

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal
Court File No. 27-CR-21-7460

Plaintiff,

vs.

**STATE'S MOTION TO RECONSIDER
SEQUESTRATION REGARDING
AUBREY WRIGHT**

Kimberly Ann Potter,

Defendant.

TO: The above-named defendant and defendant's counsel, Earl Gray, 1st Bank Building, 332 Minnesota Street, Ste. W1610, St. Paul, MN 55101; Paul Engh, Ste. 2860, 150 South Fifth Street, Minneapolis, MN 55402.

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that the State hereby moves the Court to reconsider its pretrial order sequestering Aubrey Wright from the courtroom and precluding him from viewing the trial before he testifies. *See State v. Papadakis*, 643 N.W.2d 349, 356 (Minn. Ct. App. 2002) (“Although the rules of criminal procedure do not specifically authorize motions for reconsideration of omnibus rulings, the district court has the inherent authority to consider such a motion.”).

INTRODUCTION

On October 1, 2021, the State moved the Court to order sequestration of witnesses at trial with exceptions for specific witnesses. (State's Mot. Regarding Witness Sequestration, at 1). Among those was a request that the Court exempt Daunte Wright's father, Aubrey Wright, from any sequestration order. (*Id.* at 3). The State explained that Mr. Wright would be a witness for the limited purpose of providing spark-of-life testimony; he would not be providing, and the State

would not elicit through him, testimony pertaining to the incident in question. (*Id.*) The State did not indicate when it intended to call Mr. Wright as a witness.

On October 14, 2021, Defendant filed a memorandum responding to the State's pretrial motions which included a request that Daunte's parents be permitted to watch the trial only after they have testified. (Def. Response to the State's Mem. in Opp. and its Pretrial Mot., at 21). Defendant stated in her response that the State had suggested that both parents would be up first. *Id.* On October 27, 2021, the Court filed an order stating that the parents would be permitted in the courtroom after they testify. (Order on Mot. *in Limine*, at 3).

The State has never suggested that Mr. Wright would testify first. To the contrary, the State seeks to offer Mr. Wright's testimony towards the close of its case-in-chief. As such, the State respectfully requests that the Court reconsider its Order solely as to the sequestration of Mr. Aubrey Wright before he testifies.¹

MEMORANDUM OF LAW IN SUPPORT OF MOTION

This Court has inherent discretion over the sequestration of witnesses and may exempt certain witnesses from sequestration orders when that the presence of those witnesses would not be prejudicial to the accused. *State v. Garden*, 125 N.W.2d 591, 601 (Minn. 1963). And the Court may allow a specific witness to be present throughout trial when that witness does not have evidence to present on a central issue, such as the guilt or innocence of the accused or the defendant's identity or participation in the crime. *State v. Jones*, 347 N.W.2d 796, 802 (Minn. 1984); *Garden*, 125 N.W.2d at 601. Mr. Wright is precisely the type of witness contemplated by

¹ On Thursday, November 11, the undersigned sent Mr. Engh, counsel for Defendant, an email asking if Ms. Potter would agree to allowing Mr. Wright to be in the courtroom before he testifies. To date, the State has not received a response. Given the language of this Court's order and the proximity of the trial, the State believes it should file this motion now.

Jones and *Garden* and should be permitted to be present in the courtroom during the trial arising from his son's death, regardless of when he testifies.

As noted in the State's original motion, Mr. Wright is a victim in this matter and should be recognized as such. Minn. Stat. § 611A.01(b) (defining "victim" to include the "family members" or guardian of the deceased). As a victim, Mr. Wright has a right "to be informed of and participate in the prosecution process." Minn. Stat. § 611A.02, subd. 2(5). This statutory right includes being permitted to participate in the process, including the trial. As a father who lost his young son, Mr. Wright has a strong interest in being present throughout the trial. Mr. Wright's role as a witness in this trial will be limited to providing spark-of-life testimony to share with the jury who his son Daunte was to him and who Daunte was as a human being. None of Mr. Wright's testimony will touch on the shooting or what occurred on April 11, 2021, nor will it touch on any central issue. Thus, hearing or observing any stage of trial before he testifies would have no influence on Mr. Wright's testimony. *See Jones*, 347 N.W.2d at 802; *Garden*, 125 N.W.2d at 601.

That the State seeks to call Mr. Wright as a witness near the end of its case-in-chief should not result in Mr. Wright's exclusion from the courtroom before his testimony. Courts are to afford "[p]articular deference . . . to the decisions of counsel regarding trial strategy." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). Which witnesses are called at trial and the order in which they are presented "are questions that lie within the proper discretion of the trial counsel" because counsel must have flexibility in how to represent its position and present its case. *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986).

Regardless of when the State decides to call Mr. Wright, he, as a victim, retains the important statutory rights under Minn. Stat. § 611A.02, subd. 2(5) noted above. And, because Mr. Wright's testimony will be narrowly focused on the life of his beloved son Daunte and not on

how his son was killed or other facts related to Defendant's guilt or innocence, there is little reason to exclude him from the courtroom. Allowing him to be present would cause no prejudice to Defendant whatsoever. The overarching purpose of witness sequestration "is to remove any possibility that a witness waiting to testify may be influenced consciously or subconsciously by the testimony of other witnesses." *State v. Miller*, 396 N.W.2d 903, 906 (Minn. Ct. App. 1986). Excluding Mr. Wright from participating in and viewing the trial does nothing to serve this purpose where, as here, Mr. Wright's testimony would be unrelated to that of other witnesses. Mr. Wright's statutory right to participate in the proceedings and his strong interest in doing so should be recognized and, since there is no valid competing interest, should prevail.

CONCLUSION

For the reasons stated above, the State respectfully requests that the Court reconsider its order sequestering and excluding Daunte's father, Aubrey Wright, from watching this trial before he testifies. The State respectfully requests that Mr. Wright be permitted to be present for, and to watch, the trial before and after his testimony.

Dated: November 18, 2021

Respectfully submitted,

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