

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA

MEMORANDUM OF LAW
REGARDING THE EFFECT OF
SPREIGL EVIDENCE ON
JOINDER

PLAINTIFF,

V.

TOU THAO,

DEFENDANT.

COURT FILE NO. 27-CR-20-12949

TO: THE HONORABLE PETER A. CAHILL, JUDGE OF DISTRICT COURT, AND
MR. MATTHEW G. FRANK, ASSISTANT ATTORNEY GENERAL

MEMORANDUM OF LAW REGARDING THE EFFECT OF SPREIGL EVIDENCE ON
JOINDER

If the State wishes to introduce *Spreigl* evidence against one defendant, the other potential codefendants must not be joined in his case because (1) the other codefendants will be actually prejudiced, (2) the “overwhelming majority” of evidence will not be the same for the codefendants, and (3) the trial will be unnecessarily prolonged.

As a threshold matter, there is little authority on what effect the State’s intent to introduce *Spreigl* evidence has on the analysis of whether or not to join multiple defendants. Thus, the question on what the effect of *Spreigl* evidence is on joinder will center on how *Spreigl* evidence against one defendant would impact the four joinder factors under Minn. R. Crim. P. 17.03 subd. 2 (2020).

Evidence of previous bad acts “is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Minn. R.

Evid. 404(b)(1). It is well settled, however, that such evidence (a.k.a. “*Spreigl* evidence”) may be admitted “to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” or common scheme or plan. *State v. Ross*, 732 N.W.2d 274, 282 (Minn. 2007); *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); Minn. R. Evid. 404(b).

On August 12, 2020, the State moved for the Court to join the cases of *State v. Chauvin* (27-CR-20-12646), *State v. Kueng* (27-CR-20-12953), *State v. Lane* (27-CR-20-12951), and the above-captioned case (*State v. Thao*, 27-CR-20-12949).

On September 10, 2020, the State gave notice of their intent to introduce *Spreigl* evidence in the case of *State v. Thao*.¹ See State’s Notice of Intent to Offer Other Evidence, 27-CR-20-12949. On September 10, 2020, the State gave notice of their intent to introduce *Spreigl* evidence in the case of *State v. Chauvin*. See State’s Notice of Intent to Offer Other Evidence, 27-CR20-12646. As of today’s date, the State not given notice or otherwise indicated that it will be attempting to admit *Spreigl* evidence in the cases of *State v. Kueng* or *State v. Lane*.

If the State wishes to have the Court admit the proposed *Spreigl* evidence against Mr. Thao and Mr. Chauvin, the Court cannot join Mr. Thao or Mr. Chauvin with any of the other defendants because it directly favors separate trials under the joinder analysis.

¹ Defense anticipates filing a memorandum in opposition to the notice once the State has supplemented their notice with an argument. Therefore, Defense will not argue whether or not these acts should be admissible in the trial of *State v. Thao*, but only argue why joinder is not appropriate should the proposed evidence be admissible.

I. THE ADMISSION OF *SPREIGL* EVIDENCE AGAINST ONE DEFENDANT BUT NOT THE OTHERS DIRECTLY FAVORS SEPARATE TRIALS.

In determining whether or not to join multiple defendants, the court “must consider”: (1) “the nature of the offense charged”; (2) “the impact on the victim”, (3) “the potential prejudice to the defendant”; and (4) “the interests of justice.” Minn. R. Crim. P. 17.03 subd. 2 (2020). The four factors must be balanced. *State v. Johnson*, 811 N.W.2d 136, 142 (Minn. Ct. App. 2012).

a. The admission of Spreigl evidence against one defendant will prejudice the other three potential codefendants, disfavoring joinder.

i. Spreigl evidence in a joint trial would create antagonistic defense(s), requiring severance.

Spreigl evidence of Mr. Chauvin’s prior bad acts provides Mr. Thao (as well as the other potential codefendants) evidence to support antagonistic defense(s) – which the Minnesota Supreme Court has held require separate trials.

“Joinder is not appropriate when there would be substantial prejudice to the defendant, which can be shown by demonstrating that codefendants presented ‘antagonistic defenses.’” *State v. Jackson*, 773 N.W.2d 111, 119 (Minn. 2009)(citing to *Santiago v. State*, 644 N.W.2d 425, 446 (Minn, 2002)). An antagonistic defense occurs when the defenses of codefendants are “inconsistent and when they seek to put the blame on each other and the jury is forced to choose between the defense theories advocated by the defendants.” *Santiago v. State*, 644 N.W.2d 425, 446 (Minn, 2002); see *State v. Johnson*, 811 N.W.2d 136, 143 (Minn. Ct. App. 2012).

Spreigl evidence can be used to show absence of mistake. *State v. Ross*, 732 N.W.2d 274, 282 (Minn. 2007); *Spreigl*, 139 N.W.2d at 167; Minn. R. Evid. 404(b). If joined with Mr. Chauvin, other potential codefendants – including Mr. Thao – could argue that although they were not aware of Mr. Chauvin’s prior bad acts, Mr. Chauvin’s actions on the day of the alleged crime were not a

mistake. Thus, the joined defendant(s) would be acting as a second prosecutor during the trial – which in turn would require a midtrial severance. *See State v. Powers*, 654 N.W.2d 667, 676 (Minn. 2003); *Santiago v. State*, 644 N.W.2d 425 (Minn. 2005).

Defense Counsel explicitly gave notice at the September 11, 2020 Omnibus Hearing that if Mr. Thao’s case was joined with another case that he could and would act as a second prosecutor. The State’s notice of its intent to introduce *Spreigl* evidence provides Defense Counsel with valuable evidence to pursue an antagonistic defense that would prevent joinder under current Minnesota caselaw. *See Santiago v. State*, 644 N.W.2d 425 (Minn. 2002). Just as Defense Counsel did in *Santiago*, he would be able to shift the blame and produce a “classic exampl[e] of antagonistic defenses.” *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002).

Spreigl evidence of Mr. Chauvin’s prior bad acts would create antagonistic defenses, which requires separate trials. Thus, *Spreigl* evidence disfavors joinder.

- ii. *Spreigl* evidence admissible against Mr. Chauvin would prejudice Mr. Thao if the cases were joined.

Evidence of Mr. Chauvin’s prior bad acts would not be admitted as *Spreigl* evidence in the case of *State v. Thao* were the case to remain singular. To prove Mr. Thao guilty of Aiding and Abetting in violation of Minn. Stat. § 609.05 subd. 1, the State has the burden of showing – beyond reasonable doubt – that Officer Thao (1) knew Mr. Chauvin and others were going to commit a crime and (2) intended his presence to further the commission of that crime. *See State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016)(citing *State v. Milton*, 821 N.W.2d 789,808 (Minn. 2012)). If the cases were joined, the State would be able to offer evidence not available in the case of *State v. Thao* against Mr. Thao to show that he allegedly knew Mr. Chauvin was going to commit a crime. If the Court were to instruct the jury not to apply the *Spreigl* evidence admitted against Mr.

Chauvin towards Mr. Thao's charges, the jury would be unnecessarily confused as to the *mens rea* of Mr. Thao at the time of the alleged crime of Aiding and Abetting.

Joinder is disfavored because *Spreigl* evidence against one defendant prejudices the other potential codefendants.

b. Spreigl evidence against one defendant shows that the overwhelming majority of evidence will not be admissible against all four defendants, disfavoring joinder.

“The nature of the offense charged favors joinder when ‘the overwhelming majority of the evidence presented [is] admissible against both [defendants], and substantial evidence [is] presented that [codefendants] worked in close concert with one another.’” *State v. Johnson*, 811 N.W.2d 136, 142 (Minn. Ct. App. 2012)(citing to *State v. Martin*, 773 N.W.2d 89, 99-100 (Min. 2009)).

On August 28, 2020, Mr. Thao moved the Court to compel the State to disclose Mr. Chauvin's Minneapolis Police Department's disciplinary file. *See* Notice of Motion and Motion to Compel Discovery. Specifically, Mr. Thao requested the Court to compel the State to turn over the complete Minneapolis Police Department disciplinary files on Mr. Chauvin. *Id.* On September 9, 2020, the State filed an opposition to the motion. *See* State's Response to Defendants' Motions to Compel Disclosure. In its response, the State noted that it had given the complete disciplinary file to Mr. Chauvin, but not the other three defendants (Mr. Lane, Mr. Kueng, and Mr. Thao). The State further asserted that it would neither give Mr. Thao nor other defendants the complete file unless they “make a threshold showing of the need for in camera review of those complaint files”. *Id.* at 13.

The State wishes to do three things at once: (1) refuse to disclose Mr. Chauvin's disciplinary records in the case of *State v. Thao*; (2) introduce the disciplinary records in the case of *State v. Chauvin*; and (3) join the cases of *State v. Thao* and *State v. Chauvin*. On its face this

shows that the “overwhelming majority of the evidence presented” will not be the same for Mr. Thao and Mr. Chauvin. Thus, *Spreigl* evidence disfavors joinder under Minn. R. Crim. P. 17.03 subd. 2 (2020).

c. Spreigl evidence disfavors joinder because it impedes the interest of justice.

At the outset, the interests of justice disfavor joinder because *Spreigl* evidence provides antagonistic defenses as argued *supra*. See *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002)(where defendants have antagonistic defenses, any “potential prejudice” would also favor separate trials under the interests of justice factor).

The potential length of multiple trials is a factor for joinder, but not a determinative one. See *State v. Jackson*, 773 N.W.2d 111, 119 (Minn. 2009). If Mr. Thao’s case is joined with any other potential codefendants there would be a portion of the trial where the State was solely presenting evidence relating to Mr. Thao’s alleged past discretions. If Mr. Thao is joined with Mr. Chauvin, there would be another portion of the trial that solely revolved around Mr. Chauvin’s prior bad acts.

Given that the defendants were all unaware of each other’s prior disciplinary records (if any) at the time of Mr. Floyd’s death, the Court would provide limiting instructions to the jury to disregard the *Spreigl* evidence for all other defendant other than whose disciplinary evidence contains *Spreigl* material. This would create confusion for the jury as discussed *supra*, but would also prolong the trial. *Spreigl* evidence not presented against all joined defendants would make the trial unnecessarily longer than it already will be, thus joinder is disfavored.

Respectfully submitted,

Dated: This 25th day of September, 2020

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