

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

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

Plaintiff,

vs.

**STATE'S NOTICE OF INTENT TO
SEEK AN UPWARD SENTENCING
DEPARTURE**

Kimberly Ann Potter,

Defendant.

TO: The Honorable Regina M. Chu, 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.

PLEASE TAKE NOTICE THAT the State will seek an upward sentencing departure pursuant to Minn. Stat. § 244.10, Minn. R. Crim. P. 7.03, the Minnesota Sentencing Guidelines, *Blakely v. Washington*, 542 U.S. 296 (2004), and pertinent case law.¹ Specifically, the bases for the aggravated sentence are:

- 1) Defendant's conduct caused a greater-than-normal danger to the safety of other people, as she fired into a motor vehicle in which a passenger was present and two other officers were in close proximity while the vehicle was operational on a busy public street. After Defendant fired, the vehicle travelled down the street and struck an occupied vehicle heading in the opposite direction. *State v. Fleming*, 883 N.W.2d 790 (Minn. 2016); *see* Minn. Stat. § 244.10, subd. 5a(a), (c).
- 2) Defendant abused her position of authority, as she was a licensed police officer in full uniform who had seized Mr. Wright. *State v. Lee*, 494 N.W.2d 475 (Minn. 1992); *State v. Rourke*, 681 N.W.2d 35 (Minn. Ct. App. 2004).

¹ Consistent with the Court's scheduling order, a copy of this notice was previously provided to Defendant, through her counsel, on July 30, 2021.

Dated: October 6, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Matthew Frank
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