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5 **IN THE SUPERIOR COURT IN AND OF THE**
6 **COUNTY OF COCONINO FOR THE STATE OF ARIZONA**

7 IN THE MATTER OF:

No. CR 2015-00862

8 STATE OF ARIZONA,

**DEFENDANT'S RESPONSE TO STATE'S MOTION
TO PRECLUDE DEFENDANT'S STATEMENTS**

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11 v.

12 STEVEN EDWARD JONES,

Hon. Dan Slayton – Div. 2

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15 Defendant, by and through undersigned counsel, hereby respond to the State's
16 Motion to Preclude Defendant's Self-Serving Hearsay Statements and moves this Court to
17 deny the motion. This motion is supported by the following Memorandum of Points and
18 Authorities.

19 Respectfully submitted March 13, 2017.

20 **BURGES McCOWAN, PLC**

21 By B. M. L.

22 Burges N. McCowan

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. FACTUAL BACKGROUND**

4 On October 9, 2015, on the street outside the "Courtyard" apartments located at 262
5 Franklin Street on the border of the NAU campus near Mountain View residence hall and the
6 abutting parking lot, NAU freshman Steven Jones and his friends, Jacob Mike and Shay
7 McConnell, were looking for their friend, Hunter Todd, so they could go to Steven's car and
8 go home. While waiting, a group of individuals came out from the Courtyard apartments and
9 began yelling at Steven and his friends. The men in the group appeared heavily intoxicated
10 and were very belligerent. They pushed Jacob and Shay to the ground and one of them
11 punched Steven in the face, knocking him to the ground and causing his glasses to fall off his
12 face. Steven and his friends immediately got up and ran away into the parking lot. The men
13 chased after them.

14 Steven ran to his car and retrieved his pistol. He saw that the men had his friends
15 surrounded and were still belligerent. He approached the group and took a low-ready stance
16 and commanded the men to stop. Two of the men, Colin Brough and Nicholas Piring charged
17 Steven. Brough was within two feet when Steven felt he had no choice but to shoot. He fired
18 two shots upon Brough and two upon Piring. He did not fire shots upon anyone else because
19 nobody else charged at him. Steven then holstered his pistol in his back, yelled out to call
20 police, and began giving first aid to Colin.

21 Colin's friends then tackled Steven and were punching him repeatedly. Someone also
22 tried to take his gun. During the struggle, one shot discharged and the group tackling Steven

1 scattered. Steven then shot a few more times as he rose to his feet. Steven then backed
2 away from the hostile crowd.

3 Soon thereafter he was approached by Chase Jones who reassured him and he placed
4 his gun on the ground. Right after he put his gun down, the police arrived on scene. Steven
5 immediately went to Officer Park and identified himself as the shooter. Steven also
6 emotionally uttered how scared he was and asked the officer to help those that were shot.
7 In Park's vehicle, a clearly very emotional Steven made a series of other statements that
8 were recorded by police equipment. Steven was transported to a police station where he
9 issued a full statement to Officer Hunter that was also recorded.

10 **II. LAW AND ARGUMENT**

11 Steven's statements to Chase Jones, Officer Park, Officer Hunter, et al. are hearsay
12 that require an exception to the hearsay rule to permit their admission by the Defense. *See,*
13 *State v. Barger*, 167 Ariz. 563, 566-67, 810 P.2d 191, 194-95 (App.1990); *State v. Wooten*,
14 193 Ariz. 357, 366, 972 P.2d 993 (App. 1998) (*holding inadmissible defendant's self-serving,*
15 *exculpatory statements without a valid exception*). The State does not specify which
16 statements it wishes to preclude, instead asking for a blanket preclusion of all of Steven's
17 statements if offered by the Defense. This approach is overbroad as some of Steven's
18 statements are admissible under the Arizona Rules of Evidence as outlined below.

19 **1. Some of Steven's statements are Excited Utterances.**

20 The State acknowledges this exception to the hearsay rule and correctly outlines the
21 factors to consider for a statement to qualify as an excited utterance. *State v. Cruz*, 218 Ariz.

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1 149, 181 P.3d 196 (Ariz. 2008). *See also, State v. Ritchey*, 107 Ariz. 552, 555, 490 P.2d 558,
2 561 (1971).

3 The State then proceeds to cite a few non-Arizona cases for the proposition that this
4 analysis should receive heightened scrutiny when applied to Defendant's self-serving
5 statements. However, the State fails to address many of Steven's statements and focuses
6 only on his utterance to Chase Jones that he acted in self-defense. There are many other
7 statements that Steven made during the course of this incident that were not self-serving
8 denials or assertions of self-defense. They were statements made in relation to this startling
9 event either in the midst of the event or so soon after as to not give Steven time to reflect
10 and possibly fabricate. Indeed, these statements are not denials or assertions of self-
11 defense.

12 **a. Steven told Jacob Mike to call the police after the shooting of Brough
13 and Piring and before he was tackled by their friends.**

14 After shooting Brough and Piring and before their friends tackled Steven to take his
15 gun, Steven told Jacob Mike to call the police and then proceeded to give first aid to Brough.
16 This statement was made amid this startling event without any time for reflection
17 whatsoever.

18 **b. Steven told Officer Park that he was "so scared," asked the officer to
19 assure him he was "going to be okay," and urged the officer to "please
20 help them, I'm so sorry."**

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1 These statements to Officer Park were immediately after the officer arrived on the
2 scene, which was just moments after the final shots were fired. These statements were
3 captured by Officer Park's body cam and it is clear that Steven is distraught and highly
4 emotional. There is nothing about his demeanor that indicates he's taken any time to reflect
5 prior to making these statements.

6 **c. Steven made several statements in Officer Park's patrol car that**
7 **recorded without his knowledge.**

8 The statements Steven made at the scene while secured in Officer Park's patrol car
9 were recorded without his knowledge. He made several statements such as, "why did they
10 punch me?" and "why did they chase me?" that were excited utterances to himself as no
11 other person was present in the vehicle. It is clear from the recording that Steven was still
12 very distraught and emotional when he made these statements. Indeed, during the time of
13 these statements, Steven asked to be removed from the vehicle because he felt as if he was
14 about to vomit.

15 **2. Some of Steven's statements are Present Sense Impressions**

16 Rule 803(1), Ariz. R. Evid., defines a present sense impression as "[a] statement
17 describing or explaining an event or condition made while the declarant was perceiving the
18 event or condition, or immediately thereafter." The statement must describe an event or
19 condition, that was perceived by the declarant, and the statement must be made
20 immediately after the event. *State v. Tucker*, 205 Ariz. 157, 68 P.3d 110, 119 (Ariz., 2003)
21 citing, *State v. Romanosky*, 162 Ariz. 217, 222 n. 5, 782 P.2d 693, 698 n. 5 (1989).

1 Steven's statement to Chase Jones regarding attempts to take his gun was a Present
2 Sense Impression. Steven was describing his perception of the event and his ongoing
3 concern that the people who just tackled him to try and take his gun were still there and still
4 a threat to him. Chase even responded to this present sense impression by offering
5 assurances to Steven that he was okay and nobody would take his gun.

6 **3. Steven's statement to Officer Park that he was "so scared" is admissible to**
7 **show his State of Mind at the time of the utterance.**

8 Rule 803(3), Ariz.R.Evid. allows statements of the declarant's "then existing state of
9 mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental
10 feeling, pain, and bodily health)." This "exception requires that the offer be connected to the
11 declarant's state of mind at the time the statement was made and be relevant." *State v.*
12 *Fulminante*, 975 P.2d 75, 85, 193 Ariz. 485 (Ariz., 1999). Steven's statement of fear was made
13 as he was experiencing that emotion and is relevant because it tends to rebut any claim that
14 he was acting out of anger or some other motive.

15 **III. CONCLUSION**

16 Notwithstanding the general principle that a Defendant's out of court denial is self-
17 serving hearsay, such statements may be admitted if they past the muster of other hearsay
18 exception analysis. As outlined above, there are a number of Steven's statements from that
19 evening that are admissible. Therefore, the Defense moves this Court deny the State's
20 blanket motion to preclude the Defense from introducing all of Steven's statements.

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Respectfully submitted March 13, 2017.

BURGES McCOWAN, PLC

By B M L

Burges N. McCowan

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

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Copy of the foregoing delivered
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