

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

**STATE'S MOTION TO COMPEL
DISCOVERY**

Plaintiff,

v.

J. Alexander Kueng,

Court File No.: 27-CR-20-12953

Thomas Kiernan Lane,

Court File No.: 27-CR-20-12951

Tou Thao,

Court File No.: 27-CR-20-12949

Defendants.

TO: The Honorable Peter A. Cahill, Judge of District Court, and counsel for Defendants, Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101; Thomas Plunkett, U.S. Bank Center, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402.

NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY

Please take notice that on April 11, 2022, at 5:00 p.m., or as soon thereafter as counsel may be heard, the state will move the Court for an order to compel discovery. Specifically, the State respectfully moves the Court to compel Defendants to disclose materials that Defendants introduced in the course of the recent federal trial and any other materials Defendants currently possess, will introduce, but have not yet disclosed.

1. Minnesota Rule of Criminal Procedure 9.02 requires defendants, "at the prosecutor's request," to disclose "books, papers, documents" and "photographs" which "the defense intends to introduce at trial." Minn. R. Crim. Pro. 9.02, subd. 1.1.

2. The State filed such a request for discovery on June 6, 2020.

3. On January 20, 2022, Defendants stood trial in the United States District Court for the District of Minnesota for federal criminal charges relating to the death of George Floyd. That trial concluded on February 24, 2022, when the jury returned a guilty verdict on all counts.

4. Defendants are currently scheduled to stand trial in this Court on June 13, 2022 for charges stemming from the death of George Floyd.

5. In the course of the federal trial, Defendants introduced evidence that Defendants have not yet disclosed to the State in these proceedings and which the State did not disclose to Defendants. That evidence included, but may not be limited to, training manuals and photographs of Defendant Thao undergoing training.

6. “Each party has a continuing duty of disclosure before and during trial,” and each party must provide prompt disclosure of newly discovered material “in time to afford counsel the opportunity to make beneficial use of it.” Minn. R. Crim. Pro. 9.03, subd. 2(a), (c).

7. The State therefore requests the Court order Defendants to produce any undisclosed materials they possess but have not yet disclosed by April 18, 2022. To the extent Defendants do not produce discoverable materials in a timely manner, the State reserves its right to request the Court exclude those materials at trial. *See id.*, subd. 8 (providing that the Court may “enter any order it deems just in the circumstances”); *see generally State v. Lindsey*, 284 N.W.2d 368, 374 (Minn. 1979) (“The values sought to be achieved through reciprocal discovery will be attained only if the rules are properly observed.”).

Dated: April 1, 2022

Respectfully submitted,

KEITH ELLISON
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/s/ Matthew Frank
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