

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

**DEFENDANT’S
MEMORANDUM OF
LAW IN SUPPORT OF
MOTIONS IN LIMINE #40
AND #41**

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

On May 13, 2022, Mr. Thao filed Defendant’s Motions in Limine. Index #554. Mr. Thao respectfully moved the Court for two orders regarding limits of State expert witness testimony. *See Id.* – *Motion in Limine 40* and *41*.

Motion in Limine 40

First, Mr. Thao respectfully moved this Court for “[a]n order limiting the testimony of prosecution expert witnesses only to their area of professional expertise.” Index #554, *Motion in Limine 40*.

Minnesota Rule of Evidence 702 requires that expert witnesses may only testify on subjects that they hold expert knowledge in. Minn. R. Evid. 702 (stating in part “a witness qualified as an expert by knowledge, skill, experience, training, or education”); *State v.*

Crow, 730 N.W.2d 272 (Minn. 2007); and *State v. Bauer*, 598 N.W.2d 352, 369 (Minn.1999) (affirming district court's confinement of pathologist's testimony to limits of his expertise).

Motion in Limine 41

Secondly, Mr. Thao respectfully moved this Court for “[a]n order limiting the State to call one expert witness per area of expertise.” Index #554, *Motion in Limine 41*. Mr. Thao requests this motion based on the need to prevent prejudice, confusion, or a waste of time. Minn. R. Evid. 403. Having multiple experts per field – or having experts substantially overlap in areas without novel opinions – would be repetitive, cumulative, and unfairly prejudicial.

“[B]ecause expert witnesses with special knowledge have the potential to influence a jury unduly, special care must be taken to ensure that the defendant's presumption of innocence does not ‘get lost in the flurry of expert testimony,’ and that the jury retain the responsibility of judging facts and credibility.” § 32:56. Expert opinions on “ultimate issues” or “legal conclusions” or “terms of art”, 8 Minn. Prac., Criminal Law & Procedure § 32:56 (4th ed.).

Mr. Thao notes that the State’s first and amended witness lists contain a large amount of potential expert witnesses. To cause undue influence and a waste of time to the judiciary, tax payers, and jurors, Mr. Thao respectfully moves this Court to limit State

experts to (1) only testify as to their area of expertise, and (2) limit the State to one expert per area of expertise.

Dated: This 20th day of May, 2022

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