

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal
Court File No. 27-CR-20-12949

Plaintiff,

vs.

**STATE'S NOTICE OF INTENT
TO OFFER OTHER EVIDENCE**

Tou Thao,

Defendant.

To: Judge Peter A. Cahill, Judge of District Court, the above-named Defendant and Defendant's attorney, Robert Paule, 920 Second Avenue South, Ste. 975, Minneapolis, MN 55402.

Please take notice that at the trial of the above-captioned matter, the State intends to offer evidence of the following:

1. On April 27, 2012, at a crime scene, Defendant prematurely entered his squad car and sat idly while other officers performed numerous other obvious tasks which Defendant should have assisted. His expediency was addressed by his FTO.
2. On May 4, 2012, when responding to a report of a house party, Defendant pulled his squad car up to the residence and, instead of exiting his squad to talk to the homeowner and identify individuals, Defendant used the squad's PA to holler at the people outside of the residence. His expediency was addressed by his FTO.
3. On June 3, 2012, Defendant falsified a police report, claiming that he canvassed the area of a burglary call even though he did not canvas the area. Defendant later admitted that he forgot to canvas the area and lied to avoid getting into trouble. His expediency and dishonesty were addressed by his FTO and later his precinct sergeants.
4. On June 3, 2012, Defendant attempted to manipulate a domestic-abuse victim to respond to questions in a manner which would allow Defendant to avoid generating a domestic-assault report. Defendant later admitted this conduct to his FTO. His expediency and dishonesty were addressed by his FTO and later his precinct sergeants.

5. On June 4, 2012, Defendant's FTO reported that Defendant frequently forgot details that were told to him and, instead of addressing this appropriately, simply "guesses and adds things into his reports that are wrong." His expediency was addressed by his FTO.
6. On June 5, 2012, Defendant responded dismissively and insubordinately to feedback from his FTO and refused to respond to training. These issues resulted in his field-training time being extended.
7. On July 1, 2012, Defendant's FTO issued a report regarding Defendant which provided that, on multiple occasions, Defendant intentionally avoided responding to situations which clearly necessitated a police response, including observable law violations, and then, when asked by his FTO, later denied seeing the law violations. His expediency was addressed by his FTO, suggesting that Defendant lacked candor about his observations.
8. On July 7, 2012, on at least three occasions, Defendant attempted to speak to civilians in a manner which demonstrated to his FTO that Defendant was not listening to victims and was "attempting to talk his way out of [filing] legitimate reports." These issues resulted in his field-training time to be extended a second time.
9. On August 17, 2017, Defendant attempted to manipulate a domestic-abuse victim to respond to questions in a manner which would allow Defendant to avoid generating a domestic-assault report. His expediency and dishonesty were the subject of an Office of Police Conduct Review Complaint.

In this above-entitled case, on May 25, 2020, Defendant and his codefendants believed that the victim George Floyd was intoxicated, uncooperative, and injured and restrained Mr. Floyd by having officers place their body weight on his neck and back while Mr. Floyd laid in prone position on the ground. At one point, Defendant proposed "hogtying" Mr. Floyd and obtained a hobble device from the back of a squad car to secure Mr. Floyd's body. Other officers vocally agreed with the proposal to use a hobble. However, after acquiring the hobble, Defendant discouraged his codefendants from using it and proposed continuing the restraint. Defendant provided a single rationale for choosing the restraint over the hobble: avoiding having to call a sergeant to the scene to scrutinize their use of force. Following Defendant's proposal, the codefendants continued their restraint of Mr. Floyd beyond the point when such

force was reasonable under the circumstances, causing Mr. Floyd to lose consciousness and die. The State contends that Defendant's proposal to continue the restraint was prompted by expediency, a desire to avoid scrutiny, and work-avoidance, rather a conscientious and legitimate interest in exercising reasonable force.

In the upcoming trial, the State anticipates that Defendant or defense counsel may claim that Defendant's proposal was reasonable and consistent with training.

To meet its burden of proof and in light of anticipated defenses, the State seeks to introduce in its case in chief evidence of the above-listed incidents to prove Defendant's motive; common scene or plan; absence of a justifiable mistake, accident, or misunderstanding; and state of mind at the time of the crime. The State intends to prove the underlying conduct by offering testimonial evidence, photographic and video evidence, and any other supporting documentation.

Please note that the State intends to file a separate memorandum in support of admission of this evidence prior to trial. In addition, the State may offer evidence of other acts, instances of specific conduct, and prior convictions pursuant to Minn. R. Evid. 404, 608, and 609. At this time, however, the State is still receiving, reviewing, and disclosing materials related to these types of evidence and will file notices to admit such evidence as soon as it is identified by the State.

Dated: September 10, 2020

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Matthew Frank
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