

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

**NOTICE OF MOTION AND
MOTION TO DISMISS**

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

NOTICE OF MOTION

Please take notice, that on September 11, 2020 at 9:00 am, or as soon thereafter as counsel may be heard, Tou Thao (“Mr. Thao” herein) will move the Court for an order dismissing the charges filed against him in the above captioned case.

MOTION

Mr. Thao, by and through counsel, respectfully moves the Court for an order dismissing the charges filed against him on the ground that they are not supported by probable cause. The State is required to set forth all essential facts and elements which constitute the charged offenses in the complaint and supporting affidavits. *State v. Oman*, 121 N.W.2d 616, 619 (Minn. 1963). The facts must establish “probable cause to believe that an offense has been committed and the defendant committed it...”. Minn. R. Crim. P. 2.01. The State has the burden of showing – by probable cause – that Mr. Thao; (1) knew former officer Derek Chauvin and others were going to

commit a crime and (2) intended his presence or actions to further the commission of that crime. *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016); *see State v. Milton*, 821 N.W.2d 789, 808 (Minn. 2012).

Additionally, pursuant to *State v. Florence*, 239 N.W.2d 892 (Minn. 1976), Mr. Thao's forthcoming evidentiary submissions will illustrate the lack of probable cause. *See* Exhibit 1 (BodyCam of Tou Thao); Exhibit 2 (MPD Training Materials); Exhibit 3 (MPD Policy Handbook); Exhibit 4 (BodyCam of Thomas Lane).

Specifically, Mr. Thao moves the Court for the following relief:

1. An order dismissing Counts I and II on the ground that the Complaint fails to establish by probable cause that Mr. Thao had the requisite mental state for Aiding and Abetting under Minn. Stat. § 609.05 subd. 1.
2. An order dismissing Counts I and II on the ground that the Complaint fails to establish by probable cause what actions of Tou Thao furthered the commission of the underlying crime for Aiding and Abetting under Minn. Stat. § 609.05 subd. 1.
3. An order dismissing Counts I and II on the ground that the Complaint fails to establish probable cause in light of the authorization set forth in Minn. Stat. § 609.06 subd. 1.

Respectfully submitted,

Dated: This 29th day of July, 2020

/s/ Robert M. Paule

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