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State of Minnesota
12/31/2020 4:04 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Case Type: Criminal

State of Minnesota,

Plaintiff,

vs.

STATE'S RESPONSE TO DEFENDANT CHAUVIN'S MOTION FOR CONTINUANCE

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 submits this response to Defendant Chauvin's Motion For Continuance. The State does not take issue with Chauvin's descriptions of the volume and complexity of the discovery in this case. This is a complex case involving four defendants, numerous witnesses, and extensive discovery and the State will not take a position on Chauvin's request to continue the trial. The State does, however, take issue with Chauvin's unfounded accusations that the State has acted to impede his preparation.

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ARGUMENT

THE STATE HAS NOT COMMITTED ANY DISCOVERY VIOLATIONS THAT HAVE PREJUDICED CHAUVIN'S ABILITY TO PREPARE FOR TRIAL.

The State began formally disclosing reports, documents, interviews, videos, and other material to Defendants on June 9, 2020, and has continued serving disclosures on Defendants since then as promptly as it can. The rules of criminal procedure clearly contemplate ongoing disclosures in criminal cases. *See* Minn. R. Crim. P. 9.03, subd. 2(c) ("Each party has a continuing duty of disclosure before and during trial."). The Court's June 30 scheduling order set an initial discovery deadline of August 14, in advance of the September 11 omnibus hearing, and consistent with the ongoing disclosure responsibility of both parties provided that "any discovery received by a party after the discovery deadline shall be disclosed within 24 hours to the opposing party." Scheduling Order 1 (June 30, 2020). In his counsel's affidavit, Chauvin recounts disclosures made before and after August 24 and suggests that disclosures made after that date are untimely. Affidavit of Eric Nelson (Nelson Aff.) 1-3, 7. This is simply not the case. Neither the Court's order nor the rules of criminal procedure require that all disclosures end at one specific date; they both recognize the ongoing nature of discovery in criminal cases.

Moreover, by suggesting that the State's ongoing disclosures have been improper and have impaired his ability to prepare, Chauvin is essentially arguing that disclosures had to stop on August 24 so he could prepare. This is, of course, inconsistent with the rules and reality. Clearly in a complex murder case involving four defendants, the discovery will be ongoing. It is unreasonable and unrealistic to think that all investigation and preparation of reports in a complex murder case involving four defendants would be all finished within two months of the murder, and nothing further would be done. Again, to the extent that Chauvin wishes to communicate to the

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Court that he has not had sufficient time to prepare for trial, the State takes no position. But his suggestion that the State committed a discovery violation by its ongoing disclosures is not supported by fact or law.

Chauvin next complains about the form of the disclosures. Nelson Aff. 3-5. The manner in which the State discloses material in this case is necessitated by the ongoing nature of this complex case in light of discovery deadlines.[1] It is not possible to wait until a "cohesive and coherent case file" exists. *See* Nelson Aff. 6. Moreover, there are practical reasons for the manner in which the State is disclosing the material. When the State receives materials from investigative agencies, or other entities, they must be converted to a pdf file so that Bates numbers can be attached. Bates numbers are necessary so that the State can prove which items have been served on the defense. Bates numbers also increase efficiency of use because documents are uniquely and quickly identifiable by their Bates number.

Chauvin asserts that the pdf files are not searchable, and must be converted to tif files, then converted back to pdfs, and then run through an OCR program to be searchable. Nelson Aff. 3. It is not clear why Chauvin has to do it this way. The pdf files in Adobe are searchable. There is no need to convert the pdf files to tif files or run them through an OCR program to make them searchable. The State agrees that running the pdf files through an OCR program is time consuming. Indeed, one of the reasons the State does not run the pdf files through an OCR program before disclosing them to the defense is the amount of time it takes – it would be difficult to promptly disclose the files if the State had to wait for that process to finish and then reorganize it in the fashion he prefers before disclosing the material.

[1] Prosecutors are under no obligation to provide discovery in any particular format. Indeed, the State has no obligation to even provide copies of discovery. *See* Minn. R. Crim. P. 9.01, subd. 1 (stating only that the prosecutor must "allow access at any reasonable time" to disclosures).

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Chauvin next asserts that the records are in no discernible order. Nelson Aff. 3-4. But the records are in the order they were received. Chauvin's suggestion that the State has "printed the reports, shuffled them like a deck of cards, and scanned them back into the computer to be disclosed" is nonsense. Nelson Aff. 3. This accusation has no basis in fact. The State has disclosed the records in the order in which they were received. The BCA obtained a search warrant requiring the Minneapolis Police Department (MPD) to produce training records, personnel records, and police reports. The MPD initially provided records in response to the search warrant on June 3, 2020. (*See* Bates 746.) The BCA prepared a report about the receipt of those records, and the records as produced by the MPD follow the BCA report. (*See* Bates 748 - 6754.) The MPD provided more records in response to the search warrant on June 5, 2020. (*See* Bates 7803, 7352 – 7403.) The MPD disclosed additional records on June 11, 2020. (*See* Bates 9014, 9018 – 14163.) Although it might not be clear now why the MPD provided the records in the order they are in, the State did not have the time to shuffle them and organize them as Chauvin might prefer, nor did the State believe it should alter the order in which the MPD produced them. This also explains why some records (police reports listing Mr. Floyd as a witness) appear within training materials – this is the order disclosed by the MPD.[2] *See* Nelson Aff. 4.

Chauvin also complains about receiving instructions on how to open a video after receiving the video. Nelson Aff. 3. Obviously, these items were obtained at different times – the instructions were provided to help the parties use the video. Chauvin cannot seriously contend that the State should have held off on disclosing a video of the murder until it learned further instructions may

[2] Here, Chauvin asserts the State has "hay stacked" the disclosures. Nelson Aff. 4. This is another accusation without factual support.

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be necessary, obtained them, and then disclosed them. Rather, the State did what it should have done: it disclosed a video of the murder promptly.

Chauvin also complains about the volume of training materials and the inclusion of apparent duplicates. Nelson Aff. 4. Again, this is what the MPD disclosed in response to the search warrant. Further, the volume of records is not surprising. There are four former police officers involved in this case. Chauvin had been an officer for nearly 19 years, Thao for nearly 9 total years, and Lane and Kueng each for over a year. The MPD provides a lot of training for its officers. The training records establish just how extensive was the training MPD provided to these officers on such topics as the use of force, providing medical intervention, de-escalation techniques, and dealing with members of the public. Moreover, the State could not possibly spend the time examining each record word-for-word to assure that it was a duplicate and still make prompt disclosures. And even if there were duplicates, the State could not remove them because their duplication could indicate how many times each officer received that training. Chauvin also complains about the content of some of the training materials. Nelson Aff. 4. But again the State could not make a determination for the Defendants as to which training materials were relevant.[3] Furthermore, going through each training record and making a determination about whether to disclose it or remove it from the records MPD provided in response to a search warrant would take considerable time, interfering with prompt disclosure.

Chauvin also complains that some disclosures were not made "within 24 hours after the original deadline." Nelson Aff. 5. First, this misstates the Court's order. The Court's June 30

[3] For example, Chauvin complains about the Taser training materials. But even those materials provide the following instructions: "Use the minimum force necessary to accomplish lawful objectives. Give a verbal warning before the use of force. Give subjects a reasonable opportunity to comply before force is used or repeated. Immediately cease any force once a subject is under control." Bates 11515.

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scheduling order provided an initial discovery deadline of August 14 and then added that any "discovery received by a party after the discovery deadline shall be disclosed within 24 hours to the opposing party," indicating within 24 hours of receipt, not August 14.[4] Second, Chauvin's complaint in this regard is based entirely on documents that were not in the possession and control of the State because they are records of a federal agency: an interview of Dr. Uribe of the Armed Forces Medical Examiner's Office, an interview of Dr. Baker, both conducted by the United States Attorney's Office and the FBI, and a follow up letter to the United States Attorney's Office.

The State had no obligation to disclose those documents until the U.S. Attorney's Office provided them to the State. The state is required to produce documents in its possession or control that relate to the case. Minn. R. Crim. P. 9.01, subd. 1. It is not obligated to produce documents from an agency that is not a member of the prosecution staff or does not regularly report to the prosecuting office. Minn. R. Crim. P. 9.01, subd. 1a(1). That latter situation describes the documents at issue here, which were initially in the possession of the U.S. Attorney's Office. The U.S. Attorney's Office is an agency of the federal government, independent of the state and county offices prosecuting this case. The State was therefore not under an obligation to obtain and produce the FBI agent's notes from the U.S. Attorney's Office's interviews of Dr. Uribe and Dr. Baker. *See State v. Roan*, 532 N.W.2d 563, 571 (Minn. 1995) (holding that Rule 9 did not require the state to disclose documents in the possession of the Bureau of Alcohol, Tobacco and Firearms because "as a federal agency, [it] does not 'report' to the Hennepin County prosecutor's office").

The same holds true for Dr. Baker's counsel's letter to the U.S. Attorney's Office clarifying his answers given at the meeting. The medical examiner is a completely autonomous office,

[4] The rules of criminal procedure require that further disclosures be made promptly. Minn. R. Crim. P. 9.03, subd. 2(b).

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independent of the prosecutor's office. *See State v. Beecroft*, 813 N.W.2d 814, 833 (Minn. 2012). In *Beecroft*, the Minnesota Supreme Court emphasized that medical examiners must be able to operate free from influence by law enforcement and prosecutors. *Id.* Yet, as a county officer, Minn. Stat. § 390.011, the medical examiner must be provided legal representation by the county attorney's office, Minn. Stat. § 388.051, subd. 1(2). If his office is to remain autonomous and independent from the prosecution staff, his legal representation must also remain independent of the prosecution staff. For this reason, the attorneys who provide legal representation to Dr. Baker do not report to, or work with, the prosecution staff. Dr. Baker's counsel is not a member of the prosecution staff. In addition, as independent counsel for Dr. Baker, she does not regularly report legal matters, such as communication with an outside office on behalf of Dr. Baker, to the prosecutors. To require otherwise would impinge on the independence of the medical examiner, something the supreme court in *Beecroft* found to be so important. *See Beecroft*, 813 N.W.2d at 834 ("[O]ur Legislature has explicitly rejected the proposition that medical examiners serve only the police and prosecutors."); *id.* at 835 ("[B]oth our laws and practical considerations support the mandate that medical examiners must at all times remain independent, autonomous, and neutral participants in our criminal justice system.")

Still, the State voluntarily continued to ask the U.S. Attorney's Office for any documents related to their interviews of witnesses, including Dr. Uribe and Dr. Baker. The U.S. Attorney's Office provided the notes from the interview with Dr. Uribe and the State disclosed them on September 16, 2020. On October 19, the U.S. Attorney's Office forwarded the notes from the interview with Dr. Baker and the letter received from counsel to the undersigned. Those documents were then disclosed to the defendants on October 28, 2020.

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Finally, Chauvin asserts that the manner of discovery in this case has been different than the way it has been done in other cases. Nelson Aff. 6. Chauvin does not identify those cases or describe how those cases proceeded, so the State is not in a position to assess the comparison. In this case, the State disclosed a significant amount of reports, interviews, videos, and other material well before August 14, and has continued to do so. That State was not given a "cohesive and coherent case file." Rather, it was given reports and records as they became available and promptly disclosed them as best it could. The State is working from the same set of discovery disclosures as the Defendants. The State too has had to expend significant time and resources reviewing and organizing the discovery in this complex case. Yet the State was able to meet the Court's initial expert disclosure deadline on December 15, 2020. It has not been any improper conduct by the State that has led to delay. Whether Chauvin has not had sufficient time to prepare his case in advance of trial because of the volume of discovery in this case is a matter the State will leave to Chauvin and this Court, but Chauvin's suggestion that the State has committed discovery violations as a means to request a continuance is not supported by fact or law.

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CONCLUSION

For the reasons set forth above, the State respectfully requests that the Court reject any contention by Defendant Chauvin that the State has acted improperly with respect to disclosures. The State takes no position otherwise on Chauvin's request for a continuance of the trial.

Dated: December 31, 2020

Respectfully submitted,

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