

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

TOU THAO,

Defendant.

**ORDER REGARDING FILING
STATUS OF DEFENSE
EXHIBITS FILED MAY 12, 2021**

Court File No. 27-CR-20-12949

On May 12, 2021, the Defense filed a Motion for Sanctions for Prosecutorial Misconduct Stemming from Witness Coercion. [Dk No. 431] In support of that motion, the Defense filed six exhibits. [Dk Nos. 432-434, 436, and 438-439]

Exhibit 1 [Dk No. 432] is a three-page November 5, 2020 File Memorandum in the Office of the Minnesota Attorney General (AG), produced by the State during discovery in the George Floyd officer cases. (Bates pages 042881-883) That memorandum memorializes a November 5, 2020 conference between Dr. Roger Mitchell and several lawyers with the AG and the Hennepin County Attorney's Office (HCAO) and a paralegal with the AG regarding review of the Hennepin County Medical Examiner's Office (HCME) autopsy report of George Floyd, including references to various medical information of George Floyd revealed by the autopsy. Because that document contains personal medical information of George Floyd, it was initially designated to be filed confidentially pursuant to Minn. R. Public Access 4 subd. 1(f) and has not previously been publicly accessible.

Some of George Floyd's medical information referenced in Exhibit 1 is mentioned in the Press Release Report issued June 1, 2020 by the HCME announcing the final results of the

autopsy of George Floyd¹ and was also discussed extensively during the trial in *State v. Chauvin*, 27-CR-20-12646, and thus is public information. Exhibit 1 also mentions additional medical information of George Floyd – and memorializes a discussion during the November 5, 2020 conference with Dr. Mitchell on that subject -- that was also referenced on page 1 of the June 1, 2020 final autopsy report issued by Hennepin County Medical Examiner Dr. Andrew Baker and the HCME and which is further addressed on pages 12-13 of the final autopsy report. However, the final autopsy report itself was not offered into evidence during the *Chauvin* trial, and did not thus become part of the public record as a result of the *Chauvin* trial. Although the final autopsy report was filed by the Defense in *Chauvin* in support of the Defense motion to dismiss for lack of probable cause,² because that filing was done confidentially, the complete autopsy report did not thus become part of the public record by virtue of that filing.

However, review of other related court filings in the George Floyd officer cases reveals that the State has previously filed the first three pages of the final autopsy report as a public document in *State v. Lane*, 27-CR-20-12951, Exh. 4 to Frank Aff. (filed Aug. 10, 2020) [Dk Nos. 88, 89], as well as here, *see* Exh. 7 to Frank Aff. (filed Aug. 12, 2020) [Dk Nos. 83, 84]. Because the substance of one aspect of George Floyd’s medical information mentioned and addressed in Exhibit 1 that was not publicly disclosed in the HCME press release announcing the results of the George Floyd autopsy is referenced in Item II.C on page 1 of the final autopsy report, which became part of the public record based on the manner of the State’s filing of the first three pages of the final HCME autopsy report here and in *Lane*, continuing to maintain

¹ That Press Release Report is Exhibit 2 in the Defense filing on May 12, 2021 [Dk No. 436].

² *See State v. Chauvin*, 27-CR-20-12646, Def. Exh. No. 20 (filed Aug. 28, 2020) [Dk No. 112].

Exhibit 1 as a confidential or sealed record is not appropriate and this Court will order the filing status of Exhibit 1 be changed from sealed/confidential to public.

Exhibits 3 and 4 are transcripts of grand jury testimony given to a federal grand jury in the District of Minnesota by Dr. Baker on August 20, 2020 (Exh. 3) and February 18, 2021 (Exh. 4). [Dk Nos. 438, 439] Those transcripts, among other federal grand jury materials, were provided to the AG by the United States Attorney's Office for the District of Minnesota (USAO) pursuant to a sealed federal district court order filed February 19, 2021.³ Among other things, that federal court order required the USAO to inform the AG that the transcripts were provided only for use in enforcement of state law. That federal court order further directed the AG, if it determined that the transcripts must be disclosed to others outside that office,⁴ to disclose these transcripts to others outside the AG Office only as required to prepare for trial but even then only after obtaining a protective order or agreement limiting disclosure and use of those transcripts for trial preparation purposes only and further requiring that any such grand jury materials only be filed in a state court under seal. Exhibits 3 and 4 were filed under seal pursuant to this Court's Protective Order signed February 25, 2021 and filed February 26, 2021. [Dk No. 352]

Exhibits 2 [Dk No. 436], 5 [Dk No. 433], and 6 (Dk No. 434) were publicly filed and have been accessible publicly since filing.

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

ORDER

1. The filing status of Exhibit 1 [Dk No. 432] shall be changed from a confidential or sealed document to a public document, and that document shall be publicly accessible.

³ The operative federal court order was filed under seal in this case at Docket No. 345.

⁴ For present purposes, to defense counsel in the George Floyd officer cases, including Mr. Thao's counsel here.

2. Exhibits 3 and 4 [Dk Nos. 438, 439] shall remain filed under seal and shall be maintained in the court records as confidential, non-public documents.

3. Exhibits 2, 5, and 6 [Dk Nos. 433, 434, and 436] shall remain filed as public documents.

BY THE COURT:

Peter A. Cahill
Judge of District Court