

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Derek Michael Chauvin,

Defendant.

**STATE'S MEMORANDUM OF
LAW OPPOSING DEFENDANT'S
MOTION TO EXCLUDE
TESTIMONY OF PROFESSOR
SETH STOUGHTON**

Court File No.: 27-CR-20-12646

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendant; Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431.

INTRODUCTION

On April 11, 2021, Defendant notified the Court and the State that he intends to file a motion to exclude wholesale the expert testimony of Professor Seth Stoughton, an expert identified by the State in December 2020, as cumulative. In the alternative, Defendant seeks to exclude the testimony of Professor Stoughton on matters the State disclosed to the defense on April 9, 2021—specifically, testimony regarding the claim raised by the defense during cross-examination that the body-worn camera evidence showed that George Floyd said he “ate too many drugs” while being restrained by Defendant. Defendant has asked the Court to hear these motions the same morning as Professor Stoughton is scheduled to testify—even though the State first disclosed that Professor Stoughton would testify *four months ago*.

The State strongly opposes both motions. Professor Stoughton should be allowed to testify regarding Defendant's use of force and the body-worn camera evidence, and his testimony is not

cumulative of the other testimony proffered to date. The State anticipates that Professor Stoughton's testimony will be quite short, and will not materially delay the trial.

First, Professor Stoughton's testimony should not be excluded as cumulative for multiple independent reasons. His testimony will differ in several critical respects from the testimony of the State's only other retained use-of-force expert, Sergeant Jody Stiger, as well as from the testimony of Minneapolis Police Department police officers the State has called to date. Professor Stoughton teaches at the University of South Carolina Law School and is an academic expert on the use of force. He has written extensively on the use of force by police officers, and has served as an expert witness in numerous cases. He will provide an academic, scholarly perspective on Defendant's use of force that differs from the perspective offered by the police witnesses who have testified thus far. His testimony will also address national standards governing the use of force, and will address specific aspects of Defendant's restraint that have not yet been addressed in detail by other witnesses. And his expert testimony will address whether the body-worn cameras show that George Floyd said he "ate too many drugs" while being restrained by Defendant, and will discuss the "perceptual and cognitive limitations" that affect the interpretation of body-worn camera evidence. Supplemental Expert Report of Seth W. Stoughton 3 (Apr. 9, 2011). Because Professor Stoughton has a "very different background[]" from other witnesses who have testified, will "focus[] on national policing standards," and will offer "differe[nt]" testimony from other witnesses in several other respects, his testimony is not needlessly cumulative, and so should not be excluded under Rule 403. *State v. Noor*, 955 N.W.2d 644, 664 (Minn. App. 2021), review granted (Mar. 1, 2021).

Excluding Professor Stoughton's testimony at this late date would also unduly prejudice the State. The State already informed the jury in its opening statement that it would call Professor

Stoughton, and the State planned its direct and redirect examination of other witnesses on the assumption that Professor Stoughton would be available to testify. The State designed its case-in-chief this way with good reason: At no point before this weekend did Defendant ever object to Professor Stoughton's testimony on cumulativeness grounds (or any other ground). Indeed, the State disclosed that it had retained Professor Stoughton over four months ago, and disclosed his expert report over two months ago. But Defendant waited until *the day before* Professor Stoughton's testimony to raise an objection to his testimony. Preventing the State from calling one of its two retained experts on the use of force, particularly at this late date when the State is near the end of its case-in-chief, would also unduly hamper the State's ability to effectively prosecute this matter. Successful prosecutions of police misconduct are rare, and the State bears the heavy burden of proving beyond a reasonable doubt that Defendant's use of force was unreasonable. That is why the State has called numerous witnesses with different backgrounds and perspectives to explain why Defendant's use of force was unreasonable in this case. Nothing about that approach is needlessly cumulative. Quite the opposite. That approach is essential for the State to be able to successfully prosecute its case against Defendant. The Court should therefore deny Defendant's motion to exclude Professor Stoughton's testimony as cumulative.

Second, the Court should not exclude the testimony of Professor Stoughton on matters the State disclosed on April 9, 2021. This past week, for the first time, defense counsel suggested in cross-examination that the body-worn cameras showed that George Floyd said "I ate too many drugs" while he was being restrained by Defendant. The State promptly consulted with Professor Stoughton, whose academic research on police uses of force includes "the potential benefits of [body-worn-camera] technology and the perceptual and cognitive limitations that can affect the interpretation of video evidence." Supplemental Expert Report 3. On Friday, the State disclosed

a supplemental report in which Professor Stoughton explains that “a viewer’s interpretation of Mr. Floyd’s statement may be affected by audio pareidolia.” *Id.* at 4. Audio pareidolia is “the tendency to perceive meaningful forms in suggestive configurations of ambiguous stimuli.” *Id.* (internal quotation marks and citation omitted). Thus, an “individual who is ‘primed’ to anticipate a particular interpretation is significantly more likely to adopt the anticipated interpretation than is an ‘unprimed’ individual, even if that interpretation is incorrect.” *Id.* at 4-5.

Professor Stoughton should be allowed to present that testimony to the jury. The State timely disclosed Professor Stoughton’s supplemental report. Professor Stoughton is an expert on police body-worn camera technology and on the limitations of body-worn camera footage in evaluating officers’ uses of force: His research and academic writing on the subject has been cited extensively, and he serves as a subject-matter expert on body-worn cameras for numerous legal and professional organizations. And his testimony is relevant and plainly helpful to the jury, as it will aid the jury in determining whether Mr. Floyd said that he “ate too many drugs,” or whether he instead said that he “ain’t do any drugs” or that he “ain’t do nothing to deserve this.” The Court therefore should not exclude the testimony the State disclosed on April 9.

In short, the Court should deny Defendant’s motion and allow Professor Stoughton to testify as an expert witness as part of the State’s case-in-chief.

STATEMENT OF FACTS

Under this Court’s scheduling orders, the State was required to disclose the identities of its experts by December 1, 2020, and any expert reports by February 1, 2021. *See* Notice of Defenses and Expert Witness Disclosure Deadlines 1 (Oct. 8, 2020); Order Regarding Discovery, Expert Witness Deadlines, and Trial Continuance 4 (Jan. 11, 2021). The State met those deadlines for all experts—including Professor Seth Stoughton and Sergeant Jody Stiger.

The Court also required the parties to file motions in limine by February 8, 2021. On that date, Defendant filed 37 separate motions in limine. *See* Def.’s Mot. in Limine (Feb. 8, 2021). Defendant objected to the testimony of one of the State’s medical experts, Dr. Sarah Vinson. But Defendant did *not* object to the testimony of Professor Stoughton or Sergeant Stiger.

In its opening statement, the State informed the jury that it would hear from both Professor Stoughton and Sergeant Stiger. Once again, Defendant did not object to that testimony.

On April 7, when cross-examining Sergeant Stiger, defense counsel played a short video clip from Officer Kueng’s body-worn camera. After Sergeant Stiger said he could not make out what George Floyd had said in the clip, defense counsel played the clip a second time and asked: “Does it sound like he says, ‘I ate too many drugs?’ ” and played the clip a second time. Later that day, defense counsel again played the same snippet when cross-examining Senior Special Agent James Reyerson. Once again, defense counsel asked the same suggestive question. Although Special Agent Reyerson initially agreed with defense counsel when he watched the clip for the first time, he later testified on re-direct that Mr. Floyd more likely said that he “ain’t do any drugs.”

On April 9, the State disclosed a supplemental expert report from Professor Stoughton. That supplemental report addresses the limitations of body-worn camera evidence in relation to whether the body-worn cameras show that George Floyd said the phrase “I ate too many drugs.”

On April 11, defense counsel informed the Court and the State that he would move to exclude all of Professor Stoughton’s testimony as cumulative and, in the alternative, to exclude Professor Stoughton from testifying regarding the topics covered in his supplemental report.

ARGUMENT

I. Professor Stoughton’s Testimony Should Not Be Excluded As Cumulative.

Rule 403 provides that “evidence may be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403 (emphasis added). As the Minnesota Supreme Court’s Rules of Evidence Advisory Committee Comment explains, this “rule favors the admission of relevant evidence” by setting a high bar for exclusion. Minn. R. Evid. 403 Comm. Cmt (1977). It does so “by requiring a determination” that the probative value of evidence is “substantially” outweighed “by the dangers listed in the rule before relevant evidence will be excluded.” *Id.*

With respect to exclusion based on the “needless presentation of cumulative evidence,” Minn. R. Evid. 403, evidence is typically excluded if it “only indirectly tend[s] to establish minor issues” or “indirectly touches on major issues that have already been firmly established by direct evidence or otherwise.” 11 Minnesota Practice, Evidence § 403.01 (4th ed.). By contrast, evidence is unlikely to be cumulative where it speaks to “a central issue” in, or “an important, powerful, and distinct part” of, a case. *Bobo v. State*, 820 N.W.2d 511, 518 (Minn. 2012). Testimony is by definition not cumulative if it is the “only evidence offered” on a “specific issue,” or if the additional testimony provides corroboration for a fact from a witness that the jury may find more trustworthy. *State v. Penkaty*, 708 N.W.2d 185, 203 (Minn. 2006) (“In this context, corroboration of this testimony about Knight’s prior acts of violence with testimony by police officers who had no personal interest in the case was not cumulative.”). As one leading evidence treatise puts it, “[n]ot all evidence that is duplicative is therefore cumulative, and evidence should not be excluded

on this ground merely because it overlaps with other evidence.” Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 4:15 (4th ed. 2020).¹

Applying those principles, the Court of Appeals recently held in *State v. Noor* that the district court did not err in allowing the State to offer the testimony of two experts on the use of force. 955 N.W.2d at 663. The Court of Appeals explained that testimony from two experts who agreed that an officers’ “use of deadly force was inappropriate” was not needlessly cumulative and was properly admitted under Rule 403 because the two experts had “very different backgrounds,” “much of their testimony differed,” and “one expert’s testimony focused on national policing standards, [while] the other expert’s testimony focused on Minnesota’s policing standards.” *Id.*²

Based on those principles, Professor Stoughton’s testimony should not be excluded as cumulative. There is no dispute that his testimony is relevant to whether Defendant’s use of force was reasonable. And that testimony is not needlessly cumulative of the testimony of other

¹ The treatise explains:

[A] single witness on an important point might not be persuasive, while two, three, or five witnesses might be: The corroborative force of overlapping testimony can be important in persuading juries, and multiple witnesses may be more persuasive because they reinforce each other and bring to bear different perspectives or experiences, and testimony from multiple sources about the same event is likely to differ in ways that are helpful to the factfinder. Of course the credibility of multiple witnesses may vary, and one witness might be rejected because of bias or something else, while others testifying to the same points might be accepted as persuasive. In short, sometimes it is reasonable for a party to insist that “one witness is good, but two or three will make my case much stronger, even though all will testify in a similar vein.” When proof offered on a point is different in character or persuasive impact from other proof, the former is not merely cumulative of the latter.

Mueller & Kirkpatrick, *supra* § 4:15.

² In *Noor*, in addition to the two use-of-force experts who testified for the State, Chief of Police Medaria Arradondo and Lieutenant Richard Zimmerman also testified.

witnesses. Indeed, the probative value of that testimony is not “substantially outweighed” by the danger of “needless presentation of cumulative evidence” under Rule 403 for at least six reasons.

First, Professor Stoughton’s testimony is different from the testimony of other witnesses because he will provide an academic, scholarly perspective on the use of force by Defendant in this case. To date, the State has called several police officers from the Minneapolis Police Department (MPD). These police witnesses have testified to various aspects of the investigation into Mr. Floyd’s death, MPD policy, and Defendant’s training. The State has also called a retained expert, Jody Stiger, who is a Sergeant with the Los Angeles Police Department. Sergeant Stiger provided testimony regarding the *Graham v. Connor*, 490 U.S. 386 (1989), factors from the perspective of a practitioner and experienced defensive tactics trainer who has had years of experience as a police officer. None of these witnesses, however, have provided a scholarly or academic opinion on the reasonableness of Defendant’s use of force in this case.

Professor Stoughton’s testimony is therefore different in kind from the testimony of other witnesses the State has called. Professor Stoughton will testify as a scholar who has extensively studied the use of force by police officers, and who has written a book and numerous scholarly articles and publications on the subject. His opinions will be based on his extensive study of the use of force in an academic setting, including his review of hundreds of other use-of-force incidents and the policies of other police departments and police organizations throughout the country. In that respect, Professor Stoughton offers a different perspective for the jury regarding the reasonableness of Defendant’s use of force. *See Noor*, 955 N.W.2d at 663 (admission of two experts’ testimony not cumulative where the experts had “very different backgrounds”). Some jurors may find that Professor Stoughton’s scholarly, academic perspective of Defendant’s use of

force carries greater or different credibility than the testimony of individual police officers and practitioners in the field. For that reason alone, his testimony is not cumulative.

Moreover, as an academic, Professor Stoughton has testified as an expert witness in numerous other cases involving police uses of force. That would likely give him additional credibility in the eyes of some jurors. And that also distinguishes Professor Stoughton from the other witnesses who have testified to date. Indeed, in cross-examination, defense counsel attempted to discredit Sergeant Stiger's expert testimony by asking him whether he had been qualified as an expert in other courts across the country. Professor Stoughton's testimony cannot be discredited on the same grounds, and so is not cumulative of Sergeant Stiger's expert testimony. *See Penkaty*, 708 N.W.2d at 203 (holding that testimony by police officers who may be perceived as more credible in some respects is not needlessly cumulative).

Second, Professor Stoughton offers a different perspective than other witnesses regarding Defendant's use of force against Mr. Floyd because he will speak to the "national policing standards" that govern the use of force. *Noor*, 955 N.W.2d at 663. Indeed, in cross-examination, defense counsel asked Sergeant Stiger whether he knew about the policies of other police departments throughout the country, and about the differences between those various policies. In so doing, defense counsel intimated that Sergeant Stiger might not be able to speak to national standards. Professor Stoughton, by contrast, can speak to the standards governing the use of force nationally because he is a scholar who studies and has written extensively regarding those standards. His testimony is not cumulative of other witnesses for that reason, as well.

Third, Professor Stoughton's testimony is not cumulative of other testimony because it will touch on several aspects of the case that have not been addressed in detail by other witnesses. Indeed, the State designed its case-in-chief so that Professor Stoughton would address aspects of

Defendant's use of force not fully addressed by other use-of-force witnesses. Professor Stoughton will also explain to the jury in detail the timeline of the nine minutes and 29 seconds during which Defendant restrained Mr. Floyd on the ground. Professor Stoughton will focus the jury's attention on aspects of the specific dialogue between the officers—including, for example, the moment where the officers confirmed that Mr. Floyd no longer had a pulse, and the officers' actions during and after that moment. He will focus the jury's attention on aspects of the comments made by the bystanders toward the officers, and the officers' actions in response. And he will focus the jury's attention on the specific movements of the officers during the minutes when Mr. Floyd was pinned face-down to the ground. Although aspects of this testimony have been addressed in general terms by other witnesses, Professor Stoughton will provide specific, moment-by-moment testimony that has not yet been provided by other witnesses. Moreover, as noted, Professor Stoughton will provide testimony regarding the limitations of body-worn camera evidence and the "perceptual and cognitive limitations that can affect the interpretation of video evidence," including in connection with the defense's claim that the body-worn camera shows that Mr. Floyd said he "ate too many drugs." Supplemental Expert Report 3; *see supra* pp. 3-4; *see infra* pp. 14. This testimony will assist the jury in making sense of the body-worn camera footage and other video evidence. Because all of this testimony speaks to "central issue[s]" in the case and will provide additional evidence on those issues, it is not cumulative. *Bobo*, 820 N.W.2d at 518.

Fourth, Professor Stoughton's testimony is not cumulative because the defense has attempted to discredit the testimony of the State's other use-of-force witnesses on various grounds. Defense counsel intimated in cross-examination that, for example, Lieutenant Richard Zimmerman was trained too long ago to provide the jury with useful testimony; that Chief of Police Medaria Arradondo now spends most of his time addressing administrative matters, and that his

testimony thus should be given less weight; and that Sergeant Stiger was from Los Angeles, and therefore could not provide helpful testimony regarding the standards applicable to Defendant's conduct. The State, of course, strongly disagrees with the defense's suggestion that these witnesses lack credibility or that they did not provide helpful testimony. Nonetheless, these attacks on the credibility of the State's other witnesses underscore the importance of probing Defendant's conduct from other angles, and to call qualified witnesses who can speak to Defendant's conduct from a variety of perspectives. Here, Professor Stoughton provides a different perspective than other witnesses, and his testimony carries credibility by virtue of his unique perspective and credentials as a scholar. So his testimony is not needlessly cumulative.

Fifth, the State would suffer undue prejudice from the exclusion of his testimony at this late date, after the State already informed the jury in its opening statement that it would call Professor Stoughton, and after the State designed its case-in-chief based on the knowledge that Professor Stoughton would testify. The State planned its direct and redirect examination of other witnesses based on the assumption that Professor Stoughton would be available to testify regarding unique aspects of the incident, including the precise timeline of events during the nine minutes and 29 seconds of the restraint and the dialogue between officers. In fact, the State trimmed down the direct and redirect examinations of its other witnesses—at the Court's request—on the assumption that Professor Stoughton would testify later in the State's case-in-chief.

Defendant, moreover, has had ample prior opportunity to challenge Professor Stoughton's testimony as cumulative. The State first disclosed Professor Stoughton as an expert in early December, disclosed his expert report in January, and has consistently identified him as an expert witness ever since. And in its opening statement, the State informed the jury that it would call Professor Stoughton along with Sergeant Stiger. Nonetheless, defense counsel *never once* raised

an objection to the testimony of Professor Stoughton until the *day before* his scheduled testimony. Not in a written motion in limine. Not in an oral motion on the record. And not in an in-chambers conference. Suddenly excluding Professor Stoughton’s testimony—near the close of the State’s case-in-chief, no less—would result in significant harm to the State as it attempts to establish beyond a reasonable doubt that Defendant’s use of force was unreasonable.

Finally, allowing Professor Stoughton’s testimony will not result in an “undue delay” in the trial. Minn. R. Evid. 403. The State anticipates that it can complete its direct examination of Professor Stoughton in approximately 90 minutes. As a result, the State does not believe that it will need an additional day for its case-in-chief if Professor Stoughton testifies.³ Regardless, any minimal delay from Professor Stoughton’s testimony would hardly be “undue.” Because Professor Stoughton’s testimony is not needlessly cumulative of the testimony presented by other witnesses in the case, and because the State would suffer undue prejudice from the wholesale exclusion of Professor Stoughton’s testimony on Rule 403 grounds, there is no basis for concluding that any brief delay in the trial would warrant the exclusion of Professor Stoughton’s testimony.

Any of these six reasons would be sufficient to deny Defendant’s motion, as each provides an independent basis for concluding that Professor Stoughton’s testimony is not cumulative. The fact that all six point in the same direction is telling. Defendant’s motion should be denied.

II. Professor Stoughton’s Testimony Regarding Matters Disclosed on April 9, 2021 Should Not Be Excluded.

In the alternative, Defendant has moved to limit Professor Stoughton’s testimony by seeking to exclude testimony regarding matters disclosed to the defense on April 9, 2021. That request should also be denied. Defendant has not informed the State or the Court of the basis for

³ As noted, at the Court’s request, the State has substantially trimmed its direct examination of witnesses testifying regarding use of force so as to keep the trial moving expeditiously.

this alternative request to limit Professor Stoughton’s testimony. In any event, this testimony is plainly admissible, and the Court should not exclude it.

As a threshold matter, the State has fully complied with its discovery obligations and “promptly” disclosed Professor Stoughton’s supplemental report, as Rule of Criminal Procedure 9.03 requires. Minn. R. Crim. P. 9.03 subd. 2(b); *see State v. Carlson*, 328 N.W.2d 690, 695 (Minn. 1982) (finding that State complied with Rule 9.03 when prosecutor did not know of an expert’s existence, promptly disclosed expert’s identity, and called the expert on rebuttal); *State v. Johnson*, No. C0-94-2146, 1995 WL 321577, at *1 (Minn. App. May 30, 1995) (holding that the State could call a witness previously not disclosed as testifying when witness informed a prosecutor of an inculpatory statement on the first day of trial).⁴ Here, the defense’s cross-examination on April 7 introduced an issue—namely, whether the body-worn cameras show that Mr. Floyd said “I ate too many drugs”—for the first time, and the State promptly disclosed the supplemental expert report Professor Stoughton wrote regarding that issue two days later.

Professor Stoughton’s testimony about audio pareidolia is also admissible expert testimony under Rule of Evidence 702. Under that Rule, expert testimony is admissible if: “(1) the witness is qualified as an expert; (2) the expert’s opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard.” *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011).

⁴ Alternatively, the Court could consider Professor Stoughton’s testimony as rebuttal evidence properly presented in the State’s case-in-chief, which need not be disclosed in advance of trial. *See, e.g., State v. Raasch*, No. A12-0524, 2013 WL 599171, at *1 (Minn. App. Feb. 19, 2013) (“An expert witness may be called as a rebuttal witness in the prosecution’s case-in-chief if the victim’s credibility was undermined through cross-examination or during defense counsel’s opening statement.”).

First, as Professor Stoughton’s supplemental report notes in extensive detail, he is qualified as an expert based on his extensive academic scholarship and professional activities related to interpreting body-worn-camera footage. Professor Stoughton’s work on police body-worn-camera technology “has been cited not just in legal scholarship, but also in criminology and criminal justice, psychology, public policy, research encyclopedia, and trade books.” Supplemental Expert Report 3. He serves on the American Bar Association’s Working Group on Building Public Trust in the American Justice System “as a liaison on Body Worn Cameras”; has been a member of the National Institute of Standards & Technology’s Video Analytics in Public Safety—Legal Ethical, and Social Concerns Working Group; and has been a subject-matter expert on body-worn cameras for the Bureau of Justice Assistance Body-Worn Camera Toolkit, the National Association of Criminal Defense Lawyers Report and Recommendations on Body-Worn Cameras, and for the OIR Group’s review of the Madison Police Department. *See id.* Additionally, he has “provided multiple trainings to the Chicago Civilian Office of Police Accountability related specifically to the role of BWC footage in use-of-force investigations,” and has provided trainings to judges, courts, and law enforcement officials regarding the interpretation of body-worn camera footage—with an emphasis on use-of-force incidents—on more than thirty occasions. *Id.*

Second, Professor Stoughton’s testimony has “foundational reliability.” Minn. R. Evid. 702. “[F]oundational reliability” requires “that the theory forming the basis for the expert’s opinion or test is reliable.” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 166 (Minn. 2012). Professor Stoughton’s testimony regarding the interpretation of body-worn camera footage and audio pareidolia readily satisfies that test. The concept of audio pareidolia is well-established in the academic literature. Indeed, Professor Stoughton’s supplemental expert report cites examples of peer-reviewed academic research on audio pareidolia dating back over sixty years.

Third, his testimony “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. Professor Stoughton will explain a counterintuitive phenomenon related to audio recordings that is both “beyond the knowledge and experience of an average jury” and would help the jury make sense of the “particular circumstances surrounding” the body-worn camera videos at issue in this case. *State v. Reese*, 692 N.W.2d 736, 741 (Minn. 2005); *State v. Mosley*, 853 N.W.2d 789, 800 (Minn. 2014). That testimony will assist the jury in understanding what Mr. Floyd said during the restraint—and, critically, what he did not say.

Fourth, there is no need for a *Frye-Mack* analysis or hearing because Professor Stoughton’s testimony is not based on any novel scientific theory. Instead, he will discuss a well-understood phenomenon relevant to understanding and interpreting body-worn camera videos. *See* Minn. R. Evid. 702; *State v. DeShay*, 645 N.W.2d 185, 191 (Minn. App. 2002) (holding that a *Frye-Mack* hearing was not necessary where expert testimony did not rest on novel scientific evidence).

By asking multiple witnesses about the body-worn camera videos and suggesting that Floyd said he “ate too many drugs,” Defendant has opened the door to a rigorous examination of how and why the selective portion of the audio that defense counsel played was deeply misleading. *See State v. Myers*, 359 N.W.2d 604, 611-612 (Minn. 1984). Defendant can hardly complain now about expert testimony that would inform the jury and provide a full and accurate picture of what the body-worn cameras show that Mr. Floyd said during the restraint.

CONCLUSION

The State respectfully requests that the Court deny Defendant's motion to exclude Professor Seth Stoughton's testimony as cumulative or, in the alternative, to exclude Professor Stoughton's expert testimony regarding the matters addressed by his supplemental expert report.

Dated: April 11, 2021

Respectfully submitted,

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