

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12951

State of Minnesota,

Plaintiff,

v.

Thomas Kiernan Lane,

Defendants.

**SUPPLEMENTAL
MEMORANDUM IN SUPPORT
OF DISCOVERY – BRADY GIGGLIO –
PARADEE MOTION****SUMMARY**

The defense has received and reviewed the expert use of force reports and opinions of the State's Use of Force experts. These experts opine that Thomas Lane acted unreasonably by not physically intervening after he questioned Officer Chauvin twice about rolling George Floyd over and Chauvin refused.

The defense is requesting the information regarding previous sustained use of force incidents where there was intervention by another officer be disclosed because it is crucial to the defense of Mr. Lane. The information is material and relevant for impeaching the State's "experts" by establishing to the jury that such alleged "unreasonable" conduct by an officer for not intervening physically has never happened. This evidence is also material for impeaching various commanders and lieutenants of the Minneapolis Police Department who have voiced the same opinion.

The defense team, including several investigators, have worked for over a year to find witnesses, police officers or experts, to testify to this specific issue without success. Based on the

media, publicity, and violent behavior incited by this case, no one is willing to share such an opinion with the jury, people are afraid for their lives. The request for this information to be provided by the State is the only way for the defense to get this essential circumstantial evidence needed for the trial. The information is *Giglio* for Mr. Lane.

It is defense counsel's understanding that the Minneapolis Police Department keeps records of all unreasonable use of force incidents and that the records are now computerized. Thus the performance of defense counsel's request is certainly not unreasonable. Especially with this supplemental memorandum significantly paring down the timeframe of information which we are requesting.

DISCOVERY/BRADY

Under Rule 9.01, subd. 1(6), even without a court order, upon a defendant's request, the prosecutor must disclose a number of things that relate to a case, including "material or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt". To the extent not otherwise required by Rule 9, the State is required to comply with *Brady v. Maryland*, 373 U.S.83 (1963), and other constitutional pronouncements. *See State v. Miller*, 754 N.W.2d 686, 706 (Minn. 2008); *see also* Comment to Rule 9 (providing that "the rules are intended to give the parties complete discovery subject to constitutional limitations."). As the *Brady* court stated, "society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady*, 373 U.S. at 87. Accordingly, *Brady* requires that the State provide the defendant with all exculpatory evidence. *Miller* at 706. Also, the *Brady* rule has been extended to evidence that may be used to impeach a State's witness. *See, United States v. Bagley*, 473 U.S. 667, 676 (1985).

The State's requirements under *Brady* are not limited to materials and information possessed or known to the prosecutor. *Miller* at 706 (“Brady does not require that the suppressed evidence be within the prosecuting authority’s actual knowledge.”); *see also* Minn. R. Crim. P. 9.01, subd. 1a(1) (prosecutor’s Brady and discovery obligations extend beyond the prosecution staff and will include material and information in the possession or control of investigators “who either regularly report, or with reference to a particular case have reported, to the prosecutor’s office”). As the U.S. Supreme Court has held, prosecutors have a “duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *see State v. Williams*, 593 N.W.2d 227, 235 (Minn. 1999) (because prosecutors have a duty to learn of any favorable evidence known to others, including the police, whether prosecutors actually knew of exculpatory evidence is not dispositive for *Brady* purposes). *Brady* places the burden on the State to ensure it is disclosing all impeachment and other exculpatory material and information in its possession or in the possession of police or others acting on the government’s behalf. *Brady* does not require a defendant to first identify exculpatory material that must be disclosed.

The State should supply the requested exculpatory information under *Brady* even if the original source of the information is itself protected from disclosure under state law, although we do not contend that it is. *See Giles v. State of Md.*, 386 U.S. 66, 74 (1967). The State cannot avoid its constitutional *Brady* obligations by claiming the information is contained in work product documents relating to an ongoing investigation or that the information is private data protected by the Minnesota Government Data Practices Act. *Mincey v. Head*, 906 F.3d 1106, 1133 n. 63 (11th Cir. 2000).

The defense may not necessarily be entitled to receive copies of all of the specifically requested materials outright (although we believe we are), provided the State fully complies with its *Brady* obligations as required by law and ensures that all categories of records identified by this defendant have been reviewed to determine if they contain potential impeachment or other exculpatory material or information, and provided that the State then discloses all appropriate *Brady* material and information to the defendant. Should this be the case here, if the State reviews the reports itself without providing them, the defense requests that whoever, whether it be the prosecutor or a custodian of records, draft a report or Affidavit indicating the findings or lack thereof, to fully comply with the discovery request under *Brady*.

PARADEE

Lastly, although not the best use of the court's time and resources, the defense requests that this Court order the records requested be handed over to the Court for an in-camera review, if the State will not abide by the discovery rules as outlined above. *State v. Paradee*, 403 N.W.2d 640 (Minn. 1987). The defense has certainly made a "plausible showing" that the information the defense seeks is "both material and favorable to the defense". *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). Although the defense does not find this to be the best option available, because the reports being sought are likely not privileged or highly confidential, we again emphasize the importance of receiving the requested information and are seeking any avenue available to receive such information. However, it is the defense's position that it is the State that has *Brady* obligations with respect to its law enforcement and other witnesses. Therefore, it is the State that should be gathering, reviewing, and disclosing potential impeachment and other exculpatory material and information.

CONCLUSION

The State is required to address its *Brady* obligations to ensure due process and fairness to the defendant. Any material that may negate or reduce the defendant's guilt must be disclosed. Even if the requested material may not ultimately be admissible in court, it must be disclosed.

Dated this 22nd day of June, 2021.

Respectfully submitted,

s/Earl P. Gray
Earl P. Gray #37072

s/ Amanda J. Montgomery
Amanda Montgomery #0393287

Attorneys for Defendant Thomas Lane
First National Bank Building
332 Minnesota Street
Suite W1610
St. Paul, MN 55101
651-223-5175