

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

**ORDER ON *SPREIGL*
MOTIONS**

vs.

**DEREK MICHAEL CHAUVIN,
TOU THAO,
THOMAS KIERNAN LANE,
J. ALEXANDER KUENG,**

Dist Ct. File 27-CR-20-12646
Dist Ct. File 27-CR-20-12949
Dist Ct. File 27-CR-20-12951
Dist Ct. File 27-CR-20-12953

Defendants.

This matter is before the Court on motions by all parties seeking to introduce *Spreigl* evidence at trial.

Matthew Frank, Assistant Attorney General, and Neal Katyal, Special Assistant Attorney General, appeared on briefs on behalf of the State of Minnesota.

Eric J. Nelson, Attorney at Law, appeared on briefs on behalf of Defendant Derek Chauvin (Chauvin).

Robert M. Paule and Natalie R. Paule, Attorneys at Law, appeared on briefs on behalf of Defendant Tou Thao (Thao).

Earl P. Gray, Attorney at Law, appeared on briefs on behalf of Defendant Thomas Lane (Lane).

Thomas C. Plunkett, Attorney at Law, appeared on briefs on behalf of Defendant J. Alexander Kueng (Kueng).

The following summarizes the parties' filings between August 2020 and January 2021 in support of and opposing the motions by all parties seeking to admit at trial, pursuant to Minn. R. Evid. 404(b)/*Spreigl*, evidence of twenty other incidents involving George Floyd, Chauvin, Thao, and Kueng. All references to docket numbers in connection with a filing by the State are to the docket in *State v. Chauvin* unless otherwise indicated, although the State frequently filed the identical document in all four cases. All references to docket numbers in connection with a filing by a defendant are to the docket in that defendant's case.

I. **Defendants' Motions to Admit Rule 404(b)/*Spreigl* Evidence**

On August 27, 2020, Kueng filed Notice of Additional Evidence [Dk # 103] and on August 28, 2020, Chauvin filed Defendant's Notice of Intent to Introduce Additional [*Spreigl*] Evidence [Dk # 107]. In those filings, Kueng and Chauvin each seek to introduce at trial evidence relating to the following incidents involving George Floyd [Floyd]:

- (1) Floyd's arrest by the Minneapolis Police Department on May 6, 2019 during which Floyd allegedly swallowed "large quantities" of controlled substances "in an attempt to avoid arrest," allegedly acted in "diversionary behavior such as crying and act[ing] irrationally" while interacting with police, and Floyd's subsequent admission to the Hennepin County Medical Center (HCMC) for treatment for "accidental drug ingestion;" and
- (2) Floyd's August 2007 conviction for aggravated robbery in Harris County, TX Case No. 1143230.

On October 12, 2020, Lane filed Defendant's Notice of Motion and Motion to Admit Floyd's May 6, 2019 Incident, a Supporting Memorandum, and several exhibits. [*State v. Lane*, Dk # 172-177]

On October 16, 2020:

- (1) Thao filed a Notice of Intent to Use *Spreigl* Evidence, a Memorandum of Law in Support of *Spreigl* Evidence, a Motion for Leave to Supplement the Spreigl Motion with Additional Video Exhibit, and several exhibits. [Dk # 172-181]; and
- (2) Chauvin filed Defendant's Notice of Motion and Motion to Admit Floyd's May 6, 2019 Incident. [Dk # 182]

On November 16, 2020:

- (1) The State filed its Response Opposing Defendant's Motions to Admit Spreigl Evidence. [*State v. Chauvin*, Dk # 206; also filed in *Thao, Lane, and Kueng*]; and
- (2) Lane filed Defendant's Objection to the State's Spreigl Notice and Motion to Reconsider the Court's Order for Joinder. [Dk # 198]

On November 23, 2020, Kueng filed a Supplemental Offer of Proof in Support of Motion to Admit Floyd's May 6 2019 Incident, together with several exhibits. [Dk # 209-13]

On December 31, 2020, Thao filed a Supplemental Statement of Facts Regarding George Floyd's May 2019 Spreigl Evidence together with three exhibits. [Dk # 254-257]

On January 4, 2021, Kueng filed a Supplemental Statement of Facts Regarding George Floyd's May 2019 Spreigl Evidence. [Dk # 260]

II. State's Motions to Admit Rule 404(b)/*Spreigl* Evidence Against Defendants Chauvin, Thao, and Kueng

On September 10, 2020, in *State v. Chauvin*, 27-CR-20-12646, the State filed Notice of Intent to Offer Other [*Spreigl*] Evidence [Dk # 128] at trial relating to eight incidents involving Chauvin:

- (1) a March 15, 2014 arrest involving Chauvin's use of a restraint technique, MPD CCN 2014-082863;
- (2) a February 15, 2015 arrest involving Chauvin's use of a restraint technique, MPD CCN 2015-054320;
- (3) an August 22, 2015 incident involving Chauvin's participation in the detention and transport of an individual to a hospital, MPD CCN 2015-317385;
- (4) an April 22, 2016 arrest involving Chauvin's use of a restraint technique, MPD CCN 2016-141710;
- (5) a June 25, 2017 arrest involving Chauvin's use of a restraint technique, MPD CCN 2017-235836;
- (6) a September 4, 2017 arrest involving Chauvin's use of a restraint technique, MPD CCN 2017-337738;
- (7) a March 12, 2019 detention involving Chauvin's use of a restraint technique, MPD 2019-71230; and
- (8) A July 6, 2019 incident involving Chauvin's use of force and a restraint technique, MPD 2019-19749.

On September 10, 2020, in *State v. Thao*, 27-CR-20-12949, the State filed Notice of Intent to Offer Other [Spreigl] Evidence [Dk # 123] at trial relating to nine incidents involving

Thao:

- (1) that at a crime scene on April 27, 2012, Thao sat in his squad car while other officers on the scene carried out law enforcement duties, which conduct the State indicates was addressed by Thao's Field Training Officer (FTO);
- (2) an incident on May 4, 2012 in which the State contends Thao inappropriately remained in his squad and used the squad's public address system "to holler at people outside the residence," which conduct the State indicates was addressed by Thao's FTO;
- (3) an incident on June 3, 2012 in which the State contends that Thao falsified a police report, which conduct the State indicates was addressed by Thao's FTO as well as later by his precinct sergeants;
- (4) an incident on June 3, 2012, in which the State contends that Thao attempted to manipulate a domestic abuse victim to respond to questions in a manner by which Thao could avoid generating a domestic-assault report, which conduct the State indicates was addressed by Thao's FTO;
- (5) an incident on June 4, 2012, in which the State contends that Thao's FTO reported that Thao forgot details but then made guesses and included factually-incorrect information in his reports;

- (6) an incident on June 5, 2012, in which the State contends that Thao “dismissively and insubordinately” responded to feedback from his FTO and refused to respond to training, leading to his field-training time being extended;
- (7) a report issued by Thao’s FTO on July 1, 2012 detailing multiple occasions on which Thao allegedly intentionally avoided responding to situations necessitating a police response, including observable violations of the law, while later denying to his FTO that he had seen any violations, resulting in his FTO remarking on Thao’s lack of candor;
- (8) three incidents on July 7, 2012 in which Thao spoke to civilians in a manner his FTO characterized as Thao not listening to victims and “attempting to talk his way out of filing legitimate reports,” resulting in a second extension of Thao’s field-training period; and
- (9) An August 17, 2017 incident in which Thao allegedly attempted to manipulate a domestic-violence victim to respond to questions in a manner enabling Thao to avoid generating a domestic assault report, in which Thao’s alleged dishonesty and expediency were the subject of an Office of Police Conduct Review Complaint.

On September 10, 2020, in *State v. Kueng*, 27-CR-20-12953, the State filed Notice of Intent to Offer Other [*Spreigl*] Evidence [Dk # 120] at trial relating to a Dec. 23, 2019 incident involving an intoxicated, injured, uncooperative male and the use of force and restraint techniques in which Kueng and other involved officers had moved the male from the prone position to a sitting position once the male stopped resisting, MPD 2019-375167.

On September 25, 2020, the State filed an Amended Notice of Intent to Offer Other [Spreigl] Evidence in its cases against Chauvin, Thao, and Kueng, as follows:

- (1) In *State v. Chauvin*, [see Dk # 155 in 27-CR-20-12646], the same eight incidents involving Chauvin covered by the State's September 10 filing as summarized above;
- (2) in *State v. Thao*, [see Dk # 149 in 27-CR-20-12949], the same nine incidents involving Thao covered by the State's September 10 filing as summarized above; and
- (3) in *State v. Kueng*, [see Dk # 152 in 27CR-20-12953], the same incident involving Kueng covered by the State's September 10 filing as summarized above, except that in this filing, the State refers to an incident date of December 24, 2019 rather than December 23 ,2019.

On October 12, 2020, the State filed a Memorandum of Law in Support of its Motion to Admit Other [Spreigl] Evidence. [*State v. Chauvin*, Dk #174; also filed in *Thao, Lane, and Kueng*]

On November 16, 2020:

- (1) The State filed a Supplemental Memorandum of Law in Support of Other [Spreigl] Evidence. [*State v. Chauvin*, Dk #204; also filed in *Thao, Lane, and Kueng*];
- (2) Chauvin filed Defendant's Objection to State's Proposed Introduction of Spreigl Evidence. [Dk # 205];
- (3) Thao filed Defendant's Memorandum in Opposition to State's Motion for Spreigl Evidence Against Mr. Thao [Dk # 209] as well as separate Memoranda in

Opposition to State's Motion for Spreigl Evidence (i) Against Co-Defendant Kueng [Dk #205], and (ii) Against Co-Defendant Chauvin [Dk # 208]; and

(4) Kueng filed Defendant's Objection to the State's 404(b) Evidence. [Dk # 208]

Based on all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. All defendants' motions to admit as Rule 404(b)/*Spreigl* evidence at trial evidence relating George Floyd's May 6, 2019 arrest by the Minneapolis Police Department and his subsequent admission to HCMC as well as his 2007 Harris County, Texas conviction for aggravated robbery are **DENIED**.
2. The State's motion to admit as Rule 404(b)/*Spreigl* evidence at trial in *State v. Chauvin* the eight separate incidents as summarized above is **GRANTED IN PART AND DENIED IN PART**. The State may introduce evidence of the Aug. 22, 2015 incident, MPD CCN 2015-317385, (provided the State presents clear and convincing evidence that Chauvin was present when a medical professional made the remarks summarized in the State's offer of proof) and of the June 25, 2017 incident, MPD CCN 2017-235836. The State's motion to admit the other six incidents involving Chauvin as summarized above is **DENIED**.
3. The State's motion to admit as Rule 404(b)/*Spreigl* evidence at trial in *State v. Thao* the nine separate incidents as summarized above is **DENIED**.
4. The State's motion to admit as Rule 404(b)/*Spreigl* evidence at trial in *State v. Kueng* evidence regarding the incident on December 23-24, 2019 as summarized above is **DENIED**.
5. A Memorandum Opinion will follow at a later date.

BY THE COURT:

Peter A. Cahill
Judge of District Court