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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mohamed M. Noor,

Defendant.

Court File No.: 27-CR-18-6859

DEFENDANT'S RESPONSE TO THE STATE'S MOTIONS IN LIMINE REGARDING EMANUEL KAPELSOHN

Defendant, Mohamed M. Noor, by and through his attorneys, offers the following response to the State's Motion to Exclude the Testimony of Defendant's expert witness Emanuel Kapelsohn. The State's primary argument for exclusion of Mr. Kapelsohn is that his "experience does not include working as a police officer." The State's argument is not supported by the law or Mr. Kapelsohn's extensive academic and practical training.

The State relies on Fiedler v. Spoelhof, 483 N.W.2d 486, 489 (Minn. 1992), for the proposition that because Mr. Kapelsohn is not a working police officer he cannot provide expert testimony. Fiedler involved the question of whether the trial court erred in allowing the testimony of a medical doctor. 483 N.W.2d at 489. Over the Appellant's objection the trial court allowed a medical doctor who was trained as a cardiologist to testify about family practice medicine in a prison setting. Fiedler, 483 N.W.2d at 489. While the State did properly cite the court of appeals general recital of expert witness qualifications ("in determining the competency of an expert witness, a trial court should

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examine both the witness' scientific knowledge and the witness' practical experience with the subject matter of the testimony"), the State failed to provide the core holding of Fiedler. 483 N.W.2d at 489. It is understandable why the State ignored the core holding, indeed, the holding of Fiedler strongly supports a finding that Mr. Kapelsohn is a qualified expert. In determining that a cardiologist was qualified to testify about family practice medicine in a prison setting the court of appeals stated the following:

> The record adequately supports the trial court's decision to allow Dr. Benditt's testimony. The fact that Dr. Benditt does not practice the same specialty as appellant is not sufficient reason to exclude his testimony. See Haas v. Gaviser, 348 N.W.2d 406, 408 (Minn.Ct.App. 1984) (trial court improperly excluded expert medical testimony because witness was not in same specialty as defendant). The record indicates that Dr. Benditt has experience with and knowledge of the standard of care exercised by family practitioners. Although Dr. Benditt was never a prison physician, this factor does not render him incompetent to testify but instead goes to the weight of his testimony. The record indicates that through cross examination the jury was made well aware of the limits of Dr. Benditt's experience. Under these circumstances, we conclude that the trial court did not err in allowing Dr. Benditt's testimony.

Fiedler, 483 N.W.2d at 489. Similarly, the State overstates the holding in Noske v. Friedberg, 713 N.W.2d 866 (Minn.Ct.App. 2006). The State quotes Noske, as follows: "experts should have practical experience in the particular matter at issue." (State's Memo at p. 2). The actual quote from Noske, is: "*Preferably*, experts should *also* have practical experience in the particular matter at issue." Noske, 713 N.W.2d at 871 (emphasis indicates sections left out of the State's quote). The State also does not fairly represent the holding of Noske. The State writes, "a law professor who had never practiced criminal law was unqualified to opine on the duties of a criminal defense

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attorney". (State's Memo at p. 2). But, the actual holding of Noske, is a little more nuanced,

> The district court did not abuse its discretion by ruling that, although Scherschligt's expertise in professional responsibility was arguably relevant, his lack of practical or academic experience in the criminal-law area made it unlikely that his testimony on the duty of a criminal-defense attorney would have been admissible as expert opinion in court.

Noske, 713 N.W.2d at 872. It was not simply that the expert in Noske was unqualified because he did not practice criminal defense, he was unqualified because criminal defense was not even an area of his academic experience.

The State has good reason to shade the law in its motion to exclude the testimony of Mr. Kapelsohn, his "admittedly impressive resume" shows he is unequivocally qualified to testify as an expert in this case. (State's Memo at p. 4). Mr. Kapelsohn recently testified as an expert witness on nearly identical issues in Ramsey County in State v. Jeronimo Yanez. He is well educated, Yale undergrad, Harvard Law. He has been an adjunct instructor on use of force. He has had extensive training on use of firearms. He has spent hundreds of hours participating in law enforcement activities across the United States. He has written and lectured extensively about the subject matter of his report. Importantly, he has been qualified as an expert in numerous states and federal court on use of firearms by law enforcement and the use of force generally. His 59 page curriculum vitae is not just impressive, it represents decades of academic and practical experience of a fully qualified expert witness. A witness that fully meets the requirements of Rule 702 of Minnesota Rules of Evidence.

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The State also takes issue with Mr. Kapelsohn on the basis that his report does not articulate the proper legal standard. Here too the State is simply wrong. Mr. Kapelsohn's report does use the subjective intent of Defendant and Officer Harrity in formulating his opinion about what a reasonable officer would do in similar circumstances. The law in on use of force as recited by CRIMJIG 7.11, states in relevant part,

> As to each count or defense, the kind and degree of force a peace officer may lawfully use is limited by what a reasonable peace officer in the same situation would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. *To determine if the actions of the peace officer were reasonable, you must look at those facts known to the officer at the precise moment he acted with force.*

(emphasis added). Mr. Kapelsohn's reliance on what Defendant and Officer Harrity knew at the time is precisely the standard outlined by Minnesota law. The State's has overly emphasized the "objective" reasonable officer portion of the law.

Mr. Kapelsohn is a well qualified and respected expert in the area of use of force by police officers. His expert report is appropriate and meets the standards of the law. His testimony is necessary to properly defend this case.

Respectfully submitted,

Dated: February 22, 2019.

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