

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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STATE OF MINNESOTA,

Plaintiff,

vs.

**DEREK MICHAEL CHAUVIN,**

Defendant.

**ORDER ALLOWING  
404(b) EVIDENCE OFFERED BY  
DEFENDANT**

Court File No. 27-CR-20-12646

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This matter came before the Court on the Defendant's motion under Minn. R. Evid. 404(b) to admit evidence of an arrest of George Floyd on May 6, 2019.

Matthew Frank, Assistant Attorney General, appeared in person, and Neal Katyal and Nathaniel Avi Gideon Zelinsky, Special Assistant Attorney Generals, appeared in writing on behalf of the State of Minnesota.

Eric J. Nelson, Attorney at Law, appeared on behalf of Defendant Chauvin.

Based on all the files, records, and proceedings, the Court makes the following:

**OFFER OF PROOF**

Defendant submitted a thumb drive which will be filed confidentially as Court Exhibit 1 containing numerous photographs, body-worn camera videos, and police reports, all from Minneapolis Police Department Case Number 2019-127538.

**ORDER**

1. Defendant's motion is **GRANTED IN PART AND DENIED IN PART** as outlined in the attached memorandum which is incorporated.

2. Court Exhibit 1 will be filed as a confidential exhibit because it contains medical records as defined by Minn. R. Pub. Access to Records of the Judicial Branch 4 subd. 1(f)(1).

**BY THE COURT:**

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Peter A. Cahill  
Judge of District Court

## MEMORANDUM

The exhibits submitted by Defendant as an offer of proof establish by clear and convincing evidence that George Floyd's initial encounter by police on May 6, 2019, is very similar to his initial encounter with police on May 25, 2020. In both cases, Mr. Floyd is sitting in a car when an officer approaches his window and yells at Mr. Floyd to show his hands and place them where they can be seen. In both cases, Mr. Floyd appears to be startled and does not immediately comply. In both cases, the officer pulls his gun and points it at Mr. Floyd while continuing to yell commands. In both cases, there is evidence that Mr. Floyd began to ingest drugs by placing them in his mouth before he is removed from the car.<sup>1</sup> In both cases, subsequent to being placed in handcuffs, Mr. Floyd complains of problems breathing and calls out for his mother and appears very emotionally upset. In both cases, emergency medical services were called to respond. It should be noted, however, that neither Defendant nor any of his co-defendants<sup>2</sup> were among the officers at the scene with Mr. Floyd on May 6, 2019, nor has Defendant proffered any evidence that either he or any of the co-defendants had any personal knowledge, at the time of their encounter with Mr. Floyd on the evening of May 25, 2020, of any information regarding Mr. Floyd's May 6, 2019 arrest or of any of the behaviors in which Mr. Floyd engaged or which he had displayed during his May 6, 2019 encounter with police.

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<sup>1</sup> In the May 6, 2019 arrest, the officers observed Mr. Floyd put drugs into his mouth. From the May 25, 2020 arrest, there are still images from the Lane body-worn camera that show a white object in Mr. Floyd's mouth that could be a pill. Chauvin Exh. 9 in Support of Motion to Dismiss for Lack of Probable Cause, Dk # 103, pp. 1-2 & 4 (screen shots from Lane BWC Video at 8:09:41, 8:09:44, and 8:09:48). A search of the squad car Mr. Floyd was put into and then dragged out of during his arrest and restraint discovered a white pill with his saliva and DNA on the floor of the back seat.

<sup>2</sup> Tou Thao, *see State v. Thao*, 27-CR-20-12949; Thomas Kiernan Lane, *see State v. Lane*, 27-CR-20-12951; and J. Alexander Kueng, *see State v. Kueng*, 27-CR-20-12953.

As part of the May 6, 2019 arrest, a paramedic met with Mr. Floyd at the Fourth Precinct police station, asked what Mr. Floyd had taken, how much he had taken, and when he had taken the drugs. Mr. Floyd stated that he had taken at least seven that morning, and admitted taking one during the police encounter. The paramedic took his blood pressure and found it to be 216 over 160<sup>3</sup>, an extremely high blood pressure. This created a hypertensive emergency such that the paramedic told Mr. Floyd that he needed to go to the hospital because he was in danger of having a heart attack or stroke. Mr. Floyd initially refused but finally complied when the police officers and EMS said they would place a medical hold on him.

**I. George Floyd's Emotional Behavior on May 6, 2019 is Not Admissible.**

The similarities of George Floyd's reactions to being confronted by the police fall under the *modus operandi* exception of Minn. R. Evid. 404(b), but that alone does not justify admission. While Mr. Floyd's emotional behavior and statements at the scene of the two arrests are very similar, the May 6, 2019 emotional evidence in this regard is not relevant to any of the charges filed against Defendant. As the State points out in its memorandum, Mr. Floyd's "subjective intent- i.e., whether he was truly afraid of the officers in 2020 or just malingering," has "no bearing on whether Defendant's use of force was reasonable or on what caused Mr. Floyd's death."<sup>4</sup> The Court agrees.<sup>5</sup>

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<sup>3</sup> Court Exhibit 1, File Narc-3.mp4, Axon Body 2 X81020397 2019-05-06 T18:34-18:35

<sup>4</sup> State's Supplemental Memorandum Opposing Motion to Admit *Spreigl* Evidence, Dk #405, p. 3.

<sup>5</sup> For that same reason, the State's proposed testimony of Dr. Vinson has been excluded by the Court because it would be an opinion on the subjective intent behind Mr. Floyd's emotional reaction to the May 25, 2020 arrest by police. Such an opinion would be irrelevant and probably not a proper topic for expert testimony in any case. *See State v. Provost*, 490 N.W.2d 93, 101-104 (Minn. 1992)(holding the district court properly excluded psychiatric evidence on the question of intent).

## II. Evidence from the May 6, 2019 Police Encounter that Relates to George Floyd's Physical Condition is Admissible.

The cause of Mr. Floyd's death is very much at issue in this case. Dr. Baker, the Hennepin County Medical Examiner, opined that the cause of death was "cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression."<sup>6</sup> Dr. Baker noted arteriosclerotic and hypertensive heart disease, fentanyl intoxication and recent methamphetamine use as significant conditions.<sup>7</sup> The defense expert, in an offer of proof provided *in camera*, opines that the most likely cause of death is a cardiac arrhythmia due to Mr. Floyd's pre-existing medical conditions, his drug use, and the exertion related to his arrest.

On May 6, 2019, Mr. Floyd had a strong and severe physical reaction after the shock of being confronted by police and ingesting drugs.<sup>8</sup> This physical reaction on May 6, 2019, is more than merely evidence of existing chronic hypertension. It was a physical reaction resulting in a hypertensive emergency, a condition so serious that his initial refusal to go to the hospital was not accepted by the police and the paramedics and he was placed on a medical hold. This (the blood pressure reading obtained by the paramedic) is objective medical evidence close in time to the trauma of the initial police contact. Because Dr. Baker notes in his autopsy that Mr. Floyd suffered from hypertensive heart disease, fentanyl intoxication, and recent amphetamine use, it is certainly probative to show how Mr. Floyd **physically** reacted a year earlier in response to similar behavior by police and himself.

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<sup>6</sup> Chauvin Exh. 20 in Support of Motion to Dismiss for Lack of Probable Cause, Dk #112, p. 1.

<sup>7</sup> Chauvin Exh. 20 in Support of Motion to Dismiss for Lack of Probable Cause, Dk #112, pp. 1-2.

<sup>8</sup> The Court is not making any finding as to whether the shock of the encounter with the police, the ingestion of drugs, or both caused the spike in blood pressure exhibited by Mr. Floyd, only that such evidence is relevant to that issue.

The proffered evidence is relevant under Minn. R. Evid. 401 and Minn. R. Evid 402 because it is relevant to the defense theory on cause of death. The Court must still consider, however, whether the probative value is substantially outweighed by the danger of unfair prejudice under Minn. R. Evid. 403.<sup>9</sup> Because the evidence from May 6, 2019, is fairly limited and excludes Mr. Floyd's emotional reactions to his arrest, the Court finds that there is little danger of unfair prejudice. In addition, there is less risk of unfair prejudice when the evidence is not a prior bad act of the defendant offered against the defendant. *See United States v. Morano*, 697 F.2d 923 (11<sup>th</sup> Cir. 1983).

Accordingly, the following evidence is admissible regarding the May 6, 2019 incident:

- (1) Testimony of the officer who removed Mr. Floyd from the car. The audio and video of the body-worn camera of the officer who approached Mr. Floyd's side of the car, from the time he comes near the car<sup>10</sup> until Mr. Floyd is pulled out of the car and handcuffed<sup>11</sup> is also admissible.
- (2) A photograph of the pills in the crack between the seat cushion and back cushion of the passenger seat.<sup>12</sup>
- (3) Testimony of the treating paramedic:
  - a. Mr. Floyd's statements as to what drugs he had taken, how many pills he had taken, and when he had taken them that day;
  - b. The results of blood pressure readings taken from Mr. Floyd at the police station, along with other significant vital signs taken there; and
  - c. Why she recommended that Mr. Floyd go immediately to the hospital and why it was appropriate to place a medical hold on him to get him there.

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<sup>9</sup> Minn. R. Evid. 403 states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

<sup>10</sup> Court Exhibit 1, File Tle-2.mp4, Axon Body 2 X81320626 2019-05-06 T16:57:51Z

<sup>11</sup> Court Exhibit 1, File Tle-2.mp4, Axon Body 2 X81320626 2019-05-06 T16:59:30Z

<sup>12</sup> Court Exhibit 1, File 34233C.pdf

Evidence that Mr. Floyd was suspected of dealing drugs and that the stop was made as part of drug investigation is not admissible.

PAC