

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,

Plaintiff,

vs.

**AFFIDAVIT OF
ERIC J. NELSON**

Derek Michael Chauvin,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Eric J. Nelson, being first duly sworn, states as follows:

Background:

1. My name is Eric Nelson, and I am an attorney licensed to practice law in the state of Minnesota. I am the lead counsel for defendant Derek Michael Chauvin.
2. Pursuant to the Court's order, jury selection and trial in this matter is currently scheduled for March 8, 2021.
3. On or about June 30, 2020 the Court issued a scheduling order setting several dates. Paragraph 2B of the Court's scheduling order established that all discovery was to be completed "on or before August 14, 2020." Further the Court ordered, "failure to make timely discovery will presumptively result in the preclusion of any matter not disclosed". Finally, pursuant to the Court's order any discovery "received after the deadline shall be disclosed within 24 hours to the opposing party".
4. I am submitting this affidavit in connection with the Defendant's Motion for a Continuance and additional sanctions.

Summary of Discovery Disclosures Received Prior to the Court's Discovery Deadline:

5. As defense counsel for Officer Chauvin, I received the following disclosures from the state prior to the original discovery deadline:

- a. June 8, 2020 I was personally served a USB flash drive that contained 98 gigabytes of audio/video/electronic files. Included in this initial discovery was a single PDF file labeled Bates #35-742 (708 pages).
- b. June 10, 2020 I received via U.S. Mail a compact disc containing a single video file that was corrupted in the original June 8, 2020 disclosure.
- c. June 16, 2020 I was personally served with a compact disc that contained a single PDF file labeled Bates #743-4,058 and 4,063-4,373. (3,627 pages)
- d. June 25, 2020 I was personally served with a flash drive containing approximately 25 gigabytes of audio/video/electronic files. Included on this flash drive was a single PDF file labeled Bates #4,786-8,130 (3,065 pages).
- e. July 16, 2020 I was served by U.S. Mail a flash drive containing approximately 1 gigabyte of audio/video files and a single PDF file consisting of Bates #8,131-14,163 (6,033 pages).
- f. July 31, 2020 I was served by U.S. Mail with a flash drive containing approximately 15 gigabytes of audio/video/digital files. Included was a single PDF File consisting of Bates #14,164-22,944 (7,594 pages).

Summary of Discovery Disclosures Received After the Court's Discovery Deadline:

6. As defense counsel for Officer Chauvin, I received the following disclosures from the state after the Court's discovery deadline:
 - a. August 20, 2020 I was served by U.S. Mail a flash drive containing two PDF documents. The first was labeled Bates #22,945-26,734 (1834 pages) and the second PDF file was labeled Bates #26735-28169 (1,435 pages). The file also contained approximately 40 gigabytes of audio/video/digital evidence.
 - b. August 26, 2020 I was served by U.S. Mail a compact disc containing a single PDF file labeled Bates 28,170-28,365 (196 pages). This was the complete file of Hennepin County Medical Examiner Dr. Andrew Baker.
 - c. September 2, 2020 I was served by U.S. Mail four compact discs. One disc contained a single PDF labeled Bates #28366-33314 (4,949 pages). The remaining discs contained audio/video/digital files.
 - d. On September 16, 2020 I was served by U.S. Mail a flash drive consisting of approximately 32 gigabytes of audio/video/digital evidence. Included on the flash drive were two PDF files labeled Bates #33,315-35,957 (2,637 pages) and #35,958-36,343 (384 pages).

- e. On September 25, 2020 I was served by U.S. Mail a flash drive containing approximately 25 gigabytes of audio/video/digital evidence. The drive also contained six separate PDF files as follows:
 - i. Bates #3,132-3,137 (6 pages)
 - ii. Bates #3745-3747 (3 pages)
 - iii. Bates #14,531-15,017 (487 pages)
 - iv. Bates #33,844-33,853 (10 pages)
 - v. Bates #36,273-36,274 (2 pages)
 - vi. Bates #36,344-36,632 (289 pages)
- f. On October 12, 2020 I was served by U.S. Mail with a flash drive primarily consisting of two PDF files labeled Bates #4,549-4,550 (2 pages) and Bates #36,633-38,450 (1,818 pages) and a small amount (less than one gigabyte) of other electronic evidence.
- g. On October 28, 2020 I was served by U.S. Mail with a flash drive containing 13 gigabytes of audio/video/digital evidence and a single PDF file labeled Bates #38451-38,345 (396 pages).
- h. Finally, on November 24, 2020 I was served by U.S. Mail with a flash drive containing approximately 62 gigabytes of audio/video/digital evidence and a single PDF file labeled Bates #38,846-39,912 (1067 pages).

Issues with Discovery:

7. With every single round of discovery that has been disclosed there have been numerous problems and issues involving the manner in which the state disclosed it.
 - a. Each round of disclosure has consisted of single, merged PDF files. The pages of these single file documents number in the 1000s.
 - b. Approximately 75% of the PDFs provided by the state are not digitally searchable. In order to create a searchable file, it is necessary to go through a time-consuming process to convert the original PDF to a .tif file and then reconvert the .tif file to a new PDF and then subsequently process the new PDF file through an optical character recognition (OCR) program.
 - c. The PDF files are in absolutely no discernable order. It appears as if the state has printed the reports, shuffled them like a deck of cards, and scanned them back into the computer to be disclosed. For example:
 - i. Bates stamp # 8 (disclosed on June 8, 2020) is the City of Minneapolis Milestone Camera Video. Whereas the single page of instructions on how to open and play the videos is Bates #26,416 which was disclosed on August 20, 2020.

- ii. Substantive evidence is often “hay stacked” between other information. For example Bates Stamp #6454-6475 (22 pages) of relevant material (MPD reports listing Mr. Floyd as a witness/victim) is sandwiched between 1757 pages of MPD training materials before and 216 pages of MPD training materials after.
- d. Per the disclosure affidavits, the state disclosed 22,944 bates stamped items prior to the Court’s discovery deadline. Of those numbers, 17,825 of the Bates numbers are Minneapolis Police Department training records. In other words, approximately 78% of the material disclosed prior to the deadline were training materials – some of which dates back to 2005.
 - i. Within the MPD training materials, the state has disclosed dozens of duplicate copies of records including 17 copies of the “Taser 7 New User Certification Course” material (each approximately 50 pages in length), numerous duplicate copies of the MPD Super Bowl Plans, the RNC planning material from 2008 and over 5,000 pages of the complete MPD Taser requisition program files. Further, the MPD training records contain irrelevant information including mounted patrol, bait car, and other similar programs.
 - ii. It should further be noted that the training materials provided are largely very small documents. There are hundreds of one to two page documents within the training materials.
- e. The Bates numbers themselves are somewhat deceiving. For example, Bates #4 is in actuality 93 audio files, yet it consists of only one number. Likewise, Bates #10 contains 25 Body Worn Camera Files from each officer present at the scene of Mr. Floyd’s arrest. In addition, there are several Bates numbers that include Cellebrite cell phone analysis or other Cellular company records consisting of several hundred if not thousands of pages.
- f. By my best estimate, if items were individually Bates stamped, I would expect the actual number to approach 80,000.
- g. The amount of audio and video files involved in this case is astounding. As measured by the number of gigabytes disclosed, there are over 300 gigabytes of audio, video, photographic and other digital evidence to review.
- h. Based upon the disclosures, it appears that approximately 30 BCA Agents have participated in the investigation of this matter. Levels of involvement of these agents vary from active investigation to review of audio and video materials. In addition, narrative BCA reports indicate that approximately 30 federal law enforcement officers have participated in the investigation, as well. The Attorney

General's Office has numerous attorneys from their office participating, as well as several "volunteer" attorneys and attorneys admitted *pro hac vice*.

- i. To date, I have found that the only effective way to simply organize the discovery has been to print copies of every single page, combine reports with evidence mentioned in that report, exclude duplicate reports, catalog reports and reorganize the file. This has been a massive undertaking—particularly during the time in which my client was incarcerated at Oak Park Heights, and I was required to provide him with paper copies of all the discovery in order to review it with him. To date, my paralegal has spent over 100 hours simply breaking apart the PDF files and organizing the file.
- j. This is not a complete and exhaustive list of the issues pertaining to the manner in which the State has provided discovery.

Delayed Disclosure:

8. It appears that, despite the Court's order to disclose material within 24 hours after the original deadline, the State has failed to comply.
 - a. Since the August 14, 2020 deadline, the state has served me with eight sets of disclosure totaling 16,967 Bates numbers. Each of these disclosures has contained almost exclusively substantive material or material the State has or may potentially seek to admit as evidence in the case.
 - b. In the September 16, 2020 disclosure, Bates #35,958-36,343 consist of approximately 385 pages of Federal Investigative reports including a summary of an interview with Dr. Paul Uribe of the Armed Services Medical Examiner's Office. This interview occurred on July 22, 2020 and is labeled as "entered" on July 28, 2020. References to interview notes made by agents during this interview are made in the disclosures, however, have not been disclosed.
 - c. Approximately 30 days later, in the October 14, 2020 disclosure was a similar FBI 302 Report regarding an interview with Dr. Andrew Baker. This report indicates the interview of Dr. Baker was conducted on July 8, 2020 and "entered" on September 1, 2020.
 - d. The Baker disclosures (Bates #38,776-38,782) also includes a letter drafted by Hennepin County Attorney Beth Stack dated August 7, 2020 responding to an August 6, 2020 email from an Assistant U.S. Attorney who requested that Dr. Baker review the report for accuracy. Ms. Stack drafted a three-page response on behalf of Dr. Baker. Again, based upon the disclosure, attending agents prepared notes of this interview, however, these notes have not yet been disclosed.
 - e. The information contained in this disclosure is of great importance to establishing the cause of Mr. Floyd's death and is generally exculpatory in nature.

- f. The Baker disclosures further indicate that a BCA agent was present at the interview of Dr. Baker. The Agent's July 10, 2020 narrative report (Bates #23,393 and disclosed on August 20, 2020) pertaining to the interview, which was not recorded, only indicates that Dr. Baker "Went over his findings from the autopsy of George Floyd and answered questions from the attorneys."
- g. It appears that the State had knowledge of Dr. Baker's interview as early as July, then limited disclosure thereof in the corresponding BCA Report, had obtained a copy of the report on August 6, responded to the report on August 7, and disclosed similar Federal investigative reports on September 16—but withheld a single, material report, which the State did not ultimately disclose until a month later.

BCA Investigations:

9. Based upon my past experience involving both officer-involved critical incidents, as well as other cases where the BCA has been the primary investigative agency, I am aware that the manner by which the BCA provides their investigative materials is wholly and completely inconsistent with the manner in which the state has provided discovery to the defense in this case.
10. Generally, the investigative reports are created and shared with prosecutorial agencies in a cohesive and coherent case file. Generally, a prosecuting agency will subsequently disclose the material to the defense, consistent with *Brady* requirements, in the same or similar format.
11. Again, based upon past experience with BCA investigations and conversations with agents, I am aware that the BCA makes and retains exact, date-stamped duplicate copies of the investigative files it provides to prosecutorial agencies. It is my understanding that the BCA engages in this practice to avoid claims that certain evidence has not been disclosed to the State or to the Defense.

Prejudice:

12. The manner in which the State has conducted discovery has significantly prejudiced counsel's ability to defend and Officer Chauvin's right to a complete defense as follows:
 - a. It has caused the defense to spend significant time, material and financial resources to simply organize the materials into a coherent case file—resources which should be spent analyzing the materials.
 - b. This re-organization was absolutely necessary in order to provide potential expert witnesses with relevant case materials. Providing discovery to potential experts in

the manner conducted by the State would have resulted in significant expense to the defense and additional time on the part of possible experts.

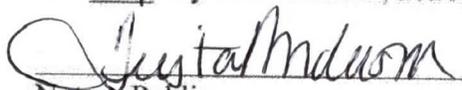
- c. The need to fully re-organize the case file has caused the defense delay in identifying areas requiring expert witnesses, delay in retaining the appropriate experts and ultimately delay in the expert's review of the case materials.
- d. It should be noted that the global profile of this case has also contributed to the delay in retaining experts willing or able to participate.
- e. Pursuant to the Court's order, approximately 17,000 items of substantive value are "presumptively" inadmissible. This exclusion would include, but is not limited to, the Medical Examiner's file, numerous investigative reports and exculpatory reports/evidence.

FURTHER YOUR AFFIANT SAYETH NOT.



Eric J. Nelson

Subscribed and sworn to before me
this 14 day of December, 2020.


Notary Public