

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Criminal

State of Minnesota,

Plaintiff,

vs.

**STATE'S RESPONSE TO
DEFENDANT CHAUVIN'S MOTION
TO EXTEND DEADLINE TO SERVE
FINAL EXPERT REPORTS**

Derek Michael Chauvin,

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

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, Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402; 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.

INTRODUCTION

The State of Minnesota objects to Defendant Chauvin's motion to extend the deadline for his final expert reports. Granted, the discovery in this case is voluminous and the issues complex. But Chauvin has been on notice of the potential need for experts in this case for nearly five months. Chauvin demonstrated a working knowledge of the discovery as early as August 28, 2020 when he filed his comprehensive challenge to probable cause. It does not appear that it is the manner of the discovery that has prevented him from meeting his deadline: he was able to support his probable cause challenge with substantial reference to the discovery and the State was able to meet

it's *earlier* deadlines while working from the same discovery. Finally, the requested extension would mean the disclosure of an expert report just two weeks before trial and after the Court's deadline for motions in limine. For these reasons, the State must oppose the requested extension.

ARGUMENT

The Court Should Deny The Requested Extension For The Defendant's Expert Reports.

First, Chauvin was on notice for many months that the case could involve experts and had plenty of time to get experts on board. On June 9, 2020, the State disclosed, in addition to other reports and interviews, the body worn camera videos, the surveillance videos from Cup Foods, the Dragon Wok, and the city camera, and the interviews of Defendants Thao and Lane. On June 25, 2020, the State disclosed George Floyd's medical records from HCMC and Dr. Baker's autopsy report.

On June 30, 2020, this Court issued an order scheduling the case for an omnibus hearing on September 11. The order also scheduled the first case for trial on March 8, 2021. Chauvin knew as early as June 30 that his case could go to trial on March 8, 2021.

On August 28, 2020, the State filed a motion requesting deadlines for initial expert disclosures and final expert reports in light of that trial date. In the motion, the State asked for deadlines of December 8, 2020 and January 8, 2021, respectively. Following the September 11 omnibus hearing, the Court issued an order on October 8, 2020 providing initial expert disclosure deadlines of December 1 for the State and December 15 for the Defendants. The order also provided that all final expert reports were due on January 19, 2021.

On August 28, 2020, Chauvin filed a motion challenging probable cause for the charges. Chauvin's memorandum supporting the motion contains a seven page facts section with citations to various pieces of the discovery, including the body worn camera videos and Minneapolis Police

Department (MPD) policies. The argument section of the memorandum spans approximately 19 pages and includes references to MPD policies, a photograph of Chauvin holding Mr. Floyd down with his knee on Mr. Floyd's neck, a photograph and a chart from MPD training materials, references to Dr. Baker's autopsy and other statements he made, and references to independent research on drug overdoses. To the memorandum, Chauvin attached 22 separate exhibits, most taken from the discovery, which he cites to in his argument section. The exhibits include body worn camera videos, interviews of witnesses, MPD policies and training guides, screenshots from body worn camera videos, interview of police officers, outside research on drug abuse, autopsy reports, MPD reports of the May 2019 incident, and Mr. Floyd's HCMC medical records. In other words, in challenging probable cause for the charges on August 28, Chauvin demonstrated a rather solid familiarity with the evidence and issues in the case.

So, as of August 28 Chauvin had demonstrated that he was familiar with the disclosures that had been made to date and the issues that could require expert testimony. At that point in time, his deadline for just his initial expert disclosure was three-and-a-half months away and his deadline for his final expert reports was more than four-and-a-half months away. This provided him adequate time to contact and retain any experts he thought necessary.

Second, Chauvin's suggestion that the extension is necessary because of the manner in which the State makes the disclosures is less than credible. Just one day before his initial expert disclosures were due, Chauvin filed a motion to extend the deadline. In support of that motion, Chauvin argued that he had had to spend considerable time organizing the discovery that had been provided to him. He makes a similar suggestion in support of this motion. But again, Chauvin demonstrated a solid familiarity with the evidence from the disclosures when he wanted to support his motion to dismiss the charges back on August 28, 2020. Then he was able to support his

argument with MPD policies and training materials, videos of the incident, interviews of witnesses, and his own research on drugs.

Moreover, the State was diligent in obtaining its experts by the deadlines set by this Court. As the State explained in its response to Chauvin's previous motion to extend his deadlines, the State Bates labels all of the discovery. The State works off of the Bates-labelled version of the discovery, not the flash drive originally provided. Chauvin now asserts that the State had the benefit of working from the flash drive provided by the BCA, but the State works from the Bates-labelled pdfs of documents just like those provided to Chauvin. It would defeat the purposes of Bates labelling if the State did not work from that version. Rather, the State worked expeditiously to organize the Bates-labelled discovery and contact experts to comply with the Court's deadlines. Indeed, the State complied with the Court's deadline for the State's initial expert disclosures. It was only after the State made its initial expert disclosures that Chauvin filed a motion to extend his deadlines.

A couple statements in counsel's affidavit merit a brief response. In paragraph 20 of his affidavit, Counsel claims that a flash drive had not been sent to the defense because of its label. That is not true. Because Defense Counsel had expressed concern about not having electronic versions of the PowerPoint training materials, the State asked the BCA to request from the Minneapolis Police Department (MPD) electronic versions of the PowerPoint training materials already provided. The MPD produced two flash drives of material to the BCA, but the BCA mistakenly only gave one flash drive to the AGO. As soon as the undersigned realized this, I contacted the BCA and asked for the second flash drive. After receiving that flash drive from the BCA, the State promptly disclosed it to the defense. All of this was explained to Counsel in the phone call referenced in paragraph 20; it was not held from disclosure because of its label. And

both flash drives were obtained and provided at the request of defense counsel. In paragraph 21, Counsel references a discussion of a positional asphyxia video. In that same phone call, I explained that the video had come from a third party and so we could not be certain it was in fact the MPD video. The undersigned specifically explained that at this time we could not determine if this video was the actual MPD video and efforts were underway to try to authenticate it.

In the letter from his retained expert, attached to Counsel's Affidavit, the expert states that he "was just informed of having only been granted access today to Dr. Baker's microscopic slides." To be clear, access to the slides has not been withheld. The State requested access to Dr. Baker's slides for its experts, and when it learned the process, included all four defense attorneys on an email to Dr. Baker's office summarizing the process for access to the slides. Chauvin or his expert could have requested access to Dr. Baker's slides at any time; they were not kept from him. While this could simply be a matter of the expert's choice of words, any suggestion that access was withheld is inaccurate. In addition, it is true that some additional testing is underway, but it is typical for experts to retain the right to amend or change their reports and opinions upon receipt of additional or new information. In other words, this is not a basis to delay completion of a report. Finally, Chauvin's expert indicates his work will be subject to peer review, which takes time. This is not a reason attributable to the State, and that time should be built into the expert's need to get the report done by the deadline.

Finally, another delay of the disclosure of the defense expert's report will prejudice the State. This Court originally set a simultaneous deadline for disclosure of all parties' expert reports far enough in advance of trial so the parties could prepare any necessary motions in limine for the Court's consideration and to be prepared for trial. The Court has already granted one extension of the deadline for the Defendant. Granting this requested extension would mean the State would

only receive the expert's report two weeks before trial, instead of the six weeks provided in the Court's October order. Indeed, if the Court grants the requested extension, the defense expert report would not be received until two weeks *after* the motion in limine deadline.

CONCLUSION

For these reasons, the State respectfully requests that the Court deny the motion for an extension of the defense expert's final report deadline.

Dated: January 29, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General
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/s/ Matthew Frank

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