

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12953

State of Minnesota,

Plaintiff,

vs.

DEFENDANT'S MOTIONS IN LIMINE

J. Alexander Kueng,

Defendant.

TO: THE HONORABLE PETER A. CAHILL, JUDGE OF HENNEPIN COUNTY DISTRICT COURT; AND KEITH ELLISON, ATTORNEY GENERAL OF MINNESOTA; MICHAEL FREEMAN, HENNEPIN COUNTY ATTORNEY.

The defendant, by and through his attorney, moves the Court for an Order granting the following in limine motions.

GENERAL MOTIONS IN LIMINE

- 1) The Defendant moves the Court for an Order precluding the State, or any of its witnesses, from referring to George Floyd as the "victim" in this matter.
- 2) The Defendant moves the Court for an Order precluding the State, or any of its witnesses, from referring to any of the defense parties as the "defendant" in this matter and requiring that they be referred to as "Mr." followed by their last name.
- 3) The Defendant moves the Court for an Order precluding the State from introducing any prior statements of witnesses, as they are hearsay, unless

and until that witness has previously testified. *Crawford v. Washington*, 541 U.S. 36 (2004).

- 4) The Defendant moves this Court for an Order requiring the State to provide the defense with any documents, information and/or criminal background checks that it obtains regarding any prospective juror. This includes information gleaned from social media or other digital sources and/or an on the record statement that no such information has been obtained by any and all persons operating OBO of the State, to include any volunteer “special” prosecutor and all partners, associates, employees or contractors of their respective private employers.
- 5) The Defendant moves this Court for an Order requiring the State to provide to defense counsel the substance of all conversations between Victim Witness Program personnel and any and all similar persons, such as legal assistants and paralegals, 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. Pro. 9.01 and *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987)
- 6) The Defendant moves the Court for an Order compelling the prosecuting attorney provide copies to all of their notes or other documents relating to

their contact with all persons they intend to call as witnesses in this case and with any and all persons having information about this case. Minn. R. Crim. Pro. 9.01 and *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987).

- 7) The Defendant moves the Court for an Order requiring that the State ensure that its witnesses know the limits of permissible testimony. *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979).
- 8) The Defendant moves the Court for an Order prohibiting the State from commenting on the failure of the Defense to call a witness or any other sort of burden shifting in any attorney argument or witness testimony.
- 9) The Defendant moves the Court for 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 or other vouching testimony. *State v. Strodtman*, 399 N.W.2d 610, 615 (Minn. Ct. App. 1987), *review denied* (Minn. March 25, 1987).
- 10) The Defendant moves the Court for an Order prohibiting the prosecutor from offering their personal opinion, either directly or indirectly expressed that a Defense party is guilty. *State v. Parker*, 353 N.W.2d 122 (Minn. 1984); *State v. Eling*, 355 N.W.2d 268 (Minn. 1984); *State v. Snyder*, 375 N.W.2d 518 (Minn. App. 1985).
- 11) The Defendant moves the Court for an Order directing the State to instruct State witnesses that they are not to assert a personal belief or opinion as to

the a defense party'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).

CASE SPECIFIC MOTIONS IN LIMINE

- 1) Precluding police officers, experts or civilian witnesses from speculating or rendering an opinion on how they would have handled the arrest of Mr. Floyd differently. *Graham v. O'Connor*, 490 U.S. 386 (1989), Minn. R. Evid. 701 and 702, and Minn. R. Evid, 401 and 402.
- 2) Precluding testimony about any police policy and that was not in effect at the time of Mr. Floyd's arrest or any subsequent changes in policies. Minn. R. Evid. 401, 403, and 407.
- 3) Precluding testimony about medical examinations performed by anyone other than the Hennepin County Medical Examiner Dr. Baker. *State v. Vue*, 606 N.W.2d 719 (Minn. Ct. App. 200); Minn. R. Evid. 401, 403, 602.
- 4) Prohibiting the State from calling multiple use of force experts or medical experts that will offer duplicative testimony on any issue. *State v. Vue*, 606 N.W.2d 719 (Minn. Ct. App. 200) Minn. R. Evid. 403, 602.
- 5) Precluding speculative testimony from any witness to the effect that they believe that, had they been allowed to intervene, they could have saved Mr. Floyd. Minn. R. Evid. 602. Additionally, no witness, other than those

testifying as an expert, should be allowed to testify as to their understanding of police officer training. Minn. R. Evid. 602.

- 6) Preventing any member of the Minneapolis Fire Department and paramedics from testifying as to cause and manner of Mr. Floyd's death or any contributing factors to Mr. Floyd's death. Minn. R. Evid. 602, 702.
- 7) Precluding the state from questioning witnesses about aspects of their training that have not been fully disclosed, including C.P.R. training and training on excited delerium. Minn. R. Evid. 401, 403, 602.
- 8) Preventing the state from questioning or commenting on Mr. Kueng's right to remain silent, including his pre-Miranda right to remain silent. *State v. Dunkel*, 466 N.W.2d 425 (Minn. Ct. App. 1991).
- 9) Precluding testimony about a "blue line" or "wall" of silence or about the officer's communications with the Minneapolis Police Federation. Minn. R. Evid. 401, 403.
- 10) The defense request the opportunity to voir dire the state's expert witnesses, in particular Dr. Sarah Vinson before they testify in the presence of the jury to determine their competence, qualifications and scope of their testimony to establish if their testimony meets the *Frye-Mack* standard. Minn. R. Evid. 702, 703, *State v. Roman Nose*, 649 N.W.2d 815, 819 (Minn. 2002).

- 11) Precluding the State's use of force witnesses from providing medical conclusions in their testimony and directing that medical conclusions be stricken from their written reports. Minn. R. Evid. 602, 702.
- 12) Precluding the testimony of Donald Williams as to his medical opinions derived for his observation of the detention of Mr. George Floyd and/or opinions based on experience as a boxer, martial artist or other training.
- 13) Precluding any reference to the David Cornelius Smith Case for lack of relevance and potential to mislead and or prejudice the jury.
- 14) Preventing the state from playing videos known as "the Facebook videos." The videos are irrelevant and unfairly prejudicial because they do not show what Kueng and Lane actually perceived and saw during Mr. Floyd's arrest and will have a tendency to distort what the officer perceptions were on those matters. Minn. R. Evid. 401, 403.
- 15) Precluding the State from relying on references to the National Anthem or Gettysburg address as time comparisons and further directing that all questioning, references to Counsel or other comments by prosecuting attorneys, special deputies and witnesses be made in a secular and appropriate manner.
- 16) The defense requests that the Court follow Minn. R. Crim. Pro. 26.02, Subd. 4(3)(b) for the exercise of challenges for cause and peremptory challenge.

17) Limiting “spark of life” testimony to its permissible grounds and moves now to reconsider the admission of all prior bad acts of Mr. Floyd previously noticed by the defense and other acts that may become relevant as rebuttal based on “spark of life” testimony.

18) Based on the Court’s right to “[e]xercise control over the mode and order of interrogating the witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.” Minn. R. Evid. 611(a). To ensure the efficient presentation of evidence, the defense requests an order requiring the state to:

- (a) Disclose which witnesses the state actually intends to call to testify during the trial at least 3 weeks prior to trial in order to winnow down the 14 double column pages of potential witnesses disclosed by the State and meet the spirit and ethical standards outlined in Minn. R. Crim. P 9.01.
- (b) Require the state to disclose the witnesses they intend to call the next day prior to adjournment the day prior.
- (c) Providing a list of all witnesses subpoenaed by the State and keeping all witnesses subpoenaed by the State under subpoena, until the close of all the evidence or agreement by the parties to release the witnesses from the Court’s subpoena.

19) Defendant joins in the limine motions of codefendants Lane 27-CR-20-12951, Thao 27-CR-20-12949 and Chauvin 27-CR-20-12646.

Respectfully submitted,

Date: February 8, 2021

/s/ **Thomas C. Plunkett**

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