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

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN EDWARD JONES,

Defendant.

No. CR2015-00862

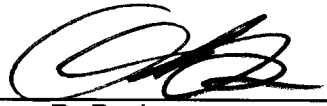
**STATE'S MOTION TO PRECLUDE
DEFENDANT'S SELF-SERVING HEARSAY
STATEMENTS**

Hon. Dan Slayton – Div. 2

The State of Arizona, by and through the undersigned Deputy County Attorney, hereby moves this Court to preclude Defendant's self-serving hearsay statements pursuant to case law and the Arizona Rules of Evidence. This Motion is supported by the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 28 day of February, 2017.

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By 
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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

After Defendant's initial confrontation with some unknown and unnamed college students on Franklin St. in the early morning hours of October 9, 2015, Defendant ran or walked to his car, which was parked approximately 150 feet from the location of this first interaction. Once inside, he made a series of deliberate choices about what he was going to do next. He grabbed his .40 caliber pistol from the glove compartment, chambered a round, turned on the tactical light attached to the pistol, and then he *returned* toward the group of individuals he encountered moments before. Defendant's car was approximately 90 feet away from the group of individuals he was walking towards.

During this second confrontation, Defendant had the advantage. He made sure of it. Nobody else on that block had a weapon in their possession. He first murdered Colin Brough, by shooting him twice in the torso. He then shot Nicholas Piring twice. He then turned to Nicholas Prato, who recalls Defendant looking right at him as he fired one shot through Prato's neck. Finally, Defendant set his sights on Kyle Zientek, who had turned to run away. He shot Kyle twice in the back.

Some indeterminate time passed before Defendant interacted with anyone else. From the witness accounts, it is clear that the police were called around this time (approximately 1:20AM), and that other folks on scene were attempting to address the wounded. Around this time, Defendant was standing back away from the carnage and was still holding onto the gun when a student, Chase Jones, asked him what was happening. According to Chase, Defendant said that "they" (he did not specify who) were trying to take his gun. Chase said he would make sure nobody took his gun. Defendant

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1 also stated that it was "self-defense."

2 Defendant eventually gave his gun to Chase Jones. Shortly after, around 1:22AM,
3 the police began to arrive. One of the first officers on scene was Officer Park, who found
4 Defendant walking toward him stating "I'm the shooter." Officer Park secured Defendant
5 in handcuffs as Defendant began uttering statements about how he was "so scared" and
6 to tell him he was "going to be okay." He also said to check the others because they've
7 been shot. He said "please help them, I'm so sorry."

8
9 Defendant was eventually placed in Park's patrol car while Park and others helped
10 the victims. Defendant was recorded in the car saying things like "why did they punch
11 me?" and "why did they chase me?" At approximately 1:56AM, Defendant was
12 transported to the police station where he submitted to an interview with Officer Hunter.
13 That statement was recorded.

14
15 **II. LAW AND ARGUMENT**

16 **A. Defendant's statements, if introduced by Defendant, are self-serving**
17 **hearsay, and thus inadmissible.**

18
19 According to Arizona law, a defendant's out-of-court denial is self-serving hearsay
20 and not admissible if introduced by the defendant. *State v. Wooten*, 193 Ariz. 357, 366,
21 972 P.2d 993 (Ariz.App.1998); *see also State v. Machado*, 224 Ariz. 343, 230 P.3d 1158,
22 1178 (App. 2010) (A murder defendant's proffered out-of-court statement was "self-
23 serving hearsay for which there is no exception"), *aff'd on other grounds*, 226 Ariz. 281,
24 246 P.3d 632 (2011).

25
26 Defendant's statements to Chase Jones, Officer Park, Officer Hunter, and any
other unnamed party, are hearsay if introduced by the defense. Furthermore, these
statements fall outside the bounds of any hearsay exception, as outlined below.

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1 **1. Defendant's self-serving statements to Chase Jones are hearsay,**
2 **and are not admissible under any hearsay exception.**

3 The State anticipates Defendant may attempt to elicit these statements from
4 Chase Jones under the "excited utterance" exception. But, Defendant's statements, even
5 if uttered within minutes of shooting the four unarmed victims, were concocted after a
6 period permitting conscious reflection and therefore fail to meet the essential elements of
7 the "excited utterance" exception.
8

9 An excited utterance is a "statement relating to a startling event or condition, made
10 while the declarant was under the stress of excitement that it caused." Ariz. R. Evid.
11 803(2). This exception to the rule turns on three factors: "(1) there must be a startling
12 event, (2) the words spoken must be spoken soon after the event so as not to give the
13 person speaking the words time to fabricate (or reflect), and (3) the words spoken must
14 relate to the startling event." *State v. Cruz*, 218 Ariz. 149, 162, 181 P.3d 196, 208 (Ariz.
15 2008) (emphasis added). Regarding the second factor, Arizona law recognizes "no fixed
16 time limits . . . to determine whether a statement will qualify as an excited utterance."
17 *State v. Rivera*, 139 Ariz. 409, 411, 678 P.2d 1373, 1376 (Ariz. 1984).
18

19 It is often the case that statements made by independent witnesses (or even
20 victims) after experiencing a "startling event" are admitted under this exception. However,
21 a defendant's self-serving statement should be subject to heightened scrutiny for the very
22 reason that it is self-serving. See *Riley v. State*, 50 Ariz. 442, 452, 73 P.2d 96 (Ariz.
23 1937) (***The fact that a statement is self-serving is "certainly an item to [be]***
24 ***considered in determining whether or not the statement was spontaneous or***
25 ***calculated.***").
26

In *State v. Pfulgradt*, the defendant told an officer within ***one to two minutes*** of

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1 the victim being held down, beaten and dragged into a nearby laundromat that he was
2 simply there to offer the victim aid and was not involved in the assault. 463 S.W. 2d 566,
3 572 (Mo.App. 1971). The trial court precluded the statement, even though the statement
4 was made almost immediately after the assault. *Id.* The court of appeals upheld the
5 ruling, reasoning in part that "***the exculpatory quality of the declarations tends to the***
6 ***inference that excitation and spontaneity had given way to calculated***
7 ***considerations of self-interest.***" *Id.* at 573. See also, *Wren v. St. Louis Public Service*
8 *Co.*, 333 S.W.2d 92, 95 (Mo. 1960) ("(T)he fact that an utterance is made a very short
9 time after the event will, in and of itself, have little weight in producing an affirmative
10 conclusion that it is admissible."); *State v. Burton*, 115 Idaho 1154, 772 P.2d 1248 (Idaho
11 App. 1989) (Five minutes was enough for reflection – "***the exculpatory content of the***
12 ***remark is a factor to be weighed in determining whether it was a product of***
13 ***reflective thought.***").

14
15
16 It is unclear how much time passed between the time Defendant shot the four
17 victims and when he spoke to Chase Jones. However, there **was** sufficient time for
18 Defendant to collect his thoughts and offer up an excuse, albeit an excuse that is
19 unsupported by the facts and evidence. At the time Chase Jones approached Defendant,
20 he had backed away from the carnage and was contemplating his next move. His
21 statement about "self-defense" was also offered up by Defendant without any invitation.
22 He wanted to promote his story of "self-defense" even though Chase Jones was not
23 asking for an explanation. The self-serving nature of the statement, and the abrupt way
24 in which Defendant attempted to offer up this excuse, shows that "excitation and
25 spontaneity had given way to calculated considerations of self-interest." See *Pfulgradt*,
26 *supra*.

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1 *State v. Pavlik* further illustrates how a defendant’s self-serving statement may not
2 meet the requirements of “excited utterance” even when spoken immediately after a
3 “startling event.” 165 Wash.App. 645, 268 P.3d 986 (Wash.App. 2011). In that case, the
4 defendant was driving his car in the early morning when he drove passed two cyclists and
5 was forced to swerve his car to avoid them. *Id.* at 647. Angry words were exchanged
6 and the defendant pulled out a gun from his car and fired a “warning shot” in the cyclists’
7 general direction. *Id.* The defendant then parked his car and waited for the cyclists. *Id.*
8 As one of the cyclists passed by on the passenger side of the defendant’s car, he noticed
9 the gun sitting on the passenger seat and lunged into the car for it. *Id.* The defendant
10 also lunged at the gun and as the two struggled to possess the gun, the cyclist punched
11 the defendant four times. *Id.* 648. The defendant eventually succeeded in securing the
12 gun and shot the cyclist, causing a non-fatal injury. *Id.* By chance, a police officer who
13 was waiting at a stoplight in the area witnessed the struggle for the gun and the resulting
14 shooting. *Id.* The police officer arrived at the scene “**immediately**,” and upon contacting
15 the defendant, the defendant blurted out: “You saw it, it was self-defense.” *Id.*

19 The trial court in *Pavlik* precluded the statement as self-serving, and the court of
20 appeals found no error. *Id.* at 655-56. In its analysis, the court of appeals described how
21 this statement, although uttered mere seconds after the “startling event,” did not qualify
22 as an “excited utterance.” *Id.* at 655. The court underscored that “**the self-serving and**
23 **conclusory nature of the statement undercuts the ‘under the influence’ aspect of**
24 **the second factor because self-serving or exculpatory statements . . . show**
25 **conscious reflection.**” *Id.* (emphasis added).
26

 The statements Defendant made after he shot four unarmed students suffer from
the same reliability issues discussed in *Pavlik*. Like *Pavlik*, Defendant shot a victim who

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1 was unarmed. Like *Pavlik*, Defendant made statements to witnesses in order to offer up
2 an excuse. And like *Pavlik*, the “self-serving and conclusory nature of the statements . .
3 . show conscious reflection,” thereby making the excited utterance exception wholly
4 inapplicable. Minutes or seconds may have passed, but the amount of time that elapsed
5 is irrelevant if Defendant had moments for reflection and to fabricate an excuse.
6

7 **2. Defendant’s statements to the police are also inadmissible**
8 **hearsay.**

9 Defendant had ample time to reflect on what he did and fabricate an excuse to
10 present to the first law enforcement officer he met. For this reason, the statements cannot
11 be argued to be an “excited utterance.” See *State v. Cruz*, 218 Ariz. 149, 162, 181 P.3d
12 196, 209 (2008) (holding the defendant’s exculpatory statement was not an excited
13 utterance because he “had ample opportunity for conscious reflection”); see also *State v.*
14 *Anaya*, 165 Ariz. 535, 799 P.2d 876 (App. 1990); *State v. Conn*, 137 Ariz. 152, 669 P.2d
15 585 (Ariz.App.1982). This is not a close call. Defendant’s statement to the police is well
16 outside the time range that one could consider “spontaneous.” Furthermore, the
17 statement is self-serving and thus inherently unreliable. If Defendant wishes to present
18 a denial to the jury, his means of doing so is by taking the witness stand and presenting
19 his testimony at trial subject to cross-examination.
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23 **3. The State may elect to elicit any, all, or none of the self-serving**
24 **statements.**

25 While the defense is barred from introducing these self-serving statements, the
26 same statements, if offered by the State, are admissible. See 1 Ariz. Prac., Law of
Evidence § 802:1 (Rev. 4th ed.) (“Statements made by a witness himself, out of court,
are hearsay and are inadmissible . . . unless offered by the opponent as an admission”);

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1 see also 801(d)(2), Ariz.R.Evid. It is a well-recognized principle that the State is not
2 required to present all witnesses or "all documents or evidence suggested by the
3 evidence." *State v. Herrera*, 203 Ariz. 131, 51 P.3d 353 (Ariz.App. 2002).

4 The State may, at its discretion, introduce any statement made by the Defendant.
5 However, Defendant is precluded from introducing his own self-serving hearsay
6 statements. They are rank hearsay outside the boundaries of any exception.

7
8 **III. CONCLUSION**

9 For the foregoing reasons, the State asks this Court to preclude the defense from
10 introducing or discussing the statements made by Defendant. Defendant's recourse for
11 telling his story is taking the witness stand and subjecting himself to cross-examination.

12
13
14 RESPECTFULLY SUBMITTED this 28 day of February, 2017.

15 WILLIAM P. RING
16 COCONINO COUNTY ATTORNEY

17 By 
18 Ammon D. Barker
19 Deputy County Attorney

20
21 COPY of the foregoing mailed/delivered this
22 28 day of February, 2017, to:

23 The Honorable Dan Slayton
24 Division 2
25 Coconino County Courthouse
26 Flagstaff, AZ 86001

Burges McCowan
Joshua Davidson
Attorneys for Defendant

By: 