

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12953

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT'S SECOND MOTIONS IN
LIMINE**

J. Alexander Kueng,

Defendant.

TO: THE HONORABLE PETER A. CAHILL, JUDGE OF HENNEPIN COUNTY DISTRICT COURT; AND KEITH ELLISON, ATTORNEY GENERAL OF MINNESOTA; MICHAEL FREEMAN, HENNEPIN COUNTY ATTORNEY.

The defendant, by and through his attorney, moves the Court for an order granting the following in limine motions.

MOTIONS IN LIMINE

- 1) The Defendant moves the Court for an Order precluding the State's witnesses from using inflammatory language to describe observations of the interactions with officers and Mr. George Floyd. Examples being characterizing knee or hand placement as ramming into Mr. Floyd or Mr. Kueng's grip as "firmly."
- 2) The Defendant moves the Court for an order prohibiting the government's witnesses from addressing the jury directly. In particular, asking the jury to take actions as the witness demonstrates. Examples being asking the jury to breathe along with the testifying witness or asking the jury to examine their own necks as the witness examines theirs.

- 3) Mr. Keung moves this Court for an order directing that no depictions of a “MRI of pharynx in a normal person” be admitted into evidence or referenced as a demonstrative exhibit without first establishing the actual dimensions of Mr. Floyds pharynx and the area immediately surrounding the same.
- 4) Mr. Keung moves this Court for an order directing that the State refrain from questioning witnesses or offering exhibits regarding narrowing of the hypopharynx and the effect of airway narrowing on a patient’s effort to breathe absent first establishing the precise dimensions of Mr. Floyd’s hypopharynx.
- 5) Mr. Kueng moves this Court for an order prohibiting testifying witnesses from referring to and/or relying on images from events other than those involving Mr. Floyd. Specifically, the Hillsborough Football Stadium Tragedy or other sporting or concert events where persons died from crowds pressing against them.
- 6) The Defendant moves this Court for an order directing that the State’s witnesses be precluded from speculating about Mr. Floyd’s actions while restrained. Examples being testimony stating the Mr. Floyd pushed his fingers against the street to lift his right shoulder or pushed his knuckles against the tire to lift his right shoulder for a speculative purpose.
- 7) The Defendant moves this Court for an order directing State’s witnesses be precluded from testifying as to their personal ethic or applying their personal ethics to intervention and use of force, rather than policy, law or rules.
- 8) Mr. Kueng moves this Court for an order directing that, non-expert police witnesses be prohibited from offering opinions as to the propriety of force used or

what force would be appropriate in these situations or physiological effects of prone positioning.

- 9) Mr. Keung moves this Court for an order directing that no witness for the state be allowed to offer speculative testimony about how they would have acted had they been in the place of any of the defendant officers. See Minn. R. Evid. 602, Minn. R. Evid. 701.
- 10) Mr. Kueng moves this Court for an order directing testimony by any non-physician medical personnel be limited to what that care givers treatment and observations and not to cause of death or characterization of Mr. Floyd's status as being dead or alive.
- 11) Mr. Kueng moves this Court for an order prohibiting the government from entering into evidence or relying on videos that combine officer body worn cameras (BWC) with any bystander video. Alternatively, Mr. Kueng asks that the audio portion of combined videos be restricted to the BWC audio only. The combined videos, especially the audio portion of the videos, suggest that the officers were able to perceive facts, sounds and events that were not available to the officers at the time the events in question and have no bearing on the "objective reasonableness test" when examining an officer's actions. *Graham v. Connor*, 490 U.S. 386, 392-399 (1989) The combined videos prejudice Mr. Kueng because they inaccurately and falsely depict the facts known at the time and should not be considered by the jury on the issue of how a similarly trained and experienced officer would respond.

- 12) Mr. Kueng moves this Court for an order prohibiting the introduction of bystander videos. Such videos are irrelevant as they do not reflect what Mr. Kueng could see and perceive.
- 13) Mr. Kueng moves this Court for an order prohibiting testimony from expert witnesses that is based on visual perspectives of Mr. Floyd that were not available to Mr. Kueng.
- 14) Mr. Kueng moves this Court for an order directing the government to refrain from eliciting opinion evidence from any testifying witness as to truthfulness of Mr. Kueng's past statements. *United States v. Roundtree*, 534 F.3d 876, 880 (8th Cir. 2008) (Improper vouching may occur when the government expresses a personal opinion about credibility, implies a guarantee of truthfulness, or implies it knows something the jury does not).
- 15) Mr. Kueng moves the Court for an order prohibiting the Government from asking questions of their witnesses designed to elicit their emotional response to watching the incident – or videos of the incident. Such testimonial evidence is irrelevant and is designed to mislead and confuse the jury.
- 16) Mr. Kueng, moves the Court for an order prohibiting the State from calling as a witness J. R., a ten-year-old, and any other juvenile witness who add nothing to the States' case but are called merely to invoke sympathy and is cumulative evidence and a waste of time.
- 17) Mr. Kueng moves this Court for an order suppressing all training PowerPoints that contain links to missing or unavailable YouTube videos and preventing the

government from referencing or introducing any aspect of training associated with such training PowerPoints. This includes but is not limited to intervention training/use of force training and first aid training.

- 18) Mr. Kueng moves this Court for an order prohibiting/limiting the testimony of Minneapolis Police Lieutenant Zimmerman regarding his conversations with Mr. Kueng while at the scene of the alleged offense as such conversations were in violation of Minneapolis Police Department Policy and *Garrity v. New Jersey*, 385 U.S. 493 (1967) prohibiting compelled statements.
- 19) The Court issued a Trail Management Order on May 25, 2022 directing, “All such (side bar) conferences shall be off the record unless a party makes a specific request to have the conference on the record.” Mr. Kueng, through counsel, requests that all side bar and chambers conference be on the record. This request is necessary to avoid a complete closure of the Court while legal arguments and rulings by the court are being made. Mr. Kueng notes that Minn. Stat. §486.02, confers a duty to make “a complete stenographic record of all testimony given and all proceedings had before the judge upon the trial of issues of fact, with or without a jury, or before any referee appointed by such judge.” Most importantly, the court reporter is required to record “verbatim, all objections made, and the grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all motions, orders, and admissions made and the charge to the jury.” *Id.*
- 20) Mr. Kueng moves this Court for an order prohibiting the State from offering repetitive and cumulative testimony from medical experts and bystanders. Mr.

Kueng notes that in the trial of Mr. Chauvin, the State called multiple eye witnesses that offered cumulative testimony of what they observed. It became clear that the State's goal was to pander to the jury by eliciting emotional testimony about how people felt more so than what they observed. Additionally, the State called a plethora of medical experts to talk about hypoxic asphyxia, albeit from their own perspective. All of this evidence was cumulative well beyond the need to present cause of death evidence. This is especially true of Dr. Lindsey Thomas' testimony in the wake of the unimpeached testimony of Dr. Baker.

- 21) Mr. Kueng moves this Court for an order limiting the number of medical examiners the State may call to one.
- 22) Mr. Kueng moves the Court for an order limiting the duration of direct examination of expert witnesses to 45 minutes. To assist the State in meeting this restriction Mr. Kueng offers to stipulate that the testifying experts are qualified and refrain from challenging their credentials on cross examination.
- 23) Mr. Kueng moves this Court for an order prohibiting cumulative testimony on the issue of use of force. In the trial of Mr. Chauvin 7 witnesses offered an opinion on use of force. Those witnesses are: (1) Sgt. David Pleoger (TT-3489-3533-3541-3542 – objection 3532-3541); (2) Lt. Richard Zimmerman (TT-3627-3639); (3) Chief Medaria Arradondo (TT-3742-3841); (4) Inspector Katie Blackwell (TT-3897-3923), (5) Lt. Johnny Mercil (TT-3987-4033); (6) Sgt. Jodi Stiger (TT-4125-4189), and (7) Seth Stoughton (TT-5079-5151). Mr. Kueng respectfully asks that the State select

one of these 7 witnesses to testify and the Court to prohibit testimony from the other 6.

- 24) Mr. Kueng moves this Court for an order directing a hearing outside the presence of the jury with live bodied testimony from all proposed State expert witnesses to allow the defense to examine all proposed expert witnesses prior to trial to determine what, if any, evidence is not cumulative and the relevance of any other testimony.
- 25) Mr. Kueng move this Court for an order prohibiting persons attending the trial from being compelled to show identification to gain access to either the courtroom or overflow courtrooms. On April 25, 2022 this Court issued an order stating that:
- No one shall be permitted on the 18th Floor unless approved by the HCSO or the Chief Judge, and then only with approved credentials or identification as required by the HCSO.
- Mr. Kueng objects to this order by Court and now moves the court for an order as outlined above. This limitation is a closure of the courtroom and violates Mr. Kueng's right to an open trial under the 6th Amendment of the United States Constitution. Spectators must be allowed to attend anonymously if they so choose.
- 26) Mr. Kueng moves this Court for an order allowing some members of the general public in the courtroom to view the live proceedings. Failure to do so is a closure of the courtroom and violates Mr. Kueng's right to an open trial under the 6th Amendment of the United States Constitution.
- 27) Mr. Kueng joins the motions in limine of defendants Tao and Lane

Respectfully submitted,

Date: May 13, 2022

/s/ **Thomas C. Plunkett**

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