

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

**STATE'S RESPONSE TO
DEFENDANT LANE'S
FEBRUARY 10, 2021
DISCOVERY MOTION**

J. Alexander Kueng,

Court File No.: 27-CR-20-12953

Thomas Kiernan Lane,

Court File No.: 27-CR-20-12951

Tou Thao,

Court File No.: 27-CR-20-12949

Defendants.

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendants, Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101; Thomas Plunkett, U.S. Bank Center, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402.

STATEMENT OF FACTS

Defendant Lane has filed a motion asking the Court to compel the State to obtain and disclose “all use of force reports where force was used by a Minneapolis police officer in making an arrest and another officer, either orally or physically, intervened in the use of force by his or her fellow officer, in the last fifty years.” In a separate memorandum, counsel for Defendant Lane claims this is needed to establish for the jury that this has not happened in the last fifty years in Minneapolis to impeach the state’s experts on the duty to intervene.¹ Counsel also claims this is

¹ Actually, counsel for Defendant Lane is aware that this has happened within the Minneapolis Police Department in the last 50 years. Lieutenant Richard Zimmerman has described an incident in which he was chasing and finally caught a suspect. Then a senior officer came up and hit the suspect, at which point Lt. Zimmerman intervened and told the senior officer to back away from Lt. Zimmerman’s suspect. Bates 27623, 43169.

necessary to impeach members of the Minneapolis Police Department “who have voiced the same opinion.” The state’s expert witnesses will testify about a reasonable officer’s duty to intervene and witnesses from the Minneapolis Police Department will testify about the policies requiring intervention. But generally counsel for Defendant Lane has not attempted to explain how the negative he claims exists is admissible to impeach these witnesses. More specifically counsel for Defendant has not established how the intentions and actions of individual police officers in past years in other incidents would be admissible to impeach testimony about the objectively reasonable officer standard. His failure to address the factual or legal standards necessary to this motion highlight that this is not a serious discovery motion, but simply an attempt to usurp the Court’s time and resources so counsel for Defendant Lane can obtain a public forum to argue his theory of the case. His motion should be summarily denied.

ARGUMENT

For the court to compel the production of documents, the requesting party must show that the documents are relevant to the case. Minn. R. Crim. P. 9.01, subd. 2(3); *State v. Lynch*, 443 N.W.2d 848, 852 (Minn. Ct. App. 1989). The requesting party must make a threshold showing that the documents sought would be relevant to the issues in dispute in the case. *State v. Underdahl*, 767 N.W.2d 677, 685 (Minn. 2009) (*Underdahl II*). In *Underdahl II*, the supreme court held that the district court abused its discretion when it granted the discovery motion because the requesting counsel advanced no theories on how the requested discovery would be relevant to his defense. *Id.*

Like *Underdahl*’s counsel, counsel for Defendant Lane has offered no theories or analysis on how the requested documents, or lack thereof would be relevant to the claims at issue in this case. Indeed, they would not be.

Counsel for Defendant Lane has not made a showing that the state's witnesses could be impeached with a negative – a lack of records about an incident. One of the primary issues in this case is the Defendants' use of force to restrain Mr. Floyd. An officer's use of force must be judged from the objectively reasonable officer standard based on circumstances existing at the time of Floyd's death. *See* Minn. Stat. § 609.06; *Graham v. Connor*, 490 U.S. 386, 396 (1989). When the state's witnesses testify that departmental policies on which Defendant Lane was trained require a duty to intervene on excessive force and offer opinions that an objectively reasonable officer would intervene, Defense counsel has not established how each witness could be impeached by a lack of incidents where officers intervened. The lack of incidents where officers intervened does not impeach testimony that a reasonable officer would intervene in the excessive use of force. That standard is an objective one, and so the subjective intentions and actions of the officers in other incidents are not relevant to this case. Moreover, any prior incidents where officers did not intervene in the use of excessive force would simply be collateral, anecdotal evidence. Permitting this impeachment would require a mini-trial on the facts and circumstances surrounding each incident.

CONCLUSION

For all the foregoing reasons, the state respectfully requests that Defendant Lane's motion to compel discovery be denied in its entirety.

Dated: May 11, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Matthew Frank
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