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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota, Court File No.: 27-CR-20-12951

Plaintiff,

v. DEFENDANT THOMAS LANE'S MOTIONS IN LIMINE

Thomas Kiernan Lane,

Defendant.

The defendant, Thomas Lane, through his attorneys, Earl Gray and Amanda Montgomery, moves the Court for an Order regarding the following motions in limine:

(1) Requiring the State to prepare its witnesses for proper testimony.

The state has a duty to prepare its witnesses, prior to testifying, to avoid inadmissible or prejudicial statements." State v. McNeil, 658 N.W.2d 228, 232 (Minn. App. 2003). The defense moves for an order requiring the State to ensure its witnesses, both expert and lay, know the general rule to answer and respond directly to the question asked and not expand or ad lib at their own leisure, nor speculate. Such unsolicited comments occurred with many State witnesses who testified during the Chauvin trial.

(2) Limiting the scope of "spark of life" testimony.

The defendant asks this Court to limit the spark of life testimony and evidence and further moves to introduce evidence of prior bad acts should the State exceed the permissible scope of "spark of life" testimony. See State v. Carney, 649 N.W.2d 455, 463 (Minn. 2002); State v. Buggs, 581 N.W.2d 329, 342 (Minn. 1998), State v. Hodgson, 512 N.W.2d 95, 98 (Minn. 1994); State v. Graham, 371 N.W.2d 204, 207 (Minn. 1985).

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(3) Prohibiting more than two use of force experts.

More than two use of force experts is cumulative. As was done in the Chauvin trial, it is anticipated there will be several use of force "experts". After each opinion given, the probative value of the next is diminished. More than two use of force experts leads to an unfair advantage by the State due to the repeated opinions of the same magnitude used to persuade by illegitimate means. Also, after the cumulative testimony, the State will surely use the multiple expert opinions to solidify their case – because so many people said the same thing it is true, which is improper.

(4) Require the State to follow the general rules and rules of ethics during argument.

There were several issues with improper argument in the Chauvin trial that surely amounted to prosecutorial misconduct according to Minnesota case law. Examples of misconduct: (1) calling the defense a "story", (2) referring to the defense as "nonsense", (3) asking the jury to put themselves in the shoes of another, (4) using the words "we" and "us" to align with the jury, and (5) interjecting personal opinion in closing argument by using "I think", "I submit" or "I suggest". We now ask this Court to order that the State follow the rules and avoid going down this road for a second time.

(5) Limiting the State's Rebuttal Argument.

Limit the prosecution's rebuttal closing argument to a **direct** response to the defendants' closing arguments, and not allow them to re-argue their entire case or areas that were already argued in their primary closing argument. Minn. R. Crim. Pro., 26.03, Subd. 12(j). The rebuttal argument is a "reply" to the closing argument of the defense, it is not a second bite at the apple. Minn. Stat. §631.07. "Rebuttal evidence consists of that evidence which "explains, contradicts,

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or refutes the defendant's evidence."" State v. Williams, 586 N.W.2d 123(1998), *citing* State v. Swanson, 498 N.W.2d 435, 440 (Minn.1993).

Rule 26.03 was amended in the year 2000 to add automatic rebuttal for the State[1]. Prior to the year 2000, the State was required to motion the court if it wished to have a rebuttal argument, and the rebuttal was limited to when the defense made a misstatement of law or fact or a statement that was inflammatory or prejudicial. Under the new amended rule, allowing for automatic rebuttal argument, as noted in the advisory committee comments in the attachment, "this argument must be true rebuttal and is limited to directly responding to matters raised in the defendant's closing argument" …. "the court has the inherent power and duty to assure that any rebuttal or surrebuttal arguments stay within the limits of the rule and do not simply repeat matters from the earlier arguments or address matters not raised in earlier arguments".

The purpose of rebuttal argument is to respond directly to the defense argument with new argument not already touched on. The rationale of the amendment encompassing automatic rebuttal was to result in a more efficient and less confusing presentation to the jury. This allows the prosecution to address only the defenses raised by the defendant, rather than guessing in its preliminary argument.

(6) Surrebuttal Argument.

If the State violates the rules of rebuttal argument or makes a "misstatement of the law or fact or a statement that is inflammatory or prejudicial", the defense will then move for surrebuttal argument under the rules. Minn. R. Crim. P. 26.03, Sudb. 12 (k).

[1] See attached Order, with attached amendment, signed on February 11, 2000 by the Chief Justice of the Supreme Court of Minnesota.

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(7) Requiring all side-bar conversations be part of the official verbatim court record and not merely summarized.

The Rules require sidebar conversations of objections and argument to be part of the stenographic record. §486.02.

Dated: May 12, 2022

Respectfully Submitted,

s/ Earl Gray

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