

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Vs.

Mohamed M. Noor,

Plaintiff,

Defendant

**THIRD SET NOTICE OF MOTIONS
AND MOTIONS IN LIMINE**

Court File No.: 27-CR-18-6859

NOTICE OF MOTIONS

PLEASE TAKE NOTICE that on March 29, 2019 at 9:00 AM, or as soon thereafter as counsel may be heard, before the Honorable **KATHRYN L. QUAINANCE**, Judge of District Court, Defendant, by and through attorney Thomas C. Plunkett and Peter B. Wold, will make the following Motions In Limine:

MOTIONS

The Defendant, through his undersigned counsel, moves the Court for an Order:

1. Excluding all testimony regarding policies pertaining to use of body worn cameras (BWC) or alternatively limiting testimony about BWC policy to a statement of what the policy for the Minneapolis Police Department was on July 15, 2017 without argument or inferences that the policy was or was not followed.

It appears that the State will elicit opinions from testifying witnesses about the Minneapolis Police BWC policy and whether it was followed by Officer Noor, Officer Harranty and others. Allowing this line of questioning allows the State to present improper 404 (b) evidence that has no relevance to any issue before this jury. It creates an irrelevant

sideshow about police policies and interpretations of policy which are not relevant. It is another attempt by the State to suggest that Officer Noor was categorically unobjective in carrying out his duties.

2. Preventing testimony from other officers regarding their experiences with persons slapping, striking or approaching cars and/or their opinions about is case.
3. Preventing the State from eliciting testimony suggesting a blue line of silence, blue wall of silence, blue code or blue shield to include eliciting questions about Officers' communications with the Minneapolis Police Federation in anticipation of meeting with the County Attorney or Officers' decisions not to voluntarily meet with the County Attorney.
4. Excluding any testimony regarding pending administrative or employment related matters for Officer Noor or Harrity to include any reference to Office of Police Conduct policy violation investigations, specific complaints, investigations related to complaints or the conclusions/decisions regarding complaints or employment actions. Any investigations or decision on these issues would be based on a lower burden of proof and lesser due process protections than in a criminal case. This testimony would tend to confuse the jury and be unduly prejudicial to Officer Noor. Further, it is another improper use of 404 (b) evidence.
5. An instruction to the jury informing them that they can accept as fact that Ms. Justine Ruszczuk's finger prints were found on the squad car in the course of the investigation.

In the early morning hours of July 16, 2017, a BCA forensic team began processing Officer Harrity and Noor's squad car. When the forensic team completed their work the incident commander, a Minneapolis Police Sgt., was informed by the BCA that the car would be returned to the Minneapolis Police Department. The incident commander reports

voicing their objection to the BCA and informing the BCA Agent that this should not happen because the car will be washed and returned to service. Ultimately the car was returned to the MPD who washed the car and returned it to service. On August 31, 2017 Counsel sent a preservation letter to the BCA which stated:

This letter is to inform you that I am directing that the squad car in involved in this matter be preserved and not tampered with as the BCA investigation into the death of Ms. Justine Ruszczyk Damond continues. This direction is given to allow the defense an opportunity to review this crucial piece of evidence in as near a state as possible to the time of the event for the purpose independently examining the evidence. This includes assuring that the exterior is protected from the elements. It came to my attention in a recent news article that the Hennepin County Attorney's Office is anticipating some delay in making a decision on this matter, so I am sending this letter now to assure that no evidence is dissipated or spoiled between now and the end of the investigation and eventual review by the Hennepin County Attorney.

Unfortunately, the evidence had already been destroyed by the State of Minnesota.

Subsequent analysis of fingerprint evidence by the BCA showed fingerprint evidence on the "side driver quarter panel" and the "driver door" that was "Inconclusive to Ruszczyk, due to the limited quality and quantity of information in the latent print." The defense was not given an opportunity to have an independent expert examine the squad for additional fingerprint evidence or properly examine the processes used to collect evidence.

The Defense relies on both Due Process/Confrontation and Spoliation.

Due Process:

The Defense relies on *State v. Hawkinson*, 829 N.W.2d 367 (Minn., 2013). *Hawkinson* outlines the analysis under both *Brady v. Maryland* and *Arizona v. Youngblood* for governmental destruction of evidence. The difference being that *Youngblood* adds a bad-faith component to the analysis in cases where the evidence destroyed by the State lacks apparent and material exculpatory value. See *State v. Hawkinson*, at 372. In this

case the defense argues that the *Youngblood* bad-faith requirement is not appropriate because the State's misconduct constitutes a *Brady* violation. Regardless of the Standard applied, the facts support a bad-faith finding because, in the face of the incident commanders' efforts to prevent the BCA from destroying evidence and telling the BCA to retain the evidence, the BCA chose to cast off irreplaceable evidence. This is not mere negligence on the part of the BCA because the decision to destroy evidence was volitional in the wake of the incident commander's input.

Spoliation:

If the Court is not inclined to grant relief based on Confrontation, the defense asks this Court to consider this instruction as an appropriate sanction based on spoliation of evidence. An appropriate sanction for spoliation of evidence may be a negative inference instruction. See *Wajda v. Kingsbury*, 652 N.W.2d 856 (Minn. 2002).

In *Wajda* a police department did not retain a 911 tape which would have illustrated whether a squad car had its emergency lights and siren on at the time of an accident. In *Wajda* the trial court instructed the jury that they can assume the missing tape would show the police siren was not activated at the time of the accident. It is important to note that bad intent and malfeasance are not a part of this analysis.

Respectfully submitted,

Dated: March 14, 2019.

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