

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

DEFENDANT'S
MOTIONS IN LIMINE

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 June 13, 2022, or as soon thereafter as counsel may be heard,
Tou Thao (“Mr. Thao” herein) will move the Court as follows.

MOTIONS

Mr. Thao respectfully moves the Court for the following:

1. An order prohibiting the State from referring to George Floyd as a “victim” in this case, as this is a characterization of evidence. Mr. Thao requests the Court to direct the State to refer to George Floyd by name or as “the decedent”.

2. An order prohibiting the State or its witnesses from referring to George Floyd as “the body”, “a body”, deceased, or dead in any videos, questions, or testimony until the time when he was officially pronounced deceased at HCMC.
3. An order precluding any spark of life testimony of George Floyd, except within precedential limitations. Should the State’s questioning (or the witness’s testimony) exceed the permissible limitations, the defense will move to introduce evidence of Mr. Floyd’s prior bad acts. *State v. Carney*, 649 N.W.2d 455, 463 (Minn. 2002); *State v. Buggs*, 581 N.W.2d 329, 342 (Minn. 1998); *State v. Hodgson*, 512 N.W.2d 95, 98 (Minn. 1994); *State v. Graham*, 371 N.W.2d 204, 207 (Minn. 1985).
4. An order requiring the State to allow the defense access to and use of video/audio exhibits and equipment introduced or utilized by the State.
5. An order prohibiting the State from commenting on the failure of defense to call a witness. *State v. Daniels*, 361 N.W.2d 819, 833 (Minn. 1985); *State v. Swain*, 269 N.W.2d 707 (Minn. 1978).
6. An order prohibiting the State from asserting in the presence of the jury a personal belief or opinion as to the credibility of a witness. *State v. Strodtman*, 399 N.W.2d 610, 615 (Minn. Ct. App. 1987), *review denied* (Minn. March 25, 1987).
7. An order prohibiting the State from introducing any and all evidence or witnesses related to evidence that has not been fully disclosed, including – but not limited to – jail calls, witness interviews, or ongoing investigations. Minn. R. Crim. P. 7.01, 9.01.
8. An order precluding testimony or comments from the prosecution on defendant’s right to remain silent, including his pre-*Miranda* right to remain silent. *State v. Dunkel*, 466 N.W.2d (Minn. Ct. App. 1991).

9. An order directing the State to disclose complete criminal histories – specifically N.C.I.C. records – of listed potential witnesses, including law enforcement officers.
10. An order directing the State to disclose all personnel and disciplinary files on all law enforcement officers listed as potential witnesses by the State.
11. An order directing the State to disclose or otherwise assist in the disclosure of the National Prosecutors College and the National District Attorneys Association database/materials pertaining to all experts (both State and defense) prior to the start of trial.
12. An order directing the State to disclose or assist in the disclosure of Minneapolis Fire Department personnel records of Genevieve Hansen.
13. An order directing the State to disclose or assist in the disclosure of all Minneapolis Police Department personnel, training, or hiring records of Donald Williams.
14. An order directing the State to disclose or assist in the disclosure of a recording and transcript of the interview of Dr. Baker by FBI and BCA agents on July 8, 2020. *Brady v. Maryland*, 373 US 83 (1963) and *United States v. Giglio*, 405 US 150 (1972).
15. An order directing the State to disclose the entire email exchange between the United States Attorney's Office and the Hennepin County Attorney's Office staff involved in the representation of Dr. Baker from the dates of July 1, 2020, to October 28, 2020.
16. An order directing the State to disclose all chain of custody and search evidence of Mr. Floyd's vehicle from May 25, 2020, to present.
17. An order directing the State to disclose all chain of custody evidence of Mr. Floyd's body from May 25, 2020, to burial.
18. An order compelling the State to provide defense substance of communications between the State and any potential witnesses, along with any prosecution notes or documents

relating to communication between the State and potential witnesses. Minn. R. Crim. Pro. 9.01; *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987).

19. An order compelling the State to provide the defense with any documents, information, and/or criminal background checks that it – or any contractors working on behalf of the state (including, but not limited to pro hoc vice attorneys, pro bono attorneys, and any staff working under)– obtains on any prosecutive juror.
20. An order requiring the State to provide to defense the substance of all conversations between Victim Witness Program personnel and any and all person having information about this case, and disclose all Victim Witness Program records, reports, notes, files, and other documents relating to contact with any and all persons with information about this case. Minn. R. Crim. P. 9.01; *State v. Mussehl*, 408 N.W.2d 884 (Minn. 1987).
21. An order requiring the State to identify the witness(es) it intends to call by end of testimony the day prior to anticipated testimony.
22. An order to sequester all witnesses, except those who are *entirely* character witnesses.
23. An order directing any person listed as a witness to not view any media coverage of the trial, absent Court approval.
24. An order requiring the State to advise their witnesses on the limits of permissible testimony. *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979).
25. An order prohibiting non-expert witnesses from offering opinions as to the use of force used, amount of force, effects of force, or psychological/medical effects of force used.
26. An order prohibiting the State from asking their witnesses questions that would elicit an emotional response.

27. An order prohibiting witnesses (including, but not limited to police witnesses) from testifying as to their personal ethic, or applying their personal ethics to intervention and use of force (as opposed to relying on policy, rules, and laws).
28. An order limiting testimony of non-physician medical witnesses to what they observed, how they treated Mr. Floyd and why. Specifically, non-physician medical witnesses should not testify as to the cause or manner of death, or whether Mr. Floyd was alive or dead at the time of treatment – as they cannot legally/professionally pronounce time of death.
29. An order allowing medical experts to be questioned on Mr. Floyd’s opiate addiction, prior overdose, and hospitalization exactly one year before the incident as they are pertinent to explain Mr. Floyd’s baseline health and effect of drugs in his system when he died as this would impact defendant’s right to present a complete defense and would violate the confrontation clauses of both the United States Constitution and Minnesota Constitution. Minn. R. Evid. 803; U.S. Const. amend. VI, Minn. Const. art I § 6.
30. An order precluding the State from eliciting testimony on or commenting on defendant’s prior complaints whether sustained or unfounded. Minn. R. Evid. 608(c).
31. An order allowing the defense to cross-examine Genevieve Hanson using her bystander video, or in the alternative, prohibiting her from testifying as allowing her to testify without the ability to cross-examine her on the video would violate the confrontation clauses of both the United States Constitution and Minnesota Constitution. U.S. Const. amend. VI, Minn. Const. art I § 6.
32. An order precluding any questions to or testimony from bystander witnesses regarding the idea that if they would have intervened, they could have saved Mr. Floyd. Minn. R. Evid. 602.

33. An order precluding questions on or testimony about a firefighter's ability to determine cause and manner of Mr. Floyd's death or any contributing factors. Minn. R. Evid. 602, 702.
34. An order precluding any person other than trained peace officers from testifying on police officer training. Minn. R. Evid. 602.
35. An order prohibiting any questions on or testimony regarding Donald Williams training, experience, or alleged expertise in martial arts, boxing or other training. Minn. R. Evid. 401, 403.
36. An order prohibiting any questions on or testimony regarding Donald Williams' understanding of a "blood choke" and how it affects breathing and/or circulation on the grounds that it is irrelevant, prejudicial, Mr. Williams lacks any medical training, and the State has not disclosed any records that Mr. Williams has any martial arts, wrestling, or boxing training. Minn. R. Evid. 401, 403; Minn. R. Crim. P. 9.01, subd. 1(4)(c).
37. An order requiring the State to instruct their witnesses that they are not to assert a personal belief or opinion as to the Defendant's guilt or innocence, or whether or not the defendant is the type of person who could commit such an offense. Minn. R. Evid. 404.
38. An order barring any prosecution witness from wearing a uniform unless they are testifying in the capacity of that uniform. Minn. R. Evid. 403.
39. An order barring any prosecution witness from wearing an outfit with signage or writing on it. Specifically, from precluding Donald Williams from wearing an undershirt with visible writing on it as he did in *State v. Chauvin*. Minn. R. Evid. 403.
40. An order limiting the testimony of prosecution expert witnesses only to their area of professional expertise.

41. An order limiting the State to call one expert witness per area of expertise.
42. An order prohibiting the prosecution from calling bystander witnesses who were juveniles at the time of the incident. The only result of the State bringing in child witnesses would be to further traumatize the child and unfairly provoke the emotions of the jury as the State has many other bystander witnesses capable of testifying as to the events of May 25, 2020 as well as non-unique video evidence admissible through other witnesses. Additionally, the juvenile witnesses in *State v. Chauvin* provided no testimony that was different than that of other adult bystanders witnesses.
43. An order precluding police officers from speculating, inferring, or opinion on whether they would have handled the arrest and detainment of Mr. Floyd differently. *Graham v. Connor*, 490 U.S. 386 (1989), Minn. R. Evid. 701, 702.
44. An order precluding questions on or testimony about policies that were not in effect at the time of Mr. Floyd's arrest, or any subsequent changes in policies. Minn. R. Evid. 401, 403, 407.
45. An order precluding testimony about medical examinations performed by anyone other than The Hennepin County Medical Examiner Dr. Baker. *State v. Vue*, 606 N.W.2d (Minn. Ct. App. 2000); Minn. R. Evid. 401, 403, 602.
46. An order precluding questions on or testimony about a blue line, wall of silence, involvement with the Minneapolis Police Federation, or Minnesota Police and Peace Officers Association. Minn. R. Evid. 401, 403.
47. An order precluding questions on or testimony about the David Cornelius Smith Case based upon irrelevance and prejudicial effect on the jury. Minn. R. Evid. 401, 403.

48. An order precluding expert witnesses from referencing their personal clinical experiences and anecdotal testimony unless the State can provide documentation that such testimony is peer-reviewed and available for inspection.
49. An order prohibiting any attorneys or witnesses from likening Mr. Floyd to Jesus Christ.
50. An order precluding the entirety of the proffered testimony of Dr. Sarah Vinson (post-mortem psychiatric evaluation of Mr. Floyd) on the grounds that it is entirely speculative, based upon multiple levels of inadmissible hearsay, fails to meet any scientific studies, offers no assistance to the jury, confuses the jury, and prejudices them by unfair means. *State v. Nystrom*, 596 N.W.2d 256, 260 (Minn. 1999); *Hanson v. Christensen*, 275 Minn. 204, 217, 145 N.W.2d 868, 877 (1966); *State v. Fitzgerald*, 382 N.W.2d 892, 894-95 (Minn. Ct. App. 1986); *State v. Saldana*, 324 N.W.2d 227, 231 (Minn. 1982); *State v. Deshay*, 609 N.W.2d 878, 888 (Minn. 2003); *State v. Ritt*, 599 N.W.2d 802, 812 (Minn. 1999).
51. An order allowing evidence of Johnny Mercil's bias and prior bad acts for impeachment purposes.
52. An order precluding Katie Blackwell from testifying as she does not understand – or alternatively respect – the oath to testify truthfully, as shown in her testimony at Mr. Thao's recent federal trial.
53. An order precluding Richard Zimmerman from testifying as he does not understand – or alternatively respect – the oath to testify truthfully, as shown in his testimony at Mr. Thao's recent federal trial. In the alternative, the defense moves for an order allowing impeachment evidence regarding his involvement in improper use of force and homicide investigations. *See* Attachment 1 (*Nguyen v. Zimmerman*, 1997 WL 458108 (Minn. Ct.

App. 1997)); Attachment 2 (Certificate of Commutation signed by Keith Ellison in *State v. Burrell* (27-CR-02-098794)); and Attachment 3 (REPORT OF THE INDEPENDENT PANEL TO EXAMINE THE CONVICTION AND SENTENCE OF MYON BURRELL).

54. An order precluding Darnella Frazier from testifying based upon her extreme emotional reaction to basic questions during Mr. Thao's recent federal trial. Any testimony from her would be redundant based upon the many other bystanders the State will surely call, and undue waste of time, and will unfairly prejudice the jury. Should Darnella Frazier be allowed to testify, the defense moves to question her \$700,000 "Peace and Healing for Darnella Frazier" GoFundMe, her photo-op with Keith Ellison during the trial of *State v. Chauvin* in violation of this Court's prior order, awards given for her participation in *State v. Chauvin*, and /pseudo-celebrity status since testifying in *State v. Chauvin* for the purposes of impeachment and bias.
55. An order precluding improper questioning or testimony of use of force by any witness.
56. An order precluding the State from introducing any prior statements of witnesses, as they are hearsay, unless and until that witness has previously testified in the above-captioned case of *State v. Thao*. See *Crawford v. Washington*, 541 U.S. 36 (2004).
57. An order keeping all witnesses under subpoena until the close of all evidence, or agreement of all parties to release the witness from the subpoena.
58. An order that no witness under subpoena shall make any public statements from the start of the trial until the verdict is rendered. Specifically, barring Courtney Ross from holding another press-conference in a lobby of a government courthouse during trial with Mr. Floyd's attorneys.

59. An order directing the State to refer to counsel either by name or by “counsel” when on the record. The use of phrases and terms such as “my friends” is not appropriate under Minnesota rules.
60. An order suppressing the 911 calls made by Donald Williams and Genevieve Hansen on the basis that they are more prejudicial than probative and are inadmissible hearsay.
61. An order suppressing the videos known as the bystander videos as they are more prejudicial than probative and violate *Graham* because in that they show a point of view that officers were not able to evaluate in real time during the arrest.
62. An order barring the State from editing the videos known as the bystander videos by either editing the volume of the sound, or by combining the bystander videos together or with the any other videos as it is more prejudicial than probative, and also violates the confides of *Graham* in that it infers that the defendants observed in real time the point of view(s) of bystanders.
63. Defense moves the Court to reconsider its Trial Management Order issued on May 25, 2022, regarding its ruling on headset conversations being off the record. To protect the defendant’s State and Federal Constitutional right to an open proceeding, defense moves to make spoken objections on the record. Having objections on headsets and only privy to the attorneys and Judge would constitute a closure of the courtroom. Additionally, it would result in incomplete record of objections made by counsel which would hinder any potential appeals and be in violation of Minn. Stat. §486.02.
64. An order requiring the State to inform the defense which specific Minneapolis Police Department Training or Personnel Records it intends to elicit testimony on, based upon

this Court's right to exercise control over the mode and order of presentation of witnesses to avoid needless consumption of time. Minn. R. Evid. 611(a).

Dated: This 12th day of May, 2022

/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.
101 East Fifth Street
Suite 1500
St. Paul, MN 55101
T: (612) 440-3404
nrp@paulelaw.com

Attorneys for Tou Thao