

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,
Plaintiff,

vs.

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

Defendants.

**ORDER CORRECTING FACTUAL ERROR IN
MEMORANDUM OPINION ON STATE'S
MOTION FOR TRIAL JOINDER (FILED
NOVEMBER 4, 2020)
REGARDING KUENG DEFENSE FILING**

Court File No. 27-CR-20-12646
Court File No. 27-CR-20-12949
Court File No. 27-CR-20-12951
Court File No. 27-CR-20-12953

On November 4, 2020, this Court filed in all four referenced cases an Order and Memorandum Opinion Granting State's Motion for Trial Joinder (Memorandum Opinion). See *Chauvin*, 27-CR-20-12646, Dk # 191; *Thao*, 27-CR-20-12949, Dk # 190; *Lane*, 27-CR-20-12951, Dk # 186; and *Kueng*, 27-CR-20-12953, Dk # 190. The Court is filing this Order to correct the record with respect to the Court's erroneous recounting of an aspect of the procedural history in *Kueng*, 27-CR-20-12953, in the Memorandum Opinion.

On page 40 of the Memorandum Opinion, the Court wrote:

Finally, none of the Defendants has filed notice of any defense that is antagonistic to the defenses of any of the other Defendants. Chauvin, Thao, and Lane have all filed written notices of their anticipated defenses. All three indicate they intend to defend their conduct as the use of force expressly authorized for police officers under Minnesota law, Minn. Stat. § 609.06 subd. 1(1), and that the force used was reasonable force expressly authorized for police officers under Minnesota law, Minn. Stat. § 609.066. See Thao Notice of Defense (Aug. 28, 2020); Chauvin's Rule 9 Disclosure (Oct. 23, 2020); Lane's Rule 9 Disclosure (Oct. 23, 2020).

On page 43 of that Memorandum Opinion, the Court wrote:

Although Kueng argues that he, Lane, and Thao “are likely to argue that Chauvin caused Floyd’s death and that [he and Lane and Thao] were merely present,” Kueng has not filed any notice of defense²⁷ expressly seeking to blame Chauvin, nor does he explain how his intended defense that he did not know that Chauvin was committing a crime and that he did not intend his presence or actions to further a crime is antagonistic or inconsistent with Chauvin’s.

Footnote 27 of that Memorandum Opinion reads as follows:

Despite this Court’s June 30, 2020 Scheduling Order directing the Defendants to file Notices of their Defenses prior to the September 11, 2020 first omnibus hearing (that Order directed the filing of notices required by Minn. R. Crim. P. 9.02, which requires a defendant to inform the State, in writing, of any defense it intends to assert at trial), Kueng does not appear to have filed a Notice of Defenses in 27-CR-20-12953.

Kueng in fact filed a Rule 9 Disclosure on June 29, 2020. *See State v. Kueng*, 27-CR-20-12953, Dk No. 49. In that Disclosure, Kueng asserted the following defenses: not guilty; self defense; reasonable force (Minn. Stat. § 609.066); and authorized use of force (Minn. Stat. § 609.06).

In preparing the Memorandum Opinion, the Court overlooked Kueng’s June 29, 2020 Rule 9 Disclosure. As a result, those portions of the Memorandum Opinion from pages 40 and 43 quoted above do not accurately reflect the record. Instead, those paragraphs should read, and are hereby revised and corrected to read, as follows:

As to p. 40, the revised paragraph is:

Finally, none of the Defendants has filed notice of any defense that is antagonistic to the defenses of any of the other Defendants. All Defendants have all filed written notices of their anticipated defenses, indicating that they intend to defend their conduct as the use of force expressly authorized for police officers under Minnesota law, Minn. Stat. § 609.06 subd. 1(1), and that the force used was reasonable force expressly authorized for police officers under Minnesota law, Minn. Stat. § 609.066. *See* Kueng Rule 9 Disclosure (June 29, 2020); Thao Notice of Defense (Aug. 28, 2020); Chauvin’s Rule 9 Disclosure (Oct. 23, 2020); Lane’s Rule 9 Disclosure (Oct. 23, 2020).

As to p. 43, the revised paragraph is:

Although Kueng argues that he, Lane, and Thao “are likely to argue that Chauvin caused Floyd’s death and that [he and Lane and Thao] were merely present,” Kueng did not expressly seek to blame Chauvin in his Rule 9 disclosure nor does he explain how his intended defense that he did not know that Chauvin was committing a crime and that he did not intend his presence or actions to further a crime is antagonistic or inconsistent with Chauvin’s.

Footnote 27 should be deleted in its entirety.

BY THE COURT:

Peter A. Cahill
Judge of District Court