

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,
Plaintiff,
vs.
Derek Michael Chauvin,
Defendant.

**MEMORANDUM OF LAW
REGARDING THE EFFECT OF
THE STATE'S *SPREIGL* NOTICE
ON ITS JOINDER MOTION**

TO: **THE HONORABLE PRESIDING JUDGE OF HENNEPIN COUNTY DISTRICT COURT; AND MATTHEW G. FRANK, ASSISTANT MINNESOTA ATTORNEY GENERAL.**

INTRODUCTION

On August 12, 2020, the State moved this Court to join the criminal trial of Defendant Derek Michael Chauvin, with those of his co-defendants Tou Thao, J. Alexander Kueng, and Thomas Lane, pursuant to Minn. R. Crim. P. 17.03. On September 10, 2020, after the parties had briefed the joinder issue, the State filed its notice of intent to offer evidence of prior acts pursuant to Minn. R. Evid. 404(b), or *Spreigl*¹ evidence. At the Omnibus Hearing held on September 11, 2020, the Court offered Mr. Chauvin the opportunity to file a written submission regarding the impact of the State's *Spreigl* notice on its joinder motion. On September 25, 2020, the deadline for Mr. Chauvin's submission, the State filed an amended *Spreigl* notice, including additional prior act evidence that it intends to offer.

Accordingly, Mr. Chauvin, through his attorney Eric J. Nelson, Halberg Criminal Defense, submits this memorandum of law in opposition to the State's joinder motion, particularly in light of its *Spreigl* notices. The facts of this case are set forth in Mr. Chauvin's memorandum of law in

¹ Referring to *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

support of his motions to dismiss for lack of probable cause and the legal argument regarding joinder is set forth in Mr. Chauvin's principal memorandum opposing joinder, both of which are incorporated herein by reference.

ARGUMENT

THE STATE'S NOTICE OF INTENT TO INTRODUCE *SPREIGL* EVIDENCE UNDERMINES ITS JOINDER MOTION.

"Minnesota... has a historical preference for separate trials[.]" *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002). Under Minnesota law, the trials of two or more defendants may be joined when the defendants "are charged with the same offense." Minn. R. Crim. P. 17.03, subd. 2. Before joinder may be ordered, however, this Court must consider four factors set forth in the Rules of Criminal Procedure: (i) "the nature of the offense charged"; (ii) "the impact on the victim"; (iii) "the potential prejudice to the defendant"; and (iv) "the interests of justice." *Id.* As Mr. Chauvin demonstrated in his principal memorandum opposing the State's motion to join the trials herein, it is clear that the four factors do not favor joinder in this case. The *Spreigl* notice, and the State's intent to offer the evidence included therein, further undermines the prosecution's position regarding joinder, particularly with respect to the "nature of the offense charged," "potential prejudice," and "interests of justice" factors. In light of the *Spreigl* notice, it is even more apparent that Mr. Chauvin must be tried separately from his co-defendants.

A. The State's proffered evidence is not admissible against all defendants and demonstrates that they did not act in close concert with one another.

The nature of the offense charged favors joinder where codefendants are charged with the same crimes, *a majority of evidence is admissible against all*, and the evidence shows that they worked in close concert. *State v. Jackson*, 773 N.W.2d 111, 118-19 (Minn. 2009). However, when one defendant's role is distinguishable from those of his codefendants, joinder is improper. *See*,

e.g., *State v. Green*, No. A17-1328, 2018 WL 3966343 at *2 (Minn. App. Aug. 20, 2018, *review denied*) (Minn. Nov. 13, 2018). Mr. Chauvin distinguished his alleged role in the charged offenses in his principal memorandum opposing joinder, however, the State’s seven-page, amended *Spreigl* notice demonstrates the prosecution’s intent to offer considerable evidence that will not be admissible against all of the defendants, particularly with respect to Mr. Chauvin.

The State has charged Mr. Chauvin with three offenses: Second-degree unintentional felony murder; third-degree depraved mind murder; and second-degree unintentional manslaughter. Contrarily, Mr. Thao, Mr. Kueng, and Mr. Lane were charged with two offenses each: Aiding and abetting second-degree murder and aiding and abetting second-degree manslaughter.

Although some overlap will exist in the evidence that may be admitted against all four defendants, much of it already differs from one defendant to another. As the State points out in its memorandum of law supporting joinder, each defendant’s MPD personnel and training records may be admitted. While it attempts to downplay the volume of this evidence, it is likely to comprise the bulk of the evidence presented against Mr. Chauvin. (State’s Memo at 15-16). It certainly comprises the bulk of the State’s discovery in this case. Such evidence is relevant to the intent and state of mind elements in each of the three offenses with which he is charged, as well as to whether Mr. Chauvin’s actions actually caused the death of Mr. Floyd.

The State’s *Spreigl* notice indicates its intent to introduce evidence that Mr. Chauvin had “common scheme or plan and modus operandi” in the way that he approached arrestees. The State offers eight separate instances that allegedly demonstrate such modus operandi with respect to Mr. Chauvin and his use of holds on suspects. It makes no such allegations and proffers no similar evidence against the other defendants—only against Mr. Chauvin. The State makes clear that, with

respect to Mr. Chauvin's case, little of the actual evidence the prosecution will need to prove intent and causation will overlap with that of other defendants. As the State's *Spreigl* notice and the voluminous training materials disclosed in discovery demonstrate, ***a majority of the evidence will not be admissible against all defendants.***

Finally, for the nature of the offense to favor joinder, there must be evidence that the defendants worked in "close concert" with one another. *Jackson*, 773 N.W.2d at 118-19. Close concert means that all defendants shared a criminal objective. *See State v. Powers*, 654 N.W.2d 667, 675 (Minn. 2003). For this to be true, the State must present evidence that Mr. Chauvin intended to perpetrate a crime against Mr. Floyd, that the other defendants were aware of Mr. Chauvin's intent, and that the other defendants then intentionally aided Mr. Chauvin in the commission of his crime. Here, there is no evidence whatsoever that the defendants worked in close concert to achieve a criminal objective. In fact, the pretrial pleadings filed by Lane, Thao, and King disavow any knowledge of Mr. Chauvin's intentions. It simply cannot be said that the other defendants worked in close concert with Mr. Chauvin to perpetrate the charged offenses.

Moreover, the State's *Spreigl* notice completely eviscerates its argument that the defendants did work in close concert. If, as the State alleges, Mr. Chauvin had a particular propensity with regard to the way he restrained arrestees, there is no way that Kueng and Lane could have known this. They could not know that Mr. Chauvin would be a responding officer, they could not know that he would use a neck restraint on Mr. Floyd, and they could not have known Mr. Chauvin's intentions with respect to Mr. Floyd.

The proffered *Spreigl* evidence further undermines the State's argument that the nature of the offense favors joinder. Because the offenses with which Mr. Chauvin is charged differ from those of the other defendants, because considerably different evidence will be required for the

State to prove its case against each defendant, and because the defendants cannot be said to have worked “in close concert” with one another, the nature of the offense charged does not favor joinder.

B. The *Spreigl* evidence, if admitted, would be incredibly prejudicial to Mr. Chauvin in a joint trial.

A joint trial’s potential for prejudicing a defendant can be demonstrated by showing that defendants will present “antagonistic” defenses at trial. *Jackson*, 773 N.W.2d at 119; *Santiago*, 644 N.W.2d at 440. Defenses are considered “antagonistic” when defendants seek to put the blame on each other, and the jury is forced to choose between the defense theories advocated by the defendants.” *Santiago*, 644 N.W.2d at 446. As is evident from pretrial pleadings, the other three defendants are prepared to place the blame for Mr. Floyd’s death squarely on Mr. Chauvin’s shoulders. (*See, generally*, memoranda in support of motions to dismiss of Lane, Kueng, and Thao).

In his principal memorandum, Mr. Chauvin demonstrated that a joint trial had a great potential to prejudice his defense. The State’s proffered *Spreigl* evidence would simply exacerbate such prejudice by offering further evidence that Mr. Chauvin’s codefendants could use in their own antagonistic defenses. Lane claims that he was a rookie who relied on Mr. Chauvin’s experience at the scene, and that he “did not know there was a felony being committed... when Chauvin was kneeling on Floyd.” (Lane Memo. in Support of Dismissal at 13). Counsel for Kueng wrote that “there is no evidence that Kueng knew Chauvin was going to commit a crime at the time...Chauvin utilized the neck restraint.” (Kueng Memo. in Support of Dismissal at 5). Thao claims that he “did not intend to aid Officer Chauvin in the commission of any crimes.” (Thao Memo. in Support of Dismissal at 6). The other defendants are clearly saying that, if a crime was committed, they neither knew about it nor assisted in it.

All four defendants assert their lack of guilt on the ground that their actions were lawful. However, Lane, Kueng, and Thao also put forth the notion that, if a crime was committed, they had no knowledge of it, and Mr. Chauvin acted alone. The State's proposed *Spreigl* evidence that Mr. Chauvin had a propensity, or a modus operandi, regarding the way in which he approached arrestees, would only bolster his codefendants' arguments while prejudicing Mr. Chauvin's own defense. A jury would be forced to choose between Mr. Chauvin's defense theory and those of Lane, Thao, and Kueng. *Santiago*, 644 N.W.2d at 446. When potential prejudice due to antagonistic defenses disfavor joinder, the interests of justice also disfavor joinder. *Id.* Mr. Chauvin's defenses are clearly antagonistic to those of the other defendants, which is made abundantly clear by the State's *Spreigl* notice. The interests of justice, therefore, disfavor joinder.

CONCLUSION

The nature of the offense charged, the potential prejudice to Mr. Chauvin and the interests of justice all disfavor joinder. The State's *Spreigl* notice further undermines its argument in favor of joinder. Based on the foregoing, Mr. Chauvin respectfully requests that this Court deny the State's joinder motion as to the matter herein.

Respectfully submitted,

HALBERG CRIMINAL DEFENSE

Dated: September 25, 2020

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