

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

**SUPPLEMENTAL
STATEMENT OF FACTS
REGARDING GEORGE
FLOYD’S MAY 2019
SPREIGL EVIDENCE**

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

INTRODUCTION

On October 16, 2020, Tou Thao (“Mr. Thao” hereinafter), by and through his attorney, filed a Notice of Motion and Motion to Admit *Spreigl* Evidence as well as a Memorandum of Law in Support of *Spreigl* Evidence. On November 16, 2020, the State filed a response (State’s Response Opposing Defendants’ Motions to Admit *Spreigl* Evidence). In their response, the State argued the May 2019 arrest of George Floyd (the *Spreigl* evidence) was inadmissible because they believed there was only speculative evidence that Mr. Floyd ingested drugs during the arrest proceeding his death in 2020. A substantial portion of the State’s argument against admitting Mr. Floyd’s 2019 arrest into evidence is that they believed there was no clear evidence that Mr. Floyd had drugs on him. *See* State’s Response at 11 (“Defendants also have not identified any evidence

suggesting that there were drugs in the vehicle, or that those drugs would have been within reach when Floyd was confronted by Police”). On December 17, 2020, the State disclosed evidence of just that: That George Floyd had methamphetamine/fentanyl pills within his vehicle during his May 25, 2020 arrest and subsequent death.

As the State did not disclose this vital evidence until a month after their response, and two months after the Defense had to file their motion, the Defense now submits this supplemental statement of facts.

Based on the clear and convincing nature of Mr. Floyd’s actions during his May 2019 arrest, his behavior’s relevance and materiality to the question of whether Mr. Thao can be found guilty of Mr. Floyd’s death, and the fact that their probative value outweighs any danger of unfair prejudice, Mr. Thao respectfully requests that the Court admit the proffered *Spreigl* evidence of Mr. Floyd’s May 2019 arrest.

STATEMENT OF THE FACTS

The Defense incorporates their statement of facts section from the Memorandum of Law in Support of *Spreigl* Evidence filed on October 16, 2020.

The Court issued a scheduling order dated June 30, 2020, which ordered that all discovery required by Minn. R. Crim. P. 9.01, 9.02, and 11.04 be disclosed by August 14, 2020. Despite this clear order, the State has continued to make untimely discovery disclosures. To date, the State has submitted thirteen (13) disclosures after this Court’s clear deadline.

On December 17, 2020, the State again disclosed exculpatory evidence after their August 14, 2020 deadline and after 24 hours of possession as this Court has ordered. Of particular note to *Spreigl* evidence are three documents: (1) a Report on the Examination of Physical Evidence dated December 11, 2020; (2) a Crime Scene Supplemental Report dated December 9, 2020; and (3) a

Lab Result Attachment dated December 11, 2020. These documents hold exculpatory evidence. The documents prove that Mr. Floyd had the same type of drugs in his car during his 2020 arrest that led to his subsequent overdose death. Together these documents show the following:

- That on December 9, 2020 the car George Floyd was arrested in was searched. *See* Exhibit 2.
- In the search of the car two white pills were found somewhere in his vehicle. *See* Exhibit 3.
- That upon testing, the pills were found to contain methamphetamine and fentanyl. *See* Exhibit 1.

CONCLUSION

Based on the Defense's Motion to Admit *Spreigl* Evidence and Memorandum of Law in Support of in Support of *Spreigl* Evidence filed on October 16, 2020 and this new evidence, Mr. Floyd's 2019 arrest must be admitted into evidence in trial. The clear and convincing evidence of Mr. Floyd's prior act bears a stunning and marked relevance to the events underlying the charged offense and is therefore highly probative of Mr. Floyd's intent, absence of mistake or accident, and common scheme or plan during his arrest. Mr. Thao has demonstrated a compelling need for admission of the *Spreigl* evidence. Any prejudicial effect upon the State is outweighed by Mr. Thao's Constitutional right to produce a complete defense and the highly probative nature of Mr. Floyd's prior acts. Therefore, Mr. Thao respectfully requests that the court admit the proffered *Spreigl* evidence.

Respectfully submitted,

Dated: This 31st day of December, 2020

/s/ Robert M. Paule
Robert M. Paule (#203877)
Robert M. Paule, P.A.
920 Second Avenue South, Suite 975
Minneapolis, MN 55402
T: (612) 332-1733
F: (612) 332-9951

Natalie R. Paule (#0401590)
Paule Law P.L.L.C.
5100 West 36th Street
P.O. Box 16589
Minneapolis, MN 55416
nrp@paulelaw.com