any writings or other recorded recollections by  
10 Fredrick Saupe regarding the event in question before he may testify. On his twitter account, he  
11 stated clearly that he was going to make such a writing. The State's failure to disclose this violates  
12 the general rules of discovery.

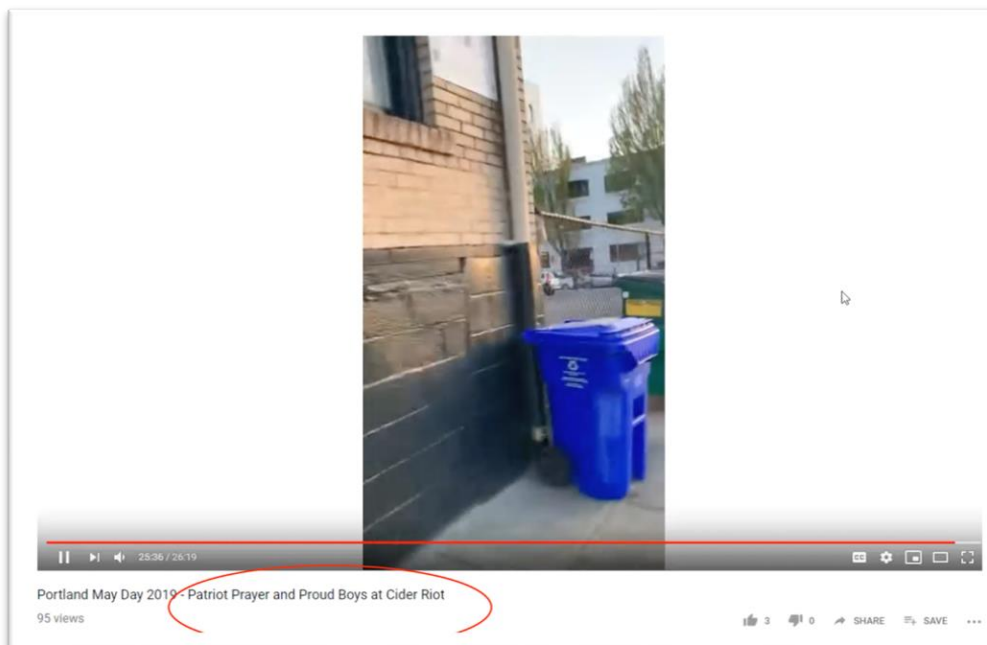


13  
14 52. Motion to bar the State from introducing the video "Saupe footage 1" as it  
15 unnecessarily contains a confusing and prejudicial pop up overlay regarding a wanted "high risk"  
16 sex offender. ER 402; ER 403. See below.

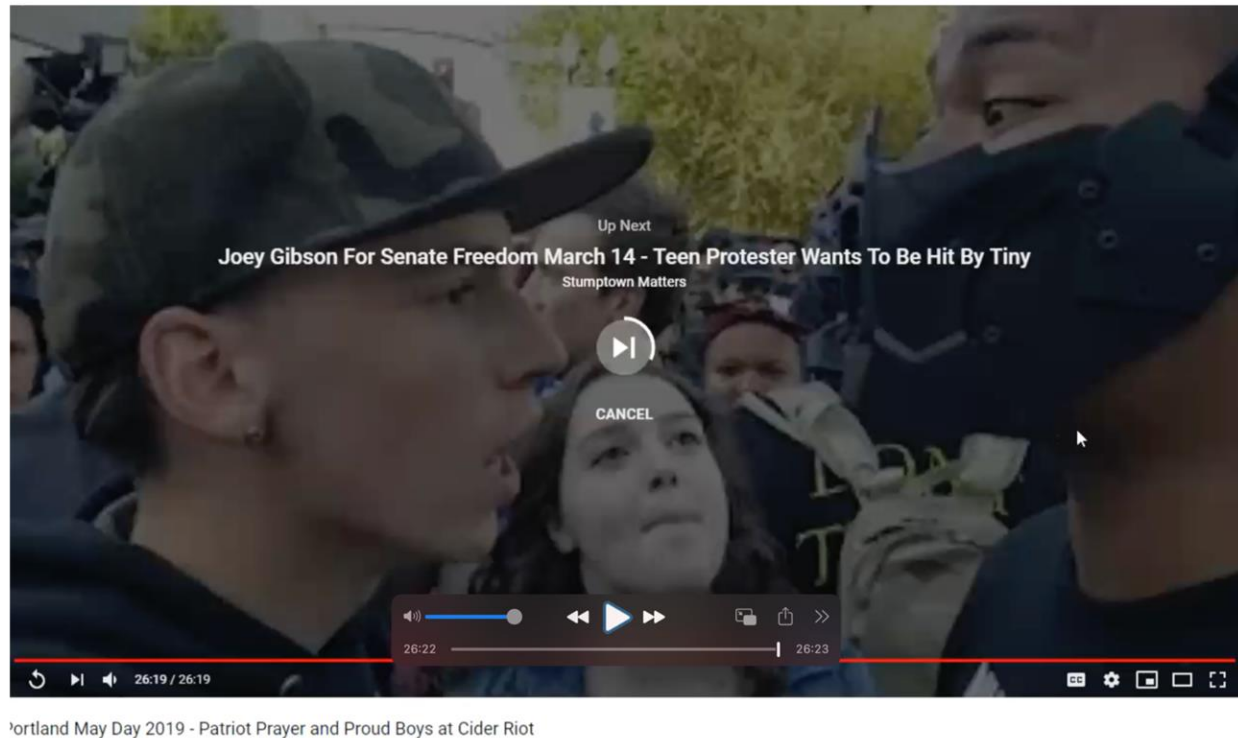




53. Motion to bar the State from introducing the youtube video “Saupe footage 1” as it contains a false, prejudicial, and confusing title that asserts that the “Proud Boys” were part of the event at Cider Riot. ER 402; ER 403. See below.



1           54.     Motion to bar the State from introducing the youtube video “Saupe footage 1” as it  
2 ends by promoting another video that is irrelevant, prejudicial, and comments on political speech.  
3 ER 402; ER 403. See below.



4           55.     Motion to bar Mr. Saupe, and all other State’s witnesses, from referring to any of  
5 the participants of the May 1 event as a racist, “fash,” “fascist,” or “Nazi” event, as Mr. Saupe is  
6 prone to do. In the below tweet on May 1, he linked to a Periscope video he posted of protesters  
7 waiving the American flag. ER 402; ER 403; ER 701.





4 To the extent the court regard these statements as “background”—and it should not—under  
 5 the Court’s ruling on the First and Second Motions *in limine*, an OEC 104 hearing is required for  
 6 Mr. Saupe, another Antifa member videotaping the events. The right result is to exclude this  
 7 testimony outright.



1           56.     Motion to bar the State from introducing testimony from Mr. Saupe that ‘it was his  
2 ***understanding*** that Joey Gibson decided the group would go over to Cider Riot.’ Mr. Saupe did  
3 not hear this from Mr. Gibson or any defendant. This is irrelevant, prejudicial, hearsay, and  
4 speculation or opinion. ER 402; ER 403; ER 701; ER 801; ER 801.

5           57.     Motion to bar the State from introducing testimony from Mr. Saupe that he was  
6 ***told*** by a large older male with a pointy goatee that they were going over the Cider Riot to “start  
7 some shit.” This is irrelevant, prejudicial, hearsay. ER 402; ER 403; ER 801; ER 802.

8           58.     Motion to bar the State from introducing testimony from Mr. Saupe that another  
9 male ***told him*** Cider Riot was a known Antifa hangout and Gibson wanted to film there. This is  
10 irrelevant, prejudicial, hearsay. ER 402; ER 403; ER 801; ER 802.

11          59.     Motion to bar the State from introducing testimony from Mr. Saupe that as the  
12 group walked towards Cider Riot ***it became clear to him*** from the chatter amongst the groups  
13 members the group was going there “to start some shit.” ER 402; ER 403; ER 701; ER 801; ER  
14 801.

15          60.     Motion to bar the State from introducing testimony from Mr. Saupe that the group  
16 chatter included how ***they wanted*** to arrive from a certain direction and catch the people in the bar  
17 by surprise. Mr. Saupe did not hear this from Mr. Gibson or any defendant. ER 402; ER 403; ER  
18 801; ER 801.

19          61.     Motion to bar the State from introducing testimony from Mr. Saupe that ***he heard***  
20 ***someone say*** “we need to ambush them” ***and another person say*** “they were armed and ready to  
21 go.” Mr. Saupe did not hear this from Mr. Gibson or any defendant. ER 402; ER 403; ER 701;  
22 ER 801; ER 801.



1           62.     Motion to bar the State from introducing testimony from Mr. Saupe that in the  
2 conversations with *members of the group* about why they were going over to Cider Riot they  
3 related to how the group *felt* that the bar was a known Antifa hang out and the owner supported  
4 the group. Mr. Saupe did not hear this from Mr. Gibson or any defendant. ER 402; ER 403; ER  
5 701; ER 801; ER 801.

6           63.     Motion to bar the State from introducing testimony from Heather Clark that she  
7 sustained a fractured bone or vertebrae. While it was wildly reported in the media that she had  
8 sustained such an injury, the discovery shows this is not true. This motion however is not based  
9 on the falsity of this anticipated fact claim, but on the fact that Heather Clark is not a medical  
10 professional and has no personal knowledge of the extent of any internal injury. Such testimony  
11 would be hearsay. ER 801. Further, Ian Kramer is not on trial here. The extent of any injury to  
12 Ms. Clark from Ian Kramer is not relevant to any fact finding before the jury in this case and would  
13 be introduced purely to impassion the jury and prejudice defendants. ER 402; ER 403.

14           DATED: July 7, 2022.

15           /s/ D. Angus Lee  
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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 July 7, 2022, I caused the following document to be served:

JOSEPH GIBSON'S MOTIONS *IN LIMINE* [THIRD SET]

in the following manner on the parties listed below:

Brad Kalbaugh	( )	(BY FIRST CLASS US MAIL)
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1200 SW 1st Ave., Ste 5200	( )	(BY FAX)
Multnomah County Central Courthouse	( )	(BY HAND)
Portland, OR, 97204-3201	(X)	(E-Service, UTCR 21.100)
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/s/ Carole Caldwell

