

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-21-7460

State of Minnesota,

Plaintiff,

vs.

**MOTION FOR PRODUCTION
OF BRADY AND GIGLIO
MATERIALS**

Kimberly Ann Potter,

Defendant.

The Defendant, former Brooklyn Center Police Officer Kimberly Ann Potter, by and through her lawyers, Earl Gray and Paul Engh, and in accordance with Rule 9.01, Subd. 1(6), Minn. R. Crim. P., Brady v. Maryland, 373 U.S. 83 (1968), United States v. Agurs, 427 U.S. 97 (1976), Giglio v. United States, 405 U.S. 150 (1972), State v. Hunt, 615 N.W.2d 294, 299 (Minn. 2000), and State v. Williams, 593 N.W.2d 234 (Minn. 1999), moves the Court for an Order requiring the State to disclose both evidence impeaching and favorable to the defense.

1. We request disclosure of the decedent's family's interest in pursuing a civil action after the conclusion of this case, including the fee agreement, which is

not privileged, its date, and the specific identity of the lawyer or law firm representing those individuals who have expressed an intention to file a civil lawsuit against Officer Potter and the Brooklyn Center Police Department. See State v. Underwood, 281 N.W.2d 337, 341 (Minn. 1979)(mandating disclosure of planned or pending litigation and financial motive).

2. The State of Minnesota has engaged the services of Mr. Seth Stoughton, a purported use of force expert. We request all fee agreements and current billings. We are aware of Mr. Stoughton's hourly and daily rates, but not the ongoing totals.

3. We request information gathered by the prosecution, whether or not in a formal report, that is inconsistent, or impeaches, Mr. Stoughton's opinion that

A) Mr. Wright was unlikely to avoid later apprehension, if he had managed to escape on April 11, 2021;

B) Given Mr. Wright's pattern and conduct of flight from law enforcement, he was likely to attend Court hearings as required.

C) That given Mr. Wright's slight behavior, Officer Potter's use of her Taser was unreasonable and inconsistent with her training.

4. Mr. Wright's drug possession and/or use on or before April 11, 2021. Medical records indicate his ingestion of marijuana, but not quantity. Drugs were

also found within his passenger's body. We request evidence of whether those drugs were Mr. Wright's and whether he provided the same to his passenger shortly before his attempted arrest.

5. Evidence from interviews of the Officers on the scene, and in the opinion of Officers who have reviewed the video, that reflect Sgt. Johnson and Officer Luckey were at risk of substantial bodily harm if Mr. Wright had been allowed to drive away unimpeded.

6. Investigative summaries, reports, or opinions, as to the numerous and evident crimes Mr. Wright has committed, whether or not formally charged, particularly those concerning crimes of violence and flight from police.

7. Evidence of the training warnings referenced in the Amended Complaint. Specifically, that the Taser manufacturer required warnings, during training, that the officers involved could not sue that company for a malfunction or accident involving Taser usage. And whether those particular warnings have been misconstrued in the Amended Complaint.

8. Evidence that Officer Potter was not required, by her training, to use her left hand to draw her Taser, which was located on the left side of her duty belt.

9. Evidence that the Taser holster provided to Brooklyn Center Police Officers was reversible. We specifically request evidence that the right handed

police officer utilizing a Taser would and could use her right hand to pull the Taser holstered on the left side of her body. And evidence of training that the officer's dominant hand reaches for the Taser, no matter what side of the duty belt the Taser is located.

10. We request reports and documentation of Mr. Wright's purported gang affiliation.

11. Whether or not the State has this requested information in its offices in St. Paul is beside the point. Brady information must be sought out wherever it is. Williams, 593 N.W.2d at 234; Kyles, 514 U.S. at 432.

Dated: October 13, 2021

Respectfully submitted,

/s/ Paul Engh

PAUL ENGH #134685
Suite 2860
150 South Fifth Street
Minneapolis, MN 55402
612.252.1100

EARL P. GRAY #37072
Suite 1600W
First National Bank Building
332 Minnesota Street
St. Paul, MN 55101
651.223.5175

Lawyers for Officer Potter