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17 MAR 14 PM 3:35  
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**IN THE SUPERIOR COURT IN AND OF THE  
COUNTY OF COCONINO FOR THE STATE OF ARIZONA**

IN THE MATTER OF:  
  
STATE OF ARIZONA,  
  
v.  
  
STEVEN EDWARD JONES,

No. CR 2015-00862

**DEFENDANT'S RESPONSE TO  
STATE'S MOTION *IN LIMINE***

**Hon. Dan Slayton – Div. 2**

Defendant, by and through undersigned counsel, hereby respond to the State's  
*Motion In Limine* as set forth below.

**1. Rumors and opinion regarding parties/police contact at "the Courtyard"**

Statements of witnesses regarding the parties and fights associated with the  
"Courtyard" are relevant because many of the witnesses made these observations  
themselves and noted that the fight they heard the night in question was worse than usual.  
This helps explain why so many witnesses observed the event before any shots were even  
fired. These witnesses started looking out the window specifically because the fighting they

1 heard was worse than usual. This fact is relevant because it speaks to the conditions under  
2 which Steven made his decision to protect himself and his friends.

3 **2. Deceased victim's tattoos**

4 The Defense concurs and would expand the prohibition of mentioning tattoos to any  
5 other witness or victim that has tattoos.

6 **3. Deceased victim's false ID**

7 The defense concurs.

8 **4. Victims' drug use**

9 **a. Deceased victim's drug use**

10 The State's Motion *in Limine* to withhold from the jury that Mr. Brough's toxicology  
11 confirmed that he had both THC and Xanax in his system at the time of the incident is  
12 essentially a regurgitation of the State's Motion to Preclude Dr. French's testimony.  
13 Defendant therefore incorporates by reference his Response to the Motion to Preclude Dr.  
14 French for the State's related Motion *in Limine*.

15 **b. Mr. Prato and Mr. Zientek's marijuana use**

16 When treated at ED of Flagstaff Medical Center following the incident, Prato, Piring  
17 and Zientek were tested for blood alcohol concentrations and drugs of abuse. In addition to  
18 finding blood alcohol concentrations ranging from .092% to .208% among the three  
19 individuals, medical testing further detected the presence of cannabis in urine samples from  
20 Mr. Prato and Mr. Zientek. Without providing any factual reference or supportive expert  
21 opinion, the State asserts that "[a]ll indications are that Mr. Prato and Mr. Zientek were not  
22 under the influence of any drugs" and that the testing results should be precluded because

1 they arise from urinalysis. While a positive urinalysis does not rule out the possibility that  
2 both individuals were consuming alcohol while attending a party but abstaining from  
3 marijuana on that particular date, the presence of cannabis in their urine could just as likely  
4 be explained by more recent usage.

5         The State implicitly concedes that the positive urinalysis provides, at a minimum, a  
6 basis for these individuals to be cross-examined regarding their drug usage on the date of  
7 the incident. In the event the alleged victims deny smoking or otherwise using marijuana on  
8 October 9, 2015, during cross-examination, Defendant should be permitted to confront and  
9 cross-examine them with the hospital laboratory reports and permit the jury to assess the  
10 credibility of their anticipated claim that earlier usage caused the positive result. The jury  
11 will already hear testimony regarding their alcohol usage so the additional information  
12 regarding a positive marijuana test would pose a minimal, if any, risk of prejudice. This is  
13 particularly true in today's political climate wherein marijuana usage is quickly gaining  
14 mainstream acceptance and nearly became legal in Arizona on a recreational basis this past  
15 November. Also, should either individual assert that the positive test resulted from earlier  
16 usage, defense counsel will not argue or suggest to the jury that their drug usage reflects  
17 adversely on their general character or otherwise make any other improper inferences based  
18 on that evidence.

19         The State's Motion also ignores that fact that Mr. Prato provided untruthful  
20 information to the medical staff at the hospital and claimed that he did not use controlled  
21 substances. Mr. Prato will be testifying at trial and his credibility is therefore of paramount  
22 importance. In as much as the subsequent laboratory testing determined that he was not  
23 truthful about his history, particularly in light of the critical circumstances under which he  
made the misrepresentation, Mr. Jones' constitutional right to confront and cross-examine  
his accusers would be abridged should this information be withheld from the jury.

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Respectfully submitted March 13, 2017.

**BURGES McCOWAN, PLC**

By B. M. C.  
Burges N. McCowan

Original of the foregoing e-filed  
March 13, 2017.

Clerk of the Court  
Coconino County Superior Court  
200 N. San Francisco Street  
Flagstaff, AZ 86001

Copy of the foregoing delivered  
March 13, 2017 to:

Ammon Barker  
Deputy County Attorney  
Coconino County Attorney's Office  
110 E. Cherry Ave  
Flagstaff, AZ 86001

By B. M. C.  
Burges McCowan

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Category

CR



Case Number

S0300CR201500862



Filing Date

3/14/2017



Event Code

14968



Sequence

344



Party Type

D



Party Number

D-1



Document Id

1298176



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