

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MOHAMED MOHAMED NOOR, )  
 )  
 Defendant. )

**STATE’S AMENDED MOTION  
REGARDING WITNESS  
SEQUESTRATION**

MNCIS No: 27-CR-18-6859

TO: THE HONORABLE KATHRYN QUAINANCE, HENNEPIN COUNTY DISTRICT COURT; COUNSEL FOR DEFENDANT; AND DEFENDANT.

**MOTION**

The State moves the court to order that witnesses be sequestered during the trial with three exceptions: (1) that expert witnesses be permitted to attend trial during the testimony of experts called by the opposing side, (2) that Mr. Don Damond, Ms. Ruszczyk’s fiancé, be permitted to attend any part of the trial he wishes after he testifies, and (3) that lead case agent, Special Agent (SA) Brent Petersen of the Minnesota Bureau of Criminal Apprehension (BCA), be permitted to attend throughout the duration of the trial.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION**

**I. The Court Has Discretion To Order That Certain Witnesses Be Sequestered During Some Or All Of The Trial.**

Either party may request that any or all witnesses be excluded from the trial, including during jury selection, so that they cannot hear the testimony of other witnesses. Minn. R. Evid. 615 (2018); Minn. R. Crim. P. 26.03, subd. 8. Whether to grant a request to sequester witnesses is in the discretion of the court. *State v. Jones*, 347 N.W.2d 796, 802 (Minn. 1984); *State v.*

*Garden*, 125 N.W.2d 591, 600 (1963). Expert witnesses who are essential to advise counsel in the subject matter of the litigation should not be excluded. Minn. R. Evid. 615 advisory committee cmt. The risk of prejudice resulting from permitting a witness to attend a trial is mitigated if the witness does not hear the testimony of other witnesses before he or she takes the witness stand. *See generally, State v. Koselka*, 536 N.W.2d 625, 630-31 (Minn. 1995); 11 Minn. Prac., Evidence § 615.01 (4<sup>th</sup> ed.) (September 2018 update).

**II. In This Case, Partial Sequestration is Appropriate for Expert Witnesses and Mr. Damond.**

Courts regularly allow expert witnesses to be present in the courtroom during the testimony of experts appearing for the other side. In this case, it is possible, and even likely, that the State and the defendant will call experts, particularly on the issue of the use of deadly force by a police officer. Permitting experts from both sides to hear each other's testimony on this issue will assist counsel from both sides in preparing and presenting their cases.

In the case of Mr. Damond, he is a witness because he was the last person to speak with Ms. Rusczyk before she left her home in hopes of speaking with the police she called twice that night for help. Mr. Damond will have helpful testimony about those conversations, as well as information about who Ms. Rusczyk was as a person. As her fiancé, Mr. Damond is Ms. Rusczyk's only relative in the United States and has a strong interest in being present for any or all of the trial if he wishes. The subject matter of his testimony is limited. He was in Las Vegas at the time the defendant shot Ms. Rusczyk, so he has no information from the scene. He will testify at the beginning of the State's case, so he will not be influenced by any other testimony. Therefore, it is proper to allow him to be present for the rest of the trial after he testifies.

**III. SA Brent Petersen Should Be Allowed to Attend Any or All of the Trial.**

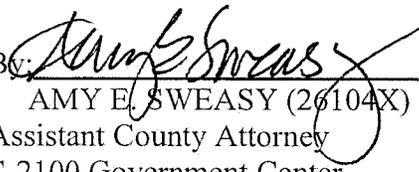
Finally, SA Brent Petersen is the lead BCA investigator on the case. Investigating officers and case agents who were involved in the transaction being litigated can be essential to the trial process and should not be excluded. Minn. R. Evid. 615 advisory committee cmt. As the lead investigating officer, SA Petersen's role is different from all other witnesses in that he has collected, reviewed, and knows all of the evidence in the case. His presence is necessary to assist the State during trial with responding to any issues that will inevitably arise in a case of this complexity. Because SA Petersen has a comprehensive knowledge of the case and of all expected witness testimony, any concerns that apply to the sequestration of other witnesses do not apply to him.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that the court order that witnesses be sequestered with three exceptions: that expert witnesses be permitted to listen to the testimony of experts called by the opposing side, that Mr. Don Damond be permitted to attend any part of the trial, if he so desires, after he concludes his testimony, and that SA Brent Petersen of the BCA be permitted to attend any or all of the trial in this matter.

Respectfully submitted,

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