Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

State of Minnesota, Plaintiff, vs. **MOHAMED MOHAMED NOOR,** Defendant.	)	**STATE'S RESPONSE TO DEFENDANT'S THIRD MOTIONS IN LIMINE** MNCIS No: 27-CR-18-6859

* * * * * * * *

TO: THE HONORABLE KATHRYN QUAINTANCE, HENNEPIN COUNTY DISTRICT COURT JUDGE; COUNSEL FOR DEFENDANT; AND DEFENDANT.

INTRODUCTION

The defendant is charged with second degree intentional murder (Count 1), third degree murder (Count 2), and second degree manslaughter (Count 3). His trial is set for April 1, 2019. The trial court's scheduling order required all pretrial motions to be filed by February 15, 2019, so that motions could be decided in advance of the trial. The court held a hearing and ruled on those motions, except for the State's motion to exclude or limit the expert testimony of defense witness Emanuel Kapelsohn, on March 1, 2019. After granting the State's request for a hearing on its expert witness motion, the defense filed a motion on March 8, 2019, requesting a pretrial hearing on the State's experts' qualifications. The State twice requested a hearing to oppose the defense's untimely motion, but the court did not respond to these requests. The State previously objected on the record both at the in-chambers scheduling conference on February 28, 2019 and at the motion hearing on March 1, 2019 to the defense submitting evidence to the court including Mr. Kapelsohn's report, resume, and an email he sent to defense counsel outside of that expert hearing.

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

The court did not receive the evidence on those dates, but the defense emailed it to the court anyway on March 6, 2019.

The court then issued an amended scheduling order on March 13, 2019 permitting additional motions as long as they were filed by March 15, 2019. The State amended its expert motion and filed one new motion resulting from the parties' recent inability to agree on a method for admitting the defendant's body worn camera (BWC) video into evidence. The defendant filed five new motions, resulting in a total of six now filed beyond the court's February 15, 2019, deadline.

The defendant received full discovery by June 1, 2018, and since then has only received supplemental or trial-preparation discovery. By contrast, the State received most of its discovery, including the defendant's expert report, from the defendant on January 11, 2019. The State's responses to the defense's latest motions follow.

RESPONSES AND ARGUMENT

1. THE STATE OPPOSES THE DEFENDANT'S MOTION TO LIMIT TESTIMONY REGARDING THE BODY WORN CAMERA POLICY OF THE MINNEAPOLIS POLICE DEPARTMENT ON THE DATE OF THE OFFENSE.

Neither the defendant nor Officer Harrity's BWCs were turned on when the defendant shot and killed Ms. Ruszczyk. The evidence will show that MPD's BWC policy at the time gave officers discretion on when to activate their BWC depending on the type of the call, what type of interaction the officer might expect to have with citizens or perpetrators during the call, and whether evidence might be captured by the camera.

The defendant and Officer Harrity's understanding of this policy is critical evidence. It illuminates each of their mindsets as they entered Ms. Ruszczyk's alley and shows what they expected to encounter. The fact that they did not turn on their cameras shows that they expected

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

to encounter no one and had no intention of making contact with the 911 caller. It also shows that they did not think this was a particularly serious call. This evidence will stand in stark contrast to any assertion that it was necessary to have their guns drawn, or that either of them experienced anything that would have made it justifiable to use deadly force. Both officers knew they had to turn their cameras on *after* the defendant shot Ms. Ruszczyk, so they obviously knew the evidentiary value of those recordings at that time.

The evidence will also show that responding officers from MPD turned their cameras on and off at will at the scene for various reasons and based on their interpretations of the policy. Discussion of what took place in the immediate aftermath of this officer-involved shooting and how it was investigated in those crucial early hours is highly probative evidence either captured by, or missing from, the BWC videos. Most notably, the defendant's statement to his supervisor on the scene about why he shot and killed Ms. Ruszczyk was lost because the supervisor had turned her camera off as she did two other times at the scene. Whether the officers' interpretation of the BWC policy was correct from an employment standpoint is not the issue, nor is it the reason the evidence will be offered. Rather, it is necessary to put the BWC videos into context for each officer who responded to the scene who was wearing a camera. The evidence of the MPD BWC policy on July 15, 2017 is not Minn. R. Evid. 404(b) evidence as the defendant claims. The defendant is not being prosecuted for failing to turn his BWC camera on or violating MPD policy, he is being prosecuted for unjustifiably and unreasonably using deadly force to kill a 911 caller. The fact that he did not have his BWC turned on before he did that shows that he was not experiencing fear or was in a state of so-called "heightened alert."

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

2. THE STATE OPPOSES THE DEFENDANT'S MOTION TO LIMIT TESTIMONY FROM OFFICERS REGARDING THEIR EXPERIENCES WITH CITIZENS APPROACHING OR TOUCHING THEIR SQUAD CARS.

At the time of this murder, the defendant was a Minneapolis police officer, a status that permitted him to legally use deadly force and therefore provides a specific defense to these charges. The fact that the defendant and the State intend to call use-of-force experts shows that both sides understand that there are some aspects of police work that are outside the average juror's experience. *See* Minn. R. Evid. 702. In a similar vein, there will be significant testimony in this case about how 911 and police calls work, how they are communicated to police officers, the difference between radio and computer dispatch, what various police codes mean, and numerous other relevant topics outside the average juror's knowledge. Testimony from officers about the ways police respond to certain calls and the manner in which reasonable officers encounter citizens—whether it is by phone, in person, by being flagged down, or by having citizens approach them on foot while they are in their squad cars—is relevant. The defendant wants it both ways; he intends to claim he was acting as a reasonable police officer when he shot and killed an unarmed 911 caller looking for his help and simultaneously keep the jury from hearing the common experience of officers who will describe similar events occurring as a regular part of police work. Those police officers have never killed an approaching citizen.

It is also significant that Officer Harrity testified at a prior proceeding that "no one came out to flag us down" and "no one asked us for assistance," when in fact, the evidence proves that Ms. Ruszczyk did both of those things. Evidence that people commonly walk up to squad cars to make contact with police officers proves the unreasonableness of the defendant's actions and Officer Harrity's prior testimony. The State is willing to provide an offer of proof as to which officers, including the experts, would be offering such testimony about police work. Other than

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

the experts, the State will not ask any officers for an opinion about the manner in which Ms. Ruszczyk, in particular, approached the car on July 15, 2017. Finally, the issue of the frequency of people, including officers and civilians, approaching and touching squad cars is relevant to the fingerprint evidence, or lack thereof, in this case. *See* number 5, *infra.*

3. EVIDENCE OF AN OFFICER'S BIAS IS RELEVANT TO CREDIBILITY AND THE STATE SHOULD BE PERMITTED TO ARGUE ALL LEGITIMATE INFERENCES FROM SUCH EVIDENCE.

Here, the defendant appears to be arguing to exclude testimony related to the Minneapolis Police Federation advising officers not to cooperate with the Hennepin County Attorney's Office prior to and during the 2018 grand jury proceedings in this case. It is not clear how the activities of the federation leadership at that time would be relevant in this case. What is relevant, however, is any bias an officer *from any agency* shows in his or her testimony. Minn. R. Evid. 616; *State v. Waddell*, 308 N.W.2d 303 (Minn. 1981) (holding bias is not a collateral matter and may be established by extrinsic evidence).

The jury should question the credibility of any officer's testimony if he or she demonstrates an unwillingness to give full or truthful testimony because of a bias toward police. Similarly, the behaviors and statements of particular officers and investigators at the crime scene and during the investigation that demonstrate bias are relevant to show how and why certain evidence was or was not acquired or preserved. This evidence will also show how an investigation of an officer-involved homicide differs from one involving ordinary citizens, and the special procedures that apply to the police in these cases generally and this case specifically.

As for restricting the State from using particular phrases in its examination of witnesses and arguments such as "blue line of silence, blue wall of silence, blue code, or blue shield," if the evidence suggests pro-police bias that affects the evidence in the case, the State should be

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

permitted to argue that in any way consistent with the evidence without any restriction on the terminology used to do so.

4. THE STATE HAS MADE NO MOTION TO ADMIT EVIDENCE OF THE DEFENDANT'S ADMINISTRATIVE OR EMPLOYMENT CONSEQUENCES UNDER RULE 404(B).

The State does not intend to elicit evidence about any employment-related consequences related to this shooting with the following exceptions: The fact that both officers were put on paid administrative leave is relevant to the policies governing officer-involved shootings by the MPD. The fact that Officer Harrity returned to work is relevant in establishing his background and experience. The fact that the defendant is no longer employed by MPD is also relevant and will serve to answer a question jurors will surely have. Beyond that, the State was not a party to and has no information regarding the investigation or events that led to the defendant's dismissal from MPD and does not intend to elicit it at trial.

5. THE COURT SHOULD DENY THE DEFENDANT'S UNTIMELY MOTION TO GIVE AN ADVERSE JURY INSTRUCTION THAT MS. RUSZCZYK'S FINGERPRINTS ARE ON THE SQUAD CAR.

As an initial matter, this motion clearly concerns a matter of law which should have been raised by the February 15, 2019 deadline. Not only has the defendant had full discovery of all matters pertaining to Squad 560 for nearly one year, he has also submitted proposed jury instructions from which this requested instruction was notably absent. The fact that he waited until two weeks before the start of trial to bring this motion shows that he does not consider it a serious issue. In any event, the motion misrepresents the facts and overstates the significance of the return of Squad 560 to MPD.

The defendant concedes "the forensic team completed their work" before Squad 560 was returned to MPD, but minimizes the specific work they did. The BCA crime lab extensively documented the entire crime scene and processed the full exterior of Squad 560 for fingerprints.

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

In fact, law enforcement grew concerned that the BCA crime lab technicians were so painstaking that the sun would come up and crowds would gather before they finished their work. The BCA crime lab was at the crime scene for nearly seven hours. These facts are notably absent from the defendant's emailed submissions to the court.

The defendant absolutely misstates the evidence when he alleges that the incident commander at the scene was "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." The evidence at trial will show that the incident commander did *not* say that to the BCA agents at the scene, made no mention of that in her report or subsequent BCA interview, and did not say that when she testified at the grand jury, where she specifically *denied* "voicing her concern."[1] In fact, the sergeant's total *lack of concern* about the car being returned to MPD was fully demonstrated by her immediate directive to a patrol officer to have it washed before it was returned to the precinct. Ironically, the reason she wanted it washed was because it had fingerprint powder all over it. These facts—deliberately ignored by the defendant in his motion—show that the BCA's decision to return the car was not "volitional in the wake of the incident commander's input" as he alleges.

Most importantly, the BCA fully processed the car for fingerprints at the scene. This is how crime lab technicians always test for prints. They dust for latent prints, lift them, and then analyze the prints at the lab. When a car is broken into on the street and a print is found on the window, the crime lab does not tow the victim's car; it lifts the print and takes it to the lab. At a residential burglary scene, technicians take prints from windows, walls, furniture, and appliances. They do not seize the house.

[1] The sergeant testified, "I voiced my concern. I didn't – I shouldn't say 'voice my concern.' I wanted to make sure they didn't want it because if we took it, it was going back into service."

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

To show that the BCA's decision to return Squad 560 to MPD constitutes a due process violation, the defendant must show that it was done in bad faith. *State v. Hawkinson*, 829 N.W.2d 367, 372 (Minn. 2013) (citing *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988)). "Bad faith" in this context means that either (1) the State purposefully destroyed the evidence to hide it, or (2) the State failed to follow normal practices in destroying the evidence. *Id.* at 373-74 (citing *State v. Ture*, 632 N.W.2d 621, 626, 629 (Minn. 2001)). A defendant's boiler plate letter requesting to preserve potentially useful evidence does not negate the bad-faith component of the due process analysis. *Hawkinson*, 829 N.W.2d at 376.

As for the first prong of *Hawkinson*, there is no evidence that the BCA returned the car in order to purposefully destroy evidence. The defendant alleges that the BCA deviously refused to take the car in the face of MPD's vehement protests, but it was MPD who washed the car based on the directive of the very sergeant who the defendant now falsely claims protested the return of the car. Moreover, the evidence at trial will show that there is no reason to think the BCA had any desire to destroy evidence that might help the defendant. More specifically, the evidence will demonstrate that while the allegation that Ms. Ruszczyk "slapped" the car was most likely concocted by law enforcement personnel at the scene looking for an explanation for this inexplicable homicide, the BCA was aware of this allegation. The BCA knew it was important to look for evidence that Ms. Ruszczyk might have touched the car, and they did.

The second prong of *Hawkinson* is also satisfied because the State followed normal practices in examining the car for fingerprints. The fact that the squad was returned to MPD does not affect the fingerprint analysis in the slightest. As stated earlier, it is the common and accepted practice of crime lab personnel to dust surfaces for prints, take those prints back to the lab, and

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

make comparisons there. The BCA's decision not to take the car was not a deviation from standard practice.

While it is true that the defendant did not have an opportunity to examine the squad car before it was returned to MPD (which happened eight months before he was charged with a crime), he cannot demonstrate prejudice because the BCA fully and completely analyzed the squad for fingerprints before returning it. The fact that the defendant's attorney did not have access to a fully preserved crime scene eight months after the crime is not unique to this case. In cases ranging from shoplifting to murder, stores are reopened, houses are released back to their owners, apartments are rented to new tenants, streets and alleys are reopened, and what was once a crime scene returns to normal use. The important question is what was preserved and analyzed, not for how long. It cannot be overstated that the defendant has had full knowledge of these facts for nearly one year, has made no request to review or retest any fingerprint evidence, and raises this issue for the first time two weeks before trial. This demonstrates just how disingenuous this motion is.

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney

By: _____
AMY E. SWEASY (26104X)
Assistant County Attorney
C-2100 Government Center
Minneapolis, MN 55487
Telephone: (612) 348-5561

Filed in District Court
State of Minnesota
3/20/2019 9:10 AM

By: _____
PATRICK R. LOFTON (0393237)
Assistant County Attorney
C-2100 Government Center
Minneapolis, MN 55487
Telephone: (612) 348-5561

Dated: March 20, 2019