

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT'S MOTION
IN LIMINE**

Derek Michael Chauvin,

Defendant.

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

NOTICE OF MOTIONS

PLEASE TAKE NOTICE the Defendant, Derek Michael Chauvin, hereby moves the Court for Orders regarding the following in limine motions:

General

1. The Defendant moves the Court for an Order to sequester the witnesses.
2. The Defendant moves the Court for an Order to preclude the State, or any of its witnesses, from referring to George Floyd as the "victim" or "accused" in this matter.
3. The Defendant moves the Court for an Order to preclude the State, or any of its witnesses, from referring to Derek Chauvin as the "defendant" or "accused" in this matter.
4. The Defendant moves the Court for an Order to preclude the State from introducing any prior statements of witnesses, as they are hearsay, unless and until that witness has previously testified. *Crawford v. Washington*, 541 U.S. 36 (2004).

5. The Defendant moves this Court for an Order requiring the State to provide the defense with any documents, information and/or criminal background checks that it obtains regarding any prospective juror.
6. An order directing the State to disclose complete criminal histories of listed witnesses including law enforcement officers.
7. The Defendant moves this Court for an Order requiring the State to provide the defense with any criminal background checks that it obtains regarding any prospective witness.
8. The Defendant moves this Court for an Order requiring the State to provide to defense counsel the substance of all conversations between Victim Witness Program personnel and any and all persons having information about this case, and disclose all Victim Witness Program records, reports, notes, files and other documents relating to contact with any and all persons with information about this case. Minn. R. Crim. Pro. 9.01 and *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987)
9. The Defendant moves the Court for an Order compelling the prosecuting attorney to provide defense counsel with the substance of conversations between him, and any and all persons in the Attorney General or Hennepin County Attorney's Office(s) having information about this case, and access to all his notes or other documents relating to her contact with all persons she intends to call as witnesses in this case and with any and all persons having information about this case. Minn. R. Crim. Pro. 9.01 and *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987).
10. The Defendant moves the Court for an Order requiring that the State ensure that its witnesses know the limits of permissible testimony. *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979).

11. The Defendant moves the Court for an Order prohibiting the State from commenting on the failure of the Defense to call a witness, particularly where the witness is equally available to both parties. *State v. Daniels*, 361 N.W.2d 819, 833 (Minn. 1985); *State v. Swain*, 269 N.W.2d 707 (Minn. 1978).
12. The Defendant moves the Court for an Order prohibiting the State from asserting, in the presence of the jury, a personal belief or opinion as to the credibility of a witness. *State v. Strodtman*, 399 N.W.2d 610, 615 (Minn. Ct. App. 1987), *review denied* (Minn. March 25, 1987).
13. The Defendant moves the Court for an Order prohibiting the prosecutor from offering his own personal opinion, either directly or indirectly expressed, that the Defendant is guilty. *State v. Parker*, 353 N.W.2d 122 (Minn. 1984); *State v. Eling*, 355 N.W.2d 268 (Minn. 1984); *State v. Snyder*, 375 N.W.2d 518 (Minn. App. 1985).
14. The Defendant moves the Court for an Order directing the State to instruct State witnesses that they are not to assert a personal belief or opinion as to the Defendant's guilt or innocence, or whether or not the Defendant is the type of person who could commit such an offense (Minn. R. Evid. 404).
15. The Defendant moves the Court for an Order prohibiting the State from introducing any and all evidence or witnesses related to evidence that has not been fully disclosed, including but not limited to recorded jail calls, additional witness interviews or ongoing investigation (Minn. R. of Crim. P. 7.01 and 9.01).

Case Specific

16. The Defendant moves the court for an order directing any person listed as a witness be directed not to view any live stream coverage of the trial absent Court approval.
17. The Defendant moves the Court for an Order prohibiting the State from introducing any evidence pertaining to Washington County Court File #80-CR-20-2813, wherein the Defendant is accused various tax related crimes.
18. The Defendant moves the Court for an Order precluding witness police officers from speculating or rendering an opinion on how they would have handled the arrest of Mr. Floyd differently. *Graham v. O'Connor*, 490 U.S. 386 (1989), Minn. R. Evid. 701 and 702.
19. The Defendant moves the Court for an Order precluding testimony about any police policy and that was not in effect at the time of Mr. Floyd's arrest or any subsequent changes in policies. Minn. R. Evid. 401, 403, and 407.
20. The Defendant moves the Court for an Order precluding testimony about medical examinations performed by anyone other than the Hennepin County Medical Examiner Dr. Baker. *State v. Vue*, 606 N.W.2d 719 (Minn. Ct. App. 200); Minn. R. Evid. 401, 403, 602.
21. The Defendant moves the Court for an Order precluding the speculative testimony from Genevieve Hanson that she believes that if she intervened, she could have saved Mr. Floyd. Minn. R. Evid. 602. Additionally, Ms. Hanson should not be allowed to testify as to her understanding of police officer training. Minn. R. Evid. 602.
22. The Defendant moves the Court for an Order precluding the testimony of Donald Williams as to his training, experience and/or expertise in mixed martial arts, boxing or other training on the grounds that it is irrelevant and overly prejudicial. Minn. R. Evidence 401, 403.

Further, foundation for expertise cannot be established nor has it been disclosed. Minn. R. Crim. Pro. 9.01, subd. 1(4)(c). Further, because Williams' training/experience is not the same as the training of Minneapolis Police Officers, it is irrelevant.

23. The Defendant moves the Court for an Order precluding any member of the Minneapolis Fire Department and paramedics from testifying as to cause and manner of Mr. Floyd's death or any contributing factors to Mr. Floyd's death. Minn. R. Evid. 602, 702.
24. The Defendant moves the Court for an Order precluding the state from questioning witnesses about aspects of their training that have not been fully disclosed, including C.P.R. training and training on excited delirium. Minn. R. Evid. 401, 403, 602.
25. The Defendant moves the Court for an Order precluding the state from questioning or commenting on Chauvin's right to remain silent, including his pre-Miranda right to remain silent. *State v. Dunkel*, 466 N.W.2d 425 (Minn. Ct. App. 1991)
26. The Defendant moves the Court for an Order precluding testimony about a blue line or wall of silence or about the officer's communications with the Minneapolis Police Federation or the Minnesota Police and Peace Officers Association. Minn. R. Evid. 401, 403.
27. The Defendant moves the Court for an Order precluding any reference to the David Cornelius Smith Case for lack of relevance and potential to mislead and or prejudice the jury.
28. Based on the Court's right to "[e]xercise control over the mode and order of interrogating the witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Minn. R. Evid. 611(a). To

ensure the efficient presentation of evidence, the Defense requests an order requiring the state to:

- (a) Disclose which witnesses the State actually intends to call to testify during the trial at least 2 weeks prior to trial.
- (b) Require the State to disclose the witnesses they intend to call the next day prior to adjournment.
- (c) Keeping all witnesses subpoenaed by the State under subpoena, whether issued by the State or the Defense, until the close of all the evidence or agreement by the parties to release the witness from the Court's subpoena.
- (d) Require the State to identify which Minneapolis Police Department training materials it intends to introduce or rely upon at trial.
- (e) Require the State to identify which Personnel Records they may seek to introduce or elicit testimony regarding.

29. The Defendant moves this court for an order directing any expert witness from referencing their personal clinical experiences and/or anecdotal testimony on the grounds that such information is neither peer reviewed nor available for inspection/verification.

30. The Defendant moves the Court for an Order precluding any expert from likening the death of George Floyd to the crucifixion of Jesus Christ on the ground that such analogy is prejudicial.

31. The Defendant moves the Court for an Order precluding the State from playing, publishing or otherwise relying upon the statements of co-defendants Thao and Lane on the grounds that the Defense would not be permitted to cross-examine these co-defendants in violation of his Constitutional rights.

32. The Defendant moves the Court for an Order precluding the entirety of the proffered testimony of Dr. Sarah Vinson (psychiatric evaluation of George Floyd) on the grounds that the evaluation is speculative, based upon multiple levels of inadmissible hearsay, fails to meet scientific standards, offers no assistance to the jury, or so favors one party. *State v. Nystrom*, 596 N.W.2d 256, 260 (Minn. 1999); *Hanson v. Christensen*, 275 Minn. 204, 217,

145 N.W.2d 868, 877 (1966); *State v. Fitzgerald*, 382 N.W.2d 892, 894-95 (Minn. Ct. App. 1986); *State v. Saldana*, 324 N.W.2d 227, 231 (Minn. 1982); *State v. Deshay*, 609 N.W.2d 878, 888 (Minn. 2003) (expert's testimony about gangs was merely "duplicative and of little real assistance to the jury in evaluation of the evidence."); *State v. Ritt*, 599 N.W.2d 802, 812 (Minn. 1999) (no error to exclude expert's testimony about police interrogation techniques where the testimony added nothing to the jury's ability to evaluate the veracity of the defendant's statements to the police); *Burkhart v. Wash. Metro. Area Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997). In the alternative, the Defendant moves for an *in camera* review of her report and a Frye-Mack hearing to address the admissibility thereof.

33. The Defendant moves the Court for an Order limiting the scope of "spark of life" testimony to its permissible bounds. The Defendant further moves to introduce evidence of prior bad acts should the State exceed the permissible scope of "spark of life" testimony. *See generally State v. Carney*, 649 N.W.2d 455, 463 (Minn. 2002); *State v. Buggs*, 581 N.W.2d 329, 342 (Minn. 1998); *State v. Hodgson*, 512 N.W.2d 95, 98 (Minn. 1994); *State v. Graham*, 371 N.W.2d 204, 207 (Minn. 1985).
34. The Defendant moves the Court for an Order permitting the Defendant to supplement the record by offer of proof with additional information regarding George Floyd's May 2019 arrest and hospitalization.
35. The Defendant moves the Court for an Order permitting testimony of George Floyd's opiate addiction and medical records pertaining thereto including his hospitalization following his May 2019 arrest. Minn. R. Evid. 803(4).
36. The Defendant moves the Court for an Order precluding any evidence of or reference to citizen complaints filed against Mr. Chauvin in his capacity as a police officer or

investigated by the Minneapolis Police Department whether sustained or deemed unfounded. Minn. R. Evid. 608(c).

37. The Defendant moves the Court for an order requiring the state to disclose any information it obtains relevant to any and all identified expert witnesses from the National Prosecutor's College. Minn. R. Crim. P. 9.01, subd. 1(3) and 2(1).

These motions are based upon the files and records in this case, the Minnesota Statutes, the Minnesota Rules of Criminal Procedure, the United States and Minnesota Constitutions and upon such other and further points and authorities as may subsequently be presented to the Court.

HALBERG CRIMINAL DEFENSE

Dated: February 8, 2021

/s/ Eric J. Nelson

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