

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No.: 27-CR-20-12646

State of Minnesota,

Plaintiff,

v.

Derek Michael Chauvin,

Defendant.

**MOTION TO EXCLUDE  
REFERENCE TO GEORGE  
FLOYD'S INTERNAL  
MOTIVATIONS AND PERMIT  
CHARACTERIZATIONS OF  
OBJECTIVE BEHAVIOR**

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendant, Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431.

**INTRODUCTION**

Consistent with this Court's recent Order regarding the May 6, 2019 incident, the State moves to exclude any characterization of George Floyd's subjective, internal motivations that could not have been apparent to Defendant on May 25, 2020. However, the Court should permit the parties to characterize how a reasonable officer (and Defendant) should have perceived Mr. Floyd's objective behavior.

In particular, both sides should be permitted to state that, based on MPD policy and his training, Defendant should have (or not) perceived Mr. Floyd to be unable to comply due to a medical condition, a behavioral crisis, or the influence of drug or alcohol use. *See* Order and Mem. Op. on Defense Mots. to Dismiss for Lack of Probable Cause 73 (Oct. 21, 2020) (holding that Defendant was "required by [his] training to consider whether [Mr.] Floyd's alleged 'lack of compliance' was a 'deliberate attempt to resist' or just 'an inability to comply' based on [Mr.] Floyd's self-identified claustrophobia and anxiety . . ."). While the State believes this evidentiary

line is already implicit in the Court’s prior rulings, the State makes this motion to prevent any need—for either side—to object during opening statements. A proposed order is attached.

### ARGUMENT

1. Throughout pretrial proceedings and again in its most recent Order, this Court has repeatedly held that Mr. Floyd’s subjective, internal thoughts are not relevant. *See* Order and Mem. Op. Allowing 404(b) Evidence Offered By Def. 4. (Mar. 24, 2021); Order and Mem. Op. on Defense Mots. to Dismiss for Lack of Probable Cause 68; *see also State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013) (noting that the State must prove that Defendant engaged in “a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation” (internal quotation marks omitted)). Instead, whether Defendant’s use of force was reasonable turns on objective factors. *See McCormick*, 835 N.W.2d at 507.

In opening statements, both sides should thus be excluded from characterizing Mr. Floyd’s inner thought processes that would have been unknowable to Defendant—for example stating that, regardless of his external behavior, Mr. Floyd was really “just malingering” on May 25, 2020.

2. However, this Court should permit the State and Defendant to describe how a reasonable officer would have perceived Mr. Floyd’s objective behavior. In particular, the parties should be permitted to state that Mr. Floyd’s objective behavior should have indicated to Defendant that Mr. Floyd’s “lack of compliance” did not reflect “a deliberate attempt to resist” but instead reflected “an inability to comply” based on symptoms of a medical condition, a behavioral crisis, or the influence of drug or alcohol use. *See* MPDPPM § 5-304(B)(1)(b) (submitted as Exhibit 1).

This Court has previously recognized that MPD’s policy instructed officers using force to consider these same factors. *See* Order and Mem. Op. on Defense Mots. to Dismiss for Lack of Probable Cause 31; *see also* Exhibit 1. Defendant was thus “required by [his] training to consider

whether [Mr.] Floyd’s alleged ‘lack of compliance’ was a ‘deliberate attempt to resist’ or just ‘an inability to comply’ based on [Mr.] Floyd’s self-identified claustrophobia and anxiety, his assertions that he had been shot before and was ‘scared’ and that he was recovering from COVID, and the ‘influence of drug or alcohol use, among other things” *Id.* at 73 (citing MPDPPM § 5-304(B)(1)(b)).

That inquiry, like all inquiries into the reasonableness of Defendant’s use of force, turns on how Mr. Floyd objectively appeared to Defendant and what Defendant should have perceived—not what Mr. Floyd may have been thinking or intending but which was not apparent to observers. The parties should thus be permitted to characterize Mr. Floyd’s objective actions as indicative of deliberate resistance, or medical symptoms, a behavioral crisis, or the influence of drug or alcohol use.

### CONCLUSION

For the forging reasons, the Court should exclude any characterization of George Floyd’s subjective, internal motivations. However, the Court should permit the parties to characterize Mr. Floyd’s behavior for the purposes of stating that Defendant should have considered that Mr. Floyd’s lack of compliance was due to deliberate resistance or an inability to comply.

Dated: March 26, 2021

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Matthew Frank  
MATTHEW FRANK  
Assistant Attorney General  
Atty. Reg. No. 021940X

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1448 (Voice)  
(651) 297-4348 (Fax)  
matthew.frank@ag.state.mn.us

NEAL KUMAR KATYAL (*pro hac vice*)  
NATHANIEL AVI GIDEON ZELINSKY  
(*pro hac vice*)  
Special Attorneys for the State of Minnesota  
Hogan Lovells U.S. LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5600 (Voice)  
neal.katyal@hoganlovells.com

ATTORNEYS FOR PLAINTIFF