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FILED

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

11 STATE OF ARIZONA,

12 Plaintiff,

13 vs.

14 STEVEN EDWARD JONES,

15 Defendant.

No. CR2015-00862

**MOTION TO ADMIT RELEVANT
PHOTOGRAPHS AND VIDEO**

Hon. Dan Slayton – Div. 2

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17 The State of Arizona, by and through the undersigned Deputy County Attorney,
18 hereby moves this Court to rule on the admissibility of certain photos and video that the
19 State intends to introduce at trial. The State felt compelled to file this Motion because the
20 defense has attempted to obstruct the introduction of evidence at trial by way of ambush.
21 As the Court is aware, there was a Comprehensive Hearing set in this case to address
22 issues of evidentiary significance. The defense elected not to file a single motion *in limine*
23 prior that date, but did file an untimely motion the day of trial, and subsequently objected
24 to evidence that they knew, or should have known, would have been presented at trial.
25 Thus, to avoid future issues, the State files this Motion so that Court and Counsel will
26 understand the relevance of this evidence, and the law that supports its introduction.

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1 **1. Whether the defense is strategically not contesting an issue is not a valid**
2 **reason to preclude corroborating evidence.**

3 If the defense is not contesting a part of the State's case, that is up to them. The
4 State is not trying this case to the defense, or to the Court; the State is trying this case to
5 the jury. They are the factfinders. As the Court is aware, the jury is free to accept or
6 reject stipulations. Thus, it follows, that if the defense is offering to stipulate to a fact in
7 the case in lieu of the introduction of some relevant testimony or piece of evidence, the
8 State can reject that offer and introduce it anyway. The same logic applies to evidence
9 that the defense claims they are not contesting. For example, the defense has claimed
10 self-defense in this case. That means the defendant is admitting he shot the victims.
11 **However, the State still has to prove the elements of the charges.** Again, whether
12 the Court or Counsel believe these issues are uncontested does not necessarily mean
13 the jury believes these issues are uncontested.

14 This concept is not only logical, it is established Arizona law. ***"Even if a defendant***
15 ***does not contest certain issues, photographs are still admissible if relevant***
16 ***because the burden to prove every element of the crime is not relieved by a***
17 ***defendant's tactical decision not to contest an essential element of the offense."***
18 *State v. Pandeli*, 215 Ariz. 514, 567 (Ariz. 2007) quoting *State v. Dickens*, 187 Ariz. 1, 18
19 (1996) (emphasis added).

20 **2. Photos and videos of injuries are relevant to prove the elements of death**
21 **and injury to the victims, regardless of the defense's tactical decision not**
22 **to contest these elements.**

23 Photographs are especially relevant to prove "the corpus delicti, to identify the
24 victim, ***to show the . . . injury, to determine the atrociousness of the crime, to***

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1 *corroborate State witnesses, to illustrate testimony, or to corroborate the State's*
2 *theory of the crime.” State v. Hampton, 213 Ariz. 167, 140 P.3d 950 (Ariz. 2006)*
3 (emphasis added).
4

5 Therefore, even if the defense is not contesting the credibility of a certain witness,
6 or the Court believes the witness is credible without the corroborating evidence, *the State*
7 *should still be allowed to provide photographs or video that corroborate that*
8 *testimony*. After all, it is up to the jury to decide a witness's credibility. So, for example,
9 if an officer testifies to seeing an event, and they have body camera footage that
10 corroborates that event, the jury should be allowed to view it and decide for themselves
11 if what was testified to is accurately represented by the video.
12

13 The State intends on introducing body camera footage of the officer who
14 discovered Nick Prato on the floor, holding his injured neck and yelling out the identifying
15 characteristics of the defendant. This is relevant and admissible to corroborate Nick
16 Prato's testimony and the testimony of the officer. The credibility of these witnesses is
17 obviously important to the State's case. Nick Prato's testimony cuts right through
18 Defendant's self-defense claim. The State anticipates that Nick Prato will testify that he
19 was ascertaining the identity of the defendant at the time the defendant shot him in the
20 neck without provocation. The officer will testify that when he arrived to find Nick Prato,
21 Nick Prato was yelling out the identifying characteristics of the defendant consistent with
22 his prior actions. This body cam footage will corroborate Nick Prato's and the officer's
23 testimony. Again, it is up to the jury to decide if any witness is credible, and the body
24 camera footage helps prove these facts.
25
26

3. Gruesomeness is not a valid objection.

Arizona courts have generally permitted photographic exhibits, even gruesome or

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1 graphic photos. "Gruesomeness alone is not a valid objection." *State v. Staatz*, 159 Ariz.
2 411, 415, 768 P.2d 143, 147 (1988). "There is nothing sanitary about murder" and
3 sometimes gruesome photographs properly will be introduced. *State v. Cota*, 229 Ariz.
4 136, 272 P.2d 1027 (Ariz. 2012) *citing State v. Rienhardt*, 190 Ariz. 579, 584, 951 P.2d
5 454, 459 (1997).

7 In *Anderson*, a photo was introduced at trial that showed the victim's "disfigured
8 head with a knife inserted through the ear and emerging through the nose." *State v.*
9 *Anderson*, 210 Ariz. 327, 339, 111 P.3d 369, 381 (Ariz.2005). Despite the prejudicial
10 impact such a photo carried, the court sustained the trial court's decision to admit the
11 photos because "the photos were relevant . . . to corroborate the State's theory of the
12 case and to prove its allegation." *Id.* Likewise, in *McGill*, photographs of the body of the
13 victim, who was burned alive, were admissible, despite the fact that the defendant did not
14 contest the manner of the death. *State v. McGill*, 213 Ariz. 147, 155, 140 P.3d 930, 938
15 (Ariz. 2006). The court concluded that it was "unlikely that the pictures added much to
16 any sense of shock the jurors experienced from hearing the injuries described." *Id.*

19 Likewise, in this case, the State intends to admit photos depicting the location and
20 severity of the injuries of all the victims, including the deceased. This is relevant to
21 Defendant's intent (an element of the charges the State must prove). The severity is also
22 relevant because Defendant is charged with causing serious physical injury to all the
23 victims. The photos will aid the jury to understand medical testimony and the testimony
24 of the victims. They are not unduly prejudicial, not excessively gruesome, and are not
25 submitted merely to inflame the passions of the jury.
26

The Court will, and justifiably, find that some of these photos and video are
prejudicial. But relevant evidence will most assuredly be prejudicial to the opposing

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1 party's case. The standard, however, is not if a piece of evidence is prejudicial, but if the
2 relevance is "**substantially** outweighed" by "**unfair** prejudice." See Rule 403. This is a
3 high standard, especially given the great probative weight of this evidence to the State's
4 case.
5

6 **4. The State attaches the following photos and video and asks the Court to**
7 **rule regarding their admissibility.**

8 Because the defense has failed to proactively object to any marked video or
9 exhibits, the State assumes there is no objection. Nevertheless, so there will be no
10 confusion or wasted time during trial, the State submits these photos and video for the
11 Court's review and asks for a ruling on their admissibility. For ease of reference, the
12 photos and the video clip are attached with their accompanying **trial** exhibit number.
13
14

15
16 RESPECTFULLY SUBMITTED this 10 day of April, 2017.

17 WILLIAM P. RING
18 COCONINO COUNTY ATTORNEY

19 By 
20 Ammon D. Barker
21 Deputy County Attorney

22
23 COPY of the foregoing mailed/delivered this
day of April, 2017, to:

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

Burges McCowan
Joshua Davidson
Attorneys for Defendant

By: 



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State v Jones