

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT

File 82-CR-19-2887

State of Minnesota,

Plaintiff,

vs.

Brian Jeffrey Krook,

Defendant.

**DEFENDANT’S REPLY TO
THE STATE’S RESPONSE
CONCERNING THE TESTIMONY
OF GLENN HARDIN**

The State argues that Mr. Hardin’s testimony “would not be helpful,” citing State v. Bahri, 514 N.W.2d 580 (Minn. Ct. App. 1994), rev. denied (Minn. June 15, 1994) and State v. Frank, 364 N.W.2d 398 (Minn. 1985). Both cases are factually inapposite.

In Frank, a sexual assault case, our Supreme Court emphasized the black letter rule that, “through extrinsic evidence,” the defendant is permitted to show the “other party’s witness was intoxicated at the time to which his testimony relates.” 364 N.W.2d at 400 (citations omitted). But because the victim in Frank had been cross examined as to what she drank and the impact it had, the holding was that the defendant does not “always have a right to have expert testimony admitted on the subject of excessive alcohol consumption by the victim as it

relates to her ability to withhold consent.” Id. at 399 (emphasis added).

In Bahri, another sexual assault case, the defendant likewise sought to admit expert testimony as to the victim’s intoxication levels. As in Frank, the victim was questioned about her consumption before a jury, and thus the defendant had “the opportunity to establish” the effects of alcohol on her perception of what occurred. Hence there no abuse of discretion the barring the proposed expert testimony. 514 N.W.2d at 583.

Mr. Evans saw to it that he would not be with us. Thus we cannot, obviously, cross-examine him about the number of drinks he consumed, and the impact of his gross and intentional intoxication. While it may be true many of the jurors have a “general understanding” of the effects of alcohol, State’s Brief at p. 1, few will have independent knowledge of the consumption required to reach a level of .204 BAC. Mr. Evans had the equivalent of 8.9 drinks in his blood stream at the time of death, having consumed 14.6 to 20.4 drinks during the day to reach that level. Hardin Report at p. 4. Mr. Hardin’s testimony as to the number of drinks required to reach that level, taking into account burn off rates, is consistent with our theory of defense. The effects of that level alcohol on an individual’s thought process and conduct at that BAC level will corroborate what the officers on the scene were seeing that night, namely an impaired and dis-inhibited individual, who lacked social functioning and attendant judgment, who would not

follow repeated orders to disarm, who was more than an apparent danger to the officers and community, and who caused his own death.

Mr. Hardin’s literature-based opinion is “scientific” and will “assist the trier of fact to understand the evidence,” Rule 702, Minn.R.Evid.

Dated: March 4, 2020

Respectfully submitted,

/s/ Paul Engh

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