

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

**MOTION TO COMPEL
DISCLOSURE**

PLAINTIFF,

V.

TOU THAO,

DEFENDANT.

COURT FILE NO. 27-CR-20-12949

TO: THE HONORABLE PETER A. CAHILL, JUDGE OF DISTRICT COURT, AND
MR. MATTHEW G. FRANK, ASSISTANT ATTORNEY GENERAL

NOTICE OF MOTION

Please take notice, that on September 11, 2020 at 9:00 am, or as soon thereafter as counsel may be heard, Tou Thao (“Mr. Thao” herein) will move the Court for an order compelling the disclosure of; (1) the complete Hennepin County Medical Examiner’s Office file, (2) the reports and autopsies performed by Dr. Michael Baden, (3) the reports and autopsy performed by Dr. Allecia Wilson, and (4) the Office of the Armed Forces Medical Examiner entire file. Additionally, Mr. Thao respectfully moves the Court to continue the issue of causation of death from the September 11, 2020 Omnibus Hearing date to a date to be scheduled.

MOTION

Pursuant to Minn. R. Crim. P. 9.01 subd. 1 and subd. 2 (2020), Mr. Thao, by and through counsel, respectfully moves the Court for an order compelling the State to disclose the following documents associated with the investigation and death of George Floyd:

1. The complete Hennepin County Medical Examiner's Office file;
2. Any and all reports and autopsies performed by Dr. Michael Baden;
3. Any and all reports and autopsies performed by Dr. Allecia Wilson; and
4. The entire Office of the Armed Forces Medical Examiner file.

Mr. Thao additionally moves the Court to continue the issue of causation of death from the September 11, 2020 Omnibus Hearing to a date to be scheduled once the files have been turned over and reviewed by Defense.

STATEMENT OF FACTS

On May 25, 2020, Mr. Thao – then a Minneapolis Police Department Officer – responded to a call for backup outside the Cup Foods located at 3759 Chicago Avenue in Minneapolis, Minnesota. Mr. Thao assisted other Minneapolis Police Department Officers including Officer Derek Chauvin, Officer Thomas Lane, and Officer J. A. Kueng in the arrest of George Floyd (“Mr. Floyd” hereinafter), by attempting to control the growing crowd of onlookers. Mr. Floyd became unconscious during the arrest and was transported via ambulance away from the scene. Later that day Mr. Floyd was pronounced dead at the Hennepin County Medical Center (a.k.a. “HCMC”). The Minnesota Bureau of Criminal Apprehension and the Federal Government immediately began a criminal investigation into the death of Mr. Floyd.

On June 3, 2020, the State charged Officer Thao with two criminal counts via complaint. Count I alleges that Officer Thao committed the crime of aiding and abetting Second Degree Murder in violation of Minn. Stat. § 609.19.2(1) with reference to Minn. Stat. § 609.05.1. Count II alleges that Officer Thao committed the crime of aiding and abetting Second Degree Manslaughter in violation of Minn. Stat. § 609.205(1) with reference to Minn. Stat. § 609.05.1.

Pursuant to the Court's June 30th Scheduling Order, all discovery required by Minn. R. Crim. P. 9.01, 9.02 or 11.04 (2020) was to be completed on or before August 14, 2020. Discovery previously disclosed by the State includes documents that reference Hennepin County Medical Examiner Dr. Andrew Baker's autopsy and findings, as well as review of said findings by the Office of the Armed Forces Medical Examiner, and two "independent" autopsies performed by Dr. Michael Baden and Dr. Allecia Wilson. *See* Exhibit 1, 2, 3, 4, and 5. The complete Hennepin County Medical Examiner's Office file, reports and autopsies performed by Dr. Michael Baden, reports and autopsies performed by Dr. Allecia Wilson, and entire Office of the Armed Forces Medical Examiner file are vital parts of this case as they relate to the issue of causation regarding Mr. Floyd's death.

On August 19, 2020, the Defense inquired into as to the status of the entire Hennepin County Medical Examiner's Office file, and was told that although it had been requested by the State, they had not yet received it. As of August 24, 2020, the Defense has not received the entire Hennepin County Medical Examiner's Office file or the other referenced documents relating to the death of Mr. Floyd.

ARGUMENT

The Minnesota Rules of Criminal Procedure require the State to disclose any documents and tangible objects related to the case and any reports of examinations or tests. Minn. R. Crim. P. 9.01 subd. 1(1)(2020). The complete Hennepin County Medical Examiner's Office file squarely fits into this requirement. As do the "independent" autopsies and reports generated by Dr. Michael Baden and Dr. Allecia Wilson, because they participated in the investigation and have reported to the State in this particular case. Minn. R. Crim. P. 9.01 subd. 1a(2020).

The Office of the Armed Forces Medical Examiner's report and autopsy fall under Minn. R. Crim. P. 9.01 subd. 2(1) and (3)(2020) as they are "specified matters relating to the case that are within the possession or control of an official or employee of any governmental agency, but not within the prosecutor's control" and may "negate guilt or reduce the culpability of the defendant as to the offense charged". *See* Minn. R. Crim. P. 9.01 subd. 2(1)(2020); and Minn. R. Crim. P. 9.01 subd. 2(3). A showing that Mr. Floyd's death did not result from the restraint used by former officer Derek Chauvin would exculpate Mr. Thao.

The State has yet to disclose the Hennepin County Medical Examiner's file, the reports and autopsies performed by Dr. Michael Baden, the reports and autopsy performed by Dr. Allecia Wilson, and the reports and autopsies performed by the Office of the Armed Forces Medical Examiner.

Under the Minnesota Rules of Criminal Procedure, agents of the prosecution are held to the prosecution's obligations. Minn. R. Crim. P. 9.01 subd. 1a (2020). This includes "members of the prosecution staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the prosecutor's office". Minn. R. Crim. P. 9.01 subd. 1a (1) (2020). Agents in this case include

any and all staff members of the Minnesota Attorney General's Office (including any "Special Assistant Attorney Generals"), any staff members of the Hennepin County Attorney's Office, and all persons who performed medical exams and/or autopsies on the body of George Floyd or who have knowledge/access to the Medical Examiner File. Specifically, this includes:

- Chief Hennepin County Medical Examiner Dr. Andrew Baker (*see* Exhibit 1, 2, 3, 4, 5);
- Dr. Michael Baden (*see* Exhibit 2, 5, and 6);
- Dr. Allecia Wilson (*see* Exhibit 2 and 6);
- Paul S. Uribe M.D., Director of the Office of the Armed Forces Medical Examiner (*see* Exhibit 5);
- Louis N. Finelli D.O. of the Office of the Armed Forced Medical Examiner (*see* Exhibit 5);
- BCA Agents Scott Mueller and Mike Phill (*see* Exhibit 3); and
- FBI Agents Hoffstetter, Rainer, Kane, and Melcher (*see* Exhibit 3).

The Defense has reason to believe that the Hennepin County Medical Examiner's Office file is complete, as reports from the above Exhibits reference the final findings of Dr. Baker dating back to June 1, 2020. *See* Exhibit 1, 2, 3, 4, and 5. The Defense now respectfully asks the Court to compel the State to supply the complete Medical Examiner findings regarding the death of Mr. Floyd to the Defense pursuant to the Minnesota Rules of Criminal Procedure and the Court's June 30th Scheduling Order. Specifically, the Defense respectfully moves the Court to compel the following:

1. The complete Hennepin County Medical Examiner's Office file;
2. Any and all reports and autopsies performed by Dr. Michael Baden;
3. Any and all reports and autopsies performed by Dr. Allecia Wilson; and
4. The entire Office of the Armed Forces Medical Examiner file.

Additionally, since the Hennepin County Medical Examiner's Office file and other requested documents have yet to be disclosed, the Defense respectfully asks the Court to continue the issue

of causation from the September 11, 2020 Omnibus Hearing to a date to be scheduled once the file is received and reviewed.

Respectfully submitted,

Dated: This 24th day of August, 2020

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