

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

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

State of Minnesota,

Plaintiff,

**STATE'S MOTION REGARDING
WITNESS SEQUESTRATION**

vs.

Kimberly Ann Potter,

Defendant.

TO: The Honorable Regina M. Chu, Judge of District Court; 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 order that witnesses be sequestered during the trial with the following exceptions: (1) that Ms. Katie Bryant, Daunte Wright's mother; (2) that Mr. Aubrey Wright, Daunte Wright's father; (3) that lead case agent, Assistant Special Agent In Charge (ASAIC) C. Michael Phill of the Minnesota Bureau of Criminal Apprehension; and (4) that any expert witness retained by either party be permitted to attend throughout the duration of the trial, including any and all portions of the trial before and after they each testify.

MEMORANDUM OF LAW IN SUPPORT OF MOTION

While Minn. R. Evid. 615 allows either party to request that witnesses be sequestered, the trial court may exercise its discretion in the sequestration of witnesses. *State v. Jones*, 347 N.W.2d 796, 802 (Minn. 1984); *State v. Garden*, 125 N.W.2d 591, 601 (Minn. 1963); Minn. R. Crim. P.

26.03, subd. 8. The trial court may refuse to sequester certain witnesses if the witnesses' presence would not be prejudicial to the accused. *Garden*, 125 N.W.2d at 601. When the witness does not have evidence to present on a vital issue, such as the guilt or innocence of the accused or the defendant's identity or participation in the crime, the court may allow that witness to be present for other parts of trial. *Jones*, 347 N.W.2d at 802; *Garden*, 125 N.W.2d at 601.

A. Katie Bryant

As Daunte's mother, Ms. Bryant is a victim in this matter, as defined by the Minnesota Crime Victims' Rights Act. Minn. Stat. § 611A.01(b) (defining "victim" to include the "family members" or guardian of the deceased). Under Minn. Stat. § 611A.02, subd. 2(5), she has a right "to be informed of and participate in the prosecution process." Minn. Stat. § 611A.02, subd. 2(5). As such, she has a statutory right to participate in the process and a strong interest in being present for the trial. Ms. Bryant raised Daunte Wright and had a close relationship with her son. She spoke with him before he left the house on April 11, 2021, then again on the phone before and during the traffic stop, and had a video call with Daunte's girlfriend, A.A-P., after Defendant shot Daunte. Ms. Bryant then went to the scene. Ms. Bryant will provide testimony about Daunte's whereabouts during the day, her interactions with him immediately before and during the stop, her call after Daunte had been shot, and what she observed and experienced at the scene. The subject matter of Ms. Bryant's testimony will be limited in scope; while her testimony is relevant to the circumstances involved in the case, she will not testify to vital evidence regarding the defendant's actions and inactions that form the basis of her guilt. She will likely testify early in the State's case and her testimony is not likely to be influenced by that of any other witness. Thus, the Court should permit Ms. Bryant to be present for the trial.

B. Aubrey Wright

Likewise, as Daunte's father, Mr. Aubrey Wright is a victim in this matter under Minn. Stat. § 611A.01(b) and has a right "to be informed of and participate in the prosecution process" under Minn. Stat. § 611A.02, subd. 2(5). He too has a statutory right to participate in the process and has a strong interest in being present for the trial. Mr. Wright will be a witness in this case for the limited purpose of providing spark of life testimony. *See State v. Graham*, 371 N.W.2d 204, 207 (Minn. 1985) (homicide victims are "not just bones and sinews covered with flesh, but was imbued with the spark of life" so "[t]he prosecution has some leeway to show that spark and present the victim as a human being.") He will provide information about who Daunte was as a person. He had no personal knowledge of the facts pertaining to the shooting, nor would the State seek to offer any testimony to that effect from Mr. Wright. Given that Mr. Wright's testimony will be limited to describing his late son's life, and not about the facts of the traffic stop or shooting, hearing or observing any stage of trial before he testifies would have no influence on Mr. Wright's testimony. Accordingly, the Court should permit him to be present throughout the trial.

C. ASAIC C. Michael Phill

ASAIC Phill is the lead investigator on this case. Investigating agents "who were involved in the transaction being litigated ... can be essential to the trial process and should not be excluded." Minn. R. Evid. 615 advisory committee cmt. ASAIC Phill's role in this case differs from any other witness in that he collected, reviewed, and is familiar with all evidence in the case. His presence throughout the full trial or portions of trial may be necessary to assist the State with matters that may arise during trial.

D. Expert Witnesses

Experts who are “essential to advise counsel in the litigation can be essential to the trial process and should not be excluded.” Minn. R. Evid. 615 advisory committee cmt. Any experts retained by both parties in this case will, presumably, have fully reviewed and developed a familiarity with all the evidence in this case. Their expertise and analysis are essential to the parties who have retained them, and their opinions will be most helpful to the jury if they are based on complete and accurate understanding of the evidence and witness testimony presented at trial. The State asks that the Court exclude from sequestration any expert witnesses that may be retained by the parties in this case.

Because ASAIC Phill and the expert witnesses already have a comprehensive knowledge of the case and of the anticipated witness testimony, any concerns that may otherwise cause the Court to sequester witnesses do not apply to them. Thus, the Court should permit ASAIC Phill and any expert witness retained by either party to be present throughout the trial.

CONCLUSION

For the reasons stated above, the State respectfully requests that the Court order the sequestration of all witnesses at trial, with the exceptions noted above.

Dated: October 1, 2021

Respectfully submitted,

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/s/ Matthew Frank
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